HAWAIIAN HOMES COMMISSION
Minutes of September 19, 2011
Meeting Held in Kapolei, O`ahu

Pursuant to proper call, the 619th Regular Meeting of the Hawaiian Homes Commission was held at the Department of Hawaiian Home Lands, 91-5420 Kapolei Parkway, Kapolei, Hawai`i, beginning at 10:00 a.m.

PRESENT Mr. Albert "Alapaki" Nahale-a, Chairman
Mr. Imaikalani Aiu, Commissioner, Kaua`i
Ms. Leimana DaMate, Commissioner, West Hawai`i
Mr. J. Kama Hopkins, Commissioner, O`ahu
Mr. Michael P. Kahikina, Commissioner, O`ahu
Mr. Ian B. Lee Loy, Commissioner, East Hawai`i
Mr. Henry K. Tancayo, Commissioner, Moloka`i
Mr. Renwick V.I. Tassill, Commissioner, O`ahu

EXCUSED Mr. Perry O. Artates, Commissioner, Maui

COUNSEL Deputy Attorneys General Kalani Bush & Matthew Dvonch

STAFF Michelle Ka`uhane Deputy to the Chairman
Wai`ale`ale Sarsona, Chief of Staff
Rodney Lau, Administrator Officer
Linda Chinn, Administrator, Land Management Division
Francis Apoliona, Compliance Officer
Darrell Yagodich, Administrator, Planning Office
Crystal Kua, Information and Communications Officer
Dean Oshiro, Acting Homestead Administrator
Juan Garcia, Administrator, District Homestead Operations
Kaleo Manuel, Planner, Planning Division
Julie Cachola, Planner, Planning Division
Bob Freitas, Planner, Planning Division
Dre Kalili, Policy and Programs Analyst
Kala Enos, Special Assistant
Todd Gray, Land Agent, Land Management Division
Kahana Albinio, Land Agent, Land Management Division
Elaine Searle Secretary to the Commission

PULE & MELE Commissioner Kama Hopkins
"Papakolea" sung by All

AGENDA Commissioner H. Tancayo moved, seconded by Commissioner M. Kahikina, to approve the agenda. Motion carried unanimously.

MINUTES Commissioner K. Hopkins moved, seconded by Commissioner R. Tassill, to approve the minutes of August 15, 2011 as circulated. Motion carried unanimously.

AMENDED AGENDA Commissioner K. Hopkins moved, seconded by Commissioner L. DaMate to amend the agenda to address Public Testimony on Agendized Items prior to the Workshop presentation. Motion carried unanimously.

B - PUBLIC TESTIMONY ON AGENDIZED ITEMS

Re: Item 18
Subject: Request to Transfer Lease - Arlene Chow

Mr. Von Scott Wong testified that he is thankful the department was able to correct its position on the request to transfer the interest of Pastoral Lot Lease No.9021 in Pu`ukapu, Hawai`i from Arlene Chow to a joint tenancy of Julia Wong and himself.

Re: Item D-1, Exhibit D
Subject: DHHL Guarantees for U.S. Small Business Administration

Ms Naki Wilson represented her father Ernest K. Wilson who received a loan guarantee from the department for the completion of their home in Waiohuli homestead after her parents lost their home in "Hurricane Katrina". She expressed appreciation to the department and Deputy Michelle Ka`uhane for assisting her parents in funding a home loan.

Re: Item D-16
Subject: Request to Advance Net Proceeds - Victoria G. Kapuni

Ivan Lui-Kwan, Esq., counsel for Ms. Victoria Kapuni appeared on her behalf to request proceeds of her husband's homestead be adjusted to $24,600 instead of the recommended amount of $21,600 calculated by the department, thus allowing a total distribution of $208,600. The foremost issue Ms. Kapuni wants addressed is the pending proceeds of the lease be advanced to her due to a verbal commitment by a staff administrator to waive requirements that proceeds would be forthcoming only after a new lessee was found. Counsel Lui-Kwan believes that once representation is demonstrated through a verbal agreement, it becomes a department

commitment. Mr. Lui Kwan submitted material to be made part of these minutes as Exhibit "A" which included Section 209(5) of the Hawaiian Homes Commission Act which states "department shall appraise the value of all the improvements ...and shall pay to the nonqualified source ...the value thereof, less any indebtedness to the department or for taxes or for any other indebtedness to the department .... Further testimony was submitted by M. Kapuniai via e-mail to be made a part of these minutes as Exhibit "B".

