



# Clean Water And Natural Lands Advisory Commission

CITY AND COUNTY OF HONOLULU

530 South King Street, Room 208 • Honolulu, Hawaii 96813

## COMMISSIONERS

Sherry P. Broder – Chairperson  
Jason Kekahi “Kahi” Pacarro – Vice Chair  
Keli’iahonui Kotubetey  
William Reese Liggett  
William Kamana’olana Mills  
Jamie Tanimoto

**Meeting Minutes  
Friday, May 12, 2023  
9:00 a.m.  
Meeting Held Virtually**

CALL TO ORDER – Chair Sherry Broder called the meeting to order at 9:02 a.m.

Commissioners Present – Sherry Broder, Jason Kekahi “Kahi” Pacarro, Keli’iahonui Kotubetey, William Reese Liggett, William Kamana’olana Mills

Commissioners Absent – Jamie Tanimoto (excused)

## Staff Resources Personnel Present

Dawn Spurlin, Deputy Corporation Counsel  
Tammy Namihira, Budget and Fiscal Services (BFS)

Chair Broder asked about Commissioner Cramer’s status.

Ms. Namihira replied that he had resigned from the Commission a few months ago and City Council has not appointed a replacement yet.

Chair Broder commented that she thought he only recused himself from the pending project and misunderstood that he was resigning from the Commission.

Ms. Namihira confirmed his resignation and stated that she would again check with City Council on the status of his replacement.

## APPROVAL OF THE MEETING MINUTES FOR FEBRUARY 10, 2023

The minutes of the February 10, 2023 meeting were not approved as Ms. Namihira stated it was incorrectly listed on the agenda as being the minutes of the January 13, 2023 meeting for approval. Chair Broder declared that approval of the minutes be tabled until the next meeting to be ensure that Sunshine Laws were being adhered to.

DEPARTMENT OF BUDGET AND FISCAL SERVICES PROVIDED AN UPDATE ON THE CWNL FUND BALANCE

Ms. Namihira shared the CWNL Fund balance spreadsheet provided as part of the meeting materials and that the current Fund balance as of April 17, 2023 was approximately \$54,568,291.87. The amount of \$17,167,000 would lapse June 30, 2023 and \$17,894,939 would lapse on June 30, 2024. These are the amounts that are appropriated annually but if not spent, the funds are not lost but remain in the fund. The approved projects total \$14,230,300 so the amount of funds requested for the projects fall within the appropriated funds to be used within the next year. She stated that she does not have the appropriated amount for June 2025.

Chair Broder commented that this is a really good report and should be shared at every meeting.

Ms. Namihira stated that if there is no activity, the report would remain the same. The report would only change if DLM finalizes a project where funds would be expended or the Commission approves a project, which would be added to the pending projects section.

Chair Broder stated that this should be shared so that the public can see on a monthly basis what the balance is and it might spur people to apply knowing how much money there is. She asked the Commissioners if there were any questions.

Commissioner Kotubetey asked about two of the older projects from 2019 and 2021 and why they were still pending or if this is a normal timeline for projects to be completed.

Ms. Namihira stated that DLM should be giving an update on these projects shortly but her understanding is that the Pearl Harbor project is going through condemnation and is unsure if CWNL funds will be used. For the Waikalua Loko l'a project, DLM is working with the non-profit to clear up the title issues but she cannot confirm why the project is being held up.

Commissioner Kotubetey commented that it sounds like it's a case by case basis.

Ms. Namihira agreed.

Chair Broder thanked Commissioner Liggett for requesting the report and stated that the Commission has been asking for it for a while and it is very helpful to see what is actually in the Fund. She also thanked Ms. Namihira for putting the report together.

Ms. Namihira commented that it was the Accounting division that helped in giving the updated balance to complete the report.

Chair Broder stated that it was formatted in an easy to read manner and thanked Ms. Namihira.

Ms. Namihira also commented that there are no new applications except for the pending Wailupe project.

DEPARTMENT OF LAND MANAGEMENT PROVIDED AN UPDATE ON THE PENDING APPLICATION FROM PUUHONUA O WAILUPE AND THE MAUNAWILI PROJECTS RECOMMENDED BY THE COMMISSION AND APPROVED BY CITY COUNCIL

Chair Broder commented that she had cancelled last month's meeting because there was nothing to take action on. She did want to meet this month to get an update on the status on the approved Maunawili projects and the Puuhonua o Wailupe application so there is no action to be taken. She asked if there are any questions.

