

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

DATE: June 9, 1995
TIME: 9:30 a.m.
PLACE: Kona Surf Hotel
Mauna Loa Conference Room
78-128 Ehukai Street
Kailua-Kona, Hawaii

**ROLL
CALL**

Chairperson Michael D. Wilson called the meeting of the Board of Land and Natural Resources to order at 9:30 a.m. The following were in attendance:

MEMBERS: Mr. Herbert K. Apaka
Mr. Christopher Yuen
Mr. William Kennison
Mr. Michael Nekoba
Mr. Michael D. Wilson

STAFF: Mr. Eric Onizuka
Mr. Ralston Nagata
Mr. Mason Young
Mr. Roger Evans
Mr. David Parsons
Ms. Geraldine M. Besse

OTHERS: Ms. Linnell Nishioka, Dept. of the Attorney General
Mr. Peter Garcia, Dept. of Transportation
Ms. Lyda A. Navas (Item No. B-1)
Mr. Carl Varady (Item Nos. E-1 and E-2)
Ms. Tamar Chotzen (Item No. E-4)
Ms. Meredith Ching, Mr. Garret Hew and Mr. Dick
Cameron (Item No. F-1-b through F-1-e)
Mr. Ted N. Petit (Item No. F-1-f)
Ms. Donna Leong (Item No. F-1-h)
Ms. Carol Hendricks (Item No. F-2)
Mr. Mark Gushiken (Item No. F-3)
Mr. David Bills (Item No. H-1)
Mr. Rory Frampton (Item No. H-3)
Mr. Richard Boyd, Ms. Carolyn Pomeroy, Mr. John
Broussard, Juliet Begley, and Mr. Michael Rearden,
Item No. H-4)

All written testimonies submitted at the meeting are filed in the Chairperson's Office and are available for review.

The agenda for this meeting is attached for reference.

ADDED The following item was added to the agenda (Yuen/Apaka):
ITEM

**ITEM NO. J-3 LEASE OF OFFICE SPACE FOR THE HILO HARBOR AGENT
BRANCH OF THE DIVISION OF BOATING AND OCEAN RECREATION,
HILO, ISLAND OF HAWAII**

B. DIVISION OF AQUATIC RESOURCES

Item B-1 Ms. Lyda Navas spoke in favor of the submittal. Unanimously approved as submitted (Yuen/Nekoba).

E. DIVISION OF STATE PARKS

Item E-1 Mr. Carl Varady was present. Items were withdrawn based on advice from Attorney General's Office (Kennison/Nekoba).

and

Item E-2

Item E-3 Unanimously approved as submitted (Yuen/Nekoba).

Item E-4 Ms. Tamar Chotzen, applicant was present. Unanimously approved as submitted (Nekoba/Yuen).

F. DIVISION OF LAND MANAGEMENT

Documents for Board Consideration:

Item F-1a Unanimously approved with an amendment that the consent of the HFDC be obtained; otherwise, the assignment would be voided (Yuen/Nekoba).

Item F-1b Unanimously approved as submitted (Kennison/Apaka).

Item F-1c Unanimously approved as submitted (Kennison/Apaka).

Item F-1d Unanimously approved as submitted (Kennison/Apaka).

Item F-1e Unanimously approved as submitted (Kennison/Apaka).

