

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

DATE: FRIDAY, JULY 11, 2003  
TIME: 10:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 10:43 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young  
Mr. Timothy Johns  
Mr. Ted Yamamura  
Mr. Gerald DeMello

Ms. Lynn McCrory  
Ms. Kathryn Inouye  
Mr. Toby Martyn

STAFF

Ms. Dede Mamiya, Land Division  
Mr. Scott Whitting, Land Division  
Mr. Andrew Monden, Engineering

Mr. Sam Lemmo, Land Division  
Mr. Peter Garcia, DOT

OTHER

Mr. Vince Kanemoto, Deputy Attorney General  
Ms. Yvonne Izu, Deputy Attorney General  
Ms. Linda Chow, Deputy Attorney General  
Ms. Linnel Nishoka, M-1, M-2  
Ms. Monnie Gay, D-9  
Mr. Wayne Katayama, D-10  
Mr. Robert Kratovil, D-11  
Mr. Don Wilson, D-11  
Mr. Gaylord Wilcox, D-11  
Ms. Mina Morita, D-11

Ms. Asako Shimazu, M-1, M2  
Mr. Larry Cobb, D-9, D-6  
Mr. Alton Komori, D-5  
Mr. Michael Miller, D-11  
Mr. Russell Inrim, D-11  
Mr. Alan Tasaka, D-11

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

**Item A-1: Minutes of June 27, 2002**

**Member Johns recused himself.**

The Board made the following changes:

Page 5, third paragraph, last line

**“~~[reforestation]~~landscape plan in place for the area.”**

Page 5, last paragraph, fourth sentence

**“substantial cost from ~~[a previous violation]~~ the Kauai County SMA violations for this tree cutting and he feels remorseful for his actions.”**

Page 8, third paragraph

**“The Board noted its displeasure with A & A coming before the Board on four previous occasions for default in rental payments, and his position of not paying the State because his tenant didn’t pay him.”**

Page 9, first paragraph, fifth line

**“Board he would like to hire~~¶~~ a surveyor to determine the boundary.”**

Page 9, fourth paragraph

**“Member McCrory communicated she would be in favor of a deferral if it would not exceed six months but in the meantime she would make ~~[made]~~ a request that staff go back and address all the issues and damages done to State land.”**

Page 9, fifth paragraph

**“A motion was made at 1:30 p.m. to move into Executive Session to discuss the Board’s legal ability to provide a deferral with a time frame and what effect ~~[in]~~ it will have on all of the issues before the Board. “**

Page 10 first paragraph

**“His survey’s emphasis was to estimate the number of tree’s destroyed from logging and the size and quality of harvested logs (determines wood volume).”**

Page 10, second paragraph, fourth line

**“asked ~~[the]~~ by the Board the number of years ~~[if]~~ it would take the monitoring plan to work, Mr. Constantinides replied about fifteen (15) years.”**

**Unanimously approved as amended (McCrorry/Martyn).**

**Item M-1: Amendment to Prior Land Board Action of May 23, 2003, Under Agenda Item M-1, for a Construction Right-of-Entry and Issuance of Lease of Easement to Citizens Communications Company, LTD., at Kalaeloa Barbers Point Harbor, Oahu, TMK: (1) 9-1-14P.**

Member Johns recused himself.

Peter Garcia of the Department of Transportation (DOT) told the Board this is an amendment from a prior Land Board action of May 23, 2003. He informed the Board Citizens Communications Company is being purchased and the new name will be The Gas Company, LLC. He requested the construction right-of-entry be issued to Citizens Communications Company while the lease of easement be issued to The Gas Company, LLC. Mr. Garcia recommended the Board amend the name of the applicant for the lease of easement to The Gas Company, LLC.

Linnel Nishioka of the law firm Oshima, Chun, Fong and Ching was on hand to represent Citizens Communications. She informed the Board her client was in full support of this item.

Asako Shimazu of McCorriston, Miller, Mukai and MacKinnon was present to represent The Gas Company. Ms. Shimazu noted her client was in support of this item.