Regarding the application for Puuhonua o Wailupe, Commissioner Mills stated that besides being on this Commission, he is the Chair of the Oahu Island Burial Council and remembers this case coming forward to the Council with a burial treatment plan that was submitted. As stated on the agenda, the purpose is for preserving human remains and burial cave on the property. If his memory is correct, there were remains found in a blister

but no concentration of burials in that area. During the meetings, there was a lot of back and forth because basically people in the surrounding area did not want the owner to develop the land area. He is really curious of this project because there was a plan that was passed by the Island Burial Council and accepted by the State Historic Preservation Division (SHPD) so no matter who owns the land, the burial sites would be taken care of. He would like to know if there was anyone from Puuhonua o Wailupe present on the meeting and if there were more burials discovered after the plan was passed by the Council. There was no representative present.

Acting Director Catherine Taschner from the Department of Land Management stated that the City received an application from Puuhonua o Wailupe for the protection of the burial sites and that there is a burial treatment plan. The applicant is stating that there potentially other sites so the Administration advised that an archaeological inventory survey (AIS) be completed to document what is historic, cultural and archaeological sites may be on the property. The City is committed to work with the applicant in obtaining an AIS and it would be very informative to fully understand what is there. They had a site visit with the applicant last Friday and have been in constant communication with them.

Commissioner Mills thanked Ms. Taschner for the update and stated that he would hold his comments for later.

Chair Broder asked how much was the AIS cost and if it is the responsibility of the applicant.

Ms. Taschner commented that they are still going through the procurement process and the cost hasn't been determined. Once that is known, she would be happy to share with the Commission.

Chair Broder asked that if it is going through the procurement process that the department would be paying for the survey.

Ms. Taschner replied that in this case, they are researching if Clean Water funds could be used to pay for the survey.

Commissioner Mills commented that he recalls that Bob Breckman was the archaeological firm on this project and in order for them to have a burial treatment plan, an AIS should have already been completed and there should be one on file.

Ms. Taschner commented that there was a previous AIS completed for a large 123 acre parcel whereas here they are looking at a 2.5 acre parcel so they really want to understand what is on this property. When speaking with the applicant, SHPD has been on the site several times and walked the property with them. The City wants to know what sites exist on the property outside of the report that went to the burial treatment plan.

Chair Broder asked Commissioner Mills if it would be of assistance if the AIS that was already completed be circulated to the Commission.

Commissioner Mills commented that he thought it would be and that although the AIS was done on a large parcel and the City now wants one done on a smaller lot, he doesn't know what additional things it would find because it's not a large property. In addition, he is concerned about setting a precedence as they found one burial in a blister and the developer is asking for \$8 million. He is worried that it may set a precedence with other developers that want to develop a property and if they discover burials, decide they don't want the property and then come before this body to purchase land and that makes him nervous. Usually with the Island Burial Council and SHPD, they want the landowner to take on the kuleana with the recognized lineal and cultural descendants to malama the iwi kupuna. He said he will stop for now until he gets more information and sees the application. He thanked everyone for the time.

Chair Broder asked if the previous completed AIS and copy of the procurement notice could be sent to the Commissioners so that it could see what the department is considering.

Ms. Taschner replied that they will be able to provide the Commission with the information.

Chair Broder thanked her and asked if there were any other questions or concerns.

Vice Chair Pacarro asked if this is the parcel up on the hillside that can be seen as you drive on the highway that has been scraped and has been in the news.

Ms. Taschner replied yes.

Chair Broder asked if there were any other questions.

Ms. Namihira commented that there were two people registered to testify on this item and just prior to the meeting had sent written testimony to the Commissioners for review.

Jeanne Ohta, president of the Aina Haina Community Association testified that she wanted to inform the Commission that they have been involved in protecting this property since 2006. There was an initial large proposal and a current proposal which was about 10-12 years after the initial one. The primary concern has been for the protection of the neighboring homes because of the construction, grading and excavation work that was proposed. Wailupe Valley is prone to rock slides, boulder falls and slipping homes so that was the concern of the neighbors next to and below the property. Commissioner Mills already expressed one of her concerns that is in her written testimony so she won't go over that. But she does echo his concern over setting a precedent and is available for any questions.

Chair Broder asked if there were any questions then stated that the agenda states that the application is for \$7.6 million for the purpose of preserving any human remains and burial cave on the property. It seems that what Ms. Ohta testified to is that the neighborhood board is concerned about the danger to the residents below because of possible rock slides and other environmental hazards based on the type of terrain in that location. So it seems that what Ms. Ohta said and what the application is for is a little different.

