

**MINUTES OF A REGULAR MEETING  
OF THE MEMBERS OF THE  
HAWAII COMMUNITY DEVELOPMENT AUTHORITY,  
STATE OF HAWAII**

MEETING NO. 333  
Wednesday, September 3, 2008

Members Present: C. Scott Bradley  
Grady Chun  
Joseph Dwight, IV (9:30am)  
Michael Formby  
Paul Kimura  
Jonathan Lai  
Kay Mukaigawa (9:42am)  
Dexter Okada  
Russ Saito

Kalaeloa Members: Micah Kane (replaced by Linda Chinn at 12:29 p.m.)  
Evelyn Souza  
Maeda Timson

Members Absent: Amanda Chang  
Henry Eng  
Stanton Enomoto  
Christopher Kobayashi  
Theodore Liu  
Robert Piper

Others Present: Anthony Ching, Executive Director  
Sandra Ching, Deputy Attorney General  
Richard Kuitunen, Asset Manager  
Tessa Malama, Director of Planning and Development for Kalaeloa  
Craig Nakamoto, Director of Communications  
Deepak Neupane, Director of Planning and Development for Kakaako  
Craig Uemura, Asset Management Specialist  
Cal Machida, Program Specialist  
Loretta Ho, Secretary  
Annette Kawasaki, Secretary

## 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 Member Jonathan Lai, Chairperson of the Authority, at 9:24 a.m. on Wednesday, September 3, 2008, at the Department of Hawaiian Home Lands Conference Center at 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, pursuant to article IV, section 1 of the Authority’s Bylaws.

### MATERIALS DISTRIBUTED

1. Agenda for September 3, 2008 Meeting;
2. Summary Minutes of Authority Meeting of August 6, 2008;
3. Report of the Executive Director;
4. Information: Report of the Executive Director PowerPoint Presentation (distributed after the meeting);
5. Action: Hawaii Community Development Authority Five-Year Work Plan and Budget PowerPoint Presentation;
6. Action: Kewalo Basin Administrative Rules;
7. Action: Lease Agreement and Expend Revolving Funds to Enter into a Lease with James Campbell Company, LLC for the Hawaii Community Development Authority Kalaeloa Field Office (distributed at the meeting);
8. Kalaeloa Status Report;
9. Navy Report;
10. Hawaii Public Housing Authority Report;
11. Information: SORT, LLC Proposed Plan for Temporary Racing Facility;
12. Information: Kalaeloa District Tour Schedule and Route Map.

## II. APPROVAL OF MINUTES

1. Minutes of the Regular Meeting of August 6, 2008

Chairperson Lai asked that the minutes of August 6, 2008 be deferred.

Chairperson Lai described the procedures that would be followed for persons interested in providing testimony on the agenda items. At the start of each agenda item, persons who have signed up to speak on the agenda would be called in turn to provide comments. A time limit of two minutes for each speaker would be imposed. Each speaker would receive a warning after one minute has passed and time would be called at exactly two minutes. For persons signed up to provide comments on the Save Oahu’s Racetracks, LLC (“SORT”) presentation, he noted it was an information item and the Authority would not be taking any action. Given the limited amount of time, he urged all speakers to summarize their comments.

Chairperson Lai noted the Authority would be considering the General Growth Properties (GGP) Ward Neighborhood Master Plan Application (“Application”) in its upcoming meetings. GGP is requesting the Authority’s approval of their plans to develop their holdings in the Kakaako Mauka Area. To facilitate the Authority’s review of this matter, he established a committee of five Kakaako Members who would be charged with reviewing the Application, public input and staff report and offering their own recommendation to the rest of the Authority. The committee would be comprised of Members Bradley, Chun, Kobayashi, Mukaigawa and Okada. He anticipated they would meet in two weeks to organize themselves and thereafter meet as needed. He also stated his expectation that the committee members would be present at the public hearing to be scheduled in mid-October to receive public comment on the Application and subsequently report their findings to the Authority at its regularly scheduled meeting in November 2008. As required by its by-laws, the Authority would act on the matter at its meeting in December 2008. Chairperson Lai thanked the members of the committee in advance for their efforts.

Member Timson asked for clarification on whether public input on the SORT presentation would be allowed prior to or after the informational briefing. She stated that presenters should be allowed to comment after hearing the presentation so they would be prepared to address the concerns.

Chairperson Lai stated the public would be given time to provide comments before the SORT presentation and that the Authority had used this format during its past couple of meetings.

### III. REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Anthony Ching noted the full Executive Director’s report was enclosed in the packet distributed to the Authority Members and presented a summary of his report via a PowerPoint presentation (Exhibit A).

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

Member Okada posed questions regarding the lease to Re-Use Hawaii being a short term or long term lease and interfering with what the Kakaako Makai Community Planning Advisory Council (“CPAC”) is doing.

Mr. Ching stated it would be a five year lease. Since the CFS3 facility is a warehouse primarily used for harbor and other types of activities, it would not be inconsistent with the CPAC vision and guiding principles.

Member Okada asked whether Re-Use Hawaii planned to build or just use existing facilities.

Mr. Ching stated it was only an offer to lease at this point and action would be required by the Authority to accept or not accept the lease.

Member Saito posed questions regarding the location of the property relative to the Next Step Shelter.

Mr. Ching responded that it was located in the mauka area of the same facility in a portion that is currently vacant.

Member Saito asked to what extent hazardous materials would be stored in the facility.

Mr. Ching stated that Re-Use Hawaii products were salvaged and reusable materials and presumed not to be hazardous materials.

Member Okada inquired whether the reserved housing forum meetings included Kamehameha Schools/Bishop Estate (“KSBE”).

Mr. Ching explained both GGP and HCDA had sought to convene the meetings to generate understanding as to what might work to produce more affordable housing. GGP convened the meetings and HCDA asked to facilitate the first two meetings and focus on reserved housing. The invitees total about twenty people and include landowners such as KSBE, developers who have produced affordable units in the past and desire to produce more, and two banks.

