

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

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

MEMBERS

Mr. Peter Young
Mr. Ted Yamamura
Mr. Gerald DeMello
Ms. Taryn Schuman

Mr. Tim Johns
Mr. Ron Agor
Mr. Toby Martyn

STAFF

Mr. David Gaud, DOCARE
Mr. Sam Lemmo, OCCL
Ms. Christine Ogura, DOFAW
Mr. Mike Shinozuka, DOT
Ms. Holly McEldowney, Parks

Mr. Russell Tsuji, Land
Mr. Paul Conry, DOFAW
Mr. Dwayne Meadows, DAR
Ms. Lauren Tanaka, Parks

OTHERS

Ms. Pam Matsukawa, Deputy Attorney General
Mr. Max Graham, K-1
Mr. Bill Byrns, D-12
Mr. Jim Romig, E-1
Mr. Ed Holland, E-1
Mr. Campbell Cavasso, E-1
Mr. Sam Blair, E-1
Mr. Rick Ralston, E-1

Dr. Jonathan Schuer, C-3
Mr. Frank Hay, E-1
Mr. David Bettencourt, E-1
Mr. Edward Wels, E-1
Mr. Don Carswell, E-1
Mr. Paul Matsunaga, E-1

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

Item M-2: Amendment to Prior Land Board Action of January 28, 2000, Under Agenda Item K-3 Regarding the Issuance of a Non-Exclusive Lease of Easement by Direct Negotiation to Phoenician, LLC, Together with a Construction Right-of-Entry at Kalaeloa Barbers Point Harbor, Oahu.

Unanimously approved as submitted (Martyn/Johns).

Item D-12: Amend Prior Board Action of May 23, 2003 (Item D-6), Grant of Term, Non-Exclusive Easement for Existing Shoreline encroachments to The Keawe Group, LLC dba Hotel Molokai, Kamiloloa Homesteads, Molokai, TMK: (2) 5-4-02:seaward of 01.

Russell Tsuji, Administrator of the Land Division conveyed that the prior landowner, The Keawe Group was found to be encroaching upon State lands. The Keawe Group has since paid the fine, the easement consideration amount and other processing fees. Subsequently, The Keawe Group sold the subject property to Blue Island Property Holdings, LLC. Mr. Tsuji is recommending the Board amend the prior Board action of May 23, 2003 under agenda Item D-6 by changing the Applicant from The Keawe Group, LLC to Blue Island Property Holdings, LLC.

Unanimously approved as submitted (Yamamura/DeMello).

Item E-1: Request Approval to Dispose of Recreation Residences through Direct Negotiations, Drawing, and Request for Qualifications/Request for Proposals for Concession Lease, Kokee and Waimea Canyon State Parks, Waimea, Kauai.

Lauren Tanaka, Planner with the Division of State Parks reminded the Board on December 31, 2006 approximately 114 recreation residence and seven vacant lots lease in Kokee and Waimea Canyon State Parks will expire. Staff is requesting to allow direct negotiations with individuals whose cabins are currently deemed historic. There are approximately 46 residences that fall within this category. Ms. Tanaka pointed out Section 171-36.2 HRS, allows direct negotiations for the purposes of historic preservation and recreation projects. Staff is also requesting the Board allow direct negotiations with current lessees that are eleemosynary (2) or religious (4) organizations. Secondly, Ms. Tanaka is requesting the issuance of a RFQ/RFP for the lease of potentially 20 structures and lots to a single operator for short-term or daily rentals. As far as the cabins currently used by Divisions within the Department, Ms. Tanaka asked that the division be allowed to retain use of the structures and lots. Third, she would like the Department to conduct a series of drawings to select lessees for those remaining recreation residences and lots not disposed through direct negotiations, the bid process and not retained for use by DLNR divisions. Ms Tanaka pointed out a lessee has the option to remove their cabin from the leased lot prior to the expiration of the lease provided they obtain a CDUA. Should they choose not to remove the cabin, the structure would revert to the State.

