

Hawaiian Paradise Park Owners Association
Fugitive Dust Committee Meeting on December 9, 2012

MINUTES

1. **Call to Order:**

Chairperson Leilani Bronson-Crelly called the meeting to order at 3:00 p.m. at the Hawaiian Paradise Park Activity Center, 15-1570 Maku'u Drive, Kea'au. Quorum was confirmed.

Roll Call by Sign in Sheet:

- a) Bertram Carvalho, June Conant, Elizabeth "Liz" Bonnell, Tom Nickerson, Leilani Bronson-Crelly, Terry Michels, Tap Titherington, Lawrence Bergner, William "Bill" Cesaletti, Harold Ching, Francis Ganon, Dorcas "Dorie" Liu, Frank Pustka, Linnea Lindley, Bruce Derrick, Lawrence "Larry" Brennan, Linda Nako, Verne Presnall, and Cindy Hisatake.
- b) **Guests present:** Eddie Uratani, Rod Thompson, State Representative Faye Hanohano, Heimes Hanohano, and Craig Crelly.

2. **What Triggered the Fugitive Dust Committee:**

June Conant (District 6) explained how the issue arose back in the summer of 2010 from two lot owners on 30th Street, who kept coming to the Board meetings complaining about dust on their roadways. Eventually, many residents on 30th got together and signed a petition requesting that their street be paved. She added that the general manager at the time, Kaniu Kinimaka-Stocksdale, admitted later that she may have tipped the residents that their complaint had a term known by the Department of Health as "fugitive dust." To date, there are three complaints about fugitive dust which have been lodged by individuals with the Department of Health.

Leilani Bronson-Crelly, Chair (District 6) reviewed how the fugitive dust topic filters down from the federal Environmental Protection Agency (EPA) – Clean Air Branch, which is administered in the state of Hawaii by the Department of Health's Clean Air Branch (DOH/CAB).

3. **Purpose of the HPP Fugitive Dust Committee:**

Leilani Bronson-Crelly recapped the purpose of the Fugitive Dust Committee, which was voted into existence on the October 28, 2012, by lot owners at its General Membership quarterly meeting. The committee was entrusted to introduce viable options on how to mitigate the dust problem brought forth by three complainants to the Department of Health who issued notices of violations to HPPOA. These options are to be presented at the next General Membership meeting on February 24, 2013.

4. **A Clearing House of Informed Options:**

June Conant said that the definition of fugitive dust is very loose because there is no measurement of the amount of dust or its particulate. She said that it is essentially, any visible dust from the ground that is stirred up by cars driving over the unpaved land too fast into the air.

Members discussed whether there was an actual measurable particulate matter. Some said no, others said it was PM10 (particulate matter 10). But according to Ms. Conant, there was no particulate matter in the Hawaii Administrative Rules (HAR) defining fugitive dust.

June Conant said that someone came out from DOH/CAB to visually observe the dust incident and noted that cars that drove more than the allotted speed limit of 15 MPH on unpaved roads helped to cause dust to come off the surface of unpaved roads. Ms. Conant recounted a meeting she had with the DOH/CAB in Honolulu in July 2012, in which she asked for guidelines and best management practices for the matter, but was given none by the department. She further asked the state for criteria on other mitigation options and was told there was none available to provide.

Tom Nickerson (District 4) stated that HPPOA has never been sent a formal notice of violation of fugitive dust. He said the DOH is seeking reasonable precautions but were not telling us specifically how to stop fugitive dust in our community. He raised the issue of takings, condemnation, and special assessments that would possibly come out of the state directing us on how to solve this issue. He believed that the state would want to avoid this at all cost; they would “love to save face” in this matter because they don’t want 8,700 lot owners in litigation with them. Ultimately, he thought, the state probably just wants us to put forward a long-term plan to provide reasonable precautions. He admitted he was not certain what “reasonable” would mean in this case, as the notion of what is reasonable changes often.

Frank Pustka (District 5) asked if the complainers were known; **June Conant** said they were anonymous.

