

HAWAIIAN HOMES COMMISSION
Minutes of February 19, 2019
Meeting held at Hale Pono`i, Kapolei, O`ahu

Pursuant to proper call, the 708th Regular Meeting of the Hawaiian Homes Commission was held at the Hale Pono`i, 91-5420 Kapolei Parkway, Kapolei, O`ahu, Hawai`i, beginning at 9:30 a.m.

PRESENT Jobie M. K. Masagatani, Chairman
Randy K. Awo, Maui Commissioner (arrived 10:35 a.m.)
Zachary Z. Helm, Moloka`i Commissioner
Wallace A. Ishibashi, East Hawai`i Commissioner (arrived 10:35 a.m.)
Michael P. Kahikina, O`ahu Commissioner
Pauline N. Namu`o, O`ahu Commissioner
Wren Wescoatt, O`ahu Commissioner

EXCUSED David B. Ka`apu, West Hawai`i Commissioner
Vacant, Kaua`i Commissioner

COUNSEL Craig Iha, Deputy Attorney General

STAFF William Aila Jr., Deputy to the Chairman
Paula Aila, Contact and Awards Division Manager
Kahana Albinio, Acting Land Management Division Administrator
Dean Oshiro, Acting Homestead Services Division Administrator
Stewart Matsunaga, Acting Land Development Division Administrator
Andrew Choy, Acting Planning Program Manager
Leah Burrows-Nuuanu, Secretary to the Commission
Cedric Duarte, ICRO Manager
Debra Aliviado, Customer Service Manager
Lehua Kinilau-Cano, Legislative Analyst

ORDER OF BUSINESS

CALL TO ORDER

Chair Masagatani called the meeting to order at 10:05 a.m.
Five (5) members were present at roll call. Commissioners Awo and Ishibashi arrived at 10:35 a.m. The Kaua`i seat was vacant.

APPROVAL OF AGENDA

MOTION/ACTION

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

APPROVAL OF MINUTES

Chair Masagatani noted that the Minutes for March 2015 will be taken up Tuesday, and the Minutes for 2018 will be deferred to the next meeting.

PUBLIC TESTIMONY ON AGENDIZED ITEMS

ITEM A-1 Bo Kahui - Villages of La‘i‘Ōpua Re: Item D-2, D-3, G-1,

B. Kahui requested VOLP be released from the SIC contract with DHHL. Chair Masagatani stated that the Commission does not regulate telecommunications, and the Commission and Department are trying to work in partnership with the DCCA and the PUC to understand and to get information out to the beneficiaries and general lessees as soon as possible. B. Kahui is requesting the AG and the Commission to give the association guidance so they can connect with other service providers besides SIC, i.e., Hawaiian Telcom and Spectrum.

ITEM A-2 Homelani Schaedel Re: Item F-2

H. Schaedel concurred with B. Kahui and agreed that there are internal legal issues that should not be discussed with beneficiaries to prevent rumors. H. Schaedel stated that the associations don't know, at this point, but they need to know.

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.

Commissioner Wescoatt asked for some explanation regarding Item D-10. Chair Masagatani stated that Item D-10 will be moved to the Regular Agenda.

- ITEM D-2** Approval of Consent to Mortgage (see exhibit)
- ITEM D-3** Approval of Streamline Refinance of Loans (see exhibit)
- ITEM D-4** Approval to Schedule Loan Delinquency Contested Case Hearings (see exhibit)
- ITEM D-5** Approval of Homestead Application Cancellations (see exhibit)
- ITEM D-6** Approval of Designation of Successors to Leasehold Interest and Designation of Persons to Receive the Net Proceeds (see exhibit)
- ITEM D-7** Approval of Assignment of Leasehold Interest (see exhibit)
- ITEM D-8** Approval of Amendment of Leasehold Interest (see exhibit)
- ITEM D-9** Approval to Issue Non-Exclusive Licenses for Rooftop Photovoltaic Systems for Certain Lessees (see exhibit)

MOTION/ACTION

Moved by Commissioner Wescoatt, seconded by Commissioner Kahikina, to approve the Consent Agenda, except for Item D-10. Motion carried unanimously.