Holly McEldowney, Archeologist with State Parks described to the Board how cabins were rated which was based on the level of the homes historic integrity. There were three assessments done on the historic level of the homes with the most recent assessment being done in 2003.

Structures deemed level 5, which is the highest level looked as it did when the structure was originally built, has no major modifications (if there have been modifications there are considered sympathetic to the original style and character of the building) and have architectural features that are distinctive of that time (i.e. stone work of the chimney). Level 4 is different from level 5 as it lacks outstanding architectural features. Level 3 structures are structures, which show signs of its historic style, but have been modified. The structure's integrity has been modified but is Reversible (i.e. porch, windows or painting). Level 2 structures have been heavily modified. Level 1 structures have significant modification and would be difficult to bring it back to its historic character.

Frank Hay a lessee since 1975 testified before the Board. He indicated the 1985 auction took place in the beginning of July and the leases ended at the end of July. At that auction there was no compensation to the lessee's, which resulted in homes being removed and some lots being vacated. Mr. Hay spoke of his dismay by the turn of events over the last few years. After the January meeting on Kauai Mr. Hay believed the Board heard the communities concerns and felt they were all headed in the same direction with regards to the future of Kokee that is until today's submittal by State Parks. He questions why there is a sudden change after eight years of working with the community. Mr. Hay suggested the Department negotiated new leases with the existing leaseholders and make the eight cabins under DLNR control available to the public at an auction. With regards to the structures on the parcel, Mr. Hay feels a provision should be added to the lease, which states that the new lessee must reimburse the previous lessee the fair market value of the structure. In closing he asked the Board to reject the submittal before them today.

Jim Romig, a lessee at Kokee whose structure has been rated 5 testified before the Board. Mr. Romig spoke of a time he had a home in Malekana. He communicated when those homes were condemned and turned over to the State; the homes were not up kept and are in complete disrepair. He believes the same situation will occur in Kokee should the Department move ahead with its plans

David Bettencourt came forward and gave the Board some background information into the Kokee situation. In 1985 Mr. Bettencourt worked with Sam Lee on Kauai to solve some of the problems that are occurring today. He proposed DLNR appraise the structures on the property. DLNR stated they did not have the funds or staff to appraise the structures. A second option was proposed in which the winning bidder would pay the lessee a pre-determined minimum amount for the cost of the structure on the property. He believes this would cut down the speculation. Another option proposed would be to rely on the tax assessed value of the structure, which at that time was extremely low. Mr. Bettencourt went on to say he believes an Environmental Impact Statement for Kokee should be done as the leases are for long-term use of the land. Also he does not believe the law allows existing religious organizations with leases the ability to negotiate directly with the State instead the State should negotiate with all religious organizations. The restriction given preference to Kauai residents although well intentioned is illegal.

Ed Holland, a caretaker of three cabins on water tank road testified in opposition to staff's submittal. Mr. Holland feels the proposal set forth by State Parks does not provide the same options for everyone. Those fortunate are able to directly negotiate a lease with the State while

others must proceed to auction. State Parks proposal is causing conflict amongst the lessees in Kokee and it is not good and not fair.

Edward Wels, a resident of Honolulu and an occasional user of a cabin in Kokee read from his written testimony in opposition to staff's submittal. Mr. Wels believes the plan set forth by State Parks falls short in its goal of giving the broader community the opportunity to lease State lands. Mr. Wells recommended the Department 1) negotiate directly with all the current leaseholders; 2) create at least 50 new camp lots for long-term leaseholders; 3) create the desired 20 additional short-term cabins close to the current lodge facilities and main roads; and 4) any interpretive center should be built from scratch and be located near or adjacent to the existing museum.

