

HAWAIIAN HOMES COMMISSION
Minutes of January 13 and 14, 2014
Meeting Held in Kapolei, Oahu

Pursuant to proper call, the 647th Regular Meeting of the Hawaiian Homes Commission was held at the Department of Hawaiian Home Lands, 91-5420 Kapolei Parkway, Kapolei, Hawaii, beginning at 10:10 a.m.

PRESENT Jobie M. K. Masagatani, Chairman
Gene Ross K. Davis, Commissioner, Molokai
Doreen N. Gomes Commissioner, Maui
J. Kama Hopkins, Commissioner, Oahu (ar: 1:45 p.m.)
Wallace A. Ishibashi, Commissioner, East Hawaii
Michael P. Kahikina, Commissioner, Oahu
Patricia W. Sheehan, Commissioner, Kauai
Renwick V. I. Tassill, Commissioner, Oahu

EXCUSED Leimana DaMate, Commissioner, West Hawaii

COUNSEL Craig Y. Iha, Deputy Attorney General

STAFF Darrell Young, Deputy to the Chair
Rodney Lau, Administrative Services Officer
Linda Chinn, Administrator, Land Management Division
Norman Sakamoto, Land Development Specialist, Office of the Chair
Francis Apoliona, Compliance Officer
Dean Oshiro, Acting Administrator, Homestead Services Division
Juan Garcia, Homestead District Supervisor, Homestead Services Division
Kaleo Manuel, Planner, Planning Office
Nancy McPherson, Planner, Planning Office
Bob Freitas, Planner, Planning Office
Gil Fernandes, Loans Specialist, Homestead Services Division
Sandra Pfund, Administrator, Land Development Division
Kahana Albinio, Property Development Manager, Land Management Division
Niniau Simmons, NAHASDA Manager, Office of the Chair
Carolyn Darr, Land Agent, Land Management Division
Shelly Carreira, Land Agent, Land Management Division
Gerald Lau, Loans Specialist, Homestead Services Division
Kanai Kapeliela, Applications Officer, Homestead Services Division
John Peiper, Enforcement Officer
Elaine Searle, Secretary to the Commission

APPROVAL OF MINUTES

AMENDED MINUTES

Moved by Commissioner Davis, seconded by Commissioner Gomes, to approve the minutes for January 2013 after the "J" agenda. Motion carried unanimously.

AGENDA/MOTION

Moved by Commissioner Ishibashi, seconded by Commissioner Sheehan, to approve the agenda.

Commissioner Tassill proposed having the “J” agenda addressed in an earlier segment of the meeting, to accommodate beneficiaries who want to present their matters to the commission. The Chair stressed the importance of addressing action items that impact the Trust as a whole. The “J” agenda affords a beneficiary and the public an opportunity to share their personal concerns. She noted that beneficiaries are provided an opportunity to testify at the beginning of each meeting, and whereby staff is available to assist, if necessary.

ACTION

Motion carried. Commissioner Tassill voted no.

MOTION/ACTION

Moved by Commissioner Kahikina, seconded by Commissioner Ishibashi, to adjourn to executive session to discuss Executive Session Item 1. Motion carried unanimously.

RECESS 10:17 a.m.

EXECUTIVE SESSION

The Commission convened in executive session pursuant to Section 92-5(a)(4), HRS, to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities on the following subject matter below.

1. Nelson Case - “Sufficient Sums” for DHHL Funding, Richard Nelson, III, Kaliko Chun, et al., v HHC, Civil No. 07-1-1663

MOTION/ACTION

Moved by Commissioner Kahikina, seconded by Commissioner Ishibashi to reconvene to the regular meeting. Motion carried unanimously.

RECONVENE 11:20 a.m.

