

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

MEETING NO. 344  
Wednesday, August 5, 2009

Members Present: Barbara Annis  
C. Scott Bradley (9:28 a.m.)  
Steve Bretschneider  
Amanda Chang  
Joseph Dwight, IV  
Michael Formby  
Jonathan Lai (10:15 a.m.)  
Kay Mukaigawa  
Dexter Okada  
Sandra Yahiro

Kalaeloa Members: Maeda Timson

Members Absent: Grady Chun  
Stanton Enomoto  
Micah Kane  
Paul Kimura  
Christopher Kobayashi  
Evelyn Souza  
David Tanoue

Others Present: Anthony Ching, Executive Director  
Diane Taira, Supervising Deputy Attorney General  
Eugene Won, Deputy Attorney General  
Deepak Neupane, Director of Planning and Development for Kakaako  
Richard Kuitunen, Asset Manager  
Tesha Malama, Director of Planning and Development for Kalaeloa  
Patricia Yoshino, Secretary  
Loretta Ho, Secretary  
Holly Hackett, Court Reporter

I. 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. Michael Formby, Member of the Authority, at 9:11 a.m. on Wednesday, August 5, 2009, at the Authority’s principal executive offices at 677 Ala

Moana Boulevard, Suite 1001, Honolulu, Hawaii 96813, pursuant to Article IV, Section 1 of the Authority's Bylaws.

Presiding Officer Formby introduced himself and stated that he was designated by Chairperson Lai to open the meeting and act as presiding officer. The gavel would be transferred to Chairperson Lai upon his arrival at the meeting. Presiding Officer Formby welcomed Ms. Sandra Yahiro in her new capacity as Deputy Comptroller, Department of Accounting and General Services and designee for Member Russ Saito. He also introduced Mr. Steve Bretschneider as designee for Member Theodore Liu.

## MATERIALS DISTRIBUTED

1. Report of the Executive Director;
2. Report of the Executive Director's PowerPoint Presentation (distributed at the meeting);
3. Summary Minutes of Authority Meeting of July 1, 2009;
4. Information: Kalaeloa Status Report;
5. Information: Issuance of a Request for Proposals ("RFP") to Enter into a Long-Term Development and Ground Lease Agreement for Planning, Design, Construction and Financing of a Mixed-Use Project in Kakaako at the Forrest Avenue Site Makai of Ala Moana Boulevard;
6. Action: Shall the Authority Authorize the Executive Director to Expend Hawaii Community Development Revolving Funds to Comply with the National Pollutant Discharge Elimination Systems Permit Requirements for Kewalo Basin;
7. Action: Shall the Authority Authorize the Executive Director to Grant Easements in Properties Owned by the Hawaii Community Development Authority to the City and County of Honolulu to Operate and Maintain the Open Channel and Box Culvert Drainage System in the Makai Area;
8. Action: Shall the Authority Authorize the Executive Director to Expend Hawaii Community Development Revolving Funds for the Design and Construction of Various Repairs to the Charter Boat Building at Kewalo Basin;
9. Action: Shall the Authority Authorize the Executive Director to Close a Portion of the Kakaako Waterfront Park 3-4 days in April 2011, for the Hosting of an International Music & Arts Festival;
10. Action: Shall the Authority Authorize the Executive Director to Maintain a Separate Revolving Fund Attributable to Kewalo Basin Harbor Operations.

## II. APPROVAL OF MINUTES

1. Minutes of the Regular Meeting of July 1, 2009

Presiding Officer Formby stated that since an appropriate number of Members (10) was not present, approval of the minutes of the July 1, 2009 meeting would be deferred to the next Authority meeting.

Presiding Officer Formby stated that the Authority would now be convening in Executive Session. In addition to consulting with its attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities as listed on the agenda, he would entertain a motion from the Members to expand the scope of the executive session to include, as provided in §92-5 (a)(3), HRS, a discussion concerning the authority of persons designated by the Authority to conduct labor negotiations.

A motion was made by Member Dwight and seconded by Member Okada. There were no objections from the Members, and the motion was passed.

