

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

**DATE:** April 8, 1993  
**TIME:** 9:00 a.m.  
**PLACE:** 1151 Punchbowl Street  
Board Room, Room 132  
Honolulu, Hawaii

**ROLL  
CALL**

Chairperson Keith W. Ahue called the meeting of the Board of Land and Natural Resources to order at 9:01 a.m. The following were in attendance:

**MEMBERS:** Mr. John Arisumi  
Mr. William W. Paty (excused at 10:10 a.m.)  
Mr. Herbert K. Apaka, Jr.  
Ms. Sharon Himeno (excused at 12:30 p.m.)  
Mr. Christopher Yuen  
Mr. Keith W. Ahue

**STAFF:** Mr. Eric Onizuka  
Mr. Michael Buck  
Mr. Ralston Nagata  
Mr. Mason Young  
Mr. Ed Henry  
Mr. Ron Walker  
Mr. Carl Masaki  
Mrs. Geraldine M. Besse

**OTHERS:** Ms. Linnell Nishioka, Dept. of the Attorney General  
Mr. Edwin Watson, Dept. of the Attorney General  
Mr. Peter Garcia, Dept. of Transportation  
Mr. John Mathias (Item C-1)  
Mr. Frank Smith (Item C-1)  
Mr. Tomas Fredericks (Item C-1)  
Ms. Marjorie Ziegler (Item C-2)  
Mrs. Pearl Fernandes (Item E-1)  
Mr. Ed Ressler (Item F-6)  
Mr. Kevin McMahon (Item F-6)  
Mrs. Joyce Castilloux (Item H-1)  
Ms. Sandra Schutte (Item H-2)  
Mr. Daniel J. Lutkenhouse (Item H-2)  
Mr. Dustin Crimmins (Item H-3)  
Ms. Ramona Mattox  
Mr. Ben Kudo (Item H-5 & Item F-6)

Ms. Schutte further stated that the variance was issued in 1991 to Hawaii Tropical Botanical Garden for the commercial operation to plant 100 palm trees. She said she objects to the violation; she said the intent was not to plant the 100 trees and harvest--the variance was to plant the trees. She said the trees were planted within one year, and a list of the palms was submitted to the Division of Forestry and Wildlife prior to planting. She said nowhere in the permit does it state that the trees need to be removed within one year. She said it is not a practical matter to leave the trees in the ground for only one year. She said the definition of "subsequent use" in Condition No. 6 was unclear; she interpreted "subsequent use" to mean that if Hawaii Tropical wanted to plant more trees it would have to apply for a new permit. She said Hawaii Tropical is not the applicant. Ms. Schutte pointed out that rules on variance state, "No variance shall be approved for more than one year." She asked, "What does that mean? Does that mean that everything has to be removed at the end of the year period? It doesn't say so in this rule." She said that it should be clear in the permit and the rules that there is a violation. She said the permit should be the guide to follow. Based on this, she said, she believes there is no violation.

Ms. Schutte pointed out that the application is by Mr. Lutkenhouse personally--that it was not for the garden or commercial use. She said that applicant's intent is to beautify the area.

She said she has reviewed the new recommendations but asked for clarification on Condition No. 8 regarding recording in the Bureau of Conveyances. She said she assumed that the recording requirement applies only to the length of the permit or the planting and that at the end of the five-year period the restrictive covenants on the property would terminate. She said Mr. Lutkenhouse is concerned with encumbrances on the property.

Condition No. 9, the submission of the landscaping plan, she stated that Mr. Lutkenhouse will be working in phases and may find it difficult to submit a plan that is site specific for every tree. To avoid months of delay, Ms. Schutte asked that the plan be of a general nature to be approved by the Hilo office of DOFAW. It was agreed that the department would work as expeditiously as possible to approve the plans.

Mr. Henry concurred with the five-year time-frame for recordation. He said an arrangement could be worked out to accommodate applicant's concern.

Ms. Schutte stated that the permit was for the planting of trees and not a house. Mr. Yuen stated that he thought this could be worked out administratively without going to the Board for the planting of trees. Ms. Himeno agreed there was a "gray zone" in the present application. She said if it were a temporary activity, clearly at the end of the time-frame, it would be removed, such as a wood shed. She said unless it's clear in the variance that the applicant remove the trees planted it was a gray area and felt uncomfortable, in this particular situation, to impose a fine for a violation. Mr. Henry assured the Board that he would work to improve the wording of the temporary variances.

