

**NEIL ABERCROMBIE**  
GOVERNOR

**DEAN H. SEKI**  
COMPTROLLER

**SCOTT L. CHAN**  
MANAGER

**LOIS M. MANIN**  
DEPUTY MANAGER



**ALOHA STADIUM**

*An Agency of the State of Hawaii*

Stadium Authority Special Meeting  
99-500 Salt Lake Boulevard  
Honolulu, Hawaii 96818

July 5, 2013

Members Present:

Kenneth B. Marcus, Interim Chair Person  
Keith "Kika" G. Bukoski  
Wilbert C.F. Chee  
Odetta Fujimori  
Edward K. Hasegawa  
Kathryn W. Inouye  
Scot Long  
Alan S. Tamayose  
Charles T. Toguchi

Staff Present:

Scott L. Chan	Liane S. Nakagawa
Russell Uchida	Chuck Beck
Stephen G. Lee	Samantha Spain
Ryan G. Andrews	

Others:

Randall S. Nishiyama, Deputy Attorney General  
See Exhibit A (Sign-in Sheet)

I. Call to Order

A quorum being present, Interim Chairman Kenneth Marcus called the meeting to order at 10:02 a.m.

Chair Marcus said the purpose of today's special meeting is to discuss and consider a request from Hawaii Five-0 (H5-0) for filming at Aloha Stadium.

Manager Chan said the following items are in their packets:

1. Summary of the agreement for your review. Instead having to review the entire agreement, we simplified it in a summary.
2. Draft Agreement
3. Script involved with regard to this particular request.
4. A picture of the helicopter that will be used in the Hawaii 5-0 episode.

Member Toguchi inquired about the red and blue comments. Manager Chan noted that the red indicates comments by Hawaii 5-0 and the blue are comments by the stadium. Manager Chan confirmed that the comments are still under discussion by both parties.

Stephen Lee described the proposed event:

- Hawaii Five-0 (H5-0) is requesting to use the stadium on July 15 & 16, 2013. Timmy Chinn, Locations Manager for H5-0 and Mr. Richard Schuman of Makani Kai Helicopters is present to answer questions by the Board.

Mr. Chinn said they would like to come in on Saturday, July 13, 2013 to prep and then shoot the first episode of the season on Monday and Tuesday, July 15-16, 2013, and be out Tuesday night. He said it is a fairly big shoot.

Chair Marcus inquired if a motorcycle will be seen on the stands. Mr. Chinn said he is 99% sure they have taken that entire section out. Since Mr. Chinn was not 100% sure that the motorcycle scene will not be a part of the filming, Member Marcus said (in terms of evaluating this event) he will still include the motorcycle as part of the request.

Chair Marcus inquired if there were any other physical activities besides individuals running on the field. Mr. Chinn replied there would be a helicopter landing in the center field and one shot in the parking lot. They will also be creating their own swap meet for an opening scene.

Member Inouye asked what are the deal breakers on either side.

Manager Chan replied:

1. The helicopter landing in our facility and the consequences to that request.
2. The rental agreement.

The biggest concern that management is facing is “if a worst-case scenario occurs,” will we be able to restore our facility in time to hold the first University of Hawaii (UH) football game on August 29, 2013 with the University of Southern California (USC).

Member Toguchi asked Manager Chan, in terms of unsettled matters, what is he asking the Board to do today? Manager Chan said they are seeking concurrence and support from the Board concerning: 1) liquidated damages; 2) costs; and 3) rental fee.

Russell Uchida added that the biggest deal breaker item, with the most impact, concerns the liquidated damages which H5-0 has not conceded to, and lined out in the draft agreement.

Chair Marcus offered clarification and his understanding on the issue of liquidated damages. Should something go disastrously wrong and the field is not capable of being used by UH for the August 29, 2013 game, a determination needs to be made concerning the potential cost to UH and the State if the game is cancelled. Management is suggesting that this should be H5-0's expense.

Member Toguchi said the Board's purpose in being here today should be to make a major policy decision. If there are other minor things, he has no problem in leaving them up to the stadium manager to resolve.

Chair Marcus said the Board basically approves the concept of the event and leaves the details to the manager to work out, with the assumption he will be working from our standard license agreement. He said Manager Chan is seeking Board approval or disapproval of the event, so that he can move forward.

