

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

DATE: FRIDAY, MAY 27, 2005
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 9:00 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Ted Yamamura
Mr. Toby Martyn (arrived at 10:15 a.m.)

Ms. Kathy Inouye
Mr. Gerald DeMello
Mr. Ron Agor

STAFF

Mr. Harry Yada, Land
Mr. Paul Conry, DOFAW
Mr. Eric Hirano, Engineering

Mr. Sam Lemmo, OCCL
Mr. Francis Oishi, DAR
Mr. Mike Shinozuka, DOT

OTHER

Ms. Julie China, Deputy Attorney General
Ms. Linnel Nishioka, D-7
Mr. Bob Schneider, D-2
Mr. Desmond Twigg-Smith, K-1, K-2

Mr. John Gamble, K-3
Ms. Lynn McCrory, C-2

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

Item A-1: Minutes of May 13, 2005

Member Inouye recused herself.

Unanimously approved as submitted by the remaining Board members (Yamamura/Martyn).

Item D-7: Shoreline Certification Application for Private and Public Lands Located in Ewa, Oahu, TMK: (1) 9-1-11: 06 & 07, (1) 9-1-12: 06, 25 & 47 and Resolution of Shoreline Encroachment for State Lands Located in Ewa, Oahu, TMK: (1) 9-1-11:06 & 07, 9-1-12:25 & 47 seaward.

Harry Yada, Acting Administrator of the Land Division made it known the applicant has filed three applications for shoreline certification covering the subject areas in connection with its Ocean Pointe project. Mr. Yada disclosed there are a number of encroachments fronting the subject parcel, which the applicant will be removing. Under section 13-222-19, HAR the chairperson is prohibited from certifying the shoreline until the encroachment issues are resolved. As a result staff is suggesting that the Board agree in concept to removal of the encroachments and collect a deposit amount, which is equal to the estimated cost of removing the encroachments. Mr. Yada recommended the Board process the shoreline certification applications subject to a deposit of \$35,000, sign as landowner on the Applicant's conservation district use permit application and issue a standard right-of-entry permit for the removal of the encroachments.

Linnel Nishioka representing Haskeo noted she had no objections to staff's recommendations and informed the Board they are prepared to remove the encroachments.

Unanimously approved as submitted (Inouye/Martyn).

Item K-1: Plan Modification for Conservation District Use Permit (CDUA) HA-3140 for the Construction of A single Family Residence.

Item K-2: Plan Modification for Conservation District Use Permit (CDUA) HA-3141 for the Construction of a Single Family Residence.

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands (OCCL) reminded the Board on October 24, 2003 the Board approved CDUA HA-3140 and CDUA HA-3141 which was for construction of a single-family residence and a caretaker's cottage. At present, Mr. Twigg-Smith would like to exchange the location of the single-family residence with that of the caretaker's cottage and place the cottage where the original single-family residence was approved. Mr. Twigg-Smith feels this exchange would greatly lessen the amount of fill needed to be brought in. Mr. Lemmo recommended the Board approve the subject plan modification to the Single Family Residence.

Unanimously approved as submitted (DeMello/Yamamura).

Item K-3: Enforcement File No. HA-03-49, Regarding Alleged Unauthorized Rockwall Extension and Landscaping.

Mr. Lemmo communicated that at the October 8, 2004, meeting action was brought against the landowner, the Gambles for unauthorized construction of a bed and breakfast facility. At the meeting the landowner requested a contested hearing. Meanwhile the Gamble's went to the State Land Use office and sought and received a reinterpretation of the boundary. This reinterpretation confirmed that the bed and breakfast facility was not in the conservation district but in the agricultural district. Based on the new interpretation it was determined that two violations still remained the rock wall and landscaping work. Mr. Lemmo recommended the Board find the Gambles in violation of HRS, Chapter 183C and HAR, Chapter 13-5 and subject to the conditions listed in staff's submittal.

John and Michelle Gamble the landowners came forward to testify. Mrs. Gamble let it be known the Land Use Commission (LUC) determination was not a reinterpretation of the boundary line. What were in dispute were the conflicting maps at the LUC, which showed the metes and bounds. Mrs. Gamble went on to address the issue of the two remaining violations. With regards to the landscaping violation, Mrs. Gamble noted at staff's site visit she was told they would be sited for plants around the bed and breakfast. Later it was determined that the plants were in the agriculture district at which time staff told her she would be cited for plants along the cliff area. Mrs. Gamble let it be known those plants along the cliff existed prior to them purchasing the subject parcel. Addressing the rock wall, Mrs. Gamble noted the wall was being constructed when they purchased the property. She also stated the previous landowners obtained an after-the-fact site plan approval for the rock wall. Mrs. Gamble told the Board in March 2002 due to heavy rain they had to repair the rock wall.

