

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

DATE: FRIDAY, MAY 9, 2003
TIME: 9:00 A.M.
PLACE: MAUI COMMUNITY COLLEGE
KALAMA BUILDING ROOM 103
310 KAAHUMANU AVE
KAHULUI, MAUI, HAWAII 96732

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:07 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Timothy Johns
Mr. Toby Martyn

Ms. Lynn McCrory
Mr. Ted Yamamura

STAFF

Ms. Dede Mamiya, Land Division
Mr. Peter Garcia, DOT

Mr. Jason Koga, Land Division

OTHERS

Mr. Jay Paige, Deputy Attorney General
Ms. Linnel Nishioka, D-4
Mr. Nick Mitchell, D-10

Mr. Philip Leas, D-5
Ms. Sasha Smith, D-11

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

Item A-1: Minutes of March 14, 2003

Unanimously approved as submitted (McCrorry/Johns).

Item A-2: Minutes of April 25, 2003

Unanimously approved as submitted (Johns/Yamamura).

**Item D-4: Petitioner's Oral and Written Request for Contested Case Hearing, and Appointment and Selection of a Hearing Officer to Conduct All Hearings for a Contested Case Hearing. Docket No. HA-03-03
Petition from the Estate of Samuel Mills Damon Contested the Board of Land and Natural Resources April 11, 2003 Decision to Access a Fine of \$466,800 or in the Alternative, Order the Restoration of its Private Lands for the Alleged Conservation District Violations (Enforcement Case HA-02-01) of Timber Harvesting, at Kau, Island of Hawaii, TMK: (3) 9-2-001: 002.**

Member Johns recused himself.

Dede Mamiya Administrator for the Land Division told the Board on April 23, 2003 her office received a petition for a contested case hearing regarding the conservation district violation.

Linnel Nishioka representing Damon Estates addressed the Board. She requested the process of selecting a hearings officer be deferred while Damon Estate works on a reforestation plan. The Estate has retained Charlie Wakida and he has been working with the National Park Service to come up with a reforestation plan. Mr. Wakida has completed a reforestation plan but the plan requires trustee approval before it is released publicly. Upon approval by the trustees, Damon Estate plans to meet with staff from the State Conservation and Coastal Lands and the Division of Forestry and Wildlife to get their input. Damon Estate hopes to come before the Board with their plan on the second meeting in June. Ms. Nishioka also informed the Board the National Park Service anticipates a closing date of June 30, 2003 on acquiring the property.

The Board amended the Recommendation Section by amending paragraph 3) to read as follows:

“[3]2) That the Board delegate the authority for selection of the Hearing Officer to the Chairperson; provided the selection shall not occur prior to August 31, 2003.”

Unanimously approved as amended (Martyn/McCrorry).

Item D-5: Waive Petitioners' Failure to make an Oral Request for Contested Case Hearing, and Appointment and Selection of a Hearing Officer to

Conduct All Hearings for a Contested Case Hearing. Docket No. OA-03-02 Petitions requesting the Board to deny CDUP application OA-3113 to Construct the Holland's Single Family Residence and Landscaping at 166 Poloke Place, Honolulu, Island of Oahu, 96822, TMK: (1) 2-5-015: 024.

Ms. Mamiya conveyed to the Board they have received two petitions requesting a contested case hearing regarding the construction of a single-family residence. She did note that no oral request where made at the February 28, 2003 board meeting but the petitioners did file their request in a timely manner. Ms. Mamiya also informed the Board she has received two written request to defer this item.

Philip Leas appeared on behalf of the Holland family. He told the Board on the February 28, 2003, meeting, the Holland's received approval for construction of a single-family residence. He noted at the meeting there was no request for a contested case hearing. Mr. Leas questioned the characterization that the petitioner's request was done "in a timely manner." He felt that the rules state that an oral request must be made at the time the Board makes a decision on the matter and because none was received, there was no foundation for a written request to be submitted later. Mr. Leas told the Board his clients are living in the basement under their garage until their home can be built and because of this delay they are in jeopardy of losing their contract with the builders. He asked the Board to deny the request before them today.

