

HAWAIIAN HOMES COMMISSION
Minutes of September 16, 2019
Lihu'e State Building, Rooms A-C, Lihu'e, Kaua'i, Hawai'i

Pursuant to proper call, the 715th Regular Meeting of the Hawaiian Homes Commission was held at the Lihu'e State Building, 3060 Eiwa Street, Lihu'e, Kaua'i, Hawai'i, beginning at 9:30 a.m.

PRESENT William J. Aila Jr., Chairman
Randy K. Awo, Maui Commissioner
David B. Ka'apu, West Hawai'i Commissioner
Pauline N. Namu'o, O'ahu Commissioner
Dennis L. Neves, Kauai Commissioner
Patricia L. Teruya, O'ahu Commissioner

EXCUSED Zachary Z. Helm, Moloka'i Commissioner
Vacant, O'ahu Commissioner
Vacant, East Hawai'i Commissioner

COUNSEL Ryan Kanaka'ole, Deputy Attorney General

STAFF Paula Aila, ICRO Manager
Kahana Albinio, Acting Land Management Division Administrator
Dean Oshiro, Acting Administrator, Homestead Services Division
Andrew Choy, Acting Manager, Planning Office
Stewart Matsunaga, Acting Land Development Division Administrator
Rodney Lau, Administrative Services Officer
Sharon Mendoza, Program Budget Analyst
Leah Burrows-Nuuanu Secretary to the Commission
Halealoha Ayau, Water Specialist
Cedric Duarte, Information and Community Relations Officer
Michael Lowe, Information Specialist
Jamilia Epping, Information Specialist
Darlene Llacuna, Contact Center
Lehua Kinilau-Cano, Legislative Analyst
Nancy McPherson, Planner
David Hoke, Enforcement Officer
Kip Akana, Enforcement Officer
Akoni Shannon, Enforcement Officer
Erna Kamibayashi, Kaua'i District Supervisor
Rhonda Fu, Kaua'i District Office

ORDER OF BUSINESS

CALL TO ORDER

Chairman Aila called the meeting to order at 9:34 a.m.
Six (6) members were present at roll call. The East Hawai'i and O'ahu seats were vacant.

APPROVAL OF AGENDA

MOTION/ACTION

Moved by Commissioner Teruya, seconded by Commissioner Neves, to approve the agenda.
Motion carried unanimously.

APPROVAL OF MINUTES

Approval of Minutes deferred to Tuesday, September 17th.

PUBLIC TESTIMONY ON AGENDIZED ITEMS

ITEM A-1 Homelani Schaedel Re: Item F-3

H. Schaedel quoted sections of the Hawaiian Home Lands Act, specifically 207, 204 and 212 pertaining to available Hawaiian Home Lands. She stated that Kaua'i Island Utility Cooperative (KIUC) on Kaua'i is a solar project using 60-acres and is not a beneficiary. Innergex is the solar project in Kalaeloa, O'ahu using 100-acres, and is also not a beneficiary. H. Schaedel stated that it is ludicrous for the SCHHA to file a petition when a similar project is on the Chairman's ahupua'a, and a 30-year extension approved by the Hawaiian Homes Commission on February 20, 2019, for the total term of 55-years.

H. Schaedel stated the HHC public hearing on July 8, 2019, was disappointing to witness. The disruptive behavior of those who had no respect for Hale Pono'i, the Commissioners, or those who were there to learn about the project was a'ole pono. She wondered where these people were when the Ho'omalua Energy Policy was approved by the Commission in 2009; or if they attended the Kapolei Regional Plan meetings in 2009 or the O'ahu Island Plan meetings in 2013. If they attended those meetings, they would know why Kapolei homestead leadership and beneficiaries support income-generating projects in Kalaeloa instead of residential projects.

The Innergex Solar Project aligns with the Commission's 2009 Ho'omalua Energy Policy, the O'ahu Island Plan, and the Kapolei Regional Plan. It is located in Kalaeloa, not in Nanakuli, Waianae, Waimanalo, or any other place. She testified to ensure the voices of the Kapolei homesteaders are not ignored, diminished or dismissed by those who have asserted themselves. They do not speak for all. Kapolei homestead leadership respects all homestead leaders in their role and kuleana in their ahupua'a and moku. The Kapolei homestead leaders will kokua when asked and only when the kahea goes out. To do so otherwise is mahaoi.

H. Schaedel asked the Commission to move forward with the process, and for Innergex to proceed with the project.

Commissioner Teruya stated that H. Schaedel made a statement that the Chairman has a project in his community, and asked what project that is. H. Schaedel said she was referring to the SCHHA Chairman, and that would be the KIUC project in Anahola.

Commissioner Teruya asked if H. Schaedel's non-profit will be receiving funds from the solar integrated Kalaeloa project. H. Schaedel confirmed they would, along with Hawaii Community Development Authority (HCDA), for the solar project.

H. Schaedel stated the Kapolei Community Development Corporation (KCDC) serves only the beneficiaries in the Kapolei region. She understands that HCDA is not specific to any particular homestead, whether it be Kaua'i, O'ahu or any other.

Commissioner Teruya asked if H. Schaedel's testimony is on behalf of Kanehili, Maluohai, and Kaupe'a. H. Schaedel stated that her testimony is as an individual beneficiary and as a homestead leader. She stated she attends the KCDC quarterly meetings as the President of Maluohai. If she is not able to get the Board's approval for testimony before the Commission, she will not represent herself as Maluohai.

Commissioner Teruya stated she was the only Commissioner that voted it down (Innergex), and she doesn't mind saying it. Her concern is that the land could have been used as commercial space for native Hawaiians, or people along in West O'ahu where there is limited business space. Businesses

park their vehicles on ag and residential lots. As an O'ahu Commissioner, she voted against the motion because although it is not suitable for residential use, it could have been suitable for commercial use.

