

**CONDOMINIUM REVIEW COMMITTEE**  
REAL ESTATE COMMISSION  
Professional and Vocational Licensing Division  
Department of Commerce and Consumer Affairs  
State of Hawaii  
[www.hawaii.gov/hirec](http://www.hawaii.gov/hirec)

MINUTES OF MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor as required by Section 92-7(b), Hawaii Revised Statutes.

Date: June 10, 2009

Time: Upon adjournment of the Laws and Rules Review Committee meeting scheduled to convene at 9:00 a.m.

Place: Queen Liliuokalani Conference Room  
King Kalakaua Building  
335 Merchant Street, First Floor  
Honolulu, Hawaii

Present: William Chee, Chair, Broker / Honolulu Commissioner  
Mark Suiso, Vice Chair, Public / Honolulu Commissioner  
Louis Abrams, Broker / Kauai Commissioner  
Trudy Nishihara, Broker / Honolulu Commissioner  
Carol Ball, Broker / Maui Commissioner  
Stanley Kuriyama, Broker / Honolulu Commissioner  
Michele Sunahara Loudermilk, Public / Honolulu Commissioner  
Frances Gendrano, Broker / Honolulu Commissioner

Neil Fujitani, Supervising Executive Officer  
Cynthia Yee, Senior Condominium Specialist  
Cheryl Leong, Condominium Specialist  
Benedyne Stone, Condominium Specialist  
Amy Endo, Real Estate Specialist  
David Grupen, Real Estate Specialist  
Shari Wong, Deputy Attorney General  
Jon Gasper, Recording Secretary

Others: Mike Grossi, AON Risk  
Richard Asato, Esq., Imanaka Kudo Fujimoto  
Eric James, Esq., Carlsmith Ball LLP  
Terri Ann Motosue, Esq., Carlsmith Ball LLP  
Aron Espinueva, Hawaii Association of REALTORS®  
Philip Nerney, Esq., Community Associations Institute Hawaii Chapter  
Tracey Wiltgen, Mediation Center of the Pacific, Inc.  
John Morris, Esq., Community Associations Institute Hawaii Chapter

Absent: Annette Aiona, Broker / Hilo Commissioner

Call to Order: Chair Chee called the meeting to order at 9:29 a.m., at which time quorum was established.

Chair's Report: No report was presented.

The Chair announced that the Commission may move into executive session to consider and evaluate personal information relating to individuals applying for licensure in accordance with Section 92-5(a)(1), HRS, and/or to consult with the

Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities in accordance with Section 92-5(a)(4), HRS.

Commissioner Aiona was excused from the meeting. Prior notification of her non-attendance was received.

Condominium  
Specialist's  
Report:

**Additional Distribution**

The following materials were distributed prior to the start of the meeting:

4. Condominium Governance and Management
  - a. Mediation & Arbitration
5. CPR Registration and Developer's Public Reports
  - a. Condominium Projects and Developer's Public Reports
    - 6) Request to register one restaurant unit as a "project" in a phase project pursuant to Chapter 514A, HRS, §514A-3, HRS – Honua Kai Condominium Project, Kaanapali, Maui, Maui Beach Resort Limited Partnership, Developer

Minutes:

Upon a motion by Commissioner Nishihara, seconded by Commissioner Kuriyama, it was voted on and unanimously carried to accept the minutes of the May 6, 2009 Condominium Review Committee meeting as circulated.

**Performance Bonds/Irrevocable Letters of Credit – Requests for Release of Bonds for Haseko Homes / Ke Noho Kai Development, Bond Nos. 059320, 017044, 059322 – May 12, 2009**

Michael Grossi, Executive Vice President, AON Risk Services, Inc. of Hawaii (AON) informed the committee that the project in question was completed in 2002/2003. He also represented that the bonding company for the condominium projects, Kemper Lumbermen, is in receivership. Since the bond has not been released, the developer is still being assessed premiums. What is needed is the Commission's release of the bond.

Commissioner Kuriyama noted the unusualness of the request in that terms and conditions for releasing a bond is generally provided for by contract; that the burden of establishing completion of the contract lies with the developer and contractor; and that the bonding company is requesting the Commission to make a statement regarding completion of the project.

