

**HAWAIIAN HOMES COMMISSION**  
**Minutes of June 16 & 17, 2014**  
**Meetings Held in Hale Pono, Kapolei, Hawai'i**

Pursuant to proper call, the 652nd Regular Meeting of the Hawaiian Homes Commission was held on the Department of Hawaiian Home Lands, 91-5420 Kapolei Parkway, Kapolei, Hawaii, beginning at 9:40 a.m.

**PRESENT**      Jobie M. K. Masagatani, Chairman  
Gene Ross K. Davis, Commissioner, Molokai  
Doreen N. Gomes, Commissioner, Maui  
J. Kama Hopkins, Commissioner, Oahu  
Wallace A. Ishibashi, Commissioner, East Hawaii  
David B. Kaapu, Commissioner, West Hawaii  
Michael P. Kahikina, Commissioner, Oahu  
Patricia W. Sheehan, Commissioner, Kauai  
Renwick V. I. Tassill, Commissioner, Oahu

**COUNSEL**      Craig Iha, Deputy Attorney General  
Diane Taira, Deputy Attorney General

**STAFF**          Darrell Young, Deputy to the Chairman,  
Norman Sakamoto, Development Officer, Office of the Chair  
Rodney Lau, Administrative Services Officer  
Linda Chinn, Administrator, Land Management Division  
Kahana Albinio, Property Development Supervisor, Land Management Division  
Shelly Carreira, Land Agent, Land Management Division  
Puni Chee, Administrator, Information & Community Relations Office  
Francis Apoliona, Compliance Officer  
Bob Freitas, Planner, Planning Office  
Nancy McPherson, Planner, Planning Office  
Dre Kalili, Policy & Program Analyst, Office of the Chair  
Dean Oshiro, Acting Administrator, Homestead Services Division  
Juan Garcia, Supervisor, Oahu District Office, Homestead Services Division  
Sandra Pfund, Administrator, Land Development Division  
Niniau Simmons, NAHASDA Manager, Office of the Chair  
Elaine Searle Secretary to the Commission

**ORDER OF BUSINESS**

**CALL TO ORDER**

Chair Masagatani called the meeting to order at 9:40 a.m.  
All commissioners are present constituting a quorum of nine (9) members present at roll call.

**APPROVAL OF AGENDA**

Chair Masagatani rearranged the agenda to address *Items for Decision Making* at the beginning of the meeting. *Executive Session* will follow Item C-2. Item G-1 is deferred to next month's agenda. Approval of minutes deferred to the next month

MOTION/ACTION

Moved by Commissioner Gomes, seconded by Commissioner Hopkins. Motion carried unanimously.

**PUBLIC TESTIMONY ON AGENDIZED ITEMS**

**ITEM A-1: Ben Char, Re: Item C-2,**

B. Char said he acquired a 1.9 acre Revocable Permit (RP) in Waimanalo and he was determined to be non-compliant when the department reviewed all permits in June 2013. He met with Deputy Darrell Young in January 2014, to address the situation. He admitted to allowing others to trespass and park their trucks on the property and welcomed animals, drug addicts, and anyone needing assistance. He questioned the Commission's grounds for terminating his RP and said the commission has a fiduciary responsibility to help people like him, retain native lands. Commissioner Tassill said he supports and approves B. Char's efforts for what he accomplished in the Waimanalo community over the past several years.

**ITEM A-2: Patty Silva, Re: Item C-2,**

P. Silva of Manawalea Riding Center (MRC) attended the same meeting with Ben Char in January 2014 and anticipated that the department would offer B. Char a temporary lease to allow MRC, a non-profit entity, to apply for his RP. DHHL staff planned to inspect the property, to ensure the property was cleared and the live-in resident was removed. P. Silva submitted her permit application for the property in February 2014. She recommended that Allan Silva, B. Char's former partner, who has an adjoining lot, be provided his own entryway, so as not to hinder his usage when handi-vans and buses converge on the property.

**ITEM A-3: Shad Kane, Re: C-2 and C-3,**

S. Kane stated he is a Hawaiian Civic Club member and cultural expert for the Preservation of Historic Sites and Cultural Properties. Former DHHL Chair Micah Kane asked him to participate in a cultural site inspection for land in Kalaeloa. S. Kane shared that the Kalaeloa Heritage Park in Kalaeloa contained more archaeological and cultural sites than anywhere in the state. There are documented and undocumented cultural sites in Ordy Pond at Kalaeloa. The property makai of the Kalaeloa Racetrack is one of the undocumented cultural sites. He said that the Navy cleared a 15-foot roadway on the exterior fence line. A 40-foot area, makai of SORT's (Save Our Race Track) fence line was also cleared. He explained to Chair Kane that if SORT was allowed to access that portion of land without impacting any cultural sites, 40 feet would be an adequate distance from the racetrack. However, he requested revocation of SORT's lease due to damage to cultural sites in the area.

S. Kane wrote a book about the area titled "Cultural Kapolei." David Tuggle, an archaeological surveyor, completed a 250-page documentation of the Barber's Point Base closure process. Both he and Auntie Rubillite Johnson, a well-known cultural expert, were part of that archaeological team that visited the site. S. Kane represented the Royal Order of Kamehameha I (Royal Order), who was asked to assist with the survey due to a disagreement over the 40-foot buffer. SORT wanted more land space while the Royal Order deemed it inappropriate to extend beyond 40 feet.

When Navy personnel asked S. Kane to escort them to Ordy Pond to clear the area of unexploded ordinances, they viewed heavy equipment tracks leading to the racetrack property and damages to the Mauka end wall. The two archaeologists documented the destruction of the cultural sites and

requested S. Kane to report the findings to DHHL and schedule a site visit. The Graces expressed displeasure when S. Kane appeared the next morning and they filed a “no trespassing” report against him.

S. Kane said that two archaeological surveys were done on the racetrack site; one in 1970 by Bishop Museum, the other by Dave Tuggle, in preparation to close the Barber’s Point Naval Air Station. The area surrounding the racetrack site displayed substantial burial and cultural sites. A trail passed through the Heritage Park and disappeared within the area of the racetrack and continued on the other side of the racetrack. Another trail was located on the Waianae side of Coral Sea Road and extended into a Hawaiian home lands parcel. Five known burial sites were fifty (50) yards from the racetrack. Other burial sites were located on the Honolulu side of DHHL lands. S. Kane said that having racing activities over these burial sites is unacceptable.

**ITEM A-4: Evelyn and Franklin Souza, Re: C-2,**

Jeanette and George Grace and Evelyn and Franklin Souza were partners, and in 2008, they entered into an agreement with DHHL for Parcel 24, also known as the racetrack. An archaeological monitoring preservation plan was completed by Tom Dye and Associates. It noted that archaeologist Dave Tuggle had several omissions in his report of the Barber’s Point Naval Station closing. In the preservation’s monitoring program, sites 1504, 1506, 1507, and 1747 were located near the perimeter of the racetrack. Site 1507 was destroyed by heavy equipment owned by the Graces, said E. Souza. It is the same parcel stated in T. Dye’s preservation plan that sits under a parking lot.

E. Souza read the HCDA’s (Hawaii Community Development Association) meeting minutes held in Kapolei that disclosed no Phase 2 development, makai of the current development of the racetrack would be authorized, and that SORT (Save Our Race Tracks) would not be allowed to work makai of the current Phase 1 development without DHHL’s approval. From day one, SORT disregarded the rules, noted E. Souza. She said all of these documents were handed over to DHHL Special Assistant Kamaano Mills. Chairman Kane then passed a resolution for the preservation of the site. Other organizations in agreement to this resolution included Aha Hui Siwila, Hoakalei Cultural Site, and Associations of Hawaiian Civic Club.

F. Souza contested reinstating SORT as a permittee, due to the fact that the Graces blatantly violated everything in their lease, including expanding beyond the original 42 acres. He appealed for a repayment of \$30,000 that was used as a down payment for rent. He said when he ran the Hawaii Raceway Park the entrance fee was \$15, a pit pass, \$5, and a race fee, \$40. Revenues were about \$5,000, and everyone got paid. In contrast, he heard that SORT generated \$40,000 in a day’s revenue; yet, no one got paid.

Commissioner Gomes inquired about SORT’s liability insurance. E. Souza said she was present at a Senate hearing when G. Grace was told his insurance policy was not valid in Hawaii. She said insurance for this type of event costs nearly \$1,600 per week. F. Souza added that someone paid out-of-pocket-expenses for his own injury incurred at the racetrack.

**ITEM A-5: Lance Holden, Kapolei Hawaiian Civic Club, Re: C-2,**

L. Holden requested that Parcel 24 in Kalaeloa be denied for use as a racetrack. In 2011, he sent a letter to the department requesting to revoke SORT's permit for damages sustained to this Kalaeloa parcel. In that letter, he also expressed that Hawaiian culture is more important than a racetrack.