Presiding Officer Formby requested that Counsel Eugene Won, Counsel Diane Taira, the Executive Director, the respective Directors of Planning and Development for Kakaako and Kalaeloa, and Secretary Patti Yoshino join the Executive Session.

III. EXECUTIVE SESSION

-----

The Hawaii Community Development Authority ("HCDA") convened in Executive Session at 9:15 a.m. pursuant to Section 92-5(a)(3) and 92-5(a)(4), Hawaii Revised Statutes, to deliberate concerning the authority of persons designated by the Authority to conduct labor negotiations and to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities.

-----

Chairperson Lai arrived at 10:15 a.m.

Member Mukaigawa and Member Bretschneider exited the meeting at 10:25 a.m.

Chairperson Lai reconvened the regular meeting at 10:26 a.m.

IV. REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Anthony Ching summarized his report via a PowerPoint presentation (see Exhibit A).

Ms. Tesha Malama, Kalaeloa Director of Planning and Development, announced there would be a dedication and volunteer recognition ceremony for the Geiger Gate Entrance to Kalaeloa. The overall cost expended for the beautification project was way under the \$15,000 budget approved by the Authority as a result of the donations of material and labor from the volunteers.

Mr. Ching stated that the September meeting was anticipated to be a Kakaako only meeting to consider the Kamehameha Schools Master Plan permit application as well

as other action items. However, if any items affecting Kalaeloa should arise, they would be added to the agenda.

Member Okada inquired as to the status of the McKinley High School track project.

Mr. Ching stated that it was premature to discuss the project, and there was no action for the Authority to take at this time. The strategy at this point was to have the project funded to the greatest degree possible by contributions.

Member Bradley stated he wanted to recognize HCDA staff for increasing the occupancy at Kewalo Basin Harbor from 38% to 72%. He commented that the increase in occupancy would create changes that would be welcomed by some and not by others. He inquired whether user group surveys had been conducted on the impact of the changes.

Mr. Ching stated that staff had met once with the harbor user group and talked about a range of issues. HCDA staff had since engaged a marine design consultant and intended to return to the group with their recommendations on repairs to the Kewalo Basin Harbor. The harbor user group had representation from a comprehensive group of the current stakeholders. Staff offered that complaints should be directed to the Kakaako Makai Community Advisory Council ("CPAC") or directly to the HCDA as well as to other federal/state agencies. As operations are normalized, it was expected that challenges and questions might be raised. The agency's commitment was to operate strictly according to the Rules and to work with the harbor agent to make sure policies were consistently enforced. New recreational vessels coming in were subject to the same rules and were given temporary slips, not permanent ones.

Charter Building renovations will not be funded from the harbor revenue, but from an appropriate fast lands account. The user group was advised that there are small projects that should not wait, such as the enhancement of the harbor hazardous waste facility. Comments had been received about the parking situation and staff may look to get an operator to run parking in the area and uniformly enforce parking regulations. The front row area was changed from a no parking zone to a loading zone so people can arrive, pay their fee and get on the boat. Motorcycles and motor scooters are currently parked all over the place and sometimes end up on the piers, which is not good from an environmental standpoint. These vehicles will need to be moved off and given a more appropriate space to park. Existing and newly adopted maritime security regulations must also be considered. While there may be challenges or questions as to the harbor operations and not everything can be covered by rules, it should be covered by the rule of common sense in terms of making it workable, safe and legal.

Member Bradley stated he supported the approach and had not heard complaints. However, given the amount of apprehension that had been expressed by some harbor users in the past about the changes that were coming, he felt it would be good to

circle back and give users a forum to comment on how it was proceeding and give suggestions, so they know that communication was still open.

Member Okada stated that he had heard some complaints, but had advised the complainants to formalize their concerns.

Mr. Ching responded that he expected and anticipated they would have to work closely with the various harbor user groups.

V. ITEMS FOR INFORMATION

A. Kalaeloa Status Report

Ms. Tesha Malama, Kalaeloa Director of Planning and Development, summarized the written report in the packet distributed to Members.