Richard Asato of Imanaka Kudo & Fujimoto, attorney for the developer, inquired whether based on the evidence provided by the developer to the Commission, would the Commission recognize that the project was complete.

Chair Chee noted that the Commission is not in a position to state that the project is complete.

Mr. Asato then inquired as to whether the Commission would acknowledge receipt of evidence of project completion. Mr. Grossi then followed with a request that the Commission acknowledge that the project is complete.

Discussion then followed relating to the developer's submitted documents. Staff referenced the submitted certificates of occupancy with its exceptions including grounds for revocation of an issued certificate of occupancy and inquired whether AON in the last five years, had any such experience with a certificate of occupancy being revoked. AON indicated it did not have any such experience. Mr. Asato noted that he made an inquiry with the Building Department on this topic and has not yet received a response.

The discussion then followed with Mr. Grossi informing the committee about insurance coverage for code violations, the difference between a performance bond and a completion bond (a funding vehicle) and clarification that the developer is requesting release of a performance bond which guarantees the completion of a project and is not requesting the release of a completion bond.

Staff then indicated that staff has received conflicting recommendations with respect to the release of the bond from representatives of AON with Mr. Grossi advocating for the release of the bond and from William Sandkuhler recommending retention of some of the bond. Mr. Grossi provided an explanation reconciling the differences.

Upon a motion by Commissioner Abrams, seconded by Commissioner Nishihara, it was voted on and unanimously carried to take the matter under advisement.

Condominium  
Governance and  
Management:

## **Mediation & Arbitration**

### **Evaluative Mediation Program Proposal**

Ms. Sugimura, Ms. Wiltgen, and Mr. Morris served as spokespersons for the group in submitting the proposal for CETF subsidy of an "evaluative mediation" program. The group's presentation included information about the total costs, amount of CETF subsidy needed, promotional plans, target groups, program evaluation; incorporation of some aspects of "neutral evaluation" as part of the proposed "evaluative mediation" program including the parties' exchange of evidence. The group indicated that the total cost would be \$1000 with \$500 of the costs being subsidized by CETF. For unregistered AOUC's the total costs would be \$1250; in comparison to the current CETF subsidy of \$250 for "Facilitative Mediation."

Discussion then followed clarifying how much CETF subsidy would be and how much condominium owners would have to pay. Staff questioned what is included in the cost of \$1250. Is the \$850 to be paid to the mediator in addition to the \$1250? Ms. Sugimura noted that \$850 is included in the \$1250 for 3 hours.

The spokesperson for the proposals then went on to discuss and outline the benefits of "evaluative mediation" as compared to the current "facilitative evaluation."

Commissioner Kuriyama noted that the concept was a great one and that the market forces will determine its feasibility.

Upon motion by Commissioner Kuriyama, seconded by Commissioner Abrams it was voted on and unanimously carried to take this matter under advisement.

**AOUO Registrations**

Specialist Stone reported that as of May 31, 2009, 313 AOUO's have successfully registered for the 2009-2011 biennium.

**Condominium Seminars and Symposium – Evaluations**

Evaluations for the following CAI Hawaii seminars were distributed for informational purposes: 1) "ABC's - A Basic Course for New Board Members" May 16, 2009; and 2) "Contracts, Insurance & Pitfalls" May 21, 2009.

**Case Law Review Program**

The following articles from the May 2009 issue of *Community Association Management Insider* were distributed for informational purposes: 1) "Association Not Liable for Member's Water Intrusion," 2) "Bylaw Amendment Restricting Rentals Is Enforceable," and 3) "Board Decision Regarding Construction Project Ruled Valid."

**Condominium Related Articles**

The following articles from the April 2009 issue of *CAI Hawaii* were distributed for informational purposes: 1) "Stupid Things Board Members Say," 2) "The Virginia Graeme Baker Pool and Spa Safety Act," 3) "Providing Assistance to Our Residents and Owners," and 4) "CAI Launches New Website."

