

**HAWAIIAN HOMES COMMISSION**  
**Minutes of**  
**August 15, 2011**  
**Meeting Held in Kailua-Kona, Hawai'i**

Pursuant to proper call, the 618th Regular Meeting of the Hawaiian Homes Commission was held at the King Kamehameha Hotel, 75-6550 Palani Road, Kailua-Kona, Hawai'i, beginning at 10:30 a.m.

**PULE** Commissioner Kama Hopkins and a mele "Kona Kai `Opua"

**PRESENT** Mr. Albert "Alapaki" Nahale-a, Chairman  
Mr. Imaikalani Aiu, Commissioner, Kaua'i  
Mr. Perry Artates, Commissioner, Maui  
Ms. Leimana Damate, Commissioner, West Hawai'i  
Mr. Kama Hopkins, Commissioner, O'ahu  
Mr. Michael Kahikina, Commissioner, O'ahu  
Mr. Ian Lee Loy, Commissioner, East Hawai'i  
Mr. Henry Tancayo, Commissioner, Moloka'i  
Mr. Renwick Tassill, Commissioner, O'ahu

**COUNSEL** Kalani Bush, Deputy Attorney General

**STAFF** Michelle Kauhane, Deputy to the Chairman  
Wai'ale'ale Sarsona, Chief of Staff  
Linda Chinn, Administrator, Land Management Division  
Darrell Yagodich, Administrator, Planning Office  
Dean Oshiro, Acting Administrator, Homestead Services Division  
Francis Apoliona, Enforcement Officer  
John Peiper, Enforcement Officer  
Jim DuPont, Supervisor, West Hawai'i District Office  
Kahana Albinio, Agent, Land Management Division  
Gigi Cairel, Planner, Planning Division  
Kaleo Manuel, Planner, Planning Division  
Dre Kalili, Policy and Programs Analyst  
Blaine Fergerstrom, Information and Community Relations Agent  
Corinne Lee, Grants Specialist and Information and Community Relations  
Ellery Batino, Enforcement Officer, Island of Hawai'i  
Elaine Searle Secretary to the Commission

**AGENDA** Commissioner K. Hopkins moved, seconded by Commissioner R. Tassill, to approve the agenda. Motion carried unanimously.

**MINUTES** Commissioner K. Hopkins moved, seconded by Commissioner M. Kahikina, to approve the minutes of July 19, 2011 as circulated. Motion carried unanimously.

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

HAWAIIAN HOMES COMMISSION WORKSHOP/AGENDA  
King Kamehameha Hotel, 75-6550 Palani Road, Kailua-Kona, HI,  
Monday, August 15, 2011, 10:30 a.m., & August 16, 2011, 8:30 a.m.

**ORDER OF BUSINESS**

Roll Call  
Approval of Agenda  
Approval of Minutes of July 19, 2011

**A - WORKSHOP PRESENTATIONS**

- Land Dispositions: General Leases
- Native Hawaiian Development Program Plan (Part 2): Individual Development Programs
- Kalaupāpā

**B - PUBLIC TESTIMONY ON AGENDIZED ITEMS**

**C - OFFICE OF THE CHAIRMAN**

- C-1 HAR Title 10 - Amendment Development Process  
C-2 Establish Quarterly Meetings with Office of Hawaiian Affairs (OHA)

**D - HOMESTEAD SERVICES DIVISION**

- D-1 HSD Status Reports  
Exhibits:  
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
- D-2 Notification of Various Lease Awards and Cancellation of Corresponding Applications
- D-3 Rescission of Homestead Lease Awards and Reinstatement of Application - East Kapolei I, Undivided Interest
- D-4 Rescission of Homestead Lease Award and Reinstatement of Application - East Kapolei II, B & C, Undivided Interest
- D-5 Approval of Consent to Mortgage

- D-6 Refinance of Loans
- D-7 Schedule of Loan Delinquency Contested Case Hearings
- D-8 Homestead Application Transfers / Cancellations
- D-9 Commission Designation of Successors to Application Rights (Deceased)
- D-10 Ratification of Designation of Successors to Leasehold Interest and Designation of Persons to Receive Net Proceeds
- D-11 Approval of Assignments of Leasehold Interest
- D-12 Approval of Amendments of Leasehold Interest
- D-13 Approval of Exchange of Leases
- D-14 Request to Schedule Contested Case Hearing - Lease Violations
- D-15 Request to: 1) Amend the Hawaiian Homes Commission's June 23, 2009 Action Relating to the Keokea-Waiohuli Development - Phase 1, Keokea, Kula, Hawai'i; 2) Approve Amendment of Keokea-Waiohuli Development - Phase 1, Homestead Leases
- D-16 Continued Discussion and Decision Re: July 19, 2011, Item B-15, "Request to Transfer a Portion of a Leasehold Interest - **James Akiona, Sr.**"

#### **F- LAND MANAGEMENT DIVISION**

- F-1 General Leasing (deleted)
- F-2 Issuance of Right-of-Entry Permit, The Honolulu Authority for Rapid Transportation (HART), Waiawa, O'ahu
- F-3 Issuance of License, Kamehameha Schools, Keaukaha, Hawai'i
- F-4 Approval of Payment Plan, License No. 607, Mahalo Broadcasting LLC, Humu'ula, Hawai'i
- F-5 For Information Only; Request from Waimea Hawaiian Homestead Association for Park and Cemetery Use
- F-6 Ratification of Ratification of Consents and Approvals by Chairman, Hawaiian Homes Commission
- F-7 Notices of Default and Revocations, Statewide