REGULAR AGENDA

HOMESTEAD SERVICES DIVISION

ITEM D-10 Request to Schedule a Contested Case Hearing- LEASE VIOLATION- DEBRA K. KUAMOO, Residential Lease No. 01078, Lot No. 211A, Keaukaha, Hawai'i

RECOMMENDED MOTION/ACTION

Acting Homestead Services Division Administrator Dean Oshiro recommended the following: Motion to schedule a contested case hearing, lease violation for Debra K. Kuamo'o, residential Lease No. 01078, Lot No. 211A, Keaukaha, Hawai'i

MOTION

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

DISCUSSION

D. Oshiro stated that the violation is for waste and unlawful, improper offensive use of premises. Police reports have been received that the premises have been used for illegal activities and the violations will be fleshed out during the hearing.

Chair Masagatani asked if it the Department's position that the violation rises to the level of the lessee's violation of a rule or lease condition? D. Oshiro answered the violations are severe.

ACTION

Motion carried unanimously.

ITEM D-11 Request to Schedule Contested Case Hearing- LLOYD LOPES, Residential Lease No. 07753, Lot No. 216, Waiohuli, Kula, Maui

RECOMMENDED MOTION/ACTION

Acting Homestead Services Division Administrator Dean Oshiro recommended the following: Motion to schedule a contested case hearing for Lloyd Lopes, residential Lease No. 07753, Lot No. 216, Waiohuli, Kula, Maui. The request was made by Colette Thomas. The Department's recommendation is that the Hawaiian Homes Commission deny the request as there has been no violation of the Act, the Rules, or the Lease itself.

MOTION

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

DISCUSSION

D. Oshiro stated that Mr. Gonzales, the attorney, appeared before the Commission on the J-Agenda. His client entered into a transaction to purchase Mr. Lopes' lease, and the supporting documents and exhibits that have been provided to the Commission show that there was a transfer request received. The transfer was never effectuated because Mr. Lopes consequently canceled the transfer request. Once he did that, the Department stopped all processing of the transfer from Mr. Lopes to Ms. Thomas.

ACTION

Motion carried unanimously.

PLANNING OFFICE

- ITEM G-1 Approval to Conduct Beneficiary Consultation Meetings on Selected 2019 Renewable Energy Projects, Kalaeloa, Island of Oahu, TMK No. (1) 9-1-013: 03 8 and 040; and Kahikinui, Island of Maui, TMK No. (2) 1-9-001: 003 (portion)**

RECOMMENDED MOTION/ACTION

Acting Planning Office Manager Andrew Choy recommended the following:

Motion that the Hawaiian Homes Commission authorize the Department of Hawaiian Home Lands to conduct beneficiary consultation meetings with the renewable energy applicants that have been selected to proceed with the leasing process for Kalaeloa, O`ahu and Kahikinui, Maui pursuant to the 2019 Renewable Energy Projects Solicitation.

Chair Masagatani noted that Commissioner Wescoatt had recused himself on this motion. Chair stated that this motion would be deferred until the Commission has sufficient quorum.

ITEMS FOR INFORMATION/DISCUSSION

GENERAL AGENDA

REQUESTS TO ADDRESS THE COMMISSION

ITEM J-1 Homelani Schaedel- Malu`ohai Homestead Association

H. Schaedel is the President of the Malu`ohai Homestead Association. She stated that more than 10-years ago, she Shirley Swinney spoke with LMD regarding future traffic options for the homesteads, i.e. traffic circles, speed bumps, reducing the speed limits of the interior streets from 25 to 15 miles per hour, and installing a crosswalk at Malu`ohai and Kaiiau Avenue. Speeding on Kaiiau is a constant problem. In the past two years, there have been five accidents on Malu`ohai Street or Kaiiau Avenue. On February 13, 2017, H. Schaedel sent an email to Kehau Quartero and Rich Spear of DHHL's Land Development Division, for assistance or referral for temporary placement of a radar speed sign along Kaiiau Avenue, through a city and state agency or another resource.