**CDR Pilot Program**

The following CDR cases were distributed for informational purposes: 1) In the Matter of A.J. Di Mauro, and Keith Wilde vs. Board of Directors of the Waikoloa Villas AOA, Michael Bernstone, and Jesse Maupin – CDR -2006-3; 2) In the Matter of Tommy Wai Hung Ma, and Sindy Sin Yee Ma vs. AOA Queen Emma Gardens, and Touchstone Properties Ltd. - CDR-0809-4; and 3) In the Matter of Sherry W. Arndt, Nancy Shah, and John Ervin, vs. David Nagy, Patricia Dykstra, Emory Bush and Charles Gallagher 2008 MLS Director – CDR-0809-5.

Condominium  
 Project  
 Registration:

**Condominium Project Registration - Public Reports Issued**

A list of those condominium projects issued effective dates during the month of May 2009 were distributed for informational purposes.

PROJ #	PROJECT NAME	PROJECT ADDRESS	TMK #	TTL	RPT	DATE
6757	1025 AND 1027 3RD AVE CONDOMINIUM	1025 & 1027 3RD AVE HONOLULU HI 96816	132010051	2	B AMD	5/7/2009
6804	1119 & 1121 8TH AVENUE CONDOMINIUM	1119 & 1121 8TH AVE HONOLULU HI 96816	132004005	2	B REPT	5/7/2009
6817	151 HANA HIGHWAY	151 HANA HWY PAIA HI 96779	226004011	10	B REPT	5/7/2009
6783	51-378 KAMEHAMEHA HIGHWAY	51-378 KAMEHAMEHA HWY KAAAWA HI 96730	151010025	2	B REPT	5/11/2009
6793	691 KIHAPAI STREET	691 KIHAPAI ST KAILUA HI 96734	143067034	4	B REPT	5/28/2009
6808	722 & 722A PALANI AVENUE	722 & 722A PALANI AVE HONOLULU HI 96816	127034048	2	B REPT	5/15/2009
6818	BUDD HALE	69-1897 PUAKO BEACH DR KAMUELA HI 96739	369006030	2	B REPT	5/28/2009
6813	HALE O' NOEAU	ALIOMANU RD & KAKUNA RD	449004015	2	B REPT	5/18/2009

Condominium Review Committee  
 Minutes of the June 10, 2009 Meeting  
 Page 5

6815	HALE PUEO CONDOMINIUM	KAPAA HI 96746 1000 KAI HELE KU PL LAHAINA HI 96761	247010040	2	B REPT	5/19/2009
6805	HANAUNA CONDOMINIUM	165 & 167 AWAIKU ST LAHAINA HI 96761	247009055	2	B REPT	5/28/2009
6423	HOANA HOMES	5425 HOANA PL HONOLULU HI 96821	136004017	2	B AMD	5/21/2009
6759	HUALUKINI PLACE	45-624 HUALUKINI PL KANEHOE HI 96744	145083050	2	B REPT	5/4/2009
6411	JOHNSON ESTATES CPR	1050 KAMALU RD KAPAA HI 96746	444011013	2	B AMD	5/12/2009
6488	KAAAWA OCEANVIEW	51-432 & 51-432A LUHIMAUNA RD KAAAWA HI 96730	151011007	2	B AMD	5/7/2009
6428	KAHU'AINA FARMS (PHASE 1)	7480 KOOLAU RD KILAUEA HI 96754	451003006	10	B AMD 2	5/19/2009
6711	KAHU'AINA FARMS (PHASE 2)	7480 KOOLAU RD KILAUEA HI 96754	451003006	3	B AMD	5/19/2009
6230	KALAHEO RIDGE	3926 WAHA RD KALAHEO HI 96741	426017008	2	B REPT	5/19/2009
5900	KAPALUA BAY CONDOMINIUM	1 BAY DR KAPALUA HI 96761	242004028	148	SUPPL 2	5/22/2009
6779	KARASUDA ESTATES	2684 ONU PL KALAHEO HI 96741	424014028	2	B REPT	5/7/2009
3119	KILAUEA PLANTATION CENTER	4244M KILAUEA RD KILAUEA HI 96754	452004062	3	SUPPL 3	5/14/2009
6542	KILOHANA CENTER	KUPUOHI ST LAHAINA HI 96761	245010067	13	B AMD	5/13/2009
6218	KOUKALAKA ESTATES II	4953 NUNU RD KAPAA HI 96746	446015095	2	B AMD 2	5/4/2009
6820	LAULANI PHASE 10	91-1001 KEAUNUI DR EWA BEACH HI 96707	191149003	17	B REPT	5/21/2009
6802	MAKONA AND LILIANA ST CONDO	87-153 MAKONA & 87-154 LILIANA ST WAIANAHE HI 96792	187001003	5	B REPT	5/28/2009
5982	NALEI CONDOMINIUM	155 ALA HOKU PL LAHAINA HI 96761	243010002	2	SUPPL	5/28/2009
6107	OPUKEA AT LAHAINA	LIMAHANA PLACE LAHAINA HI 96761	245011001	114	B AMD 2	5/13/2009
6674	S & F DOMINGO CONDOMINIUM	1412 B, C, D & E GULICK AVE HONOLULU HI 96819	113015019	4	B AMD	5/4/2009
6821	TOWN HOMES AT KA MAKANA AT HOAKALEI INCREMENT 2 THE	91-1355 & 91-1363 KEONEULA BLVD EWA BEACH HI 96706	191146027	10	B REPT	5/20/2009
0	<b>Preliminary Reports</b>					
0	<b>Contingent Final Reports</b>					
0	<b>Final Reports</b>					
3	<b>Supplementary Reports</b>					
15	<b>B Reports</b>					
10	<b>B Amendment Reports</b>					
28	<b>TOTAL REPORTS</b>					