#### **G - PLANNING OFFICE**

- G-1 Nā Kupa'a Operations and Maintenance Agreement
- G-2 Budget Amendment for DHHL Grants Program

#### **J - GENERAL AGENDA**

- J-1 Request to Address Commission - Harvey Keliikoa of Kings Landing, Keaukaha
- J-2 Request to Address Commission - Duke Kapuniai, Pu'ukapu Pastoral Water Group
- J-3 Request to Address Commission - Kanani Kapuniai, 'Oiwi Lokahi O Ka Mokupuni O Keawe
- J-4 Request to Address Commission - Gabriel Mamani, Kawaihae Homestead Assn.
- J-5 Request to Address Commission - Edgar Spencer

## EXECUTIVE SESSION

The Commission anticipates convening in executive meeting Pursuant to Section 92-5(a)(4), HRS, to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities.

1. Richard Nelson, III, Kaliko Chun et al. vs HHC, Civil No. 09-1-161507
2. Honokaia `Ohana vs HHC & DHHL, Civil No. 09-00395
3. Issues Relating to Commission's Powers, Duties, Privileges, Immunities and Liabilities Under the HHCA of 1920 and HAR, Pursuant to §92-5(a)(4), HRS

## ANNOUNCEMENTS AND ADJOURNMENT

1. Next Meeting – September 20, 2011, Kapolei, Hawai`i
2. Other Announcements
3. Adjournment



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

## COMMISSION MEMBERS

Imaikalani P. Aiu, Kaua`i  
Perry O. Artates, Maui  
Leimana DaMate, West Hawai`i  
J. "Kama" Hopkins, O`ahu

Michael P. Kahikina, O`ahu  
Ian B. Lee Loy, East Hawai`i  
Henry K. Tancayo, Moloka`i  
Renwick V.I. Tassill, O`ahu

The next community meeting will be held on Monday, September 19, 2011 at Papakolea Community Center, 2150 Tantalus Drive, Honolulu, Hawai`i at 6:00 p.m.

Special Accommodations (such as Sign Language interpreter, large print, taped materials) can be provided, if requested at least five (5) working days before the scheduled meeting on the respective island by calling (808) 620-9590.

## A – WORKSHOP PRESENTATIONS

### Item #1 LAND DISPOSITIONS: General Leases

Land Management Administrator Linda Chinn provided a brief overview of general Leases which are governed by:

- 1) Hawaiian Homes Commission Act of 1920
- 2) 171 Hawaii Revised Statutes
- 3) Chapter 4, Title 10 Hawaii Administrative Rules

#### Four types of Agreements

General Leases – long term leases up to 65 years

Revocable Permits – month to month short term leases; retained for the lands not ready for Homestead use.

Licenses – Generally used for easement for utility companies or cell site

Right of Entry Permit –short term entry used for a specific entry for specific time.

#### Big Island Projects include

- 1) Target- Safeway Hilo
- 2) Big Island Carbon, Kawaihae

General Leasing Program – generates revenue and provide long term use for commercial, industrial, pastoral and agricultural lands. 120 general leases exist statewide which creates 8.1 M annually.

Two provisions in HHCA govern general leasing process:

- 1) Section 204(a)(2) – 171.59, HRS
- 2) Section 220.5 – 171.60 HRS

Department may lease lands for revenue generating purposes to general public on same terms and conditions and uses that apply to disposition of public lands in HRS, Chapter 171. This is the first guiding authority. Section 204 was amended by 1978 Constitutional Convention by adding:

“provided further that the Department is expressly authorized to negotiate, prior to negotiation with general public the disposition of a lease of Hawaiian home lands to a native Hawaiian or organization or an association owned or controlled by native Hawaiians for commercial, industrial or other business purposes.” Commission further adopted in September 1981 allowing lands used for income purposes to Hawaiians and general public. Another action rescinded the general leasing policy adopted on September 1981, in October, 2001. No further preference to native Hawaiians on general lease offerings.

Section 220.5(b) – Department authorized to enter into project developer agreement to 1) set by appraisal the minimum rental of lands at fair market value; 2) give notice of proposed disposition in accordance with procedures and requirements of Section 171-60 HRS; establish criteria for

## Q&A

Does the department have any connection with subleases should a lessee decide to sublease portions of a lease?

The chairman grants all sublease agreements which are reviewed for terms and agreements. The department is subject to receive additional monies through a cost share process and may be entitled to collect 50% of profits after costs are recouped. All subleases are to be reported, otherwise, this oversight may cancel the lease. Percentage rent leases are not considered reliable income due to fluctuating economic times.

Are general leases given in areas designated agricultural or pastoral?

There are some old pastoral leases, but no long term general leases have been issued for those types of uses. The department believes that homesteaders should acquire and utilize the agriculture or pastoral lands for these purposes. Short term, month to month leases have been issued.

What has been the performance of percentage leases and the shifts seen in the market level?

Because deductions are offered for turn-on and turn-off investments, general leases need to be continued for a duration of time before percentages kick in. Percentage leases are not relied on as revenue generating leases, but some type of gain helps.

