

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

DATE: FRIDAY, OCTOBER 14, 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 9:03a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Ted Yamamura
Mr. Ron Agor

Mr. Tim Johns
Mr. Gerald DeMello
Ms. Taryn Schuman

STAFF

Mr. Russell Tsuji, Land
Mr. Bill Andrews, DOBOR
Mr. Dan Pohlemus, DAR

Mr. Richard Rice, DOBOR
Ms. Tiger Mills, OCCL
Ms. Karen Motosue, Parks

OTHERS

Ms. Julie China, Deputy Attorney General
Ms. Sandra Song, D-4
Mr. Stan Fujimoto, D-5
Mr. Darrell Ing, D-5
Mr. Hank Mulligan, J-1

Mr. Calvin Choy, D-6, D-8
Mr. Larry Sumida, D-5
Mr. Jerrold Kguben, D-2
Ms. Joelle Kane, M-3

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

Item A-1: Minutes of September 9, 2005

Unanimously approved as submitted (Agor/Johns).

Item A-2: Minutes of September 23, 2005

Unanimously approved as submitted (Johns/DeMello).

Item D-4: Waiver of Use Restrictions – Land Office Deed S-19,941, Dr. William C. Bergin and Mrs. Patricia C. Bergin, Lot 22-B, Lalamilo Farm Lots, Lalamilo, South Kohala, Hawaii, TMK: (3) 6-6-5:13.

Member Johns recused himself.

Russell Tsuji, Administrator of the Land Division noted the subject parcel has a deed restriction, which restricts its use to agriculture, which is defined as truck and orchard crops. The applicant is requesting a waiver of the use restriction under 171-63A. Mr. Tsuji indicated the attorney for the applicant is asking that staff's submittal be amended to be broader and include a waiver of the subdivision restriction. Upon consultation with the Attorney General's office staff was advised that they are limited to waiving only the use restriction under 171-63A. Mr. Tsuji recommended the Board find the restriction on agricultural use, number of dwellings, requirements for consent and approval of building plans, and options to repurchase are not in the public interest and authorize the waiver of use restriction contained in Land Office Deed identified as LOD. No. S-19,941 subject to review and approval by the Department of the Attorney General.

Sandra Song, attorney representing the applicants asked the Board for a waiver of the agricultural restriction on the parcel. She pointed out a land patent for the parcel was issued in 1963 before the land use law was adopted. Ms. Song went on to communicate that due to the restrictive conveyance on the parcel, landowners in the Lalamilo Farm Lots currently need to come before the Board for approval of a use, to subdivide their lot or any building plans due to the restrictive use on the property. Ms. Song further requested that the subdivision restriction be eliminated but due to the opinion issued by the Attorney General's office she is willing to work with them and have today's Board approval be subject to their review and approval.

Mr. Tsuji had concerns with the Department waiving the subdivision restriction as this waiver could eliminate the State's repurchase option.

The Board amended the following

1. Recommendation 1)

“Find that the restrictions on agricultural use, subdivision, number of dwellings, requirements for consent and approval of building plans and options to repurchase area not in the public interest pursuant to Chapter 171-63, HRS;”

2. Subject to the Applicant fulfilling all of the requirements listed above, authorize the waiver of the use restriction and the restriction on subdivision and connected repurchase option contained in Land Office Deed identified as LOD. No. S-19,941;”

3. Add Recommendation 5)

“5. The waiver on the restriction on subdivision and connected repurchase option shall be subject to the review and approval of the Department of the Attorney General, and specifically on the Department of the Attorney General revisiting that certain advice letter dated November 29, 2004 stating that the Board does not have the authority to waive any other restrictions in the Lalamilo Deeds, except for the use restriction in accordance with HRS 171-63 (a); and

4. Add Recommendation 6)

“6. If the Department of the Attorney General does not approve the waiver or other modification of the subdivision restriction and related repurchase option, then the Board’s waiver herein shall be limited to only the use restriction as aforesaid.”

Unanimously approved by the remaining Board members (DeMello/Yamamura).

Item D-6: Grant of Term, Non-Exclusive Easement to Hawaiian Telcom, Inc. for Access Purposes, Haleakala, Makawao, Maui, TMK: (2) 2-2-7:5 portion.

Unanimously approved as submitted (Yamamura/Johns).