ITEM A-2 Garrett Danner Re: Item F-3

G. Danner testified regarding what the SCHHA is trying to contest and what HCDC did, which was to have it done under Section 207. As he understands, DHHL got involved and changed it to Section 204 to get a piece of the pie. He testifies as pro-SCHHA as he stated that SCHHA and Anahola is not the enemy.

ITEM A-3 Halealoha Ayau Re: Roads and Highways, claim pursuant to Act 14

H. Ayau testified that there were no armed Hawaiians on the Mauna, and the only ones carrying weapons were law enforcement. H. Ayau stated that the Hawaiians were armed with kapu aloha, which is the projection of strength through humility and aloha aina, which is loyalty to the land. He showed a video from July 17, 2019, in which kupuna was arrested. He added that there is a standing order with respect to roads and highways, which was taken by the Hawaiian Homes Commission in November 1994. Inclusive is the settlement with the State of Hawai'i for the roads and highways that were unlawfully taken and remain uncompensated. The order states should the State not comply with the deal; the Commission withdraws its approval and avails itself of any legal remedies. H. Ayau asked the Commission to withdraw its approval and invoke its legal remedies against the State of Hawai'i for non-compliance. He also asked the Commission to declare a ho'omalua, a moratorium that no beneficiaries be arrested on Hawaiian home lands for standing up for their rights.

ITEMS FOR INFORMATION/DISCUSSION

GENERAL AGENDA

REQUESTS TO ADDRESS THE COMMISSION

ITEM J-1 Dion Maeda, Senior Pastor - Connect Point Church Seeking Long-term Disposition

D. Maeda stated that the Connect Point Church (Church) is seeking a long-term disposition with DHHL. For 21-years, the Church has been sub-leasing from DHHL lessee, Lawrence J. Balberde. The Church is seeking a long-term disposition for all the time, money, and investments made at 168 Holomua Street. The former lease was canceled because the lessee failed to pay over \$239,000 to DHHL over the last nine years. The Church has been leasing the property from Mr. Balberde since July 1, 1998, over 21-years. Mr. Balberde has not paid a dime to the DHHL for the past 21-years, and the Church has been a victim of Mr. Balberde.

General and structural repairs were the responsibility of Mr. Balberde, but he did not do any repairs. The Church has tried contacting Mr. Balberde for repairs, but he did not reply. The Church sent Mr. Balberde receipts for general and structural repairs done over the years. The Church has spent over \$550,000 on the property.

D. Maeda stated the Church was put into the predicament because of DHHL's poor management and negligence of oversight of lessee Lawrence Balberde. D. Maeda requested that the Hawaiian Homes Commission move Connect Point Church into a long-term disposition, and first, by eliminating the public auction of the property, and second, allow the Church to pay the fair market value for a long-term lease for the next 55-years with no future lease dues.

Hawai'i County Prosecuting Attorney Mitch Roth testified in favor of Connect Point Church, via telephone. He spoke of the crime triangle that was discussed in an earlier conversation. M. Roth stated that the Department's role is not only as managers of the community but also as guardians of the community. He asked that the Commission give Connect Point Church a long-term lease.

Acting Land Management Division Administrator (LMD) K. Albinio stated that the Commission canceled Mr. Balberde's lease in May 2019. He said LMD was aware of the sub-lease before the cancellation. Part of the cancellation was because there was no consent from Hawaiian Home Lands regarding the sub-lease. Attempts were made to contact Mr. Balberde, but no response was received, so the Department moved forward with the cancellation. Chair Aila asked Kahana if the referrals for the request for proposals went out. Kahana stated not yet. Commissioner Neves asked about the status of recovering the funds in arrears. Kahana stated that the Department is working with the Attorney General's office.

ITEMS FOR DECISION MAKING

REGULAR AGENDA

OFFICE OF THE CHAIRMAN

ITEM C-1 Acceptance of the 2019 Annual Performance Report (APR) Native Hawaiian Housing Block Grant (NHHBG)

RECOMMENDED MOTION/ACTION

Legislative Analyst Lehua Kinilau-Cano, on behalf of NAHASDA Manager Niniau Simmons, presented the following:

Motion that the Hawaiian Homes Commission accept the 2019 Annual Performance Report (APR) for the Native Hawaiian Housing Block Grant (NHHBG) for transmittal to the US Department of Housing and Urban Development (HUD).

MOTION

Moved by Commissioner Ka'apu seconded by Commissioner Namu'o, to approve the motion as stated in the submittal.

DISCUSSION

L. Kinilau-Cano the Commission was briefed on the report last month. Commissioner Teruya asked if the listings under the 5-year plan include kupuna housing development. L. Kinilau-Cano stated it is No. 8, of the rental operating subsidy, which provides financing for the kupuna housing in Waimanalo. Commissioner Teruya asked if there were any future kupuna housing planning in the Waianae moku. L. Kinilau-Cano was not aware and stated that she would have N. Simmons follow-up.

ACTION

Motion carried unanimously.

LAND MANAGEMENT DIVISION

ITEM F-1 Annual Renewals of Right of Entry Permits, Island of Kaua'i

RECOMMENDED MOTION/ACTION

Acting Administrator Land Management Division Kahana Albinio presented the following: Motion that the Hawaiian Homes Commission approve the annual renewals of the right of entry permits on the Island of Kaua'i.

MOTION

Moved by Commissioner Teruya, seconded by Commissioner Namu`o, to approve the motion as stated in the submittal.

DISCUSSION

Commissioner Neves asked if all the ROEs are up to date and if contact was made with all the applicants. He would like to see a more complete and comprehensive report. He would like to know what is available for the beneficiaries to look at, and there should be more transparency in the process.

ACTION

Motion carried unanimously.