A - WORKSHOP PRESENTATIONS

A -1 Land Management Land Dispositions: Revocable Permits has four types of agreement

- General Leases
- **Revocable Permits**
- Licenses
- Right-of-Entry Permits

Purposes:

- Generate revenue
- Provide short term use for industrial, pastoral, agricultural and community purposes
- Ensure appropriate stewardship and maintenance of HHL at minimum cost to DHHL
- Plan for long term dispositions of the land without immediate pressure to act

Kalaeloa Lands

- Consists of 555 acres totaling 10 parcels received from federal "Recovery Act"
- Utilities controlled by Navy: electricity, water & sewer which are aged
- Forty-Six tenants generate $1,000,000 annually
- Long term leases inadvisable due to extensive rebuilding costs

Pasha - Utilizes 25 acres close to airport runway for parking military vehicles; Coastal Construction uses 5 acres. Together they generate $650,000 annually. As of June 30, 2010, 195 renewable permits statewide generate $2.7 million annually.

Hawaiian Homes Commission Act Section 204(a)(2) allows for to use land that is not immediately required under Section 207 to follow Chapter 171 to dispose the use of these lands. Chapter 171-55 indicates BLNR permits may issue permits for temporary occupancy on a month-to-month basis without public auction to serve the best interest of the state. The department follows these guidelines on a month-to-month basis for one additional year period. Revocable Permits are approved by the Chairman and all Commission members receive a copy of notification letters for permit uses

HHC Actions

- 1982 - Adoption of standardized rental charges for Kaua`i Pastoral and Agricultural Lands minimum of $40 acre

- 1984 - Adoption of minimum rent charge for all revocable permits total $20.00
- 1985 - Authorized Chairman to issue, amend, renew, and terminate a revocable permit subject to all copies of correspondence to revocable permits be sent to commissioners of respective islands
- 1986 - Adopted a policy for Revocable Permits issued for agricultural use involving more than forty (40) acres to consider impact on native Hawaiian homestead farmers on same island. Will require diligence on department's part to not give land away that can be homesteaded. The purpose is a short term usage until these lands can be used for other uses.

Q&A

Re: 1985 Action – Request that all commissioners receive a copy or email of correspondence relating to a revocable permit matter on another island as all commissioners represent all the beneficiaries.

As a matter of policy or procedure, is it a practice of staff to tell a lessee not to pay when the lease is in violation because of lack of payment?

A Revocable Permit (RP) is sent a notice of default and then a notice of revocation after a period of non-payment. Staff is directed to not accept payment due to possible termination of the lease. Accepting payment beyond the due date may jeopardize the intent of the lease creating a sentiment that everything is alright. It was noted that staff generally attempts to work things out prior to pulling the permit.

By design, if an RP lessee is unable to make payment, the department can pull the lease after five days. However, the department has worked with some delinquent RP's over an extended period of time. Commission was reminded that there is distinct difference between RP's, a short term lease as opposed to a general lease, a long term lease.

What is the process of requesting a Revocable Permit and preferential use to native Hawaiians?

Revocable Permits are not solicited by the department. Individuals submit a written request for a particular parcel not being used. The department sets the terms and condition, assuring an RP conforms to requirements.

What criteria are used to establish a monthly rent?

A 30 day contract may require as little as $30 a month, depending on the use and Tax assessment of the parcel. Calculations are taken on the value of the property, rate of return at 6% or 8%; then, a discount of 50% may be applied. The Pasha RP has an industrial rate.

How can a homesteader in Ka`u change from an RP to a general lease and does the Commission review RP's annually?

This type of request will require a public auction where anyone can bid on it. It won't guarantee the party who has an RP to receive this parcel outright as there are different rules that apply to general leases. The commission has an opportunity to review RP's annually.

Commission commended Administrator L. Chinn and her staff for maintaining excellent fortitude in coverage and handling of the current 737 leases statewide.

A-2 Native Hawaiian Development Program Plan (Part 3)

Planning System Guiding Principles

- Beginning of Framework of Decision Making of Commission
- Driven by goals set by Commission
- Policy Continuum - insure continuity transparency in policy
- Community involvement
- Cultural Context - insert areas needing protection zones for cultural practices
- Measure and evaluate performance in meeting objectives

General Plan

- Plan approved in 2002 - developing policy direction
- Target to promote 500 homesteads annually
- Set parameters - No more than 1% of lands used for high income production such as commercial
- Emphasis to adjust those in need
- Protection of natural resources such as water

Island Plan

- Asserts HHC authority over land use
- Used to define foreseeable water uses - first rights to water needed for homesteading
- Island Plan defines a 20-year plan
- Lands not needed for homesteading can be used for other revenue producing purposes
- Communication with other state agencies
- Defines specific needs and opportunities
- All islands have Island Plan except for O`ahu