This item was deferred to later in the meeting so staff could retrieve the files dealing with the original site plan for the construction of the rock wall.

Item D-2: Grant of Perpetual, Non-Exclusive Easement to the Brown Family Limited Partnership for Access and Utility Purposes, Puuanahulu, North Kona, Hawaii, TMK: (3) 7-1-03: por. of 02.

Mr. Yada disclosed the Brown Family owns five three-acre lots issued under various Land Patent Grants, which are all landlocked parcels along the coastline. The lots were obtained through public auctions held in 1926, 1930 and 1931. These grants were conveyed pursuant to the notice of sale with the express understanding that these did not include a right-of-way to the Government Road and the lots may be reached by trail over leased Government land or by boat; and upon further express understanding that the Territory of Hawaii does not obligate itself at any time to furnish any right-of-way. In considering today's mode of transportation, Mr. Yada feels it is unrealistic to expect continued access by boat and supports the request before the Board to provide access over an existing graveled roadway. Comments were solicited from the Puuwaawaa Advisory Council which noted they had no objects to the granting of the easement but

asked that a locked gate be maintained at the Queen Kaahumanu Highway end of the easement, the landowner and their appointed representative work with the Kiholo Task Force and the State of Hawaii in the preparation of plans for the Kiholo State Park, the landowner coordinate the installation of signage indicated public access to the beach and the landowner should provide a key to the highway gate to emergency personnel for access. Mr. Yada recommended the Board authorize the issuance of a perpetual non-exclusive easement to the Brown Family Limited Partnership covering the subject area and impose a fine of \$500 for the unauthorized use of State lands.

Bob Schneider appeared on behalf of the Brown family and noted his agreement with the recommendations.

The Board amended Page 5 of submittal

“ . . . and 4) The landowner should [~~consider providing~~] provide a key to the highway gate to emergency personnel including police, fire and DOCARE for access as needed.”

Unanimously approved as amended (DeMello/Yamamura).

Item M-1: Amendment to Prior Board Action of July 30, 2004, Item M-3, Trans Executive Airlines of Hawaii, Inc., South Ramp Area, Honolulu International Airport.

Item M-2: Amendment No. 1 – Retail Concession Lease No. DOT-A-01-0003, DFS Group, L.P., Honolulu International Airport.

Item M-3: Issuance of Direct Lease, Kalitta Air, L.L.C., Honolulu International Airport.

Unanimously approved as submitted (Yamamura/DeMello).

Item C-2: Approval in Concept and Authority to Conduct a Public Hearing to Consider the Designation of the Mana Plains Forest Reserve for Coastal Plant Habitat and Wildlife Sanctuary Purposes, Kekaha, Kauai, Tax Map Key: (4) 1-2-2: portion 1 to the Department of Land and Natural Resources, Division of Forestry and Wildlife.

Paul Conry, Administrator of the Division of Forestry and Wildlife communicated the action before the Board would consolidate three parcels the Department has and designate these parcels as part of the Mana Plains Forest Reserve. In designating the area a Forest Reserve it will provide better flexibility to manage as well as produce and use revenue generated from this site. Mr. Conry recommended the Board approve in concept the designation of the Mana Plains Forest Reserve and the set aside of 142 acres of the subject lands to the Department of Land and Natural Resources, Division of Forestry and

Wildlife, authorize the Department to conduct a Public Hearing on the proposed designation and authorize the Chairperson to appoint a Hearing Master.

Lynn McCrory, President of Pahio Resorts came forward and testified in support of staff's recommendation. She pointed out individuals have been working on this project for the past four years. She noted the subject parcels encompasses approximately 101 acres, which would be part of the Forest Reserve. Ms. McCrory also revealed over the past year they've met with Ducks Unlimited and other organizations that are willing to provided matching funds for the project. In closing, Ms. McCrory asked the Board to support this submittal.

Unanimously approved as submitted (Agor/Inouye).

