

**HAWAIIAN HOMES COMMISSION**  
**Minutes of February 20 and 21, 2018**  
**Hale Pono'i, 91-5420 Kapolei Parkway, Kapolei, O'ahu, Hawai'i**

Pursuant to proper call, the 696th Regular Meeting of the Hawaiian Homes Commission was held at Hale Pono'i, DHHL Main Office, Kapolei, O'ahu, beginning at 10:00 a.m.

**PRESENT** Jobie M. K. Masagatani, Chairman  
Randy K. Awo, Commissioner, Maui  
Wallace A. Ishibashi, Commissioner, East Hawaii  
David B. Ka'apu, Commissioner, West Hawaii  
Michael P. Kahikina, Commissioner, O'ahu  
Wren Wescoatt, Commissioner, O'ahu

**EXCUSED** Molokai Seat, Vacant  
Kaua'i Seat, Vacant  
O'ahu Seat, Vacant

**COUNSEL** Matthew Dvonch, Deputy Attorney General

**STAFF** William Aila Jr., Deputy to the Chairman, Office of the Chair  
Paula Aila, ICRO Manager  
Kahana Albinio, Acting Land Management Division Administrator  
Dean Oshiro, Acting Administrator, Homestead Services Division  
Kaleo Manuel, Acting Manager, Planning Office  
Norman Sakamoto, Acting Land Development Division Administrator  
Leah Burrows-Nuuanu Secretary to the Commission  
James Du Pont, West Hawaii District Office Supervisor  
Halealoha Ayau, Water Specialist  
Bryan Cheplic, ICRO  
Debra Aliviado, Customer Service Manager  
Allen Yanos, Property Development Agent  
Gigi Cairel, Grant Specialist  
Susie Richey, Secretary

**ORDER OF BUSINESS**

**CALL TO ORDER**

Chair Masagatani called the meeting to order at 10:03 a.m.

Six (6) members were present at roll call. Moloka'i, Kaua'i, and Oahu Commission seats were vacant.

**APPROVAL OF AGENDA**

Chair Masagatani noted the minutes for October 2017 was distributed for approval on Tuesday. Item C-1 was to be taken at the end of the decision-making items, before the executive session. Item F-3 was deferred until March. However, the testimony of individuals or organizations attending the meeting would still be heard. No community meeting this month.

**MOTION/ACTION**

Moved by Commissioner Ishibashi, seconded by Commissioner Kahikina, to approve the agenda. Motion carried unanimously.

## **PUBLIC TESTIMONY ON AGENDIZED ITEMS**

None.

## **ITEMS FOR DECISION MAKING**

### **CONSENT AGENDA**

#### **HOMESTEAD SERVICES DIVISION**

##### **RECOMMENDED MOTION/ACTION**

Acting Homestead Services Division Administrator Dean Oshiro presented the following:  
To approve the Consent Agenda as listed in the submittal.

##### **DISCUSSION**

Chair Masagatani asked Commissioners if there were any Items from the Consent Agenda that they wanted to move to the Regular Agenda. No items from the Consent Agenda were moved to the regular agenda.

- ITEM D-2** Ratification of Loan Approvals (see exhibit)
- ITEM D-3** Approval of Consent to Mortgage (see exhibit)
- ITEM D-4** Approval of Streamline Refinance of Loans (see exhibit)
- ITEM D-5** Approval to Schedule Loan Delinquency Contested Case Hearings (see exhibit)
- ITEM D-6** Approval of Homestead Application Transfers / Cancellations (see exhibit)
- ITEM D-7** Approval of Designation of Successors to Leasehold Interest and Designation of Persons to Receive the Net Proceeds (see exhibit)
- ITEM D-8** Approval of Assignment to leasehold Interest (see exhibit)
- ITEM D-9** Approval of Amendment of Leasehold Interest (see exhibit)
- ITEM D-10** Approval to Issue Non-Exclusive Licenses for Rooftop Photovoltaic Systems for Certain Lessees (see exhibit)
- ITEM D-13** Conditional Approval of Subdivision, Transfer of a Portion of Lease and Amendment to Lease No. 6677, Lot No. 4A-1-2, Waianae, Oahu
- ITEM D-14** Commission Designation of Successor – **EARL N. BELL**, Residential Lease No. 2806, Lot No. 5, Kūhiō Village, Kamuela, Hawaii

##### **MOTION/ACTION**

Moved by Commissioner Ishibashi, seconded by Commissioner Kahikina to approve the motion as stated in the submittal. Motion carried unanimously

### **REGULAR AGENDA**

#### **HOMESTEAD SERVICES DIVISION**

- ITEM D-11** **Commission Designation of Successor – JEANETTE M. HANAWAHINE, Residential Lease No. 1758, Lot No. 87, Waimanalo, O‘ahu**
- ITEM D-12** **Commission Designation of Successor – BENJAMIN K. KELIIHOLOKAI, Residential Lease No. 1758, Lot No. 87, Waimanalo, Oahu**

##### **RECOMMENDED MOTION/ACTION**

Acting Homestead Services Division Administrator Dean Oshiro asked to address Item D-11 and Item D-12 together because they are for the same residential lease in Waimanalo.

Motion for D-11: To approve the designation of Ku'uleilani K. Petty-Hanawahine (Ku'ulei), as successor to Jeanette Hanawahine's 50% tenant-in-common interest to Residential Lease No. 1758, Waimanalo, Oahu for the remaining term of the lease.

Motion for D-12: To approve the designation of Leiluluhipolanikeakahaumaliokalani Keliioholokai Makanani (Lei) and Cecelia Wahineaukai Keliioholokai (Cecelia), as successors to Benjamin Keliioholokai's 50% tenant-in-common interest to Residential Lease No. 1758, Waimanalo, Oahu for the remaining term of the lease.

#### DISCUSSION

D. Oshiro reminded Commissioners that the item was presented to the Commission in January as an introduction. He reviewed that residential Lease No. 1758, Lot No. 87, Waimānalo, O'ahu (Lease), was awarded to Mary K. Hanawahine on August 30, 1946. Mary designated her sons, William and George Hanawahine as tenants-in-common successors to the Lease. When Mary died in 1989, the lease was transferred to George and William, as tenants-in-common.

George designated his wife, Jonette A. Hanawahine (Jonette), as the successor to his tenant-in-common interest. George passed away on May 29, 1997. Jonette transferred her leasehold interest in the Lease to her then-husband, Benjamin K Keliioholokai.

William designated his daughter Jeanette Hanawahine to his tenant-in-common interest to the Lease.