- Item F-1f** Unanimously approved with the following amendments: Prior to the consummation of the assignment: (1) assignee shall be registered to do business in the State of Hawaii; and (2) delinquent lease rental and real property taxes shall be brought to current (Nekoba/Kennison).
- Item F-1g** Unanimously approved with an amendment of the name of the permittee to Hawaii Alcoholism Foundation (Yuen/Nekoba).
- Item F-1h** Unanimously approved as submitted (Nekoba/Matsumoto).
- Item F-1i** Unanimously approved as submitted (Yuen/Nekoba).
- Item F-1j** Unanimously approved a submitted (Yuen/Nekoba).
- Item F-1-k** Unanimously approved with an amendment that the consent of HFDC to be obtained; otherwise the assignment is null and void (Yuen/Nekoba).
- Item F-2** Unanimously approved as submitted (Yuen/Nekoba).
- Item F-3** Unanimously approved with the following amendments (Yuen/Nekoba):
- A. Amend all references to "Huehue Ranch" to "Huehue Ranch Associates, a Hawaii limited partnership.";
 - B. Under Recommendation C, at bottom of page 3 to the top of page 4, delete Condition No. 3 in its entirety;
 - C. Under Recommendation D, revise Condition No. 1 in its entirety to read as follows:
 - 1. Prior to the issuance of the direct lease, HELCO shall submit to the Division of Land Management the following items:
 - a. Up-to-date survey descriptions and a minimum of three (3) survey map whiteprints prepared by a Hawaii registered professional land surveyor covering the proposed microwave tower site, and access and utility easement area.
 - b. Three (3) copies of the final County of Hawaii approved subdivision plat map covering the proposed microwave tower site, and access and utility easement area being leased.
 - D. Under Recommendation D, revise Condition No. 2 in its entirety to read as follows:

2. Prior to the issuance of the direct lease, HELCO shall acquire a perpetual, non-exclusive access and utility easement [fifteen (15) feet) wide] in, over, under and across the lands owned by Huehue Ranch Associates, a Hawaii limited partnership, which easement rights shall be in favor of the State of Hawaii, its successors and its permitted assigns.

E. Under Recommendation E, add the following condition:

9. If HELCO fails to fully comply with Condition Nos. D.1 and D.2 at any time prior to the issuance of the direct lease, all microwave tower improvements and other improvements constructed, built, erected or placed by HELCO or its contractor(s) shall be immediately removed from the subject premises. To ensure the immediate removal of the improvements upon the written demand of the Chairperson of the Board of Land and Natural Resources, HELCO shall deposit with the Department of Land and Natural Resources a cash bond or a surety bond acceptable to the DLNR in the amount of \$5,000.00 within thirty (30) calendar days of the Land Board's approval of the construction right-of-entry.

ITEM F-4 Unanimously approved as submitted (Yuen/Nekoba).

ITEM F-5 Mr. Yuen recused; approved as submitted (Kennison/Apaka).

ITEM F-6 Unanimously approved as submitted (Nekoba/Kennison).

ITEM F-7 Unanimously approved as submitted (Kennison/Apaka).

ITEM F-8 Unanimously approved as amended as follows (Kennison/Apaka):

TITLE: DIVISION OF FORESTRY AND WILDLIFE (DOFAW) AND ITS VOLUNTEER CREWS REQUEST FOR THE RIGHT OF ENTRY FOR MICONIA ERADICATION, PORTION OF WAKIU AND KAWAIPAPA, HANA, MAUI, TAX MAP KEY 2-3-04:20

REPLACE EAST MAUI WATERSHED PARTNERSHIP WITH DOFAW

Conditions:

2. DOFAW shall be responsible for obtaining signed waivers from all volunteers prior to entering the subject property indemnifying and holding the State of Hawaii and Mahealani Farms, Inc. harmless against all claims for personal injury, death or property damage caused by or in any way connected with the permission granted herein.

3. Replace liability insurance requirement with:

DOFAW shall be responsible to supervise all volunteers at all times while on the subject property.

ITEM F-9 Unanimously approved as submitted (Kennison/Apaka).

H. ADMINISTRATION

ITEM H-1 Mr. David Bills, representing the applicants, in a written statement agreed with the staff recommendation and urged approval of the item. Unanimously approved with the amendment of the extension to six months (Matsumoto/Nekoba).

ITEM H-2 Unanimously approved as submitted (Apaka/Nekoba).

ITEM H-3 Unanimously approved as submitted (Kennison/Nekoba).

ITEM H-4 Mr. Evans provided a chronology of the application and the fact that certain conditions of the permit were not fulfilled; therefore, the recommendation of the staff to revoke the permit.