Program Plans

- Native Hawaiian Development Plan
- AG & Water Resources both underway

Regional Priority Plans

- Covers 21 regional plans
- Way to have conversation to determine what projects are important to the community
- Proposals include: Waimea & North Kona Water Systems, HI; North-South Road, Ewa; Moloka`i Water System Improvements; Anahola Town Center Plan, Kaua`i; Waiohuli Community Center & Historic Park, Maui; Farmers' Market in Maku`u, HI
- Reevaluation of Plans will begin next year on annual basis

Implementation

- Operating Budgets
- Land Use Control
- Water Reservations
- Legislative Proposals
- Administrative Rule Proposals

Q&A

When are the department's ideas of the regional plans expressed as most of these plans are grassroots driven and what did it cost for acquisition of lands in Waimanalo?

Lands in Waimanalo were secured from Department of Land and Natural Resources. Department is conducting an O`ahu plan for available lands, infrastructure and other costs. Regional plans are merely an expression of the community and its ideals. If partnering resources are unavailable for infrastructure, the plan may not materialize. One of the challenges in this process is the conflict with those on the waitlist and those who are homesteaders whose needs are not always met.

Island Plans gives Land Development and Land Management a direction on how these lands will be utilized; whether for homesteading or commercial uses. Some of these lands may be developed for revenue generating uses.

What is the update cycle for the Island Plans?

Generally, every five years.

The challenges of supporting the 20-year plan are the unexpected changes. Could changes be implemented in these plans to accommodate the needs of the community?

During the course of time, amendments can be made to adjust to a more favorable plan which would involve consultation with the area's community prior to re-approval by commission.

Note: All General and Island Plans are available on line.

Suggestion to have OHA included in the department's implementation process.

Chairman Nahale-a suggested that Community Consultation and Self-Governance items be deferred to a later date to allow for community input.

MOTION/ACTION

Moved by Commissioner I. Lee Loy, seconded by Commissioner M. Kahikina to defer these two items to December, 2011 agenda. Motion carried unanimously.

Other comments:

There was no plan for pastoral usage in the program plan, suggestion to implemented a plan to address this matter.

Noted by Commissioner Tassill - Waimanalo is excited about its growth potential.

A-3 Agriculture Program Concept Matrix

DHHL Agricultural History

- Provided poor agricultural lands in Kalama`ula lands on Moloka`i
- Agriculture Applications total 17, 000; Pastoral Applications 2,800
- Current 11,000 homesteaders have agriculture leases;
- Water resources overuse created Ho`olehua homestead community
- 1920 - 1030 farming very successful
- Pineapple companies diversified farmers to grow their crops
- Created opportunities
- Pineapple companies brought in its own workers, relieving homesteaders from farming their lots
- In 1980's, department began homesteading opportunities on Moloka`i
- In 1999, commission created Agricultural Task Force composed of homesteaders, applicants, staff and agricultural experts to address decline of agriculture usage
- Recommendation adopted by commission in 2000
- Although commission adopted Agricultural Task Force, no adoption of budgetary support
- Department attempted to implement policies of Task Force
- Native Hawaiians sued DHHL with settlement occurring in 2005 creating a pilot program in Honokaia. It provided a legal authority and resources to develop the area

Agricultural Program Concept Matrix components

- Subsistence
- Supplemental
- Commercial

Agricultural Pilot Program

- Address settlement
- Majority of people (80%) want to have a home in a rural area to grow some kind of agriculture products in 1 - 4 acre parcel
- Approximately 10-15% want larger scale parcels

Q&A

Is there a plan to accommodate large scale farming or pastoral?

One of the issues regarding large scale development is the financing. The current loan program offered by the department has been raised from $50,000 to $100,000. There may be an advantage to have these homesteaders seek assistance from Department of Agriculture and USDA. DHHL wants to pattern a program similar to Hawai`i's DOA's program. The task force indicated the department's agriculture loan is adequate for small leases, but not for those who plan to expand their businesses.

Today's trend is for sustainability. There are enough projects across the state to provide the sustenance for rehabilitation of the Hawaiian homesteads

Is Honokaia used as a model for both agriculture and pastoral lots?

The Honokaia lands were planned for cluster type living to allow both pastoral and agricultural uses to make it a more cohesive community. Most homesteaders want to raise animals and crops together. However, department rules prevent agricultural lessee from having animals and pastoral lessees from growing crops. The department is looking to address these issues.

Commissioners are encouraged by the efforts of the Planning department to keep things "moving on the road". Integrating eco-systems to become a self-sufficient unit by generating itsown fertilizer and other uses is ideal.

