

STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY
Kalaeloa Community Development District
Honolulu, Hawaii 96813

December 6, 2017

Chairperson and Members
Hawaii Community Development Authority
State of Hawaii
Honolulu, Hawaii

HCDA Board Members:

SUBJECT: Shall the Authority Adopt the Findings and Recommendations of the Task Force to Resolve the Stockpile at the Kalaeloa Heritage Park?

SUMMARY:

At its September 6, 2017 board meeting the task force presented its findings based on its review of the matter involving the stockpiled material at the Kalaeloa Heritage and Legacy Foundation (KHLF), which follow:

1. KHLF is a domestic nonprofit corporation registered to do business in Hawaii and in good standing with the Department of Commerce and Consumer Affairs (DCCA).
2. KHLF has been registered with DCCA since 2012.
3. KHLF has a board of nine members that include Shad Kane, the KHLF point of contact in this matter.
4. The property at issue is held in fee by HCDA and leased to KHLF at a nominal rent for 40 years starting on December 1, 2015 and ending on November 30, 2055, with an option to extend for an additional 20 years, to develop and operate a multi-purpose cultural center with the objective of preserving and maintaining archaeological, cultural, and natural resources in the Kalaeloa Heritage Park.
5. A citation was issued by the City and County of Honolulu, Department of Planning and Permitting (DPP) to the HCDA for the unpermitted stockpile.
6. KHLF was in control of the property when the stockpile occurred and subsequently discovered by DPP.
7. Current measures put in place by KHLF in conjunction with the HCDA adequately addresses stockpile concerns by the Department of Health (DOH) and DPP; however, action must be taken to clear the DPP violation to resolve the issue of fines.
8. KHLF alone does not have adequate funds to pursue the necessary corrective action.

Based on its investigation the task force also presented the following recommendations:

1. The HCDA should continue to work in collaboration with KHLF in resolving the stockpile.

2. Work with the local development community to identify a party interested in the fill material.
3. KHLF should pay any and all fines resulting from the stockpile.
4. The HCDA should pay for remediation costs, subject to reimbursement from KHLF for 50% of costs incurred. This agreement should be memorialized in an addendum, including a payment schedule and milestones.

AUTHORITY:

Permitted interactions of a group of board members is governed by Hawaii Revised Statutes (HRS) § 92-2.5(b), which states that two or more members of a board, but less than the number of members which would constitute a quorum may be assigned to:

- (1) Investigate a matter relating to the official business of their board, provided that:
 - (A) The scope of the investigation and the scope of each members authority are defined at a meeting of the board;
 - (B) All resulting findings and recommendations are presented to the board at a meeting of the board; and
 - (C) Deliberation and decision-making on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board.

The task force was formed at the July 5, 2017 Kalaehoa Community Development District Board meeting to:

1. Review the matter involving stockpiled material; and
2. Make a recommendation on a proposed course of action.

The task force findings and recommendations were presented at the September 6, 2017 Kalaehoa Community Development District board meeting. So, the board may proceed with deliberation and decision-making at this meeting.

BACKGROUND:

The task force met on July 26, 2017, August 23, 2017, and November 14, 2017.

At its July meeting, the task force was provided a timeline and was briefed on the circumstances resulting in the stockpile and subsequent notice of violation. A timeline that summarizes these circumstances is included as Attachment 1.

At its July meeting, the task force was also presented with options for dealing with the stockpiled material from staff in a staff report dated July 21, 2017. The task force also requested remediation alternatives from KHLF that was also reviewed.

On August 17, 2017, staff met with KHLF as directed and reported back to the task force that KHLF met with a local developer who is interested and can utilize the stockpiled material and

would waive what the HCDA would otherwise incur as a tipping charge upon disposal with the exception of certain materials (scrap metal, painted concrete, re-bar, green waste). The HCDA/KHLF however would be responsible for loading and hauling the material to its site in Kapolei. This expense may be reduced or waived pending further discussion by KHLF with developers.

The local developer's proposal was discussed at length at the August meeting of the task force.

At its November 14, 2017 task force meeting, staff provided an update on the discussions with KHLF and local developers, including a second interested developer. Staff also provided more detailed information about necessary plans to resolve the stock pile and close the outstanding City citation.

FINDINGS:

Findings previously presented at the September 6, 2017 meeting are reiterated below:

Finding 1 - The HCDA should share in the cost of correcting the violation:

- a. The original right of entry between the HCDA and KHLF explicitly indicates that, "KHL(F) will work in partnership with HCDA to further the development of Kalaeloa Heritage Park..."
- b. KHLF entered in an oral agreement with a trucking and equipment operator (with the intent of utilizing its equipment and donated fill material) to grade a portion of the property to allow the placement of a Green Lanai, a structure used by the Sony Open for an enclosed, climate controlled spectator seating.
- c. The idea of using the Green Lanai was proposed by the previous HCDA executive director, which was subsequently cancelled by the owner of the Green Lanai.
- d. The HCDA was aware that the KHLF had sub-let a portion of its property to an equipment operator.
- e. The HCDA did not pursue timely action to avert the Notice of Order when notified by the City and County of Honolulu Department of Planning and Permitting (DPP) on the initial notice of violation.