Ms. Ohta clarified that she is with the Aina Haina Community Association, not the neighborhood board. The reason she did not mention the preservation, conservation of iwi and other native resources is because they are not against purchasing of the property those reasons. She also concurs with DLM for the additional AIS because their understanding was that the original AIS was for a much smaller property but one of the reasons she brought up the safety issue is because she wanted the commissioners and City to know that if they choose to purchase the property, it is degraded, excavated and graded and has not been put into a state of remediation that is safe. The land owner had a stop work order and she wanted everyone to be aware of that and that may weigh into the cost of the property.

Chair Broder thanked her and asked if there were any other questions.

Vice-Chair Pacarro asked if Puuhonua o Wailupe was the developer or another group.

Ms. Ohta replied that it is a group of cultural practitioners and lineal descendants for the area and thinks their aim is to be the stewardship group for the property.

Chair Broder asked if there were any other comments or questions.

Vice-Chair Pacarro asked who came up with the \$7.6 million amount.

Ms. Ohta replied that she ran the numbers and believes that it is from the City and County property tax assessment, which currently for 2023 is exactly that number of \$7,666,000.

Chair Broder asked if it was known if that amount includes the degradation of the property as Ms. Ohta had earlier indicated or how they came up with that.

Ms. Ohta stated that is exactly one of their concerns and that there be an independent appraisal of the property. They have not worked with the developer in some time but that is what his asking price was.

Chair Broder asked if there were any other questions or comments. She then asked for the second testifier.

Ms. Namihira called Ms. Marie Riley.

Ms. Riley stated that she did not want to take up the committee's time with reiterating what Ms. Ohta reported but did want to comment that they tried working with the land owner for several years to engage him with thoughts of selling the property rather than developing it. She did submit written testimony giving some of the factors about the property to make it a very poor decision to construct or grade anything. Given all of the slide areas in East Honolulu on such soils, which are highly elastic and submit to slow movement down slope and drastic movement when wet. She commented that she was part of an entity that helped an individual bring a lawsuit against a joint development plan run by the City and County and the State of Hawaii in connection with a private developer that was a turnkey project in Kuliouou. Several houses, roadways and all of the infrastructure was put in and when there was a drastic rainfall in 1987/1988, the entire subdivision came down hill to great loss. They represented a woman, Mrs. Franks, who owned a neighboring property that had to be bought out by the City because her property was damaged by what happened in the partially built up subdivision in her neighborhood. She stated that history repeats with examples of foolish attempts to develop on such slopes and have provided some of these cautions in her written testimony.

Ms. Riley continued that the proposed development is on a very unlikely and unworthy site. The current developer attempted to flatten out sections of this slope in order to provide foundations for his initially planned large subdivision, but then subsequently for eight (8) separate condominium units. You can see from Kalaniana'ole Highway, a large wall that is about nine (9) feet above ground and two (2) feet below ground set to protect one house from boulder runoff and slippage, which were in the warnings that were given to the developer before he started so it is a very real threat. They are totally behind Puuhonua o Wailupe to take over and manage the property that is sacred to the Hawaiian people. There is evidence of burial sites, some discovered, some not yet discovered and they have documents saying that there more things up on the hill. It is not a slope to be damaged or modified by any kind of digging at all. In addition, instability of the slope is not qualified for this kind of development. As Ms. Ohta had pointed out, they question the source of the valuation as it tracks with tax documents. There was a virtual proposal where there were no metes and bounds, nothing that set one parcel apart from another so the tax department had nothing to go on except for what Mr. Untermann showed at one of the meetings with the community where he took a big map, divided into certain squares, some bigger and some smaller. She believes that was the basis for what the tax department used in giving the valuations for the 2.9 acre parcel – divided it up into eight (8) segments. They have not yet seen any valuation for the \$7,666,000 that holds any weight or support of this valuation and assessment. They also would like to see a fair and impartial assessment as well as the archaeological inventory study. She has provided written testimony and thanked the Commission for her time.

Vice Chair Pacarro asked Ms. Taschner what the liability is if the City and County were to go forth and acquire a property like this and there's down slope action that affect homes down slope.

Ms. Taschner replied that if it's a question as to liability, she would like to consult with Corporation Counsel and will be happy to get to him with a response.

Chair Broder asked if there were any other questions, then thanked Ms. Riley for her testimony. She asked Ms. Namihira if there were any other testifiers on this issue.

Ms. Namihira stated that there were no others signed up to testify but was unsure if there was anyone else online.

Chair Broder asked if there were any other testifiers. There were none.

Chair Broder asked if Ms. Namihira would be giving the update on the Maunawili projects.

Ms. Namihira replied that it would be Ms. Taschner.

Ms. Taschner commented that as of last week, matching funds from the State Legacy Land Fund were granted so the applicants are working through the State process right now with DLNR. She thinks they are able to move forward now since they were kind of waiting for the matching funds to come in. She reached out to the applicants last week to congratulate them and also reached out to TPL and HILT since they're assisting with the transactions. DLM has not been able to meet with the applicants yet but will be meeting soon and will be able to move forward with the two transactions.