Member Inouye said liquidated damages are usually for non-performance of contractual events and damages to the field should be covered by the insurance policies. She questions what kicks in and at what point.

Mr. Uchida said the liquidated damages represent revenue loss to all parties and the insurance should cover the field replacement or it will fall on the Licensee.

Member Inouye inquired whether the damages to the field would be covered under the general liability policy or under the aviation insurance policy. Mr. Uchida said he believes if the damages are caused as a result of the helicopter landing, it would be covered by the aviation insurance policy but he will verify that with the Risk Management Office.

Member Inouye inquired if we are looking at the aviation policy to pick up the liquidated damages. Mr. Uchida said the Licensee would be informed that they are responsible for liquidated damages through whatever means.

Further discussions by Chair Marcus and Member Inouye took place concerning the elements of damages and insurance coverage for those damages.

Chair Marcus concluded that there are two issues:

1. What is the measure of damages, and in his view, both the inability to run a game, and repairing the field?
2. Member Inouye's issue is, are they both covered by insurance, and if not, how do we insure that we can collect for those things. Chair Marcus said he would leave that responsibility to Mr. Nishiyama and Risk Management at the State level to make sure it is handled appropriately.

Member Inouye added, if the damages are covered under the general liability insurance, she is unsure if it would be sufficient to cover the estimated damages of \$3.3 million.

Mr. Uchida said he is with the understanding that general liability is separate from collecting for damages from the loss of revenue. He sees the repair and restoration of the damages to the field and facility to be covered by insurance and the Licensee being held responsible for the loss of revenues.

Member Inouye suggested that Mr. Uchida discuss this matter with his insurance consultant. She also asked how he arrived at the \$3.3 million figure. Mr. Uchida said he based the \$2.3 million on data that was submitted by the UH in 2010 concerning another project. He also added the stadium's and Centerplate's average revenues per game, added a factor

for inflation, miscellaneous other expenses, loss of goodwill, and the potential loss of advertising revenues.

Member Bukoski inquired if there is language in the license agreement that relates to the cancellation of events and potential liquidated damages. Chair Marcus responded he does not think so and that our main obligation is to deliver the facility.

Member Inouye inquired if the \$2.3 million loss was just UH's, or would there be other funds owed to the other team. Manager Chan said in speaking with Ben Jay, UH Athletic Director, the amount was inclusive. Mr. Jay wants to make sure we are able to deliver the facility on August 29<sup>th</sup> because it would be a huge loss and it would not be good for all concerned.

Member Inouye inquired if management investigated the length of time it would take to repair the field. Manager Chan said they have had meetings with the subcontractors on whether or not they can fulfill our request to have the facility up and running by the August 29. We have included all of these conditions in the agreement and are seeking the Board's input so that we can make any necessary adjustments.

Member Bukoski inquired who has the final say on whether or not the field is game ready. Manager Chan replied that they work directly with the client. Mr. Uchida said it is written in the agreement that it has to meet with stadium manager's approval.

Member Fujimori inquired if the UH and/or the visiting team will be requesting the courtesy use of the field prior to the August 29<sup>th</sup> game? Manager Chan said yes and that the UH is requesting that the field be ready by August 2. We have discussed their commitments and if the game is cancelled, they will have to inform the NCAA, the broadcasting stations, and the other team.

#### Makani Kai Helicopters

Mr. Richard Schuman and his safety manager were present to answer questions by the Board. He stated:

1. He has been in business for 17 years and for the past four years he has been doing most of the aerial work on camera and filming for H5-0.
2. They have an extensive safety management system and explained in detail the procedures they follow to mitigate risks to a minimum.

3. They work in conjunction with the Federal Aviation Administration (FAA) and present their plans for approval.
4. Helicopters are extremely safe vehicles for transportation.
5. As a pilot he focuses on safely landing the helicopter, and from a mental standpoint makes every attempt to prevent an accident from happening.
6. In a worst-case scenario is if the engine dies. He tries to envision what it might look like from the stadium's point of view. He explained the weight of the helicopter is 3,500 pounds and that they are trained to land it safely on the field.
7. In their walk-through of the stadium, they looked for obstacles throughout the facility. Whatever appeared to be obstacles, they discussed the removal of those items to provide for a safe landing.
8. He assured the Board that H5-0, CBS, and Makani Kai do not want to have an accident and they do all that they can to mitigate the worst-case scenario. If the engine quits, they immediately transition to an auto rotation which slows down the impact. But if he dies from a heart attack, and the helicopter crashed, it would probably put a big dent in the field and he is not sure how it would be repaired.