ITEM J-4 Bo Kahui- La'i 'Opua 2020 and Villages of La'i 'Opua

B. Kahui requested a letter to be sent to the top ten delinquent lessees, but has no knowledge or if the letter was sent out from the Department. The Association is asking for \$2 million from the Legislature for the North Kona Water Storage Development. The association is asking the Department to continue to support this. He was asked to go to support the reinstatement of the NAHASDA funding and made it a point that the reinstatement of the \$10 million of NAHASDA funds was critical to the build-in communities across the state.

B. Kahui stated that this year, they received \$200k from the State Legislature to keep their office operating. He asked the Commission to consider setting aside funds for programs for community associations involved in economic development.

RECESS

11:40 A.M.

RECONVENED

11:52 A.M.

WORKSHOPS

LAND DEVELOPMENT DIVISION

ITEM E-1 For information only. Hawaiian Home Lands Rental Housing in the Villages of La‘i ‘Ōpua

RECOMMENDED MOTION/ACTION

None. For information only. Acting Land Development Division Administrator (LDD) Stewart Matsunaga presented the following:

DISCUSSION

S. Matsunaga stated 225 turnkey lots were completed in La‘i ‘Ōpua Village III, in 2000. This was the rent with option to purchase development. There were 118 lots completed in Village IV and 45 turnkey lots completed in Village V, in 2012. Village IV will have 101 single family lots in 2021. A little over \$10 million was put in to complete the 118 lot subdivision.

Renters are provided with the option to purchase the home at the end of a 15-year rental compliance period. Should the home be purchased, the 99-year homestead lease would be awarded. This provides an option for those financially unable to purchase.

Moved by Commission Wescoatt, seconded by Commissioner Kahikina, 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.

EXECUTIVE SESSION IN 12:55 P.M.

The Commission anticipated 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 1:53 P.M.

ITEM J-3 Frank Mahuka Jr.- Nanakuli Homestead Lease

F. Mahuka, Jr. stated that he is before the Commission because his sister surrendered their family home back to DHHL. He asked if there was any way they could have the first chance to buy the house. Chair Masagatani stated that once it’s in DHHL’s inventory, the Commission has to respect the waiting list.

ITEM J-5 Timothy K. McBrayer- Homestead Concerns

Iwalani McBrayer, the wife of Timothy McBrayer (lessee), presented issues about the house she and her husband bought back in January 2007. She noted that she has 28 exhibits and will be speaking about the time when she bought her home till now. She requested a hearing with the Hawaiian Homes Commission to immediately resolve the deceptive, negligent plumbing and electrical workmanship by Contractor Shioi Construction. Her home has mold, water damage, and does not meet electrical code. I. McBrayer stated that the shoddy plumbing and

electrical work done by Shioi Construction, hired by the DHHL Trust, was never properly addressed, nor the corrected construction standard implemented to address the mold and water damage of their Kaupea home that was visible and documented in 2008. She is here on behalf of her husband to ask the Hawaiian Homes Commission to direct a Department head to follow up with her request, along with a written report, an action plan with a time frame.

