



LAND USE COMMISSION  
STATE OF HAWAII

September 28, 2018

2018 OCT -1 A 8:33

Mr. Daniel Orodener  
Land Use Commission  
State of Hawaii  
P.O. Box 2359  
Honolulu, Hawaii 96804-2359

Subject: Hanohano LLC, Docket No. A03-745

Honorable Chair and Members of the Commission:

On behalf of Hanohano, LLC and in accordance with Condition No. 4 of the Findings of Fact, Conclusions of Law, And Decision and Order for a State Land Use District Boundary Amendment (the "D&O") entered in the above-referenced docket on May 17, 2005, we hereby submit this update on Condition No. 4 to the Land Use Commission of the State of Hawaii (SLUC).

I. Status of the Project and Request for Approval

The Project completed construction of the subdivision improvements and all lots have been sold to individual owners. To comply with the Conditions of the D&O, we are requesting an approval of the Curator Selection Committee (Committee) composition and structure, procedures and plan of action as required by Condition No. 4d.

II. Petitioners Response to the Condition No. 4c and 4d as follows:

- 4c. Petitioner shall cause the formation of a three (3) person committee, composed of a representative of the Homeowners Association pursuant to a provision in the CC&Rs, a representative from OHA, and a representative from the Kupuna Council of Maui (the Curator Selection Committee), to select the Curator, who shall (a) oversee the maintenance of the Heiau by the Homeowners Association; and (b) direct and coordinate the initial installation by the Petitioner and the perpetual maintenance by the Homeowners Association of the native plantings in the 60 foot wide buffer zone.

**Status:** Since the lots have been sold to individual homeowners, and the Kualono Homeowners Association (HOA) has been established, Leahi Hall, a lot owner, has volunteered to be the representative of the HOA to be a member of the Committee.

In addition, the Kupuna Council of Maui (Council) seems to be a defunct Council. Attempts to contact the group directly through their website have been fruitless. And, attempts to the County of Maui's Mayor Office, since the Council was active during Mayor Arakawa's first term, to locate the Council have also been fruitless. However, in consultant with Riley Hakoda of the State Land Use Commission, he suggested that we contact Na Kupuna O Maui. Therefore, we contacted Patty Nishiyama, and she has volunteered to be the representative for the Council.

A request was made to OHA for a representative to become a member of the Committee. We received an email from Thelma Shimaoka stating that she would attend a Committee meeting to listen and refer any questions (implicit in the email, any decisions) to the OHA Compliance or Advocacy Division.

In discussions with Ms. Hall and Ms. Nishiyama, they recommended that the curator be Sam Kaai since he is from the area and is extremely knowledgeable about archaeology and cultural aspects of this particular area. As the curator, Mr. Kaai will be responsible for directing and overseeing the installation of the plantings within the 60-foot buffer and overseeing the maintenance of the Heiau. Mr. Kaai will also provide guidance of traditional and customary native Hawaiian practices as it relates to the Heiau.

A request was made to OHA on the choice of Mr. Kaai. Ms. Shimaoka's email, see attached Exhibit A, had no objections.

In light of the above, we plan on contracting a landscape architect to provide an appropriate native planting plan based on Mr. Kaai's suggestion of the native palette. The plan would be forwarded to the Committee and the Kualono Homeowners Association for comments.

- 4d. The Petitioner shall establish the Curator Selection Committee and its governing laws including succession plans no later than six months from the issuance of this Decision and Order. Upon establishment of the Curator Selection Committee, the Petitioner and Curator Selection Committee shall provide a written report to the Commission, OP and the Planning Department, with details as to the Curator Selection Committee composition and structure, procedures and plan of action to be approved by the Commission."

**Status:** As noted in the status for item 4c. above, the Committee has selected Sam Kaai to be the Curator. In regards to the Committee's governing laws, please see the attached Bylaws of the Kualono Heiau Curator Selection Committee, as Exhibit B.

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In light of the Committee's selection, we request that the State Land Use Commission approve the Curator Selection Committee composition and structure, procedures and plan of action as required by Condition 4d.