Chair Marcus said the Board needs to be concerned with two risk factors:

1. What affect, if any, does all of the rotation blades create in terms of stressing on the field as you land and take off again (which may occur more than once). This is considered an ordinary predictable risk.
2. The other risk is the catastrophe that was described.

Chair Marcus asked Mr. Schuman if he feels the field would have issues. Mr. Schuman replied he is not totally aware of how the field was constructed, but there if there is loose debris it will blow away. He is unsure if the inserts would lift up with a little wind. Manager Chan said they are secured by velcro. Mr. Chinn said considering the weight of the helicopter, he does not feel the infill and rubber granules would lift and go into the helicopter engine.

Mr. Uchida said we considered a test run but felt the risk factor would be the same as with an actual event. If a crash occurred during the test run, we would have nothing to hold them liable.

Chair Marcus asked Manager Chan, putting aside the catastrophe, is the likely affect to the infill minimal? Manager Chan said the contractor that installed the field and our engineer are both comfortable with that conclusion.

Stadium engineer, Ron Tsuzuki, said there are ways to test the field before the helicopter lands, relative to the bounce and depth of the infill material.

Chair Marcus asked if he is comfortable that it is not a significant issue. Mr. Tsuzuki said yes, because they will be testing it before and after the landing. Manager Chan added the stadium is using the apparatus from the National Football League (NFL) called the G-Max machine which weighs and measures the resiliency of the material in various areas. We are also working with NFL for support on some of our decisions.

Member Inouye expressed her concerns:

1. The impact of the helicopter rotational blades near the surface.
2. Suggest a protective surface to cover the field.

Manager Chan said the protective surface (Geo-tech and Dura-Dec) was discussed, but it was too costly (approx. \$25,000) according to Mr. Chinn. Member Inouye suggested rewriting the script and perhaps landing on the parking lot. Mr. Chinn said he presented it and it was not an option.

Member Chee inquired if the surface can support the weight of the helicopter. Manager Chan said it can, but the length of time in the same position may have an impact. Mr. Chinn said it would be travelling inside and outside the stadium and it would not be in one place for too long.

Manager Chan said for the most part management is comfortable with the described use and is mainly concerned with the worst-case scenario (a catastrophe).

Member Bukoski asked Mr. Chinn to share H5-0's issues on liquidated damages. Mr. Chinn said he was not at liberty to disclose the concerns of their legal department.

Member Bukoski said it might be more acceptable if the language could be tightened to specifically refer to the cancellation of the game and not be as broad as it currently reads.

Mr. Schuman assured the Board that his company carries a \$25.0 million general liability policy (per occurrence) and stated if their helicopter cause damages, the stadium would have up to that amount for repairs.

Mr. Chan thanked Mr. Schuman for that information and said it addresses part of the concerns and challenges discussed; but, his question is, "can the repairs be done within the timeline (before August 29, 2013). That is a major issue and we want to make sure we are all comfortable with the arrangements as we move forward.

Member Inouye expressed concerns about the supplies arriving on time. Mr. Tsuzuki said all estimates were based on everything being flown in and that some of the materials will have to be fabricated, but it will not take long. Manager Chan said we confirmed that the materials are in stock and the factory will meet our timelines, although very tight.

Note: At 11:00 a.m. Chairman Marcus announced a short break in the meeting to do the swearing-in of the three incoming Board members.

Chairman Marcus conducted the Oath of Office swearing-in ceremony for the following:

- Keith "Kika" G. Bukoski
- Wilbert C.F. Chee
- Charles T. Toguchi

Catherina Pratt (Notary Public) was present to witness and notarize the signatures of the new members.