Both Jeanette Hanawahine and Benjamin Keliioholokai passed away without designating a successor. The Department followed Administrative Rules 10-3-63 and published legal ads to notify all interested, eligible and qualified heirs of Benjamin and Jeanette, to submit successorship claims. The Department received successorship claims from Benjamins sisters, Cecelia Keliioholokai and Lei Makanani. The Department also received a claim from Jeannette's daughter Ku'uleilani K. Petty-Hanawahine.

Essentially, two separate families hold an equal share in the same Lease.

Chair Masagatani called the parties to the table to hear their testimonies.

Lei Makanani stated she is the sister of Benjamin Keliioholokai and decided to step forward to claim the lease. She stated that she is willing to take on the financial liability associated with the lease because she needs a home and feels that she has a right to claim he brother's interest. She added that the house is riddled with drug dealers who park at the end of the street and use the hale to do their business. There are abandoned vehicles on the lot, and it was recently raided by police. The house was gutted and needs to be rebuilt. She is willing to take on the responsibility of rebuilding the house. She and her husband are willing to do what it takes to bring the home into compliance.

Chair Masagatani asked if there was an opportunity for the three potential lessees to talk to each other. D. Oshiro stated L. Makanani provided her telephone number to the other party.

Chair Masagatani asked who is living in the home. L. Makanani stated her brother David and her son lives in the home. Chair Masagatani confirmed that there is no electricity. L. Makanani stated there is no electricity, but there is water.

Chair Masagatani asked L. Makanani if she understood that if the Commission approved the successorship, Kuuleilani Petty-Hanawahine has the same rights to the lot and home as she does. L. Makanani confirmed that she understood. Chair Masagatani asked if subdividing the property



is something she would consider. L. Makanani stated she is willing to subdivide. She testified that she wants to be pono and would not leave her grand-niece out in the cold if the Commission sided with her. Her sister is willing to surrender her 25% interest in the lease to her. Chair Masagatani clarified that L. Makanani only has rights to 50% of the lease so that the lease wouldn't go to only one party.

Chair Masagatani called Elizabeth Dawson to the table. E. Dawson stated she just wanted the Commission to know that Jeanette Ku'ulei Petty-Hanawahine has family behind her who are willing to support her in this process.

Roxanne Hanawahine stated she is Ku'ulei Petty-Hanawahine's grand-aunt. They stand behind the written testimony they submitted in January and urge the Commission to help the families through this difficult process.

Chair Masagatani asked if the parties would be willing to sit down to talk about options. K. Petty-Hanawahine and L. Makanani stated they could sit down and talk.

Commissioner Kahikina suggested ho'oponopono as an option.

R. Hanawahine asked if the Department will issue a lease with both names on it.

Chair Masagatani stated the action before the Commission for approval is the clearest legal option. The Commission must also determine what is in the best interest of the family. The Commission must take into consideration what it does for one family; it must be willing to do for all families.

Chair Masagatani recommended the item be deferred to allow counsel to provide the Commission and staff with options for moving forward. The deferral will also allow the parties to talk story. She can have staff available as a third-party resource. Following today's executive session discussion, the Commission will inform staff what options it is considering. Staff can reach out to the parties to set up a time to meet to talk it over.

#### ACTION

Deferred to a future agenda

**RECESS** 11:00 AM

**RECONVENE** 11:08 AM

**ITEM D-16 Request to Schedule a Contested Case Hearing – LIONEL AVILLA, Lease No. 9303, Lot No. 90, Kaniōhale, Kailua-Kona, Hawaii**

#### RECOMMENDED MOTION/ACTION

Acting Homestead Services Division Administrator Dean Oshiro recommended the following: To deny the request to schedule a contested case hearing for Lionel Avilla regarding Lease No. 9303, Lot No. 90 situated at Kaniōhale previously held by Rachel Loo.

#### MOTION

Moved by Commissioner Kaapu, seconded by Commissioner Awo to approve the motion as stated in the submittal.

#### DISCUSSION

West Hawai'i District Manager James Du Pont summarized that the lease was originally issued to Mrs. Rachel Loo. A few years after obtaining the lease, Mrs. Loo added her daughter Gwendolyn Avilla to the lease as a joint tenant. Unfortunately, Mrs. Avilla passed away, and the lease reverted to Mrs. Loo. Before her passing, Mrs. Loo named her granddaughter Tina Cox as her primary beneficiary.

Before being added to her mom's lease, Mrs. Avilla was awarded a residential lease in La'i'ōpua which she transferred to her daughter Tina Cox. Since Ms. Cox already had a residential lease, she had to transfer her lease to succeed to her grandmother's lease.

During the history of this lease, both Mr. Avilla and his wife resided on the property. Mrs. Loo did not live on the homestead. J. Du Pont understood that Mrs. Loo resided on O'ahu for medical reasons, and never fully occupied the residence in Kona.

During the process of the transfer from Mrs. Loo to herself and her daughter, Mr. Avilla thought that the transfer involved him as the spouse of Mrs. Avilla. It did not, and J. Du Pont explained that if Mrs. Loo wanted to transfer the lease to her daughter and Mr. Avilla, she would have been able to. It was a specific joint tenancy between Mrs. Loo and her daughter Gwen. The process was explained to Mr. Avilla on several occasions. Because Mr. Avilla and Mrs. Avilla resided in the home from the issuance of the lease, Mr. Avilla believed he had certain rights to the lease because he was married to Gwen Avilla. When you look at the process of signing the lease and the transfer of joint tenancy, none of it involved Mr. Avilla specifically.

Mr. Avilla, who was married to Gwendolyn Avilla, stated that he is the lawful and rightful successor to Lease No. 9303, Kaniohale, Hawai'i. He believes that Mrs. Loo abandoned the homestead and that is the basis for the request for a contested case hearing. The Department asserts that no law or rule has been violated. Mrs. Loo was the rightful lessee at the time of her death, and her successor is Tina Cox.

Chair Masagatani asked for more detail about why Mrs. Avilla became a joint tenant when she was already the primary successor to Mrs. Loo's lease. J. Du Pont responded that he had a conversation with Mrs. Loo that the requirement of a residential lease is occupancy. Mrs. Loo decided to add her daughter Gwen to the lease.

Commissioner Wescoatt asked who owns the improvements on the house. J. Du Pont stated Mrs. Loo took out a mortgage on the house, so she owned the improvements, which then passed on to Tina Cox.

Commissioner Ishibashi asked if there was anything in writing from a doctor for the absence. J. Du Pont stated he spoke to Mrs. Loo's sister on several occasions about it, but there was nothing in writing from a doctor.