ITEM F-2 Approval to Issue a Right of Entry to AEP Wind Holdings, LLC, Kahikinui, Maui, TMKS: (2) 1-9-001:003 (p), 007 (p), 008 (p), 011(p)

RECOMMENDED MOTION/ACTION

Acting Administrator Land Management Division Kahana Albinio presented the following: Motion to approve the issuance of a right of entry permit to AEP Wind Holdings, LLC, for approximately 140 sq. ft. of Hawaiian Home land in Kahikinui, for the purpose of conducting an occupancy study on the ope`ape`a or the Hawaiian hoary bat.

MOTION

Moved by Commissioner Teruya, seconded by Commissioner Ka`apu, to approve the motion as stated in the submittal.

DISCUSSION

Commissioner Awo stated that he wanted to hear more from someone involved in the study regarding the procedures and the desired outcome. Raye Kamai of Hawai`i Wind and Marie Van Zant of AEP attended the meeting to answer questions. M. Van Zant conducted on the leeward side and is on seasonal trends to know where the bats are during different times of the year. It is thought that the ope`ape`a spend most of their time close to the summit, and the expectation is that there will be a movement to the coastal areas. The purpose of the study is to look at seasonal trends and distribution and how are bats using the area. The design is to set up an acoustic monitor on an 8' pole to pick up the high-frequency bat calls to monitor bat activity. The long-term goal is to see if bat activity is tied to forest edges, cattle grazing, water features, and how are the features used. They also want to know if more habitats can be created for the bats.

ACTION

Motion carried unanimously.

ITEM F-3 Request to Schedule Contested Case Hearing- Sovereign Council of Hawaiian Homestead Associations, Right-of-Entry Permit and Conditional Approval for a General Lease to Innergex Renewables USA LLC for Kalaeloa, Oahu, Tax Map Key No. (1)9-1-013:038 & 040.

RECOMMENDED MOTION/ACTION

Acting Administrator Land Management Division Kahana Albinio presented the following: It is the Commission's policy to not initiate a contested case proceeding if it is clear on the face of a complaint that there has been no violation of law or rule of the Commission. HAR §10-5-31(d). The Department, therefore, respectfully request that the Hawaiian Homes Commission deny the Petitioners' request for a contested case hearing.

MOTION

Moved by Commissioner Neves, seconded by Commissioner Ka`apu, to approve the motion as stated in the submittal.

DISCUSSION

Chair Aila stated that further discussions would be held in an executive session.

ITEM F-4 Request to Schedule Contested Case Hearing- Eddie Maria dba EC Trucking LLC, Right-of-Entry Permit, and Conditional Approval for a General Lease to Innergex Renewables USA LLC for Kalaeloa, Oahu, Tax Map Key No. (1)9-1-013:038 & 040.

RECOMMENDED MOTION/ACTION

Acting Administrator, Land Management Division, Kahana Albinio, presented the following: Motion that the Hawaiian Homes Commission deny Petitioners, Eddie Maria, and EC Trucking LLC's, request to schedule a contested case hearing on their written request of July 12, 2019.

MOTION

Moved by Commissioner Ka`apu, seconded by Commissioner Namu`o, to approve the motion as stated in the submittal.

DISCUSSION

Chair Aila stated that further discussions will be done in executive session.

DAG Kanaka`ole recommended that the Commission defer the decision making of Items F-3 & F-4 until after the executive session.

MOTION

Moved by Commissioner Ka`apu, seconded by Commissioner Neves, to defer decision making for Item F-3 and Item F-4 until after the executive session. Motion carried unanimously.

ITEMS FOR INFORMATION/DISCUSSION

ADMINISTRATIVE SERVICES OFFICE

ITEM H-1 DHHL Supplemental Budget Requests for the Fiscal Year 2021 (Sufficient Sums Budget) (relative to H-1)

RECOMMENDED MOTION/ACTION

None. For information only.

DISCUSSION

Administrative Services Officer Rodney Lau presented the DHHL Supplemental Budget Requests for the Fiscal Year 2021, Sufficient Sums Budget. R. Lau stated the Budget would be submitted to the Legislature via the Department of Budget & Finance (B&F), and then the Governor's office for review. Item H-1 is a chronology of DHHL's request for sufficient sums as related to the Nelson case. The Budget is separated by purposes which in the Nelson case, were for lot development, loans, rehabilitation projects, and administrative and operating costs. R. Lau stated that the Courts determined that purposes 1, 2, and 3 are a political doctrine of any discussion between the Department and the Legislature. Purpose 4 can be judicially determined. When the supplemental budget was prepared, the FY2020 – FY2021 Biennium Budget which is a 2-year budget, was used as a base to move forward. In 2019, the Legislature provided the Department with \$18.6 million for administrative and operating costs. The Legislature also set aside \$6.8 million in separate appropriations with B&F for fringe benefit costs. The

administrative and operating general funds budget is comprised of \$11.8 million in personnel costs and \$6.8 million in other current expenditures, which provides for 200 permanent positions. Other sources of financing were provided from DHHL's Special Fund for \$4.8 million. \$3.7 million was included and provided by the DHHL's Trust funds; in other words, the Legislature appropriated DHHL's monies.

For the State general obligation bonds, the Legislature provided funding for FY 2020 only. They provided \$25 million in GO (general obligation) bonds, \$20 million was for lot development (purpose 1), and \$5 million for repair and maintenance (purpose 4). The Legislature appropriated \$1 million for land acquisition in the Hawai'i Kai area. DHHL's supplemental budget request for FY 2021 is for an additional 60 general funded positions, which would increase the position count to 260 positions.

R. Lau stated that the Department is trying to ramp up the positions to be normally effective as it is currently short-staffed. The administrative and operating cost (purpose 4) request is \$93.2 million. The biennium CIP budget requests for FY 2020 and FY 2021 was \$84.7 and \$89.97 million. During FY2020, the Department financed its CIP (the first year) by GO Bonds, Trust funds, and prior appropriations. The Department's new ask is \$192 million.