PUBLIC TESTIMONY ON AGENDIZED ITEMS

B-1, Robin Danner, Re: Item No. D-7,

R. Danner conveyed that her aunt, Elsie Kaaaina, wants consideration to allow her to apply for her deceased brother's position on the DHHL application waitlist. Her aunt and Alapai Hui Kolo are blood siblings, having the same parents, William Kaiwi Kolo and Mary Hui, although Elsie Kaaaina was adopted by another relative. R. Danner said that DHHL informed E. Kaaaina that she was unable to receive the lease as Ms. Kaaaina is legally A. Kolo's cousin. R. Danner requested a letter be sent to Elsie Kaaaina, informing her of this fact. R. Danner is confused as to how a sibling relationship is

discounted, as the department upholds its adoption policy process. The Chair will recommend to the commission to remove this item until further research is completed.

B-2, Kekoa Enomoto, Waiohuli Undivided Interest, Re: Item A-3 Water Policy,

K. Enomoto said that Keokea Hawaiian Farm Lots Association (KHFLA) and Waiohuli Undivided Interest (WUI) lessees rely on Maui County to provide an agricultural allotment of water for each of the 66, 2-acre, Keokea Farm lots that were approved by former Mayor Apana's administration. Keokea farmers want to convey the importance of lobbying for access rights to farm the aina for the 288 undivided interest lessees in upcountry Maui who signed leases in 2005. K. Enomoto commended Hawaiian Homes Commission for proposing first right-of-refusal for available Maui lots, and for approving the \$9 million for flood mitigation. She recommended that DHHL provide a financial literacy education to young, low-income families when lots become available in 2015. She recommended that the Hawaiian Homes Commission utilize its first-right privileges to the water and to develop the remaining 5,000 acres of land in Waiohuli.

A - WORKSHOP PRESENTATIONS

ITEM A-1 Agricultural and Pastoral Subdivision Moratorium Status

DHHL Planner Bob Freitas updated the commission on the subdividing of agriculture (ag) and pastoral leases on Hawaiian home lands, by providing a history of the legal basis for ag and pastoral leases, the reasoning behind the commission's decision to adopt a moratorium on the subdivision of ag and pastoral leases, and the recommendations from the Ag Task Force.

The purpose of the moratorium was to prohibit some people who had acquired large ag lots, who were not utilizing these lots, and then who proceeded to subdivide and transfer portions of their lots. The Ag Task Force, along with farmers and ranchers, agreed to not subdivide ag and pastoral lands, as these lands were meant to be used exclusively for ranching and farming. According to B. Freitas, this has been the guiding principle since its adoption which was to continue until the Hawaiian Homes Commission adopted clear policies and conditions. In the meantime, the department focused on residential leases. The Ag Task Force was comprised of commissioners, farm specialists, homesteaders, and CTAHR (College of Tropical Agriculture and Human Resources) representatives who recommended limiting the size of the homestead farm to one residence per lot and enforce compliance. In a 2003 contested case proceeding, a standard was set for what would constitute an agricultural farm plan and pastoral plan. The commission adopted criteria on what would be required in those plans. B Freitas said that the Ag Task Force recommended terminating the leases for those not farming or ranching and for those who failed to implement their farm plans. They also considered offering alternatives for aging lessees who could no longer maintain their farms.

Last January, a plan was devised to remove the moratorium. The goal was to ensure that staff was prepared to implement the process by April 2013 for a plan approval in May 2013, noted B. Freitas. Both farmers and ranchers supported this goal. Statewide

meetings were well attended and beneficiary comments and recommendations were incorporated into the plan.

Nine criteria were established for applicants to meet:

1. Water resources
2. Subdivision Land Use requirements
3. Utilization of 2/3 portion of land for ag use
4. Good standing and in compliance
5. Financial capability
6. Understanding of activity use, avoidance of nuisance
7. Identity of family member to receive land
8. Submittal of farm or ranch plan
9. Acknowledgment of environmental assessment

B. Freitas noted how the department created two entry points for submitting applications for bulk processing of applications; once by January 31, the other by June 30. It also created a table of homestead areas conducive to subdividing. No special provisions were afforded to hurry the process through with various Counties, as each county needed to review and determine what impact the process would have in the bigger system. Subsistence scale lots, averaging one (1) to five (5) acres would have minimal processing impact, and the larger and more complex lots would take longer to process. Pre-assessments would be prepared for each region of homesteaders, to allow for easier processing, noted Kaleo Manuel. Material was provided and made a part of these minutes as Exhibits "A" and "B" for Item A-1.