The department is attempting to establish the fixed cost of running the department as well as determining how much it will cost to place a homesteader on the land. Revenues need to be increased. Through the island plan process, some lands are designated for commercial use. The land value changes when the market is bad. No value figure is placed on the property until the department is preparing for development. In the matter of the DeBartolo lease, estimated annual income in three years is anticipated at approximately \$4.6 M. Land Management manages approximately 230,000 acres besides other land base with a staff of ten (10).

How are the commercial funds utilized to generate revenues for the purpose of the Act?

Monies go into a general fund and are utilized for whatever funding purposes the Commission determines.

On the Hawaiian Homes Commission rescission action of October 23, 2001, why was the general leasing preference policy changed?

From 1981 to 2000, nineteen (19) general leases were issued with sixteen (16) leases given to native Hawaiians. Of the sixteen leases, only four (4) leases survived. A number of factors caused these leases to fail. The developing and building of raw land, the mortgage payments and insurance costs were far greater than expected and caused many of them to fold within a year.

The HOAP program was offered to assist general lessees in the planning and preparation for a general lease. The subsequent action didn't prevent the department from giving preference to Hawaiians, it merely removed a mandate requiring the department to first offer it to a Hawaiian.

How will Section 220.5 be utilized?

Although this lease process has not been tested, projects are growing bigger and infrastructure is reduced to a lesser amount which may require the department to initiate this lease process. An appraisal for best use will need to be completed; advertising and the setting of criteria to review the project. With all factors considered, it will determine:

- 1) who's willing to pay the most money; and
- 2) what's the best project for the area.

HRS 171-43.1 What size lots are determined for consideration?

Depending on the needs for the community or other non-profit organizations, nominal fees are charged or nothing at all. Consideration is given on whether native Hawaiians will be served. Non-profit organizations are offered leases and are required to seek their own financing. An example: Special Olympics is building its facility near the Kroc Center in Kapolei. Most leases geared for terms of 20 or more years. The department does not guarantee financing of these projects. Each entity maintains its own funding source.

Consent To Mortgage?

These matters are being reviewed and updated in the Administrative Rules.

Are lands not designated for homestead use derived through the Island Plans?

This body determines the land uses and there is no reason why this body cannot go back and re-designate land uses. We are required by law to go through a hearing process.

Does the department look into revenue sharing with the immediate community?

In working with bidders, the department attempts to package services or dollars as part of the negotiations to benefit the community. A couple of months ago, the commission approved a new policy to set aside 15% of general lease revenue into the NHRF (Native Hawaiian Recovery Fund) funds. Funding from commercial revenues would be set aside to benefit community needs.

Item #2 NATIVE HAWAIIAN DEVELOPMENT PROGRAM PLAN): (Part 2) Individual Development

Presented by Planning Administrator Darryl Yagodich and Planner Bob Freitas

The NHDP is the vehicle for determining how NHRF (Native Hawaiian Recovery Fund) are utilized. These funds are intended for self sufficiency and self determination for native Hawaiians. One only need be a native Hawaiian to benefit from these funds. This fund can be utilized for social, cultural and economic and political and educational purposes.

The Native Hawaiian Development Program Plan (NHDPP) was adopted by this commission in September, 2009. The Plan is currently "out for consultation" with comments due by September 3, 2011, to be presented at the October, 2011 meeting. The NHDPP is a means to increase self-sufficiency and self-determination of native Hawaiians. This program targets education of which scholarships are offered to approximately 250 individuals. Consideration is being given to expand the program and address internships under the scholarship program.

Agriculture program covers 1500 people statewide to provide technical assistance. A new agricultural policy is positioned to be in place by the end of the year. In review, the commission adopted an agricultural task force policy in 2000 because agriculture leases were not awarded since the 1980's. The program wasn't matching up to the policies in place, therefore a moratorium was issued. In the meantime, recommendations were made; however no action was taken due to the fact that homesteading was viewed as a priority.

Over the course of a two-year period, the Home Ownership Assistance Program (HOAP) has benefited more than 3200 people and has proved to be a viable program. Currently, the department is having it reassessed with potential changes being made.

#### Q & A

The department is being advised by UH College of Tropical Agricultural Cooperative Extension Service personnel. How is it that non-natives who have no connection to the lessees, are giving inappropriate advise on the lands?

Commissioner L. DaMate recommends utilizing a rancher who has experience and knowledge of the lands to advise the department on land issues. When this ag policy plan comes to the commission, it will be tweaked to address those priorities. It is difficult to give direction without an ag plan. Once direction is provided, it should make sense.

With no awarding of Ag leases since 1980 and Pastoral leases since 1990 is it the commission's responsibility to define this policy?

The way this commission can prioritize ag and pastoral leases is through the budget. There are no ag specialists within the department. If the commission requires agricultural and pastoral lands to become a priority, then the commission will need to redirect funding from the residential to pastoral/agriculture leases. It is not that simple as the majority of the waitlist comes from residential leases.



Why can't farming and pastoral lands be interchanged where ag lands can have animals and vice versa to operate under a subsistence usage?

Currently the ag and pastoral leases have a policy in place which restricts usage. In past practice the department held these leases to a commercially viable status. If lessees want to interchange both types of usages, the policy could provide for these types of considerations. Challenge may come from those who disagree with this concept.

