

STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY
KALAELOA BUSINESS MEETING

Wednesday, February 6, 2019

MINUTES

I. CALL TO ORDER/ROLL CALL

A regular business meeting of the Kalaeloa Members, Hawaii Community Development Authority (“Authority” or “Board”), a body corporate and a public instrumentality of the State of Hawaii, was called to order by, John Whalen Chair of the Authority at 10:24 am, February 6, 2019 at the Authority’s principal offices at 547 Queen Street in Honolulu, Hawaii, 96813.

Members Present: Michael Golojuch, Sr.
Wei Fang
Beau Bassett
Mary Pat Waterhouse
Shirley Swinney
Maeda Timson
Lynn Araki-Regan (DOT Ex-Officio)
Kathy Sokugawa (DPP non-voting)
John Whalen, Chair

Members Excused: Mark Anderson (B&F Ex-Officio)
Jobie Masagatani (DHHL non-voting)

HCDA Staff Present: Aedward Los Banos, Executive Director
Garett Kamemoto, Interim Kakaako Planning and Development Director
Tessa Malama, Kalaeloa Planning and Development Director
Francine Murray, Interim Compliance Assurance & Community Outreach Officer
Lindsey Doi, Asset Manager
Tommilyn Soares, Secretary

Legal Counsel: Max Levins, Deputy Attorney General

II. APPROVAL OF MINUTES

Minutes of the January 9, 2019 Kalaeloa Authority meeting were approved as presented.

III. INFORMATION AND DISCUSSION

Update Regarding the Issue Involving Stockpiled Material in the Kalaeloa Heritage Park

The Authority anticipates convening an executive meeting pursuant to HRS § 92-5(a)(4), to consult with the Board's attorneys on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities for the subject agenda item.

Mr. Kamemoto explained that the Consultant has completed its testing to the stockpile site and anticipates providing that analysis report to the board at its March or April meeting. The Consultant indicated that contamination levels do not exceed any Department of Health action levels.

Board Members noted receiving a substantive amount of testimony.

Chair Whalen reminded everyone that the item listed on the agenda is for an update on the stockpiled material and not relating to a lease, stewardship agreement or right of entry and does not require a decision; however, invited public testimony.

Board members asked Deputy Attorney General Max Levins, procedurally is the board allowed to receive public testimony that is not specific to the stockpiled material as indicated on today's agenda and ask questions of those that have submitted testimony? The public testimony that was submitted pertained to the Kalaeloa Heritage and Legacy Foundation's lease and not the stockpiled material.

Deputy Attorney General Levins explained that the item on the agenda is regarding the stockpiled material located at the Kalaeloa Heritage Park leased by the Kalaeloa Heritage and Legacy Foundation and although the lease is not part of the agenda the stockpile is inter-related. He further explained that although there is no action for a board decision regarding the lease on the agenda, the public can provide testimony.

Before public testimony, Member Sokugawa noted that she would like to make an announcement that pertains to the stockpile and noted that House Bill 460 re: County civil fines program got scheduled for a hearing at the last minute and that HCDA may be adversely affected. Member Sokugawa noted the City and County of Honolulu's Department of Planning and Permitting's testimony that specifically mentions HCDA's current stockpiled permit as an example and suggested the board may want to take a position on this bill should it move forward in the legislature. HB 460 prohibits a county from accepting a discounted payment of a fine levied by the county planning and permitting department or agency. It requires the State Auditor to conduct an annual audit of the fines levied and collected by the counties.

Member Waterhouse asked if HB460 is included on HCDA's list of legislative bills?

Mr. Los Banos responded that specific bill, HB460, is not included but staff can certainly add it to the list for monitoring purposes.

Member Waterhouse asked Mr. Los Banos if HCDA should submit testimony.

Mr. Los Banos noted Member Waterhouse's comment and asked Member Sokugawa if there was a companion bill.

Member Sokugawa responded that she is not aware of a companion bill.

Chair Whalen asked for public testimony.

Public Testimony:

Mr. Dwight Victor, President of the Kalaeloa Heritage and Legacy Foundation (KHLF) stated he would like to officially submit KHLF's response to HCDA's second notice of breach.

Members expressed concerns regarding receiving an official response to items that are not part of today's agenda.

Chair Whalen stated that a written response is necessary however the item on the agenda is specific to the stockpile and not the lease. Chair Whalen advised Mr. Victor to submit the response to HCDA staff.