Chair Masagatani called on Mr. Avilla and his counsel for their testimony.

Lionel Avilla addressed the Commission and asked for a contested case hearing because he bought the lot in Kaniohale.

Georgette Yaindl introduced herself as Mr. Avilla's attorney. She stated they did not know the contested case hearing decision would be made today. The request for a contested case hearing was sent in November. There was no communication between the Department, so they asked to be placed on the J Agenda to find out when a decision might be made. On Wednesday, she received the filed agenda and happened to notice that the item was listed for decision-making.

G. Yaindl stated she would stick to undisputed facts in her testimony and compelling matters of law to show that this issue warrants a contested case.

Mr. Avilla is a native Hawaiian as defined by the Hawaiian Homes Commission Act; he is a beneficiary and the reason this Act was passed. He is a Kohala kanaka. In 1998, Mr. Avilla's mother in law was awarded a lease in Kaniohale, Hawai'i. Mr. Avilla paid cash to purchase construction of the home for the unimproved lot. In 1999, Mr. Avilla and his wife Gwendolyn moved in and has lived there ever since. Mr. Avilla has paid taxes, homeowners' insurance, and homeowners' association dues. There is correspondence from Mr. Du Pont to Mr. Avilla permitting him to proceed with construction of small improvements. Mrs. Loo never took occupancy of the residence. They have the documents to prove that Mrs. Loo wanted a life estate but someone in the Department told her she had to get a joint tenancy. Gwendolyn passed in October 2006, and in November 2006, Tina Cox flew to O'ahu and filled out the transfer of successorship form. They will have witness testimony to that effect once a contested case hearing is granted.

G. Yaindl understood Mr. Avilla needs to satisfy four conditions to have a contested case hearing. She pointed out that Ms. Cox knew that she was Mrs. Loo's successor and that she needed to relinquish herself from her Ha Place lease to be a qualified successor, but sat on it for eight years. It wasn't until her grandmother passed that she acted to digress herself of that interest. She slept on her rights and therefore lost them.

G. Yaindl stated Mr. Avilla's mission today is to get a contested case hearing scheduled. She appreciated Commissioner Wescoatt's question about the residuals and who bought the house. Is the Commission going to disinvest the purchaser who is a 50% kanaka from Kohala who wants to live in Kailua-Kona?

G. Yaindl drew the Commission's attention to an exhibit showing a fixed notary certificate where a stamp was used to indicate the document was undated at the time of publication. It cannot be done under the statute that governs notary laws. The other thing missing as a matter of law is the verification and acknowledgment of the Chairman's signature. There is no acknowledgment of the Chairman's signature. Notaries are held to codes of conduct that spell these things out. There are several matters of law and several matters of fact that should be enough to compel the Commission to grant the contested case hearing.

Commissioner Kahikina stated he would support a contested case hearing.

Chair Masagatani stated she has several questions for counsel before deciding. She informed the parties that the Commission will go into executive session which will last for at least 2 hours to cover several different matters.

G. Yaindl asked if a decision will be made in executive session. Chair Masagatani stated any decision made by the Commission would be done in open session.

Leeann Avilla added that her great grandmother Rachel Loo had Alzheimer's disease for the last seven years of her life. It was her grandparents Lionel and Gwen that took care of her.

Yvonne Avilla stated her father in law is Lionel Avilla. Everyone in their family including Tina Cox knows the house belongs to Lionel Avilla. He built it and took care of everything including Tina Cox from when they were young.

Chair Masagatani asked if Mr. and Mrs. Avilla have any children together. G. Yaindl stated there were no children from their marriage.



ACTION

Deferred to after executive session.

**LAND DEVELOPMENT DIVISION**

**ITEM E-1      Rescission of Homestead Lease Award and Reinstatement of Application –  
East Kapolei I, Undivided Interest – Albert S. N. Hee**

RECOMMENDED MOTION

Acting Land Development Division Administrator Norman Sakamoto presented the following:

1. To approve the rescission of one (1) Residential Leases, East Kapolei I Undivided Interest Program, which commenced on December 2, 2006.
2. To reinstate one (1) residential lease applications to the appropriate Residential Lease Waiting list according to the original date of application.

MOTION/ACTION

Moved by Commissioner Ishibashi, seconded by Commissioner Awo to approve the motion as stated in the submittal. Motion carried unanimously.

**LAND MANAGEMENT DIVISION**

**ITEM F-2      Approval to Issuance of Right-of-Entry Permit to U-Haul of Hawaii, Inc.,  
Shafter Flats, Island of Oahu, TMK (1)11064010 (por.)**

RECOMMENDED MOTION

Acting Land Management Division Administrator Kahana Albinio and Property Development Agent Allen Yanos presented the following:

That the Hawaiian Homes Commission ("HHC") authorize the issuance of a Right-of-Entry permit ("ROE") to PERMITTEE covering the Premises for parking of its company vehicles under the terms and conditions described below and further subject to the conditions in the submittal.

MOTION

Moved by Commissioner Awo, seconded by Commissioner Wescoatt to approve the motion as stated in the submittal.

DISCUSSION

Allen Yanos stated the action before the Commission is for a very short term. LMD plans to do a workshop for the Commission in April, regarding the short and long-range plans for the area. A report is due from the consultants in a few months regarding the maximum density and highest and best uses for the properties in Schafter Flats. There are limitations due to the area flooding. They anticipate any redevelopment of the parcels to be at least ten years in the future.

ACTION

Motion carried unanimously.

**ITEM F-3      Approval to Amend General Lease No. 290, Kapolei Community  
Development Corp. (KCDC), East Kapolei, Oahu, TMK (1) 91151002**

RECOMMENDED MOTION

Acting Land Management Division Administrator Kahana Albinio noted Item F-3 was deferred to the March agenda. KCDC President Scott Abrigo and Mark Zimmerman of KZ Companies, LLC attended to provide testimony on the action.

S. Abrigo summarized that KCDC was awarded the general lease in 2011 and that it took six years to execute the sublease and get approval for the sublease. They are before the Commission for a second amendment to the general lease which would align the development plans to the general lease. They also want to introduce a CPR (Condominium Property Regime for the property to allow KZ to create units on the site to bring in different. The general lease doesn't allow for it as it is now. They are contemplating different changes within the general lease that would shift the obligations and responsibilities of KCDC in the general lease, to KZ the developer. KZ has completed their initial due diligence study and has taken possession of the property.