Does the department have any rules or policies that address the educational financial needs of students in the Punānā Leo schools or Hawaiian Immersion Schools on Hawaiian homelands?

Scholarships for pre-schoolers not academically oriented were addressed at several beneficiary consultation meetings. This matter needs to be addressed in the department's rules and policies.

Are funds being focused on those native Hawaiian businesses that failed in the first year of development?

Efforts will be made to prioritize how the department is able to assist all of these ventures. Consideration is merited on the amount of funds available for any one of these projects.

### Item # 3 KALAUPĀPĀ

Planner Kaleo Manuel presented a report on Kalaupāpā

DHHL is part owner of the peninsula which is part of the Kalaupāpā National Historic Park. The National Park is the current lessee and has been working closely with the department and community in an alternative planning process.

**Background** - There is approximately 1400 acres in the Kalaupāpā - Palaaau area. Palaaau Park is licensed by DLNR to manage. Two community use area sites have been determined in the area: one near the Kalaupāpā Airport and the other at a trailhead entering Kalaupāpā. The entire area is limited to various constraints due to difficulty in developing the lands. It requires much thought in the planning process to determine how these lands will be utilized.

Use - The National Park Service (NPS) has a 50 year lease which expires in 2041. The annual lease rent is \$230,000 with NPS managing these resources. Over \$20 M was spent to build a well in Waikolu Valley and NPS continues to receive federal funding to maintain and manage the facilities in Kalaupāpā. The area is a significant and spiritual place with a lot of cultural and natural resources. Kupuna and `iwi are in the area, untouched, and archaeological and endangered species are located along the peninsula. St. Damien (recently canonized) of St. Philomena Church and the beautification of Mother Marianne are some of the things NPS is perpetuating to preserve across the nation. Access is via trail, airplane and barge (once a year). Improvements in Kalaupāpā are very costly. There are less than 20 patients remaining. Some of the communities are interested in the history of this area. Opihi and salt are one of the best in the state. It was advised that NPS work closely with the native Hawaiian community (topside) in

the preservation of the native gathering rights. One of the considerations is whether homesteading is viable and the future plans of the area once the last patient passes on. Within the next 7 to 15 years, this commission will need to make a decision on the future of Kalaupāpā.

The NPS has a general management plan similar to DHHL's planning process for short and long term situations which are guided by a budget. This plan acts as an environmental and social impact of Kalaupāpā begun in 2008 in gathering information from community. Over 9,000 comments were incorporated into what they envision Kalaupāpā's future will be. In 2012 a draft management plan will be presented which will then be adopted into a general management plan in 2013.

A packet submitted to be made a part of these minutes as Exhibit "B" offers various alternatives:

- a) no changes; management will remain constant in existing state, 100 person cap with no one younger than 16 years (per patient request).
- b) continue to keep access limited; keep in pristine existence environment
- c) stewardship involving the preservation of resources
- d) arrange for visiting opportunities for religious pilgrimages, visit kupuna

Kalaupāpā is the fifth (5<sup>th</sup>) county in the state of Hawai'i called Kalawao. The mayor of that county is the head of the Department of Health, an appointed position.

Two beneficiary consultation meetings were held; one topside and one in Kalaupāpā as the community has a unique interest in the area. They prefer not to be treated as visitors. Access issues need to be addressed as well as gathering rights. They believe the legacy of Kalaupāpā needs to be protected. Another issue discussed was whether homesteading would be an option. Comments from the commission and community will be presented to the NPS to consider the next steps.

## Q & A

Out of these regional plans what is the intent of the department to pursue any one of these plans?

Based on conversations on Moloka'i with NPS and Moloka'i community, the department would be recommending to b) keeping the area in its pristine condition and c) stewardship in preserving its resources. The beneficiaries are interested in forming a native Hawaiian ban to cover access for cultural practices, ocean resources and management concessions. Another discussion was on the pre-settlement of Kalaupāpā. Three kupuna attending an open house in Kalaupāpā said they lived there as children during pre-settlement days. Their families were forced to leave

Chairman Nahale-a thanked NPS for engaging in an open house format to allow for conversations among the community and the department and NPS. Kudos to the planning department for its involvement in this process. Planner Kaleo Manuel spent one week in Kalaupāpā gathering information to preserve the history and management wishes of the community.

Initially, NPS reluctantly agreed to a rental annual fee of \$320,000 based on the state's appraisal. A subsequent appraisal complete with federal guidelines revealed a lesser amount. Therefore, the department adjusted its rent. The NPS has a vested interest as they have made vast improvements to the lands. In reclaiming the lease, the community's prospective is that NPS needs to be compensated for its investments if the lease is cancelled. At the end of the lease in 2041, the lease is returned to the department without repayment.

What is the use of the well water developed by NPS?

Prior to the well water being developed by NPS, patients were accustomed to using brackish water. Waikolu Valley was the only source of fresh water and patients traveled there with empty buckets to replenish their drinking water.

What is the beneficiary interest in homesteading in Kalaupāpā?

To create a homestead in Kalaupāpā would be costly as Moloka'i has ample lands available for homesteading and agriculture. A few lessees envision this as an opportunity to reside there. Commissioner L. DaMate inquired about NPS support of indigenous native people by establishing an aha moku system, similar to Haleakala National Park which affords a strong voice for native Hawaiians in its stewardship and management system.