**ITEM A-6: Michelle Kauhane, Council for Native Hawaiian Advancement, Re: C-3,**

M. Kauhane requested that beneficiary input be utilized as a checkpoint on what is appropriate and fair in the enforcement of non-compliant revocable permits.

**ITEM A-7: Homelani Schaedel, Maluohai Homestead Community Association, Re: C-2,**

H. Schaedel said that native Hawaiians consider Shad Kane a historian, knowledgeable about the Kapolei, Oahu region. She attended a hearing for SORT and was appalled by George Grace's behavior for the non-payment of rent for the Kalaeloa parcel. She encouraged the commission to visit the Heritage Park site in Kalaeloa to view all the changes made to the area. H. Schaedel recommended continuing the development of Revocable Permit (RP) policies that began in 2013 and encouraged the commission to seek other available resources.

**ITEM A-8: Roy Figueroa, Kahului, Maui, Re: C-3,**

R. Figueroa represented Nelson Hiraga and requested Revocable Permit (RP) 321, Lahaina, Maui, not be cancelled. In a May 14, 2013 letter to the department, N. Hiraga informed the department that he was awaiting clearance from the Maui Fire Department (MFD) for fire-hydrant requirements to be compliant with his permit. It was initially determined that 500 feet was an adequate distance for a fire hydrant; however, MFD changed a stipulation and deemed a fire hydrant be situated no further than 300 feet away from a building. R. Figueroa said these requirements resulted in making design changes and creating additional expenses of \$90,000 to \$100,000 to connect an 8-inch or 10-inch waterline. A May 27, 2013 letter received from the department deemed that an extension would be granted. The Chair reminded R. Figueroa that RP's are short-term dispositions that can be terminated after a 30-day notice. R. Figueroa asked to meet with staff to seek other remedies.

**ITEM A-9: Mike Kitchens, SORT Track Scheduler Re: C-2,**

M. Kitchens supports SORT (Save Our Race Track) which has been home to motorsport enthusiasts. He noted that much needs to be constructed on the parcel, thus, funds generated from revenue sales go back into the enhancement of the racetrack. He said the park is not about financial gain, it is about benefiting those who do not have a place to go. He said there was some difficulty in building the racetrack as well as issues with those discrediting the project. Commissioner Kahikina expressed that the purpose of these lands is for the betterment of native Hawaiians, and there appears to be total disregard for the cultural sites. He supports what the program is doing for others but emphasized that the purpose of this trust is for the native Hawaiian beneficiaries. Commissioner Davis questioned SORT's commitment to making regular rental payments, as the Hawaiian communities rely on these types of income to stay afloat.

## **ITEMS FOR DECISION MAKING**

### **ITEM C-1 Resolution of Appreciation No. 276 – Jeremy Kamakanealoaha Hopkins**

#### **RECOMMENDATION**

Deputy to the Chair Darrell Young recommended adoption of Resolution No. 276, honoring Commissioner Hopkins for his time served as Oahu commissioner.

#### **MOTION**

Moved by Commissioner Kahikina, seconded by Commissioner Sheehan.

#### **DISCUSSION**

The commission members expressed their congratulatory wishes to Commissioner Hopkins for a job well done in service to the beneficiaries they serve. Commissioner Ishibashi said Commissioner Hopkins' grandfather served as a union leader and would be proud of his grandson's accomplishments in service to his native country. He thanked everyone, especially the Chair, who demonstrated compassion and a deep aloha for all beneficiaries. He welcomed newly-appointed Commissioner William Kahelelani Richardson who hails from a well-known Hawaiian family who supported many native Hawaiians issues with their legal expertise. He expressed gratitude to staff and Deputy AG Iha for their hard work in serving the beneficiaries. He challenged anyone who questioned the integrity and dedication of a commissioner. He said the job is a difficult task especially when you have the power to impact another person's life.

#### **ACTION**

Motion carried unanimously.

**RECESS** 12:00 p.m.

**RECONVENE** 12:15 p.m.

## **INFORMATIONAL PRESENTATION**

### **ITEMS C-2, C-3, C-4, and F-6**

#### **BACKGROUND**

Deputy to the Chair Darrell Young presented background information on Items C-2, C-3, C-4, and F-6 of the Revocable Permit (RP) program. Under Hawaiian Homes Commission Act (Act), Section 204(2) it states that for any management of lands not required for leasing under Section 207(a), the department may dispose of those lands to the public, including native Hawaiians, on the same terms, conditions, restrictions, and uses applicable, to the disposition of public lands as stated in Chapter 171, Hawaii Revised Statutes (HRS).

Deputy Young said Chapter 171, HRS, states that the board may issue permits for the temporary occupancy of state lands or interest therein on a month-to-month basis to serve the best interest of the State, subject to such restrictions as may from time to time be expressly provided by law. Permits may continue for a period not to exceed one year from the date of its issuance provided that the board may allow the permit to continue on a month-to-month basis for an additional one-year period.

Hawai'i Administrative Rules (HAR), Section 10-4-1 states that the department may lease, license, or deal with any Hawaiian home lands as may not be immediately needed, as provided in Section 204(2) of the Act and Chapter 171, HRS, upon such terms and conditions as may be deemed fair and reasonable to include RP and transitional Rights-of-Entry (ROE) and limited ROE.

Other rules that govern the department relates to a general plan which states that the department develop and maintain a general plan providing for the development and use of land for the purposes of the Act. The plan shall be based on sociological, financial, and economical consideration. A public hearing shall be held before a general plan is adopted.

In 1984, the commission adopted several policies:

- a) Minimum monthly rent charge of \$20 for RP's;
- b) Annual renewal of RP's submitted with recommendation to commission; once approved, permittee is informed of commission's action;
- c) Limited number of RP's allowed for household;
- d) Invoicing and Billing of RP's;
  - \$200 or less shall be billed and collected in advance
  - \$201 and over shall be billed and collected quarterly or semi-annually

In 1985, the commission adopted a policy that stated for all RP's authorized by the Chair being amended, renewed, or terminated; a copy be forwarded to the commissioner(s) of the respective island.

In 1986, the commission adopted a policy allowing RP's of agricultural purposes for more than 40 acres of land consider the impact to native Hawaiian farmers on the same island. The impact could include water and market sharing prices. The permittee(s) named in the RP must have ownership in the crops, and the RP must require that at least one permittee participate in active management.

In 2013, the commission adopted an interim process period pertaining to all RP's and notice was sent to all RP holders that agreements had expired June 30, 2013 with no approved renewal. An ROE would be offered to those in full compliance, subject to conditions based on a month-to-month ROE permit, effective to June 30, 2014, using the same monthly fee as allowed in the original RP. Compliance included insurance requirements and compliance with all rules and regulations as required by the State, County, and Federal governments. The commission offered an additional 30-day period, for those who were not in compliance as of July 23, 2013. For those failing to correct the violations within that period, the department is seeking authorization to request assistance from the Department of the Attorney General (AG) and the department's Enforcement Team (ET) for removal (including eviction if necessary).

The Land Management Division (LMD) handles General Leases (GL), Licenses, RP's, ROE's, as well as areas requiring special attention, natural hazard areas, cliffs, drainage, open spaces, conservation areas such as forest reserves, water sheds, native species, historic cultural sites, and areas pending sufficient funding for development. The Aina Mauna Legacy program has 50,000 acres, \$10 million is generated from 127 GL's, and \$841,000 generated from 417 Licenses to schools, churches, and government agencies. There were 182 RP's as of June 2013 that generated \$2.7 million. Other unencumbered lands are located in South Point, Waimanalo Cliffs, and Waimea, Kauai, totaling 70,000 acres. Another 40,000 acres represent lands under homestead communities.

The purpose for the RP program was to ensure appropriate maintenance and management of land at a minimum cost to the department until sufficient resources were available to develop the land for the purposes the Act. The same RP process is used at DOT (Department of Transportation), DLNR (Department of Land and Natural Resources, and DAG (Department of Agriculture). The authorization is under HRS Section 171.

In May 2013, the commission issued a 60 to 90-day moratorium on the issuance of any new RP's so that the existing program could be reviewed. The Governor created an assessment committee to assist the department. All 182 RP's were allowed to expire on June 30, 2013. The interim process was approved by the commission in July 2013 to transition from the existing RP's to a temporary ROE until a new program was approved. In October 2013, 148 ROE's were issued (82%), nine were cancelled, and the remaining 24 were found to be non-compliant. These were given until November 2013 to comply. The reasons for non-compliance were: delinquent rent or utility payments; cleared or expanded boundaries without approval; multiple or unpermitted or unauthorized buildings on the premises; residential usage which is not allowed; other businesses located on the premise; inconsistencies with usage, unauthorized storage, and unpermitted or unauthorized buildings on the premises, and insufficient insurance coverage. In January and February 2014, the commission was updated of the department's progress. Most of the 24 non-compliant entities attempted to bring their operations into compliance. Some have presented a settlement plan or have agreed to surrender the property back to the department, said Deputy Young.

#### MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Gomes, to convene in executive session to consult with its counsel. Motion carried unanimously.

#### **EXECUTIVE SESSION IN**

**12:28 p.m.**

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 on the following item.

1. Rights-of-Entry Approved for Extension: Recommended for Cancellation FY 2014-2015.

#### **EXECUTIVE SESSION OUT**

**1:30 p.m.**

#### **ITEMS FOR DECISION MAKING**

##### **ITEM C-2 Response to Petition for Contested Case Hearing, SORT LLC, Kalaeloa, Oahu**

#### RECOMMENDATION

Deputy to the Chair Darrell Young recommended that the commission deny the petition for a Stay on the cease and desist enforcement and contested hearing by SORT LLC, (Save Our Race Track), the Requestor, pursuant to Hawaii Administrative Rules (HAR) 10-5-31(c) and (d).

#### MOTION

Moved by Commissioner Hopkins, seconded by Commissioner Gomes.

### DISCUSSION

This petition relates to the expired month-to-month Revocable Permit 411 to SORT LLC, authorizing the use of Hawaiian home lands at Kalaeloa, Oahu, as a temporary racetrack site. On April 8, 2014, SORT delivered a petition to the department requesting a "Stay" on a cease and desist enforcement, to prevent removing SORT from operations in Kalaeloa. Under Title 10, HAR 10-5-31, titled Contested Case Hearing Requests, any person may request a contested case hearing provided that the claim is based on a law or rule over which the commission has jurisdiction. The complaint requesting a contested case must contain a Statement of Facts of the alleged violation.

Commissioner Hopkins inquired about the violations. According to Deputy Young, the cease and desist letter sent to SORT addressed several areas of delinquency: (1) the fee delinquency which was comprised of monthly fees of \$32,438, and utilities of \$7,800; (2) City and County fines for mass-grade and stockpiling violations; (3) movement of truckloads of dirt hauled on site, as well as the demolition derby; and (4) concrete crushing operations to which insurance would likely be increased to what is considered standard. However, the request to increase the insurance did not happen, noted the Chair. The intent was to bring SORT into compliance, and then discuss insurance matters.

### ACTION

Motion carried unanimously.

## **ITEM C-3 Enforcement Actions Regarding Non-Compliant Former Revocable Permits, Statewide**

### RECOMMENDATION

Deputy to the Chair Darrell Young recommended that the commission approve:

1. Initiate termination action for those Revocable Permits/Right-of-Entry permits listed in Exhibit A that were either not eligible for conversion to Right-of-Entry (ROE) permits or are currently in default;
2. Authorize the department, with the assistance of the Department of the Attorney General, to enforce the termination action and to take all and any necessary steps to recover the outstanding balance due and payable to the department.

### MOTION

Moved by Commissioner Hopkins, seconded by Commissioner Gomes.

### DISCUSSION

Deputy Young reviewed some of the violations affecting the non-compliant former Revocable Permits (RP). A pastoral parcel located at Anahola, RP023, has a delinquency. RP173 has five unresolved issues since January 2014 which include residential use of the property, homeless shelter on the property, sub-lessee tenant not removed, continual industrial use on the agricultural-zoned property, and real property tax amount due of \$20,000. He noted that the process was to ensure that they were in compliance prior to submitting any proposal to this body to consider renewing the permit.

Commissioner Hopkins noted a statement was made by Patty Silva that Ben Char was not expected to receive the permit. He expressed that whatever communication shared with B. Char or P. Silva be done thoroughly and appropriately. Commissioner Kaapu inquired whether representation was made to Ms. Silva that should Manawalea Riding Academy (MRA) submit an application, the department would request a transfer. Deputy Young said that representation consisted of five (5) issues which needed to be resolved before a proposal could move forward.



They were: (1) removal of Hiroshima Trucking; (2) cease the auto repair business; (3) removal of residential uses; (4) removal of homeless shelter activity; and (5) resolution of the \$20,000 real property tax delinquency.

RP176, RP181, RP182, and RP213 are all backyard extensions of homestead leases. When the department implemented the transitional ROE from the Revocable Permit (RP), the department decided on a minimum rental rate of \$20 for these extensions. For these RP's, it appeared to not be worth the expense to retain the extensions. RP210, in Anahola, Kauai, was for commercial usage and used as a residence, and not paying rent.

RP321, in Lahaina, Maui, was for storage of property where two additional structures were built without department approval and use expansion. Other violations are being addressed and Administrator Linda Chinn is requesting additional time be given while they secure a pending permit from Maui County. Commissioner Kaapu queried L. Chinn about the expansion on this RP. L. Chinn explained that the RP holder had a ½ acre parcel and expanded it to 3 acres. The permittee has since offered to compensate the department for the use of the additional land.

Commissioner Kaapu questioned the integrity of the permittee for not initiating a request for the expansion. He expressed the concern that this will set a precedent and permittees will prolong the process to do whatever they please until exposed. Commissioner Kahikina voiced similar concerns. Commissioner Gomes supported efforts by the department to work with the client. L. Chinn pointed out that the location of the property is not ready for development and is at risk of becoming a dumping site. She said the tenant also subleased the land which is not permitted. Commissioner Hopkins asked R. Figueroa to address these concerns. Mr. Figueroa said the original usage was for 8,000 sq. ft. and was expanded to 26,000 sq. ft. with proper setbacks. He said there is no 3 acres involved. The sub-lessee, John Kaahui, is a close friend of Nelson Hiraga. The area to the west of the property is a dumping site and not part of their land use. Commissioner Hopkins contended that this should have been resolved earlier. R. Figueroa is hopeful the commission will allow them to push forward to clear the infractions. Nelson Hiraga, the permittee, said verbal permission was given to put up a building. He is willing to comply with department requirements. L. Chinn said it would take up to 30 days to comply. Commissioner Davis does not want to penalize Mr. Hiraga for what transpired previously. Commissioner Kaapu asked N. Hiraga what recourse is there should Maui County not provide him the proper permitting. N. Hiraga said he would likely relocate to another site. The Chair queried as to why the department recommended removing the permittee from today's action. L. Chinn explained that the permittee is attempting to comply with his permit, and she seeks approval to grant him the necessary time to succeed.

#### AMENDED MOTION

Moved by Commissioner Gomes, seconded by Commissioner Davis, to remove RP321 from the cancellation list.

#### DISCUSSION

Commissioner Gomes recommended extending the compliance date to two months, as she is familiar with procedures of acquiring a permit from Maui County. L. Chinn suggested maintaining the 30-day allowance period. If it is deemed necessary, the matter can be readdressed after the 30-day period. A roll call vote was taken.

Moved by Commissioner Hopkins 1. Initiate termination action for those Revocable Permits/Right-of-Entry permits listed in Exhibit A that were either not eligible for conversion to Right-of-Entry (ROE) permits or are currently in default; 2. Authorize the department, with the assistance of the Department of the Attorney General, to enforce the termination action and to take all and any necessary steps to recover the outstanding balance due and payable to the department. Remove RP321 from the cancellation list.

Seconded by Commissioner Gomes

Commissioner	1	2	'AE (YES)	A'OLE (NO)	RECUSED	EXCUSED
Commissioner Davis			X			
Commissioner Gomes		X	X			
Commissioner Hopkins	X		X			
Commissioner Ishibashi						X
Commissioner Ka'apu			X			
Commissioner Kahikina			X			
Commissioner Sheehan			X			
Commissioner Tassill					X	
Chair Masagatani			X			
<b>TOTAL VOTE COUNT</b>			<b>8</b>	<b>0</b>	<b>1</b>	

MOTION:  UNANIMOUS  PASSED  DEFERRED  FAILED

Motion passes with seven (8) Yes, (1) Recusal.

#### ACTION ON AMENDMENT TO THE MOTION

Motion carried.

#### DISCUSSION

Deputy Young noted that cancellation of RP420 is due to lack of insurance. L. Chinn said this RP was initially for gratis usage. When the commission incorporated a standard monthly fee of \$20 for all RP's, the user did not comply. L. Chinn stated that RP430 was not the right disposition for mining operations; thus, a recommendation was made to terminate the permit for a more suitable licensing for this type of operation. With regard to RP449 on Molokai, appropriate documents were issued, yet were never activated; therefore, the RP will be cancelled. The following RP's converted to ROE's but have since become delinquent due to rental issues: RP72, RP414, RP428, RP440, RP460, and RP466. Biogenesis (RP 428) and FCS, Inc. (RP 460) have outstanding debts which may have been overlooked in transition, noted D. Young.