Member Timson stated she appreciated the update on the bowling alley. The status of the bowling alley was a frequently asked question at Neighborhood Board meetings. She also thanked the Authority for its efforts to help solve the problem with the Kalaeloa Shuttle.

Member Bradley inquired as to when the next draft of the administrative rules would be ready for review and when the final would be completed.

Ms. Malama responded that the target was to have the rules approved by the end of the year. A form of the draft had been sent to the National Renewable Energy Laboratory consultants stationed at the Department of Business, Economic Development and Tourism, for review of the sustainability language. The draft was at version 8 right now, and she anticipated getting it out to stakeholders and the Authority by sometime in September.

Mr. Ching stated that in the course of promulgating the rules for Kalaeloa and Kakaako Mauka, he had requested approval to expend money for software. It was a longstanding issue with the Comptroller, and he wanted to note as a reminder that the matter was still awaiting Comptroller's approval. He was anxious to resolve it so that HCDA would have a mechanism with which to promulgate the rules and secure public comment.

Member Timson exited the meeting at 11:01 a.m.

B. Issuance of a Request for Proposals ("RFP") to Enter into a Long-Term Development and Ground Lease Agreement for Planning, Design, Construction and Financing of a Mixed-Use Project in Kakaako at the Forrest Avenue Site Makai of Ala Moana Boulevard

Chairperson Lai noted that the Authority had received public testimony from Ms. Nancy Hedlund opposing the project.

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

Mr. Ching stated that any development project would typically take 2-3 years to get in the ground. The RFP process is intended to solicit information and indications of interest and in a development at the Forrest Avenue lot. The solicitation is designed to ascertain levels of interest within the development community at this site.

Member Okada inquired as to whether it was more appropriate to get a Request for Information (“RFI”) versus an “RFP”.

Mr. Neupane responded that State procurement rules required an RFP.

Member Okada stated that CPAC had reported that the area would be capped as a form of remediation.

Mr. Ching responded that the Authority had previously approved paving the lot as an interim remediation measure. That project was moving forward.

Member Bradley commented that the item might convey the impression that major development was being considered in the Makai Area. Since there had been so much negative reaction on the A&B project, the development community might hesitate to get involved. The mere mention of an RFP had generated a strong reaction from a CPAC member. A deliberate plan on how to engage the community would be needed.

Mr. Ching stated that the current master planning horizon was 6-9 months, and the planning process would include the active participation of the CPAC and other stakeholders. The area Forrest Avenue lot was a commercial, not residential use and included the pump station which will be preserved for public use.

Member Bradley felt an affirmative statement was needed from CPAC that they could see the need for such a development.

Mr. Ching stated that the subject could be discussed at next CPAC meeting.

Member Dwight asked whether the project was discussed in an article he had read in Hawaii Business.

Mr. Ching responded that people were interested in what economic development could occur and he had mentioned Forrest Avenue before. In the

article, he had also mentioned Pohukaina Place, Lot 40, and Forrest Avenue as lots with mixed uses.

Member Dwight stated that caution should be exercised in discussions with reporters prior to discussing a subject with the Authority first. He noted he was only now seeing Forrest Avenue now as an information item.

Mr. Ching responded that the comment was been noted. He would seek to ensure that in the future, comments to the media would only include those items which had previously cleared with the Authority.

Member Yahiro stated that RFPs were normally issued with the intent of actually doing something. If you are fishing, you can do an RFI, since normally there would be a \$500 fee to put in a proposal as an RFP. She stated she would confirm whether an RFI would be more appropriate.

Member Annis stated that there were other problems with an RFP since there were strict guidelines on how they are evaluated.

Mr. Ching stated that given comments by the Authority, he would withdraw issuance of the RFP. While it was generally within the scope of the Executive Director to do an RFP, he thought it would be prudent to bring it before the Authority first. On the matter of an RFI, he stated he would take the issue directly to the State Procurement Office with involvement by Member Yahiro.

## VI. ITEMS FOR ACTION

Chairperson Lai stated that the election of officers would be moved to the end of the meeting and the Authority would take up the other action items first.

4. Shall the Authority Authorize the Executive Director to Expend Hawaii Community Development Revolving Funds to Comply with the National Pollutant Discharge Elimination Systems Permit Requirements for Kewalo Basin?

