

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

DATE: FRIDAY, FEBRUARY 27, 2004
TIME: 9:00 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 9:12 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Timothy Johns
Mr. Toby Martyn (arrived 10:15 am)

Ms. Lynn McCrory
Mr. Ted Yamamura

STAFF

Ms. Charlene Unoki, Land Division
Mr. Dan Quinn, State Parks
Mr. Derek Lenning, DOT

Mr. Sam Lemmo, OCCL
Mr. John Dolling, DOT

OTHER

Mr. Jay Paige, Deputy Attorney General
Mr. Robert McLaren, D-10
Ms. Diana Bertsch, E-4
Mr. Mich Hirano, D-8
Mr. John Maloney, E-5
Mr. Kekua Beamer, D-7
Mr. Don Carpenter, D-6
Mr. Calvin Oda, D-9

Ms. Lisa Munger, D-10
Mr. Lew Friedland, E-4
Mr. Eric Ginser, E-5
Mr. Delan Perry, E-3
Mr. Jon Steiner, D-6
Mr. Thomas Carpenter, D-6

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

Item A-2: Minutes of February 13, 2004

Unanimously approved as submitted (McCrorry/Yamamura)

Item D-10: Request to Extend the Processing Period for an Additional 30-days for Conservation District Use Application (CDUA) HA-3065 for the Keck Outrigger Telescopes Project at Mauna Kea Science Reserve, District of Hamakua, Hawaii, University of Hawaii at Manoa, Institute for Astronomy, Mauna Kea Science Reserve, District of Hamakua, Hawaii, TMK: (3) 4-4-15:9 & 12.

Sam Lemmo Administrator for the Office of Conservation and Coastal Lands appeared before the Board and recommended the extension of the processing period for CDUA HA-3065 and additional 30-days to April 10, 2004.

Robert McLaren and Lisa Munger were present to represent the University of Hawaii. The Board asked Mr. McLaren if a 30-day time extension would be sufficient to complete matters to which Mr. McLaren said yes.

Unanimously approved as submitted (Johns/Yamamura)

Item E-4: Request from the World Triathlon Corporation to Use the Hapuna Beach State Recreation Area in South Kohala, Hawaii, for the Inaugural Hawaii's Big Island Triathlon.

Dan Quinn Administrator for the Division of State Parks informed the Board the World Triathlon Corporation is seeking a request to hold part of the Inaugural Hawaii's Big Island Triathlon at Hapuna Beach State Recreation Area (SRA). This event will serve as a qualifying race for the Ironman Triathlon World Championship to be held later in the year. The event is scheduled for Sunday, June 13, 2004 and will be an Olympic distance race. The swim portion of the race will take at Hapuna SRA and should be completed by 8:30 a.m. or 9:00 a.m. Mr. Quinn went on to say race organizers would set up course markers and bike racks the night before the race. They hope to be out of the park by the time normal park users come to use the facilities. Mr. Quinn recommended the Board approve the issuance of a Special Use Permit to the World Triathlon Corporation to utilize the Hapuna Beach State Recreation Area for the Hawaii's Big Island Triathlon competition.

The Board questioned why we were not charging the usual fee of \$100 per day. Mr. Quinn noted we could include the fee as one of the conditions of the Permit.

Diana Bertsch and Lew Friedland representing the Ironman World Triathlon were present to answer any questions.

The Board added condition 4) to the Recommendation

“4. The Department will charge a fee of one hundred dollars (\$100) per day for any use of Hapuna Beach State Recreational Area as determined by State Parks.”

Unanimously approved as amended (Johns/McCrory).

Item D-8: After the Fact Rock Revetment and Improvements, Mich Hirano, AICP, Munikiyo and Hiraga, 4591 Lower Honoapiilani Road Kahana, Lahaina, Maui, TMK: (2) 4-3-019:047.

Mr. Lemmo conveyed in 1997 the applicants constructed a rock revetment and fill area fronting their property. This action created a parcel of reclaimed land, which they purchased by quitclaim deed from the State. The issue of the rock revetment was processed as a violation as the applicant did not secure permits for its construction. The violation was run through the HOAPS program and the applicants paid a fine and are now before the Board seeking an after the fact application to bring the wall into compliance with conservation rules. Staff found no adverse effects from the placement of the wall and Mr. Lemmo recommended the Board approve the After the Fact Rock Revetment and Improvements.

