

Minutes of a Regular Meeting
of the Members of the
Hawaii Community Development Authority,
State of Hawaii

MEETING NO. 376
Thursday, August 16, 2012

KALAELOA

I. CALL TO ORDER/ROLL CALL

A regular meeting of the Members of the Hawaii Community Development Authority (“Authority”), a body corporate and public instrumentality of the State of Hawaii, was called to order by Mr. Brian Lee, Chairperson of the Authority, at 10:19 a.m. on Thursday, August 16, 2012, at the Department of Hawaiian Home Lands, Hale Pono’i conference center, 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, pursuant to Article IV, Section 1 of the Authority’s Bylaws.

Members Present: Linda Chinn (DHHL)
Grady Chun
Miles Kamimura
Kamaki Kanahale
Ralph Morita (DAGS)
Luis Salaveria (DBF)

Members Absent: Randy Grune (DOT)
Richard Lim (DBEDT)

Others Present: Brian Lee, Chairperson of the Authority
Anthony Ching, Executive Director
Lori Tanigawa, Deputy Attorney General
Deepak Neupane, Director of Planning and Development, Kakaako
Shelby Hoota, Program Specialist
Patricia Yoshino, Secretary
Holly Hackett, Court Reporter

MATERIALS DISTRIBUTED:

1. Report of the Executive Director;
2. Decision Making: Shall the Authority Authorize the Executive Director to Accept Ownership of Enterprise Avenue in the Kalaeloa Community Development District from the State Department of Transportation;
3. Decision Making: Shall the Authority Authorize the Executive Director to Expend Up to \$3,500,000 in Capital Improvement Projects Funds to Design and Construct

EXHIBIT S

the Kalaeloa East Energy Corridor Project in the Kalaeloa Community Development District;

4. Decision Making: Shall the Authority Authorize the Executive Director to Accept the Remediation Measures Proposed by Aloha Solar Energy/Sunetric to Address the Damages Resulting from Unauthorized Activities on Parcel 13073-E in the Kalaeloa Community Development District.

II. REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Ching summarized the report in the packet distributed to Members. He also provided a report on the new Authority structure and financial statement via a PowerPoint presentation (see Exhibit A).

There were no questions from Members on the report.

Chairperson Lee asked whether any members of the audience wished to comment on the report.

Public Testimony:

Mr. Glenn Oamilda, president of the Ewa Beach Community Association, asked whether any location had been considered for the biosafety lab.

Chairperson Lee reminded the public that the time was for public comment and not to ask questions of the Authority. Questions could be addressed to the Executive Director after the meeting.

Mr. Ching stated that the Hawaii Community Development Authority (“HCDA”) had no jurisdiction to address the biosafety lab until the zoning rules were established. Once established, then any application for activity would be subject to the rules.

Mr. Oamilda stated that the Authority of Kakaako and Kalaeloa seemed to rest on the premise that there shall be no transparency and moved from one site to another site which they directly control. The Authority had not considered other sites than what was under its purview.

Mr. Michael Kumukauoha Lee stated he was a native Hawaiian cultural practitioner, recognized in First Circuit Court as native Hawaiian cultural expert for the area in the Ho’opili Case in 2012, and recognized by State Historic Preservation Division (“SHPD”) and Office of Environmental Quality Control as a cultural descendant. He stated the importance of the limu picked in the area. He noted that the Malden maps showed clearly the Hawaiian trails that were in the area and the water karst systems which the limu needs to grow. He wanted to keep the historical context front and center because it is protected under Article XII, section 7 and the Federal Clean Water Act.

Ms. Polly Grace stated she wanted assurance that the iwi kai kapu was going to be preserved.

III. KALELOA MATTERS

1. Decision Making: Shall the Authority Authorize the Executive Director to Accept Ownership of Enterprise Avenue in the Kalaeloa Community Development District from the State Department of Transportation?

Mr. Ching summarized the report in the packet distributed to Members.

Member Kanahele asked whether it would be necessary to have legislative action to make a legal transfer.

