

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

DATE: FRIDAY, SEPTEMBER 27, 2002
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

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
Mr. Timothy Johns
Ms. Kathryn Inouye

Ms. Lynn McCrory
Mr. Ted Yamamura

STAFF:

Ms. Dede Mamiya, Land Division
Mr. Dan Quinn, State Parks
Mr. Carl Dalla Rosa, DOFAW
Mr. Peter Garcia, Dept. of Transportation

Mr. Michael Buck, Division of
Forestry and Wildlife (DOFAW)
Mr. Barry Chueng, Land Division
Mr. Walter Ikehara, Aquatic
Resources

OTHERS:

Ms. Pam Matsukawa, Department of the
Attorney General
Mr. Glenn Ching, D-5
Mr. Walton Hong, D-7, D-12
Mr. Alan Asang, D-8
Mr. Ken Fong, D-9
Mr. Eric Maehara, D-10
Mr. Andy Char, D-12
Mr. Robert Reish, D-14

Mr. Doug Connors, C-1
Mr. Gino Gabrio, D-3
Mr. Stanley Kawabata, D-6
Mr. Presley Pang, D-8
Mr. Clayton Goo, D-8
Ms. Eleanor Tokunaga, D-10
Ms. Sheryl Buecher, D-11
Ms. Roberta Rita, D-13
Ms. Irene Anzai, D-15

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

Item A-1: Approval of the Minutes of July 12, 2002

The minutes of July 12, 2002 were unanimously approved as submitted (Johns/McCrory).

Item A-2: Approval of the Minutes of August 9, 2002

The minutes of August 9, 2002 were unanimously approved as submitted (Johns/McCrory).

Item A-3: Approval of the Minutes of August 23, 2002

Member Inouye recused herself, as she had not been present at the August 23, 2002 meeting.

The minutes of the August were unanimously approved by the members remaining (McCrory/Johns).

Item D-8: Fee Conveyance to 500 Acres to the University of Hawaii for Its West Oahu Campus, Honouliuli, Ewa, Oahu, TMK: (1) 9-1-16: por 108.

Dede Mamiya, Administrator of the Land Division briefed the Board on the University of Hawaii's efforts to establish a West Oahu campus. She stated that eight years ago, the Board approved the fee simple conveyance of the 500 acres, but since certain conditions have changed she recommended the Board rescind their prior action and reauthorize the fee conveyance of the subject lands. She noted that the University has agreed to allow the current permittees to continue their operation while UH continues the planning process.

Michael Buck of the Division of Forestry and Wildlife (DOFAW) spoke about the plant species *abutilon mezieisii*. Member Johns questioned the presence of the endangered plant species *abutilon menziesii* and what effect it would have on the development plans of the West Oahu campus.

Presley Pang and Alan AhSan representing the University of Hawaii were present. Mr. AhSan stated that the University is aware of the presence of *abutilon menziesii* and the University will plan the development of the campus around the endangered plant.

Chairperson Coloma-Agaran questioned the term “University Purposes” in recommendation 4B as to whether it was too broad. Member Johns also questioned whether the revenue generated by this piece of land would go towards supporting the University of Hawaii system or would it be designated specifically for the West Oahu campus.

Mr. AhSan informed the Board that the legislature will expect UH to do everything they can to generate income from the parcel of land to pay for building of the West Oahu campus but the final authority as to the disposition of revenue generated will be at the discretion of their Board of Regents.

The Board amended the Recommendation Section by amending paragraph 4.b. to read as follows:

“b. In the Event the University of Hawaii does not use or generate revenues from the use of the subject lands for [university] West Oahu campus purposes as determined by the University Board of Regents, the lands shall revert to the ownership of the Department of Land and Natural Resources;”

Unanimously approved as amended (Inouye/McCrory).

ITEM C-1: Request Approval of Contract with the Laupahoehoe Train Museum (the Okala Community Forest) to Participate in the State Forest Stewardship Program

Mr. Michael Buck, Administrator for the Division of Forestry and Wildlife (DOFAW) and Mr. Karl Dalla Rosa, Service Forester was present. Mr. Buck briefed the Board on the Forest Stewardship Program and recommended the Board approve the contract agreement with the Laupahoehoe Train Museum to participate in the implementation of the State Forest Stewardship Program.