RECESS **3:40 P.M.**

RECONVENED **3:55 P.M.**

LAND MANAGEMENT DIVISION

ITEM F-1 For Information Only- Approval to Lease Extension, General Lease No. 299, Anahola, Island of Kaua'i, TMK No. (4)4-7-004:002

RECOMMENDED MOTION/ACTION

None. For information only. Acting Land Management Division Administrator Kahana Albinio presented the following:

DISCUSSION

K. Albinio stated that the area the lease is under, general lease no. 299, covers 60-acres. The initial term was for 25-years, beginning in February 2015 and expiring in 2040. Kaua`i Island Utility Cooperative (KIUC) is asking for a lease extension. They are asking for a lease extension. The current annual rent is \$144,114.00 and remains in effect through January 31, 2020. The site is in Anahola and is a 12-MW solar farm that provides renewable energy that meets 5% of KIUC's total energy protection. During daylight, about 20% of the island's electricity comes from the solar farm. Article One, Section 2 of the General Lease provides: the term of the lease may be extended for an additional 30-years, for a total lease term of 55-years, provided that:

1. The lessee shall, in writing, request such an extension of lease not later than 5-years from the effective date.
2. The request for the extended term may be for areas encompassing the substation which covers approximately 2-acres, and/or the service center, approximately 5-acres, and
3. Any lease extension shall comply with all the terms and requirements set forth in HRS 171-36(b) and be subject to the approval of the Hawaiian Homes Commission.

GENERAL AGENDA

REQUESTS TO ADDRESS THE COMMISSION

ITEM J-6 Boniface Konohia Jr.- Waimanalo Lessee

B. Konohia, Jr. testified that he is the lessee for his Waimanalo homestead, but has been put on a temporary restraining order and cannot access his residence. He is demanding that his wife, the petitioner of the restraining order, be removed from his residence because the restraining order is set for 4-years. As the beneficiary and lessee, he should be in the home.

WORKSHOPS

PLANNING OFFICE

ITEM G-2 For Information Only- Kapolei Regional Plan Priority Project Updates

RECOMMENDED MOTION/ACTION

None. For information only. Acting Planning Office Manager Andrew Choy and Legislative Analyst Lehua Kinilau-Cano presented the following:

DISCUSSION

L. Kinilau-Cano stated that for the O`ahu Island Plan, 21% of the land designated for residential purpose is in the Kapolei region. 84% of the land in Kapolei is designated as commercial because of its location within areas where the residential density is restricted by an easement from Kalaeloa Airport.

In addition to the land designated for commercial use, 81% of the land in Kalaeloa has been identified as industrial based on proximity to the active airfield. The priority is to support the Heritage Center and Community Commercial Development. Another priority support the new school development in which the Legislature, in 2017, appropriated \$77 million to the 2017 budget and \$13 million in last year's 2018 budget. The other priorities are to engage beneficiaries in a planning charette process, develop a pedestrian/bike path network to community resources, and to preserve and develop parks to service the homestead community.

RECESS

4:28 p.m.

HAWAIIAN HOMES COMMISSION
Minutes of February 20, 2019
Meeting held at Hale Pono`i, Kapolei, O`ahu

PRESENT Jobie M. K. Masagatani, Chairman
Randy K. Awo, Maui Commissioner
Zachary Z. Helm, Moloka`i Commissioner
Wallace A. Ishibashi, East Hawai`i Commissioner
David B. Ka`apu, West Hawai`i Commissioner
Michael P. Kahikina, O`ahu Commissioner (9:30 a.m.)
Pauline N. Namu`o, O`ahu Commissioner
Wren Wescoatt, O`ahu Commissioner

EXCUSED Vacant, Kaua`i Commissioner

COUNSEL Craig Iha, Deputy Attorney General

STAFF William Aila Jr., Deputy to the Chairman, Office of the Chair
Paula Aila, Contact and Awards Division Manager
Kahana Albinio, Acting Land Management Division Administrator
Dean Oshiro, Acting Homestead Services Division Administrator
Stewart Matsunaga, Acting Land Development Division Administrator
Andrew Choy, Acting Planning Program Manager
Leah Burrows-Nuuanu, Secretary to the Commission
Cedric Duarte, ICRO Manager
Debra Aliviado, Customer Service Manager

ORDER OF BUSINESS

CALL TO ORDER

Chair Masagatani called the meeting to order at 9:15 a.m.
Seven (7) members were present at roll call. The Kaua`i seat was vacant.