## **B - PUBLIC TESTIMONY ON AGENDIZED ITEMS**

Re: ITEM C-1: HAR Title 10 – Amendment Development Process

1. Kanani Kapuniai – Homesteader, Waimea Homestead Association. Ms. Kapuniai wants assurances that the commission and the department will collaborate with the public on matters pertaining to the updating of administrative rule changes.

2. Kaipo Kincaid, Hui Kako'o Aina Ho'opulapula – suggested at a previous meeting that commission amend the composition of the “adhoc committee” to include beneficiaries. However, commission opposed that suggestion. Ms. Kincaid suggests that Beneficiaries be allowed an opportunity to digest and input their viewpoints on the amended administrative rule changes to allow for transparency issues.
3. Bo Kahui – Is interested in addressing rules governing the contested case process. Would like to know how changes would interface with their community in La'i'opua where the Kanawai process is being implemented in its community.

Re: Native Hawaiian Development Program (Individual Development Programs)

Bo Kahui – La'i'opua Community Association – Thanked the Planning department upon recently receiving its grant funding through the Kulia ika Nu'u program. He believes the program needs to be beefed up to ensure its program continues to stay afloat and become sustainable in reaching its goal

Re: Item D-16 – Transfer a Portion of Leasehold Interest – James Akiona, Sr.

Sherilyn Adams appeared on behalf of her father, James Akiona, Sr. requesting that Parcel #1 of Pastoral lease No. 9043 being awarded to her, be approved for transfer to her daughter Moana Keakealani, for the purpose to build and raise cattle.

## C – OFFICE OF THE CHAIRMAN

ITEM NO: C - 1

SUBJECT: HAR Title 10 – Amendment Development Process

### RECOMMENDATION

Approval of this process by the Hawaiian Homes Commission for consideration of administrative rules, policy decision-making on related issues and development of new administrative rules and rule amendments

### MOTION

Moved by Commissioner L. Damate, seconded by Commissioner I. Lee Loy

### DISCUSSION

Policy and Rules Analyst Dre Kalili explained the term "white paper" refers to an authoritative and educational report designed and utilized by government and businesses alike to assist in

situations regarding decision making processes. Staff committee on rules described what the implications are and the advantages and disadvantages of changing existing rules. Ray Enos has been tasked with providing background information and a comment format.

Commissioner K. Hopkins inquired whether the timeline needed to discuss recommendations by staff to the ad hoc committee will be formidable. Chief of Staff Wai'ale'ale Sarsona indicated that the "white paper" will instead be presented to the Ad Hoc committee for determining which items need to be addressed for changes verses the staff making those selections. Because there hasn't been a review of administrative rules for over ten years, it will be a work in progress. Workshops and break-up groups will be formulated to review and digest the rules in different sections. Rules will be drafted and brought to the commission. The agenda items will then be presented to the community for additional review before a final draft is presented. Options are being considered to post this information on the website for further comment and review. It would create a very interactive process. This energetic process is totally different from the 70's and 80's noted Commissioner R. Tassill. The resources being allocated for the project is promising and challenging, added Commissioner I. Lee Loy. Kudos to Dre Kalili and her team of staff members who helped formulate this process. It was an eye opener for some who never participated in such an endeavor before this. Commissioner K. Hopkins appreciated the diligence of staff to tackle a number of these administrative rule issues in workshop sessions. Chairman Nahale-a's perspective is to keep things simple and clear.

Information and suggestions received from beneficiary and outside sources should be forwarded to an Ad Hoc committee member as they are the fact finding committee tasked with gathering information.

#### ACTION

Motion carried unanimously.

#### ITEM NO: C - 2

#### SUBJECT: Establish Quarterly Meetings with Office of Hawaiian Affairs (OHA)

#### MOTION

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

#### DISCUSSION

OHA Trustee Robert Lindsey thanked the commission for the opportunity to engage in quarterly meetings with Hawaiian Homes Commission. This could not come at a better time to serve and partner together, especially during tough economic times. Chairman Nahale-a noted this initiative was the brainchild of Trustee Lindsey and Commissioner Kama Hopkins. Commissioners expressed with gratitude the beginning of a significant and historic event that

will support and benefit the needs of our people. The meeting will be agendized for next month. Trustee Lindsey is confident other Trustees will be supportive of this venture.

ACTION

Motion carried unanimously.

ITEM NO: D-1

SUBJECT: HSD Status Reports

MOTION/ACTION

None. For Information only.

DISCUSSION

Acting Homestead Services Administrator Dean Oshiro presented the monthly activity reports on

- a) Homestead Lease and Application Totals and Monthly Activity Reports
- b) Delinquency Report & Status of Contested Case Hearings
- c) DHHL Guarantees for USDA-RD Loans

COMMENT

To follow up on the outcome of contested case hearings, commissioners may contact the Homestead Services Division for further information. Commission M. Kahikina noted the large sums of delinquency in the Nanakuli areas including Habitat for Humanity guaranteed loans. A workshop would aid in understanding the process.

