

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

DATE: Friday, August 9, 2002
TIME: 9:00 a.m.
PLACE: State Office Building
Conference Rooms A, B & C
3060 Eiwa Street
Lihue, Hawaii 96766

Chairperson Gilbert Coloma-Agaran 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. Gilbert Coloma-Agaran	Mr. Timothy Johns
Ms. Lynn McCrory	Mr. Ted Yamamura
Ms. Kathryn Inouye	Mr. Toby Martyn
Mr. Gerald DeMello (arrived at 9:40 a.m.)	

STAFF:

Ms. Dede Mamiya, Land Division	Mr. Sam Lemmo, Land Division
Mr. Mike Laureta, Land Division	

OTHERS:

Ms. Linda Chow, Department of the Attorney General	Ms. Kristina Kiehl, D-11
Mr. Randy Teruya, DOA, D-3	Mr. James Boswell, MCC, D-3
Ms. Sandy Padaken, D-7	Mr. Tom Contrades, Boy Scouts, D-10
Mr. Robin Gibson, D-2	Ms. Mary Thronas, D-1

Item D-11 Amendment to Prior Board Actions and Issuance of Immediate Right-of-Entry to Kristina Kiehl for Access and Utility Purposes, Lalamilo, South Kohala, Hawaii, TMK: 3rd/6-6-02: Portion of 31.

Ms. Dede Mamiya explained that prior board actions had approved interim easements to landowners requiring access through a parcel of land destined to be part of the Hapuna Beach State Recreation Area. Landowners at that time acknowledged that the permanent alignment of easements would be determined following the completion of the environmental impact statement

process; Ms Mamiya noted that the Division of State Parks completed the EIS process in September, 2001. Ms. Mamiya informed the board that the current landowner recently constructed a house on the property and was, by this submittal, requesting a right-of-entry to develop the permanent access, and relocate the electrical and waterline into the new permanent access alignment.

Ms. Kristina Kiehl, the landowner, was present to respond to questions.

Member DeMello was not present for the vote.

Item D-11 was approved, as submitted, by the members remaining (Johns/Yamamura).

Item D-3 Withdrawal of Lot 11 from Governor's Executive Order No. 3696 and Set Aside to Department of Agriculture, State of Hawaii, for General Agricultural Purposes, Hoolehua-Apana and Palau-Apana 2, Molokai, TMK: (2) 5-2-001: 020.

Ms. Mamiya informed the board that Lot 11, part of the Molokai Agricultural Park, was currently occupied by Maui Community College (MCC) under a month-to-month permit with the State Department of Agriculture (DOA). Ms. Mamiya noted that, because of the anticipated future growth of the MCC program utilizing Lot 11, MCC approached the DOA requesting a long-term lease and discovered that laws governing agricultural parks did not allow for long-term leases. The subject withdrawal and set-aside would allow the DOA to issue a long-term lease to MCC.

Mr. Randy Teruya, Department of Agriculture, testified that the Board of Agriculture had, at its June, 2002 meeting, voted to petition the Board of Land and Natural Resources to approve the withdrawal and set-aside.

Mr. James Boswell, Maui Community College was present to answer questions.

Item D-3 was unanimously approved as submitted (Yamamura/McCrory).

Item D-10 Amend Prior Board Action of February 23, 2001 (Agenda Item D-4), Approval in Principle for Land Exchange Between the State of Hawaii and the Boy Scouts of America for State-Owned sites at Camp Pupukea on Oahu, Camp Honokaia on Hawaii, Camp Alan Faye on Kauai, and Privately-Owned Sites at Mill Town Center on Oahu and Maui Business Park on Maui.

Ms. Mamiya briefed members and recommended that the board amend the prior board action to reflect the new parcels to be considered for the exchange from Mill Town Center, Phase 1-A, parcels 13, 14, 15, 16, & 17 to Mill Town Center, Phase 1-B (all lots).

Member Johns emphasized that staff should not consider any parcels in Phase II; Ms. Mamiya stated that staff was only considering the lots in Phase I-B.

In response to Member Inouye's question regarding the appraiser for the state-owned lands, Ms. Mamiya stated that the appraisals were done by [Robert] Vernon of John Childs & Company.

Mr. Tom Contrades, representing Reese Faulkner of the Boy Scouts of America, testified that the executive board of the Aloha Council has already approved the monies for the appraisals of the private lands.

Item D-10 was unanimously approved as submitted (Johns/McCrory).