Member Okada stated he was speaking as a small landowner in the area and wanted to know what was going on. Past legislative sessions have showed that the landowners are also affected by whatever is decided on reserved housing.

Mr. Ching stated he would generate a summary of the meetings and report back to the Authority. The information would also be posted on the HCDA website to effect a wider distribution to landowners in the area.

#### IV. ITEMS FOR ACTION

2. Shall the Authority Approve the Kakaako Public Facilities, Infrastructure Improvements and Planning Projects Five-Year Work Plan and Budget and Authorize the Executive Director to Begin Implementing the Work and to Enter the Contract with Fidelity National Title Insurance Company for the Dedication of Improvement District Projects?

Chairperson Lai noted there was written testimony from Senators Carol Fukunaga, Suzanne Chun Oakland, Sam Slom, and Representatives Tom Brower and Karl Rhoads urging the deferral of the Authority’s action on this item.

Chairperson Lai stated that Mr. Ching and Mr. Deepak Neupane, Director of Planning and Development for Kakaako would present the report and staff's recommendation. Chairperson Lai asked if there was anyone in the audience who wished to provide public testimony on the agenda item before staff made its report.

Senator Fukunaga stated it was a little unusual to provide testimony before staff provided its report but appreciated the opportunity to provide oral testimony to supplement the written comments from the area legislators. Comments have been submitted on the Kakaako Mauka Area Plan Draft Supplemental Environmental Impact Statement ("SEIS"), and the shortage of parks and recreational space in the Mauka Area boundaries was one of the areas of concern. They wanted to focus the Authority's attention on the McKinley High School ("McKinley") collaboration because they did not think it was a great project. They wanted a full and comprehensive review and evaluation of the facilities and the costs prior to the Authority deciding what kind of contribution to make. One of the things the area legislators learned in July was that the scope of what was being contemplated in the McKinley Master Plan would be a major undertaking. They were able to see what the proposed park space would look like and wanted to note that \$3 million for a sports facility was woefully insufficient to achieve what could be possible if HCDA, McKinley and others were to go forward.

Chairperson Lai asked whether Members had any questions for Senator Fukunaga.

Mr. Kurt Fevella from the audience stated he wanted to be educated on a subject matter prior to testifying and asked the Authority to consider hearing testimony after the presentation.

Member Souza suggested that Chairperson Lai consider Mr. Fevella's request after completing the Kakaako items. The issue of public testimony could be discussed later along with Kalaeloa items in order to expedite the proceedings.

Chairperson Lai agreed and asked Mr. Ching and Mr. Neupane to proceed with staff's report.

Chairperson Lai stated for the record that Members Mukaigawa and Dwight were present.

Chairperson Lai entertained a motion to approve the Kakaako Public Facilities, Infrastructure Improvements and Planning Projects Five-Year Work Plan and Budget and to Authorize the Executive Director to Begin Implementing the Work Plan.

It was moved by Member Chun and seconded by Member Saito. Chairperson Lai asked whether Members had any discussion on the motion.

Member Saito asked for clarification on what the Authority was approving and authorizing since some of the numbers suggested there may not be enough funding for the projects.

Mr. Ching explained authorization was being sought to allow staff to begin mobilization, develop more specific budget figures and then return to the Authority for approval.

Member Formby reiterated Member Saito's question and asked for assurance that if approval were given, it would not restrict the Authority from being able to address the concerns expressed by Senator Fukunaga or other issues that might come out of the SEIS.

Mr. Ching confirmed that staff was earmarking the sums of money in the revolving fund for those potential purposes and asking for the ability to move forward and gather more details and specific cost estimates on each individual project. The staff would subsequently ask the Authority to make its appropriate decisions.

Member Bradley noted a reference was made in Senator Fukunaga's written testimony to a consultant's report scheduled for release in November 2008 regarding the McKinley Sports Complex. He asked what was envisioned to happen between now and then that would necessitate the Authority making a decision today as opposed to respecting the Senator's request to defer such decision.

Mr. Ching stated the McKinley Master Plan had its own constituency which had been discussing the project for some time. He had asked the group if they would be interested in renovating the track and football field not only as a school facility but as a community facility. HCDA's mandate does include the construction or development of community facilities, which implies the facility would not be solely reserved for a school and should be accessible to the general community for activities such as jogging or exercise. It was seen as an investment in a community facility that would allow for greater utility of the limited open space in the area. It would be McKinley's option to choose to make a proposal directly to the Authority for other projects.

Member Bradley asked if there was an agreement with McKinley regarding the public's use and access to those facilities.

Mr. Ching stated it was made it clear to McKinley that a community facility would need to be accessible to the public outside of school activities. A Memorandum of Understanding (“MOU”) has not yet been developed, but would be a part of what would be required to move forward.

Member Chun noted the letter sent from the Legislature urged the Authority to defer action on funding commitments. He asked for clarification that the Authority would not actually be funding the projects, but just authorizing staff to start the five-year work plan.

Mr. Ching confirmed that funding was not being approved and the action item would allow staff to mobilize and develop specific cost estimates.

Member Kimura asked for clarification on whether \$3 million was budgeted for a football field and large track.

Mr. Ching explained the McKinley Master Plan envisioned a reconfiguration that would move the football field towards the corner of Pensacola Street and Kapiolani Boulevard. The field would be rehabilitated with an artificial surface as well as an all weather track similar to the fields at Punahou and Iolani Schools. He noted that even at the private schools, there were many members of the community who utilized the fields for recreation as well as exercise.

Member Kimura asked if the Authority would be taking the place of the Department of Education (“DOE”) in funding the project.

Mr. Ching noted Senator Fukunaga’s handout indicated McKinley wanted to build a 10,000 seat stadium. He had indicated clearly to McKinley that a stadium would qualify as a school facility and not as a community facility. The Athletic Director of McKinley understands that our commitment would only be to create a community facility and a stadium would be a DOE priority.