Should you have any questions or require additional information, please do not hesitate to contact me at 808-270-5936 or at [leilanip@paciricrimland.com](mailto:leilanip@paciricrimland.com).

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Pulmano', written over a faint horizontal line.

Leilani Pulmano  
Project Manager  
Pacific Rim Land, Inc.

cc: Department of Planning, County of Maui  
Office of Planning, State of Hawaii

## Leilani Pulmano

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**From:** Thelma Shimaoka <thelmas@oha.org>  
**Sent:** Friday, July 13, 2018 9:29 AM  
**To:** Leilani Pulmano  
**Subject:** RE: Kualono Subdivision Heiau Curator Uncle Sam Kaai

Yes, our staff at Compliance asked the question, if it was required for the selection committee to notify the LUC about the selection of Sam Kaai in letter form? OHA is fine with the selection, I guess you are to proceed to the next step. Mahalo.

thelma



Thelma Shimaoka  
*`Aho Kuahui Hui Huliāmahī III*  
*Office of Hawaiian Affairs*  
33 Lono Avenue Suite 480  
Kahului, Hawai'i 96732

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**From:** Leilani Pulmano [mailto:[leilanip@pacificrimland.com](mailto:leilanip@pacificrimland.com)]  
**Sent:** Wednesday, July 11, 2018 7:59 AM  
**To:** Misti Pali-Oriol <[mistip@oha.org](mailto:mistip@oha.org)>; Teresa Kaneakua <[teresak@oha.org](mailto:teresak@oha.org)>; Thelma Shimaoka <[thelmas@oha.org](mailto:thelmas@oha.org)>; Kai Markell <[kaim@oha.org](mailto:kaim@oha.org)>  
**Subject:** RE: Kualono Subdivision Heiau Curator Uncle Sam Kaai

Aloha,

Have you had an opportunity to discuss this?

*Mahalo,*  
*Leilani Pulmano* | PACIFIC RIM LAND, INC.  
Project Coordinator

1300 N. Holopono Street, Suite 201  
P.O. Box 220, Kihei, Maui, Hawaii 96753

Office: 808-874-5263 | Direct: 808-270-5936  
E-mail: [LeilaniP@pacificrimland.com](mailto:LeilaniP@pacificrimland.com)

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**From:** Misti Pali-Oriol <[mistip@oha.org](mailto:mistip@oha.org)>  
**Sent:** Tuesday, June 19, 2018 9:23 AM  
**To:** Leilani Pulmano <[leilanip@pacificrimland.com](mailto:leilanip@pacificrimland.com)>  
**Cc:** Teresa Kaneakua <[teresak@oha.org](mailto:teresak@oha.org)>  
**Subject:** Re: Kualono Subdivision Heiau Curator Uncle Sam Kaai

Great catch. I've cc'ed her for real now :)

Mahalo!

---

**From:** Leilani Pulmano <[leilanip@pacificrimland.com](mailto:leilanip@pacificrimland.com)>  
**Sent:** Tuesday, June 19, 2018 8:36:08 AM  
**To:** Misti Pali-Oriol  
**Subject:** RE: Kualono Subdivision Heiau Curator Uncle Sam Kaai

Aloha Misti,

Thank you for your following up. I didn't that Teresa was cc'd on the email. Did you by chance forwarded to her? Can you please also send along my contact information in case she has questions.

*Mahalo,*  
*Leilani Pulmano* | PACIFIC RIM LAND, INC.  
Project Coordinator

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**From:** Misti Pali-Oriol <[mistip@oha.org](mailto:mistip@oha.org)>  
**Sent:** Tuesday, June 19, 2018 8:27 AM  
**To:** Leilani Pulmano <[leilanip@pacificrimland.com](mailto:leilanip@pacificrimland.com)>; Thelma Shimaoka <[thelmas@oha.org](mailto:thelmas@oha.org)>  
**Cc:** Kai Markell <[kaim@oha.org](mailto:kaim@oha.org)>  
**Subject:** RE: Kualono Subdivision Heiau Curator Uncle Sam Kaai

Aloha mai kākou,

I'm cc'ing our Acting Compliance Manager, Teresa Kaneakua so she can help advise us in Kai's absence.