Tap Titherington (District 7) added that once the state were to enforce a formal violation to HPP, they would have to turn to every other substandard subdivision on unpaved roads in the state and address their fugitive dust issue as well. **June Conant** responded the state was well-aware on this far-reaching impact.

Tap Titherington felt that the state just wanted HPP to solve its fugitive dust problem first, or change the law for them – instead of doing it on their own. She felt strongly that this rule should not be applied to our agriculturally-zoned, rural and substandard subdivision. She felt this rule was written to be applied to construction sites.

June Conant added that the state wants us to do our job of solving this matter whenever we get a dust complaint. The state told her to make people stop making further dust complaints to them. She pointed out to the state that there are residents in HPP who do not seem to care about the impacts that their complaints make – they just want their road paved, now!

Members agreed that the committee could come up with some far-flung, creative, reasonable, and practical ideas to solve our problem.

Larry Brennan (District 9) encouraged the committee to develop a long-term plan that addresses fugitive dust in a comprehensive manner, that is cost-efficient to HPP, and which could be presented to DOH.

Francis Ganon (District 1) opined that the cause of the dust is the type of material the Road Crew is putting onto the road. He said, "If we change the material, we change the dust situation." He and Skip McAlister have tested the different types of material being brought in by the Road Crew from Puna Rocks that show this to be true.

8. ***Distribute Committee Folder:**

Chair Leilani Bronson-Crelly decided to take the agenda out of order – at this time- and distribute the committee's folders (Agenda Item 8) so that the members could read the available documents provided in it. Each section was reviewed:

- 1) Background documents from HPPOA;
- 2) HPP Road Miles – Paved and Unpaved;
- 3) Excerpts of Board Minutes 2010 – 2012;
- 4) State Laws and Rules Regarding "Fugitive Dust";
- 5) Other Places, Similar Issue, Different Solutions; and
- 6) Task Sheet.

(Note: A complete copy of this folder is available for public review in the HPP office.)

June Conant said she explained the shared ownership of Increment 1 to the state at their meeting in Honolulu this past July. However, the state felt we had a duty to address the issue for the entire Park since we are paid a fee to maintain the roads. Members discussed the difference between roads in Increment 1, which is comprised of 5,750 lot owners who own a proportionate share of the roadway in their deed; and the road ways in Increment 2 which are owned wholly by HPPOA. **Ms. Conant** explained that by living in Increment 2, she has access to her home and throughout the Park, but does have legal duty or partial ownership of it – through her deed, as do the folks who live in Increment 1 would.

Bruce Derrick (District 1) stated that easement is controlled by HPPOA in Increment 2. He opined that it comes down to: "Who controls the easement?" He added that "We are not alone," the mainland has the same fugitive dust issue as we do. Derrick explained that farmers in the mid-west would post signs when they were going to work in or drag their fields for crops.

Leilani Bronson-Crelly reminded the committee that its purpose was to act as a clearing house of informed options for the fugitive dust problem. The committee was to come up with a list of viable and researched options to present to its fellow-lot owners at the next General Membership meeting in February 2013; and that it was not an advisory group. As such, all options at this stage should be accepted, researched and listed, and not discouraged from going forth. Following the General Membership meeting, an advisory group could be formed to further investigate proposed options and perhaps suggest which one(s) might be the best to pursue.

June Conant informed the group that she had sent HPPOA's Bylaws in advance of the Honolulu meeting to DOH/CAB and the office of the Attorney General. In reading the Bylaws, Deputy Attorney General, William Cooper,

suggested that a special assessment could be used to raise money to pave the remaining unpaved roads – thus mitigating the dust problem. Ms. Conant explained that we were not a community that could afford for its lot owners to pay an additional charge of \$2,500 over a five year period to pave these roads. Mr. Cooper asked Ms. Conant if the Board had ever proposed this to its lot owners, to which she replied, “No, never.” At the suggestion of the public engineer whom HPPOA had hired to accompany Ms. Conant to the meeting, a survey should be sent out to the lot owners to ask them what they were willing to do to manage this problem – just in case the matter ever went to court. She added that HPPOA’s corporate counsel, Mr. Ivan Van Leer, reviewed the survey which was sent out along with the annual financial statement to lot owners in October 2012. Ms. Conant reported that she has gotten back 1,300 surveys, so far, and that overwhelmingly, the answer is “No Way!” to raise the money to pave the roadways through a special assessment. She felt confident that the survey served several positive purposes: 1) hear the opinion of the people; and 2) have documented input should the matter be litigated in the future.