ITEM A-2 Oahu Island Plan

Planner Kaleo Manuel shared the findings of the Oahu Island Plan (OIP) which involved the overall growth, developmental uses of the lands, and whether to focus on residential or agricultural opportunities or non-homestead generating revenues. Prioritizing the goals is essential, especially with limited resources available. The commission determines the land use designation for each island, said K. Manuel. He added that Regional plans are configured for a period of 20 years and updated every ten (10) years. Of all of the twenty such plans, Oahu is the final and most difficult island plan. In addition, only 3% of all Hawaiian home lands are located on Oahu.

Because of Oahu's substantial economic conditions, many beneficiaries on the neighbor islands were relocating to Oahu and signing up for the Oahu waitlist. Since then, more lands have been acquired with a majority of homestead lands situated in Waianae and Waimanalo. The OIP process is mandated to include as much consultation with applicants and lessees, as possible. Planner Nancy McPherson communicated that the OIP process began two years prior to 2013. She also conveyed that the goal of the land use planning is necessary to guide development of the home lands in an orderly and logical fashion, and to analyze land for best usage. Much of the development has been centralized in Kapolei. Some of the industrial designations appear to have some constraints in areas involving geological and historic resources. The lands in Waimanalo

are not developable, but the department is seeking additional ag homesteading and residential opportunities there. Haiku is considered a special district and is being assessed for ag uses. The department intends to explore ag opportunities in the Waiahole area. Material was provided to be made a part of these minutes as Exhibit "A" for Item A-2.

RECESS 12:50 p.m.

RECONVENE 1:25 p.m.

ITEM A-3 Water Policy Plan

Planner Kaleo Manuel introduced the Water Policy Plan (WPP) and how it correlates with the department's current plans. When the general plan was approved in 2002, three specific goals were articulated:

1. Provide access to quality water in most cost-effective and efficient manner;
2. Ensure the availability of sufficient water to carry out Hawaiian Home Lands' mission;
3. Aggressively exercise and protect Hawaiian home land water rights.

These goals were approved by the commission in 2002 as a general plan on: (a) How to provide access to water, (b) how to offer a cost-effective method, (c) how to run systems in the black and, (d) how to ensure sufficient water to carry on the mission. The goal is within the strategic plan, to establish a water policy document with policy language that portrays how this water will be developed to help make decisions. The WPP will guide and direct the department and beneficiaries on how to make decisions relating to water, as this is the initial water policy document created by the department, said K. Manuel.

Much time was spent developing the State of Hawaii Water Plan, which addressed the water demands of all state agencies; including the Department of Education, Department of Health, and Department of Agriculture. DHHL's water demands, statewide, will be articulated in the Planning Office documents to include all lands throughout the state for the next 20 years, based on the department's island plans and projected demands. Beneficiaries on each island have varying priorities: Molokai - the ag and MIS (Molokai Irrigation System) system; Lanai - the desalinization system; Oahu - the high water and sewer rates. The goal is to ensure that the WPP is inclusive in the traditional uses of water: bathing, drinking, washing clothes, an all-encompassing document, to look at how we interface with water and the Trust and in our communities.

Water rights advocate and DHHL advisor, Jonathan Scheuer, PhD, spoke on the kuleana and rights related to the legal history of water. He noted how the cycle of a 200-year old history on water has basically gone in a circle. In ancient Hawaii, the water law was to grow kalo and to provide crops for the people. Water and land were not held as private property; people had rights to using water. These rights could not arbitrarily be taken away, said J. Scheuer. The legal understanding of the water law, though not written, continued through to the Mahele (land division). When the Hawaii State Legislature and

King Kamehameha III agreed to privatize land, water was not to be privatized and was to be retained by the King and all of the subjects. However, after privatization, large land holding interests began diverting water. And because of the increasing political and economic powers in the kingdom and territory, Judge Sanford B. Dole sometimes sided with the land owners and approved the taking of water from one ahupuaa to another, especially for sugar and other crops, not related to kalo. Water then started being treated as private property in the islands, by the courts, until a dispute between the McBryde Sugar Plantation and the Robinson Plantation erupted on Kauai.