Deputy AG Iha emphasized that all RP's are expired and that action should be taken to add termination and/or removal in the recommendation.

#### 2<sup>nd</sup> AMENDED MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Davis, to add verbiage to the recommendation. Item 1. Initiate termination **and/or removal** action on those Revocable Permits/Right-of-Entry Permits, etc. Motion carried. Commissioner Tassill recused from voting.

#### DISCUSSION

The Chair noted the recusal of Commissioner Tassill on any action relating to this item due to his involvement as a representative for some of the RP's listed.



## MOTION/ACTION

Moved by Commissioner Gomes, seconded by Commissioner Davis.

## DISCUSSION

Homestead Services Division Supervisor Juan Garcia provided an update which began at the Waimea meeting in July 2012, whereby the commission approved the designation of the decedent's siblings, Joseph Winchester, Albert Winchester, and Thella Marie Asing, as successors to the lease subject to the terms and conditions of the lease which included acceptance of the terms and conditions of an outstanding loan. J. Garcia said the designated successors failed to submit the executed Transfer Through Successorship documents provided to their attorney in 2013 because they deemed the decedent's outstanding loan was not part of the lease. Although declared as designated successors, they are not recognized as lessees.

Joseph Winchester and Albert Winchester, siblings of Alexander Winchester, questioned the qualification of their brother's two designated successors to the lease. J. Winchester said his brother lived on monthly public assistance of \$800 and received a stipend of \$585 and he was unable to account for the use of his brother's loan as it appeared no new structures were built. He deemed the loan to be fraudulent and refused to accept this debt. To become successors of this lease, any outstanding indebtedness is included as part of the lease, noted D. Oshiro.

J. Winchester deemed this action as not pono (right). He requested for a written statement of why he and his siblings are losing this property, and would like to view a promissory note, and other pertinent paperwork. He deemed that signing the loan protects them as designated successors, as he reasoned it to be expressed in the Hawaiian Homes Commission Act.

D. Oshiro clarified that A. Winchester secured an FHA (Federal Housing Administration) insured mortgage to which the department is neither involved in the underwriting nor the guideline process set by the FHA. Lenders have direct endorsements to enter data and receive a response via an electronic system on whether a loan is approved or not. In its capacity, the department can only verify that the loan was approved by FHA and serviced by JP Morgan. Commissioner Kaapu conveyed that similar loans were executed in 2007 which created many problems as promissory notes were found to be non-existent as banks sold loans off to other lenders. The Chair explained that the FHA 247 loan is unique to DHHL as there is no foreclosure process. When there is a default, a lender submits a claim to HUD (US Department of Housing and Urban Development), and HUD pays the claim out of a fund that mortgage insurance premiums are paid into from loans written for residential lease on Hawaiian home lands. If the fund is insufficient, then the department pays for the claim, and the mortgage is assigned back to the department. D. Oshiro said that the lender for this note has not completed a claim as of yet, but he confirmed there is an outstanding debt to this lease. Deputy AG Iha recommended additional concerns be addressed in executive session.

J. Garcia said that A. Winchester named two successors to the lease, but once A. Winchester's death was confirmed, research began and the individuals listed as successors were found to be ineligible as successors. Pursuant to HHCA Section 209, the department published a notice in the newspaper informing all qualified relatives to submit a successorship claim. The decedent's siblings submitted a claim within the 120-day requirement period. In July 2012, the commission took two actions: 1) to set aside the improper designation by the department of the two individuals named as successors; and 2) approve the three siblings to the successorship rights. J. Garcia pointed out that one of A. Winchester's two designated successors was living with him. J. Winchester denied this and said his niece was caring for his brother.

J. Garcia stated that A. Winchester's siblings claim the loan was not used towards improvements to the home. He also said that a refinanced loan could have been cashed out and used for other needs. J. Garcia affirmed that all information requested by A. Winchester's siblings was submitted to their attorney, including the promissory note which took some time to secure. The promissory note is the same as a mortgage. A. Winchester chose not to name his siblings as successors, as he and his siblings were estranged for many years.

Deputy AG Iha stated that HHCA, Section 208(6), indicates that the lessee's interests can be mortgaged with the consent of the commission, which is what happened in this case. Because successors can only get what the lessee's interest is, the mortgage would be a part of the lease as the mortgage is encumbering the lessee's interest. The Chair expressed that the mortgage is a valid debt against the lease and cannot be separated. If the lease is accepted, then the indebtedness becomes part of the lease. The Chair asked J. Winchester whether he has the authority to respond for all the successors on accepting the lease. J. Winchester said he would prefer all the information shared be in writing, so he can include his siblings in the decision. He questioned why he and his siblings are being denied as successors of the lease and why he is unable to acquire the original promissory note that his brother supposedly had, as it should be part of the department's files.

From a fiduciary standpoint, Deputy AG Iha said the department needs to do everything possible to not be indebted by this loan. If this family does not want it, then the department shall find a family who is willing to accept it, added the Chair. D. Oshiro noted that once the lease is cancelled, an appraisal is conducted, and the department offers it to a qualified applicant at the appraised value; hopefully, this that a unit is enough to cover the indebtedness. He added that if the appraisal exceeds the indebtedness of the loan, then the net proceeds go to A. Winchester's estate.

#### MOTION/ACTION

Moved by Commissioner Tassill, seconded by Commissioner Gomes, to adjourn to executive session to consult with counsel on the matter. Motion carried unanimously.

#### **EXECUTIVE SESSION IN**

**3:05 p.m.**

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 on the above-mentioned item.

#### **EXECUTIVE SESSION OUT**

**4:00 p.m.**

#### DISCUSSION (cont.)

Commissioner Kaapu suggested informing interested parties of these types of conditions in the public notices. Deputy AG Iha agreed it would be beneficial subject to confidentiality issues. D. Oshiro conveyed that claimants are notified of these types of conditions when applying as successors. Commissioner Sheehan asked what the outcome would be should a loan continue to go unpaid. The Chair said the outstanding debt is capped at six months. Once the loan comes back to the department, the successor must determine if they want to succeed to the lease and to accept the terms. Commissioner Davis asked how funds are utilized from a loan. The department does not question how funds are used, said D. Oshiro, as that is determined between the lessee and the lender. He said the commission views it as a Consent to Mortgage request in the monthly submittals that come before the commission each month.

Commissioner Hopkins asked J. Winchester if he were provided an additional 30-day reprieve for the department to produce the promissory note, would he then accept the decision of the commission. J. Winchester agreed to it. The Chair pointed out that the next meeting will be held off-island. J. Winchester inquired about another promissory note his brother made for a loan which the department claims to have no knowledge of. Based on information staff provided that there is no other promissory note, she will allow an additional 30 days to have the staff re-check its files.

#### AMENDED MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Tassill, to defer this item to next month's agenda. Motion carried unanimously.

### ITEMS FOR INFORMATION

#### **ITEM A-1 Fiscal Year 2015 Operating Budget Briefing**

Administrative Services Officer Rodney Lau presented a budget workshop on the Operating and Development Budget for Fiscal Year 2015. The department manages several internal funding sources including two special funds: the Hawaiian Homes (HH) Administration Account and the DHHL Revenue Bond Special Fund and five Trust Funds:

- Hawaiian Home Lands (IHL) Trust Fund,
- HH Operating Fund – Operating Portion and Development Portion
- Native Hawaiian Rehabilitation Fund (NHRF),
- HH Trust Fund,
- HH Receipts Fund.

There are two revolving funds - the HH Loan Fund and the HH General Loan Fund. External funding sources consist of the General Fund (appropriated by the Legislature), General Obligation Bonds, Revenue Bonds, and Federal Funds. R. Lau said that revenues are derived from the available lands which come from General Leases (GL), Revocable Permits (RP), Revenues, License, and Rights-of-Entry (ROE).

Use of the Administration Account is for the administrative and operating costs of the department in the absence of general funding. DHHL Revenue Bond Special Fund was created by the Legislature to receive transfer revenues from the Administration Account into the Revenue Bonds Special Fund to address debt service. With commission approval, funds may be transferred back into the Administration Account. Of the five trust funds, the HHL Trust Fund was created by the Legislature to receive settlement payment for land claims with the last payment due in 2015. The HH Operating Fund is divided into two portions: the Operating Portion and the Development Portion. The Operating Portion is for revenue producing activities such as DHHL water systems and rentals. The Development Portion requires written approval of the Governor to be used for improvements and developments, to serve present and future lessees, purchase of assets, engineering and planning services, and improvements for beneficiaries. The NHRF fund was created by the 1978 Constitutional Convention to be used for native Hawaiians. Its source of revenue is payment of 30% of the sugar cane leases and water licenses as of November 1978. The HH Loan Fund was established in 1921 and is used for net proceeds when a lease is surrendered or cancelled. The HH General Loan Fund is a consolidation of several loan funds which was created in 1986. Loans may be given from this fund for new loans, repairs, replacements, and farm loans. The HH Trust Fund is available for transfers into other funds to be

used for public purposes. It currently is being used as a reserve for the FHA (US Federal Housing Administrative) 247 loan. The HH Receipts Fund is a clearing fund for income derived from loan interest monies and investment income.