M. Zimmerman elaborated on due diligence study process and had a draft of the CPR to be presented to the Commission for consideration within the next 30 days. The shopping center is meant to be a daily needs type of establishment. They have already made two payments to KCDC for the sublease. Things are moving along, and they are hopeful to start the overall design once the CPR is done. M. Zimmerman stated there would be six units of which five are buildings and the last unit is the common field. Longs as the anchor tenant will manage unit 6 as part of their lease.

Commissioner Kaapu asked is there an upside for KCDC based on rents charged by KZ to its tenants. Is there an escalation clause if the spaces leases go in for renegotiation? S. Abrigo replied they have step ups for the first 20-years of the sublease and then they reopen the sublease after year 20. Then they follow a schedule of reopening and escalation. Regarding rent, the answer is no. Regarding the lease, KCDC feels good about the relationship. KCDC had counsel assisting with the contract.

Chair Masagatani asked if it is KZ's intention to own the leasehold improvements for the life of the sublease. M. Zimmerman replied yes, and further that in Hawai'i they are the developer of all of the Longs properties. The CPR is not done with the intention to sell. Longs intend to finance their improvements. KZ will eventually secure a loan for the construction of the buildings.

Chair Masagatani asked for an update on the access issues from Kualaka'i Parkway. M. Zimmern stated they hired Wilson Okamoto Corporation to do the access planning. The traffic study showed it would alleviate some of the congestion at the intersection. They just completed the engineering work on the access point. Chair Masagatani asked if getting the access point completed is necessary for the project to move forward. M. Zimmerman stated it is not.

S. Abrigo stated the property is 4.9 acres and originally Longs via KZ only wanted 2 of the 4 acres. KCDC was clear about not wanting separate developers for the parcel, and eventually, KZ became the developer. It is a new model for them, but KCDC is very hopeful.

Chair Masagatani stated that some of the amendments being requested need further review because the Department must look at these things from the perspective of what is done for one should be done for all. In this case, although the requested change may seem small and reasonable to KCDC or KZ, the Department would potentially have to make the same concessions for all its general leases.

#### MOTION/ACTION

Moved by Commissioner Kaapu, seconded by Commissioner Awo to convene 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. Motion carried unanimously.



The Commission anticipates convening in an 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 on these matters.

1. Update on issues related to Sandwich Isles Communications.

## EXECUTIVE SESSION OUT

3:15 PM

## LAND MANAGEMENT DIVISION

### **ITEM F-1 Approval to Issuance of Right of Entry to KIA Hawaii for Feral Ungulate Removal, Kahikinui, Maui, TMK (2)19001003(por.), 007, & 011(por)**

#### RECOMMENDED MOTION/ACTION

Acting Land Management Division Administrator Kahana Albinio presented the following: That the Hawaiian Homes Commission (HHC) grant its approval to issue a Right of Entry (ROE) permit to KIA Hawaii, for the purpose of conducting feral ungulate removal for the protection and restoration of the watershed forest at Kahikinui, Maui. Approval of the Right of Entry is subject, but not limited to the conditions listed in the submittal.

#### MOTION

Moved by Commissioner Wescoatt, seconded by Commissioner Awo to approve the motion as stated in the submittal.

#### DISCUSSION

K. Albinio introduced Jake Muse of KIA Hawaii, Ainoa Kaiaokamalie of Ka 'Ohana o Kahikinui, and Andrea Buckman of Leeward Haleakala Watershed Restoration Partnership (LHWRP).

Chair Masagatani asked for a summary of how the ungulate removal program will work. J. Muse stated the area is extremely remote so all removal will be done by helicopter. They have four different scenarios to use. They will generate funding through the sale of the meat. They already do wild harvested venison, so the US Department of Agriculture (USDA) is very familiar with their process and their team. They have been approved to use a new net system to bring the animals down to the bottom for USDA slaughter.

J. Muse stated they are also in the process of piloting the second project involving aerial inspections where the USDA inspector can sit in the helicopter and provide an immediate rendering. The animal can be put down immediately and taken down to the mobile slaughter facility. The brick and mortar slaughter facility will be utilized as well as another mobile until coming in June. There will be a lot of meat for processing in a short period.

Chair Masagatani asked if the beef secured by that process will be for sale. J. Muse stated the sale of the beef would help cover the cost of removal. It is a general estimate because a lot of what they do in the field is based on weather and other factors. But if they can sell approximately half of the animals that are there, which would be about 500 head of cattle. That amount should be able to cover the cost of removing all the animals and giving the rest of the meat away to DHHL communities across the state. Roughly 500,000 pounds.

Chair Masagatani asked for the methodology of how the beef is going to be available to the beneficiaries. J. Muse stated there are two different ways, either previously packaged and processed or community salvage days. The packaged way is easier to provide a wide distribution but the community salvaging days allow communities to come together to process the animals themselves. Larger communities on Maui can be on hand to receive the animals as they are

brought down on the helicopters. He believes there are almost 1400 households and nine communities on Maui. There will be so much meat in such a short amount of time, that it will require a combination of both to meet the timeline.

Chair Masagatani stated that communicating the process to the homestead association leaders is going to be key. J. Muse stated they had outlined a process to participate and they will have to work collectively within the community to make sure everyone gets something. Chair Masagatani suggests keeping the Department up to speed so the information can be readily disseminated. Even though the project is not the Department's project, some will come to the Department seeking information. Good communication is important, so there is no misunderstanding of intent.

Commissioner Kaapu asked that the accounting for the products being sold is explicitly laid out in the business plan, so there is transparency in the reporting. J. Muse understood and added that they are hoping to alleviate those concerns by having their primary source of funding come through crowdfunding. It has never been done before for conservation, but it makes it easy to report and is very transparent.

Commissioner Awo stated the operation is not DHHL's, but the removal of animals will occur on DHHL land. Is there an operational plan so there is an understanding of how things will work? J. Muse clarified that there would be no aerial shooting, the helicopters are primarily to transport the hunters and find and move the animals. One of the pieces is that the inspector could be on a helicopter. They do have standard operating procedures for armed rifle use and field protocols which can be attached as an addendum to the business plan.

Chair Masagatani asked if the same process can be used on other islands like Moloka'i. J. Muse stated on Moloka'i the Buchanan and Ritte 'ohana have been honest with him in telling him to make his mistakes somewhere else first. There are an estimated 70,000 deer on Moloka'i, but the cultural carrying capacity is different. He is preparing to go to Moloka'i to let the community ask questions about what they've learned from the past three years of venison harvesting on Maui.

Chair Masagatani thanked the group for their attendance.

#### ACTION

Motion carried unanimously.