Mr. Doug Connors, treasurer for the Laupahoehoe Train Museum was present to answer any questions. He stated the Laupahoehoe High School students have been supportive and helpful in the planting and measuring of the plants. In terms of commercial harvesting, Mr. Connors stated it is something their organization will look at in the future.

Unanimously approved as submitted (Johns/Yamamura).

Item D-14: Consent to Assign Perpetual non-Exclusive Easement LOD No 28,439, Frank L. Tabrah and Ernestine Tabrah, Assignors, to Robert C. Reish and Susan N. Reish, Trustees of the Robert C. Reish and Susan N. Reish 1995 Family Trust, Assignees, and Amendment to the Easement; Lamaloloa, North Kohala Hawaii, TMK: 3rd/5-7-01: Por. 22.

Ms. Mamiya of the Land Division noted this action was a result of a court ordered sale of the Tabrah property to Robert and Susan Reish, Trustees of the Reish Family Trust. She stated Robert Reish had concerns regarding paragraph five of the deed. Ms. Mamiya noted that before the Board today is the Consent to Assign Perpetual non-Exclusive Easement and that the Reish Family Trust will come back separately for the Consent to Mortgage. Ms. Mamiya recommended the Board Consent to the Assignment.

Mr. Robert Reish appeared before the Board and stated he had questions with regards to Items 15, 18, 19 and 22 on the easement. Ms. Mamiya informed Mr. Reish that her staff would work with him regarding these questions and if there were any problems it would be brought back to the Board.

Unanimously approved as submitted (Johns/ Yamamura).

Item D-12: Consent to Assignment and Mortgage, General Lease Nos. 3911, 3940, 4265, 4547 and 4571; Cancellation of General Lease Nos. 3879 and 4591 and Revocable Permit No. 3625, Wailua and Hanalei, Kauai, TMKs: Various.

Ms. Mamiya stated this would be an assignment from Kauai Electric Company to Kauai Island Utility Co-op. Ms. Mamiya recommended the Board Consent to the Assignment and Mortgage of these leases, and the cancellation of General Lease 3879, 4591 and Revocable Permit 3625 provided Kauai Electric remove all improvements and restore the area to its original condition.

Walton Hong representing Citizens Communication told the Board that he anticipates a closing date of October 31 or November 1, between Citizens Utilities and Kauai Island Utility Co-op. For the record, he presented to the Board pictures of the 3 sites being terminated, to show there is nothing on the site.

Member McCrory advised the Board that she would like to add the condition that the Consent to Assignment and Mortgage be contingent upon the close of the sale.

Andy Char representing Kauai Island Utility Co-op stated he does not object to Member McCrory's above condition. He noted that the reason they are pushing for a closing date of Nov 1, 2002, is because it would entitle the ratepayers of Kauai to a three million dollar rebate.

Member McCrory recused herself.

The Board Amend staff recommendations by:

- 1) Adding that the Board's consent under paragraphs A and B will not be valid if the sale of KECO to KIUC is not consummated; and
- 2) Amending paragraph B to read as follows:

“Consent to the mortgage between Kauai Island Utility Co-op, Mortgagor, and [National Rural Utilities Cooperative Finance Corporation, Mortgagee, or alternatively,] the U.S. Department of Agriculture, Rural Utilities Service and National Rural Utilities Cooperative Finance Corporation, Co Mortgagees, subject to the following ...”

Unanimously approved as amended by the remaining members (Johns/Inouye).

Item D-7: Selection and Appointment of a Hearing Officer to Conduct all Hearings for a Contested Case Hearing [Docket No. KA-03-01 – in the Matter of a Contested Case to Appeal Two Certified Shorelines for TMK: (4) 5-8-09: 045 Subdivision, Lot 6, Joseph Brescia and for TMK: (4) 5-8-09: 041 Subdivision, Lot 2, Carl Stephens in the District of Wainiha, Kauai].

Ms. Mamiya briefed the Board and recommended the Appointment of a Hearing Officer to Conduct hearings relevant to the subject petition and that the Board delegate the authority to select a hearings officer to the Chairperson.

Mr. Hong, representing Mr. Joseph Brescia asked the Board expedite this matter as soon as possible as Mr. Brescia has permits out to build his residence and this action is holding matters up.