Item D-7 After-the-Fact Grant of Perpetual, Non-Exclusive Easement and Construction Right-of-Entry to Time Warner Entertainment Company, dba Sun Cablevision, for Utility Purposes at Puuanahulu to Keahole, North Kona, Hawaii, TMKs: 3rd/7-1-02: 01; 7-1-03: 01; 7-2-04; 7-2-05: 08; and 7-3-10: 33.

Ms. Mamiya briefed the board and recommended the issuance of the after-the-fact easement and right-of-entry to Sun Cablevision for its placement of overhead television cable lines over and across state-owned lands. Ms. Mamiya noted that Sun Cablevision had gone through the hearing Officer Administrative Penalty System (HOAPS) process for the conservation district violations and had paid a fine of \$500 plus administrative costs.

Ms. Mamiya recommended that the REMARKS section of the staff submittal be amended to delete the last sentence of the last paragraph:

... This project qualifies as an exempt class of action under 11-200-8(a)(6), Hawaii Administrative Rules, as it will have minimal or no significant effect on the environment and is a construction or placement of minor structures accessory to existing facilities. [Staff is recommending a fine of \$500 for unauthorized use of public lands.]

Chairperson Agaran, Member Johns and Ms. Mamiya briefly discussed the manner by which the number of violations was determined. Ms. Mamiya stated that in the instant case, the placement of lines, in its entirety, was counted as a single violation.

Ms. Sandy Padaken, representing Time Warner, was present to respond to questions.

Member Inouye recused herself.

Item D-7 was unanimously approved, as amended, by the members remaining (DeMello/Yamamura).

Item D-1 Amend Prior board Action of April 26, 2002 (Agenda Item D-12), Authorize One-Year Holdover Term for General Lease No. S-4092, Issuance of Revocable Permit Upon Expiration of Holdover Period, and Sale of Lease at Public Auction for Pasture Purposes, Parcels A & B of the Wailua Game Reserve, being Portion of the Government Lands of Wailua, North and South Olohena, Waipouli and Kapaa, Kawaihau (Puna), Kauai, TMKs: 4-2-1: 1 and 4-4-1: 1.

Ms. Mamiya briefed the board and recommended that the board amend its action of April 26, 2002, because, although past the deadline set by the board, proper documentation for the required performance bond had been submitted.

Member McCrory requested that the language of staff recommendation be amended so as not to imply that a performance bond was not required at all. Chairperson Agaran recommended that, instead of deleting the requirement to obtain a performance bond, the number of days allowed to submit the bond be amended from 30 to 60 days.

Member McCrory also requested that staff require the bond to be in cash or savings book form.

Ms. Mary Thronas was present to respond to members' questions. In response to Member McCrory's question regarding the cash bond requirement, Ms. Thronas stated that the requirement that the bond be in cash form did not present a problem.

Member McCrory amended the RECOMMENDATION section as follows:

That the Board:

Amend its approval of April 26, 2002, under Agenda Item D-12 by [deleting the requirement] amending the number of days to obtain a performance bond from 30 to 60 days, provided that such performance bond shall continue to remain in cash or savings passbook form.

Item D-1 was unanimously approved as amended (McCrory/Johns).

Item D-2 Forfeiture of General Lease No. S-4573, Hanapepe Place Associates, Inc., Lessee, Lot 23 Hanapepe Business Lots, Hanapepe, Waimea, Kauai, TMK: 1-8-8:64.

Ms. Mamiya recommended that the board authorize the cancellation of the subject lease due to the lessee's failure to keep current on its rental payments and its failure to post the necessary performance bond. She noted that the lessee's property manager, Chaney Brooks & Company, informed staff that the lessee was currently experiencing a cash flow problem created by the failure of a major tenant.

Mr. Robin Gibson, Senior Property Manager for Chaney Brooks, testified that the owners of Hanapepe Place Associates, had been unable to attend the board meeting but asked him to

convey their wish to retain the lease. He informed the board that a commercial warehouse with area divided into space for three tenants, was currently situated on the property. He noted, however, that only one tenant, Big Save Corp. currently occupied space at the warehouse. Mr. Gibson acknowledged that the lessee had been delinquent on lease rents on several occasions over the past three years, due primarily to the bankruptcy of their largest tenant. He noted, however, that he was currently in negotiation with Big Save Corp. for use of the space vacated by the failed tenant.

Mr. Gibson further testified that the lessee was prepared to cure the rental delinquencies by way of a check payment for the full amount of back rent, but requested an extension of time to submit the performance bond. He noted that a second tenant would strengthen the lessee's chances of obtaining a bond. He requested that the board allow the lessee to submit the required amount for the performance bond in installments.

