



NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY

An Authority of the State of Hawaii attached to the Department of Business, Economic Development & Tourism



**BOARD OF DIRECTORS
MEETING MINUTES
Tuesday, June 8, 2021
10:00 a.m.**

An Interactive Conference Technology Meeting was held at

**NELHA OceanView Conference Room
Hale Iako Building
73-970 Makako Bay Drive
Kailua-Kona, HI 96740**

and via Zoom Video Conferencing Software.

Members/Designees in Attendance

Linda Rosehill (Gov. Appointee/Chair)
Douglass Adams (County of Hawaii)
Riley Saito (County of Hawaii – Alternate)
Robert Masuda (DLNR)
Chung Chang (DBEDT)
Dr. Gerry Cysewski (Tenant Representative)
Alan Hilton (RAC Chair)
William Mielcke (Gov. Appointee/Vice Chair)
Dr. Vassilis Syrmos (University of Hawaii)
Cyd Miyashiro (Gov. Appointee)
Dr. Phil Bossert (RAC Secretary)
Neil Sims (Tenant Representative)

Guests/Staff Present

Greg Barbour (Executive Director)
Laurence Sombardier (Dep. Director)
Keith Olson (NELHA)
Dr. Alex Leonard (NELHA)
Daniel Jacobs (Deputy AG)
Randy Park (Destiny Deep Seawater)
Jeff Zimpfer (National Park Service)
Briana Lalumiere (Realtor/Broker)
Daniel Fowler (Nekia ChemWerks. Inc)
Dr. Joan Salwen, – (Blue Ocean Barns)
Matthew Rothe (Blue Ocean Barns)
Kimberly Beckwith (EXP Realty)
Aldric Ulep, (House Finance)
Cody Brooks, (RTO Insider)

Board Members Not Attending and Excused

None.

- **Item 1. Call to Order.**

The meeting was called to order by Chair Rosehill at 10:02 a.m. Upon calling the meeting to order, Chair Rosehill requested a roll call of Board members, NELHA staff, and guests in attendance.

- **Item 2. Approval March 16, 2021 NELHA Board of Directors' Meeting Minutes.**

Chair Rosehill entertained a motion to approve the November 17, 2020 minutes. The motion was made by Vice-Chair Mielcke and seconded by Director Cysewski. No discussion ensued or corrections were noted. The motion carried unanimously following no objections.

- **Item 3. Approval November 17, 2020 NELHA Board of Directors' Executive Meeting Minutes.**

Chair Rosehill entertained a motion to approve the November 17, 2020, minutes. The motion was made by Vice-Chair Mielcke and seconded by Director Bossert. No discussion ensued or corrections were noted. The motion carried unanimously following no objections.

- **Item 4. Approval March 16, 2021 NELHA Board of Directors' Executive Meeting Minutes.**

Chair Rosehill entertained a motion to approve the March 16, 2021, minutes. The motion was made by Vice-Chair Mielcke and seconded by Director Hilton. No discussion ensued or corrections were noted. The motion carried unanimously following no objections.

- **Item 5. Election of NELHA Board of Directors' Officers for FY 2022 beginning July 1, 2021 through June 30, 2022.**

Chair Rosehill made a motion to nominate William Mielcke as Chair and Cyd Miyashiro as Vice- Chair. Director Mielcke is the longest serving Governor appointee on the Board, and this will be his last year on the Board. Director Miyashiro is the newest Governor appointee on the Board and will get good experience as a Board officer. Director Masuda made a motion that the nominations be closed. Seconded by Director Cysewski. No discussion ensued or corrections were noted. The motion carried unanimously following no objections.

Chair Rosehill thanked the NELHA staff for all the hard work they have done over past two years while she has been Chair. They have performed very successfully especially during these challenging times during the pandemic and Chair Rosehill is very confident that NELHA will continue successfully with Director Mielcke and Director Miyashiro at the helm.

