



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 30, 2020

10:00 a.m.

An Interactive Conference Technology Meeting was held between the following three locations:

NELHA Ocean View Conference Room Hale Iako

73-970 Makako Bay Drive

Kailua-Kona, HI 96740

Members / Designees

Riley Saito (County of Hawaii)
Robert Masuda (DLNR)
Dr. Gerry Cysewski (Tenant Representative)
Neil Sims (Tenant Representative)
William Mielcke (Gov Appointee / Vice Chair)

Guests / Staff Present

Keith Olson (NELHA)
Laurence Sombardier (NELHA)
Jan War (NELHA)
Dr. Alex Leonard (NELHA)
Jeff Zimpfer, National Park Service (Guest)

Department of Business, Economic Development and Tourism

Conference Room 506

250 South Hotel Street

Honolulu, Hawaii 96813

Members / Designees

Cyd Miyashiro (Gov Appointee)
Alan Hilton (RAC Chair)
Dr. Phil Bossert (RAC Secretary)

Guests

None

Department of Business, Economic Development and Tourism

Conference Room 436

250 South Hotel Street

Honolulu, Hawaii 96813

Members / Designees

Linda Rosehill (Gov. Appointee / Chair)
Chung Chang (DBEDT)

Guests

Daniel Jacobs (Deputy AG)
Greg Barbour (NELHA Executive Director)
Sandra Gibson (Guest/ Sea Salts)

Board Members Excused/Absent

Dr. Vassilis Syrmos (University of Hawaii)

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1. **Call to Order.**

The meeting was called to order by Chair Rosehill at 10:07 a.m.

2. **Approval January 21, 2020 NELHA Board of Directors' Meeting Minutes.**

Chair Rosehill entertained a motion to accept the Board minutes of January 21, 2020. Director Cysewski made the motion, which was seconded by Director Mielcke. vote was taken, and the motion passed unanimously. There was no discussion.

3. **Approval February 18, 2020 NELHA Board of Directors' Meeting Minutes.**

Chair Rosehill entertained a motion to accept the Board minutes of February 18, 2020. Director Sims made the motion, which was seconded by Director Bossert. A vote was taken, and the motion passed unanimously. No discussion ensued.

4. **Approval of the March 24, 2020 NELHA Board of Directors' Meeting Minutes.**

Chair Rosehill entertained a motion to accept the Board minutes of March 24, 2020. Director Sims made the motion, which was seconded by Director Chang. A vote was taken, and the motion passed unanimously.

5. **Election of NELHA Board of Director's Officers.**

Director Chang thanked Chair Rosehill for her service and announced that the Governor's office desires to have Chair Rosehill continue as a "hold over" Board Member. Due to disruption regarding COVID-19 issues Governor will not be going through the nomination and confirmation process during the current legislature session for Director Rosehill and she will continue as a NELHA Board Member.

Director Cysewski nominated Chair Rosehill as Chairperson and Director Mielcke for Vice-Chairman for the period July 1, 2020 through June 30, 2021. Hearing no further nominations or discussion, Chair Rosehill entertained a motion on the matter. The motion was made by Director Bossert and seconded by Director Miyashiro. A vote was taken, and the motion passed unanimously. Chair Rosehill then commented that it has been a pleasure serving as the board chair for the past two years and that she looks for serving in this capacity over the next year.

At this point in the meeting, the decision was made to address New Business agenda item 8b. Director Saito also jointed the meeting in Kona at this time (10:14 a.m.).

8b. **Discussion and Decision-Making regarding the transfer of Mera Pharmaceuticals, Inc deep seawater salt business to Hawaiian Islands Trading Company, LLC, the termination of Mera Pharmaceuticals, Inc. Sublease K-28 and final approval for a new sublease with Hawaiian Islands Trading Company, LLC.**

NELHA Deputy Director (DD) Sombardier summarized the background information in the Board Book concerning this agenda item and the NELHA staff recommendation for the Board to grant approval to allow SEA SALTS to take over the MERA facility as proposed in the business plan submitted to the Board. NELHA staff further recommended that approval be given to enter into a new five-year sublease.

NELHA DD Sombardier then indicated that Sandra Gibson, who is the President and CEO of Hawaiian Islands Trading Company LLC / SEA SALTS was in attendance in DBEDT conference room 436 to answer any questions that the board may have concerning this matter.

At this point in the meeting, Chair Rosehill entertained a motion to accept the staff recommendation for this project. The motion to do so was made by Director Mielcke and

seconded by Director Hilton.