Member Toguchi apologized that he has to leave the meeting due to a prior commitment with a Senator. He said he is familiar with the Board operations (was previously on the Board for seven years) and agrees with the Chair that some things can be left for the stadium manager. Today, the Board is being asked to approve the agreement with some details left for the manager's discretion. However, he is still unclear as to what are the big items that need to be resolved by the Board as opposed to what can be completed by the manager.

Manager Chan said it is entirely up to the Board and feels whatever can be addressed and taken back to the Licensee would be very helpful. This type of event is the first one for us, and we are seeking support and approval to address the challenges that we face.

Member Toguchi said it is important for him to say that he wants to see what the Board can do in every way to accommodate H5-0's request.

**A MOTION WAS MADE BY MEMBER INOUYE TO APPROVE THE EVENT, SUBJECT TO STAFF CONFIRMATION ON THE TIMING**

OF THE REPAIR AND REPLACEMENT OF ANY FIELD DAMAGE,  
AND CONFIRMATION OF INSURANCE COVERAGE.

Discussion

Member Chee inquired, at the adoption of this motion, what are the options for us on a proviso that another issue arises beyond the issue of timeline for getting materials? What happens if something comes up? At this point if we pass the motion, it is a conditional approval.

Chairman Marcus stated Mr. Nishiyama and Manager Chan ultimately have to be satisfied with the form of the license agreement. If another deal breaker arises, although they have authorization, they are not obliged to allow the event if they are not satisfied with the agreement. He said the singular distinction between what Member Inouye suggested on another issue was that if they were satisfied that we could fix the turf by August 29<sup>th</sup>, we would be obliged to proceed and she would not have insisted that a condition to the licensee fee if the stadium manager reached the conclusion between July 27 and August 29. The fact that he would be able to trigger in liquidated damages was that UH could take whatever steps necessary to ameliorate the situation.

Member Long said he agrees with the Chair and did not understand the motion in that sense. If the motion was to support Manager Chan, then he is in agreement, as long as he puts in an amendment of the other issues.

Member Inouye asked Member Long if he is wanting to state, "in addition, satisfaction of all stadium management's concerns." Mr. Nishiyama stated we can amend the motion to also include "pending resolution of other issues that may arise by stadium management or the authority."

Chairman Marcus said the stadium manager always has the ability to impose whatever conditions he thinks are necessary in his judgment and work with Mr. Nishiyama to incorporate them in the license agreement. But what the Board has said is that there are no conditions that it will impose upon him beyond his discretion other than that he is satisfied that he will be able to replace or repair the field if he discovers a problem on July 17, 2013. The Board has not insisted on liquidated damages or a limitation on what they do; we have left all of that at the manager's discretion and he is authorized to move forward without (as far as the Board is concerned) any limitations under his authority.

Member Long said he is in agreement with all of that and let's approve Manager Chan as well as address the specifics that Member Inouye noted.

Member Fujimori said she thinks he is trying to do an amendment by acknowledging what both of them said.

Member Marcus said it is inherent in Manager Chan's authority that when we authorize him to do an event, we do not require him to enter into an agreement that he is not satisfied with. He has the authority and responsibility to refuse to give them that license agreement.

Member Marcus restated that Member Inouye's amendment would impose only one condition as far as the Board is concerned on the exercise of Manager Chan's discretion. We want him to be satisfied that he believes he will be able to repair the field within the time frame involved based on his findings from the factory, our engineer, etc., so that if they assure him that they can get a replacement field installed by whatever the drop-dead date is for delivery to UH, he is authorized to go forward on whatever other basis he feels is appropriate -- including the helicopter and the motorcycle if it goes that way. We are not putting any limitations on what he can authorize. We are not insisting on Liquidated Damages, or limiting what authority he has to let them shoot the script that has been described to us.

Member Inouye stated she has requested Mr. Uchida to verify the insurance requirements. Mr. Uchida said he did consult with the Risk Management Office with reference to the general liability and aviation insurance, but will find out if liquidated damages are covered under that. Member Inouye also asked that he confirms Makani Kai Helicopter's insurance. Mr. Uchida said he would and that they are required through the license agreement to provide a certificate of insurance.

Mr. Schuman said he currently has the State of Hawaii, DOT, Dept. of Harbors, Department of Land & Natural Resources, City and County of Honolulu listed as additional insured. A certificate of insurance will be submitted upon request. He also noted in 17 years, Makani Kai Helicopters has never had any damage to any property, including landing by residential areas. Mr. Schuman confirmed that the helicopter in the photo that was passed out to the Board is the exact one that will be used for the filming.