**Unanimously approved as submitted (Inouye/DeMello).**

**Item M-2: Issuance of Revocable Permit to the Gas Company, LLC, Adjacent to Piers 37 and 38, Honolulu Harbor, Oahu, TMK: (1) 1-1-03-1P.**

Member Johns recused himself.

Mr. Garcia communicated Gasco is being sold and its new name will be The Gas Company, LLC. Mr. Garcia recommended the Board authorize the Department of Transportation, Harbors Division to issue a revocable permit to the applicant for the above stated purpose.

Linnel Nishoka and Asako Shimazu noted their support of this item.

**Unanimously approved as submitted (Inouye/Martyn).**

**Item M-3: Report on Revocable Permits Issued or Renewed by the Department of Transportation for Consistent Uses.**

**No Action.**

**Item M-4: Report on Revocable Permits Issued or Renewed by the Department of Transportation for Consistent Uses.**

**No Action.**

**Item D-9: Rescind Prior Land Board Actions of May 25, 2001, Agenda Item D-2 and December 13, 2002, Agenda Item D-42, Relating to Department of Agriculture's General Lease No. S-3001, Cancellation of Governor's Executive Order No. 3251 to the Department of Agriculture, Set Aside to the County of Maui for Agricultural Processing and Marketing Purposes, Kula, Makawao, Maui, TMK: (2) 2-3-003: 023.**

Dede Mamiya Administrator of the Land Division disclosed this is a request to rescind a prior Board action and to cancel Governor's Executive Order No. 3251 and reset the lands to the County of Maui for a vacuum cooler plant facility. As background information, Ms. Mamiya made it known in 2001 and 2002, the Department of Agriculture (DOA) requested for consent to assign, extend and amend their general lease No. S-3001 to assist the County of Maui in obtaining a grant for the Maui Agricultural Processing and Marketing Center. The County now realizes that the most appropriate way would be to have the lands set-aside directly to the County of Maui. Ms. Mamiya is recommending the Board rescind its prior actions and approve and recommend to the Governor the issuance of an executive order canceling Governor's Executive Order No. 3251 to the Department of Agriculture and approve and recommend to the Governor the issuance of an executive order setting aside the subject lands to the County of Maui.

Monnie Gay the Agricultural Coordinator for the County of Maui was on hand to testify. She noted it was her hope this item would be passed so the County of Maui can move forward with this project.

Larry Cobb, district property manager for the County of Maui, Department of Agricultural was present to answer any questions.

**Unanimously approved as submitted (DeMello/Johns).**

**Item D-6: Consent to Revocable Permit and Construction Right-of-Entry to Various Owners for Bridge Over and Across Irrigation Ditch under Governor's Executive Order No. 1660 to Department of Agriculture, Puukapu, South Kohala, Hawaii, TMK: 3<sup>rd</sup>/6-4-17: 06.**

Ms. Mamiya made it known the subject area is under Governor's Executive Order No. 1660 to the Department of Agriculture for the Waimea, Hawaii Irrigation and Water Utilization Project. Recently the Department of Agriculture approved the issuance of a revocable permit and right-of-entry to various owners that rely on the existing bridge crossing to access their properties. Ms. Mamiya recommended the Board consent to the revocable permit and construction right-of-entry between the Department of Agriculture and various owners.

Larry Cobb, district property manager for the County of Maui, Department of Agricultural was in favor of this agenda item.

**Unanimously approved as submitted (DeMello/Johns).**

**Item D-10: Amend Prior Board Action of October 26, 2001 (Agenda Item D-11) Authorizing a Direct Lease to, now, Authorizing a Set Aside to the Agribusiness Development Corporation for Agricultural Purposes, Kekaha, Waimea, Kauai, TMK: (4) 1-2-02 parcel 1; Issuance of a Revocable Permit to the Agribusiness Development Corporation for Hydro, Kekaha, Waimea, Kauai, TMK: (4) 1-5-01: parcel 1 (portion).**

Ms. Mamiya communicated the lands in question were the former Kekaha Sugar lands. Upon closure of Kekaha Sugar Company in 2001, five revocable permits were issued which covered the subject lands. In October 2001 the Board tabled the idea of having the coop apply for the master lease and authorized the issuance of a direct lease to the Agribusiness Development Corporation (ADC). In June 2003 the Kekaha Committee of the ADC adopted a resolution agreeing to accept an executive order, subject to a memorandum of agreement. Ms. Mamiya also made it known that a Mauka Hydro which is located at the bottom of Waimea Canyon was not under any lease or permit and needed to be included in the disposition. Ms. Mamiya recommended the Board amend its prior action and authorize the Chairperson to negotiate and enter into a memorandum of agreement on behalf of the Department with the ADC.