Mich Hirano of Munikiyo and Hiraga representing the applicant were present.

Unanimously approved as submitted (Yamamura/Johns).

Item E-5: Establishment of Curatorship Agreement for the north Puu Olai Wetland, Makena State Park, Maui.

Mr. Quinn made it known their office has in place several Curatorship Agreements in which an organization has taken responsibility of caring for a historic and cultural site but this is the first curatorship agreement that calls for the caring of a natural resource area. This agreement is for the North Pu'u Ola'i Wetland, which is located in the north end of Makena State Park. The Wetland encompasses a portion of private property as well as State owned land. The goal of this curatorship is to create a more suitable habitat for the endangered birds. The curatorship agreement will be valid for 5 years. Mr. Quinn recommended the Board approve the Pu'u Ola'i Wetland management Association as the curators for the North Pu'u Ola'i Wetland within Makena State park for a 5-year term.

The Board asked Mr. Quinn to also look into the necessary take permits the organization would need to complete their task.

Eric Ginser of ECOS Consultant Company appeared before the Board. He explained that his company has been working with the Association to clear the area of trees and restore the wetland.

The Board asked Mr. Ginser if the Pu'u Ola'i Wetland Association was a legal association. John Maloney representing the homeowners association noted dues would

be collected from the homeowners and these dues would travel with the lots. He told the Board he is working with the Association's attorney to finalize the necessary documents to create the association. Mr. Maloney anticipates the association will have the required documentation within the next thirty days, which will legalize its formation.

The Board amended the Recommendation Section by adding condition 1)

“The Curatorship Agreement becomes effective at the point there is a legal homeowners association that has filed the necessary documents with the Department of Commerce and Consumer Affairs.”

Unanimously approved as amended (Yamamura/Johns).

Item E-3: Request from the Big Island Farm Bureau to use a Portion of the Old Kona Airport State Recreation Area in Kailua-Kona, Hawaii, for a Big Island Farm Fair.

Mr. Quinn communicated the Big Island Farm Bureaus is requesting to use a portion of the Old Kona Airport State Recreation Area to old the annual farm fair. The use of the Old Kona Airport will be for fourteen (14) days starting September 2, 2004 until September 15, 2004. Mr. Quinn made it known the conditions listed in the submittal are the same conditions listed on the previous farm bureau permits. In closing he recommended the Board delegate to the Chairperson the authority to approve future similar permits for events at Old Kona Airport State Recreation Area including all appropriate fees, terms, and conditions based on the pattern of previously approved permits.

Delan Perry was present to answer any questions.

The Board asked Staff to look at reassessing the current fees charged and to also look at a per day fee for use of the park.

The Board deleted condition 1) of the Recommendation Section

Unanimously approved as amended (Johns/McCrory).

Item E-1: Special Use Permit for Michael A. Meierdiercks for Residential Purposes, Kalihi, Oahu, TMK: 1-4-16:3.

Mr. Quinn indicated at the December 12, 2003 Board meeting Michael Meierdiercks was given approval for a special use permit for a state parcel in Kalihi. Upon review of the documents the Attorney General's office indicated this transaction is subject to the State Landlord Tenant Code. In light of the condition of the dwelling and that its habitability could not be warranted by the State, Mr. Quinn is recommending the Board rescind its action of December 12, 2003, Item E-1 and give notice to the Permittee to vacate

premises by March 31, 2004. State Parks will then remove the structure from the property.

Unanimously approved as submitted (Johns/McCrory).

Item E-2: Kokee Lunchwagon Concession Contract, Contract No. CF-01-038-SW.

Mr. Quinn pointed out requests for bid for Lunchwagon Concessions statewide were put out. The only location to generate interest was Kokee State Park. The successful bidder, Kokee Ventures also operates the cabins at Kokee. The current agreement expires shortly and because State Parks is in the process of developing a Request for Proposals, Mr. Quinn is recommending the Board approve the extension on the Lunchwagon concession agreement to Kokee Ventures on a month-to-month basis not to exceed one year subject to the same terms and conditions as per the existing Agreement.

The Board questioned why Mr. Quinn believed there was a lack of interest in bidding for a lunchwagon concession statewide. Mr. Quinn felt the document might have been too overwhelming for the Ma and Pa type operations to decipher. He noted his division is looking at simplifying the documents as to not overwhelm potential bidders.

Unanimously approved as submitted (McCrory/Johns).