Chair Marcus asked, who would bear the cost if something happened and we were compelled to cancel the event due to the factory's inability to fabricate and deliver on time? Mr. Nishiyama responded, the stadium.

Mr. Uchida stated it is written in the license agreement that the Licensee is responsible for procuring materials and supplies and labor to insure that the field is restored back to its original condition. Mr. Nishiyama said – it would be under State supervision, monitored by DAGS.

The following statements were made by Chair Marcus (and confirmed by Mr. Nishiyama):

- In the draft agreement, it is the obligation of the Licensee to fulfill the stadium's obligation to deliver on time and the Liquidated Damages would be on them.
- The only difference between Liquidated and Non-Liquidated Damages would be what is included in the projected \$3.0 million and the stadium would have the right to collect from them.

Chair Marcus asked Mr. Chinn if it is an issue with H5-0 if they or their insurance company were out the \$3.3 million. Mr. Chinn said he is being told they will take care of everything.

Manager Chan noted that the project cost is still a projection as we continue to gather all the necessary information.

Member Inouye suggested adding a catch-all, i.e. all related costs. Mr. Uchida confirmed an additional 25% for miscellaneous items is included in the agreement.

Chair Marcus inquired, although the licensee is refusing to include Liquidate Damages, is the stadium entitled to all its actual damages? Mr. Nishiyama said yes, we will have to prove the damages.

Member Bukoshi asked if the repair work would be subject to procurement. Manager Chan said we are looking at two options in order to get the job done in a timely manner.

Mr. Uchida stated the two options:

1. All of it rests with the licensee being required to procure (at the discretion and/or demand of the Authority) all services, equipment, materials and supplies necessary to repair and restore any damage to the Aloha Stadium as a result of Licensee or its subcontracted parties, etc. The State of Hawaii, DAGS, Public Works, Stadium Authority and its designated representatives will retain control and oversight of the construction and restoration process.
2. If the repair is covered under warranty, the stadium can go through a sole-source procurement, i.e., the procurement policy board approves a certain situation where you can do a sole-source procurement and one of which is "if the repair continues to be covered under warranty." To

make sure it is done in the most expeditious manner, the stadium will be looking at the best option for us and whether it is covered under a warranty. Mr. Uchida stated (in the damages section of the agreement), we included an expeditious method of manufacturing materials and shipping to ensure the repairs are done in a timely manner.

Member Inouye asked Mr. Uchida (in checking on the insurance policies) that he verifies if we cancel the game whether it qualifies as an event of business interruption and is it covered under business interruption insurance.

#### Discussion on the Rental Rate

Manager Chan said this matter is being brought to the Board because the Administrative Rules does not allow the manager to adjust rental fees.

Mr. Uchida quoted the proposed rental fee:

\$2,000 per day between the hours of 7:30 a.m. – 3:30 p.m.

\$300 per hour beyond the noted time frame

Mr. Chinn inquired if there is any flexibility to the scheduling and charges of the prep days and restoration days. Mr. Uchida said although it is not presented in the summary, we are looking at half of the rental amount (\$1,000). Mr. Chinn said they have no problem with the \$2,000 per day, but the way it is presented, it would involve several thousand dollars in addition to the rent. He said in their typical agreements, the rental fee would cover their 12-hour work day.

Following a discussion on how the stadium arrived at the rental rate, Member Inouye asked if this matter could be deferred to the staff to resolve.

Mr. Nishiyama agreed that the staff should be given the authority, but the parameter should be set by the Board.

Mr. Uchida said the stadium is proposing to the Board a slightly modified rental structure to the extent that it involves Hawaii 5-0.

Chairman Marcus said he will extend the motion to leave it up to the manager to seek the \$2,000 plus the \$300/hr. but have the flexibility to negotiate that fee as necessary. Member Inouye said she is agreeable to that change.