Member Okada commented that the Authority had not seen the McKinley Master Plan and it was premature to commit funds without seeing the documentation.

Mr. Ching reiterated that funds were not being committed and were being earmarked for potential expenditures. However, repair and rehabilitation of the McKinley football field and track could take place without any other of the events happening and would produce additional park space and recreation space in the area.

Member Okada noted that moving the football field towards the corner of Pensacola Street and Kapiolani Boulevard was essentially building a new field,

and not rehabilitating the existing field. He reiterated his concern that it was premature to commit funds if the master plan still had to go through an SEIS.

Member Okada asked whether there had been any kind of community input regarding the Mother Waldron Playground.

Mr. Ching noted senior housing exists in that particular area, the playground is used intensively for basketball by local workers in the area, and on Saturdays there is an open market neighborhood park type of situation. Building up a critical mass of warm bodies in the playground over and above what currently exists would be good things that would result in utilization of the park. In addition, staff has consulted with the City and County of Honolulu (“City”) Department of Parks and Recreation which has a share of that particular park.

Member Saito felt that confusion stemmed from the two parts of the statement in the action item. He suggested truncating it to state “Shall the Authority Approve the Kakaako Public Facilities, Infrastructure Improvements and Planning Projects Five-Year Work Plan and Budget and Authorize the Executive Director to Begin Implementing the Work.”

Mr. Neupane clarified that approval was also being requested for the one specific contract with Fidelity National Title Insurance Company (“Fidelity”) for title searches which were a requirement for Improvement District (“ID”) dedication to the City.

Mr. Ching noted that approval for the contract with Fidelity was listed as a separate item. The first action requested was approval to implement the work plan, and then separately was approval for the contract with Fidelity which had already gone through the procurement process.

Chairperson Lai stated that before continuing with the action item, he wanted to address procedures regarding public comment prior to a presentation. The procedures had been researched and some other boards followed similar procedures. However, he wanted to state for the record and assure Senator Fukunaga and members of the public who were present that he had no particular preference as to whether public comments were taken before or after a presentation. Chairperson Lai then solicited comments from other Members.

Mr. Glenn Oamilda asked to be recognized. He stated he was from Ewa Beach and disagreed with the procedures for receiving public comments. He did not understand why the agenda included Kakaako items and only wanted to hear about Kalaeloa issues. He stated that only Members Timson and Souza lived in the area and were familiar with the issues about Ewa and the Ewa Plains.



Member Formby stated that at the Land Use Commission, testimony was taken before staff made its presentation and before a petitioner's case was heard. He offered an alternative viewpoint that the reasoning was for the Authority to have in its mind the concerns, issues and points of contention of the public before staff made a presentation. He stated that there were two sides to the issue. He noted an informational item is an iterative process in that the subject would likely come up again later and the public would have another opportunity to offer testimony. He stated that he was present to act as a public servant to be educated by the public to make informed decisions.

Member Saito acknowledged that there were different points of view and valid points being offered relative to the information items. He made a motion to allow the information presentation to be made first and then allow the public to testify based on the information that would be provided.

Member Timson seconded the motion. The motion passed 12 to 0, with 6 excused (Members Chang, Eng, Enomoto, Kobayashi, Liu and Piper).

Mr. Oamilda asked whether Kalaeloa issues would be taken up after adjournment.

Chairperson Lai stated that Kalaeloa issues were listed on the agenda before the adjournment of the meeting.

Chairperson Lai invited Senator Fukunaga and members of the public to provide comments on the action item since staff had made their presentation.

Senator Fukunaga stated she wanted to work closely with HCDA to determine the full scope and range of the costs for improvements at McKinley High School and in the Mauka Area plan. She felt there were still costs that had not been fully identified which should be presented to the Authority before final approval was given.

Member Kane stated his opinion that the motion on the floor for both issues could be achieved. There would be time between approval now and when the issue is brought to the Authority in the future for staff to clarify the cost estimates and mitigate the concerns raised by Senator Fukunaga in her testimony. He acknowledged that he was not a voting member on the two issues, but as a member of the Authority, he was offering his recommendation.

Member Formby stated he would like to adopt Member Kane's recommendation and clarify the motion so the Authority would have the opportunity later to revisit numbers that were not specifically earmarked or committed at this time. Member Bradley agreed with the clarification.

Chairperson Lai stated that the vote on the action item would be taken in two parts. The first part was “Shall the Authority Approve the Kakaako Public Facilities, Infrastructure Improvements and Planning, Projects Five-Year Work Plan and Budget and Authorize the Executive Director to Begin Implementing the Work.”

Member Formby added the following statement to the motion: “With the Understanding that this Five-Year Work Plan is Conceptual and Subject to Further Clarification, Public Input and Comment.”

A roll call vote was conducted.

Ayes: Members Bradley, Chun, Dwight, Formby, Kimura, Mukaigawa, Okada, Saito and Chairperson Lai.

Nays: None

The motion carried 9 to 0 with 4 excused (Members Chang, Kobayashi, Liu and Piper).

Chairperson Lai stated there was a second part to the motion to “Authorize the Executive Director to Enter the Contract with Fidelity National Title Insurance Company for the Dedication of Improvement District Projects.” He noted for the record, there had been a motion and a second.

A roll call vote was conducted.

Ayes: Members Bradley, Chun, Formby, Kimura, Mukaigawa, Okada, Saito and Chairperson Lai.

Nays: None

The motion carried 8 to 0 with 1 recused (Member Dwight) and 4 excused (Members Chang, Kobayashi, Liu and Piper).

3. Shall the Authority Adopt the Proposed Kewalo Basin Rules of Chapter 211 Entitled “Kewalo Basin Rules for Kewalo Harbor and Tariff”; Chapter 212 Entitled “Kewalo Basin Rules for Vessel and Harbor Controls”; Chapter 213 Entitled “Kewalo Basin Rules for Motor Vehicles”; and Chapter 214 Entitled “Kewalo Basin Rules Relating to Services and Procedures, Charges, Tolls and Fees”, of Title 15, Hawaii Administrative Rules?