ITEMS FOR DECISION MAKING

REGULAR AGENDA

PLANNING OFFICE

ITEM G-1 Approval of 2020 Legislative Proposal

RECOMMENDED MOTION/ACTION

Acting Manager Planning Office Andrew Choy presented the following:

Motion to approve the DHHL Legislative Proposal for inclusion in the Administration's Legislative Package for the 2020 regular session.

MOTION

Moved by Commissioner Ka'apu, seconded by Commissioner Neves, to approve the motion as stated in the submittal.

DISCUSSION

Legislative Analyst Lehua Kinilau-Cano stated that a briefing was provided on the draft of the legislative proposals at the last Commission meeting. The main proposal was for independent legal counsel, which has been at the legislature many years, and it's likely it will not be included in the Governor's administrative package.

ACTION

Motion carried unanimously.

ITEM G-2 Accept Beneficiary Consultation Report for Two Land Use Requests, Anahola Farmers' Market and Ulupono Anahola, Anahola, Kauai Tax Map Key Nos. (4)-4-8-005:026 and (4)-4-8-003:019

RECOMMENDED MOTION/ACTION

Acting Planning Program Manager Andrew Choy presented the following:

Motion to accept the beneficiary consultation report for two land-use requests; Anahola Farmers' Market and Ulupono Anahola, Anahola, Kaua'i, Tax Map Key Nos. (4)-4-8-005:026 and (4)-4-8-003:019.

MOTION

Moved by Commissioner Ka'apu, seconded by Commissioner Teruya, to approve the motion as stated in the submittal.

DISCUSSION

Planner and Kaua'i Island Planning Liaison Nancy McPherson stated that beneficiary consultation was conducted for the two land-use requests. There was discussion about the process for reviewing unsolicited requests for the use of Hawaiian home lands from non-profit organizations. Comments were received during the 30-day comment period. The two requests had lots of support because they would include community gardens for ag lessees and residential lessees who don't have an area to do agriculture. N. McPherson stated that the concerns of both projects were common. The request is that the Hawaiian Homes Commission accept the beneficiary consultation.

ACTION

The motion was deferred until after the executive session.

MOTION

Moved by Commissioner Ka'apu, seconded by Commissioner Awo to convene in an 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

12:00 P.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. Kekaha Residence Lots Unit 4 Soils Remediation
2. Contested Case Hearing Requests Procedures Under Sunshine Law
3. Roads and Highways Claim Pursuant to Act 14, Special Session Laws of Hawaii 1995

EXECUTIVE SESSION OUT

2:14 P.M.

ITEMS FOR DECISION MAKING

LAND MANAGEMENT DIVISION

ITEM F-3 Request to Schedule Contested Case Hearing- Sovereign Council of Hawaiian Homestead Associations, Right-of-Entry Permit and Conditional Approval for a General Lease to Innergex Renewables USA LLC for Kalaeloa, Oahu, Tax Map Key No. (1)9-1-013:038 & 040.

RECOMMENDED MOTION/ACTION

Acting Administrator Land Management Division Kahana Albinio presented the following: Motion to deny petitioner Sovereign Council of Hawaiian Homes Associations' (Petitioner) request to schedule a contested case hearing on their written request of July 15, 2019.

DISCUSSION

K. Albinio stated it is the Commission's policy to not initiate a contested case proceeding if it is clear on the face of a complaint that there has been no violation of law or rule of the Commission.

HAR §10-5-31(d). The Department, therefore, respectfully request that the Hawaiian Homes Commission deny the Petitioners' request for a contested case hearing.

Commissioner Teruya stated that she would not support Items F-3 and F-4 because she was hoping it would be deferred to the O'ahu HHC meeting in December to give the people who filed for a contested hearing the opportunity to be present. She stated that she would not be supporting the motion.

ACTION

Moved by Commissioner Neves: Motion to deny petitioner Sovereign Council of Hawaiian Homes Associations' request to schedule a contested case hearing on their written request of July 15, 2019.						
Seconded by Commissioner Kaapu						
Commissioner	1	2	'AE (YES)	A'OLE (NO)	KANALUA	EXCUSED
Commissioner Awo			X			
Commissioner Helm						X
Commissioner Kaapu		X	X			
Commissioner Namuo			X			
Commissioner Neves	X		X			
Commissioner Teruya				X		
Chair Aila			X			
TOTAL VOTE COUNT			5	1		1
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED						
Motion passes with five (5) 'Ae, one (1) A'ole, one (1) Excused. Vacant: East Hawai'i and O'ahu						

ITEM F-4

Request to Schedule Contested Case Hearing- Eddie Maria dba EC Trucking LLC, Right-of-Entry Permit, and Conditional Approval for a General Lease to Innergex Renewables USA LLC for Kalaeloa, Oahu, Tax Map Key No. (1)9-1-013:038 & 040.

RECOMMENDED MOTION/ACTION

Acting Administrator Land Management Division Kahana Albinio presented the following:
That the Hawaiian Homes Commission deny Petitioners, Eddie Maria, and EC Trucking LLC's request to schedule a contested case hearing on their written request of July 12, 2019.