**Request to register one restaurant unit as a "project" in a phase project pursuant to Chapter 514A, HRS, §514A-3, HRS – Honua Kai Condominium Project, Kaanapali, Maui, Maui Beach Resort Limited Partnership, Developer**

The developer's attorneys appeared before the committee and indicated their willingness to answer any questions.

Commissioner Kuriyama discussed the applicability of the Commission's 1993 informal non-binding interpretation regarding the Commission's registration of one apartment of a phase condominium project as a "project" to the request before the committee.

Staff reviewed for the committee the factual background behind the 1993 informal interpretation and subsequent informal non-binding interpretations relating to somewhat similar requests which had varying end results. The review included a November 22, 2006 REC decision refusing the issuance of separate effective dates for separate developer's public report for a two unit condominium project; an October 29, 2004 informal non-binding interpretation relating to Haiku Estates #5481 requiring the developer to register each phase as a separate "project"; and

the December 14, 2001 informal non-binding interpretation relating to the registration of the Prince Tower at Queen Emma Gardens as a one unit condominium project for other reasons other than the 1993 Commission decision.

The discussion that followed included a discussion of the statutory definition of "project" in phased condominiums and the applicability of the Commission's 1993 informal non-binding interpretation to the present request.

Upon a motion by Commissioner Kuriyama, seconded by Commissioner Ball, it was voted on and unanimously carried to take the matter under advisement.

### **CPR Workshops and Meetings**

Specialist Yee announced that on August 18, 2009, the condominium consultants are holding a one day forum and commissioners are welcome to come by and greet them.

#### **Program of Work:**

#### **Rulemaking, Chapter 107**

Staff provided a status report on rulemaking. The report summarized a meeting with Condominium Specialists Yee and Stone and Mr. Lloyd Sodetani (condominium consultant to the Commission and a volunteer rule drafter) which included tentative action plans. The plan provides for drafting a letter to all stakeholders with appropriate cites to relevant sections of the condominium laws, Chapter 514B, HRS, and soliciting stake holders' comments with a due date of October 31, 2008 for responses. The next step would be the actual drafting of the proposed rules based on received comments.

Commissioner Loudermilk noted that perhaps the identification and drafting of the proposed rules should occur first. In this manner the stakeholders would have something to comment on.

The discussion concluded with plans to schedule another conference with Mr. Sodetani, Commissioner Loudermilk, Commissioner Abrams, SEO Fujitani, and the condominium specialists to discuss action plans for rulemaking.

### **Legislative Acts and Resolutions**

A copy of House Resolution No. 128, H.D. 1, was distributed for informational purposes.

### **Neighbor Island Outreach / Condominium Specialist Office for the Day**

The July 8, 2009 committee meetings will be held in Lihue, Kauai at the State Office Building, Conference Rooms A, B, and C, 3060 Eiwa Street in conjunction with the Specialists' Office for the Day.