Mahalo,  
Misti

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**From:** Leilani Pulmano [<mailto:leilanip@pacificrimland.com>]  
**Sent:** Monday, June 18, 2018 8:59 AM  
**To:** Thelma Shimaoka <[thelmas@oha.org](mailto:thelmas@oha.org)>  
**Cc:** Misti Pali-Oriol <[mistip@oha.org](mailto:mistip@oha.org)>; Kai Markell <[kaim@oha.org](mailto:kaim@oha.org)>  
**Subject:** RE: Kualono Subdivision Heiau Curator Uncle Sam Kaai

Aloha Thelma,

I wanted to be sure that I understand you. It is ok for me to send a letter to the State LUC? How shall I characterize OHA's position on the selection of the curator i.e. OHA approves?

*Mahalo,*

*Leilani Pulmano* | PACIFIC RIM LAND, INC.

Project Coordinator

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Office: 808-874-5263 | Direct: 808-270-5936  
E-mail: [LeilaniP@pacificrimland.com](mailto:LeilaniP@pacificrimland.com)

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**From:** Thelma Shimaoka <[thelmas@oha.org](mailto:thelmas@oha.org)>  
**Sent:** Monday, June 18, 2018 8:53 AM  
**To:** Leilani Pulmano <[leilanip@pacificrimland.com](mailto:leilanip@pacificrimland.com)>  
**Cc:** Misti Pali-Oriol <[mistip@oha.org](mailto:mistip@oha.org)>; Kai Markell <[kaim@oha.org](mailto:kaim@oha.org)>  
**Subject:** RE: Kualono Subdivision Heiau Curator Uncle Sam Kaai

Let us follow protocol and keep things in order. That way they can never say they were not advised of selection. Yes, I don't think we have anything to lose, it is part of information.

Mahalo, thelma



*Thelma Shimaoka*  
*`Aho Kuahui Hui Huliāmahī III*  
*Office of Hawaiian Affairs*  
*33 Lono Avenue Suite 480*  
*Kahului, Hawai'i 96732*

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**From:** Leilani Pulmano [<mailto:leilanip@pacificrimland.com>]  
**Sent:** Monday, June 18, 2018 8:40 AM  
**To:** Thelma Shimaoka <[thelmas@oha.org](mailto:thelmas@oha.org)>  
**Cc:** Leah Hall <[lhall@makenagbc.com](mailto:lhall@makenagbc.com)>; patty nishiyama <[auntypattynishiyama@gmail.com](mailto:auntypattynishiyama@gmail.com)>  
**Subject:** FW: Kualono Subdivision Heiau Curator Uncle Sam Kaai

Aloha Thelma,

Would it be ok to send a letter to the State LUC regarding the selection of Sam Kaai as the curator?

*Mahalo,*  
*Leilani Pulmano* | PACIFIC RIM LAND, INC.  
Project Coordinator

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Office: 808-874-5263 | Direct: 808-270-5936  
E-mail: [LeilaniP@pacificrimland.com](mailto:LeilaniP@pacificrimland.com)

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**From:** Leilani Pulmano  
**Sent:** Tuesday, May 22, 2018 3:32 PM  
**To:** Thelma Shimaoka <[thelmas@oha.org](mailto:thelmas@oha.org)>; Leahi Hall <[lhall@makenagbc.com](mailto:lhall@makenagbc.com)>; patty nishiyama <[auntypattynishiyama@gmail.com](mailto:auntypattynishiyama@gmail.com)>  
**Subject:** Kualono Subdivision Heiau Curator Uncle Sam Kaai

Aloha,

As a matter of background, the list below consists of State Land Use Commission Conditions for Kualono project that included some provisions for the existing heiau. Conditions 4c and 4d requires establishment of the Curator Selection Committee that you are all a part of. In our discussions with Aunty Patty; and consequently, Leahi and Thelma, Uncle Sam Kaai was selected as the curator for the heiau. As Aunty Patty stated, he is from the area and is extremely knowledgeable about archaeology and cultural aspects of this particular area. As the curator, Uncle Sam will be responsible for directing and overseeing the installation of the plantings within the 60 – foot buffer and overseeing the maintenance of the heiau. Uncle Sam will also provide guidance of traditional and customary native Hawaiian practices as it relates to the heiau.