**ACTION** Mr. Yuen moved to approve staff recommendation with the conditions: delete the finding of the violation; delete the landscaping plan; however, a list of anything to be planted be submitted to DOFAW-Hilo for review, and approval can be assumed approved if no objection is received within 30 days. Mr. Yuen also moved to change Condition No. 8 to reflect that the applicant shall provide documentation that this approval has been placed in recordable form as part of the deed instrument for the duration of the five-year time-frame prior to submission of the plant list. On Condition No. 11, he asked that the word "any" in the first line of the condition be deleted to read, "work and construction . . . within one year." Ms. Himeno seconded the motion. Staff recommendation was unanimously approved as amended.

**ITEM H-5: PETITION FOR CONTESTED CASE HEARING ON CDUA HA-487A-EXPANSION OF THE KEAHOLE GENERATOR STATION, KEAHOLE, NORTH KONA, HAWAII, TAX MAP KEY 7-3-49:36, APPLICANT: HAWAII ELECTRIC LIGHT COMPANY, INC.; AGENT: CH2M HILL**

Ms. Himeno asked to be recused from participating on this item. Mr. Henry stated that two petitions to intervene were received for contested case hearing and referred to the Attorney General's Office for review concerning standing and other matters concerning the petitions. Mr. Kudo asked for clarification of the parties, whether the lessee association of the ag park was a party or whether it was the two individuals. Ms. Nishioka stated that at the time the information was submitted, there was no authorization from the association itself so at that point only the two parties had standing. Mr. Kudo asked that the selection of a hearings officer and the hearing be expedited.

**ACTION** Unanimously approved as submitted (Yuen/Paty).

**ITEM C-1: ADOPTION OF REVISED SECTIONS OF CHAPTER 104, RULES REGULATING ACTIVITIES WITHIN FOREST RESERVES**

Mr. Buck reported that there was a need to regulate uses in the forest reserves. Uses, which are sometimes conflicting, could damage the resources, or concern safety and health issues. He said the stimulus for the rules was that there were no regulations for mountain bikes, which has been increasing in use, with indications of problems. It was suggested by the Attorney General's Office that designations be used. He displayed the signs and posters. He said that horseback riders and mountain bikers would not be allowed in areas unless they were specifically designated for that use.

He said there is a fear that the State is trying to completely regulate and not allow any mountain bikes or horses in the forest reserves. He says DOFAW wants the ability to regulate and designate by official trail guides. He said they would not close any trails unless the Na Ala Hele advisory group on that island has a meeting and affords opportunities for people to interact.

(Mr. Paty excused at 10:10 a.m.)

Mr. Yuen expressed his concerns about wheelchairs--that as written wheelchairs are not allowed. He said it might be a legal problem, and Mr. Buck stated he would seek counsel from the Attorney General's Office.

Mr. Yuen asked for clarification as to when a fire could be built. Mr. Carl Masaki called his attention to 13-104-7(2). Mr. Yuen said it was an important regulation and wanted it to be very clear to people that they can't build a fire, except with a camp stove. Mr. Buck stated that the section could be reworded.

Mr. Apaka, as well as Mr. Yuen, expressed concerns with liability. Mr. Buck explained that DOFAW would attempt to address the issue by use of only certain trails, signage, maintenance, and public education. He said that people assume a certain amount of risk. Mr. Apaka stated that the program was a good program but thought that it should be looked into further and a package put back together even if it means additional public hearings to ensure everyone understands.

Comments were received from the following:

Mr. John Mathias of Hawaii Bicycling League addressed the concern about building fires. He agreed the rule should be made very clear. He said on the subject of horses, in November, when proposed rules were distributed, he asked whether there were problems with use of equestrian trails. He said he's spoken with several equestrians and a staff person from Na Ala Hele and the answers are "no" and suggested there should be no further regulation. Mr. Mathias stated he was informed that the equestrian group was unaware of the November public hearing. He noted that there aren't any conflicts that couldn't be resolved through education. He said bicycling is a healthy activity. As for mountain bikes, he asked how will it be determined whether a trail is safe. It is a popular activity but claimed he has not heard of any mountain biker injured or killed on a trail so any regulation should be with the public-at-large and their conduct on the trails. He said the Mokuleia ban is appropriate because the trail is not built to State standard but would expect there would be some restriction on hikers, who could cause the same type of damage to the land snails habitat. Designation would put the State in a liability position; that the rules should be very specific as to what activity is prohibited on the trail. User groups are responsible enough to know which trails are appropriate for their use. He recommended another public hearing with notification to the user groups.