The Board deferred this item to the end of the meeting so they could obtain additional information on this item.

Item D-6: Grant of Perpetual Non-Exclusive Easement to Michael Miller for Access/Utility Purposes, Waioli Valley, Hanalei, Kauai, TMK: 5-5-06: por. 20, 5-5-08: por. 18 and 32.

Ms. Mamiya briefed the Board and noted the applicant has requested a deferral to the next meeting.

Motion to Defer

Unanimously approved to defer (McCrorry/Johns).

Item D-10: Issuance of Right-of-Entry Permit to the Department of Transportation, Highways Division and Geolabs Inc., on Lands Encumbered by General Lease No. S-5586, Island Dairy, Lessee, at Humuula, North Hilo, Hawaii, TMK: (3) 3-9-01: por. 01.

Ms. Mamiya pointed out this is a request for a right-of-entry to the Department of Transportation and Geolabs, Inc. for survey study purposes in connection with the Hawaii Belt Road Rockfall Protection Project. Ms. Mamiya stated the applicants would need to obtain written concurrence from all lessees of the subject land. Ms. Mamiya

recommended the Board authorize the issuance of a right-of-entry to the Department of Transportation and Geolabs Inc.

Nick Mitchell of Geolabs Inc. was present to answer any questions.

Unanimously approved as submitted (Johns/Martyn).

Item D-11: Issuance of Revocable Permit to Sasha Smith, Kula Makawao, Maui, TMK: (2) 2-3-007: 017.

Ms. Mamiya conveyed to the Board the applicant is requesting a revocable permit for pasture purposes. She told the Board the applicant is an employee of the Division of Forestry and Wildlife and has raised and maintained horses her entire adult life. Staff believes the applicant qualifies as a bona fide farmer pursuant to §171-14.5, HRS. The applicant intends to place no more than two horses on the parcel for her own personal use. Ms. Mamiya noted requirements such as a conservation plan, fencing of the entire parcel and a maximum of two animals shall be allowed to graze the parcel are conditions on her permit. Ms. Mamiya recommended the Board authorize the issuance of a revocable permit.

Sasha Smith was present to answer any questions. Ms. Smith told the Board she has received a quote for insurance for this parcel.

Unanimously approved as submitted (Yamamura/Johns).

Item M-1: Issuance of Revocable Permit to Mid Pacific Steel, Inc., Honolulu International Airport, Oahu, TMK: (1) 1-1-03-1P.

Peter Garcia of the Department of Transportation (DOT) made it known the permit is for 20,490 square feet of land on Ualena Street and will be used for storage of forged steel. The monthly rent will be \$5,379.000. Mr. Garcia noted the applicant's business is expanding so they are asking for more space. Mr. Garcia recommended the Board authorize DOT to issue the above revocable permit.

Unanimously approved as submitted (Johns/Yamamura).

Item M-2: Issuance of Revocable Permit to Royal Hawaiian Movers, Inc, Honolulu International Airport, Oahu, TMK: (1) 1-1-03-1P.

Mr. Garcia pointed out the permit would encompass 17,468 square foot of space and the monthly rent would be \$4,585. He also noted Royal Hawaiian Movers, Inc. has received an increase in business and is thereby requesting more space. Mr. Garcia recommended the Board authorize DOT to issue the above permit.

Unanimously approved as submitted (Johns/Yamamura).

Item M-3: Consent to Sublease, Hawaii Helicopters, Inc. to Helicopter Consultants of Maui, Inc., Kahului Airport, TMK: (2) 3-8-01-19P.