ITEM NO: D-2

SUBJECT: Notification of Various Lease Awards and Cancellation of Corresponding Applications

MOTION/ACTION

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

ITEM NO: D-3

SUBJECT: Rescission of Homestead Lease Awards and Reinstatement of Applications – East Kapolei I, Undivided Interest

MOTION/ACTION

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

**ITEM NO: D-4**

**SUBJECT: Rescission of Homestead Lease Award and Reinstatement of Application – East Kapolei II, B & C, Undivided Interest**

MOTION/ACTION

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

**ITEM NO: D-5**

**SUBJECT: Approval of Consent to Mortgage**

MOTION/ACTION

Moved by Commissioner P. Artates, seconded by Commissioner M. Kahikina.

DISCUSSION

Commissioner K. Hopkins asked for explanation of the "Consent to Mortgage." When a bank places a mortgage on a property, the department is required to give consent for the mortgage to be recorded against the property. Deputy Chairman M. Ka'uhane noted no longer will the department record the mortgage document and bring it to the commission for ratification. Permission will be granted by the commission prior to recording of the mortgage documents at Department of Hawaiian Home Lands.

ACTION

Motion carried unanimously.

**ITEM NO: D-6**

**SUBJECT: Refinance of Loans**

MOTION/ACTION

Moved by Commissioner H. Tancayo, seconded by Commissioner P. Artates. Motion carried unanimously.

**ITEM NO: D-7**

**SUBJECT: Schedule of Loan Delinquency Contested Case Hearings**

**MOTION/ACTION**

Moved by Commissioner P. Artates, seconded by Commissioner H. Tancayo. Motion carried unanimously.

**ITEM NO: D-8**

**SUBJECT: Homestead Application Transfers/Cancellations**

**MOTION/ACTION**

Moved by Commissioner P. Artates, seconded by Commissioner K. Hopkins. Motion carried unanimously.

**ITEM NO: D-9**

**SUBJECT: Commission Designation of Successors to Application Rights (Deceased)**

**MOTION/ACTION**

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

**ITEM NO: D-11**

**SUBJECT: Approval of Assignments of Leasehold Interest**

**MOTION**

Moved by Commissioner P. Artates, seconded by Commissioner K. Hopkins.



COMMENT

Acting HSD Administrator, Dean Oshiro corrected the total to read 50 assignments of lease, not 49 (1<sup>st</sup> page). Commissioner K. Hopkins expressed how daunting it is for staff to comply with many various restrictions and department rule policies. The Ad Hoc committee is addressing the process through administrative rule changes.

ACTION

Motion carried unanimously.

ITEM NO: D-12

SUBJECT: Approval of Amendments of Leasehold interest

MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner P. Artates. Motion carried unanimously.

ITEM NO: D-13

SUBJECT: Approval of Exchange of Leases

MOTION/ACTION

Moved by Commissioner H. Tancayo, seconded by Commissioner R. Tassill. Motion carried unanimously.

ITEM NO: D-14

SUBJECT: Request to Schedule Contested Case Hearing – Lease Violations

MOTION/ACTION

Moved by Commissioner L. DaMate, seconded by Commissioner P. Artates. Motion carried unanimously.

ITEM NO: D-15

SUBJECT: Request to 1) Amend the Hawaiian Homes Commission's June 23, 2009 Action Relating to the Keokea-Waiohuli Development – Phase I, Keokea, Kula, Hawai'i;  
2) Approve Amendment of Keokea-Waiohuli Development – Phase 1, Homestead Leases

MOTION

Moved by Commissioner P. Artates, seconded by Commissioner H. Tancayo.

DISCUSSION

Due to county water limitations of 600 gallons per day (a typical household usage), the department submitted to waive this requirement in 2009. Unfortunately, wording was improper and lessees were not required to cultivate the lands and were allowed to erect worker quarters without commission approval. This submittal will correct this error.

Maui County was unable to secure a sustainable water source for fifteen lots in Keokea. These lessees were advised to implement a water catchments system. Based on the water usage, 2/3 of the land was to be utilized for agriculture purposes. This amendment will allow these lessees to build on their lot without the agriculture requirement, noted Deputy M. Ka'uhane. Commissioner K. Hopkins feels it an imposition to have these lessees pay for their catchments system.

Commissioner L. DaMate suggested reviewing these lots individually to provide assistance to these lessees should they have concerns. A supplemental consideration may be provided to these lessees if necessary, added Chairman Nahale-a.

ACTION

Motion carried unanimously.

**ITEM NO: D-16**

**SUBJECT: Continued Discussion and Decision Re: July 19, 2011, Item B-15, "Request to Transfer a Portion of a Leasehold Interest – James Akiona, Sr."**

MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner L. DaMate to table this matter to Executive Session. Motion carried unanimously.

MOTION/ACTION

Moved by Commissioner L. DaMate, seconded by Commissioner K. Hopkins to Recess for 15 minutes. Motion carried unanimously.

RECESS

1:50 p.m.

RECONVENE 2:10 p.m.

ITEM NO: F-1

SUBJECT: General Leasing

MOTION/ACTION

Submittal Withdrawn.

ITEM NO: F-2

SUBJECT: Issuance of Right-of-Entry Permit, The Honolulu Authority for Rapid Transportation (HART), Waiawa, O'ahu

RECOMMENDATION

To grant authority issuance of a Right-of-Entry (ROE) to HART to use a piece of Hawaiian Home Lands property in Waiawa, known as Ewa Drum site, for environmental field investigation and potential construction of the Honolulu High-Capacity Transit Corridor Project guideway and maintenance and storage system.