Mr. Frank Smith of Island Triathlon Bike and legislative affairs chairman for Hawaii Bicycling League commented that the land is public land and the public should be encouraged to use and have general access to the land. He viewed the regulation as being "exclusionary," as presently worded. He said the biking community does recognize the need for regulation and that the key was working with the Na Ala Hele staff, plus education. He said signs will still be necessary.

Mr. Tomas Fredericks of Hawaii Bicycling League commented that his concerns were the same as expressed by the others--that the rule not be exclusionary, more open-minded wording. He said he had some information on multiple-use and would forward the information to Mr. Buck.

**ACTION** Mr. Yuen stated he did not feel the Board was at a point to take action on the rule regarding vehicles. He moved to approve all the rule changes as proposed except for Rule 13-104-11, pertaining to vehicles and transportation, which would for now be left as is and would give DOFAW an opportunity to review comments. Motion was seconded by Ms. Himeno. Members of the Board suggested that the issues of motorized wheelchairs and the liability question be addressed. Mr. Buck stated that DOFAW would confer with the Attorney General's office and constituents on the issues. Unanimously approved as amended.

**ITEM H-3: CDUA FOR A PUBLIC PARK AT KAUPULEHU, NORTH KONA, HAWAII TAX MAP KEY 7-2-4:POR. 5; APPLICANT: HUEHUE RANCH ASSOCIATES, LP.: AGENT: PBR HAWAII**

Ed Henry stated that the recommendation was for approval, subject to the following:

(A) In consultation with the applicant, Condition No. 8 was modified to reflect that the applicant shall obtain agreement regarding the quitclaim title and any work or the normal condition regarding construction activity be dated subject to the initiation of the approval of the agreement of the quitclaim title rather than to initiate within one year and completion in two years of this Board action.

(B) The applicant shall also notify the Department in writing when work is initiated and completed.

Dustin Crimmins, project director for Hue Hue Ranch Associates, and Ramona Mattox, on behalf of the master planner, were both present.

**ACTION** Mr. Yuen moved for approval with the following additional amendments:

(1) Condition No. 2 -- that the management plan also be circulated to the Division of Forestry and Wildlife because of the Na Ala Hele Program and that the plan be brought to the Board for final approval.

(2) That the landscaping plan as appears must include a vegetation buffer between the beach and the urban zoned property, to be identified in the management plan.

(3) Condition No. 8 -- that toilet facilities be available for public use during the construction period.

(4) Concerning the mauka-makai access, the applicant shall work with community groups to allow reasonable pedestrian access during the construction period insofar as practical.

Ms. Himeno seconded the motion, and the item was unanimously approved as amended.

Mr. Crimmins stated that the amendments were acceptable.

**ITEM F-6: ASSIGNMENT OF LEASE EXTENSION OF LEASE TERM AND CONSENT TO MORTGAGE COVERING GENERAL LEASE NO. S-4654, KEKAHA, WAIMEA (KONA), KAUAI, TAX MAP KEY 1-2-02:35**

Mr. Ben Kudo representing the applicant explained the background of the request. Also present were Mr. Ed Ressler and Mr. Kevin McMahon, site manager, both of whom commented on the lease.

**ACTION** Unanimously approved as submitted (Apaka/Arisumi).

**ITEM H-1: CONSERVATION DISTRICT USE APPLICATION (CDUA) FOR AFTER-THE-FACT LANDSCAPING, COMMERCIAL AGRICULTURAL, AND SINGLE FAMILY RESIDENTIAL USES; AND PROPOSED IMPROVEMENTS TO THE EXISTING RESIDENCE AT HAKALAU, SOUTH HILO, HAWAII, TAX MAP KEY 2-9-04:14; APPLICANT: MR. PHILIP AND MRS. JOYCE CASTILLOUX**

Mrs. Castilloux stated that when they purchased the property, they had no knowledge the property was in the conservation district. She also said that she and her family were beset by several personal tragedies during the time period.