Mr. Victor responded that a written response was mailed into HCDA; however, he wanted to ensure the board received the response therefore, brought one in today. Mr. Victor also urged the HCDA board to continue to support the KHLF and allow KHLF to continue its mission at the Kalaeloa Heritage Park. Mr. Victor also noted that KHLF has submitted its Annual Report.

Chair Whalen noted that board members did receive the Annual Report.

Regina Hilo, former President of the society for Hawaiian archaeology, a scholarship recipient of a native American scholarship for graduate studies for American Archaeology, UH Manoa student and works at the State Historic Preservation Division at the Department of Land and Natural Resources Department, noted she took off from work to attend today's meeting and strongly urges support for KHLF and its mission.

Member Bassett expressed his appreciation for everyone that took off of work and made time to attend today's meeting. Member Bassett asked Ms. Hilo what her concern would be if the lease was terminated?

Ms. Hilo responded her concern is that the area may possibly be developed into something else and explained that the KHLF parcel is the only small piece of parcel left in the area where people can see the archaeology history that may date back to the 1400's. The adjacent parcel to KHLF will become a solar farm and the KHLF parcel is really the only place to visit and see the archaeology history of Hawaii.

Ms. Rocky Kaluhiwa, of the Koolaupoko Moku, provided testimony in support of KHLF retaining its lease.

Ms. Mahealani Cypher, former board member of HCDA's Heeia district and currently with the Koolau Foundation, stated cultural resources should be properly managed and preserved and provided support

for KHLF to continue its good work. Ms. Cypher recommended that HCDA work together with KHLF to resolve the stockpile and lease issues.

Thomas Ryan Clik, volunteer with KHLF provided support for KHLF.

Ms. Leimana Demate, Executive Director for the Aha Moku provided support for KHLF.

Ms. Tricia Kehaulani Watson stated her background in environmental law and is the President of Keiki Hula and provided support for KHLF and suggested a cure to allow KHLF to move forward in its lease and stewardship of the Kalaeloa Heritage Park.

Member Fang asked Mr. Los Banos to provide a background refresher for the board and the public regarding the stockpiled material.

Mr. Los Banos provided a timeline and status for the board members and the public as Member Fang requested.

Ms. Valerie Kane, KHLF board member stated for the HCDA board that their efforts to remove the stockpiled material have been continuous and is a day-to-day responsibility, however, KHLF was told to stop its work on moving the stockpile out.

Braven Cabigon provided support for KHLF and asked HCDA to help develop KHLF as efficient administrators for the land.

Eric Matanane, resident of Makakilo, cultural descendent, cultural practitioner and a volunteer for KHLF expressed his support for KHLF and that the KHLF is qualified to continue its stewardship of the Kalaeloa Heritage Park.

Member Bassett stated he understands that KHLF has wonderful ability and connectivity not only to Kalaeloa and Ewa but to Oahu and Hawaii which has the ability to help translate the importance of this aina (land) to the rest of the state, however, as board members of HCDA there is a responsibility as owners to oversee how to best steward this land. KHLF has a lot of great things about its organization, however, is lacking in some (administrative) areas.

Mr. Matanane responded that Mr. Dwight Victor has been placed in the role of leading efforts of KHLF (administratively) and its members are continuing to look for other strong individuals to help in that area, however, the reason KHLF has not been able to grow further is due to the stockpile issue. Mr. Matanane asked the HCDA board members who live in the community if they had any questions for him.

Member Timson stated she is a resident of Kalaeloa and have been very active and involved in the community and noted a disconnect with the public testimony that have been submitted and urged the public to understand the complete and true story of what the issue here is. She noted that the board, especially the three community members on the HCDA board, have been working very hard to move forward with this issue and it has not been easy, however wanted to make it clear that the board has been very supportive of KHLF and its stewardship efforts and agrees to continue its work, however,

there are issues with the lease that the board has been concerned with and Mr. Los Banos has been trying to communicate with KHLF which has not been easy.

Mr. Dwight Victor stated that he would like to clarify on behalf of KHLF and its board that KHLF appreciates the work it has been doing with HCDA and there may be some disconnect between what HCDA board members see and what KHLF's members see, however KHLF's mission and reason for being in attendance today is for KHLF's work in the park and although Mr. Los Banos presented KHLF a nice offer in October, KHLF needed some time to discuss the offer and to take into account the work and investment that went into the park. Mr. Victor also noted that KHLF's understanding was that to continue its stewardship work, it needed to retain a lease to the land.