Chairman asked the recording secretary to repeat Member Inouye's motion. He then rephrased the motion with Member Inouye's approval to read:

A MOTION WAS MADE BY MEMBER INOUYE AND SECONDED BY MEMBER FUJIMORI TO APPROVE THE EVENT WITH TWO QUALIFICATIONS: 1) THAT MANAGEMENT CONFIRM THAT ANY DAMAGE FROM THE EVENT, INCLUDING THE LOSS OF THE AUGUST 29, 2013 UH GAME IS THE RESPONSIBILITY OF THE LICENSEE AND IS COVERED BY INSURANCE; AND 2) MANAGEMENT IS CONFIDENT THAT IF THERE IS A DAMAGE TO THE FIELD THAT THEY WILL BE ABLE TO OBTAIN REPAIRS AND REPLACEMENTS IN A TIMELY FASHION TO MAKE THE USC GAME.

Manager Chan referred to Mr. Chee concerning his previous question to the motion. Mr. Chee stated it was more of a clarification and his question was directed at other potential show stoppers which the manager would inherently be approving.

THE MOTION CARRIED BY A SEVEN (7) TO ONE (1) VOTE, AND ONE (1) NAY BY CHAIRMAN MARCUS. MEMBER TOGUCHI WAS NOT PRESENT TO VOTE ON THE MOTION.

VII. NEXT MEETING

June 27, 2013

VIII. ADJOURNMENT

There being no further business Interim Chairman Marcus adjourned the meeting at 11:35 A.M.



KENNETH B. MARCUS, Esq.  
Interim Chairman

Recorded by: Diana C. Ho

Date: July 25, 2013

# Stadium Authority Board Meeting

## Sign-In Sheet (please print)

Event Date: July 5, 2013

**Public Testimony Notice:** Please indicate if you wish to provide oral, public testimony. If you are, please indicate if you wish to speak at the beginning of the meeting, or if you choose to wait until the agenda topic is being discussed. Please limit testimony to no more than 3 minutes.

Print Name	Organization	Phone #	Email Address
<i>Timmy Chinn</i>	<i>Eye Peer</i>	<i>808.781.2233</i>	<i>Timmylosters@gmail.com</i>
Are you providing public testimony? <input type="checkbox"/> Yes <input type="checkbox"/> No      If "Yes": <input type="checkbox"/> Beginning <input type="checkbox"/> Will Follow Agenda			
Are you providing public testimony? <input type="checkbox"/> Yes <input type="checkbox"/> No      If "Yes": <input type="checkbox"/> Beginning <input type="checkbox"/> Will Follow Agenda			
Are you providing public testimony? <input type="checkbox"/> Yes <input type="checkbox"/> No      If "Yes": <input type="checkbox"/> Beginning <input type="checkbox"/> Will Follow Agenda			
Are you providing public testimony? <input type="checkbox"/> Yes <input type="checkbox"/> No      If "Yes": <input type="checkbox"/> Beginning <input type="checkbox"/> Will Follow Agenda			
Are you providing public testimony? <input type="checkbox"/> Yes <input type="checkbox"/> No      If "Yes": <input type="checkbox"/> Beginning <input type="checkbox"/> Will Follow Agenda			
Are you providing public testimony? <input type="checkbox"/> Yes <input type="checkbox"/> No      If "Yes": <input type="checkbox"/> Beginning <input type="checkbox"/> Will Follow Agenda			
Are you providing public testimony? <input type="checkbox"/> Yes <input type="checkbox"/> No      If "Yes": <input type="checkbox"/> Beginning <input type="checkbox"/> Will Follow Agenda			
Are you providing public testimony? <input type="checkbox"/> Yes <input type="checkbox"/> No      If "Yes": <input type="checkbox"/> Beginning <input type="checkbox"/> Will Follow Agenda			
Are you providing public testimony? <input type="checkbox"/> Yes <input type="checkbox"/> No      If "Yes": <input type="checkbox"/> Beginning <input type="checkbox"/> Will Follow Agenda			
Are you providing public testimony? <input type="checkbox"/> Yes <input type="checkbox"/> No      If "Yes": <input type="checkbox"/> Beginning <input type="checkbox"/> Will Follow Agenda			
Are you providing public testimony? <input type="checkbox"/> Yes <input type="checkbox"/> No      If "Yes": <input type="checkbox"/> Beginning <input type="checkbox"/> Will Follow Agenda			