### **HOMESTEAD SERVICES DIVISION**

#### **ITEM D-16 Request to Schedule a Contested Case Hearing – LIONEL AVILLA, Lease No. 9303, Lot No. 90, Kaniohale, Kailua-Kona, Hawaii**

NOTE: The initial discussion and motion for Item D-16 occurred earlier in the agenda but was deferred to allow Commissioners the opportunity to seek advice from counsel in executive session.

#### RECOMMENDED MOTION/ACTION

Acting Homestead Services Division Administrator Dean Oshiro recommended the following: To deny the request to schedule a contested case hearing for Lionel Avilla regarding Lease No. 9303, Lot No. 90 situated at Kaniohale previously held by Rachel Loo.

Chair Masagatani asked Mr. Lionel Avilla and stated that from the Commission's point of view, it does not appear that Mr. Avilla has standing for the Commission to consider him a party to the lessee of record. She afforded G. Yaindl the opportunity to state why she believes Mr. Avilla has legal standing.



G. Yaindl stated the Act was written for him as a 50% kanaka born in Kohala, Hawai‘i. Mr. Avilla and his wife took occupancy of the home and paid cash to have the house built. They live there without interruption. Rachel Loo never took occupancy of the home so her interest is never vested. Her named successor was Gwendolyn Avilla. When the matter of her lack of occupancy was brought to her attention, her proposed remedy was a life estate. She was told by DHHL that she couldn’t do a life estate, or a tenancy in common instead had to do a joint tenancy. It was legal advice being given inappropriately. They depended on the staff’s advice and entered the joint tenancy.

G. Yaindl continued that with no leasehold interest ever perfected, Rachel Loo had no interest to designate anyone as a beneficiary because there was two other kanaka living on the property who were on the waitlist. There are equitable considerations, Rachel Loos intent was clearly to name her daughter as her successor. They know that Mr. Avilla’s stepdaughter, Tina Cox flew over to O‘ahu within the month of her mother passing with the form filled-out to sign over a successorship to herself. They know and will bring to bear that Rachel Loo had no legal capacity to enter a contract. Mr. Avilla has a record of paying property taxes, insurance, and association fees. They do not believe the transfer of the original lease to Tina Cox’s daughter is legal, and that the daughter is not a qualified successor.

G. Yaindl concluded to present the contested case, going forward, she submitted a request to inspect the case file. They are waiting to see when they can look at the files. They are concerned about the purported transfer through successorship being undated and illegally notarized, of having the actual records they know are there, still there. There are the equitable issues as a matter of law, the Department’s own published rules and who is a qualified successor. There are other matters where Mr. Avilla’s beneficiary on his retirement and life insurance was changed to Tina Cox without his knowledge. She hoped it would be enough for standing and if granted a contested case hearing, would bear the burden.

Chair Masagatani thanked Ms. Yaindl and noting no further questions, asked for a roll call vote.

Moved by Commissioner Kaapu, Seconded by Commissioner Awo to deny the request to schedule a contested case hearing for Lionel Avilla regarding Lease No. 9303, Lot No. 90 situated at Kaniohale previously held by Rachel Loo.						
Commissioner	1	2	‘AE (YES)	A’OLE (NO)	KANALUA ABSTAIN	EXCUSED
Commissioner Awo		X	X			
Commissioner Ishibashi			X			
Commissioner Ka‘apu	X		X			
Commissioner Kahikina				X		
Commissioner Wescoatt			X			
Chair Masagatani			X			
TOTAL VOTE COUNT			5	1		
MOTION: [ ] UNANIMOUS [ X ] PASSED [ ] DEFERRED [ ] FAILED						
Motion passes with five (5) Yes, one (1) No, three (3) Vacancies (Moloka‘i, Kaua‘i, O‘ahu)						

ACTION

Motion carried.



G. Yaindl asked for a reconsideration. Chair Masagatani asked if any of Commissioners who voted yes would reconsider their vote. Hearing none, the Item was concluded. G. Yaindl noted Mr. Avilla would be taking the matter to circuit court.

**RECESS** **4:01 PM**

**RECONVENE** **4:08 PM**

**PLANNING OFFICE**

**ITEM G-1 Approval to proceed to Beneficiary Consultation for proposed water rate schedules for the DHHL-owned water systems**

RECOMMENDED MOTION

Acting Planning Program Manager Kaleo Manuel, Grants Specialist Gigi Cairel and Water Specialist Halealoha Ayau presented the following:

That the Hawaiian Homes Commission (HHC) approve proceeding to beneficiary consultation for proposed water rate schedules and fees for the DHHL-owned water systems, except the Pu'ukapu Water System in West Hawaii.

MOTION

Moved by Commissioner Ishibashi, seconded by Commissioner Wescoatt to approve the motion as stated in the submittal.

DISCUSSION

- For rate recommendations for all DHHL water systems, it is advisable to add a 3% annual increase for inflation. And to minimize rate shock for customers, spread the increases to base and usage rates over a 10-year period.
- To ensure rate affordability, while moving DHHL towards greater fiscal sustainability, it is recommended that DHHL implement rates in the range of 1.5% to 3.0% of US Census median household income. Also, it is recommended that DHHL consider conducting median household income surveys to more accurately inform the setting of rate structures if US Census data is not accurate.
- Change from bi-monthly billing to monthly to achieve fiscal sustainability and customer affordability objectives.
- When more reliable financial statements (based on Enterprise Accounting) are consistently generated, it is recommended that DHHL compare the projected costs used in the Rate Study to calculate rates to actual costs tracked.
- It is recommended that DHHL review the operations service contracts as these are very large expenses that skew the rates. It is recommended to separately track routine operations and maintenance service, one-time meter /backflow prevention device installations, and repairs.
- Develop a long-term plan and have written policies to fund reserve accounts.
- Conduct annual reviews of accounts receivable's aging reports to verify the amounts that are deemed un-collectible. This should be done every year as part of the budgeting process.
- Educate water customers regarding the costs of service and the need for rate increases. Often, when customers understand this, resistance to rate increases lessens.
- Develop stringent collections and water service shut-off policies to keep delinquent accounts at a minimum.

K. Manuel stated staff is looking at holding the Moloka'i consultation on March 23<sup>rd</sup> and a 30-day comment period to April 12<sup>th</sup>. There will be a placeholder on the Moloka'i Commission agenda in April to provide an update on the process.

ACTION

Motion carried unanimously.