Chairperson Lai introduced the next action item on the agenda. He noted for the record that Senators Fukunaga, Chun Oakland, and Slom, and Representatives

Brower and Rhoads had submitted written testimony on the item. Staff would make its report first and public comment would be allowed after.

Mr. Ching provided staff's report on the proposed Kewalo Basin Rules.

Member Saito asked whether staff had obtained a current review from the Attorney General on whether there were any substantial changes in the rules that would require a public hearing.

Mr. Ching confirmed that the Attorney General had been consulted.

Member Saito asked whether there were any significant changes between the old rules by the Department of Transportation ("DOT") and the current rules.

Mr. Ching stated that there was a difference in the rate schedule and the two-tiered system. Otherwise, the content of the current rules were taken from the DOT rules and updated.

Member Okada stated that the situation with Kewalo Basin reminded him of the process with ID 11. The result was in the new Mauka Area plan of getting community consensus, and he did not feel that it was being achieved. The rules should not be approved if small businesses in the harbor would be harmed.

Member Chun asked for clarification from HCDA's standpoint on the need for the two-tiered system, the availability of slips for commercial fisherman, and the reason the new permit would be seven pages instead of one page.

Mr. Ching stated the Authority packet included a staff report with detailed responses to all the issues. The information had also been transmitted to existing permittees in Kewalo Basin. Regarding concern about a definition of vessels over 65 feet, he clarified that although there was no specific definition of vessels over 65 feet, there was ample coverage that vessels of any length were included.

Mr. Ching stated staff would work with the advisory group to devise an appropriate permit form. The permit would need to cover all the requirements, including some that were not currently reflected in the one-page DOT permit.

Mr. Ching stated that \$4.9 million was needed to repair docks and other renovations to promote the viability of the industry operating out of Kewalo Basin. HCDA's projections indicated that a two-tiered system was needed to pay for required improvements. HCDA has offered to seed the repair with its own money and then repay itself over time as revenues are produced.

Mr. Ching stated there was a clear hierarchy established in the proposed rules that charter boat, excursion or commercial fisherman have automatic priority for slips. The only time a non-commercial entity would have priority would be after the slips were completed and/or renovated and there were no takers. A recreational pleasure boat operator could seek to take a vacant slip. However, if at any point a commercial entity were to apply to the waiting list, it would receive automatic priority over pleasure boaters regardless of when the application was submitted.

Member Dwight stated for the record that he agreed with comments made earlier on scheduling the meeting and agenda items. On the rare occasions when the meetings are held in Kalaeloa, the agenda items should be focused on Kalaeloa where the community is available, and not require members of the Kakaako community to travel to Kalaeloa for their agenda items.

Member Dwight noted one of the Kewalo Basin issues involved the size of the vessels and the requirement to receive harbor master clearance to leave a slip. If the harbor master was an 8:00 a.m. - 5:00 p.m. job, he asked whether a vessel seeking to leave earlier or later would be in violation of the rules. He stated that commercial longliners are over 65 feet and asked whether the harbor master would be available in the early morning hours when a longliner leaves.

Mr. Richard Kuitunen, Asset Manager stated that vessels home-ported in Kewalo Basin would have a working relationship with the Harbor Manager who would be able to contact them and arrange the schedule for when they are coming and going. Department of Homeland Security requirements for Kewalo Basin are not as stringent as Honolulu Harbor. DOT staff has indicated that clearance is normally controlled by the Harbor Tower Operator so clearance would not necessarily be received from the Kewalo Harbor Master. The requirement for the Harbor Manager is to be available 24/7. A ship coming into port would know before it arrives at the channel that it is coming into port, and the Harbor Master does not have to be present to allow that ship into port. In discussions with DOT, their tower will have emergency contact numbers for the Harbor Master in the event of an emergency.

Member Dwight stated he had serious concerns and reservations about mixing commercial vessels and pleasure boaters in Kewalo Basin. There is documented history of commercial vessels having a difficult time navigating that particular harbor entrance in the evening, and unfortunately, most drownings occur in the evening. He questioned why it was a priority to mix pleasure and commercial crafts in this particular harbor.

Mr. Kuitunen stated HCDA has a fiduciary obligation to the State of Hawaii ("State") when the harbor is underutilized to increase revenue so that it is self sufficient. Harbor users have advised that currents in the channel are dangerous when there is a south swell and low tide, although the condition occurs during a

minority of the time. There is a reciprocity arrangement with Honolulu Harbor, so if it is unmanageable to get in or out of Kewalo Basin, Honolulu Harbor would be available and vice versa.

Member Dwight noted that priorities were ranked with respect to who can use the harbor and get permits, and commercial vessels would be the top level priority. However, in the event that a pleasure boater were able to secure a slip and get a revocable permit, a commercial user who would like to utilize the harbor would be essentially locked out if there is no other slip available. He asked if it was accurate under the rules that in the downturn of the economy where some of the commercial operators are not able to make a living in the harbor, a good portion of the slips would be transformed into a pleasure harbor. There would not be a way, unless those pleasure boaters leave, for commercial interest to get back into the harbor.

Mr. Ching stated that it would be accurate. However, he noted that the existing permittees have said there is a pent up demand for improved facilities. If the facilities are improved and the commercial interests come, then there will be little opportunity for the pleasure craft to monopolize the slips. If there is no demand even after the facilities are repaired, then there is the possibility in an economic downturn that slips can be occupied by recreation or pleasure craft, and if they maintain their compliance with the rules, they cannot be asked to leave.

Member Dwight stated his concern that a policy decision was being made that commercial use of this particular harbor is the priority. He wanted an amendment to the rules to address the scenario that if commercial use were to rebound, there would be a mechanism whereby commercial slips could be made available and pleasure boaters could be relocated.

Member Dwight stated his concern with the Executive Director's powers to make exceptions, change the rules, and move people up and down the priority list. He stated that if a good job is done in drafting the rules, we should abide by the rules. He felt it would create a situation where there could easily be due process concerns to get thrown out and would invite additional litigation. He stated that he would like to see the provision removed.