Please let me know if you have any questions. As the next step, I would like to send a letter to the State Land Use Commission of the selection of the curator.

*Mahalo,*

*Leilani Pulmano* | PACIFIC RIM LAND, INC.

Project Coordinator

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E-mail: [LeilaniP@pacificrimland.com](mailto:LeilaniP@pacificrimland.com)

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**From:** Desiree Lopes  
**Sent:** Friday, December 1, 2017 4:05 PM  
**To:** [auntypattynishiyama@gmail.com](mailto:auntypattynishiyama@gmail.com)  
**Cc:** Leilani Pulmano <[leilanip@pacificrimland.com](mailto:leilanip@pacificrimland.com)>  
**Subject:** Kualono Subdivision Heiau Curator Uncle Sam

Aloha Aunty Patty,

Mahalo for your phone call today. We appreciate you taking the time to talk with us regarding the heiau at the Kualono Subdivision in Pukalani and for talking to Uncle Sam to be the curator.

As we explained, the Subdivision has an archaeological requirement to satisfy as conditioned by the Land Use Commission. Specifically, the conditions are:

"4. Archaeological. To protect the native Hawaiian practitioner's exercise of customary and traditional practices in the subject area; to ensure appropriate public access to the Heiau located within the Property; to ensure the availability of natural and cultural resources for present and future generations; to promote the practice of ohana and conservation values with respect to the physical and cultural landscape:

4a. Petitioner shall establish on the Heiau/Retention Basin Lot, permanent 60 foot wide and 100 foot wide buffer zones around the Heiau, with a rock wall of not less than four (4) feet high demarcating the perimeter of the 60 foot buffer zone. Within 6 months of the filing of this Decision and Order, Petitioner shall use reasonable efforts to request, but shall not be required to obtain, the consent and cooperation of the owner of the parcel of land immediately adjacent to the Heiau/Retention Basin Lot to extend the permanent 100 foot wide buffer zone on such adjoining lot. Within six months of Petitioner receiving notice that the adjacent property has changed ownership, Petitioner shall use reasonable efforts to request the consent and cooperation to extend the 100 foot wide buffer on that adjoining lot and shall continue to use such reasonable efforts with each successive owner of the adjacent parcel until such request is agreed to."

4b. Petitioner shall include within the CC&Rs provisions which prohibit public access, through the use of appropriate signage, to the 60 foot wide buffer zone, and, with the exception of the wall around the 60 foot buffer zone and irrigation lines in the area between the perimeters of the 60 foot wide buffer zones, shall further prohibit the construction of any structures within the entire 100 foot wide buffer zones. Petitioner shall also install appropriate informational signage at the perimeters of the 100 foot wide buffer zone and the Heiau to aid in its preservation."

4c. Petitioner shall cause the formation of a three (3) person committee, composed of a representative of the Homeowners Association pursuant to a provision in the CC&Rs, a representative from OHA, and a representative from the Kupuna Council of Maui (the Curator Selection Committee), to select the Curator, who shall (a) oversee the maintenance of the Heiau by the Homeowners Association; and (b) direct and coordinate the initial installation by the Petitioner and the perpetual maintenance by the Homeowners Association of the native plantings in the 60 foot wide buffer zone."

4d. The Petitioner shall establish the Curator Selection Committee and its governing laws including succession plans no later than six months from the issuance of this Decision and Order. Upon establishment of the Curator Selection Committee, the Petitioner and Curator Selection Committee shall provide a written report to the Commission, OP and the Planning Department, with details as to the Curator Selection Committee composition and structure, procedures and plan of action to be approved by the Commission."

4e. The Curator shall monitor the preservation and maintenance of the Heiau and the effectiveness of the Petitioner's actions to limit access to and/or preserve and maintain the Heiau. The Curator shall provide recommendations consistent with this Decision and Order to the Commission with respect to the maintenance and/or preservation of the Heiau and any other traditional and customary native Hawaiian practices and cultural resources on the Property.