Linda Nako (District 2) asked if the Board has a standing long term strategic plan on this matter; and whether it has in any way altered the plan. **June Conant** replied, “No.” She added that there are not as many options here on Hawaii Island as there are on the mainland to mitigate fugitive dust.

Guest Rod Thompson (District 9) reminded everyone that this is a national problem, not just an HPP problem. He recounted how Nye County in Nevada had been cited over a decade ago by the EPA for dust on its rural roadways. The EPA and Nye County came to an agreement and signed a memorandum of agreement to mitigate the dust issue, taking federal monies to aid in their problem, using material such as chip seal. With the recent down-turn in the economy, Nye County put it to a vote of its citizens and they responded that “No way, we will not pay any more taxes for this.” The consensus ended up being that in Nye County, if they didn’t pave their rural roads they would be prohibited from any more new commercial development, though they could build new residential developments. Mr. Thompson said that while HPP has no commercial development, we might apply this to us by knowing that the DOH may want out of this problem, as much as we want out of it. He advised that we not look at just one option, but consider a series of answers and options as the need arises. The option to buy out the home of the complainers – should be looked into, but is not the only option. He added that each of the options presented by the Fugitive Dust Committee be graded A through D.

Linnea Lindley (District 4) said she spoke with the DOH herself. A suggestion was made to put big white boulders in the roadways to constrict and slow the flow of traffic – and thus lower the dust impacts. **Francis Ganon** suggested a better way might be to use speed humps to slow traffic speed.

Tom Nickerson hoped to put forward the first step of a proposal at the December 2012 Board meeting for a five-year plan to address our huge debt due to the 2007 bond (\$12M) that HPP took out. He pointed out it costs us \$2,200 in interest per day to pay back this bond (at 7% interest) with a looming call date in five years. One of his options to address this is to look towards the County of Hawaii to take over (or convey our easements) on our four

major roads (Shower, Kaloli, Paradise, and Maku'u Drives) and Beach Road. He added that this proposal is in synch with the Puna Community Development Plan. This conveyance would be a 25% savings in maintenance and upkeep. **Linda Nako** said long-term HPP plans should be in place to address this. But, she pointed out; the dust problem should be viewed as the short-term plan and the paving of the roadways as the long-term plan.

Members discussed how to get the roads to County standards so that they would take them.

Guest Eddie Uratani asked why the gravel placed on his road on Friday by the Road Crew already has pot holes in it two days later. He stated that $\frac{3}{4}$ of it is dust, and that the crew did not complete grading the entire roadway. Uratani opined if the $\frac{3}{4}$ " aggregate used on the roadways chips the paint on a car – it should be because they were speeding. He asked if HPP has ever looked at using chip seal like Orchid Land Subdivision does, across the highway from HPP. He feels that we will all run out of money, and affordable solutions have to be considered sooner, and not later. Another suggestion is to consider using road tack, the extra material taken off a highway during its construction and used as an alternative material on our roadways. It would save us money. Lastly, Mr. Uratani asked why HPP had not brought up the four main roads to County standards during the last overlay (Phase III). **Francis Ganon** replied that HPP has tried that material, but that the state no longer sells it. It would have to come from Glover or Yamada. Mr. Ganon said that he has repeatedly told the Board to use chip seal on our roadways, to no avail.