**ACTION** Mr. Yuen moved for approval, amending the amount of the fine to \$350.00, and also amending Condition No. 9 to state that the owner has the responsibility to replace the vegetation which blocks the views to Akaka Falls Park. Ms. Himeno asked Mr. Yuen whether he would consider amending his motion to delete the fine in light of the extreme personal hardship the family had been through. Mr. Yuen consented.

Unanimously approved as amended.

**ITEM E-1: REQUEST TO USE THE IOLANI PALACE GROUNDS FOR A SPIRITUAL CEREMONY**

Mr. Nagata asked to amend the submittal to reflect a change in the date and time of the ceremony to Sunday, July 11th, 6 a.m. to 3:00 p.m. The group will be conducting a spiritual ceremony and celebrating the reestablished Kingdom of Hawaii.

Because of limited finances, the group asked for a waiver of Condition No. 12. Mrs. Pearl Fernandes, representing the group, was present.

**ACTION** Unanimously approved as amended (Himeno/Arisumi).

**ITEM C-2: REQUEST FOR APPROVAL OF CONTRACT WITH DR. J. GREGORY MASSEY, DVM, TO PROVIDE VETERINARY SERVICES FOR THE CAPTIVE PROPAGATION PROGRAM**

**ACTION** Unanimously approved as submitted (Arisumi/Himeno).

Ms. Marjorie Ziegler of the Sierra Club Legal Defense Fund and a member of the board of the Audubon Society asked to comment because of the organizations' strong interest in the Olinda facility. She stated she was not familiar with Dr. Massey's qualifications. Her questions centered on his familiarity with the Hawaii captive breeding program. She noted that Dr. Duval who has been at the facility for a number of years also applied but was not offered the position.

The Chairperson advised that Dr. Duval could obtain information on the hiring process, if she were interested, through the administrative process.

**ITEM K-1: APPLICATION FOR ISSUANCE OF REVOCABLE PERMITS 5003, ETC., AIRPORT DIVISION, HNL, LIH**

**ACTION** Unanimously approved as submitted (Himeno/Arisumi).

**ITEM K-2: RESUBMITTAL OF REVOCABLE PERMITS 4901, AIRPORTS DIVISION (MOLOKAI-LANAI AIR SHUTTLE, INC.)**

**ACTION** Unanimously approved as submitted (Himeno/Arisumi).

**ITEM K-3: RENEWAL OF REVOCABLE PERMITS 0932, ETC., AIRPORTS DIVISION, OGG, HL,, HDH, MKK, ITO**

**ACTION** Unanimously approved as submitted (Himeno/Arisumi).

**ITEM K-4: ISSUANCE OF REVOCABLE PERMIT, HARBORS DIVISION, PIER 36, HONOLULU HARBOR, OAHU (MARIMED FOUNDATION)**

**ACTION** Unanimously approved as submitted (Himeno/Arisumi).

**ITEM B-1: REQUEST FOR APPROVAL TO AMEND/EXTEND EXISTING AGREEMENTS WITH THE RESEARCH CORPORATION OF THE UNIVERSITY OF HAWAII (RCUH) DURING FY 1993-94**

ACTION Unanimously approved as submitted (Himeno/Yuen).

**ADDED**

**ITEM B-2: REQUEST FOR APPROVAL TO AMEND TWO AGREEMENTS FOR FISHERIES RESEARCH AND DEVELOPMENT WITH THE RESEARCH CORPORATION OF THE UNIVERSITY OF HAWAII (RCUH) FOR CONTINUATION THROUGH FY 1993**

ACTION Unanimously approved as submitted (Himeno/Arisumi).

ITEM C-1: See page 7.

ITEM C-2: See page 8.

**ITEM C-3: APPROVAL OF AWARD OF CONSTRUCTION CONTRACT, PROJECT NO. 40562DGE, ADDITIONS AND RENOVATIONS TO THE DLNR KAHULUI BASEYARD OFFICE, KAHULUI, MAUI, HAWAII**

ACTION Unanimously approved as submitted (Arisumi/Himeno).

ITEM E-1: See page 8.