The matter was finally decided in a 1970 Supreme Court ruling, with then Supreme Court Judge and later Lieutenant Governor, William S. Richardson, that neither entity owned the water. It was determined that the state, as the successor sovereign to the kingdom and the current ruling entity of Hawaii, continues to hold water in Trust, owns it, not as its own personal property, but holds it in Trust for the benefit of the people. Economic and political chaos broke out where a compromise had to be reached. In 1978, the State Constitutional Convention passed a series of amendments that called for establishment of a water code and a water commission. The commission currently protects not only private uses of water, but protects the native Hawaiian interests in water, and in 1987, a water code program was established. There is a section on native Hawaiian water rights on how Hawaiian water rights are to be protected by the code. Additional information can be located in HRS 174C. Maui County fought to manage the Iao Aquifer, therefore the legislature split responsibility between Maui County and the State of Hawaii.

J. Scheuer noted that permits have been issued in all of the designated water management areas, and are conditioned on DHHL's rights, meaning that if water is being used for the public's interest, explanation is required as to how the new uses of water will not interfere with the rights of DHHL, as provided in Section 221, HHCA (Hawaiian Homes Commission Act).

The demand in water gives the department three major powers:

1. Power to demand water from state or private entities;
2. Power to negotiate usage; and
3. Power of condemnation.

DHHL owns and manages four (4) of its own water systems – in Anahola, Kawaihae, Puukapu, and Molokai - all at a considerable financial loss, expressed J. Scheuer. Charged rates do not cover the operations, nor do they cover the maintenance of the systems. DHHL may derive income from selling water to non-homesteaders. Should homesteaders demonstrate an actual need for water, they would receive 2/3 of the water in that area, automatically.

The State of Hawaii State Commission on Water Resource Management (CWRM) is comprised of seven members, two of whom include the Directors of Department of Health and Department of Land and Natural Resources. These are the people the Hawaiian Homes Commission (HHC) will turn to, to protect the department's rights. The department is attempting to secure water reservations on all islands through the

CWRM. The department receives 30% of its revenue from licenses that the State issues for the development of water from its lands, which is then deposited into the Native Hawaiian Rehabilitation Fund (NHRF). However, due to the decline of sugar, the fund has depleted over time. One of the things lagging is that the Commission is not taking an active role when licenses are issued. J. Scheuer articulated that CWRM made eight (8) major decisions, all of which have been appealed and overruled, that indicated that public trusts and native Hawaiian interests were not protected. On remand, with further deliberation, the commission has made better decisions, which demonstrates that implementation of the water code as problematic.

A final water policy draft plan is being prepared for February 2014, to take out for final consultation, to allow beneficiaries to review and comment, and allow the department to edit and present for final approval in June 2014. Material was submitted to be made a part of these minutes as Exhibits "A" and "B" for Item A-3. The draft plan is available on the DHHL website.

Note: Commissioner Hopkins arrival to meeting.

ITEM A-4 184A Loan Program

Acting Administrator Dean Oshiro, Homestead Services Division, presented a workshop on the HUD (U.S. Department Housing and Urban Development) 184A Loan Program. The HUD 184A Loan Program is a loan guarantee program administered by HUD's Office of Native American Programs (ONAP). The department originated this program in 2006, with ONAP, as an alternative to the FHA 247 loan program. Lessees pay a 1% guarantee fee on the loan as opposed to a 3.8% insurance premium which demonstrates a cost savings. HomeStreet Bank, Seattle; Washington; Bank of Hawaii; and Bank2, in Oklahoma City, Oklahoma are the authorized lenders.

HomeStreet Bank services 142 loans for approximately \$34 million, with 4 delinquent loans at \$1.1 million, and two (2) loans being reassigned to the department. Bank of Hawaii services 86 loans at \$18.5 million, with three (3) delinquent loans totaling \$700,000. No loans are being reassigned back to the department. Bank2 services loans which originated from Hawaii Community Lending through a portfolio they purchased. They service 93 loans at \$23.4 million. Six loans are delinquent at \$1.5 million, and three (3) loans are being reassigned to the department.