MOTION

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

DISCUSSION

HART will continue its due diligence to maintain its efforts to continue this project although a new lawsuit has been filed to prevent the project from materializing. Should the suit be successful, the property would be reclaimed by the department. A license agreement is in the works for an eventual land exchange between the City and County of Honolulu and the department for a 52 acre Ewa Drum site relinquished by the federal government to Hawaiian home lands in exchange for a 52 acre parcel known as the Varonna Village site. Anticipation is to finalize the exchange within two (2) years. Once this land exchange is complete, DHHL will own all four corners of the Kapolei Parkway (North - South Road) intersection.

ACTION

Motion carried unanimously.

ITEM NO: F-3

SUBJECT: Issuance of License, Kamehameha Schools, Keaukaha, Hawai'i

RECOMMENDATION

Approve issuance of an extension of license for an addition five (5) years.

MOTION/ACTION

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

ITEM NO: F-4

SUBJECT: Approval of Payment Plan, License No. 607, Mahalo Broadcasting LLC, Humu'ula, Hawai'i

MOTION

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

COMMENT

Should this license agreement default, the department will reclaim the property. The department is interested in working with these lessees to establish a workable monthly payment plan.

ACTION

Motion carried unanimously.

ITEM NO: F-5

SUBJECT: For Information Only: Request from Waimea Hawaiian Homestead Association for Park and Cemetery Use

MOTION

None. For Information Only.

DISCUSSION

Waimea Hawaiian Homesteaders Association is interested in mapping out an area in Pu'ukapu near the Kanu O Ka Aina Charter School for its priority project. To move forward on this project, one of the requirements is to be certified under the Kūlia ika Nu'u program. Steps would be taken to have members trained to become certified and qualified under a 501c3 non-profit entity. DHHL Planner Gigi Cairel single handedly provides resources and support for the "Kūlia" program. There is no fast-track process to quicken the course, noted Chairman Nahale-a.

Overall, the department supports the steps needed to manage the program, added Ms. Chinn. Commissioner M. Kahikina noted that the Nanakuli Hawaiian Homestead Community Association (NHHCA) project has not been successful with its grant assessment by the Kūlia program and is recommending (NHHCA) be placed on a future agenda. Kanani Kapuniai, Waimea Homestead Community added the initial 40 acre project is a beginning stage. They aspire to develop this project to include approximately 120 acres.

The Kulia process was developed to provide funding resources and land to communities that meet certain criteria within the Kulia program. It was formulated through a national practice. Since its implementation, it's been a work in progress.

**ITEM NO: F-6**

**SUBJECT: Ratification of Ratification of Consents and Approvals by Chairman,  
Hawaiian Homes Commission**

**MOTION**

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

**DISCUSSION**

Commissioner K. Hopkins sees potential changes to where the commission makes the decision and the chairman executes the process. Chairman Nahale-a stated this type of process already exists within the department and there is a formula which he adheres to based on department guidelines. What concerns Chairman Nahale-a is the ratification of items that have no policy. If the chairman has a direction and makes an approval or disapproval, what would be the reasoning to have the commission review it, again.

**ACTION**

Motion carried unanimously.

**ITEM NO: F-7**

**SUBJECT: Notices of Default and Revocations, Statewide**

**MOTION**

Moved by Commissioner P. Artates, seconded by Commissioner M. Kahikina.

DISCUSSION

Ms. Chinn reported RP #327 - Professional Driving Academy paid \$3,000 last week towards his monthly rent. Due to the construction volatility, there may be some fluctuation when funds are available. The department continues its due diligence in maintaining delinquencies.

ACTION

Motion carried unanimously.

**ITEM NO: G-1**

**SUBJECT: Na Kupa'a Operations and Maintenance Agreement**

RECOMMENDATION

Authorize the Chairman to negotiate terms and conditions for the following document, subject to State Attorney General Review and approval, in support of the Nā Kūpa`a o Kuhio Kaka`ina water and wastewater system project

MOTION

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

Nā Kūpa`a O Kūhio is a non profit organization accessing USDA RD funding for water and wastewater projects and works in partnership with the department to provide water and wastewater for department projects while the department funds roads, utilities and other subdivision costs. Riley Smith, Secretary-Treasurer claimed USDA has different funds available and eligible to non-profit organizations. For the water and wastewater costs at Kaka`ina project, \$918,000 of funds were available; \$541,000 for loans and \$377,000 from grants. The department benefits through the grants and the loans over a period of time. This process provides infrastructure in the ground and enables the department to utilize more resources for people on the waitlist. Nā Kūpa`a's focus has been on water and wastewater usage. The department estimates it costs \$180,000 to build one home.

ACTION

Motion carried unanimously.

**ITEM NO: G-2**

**SUBJECT: Budget Amendment for DHHL Grants Program**

RECOMMENDATION

To approve an amendment to DHHL Operating Budget, FY 2011-12, Native Hawaiian Rehabilitation Fund by increasing the budget by \$240,000.00.

MOTION/ACTION

Moved by Commissioner P. Artates, seconded by Commissioner H. Tancayo. Motion carried unanimously.