Mr. Garcia noted this is a consent to sublease between Hawaiian Helicopters, Inc and Helicopter Consultants of Maui, Inc for land at Kahului Airport. The area of the sublease would be approximately 4,900 square feet and the rent will be \$2,548. Due to a decline in business, Hawaii Helicopters, Inc. has determined it would be more cost effective to sub-contract the maintenance portion of the operation. Mr. Garcia recommended the Board authorize DOT to approve the Consent to Sublease.

Unanimously approved as submitted (Yamamura/Johns).

Item M-4: Consent to Temporary Facility Permit for Special Events under Harbor Lease No. H-87-30 at Pier 7, Honolulu Harbor, Oahu, TMK: (1) 2-1-01-58P.

Mr. Garcia made it known that the Hawaii Maritime Center, which is located at Pier 7, is asking for consent to a temporary facility permit for special events. The applicant would be using the first and second floors of the Pier 7 Restaurant to hold special events such as catering to professional people and businesses. They will be serving food and drinks. The plan is to use the area for approximately three days a week from May 22, 2003 until August 30, 2003. Mr. Garcia recommended the Board approve the Consent to the Facility Permit Agreement.

Unanimously approved as submitted (Johns/Yamamura).

Item M-5: Amendment to Prior Land Board Action of January 10, 2003, Agenda Item M-7, Regarding the Issuance of a Revocable Permit to Dewain A. Detrick at Pier 24, Honolulu Harbor, Oahu.

Mr. Garcia let the Board know this is an amendment to a prior action. He noted the monthly rental was incorrectly listed as \$7,941.60 per month with a security deposit of \$15,883.20. The rental should have read \$9,741.60 per month with a security deposit of \$19,483.20. Mr. Garcia recommended the Board amend its prior action of January 10, 2003 under agenda item M-7.

Unanimously approved as submitted (Johns/Yamamura).

Item M-6: Report on Revocable Permits Issued or Renewed by the Department of Transportation for Consistent Uses – Harbors Division.

No Action.

Item M-7: Report on Revocable Permits Issued or Renewed by the Department of Transportation for Consistent Uses – Airports Division.

No Action.

The Board recessed at 9:46 a.m. and resumed the meeting at 9:48 a.m.

Item D-1: Withdrawal from General Lease No. S-5483 issued to Alfred Silva and John Silva and General Lease No. S-5583 issued to William and Alison Sanchez; Set Aside to Department of Transportation, Highways Division for Highway Purposes; Issuance of an Immediate Construction and Management Right-of-Entry, Kapaa, Kauai, TMK: (4) 4-3-4 por. 1, 8, and 9.

Ms. Mamiya indicated this is a request to withdraw from two General Leases and to Set Aside the land to the Department of Transportation (DOT), Highways for the Kuhio Highway Improvement Project. Staff looked at "the withdrawal provision" on the State leases and determined there would be no reduction in the rent. Ms. Mamiya recommended the Board withdraw from General Lease S-5483 and S-5583, approve and recommend to the Governor the issuance of an executive order setting aside the subject lands to DOT, Highways Division and lastly to authorize a right-of-entry to DOT, Highways Division.

Unanimously approved as submitted (McCrory/Johns).

Item D-2: Rescind Prior Board Action of January 8, 1988 (Agenda Item F-8), County of Maui, Department of Water Supply's Request for Right-of-Entry and Grant of Easement for Lahaina Turbidity Control Project, Job. No. 86-132, Lahaina, Maui, TMK: (2) 4-6-18: por. 7 and 12.

Ms. Mamiya noted in 1998 the County of Maui asked for an easement but because the easement is no longer required she is recommending the Board rescind its Prior Board action of January 8, 1988, under agenda item F-8.

Unanimously approved as submitted (Yamamura/Johns).

Item D-3: Rescind Prior Board Action of March 9, 1990 (Agenda Item F-5), Direct Sale of Perpetual, Non-Exclusive Easement to R.W. Meyer, Ltd, for Water Intake Transmission Pipeline Purposes and a Construction Right-of-Entry, Kalamaula, Molokai, TMK: (2) 5-2-14: por. 3.