The Board asked Ms. Mamiya to address the issue of a set aside versus a direct lease. Mr. Scott Whitting, Special Projects Coordinator with the Land Division told the Board ADC has concerns with the lease because as it is worded ADC would need to come before the Board with regards to managerial items, which could prove to become cumbersome. By going with a set aside it would give ADC more autonomy to operate.

Wayne Katayama representing the Agribusiness Development Corporation was present to answer any questions.

**Unanimously approved as submitted (McCrorry/Johns).**

**Item D-5: Quitclaim of State's Interests in a Portion of a Drainage Easement, Makiki, Honolulu, Oahu, TMK: (1) 2-4-23: portion of 08.**

Ms. Mamiya briefed the Board and recommended the Board authorize the quitclaim of State's interest in a subject portion of the drainage easement.

Alton Komori prior owner of the parcel testified in support of the measure.

**Unanimously approved as submitted (Inouye/Johns).**

**Item D-11: Grant of Perpetual Non-Exclusive Easement for Access/Utility Purposes to Michael Miller, et al., Waioli Valley, Hanalei, Kauai, TMK: 5-5-06: portion 20, 5-5-08: portion 2, 18 and 32.**

Member McCrory requested an Executive Session at 11:00 a.m. to discuss why this item was brought before the Board after its previous request was denied and would like to review the court case with the attorney general.

**Motion to move into Executive Session (McCrory/Johns).**

The Board meeting was reconvened at 11:52 a.m.

Ms. Mamiya went over the history of this matter. She indicated this has been an on going process for the past 17 years. Initially in 1986 the Board authorized an access easement for the Miller's property for a five (5) year term instead of the requested sixty-five (65) years. In response Mr. Miller filed a lawsuit to establish an easement over State and privately owned lands in favor of his property for access/utility purposes. The Court directed Miller to first try to establish the State land portion of the easement. In 1988 the Board denied his next access/utility easement. Mr. Miller went back to Court and he was directed by the court to return to the Board to have them set the alignment as the Court believed the last Board action was merely an alignment problem. At this point, Mr. Miller is proposing a different alignment from the original alignment. In Mr. Miller's new alignment the first quarter of a mile, which is over State land is graded and graveled. The next half-mile is a foot trail over three State parcels and ten privately owned parcels. Ms. Mamiya made it known there are several owners of the affected parcels who have expressed interest in obtaining an easement over portions of Miller's proposed easement route. It was noted, Waioli Corporation's major concern is to "protect and preserve the traditional agricultural, cultural and scenic resources in the Valley by opposing the development of residential use." Staff believes this is a zoning issue and therefore should be addressed by the County of Kauai under "Special Treatment District." Ms. Mamiya recommended the Board authorize the issuance of a perpetual, non-exclusive easement covering the subject area.

Robert Kratovil was on hand to represent the applicant. He informed the Board he and his client concur with staff's submittal. Mr. Kratovil went on to read a letter he submitted to the Board as part of his testimony. In his letter he refuted comments made by Waioli Corporation, Mr. Don Wilson and the County of Kauai. With regards to the so-called cumulative effect of the road and utilities, Mr. Kratovil believes it is mere speculation because there already exists other similar roads with homes on them in this valley with no adverse effects. He indicated Mr. Miller will have a Metes and Bounds Survey prepared for placement along the proposed path. In conclusion Mr. Kratovil noted that no State in the United States permits lands to be landlocked and in the interest of justice the Board should approve this application and allow the Miller's access to their property.

The Board asked Mr. Kratovil if his client is agreeable to provide and Environmental Impact Survey (EIS) so the Board could understand it in a more structural way the effects

of the proposed alignment. Mr. Kratovil believes his client is not required to provide an EIS.