ACTION

Moved by Commissioner Neves: Motion to deny petitioner Eddie Maria dba EC Trucking LLC request to schedule a contested case hearing on their written request of July 15, 2019.						
Seconded by Commissioner Kaapu						
Commissioner	1	2	'AE (YES)	A'OLE (NO)	KANALUA	EXCUSED
Commissioner Awo			X			
Commissioner Helm						X
Commissioner Kaapu		X	X			
Commissioner Namuo			X			
Commissioner Neves	X		X			
Commissioner Teruya				X		
Chair Aila			X			
TOTAL VOTE COUNT			5	1		1
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED						
Motion passes with five (5) 'Ae, one (1) A'ole, one (1) Excused. Vacant: East Hawai'i and O'ahu						

ITEMS FOR INFORMATION/DISCUSSION

GENERAL AGENDA

REQUESTS TO ADDRESS THE COMMISSION

ITEM J-2 Kawai Warren, President Kekaha Hawaiian Homestead Association (KHHA) – Pu‘u ‘Opae Committee

K. Warren, President of KHHA spoke on behalf of the Pu‘u Opae Committee’s testimony to keep the irrigation ditch for KHHA’s 231-acre license. He stated the water they use from the ditch is about 1-mgd for the 231-acres, and the rest goes to Hawaiian homelands.

Chairman Aila stated until the designs are done for Kaua‘i Island Utility Cooperative (KIUC), the license that K. Warren has is to use the water for their farmlands. K. Warren is asking assistance from the Department, with the Agribusiness Development Corporation (ADC), for their commitment to maintaining the ditch after the yellow gate. Chairman Aila stated that the ADC has an executive order to maintain the ditch throughout the system. There is no conveyance between the ADC and DHHL for the ditches.

ITEM J-3 Sherri Cummings - Anahola Coastline

S. Cummings testified about the changes to the Anahola Coastline as being unsafe and dirty from drug use, homelessness, rubbish dumping, and abandoned cars. She is asking the Department for the opportunity to steward the 750-acres.

Commissioner Awo suggested that S. Cummings come back to the Commission with a plan.

ITEM J-4 Mike DeMotta- Buffer Zone for Lessees

M. DeMotta is from the Hanapepe Homestead. He stated with the discussion of a new subdivision on the land behind the homestead, it is important that there is a buffer zone. He asked the Commission for an additional 50-feet, with an additional 10-15 feet for an access road, which would go down to the subdivision below. With the discussion of a new agricultural subdivision on the land behind the homestead, he stated it is important to make a request for additional land.

Commissioner Neves stated that before developing the next process, the Department should see what can be done as long as it does not harm what the Department is planning.

WORKSHOPS

LAND MANAGEMENT DIVISION

ITEM F-5 Green Energy Team LLC, One Time Albizia Removal/Cleanup with No Replanting, Anahola Mauka, Anahola, Tax Map Key Nos.: (4)4-7-002:004 and (4)4-8-002:001 and (4)4-8-003:006, 007, & 022 and (4) 4-8-005:006 & 011

RECOMMENDED MOTION/ACTION

None. For information only. Acting Administrator Land Management Division Kahana Albinio introduced Joe Slevue of the Green Energy Team.

DISCUSSION

J. Sleeve stated that the Green Energy Team (GET) operates a biomass-to-energy plant on Kauaʻi, which uses wood chips as fuel. He presented the Commission with a proposal to clear invasive albizia trees from 1,067-acres in Anahola and Kamalomaloo. Green Energy clears invasive albizia trees from different tracks of land and replants non-invasive trees in a plantation model, which gives GET a continuous supply of fuel over the 30-years of their sales agreement with KIUC.

GET is asking the Commission for a 2-year right of entry to clear the albizia trees with no replanting of trees. There would be no tenancy rights, only the right of entry to remove the albizia trees.

J. Sleeve stated the different impacts of the project would be:

1. The impact on the five tenants on the land with RPs on 280-acres out of the 1,067-acres. GET met with the tenants and developed a plan to work together.
2. The impact on the community. GET met with the leaders of the community, and the community saw the advantage of the albizia removal, and the area has been unusable.
3. The impact of traffic on the community for transporting 6,300 truckloads of chips for 19-months at 15-trailers per day. GET has a hauling schedule planned.
4. The cultural impact. GET will exclusively work on the former cane and pineapple lands. There will be no soil disturbance deeper or to a greater extent than what the cane and pineapple companies did in the past. There are no historical sites or cultural sites on the former cane and pineapple lands.
5. The impact on the soil and water. The impact of logging is soil runoff. Logging activities are not considered high risk because of the small branches, twigs, and leaves that create a natural buffer that holds the soil and particles from contaminating the rivers. The GET applies the Department of Forestry and Wildlife's Best Management Practices when harvesting the albizias.
6. The impact on botanical resources and wildlife. J. Sleeve stated the last survey in 2013 noted there were no native plants or endangered plants found on the former cane and pineapple lands. The US Fish and Wildlife has litigation measures that there is a 100-ft. buffer from the birds' nests. No harvesting is done June 1 through September 15, during the Hawaiian hoary bats' pupping season.
7. The impact of noise. The biggest noise is the chipper, and the State's noise limit is 78 dBAs at the property boundary. If the chipper is kept 600 feet away from the property boundaries there is no exceedance of noise.

The advantage to the Department is the clearing of 1,067-acres of former cane and pineapple land for free. Chairman Aila stated that one thing not mentioned is the improvement of the roads. J. Sleeve stated that it is the main cane haul roads that will be reshaped to access and remove the trees. Chairman Aila confirmed that the roads would be done to USDA Forestry Standards. J. Sleeve stated that the Department of Forestry and Wildlife and the VMPs have a section of rules.

Chairman Aila stated the Department is in community discussions for the development of this area, and that is why this proposal is being considered.

**ITEM F-6 For Information Only- Presentation by Kauai Police Department (KPD)
regarding Anahola and other DHHL lands on Kaua'i**

RECOMMENDED MOTION/ACTION

None. For information only.

DISCUSSION

Detective Barry DeBlake of the Kaua'i Police Department stated their class makes suggestions to the public on how they can reduce crime. He spoke of reducing the crime on the 750-acres in Anahola with the breakdown of structures and clearing of cars. The Mayor and DHHL decided to relocate the people, and the relocation ladies went in and talked with the people offering them another place to live. The people relocated. Detective DeBlake stated that he is willing to help the Department to clean out the crime in Anahola.