Unanimously approved as submitted (McCrory/Johns).

Item D-3: Consent to Assignment of Term, non-Exclusive Easement (Grant of Easement No. S-4830) and Mortgage, Nansay Hawaii, Inc., Assignor to Rutter/KW Kohanaiki LLC, Assignee, Ooma 2nd and Kohanaiki, North Kona, Hawaii, TMK: 3rd/7-3-9.

Ms. Mamiya briefed the Board and stated that the property this easement serves was foreclosed on and the property was conveyed by Nansay Hawaii to KW Kohanaiki and subsequently to Rutter/KW Kohanaiki LLC. She recommended the Board Consent to the Assignment and the Mortgage.

Mr. Gino Gabrio, representing Rutter/KW Kohanaiki was present to answer any questions.

The Board amended the Recommendation Section by amending paragraph 1 to read as follows:

“1. Consent to the assignment of Grant of Easement No. S-4830 from Nansay Hawaii, Inc. as Assignor, to K-W Kohanaiki Group, Inc., as Assignee, and from K-W Kohanaiki Group, Inc., as Assignor, to Rutter/KW Kohanaiki LLC, as Assignee, subject to the following ...”

Unanimously approved as amended (Johns/Yamamura).

Item D-9: Grant of Perpetual, Non-Exclusive Easement to Hawaiian Electric Company, Inc. (HECO) for Fuel Pipeline Purposes, Portion of Waikele, Ewa, Oahu, Tax Map Key: 9-4-11: portion of 104.

Ms. Mamiya briefed the Board and noted the Division of Forestry and Wildlife supports granting the easement because it avoids crossing through Pouhala Marsh. She recommended the Board authorized the issuance of the Perpetual Easement to HECO for utility purposes.

Mr. Kevin Fong representing Hawaiian Electric Company Inc. was on hand to answer any questions.

Unanimously approved as submitted (Inouye/McCrory).

Item D-5: Consent to Issuance of a Term Non-exclusive Access Easement under Governor’s Executive Order No. 569 and 1522 to City & County of Honolulu, Honolulu, Oahu, Tax Ma Key: (1) 2-7-20: 11 and 2-7-36: 1 portion.

Ms. Mamiya noted that Iolani School has been using this piece of land for many years but it was never documented, therefore they would like to formulize this easement with the State. Ms. Mamiya informed the Board that Iolani School is willing to assume the cost of maintaining and widening the road.

Mr. Glen Ching from Iolani School was present to answer questions.

The Board amended:

- 1) The Terms and Conditions Section by amending the term from 55 years to perpetual; and

2) The Recommendation Section to read as follows:

“That the Board consent to the [term] perpetual non-exclusive access easement between the City and County of Honolulu and Iolani School, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following ...”

Unanimously approved as amended (Inouye/Johns).

Item D-10: Sale of Remnant to James N. Tokunaga Trust and Eleanor T. Tokunaga Trust, Kalekou-Waikaluakai Homesteads, Kaneohe, Oahu, Tax Map Key: 4-5-077: 59.

Ms. Mamiya briefed the Board and stated the applicant's boundary wall was built on the ditch. She did not recommend a fine be imposed, but she did leave it to the Board's discretion. Ms. Mamiya recommended the Board authorize the Sale of the subject Remnant to the Tokunaga Trust.

Mr. Eric Maehara, attorney for Mrs. Tokunaga was present. He indicated to the Board, there was no evidence of the right-of-way on the ground. He asked the Board to find that the right-of-way be deemed a remnant and authorize the sale of the land to his client. He noted the encroachment of the wall was probably done by the owners in 1963 and his client had no knowledge of this, therefore he asked that the fine be waived.

Mrs. Tokunaga informed the Board she was not aware that they were encroaching upon State land. She noted that her husband purchased the land in 1963, prior to their marriage. Only recently has she found out the land belonged to the State and she is here today to resolve this problem.

Unanimously approved as submitted (Inouye/McCrory).

Item D-15: Resubmittal: Amend Prior Board's Acton of July 24, 1998, Agenda Item D-8, Issuance of After-the-Fact Revocable Permit to Association of Apartment Owners of Mana Kai-Maui, Kamaole, Wailuku, Maui, Tax Map Key: (2) 3-9-004: Por. 001.