Mr. Rearden cited the Chapter 91 requirement of notice and asked that Mr. Yuen be disqualified from participating in the Board's decision. Mr. Rearden questioned his impartiality because of a previous business dealing with Mr. Yuen while he was with the Corporation Counsel's office approximately ten years ago.

EXECUTIVE SESSION Mr. Yuen asked for an executive session to consult with legal counsel; seconded by Mr. Nekoba and unanimously approved. The Board was in executive session until 10:30 a.m.

Deputy Attorney General Linnell Nishioka advised that Chapter 91 did not apply; that this was a Chapter 92 proceeding and the requirements of that chapter have been met. She also advised that Mr. Yuen did not meet the criteria to be disqualified.

Mr. Rearden objected to the submission of the photograph of the landing as a violation of his private property rights.

He stated he could complete the residence by June 25, 1995, using approved plans although he did not have the material or a contractor; that he has not done anything since he was informed that the staff intended to revoke his permit; that under the circumstances no reasonable person would go forward with the construction of a house in excess of \$500,00 in costs, fees and other financial undertakings. Mr. Yuen stated it was obvious to him that the residence would not be completed by June 25th.

Mr. Yuen moved to defer action on the matter of revocation; that the staff is directed to send permittee a letter that unless staff has received evidence of completion of the structure, with final inspection from the Building Department, Mr. Rearden's permit is null and void; that the Board is on record that any work that permittee does between June 9, 1995, and June 25, 1995, will not be considered in his favor as far as any request to extend. The motion was seconded by Mr. Matsumoto.

Mr. Rearden said he had tapes that indicate the staff has been engaged in lying, fraud, cheating, giving insider information and preferential treatment to certain groups. He said he had 30 minutes on tape of his "sting operation." He claimed that the groups had information three months ago, and he was only notified seven days ago. He claimed fraudulent entries and that the record of proceedings have been taken out of context and used to give the Board false information. Mr. Rearden stated that false representations were also made to Janice Rearden. "It is the worst case of governmental misconduct I have ever run across."

Mr. Rearden stated that calls were also made on his behalf to Carolyn Pomeroy, who made numerous misrepresentations about what was happening. That Kohala group, he said, was working with DLNR staff.

He further stated that the staff was violating Judge Kimura's order. Mr. Rearden claimed there was never a concerted effort on his part to speculate on the property. The Chairperson stated a land swap could be a possible resolution of the problem.

RECESS The Chairperson called a recess from 11:30 to 11:40 a.m.

Mr. Rearden submitted his receipt for \$500 for the easement. He said that he did enter into an agreement with Mr. Young to have the easement reappraised and he would pay for any difference that may have occurred in the interim.

The Chairperson advised Mr. Rearden that he did have a right to request a contested case, which might be moot if permit expires.

Mr. John Broussard spoke in favor of denying the extension. Mr. Richard Boyd of Save our Surf and member of Hui Lihikai distributed the testimony of Mike Moriarty.

Other testimony presented by Carolyn Pomeroy in support of staff.

ACTION Unanimously approved Mr. Yuen's motion to defer.

J. DIVISION OF BOATING AND OCEAN RECREATION

ITEM J-1 Withdrawn pending legal review (Kennison/Apaka).

ITEM J-2 Unanimously approved as submitted (Nekoba/Matsumoto).

ADDED Deferred based on budgetary concerns (Matsumoto/Yuen).
ITEM J-3

K. OTHER DEPARTMENTS

ITEM K-1 Unanimously approved as submitted (Yuen/Matsumoto).

ITEM K-2 Unanimously approved as submitted (Nekoba/Yuen).

ITEM K-3 Unanimously approved as submitted (Kennison/Apaka).

ITEM K-4 Unanimously approved as submitted (Kennison/Nekoba).

ITEM K-5 Report accepted.

ITEM K-6 Report accepted.

ADJOURN- There being no further business, the Chairperson adjourned the meeting at 1:30
MENT p.m.

Respectfully submitted,


Geraldine M. Besse, Secretary

APPROVED FOR SUBMITTAL


MICHAEL D. WILSON, Chairperson