D. Oshiro said that when lenders file a claim with HUD, HUD reviews the loan package. If approved, the loan is reassigned back to the department for further processing. If denied, HUD will return it to the servicer and work with them to correct it. When approved and returned to DHHL, the department has 60 days to initiate a contested case proceeding. The department has 12 months, from the date the process is initiated, to award the lease to a new native Hawaiian family. If the cancelled lease process is completed, DHHL is responsible to pay HUD the receipts received from the awarded lease, or appraised value. If after the contested case is presented, and the borrower is allowed to continue the lease, the department is required to reimburse an amount equal to the claim made by the lender, plus any interest accrued since that time, regardless of the

appraised amount of the home. The department's exposure would be any deficient amount between the loan and the appraised value. If perhaps the commission allows the lessee to stay in for an additional year or two, and then the loan is cancelled, the department will then need to weigh in on what the value of the home is, as opposed to the appraised value; the department could risk a loss. Completing the process in the timelines established will be the challenge, noted D. Oshiro. Deputy AG Iha clarified that the commission's obligation, in cancelling leases in contested case hearings, is to follow its administrative rules in the Hawaiian Homes Commission Act (HHCA) and cancel a lease only if justified under a rule, and the department has made its case in the contested case proceedings.

C - OFFICE OF THE CHAIRMAN

ITEM C-1 Resolution of Appreciation, No. 274 – Perry O. Artates

MOTION

Moved by Commissioner Ishibashi, seconded by Commissioner Sheehan.

COMMENT

The Chair expressed her sincerest gratitude to Commissioner Artates for his service and time during the period served on the commission. Commissioner Artates represented the people of Maui with grace and good mana'o, said the Chair.

ACTION

Motion carried unanimously.

DISCUSSION

Deputy to the Chair D. Young read Resolution 274, expounding on the many good deeds that Commissioner Artates displayed during his tenure as commissioner over the past 6 years. Commissioner Artates came from humble beginnings, to serve the Maui community in various leadership roles; as president of the Waiohuli Homestead Community Association and overseeing the construction of the Waiohuli Community Center featuring a Hale Halawai, the only commercial kitchen in that community. D Young listed a number of community boards and organizations Commissioner Artates served on, all for the betterment of the County of Maui and the native Hawaiian communities he honorably served.

ITEM C-2 Approval of Delegation of Authority to the Chair to Defer Action on Contested Case Hearings (see exhibit)

This item was withdrawn.

ITEM C-3 Revocable Permit/Right-of-Entry Program Status Report Including Pending Rights-of-Entry

RECOMMENDATION

None; for information only.

DISCUSSION

Deputy to the Chair Darrell Young presented a brief update on Revocable Permits and Rights-of-Entry status. Of the twenty-four (24) non-compliant accounts, eight (8) will be recommended for removal from the former permittees' premises. A final inspection is being conducted.

At last month's meeting, the commission deferred approval of a month-to-month permit use for the Paniola Preservation Society (PPS) to utilize the Humuula Sheep Station, on Hawaii Island. Deputy Young recommended deferral until February of any action, to allow the lead staff member to be present. Deputy Young met with Manawalea Riding Group (MRG) to discuss non-compliance issues. Mr. Char is in the process of removing structures and correcting other non-compliant matters. An inspection will be conducted in the next two weeks. With regard to Save Oahu Race Tracks (SORT), a response letter from them was anticipated last Monday, in providing timeless and action plans.

There is an ongoing disposition with Homestead Community Development Corporation (HCDC) in Anahola, Kauai, for an unexecuted month-to-month revocable permit which has been transmitted back and forth. Concerns were shared on structures, uses, and activities, regarding twenty-seven (27) tentalow units, Individual Wastewater Treatment Systems (IWTS), parking, etc. Meetings were held with Kauai Mayor Bernard Carvalho and homestead beneficiaries, to assist with compliance issues for county, state, and federal regulations as well as EA/EIS compliance issues. The department will continue to assist with compliance issues.