Finding 2 - KHLF should share in the cost of correcting the violation:

- a. The KHLF violated its right of entry with HCDA:
 - i. KHLF proceeded to sublet a portion of its property to a trucking/equipment operation;
 - ii. KHLF allowed the trucking operation to engage in stockpiling and dumping on the site; and
 - iii. KHLF did not take action to restore the site at the conclusion of its right of entry.
- b. The KHLF allowed the trucking operation to leave the stockpiled material without further action.
- c. The KHLF did not obtain the necessary permits for:
 - i. The stockpile, resulting in the Notice of Violation from DPP; and

- ii. Grading, as required for site preparation to take possession of the Green Lanai.
- d. The KHLF, in its lease, committed to resolve the stockpile within one year of its lease that commenced on December 1, 2015.

Finding 3 - Current measures put in place by KHLF in conjunction with the HCDA adequately address stockpile concerns; however, action must be taken to clear the violation and get a final account of the accrued fines.

- a. With a stockpiling permit, the stockpile is a permitted stockpile whereas the original violation was for an illegal stockpile.
- b. KHLF contracted consultants to address Department of Health concerns resulting in:
 - i. The installation of a bio-sock and vegetation to contain the stockpile; and
 - ii. Testing of stockpiled materials for contaminants (no significant levels of contaminants were identified).
- c. Resolution under the current permit is limited to removal of the stockpile.

Finding 4 - The KHLF alone does not have adequate funds to pursue the necessary corrective action.

- a. KHLF has disclosed this in its remediation alternatives.
- b. In its meetings with staff, KHLF also disclosed that it is behind in fundraising and overall business plan.
- c. KHLF's previous commitment to resolve the stockpile within one year was based on a commitment from a construction contractor that has since gone out of business.

RECOMMENDATIONS:

The recommendations provided by the task force at the September 6, 2017 board meeting are reiterated below:

Recommendation 1 - The HCDA should continue to work in collaboration with KHLF in resolving the stockpile.

Both parties are motivated to bring this matter to a close so we can gain efficiencies working together.

KHLF has a considerable amount of goodwill in the community with several commercial entities willing to assist them. This could result in reduced costs and other opportunities not otherwise available to the State. KHLF has worked to identify two local developers with projects in Kapolei that may be interested in the stockpile material as fill which would reduce hauling charges and tipping fees compared to other alternatives. KHLF has also secured a verbal agreement from the landfill for reduced tipping fees.

The HCDA otherwise has no staff expertise to provide KHLF in-house support to ensure the disposition of the material is done properly. Also, based on Finding 4, the HCDA will need to

provide any necessary financial support to remove the stockpile and close the outstanding citation.

Recommendation 2 - Work with the local development community to identify a party interested in the fill material.

This alternative yields several efficiencies, including cost savings, over other alternatives presented:

1. Material handling charges are reduced as local developers are willing to accept material without sifting the material as large boulders, concrete and asphalt chunks may be used to fill deep voids.
2. Tipping fees for a significant portion of the stockpiled materials could be avoided or greatly reduced thru negotiations.
3. Hauling charges would be greatly reduced as materials would be charged over a shorter distance with a site in Kapolei, instead of the landfill.
4. Work could start immediately as additional clearance is not required to remove stockpiled materials.

Appropriate measures should be taken to ensure that the local developer has all the requisite regulatory clearances to accept and use the fill material. Appropriate measures should also be taken at the KHLF site to ensure that the work is done properly to resolve the stockpile and close the outstanding citation.

Recommendation 3 - KHLF should pay for any and all fines resulting from the stockpile.

In securing the lease, KHLF committed to resolving the stockpile within one year of the lease, which is included in Section 1.3 of General Lease No. 15-05 between the HCDA and KHLF. The resolution of the matters identified in this section should also include the resolution of fines.

The matter regarding KHLF's non-compliance with Section 1.3 of General Lease No. 15-05 is discussed in Recommendation 4.

Recommendation 4 - The HCDA should pay for remediation costs, subject to reimbursement from KHLF for 50% of costs incurred. This agreement should be memorialized in a separate agreement that includes a payment schedule with an agreed upon date for final payment.

A cost sharing arrangement is consistent with Findings 1 and 2 of the task force. To allow for the expedient resolution of the matter, it is recommended that remediation costs are paid for by the HCDA subject to reimbursement by KHLF at a later date. As established in Finding 4, KHLF does not currently have adequate funds to take the necessary corrective action in the near-term.

The cost-sharing arrangement could be memorialized as an addendum to the lease. The addendum would reference the lease, acknowledging KHLF's non-compliance with Section 1.3 and reserving HCDA's right to terminate the lease for non-payment. The addendum would include a payment schedule. The HCDA may also consider including in this agreement, enhanced reporting requirements to monitor compliance and collectability.

The payment schedule for the cost-sharing agreement would be based on updated strategic plans from KHLF. As identified in Finding 4, KHLF realizes that it is behind on its business plans and is currently working to update them. The HCDA should consider strategic plan elements such as capital campaigns, plan milestones and financial forecasts in developing the payment schedule and any other covenants.

As the Kalaeloa Community Development Revolving Fund does not have adequate funds to address remediation costs and funds would have to be transferred from the Hawaii Community Development Revolving Fund. All funds recaptured under the proposed addendum should be returned the Hawaii Community Development Revolving Fund.