Item D-8: Amend Prior Board Action of July 8, 2005 (Item D-16), Grant of Perpetual, Non-Exclusive Easement to Maui Electric Company, Limited and Hawaiian Telcom, Inc. for Utility Purposes, Kahakuloa, Maui, TMK: (2) 3-1-01:por. 01.

Member Johns recused himself.

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

Item D-5: Amend Prior Board Action of August 27, 2004, under Agenda Item D-8: Conveyance of Remainder of the Villages of Laiopua to the Department of Hawaiian Home Lands, North Kona, Hawaii, TMK: (3) 7-4-08:20, 21 and 56.

Unanimously approved as submitted (Johns/Agor).

Item D-2: Consent to Assign, General Lease No. S-4323, Tri-K Investments, LLC, Assignor, to 888 Kalaniana'ole Avenue, LLC, Assignee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-1-10:33.

Member Schuman recused herself.

Mr. Tsuji commented on the fact that the applicant Tri-K Investments, LLC has gone through bankruptcy proceeding, which is detailed in staff's submittal. Mr. Tsuji recommended the Board consent to the Assignment of General Lease No. S-4323, Tri-K Investments, LLC, the Assignor, to 888 Kalaniana'ole Avenue, LLC or its designee as the assignee subject to the terms and conditions listed in the submittal.

Jerrold Kguben testified on behalf of the Assignee. Mr. Kguben disclosed that he believed there would be a change in the designation of the assignee from 888 Kalaniana'ole Avenue, LLC to the name of the individual.

The Board amended page 4, third paragraph of staff's submittal

"The Assignee (888 Kalaniana'ole Ave., LLC) has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions. The principal owner of [~~Assignor~~] Assignee (Jim McCully) has two other State leases in the Hilo area and has shown to be a good quality tenant."

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

Item J-1: Issuance of Revocable Permit to Hawaii Yacht Club (HYC), a Hawaii non-profit corporation, located at 1739-C Ala Moana Boulevard, Honolulu, Hawaii, for a limited number of permit parking stalls at the Ala Wai Small Boat Harbor, TMK: (1) 2-3-037:12 portion of 12.

Richard Rice, Administrator of the Division of Boating and Ocean Recreation (DOBOR) and Bill Andrews, Property Manager appeared before the Board. Mr. Rice went on to point out that the Hawaii Yacht Club is a non-profit corporation with a lease from the Department for operations within the Ala Wai Small Boat Harbor. Currently, its members cannot obtain individual parking permits. Mr. Rice reminded the Board in February they approved the beginning of a public process to allow permits to be given to the Hawaii Yacht Club members with the quantity to be determined. The submittal before the Board today is a "test" period, which will determine the correct number of future, permits to be assigned to the Yacht Club. Mr. Rice communicated the number of parking permits issued to the Hawaii Yacht Club will be reviewed on a quarterly basis. Mr. Rice recommended the Board approve the issuance of a Revocable Permit to Hawaii Yacht Club to provide seventy two (72) parking permits for the Hawaii Yacht Club for a period not to exceed one (1) year and subject to quarterly review by the Division.

Written testimony was received from Hank Mulligan.

Unanimously approved as submitted (Johns/Schuman).

Item M-3: Issuance of Direct Lease Dorvin D. Leis Co., Inc. Honolulu International Airport.

Unanimously approved as submitted (Johns/DeMello).

Item M-1: Issuance of Lease of Non-Exclusive Easement Hawaiian Telcom, Inc. Honolulu International Airport.

Item M-2: Consent to Assignment of Lease No. DOT-A-93-0007 Jay D. Whiteford dba Air Survey Hawaii to Hawaii Aviation Contract Services, Inc.

Unanimously approved as submitted (Johns/DeMello).

Item C-1: Request for Approval to Enter into a Joint Funding Agreement with U.S. Geological Survey (USGS) to Operate and Maintain Gaging stations.

Unanimously approved as submitted (Johns/Schuman).

Item F-1: Request for Approval to Enter into a Contract with the University of Hawaii (UH) to Implement the Hawaii Fisheries Disaster Relief Program – Cooperative Research Development and Outreach (To Terminate on June 30, 2007).

Unanimously approved as submitted (Johns/Schuman).

Item E-1: Request from the Federation of American Natives to Hold the First Annual Hilo Inter-Tribal PowWow on Portions of Wailoa River State Recreation Area, Hilo, Hawaii.

Item E-2: Permission to Solicit for Bids and Entry into a Services Agreement for Entry Fee Collection at Diamond Head State Monument, Oahu.