There being no further questions from the Authority Members, Chairperson Lai stated he would call for public testimony.

Senator Fukunaga stated she would stand on her written report.

Mr. Bryant Carvalho from the audience stated he was with a group called The Friends of Kewalo Basin Improvements<sup>1</sup>, comprised of about 8 or 10 persons who were fishermen and/or boat owners. He stated they would like the Authority to move forward with its plans to remove the Herringbone Pier and construct Kewalo Basin as appropriate. They want the place fixed and cleaned up; they want the floating piers and the two-tiered arrangements and they feel there is an ability to incorporate the commercial and the recreational. He brought a friend who is a member of the Papakolea Community Association, who is gratified Kewalo Basin has a native Hawaiian botanical garden adjacent to the NetShed. He stated that HCDA's jurisdiction over the harbor was well defined.

Mr. Gary Dill from the audience stated he previously raised his objections to the technical portion of the rules at the Authority meeting in August. Kewalo Ocean Activities ("KOA") has increasingly become aware of a pattern of misinformation, disinformation, or lack of information on the part of HCDA. He cited as an example the 65 feet and over issue on vessels. DOT rules have the definition for smaller commercial vessels and include those of 65 feet and over up to 300 feet. This definition was omitted from the Kewalo Basin rules. He asked last month that the Authority direct staff to remove the misstatement of fact posted on the website stating "At the suggestion of the existing stakeholders a two-tiered rate structure is proposed by HCDA." KOA and every permit holder in the harbor have objected to the two-tier rate structure since its inception.

Chairperson Lai stated that Mr. Mike DeRego was present and had also provided written testimony.

Mr. DeRego stated there were a couple of questions to address regarding the statement made earlier about the substantial changes versus DOT rules. He noted that the proposed rules refer to the permit, but that they could not accept the rules with knowing what the permits are. He stated the ADA (Americans with Disabilities Act) requirement in the permit was suspicious since they do not own the piers and HCDA does.

He noted that the possible transfer fee in the new rules was set to zero; however, there is a section that says HCDA may charge a permit premium. KOA would like to get rid of the word or the wrong language for now.

He stated his concern on the powers of the Executive Director. DOT rules state "Exception to the above priorities may be made when determined by the director to be in the interest of public safety, health and welfare." The proposed rules state "Exception to the above priorities may be made when determined by the

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<sup>1</sup> Note: Mr. Carvalho does not represent the Friends of Kewalo Basin Park Association.

executive director to be in the best interest of Kewalo Basin operations and tenant mix,” which is not identical or close to DOT rules.

Mr. Bryan Ho from the audience stated he was in support of the rules on behalf of four companies that operate out of Kewalo Basin: Extreme Parasail, Diamond Head Parasail, Honolulu Screamer, and Diamond Head Parasail and Water Sports. He had been involved with promulgation of the rules and was familiar with the concerns. He expressed the need to move forward and make improvements in the harbor and fix the piers that are in disrepair. He asked the Authority to consider a temporary abatement of booth rent fees and increase in parking fees for a six month period because of the dramatic change in the economic climate. The operating expenses for his four companies would be increasing significantly because of fuel, and the downturn in tourism has resulted in a 30% reduction in his business. His companies face an average 40% increase in harbor use fees.

There being no further testimony or questions for the Executive Director, Chairperson Lai entertained a motion to adopt the proposed Kewalo Basin Rules including Chapter 211 Entitled “Kewalo Basin Rules for Kewalo Harbor and Tariff”; Chapter 212 Entitled “Kewalo Basin Rules for Vessel and Harbor Controls”; Chapter 213 Entitled “Kewalo Basin Rules for Motor Vehicles”; and Chapter 214 Entitled “Kewalo Basin Rules Relating to Services and Procedures, Charges, Tolls and Fees”, of Title 15, Hawaii Administrative Rules.

A motion was made by Member Bradley and seconded by Member Chun. Chairperson Lai asked if Members had any discussion on the motion.

Member Dwight stated that he felt an obligation to do a better job with the rules since there seemed to be quite a few inconsistencies. He asked the Authority to defer the matter and have the staff go back and address the concerns that had been raised. Members Kimura and Mukaigawa agreed with Member Dwight.

Member Saito noted on a point of order that there was a new motion offered to defer the vote on the rules and that motion should be put on the floor.

Chairperson Lai asked for a motion to defer the item. A motion was made by Member Dwight and seconded by Member Mukaigawa.

Member Formby stated he understood what the Executive Director and the staff were trying to do and agreed with Mr. Ho’s testimony that we need to get rules in place as quickly as possible. He also shared Member Dwight’s concerns with the issues raised which he felt could be resolved within the next month or two. He hoped to get these rules promulgated by the end of the year in order to keep to the schedule agreed upon by DOT and HCDA to turn over management of Kewalo Basin at the beginning of the next calendar year. He supported the motion to

defer but wanted everyone to understand that promulgating rules is never easy and at some point we do have to move on and vote on the issue.

Member Saito stated the reason for the deferral was to address some significant differences. Staff would be asked to look at some of those accommodations that were suggested, add them to the rules and come back to the Authority for approval. However, he clarified that those significant differences are not the same as the significant differences as defined in the Attorney General's ruling. If they were deemed significant by that definition, the Authority would have to go through a new rulemaking process and not just modify the rules.

Member Dwight agreed that the issues were simple changes that could be made and the Authority was just voting on deferment.

A roll call vote was conducted on the motion to defer action on the proposed Kewalo Basin Rules.

Ayes: Members Bradley, Chun, Dwight, Formby, Kimura, Mukaigawa, Okada, Saito and Chairperson Lai.

Nays: None

The motion carried 9 to 0 with 4 excused (Members Chang, Kobayashi, Liu and Piper).