### **Program of Work and Budget, FY10**

Upon a motion by Commissioner Abrams, seconded by Commissioner Kuriyama, it was voted on and unanimously carried to approve the program of work and budget for fiscal year 2010.

Executive Session: Upon a motion by Commissioner Ball, seconded by Commissioner Suiso, it was voted on and unanimously carried to enter into executive session pursuant to section 92-5(a)(4), HRS, "To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities and liabilities."

Upon a motion by Commissioner Kuriyama, seconded by Commissioner Ball, it was voted on and unanimously carried to move out of executive session.

**Performance Bonds/Irrevocable Letters of Credit – Requests for Release of Bonds for Haseko Homes / Ke Noho Kai Development, Bond Nos. 059320, 017044, 059322 – May 12, 2009**

Upon a motion by Commissioner Kuriyama, seconded by Commissioner Loudermilk, it was voted on and unanimously carried that staff work with the developer and developer's attorney in drafting a letter citing the relevant law, acknowledging receipt of documentation regarding completion of project, and indicate that the Commission is not releasing the developer's obligations on the bond.

**Request to register one restaurant unit as a "project" in a phase project pursuant to Chapter 514A, HRS, §514A-3, HRS – Honua Kai Condominium Project, Kaanapali, Maui, Maui Beach Resort Limited Partnership, Developer**

Upon a motion by Commissioner Kuriyama, seconded by Commissioner Nishihara, based on the presented facts and isolated to only this specific project, it was voted on and unanimously carried to approve the issuance of an effective date for a one apartment condominium project which is a part of a phase project.

**Mediation Purchase Orders with Mediation Center of the Pacific, Inc.; Mediation Services of Maui, Inc.; Kauai Economic Opportunity, Inc.; Big Island Mediation, Inc. dba West Hawaii Mediation Center; and Ku'ikahi Mediation Center**

Upon a motion by Commissioner Suiso, seconded by Commissioner Abrams, it was voted on and unanimously carried to respectively approve for one fiscal year purchase orders for mediation services subject to the terms, conditions, scope of service, compensation and payment schedule, or time frame as previously procured in fiscal year 2009 and further subject to the availability of Condominium Education Trust Funds, Commission's 2010 Fiscal Year Program of Work Budget Allocation for Mediation (total of \$20,000 for all mediation subsidy), and administrative approvals.

**Evaluative Mediation Program Proposal**

Upon a motion by Commissioner Suiso, seconded by Commissioner Abrams, it was voted on and unanimously carried to approve the proposal including the increase of CETF subsidy from \$250 to \$500 per mediation for evaluative mediation services for one fiscal year subject to the availability of Condominium Education Trust Funds, Commission's 2010 Fiscal Year Program of Work Budget Allocation for Mediation (total of \$20,000 for all mediation subsidy), and administrative approvals.

Condominium Review Committee  
Minutes of the June 10, 2009 Meeting  
Page 8

Condominium Organizations Forum: No comments, recommendations or concerns were received from the following: Community Associations Institute Hawaii Chapter, Alakahi Foundation, Hawaii Council of Association of Apartment Owners, Hawaii Independent Condominium and Cooperative Owners, Hawaii State Bar Association/Real Property & Financial Services Section, Land Use Research Foundation, Condominium Council of Maui, Hawaii Association of Realtors/Institute of Real Estate Management Hawaii Chapter/ Oahu Arm Committee, others.

Open Forum: No discussion presented.

CEF Budget & Finance Report: No report presented.

Next Meeting: July 8, 2009  
Upon adjournment of the Laws and Rules Review Committee meeting scheduled to convene at 9:30 a.m.  
State Office Building  
Conference Rooms A, B, and C  
3060 Eiwa Street  
Lihue, KAUAI

Adjournment: With no further business to discuss, Chair Chee adjourned the meeting at 10:49 a.m.

Respectfully submitted:

/s/ Cynthia M. L. Yee

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Cynthia M. L. Yee  
Senior Condominium Specialist

June 30, 2009  
Date

Minutes approved as is.  
 Minutes approved with changes; see minutes of \_\_\_\_\_