Item E-3: Request for after-the-fact permission to allow mobile food concessions, solicit bids, and award and enter into mobile food concession agreements, through the Chairperson, as follows: Wailua River State Park, Kauai, to H & M Partners; Nuuanu Pali State Wayside, Oahu, to Curtis Hong, dba Paradise Shrimp & Burger; Diamond Head State Monument (Interior), Oahu, to Curtis Hong, dba Paradise Shrimp & Burger; and Diamond Head State Monument (Exterior), Oahu, to Sri Ram Society; and for authority to amend the agreement with H&M Partners to reduce rent for October 2005 based on the delayed execution date of the agreement.

Unanimously approved as submitted (Johns/DeMello).

Item K-1: Conservation District Use Application (CDUA) OA-3230 Temporary Bypass Road and Bridge for the Kamehameha Highway North Kahana Bridge Replacement Project by the State Department of Transportation, Highways Division, Located at Ahupua'a O Kahana State Park, Oahu, TMK:(1) 5-2-005:003.

Unanimously approved as submitted (Johns/Agor).

- Item L-1: Approval for Award of Construction Contract – Job No. J00CF60A Palaaau State Park ADA Barrier Removal, Molokai, Hawaii.**
- Item L-2 Approval for Award of Construction Contract – Job No. J00CF61A Waahila State Recreation Area ADA Barrier Removal, Honolulu, Oahu, Hawaii.**
- Item L-3: Approval for Award of Construction Contract – Job No. J00CF67A Polipoli Spring State Monument ADA Barrier Removal, Maui, Hawaii.**
- Item L-4: Approval for Award of Construction Contract – Job No. J00CF78A Polihale State Park ADA Barrier Removal, Waimea, Kauai Hawaii.**
- Item L-5: Approval for Award of Construction Contract – Job No. J00CF51B Puu Ualakaa State Monument ADA Barrier Removal Honolulu, Oahu, Hawaii.**
- Item L-6: Approval for Award of Construction Contract Job No. J00C101A Makiki Baseyard Facility ADA Barrier Removal Honolulu, Oahu, Hawaii.**

Unanimously approved as submitted (Johns/DeMello).

- Item D-9: Rescind Prior Board Action of May 23, 2003, Agenda Item D-48, Grant of Perpetual, Non-Exclusive Easement to Hawaiian Electric Company, Inc. for Access Purposes, Diamond Head State Monument, Fort Ruger, Honolulu, Oahu, TMK: (1) 3-1-42:por. 14.**

Member Johns recused himself.

Unanimously approved as submitted (Yamamura/DeMello).

- Item D-1: Rescind Land Board Approval of 12/10/04, Item D-20: Consent to Assignment of General Lease No. S-5057, from Paul S. and Maile F. Hurley, and Dane K. and Frances H. Oda, assignors, to Michael S. McElgunn, assignee, Lot 11, Puu Ka Pele Park Lots, Waimea (Kona), Kauai, TMK: (4) 1-4-02:12.**
- Item D-3: Issuance of Direct Land Licenses to Yamada and Sons, Inc. and Kiyosaki Tractor Works, Inc. for Quarrying, Crushing, Removal and Stockpiling of Rock Aggregate, Waiakea, South Hilo, Hawaii, TMK: (3) 2-1-13:161 & 163.**
- Item D-7: Cancellation of Revocable Permit Nos. S-7208 and S-7200; Issuance of a New Revocable Permit to Raycom National, Inc. dba KHNL/KFVE-TV, Makawao, Maui, TMK: (2) 2-2-07:14 and 15.**
- Item D-10: Amend Prior Board Action of August 24, 2001, Item D-29; Issuance of Lease to Samuel C. Kaomea for Private Non-commercial Pier Purposes**

Pursuant to Kaneohe Bay Piers Amnesty Program, Kaneohe, Koolaupoko, Oahu, TMK; (1) 4-6-23:46.

Item D-11: Amend Prior Board Action of April 25, 1969, Item F-18; Acquisition of Land for New Mililani High and Intermediate School, Waipio, Ewa, Oahu, TMK: (1) 9-5-01:54 & 55.

Item D-12: After-the fact Approval of Lease of Federal Property with the Secretary of the Air Force on Behalf of the Department of Education, for Public School Purposes, Hickam Air Force Base, Oahu, TMK: (1) 9-9-01:13 portion.

Unanimously approved as submitted (Johns/Schuman).

There being no further business, Chairperson Young adjourned the meeting at 9:33 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