Member Timson commented she had stated during the July Authority meeting that Kalaeloa matters should be taken up first when the meeting was held in Kalaeloa to provide the community with information. Since Kakaako items were taken up first, several Kalaeloa community members had left the meeting. She made a motion to allow a two-minute presentation of the Kalaeloa Status Report followed by the SORT information item and to defer any other agenda items to another meeting.

The motion was seconded by Member Souza. Chairperson Lai asked if Members had any comments or discussion on the motion.

Member Saito asked for clarification whether the motion would allow the public to testify.

Member Timson stated her motion was to allow the Authority and public to hear the SORT presentation and make their comments.

Member Formby asked if there was a procedural reason that Kalaeloa topics could not be presented before the Kakaako topics when the meeting is in Kalaeloa.



Chairperson Lai stated there was no specific procedure. Ironically, when the meeting is held in Kakaako, the Kalaeloa issues are presented first.

Member Timson commented that Kalaeloa matters were handled first because the Kalaeloa Members cannot vote on all matters regarding HCDA.

There being no further discussion, a show of hands vote was conducted to allow two minutes for the Kalaeloa Status Report and then hear the SORT presentation. The motion passed 12 to 0 with 6 excused (Members Chang, Eng, Enomoto, Kobayashi, Liu and Piper).

## V. ITEMS FOR INFORMATION

### A. Kalaeloa Status Report

Ms. Tesha Malama, Director of Planning and Development for Kalaeloa stated there were no additional comments to the report enclosed in the packet distributed to Authority Members. She noted members of Kalaeloa Public Safety Group, Kalaeloa Community Network, Kalaeloa Archaeological and Cultural Hui, Captain Bradley Bean of the U.S. Coast Guard, small business owner Ms. Bev Brennan, Carmel Partners/Kalaeloa Rental Homes District Manager Ms. Suzette Smith, and Lieutenant Jerry Asato of the Kapolei Police Department were present in the audience and recognized their efforts in getting things done in the community.

### B. Navy Report

Ms. Malama introduced Ms. Lynn Tanaka from the U.S. Navy. Ms. Tanaka presented a summary of the Navy Report enclosed in the packet distributed to Authority Members.

### C. Hawaii Public Housing Authority Report

Mr. Adam Burson, Homeless Programs Specialist, was not present to discuss the Hawaii Public Housing Authority Report.

### D. SORT, LLC Presentation on Kalaeloa Race Track

Chairperson Lai introduced Mr. Christopher Messer and Mr. Michael Kitchens from Oahu Motorsports Advisory Council (“OMAC”) who would be providing the presentation on SORT.

Mr. Messer and Mr. Kitchens presented a summary of the SORT presentation enclosed in the packet distributed to the Authority Members.

Before taking questions on the SORT presentation, Chairperson Lai established a committee to work with HCDA staff on resolving the issues with the proposed Kewalo Basin Rules. The committee would be comprised of Members Formby, Dwight, Kimura, Chang and Saito.

Chairperson Lai asked whether Members had questions for Mr. Messer and Mr. Kitchens.

Member Kane stated Mr. Messer and Mr. Kitchens had worked with the Department of Hawaiian Home Lands (“DHHL”) for the past six months to meet the requirements imposed on them and had met with organizations recommended to them. SORT made a presentation to the Hawaiian Homes Commission which had been unanimously supported and made themselves available to the Kapolei homesteaders during community meetings. It had been a long haul for everyone to find an interim use until a permanent site can be found. Member Kane acknowledged the work that had been done by SORT to mitigate and change some of their plans based on comments received during discussions with DHHL and community stakeholders.

Member Mukaigawa asked whether there would be a racing school on weekdays, and the racetrack would be open on weekends and occasional holidays.

Mr. Messer stated that was correct.

Member Mukaigawa asked whether drag racing would be allowed.

Mr. Messer replied the immediate opportunity did not allow for a drag strip. The original plan to include the drag strip might have jeopardized the project, so plans were changed.

Member Saito inquired as to what constraints were involved with the drag strip.

Mr. Messer stated that the physical property did not allow for a quarter mile drag strip with a safety shut down area. There is a layout that shows a one-eighth mile drag strip that might eventually be extended to a quarter mile drag strip. In order to construct the drag strip, they would have to relocate the dirt track.

Mr. Kitchens stated if the facility were designed for drag racing, it could only support drag racing by itself which represented only one half of the users. Since there are no race tracks in Hawaii for road racers, they decided to build the dirt track first, but are designing it to be relocated fairly easily.

Member Saito asked how it was determined that 2015 would be the date by which SORT would be in a permanent solution.

Mr. Messer stated that it had taken two years to get to the current point and he estimated it would take a minimum of three to four years to plan and relocate to a permanent facility.

Mr. Kitchens added that there could be a possibility that a private developer might come in and build a facility. Hawaii Raceway Park (HRP) had recently opened up for bid, however, no one stepped forward to bid. Member Kane of DHHL and Member Saito of the Department of Accounting and General Services have worked hard to assist SORT. He noted he had 300 letters of support and over 1,500 signatures on their petition in support of a racing facility.

Member Okada asked for clarification on the SORT organization.

Mr. George Grace, Jr. from the audience stated he is the attorney and developer for SORT which is a nonprofit organization. SORT does not have the space to support drag racers, but would help raise funds to send them to the neighbor islands where they can participate in racing.

Mr. Kitchens responded that his group is OMAC and is primarily composed of former tenants of the race track and the people who used to run the events. Earlier in the year, SORT and OMAC decided to work together to build the temporary facility.

Member Souza asked if SORT had met with the Kalaeloa Public Safety Group (“KPS”).

Mr. Messer replied they had not met with KPS. However, they had received a list of approximately fourteen agencies and responded to the concerns brought up in their meetings.

Member Souza posed questions regarding the number of spectators that a drift session would produce and the nature of the traffic study that SORT completed. She stated there would be substantial impact on the parcel and the adjoining community, Coast Guard, Surfing Beach, people staying in the cabanas and the housing areas as well on the roadway where the sides of the road are not up to standard. Over a thousand spectators had shown up at a recent event at HRP.