What do we know about the people who want a lifestyle lot and are willing to transition into a commercial lot with the support by the department?

Supplemental users want to take advantage of the additional acreage where they have their cows but want additional acres to grow corn. Currently, the department doesn't have the tools to provide supplemental living.

When lands are transferred from one division to another for use and the purpose is not fulfilled, is this land then returned to its original usage?

Yes. Once lands are zoned and dedicated to an Island Plan, it determines how these lands will be utilized. There may be interim projects that need to be addressed. Resources and how it's implemented determines whether the project will make it or break it. The department cannot change the land use designation without commission approval, but has provided intermediary use while attempting to get to the ultimate design.

The commission will be challenged on what projects will be prioritized and how much resource allocations will suffice.

C - OFFICE OF THE CHAIRMAN

ITEM NO. C-1
SUBJECT: Establishment of a Hawaiian Homes Commission Ad Hoc Committee On Legislative Affairs

MOTION/ACTION

Moved by Commissioner I. Lee Loy, seconded by Commissioner K. Hopkins.

DISCUSSION

Commissioner K. Hopkins deems the "ad hoc" committee will work in partnership with staff to craft, approve or disapprove changes to the legislation and to advise the commission on policy decisions and advocate for or against these measures. It is essential to be at the forefront working with staff, not at the backend, he added. Staff has done a tremendous job in keeping the department afloat. However, the main goal is to let the people know the commission is also a kuleana, not only a volunteer position. Perhaps the committee could adopt some type of formal policy. There is strong belief the "ad hoc" committee could be beneficial to the commission and can offer better insight in dealing with legislative matters. To be effective, the commission would be required to respond in a timely manner to legislative decision making. Commissioner K. Hopkins volunteered as chairman and Commissioners Kahikina and Lee Loy and Chairman A. Nahale-a will complement the committee.

ACTION

Motion carried unanimously.

ITEM NO. C-2
SUBJECT: Establishment of a Hawaiian Homes Commission Ad Hoc Committee on Water

MOTION/ACTION

Moved by Commissioner M. Kahikina, seconded by Commissioner L. DaMate.

DISCUSSION

Every homestead association is concerned about water shortages which affect both agriculture and pastoral lands as it is a critical component to the livelihood of the beneficiaries. Commissioner L. DaMate was selected to chair this "ad hoc" committee. Other members selected for this committee included Commissioners Tancayo and Tassill; Chairman Nahale-a to assist. Chairman Nahale-a congratulated commission members for their passion and willingness to serve without compensation. Chairman asked commission members to notify his office prior to meeting with staff to assure adequate staff support. Mahalo to Chief of Staff Wai`ale`ale Sarsona and Dre Kalili for their commitment to assist on this project.

ACTION

Motion carried unanimously.

ITEM NO. C-3
SUBJECT: Policy Development for Amendments to HAR Title 10

MOTION/

Moved by Commissioner I. Aiu, seconded by Commissioner K. Hopkins.

DISCUSSION

In the proposal, rules were considered in awarding additional acreage for agriculture and pastoral leases. The "ad hoc" committee supports an adoption of a sliding-scale criteria to rely on consultation from outside professionals such as UH CTAHR (College of Tropical Agriculture and Human Resources) to evaluate each criteria for request for additional acreage for agriculture and pastoral leases. Commissioner K. Hopkins proposed hiring knowledgeable farmers or ranchers familiar with Hawai`i soil as opposed to hiring someone unfamiliar with the lands. He highly recommends adding a sliding scale to the administrative rules when applicants are evaluated for agriculture and pastoral leases.

Dre Kalili clarified three recommendations were offered in the white paper (available to ad hoc committee members only): 1) take no action, 2) write into the rules a specific criteria 3) put into the rules an ability to have a sliding scale with option to have it reset annually.

Hui Kako'o Director Kaipo Kincaid questioned why the white paper couldn't be shared with everyone. One of the issues raised in the white paper involves a settlement that is still active; therefore confidential, noted Deputy Attorney General K. Bush. In addition, the proposal is being evaluated, not the white paper.

Chairman Nahale-a emphasized that "no rules" are being proposed, only direction to staff in helping to craft rules for decision making.

ACTION

Motion carried unanimously.

ITEM NO. C-4
SUBJECT: Resolution for Council for Native Hawaiian Advancement

MOTION/ACTION

Moved by Commissioner I. Aiu, seconded by Commissioner M. Kahikina.