Campbell Cavasso who served in the Legislature in 1985 during the last auction of the leases at Kokee testified. At present his brother has a cabin at Kokee. Mr. Cavasso also had constituents who held leases for Kokee lots. Mr. Cavasso feels the auction of 1985 was a "taking" of improvements. He spoke of the horror of what happened to the cabins (i.e. torching) as a result of the 1985 auction. He believes there should be some sort of compensation by the new lessees. Mr. Cavasso supports staff recommendation 1 and 2 but asked that all current lessees be allowed to directly negotiate with the State for new leases. As far as a concessionaire operating at the park, Mr. Cavasso feels they should operate a site close to the existing site of the present concessionaire.

Don Carswell, a lessee whose cabin has been deemed a 5 testified. Mr. Carswell feels the process in determining the rating of the cabins in Kokee was subjective. He believes there should be room for those not deemed historic to appeal the decision or allow the owners to bring their cabins up to a 4 or 5 rating. Mr. Carswell told the Board that all existing lessee should have the opportunity for direct negotiations.

Sam Blair, a lessee testified. He pointed out the commonality on all sides is the preservation of the historic nature of Kokee and providing maximum access to all citizens of Hawaii. The present plan set forth by State Parks does not achieve this goal. Mr. Blair spoke of the maintenance work he has performed on his cabin, which he feels, is consistent with the rest of the cabin but due to these changes his cabin was rated a 2. Mr. Blair feels what would be fair would be to auction all cabins but have potential bidders prequalify as well as a condition allowing the new lessee to compensate the current lessee based on the tax assessed value of the cabin or directly negotiate with all current leaseholders.

Paul Matsunaga, a leaseholder spoke in opposition of staff's recommendation. Mr. Matsunaga communicated that all of the cabins in Kokee should be considered part of the historic district and is able to negotiate directly with the State. He pointed out a lot of the leaseholders do not understand why their cabins were not deemed historic. Mr. Matsunaga believes those structures which were rated 1, 2 or 3 should have the opportunity to bring their cabins up to a 4 or 5.

Rick Ralston, a lessee came forward to testify. Mr. Ralston made it known that should he lose his lease (his cabin is rate a 5) he will not remove his cabin as he is in favor of historic restoration in Kokee. From a historic perspective he believes the private sector is in a better position to maintain historic properties. He spoke in favor of short-term rentals in Kokee but felt instead of

taking the existing cabins for this use the State would be in a better position if they would have rental cabins located in a clustered area were it is easily accessible.

Written testimony was received from Maui Architectural Group, Kokee Leaseholders Association, Frank Hay, Glenn Hontz, Lissa Dunford, Cyndi and Jim Wilson, Rick Bundschuh, Peter Baldwin, Frederick Wichman, Charles Wichman, Meredith Whipple, Sandy Brodie, Kikiaola Land Company, Ltd., Cecilia Williams, Rita Peeters, Erik Coopersmith, Marsha Erickson, Mary Lu Kelley, Historic Hawaii Foundation, Kapua Janai, Office of Hawaiian Affairs, Mataia Reeves and Edward Wels.

The Board amended the following Recommendations

1) Recommendation 2)

“That the Board approves entering into direct negotiations at nominal rent for the lease of recreation residences to [~~religious and eleemosynary organizations~~] non-profit organizations holding current leases in accordance with section 171-43 and 171-43.1, HRS”

2) Delete Recommendation 3)

3) Recommendation 4)

“That the Board approves use of [~~drawings~~] an auction as described in this submittal and as authorized in sections 171-15 and 171-16, HRS, to select lessees for those structures and lots not disposed through direct negotiations, the RFQ/RFP bid process, or retained for use by DLNR Divisions.”

4) Add Recommendation 4a

“4a. An existing lessee has the opportunity to match the highest bidder in order to retain his/her cabin.”

5) Add Recommendation 4b

“4b. Any new lessee through the auction shall pay the former lessee the assessed value of the improvements (the improvements a lessee made from the time he/she took over the cabin or in the case of an original owner, the value he/she constructed and improved).”