Mr. Messer stated the HRP event was not a drift session and they have about 300 spectators at a regular drift session. Major events that were sponsored and

advertised did draw a greater number of spectators. For the traffic study, they did observations and counted cars in front of the property.

Member Souza asked whether SORT had spoken to anyone at the U. S. Coast Guard.

Mr. Kitchens replied that several attempts had been made to contact the U. S. Coast Guard, but they had not received a return call.

Member Souza posed questions to Mr. Grace regarding his plans to address the potential for fires, especially during summer months.

Mr. Grace responded that he would do his best to meet every safety requirement on the property and prevent problems in the surrounding areas.

Member Souza posed questions regarding whether Mr. Grace had met with the Department of Land and Natural Resources (“DLNR”) and the State Historic Preservation Division (“SHPD”) and whether he was aware of the cultural sites, iwi and endangered species on the property.

Mr. Grace responded that Mr. Messer and Mr. Kitchens would meet with DLNR and SHPD, and they were very aware of the cultural sites, iwi and endangered species.

Mr. Grace questioned whether there was a conflict of interest with the questions from Member Souza.

Member Souza asked Deputy Attorney General Sandra Ching for an opinion. Ms. Ching stated that questions from Member Souza were within the parameters.

Member Souza posed questions regarding installation of lighting.

Mr. Grace stated they had not reached that stage in their planning. He commented they had stadium lights that had been donated, but were not sure if they would be able to use the lights.

Member Souza asked whether SORT was planning to fix the deteriorated roads at Roosevelt and Coral Sea since they would be adding a substantial increase in vehicular traffic.

Mr. Grace stated he would help in any way he could although he did not feel the racetrack would impact the area any more than the population of the Barber’s Point Naval Air Station when it was open.

Member Souza asked whether SORT had talked to DLNR about the archaeological survey.

Mr. Messer responded he did not think DLNR had jurisdiction over the archaeological site. He had talked with the Kapolei Hawaiian Civic Club and reviewed all the public archaeological reports for the area. He had discussed the reports with an archaeologist, but did not wish to release the name of the archaeologist at this time.

Member Souza noted the purpose of the presentation was to get SORT started on the temporary oval track which would be moved later for a road course. She asked if it was adequate for drifting.

Mr. Messer replied in the affirmative.

Member Souza stated she thought it was a go-cart track.

Chairperson Lai stated the Authority would take public comments. He noted there were various perspectives and opinions on the SORT issue and inappropriate behaviors would not be tolerated. He reminded speakers to limit their comments to two minutes.

Mr. Glenn Oamilda from the audience stated he lived in Ewa Beach which has long been impacted with traffic and development. He is a member of the Ewa Beach Hawaiian Civic Club and is a native Hawaiian who is sensitive to the cultural aspects in the development. Hawaiians used to traverse from Wahiawa to Makua, a contiguous route that included the beach shore. He stated Ewa Beach has not been involved in the grass roots process.

Mr. Kurt Fevella from the audience stated he was an Ewa Beach resident and Vice Chair of Community Concerns for the Ewa Beach Neighborhood Board. Ewa Beach residents were concerned about the traffic. As a former racer he felt the proposed traffic numbers were inconsistent with the numbers of people who formerly came to the racetrack. He was concerned with the safety of the substandard roads going into the racetrack area.

Ms. Celeste Lacuesta from the audience stated her concerns involving the month to month lease for the project; grading permits; usage of potable or non-potable water; whether the temporary facility would become permanent; who on the Authority would approve the facility; the environmental impact statement; iwi on the property and historic sites.

Ms. Polly Grace from the audience introduced herself as “Granny” and stated Mr. Grace was her son. She described the history of racing as starting after the end of

World War II when men and women like herself would put parts together to build cars. She stated the urge to race was “in your blood” and mentioned her mentors from Maui and Oahu.

Mr. Franklin Souza from the audience stated George and Jeanette Grace and Member Souza and himself were the original SORT members until they parted ways. DHHL recognized Mr. Grace on April 15 as being the lessee for the property. Mr. Grace has been a sponsor for the racing facility for two years, while Mr. Souza has operated and promoted racing and was the first promoter on the island to bring in racers from the ASCoT spring car show. He questioned the discrepancies between the first and final phases of the SORT plan and showed a plan printed from the SORT website. SORT stated they have to move the dirt track to get to their final phase. He noted the dirt track was going to be built on an archaeological site and a drag strip would be on a cultural site. He felt SORT was deceiving the Hawaiian people. He and Member Souza had spent 2-1/2 years and their own money working on the project, until Mr. Grace discontinued their association.

Member Kane stated the graphic shown by Mr. Souza was presented to DHHL by SORT. Through that process, DHHL directed SORT to meet with the Kapolei Hawaiian Civic Club to address issues that were raised. SORT made the modification to limit the development mauka of the currently graded area. Member Kane wanted to make clear there is no Phase 2 Makai of their current development. DHHL and the Hawaiian Homes Commission (“Commission”) have not authorized and at no point will SORT be able to go makai of their current Phase I without approval from DHHL or the Commission. SORT has been receptive in accommodating concerns about the rich cultural sites that are makai of the currently graded area.

Mr. Souza stated the graphic was printed off the internet on August 30 or 31. If the final phase was not going to happen, then SORT was not informing Member Kane or the general public.

Member Souza stated that Mr. Souza presented the final phase. The form dated August 30 has the complete Phase 1, Phase 2, Phase 3 and final phase promoting what the racing community will get.

Mr. Kitchens noted there is a disclaimer on the website stating that it is not the end result and things can change. The only phase they are concentrating on is the first phase.

Mr. Edwin Hollman, Jr. from the audience stated he represented the Hawaii Regions Force Car Club of America, a national organization with about 60,000 members in 112 regions. The Hawaii region was established in 1953. For over

50 years, they have been presenting events in Hawaii. The Islands of Hawaii, Maui and Kauai all have racing facilities, but Oahu has nothing since HRP closed. The SORT proposal is not ideal, but it is the only thing going right now and should be supported until a permanent facility can be established. There are thousands of people who were involved at HRP who now have nothing to do.