External sources of funding - In FY 2014-2015, the Legislature appropriated \$9.6 million under Act 134 and appropriated \$11.5 million for CIP (Capital Improvement Plan) projects this past session, \$42.5 million was floated in 2009 for CIP projects. The Federal Funds (NAHASDA) Native American Housing Assistance and Self-Determination Act is expected to receive appropriations of \$9 million.

R. Lau provided a progress report on general funds support from the legislature which is listed on page 10, Exhibit A. He said there are four purposes listed in Article X11, Section 1:

1. Administrative and operating costs of the department;
2. Loan program;
3. Lot development;
4. Rehabilitation projects.

Chair Masagatani referenced a November 9, 2012 commission meeting, Part 2 budget where the four purposes were referred to as:

1. Development of home, ag, farm, and ranch lots;
2. Home, agriculture, aquaculture, farm, and ranch loans;
3. Rehabilitation projects; and
4. Operations and administration.

The department looked at every aspect of how money was being spent within the department excluding expenditures for purposes 1, 2, and 3, said R. Lau. The remaining amounts after the exclusions cover the department's administrative and operating costs. Moving forward in the biennium budget, the Legislature, under Act 132, Session Law 2013, decided to appropriate \$9.6 million to cover what they considered non-recurring costs.

R. Lau noted that this year the commission approved a \$27 million budget for administrative and operational costs. In the CIP projects, existing infrastructure projects are related to administrative and operating costs. If an area requires maintenance and repair, and falls in disrepair, it then becomes a CIP situation. From the \$27 million requested by the commission, the Governor reduced it to \$15 million in administrative and operating costs and funded \$5.3 million for existing CIP infrastructure with general funds. The Governor also included \$29.3 million in general obligation bonds for DHHLs CIP projects. The Legislature, under HB 1700, did not amend the biennium budget, and instead kept the general fund appropriations to \$9.6 million, the Administration Account budget at \$13 million, and funded \$11.5 for the CIP G.O. Bond projects, noted R. Lau.

R. Lau noted that the department was scheduled to receive \$10 million in 2015 from the legislature as final payment of a 30-year settlement payment. The department will receive \$29 million, instead due to the department's efforts to clarify the final payment amounts with the Department of Budget and Finance and the Legislature. The legislature appropriated \$2.9 million in grants-in-aid to several homestead associations, General Obligation Bond funding for two CIP (Capital Improvement Projects) is also included: \$3 million for dams and reservoirs and \$4 million for Pulehunui, Maui site improvement.

Commissioner Kahikina inquired about establishing formal training for commission members, and whether there are appropriations for it as the commission is liable for decisions made on behalf of the department. The Chair noted that provisions for this type of expense may be included under the Office of the Chair. Chair Masagatani conveyed the probability of hiring two additional staff positions, one to handle the internal operations; the other, to become a rules' officer, to aid in the department's policies and its procedural processes. Commissioner Hopkins inquired about the actual expenses incurred compared to what was budgeted. R. Lau said the department averaged the expenses over the past four years, and determined it to be between \$17 million and \$18 million, annually. Expense for this year was less than the average. Commissioner Hopkins posed a question on how the department would fair if \$9.6 million was budgeted annually to the department for the next five years. R. Lau declined to comment. Commissioner Hopkins thanked the Administrative Services Office and Chair Masagatani for managing the department and keeping it afloat. He is hopeful the Legislature will one day provide the department the full amount requested. Commissioner Sheehan asked if there is a trend that brings the department more income. R. Lau said the Land Management Division has put together some projections and a rating agency has upgraded the department's rating from prior years. Commissioner Kaapu echoed Commissioner Hopkins comment on variances and the trends as the commission is setting policy. When he was appointed to serve, he was aware that the \$600 million settlement payment was coming to an end. He would encourage future discussions on the matter.

**ITEM E-4      Adoption of Resolution No. 277 – Relating to the Authorizing Agreements Between the Department of Hawaiian Home Lands and Na Kupaa O Kuhio for the Financing and Construction of the East Kapolei IIB Water and Wastewater System Improvements**

RECOMMENDATION

Administrator Sandra Pfund said Na Kupaa O Kuhio (Na Kupaa) is a non-profit organization that has assisted the department by obtaining financing from the USDA RD (United States Department of Agriculture Rural Development). With Na Kupaa, the department has succeeded in acquiring low interest-rate loans as well as grant funds for infrastructure development. Na Kupaa representative, Patricia Brandt, described the need for DHHL to seek additional funding sources because there is insufficient funding to complete all the projects DHHL has planned. Sewer and water grant and loan opportunities were provided for low income rural areas. S. Pfund asked that that commission adopt Resolution 277 authorizing agreements between the department and Na Kupaa for the financing and construction of East Kapolei IIB Water and Wastewater System Improvements.

MOTION

Moved by Commissioner Hopkins, seconded by Commissioner Gomes. Motion carried unanimously.

DISCUSSION

P. Brandt listed a few projects which are on tap with the department. This new project for East Kapolei will provide \$3.7 million in loan and grant funding; \$2 million is at a low-cost loan at 3.25% over 40 years. The balance of \$1.5 million is a direct no-cost grant to the department. She said that a 15% fee over the course of 35 years covers administrative costs for Na Kupaa. S. Pfund said this project is part of the Kapolei Master Plan and part of the Kapolei IIB project consisting of 160 lots next to the KROC Center located on Kualakai Parkway. Road E enters onto the Kapolei IIB project. There were five general contractors who bid on this project in February 2014. The lowest bidder for this project was Royal Contracting. The total cost for



infrastructure for the Kapolei IIB project was \$10.656 million. Na Kupaa, will handle the wastewater portion for the department at \$2.812 million. The securing of grant funding reduces the cost by \$1.8 million for the project. Commissioner Kahikina asked how the bidding process was formulated for Na Kupaa. A non-profit entity was formulated to help secure federal funding for water and sewer projects on Hawaiian homestead lands. P. Brandt said that anyone can apply for this benefit and she would be happy to share information on it. Na Kupaa was formulated in 2003. Their first project was launched in 2004 with the Molokai Water System. Commissioner Davis thanked Na Kupaa on behalf of all the beneficiaries of Hawaiian home lands. P. Brandt stated she is hopeful that the loan for East Kapolei IIB will be available this month.

**ACTION**

Motion carried unanimously. Commissioner Kahikina voted “yes” with reservations.

**MOTION/ACTION**

Moved by Commissioner Davis, seconded by Commissioner Gomes to recess the meeting until tomorrow. Motion carried unanimously.

**RECESS**

**5:30 p.m.**

**HAWAIIAN HOMES COMMISSION**  
**Minutes of June 17, 2014**  
**Meeting Held in Hale Pono'i, Kapolei, Hawai'i**

**PRESENT** Jobie M. K. Masagatani, Chairman  
Gene Ross K. Davis, Commissioner, Molokai  
Doreen N. Gomes, Commissioner, Maui  
J. Kama Hopkins, Commissioner, Oahu  
Wallace A. Ishibashi, Commissioner, East Hawaii  
David B. Kaapu, Commissioner, West Hawaii  
Michael P. Kahikina, Commissioner, Oahu  
Patricia W. Sheehan, Commissioner, Kauai  
Renwick V. I. Tassill, Commissioner, Oahu

**COUNSEL** Craig Iha, Deputy Attorney General

**STAFF** Darrell Young, Deputy to the Chairman, Office of the Chair  
Rodney Lau, Administrative Services Officer  
Sandra Pfund, Administrator, Land Development Division  
Linda Chinn, Administrator, Land Management Division  
Kahana Albinio, Property Development Supervisor, Land Management Division  
Niniau Simmons, NAHASDA Manager, Office of the Chair  
Shelly Carreira, Land Agent, Land Management Division  
Paul Ching, Land Agent, Land Management Division  
Kaipo Duncan, Land Agent, Land Management Division  
Puni Chee, Administrator, Information & Community Relations Office  
Francis Apoliona, Compliance Officer  
Bob Freitas, Planner, Planning Office  
Dean Oshiro, Acting Administrator, Homestead Services Division  
Juan Garcia, Oahu District Supervisor, Homestead Services Division  
Kaleo Manuel, Acting Administrator, Planning Division  
Elaine Searle Secretary to the Commission

**RECONVENE** 12:02 p.m.

**PUBLIC TESTIMONY ON AGENDIZED ITEMS**

**ITEM A-10: Bo Kahui, La'i Opua 2020, Re: Item C-1,**

B. Kahui of Villages of La'i Opua and La'i Opua 2020 acknowledged Commissioner Hopkins' service to the commission. **Re: Item A-1**, B. Kahui is concerned about the state's fiscal dilemma to cut exempt positions in various state entities. Currently, the 114 exempt positions in DHHL make up 54% of staff which likely will result in cuts. He supports the grant-in-aid to help communities across the state by allowing communities to manage its own DCCR's (Declaration of Covenants, Conditions, and Restrictions). B. Kahui is awaiting NAHASDA funding for its La'i Opua 2020 community project that was approved by the commission two years ago. Commissioner Tassill thanked Bo Kahui for his achievements in the La'i Opua 2020 community development which serves as an example to other communities.