Ms. Gibson pointed out that she had brought samples of some of Hawaiian Islands Trading Company's products for the board to examine. Although table and cooking specialty salt is SEA SALTS core product, the company has also recently expanded into bath salts. The salt producing system at Mera Pharmaceuticals is capable of producing Nigari, which is a high magnesium salt used in culturing tofu. SEA SALTS plans to market a Nigari product as well. Hawaiian Islands Trading Company has been in business for over eight years and has over 100 retail partners in Hawaii representing their product line.

Director Chang pointed out that Hawaiian Islands Trading Company's profit and loss statement shows a loss in the first year of operation. Director Chang asked if the parent company will be covering this period of loss. Director Chang went on to ask if the parent company is operating at a profit. Ms. Gibson indicated that the parent company has been struggling for the past few months due to the COVID-19 situation, although it is still operating at a profit and will be able to cover losses.

Director Sims asked if the COVID-19 situation is classified as a "force majeure" and if the force majeure clause in the SEA SALTS lease would be applicable to all NELHA tenants. NELHA DD Sombardier mentioned that the NELHA standard boiler plate sub-lease does not have a force majeure clause in it and that the clause referenced by Director Sims was added at SEA SALTS request. DD Sombardier added that the clause in question is a "Termination by Lessee" clause with 6-month notice. The termination event includes force majeure items such as a pandemic but also new environmental regulations or archaeological discovery which are beyond Sublessee's control and would prevent performance by Sublessee. Director Sims asked if this type of clause should be put into future leases. DD Sombardier responded that it would be appropriate to review the leasing policy including boiler plate leases as this has not been done since 2016. Changes to the boiler plate lease including the possibility of adding a force majeure clause should be considered at that time.

Director Masuda indicated that since this is a legal matter it should be reviewed by our AG. Director Mielcke agreed with this. Chair Rosehill then asked AG Jacob if he was aware of any ongoing policies of this type that are being addressed by the AG's office at this time. AG Jacob indicated if this is a policy that NELHA chooses to adopt in future, he would certainly be involved and advise NELHA on the matter. Chair Rosehill indicated that we should find out what other State agencies are doing concerning the COVID-19 situation. AG Jacob went on to say that he was not aware of any of the AG's office general conditions being modified at this time, although he would check on this matter. NELHA ED Barbour indicated that he understood that NELHA's master lease with DLNR did have a "force majeure" clause in it and this was confirmed by DD Sombardier. DD Sombardier went on to indicate that the paragraph in the SEA SALTS lease is more comprehensive than in the DLNR master lease as it allows for termination.

Chair Rosehill stated that it was appropriate to review the sub-lease boiler plates and policies and asked ED Barbour to take action on this matter, review the current lease terms and come up with recommendations to the board as to changes that may be necessary going forward. Chair Rosehill went on to ask AG Jacob to check with his department to make sure there is consistency in what NELHA is doing vis a vis what other State agencies are doing.

ED Barbour pointed out that this termination clause is not a significant departure from past policy as NELHA allows tenants to terminate their leases quickly for good cause.

Having heard a motion and accepted the NELHA staff recommendation, Chair Rosehill asked for a vote on the matter. Director Cysewski asked AG Jacob whether tenant representatives could vote since the matter involved leasing. AG Jacob indicated that tenant representatives cannot vote on matters involving lease rates, although they can vote on matters such as this that are not a deviation from standard rates and policies. Upon this clarification, Chair Rosehill asked again for a vote to be taken. The vote was taken, and the motion passed unanimously.

6. **Financial Report: Approval and Decision Making.**

NELHA ED Barbour presented a report for the first eleven (11) months of Fiscal Year 2020. There are no major deviations as the revenue stream is relatively constant. Overall revenue is tracking about 4% higher than last year. Seawater system revenue is down about 10% compared to the past two years to a lowering of demand. NELHA two largest seawater consumers have found ways to increase efficiency and lower their demand.

As far as base revenue, half of NELHA's revenue is from rent and half is from seawater sales. The seawater system revenue is essentially a break-even situation and as such has less impact on NELHA's bottom line. So far, base revenue is up 13% or \$170,000.

For expenditures, expenses for the first twelve months of this fiscal year were 4.5% or \$80,000, which is (2%) higher compared to last year. Efforts continue to be conservative to increase the Special Fund balance. NELHA managed this year to purchase new equipment and parts for the seawater system with CIP funds that NELHA obtained two years ago.

NELHA feels that it has done well in FY20 to hold down costs and increase revenue.