**Approved as amended (Agor/DeMello).
Member Johns and Member Martyn voted No.**

Item D-1: Consent to Assign General Lease No. S-5024, Peter K. Baldwin Personal Representative of the Wilfred J. Baldwin Estate and the Anne K. Baldwin Estate, Assignors, to Alfred J. and Elizabeth K. Toulon Jr., Peter K.

Baldwin, and Cecilia Williams, as Tenants in Common, Assignees, Waimea, Kauai, TMK: (4) 1-4-03:03.

- Item D-2: Cancellation of Revocable Permit No. S-1589 to Hideo Nonaka; Issuance of Revocable Permit to JINTA, LLC, Hanapepe, Kauai, TMK: (4) 1-9-10:42.**
- Item D-3: Amend Prior Board Action of August 28, 1998, (Item D-20), Direct Sale of a Portion of an Abandoned Railroad Right-of-Way at Kapaa Homesteads, 1st Series, Kawaihau, Kauai, TMK: (4) 4-6-04:22.**
- Item D-4: Request to Write-Off Uncollectible Accounts on Hawaii and Oahu.**
- Item D-5: Results of Public Auction Sale of State of Hawaii Lease Lands on the Island of Hawaii, Held on July 14, 2005.**
- Item D-6: Amend Prior Board Action of June 9, 2005 (Item D-5), Reconsideration of Rent under General Lease No. S-5152 to Hawaii Conference Foundation, North Kona, Hawaii, TMK: (3) 7-6-16:33.**
- Item D-7: Consent to Assign General Lease No. S-5134, Jessica L. Lopez, Assignor, to Kristy L. Young, Assignee, Milolii-Hoopuloa, South Kona, Hawaii, TMK: (3) 8-9-14:20.**
- Item D-8: Grant of Perpetual, Non-Exclusive Easement to Harold and Anne Sexton for Access and Utility Purposes, Koolau, Maui, TMK: (2) 1-1-08:por. 02.**
- Item D-9: Rescind Prior Board Action of May 23, 2003 (Item D-7), Grant of Perpetual, Non-Exclusive Easement to Kevin Lee and Karen Wolverton Gillies for Access and Utility Purposes, Makawao, Maui, TMK: (2) 2-9-02: por. 12.**
- Item D-10: Sale of Remnant to Walter and Shereen Naeole, Kahaukuloa Valley, Maui, TMK: (2) 3-1-04:121.**
- Item D-11: Rescind Prior Board Action of August 23, 2002 (Item D-14), Consent to Assign Perpetual, Non-Exclusive Access and Utility Easement [LOD No. S-27016], Caine Enterprises (Hawaii) Corporation, Assignor, to Valley Isle Enterprises.**
- Item D-13: Sale of Remnant Ditch Right-of-Way to EDRUCHO, LLC, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-5-43:por. 03.**
- Item D-14 Set Aside to Department of Land and Natural Resources, Division of Forestry and Wildlife for Game Management and Public Hunting Purposes, Waialua, Oahu, TMK: (1) 6-8-02:07.**

Unanimously approved as submitted (Johns/Yamamura).

- Item F-1: Request for Approval to Appoint Dr. Dan A. Polhemus as Administrator for he Division of Aquatic Resources.**
- Item L-1: Approval for Award of Construction Contract – Job No. F00CF12A Individual Wastewater System Improvements at Russian Fort Elizabeth State Historical Park, Waimea, Kauai, Hawaii.**
- Item L-2: Approval for Award of Construction Contract – Job No. F00CF78A Individual Wastewater System at Polihale State Park, Waimea, Kauai, Hawaii.**
- Item L-3: Approval to Negotiate and Award of Construction Contract Job No. B41CM72A, Kahului Small Boat Harbor Improvements, Kahului, Maui, Hawaii.**
- Item L-4: Approval for Award of Construction Contract – Job No. J32CO30A Waimanalo Wastewater Treatment Plant Improvements Waimanalo, Oahu, Hawaii.**

Unanimously approved as submitted (Johns/Agor).

There being no further business, Chairperson Young adjourned the meeting at 1:18 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