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

Chairperson Lai asked whether Members had any questions for Mr. Ching.

Member Okada asked whether the Improvement District (“ID”) for Kamakee Street drained into Kewalo Basin, and if so, whether it should be a fast lands expense.

Mr. Ching responded that the facilities that needed to be maintained were part of the harbor configuration. It was the responsibility of the harbor to maintain and manage the permits necessary to have an outlet in the harbor.

Member Formby stated that the Department of Transportation (“DOT”) had the same type of requirement, and it was a very technical area. DOT Highways and Airports have both had consent orders under federal courts requiring consultant contracts in the range of \$50 million to comply with EPA regulations. Staff was on the right track to seek funds for expert consultant guidance to comply with the technical regulations; otherwise it could result in a Notice of Violation.

Member Yahiro asked if the \$150,000 was mostly additional money for the consultant expanding their current scope.

Mr. Ching responded that it was to accommodate the permit requirements and outreach activities associated with Kewalo Basin.

Member Yahiro asked Mr. Ching to double check that expanding the scope of the current consultant was appropriate within State Procurement Office (“SPO”) procedures.

Mr. Ching responded that the first step was to obtain approval to expend, and the second step would be to secure the services in compliance with procurement laws. The HCDA’s existing contract manual allowed him to expand if it was substantially within the same scope.

There were no comments offered by the public on this agenda item.

Chairperson Lai entertained a motion for the Authority to authorize the Executive Director to expend Hawaii Community Development Revolving Funds to comply with the National Pollutant Discharge Elimination Systems Permit Requirements for Kewalo Basin.

A motion was made by Member Formby and seconded by Member Bradley.

Chairperson Lai asked whether Members had any discussion on the motion.

Member Annis asked whether there should be an amendment to state “subject to SPO.”

Mr. Ching responded that the discussion was clear that he was obliged to comply with procurement laws.

A roll call vote was conducted.

Ayes: Members Annis, Bradley, Chang, Dwight, Formby, Lai, Okada and Yahiro.

Nays: None.

The motion passed 8 to 0 with 5 excused (Members Chun, Kimura, Kobayashi, Bretschneider, and Mukaigawa).

5. Shall the Authority Authorize the Executive Director to Grant Easements in Properties Owned by the Hawaii Community Development Authority to the City and County of Honolulu to Operate and Maintain the Open Channel and Box Culvert Drainage System in the Makai Area?

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

There were no questions from Members or comments from the public on this agenda item.

A roll call vote was conducted.

Ayes: Members Annis, Bradley, Chang, Dwight, Formby, Lai, Okada and Yahiro.

Nays: None.

The motion passed 8 to 0 with 5 excused (Members Chun, Kimura, Kobayashi, Bretschneider, and Mukaigawa).

6. Shall the Authority Authorize the Executive Director to Expend Hawaii Community Development Revolving Funds for the Design and Construction of Various Repairs to the Charter Boat Building at Kewalo Basin?

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

Member Bradley asked how long the tenant leases were and when they expired.

Mr. Richard Kuitunen, Asset Manager, responded that the leases were month to month.

Member Bradley asked whether the leases were at market rates.

Mr. Kuitunen responded that the leases were recently increased to equal double of what had been charged before, and full Common Area Maintenance

("CAM") was being charged. He noted that DOT had previously subsidized the CAM costs.

Member Chang asked when the building was built.

Mr. Kuitunen stated that building was last renovated in 1988, but he did not have the plans to know exactly when it was built.

Member Chang stated that building looked run down and definitely needed the face lift, but she wondered whether the building was too old.

Mr. Ching responded that, while something more comprehensive was needed and the building might one day be gone, there were immediate needs for the clients, such as toilets that do indeed work and doors that did lock.

Member Formby commented that the repairs were part and parcel to the increased commercial activity in the harbor, and certain appearances were needed to show a commitment to the customer base.

Mr. Ching stated that the intention to pursue improvements to the Charter Building had been discussed with the user group as an immediate fix that needed to be addressed. Other immediate needs would be security in the harbor and the hazardous waste handling facility.