Upon concluding the Financial Report and hearing no further questions or comments, Chair Rosehill asked for a motion to accept the report. The motion was made by Director Masuda and seconded by Director Cysewski. A vote was taken and the motion to accept the Financial Report for FY20 was unanimous.

7. **Old Business.**

7a. **Discussion and Decision-Making regarding final approval for the sale of the building previously owned by Hawaii Deep Marine incorporated and lease of the 4.5-acre property to Blue Ocean Mariculture LLC.**

Chair Rosehill asked NELHA DD Sombardier to present the background information concerning this agenda item. DD Sombardier indicated that NELHA received a last-minute request from Blue Ocean Mariculture (BOM) to change one of the terms of the sublease. NELHA did not feel that it would be able to review the request which concerns the percentage rent clause in time for the meeting and as such, requested that this agenda item be deferred to another meeting. The change requested by BOM would have a significant impact on NELHA's leasing policy as well as an impact on the BOM sublease. DD Sombardier also mentioned that BOM has a new CEO, Richard Jones.

Director Mielcke asked if this matter would require a special board meeting to resolve or whether this would carry over to the next meeting. DD Sombardier responded that BOM appears to still be very committed to this project and would like to resolve the matter as soon as possible. At this time, it is too early to say if a special board meeting would be required. ED Barbour mentioned that the next regularly scheduled board meeting would be on July 21, 2020. Although this schedule may fit within BOM's timeline, ED Barbour emphasized that this matter is a significant deviation from the deal that NELHA negotiated with BOM and will be difficult to resolve.

Director Sims asked ED Barbour if the nature of this policy change could be shared with the board. ED Barbour responded that BOM is asking for a cap on percentage rent. Director Sims stated that he is aware of the significance and impact of percent rent since he was co-founder of the offshore lease that was acquired by and is currently being operated by BOM. At the time that Director Sims was part owner of this facility, the concern was that NELHA would require percentage rent payments from the offshore cage system, whereas the only connection was with the land-based hatchery on NELHA property. He questioned whether it is fair to be taking a percentage rent from the offshore operation where NELHA does not provide the same sort of support as it does to tenants on land.

ED Barbour mentioned that the current BOM hatchery operation does have a percentage rent requirement, although it has never had to pay this because its percent rent has always been below the base rent charged. NELHA has no interest in the offshore fish cages. DLNR is the entity that receives percentage rent from the value of the fish in the offshore cages. What

NELHA is negotiating involves the value added to the fish coming out of the processing facility and not the full the value of the fish. This policy is consistent with all other leases at NELHA. DD Sombardier confirmed that the percentage rent would only be applied to the added value of the fish after leaving the processing facility and would exclude the value of the fish entering the processing facility.

Chair Rosehill asked if there was any further discussion on this matter. Hearing no further comments, Chair Rosehill indicated that this agenda matter will be deferred until the next meeting or at a special meeting if one should become necessary.

8. New Business.

8a. Discussion and Decision-Making regarding reopening of monthly rental fees and performance bond requirements for Mats4 LLC Sublease K-36

NELHA DD Sombardier presented the background information concerning this agenda item as written in the Board packet.

After the summary information was presented, Chair Rosehill asked for a motion to accept the staff recommendation on this matter. AG Jacob indicated that since this matter concerned lease rate adjustments, the tenant representatives on the Board should choose to recuse themselves from voting. Director Mielcke moved to accept the motion, which was seconded by Director Hilton.

During the discussion period, Director Masuda indicated a concern that this project is dependent on tourism. NELHA being a science and technology related organization needs to make sure projects relate to its core mission and that it does not turn into a tourism facility. Director Cysewski mentioned that in NELHA's Master Plan, the highway frontage property is to be developed as a commercial zone and that this project fits within the long-term master plan objectives. Chair Rosehill indicated that there has been previous discussion of this concern and that the consensus of the Board was that this project does fit within the confines of the Master Plan and NELHA's future development plans. Director Hilton asked if this was the first project of this kind under the economic driver development category for NELHA or if there are some existing tenants who fall within this strategic category. ED Barbour mentioned that this will be the first tenant of this kind and went on to say that of the 900 acres of master planned property, NELHA has reserved 80 acres along the highway for economic revenue related projects. This "economic driver" area is meant to generate as much revenue as possible, although the overall objective will be to continue the ocean science and technology theme throughout all of NELHAs property. The idea is that revenue from this area will help to generate income to operate the rest of the property. This type of commercial development would only be allowed in the 80-acre area and would not proliferate into other areas of the park.