**ITEM NO: J-1**

**SUBJECT: Request to Address the Commission – Harvey Keliikoa of King's Landing, Keaukaha**

MOTION/ACTION

None, for information only.

COMMENTS

King's Landing President Herman Costa is requesting approval by the department to allow Civil Defense a right-of-entry to place a Civil Defense tower within King's Landing for safety purposes. The closest tower is three (3) miles away.

In addition, King's Landing community is requesting permission to allow successorship of the lands where MAHA community members reside. A recent MAHA member passed on and his successor was only 25% and was asked to leave.

**ITEM NO: J-2**

**SUBJECT: Request to Address the Commission – Duke Kapuniai, Pu'ukapu Pastoral Water Group**

MOTION/ACTION

None, for information only.

COMMENTS

Duke Kapuniai submitted material to be made a part of these minutes as Exhibit A. The Pu'ukapu Pastoral Water Group made up of volunteer lessees installed a gravity-flow water system which will service 183 lessees. The people involved with this project have been very helpful and Mr. Kapuniai wanted to extend his Mahalo to the general contractor, Isemoto Contracting and the department for their energy and assistance.

**ITEM NO: J-3**

**SUBJECT: Request to Address the Commission – Kanani Kapuniai, `Oiwī Lokahi O Ka Mokupuni**

**MOTION/ACTION**

None, for information only.

**COMMENTS**

Kanani Kapuniai, `Oiwī Lokahi O Ka Mokupuni O Keawe expressed her appreciation to the commission and the department for granting and approving changes to its License Agreement No. 673 with Bio-Engineers, Inc. Ms. Kapuniai submitted material to be made a part of these minutes as Exhibit "A".

**ITEM NO: J-4**

**SUBJECT: Request to Address the Commission – Gabriel Malani, Kailapa (Kawaihae) Homestead Association**

**MOTION/ACTION**

None, for information only.

**COMMENTS**

Kailapa Homesteader Gabriel Malani presented a plan to introduce a "Wellness Park" in the Kailapa community located in Kawaihae. He provided a packet which included information of his proposed project which will be made part of these minutes as Exhibit "A" Mr. Malani was advised to contact Land Management Division Administrator Linda Chinn to work on his proposed plan.

**ITEM NO: J-5**

**SUBJECT: Request to Address the Commission – Edgar Spencer, Waimea Homesteader**

**MOTION/ACTION**

None, for information only.



### COMMENTS

Waimea homesteader Edgar Spencer is requesting permission to erect wind turbines on his pastoral lot in Waimea to supplement his income. Mr. Spencer has indicated he does not find this problematic as it has been proven elsewhere in the United States that cattle and wind farms can coexist on the same land. He believes the intent of the Hawaiian Homes Act is for rehabilitative purposes, and therefore is making this request to the commission for approval.

### RECESS      3:15 P.M.

Moved by Commissioner P. Artates, seconded by Commissioner K. Hopkins to adjourn to Executive Session to include the "J" Agenda item concerns. Motion carried unanimously.

### EXECUTIVE SESSION

The Commission convened in Executive Session Pursuant to Section 92-5 (a)(4), HRS, to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities.

1. Honokaia `Ohana vs HHC & DHHL, Civil No. 09-101615-07
2. Issues Relating to Commission's Powers, Duties, Privileges, Immunities and Liabilities Under the HHCA of 1920 and HAR, Pursuant to Section 92-5(a)(4), HRS
3. Richard Nelson, III, Kaliko Chun et al. vs HHC, Civil No. 09-1-161507

### RECONVENE: 4:25 P.M.

### MOTION/ACTION

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

### ITEM NO: D-16 (cont)

**SUBJECT: Continued Discussion and Decision Re: July 19, 2011, Item B-15, "Request to Transfer a Portion of a Leasehold Interest – James Akiona, Sr."**

### MOTION

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

### DISCUSSION

In granting this motion and because of the multiple transfers involved in this request, the lessee, in this situation, may be breaking the lease, affirmed Commissioner K. Hopkins. Commissioner K. Hopkins' recommendation is to deny this request in order to protect everyone. Chairman A. Nahale-a concurs with this concept and added that the department has a policy preventing the subdivision of leases, and it would be astute to maintain that policy until policy changes warrant it. Successors having less than 25% poses a serious concern, noted Commissioner L. DaMate and favors denying this motion. Commissioner R. Tassill indicated this matter needs to be addressed more thoroughly as this may set a precedent for others. Perhaps working in a "Kau Hale" concept where families are brought together in community like surroundings instead of breaking up leases would be more formidable as the purpose of the "Act" was to bring the people together.

### ACTION

Motion was denied.

### ANNOUNCEMENTS

September 19-20, 2011 is the next scheduled meeting in Kapolei, O`ahu. Monday evening's community meeting will be held at Papakolea, O`ahu.

### ADJOURNMENT: 4:30 P.M.

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

ANNOUNCEMENTS AND ADJOURNMENT

NEXT MEETING September 19, 2011, Kapolei, O`ahu.

ANNOUNCEMENTS Hawaiian Homes Commission is scheduled to meet with Office of Hawaiian Affairs, Tuesday, September 20, 2011 at approximately 1:00 p.m. in Kapolei, O`ahu


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  
September 19, 2011



Albert "Alapaki" Nahale-a  
Hawaiian Homes Commission