**ITEMS FOR INFORMATION/DISCUSSION**

**GENERAL AGENDA Requests to Address the Commission**

**ITEM J-1 Shirley Swinney – Malu‘ōhai Lessee**

S. Swinney stated hers is a personal matter involving a wall which was originally the Land Development Division owned by Villages of Kapolei (VOKA) but has since been transferred to the Department. It took six months to get (LDD) to respond to her, and when they finally did go to the property, they didn't ask for her input and simply submitted their report which stated that the wall is not a contributing factor to gaining access to the property. She disagrees, and if the LDD person had consulted with her, she would have explained why, and would have provided police reports of burglaries to the property twice which suggest the same. S. Swinney stated she doesn't expect the wall to be replaced but wants a fix for that section which is especially low and where the decorative tile can be used as a handhold to get up and over the wall.

Chair Masagatani asked Deputy Aila to follow-up with VOKA to confirm ownership and see what options the Department could pursue. She also asked S. Swinney if she is willing to take on the project herself, sometimes the Department cannot act, and it is easier to give the homeowner permission to fix the issue themselves. S. Swinney stated it is hard to say without knowing what is allowed and how much it would cost.

**ITEM J-2 Georgette Yaindl – Lionel A. Avilla Request for Contested Case Hearing**

Presented with Item D-16.

**ITEM J-3 Bo Kahui – Villages of La‘i‘opua and La‘i‘opua 2020**

Deferred to March.

**WORKSHOPS**

**HOMESTEAD SERVICES DIVISION**

**ITEM D-15 Pu‘ukapu Pastoral Lot Subdivision – Recommendation to Amend the Commencement Date to January 1, 2018**

RECOMMENDED MOTION

None. For information only.

West Hawai‘i District Manager James Du Pont presented submittal D-15.

DISCUSSION

Chair Masagatani asked what motivation does the lessee have, to come in to do this? J. Du Pont stated aside from making improvements or needing a permit from the county; there is no motivation.

Chair Masagatani stated there would be a submittal next month to authorize the department to set the commencement dates for the Pu‘ukapu homestead leases as February 20, 2018.



Commissioner Kaapu asked if having the lessees amend their leases is going to be mandatory and if to have a tax map key assigned they must amend their lease. J. Du Pont said that it is stated in the addendum that once the roads are acceptable to the Department that the lease commencement date is going to be amended.

Chair Masagatani asked what kind of effort has been made to educate the affected lessees about what the Commission is about to do. Before the Commission takes any action on this, there needs to be more outreach to those affected. It will be important to lay out what's being considered and how it could benefit the lessee.

J. Du Pont stated he would work on getting the information out to the community affected and report back.

## **OFFICE OF THE CHAIRMAN**

### **ITEM C-2 Status FY 2018 Budget and Workplan Implementation**

#### RECOMMENDED MOTION

None. For information only.

Land Development Division Administrator Norman Sakamoto, Land Agent Darrell Ing, and Administrative Services Officer Rodney Lau presented an update on the development pipeline previously presented to the Commission in September 2017.

#### DISCUSSION

Land Agent Darrell Ing provided a status update on each project in the CIP development pipeline. Chair Masagatani stated the summary of the budget to actuals as of the end of the calendar year is included. The summary included general funds which pays for operations, personnel, and other current expenditures. There are some expenditures budgeted in the administration account that Budget and Finance did not deem as operational, but are necessary like taking care of parks. She highlighted the trust/special funds actuals have been small because the focus has been on moving the legislative appropriations general fund/ general obligation obligation bond monies out first, so they don't lapse.

**RECESS**

**5:30 PM**



## **HAWAIIAN HOMES COMMISSION**

Minutes of February 21, 2018

Hale Pono'i, 91-5420 Kapolei Parkway, Kapolei, O'ahu, Hawai'i

**PRESENT** Jobie M. K. Masagatani, Chairman  
Randy K. Awo, Commissioner, Maui  
Wallace A. Ishibashi, Commissioner, East Hawaii (Arrived 11:41 am)  
David B. Ka'apu, Commissioner, West Hawaii  
Michael P. Kahikina, Commissioner, O'ahu  
Wren Wescoatt, Commissioner, O'ahu

**EXCUSED** Molokai Seat, Vacant  
Kaua'i Seat, Vacant  
O'ahu Seat, Vacant

**COUNSEL** Matthew Dvonch, Deputy Attorney General

**STAFF** William Aila Jr., Deputy to the Chairman, Office of the Chair  
Paula Aila, Hale Manager  
Kahana Albinio, Acting Administrator, Land Management Division  
Kaleo Manuel, Acting Manager, Planning Office  
Francis Apoliona, Compliance Officer  
David Hoke, Enforcement Officer  
Akoni Shannon, Enforcement Office  
Dean Oshiro, Acting Administrator, Homestead Services Division  
Stewart Matsunaga, Community Development Manager, Land Development  
Leah Burrows-Nuuanu Secretary to the Commission  
Bryan Cheplic, ICRO  
Nancy McPherson, Planner  
Debra Aliviado, Customer Service Manager

### **ORDER OF BUSINESS**

#### **CALL TO ORDER**

Chair Masagatani called the meeting to order at 9:34 a.m.

Five (5) members were present at roll call. Commissioner Ishibashi arrived at 11:41 am, and Moloka'i, Kaua'i, and Oahu Commission seats were vacant.

#### **APPROVAL OF MINUTES**

##### **MOTION/ACTION**

Moved by Commissioner Kaapu, seconded by Commissioner Awo, to approve the minutes of the October 2017 meeting. Motion carried unanimously.

#### **PUBLIC TESTIMONY ON AGENDIZED ITEMS**

##### **ITEM A-1 Homelani Schaedel – G-5 and G-4**

H. Schaedel thanked Commissioners for attending the community meeting last night. She thanked Commissioner Wescoatt for his assistance regarding the issue of removal of the last of the trees, making their community safer.

Regarding HB 2984 she was disappointed that the measure moved forward without the changes recommended by the attorney general's office. Homes are being sold in the communities  
Regarding SB 2557 she was angry because it is unnecessary as there is already a process within the Department to address adoptions.

Chair Masagatani thanked H. Schaedel for her time and commitment in advocating for beneficiaries at the legislature.

## **ITEMS FOR DECISION MAKING**

### **OFFICE OF THE CHAIRMAN**

#### **ITEM C-1 Appointment of the investigative committee pursuant to HRS section 92-2.5 and HAR section 10-2-16(b)(1), to study and recommend DHHL investment strategies**

Chair Masagatani noted for the record that she had appointed an investigative committee to help the Commission look at investments policies for the financial resources that the Department has the statutory authority to invest outside of the state. Currently, what the Department is earning is very limited because it is held in the states pool of cash. The committee will confer with experts on investment strategies and spending policies for the Department. The committee will make recommendations to the Commission by the end of the fiscal year which is June 2018. The members of the committee include herself, Commissioners Ishibashi, Kaapu, and Wescoatt.