One new guest, Jeff Zimmer from the National Park Service joined the meeting at 10:12 a.m.

Chair Rosehill announced that as a courtesy to the number of guests waiting, we would like to take Items 7a, 8a, and 8b next and then return to Item 6 the financial report.

- **Item 7a. Old Business – Final Approval for Blue Ocean Barns, Inc. 10-acre Seaweed Project.**

Deputy Director Sombardier stated that Blue Ocean Barns (BOB) currently leases office space and has completed preliminary R&D work through a services agreement with Shrimp Improvement Systems facility. BOB is ready to start commercial operations and seeks final approval to build and operate a 10-acre production facility for its *Asparagopsis taxiformis* seaweed product.

BOB started leasing an office space in Hale Iako in March of 2020 as the pandemic was starting, a space they continue to occupy. They subsequently started working with various companies including most recently Shrimp Improvement Systems (SIS) at HOST Park to perform some initial R&D.

BOB is now ready to start commercial operations and hopes to do so by the end of 2021 or beginning of 2022. They plan to continue their R&D work to optimize systems at SIS before transitioning the optimization work to the 10-acre farm. The full 10 acres are expected to be in production by mid-2023.

BOB received approval in concept from the NELHA Board at the March 16, 2021 meeting. BOB is registered as a Public Benefit Corporation (“PBC”) in Delaware, which some refer to as a B-corporation, a new type of corporate structure. It is a for-profit business that has a stated “public interest” purpose set out in its certificate of incorporation to allow for a purpose beyond maximizing profit for stockholders.

BOB has provided a final business plan where they addressed some of the unresolved questions raised at the March 2021 NELHA Board. These included providing additional details on the operations plan in particular in the areas of wastewater, environmental impact, and structures/infrastructure to be built.

The shape of the 10-acre space to be leased has been modified following preliminary review of archaeological features in the area. The new layout will allow an access road (to property behind Moana Technologies and adjacent to the airport) to be alongside the existing King’s trail, an archaeological feature to be preserved. The new proposed location also allows BOB to still use the existing 6-acre graded property while the known archaeological features in the additional space to be graded have been cataloged as being on the lower end of the

significance scale and should therefore have a lesser likelihood of slowing down the project review and approval process. BOB is in the process of hiring a professional surveyor to complete the survey for the property.

BOB has also revised the business plan financial projections as requested to reflect primarily operations relating to NELHA. The numbers are still optimistic but are now more in line with the limited space availability in HOST park for future expansion.

BOB did come short in answering some of the technical questions posed by the RAC, in part because much of the information is proprietary and critical in light of the strong interest and competition in this area. It is staff's opinion that BOB has provided sufficient information to validate their technical expertise. Although this does not guarantee success, it provides confidence in BOB's ability to address technical issues that will arise in the scale up process.

As expressed in the March meeting, BOB appears to have the resources and expertise to execute on their business plan. BOB is on track for closing on a financial round by the end of Q2 2021 and will therefore have the funds to start the first phase of the scale up at the 10-acre production facility.

NELHA staff reached out to Moana Technologies after the approval in concept and confirms that Moana Technologies has no outstanding concerns with the siting of this project next to the Moana Technologies property.

BOB and NELHA staff have discussed lease terms. An agreed upon draft sublease has been included in this recommendation. This is a 30-year term sublease with standard rental fees following NELHA's leasing policy. The base rent of \$342.75/acre is the policy base rent for a 10-acre property. Percent rent is set at 2.5%, the rate that has been in effect for all new projects in the last 5 years.