Item D-7: Grant of Perpetual, Non-Exclusive Easement to D & I Enterprises, LLC for Access and Utility Purposes, Kamaole Homesteads, (Kihei), Wailuku, Maui, TMK: (2) 3-9-004:por. 140.

Charlene Unoki, Assistant Administrator for the Land Division made it known D & I Enterprises owns Parcel 75, which is landlocked. In order to gain access to the property the applicant is asking the State for an easement over parcel 140. The applicant is also working with Eleanor Ferreira who owns parcel 141 to gain access through her property to continue to their property. Ms. Unoki is recommending the Board authorize the issuance of a perpetual non-exclusive easement to D & I Enterprises, LLC covering the subject area for access and utility purposes.

Kekua Beamer representing D & I Enterprises was present to answer any questions.

Unanimously approved as submitted (Yamamura/Johns).

Item D-6: Alleged Unauthorized Placement of Rocks and Boulders on the Shoreline, by Richard Carpenter, Thomas Carpenter, and Cristina Foytich, at Lanikai, Oahu, TMK: (1) 4-3-004:098.

Mr. Lemmo indicated as a result of a storm in November there were a lot of people placing rocks on the shoreline to protect their property. A complaint was received by Mr. Lemmo's office noting the placement of rocks. Staff went out to the subject site and

informed Richard and Thomas Carpenter the placement of the rocks were unauthorized and a Notice and Order was served upon them. Staff gave the Carpenter brothers time to comply with staff's request to remove the rocks from the shoreline but to this day the rocks remain on the shoreline. Mr. Lemmo made it known the landowners have a permit from the County of Honolulu to construct a seawall using the rocks that were placed on the shoreline. Mr. Lemmo went over the pictures included in the submittal. In conclusion, Mr. Lemmo recommended the Board find that the abutting landowners violated the provisions of Title 13-5 Hawaii Administrative Rules, and Chapter 183C Hawaii Revised Statutes by failing to obtain the appropriate approvals for the placement of rocks in the shoreline area and subject the landowners to the five conditions listed in the submittal.

John Steiner appeared on behalf of the respondents. He informed the Board Mr. Carpenter who was responsible for obtaining the permit for the construction of a seawall was out of town until January 23, 2004 and was therefore unable to answer the notices sent by the department. Mr. Steiner told the Board he just received the case and did not have adequate time to prepare their case and so he asked the Board for a continuance to the next meeting. Mr. Steiner feels in allowing a continuance of this case he will be able to obtain evidence to prove the rocks were placed on his client's property as well as allow himself to work with staff to mediate any possible violations. He went over the pictures he brought in which he feels clearly shows the rocks were placed on private property. He told the Board his clients did not remove the rocks because they felt the rocks were placed on their property. Mr. Steiner told the Board if the rocks were placed on the shoreline it was done unintentionally and does not justify the fine of \$2,000 per day.

Don Carpenter came forward to clarify some items. He communicated the first letter sent by the department was addressed to Christina Foytich with his address. When the letter was delivered Mr. Carpenter's wife informed the mailman Ms. Foytich did not live there. They gave the mailman a forwarding address for Ms. Foytich. Mr. Carpenter went on to say that his wife could not sign a certified letter for someone else. Later Mr. Don Carpenter and his brother Richard received a letter from staff. Mr. Don Carpenter called Mr. Lemmo to notify him he did not order nor authorize the placement of the rocks and asked that the letter be sent to Ms. Foytich as she was the individual who ordered the work done.

Member Johns made a motion at 10:28 a.m. and seconded by Member McCrory to move into Executive Session to discuss with the Deputy Attorney General questions regarding the legal implications of the statutes.

The meeting was resumed at 10:49 a.m.

The Board informed Mr. Steiner and the Carpenter brothers they will be given time to provide additional evidence in determining the rocks were not placed in the Conservation District. A survey is to be conducted. The Board made it clear the clock is still running on the fines/per day. Member McCrory also noted that the landowner is not to construct the County approved seawall until the matter is resolved with the Department and Board.

Motion to defer

Unanimously approved to defer (Martyn/Johns)

Item D-9: Issuance of Revocable Permit to Maui Pineapple Company, Ltd., together with Immediate Right-of-Entry for Site Preparation, Honokowai, Lahaina, Maui, TMK: (2) 4-4-004:009, 011 and 019.