DISCUSSION

Members of the Hawaiian Homes Commission acknowledges and commends Council for Native Hawaiian Advancement (CNHA) for its 10th Anniversary celebration of the Annual Native Hawaiian Convention and extends to CNHA the gratitude and appreciation of the Hawaiian Homes Commission and beneficiaries for its devotion, dedication in serving the people of Hawai`i.

A representative of CNHA acknowledged acceptance of this recognition. Commission members attending this convention enjoyed participating.

ACTION

Motion carried unanimously

ITEM NO. C-5
SUBJECT: Ad Hoc Committee Report on Geothermal Energy

MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner L. DaMate.

DISCUSSION

This Ad Hoc committee was formed in July this year which was comprised of Commissioner Lee Loy, Mike Kahikina and Perry Artates. Geothermal Energy is regulated by the Bureau of Land and Natural Resources which dictates who will have access to geothermal energy. As a Trust it may be a challenge to the department.

The committee contacted three entities to seek partnerships in geothermal energy: Format - operators of Puna Geothermal, Innovation Development Group and Mokipower. Interest is high at both legislative bodies to partner with DLNR for potential geothermal energy. The scope of the committee is to determine the viability of geothermal energy. This opportunity can benefit not only beneficiaries but the entire state.

Why is DHHL able to have water rights yet not the mineral rights?

Research will need to be conducted to determine whether the department qualifies for mineral rights. Should it prove favorable for the department, beneficiaries could benefit greatly.

ACTION

Motion carried unanimously.

RECESS: 12:40 P.M.

MOTION/ACTION

Moved by Commissioner I. Lee Loy, seconded by Commissioner M. Kahikina to recess for lunch. Motion carried unanimously.

RECONVENE 1:00 P.M.

D - HOMESTEAD SERVICES DIVISION

ITEM NO: D-1
SUBJECT: HSD Status Reports

A) Homestead Lease and Application Totals and Monthly Activity Reports
B) Delinquency Report and Status of Contested Case Hearings
C) DHHL Guarantees for USDA - RD Loans

MOTION/ACTION

None, for information only.

ITEM NO: D-2
SUBJECT: To Amend the Reinstated Application Date for Florence Kalawa Tabag

MOTION/ACTION

Moved by Commissioner I. Aiu, seconded by Commissioner K. Hopkins. Motion carried unanimously.

ITEM NO: D-3
SUBJECT: Ratification of Loan Approvals

MOTION/ACTION

Moved by Commissioner I. Aiu, seconded by Commissioner H. Tancayo. Motion carried unanimously.

ITEM NO: D-4
SUBJECT: Approval of Consent to Mortgage

MOTION/ACTION

Moved by Commissioner H. Tancayo, seconded by Commissioner L. DaMate. Motion carried unanimously.

ITEM NO: D-5
SUBJECT: Refinance of Loans

MOTION/ACTION

Moved by Commissioner H. Tancayo, seconded by Commissioner I. Aiu. Motion carried unanimously.

ITEM NO: D-6
SUBJECT: Schedule of Loan Delinquency Contested Case Hearings

MOTION/ACTION

Moved by Commissioner H. Tancayo, seconded by Commissioner K. Hopkins. Motion carried unanimously.

ITEM NO: D-7
SUBJECT: Homestead Application Transfers / Cancellations

MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner I. Lee Loy. Motion carried unanimously.

ITEM NO: D-8
SUBJECT: Commission Designation of Successors to Application Rights (Deceased)

MOTION/ACTION

Moved by Commissioner H. Tancayo, seconded by Commissioner K. Hopkins. Motion carried unanimously.

ITEM NO: D-9
SUBJECT: Adjustment to Waitlist - Leinani L. Aina

MOTION/ACTION

Moved by Commissioner H. Tancayo, seconded by Commissioner L. Damate. Motion carried unanimously.

ITEM NO: D-10
SUBJECT: Ratification of Designation of Successors to Leasehold Interest and Designation of Persons to Receive Net Proceeds

MOTION/ACTION

Moved by Commissioner M. Kahikina, seconded by Commissioner H. Tancayo. Motion carried unanimously.

ITEM NO: D-11
SUBJECT: Approval of Exchange of Leasehold Interest

MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner M. Kahikina. Motion carried unanimously.

ITEM NO: D-12
SUBJECT: Approval of Assignment of Leasehold Interest

MOTION

Moved by Commissioner M. Kahikina, seconded by Commissioner R. Tassill.

RECOMMENDATION

Acting Homestead Administrator Dean Oshiro requested commission approval to transfer lease from Lessee Lenora Vierra to Stacy McGuire, Item #78, page 27 subject to conditions of the disposition of a contested case hearing that will be heard next month before the commission.