Item C-1: Request for Approval to Enter into a Contract with JBH to Install Ungulate-Proof Perimeter Fence within the Kapuna Drainage of Pahole Natural Area Reserve in the Waianae Mountains, Oahu.

The Board amended the Recommendation Section as follows

“That the Board authorize the Chairperson to negotiate and execute a Contract for Goods and Services in the estimated amount of [~~\$129,350~~] \$129,650 with JBH, subject to the availability of funds and approval as to form by the Attorney General's Office.”

Unanimously approved as amended (Inouye/DeMello).

Item K-3: Enforcement File No. HA-03-49, Regarding Alleged Unauthorized Rockwall Extension and Landscaping.

(continued from earlier in the meeting)

Upon review of the files, Mr. Lemmo told the Board he has a site plan approval of the wall built which indicates the extent of the wall on a portion of the property. The approved plan for the wall does not indicate the construction of the wall for the area staff is citing the violation.

The Board amended the Recommendation Section

1. Recommendation 1

“That the Gambles violated the provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and chapter 13-5, Hawaii Administrative Rules (HAR), by constructing an authorized wall extension/drainage pipe [~~and landscaping~~] within the Conservation District. The Gambles are fined [~~\$4,000~~] \$2,000 for [~~2~~] 1 separate violations;”

2. Recommendation 2

“That the Gambles are fined [~~\$1,350.00~~] \$350.00 for administrative costs;

3. Recommendation 3

“That the Gambles shall pay all fines (Total [~~\$5,350.00~~] \$2,350.00) within thirty (30 days of the date of the Board’s action on this matter;”

Unanimously approved as amended (DeMello/Yamamura).

Item L-1: Approval for Award of Construction Contract – Job No. F00CF51A, Individual Wastewater System at Makiki Valley State Park, Honolulu, Hawaii.

Unanimously approved as submitted (Yamamura/Agor).

Item F-1: Request for Approval to Amend/Extend Contract No. 52743 with the University of Hawaii (UH) for Support for Ecology of Algae in Hawaii (9/1/05-9/30/06).

Unanimously approved as submitted (Inouye/Martyn).

Item D-3: Grant of Perpetual, Non-Exclusive Easement to Oceanic Time Warner Cable for Utility Purposes, Makawao, Maui, TMK: (2) 2-2-01: por. 51 and 68.

The Board amended Recommendation 2

“Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a [~~term~~] perpetual non-exclusive easement to Oceanic Time Warner Cable covering the subject area . . .”

Unanimously approved as amended (Martyn/DeMello).

Item D-1: Consent to Assign General Lease No. S-5616, Elsie May Nishi, Assignor to Richard Corr, Sr. and Elsie May Nishi, Assignee, Lot 8, Hanapepe Rice and Kula Lots, Hanapepe, Waimea, Kauai, TMK: (4) 1-9-12:37.

Item D-4: Amendment to Prior Board Action of May 8, 1987, Agenda Item F-16, Direct Award of Perpetual, Non-Exclusive Easement for Utility Purposes, Honolulu, Oahu, TMK: 2-1-31:10 por.

Item D-5: Amend Grant of Non-Exclusive Easement S-5652 to Richard A. Riley and Carol H. Riley, and Rescind Prior Board Actions of July 9, 2004

and November 19, 2004, Mikiola, Kaneohe, Oahu, TMK: (1) 4-4-18:68
seaward.

**Item D-6: Grant of Perpetual, Non-Exclusive Easement to the City and County
of Honolulu, Department of Facility Maintenance, for Access
Purposes, Waimanalo, Koolaupoko, Oahu, TMK: 4-1-13:01 por.**

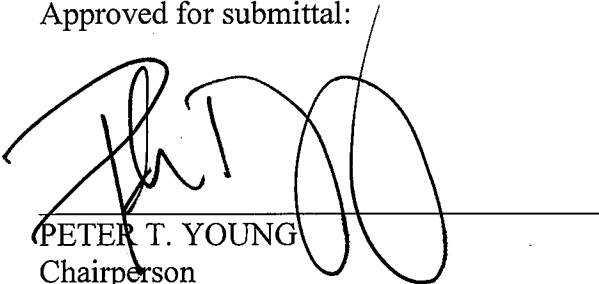
Approved as submitted (Martyn/Yamamura).

There being no further business, Chairperson Young adjourned the meeting at 9:45 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