Chairman Aila asked Detective DeBlake for one example to win hearts and minds. Detective DeBlake stated to change the attitude of the community. If a person sleeps in rubbish, how long will that person have a positive attitude? The law of momentum, positive attitude. Start with small wins and get the right people.

ITEMS FOR DECISION MAKING

REGULAR AGENDA

PLANNING OFFICE

**ITEM G-2 Accept Beneficiary Consultation Report for Two Land Use Requests,
Anahola Farmers' Market and Ulupono Anahola, Anahola, Kauai Tax
Map Key Nos. (4)-4-8-005:026 and (4)-4-8-003:019**

RECOMMENDED MOTION/ACTION

Acting Planning Program Manager Andrew Choy presented the following:

That the Hawaiian Homes Commission accept the beneficiary consultation report for two land use requests; Anahola Farmers Market and Ulupono Anahola, Anahola, Kaua'i, Tax Map Key Nos. (4)-4-8-005:026 and (4)-4-8-003:019.

MOTION

Moved by Commissioner Ka'apu, seconded by Commissioner Teruya, to approve the motion as stated in the submittal. Commissioner Neves recused himself.

DAG Kanaka'ole recommended the motions to be bifurcated to allow Commissioner Neves to vote on Ulupono. First, accept the Beneficiary Consultation report for the Anahola Farmers Market, and then accept the Beneficiary Consultation report for Ulupono Anahola.

MOTION TO AMEND/ACTION

Moved by Commissioner Awo, seconded by Commissioner Namu'o, to bifurcate the main motion to take each consultation report individually. Motion carried unanimously.

MAIN MOTION AS AMENDED #1/ACTION

Motion to accept the Beneficiary Consultation report for the Anahola Farmers' Market. Motion carried. Commissioner Neves recused himself from this vote.

MAIN MOTION AS AMENDED/ACTION #2

Motion to accept the Beneficiary Consultation report for Ulupono Anahola. Motion carried unanimously.

ITEMS FOR INFORMATION/DISCUSSION

WORKSHOPS

PLANNING OFFICE

ITEM G-3 For Information Only - Kauai Regional Update

RECOMMENDED MOTION/ACTION

None. For information only. Acting Planning Program Manager Andrew Choy introduced HHL Planner and Kaua'i Liaison Nancy McPherson.

DISCUSSION

N. McPherson briefed the Commission on the seven land use designations of the Island Plan; Waimea, Kekaha, Hanapepe, Wailua, Kapa'a, Anahola, and Moloa'a. Kauai has three Regional Plans; Wailua, Anahola, and West Kaua'i. The Wailua Regional Plan projects are timed to the homesteading development in the Wailua parcel. Projects include cultural resources inventory, potable water sources, Kalepa Ridge surface water system maintenance, Kapa'a relief route, and the Wailua Wastewater Treatment Plant.

Anahola projects include the Ke Aloha O Ko Kakou Aina-Anahola Town Center Plan, the Anahola clubhouse and park improvements, secure and manage surface water resources, support Kanuikapono 21st Century ahupua'a place-based labs and improve road and traffic circulation to Kuhio Highway.

The West Kaua'i projects are to develop the agricultural and water plan for Pu'u 'Opae, develop a multi-purpose evacuation and education center/shelter, support development of the Kekaha Enterprise Center, develop renewable energy projects compatible with agriculture and develop agricultural uses of Hanapepe Farm lots/lease areas.

N. McPherson stated materials are being translated into 'olelo Ni'ihau, so there is an understanding of what is being offered. They are still working on getting potable water and had two beneficiary meetings with lessees and waitlist applicants. The Department will be holding meetings for the community and for beneficiaries in November.

LAND DEVELOPMENT DIVISION

ITEM E-1 For Information Only. Kauai Project Updates

RECOMMENDED MOTION/ACTION

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

DISCUSSION

S. Matsunaga stated the first project is the DHHL USDA Anahola Farm Lots Water System Improvements, which would service the 46 farm lots as well as 31 Bay View residential lots. The project is estimated to cost \$13 million and in the process of getting USDA approval on the contract documents. If LDD does not get the loan funds, the CIP funds could be used.

S. Matsunaga stated there would be a full revamp and replacement of the transmission distribution lines that were built in the 1980s.

DHHL received \$3 million for the Anahola dam and reservoir improvements. The design contract with Lyons and Associates lapsed, so LDD engaged another consultant who is in the process of

submitting new dam permits to DLNR. The long-range priority for this project is to supply water to the Hawaiian Homes agriculture homesteads in the Anahola area.

There are 171-lots in the Pi'ilani Mai Ke Kai subdivision. Phase 1 is 80-lots, and the Department's Contact and Awards Division is working with the 21-selectees. Phase 2 has 51-lots. Fish and Wildlife determined Phase 2 to be an emergent wetland. The Department is working with the Army Corp of Engineers, and the discussion is still going. Phase 2 has been fenced off and off-limits. If LDD gets the design monies, design can begin on the next 40-lots for Phase 3.

S. Matsunaga stated because the Hanapepe subdivision adjoined an improved roadway with sewer, water and electrical, LDD decided to maximize the area. Hanapepe will have a 27-turn key and 20 self-help lots, which vary little in size. The back area is in the process of being cleared for a firebreak.

The soil testing has been completed for the Kekaha subdivision, and a soil management plan has been distributed to all the residents. An Environmental Consultant is in place in the event lessees do excavation and find something unusual.