Mr. Ching explained that the HCDA is a corporate instrumentality of the state and has the statutory ability to hold title to land. The transfer of ownership in this case would not require legislative authorization.

Deputy Attorney General Tanigawa advised that §171-64.7, HRS governs the conveyances of state owned lands. A conveyance between state agencies does not require a concurrent resolution.

Mr. Ching explained that while there was no transfer of funding, the Department of Transportation (“DOT”) would assist and help solicit if federal or state funds were available. State funding would have to come from the Legislature.

Member Kami noted that the Memorandum of Understanding did not include assignability provisions. He asked HCDA staff to work with the City and County of Honolulu (“City”) on what actions are being taken. Regarding the acceptance of infrastructure by the City, he felt it would be helpful to have City inspectors present when the improvements were done to help make the process go much faster.

Chairperson Lee asked whether any members of the audience wished to comment on the report.

Public Testimony:

Mr. Michael Kumukauoha Lee stated he was a consulting party in the 106 process for the Hunt Development and the Kalaeloa Energy Process Farm which recognized the importance of the karst and the iwi in the area. In lieu of an Environmental Impact Statement (“EIS”) for the transfer and building a road, he strongly urged that the historical Hawaiian cultural boundary markers be assessed before the process is started. If the karst is broken, it would destroy the limu he uses for medicine and would be a violation of the Clean Water Act.

Mr. Glenn Oamilda state he did not have a clear vision of the proposal. The 3

parties were the HCDA, the DOT and the Hawaiian Electric Company (“HECO”). He felt every process had to go through a height variance. The DOT and HECO had yielded power to the HCDA in order to side step the permitting process and public oversight.

Ms. Celeste Lacuesta stated she had contacted both the Department of Hawaiian Home Lands (“DHHL”) and the Department of Land and Natural Resources (“DLNR”) to save historic sites and Ordy Pond because there were things living and growing there. However, the sites today are destroyed. Her grandfather was a kupuna and a spiritual healer, who did things with what we think are weeds, but is actually medicine. She asked the Authority not to be pro-development or pro-rail.

Chairperson Lee entertained a motion to authorize the Executive Director to accept ownership of Enterprise Avenue in the Kalaeloa Community Development District from the State Department of Transportation.

A motion was made by Member Chun and seconded by Member Kamimura.

Chairperson Lee asked whether there was any discussion on the motion.

Member Kanahale whether the motion should be an open one and whether the transfer was instant or had a timetable for the responsibility.

Mr. Ching replied that the motions would authorize the Executive Director to finalize the transfer and conveyance document.

A roll call vote was conducted.

Ayes: Members Chinn, Chun, Kami, Kamimura, Kanahale and Morita.

Nays: None.

The motion passed 6 to 0 with 3 excused (Members Grune, Lim, and 1 Kalaeloa member not yet appointed).

2. Decision Making: Shall the Authority Authorize the Executive Director to Expend Up to \$3,500,000 in Capital Improvement Projects Funds to Design and Construct the Kalaeloa East Energy Corridor Project in the Kalaeloa Community Development District?

Mr. Ching summarized the report in the packet distributed to Members.

Member Chun asked what would happen if cost overruns could go beyond the \$3.5 million allocated.

Mr. Ching explained that the project would provide alternate service to the U.S. Coast Guard, who have agreed to fund a portion of the project. When a user desires power, the furthest one from the HECO power line is required to cover the cost of bringing power to their project. The U.S. Coast Guard is preparing budget submittals such that they can augment and pay a share to participate in the particular section of the project that would bring power to their base.

Member Kanahale asked if the HCDA would be going into the utility business.

Mr. Ching replied in the negative. The agency would only facilitate and utilize the legislative appropriation given to ensure that the necessary interconnection is constructed. The facilities will ultimately be turned to HECO who would operate, maintain and provide the power.

Chairperson Lee asked whether any members of the audience wished to comment on the report.

Public Testimony:

Mr. Michael Kumukauoha Lee stated that the cable lines would be going through 3 waterholes which were the egress for the karst system. It was where the fresh water feeds the limu and makes it regenerate. The EIS would be of high priority under Article XII section 7 and was a concern for him.