The draft sublease contains two substantive changes:

- 1) Intellectual property (IP) licensing fees have been added to the list of possible exemptions for the calculation of gross sales and percent rent. BOB is in a different position than most of NELHA's clients with respect to the amount of licensing fees. At the same time, NELHA wants to attract companies that are using licensed IP and not penalize companies that don't develop all of their IP in house. Staff feels that it is justifiable to add this exemption.
- 2) As a fast-moving startup, BOB expects to continue to raise funds through investors for rapid growth. The primary means of doing that is through the sale of stock. Language has been inserted in the assignment clause to allow sale of stock for the purpose of raising funds in accordance with the business plan as approved by the Board. Any major change such as acquisition or transfer of more than 50% ownership that results in change of management and other major changes to the plan would still trigger the assignment clause.

Both of these additions are also likely to be important for any other new startup that licenses their IP and is looking at growing rapidly.

NELHA staff has carefully reviewed utility requirements. It is expected that some adjustments to the seawater distribution system may be needed to accommodate the high estimates once the facility is fully developed. Staff recommends that sea water consumption be monitored during the first phase of the project to better inform the needs at full capacity.

The low elevation lands are preferred for high users of sea water to keep their water costs down as productive seawater rates are \$0.20/kgal while high elevation extractive rates are set at \$0.80/kgal. However, NELHA has run out of low elevation lands where productive clients would normally be situated. It is estimated that sea water pumping costs will be approximately \$0.40/kgal at the BOB proposed property elevation of 47 feet. NELHA staff feels that BOB should pay for the cost of pumping to their property but that it would be unfair to charge the higher rate of the existing two-tier seawater rate structure as the project is not situated at the high elevations of the park. Therefore, staff requests that the Board approve that BOB pay the estimated cost of pumping seawater to the BOB facility rather than either of the rates established in the existing two-tier structure. It is expected that this sliding scale rate structure will be considered at the next seawater rate review.

Director Hilton made a motion to approve the staff recommendation, and Director Masuda seconded the motion.

Director Hilton stated that the NELHA requested a review by the Research Advisory Committee of the final proposal from BOB and six RAC members responded. The NELHA staff recommendation for final approval of the Blue Ocean Barns sub-lease is consistently supported by all RAC reviewers. Reviewers found that the final proposal is substantially improved especially the financial aspects and technical questions were either answered or more fully explained.

The Board voted by roll call. Nine directors voted to approve, and Director Cysewski recused himself. The motion to approve the staff recommendation to approve sublease K-39 between NELHA and BOB and set the seawater rate for BOB at \$0.40/kgal was approved. Final sublease documents will be subject to approval of the NELHA Deputy Attorney General.

- **Item 8a. New Business –Discussion and Decision-Making to adjust acreage under extractive use for Kowa Premium Foods Hawaii Corporation Sublease K-6 covering approximately 24 acres.**

Deputy Director Sombardier stated that KOWA's construction plans have been

delayed and consequently KOWA is seeking a grace period on paying the extractive rate for a portion of the new acreage that was added in 2019.

Sublease K-6 is the third oldest sublease still currently in use at NELHA. The sublease was assigned from Big Island Abalone Corporation (BIAC) to KOWA late 2017 when KOWA purchased all BIAC assets and took over management of the abalone operations. NELHA staff and Board strongly supported the change of ownership as it prevented BIAC from closing its doors and saved approximately 30 jobs. KOWA also desired to expand and in December 2019, added another 14 acres to their original property.

KOWA had proposed to expand to two lots on either side of their current property, a 13.701-acre lot on the mauka side and a 5.461-acre lot on the makai side. KOWA had planned to complete construction of new facilities in three phases over five years. Phase I was to include site preparation, water system upgrades, a new canning manufacturing facility on the mauka lot and a new office building on the makai lot which will include facilities for visitor tours and tastings (dinning and retail sales are expected). Phase II was to include a new R&D building on the makai lot, site preparation for the remainder of the land, expansion of algae production areas, increased capacity in the form of additional equipment for the cannery facility. Finally, Phase III was slated for the construction of a bottling facility and expansion of the existing cannery facility, complete with full automation of the entire facility. The purpose of the expansion was to allow KOWA to develop new abalone products and improve on current operations with the implicit goal of increasing revenue.