Member Bradley asked if the expenditure was not coming out of harbor funds, whether the revenue would go to the same accounts.

Mr. Ching responded in the affirmative.

There were no comments offered by the public on this agenda item.

Chairperson Lai asked for a motion for the Authority to authorize the Executive Director to expend Hawaii Community Development Revolving Funds for the design and construction of various repairs to the Charter Boat Building at Kewalo Basin.

A motion was made by Member Annis and seconded by Member Dwight.

A roll call vote was conducted.

Ayes: Members Annis, Bradley, Chang, Dwight, Formby, Lai, Okada and Yahiro.

Nays: None.

The motion passed 8 to 0 with 5 excused (Members Chun, Kimura, Kobayashi, Bretschneider, and Mukaigawa).

7. Shall the Authority Authorize the Executive Director to Close a Portion of the Kakaako Waterfront Park 3-4 days in April 2011, for the Hosting of an International Music & Arts Festival?

Mr. Ching summarized the written report included in the packet distributed to Members. He stated that the promoter was in the audience and available to answer questions from Members.

Mr. Mark Tarone introduced himself as a principal member of T-Rx Entertainment.

Member Okada asked whether there was a rule prohibiting alcoholic beverages in public parks.

Mr. Ching responded that the promoter would have to apply with the Liquor Commission to secure an event permit and ensure that its staff was appropriately licensed or certified to serve alcoholic beverages. There was no specific prohibition in HCDA rules against that particular process.

Member Okada asked if staff had checked whether there might be any conflicting events at the same time, such as body surfing events.

Mr. Ching responded that most body surfing events would occur at the Point Panic area, and the proposal did not include the Point Panic area and parking lot.

Member Okada expressed concern about the adequacy of parking for the event.

Mr. Ching responded that appropriate arrangements would be made. The area behind the hyperbaric treatment could be opened up for parking. In addition, by 2011, the parking project at the piano lot and interim parking at Forrest Avenue lot would have been completed.

Member Okada asked whether the Hawaii Children's Discovery Center had been consulted.

Mr. Ching responded in the negative.

Member Yahiro asked for an explanation of how the administrative rules work when it involved fees paid directly.

Mr. Kuitunen responded that the commercial fee schedule for such an event would be \$100 per thousand persons.

Member Yahiro asked how much the promoter would be charging per person.

Mr. Tarone responded that there would be VIP tickets and regular tickets. Regular tickets would likely be in the range of \$50 to \$70 per day per person total. They would also be obligated to pay concession fees of \$10 of revenue for each person who purchased a ticket.

Member Yahiro inquired as to whether it would be possible to approve the request subject to the promoter contributing a certain number of tickets each day to a nonprofit organization.

Mr. Tarone responded it would be difficult to make a commitment at this point. With large events, the profit margin was low, especially in the early years and every single dollar needed to be watched. As the primary driver of the event, his personal desire was to showcase Hawaiian and Pacific Rim culture. In order to have a showcase, an audience was needed, not just an audience that can afford a certain ticket value, but an audience beyond that. He planned to work with schools and potentially some nonprofits. The New Orleans Jazz and Heritage Festival, which was a guiding light for his event, had done it effectively.

Member Formby stated he was generally in support of such events, which are good for the State and community. He inquired as to whether an exception was needed to give private use of public lands for a period of time that would possibly have traffic impacts of 25,000 people a day and whether an environmental assessment would be needed. If the projected revenue with 25,000 people a day would be \$500,000 to HCDA, he asked what expenses would HCDA be responsible for, such as renting porta-potties and area clean up.

Mr. Kuitunen responded that HCDA generally requires promoters to provide for such expenses and any other anticipated burdens including medical facilities onsite, traffic security, traffic cones, and roll-off bins. If streets needed to be closed, the promoter must go to the City for a permit. If there would be any staging set up on the grassy areas, a security deposit would be required in the event sprinkler lines are broken.

Member Formby asked for clarification that the request being made to Authority was just to grant the executive director authority to close the park. He asked when the agreement would be formalized that would identify the promoter's responsibilities and insurance requirements.