**ITEM E-2: REQUEST BY THE NAPO'OPO'O VILLAGE COUNCIL, INC. TO HOLD A FUNDRAISER AT KEALAKEKUA BAY STATE HISTORIC PARK**

Mr. Nagata noted that the sale of food items was not addressed and asked that if a decision was required if it arises asked that the decision be delegated to the Chairperson. Mr. Nagata also requested the waiver of the insurance coverage for the event.

ACTION Unanimously approved as amended (Yuen/Himeno).

**ITEM F-1: TRANSMITTAL OF DOCUMENTS FOR BOARD CONSIDERATION:**

**ITEM F-1-a:ISSUANCE OF REVOCABLE PERMIT TO LEROY TAGUMA DBA WESTWARD INDUSTRIAL, LOT 3 AND IMPROVEMENTS, BRODIE LOTS, HANAPEPE, WAIMEA (KONA), KAUAI, TAX MAP KEY 1-8-08:50**

ACTION Unanimously approved as submitted (Apaka/Arisumi).

**ITEM F-2: AMENDMENT TO PRIOR BOARD ACTION OF AUGUST 12, 1992 (AGENDA ITEM F-1-b RELATIVE TO THE ASSIGNMENT OF GENERAL LEASE NO. S-4195 COVERING LOT 6, KAMAOLE BEACH LOTS, KAMAOLE, KULA, MAUI, TAX MAY KEY 3-9-05:46**



**ACTION** Unanimously approved as submitted (Arisumi/Apaka).

**ITEM F-3: AMENDMENT OF GENERAL LEASE NO. S-4579 TO UNIVERSITY OF HAWAII, WAIMANALO AGRICULTURAL EXPERIMENT STATION, WAIMANALO, KOOLAUPOKO, OAHU, TAX MAP KEY 4-1-26:2 AND 21**

**ACTION** Unanimously approved as submitted (Himeno/Apaka).

**ITEM F-4: REQUEST FOR EXTENSION OF CONSTRUCTION DEADLINE, SPECIAL SALE AGREEMENT NO. S-5592, LOT 4, BLOCK S, KAPAA TOWN LOTS, FIRST SERIES, KAPAA, KAWAIHAU (PUNA), KAUAI, TAX MAP KEY 4-5-08:33**

Mr. Young asked to amend his submittal to indicate the correct date as March 20, 1989, the date sold at public auction.

**ACTION** Unanimously approved as amended (Apaka/Arisumi).

**ITEM F-5: KAUAI RACING ASSOCIATION REQUESTS RIGHTS-OF-ENTRY TO UTILIZE KAUAI RACEWAY PARK, MANA, KAUAI, TAX MAP KEY 1-2-02:POR. 30 AND 40**

**ACTION** Unanimously approved as submitted (Apaka/Himeno).

**ITEM F-6:** See page 7.

**ITEM H-1:** See page 7.

**ITEM H-2:** See page 4.

**ITEM H-3:** See page 7.

**ITEM H-4: TIME EXTENSION REQUEST FOR CDUA 0A-2242 FOR THE HAWAII VETERANS MEMORIAL CEMETERY AT KANEOHE, OAHU; TAX MAP KEY 4-5-33:1; APPLICANT: STATE OF HAWAII DEPARTMENT OF DEFENSE**

**ACTION** Unanimously approved as submitted (Himeno/Apaka).

**ITEM H-5:** See page 4.

**ITEM H-6:** See page 2.

**ADDED**

**ITEM H-7: STATUS REPORT ON HURRICANE INIKI RELIEF PROCEDURES AND POLICIES WITHIN THE STATE'S CONSERVATION DISTRICT, KAUAI**

Mr. Henry stated that process in response to Iniki is a paralleled process with the County of Kauai and Emergency Permitting Office and explained the four permit processes to be utilized to fast-track the permit process.

(Ms. Himeno excused at 12:30 p.m.).

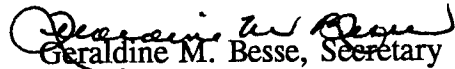
**ACTION** Unanimously approved as amended to indicate that the normal process requires Board approval (Apaka/Yuen).

The Chairperson commented that a review is being made to expedite the CDUA process in general.


**ADJOURN-** The Chairperson adjourned the meeting at 12:40 p.m.

**MENT:**

Respectfully submitted,

  
Geraldine M. Besse, Secretary

**APPROVED:**

  
KEITH W. AHUE, Chairperson