Ms. Mayima informed the Board on the background of the permittee. She recommended the Board approve the Issuance of the After-the-Fact Permit. She also amended the Recommendation section to include the propane gas tank.

Ms. Irene Anzai, attorney for the Association of Apartment Owners appeared before the Board and explained that the current members of their board did not realize they owed the State money for the use of the gravel parking lot dating back to 1987. She stated, due

to the hardship such a large amount of back rent would place on the Association, they're asking the Board of Land and Natural Resources to consider waiving or substantially reducing the back rent the association owes the State. Ms. Anzai also requested a special installment agreement (SIA) to pay any back rent.

Board Member McCrory pointed out that Ms. Anzai should look into using their Board's D&O insurance as the AOA Board Members may have been negligent in 1998 by not noting the liability for payment under the Revocable Permit in their budget.

The Board asked Ms. Mamiya to bring back a proposed SIA for their approval, including information on the D&O insurance. They amended the Recommendation Section by adding paragraph 5 to read as follows:

"5. Amend the purpose of the revocable permit to "gravel parking lot and propane gas tank."

Unanimously approved as amended (Yamamura/McCrory).

Item D-13: Consent to Assign General Lease No. S-3793, Estate of Anna Ham, Assignor to Earl Elmer Shook Jr., Assignee, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-10: 06.

Ms. Mamiya briefed the Board and noted that the lessee has passed away and the lease is going through probate. She stated that two of the Ham children, William Ham and Roberta Rita have expressed interest in the lease but no agreement could be reached. Ms. Mamiya recommended the Board Consent to the Assignment of the General Lease to Earl Elmer Shook Jr.

Robert Rita informed the Board as to what has transpired since her mother's death. She told the Board that in May she turned in an offer to her mother's estate for the lease of the property, which was more than Earl Shook's offer; therefore she was quite surprised to learn that the Board was going ahead with the Assignment of the lease to Earl Shook Jr.

In light of Ms. Rita's offer into the court, the Board felt it would be appropriate to wait until after the court hearing to consent to any assignment.

Motion to defer (Inouye/McCrory).
Unanimously approved to defer.

Item D-11: Sale of Reclaimed Land to Sheryl Buecher, Kaneohe, Koolaupoko, Oahu Tax Map Key: (1) 4-4-7-17 seaward.

Ms. Mamiya informed the Board that in 2000 the Board authorized the sale of this reclaimed land to Ms. Buecher. She recommended the Board deny the offer submitted by Mr. John King and reaffirm the sale to Sheryl Buecher.

Mr. Barry Chueng of the Land Division notified the Board that their office is in the process of getting the land appraised so they can make an offer to Ms. Buecher.

Ms. Sheryl Buecher appeared before the Board and stated that she has lived there for 24 years and during that time, has maintained and taken care of the State property. She noted that whatever the State told her need to be done, she did it.

The Board felt it was inappropriate to reject Mr. King's application until we see whether Ms. Buecher accepts the State's offer and executes the document.

**Motion to withdraw (Inouye/McCrory).
Unanimously approved to withdraw.**

Item D-6: Consent to Mortgage and Modify the Fixed Rental Period, General Lease No S-3768, Stanley Kawabata, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-027: 027.

Ms. Mamiya briefed the Board and recommended the Board Consent to the Mortgage between Mr. Kawabata and First Hawaiian Bank and authorized the Modification of the Fixed Rental Period.

Mr. Stanley Kawabata addressed the Board and stated that he would use the money to improve his home (i.e. paint the house, termite treatment).

Unanimously approved as submitted (Inouye/Yamamura).

Item F-1: Request for Approval to Enter into a New Agreement with the Research Corporation of the University of Hawaii (RCUH).

Mr. Walter Ikehara, Aquatic Biologist with the Division of Aquatic Resources briefed the Board on the request to enter into an Agreement with RCUH. He noted the position being funded would be on Kauai. Mr. Ikehara recommended the Board authorize and enter into an agreement with RCUH.

Unanimously approved as submitted (McCrory/Inouye).

Item E-2: Request for Permission to Advertise for Bids to Operate Kokee Concession, Kokee State Park, Kauai.