**ITEM A-11: Michelle Kauhane, Council for Native Hawaiian Advancement, Re: H-1,**

M. Kauhane said that it would be prudent for the commission to look at the variance of what was budgeted last year and what was actually spent, before being asked to approve the next budget as the budget authorizes the Chair to move expenditures between cost elements. Secondly, the transfer of \$6 million from the Hawaiian Home Administration Account to the Hawaiian Home Operating Fund demonstrates the lack of general funds. Beneficiaries should advocate to having the state allocate appropriate funds to the department. The basis of the Nelson lawsuit against the State of Hawaii is specific to the use of these funds for state operating costs, rather than the development of homes on Hawaiian home lands. **Re: H-2**, M. Kauhane applauded the department's Loan Program Budget. She recommended that HUD (U.S. Department of Housing and Urban Development) buybacks go directly into an account for repayments back to HUD. **Re: H-3**, M. Kauhane recommended that 9% of receipt funds go into the operating budget while 91% go into the loan fund. M. Kauhane said she understands the need to fill the 200-plus staff positions, however, businesses faced with the need for staff and a lack of revenue would negate filling all of its positions. The one cut that is visible to beneficiaries is the NHRF (Native Hawaiian Recovery Fund) which took a big loss from a \$729,600 to \$51,000 of direct funds to beneficiaries. She asked the commission to review this segment of allocations. Chair Masagatani thanked M. Kauhane for her feedback and CNHA's evaluation of the budget. Chair deemed the figure reported for the NHRF fund was in error which will be clarified by Administrative Services Officer Rodney Lau.

**ITEMS FOR DECISION MAKING**

**LAND MANAGEMENT DIVISION**

**ITEM F-4 Approval to Assignment of Lease to Aloha Beach Partners, LLC, General Lease Nos. S-3831, S-3840, and S-4647, Wailua, Kauai**

**RECOMMENDATION**

Deputy to the Chair Darrell Young and Administrator Linda Chinn introduced CEO Matt DiNapoli, Founder of DiNapoli Capital Partners, Heather Turner, Managing Partner, and Aston Aloha Beach Resort General Manager Ray Boulton. Land Management Administrator Linda Chinn recommended final approval of the following:

1. Assignment of General Lease (GL) Nos. S-3831, S-3840, and S-4647 from Nomura CDO, LLC, to Aloha Beach Partners, LLC (DiNapoli Capital Partners) for the three parcels of land located in Wailua, Kauai;
2. Authorize the amendment to certain terms and conditions of GL Nos. S-3831, S-3840, and S-4647 as listed, A. to J.

A 55-year extension of the lease terms of the three general leases shall expire on May 17, 2084. The annual lease rent shall be adjusted in year 2019, and shall increase by 1% annually until a reopened period. The fair market ground rent shall be opened in year 2050. Additionally, there will be a 4% rent provision included as a condition for the extension of the lease term to be re-determined in year 2050. Other conditions include a commitment to expend no less than \$15.5 million as capital investment. Act 219 requires improvement costs not less than 50% of the value of the improvements. DiNapoli shall demonstrate the means and methods of reinvestments into the Resort over the terms of the leases. DiNapoli shall also sign a Development Agreement with the department that will include all terms and conditions that is included in the original conditional approval by the commission on May 20, 2013 (attached as exhibit A).

**MOTION**

Moved by Commissioner Sheehan, seconded by Commissioner Gomes.

**DISCUSSION**

CEO M. DiNapoli, of DiNapoli Capital Partners (Capital Partners) said he is motivated to buy and renovate the Aloha Beach Hotel. He perceives this hotel to be a successful, group facility with just the right product type in the Kapaa area. The brand would be under a Hilton flag and discussions are for a local company to manage it. Ray Bluoin has demonstrated a loyalty to this property, noted Chair. She asked what the plans are for the existing staff members. M. DiNapoli said that the current staff understands the property, and he plans to utilize their talents and expertise. Chair said that the community's interest and the cultural significance of the property are very important and inquired whether Capital Partners has the resources to enhance and develop it. M. DiNapoli has attempted to reach out to the community's resources. Commissioner Sheehan acknowledged the many letters of support received from the community and deemed this project to be a great boost for the community. She inquired whether improvements will be expanded. M. DiNapoli said the intent is to create pathways to the ocean to add authenticity to the area. Commissioner Sheehan recommended that the new owners continue to engage themselves in community activities.

Commissioner Tassill reminisced about worship services held in the mornings at Puuhonua and inquired if this practice would continue. H. Turner said that the hotel lacks jurisdiction on that parcel of land. R. Bluoin indicated he would accept the challenge to investigate further about the sacred site and to work closely with Mayor Bernard Carvalho to address a reorganization plan as described by Commissioner Tassill. Commissioner Gomes supports the project and asked for clarification of the support for native Hawaiian communities through capital investments and partnerships. L. Chinn said that the hotel has been a supporter of cultural events and plans to continue collaborating with native Hawaiians in maintaining its historical and cultural sites in the area. R. Bluoin is committed to enhancing these cultural areas along with the hotel renovations.

L. Chinn noted that terms and conditions are similar to the previous buyer with the exception of a 4% rent increase being delayed to 2034, instead of 2024. She added that the previous buyer intended to invest \$6 million in improvements while Capital Partners proposed to invest \$15.5 million. H. Hunter said a local contractor was hired with the intent of utilizing local talent.

Commissioner Kahikina inquired whether Native Hawaiian organizations were informed of the changes to the property. H. Hunter met with several Native Hawaiian groups and plans to involve them with the planning process. Commissioner Hopkins is pleased with the information shared today. He deemed this project a revitalization of the entire community.

**ACTION**

Motion carried unanimously.

**RECESS**

**1:05 p.m.**

**RECONVENE**

**1:22 p.m.**

**ADMINISTRATIVE SERVICES DIVISION**

**ITEM H-1 Approval of Fiscal Year 2015 Operating Budget for the Department of Hawaiian Home Lands**

RECOMMENDATION

Administrative Services Officer Rodney Lau recommended 1) approval of Fiscal Year 2015 Operating Budget and authorize the Chair to shift funding of expenditures between cost elements and funds as warranted but not to exceed the total budget; and 2) that the commission approve the transfer of \$6 million from the Hawaiian Home Administration Account to the Hawaiian Home Operating Fund.

MOTION

Moved by Commissioner Gomes, seconded by Commissioner Kahikina.

DISCUSSION

Commissioner Kahikina requested information on past expenditures to which R. Lau indicated the information will be available in July. He also inquired about the department's debt service. R. Lau said the first debt service is for revenue bonds costing \$3.2 million annually. OHA (Office of Hawaiian Affairs) finances \$3 million, annually, for the debt of approximately \$42 million. The other debt costs the department \$1.7 million annually for the Kapolei building facility which is supported by the general funds. Commissioner Tassill asked how the department would address funding for additional staff. R. Lau said the department would need to continue lobbying for general funding from the Legislature as well as increasing DHHL's revenue stream. In this year's budget, there is a budget item for a consultant to look at the energy issues of the Kapolei building. Commissioner Hopkins questioned about the legal services budget. R. Lau said it is for the revenue producing areas under the Land Management division. The legal services are needed for the negotiation of leases. The \$500,000 for the AG's (Office of the Attorney General) office is part of the development portion of the operating fund. The Chair requested convening in executive session to consult with counsel further about this item.

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Kahikina to convene in executive session. Motion carried unanimously.

**EXECUTIVE SESSION IN 1:30 p.m.**

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 on the above-stated item.

**EXECUTIVE SESSION OUT 2:00 p.m.**

DISCUSSION continued

Chair Masagatani asked if there were any further questions or comments on the motion. Hearing none, she called for the question.

ACTION

Motion carried, unanimously.