Ms. Unoki indicated in the past Maui Pineapple Company, Ltd had two State permits. These Revocable permits were given up in July 2003 because they were at that time phasing out of agricultural use. They have since changed their mind. Maui Pineapple Company is asking that the purpose of the land be agriculture so they may consider diversified agriculture or pasture use in the future. Ms. Unoki recommended the Board authorize the issuance of a revocable permit and a Right of Entry to Maui Pineapple Company, Ltd.

Calvin Oda was present.

Unanimously approved as submitted (Yamamura/Johns).

Item D-1: Set Aside to City and County of Honolulu, for Landscaping Purposes and Issuance of a Management and Construction Right-of-Entry, Aiea, Ewa, Oahu, TMK: (1) 9-9-12:45.

Item D-2: Sale of Remnant to Kenneth M. and Maile B. Melrose, Trustees, Onouli 1st, South Kona, Hawaii, TMK: (3) 8-1-04: Remnant E-5.

Item D-3: Set Aside to County of Hawaii for Park and Related Purposes, Hookena, South Kona, Hawaii, TMK: 8-6-13:47.

Unanimously approved as submitted (Johns/McCrory).

Item M-1: Issuance of Lease U.S. Federal Aviation Administration for an Automated Surface Observing System (ASOS) Kona International Airport at Keahole.

Item M-2: Issuance of a Replacement Lease U.S. Federal Aviation Administration for a Precision Approach Path Indicator (PAPI) System Kona International Airport at Keahole.

Item M-3: Issuance of a Lease for Office Space U.S. Federal Aviation Administration Honolulu International Airport.

Item M-4: Consent to a Temporary Facility Permit for Special Events under Harbor Lease No. H-87-30 at Pier 7, Honolulu Harbor, Honolulu, Oahu, Tax Map Key No. 1st/2-1-01:58 (Portion).

Unanimously approved as submitted (Johns/Yamamura).

Item D-5: Alleged Unauthorized Placement of Rocks and Boulders on the Shoreline, by Rodney Howard, at Lanikai, Hawaii, abutting TMK: (1) 4-3-004:099.

Mr. Lemmo pointed out this landowner placed rocks in front of his existing seawall in the Conservation District. A Notice and Order was sent to the landowner and he complied by removing the rocks.

Motion to Withdraw

Unanimously approved to withdraw (Johns/Martyn).

Item F-1: Request for Approval to Amend an Agreement with the Research Corporation of the University of Hawaii (RCUH).

Unanimously approved as submitted (Johns/Martyn).

Item A-1: Minutes of January 23, 2004

Member McCrory recused herself

Unanimously approved as submitted (Johns/Martyn).

Item D-4: Appointment and Section of a Hearing Officer to Conduct All Hearings for One (1) Contested Case Hearing. Docket No. HA-04-08, In the matter of the Contested Case Regarding Petitions Requesting the Board of Land and Natural Resources to deny CDUP application HA-3164 for Uila Ranch Invasive Species Control/Pasture Re-establishment, at Volcano, Kau, Hawaii, TMK: (3) 9-9-001:017.

Chairperson Young recused himself.

Mr. Lemmo briefed the Board and noted due to the fact the ranching operation has a commercial element it was determined it would be in the best interest of all to hold a public hearing on this matter. Approximately forty people showed up at the hearing. At the hearing there were two requests for a contested case hearing. Mr. Lemmo recommended the Board authorize the appointment of a Hearings Officer for CC HA-04-08 and delegate the authority for selection of the Hearing Officer to the Chairperson.

The Board amended Recommendation 2)

- 2) **That the Board delegate the authority for selection of the Hearing Officer to the [Chairperson] Deputy Director of the Department as the Chairperson has recused himself.**

Unanimously approved as submitted (Johns/Yamamura).

There being no further business, Chairperson Young adjourned the meeting at 11:05 a.m.

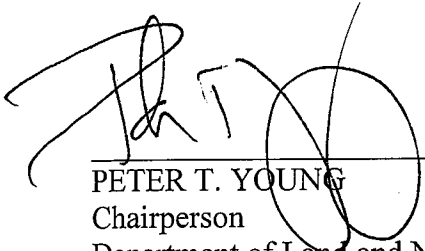
Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

Terry Crowell

Terry Crowell

Approved for submittal:



PETER T. YOUNG
Chairperson
Department of Land and Natural Resources