## **ITEMS FOR INFORMATION/DISCUSSION**

### **WORKSHOPS**

#### **PLANNING DIVISION**

##### **ITEM G-4 Legislative Updates 2018**

###### **RECOMMENDATION**

None. For information only.

###### **DISCUSSION**

Legislative Analyst Lehua Kinilau-Cano provided an update of the bill tracking spreadsheet. Of the 20 bills on this bill tracking spreadsheet, 18 are still alive. The DHHL bill in the Governor's Package is still alive in the Senate.

##### **ITEM G-5 Kapolei Regional Plan Updates**

###### **RECOMMENDATION**

None. For information only.

Legislative Analyst Lehua Kinilau-Cano presented the following:

The current Kapolei Regional Plan was approved by the HHC in November 2010. Outreach, planning activities, and discussions with beneficiaries in the region during the planning process identified the following priority projects:

- (1) Support Heritage Center & Community Commercial Development
- (2) Support New School Development

- (3) Engage Beneficiaries in a Planning Charette Process
- (4) Develop Pedestrian/Bike Path Network to Community Resources
- (5) Preserve & Develop Parks to Service the Homestead Community

**ITEM G-3 Honomū Subsistence Agricultural Homestead Project Update**

RECOMMENDATION

None. For information only.

Acting Planning and Program Manager Kaleo Manuel, Planner Julie Cachola, and consultant Sherri Hiraoka presented the following:

S. Hiraoka of Townscape Inc. highlighted a presentation prepared for community meetings in March 2018.

- a. Project Description
- b. Previous questions and comments
- c. Environmental resource studies
- d. Guiding Principles and Environmental Concept
- e. Conceptual Plan Alternatives

**Why Agriculture?**

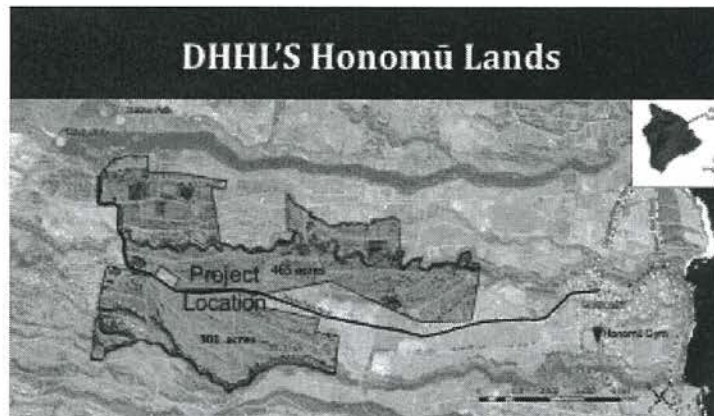
- Provision of the HHCA
- 20 years since the last Agricultural Homestead Award
- Sustainability – requires agriculture
- The Agricultural Waitlists are longer than the Residential Waitlists on most islands.

What is a Subsistence Agricultural Homestead Lease?

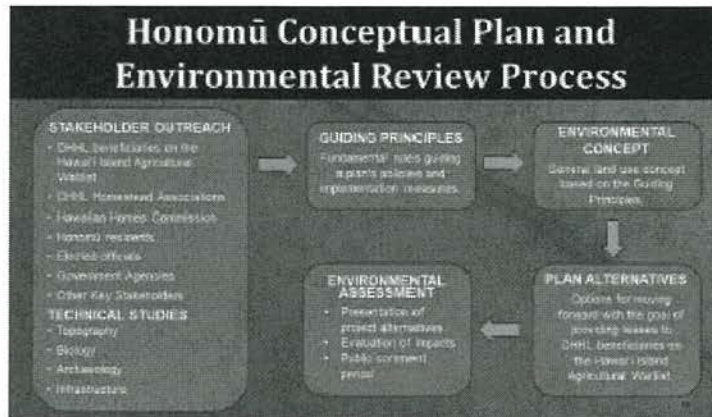
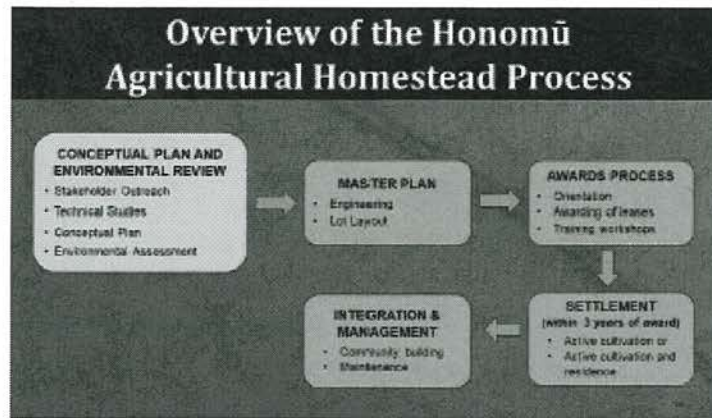
- Agricultural Administrative Rules were recently amended
- Lessees shall within three years:
  - Actively cultivate subsistence agriculture or
  - Reside and cultivate subsistence agriculture

Who can get a Subsistence Agriculture Lease in Honomū?

- Leases would be awarded according to the rank order on the Hawai‘i Island Agricultural Waitlist
- DHHL invited the Top 500 applicants on the Hawai‘i Island Agricultural Wait List to participate in planning meetings.
- These are applicants who applied between 1952 and 1985
- The average age of those invited is 66 years old







#### Major Issues and Concerns Raised

- High rainfall and runoff
- The density of lots, population increases, and impacts to the rural character of Honomū
- Monitoring and compliance with lease terms
- Training on farm and environmental practices
- Crime and agricultural theft
- Infrastructure: water, wastewater, traffic/roads

#### Technical Studies

- Topographic Survey
- Soils
- Biological Resources
- Archaeology
- Infrastructure
- Others

#### Guiding Principles

- No net increase in runoff from the 10-year storm
- Minimize erosion and polluted runoff
- Minimize visual, sound, and dust impacts
- Protect biologically sensitive environments
- Support community cohesion
- Provide for agriculture-related economic opportunities

Commissioner Kaapu asked how the Department plans to support community cohesion and provide economic opportunities. He is concerned about how the Department will help 118

farmers sell their goods. He suggested a cooperative or something to help farmers sustain themselves. The closest department store is 30 minutes away. J. Cachola stated the Department plans to get the community together through meetings and training workshops. It might help to have current farmers and residents engage with the potential awardees to talk about life in Honomū. It may not be for everyone; lessees need to know what they're signing up for.