AMENDED MOTION

Moved by Commissioner M. Kahikina, seconded by Commissioner K. Hopkins

DISCUSSION

Reservations were expressed by some commission members on whether problems would be created by rushing the process. Acting Homestead Administrator Dean Oshiro articulated if the matter is favorable for the lessee, then the transfer will be expedited without a drawback. Otherwise, a transferee may be facing a financial burden with mortgage and construction loans which may jeopardize their process and create further restrictions for them. The department endeavors to work with the lessees.

RECESS 1:45 P.M.

MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner L. DaMate to convene in executive meeting to consult with its Deputy Attorney General. Motion carried unanimously.

RECONVENE 1:58 P.M.

MOTION/ACTION

Motion by Commission K. Hopkins, seconded by Commissioner L. DaMate to reconvene in regular meeting. Motion carried unanimously.

ITEM D-12 (cont)
SUBJECT: Approval of Assignment of Lease

DISCUSSION

Motion on the floor to add the amended motion to grant the condition of a contested case hearing as a condition of this lease transfer from Lenora Vierra to Stacy McGwire. Commissioner I. Aiu supports the amendment due to information received in the executive meeting.

MOTION/ACTION

Moved by Commissioner I. Aiu, seconded by Commissioner M. Kahikina. Motion carried unanimously.

ITEM NO: D-13
SUBJECT: Approval of Amendment of Leasehold Interest

MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner H. Tancayo. Motion carried unanimously.

ITEM NO: D-14
SUBJECT: Request to Schedule Contested Case Hearing - Lease Violation

MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner M. Kahikina. Motion carried unanimously.

ITEM NO: D-15
SUBJECT: Commission Designation of Successor - Gibson P. Kay

MOTION/ACTION

Moved by Commissioner M. Kahikina, seconded by Commissioner K. Hopkins. Motion carried unanimously.

ITEM NO: D-16
SUBJECT: Request to Advance Net Proceeds - Victoria G. Kapuni

RECOMMENDATION

Chairman Nahale-a requested this matter be tabled to Executive Session.

MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner I. Lee Loy to defer this matter to Executive Session. Motion carried unanimously.

ITEM NO: D-17
SUBJECT: Request to Rescind Surrender - Daniel K. Kennedy

MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner I. Aiu. Motion carried unanimously.

ITEM NO: D-18
SUBJECT: Request to Transfer Lease - Arlene Chow

MOTION/ACTION

Moved by Commissioner H. Tancayo, seconded by Commissioner L. DaMate. Motion carried unanimously.

ITEM NO: D-19
SUBJECT: Relocation - Paul K. Kaaihili

MOTION/ACTION

Moved by Commissioner M. Kahikina, seconded by Commissioner K. Hopkins. Motion carried unanimously.

ITEM NO: D-20
SUBJECT: Rebranding of HOAP (Home Ownership Assistance Program)

MOTION/ACTION

Chairman Nahale-a requests this matter be tabled at a later time in the agenda and requests Items F-1 and F-3 be inserted here.

MOTION/ACTION

Moved by M. Kahikina, seconded by K. Hopkins. Motion carried unanimously.

F - LAND MANAGEMENT DIVISION

ITEM NO: F-1
SUBJECT: Finding of No Significant Impact (FONSI), General Lease No. 293, Kalaeloa Solar One and Kalaeloa Solar Two, Kalaeloa, O`ahu

COMMENT

Land Management Administrator Linda Chinn provided commission with a corrected page inadvertently left out.

MOTION

Moved by Commissioner M. Kahikina, seconded by Commissioner R. Tassill.

DISCUSSION

Sheldon Char appeared before the commission to respond to any concerns if necessary. Ms. Homelani Schaedel, Malu`ohai Homestead Association President, indicated the community has been involved with this project from the beginning through beneficiary consultations. Chairman Nahale-a expressed with gratitude for the commitment, dedication and forthright respect the company has displayed throughout this project.

The benefits package for the community is job creation and a percentage of revenue to support the community such as an educational funding program to support a renewable energy program benefiting native Hawaiians on O`ahu in an vocational school curriculum, Hawaiian language and an educational facility selected by the department. Commission supports alternative energy using land resources for maximum benefits. Commissioners Kahikina and Lee Loy have other concerns that need to be addressed regarding community benefits.

Steve Clark, Manager of Pacific Cultural Resources informed the commission he has consulted with native Hawaiian practitioner Shad Kane who is familiar with the history of the area. Commissioner Kahikina recommends other practitioners be utilized as well on subsequent projects.