Member Swinney asked Chair Whalen if the board is still within the boundaries of the sunshine law regarding its public discussion. Although the agenda item is specific to the stockpiled material and although discussions have been relevant to the stockpiled material, the discussion is now moving toward the Kalaeloa Heritage and Legacy Foundation lease and would like to be clear that the board is still following proper procedures and not in violation of this discussion.

Chair Whalen stated that he realizes the board has exceeded the bounds of its discussion, however, because the discussion is not leading into an action (decision-making) item on the agenda he feels discussion thus far have been okay.

Deputy Attorney General Levins agreed.

Chair Whalen stated that due to the amount of testimony submitted and for people that showed up to provide public testimony, he felt this could be an opportunity for an information gathering type of discussion.

Member Swinney stated she wanted to be clear the board is still within the sunshine law boundaries.

Chair Whalen and Deputy Attorney General Levins agreed that discussions have been okay and within appropriate boundaries.

Mr. Victor asked if the KHLF item could be placed on the next agenda.

Chair Whalen stated that HCDA is waiting for a response from KHLF and that response would be a basis for placing an item on the next agenda.

Member Timson stated that it would be okay to place an item on the agenda, however, it should not be a discussion and noted that there should be a process for things to happen before items come to the board for a decision. Member Timson suggested a real discussion between KHLF and HCDA's staff be conducted prior to placing an item on the board agenda and it is the job of HCDA's staff to provide sufficient information for a board decision.

Mr. Matanane asked if the HCDA board makes decisions?

Board members agreed.

Mr. Matanane stated that the testimony that has been provided by everyone today is to give board members their thoughts on a decision that may be made.

Member Timson asked Mr. Matanane what decision he thinks the board will make?

Mr. Matanane asked if the decision the board would be making would be to terminate its lease with KHLF.

Member Timson stated that as she understands the board voted and the lease has been terminated.

Members of the KHLF noted they were not aware of a terminated lease.

Member Fang asked that Deputy Attorney General Levins clarify for the board, KHLF and members of the public the status of KHLF's lease.

Deputy Attorney General Max Levins explained that the vote at its January 2019 Kalaeloa Board Meeting, was to authorize the Executive Director to act towards termination pursuant to 1.3 of the lease. Under the lease where there is an event of a default, the first notice of intent to terminate is submitted to the lessee, Mr. Levins noted that notice was recently sent to KHLF and it provides 15 days to respond. Therefore, as far as he is concerned he is not aware that the lease is actually terminated because after the 15-day response period, once the response comes in, the next step would be a separate termination notice that will be mailed out.

Chair Whalen and Deputy Attorney General Levins noted KHLF recently provided its response, however, as far as the board's vote to terminate the lease, the vote has been done.

Mr. Victor noted that KHLF provided its response and is now waiting to see if HCDA staff feels it can afford to provide KHLF an additional 15-day extension so that KHLF can provide a better response.

Mr. Shad Kane, board member and manager for the KHLF read his written testimony in support for KHLF.

Mr. Kawika Shook, KHLF board member and volunteer of Kalaeloa Heritage Park read his written testimony in support for KHLF and added that he disagrees with the comment about KHLF's capability as a board and noted the one thing keeping the park from thriving is the stockpile. When the HCDA created the conceptual plan, revenues were to be generated through the visitor's center for the park and as a voluntary grant writer, it is difficult to have a lingering stockpile on its financial statements. Mr. Shook asked the board to keep that in mind when asking how KHLF as a nonprofit can be sustainable and have capacity because that comes with grants and generating revenue; however, KHLF can only do that with the visitor's center per the conceptual plan that HCDA created. Because the stockpile has been lingering, the Park is unable to thrive, therefore, Mr. Shook respectfully disagreed with the questioning of KHLF's capacity not just as stewards but as a board as well.

Member Bassett asked what is it about the lease does KHLF need to steward the land?

Mr. Shook responded that he feels the construction of the visitor's center and the development of the park ties both together. As stewards or a group who is looking after the best interest of the development of the park would like to be in the driver seat, and with the surrendering of the lease it forfeits KHLF from being in that driver seat.

Mr. Victor explained the importance of the lease is that it helps to secure any type of infrastructure work or large build out activity, federal funding or grants. Most recently a request for a water line for the park took six-months and required a copy of the lease to secure the water line.