APPROVAL OF MINUTES

Chair Masagatani stated that the Minutes would be deferred to next month.

PUBLIC TESTIMONY ON AGENDIZED ITEMS

ITEM A-1 Homelani Schaedel Re: Item E-1

H. Schaedel stated that she is the President of the Malu`o`hai Residents Association, but her comments are presented as an individual advocate for the beneficiaries and the trust. She monitored the Ho`olimalima project over 5-years. Between Mark Development, Villages of Kapolei, and DHHL, the residents felt like their voices were not heard. Communication must be concise, consistent, and constant. Two, the kuleana between Ikaika Ohana and the communities, DHHL and La`i `Opua, must be transparent. All parties must work together to ensure the successful completion of the project in 2036.

ITEMS FOR DECISION MAKING

REGULAR AGENDA

LAND MANAGEMENT DIVISION

ITEM F-1 Approval to Lease Extension, General Lease No. 299, Anahola, Island of Kaua'i, TMK No. (4) 4-7-004:002

RECOMMENDED MOTION/ACTION

Acting Land Management Division Administrator Kahana Albinio presented the following: Motion that the Hawaiian Homes Commission approve the 30-year lease extension and modification of the fixed rental period for General Lease 299, issued to Kaua'i Island Utility Cooperative (KIUC), so that the aggregate of the original twenty-five (25) year term and the extended-term span a total of fifty-five (55) years, which lease term shall now expire on January 31, 2070, subject to the terms and conditions in the submittal.

MOTION

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

DISCUSSION

K. Albinio offered a slide show presentation to the Commission regarding the points raised during the presentation the day before. Joining K. Albinio was David Bissel, President, and CEO of KIUC. An aerial view of the site was presented, including a view of the solar panels. D. Bissel stated that there were 55,000 panels producing 12MW of energy. About 5% of Kaua'i's energy comes from the solar farm.

Commissioner Ka'apu asked to add into the lease extension, a part that ensures that the Anahola community would benefit as a whole and not just a portion of the community. Chair Masagatani said that staff would have to look at the agreement. There were two separate documents, one with HCDC and KIUC and the other with KIUC and DHHL (ultimately the lease). How this project was done was not typical, with the agreements separated and done at different points in time.

ACTION

Motion carried unanimously.

ITEMS FOR INFORMATION/DISCUSSION

PUBLIC TESTIMONY ON AGENDIZED ITEMS

ITEM A-2 Bo Kahui Re: Item E-1

B. Kahui stated that yesterday's workshop was revealing. When you look at what is being proposed and the time table and to get the development moving forward, and the Department's commitment for the \$5 million, and HHFC's commitment, the Association commends the Department. He suggested that the lessees live on the homestead ten years. There should be a condition under this proposed rental plan, so they don't speculate, and they end up selling their house. The Commission may have that discretionary power on a case by case basis to release or allow a lessee to sell under certain circumstances.

MOTION/ACTION

Moved by Commissioner Helm, seconded by Commissioner Wescoatt, 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.

EXECUTIVE SESSION IN

10:32 A.M.

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 Paradigm Construction, LLC v. Department of Hawaiian Home Lands, Civil No. 16-1-2035-11 DEO, Circuit Colli of the First Circuit.

EXECUTIVE SESSION OUT

2:29 P.M.

ANNOUNCEMENTS AND ADJOURNMENT

NEXT MEETING

The next regular meeting will be held at Hale Pono'i, Kapolei, Hawai'i, O'ahu, on March 18 & 19, 2019.

ADJOURNMENT

2:30 P.M.

Respectfully submitted:

Jobie M. K. Masagatani, Chairman
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:

Jobie M.K. Masagatani, Chairman
Hawaiian Homes Commission