Ms. Mamiya briefed the Board and noted the easement is no longer required. She recommended the Board rescind its prior Board action of March 9, 1990, under agenda item F-5.

Unanimously approved as submitted (Yamamura/McCrory).

Item D-7: Amend Prior Board Action of June 28, 2002 under Agenda Item D-14 for Issuance of Revocable Permit to CSX Lines, LLC for Parking of Container and Trailers Purposes, Sand Island Honolulu, Oahu, TMK: (1) 1-5-041: por. 022.

Ms. Mamiya informed the Board this is a request to amend a prior Board action in which the Board approved a revocable permit to CSX Lines, LLC at Sand Island. This request is to change the name from CSX Lines, LLC to Horizon Lines, LLC. Ms. Mamiya recommended the Board amend its prior Board action by replacing the name of the applicant with Horizon Lines, LLC.

Unanimously approved as submitted (Johns/Yamamura).

Item D-8: Amend Prior Board Action of March 28, 2003 (Item D-3), Issuance of Right-of-Entry Permit to U.S. A., Department of the Army on Lands Encumbered by Governor's Executive Order No. 3888, Keawaula, & Kahanahaiki and Makua, Waianae, Oahu, TMK: (1) 8-1-01: 08 and (1) 8-2-01: 22.

Ms. Mamiya pointed out she is requesting to amend a prior Board action of a right-of-entry permit. She would like to change the term of the permit to a period of May 12 – 30, 2003. Ms. Mamaiya recommended the Board amend its prior Board action of March 28, 2003, Agenda Item D-3.

Unanimously approved as submitted (Johns/McCrory).

Item D-9: Consent to a Revocable Permit between Department of Business, Economic Development and Tourism, and Warner Brothers Television, a Delaware Corporation, for Lands under Governor's Executive Order No. 3450, Kapahulu, Waikiki, Honolulu, Oahu, TMK: (1) 3-1-42: 09 por.

Ms. Mamiya pointed out Warner Brothers Television would be using facilities at the film studio to film an episode of the television series ER. There would be five production cottages and two trailers. Ms. Mamiya recommended the Board consent to the revocable permit.

Unanimously approved as submitted (Johns/Yamamura).

The Board recessed at 9:53 a.m. and resumed at 10:30 a.m.

Item D-5: Waive Petitioners' Failure to make an Oral Request for Contested Case Hearing, and Appointment and Selection of a Hearing Officer to Conduct All Hearings for a Contested Case Hearing. Docket No. OA-03-02 Petitions requesting the Board to deny CDUP application OA-3113 to Construct the Holland's Single Family Residence and

Landscaping at 166 Poloke Place, Honolulu, Island of Oahu, 96822,
TMK: (1) 2-5-015: 024.

A motion was made at 10:30 a.m. to move into executive session to consult with the deputy attorney general regarding the Board's rights, privileges and statutory authority with regards to HAR, Section 13-1-29 (a).

Unanimously approved to move into executive session (McCrorry/Martyn).

The Board reconvened at 10:52 a.m.

The Board amended the Recommendation Section by adding a paragraph 4) to read as follows:

"4) The Department shall expedite the appointment of the hearing Officer and shall ensure the Hearing Officer expedites the contested case hearing."

Unanimously approved as amended (Johns/McCrory).

There being no further business, Chairperson Young adjourned the meeting at 10:54 a.m.

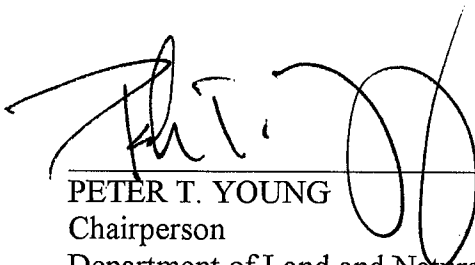
Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Terry Crowell

Approved for submittal:



PETER T. YOUNG
Chairperson
Department of Land and Natural Resources