Member Swinney stated that she took note of Mr. Shook's testimony and how important the lease is for KHLF and asked how important is the stewardship of the land?

Mr. Shook responded that the stewardship is just as important as the lease and noted that the main intent is to care for the park. Regardless of the visitor center, the park is what makes that place special therefore; holding on to the lease helps to secure the stewardship.

Member Bassett commented that the stewardship element is what it's all about and explained that the stewardship value of the land does not change with the board and would like to continue to see the land stewarded but would like to make sure the relationship with the HCDA board and the nonprofit partner (KHLF) is clear with great communication so that both entities can sustain taking care of this place. Administratively it is a lot of work for a volunteer non-profit and feels that KHLF will need to increase its operations so that communications with HCDA are seamless.

Mr. Shook noted that KHLF is being held back with the stockpiled material, if not for the stockpile KHLF would have a thriving parking with its visitor's center built, generating revenue.

Member Timson asked, to date, has KHLF made any efforts in moving forward with the Visitor's center? Have there been any applications submitted in hopes of moving forward?

Mr. Victor responded that since 2015, KHLF has spent time on working to remove the stockpile, which takes all KHLF's focus.

Member Fang explained her experience as an HCDA board member dealing with the Kalaeloa Parcel with KHLF and finds that the HCDA board is more than willing to think creatively and out of the box; however some how the relationship between HCDA and KHLF was not right sized as the Kalaeloa Parcel is a large piece of land that deserves active management and sees that KHLF has not had much resources to put into the active management and active stewardship; therefore, the board decided to terminate the lease and offer a different type of agreement and relationship. Member Fang stated she is not aware of any other state organization that has offered what the HCDA board has offered KHLF but would like KHLF to understand that the board is willing to "stick all of our necks out" to explore a better fit for KHLF. She also stated that as Member Bassett noted, the lease is a legal "heavy" contractual document and the actions and sometimes lack of action and miscommunication clearly indicates this type of lease is not the right type of fit for this non-profit organization. The HCDA board is lucky to have its board members and HCDA staff to work on this however, the board realizes it is not working with an equal party that has a sufficient amount of

resources to respond in a timely manner or to devote its resources to whatever issues need to be addressed and so the board voted to terminate its lease as it is not the right type of relationship or governing document. It may take some time to finalize a document to move forward with a stewardship agreement as the board is travelling into this new territory where it will need to discuss a way forward and structure a stewardship document.

Mr. Angus Raff-Tierney, board member for the Society for Hawaiian Archaeology, stated the KHLF was awarded the 2017 cultural heritage stewardship award as there was overwhelming support for KHLF and stated his support for KHLF.

Rona Ikehara, archaeologist for a non-profit archaeology company submitted written testimony in support for KHLF and urged the HCDA board members to find a way to work with KHLF to move forward in continuing its stewardship work.

There was no further public testimony or comments by board members.

Member Timson asked for a 5 minutes recess.

Member Bassett requested to go into executive session after the board's 5-minute recess.

Chair Whalen recessed the Kalaeoa board meeting at 12:29 PM.

Chair Whalen reconvened the meeting at 12:41 PM.

Chair Whalen asked if there is a motion for the Authority to convene in executive session pursuant to HRS Section 92-5(a)(4) to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities?

Member Swinney motioned. Member Fang seconded.

Chair Whalen conducted a voice vote, all members unanimously approved.

Deputy Attorney General Max Levins, HCDA Executive Director Aedward Los Banos, HCDA Staff Garrett Kamemoto and Tommilyn Soares joined the board in executive session.

Pursuant to Section 92-5 (a) (2), Hawaii Revised Statutes, the Authority convened in Executive Session at 12:41 pm

Board Members met in an executive meeting from 12:41 pm until 2:01 pm

Chair Whalen reconvened the meeting at 2:01 pm

There was no further comments and no public testimony.

IV. REPORT OF THE EXECUTIVE DIRECTOR

5. Monthly Requests and Other Status Reports

- a. Approved permit applications that did not require HRS § 206E-5.6 public hearings.

Mr. Los Banos deferred to the report provided in the board packet.

VI. ADJOURNMENT

Chair Whalen adjourned the regular meeting at 2:14 pm.

Approved and Submitted by,

John Whalen, Chairperson

Date Approved by HCDA Board