The Curator shall provide reports on an annual basis describing items and issues relating to the preservation and maintenance of the Heiau and other traditional and customary native Hawaiian practices and cultural resources on the Property and discussions with the adjoining landowner with respect to the buffer on the adjoining landowner's property."

4f. Petitioner shall initially landscape with grass and install the necessary irrigation lines in the area between the 60 foot wide buffer zone and the perimeter of the 100 foot wide buffer zone. Petitioner shall, in consultation with the Curator, initially install appropriate native plantings, without any irrigation lines, in the 60 foot wide buffer zone."

4g. Upon the establishment of the Homeowners Association, said Homeowners Association shall maintain in perpetuity the Heiau/Retention Basin Lot. The CC&Rs will include a condition to the effect that the Homeowners Association shall bear the cost including reasonable out of pocket costs, if any, of the Curator, such that the Curator may perform the duties prescribed in this Decision and Order."

4h. The view planes from the Heiau will be preserved by prohibiting (a) the construction of any structure (as this term is defined in Section 19.04.040, Maui County Code), with the exception of the Retention Basin, the 4 foot high walls around the 60 foot wide buffer zones and the Retention Basin, and irrigation line on that portion of the Property north



of the Heiau; and (b) the construction on the Property of any structure or landscaping that blocks the view plan from the Heiau to the summit of Haleakala (but structures that do not block such view plane may be constructed on the Property). This condition will also be included in the CC&R's and in appropriate deed restrictions."

I am so excited that Uncle Sam knows all about that heiau and is the perfect person to be curator for this heiau.

Please let us know when it is a good time for Leilani to meet with you and Uncle Sam at the heiau.

Aloha and Mahalo,  
Desiree

*Desiree A. P. Lopes* | PACIFIC RIM LAND, INC.

Office Administrator

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**BYLAWS OF THE KUALONO HEIAU CURATOR SELECTION COMMITTEE**

**ARTICLE I.**

**DEFINITIONS**

In addition to other defined words and terms in these Bylaws, the following words and terms, which are designated by the capitalization of the first letter thereof, shall have the following meanings:

(a) "Committee" means the Kualono Selection Committee, a non-profit, unincorporated association.

(b) "Curator" means an individual or entity who or which, as the case may be, is deemed competent by the Committee to carry out the responsibilities required of the Curator under the Decision and Order and these Bylaws.

(c) "Decision And Order" means the Findings Of Fact, Conclusions Of Law, Decision And Order For A State Land Use District Boundary entered by the LUC on May 17, 2005, in a proceeding bearing Docket No. A03-745.

(d) "Hanohano" means Hanohano LLC, a Hawaii limited liability company and the petitioner under the Decision and Order.

(e) "Heiau" means that certain heiau, designated by the Historic Preservation Division of the Department of Land and Natural Resources of the State of Hawaii as site 50-50-2704, located on the northwestern portion of the Property, and more particularly described in the Decision and Order.

(f) "Homeowners' Association" means a non-profit corporation or unincorporated association, organized for the purpose of, among other things, maintaining the Heiau, and whose membership is limited solely to the owners of the Property, and all subdivided portions thereof.

(g) "Kupuna Council" means the Kupuna Council of the County of Maui.

(h) "Limited Buffer Zone" means that certain sixty (60) foot wide area around the Heiau and more particularly described in the Decision and Order.

(i) "LUC" means the Land Use Commission of the State of Hawaii.

(j) "OHA" means the Office of Hawaiian Affairs of the State of Hawaii.

(k) "Property" means those two (2) adjoining parcels of land, situate at Keahua, Kula, Island and County of Maui, State of Hawaii, bearing tax map key numbers 2-3-11:1 and 2-3-11:2 (Second Taxation Division).

## **ARTICLE II.**

### **PURPOSE OF COMMITTEE AND RESPONSIBILITIES OF CURATOR**

#### **A. PURPOSE OF COMMITTEE**

The purpose of the Committee is to (1) select and, if necessary, and, in its sole and absolute discretion, replace the Curator; and (2) ensure that the Curator carries out its responsibilities required under the Decision and Order and these Bylaws.