**ITEM H-2 Approval of Fiscal Year 2015 Loan Program Budget for the Department of Hawaiian Home Lands**

RECOMMENDATION

Administrative Services Officer Rodney Lau recommended that the commission approve Fiscal Year 2015 Loan Program Budget and authorize the Chair to shift funding of expenditures between cost elements and funds as warranted but not to exceed the total loan budget.

MOTION/ACTION

Moved by Commissioner Tassill, seconded by Commissioner Davis. Motion carried unanimously.

**ITEM H-3 Transfer of Hawaiian Home Receipts Money at the End of the Fourth Quarter, FY 2014**

AMENDED RECOMMENDATION

Administrative Services Officer Rodney Lau requested that the commission approve the transfer of the entire receipts deposited in the Hawaiian Home Receipts Fund as of June 30, 2014 to the Hawaiian Home General Loan Operating Fund.

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Davis. Motion carried unanimously.

**LAND DEVELOPMENT DIVISION**

**ITEM E-1 Approval of Various Lease Awards**

RECOMMENDATION

Administrator Sandra Pfund recommended approval by the commission for the award of residence lot leases to the applicants listed in the submittal, for 99 years, subject to the purchase of the existing improvements on the lot by way of a loan or cash.

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Gomes. Motion carried unanimously.

**ITEM E-2 Rescission of Homestead Lease Award and Reinstatement of Application – Alan-Doiron K. Akau**

MOTION/ACTION

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

**ITEM E-3 Rescission of Homestead Lease Awards and Reinstatement of Application – Maluhia M. Kauanoë**

MOTION/ACTION

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

## LAND MANAGEMENT DIVISION

### **ITEM F-1 Approval to Issue Right-of-Entry Permit, University of Hawaii for its Hawaii Community College, Keaukaha, Hawaii**

#### RECOMMENDATION

Administrator Linda Chinn recommended for the commission to issue a Right-of-Entry (ROE) permit to the University of Hawaii, Hawaii Community College (UH-HCC) to enter Hawaiian home lands to allow for HCC students to build a three (3) bedroom, two (2) bath home for its annual model home program.

#### MOTION

Moved by Commissioner Kahikina, seconded by Commissioner Davis.

#### DISCUSSION

L. Chinn noted that this program has been in existence for the past 15 years, and students at the UH-HCC design and build a home for a beneficiary on the Hawaiian homes waitlist.

#### ACTION

Motion carried unanimously.

### **ITEM F-2 Approval to Amend Right-of-Entry No. 449, Kailapa Community Association, Kawaihae, Hawaii**

#### RECOMMENDATION

Administrator Linda Chinn recommended to the commission that an extension of Right-of-Entry (ROE) No. 449 issued to Kailapa Community Association (KCA) be authorized for an additional two years. Other terms of the ROE shall remain the same.

#### MOTION

Moved by Commissioner Hopkins, seconded by Commissioner Kahikina.

#### DISCUSSION

L. Chinn said that KCA's permit will expire in August and they are requesting for additional time to study the shoreline in Kawaihae for potentially turning the 72-acre parcel into a wellness park.

#### ACTION

Motion carried unanimously.

### **ITEM F-3 Approval to Issue Right-of-Entry Permit, Federal Bureau of Investigation, Haiku, Oahu**

#### RECOMMENDATION

Administrator Linda Chinn recommended approval to issue a Right-of-Entry (ROE) permit to the Federal Bureau of Investigation (FBI) for the use of 4 acres of land at Haiku, Oahu, for the purpose of conducting law enforcement activities, subject to the conditions listed in the submittal.

#### MOTION

Moved by Commissioner Kaupu, seconded by Commissioner Hopkins.

DISCUSSION

L. Chinn noted that although the FBI will not be present on a daily basis, they will demonstrate presence, which will hopefully deter trespassers from entering the premises illegally. At times, it has been a challenge for area residents to put up with the disregard and disrespect of trespassers. The department has been working with police, residents, and the Board of Water Supply staff to deter vandalism in the area. Other users to the area include a charter school, which is located near the front portion of the gated area. Koolau Foundation also utilizes the area for cultural practices.

ACTION

Motion carried. unanimously.

**ITEM F-5 Ratification of Defaults and Revocation, Statewide**

RECOMMENDATION

Administrator Linda Chinn requested ratification of the notices of default/revocation issued to General Lease (GL) No. 265, the Agency, Inc. and GL 266, Ivan Mochida Contracting.

MOTION/ACTION

Moved by Commissioner Gomes, seconded by Commissioner Davis. Motion carried, unanimously.

**HOMESTEAD SERVICES DIVISION**

**ITEM D-2 Ratification of Loan Approvals**

MOTION/ACTION

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

**ITEM D-3 Approval of Consent to Mortgage**

MOTION/ACTION

Moved by Commissioner Gomes, seconded by Commissioner Hopkins. Motion carried, unanimously.

**ITEM D-4 Approval of Streamline Refinance of Loans**

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Sheehan. Motion carried, unanimously.

**ITEM D-5 Approval to Schedule Loan Delinquency Contested Case Hearings**

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Davis. Motion carried, unanimously.



**ITEM D-6 Approval of Homestead Application Transfers / Cancellations**

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Sheehan. Motion carried, unanimously.

**ITEM D-7 Reinstatement of Deferred Application – Clyde M.K. Ohelo**

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Davis. Commissioner Kahikina recused from voting. Motion carried, unanimously.

**ITEM D-8 Ratification of Designation of Successor to Leasehold Interest and Designation of Person to Receive Net Proceed**

MOTION/ACTION

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

**ITEM D-9 Approval of Assignment of Leasehold Interest**

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Davis. Motion carried, unanimously.

**ITEM D-10 Approval of Amendment of Leasehold Interest**

MOTION/ACTION

Moved by Commissioner Sheehan, seconded by Commissioner Kahikina. Motion carried, unanimously.

**ITEM D-11 Approval of Assignment of Lease – Mark K. Chong, Lease No. 3846, Lot No. 334, Nānākuli, Oahu**

MOTION/ACTION

This matter was withdrawn due to cancellation of a transfer request.

**ITEM D-13 Ratification of the Approval of a Leave of Absence – Robin J. P. Danner, Lease No. 8220, Waimānalo, Oahu**

MOTION/ACTION

Moved by Commissioner Kahikina, seconded by Commissioner Gomes. Motion carried, unanimously.

**ITEM D-14 Request to Surrender Lease – Denise Rosehill-Mahi, Lease No. 1891, Lot No. 63, Waiakca, Hawai‘i**

MOTION/ACTION

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

**ITEM D-15 Approval for Payment of Net Proceeds – Tracy Aluli Kuoha, Lease No. 4186C, Lot No. 126-A-4, Hoolchua, Moloka‘i**

MOTION/ACTION

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

**ITEMS FOR INFORMATION**

**ITEM A-2 Water Policy Workshop**

This item is deferred to the June 25, 2014 Special Meeting in Waimea.

**ITEM D-1 HSD Status Reports**

**HSD Status Reports**

**Exhibits:**

**A- Homestead Lease and Application Totals and Monthly Activity Reports**

**B- Delinquency Report**

**C- DHHL Guarantees for USDA-RD Construction Loans**

**LAND MANAGEMENT DIVISION**

**ITEM F-6 Summary of Recommendation for the Revocable Permit Program**

MOTION/ACTION

For Information Only.

DISCUSSION

Administrator Linda Chinn said Item F-6 was submitted due to anticipation of an assessment committee proposing its recommendation for the department’s Revocable Permit (RP) program. The recommendations were recently received and will be reviewed and available at next month’s agenda. L. Chinn said that all land request forms will be processed through the Planning Office as well as the Land Management Division. Each disposition will have the Chapter 343 compliance requirements and for any RP found to be in violation twice, the RP will be terminated. One of the challenges of the RP user is that over a period of time, the RP user felt entitled or a sense of ownership for the property. The RP will be extended for a three-year period with a maximum two-time extension, said L. Chinn. A recommendation was made to auction off available properties twice a year and notices will be posted three months prior. The Chair said there would be a draft recommendation for the commission’s consideration, then consultation with beneficiaries, before a new, final Revocable Permit (RP) program is submitted. Once adopted by the commission, it will become the authority to move forward with the RP program, said L. Chinn. Commissioner Sheehan asked about the auctioned permits. L. Chinn explained

this process will have an appraised value of the RP lot with a notice in the newspaper with a date to submit a proposed bid.