Mr. Glenn Oamilda stated that the HCDA had sidestepped the process since the whole idea was in a 106 process with the U.S. Navy. They had complied with Hunt Development to move the photovoltaic field to the makai end of the runway and wanted to preserve the Ewa field. The State gave Hunt tax credits and is now giving \$3.5 million for the project. He wanted an EIS to determine what was underneath the ground due to his concerns with the karst, heiaus, estuaries, and historic stables. The process should not be approved until the 106 process is completed.

Ms. Polly Grace stated her concern about the arsenals found inside the sink holes. She felt an environmentalist should check the water before anyone eats anything from there or swims in it.

Member Kanahale stated that as it was his first meeting as the cultural specialist on the board, he wanted to know how cultural concerns have been addressed in the past.

Mr. Ching explained that since 2002, there had been a range of community meetings with groups and organizations, including culturally sensitive organizations, convened to collect information with respect to a Master Plan for the area. A prime consideration which was present in the current Master Plan is sensitivity to cultural issues. Ordy Pond and many other areas throughout the district were covered in the Master Plan and have been given recognition for their cultural, environmental and

archaeological importance. A cultural heritage park has been envisioned to be established on some lands conveyed to the HCDA because of the presence of a significant mauka-makai trail and other resources.

The HCDA has accepted the stewardship responsibility to preserve the resources present on the identified sites. With respect to identification of other sites not documented, it is a continuing requirement from both constitutional and state law. The EIS conducted by the U.S. Navy to convey lands has an inventory of historical, cultural and archaeological sites in the district. Any action taken on lands within the district will require an assessment as to whether there are documented or undocumented sites and what are the appropriate procedures to take.

There are ongoing advisory stakeholder groups which the agency consults in particular areas. One is a cultural and archaeological group from whom we solicit general analysis and concerns. The HCDA has a commitment and responsibility to steward resources, both known and unknown.

Member Kanahale asked whether the same positions are applicable to Heeia and Kakaako.

Mr. Ching responded in the affirmative.

Public Testimony:

Mr. Craig McGinnis, with Hunt Companies and Kalaeloa Ventures, stated that there was some discussion on the federal section 106 process. He clarified for the board some of the activities that have gone on. A solar field has been proposed to be built on the east side of Kalaeloa on Navy federal property. A section 106 process was initiated on the solar field and transmission line that will interconnect with the HECO grid due to the proximity to the 1941 Ewa Marine Corps Air Station and some identified Hawaiian cultural resources. After 6-7 meetings, including a public hearing, the section 106 consultation process resulted in a programmatic agreement signed by the signatories including the SHPD. Pending HCDA's finalization of the design, there is a possibility that a small section of the proposed east energy corridor may share some right-of-way at the mauka end with the transmission line for the proposed solar field. That right-of-way is currently an existing state road and state right-of-way.

Mr. Henry Chang Wo was concerned that the runoff was going to affect the ocean and the community. It was the last rural area and whatever happens to the land affects the ocean. It was a shame that agricultural land was being lost to Ho'opili.

Member Morita asked how urgent the approval was for the east corridor project.

Mr. Ching explained that Navy facilities provide distribution of power purchased

from HECO to users in the district. There is currently no HECO facility in the district. The U.S. Coast Guard has indicated its long-term commitment to the base location and its need for HECO power versus Navy power which wants to go away. It has been cited in both the Enterprise Road project and this project that replacement of the antiquated Navy power and circuits is necessary to transition to HECO power as soon as practical.

Member Morita asked if the 106 process would impact the design.

Mr. Ching replied that the 106 process and agreement are on lands which are controlled by the Navy to be leased to Hunt. The interconnection project was outside of those lands and within existing roadways and easements which currently contain utility connections.

Member Kanahele asked if one of the testifiers had an association with the Navy from their cultural committee.

Mr. Oamilda stated that he sits on a 106 consulting party as a community representative.

Member Kanahele asked if it was helpful to the Navy.