Director Hilton asked if the Mats4 LLC project would have renewable energy installations at their facility. ED Barbour mentioned that they would sell NELHA tenant products in their store, use deep seawater for cooling, are working with HELCO to install fast electrical vehicle charging stations, will install photovoltaic panels on their roof and plan to have a hydrogen fueling facility when that technology matures. Mats4 LLC is trying very hard to keep their development in the theme of ocean, science and technology. Director Masuda indicated that DLNR is comfortable with this approach if it is just for the designated 80-acre area and if NELHA continues to follow its master and strategic plans for the remainder of its property.

Hearing no further discussion on this matter, Chair Rosehill asked for a vote on the motion. Director Masuda indicated that he is voting to approve the motion, although would like his concerns noted. Chair Rosehill indicated to Director Masuda that his concerns are noted and will be recorded in the minutes of the meeting. At this time, tenant director representatives Cysewski and Sims asked to be recused from voting.

Director Mielcke suggested that the NELHA Board take the time to review its Master Plan with Board members. There are several new Board members and considering Director

Masuda's concerns, this may be a good time to do this. Director Masuda thanked Director Mielcke for his suggestion and emphasized that NELHA needs to continue to follow its Master Plan objectives moving forward. Director Sims suggested that rather than taking up a lot of time at a Board meeting that initially a brief PowerPoint presentation of 10-15 slides could be prepared to present the main bullet points of the existing NELHA Master Plan. After this presentation has been reviewed by the Board, individual Board members can ask more specific questions at one of the next meetings. Chair Rosehill asked that an executive summary of the NELHA Master Plan be put together by NELHA staff and circulated to Board members. The executive summary will be put on the agenda of a future meeting so it can be discussed in further detail.

8c. Discussion and Decision Making regarding the NELHA Fiscal Year 2021 Budget.

ED Barbour presented a recap of the proposed FY21 budget as outlined in the board packet. The budget will be very tight. It assumes that NELHA will not lose any businesses due to COVID-19 issues. We will be watching expenditures very closely and adjust as needed.

In addition to the proposed \$5M operating budget, NELHA has a \$2M grant from DOE for the Sunshot desalination project, the aquaculture accelerator with HATCH and continues to work with the insurance companies and FEMA to obtain \$5.5M for the loss of the three buildings in Puna. NELHA has also recently applied for an additional \$4.5M grant to extend the accelerator with HATCH for an additional four years. In addition to these grant funded projects, NELHA has additional projects and equipment funded with the \$3.5M in previously appropriated CIP funds. All of these initiatives will make for a busy year despite the economic challenges facing the State. ED Barbour complimented the NELHA team for successfully coming through the past three months very well and everyone for pitching in to maintain park operations.

Chair Rosehill commended ED Barbour and the NELHA staff for the excellent work they done over the past three months and for keeping the board apprised with weekly status updates. Given the situation that we find ourselves in, NELHA has done an excellent job keeping the park going, making sure that our tenant needs are addressed, and taking care of any other concerns that did occur.

9. Hawaii Technology Development Corporation: Informational Status Report

NELHA Chair Rosehill asked Director Chung if he had anything to report concerning the status of HTDC. The HTDC board has essentially been dissolved as of the date of this meeting. Chair Rosehill indicated that HTDC's last board meeting was about three weeks ago and at that last meeting the board gave limited power to the HTDC Executive Director to react to grant opportunities that may arise. The only board member that still exists is the DBEDT Director, thus for all intents and purposes, the HTDC board no longer exists. Director Chung mentioned that despite the current situation, it is anticipated that HTDC business will continue. ED Barbour asked if HTDC will continue to have a representative on the NELHA board. Since this was not certain, ED Barbour volunteered to look further into this matter.

10. Executive Director's Informational Report

ED Barbour provided an overview and summary of NELHA's Major Goals and Key Projects Timeline, as shown in the chart included in the Board Book.

After discussing the major goals and key projects on the chart, a short recess was called by Chair Rosehill. ED Barbour continued to present the remainder of the informational report after the break.

At 12:12 p.m. Chair Rosehill entertained a motion to go into Executive Session to discuss insurance matters relating to the loss of the infrastructure at the Puna facility. Director Mielcke made the motion, which was seconded by Director Masuda.

The Board came out of executive session at 12:32 p.m. Chair Rosehill entertained a motion to readjourn the meeting. The motion was made by Director Mielcke and seconded by Director Cyswski.

11. Announcements.

None.

12. Adjournment.

Chair Rosehill entertained a motion at this time to adjourn the meeting. Director Mielcke made the motion, which was seconded by Director Masuda. The meeting was adjourned at 12:33 p.m.

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