Commissioner Kahikina said the Act (Hawaiian Homes Commission Act) authorizes a preference to the beneficiary and inquired as to how the department intends to address this provision of the Act. L. Chinn said that it could be added as a recommendation. The Chair suggested deferring the matter to counsel at the appropriate time. Commissioner Hopkins said he is thankful the auction is twice a year, should a potential RP user miss one of the slotted dates to bid. He also noted that once an RP is cancelled, he wants to ensure that the commission ratifies the decision. Commissioner Kaapu suggested that the documentation be appropriate, so as not to have any unnecessary challenges or disagreements with the RP holder as this tends to be time consuming and costly. The Chair asked if the existing tenant could re-bid on the lot. L. Chinn said that they are welcome to re-bid. Commissioner Ishibashi asked about current processes, and if the department re-negotiates renewals. According to L. Chinn, it is automatically renewed with the commission approval, but the fee is reassessed based on the market conditions at the time. Over the past 10 years, the industrial RP fees have increased, but not the agricultural RP fees. With the new program, the RP's will run for three years, be re-evaluated, and placed out for auction. It still needs to be vetted with the beneficiary communities. Commissioner Davis said he is pleased with the new proposed process in bringing everyone up to speed with their contract.

## **PLANNING DIVISON**

### **ITEM G-3 Beneficiary Consultation Report for Water Policy Plan**

This item is deferred to the June 25, 2014 Special Meeting in Waimea, Island of Hawaii.

The Chair noted that the "J" agenda is not intended for decision making by the commission. The commission may listen to concerns and, if amenable, may direct staff to help find a resolution.

## **GENERAL AGENDA**

### **REQUESTS TO ADDRESS THE COMMISSION**

#### **ITEM J-1: Harold Lloyd Viela, Lessee**

H. Viela said he recently received a citation for trespassing by a DHHL Enforcement Officer for using an existing strip of land behind his homestead. H. Viela expressed former Chairman Billie Beamer gave him permission in the 1980's to utilize this strip of land. Since his retirement, he has spent many hours working the land, caring for his animals, and caring for the fruit and palm trees. Joella Viela said that she and her husband have kept this strip of land clear all these years and prevented others from illegally dumping their trash on the site. Preventing him from working the land would be devastating for him as this area serves as therapy for him. She requested the necessary palapala (paperwork) to deter complaints against them. The Chair said this may have been a blessing in disguise as the lack of paperwork all these many years can now be properly addressed and deter further complaints. The Chair said she will refer this matter to the Land Management Division to appropriately address the matter. Commissioner Kahikina voiced his displeasure with the way the matter was handled and stated that the purpose of the Act is to rehabilitate native Hawaiians. He said H. Viela has accomplished this by caring for the land. Commissioner Tassill requested ratifying permission tendered by former Chair B. Beamer. Commissioner Gomes said it is our responsibility to care for the land and she is proud of his (Viela) commitment to honor it. Commissioner Davis added his support for H. Viela's efforts to

work the land. H. Viela said he is willing to pay for the use of the property. Pua Keliikoa Kamai, a neighbor of the Viela's, expressed her verbal support of the Viela's commitment as stewards of the land. The Chair said it is not the intent of the commission to move the Viela's out, but to acquire the proper paperwork for the use of the land.

**ITEM J-3: Germaine Meyers, Lessee**

G. Meyers said she has lived in her homestead in Nanakuli since 2001. She reported that her neighbor, Frank Giron, who lives on a flag lot next to her property, has committed numerous violations since September 2008. She attempted to address some of the issues with him, including non-occupancy of his mother Eva Giron, who admittedly is afraid of her own son. In June 2014, things escalated when she complained to the police about F. Giron's late-night disturbances due to major re-construction of his residence including weekends. She was informed by a city building inspector that weekend construction work is prohibited and that before a citation can be issued, a letter from the department was necessary in order to act.

G. Meyers listed some of the issues regarding F. Giron including: non-occupancy, abuse of his mother and family members, installing a coin-operated washing machine, and abuse of the land. She has photos of these violations and asked permission to have these reviewed by the commission. The Chair inquired as to what G. Meyers was seeking to accomplish. G. Meyers responded that a citation be issued to F. Giron for non-occupancy, using his home as a rental, and for illegal construction on his home. The Chair said she can recommend for staff to follow-up on these allegations. Deputy AG Iha concurred and added that the commission cannot take action. G. Meyers thanked the commission for listening to her concerns. Material was provided to be made a part of these minutes as Exhibit A for Item J-4.

*Note: Commissioner Davis was excused from the meeting.*

**ITEM J-4: Bo Kahui, La'i Opuua 2020 and Villages of La'i Opuua Master Association**

B. Kahui corrected a statement he made earlier regarding the creation of new community development program which should be known as Kulia i ka Nuu and not Kanaioluwalu. B. Kahui requested an update on the critical habitat designation program affecting 52 acres of commercial and community development lands in Villages of Lai Opuua, Village 6. B. Kahui also noted that La'i Opuua 2020 and Villages of La'i Opuua are opposed to a petition by the U.S. National Park Service (NPS) to designate the Keauhou aquifer, in Kona, as the water management area. He is seeking the support of the commission to oppose this request and to review the process by which water reservation rights are exercised. He deemed that the department is unaware of the application process of the water management area with the Commission on Water Resource Management (CWRM). The Chair said that within water management water use permits such are explicit as to how the requested water by an entity submitting the water use permit impacts the department's rights to water. She said the department responds to every water use permit that comes before CWRM. The Chair explained that designation as a water management area does provides for a mechanism for the department to reserve water as well as comment when water permits are requested. It also requires the permit requester to address how the department's water needs are being impacted. This regulatory process does not exist for areas that are not designated. The Chair said that the department has not taken any official position in support or opposition of the Keauhou aquifer. B. Kahui requested that staff investigate further on this matter and review the department's constitutional rights related to reservation of water.

B. Kahui asked the commission to uphold the DCCR (Declaration of Consents, Covenants and Restriction) procedures in seeking solutions for violations by some of its association members. B. Kahui added that La'i Opua 2020 received a \$950,000 GIA (Grant-In-Aid) from the Legislature. In addition, La'i Opua 2020 subleased 26 acres to Pono Resource Management and is currently considering a sub-sublease factor to move forward on its development project. Material was provided to be made a part of these minutes as Exhibit A for Item J-4.

## **PLANNING DIVISION**

### **ITEM G-2 Additional Outreach and Proposed Revisions to the Oahu Island Plan Final Draft**

#### MOTION/ACTION

None. For Information Only.


Acting Planning Program Manager, Kaleo Manuel, presented additional outreach and proposed revisions to the Oahu Island Plan Final Draft. He shared some of the feedback received from the outreach meetings held in December 2013. At that time, the planning staff submitted its final Oahu Plan for approval. However, there was a recommendation to complete additional beneficiary consultations because of concerns expressed by beneficiaries in Waianae and Papakolea. Subsequently, in February 2014, 12,000 mail outs were sent to gather further input. These meetings produced minimal comments, noted K. Manuel. He said the island-planning process is geared towards the applicants, as it addresses the next areas for development. Because of the limited land on Oahu, the department set homesteading as its priority. The participants who attended the February consultation sessions advocated for more non-homesteading and community uses of the land. As a result, some language was added to the proposed final draft to address energy development in Waianae and additional homestead opportunities on the Morreira property in Papakolea.

Oahu has a very high applicant demand, yet there is only 700 acres of land on Oahu which can be developed into 3,600 homestead lots, noted K. Manuel. The lands that do not fall into homesteading uses may be utilized for commercial and community uses. He said that future opportunities on Oahu will likely rely on land acquisitions. A more thorough detailed plan will be presented at the July meeting. K. Manuel noted that commission members will have an opportunity to review the Oahu Island Plan via a CD. Commissioner Hopkins thanked staff for extending the consultation period for the Oahu Island Plan and apologized for extending the entire process. He had hoped for more participation from the beneficiaries. He anticipates the department has the resources to accomplish these goals. K. Manuel described special district designations as areas that have some development constraint, such as land slopes, burial or archaeological sites, and natural resources, that require heightened levels of planning. He said that land use designation may be changed, if necessary, and would require commission approval.


## **ANNOUNCEMENTS AND ADJOURNMENT**

<b>NEXT MEETING</b>	July 21, 2014, Kapolei, Oahu, Hawaii
<b>ANNOUNCEMENTS</b>	Special meeting scheduled for June 25, 2014, in Kamuela, Hawaii
<b>ADJOURNMENT</b>	4:30 p.m.

Respectfully submitted:

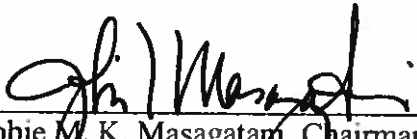
  
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Jobie M. K. Masagatani, Chairman  
Hawaiian Homes Commission

Prepared by:

  
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Elaine G. Searle  
Secretary to the Commission

APPROVED BY:  
The Hawaiian Homes Commission  
At Its Regular Monthly Meeting On

July 17, 2017

  
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Jobie M. K. Masagatani, Chairman  
Hawaiian Homes Commission