Mr. Oamilda replied that it was. The 106 process was concerned first with historical and then with cultural. He represented the community on the cultural and historical levels which go arm-in-arm together. For over a hundred years, the underground has not been mitigated and they were concerned with what was underground considering the sensitivity of the cultural aspect of the area. They recommend an EIS above ground and underground. He was from the area and knows the area.

Chairperson Lee entertained a motion to authorize the Executive Director to expend up to \$3,500,000 in Capital Improvement Projects Funds to design and construct the Kalaeloa East Energy Corridor Project in the Kalaeloa Community Development District.

A motion was made by Member Chun and seconded by Member Kami.

A roll call vote was conducted.

Ayes: Members Chinn, Chun, Kami, Kamimura and Morita.

Nays: None.

Abstentions: Member Kanahele.

The motion passed 5 to 0 with 1 abstention and 3 excused (Members Grune, Lim, and

1 Kalaeloa member not yet appointed).

Mr. Ching asked Member Kanahele to clarify that his vote was indeed an abstention.

Member Kanahele answered in the affirmative.

Member Morita asked whether the rules would allow him to retract his vote and also abstain.

Chairperson Lee called for a recess to examine the issue.

A recess was taken at 11:38 a.m.

The meeting was reconvened at 11:47 a.m.

Chairperson Lee asked Member Morita to clarify his question.

Member Morita stated he was withdrawing his concern and would stick with his vote. He was originally concerned that if the money is released it would not be limited to doing only a Finding of No Significant Impact (“FONSI”). He was satisfied that if an EIS was needed, an EIS would be conducted.

3. Decision Making: Shall the Authority Authorize the Executive Director to Accept the Remediation Measures Proposed by Aloha Solar Energy/Sunetric to Address the Damages Resulting from Unauthorized Activities on Parcel 13073-E in the Kalaeloa Community Development District?

Mr. Ching summarized the report in the packet distributed to Members.

Member Chun asked if the subcontractor had cleared out the paths in the cultural and archaeological areas.

Mr. Ching explained that the paths were not in the Kalaeloa Heritage Park area, but within the parcel just makai of the park. However, it did affect 2 documented sites.

Member Chun asked whether the solutions proposed by Aloha Solar Energy (“AES”) were sufficient.

Mr. Ching responded that the Hawaiian civic club group has expertise in that particular area. They currently have a right of entry to help steward resources within the Heritage Park and have a vested interest in ensuring that there is no intrusion into the park as well as remediation to the damaged sites. The cooperative efforts and expertise of SHPD would also be used to guide us towards the appropriate remediation.

Member Chinn requested that AES provide a mitigation plan for the Authority to review and that the archaeological studies include a resources inventory and damage report.

Public Testimony:

Mr. Michael Kumukauoha Lee stated that he was the only cultural descendent recognized by SHPD and OIBC April 14, 2010 for this area. Mr. Shad Kane and the Civic Club were not cultural descendants recognized under state law. He stated that he represented the iwi and was a lineal descendant recognized for this area. Mikahela Kekauonohi was his 4th great grand-aunt and holder of the royal patent of 42,000 acres in the area. John Meek was his 5th great grandfather and the Campbell Estate derived the lands after his death. The Meek Estate held the leases on Pu'uloa 'Ewa with the Wilcox family and he had all the deeds. He questioned under what rules or statutes could the civic club take precedence over him and wanted the Authority to be aware that the civic club was the wrong party.

Mr. Ching stated that the HCDA has the position of landowner and did not currently have zoning rules which would give any jurisdiction. In this particular case where there has been fault found by a prospective tenant, the HCDA has sought to investigate the impact to historical cultural resources. In the course of the investigation, the HCDA consulted with SHPD, who has more expertise in the particular area and conducted its own analysis and research. Recognizing Mr. Lee's comments as to the status of and appropriateness of the Civic Club and SHPD, he would take under advisement and involve other appropriate parties in the development of a remediation plan.