Mr. Kuitunen responded that this was the first time a request had been made to close the park. Separate permits have been issued for exclusive use of the amphitheater, but other permits have been first-come, first-serve. The question

being asked was whether this was something the Authority wanted to do, since it would generate money for the State.

Member Formby asked whether the details of the arrangement and contractual arrangements with the promoter would be brought before the Authority at a future date.

Mr. Kuitunen stated that an asset information letter with the permit details could be presented.

Member Formby asked whether the promoter had established a breakeven point.

Mr. Tarone responded that if approval were granted to close that section of the park, he would not have a detailed budget of what the production costs would be until a later time. The breakeven point would be dependent on artist fees, which were a huge part of the costs.

Mr. Ching stated that given the discussion, the action requested was to authorize the potential future closure of that portion of the park to host the event tentatively on those particular days. He would return for approval upon the negotiation of the final permit as an action item. At that point, there would be an environmental assessment if needed and any follow up completed on the questions that had been raised.

Member Okada expressed his concern that there would be a lot of drinking in the area that might spill out to the surrounding park. He was concerned about the liability of HCDA in terms of the wall on the makai side of the park, since an inebriated person could fall off the wall onto the rocks below.

Mr. Ching responded that those issues associated with events of this nature would be addressed in the form of the permit that would be provided.

Member Bradley asked the promoter whether the Authority's approval to close the park for the event would provide enough certainty for him to move forward.

Mr. Tarone replied that it would, and he would work closely with HCDA staff to explore the items of concern.

Chairperson Lai entertained a motion for the Authority to authorize the Executive Director to close a portion of the Kakaako Waterfront Park 3-4 days in April 2011, for the hosting of an International Music & Arts Festival. A motion was made by Member Dwight and seconded by Member Bradley.

A roll call vote was conducted.

Ayes: Members Annis, Bradley, Chang, Dwight, Formby, Lai, Okada and Yahiro.

Nays: None.

The motion passed 8 to 0 with 5 excused (Members Chun, Kimura, Kobayashi, Bretschneider, and Mukaigawa).

8. Shall the Authority Authorize the Executive Director to Maintain a Separate Revolving Fund Attributable to Kewalo Basin Harbor Operations?

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

There were no questions from Members on this agenda item.

Mr. Jack Hamada, a member of the audience asked where the monies would come to set up the fund.

Mr. Ching advised that the account would be set up to receive any revenues generated from harbor activities, such as mooring permits.

Chairperson Lai entertained a motion for the Authority to authorize the Executive Director to maintain a separate revolving fund attributable to Kewalo Basin Harbor operations. A motion was made by Member Chang and seconded by Member Dwight.

Chairperson Lai asked whether Members had any discussion on the motion.

Member Yahiro asked for clarification as to whether the money would come from mooring fees or ticket booths.

Mr. Ching responded that revenue would come from harbor operations based on the established fee schedule for moorage fees from ships using the harbor. There were very small ticket booths perched precariously above the dock and extending into the water which were included in harbor operations instead of fast lands. There was a small rental fee associated with the ticket booths included in the revenues that would also be deposited into the subaccount.

Member Annis asked whether it was allowed by statute to open up a separate account, since it often takes legislative action to open up a separate account.

Mr. Ching stated that was actually not a separate account or new revolving fund. The revenues were being organized in one area from an auditing/accounting standpoint, but the subaccount was still under the authorized revolving fund associated with the agency.

A roll call vote was conducted.

Ayes: Members Annis, Bradley, Chang, Dwight, Formby, Lai, Okada and Yahiro.

Nays: None.

The motion passed 8 to 0 with 5 excused (Members Chun, Kimura, Kobayashi, Bretschneider, and Mukaigawa).

Member Formby and Member Dwight advised the Chairperson that they had commitments and would have to exit the meeting at this time.

#### VIII. ADJOURNMENT

Given that there would not be a quorum of the Authority available to conduct further business, Chairperson Lai adjourned the meeting.

The meeting was adjourned at 12:07 p.m.

Respectfully submitted,

/s/

C. Scott Bradley  
Secretary

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