ITEM E-2 For Information Only. Kauai Unencumbered Homestead Lot Inventory

RECOMMENDED MOTION/ACTION

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

DISCUSSION

S. Matsunaga stated there are 747 leases on the island of Kaua'i, and 94-lots are unencumbered, with the majority being in the Pi'ilani Mai Ke Kai's Phase 2 51-lots. There are 80 lots in Anahola that are being assessed to determine if they will be available for award and what improvements would be needed.

Commissioner Neves stated that there are folks that don't have the money to farm 2-acres, 3-acres, or 7-acres. Those lots should be divided up before the Department offers them so it could be offered to more folks.

RECESS

5:13 P.M.

HAWAIIAN HOMES COMMISSION
Minutes of September 17, 2019
Lihu'e State Building, Rooms A-C, Lihu'e, Kaua'i, Hawai'i

Pursuant to proper call, the 715th Regular Meeting of the Hawaiian Homes Commission was held at the Lihu'e State Building, 3060 Eiwa Street, Lihu'e, Kaua'i, Hawai'i, beginning at 9:00 a.m.

PRESENT William J. Aila Jr., Chairman
Randy K. Awo, Maui Commissioner
David B. Ka'apu, West Hawai'i Commissioner
Pauline N. Namu'o, O'ahu Commissioner
Dennis L. Neves, Kauai Commissioner
Patricia L. Teruya, O'ahu Commissioner

EXCUSED Zachary Z. Helm, Moloka'i Commissioner
Vacant, O'ahu Commissioner
Vacant, East Hawai'i Commissioner

COUNSEL Ryan Kanaka'ole, Deputy Attorney General

STAFF Paula Aila, ICRO Manager
Kahana Albinio, Acting Land Management Division Administrator
Dean Oshiro, Acting Administrator, Homestead Services Division
Andrew Choy, Acting Manager, Planning Office
Stewart Matsunaga, Acting Land Development Division Administrator
Rodney Lau, Administrative Services Officer
Sharon Mendoza, Program Budget Analyst
Leah Burrows-Nuuanu Secretary to the Commission
Halealoha Ayau, Water Specialist
Cedric Duarte, Information and Community Relations Officer
Michael Lowe, Information Specialist
Jamilia Epping, Information Specialist
Darlene Llacuna, Contact Center
Lehua Kinilau-Cano, Legislative Analyst
Nancy McPherson, Planner
David Hoke, Enforcement Officer
Kip Akana, Enforcement Officer
Akoni Shannon, Enforcement Officer
Erna Kamibayashi, Kaua'i District Supervisor
Rhonda Fu, Kaua'i District Office

ORDER OF BUSINESS

CALL TO ORDER

Chair Aila called the meeting to order at 9:11 a.m.

Six (6) members were present at roll call. The East Hawai'i and O'ahu seats were vacant.

APPROVAL OF MINUTES

Approval of the May 2019 Minutes.

MOTION/ACTION

Moved by Commissioner Ka'apu, seconded by Commissioner Awo, to approve the May 2019 Minutes. Motion carried unanimously.

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 Aila asked Commissioners if there were any Items from the Consent Agenda that they wanted to move 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 I Cancellations (see exhibit)**
- ITEM D-6** **Commission Designation of Successors to Application Rights Public Notice 2018 (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 of 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-11** **Final Approval of Subdivision, Transfer of a Portion of Lease and Amendment to Lease No. 6973, Lot No. 29, Maku'u, Hawaii- JOHN I. KEKAHUNA**

MOTION/ACTION

Moved by Commissioner Awo, seconded by Commissioner Teruya, to approve the Consent Agenda. Motion carried unanimously.

REGULAR AGENDA

LAND MANAGEMENT DIVISION

- ITEM F-7** **Issuance of License Agreement, Kalalea/Anahola Farmer's Hui, Anahola Farm Lots Farmer's Market, Anahola, Island of Kaua'i, Tax Map Key No.: (4) 4-8-005:026(por.)**

RECOMMENDED MOTION/ACTION

Acting Land Management Division Administrator Kahana Albinio presented the following:

Motion that the Hawaiian Homes Commission authorizes the issuance of License Agreement, Kalalea/Anahola Farmer's Hui, Anahola Farm Lots Farmer's Market, Anahola, Island of Kaua'i, Tax Map Key No. (4) 4-8-005:026 (por.)

MOTION

Moved by Commissioner Teruya, seconded by Commissioner Ka'apu, to approve the motion as stated in the submittal. Commissioner Neves recused himself.

DISCUSSION

Agnes Keaulani Marti-Kini stated that they are the only Farmer's Market in Anahola.

ACTION

Motion carried unanimously.

ITEM F-8 Issuance of a Right of Entry Permit Ulupono Anahola Agricultural Garden Training Site and Youth Center, Kukulu Kumuhana O Anahola (KKOA) and Pi'ilani Mai Ke Kai (PMKK) Subdivision, Anahola, Kauai, Tax Map Key No.: (4)4-8-003:019 (por.) & 21 (por.)

RECOMMENDED MOTION/ACTION

Acting Land Management Division Administrator Kahana Albinio presented the following: Motion that the Hawaiian Homes Commission authorizes the issuance of a Right of Entry Permit to KKOA and PMKK covering the subject area as identified and described below to use as the Ulupono Anahola Agricultural Garden Training Site and Youth Center (UAAG).

MOTION/ACTION

Moved by Commissioner Teruya, seconded by Commissioner Ka'apu, to approve the motion as stated in the submittal. Motion carried unanimously.

ITEM F-9 Issuance of a Right of Entry Permit, Green Energy Team LLC, One Time Albizia Removal/Cleanup with No Replanting, Anahola Mauka, Anahola, Tax Map Key Nos.: (4)4-7-002:004 and (4)4-8-002:001 and (4)4-8-003:006, 007, & 022 and (4) 4-8-005:006 & 011

RECOMMENDED MOTION/ACTION

Acting Land Management Division Administrator Kahana Albinio presented the following: Motion that the Hawaiian Homes Commission authorize the issuance of a Right of Entry Permit to Green Energy Team LLC covering the subject area as identified and described below for the one-time removal of Albizia trees with no replanting at Anahola Mauka, Anahola, Kaua'i. Approval and issuance of this Right of Entry shall be subject to the conditions stated in the submittal.