ACTION

Motion carried unanimously

ITEM NO: F-3
SUBJECT: License Agreement No. 648, Narconon Hawai`i, Kalaeloa, O`ahu

RECOMMENDTION

1. Assign LA No 648 from Narconon Hawai`I to American Renaissance Academy
2. A one-time extension for an additional five years (10/11 – 9/16)
3. License fees, up to $40,000 shall be credit to proposed assignee for re-roofing of Building No. 1 over a two-year period

MOTION

Moved by Commissioner M. Kahikina, seconded by Commissioner K. Hopkins.

DISCUSSION

Mr. Jeff Beckman of American Renaissance Academy (ARA) appeared with Ms. Linda Chinn. She explained ARA wants to continue its school on the premises and has agreed to reimburse the department for past due payments. Credit will be given to ARA in the amount of $40,000 for the estimated cost of a roof replacement with $20,000 applied towards the current delinquency, the other $20,000 to be credited over a period of 24 months. Staff is recommending dealing with ARA directly for collection of monthly rent of $8,000. Staff is requesting to grant ARA an extension of 5 additional years at the facility or until they can find a suitable facility for their school. Building 1 is a historical building which has seen major repair for termites, a new stairway and air-conditioning. One can see the improvements to the building. The roof repair is one of the last things to complete. It was estimated Narconon has spent over $1,000,000 in repairs to the facility.

ACTION

Motion carried unanimously.

RECESS 2:35 P.M.

Moved by Commissioner K. Hopkins, seconded by Commissioner H. Tancayo to convene in executive meeting. Motion carried unanimously

EXECUTIVE SESSION

The Commission convened in executive meeting Pursuant to Section 92-5(a)94), HRS, to consult with its attorney on questions and issues pertaining to the Commission's powers, duties privileges, immunities and liabilities.

1) Honokaia `Ohana v HHC & DHHL, Civil No. 09-00395
2) Honokaia `Ohana v HHC & DHHL, Civil No. 09-101615-07
3) Leimomi Lum v Hawaiian Homes Commission, et al; Civil No. 09-1-2332-10 & Civil No. 10-102170-10
4) In the Matter of Vanessa Wong
5) In the Matter of Arlene Chow
6) Resolution of Property Tax Liability
7) Defect of Title Claims
8) Alternate Land Use for Pastoral & Agricultural Homestead Leases

RECONVENE 4:20 P.M.

MOTION/ACTION

Moved by Commissioner I. Aiu, seconded by Commissioner K. Hopkins to reconvene to regular meeting. Motion carried unanimously.

ITEM D-16 (cont)
SUBJECT: Request to Advance Net Proceeds – Victoria G. Kapuni

RECOMMENDATION

1) Recommend denial of the request to advance the payment of net proceeds to Ms. Victoria G. Kapuini
2) Recommend approval to cease interest as of July 28, 2009

MOTION

Moved by Commissioner H. Tancayo, seconded by Commissioner L. DaMate

AMENDED MOTION/ACTION

Moved by Commissioner M. Kahikina to advance net proceeds to Ms. Kapuni, seconded by Commissioner K. Hopkins. Motion carried unanimously.

DISCUSSION

If the Commission approves to advance the net proceeds, staff requests to increase a contingency fund of an additional $10,000, making it a $20,000 total to cover costs incurred in re-awarding the home. Such costs will cover survey, termite treatment and other unforeseen expenses. Many times, the department withholds funds for such measures only to discover the costs exceed the actual which the department is unable to recoup.

MOTION/ACTION

Moved by Commissioner I. Aiu, seconded by Commissioner K. Hopkins to increase the contingency fund as requested. Motion carried unanimously.

RECOMMENDATION

Chairman Nahale-a recommended to have Item D-20 deferred until next month's meeting.

MOTION/ACTION

Moved by Commissioner L. DaMate, seconded by Commissioner H. Tancayo. Motion carried unanimously.

ITEM NO: F-2
SUBJECT: General Lease No. 113, George and Jean Madden, Waiakea, Hawai`i

RECOMMENDATION

Two Part Motion:

1) Amend general lease 113 for the purpose of implementing a payment plan as requested to cure its deficient base lease rent due to the recent rent re-opening to establish a General Lease (GL) rent as of October 1, 2011
2) Consent to the proposed assignment of GL 113 from Mr. and Mrs. Madden to their wholly owned LLC named 154 Holomua Ohana LLC

MOTION/ACTION

Moved by Commissioner H. Tancayo, seconded by Commissioner K. Hopkins.