The COVID pandemic has resulted in delays in construction planning and design activities as well as a significant decrease in revenues for KOWA as sales of abalone decreased drastically in 2020. Consequently, the cannery building has been reduced in size and its construction has been delayed. The cannery is not expected to be completed till later in 2021. In addition, the construction of the visitor center and restaurant/retail area has been postponed. KOWA was expecting to be generating revenues from the new construction by now and is asking for some assistance in offsetting the impact from these delays.

Despite last year's challenges, KOWA has nevertheless proceeded with its design work and is currently in the process of obtaining county permits for both Phase I mauka and makai expansions, albeit for a smaller surface area. KOWA has provided NELHA with the new drawings and plans.

Staff has worked with KOWA to come up with an acceptable solution to help with the unexpected delays. KOWA will retain the full acreage but some adjustment in rate regarding the lands that are not yet being used for extractive purposes is being requested.

KOWA has been paying extractive rate for 3 acres since September 2019 and is requesting to pay productive rate on this acreage until the cannery is build completion in November 2021 at which point the extractive rate will be paid for the area occupied by the cannery. Although the permitting for the visitor center will be completed at the same time as the cannery permitting, its construction will be postponed and is not expected to be built until 2022. KOWA requests to pay productive rent on the visitor center area until October 2022 at which point KOWA will resume paying extractive rates on the full 3 acres. The alternative of returning land to NELHA is neither desired by KOWA, nor favorable in the long run to NELHA. KOWA intends to continue with their long-term plan for their NELHA facility but need more time.

The ratio of productive to extractive areas will be reviewed upon completion of the phase I construction and if acreage used for extractive purposes is greater than 3 acres, the rent will be adjusted accordingly. KOWA is in good standing with NELHA.

Staff also took this opportunity to clean up some typos from the original sublease and subsequent Supplemental Agreement No. 2. regarding term and reopening dates. NELHA AG has reviewed and approved a Supplemental Agreement No.3 document.

Cody Brooks joined the meeting via Zoom at 10:29 a.m.

Director Hilton made a motion, seconded by Director Mielcke to approve the staff recommendation to approve the draft Supplemental No.3 and direct the Executive Director to work with NELHA AG to finalize and execute the agreement. The Board voted by roll call. Nine directors voted to approve, and Director Cysewski recused himself.

- **Item 8b. New Business – Discussion and Decision-Making Regarding Destiny Deep Sea Water, LLC approval to sublet to Nekia Chem Werks, Inc under Sublease K-12.**

DD Sombardier stated that Destiny Deep Sea Water LLC (“Destiny”) is seeking Board permission to sublet to Nekia Chem Werks, LLC (“Nekia”), a water products company for a period of 5 years.

Destiny (previously Enzamin USA, Inc.), a desalination and water botting company with ties to Al-Morrel Development from Utah which specializes in rapid installations of water distribution facilities in the middle east primarily for military use, has been trying to sell or lease its facility at NELHA for several years. Destiny is currently in discussion with the CEO of Nekia, Inc to sell the Destiny business to Nekia. As a first step, Destiny wishes to sublet their facility to Nekia for 5 years before a potential sale.

Destiny previously obtained approval from the NELHA Board to sublet a portion of their facility to a bottle preform manufacturing company, EnKon, from 2013 to approximately 2017. That business provided plastic bottle preforms for Destiny and others in the park as well as in Hawaii and is no longer subletting from Destiny.

Destiny now wishes to lease the entirety of the building and approximately 14 parking spaces to Nekia for the purpose of producing deep sea water products which would include non-flavored bottled water, flavored bottled water using aluminum containers. Nekia will also provide private labels and will continue to service Destiny's clients, some of which are bulk water clients grandfathered in from the early days before NELHA Board policy restricted water products to be bottled/packed on site at NELHA. The proposed use of the property will therefore be in line with Destiny's original business plan.