Michael Miller came forward to speak about kuleana lands. He mentioned a court case in which residents were trying to restrict road entrance to a footpath but it was denied and instead allowed a 10-foot wide axel vehicle road. He indicated there is no case in which vehicle access was denied in favor of a footpath.

Mr. Miller provided the Board with written testimony from several landowners in support of his easement and their desire to also receive an easement along the same route. Mr. Miller told the Board there are six other property owners seeking an easement.

The Board noted its concern and questioned the cumulative impact of the easement on the surrounding community as additional people have requested use of this easement.

When questioned by the Board regarding the decision made with regards to this case by Judge Clifford Nakea, Mr. Miller indicated Judge Nakea instructed him to go to the State and get an easement over State lands and once that easement was obtain he would get an easement from the private landowners. Mr. Miller stated if he prevails here today or if he goes through a contested case hearing he feels very confident Judge Nakea would give him an easement over the private lands.

Mr. Kratovil asked the Board if his client's request is denied if they would state specifically why it was being denied.

Don Wilson, general council for Waioli Corporation testified before the Board. He told the Board Waioli Corporation is a Hawaii based non-profit organization that works to preserve the Waioli Mission House Museum, Grove Farm Homestead Museum and the preservation of open and agriculture uses on its lands. Mr. Wilson made it known when Waioli Corp. purchased these lands from Mr. Sanborn there were certain deed restrictions limiting the use to agriculture and conservation. Under the terms of the deed, residential and speculative use is not allowed. Regarding the intended use the easement, Mr. Wilson feels if Mr. Miller (and the other interested land owners) used their land for agricultural purposes (which he is stating) and not for residential use, Waioli would have some objections, but no as much. Mr. Wilson believes Mr. Miller intends to convert his property to residential use as well as agricultural use. Mr. Wilson feels the increase in traffic, the need for a wastewater treatment system and the obstruction of the view plane will cause negative impacts over time. Mr. Wilson feels this Board does not have the authority to put in deed restrictions on the easement, but they could put in similar conditions, which could limit the land to agriculture purposes. In closing, Mr. Wilson asked the Board to defer action on this matter until and EA can be prepared and the effects addressed, but if the Board will allow an easement it is their request that it be stated for agricultural, not residential use.

The Board asked Mr. Wilson if the applicant provided and Environmental Assessment which mitigated most of Waioli's concerns would he go along with the easement. Mr.

Wilson replied as long as the land was used for agricultural purposes they would go along with it.

Chairperson Young revealed in the mid 1980's he did appraisals for Bill Sanborn for several properties in Hanalei Valley.

The attorney general felt there was no conflict of interest on Chairperson Young's part.

Chairperson Young asked the members of the public if they had any objections to him taking part in this matter. There were no members of the public objecting.

Russell Inrim spoke on behalf of the taro farmers in Hanalei Valley. He provided the Board with a petition from the taro farmers asking the Board to deny Michael Miller's request. Mr. Inrim told the Board the taro farmer are concerned with the impact the easement will have on the taro industry due to the increase in traffic and increased residential use of the various parcels. Mr. Inrim went on to explain an incident in which Mr. Miller inserted a PVC pipe through a dirt bank, which started to erode the bank eventually causing a huge break in the ditch bank.

Alan Tasaka a taro farmer appeared before the Board. Mr. Tasaka spoke of the negative impact the easement will have on the taro farmers and their crops.

Gaylord Wilcox a landowner and director of Waioli Corp testified before the Board. He is in favor of the State placing a restriction of agriculture use on the land as part of the condition of the easement. He does not see a great demand for a road in that area.

Mina Morita a resident of Hanalei Valley for the past twenty-seven (27) years appeared before the Board. As a State representative she sees a desire to protect and preserve the historical, cultural and economic aspect of the island of Kauai. Ms. Morita feels there is a desire to protect the taro industry. She disagrees with staff's recommendations and feels at the very least an Environmental Impact Statement should be done. She informed the Board the alignment of the road would pass through an awai system (an irrigation system that services the taro lands) therefore the ownership of the awai system should be addressed. Ms. Morita questioned whether the awai system was a public resource or not and felt that this question should be investigated. Ms. Morita indicated she walked the property yesterday and it is in a fragile condition. In closing Ms. Morita believes at stake today is public trust resource and a life style that is valued by the people of the island.