ITEM NO: F-4
SUBJECT: Issuance of Right-of-Entry, U.S. Geological Survey, Papakolea, O`ahu

RECOMMENDATION

Authorize the Right-of-Entry (ROE) to US Department of Interior, U.S. Geological Survey (USGS) for the purpose of installing and operating a stream flow monitoring gage on HHL at Kanaha Stream, Papakolea, O`ahu

MOTION/ACTION

Moved by Commissioner H. Tancayo, seconded by Commissioner K. Hopkins. Motion carried unanimously.

ITEM NO: F-5
SUBJECT: Notices of Default and Revocations, Statewide

RECOMMENDATION

That the Hawaiian Homes Commission ratify notices of Default/Revocation issued to parties

1) Revocable Permit No. 435
2) Jonnaven Monalim dba Pacific Trucking, Inc.
3) Kalaeloa, O`ahu

MOTION

Moved by Commissioner I. Aiu, seconded by Commissioner H. Tancayo.

DISCUSSION

Commissioner K. Hopkins recognizes the inconsistencies in attempting to secure lease payments, yet he realizes the need to collect the most amount of revenue for our beneficiaries. When a Revocable Permit is delinquent, the lease can be canceled after five days and the department can still do a workout.

ACTION

Motion carried unanimously.

H - ADMINISTRATIVE SERVICES OFFICE

ITEM NO: H-1
SUBJECT: Transfer of Hawaiian Home Receipts Money at the End of the First Quarter, FY 2012

RECOMMENDATION

Approve transfer of the entire receipts deposited in the Hawaiian Home Receipts Fund as of September 30, 2011 to the Hawaiian Home Operating Fund.

MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner M. Kahikina. Motion carried unanimously.

J - GENERAL

ITEM J-2
SUBJECT: Kahea O Ka`ahiu Hunting Organization

MOTION/ACTION

Chairman Nahale-a announced Kahea O Ka`ahiu Hunting Organization was unable to present its power point and will request to meet with commission at a later date.

ITEM NO: J-1
SUBJECT: Request to Address the Commission – Robert K. Kekuna, Jr. and Stuart T. Ing, Esq.

MOTION/ACTION

None, for information only.

DISCUSSION

Robert Kekuna, Esq. and Stuart Ing, Esq. of Law Office of Stuart T. Ing along with Jean Christenson, Esq. appeared before the commission to address bankruptcy clients who leased property from DHHL.

Example: If a homesteader has assets that are not protected, it can be liquidated by the Trustee in charge of the case. In real estate cases, if you have a $150,000 home worth and $160,000 loan, there is no equity. As long as the individual makes payments on mortgage, there is no problem to apply Chapter 7 in equity. In the case of a leasehold interest, the beneficial trust is not part of the bankruptcy estate. The leaseholder has no control over the lease because control is with the commission which is under Section 210 HHCA to deny any transfer.

Under Chapter 13, the debtor is allowed to catch up on arrears through a payment plan. Prior to 2010, only the home and other improvements were valued. Leasehold is considered to be without value in determining value of property.

Options to consider in situations: Seek Financial Counseling such as Hawaiian Community Assets. The commission must address how the rights of leaseholders will be affected by Bankruptcy Courts and how the leasehold adds significant monetary value to a lease.

The HHCA does vest the commission with awarding to approve or disapprove transfers. The current situation in bankruptcy benefits only the predators. For those with fairly low income, there is no way they could pay the fair market value of the lease in three to five years.

Although infrequent, there is involuntary bankruptcy under Chapter 7 where lessees are forced into bankruptcy when creditors can't get paid. Historically, a credit card company could secure a judgment, forcing the person into involuntary bankruptcy and the trustee would liquidate the assets and find a native Hawaiian buyer for a decent market price.
I

ANNOUNCEMENT

Commissioner Tassill had extended an invitation to the Commission members to stop and meet Kupuna Hale residents prior to a Waimanalo community meeting.

ADJOURNMENT 4:45 P.M.

Moved by Commissioner K. Hopkins, seconded by Commissioner H. Tancayo to adjourn the regular meeting. Motion carried unanimously

ANNOUNCEMENTS AND ADJOURNMENT

NEXT MEETING October 17, 2011, Wailuku, Maui

ANNOUNCEMENTS Next community meeting to be held on October 17, 2011 at Holy Ghost Community Church Hall, 4300 Lower Kula Road, Kula, Maui at 6:00 p.m.

ADJOURNMENT 4:30 P.M.

Respectfully submitted:

Albert "Alapaki" Nahale-a, Chairman
Hawaiian Homes Commission

Prepared by:

Elaine Searle
Secretary to the Commission

APPROVED BY:
The Hawaiian Homes Commission
At Its Regular Monthly Meeting Of
October 17, 2011

Albert "Alapaki" Nahale-a, Chairman
Hawaiian Homes Commission