#### **B. RESPONSIBILITIES OF CURATOR**

The Curator shall:

(1) Oversee the maintenance of the Heiau by the Homeowners' Association;

(2) Direct and coordinate the initial installation, by Hanohano, and the perpetual maintenance, by the Homeowners' Association, of native plantings in the Limited Buffer Zone;

(3) Monitor the effectiveness of Hanohano's efforts to limit access to and/or preserve and maintain the Heiau;

(4) Provide annual reports to the Committee describing (a) the items and issues relating to the preservation and maintenance of the Heiau and other traditional and customary native Hawaiian practices and cultural resources on the Property; and (b) any discussions with the owner of the property abutting the Property for the extension, on such abutting property, of the Limited Buffer Zone and the one hundred (100) foot buffer zone around the Heiau and more particularly described in the Decision and Order; and

(5) Carry out the responsibilities required of the Curator under the Decision and Order and these Bylaws.

### **ARTICLE III.**

#### **MEMBERSHIP**

##### **A. COMPOSITION OF COMMITTEE**

The Committee shall be composed of three (3) members, one (1) of whom shall be a trustee, employee or other representative of OHA (the "OHA Member"), the second of whom shall be a member of the Kupuna Council (the "Kupuna Council Member"), and the third of whom shall be an officer, director, member or other representative of the Homeowners' Association (the "Homeowners' Association Member").

**B. TERM OF OFFICE**

Commencing on \_\_\_\_\_, 2005, the OHA Member shall be initially appointed for a term of one (1) year; the Kupuna Council Member shall be initially appointed for a term of two (2) years; and the Homeowners' Association Member shall be initially appointed for a term of three (3) years. Upon the expiration of the initial term of any member, the term of such member shall thereafter be three (3) years.

**C. VACANCIES**

Upon either the expiration of the term of a member or any vacancy in the Committee before the normal expiration of such term, the OHA Member shall be selected by OHA, the Kupuna Council Member shall be selected by the Kupuna Council, and the Homeowners' Association Member shall be selected by the Board of Directors of the Homeowners' Association.

**ARTICLE IV.**

**MEETINGS**

The committee shall hold an annual meeting once a year within sixty (60) days after the end of each calendar year. Additional meetings of the Committee shall be held at the call of any member (the "Calling Member"). The Homeowners' Association Member or the Calling Member shall give the other members of the Committee notice (written or oral) of every meeting not less than seventy-two (72) hours prior to the time fixed for the commencement of such meeting. Meetings of the Committee shall be governed by such rules of order as the Committee shall adopt and from time to time amend. Such rules of order shall continue in effect after the expiration of the term of office of any such Committee, until amended or revoked by

their successors. The Homeowners' Association Member shall preside at meetings of the Committee. Those members of the Committee in attendance at a meeting shall constitute a quorum for the transaction of business at meetings of the Committee. Members of the Committee shall vote in person and not by proxy. Any member of the Committee, in his or her discretion, may invite persons who are not members to attend meetings of the Committee. The act of the majority of the members of the Committee present at a meeting at which a quorum is present shall be the act of the Committee. Attendance of a member at a meeting of the Committee shall constitute a waiver of notice of such meeting, except where a member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting has not been lawfully called or convened. The members may conduct a meeting by means of a conference telephone or similar communication equipment in which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at that meeting. Any action required or permitted to be taken at any meeting of the Committee may be taken without a meeting if all of the members of the Committee sign a written consent setting forth the action taken or to be taken at any time before or after the intended effective date of such action. Such consents shall be filed with the minutes of the Committee's meetings, and shall have the same effect as the unanimous vote of the directors at a meeting of the Committee.

#### **ARTICLE V.**

#### **AMENDMENT AND REPEAL OF BYLAWS**

Any amendment to these Bylaws or the repeal of these Bylaws and the enactment of new Bylaws shall be effective upon the adoption of a resolution of amendment or repeal at a

meeting of the Committee, written notice of which shall have stated the amendment of Bylaws as a part of the agenda of the meeting called, carried by the vote of not less than two (2) members.