Nekia is a State of Georgia for profit corporation which operates out of Florida and specializes in chemical engineering (<https://www.nekiachemwerks.com/>). Nekia plans to conduct business at NELHA as WaterWurks, Inc., an entity which still needs to be formed and registered.

Destiny has provided NELHA staff with Nekia's business plan along with a copy of the commercial lease Destiny signed with Nekia. This lease would take effect on July 1st and only after NELHA Board approval. The sublet rent includes a monthly base rent. Monthly CAM charges, annual 3.5% base rent increases and abated fees for the first 4 months. The agreement between Destiny and Nekia has a 5-year term from 7/1/2021 to 6/30/2026. NELHA Board approval would be for this 5-year term only. Destiny will need to come back to the Board for any action beyond 6/30/2026.

Destiny's sublease K-12 "Subletting" paragraph 28 specifies that NELHA may review the sublet rent and revise the rent of the subleased premises based on the proposed sublet rent. Given that Destiny will be paying approximately 10% of the revenue received from subletting, NELHA staff recommends no change other than including the annual CPI adjustment to bring the sublease in line with NELHA'S boiler plate sublease.

A draft Supplemental No. 2 has been drafted and reviewed by Destiny and NELHA AG to address subletting to Nekia and to clarify the reporting of percent rent. In response to challenges experienced with the past reporting of Enkon gross sales, the supplemental agreement includes language that clarifies that Nekia is responsible for submitting an annual report on gross sales which are to be added to Destiny's gross sales for the purpose of calculating % rent (set at 2%).

The supplement No. 2 also clarifies that new bulk sales are not allowed following

the Board policy to allow only bottled or packaged deep sea water beverage manufacturing. However, the agreement specifically allows to continue producing bulk water for Destiny's bulk water clients established before the policy went into effect.

Destiny has significant back rent due. Approval would be contingent on NELHA receiving 70 percent of back rent due by June 1, 2021, and the remaining balance before July 1, 2021. Supplemental No. 2 would not get executed nor Board approval be considered final without Destiny taking the steps above necessary to be in good standing with NELHA.

Vice-Chair Mielcke made a motion, seconded by Director Bossert to approve staff recommendation for granting approval for the subletting of Destiny's building to Nekia as described above and direct the Executive Director to work with NELHA AG to finalize and execute the supplemental agreement No.2 to Sublease K-12.

A roll call vote was taken, and the motion carried unanimously with 10 "yes" votes.

Director Sims joined the meeting at 10:48 a.m.

- **Item 6. Financial Report: Approval and Decision Making.**
ED Barbour presented and overview and summary the Financial Report in the board packet (Attachment A). Chair Rosehill called for a motion to accept the report. Vice-Chair Mielcke made the motion which was seconded by Director Cysewski. There being no further discussion or questions concerning the Financial Report, Chair Rosehill thanked NELHA and its staff for its report.
- **Item 9. Executive Director's Informational Status Report on ongoing projects including: New leases; seawater system maintenance; new potable water supply update; aquaculture accelerator and investment fund initiative and grant application to extend accelerator for four additional years; renewable distributed energy resources initiative including grant applications and solicitations for microgrids, energy storage, and solar desalination; analysis HOST Park energy system; and, the grant application to the US government for damage to buildings and associated items in Kapoho, Hawaii.**

ED Barbour presented and overview and summary of NELHA's major goals and key projects timeline as contained in the Board Packet (Attachment B) as part of the Executive Director's Information Status Report.

Director Adams joined the meeting at 11:02 a.m.

Chair Rosehill asked if there were any questions or comments. Hearing no further questions or comments, the report was accepted unanimously as presented.

NELHA Board of Directors Meeting Minutes
June 8, 2021

- **Item 10. Announcements.**
There were no announcements.
- **Item 11. Adjournment.**
Chair Rosehill adjourned the meeting at 11:24 a.m.

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