Cindy Hisatake (District 2) recounted that before the Road Crew had placed the gravel on her road last Friday, she had spoken with Tommy Spencer, Roads Supervisor, who pointed out that the material they were using for all unpaved road repairs, "Was the best stuff ever." Ms. Hisatake disagreed with his statement and observed that this material breaks down quickly and causes dust. In addition, people clear their lots devoid of trees and this also creates dust problems.

Bruce Derrick reminded the committee that up to 2005/06, red cinder was used on the roadways. This material worked fine until population increased. Then, in 2006 the Road Crew started replacing red cinder on the upper roads with $\frac{3}{4}$ " base course, laying it two inches thick and well-compacted. Then in 2008/09 five new directors came on the Board and decided that in order to save \$1/ton, they switched to 1 $\frac{1}{2}$ " base course, which was not laid as thickly as before. Folks on the upper roads started to complain about the dust that arose from this rapid break down of the material being used. But the material being used then was an even better type of material than what is being used now. He stated he's watched the Road Crew put material down over the past three years and is appalled by its inferior quality and the amount of dust and health impacts it has on the near-by residents.

Francis Ganon suggested that the Board consider using a new quarry, even if it costs us more. "The quality of rock will be better in the long run."

Leilani Bronson-Crelly continued to point out the sections of the committee folder – including the Excel spreadsheet of the roadways, paved and unpaved, which had been put together by the general manager, Mr. Scott Reilling. The spreadsheet points out that we still have approximately 88 unpaved road miles to address. She shared

that according to history, some roads in the Park were once grass-covered. The largest substandard subdivision in the nation is also on Hawaii Island, which is Hawaii Ocean View Estates (HOVE), where, she pointed out, they use chip seal on their 157 road miles. She reviewed the remaining documents in the folder with the committee.

A fifteen minute break was called to stretch and get some refreshments.

5. **Define the Categories Under Which Options Can be Placed:**

Leilani Bronson-Crelly explained that the next step was for each member of the committee to take a Sharpie pen and write down options – one per sheet of paper – that they felt should be considered to mitigate this dust problem. Each of their options would be then taped under one of the appropriate five categories already posted on the stage wall. The categories included:

1) **Legal:** seek legal counsel to litigate or sue.

2) **Legislative:** work with legislators to change, exempt or modify the law on fugitive dust; or seek to dedicate major roadways to the County of Hawaii.

3) **Suppressant Measures:** a substance on the roads to stop dust from flying; dust fencing; or chip seal, speed humps, etc.

4) **HPPOA Administrative Action:** have Road Crew use different material on roadways; buy out the complainers; change speed limit, find cheaper cost for paving, etc.

5) **Other:** compare how dust is suppressed in other subdivisions and rural neighborhoods; compare to mainland practices, etc.

6. **Put Pen to Paper and List Your Suggestions and Options:**

Members wrote their preferred options and taped them under the appropriate category, after which, the Chair asked them to take a moment to review what their peers had written. This was described as a brainstorming session.

7. **Putting Skin in the Game by Researching and Vetting Your Options:**

Finally, the Chair, directed the members to remove their option(s) from the wall and take them home to research and write a brief report using the attached Task Sheet. She instructed the members to define their option, list the sources of information used, the potential cost of the option, and explain why it should be considered a viable option. Members are to return to the next meeting with completed Task Sheets.

Larry Brennan encouraged the group to drill down on this issue at the next meeting. He admitted there was a lot of work ahead of us and advised that we should not go fast in reviewing it.

8. ***Distribute Committee Folder:**

This agenda item occurred out of order, and earlier in the meeting. See above notes.

9. **Set Date of Next Meeting:**

The second meeting of the Fugitive Dust Committee will be Sunday, January 20, 2013, at 3:00 pm in the HPP Activity Center.

10. **Adjournment of Committee Meeting No. 1 Occurred at 5:20 pm.**

Respectfully Submitted by:

Leilani Bronson-Crelly, Chair

THESE MINUTES APPROVED BY FUGITIVE DUST COMMITTEE ON JANUARY 20, 2013, WITH ONE CORRECTION; A NAME CORRECTION ON PAGE ONE: BERGNER NOT BERGER.