Public Testimony:

Mr. Glenn Oamilda stated that SHPD and DLNR were out of the loop as far as Hawaiians are concerned and should not undertake any kind of historic or cultural investigation. SHPD has never followed through on projects because of their lack of resources and manpower. He wondered if the perpetrator who destroyed the property has been fined to the extreme. He stated that since there was only one Hawaiian on the Authority, a group of Hawaiians should be convened to make a proper assessment and not rely on the Civic Club's determination.

Mr. Kawika McKeague stated he is the senior environmental planner with Group 70 International and his ohana has been in the Honouliuli district for about 47 years. He was also the former Ewa Moku representative and vice-chair and chair of the Oahu Island Burial Council and was familiar with the recognition provided to Mr. Lee. He was brought on board after the incident occurred.

There was a gross miscommunication between Group 70, AES and Geolabs in terms of maximizing the mobilization and efficiency to get work done in 2 potential projects areas where AES was looking to do solar work. From a Hawaiian perspective, it is recognized that a haunia, defilement of sorts, was created and needs to be addressed in a way deemed appropriate, and not

necessarily by a consensus of those that are the ku'aina, kupa'aina of these lands. The most appropriate start was with the Kalaeloa Cultural Heritage Park Advisory Group, whose members are also members of the Hawaiian Civic Club. Since he has a working and personal relationship with Mr. Shad Kane, he was the first person that was called. He recognized Mr. Lee's contribution and role in this community, but had not had a chance to talk with him.

Out of the Navy BRAC decommission report, the Civic Club was the only entity identified at the time that must be consulted as a recognized cultural descendant and the level of effort that was done through the documenting of historic sites was done with bare threshold. We know there are more sites than was actually documented and this unfortunate incident has now brought up those needs. The archaeological inventory survey would have been done as part of the due diligence environmental assessment. What is needed now is to assess the inventory of what is there, the level of significance of that inventory and the assessment of damage that was done to those sites. The Civic Club is an entity that is a potential resource and they will move forward on that. They also want to ensure the security and protection of the Heritage Park because what was done potentially opens up unauthorized access to that area. There may be fines and penalties. As a long-term commitment to the 'aina and entities that are taking care of places, they would definitely continue the conversation with Mr. Lee and include him as much as possible in the process.

Member Kamimura asked the witness if he was still in agreement with the 3 recommendations in the report after hearing the testimony of the other witnesses.

Mr. McKeague replied in the affirmative in terms of moving forward with an archaeological inventory and damage report and addressing the remediation plan. Because of the nature of what was in the Navy decommission report, the Hawaiian Civic Club is one entity that is appropriate to lend an understanding of the ethno history of the area, and they have been retained on a consultant basis. There is a need for perimeter fencing to secure the park from potential unauthorized entry because of the damage that was done.

Member Kamimura asked whether he would amend the plan or was comfortable with it as proposed.

Mr. McKeague replied that he was comfortable with it. However, if there were recommendations specific to the details in the proposed plan of action, amendments could be made.

Chairperson Lee entertained a motion to authorize the Executive Director to accept the remediation measures proposed by Aloha Solar Energy/Sunetric to address the damages resulting from unauthorized activities on Parcel 13073-E in the Kalaeloa Community Development District.

A motion was made by Member Chun and seconded by Member Morita.

Member Kami asked whether the motion would preclude the HCDA from including others in the discussion of the remediation process.

Mr. Ching replied that an amendment or clarification to the motion could be made. However, the motion did not preclude having discussion with others.

A roll call vote was conducted.

Ayes: Members Chinn, Chun, Kami, Kamimura, Kanahele and Morita.

Nays: None.

The motion passed 6 to 0 with 3 excused (Members Grune, Lim, and 1 Kalaeloa member not yet appointed).

IV. ADJOURNMENT

There being no further business, a motion was made by Member Chun and seconded by Member Kamimura to adjourn the meeting. By a show of hands vote, the motion carried unanimously.

The meeting adjourned at 12:15 p.m.

Respectfully submitted,

/s/

Miles Kamimura
Secretary

Attachments: Exhibit A - Report of the Executive Director PowerPoint Presentation

Note: The transcript of this meeting contains a verbatim record and should be consulted if additional detail is desired.