Ms. Mamiya noted she would recommend against an Environmental Assessment. Looking down the road she feels there will be certain conditions imposed on the applicant that he will feel is unsatisfactory and this matter will be brought back to the courts and this process will continue with the State being caught in the middle of this situation. She strongly believes this is a zoning issue that needs to be handled by the County of Kauai.

Member McCrory noted she was uncomfortable supporting staff's recommendation without more information. She was uncomfortable with: a)the septic system,



b)Environmental impact of the road and c)request by other landowners to use the easement.

**The Board directed the applicant to provide an environmental assessment addressing the potential and cumulative effects, which is to be provided for the Board's review before any alignment issue, is determined.**

**Motion to Deny**

**Unanimously approved to deny (McCrorry/Johns).**

**Item L-1: Permission to Hire Consultants for DLNR CIP Projects**

Andrew Mondon, Chief Engineer with the Engineering Department briefed the Board and recommended the Board authorize the hiring of consultants for the projects indicated and authorize the Chairperson to sign the necessary documents pertaining to the individual projects.

**Unanimously approved as submitted (Johns/Yamamura).**

**Item D-1: Rescind Prior Board Action of January 14, 2000 (Agenda Item D-10), Consent to Assign General Lease No. S-5062, Kathryn Reinard, Assignor to James and Kathryn Cassel, Assignees, Waimea, Kauai, TMK: (4) 1-4-2: 25.**

**Item D-2: Forfeiture of General Lease No. S-5208, Kauai Cablevision, Lessee, Kawaihau, Kauai, TMK: (4) 4-2-1: portion 2.**

**Item D-3: Rescind Prior Board Action of November 22, 1967 (Agenda Item F-13), Acquisition for 3<sup>rd</sup> Waipahu Park Site for the City and County of Honolulu at Waipahu, Oahu, TMK: (1) 9-4-53: 119.**

**Item D-4: Amend Prior Board action of December 13, 2002 (Agenda Item D-48) Fee Conveyance of Road Lot to County of Hawaii; Perpetual, Non-Exclusive Easement for Water Meter Box Purposes and Bill of Sale for Water System Improvements Built by the State to Water Board of the County of Hawaii, Onouli, Hawaii, TMK: (3) 8-1-4: portion 36 and 45.**

**Item D-7: Grant of Perpetual, Non-Exclusive Easement to Jeffrey A. and Cynthia L. Guild, and Issuance of an Immediate Right-of-Entry, for Access and Utility Purposes, Kailua, Makawao, Maui, TMK: (2) 2-9-011: por. 008**

**Item D-8: Construction Right-of-Entry to the Department of Accounting and General Services for the Installation of a Waterline, Pulehunui and**

**Waikapu, Wailuku, Maui, TMK: (2) 3-8-008: portion of 001 (future Mokulele Highway Widening Parcel).**

Ms. Mamiya recommended the Board approve the above items as noted in the submittal.

**Unanimously approved as submitted (McCrorry/Yamamura).**

There being no further business, Chairperson Young adjourned the meeting at 1:22 p.m.

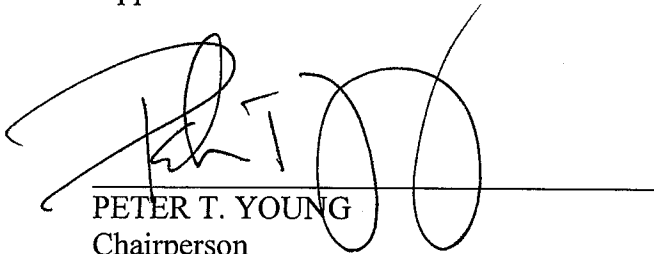
Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Terry Crowell

Approved for submittal:



PETER T. YOUNG  
Chairperson  
Department of Land and Natural Resources