Chair Broder stated that was fantastic and asked if there were any questions for Ms. Taschner for these projects. She asked Ms. Taschner's opinion if the Commission should write a thank you note or if DLM took care of that.

Ms. Taschner stated that it would be a nice gesture and they would appreciate it.

Chair Broder commented that it is really exciting and asked Ms. Namihira to write something from the Commission. She asked if it was okay with everyone or if anyone had any objections to acknowledge them. There were no comments or objections.

### ELECTION OF OFFICERS

Chair Broder stated that the next item on the agenda was the election of officers. She had thought that because there was a new commissioner (Cramer) that recently came in, that there should be an election but misunderstood about his resignation from the Commission. Since it's on the agenda and the officers have been the same for a while, she thought it would be a good practice to conduct the election. She asked for a nomination for Chair.

Commissioner Liggett nominated Sherry Broder to be Chair.

Chair Broder asked if there was a second.

Commissioner Mills seconded.

Chair Broder asked if there were any other nominations. She then asked if the Vice Chair could conduct the elections since she was the nominee.

Vice Chair Pacarro asked about the Vice Chair position.

Chair Broder stated that they would do that second so he could conduct this election.

Vice Chair Pacarro stated that he respectfully would like to be considered to be Chair.

Chair Broder asked if he was nominating himself.

Commissioner Kotubetey nominated Vice Chair Pacarro for Chair.

Chair Broder asked if there was a second.

Vice Chair Pacarro stated that he was not sure if he could second himself and if that is possible, he seconds himself.

Chair Broder was unsure and asked Deputy Corporation Counsel Spurlin if that was possible.

Ms. Spurlin stated that she did not know but would advise against it.

Chair Broder asked if there was a second.

Commissioner Mills asked if he could offer a second.

Chair Broder then asked Ms. Namihira to record the vote and call the roll. She asked Ms. Spurlin on how the vote should be taken. Would it be to call the roll and people vote for whomever they are going to vote for or should it be a vote for Broder, then Pacarro.

Ms. Spurlin stated that it needs to be done separately so Chair first.

Chair Broder stated that Vice Chair Pacarro is running for Chair as well. She then asked Ms. Namihira to call the

roll for Broder.

Ms. Namihira asked Vice Chair Pacarro for his vote.

Vice Chair Pacarro said he would recuse himself.

Chair Broder stated that he should vote no.

Vice Chair Pacarro voted no and stated that he loves Chair Broder.

Chair Broder stated she knows and that's fine. Not to worry about it.

Ms. Namihira asked for Commissioner Kotubetey's vote.

Commissioner Kotubetey asked if he's voting either yes or no on Broder, not saying a name.

Ms. Namihira stated yes.

Chair Broder stated that he can vote either way.

Commissioner Kotubetey voted in favor of Vice Chair Pacarro so no for Broder.

Ms. Namihira asked for Commissioner Liggett's vote.

Commissioner Liggett voted yes for Broder.

Ms. Namihira asked for Commissioner Mills' vote.

Commissioner Mills voted yes for Broder.

Ms. Namihira stated the Commissioner Tanimoto is not present then asked for Chair Broder's vote.

Chair Broder voted yes for Broder. She then asked Ms. Spurlin if that is an election because it's 3 to 2.

Ms. Spurlin replied that a majority vote is needed.

Chair Broder asked if this works.

Ms. Spurlin replied that it's a majority of the members of the board so it would need 4.

Chair Broder commented that it sounds like elections could not be held and would need to wait until there is a full board.

Vice Chair Pacarro commented that he didn't mean to make it super exciting but wanted to show Chair Broder how much he's learned from her.

Chair Broder replied that it's very kind of him. She also commented that the problem is also that the Commission is down one member so it's even harder right now. She thanked everyone and thought that it was a good meeting and was happy that they were able to talk about the Wailupe project.

ADJOURNMENT: Meeting was adjourned at 9:42 a.m.

Respectfully Submitted,

---

Tammy Namihira

The minutes of the Commission Meeting on May 12, 2023 were approved at the Sept. 8, 2023 Commission Meeting.

	<u>Aye</u>	<u>No</u>	<u>Comment</u>
Sherry P. Broder	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Keli'i Kotubetey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
William Reese Liggett	<input type="checkbox"/>	<input type="checkbox"/>	Excused
William Kamana'olana Mills	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Jason Kekahi "Kahi" Pacarro	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Jamie Tanimoto	<input checked="" type="checkbox"/>	<input type="checkbox"/>	