MOTION

Moved by Commissioner Ka'apu, seconded by Commissioner Neves, to approve the motion as stated in the submittal.

DISCUSSION

Former Mayor Bernard Carvalho, Jr. testified in support of the Green Energy Team. He stated that this is an opportunity to clear the land of the albizia trees.

Commissioner Ka'apu asked K. Albinio if there was a plan to remove the stumps. Chair Aila stated there is a discussion about the stumps between the parties.

ACTION

Motion carried unanimously.

ADMINISTRATIVE SERVICES OFFICE

**ITEM H-1 DHHL Supplemental Budget Requests for the Fiscal Year 2021
(Sufficient Sums Budget)**

RECOMMENDED MOTION/ACTION

Administrative Services Officer Rodney Lau presented the following:

1. Motion that the Hawaiian Homes Commission approve the FY2021 Operating and Capital Improvement Program Budget Request, Sufficient Sums Budget, presented below to the Governor for consideration in the Administration's Executive Budget Request to the 2020 Legislature.
2. Motion that the Hawaiian Homes Commission approves the FY2021 Operating and Capital Improvement Program Budget Request be presented to the 2020 Legislature.
3. Motion that the Hawaiian Homes Commission, authorize the Chairman to adjust the Operating and the CIP Budget Request to make technical adjustments due to minor errors before it is incorporated into the Administration's Executive Budget.

Commissioner Teruya asked in the 2020 FY Budget, is the Operating part for the increase for staffing for the security that was discussed. R. Lau said yes. R. Lau stated that 60 new positions were added in this Budget request so the total count would be 260, and 7 of those positions are enforcement positions.

MOTION/ACTION

Moved by Commissioner Namu'o, seconded by Commissioner Neves, to approve the motion as stated in the submittal. Motion carried unanimously.

**ITEM H-2 Transfer of Hawaiian Home Receipts Fund Money at the End of the
First Quarter, FY 2020**

RECOMMENDED MOTION/ACTION

Administrative Services Officer Rodney Lau presented the following:

Motion that the Hawaiian Homes Commission approve the transfer of the entire receipts deposited in the Hawaiian Home Receipts Fund as of September 30, 2019, to the Hawaiian Home General Loan Fund.

MOTION/ACTION

Moved by Commissioner Ka'apu, seconded by Commissioner Namu'o, to approve the motion as stated in the submittal. Motion carried unanimously.

ITEMS FOR INFORMATION/DISCUSSION

WORKSHOP

PLANNING OFFICE

ITEM G-4 For Information Only- Kaua'i Water Issues Update

RECOMMENDED MOTION/ACTION

None. For information only.

Acting Planning Office Manager Andrew Choy and DHHL Water Consultant Dr. Jonathan Scheuer presented the following:

DISCUSSION

J. Scheuer provided five updates:

1. The Wailua Well No. 1
2. The Wailua River/Stream interim instream flow standards
3. The Anahola farm Lots Water System Improvements Project
4. The Moloa'a Opportunities, and
5. The Waimea River settlement implementation

J. Scheuer stated that the most important update is regarding the Wailua River, having two different proceedings going on. The Water Commission is trying to set instream flow standards for a portion of the Wailua River, which means the amount of water that should be left in the stream before allowing the consumptive off-stream uses. Kaua'i Island Utilities Cooperative (KIUC) asked for a contested case on the matter. Several other parties, including DHHL, joined in. After having informal discussions with the parties, the Water Commission has chosen a hearings officer. Formal hearings on the instream flow standards will begin in November.

At the same time, BLNR (Board of Land and Natural Resources) is trying to determine how to issue a renewable revocable permit or a long-term water lease to KIUC for the waters diverted at the "blue hole diversion". The interest that the Department has been threefold:

1. The right to reserve water from any of the diversions
2. By Constitutional and Statutory provisions, DHHL is entitled to 30% of the licensing revenue
3. The Department tries to make sure that there are no adverse effects on those practices from any proposed diversion of water

J. Scheuer stated there might be legislative proposals introduced in the next session to address this matter.

Chairman Aila stated the issue with the water license is that the court case clarified that Alexander & Baldwin could not renew the license. However, DLNR took a position that it cannot issue any RPs because of that case. There are folks stating that the BLNR should be able to issue an RP.

HOMESTEAD SERVICES DIVISION

ITEM D-1 HSD Status Reports

- A – Homestead Lease and Application Totals and Monthly Activity Reports
- B – Delinquency Report
- C – DHHL Guarantees for FHA Construction Loans

DISCUSSION

Acting Homestead Services Division Administrator Dean Oshiro stated there are no actions. Commissioners had no questions.

ANNOUNCEMENTS AND ADJOURNMENT

NEXT MEETING

The next meeting will be held on October 21 & 22, 2019, in Keaukaha, Hilo, Hawai'i.


MOTION/ACTION

Moved by Commissioner Awo, seconded by Commissioner Neves, to adjourn the meeting.
Motion carried unanimously

ADJOURNMENT

12:15 P.M.

Respectfully submitted:



William J. Aila Jr., Chairman
Hawaiian Homes Commission

Prepared by:

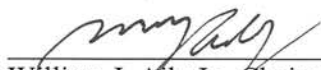


Leah Burrows-Nuuanu, Commission Secretary
Hawaiian Homes Commission

APPROVED BY:

The Hawaiian Homes Commission at its regular monthly meeting on:

November 19, 2019



William J. Aila Jr., Chairman