Members Bradley and Kane exited the meeting at 12:29 p.m. Member Chinn replaced Member Kane.

Mr. Les Vallarano from the audience stated he was speaking as a member of the racing community. While he supported efforts to build a racetrack, he had concerns about traffic in this particular project. HRP was located in an industrial area and didn't bother anyone. The SORT facility would be in an area with traffic going through a residential area. The Aliamanu Neighborhood Board and Crosspointe Community Association residents did not want racing in their backyard. It was important to do an environmental assessment and get public input before the racetrack in Kalaeloa is built. He believed promotion of the racetrack has been dishonest since the final phase diagram incorporated every venue at HRP. Instead of saying there will not be a drag strip, SORT is telling the drag racers and racers that they will be accommodating them. He stated his concern about point 4 miles. From his experience in road racing, point 4 miles is a go-cart track, not a road racing course.

Mr. Sean Oliberos from the audience stated he is 100% in support of the project. He acknowledged there was concern with traffic, but felt the concern was addressed because the parking would be free. Cars would be able to roll right in and not wait on the road to enter. He stated he personally worked on two race jobs, one that specifically built drift cars and the other to show cars. Everyone who comes into the shop and is involved with racing is in support of the project. They were able to race at Halawa Stadium for a while and were able to make it work.

Member Souza asked why there is no racing now at Halawa Stadium.

Mr. Oliberos responded there were concerns from the neighborhood on noise and traffic issues and the effect on children.

Ms. Jeanette Grace from the audience stated she was with SORT. They were working with Kim & Shiroma, an engineering firm that is working with the State and City Department of Planning and Permitting ("DPP") to put together their stockpiling permit. The final plan was submitted to DPP and the turnaround time is two days. The State has already signed on and they are waiting for final approval from DPP. SORT has complied with all requests from DHHL and the City.

Member Souza noted DHHL had told SORT to get the necessary permits in May 2007. She inquired as to why they were getting a permit after receiving a notice of violation from DPP for illegally transporting 35,000 cubic yards of material on the property.

Ms. Grace stated there were issues about permits when they initially got the property from DHHL because Hawaiian Home Lands is sovereign and not required to go through the permit process like other landowners. Member Kane had initiated a letter to DPP asking whether permits were required or not. The letter stated if no response was received within 20 days, SORT would proceed. Since no response was received, SORT proceeded to bring the dirt material needed to build the racetrack onto the property. The material came from one job site, so the soil is consistent.

Member Souza asked for the date the 20-day letter was initiated by DHHL. She had copies of letters dated March 4 and April 15 which specifically state SORT must obtain stockpiling and grading permits from the City.

Ms. Grace stated she did not see those letters. However, they have notified the contractor they would be submitting the stockpiling permit application.

Member Souza inquired whether SORT would be doing an environmental assessment (“EA”).

Ms. Grace responded they had asked DHHL if an EA or environmental impact statement (“EIS”) would be required. Since the site is temporary and modifications to the site were within certain levels, DHHL advised an EA was not required. If it was determined something was being done to the property that required an EA or EIS, they would be advised.

Member Souza questioned whether changing topography of the property and impacting the streets would not require an EA. She noted the letter dated April 15 stated DHHL was subject to HRS Chapter 343 and laid out regulatory conditions pertaining to the impact from the environment and neighboring community. If DHHL deemed the use exceeded what was allowable as minor, then it may trigger the need for an EA. Member Souza stated her belief that SORT was impacting the community and the parcel.

Ms. Grace stated she had a discussion with DHHL because she was informed the matter was brought up at the July HCDA meeting. DHHL has told them an EA is not necessary at this time.



Member Souza posed the question to Member Chinn whether SORT would need an EA.

Member Chinn responded that DHHL was not requiring an EA at this time.

Ms. Grace stated SORT was not doing the full phase and was doing the smaller portion which was approved by DHHL. They are staying on the piece of property that does not have cultural sites.

Mr. Oamilda stated the question being presented to the Authority was whether the race track or cultural issues are more sensitive. Centuries of people have been buried on the site and there would be no EIS or inventory of what is under the land. He stated he had an issue with DHHL and felt they should not be facilitators of development in the Kalaeloa region.

Member Timson posed a question to Member Chinn regarding whether DHHL as landowner would be liable for what happens on the property leased to SORT.

Member Chinn declined to comment since she did not have all the documents in place and requested that questions be submitted to DHHL in writing.

Member Timson recommended that SORT have discussions with the neighboring communities since comments from the audience indicated a need for the interaction.

Member Timson posed questions regarding electrical power and lighting on the property.

Mr. Grace responded that generator power would be used. They had water but no electricity.

Member Timson noted that SORT might be looking for another location in 2015. She asked Member Chinn whether the lease would be extended.

Member Chinn stated DHHL would do an annual review of the operation and if SORT was in compliance with the agreement, the position would be extended.

Member Souza posed questions regarding whether SORT was subject to Chapter 343.

Member Chinn responded that DHHL did not see a major change of the terrain based on what SORT had submitted. Since the plans do not really change the topography of that landscape, DHHL made the exception to waive preparation of the EA.

Member Okada asked whether people who were against the project had been able to approach DHHL to address their concerns.

Member Chinn replied in the affirmative.

There were no further questions from Authority Members on the SORT presentation.

VI. ADJOURNMENT

Chairperson Lai stated all other items on the agenda would be deferred and called for a motion to adjourn. It was moved by Member Dwight and seconded by member Kimura to adjourn the meeting. The motion passed 11 to 0 with 7 excused (Members Bradley, Chang, Eng, Enomoto, Kobayashi, Liu and Piper).

The meeting adjourned at 12:50 p.m.

Respectfully submitted,

/s/

Amanda Chang  
Secretary