Mr. Dan Quinn, Administrator for State Parks informed the Board of the concession agreement and proposed the new agreement be short-term, ending March 31, 2006. He recommended the Board authorize the advertising for Bids to Operate the Kokee Concessions.

Member Johns was not present for the vote.

Unanimously approved as submitted, by the members remaining (McCrorry/Inouye).

Item E-1: Request to use the Old Kona Airport State Recreation Area in Kailua-Kona, Hawaii, for an Old Fashion Political Rally.

Mr. Quinn informed the Board, the Linda Lingle Campaign Committee is requesting the use of the Pavilion to hold a Political Rally on Sunday, October 27, 2002. He noted the campaign is requesting to sell tickets and collect donations at the site. Mr. Quinn recommended the Board approve the Issuance of a Special Use Permit but not allow any exchange of monies at the Old Kona Airport State Recreation Area.

Member Johns questioned Mr. Quinn as to whether the State allows political activities in State Parks. Mr. Quinn noted in the past the State has allowed political gatherings, but on a much smaller scale.

The Board amended the Recommendation Section by deleting condition 1.

Unanimously approved as amended (Johns/Inouye).

Item K-1: Issuance of a Lease to the Federal Aviation Administration for System Support Unit (SSU) and Airport terminal Information Service (ATIS) at Molokai Airport.

Mr. Peter Garcia of the Department of Transportation (DOT) briefed the Board and recommended the issuance of a Lease to the Federal Aviation Administration.

Unanimously approved as submitted (Yamamura/Johns).

Item K-2: Lease of Office Spaces to United States of America, General Services Administration, Acting or and on Behalf of U.S. Drug Enforcement Administration, at Honolulu International Airport.

Mr. Garcia briefed the Board on the terms of the lease and recommended the Board authorized the Lease of Office Space and issue a construction right-of-entry to the Government of the United States of America, General Services Administration.

Unanimously approved as submitted (Johns/Yamamura).

Item K-3: Issuance of a Traveler Services Concession at Honolulu International Airport.

Mr. Garcia informed the Board as to what services the concessionaire would be providing and indicated the areas they would occupy. He noted the contract would be for 5 years and there would be a minimum annual guaranteed rent of not less than \$550,000. Mr. Garcia recommended the Board authorize DOT to call for sealed bid tenders for the Travelers Services Concession.

Member McCrory asked Mr. Garcia to provide the Board with copies of the Revocable Permit Reports.

Unanimously approved as submitted (Johns/Yamamura).

Item D-1: Consent to a Revocable Permit between Department of Business, Economic Development and Tourism and Helldorado Productions, LLC, for Lands under Governor's Executive Order No. 3450, Kapahulu, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 3-1-42: 09 Por.

Ms. Mamiya briefed the Board and recommended the Board consent to the Revocable permit between Department of Business Economic Development and Tourism and Helldorado Productions.

Unanimously approved as submitted (Johns/Yamamura).

Item D-2: Amend Grant of Easement [LOD No 28,530] issued to the County of Maui, by Revising the Character of Use for the Perpetual, Non-Exclusive Utility Easement, Over State Lands Identified as Tam Map Keys: (2) 3-4-011: Pors. 002 and 019, Owa, Wailuku, Maui.

Ms. Mamiya informed the Board that Maui Electric Company, Limited and the County of Maui are requesting that the easement document be revised to address underground installations. Ms. Mamiya recommended the Board amend the Grant of Easement.

Unanimously approved as submitted (Yamamura/Johns).

Item D-4: Set Aside to Department of Accounting and General Services for Puea Cemetery, Puea, Kaplama-Uka, Honolulu, Oahu, Tax Map Key: (1) 1-6-015: 069.

Ms. Mamiya informed the Board the Department of Accounting and General Services (DAGS) has been taken care of this piece of land and recommended the Board approve the issuance of an executive order setting aside the subject lands to DAGS.

Unanimously approved as submitted (Johns/Yamamura).

Motion made at 11:30 a.m. to move into executive session (Johns/McCrory) following oral arguments.

There being no further business, Chairperson Coloma-Agaran adjourned the meeting at 1:14 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,

Terry Crowell

Approved for submittal:

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