K. Manuel indicated that the agriculture program needs to be developed. The Department does a survey every five-years, and when asked if the lessee plans to use their ag lot for farming, most respond they just want it for housing. Eighty-five percent of those on the Ag wait list just want an extra name in the pot to get a place to build a home. The Department has never done this type of program, and it will be a learning experience.

Chair Masagatani stated the Department isn't going to know what people's intentions are until they get on the lot. There may be a range of people who just want a garden or fruit trees and a house and those who want to farm. Commissioner Kaapu commented that the Department should find out which are serious farmers and put them on the best lots and those who just want to go on the weekends can have the other lots. Chair Masagatani stated the difficult part is knowing people's intentions until they take possession of the lots.

Chair Masagatani suggested phasing the awards to see how the community reacts to the program. If the first 100 lots are awarded and 95% of them farm, they might need more land, but if 95% of them build homes it becomes a different paradigm altogether.

Commissioner Wescoatt asked if there will be a DCCR component attached to the leases. There needs to be some obligation in the lease if there is eventually a common area maintenance fee. K. Manuel stated the sentiment is to go with codes of conduct or guidelines as lease standards, but not tied to 421(j). DCCRs are very complicated and stringent.

K. Manuel stated the disposition could be changed, but we would have to create a settlement plan as an overlay. If the Department is disclosing density and impact and mitigating against it, it should be okay. Chair Masagatani stated that it could be a mix of kuleana and subsistence ag. J. Cachola stated the area has a lot of Ag 20 lots, so the current residents think DHHL should be the same.

Commissioner Awo asked if the integrity of the project is agriculture, what impact would homes cause to the farmers. K. Manuel stated density is the main concern, but informing lessees who build homes in an agriculture community that there will be dust, noise and smells.

Chair Masagatani thanked the staff for their work in trying to work through the process of planning for Honomū.

**RECESS** 11:20 AM

**RECONVENE** 11:30 AM

## **HOMESTEAD SERVICES DIVISION**

### **D-1 HSD Status Reports**

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

#### **B - Delinquency Report**

### RECOMMENDATION

None. For information only.

Acting Homestead Services Division Administrator Dean Oshiro and Applications Branch Manager Ross Kana'i Kapeliela provided a short presentation on DHHL's Native Hawaiian qualification process and methodology for applicants.

R. Kapeliela stated when applying with the Department the most important document is the birth certificate. Regarding weight, the Department gives more weight to birth certificates, then marriage certificates, and then death certificates. Birth and marriage certificates are given more weight because someone on the certificate was there to verify the information being provided on the certificate. The Department uses primary documents or no records certification from the Department of Health. A beneficiary can qualify as a native Hawaiian using birth documents, although sometimes secondary documents like US Census documents, school records, genealogical charts, baptismal records are required.

Commissioner Kaapu asked if the Department's process is rule based. He stated most cases are based on hearsay; even birth certificates are provided by someone else. R. Kapeliela stated the process is not rule based and has been developed by staff over decades through trial and error. The process is far more comprehensive today than it has been in the past.

Commissioner Kaapu asked if the Department's role to be more inclusive or to keep folks off the list? He wanted to understand what the role is because the Department is looking at imperfect information and making a judgement call on whether someone is qualified or not. It affects people's lives and their children's lives. From a policy standpoint, he felt the Commission should have some say in the cases where the Department doesn't know for sure. He felt it is the Commission's role to determine who is qualified. R. Kapeliela stated in cases if there is a chance where the Department can give the benefit of the doubt, it's no problem. He provided an example using census data from the 1800's for someone who is listed as part Hawaiian, with no prior data. There is a very good chance that the person is no less than 50% Hawaiian because most of the children back then are from a pure Hawaiian mother and a non-Hawaiian father. In those instances, it is reasonable to conclude that the child is 50% Hawaiian.

R. Kapeliela stated a lot of times the Department encounters challenging cases where the great-great-grandparents say they're one thing and the younger generations who are trying to qualify are saying different.

Commissioner Wescoatt asked how often do cases come up where there isn't convincing evidence one way or the other. R. Kapeliela answered that he doesn't feel comfortable assigning a percentage. Chair Masagatani asked if it would make staff's job easier if the Commission weighed in on those types of decisions.

Deputy Attorney General (DAG) M. Dvnoch stated that the administrative rule indicates the determination must be made by the Chairman or the Chairman's designee. If the applicant disagrees with the determination, they can petition the Commission to decide. D. Oshiro stated one case is going through the process now.

Commissioner Awo asked what is the current philosophy of the Department when the evidence is equal. D. Oshiro stated when the Applications Branch receives an application; they try their best to help the person qualify. The staff does extensive research to try to qualify the person. Sometimes they hit a dead end or find more evidence against a qualification.

Chair Masagatani thanked R. Kapeliela and D. Oshiro for the discussion.

## **ANNOUNCEMENTS AND ADJOURNMENT**



**NEXT MEETING**

The next regular meeting will be held at the main office in Kapolei, O'ahu, on March 19 & 20, 2018.

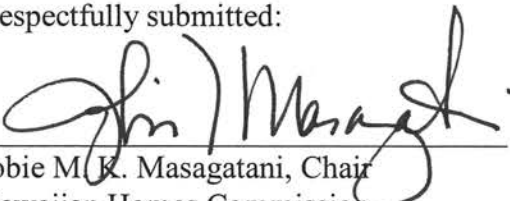
MOTION/ACTION

Moved by Commissioner Kaapu, seconded by Commissioner Ishibashi, to adjourn the meeting. Motion carried unanimously.

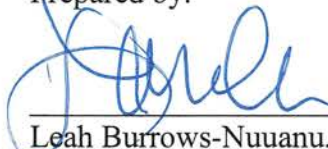
**ADJOURNMENT**

12:24 PM

Respectfully submitted:

  
\_\_\_\_\_  
Jobie M. K. Masagatani, Chair  
Hawaiian Homes Commission

Prepared by:

  
\_\_\_\_\_  
Leah Burrows-Nuuanu, Commission Secretary  
Hawaiian Homes Commission

APPROVED BY:

The Hawaiian Homes Commission at its regular monthly meeting on:

October 16, 2018, Paukukalo, Maui

  
\_\_\_\_\_  
Jobie M. K. Masagatani, Chairman  
Hawaiian Homes Commission