Member McCrory noted her concern regarding the lessee's numerous defaults as outlined in staff's submittal. She stated that the lease plainly sets out what is required by the lessee, and that it was the lessee's responsibility to meet the conditions of the lease. Member McCrory further cautioned Mr. Gibson that, if the board allowed the lessee to retain the subject lease, any further default, of any kind, would result in an automatic cancellation. Member McCrory also clarified that, given the history of the lessee, the board, even if it allowed payment in installments, would not be amenable to anything less than cash with regards to the performance bond.

Members discussed the appropriate schedule of payment for the performance bond. Member McCrory amended staff submittal by:

1. Deleting recommendations 1, 2, 3 & 4, in their entirety, and
2. Setting aside the forfeiture of General Lease No. S-4573, subject to the following conditions:
 - a. That the Lessee shall post, in four (4) installments over the next 2 years, a cash performance bond of \$46, 800. Payment of the bond shall be made with each semi-annual rental payment;
 - b. That the performance bond shall remain in cash; and
 - c. That any further defaults by the lessee shall result in an automatic cancellation of the lease.

Item D-2 was unanimously approved as amended (McCrory/Johns).

Item D-4 Issuance of Right-of Entry to Maui Electric Company, Limited for Utility Purposes, Ualapue, Molokai, Maui, TMK: 5-6-002: Por. 034.

Ms. Mamiya briefed the board and recommended approval.

Item D-4 was unanimously approved as submitted (Yamamura/Johns).

Item D-5 Authorization of Bill of Sale to the Water Board of the County of Hawaii for Water Transmission Line and Reservoir Modifications, North Kona, Hawaii, TMK: 3rd/7-3-009: 019 & 030 and 3rd/7-3-047: county Road ROW.

Ms. Mamiya briefed the board and recommended approval.

Item D-5 was unanimously approved as submitted (DeMello/Yamamura).

Item D-6 Consent to a Revocable Permit Between the Department of Health and Care Hawaii, Inc. for Lands Under governor's Executive Order No. 3504, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-5-23: Por. 02

Ms. Mamiya briefed the board and recommended approval.

Members discussed the subject consent as an example of a non-profit policy.

Item D-6 was unanimously approved as submitted (Inouye/McCrory).

Item D-8 Request for Right-of-Entry by the United States Army Corps of Engineers, onto General Lease No. 5373, Palekoki Ranch, Inc., at Lalamilo, South Kohala, Hawaii, TMK: 3rd/6-6-01: Portion of 02.

Ms. Mamiya briefed the board and recommended approval.

Item D-8 was unanimously approved as submitted (DeMello/Yamamura).

Item D-9 Grant of Perpetual, Non-Exclusive Easement to City & County of Honolulu, Board of Water Supply for Water Meter Purposes, Honouliuli, Ewa, Oahu, TMK: (1) 9-1-088: Por. 014.

Ms. Mamiya briefed the board and recommended approval.

Item D-9 was unanimously approved as submitted (Inouye, Johns).

Item D-12 Conservation District Enforcement File No. KA-02-11: Unauthorized Grubbing and Landscaping: and Unauthorized Construction of a Jacuzzi and Pump House, Haena Ahupuaa, Hanalei, Kauai, TMK: (4) 5-9-002: 34.

Chairperson Agaran informed the board that the landowner was unable to attend the meeting and had requested that Item D-12 be deferred.

Item D-12 was deferred (McCrorry/Johns).

Item E-1 Request from the Ironman Triathlon World Championship to Use the Old Kona Airport State Recreation Area in Kailua-Kona, Hawaii, for the Ironman Hawaii Competition.

Ms. Mamiya presented staff submittal for the Division of State Parks, requesting approval to use the Old Kona Airport State Recreation Area for the Ironman Hawaii Competition.

Member McCrorry noted that State Parks' rules did not allow for any monies to be collected on site.


The board amended the Recommendation section by adding a paragraph 5:

5. The board waives the prohibition against the collection of monies under this Special Use Permit.

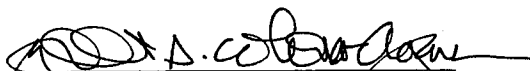
There being no further business, Chairperson Coloma-Agaran adjourned the meeting at 10:09 a.m.

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,


Gail Y. Murayama

Approved for submittal:


GILBERT S. COLOMA-AGARAN
Chairperson
Board of Land and Natural Resources