MOTION/ACTION

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

RECESS 2:53 p.m.

EXECUTIVE SESSION

The commission convened in executive session pursuant to Section 92-5(a)(4), HRS, to consult with its attorney on questions and issues pertaining to the commission's powers, duties, privileges, immunities, and liabilities on the above-subject matter.

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Sheehan, to reconvene to regular session. Motion carried unanimously.

RECONVENE 3:30 p.m.

D - HOMESTEAD SERVICES DIVISION

ITEM D-1: HSD Status Reports

MOTION/ACTION

None, for information only.

Exhibit:

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

ITEM D-2 Approval of Consent to Mortgage (see exhibit)

MOTION/ACTION

Moved by Commissioner Davis, seconded by Commissioner Gomes. Motion carried. Commissioner Hopkins recused himself from voting.

ITEM D-3 Approval of Streamline Refinance of Loans (see exhibit)

MOTION/ACTION

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

ITEM D-4 Approval to Schedule Loan Delinquency Contested Case Hearings (see exhibit)

MOTION/ACTION

Moved by Commissioner Gomes, seconded by Commissioner Ishibashi. Motion carried. Commissioner Hopkins recused himself from voting.

ITEM D-5 Approval of Homestead Application Transfers / Cancellations (see exhibit)

MOTION/ACTION

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

ITEM D-6 Commission Designation of Successors to Application Rights – Public Notice 2009, 2012 (see exhibit)

MOTION/ACTION

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

ITEM D-7 Cancellation of Deceased Applicants from Waiting List – Public Notice 2012

MOTION

Moved by Commissioner Hopkins, seconded by Commissioner Ishibashi.

AMENDED MOTION

Moved by Commissioner Gomes, seconded by Commissioner Sheehan to remove Alapai Hui Kolo from the cancellation list, pending further investigation.

DISCUSSION

Applications Officer Kanai Kapeliela said there is an adoption process involved in this particular situation which generally terminates the parental rights of the birth parents. Whenever a legal adoption occurs, there are changes to the relationship. A petitioner, who wanted to succeed to the application rights of the deceased, is a biological sibling of the decedent, except she was adopted, and legally is no longer eligible to succeed to her brother's application rights. The department does not have an objection to pulling Alapai Hui Kolo's name from the submittal. K. Kapeliela requested concurrence from the AG's office that the procedure followed by the department over the years is still valid, as DHHL has validated Successorship through the legal relationship between individuals. Commissioner Hopkins said he deems this issue to be biological, and they have every legal right to apply. Deputy AG Iha said that for purposes of NHQ (Native Hawaiian Quantum), one looks to blood relations. For other purposes, the legal relationship is pursued. Deputy AG Iha will seek further information on the matter.

ACTION ON AMENDED MOTION

Motion carried unanimously.

ACTION ON ORIGINAL MOTION

Motion carried unanimously, as amended.

ITEM D-8 Reinstatement of Deferred Applications (see exhibit)

MOTION/ACTION

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

ITEM D-9 Ratification of Designation of Successors to Leasehold Interest and Designation of Persons to Receive Net Proceeds (see exhibit)

MOTION/ACTION

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

ITEM D-10 Approval of Assignment of Leasehold Interest (see exhibit)

MOTION/ACTION

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

ITEM D-11 Approval of Amendment of Leasehold Interest (see exhibit)

MOTION/ACTION

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

ITEM D-12 Commission Designation of Successor – Hilda K. Mutch, Lease No. 4879, Lot No. 155, Kewalo, Oahu

MOTION/ACTION

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

ITEM D-13 Commissioner Designation of Successor - Antone Silva, Jr., Lease No. 8395, Lot No. 104, Princess Kahanu Estates, Oahu

MOTION/ACTION

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

ITEM D-14 Request to Surrender Lease – Abigail M. Looney, Lease No. 2662, Agriculture Lot No. 178, Hoolehua, Molokai

MOTION/ACTION

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

E - LAND DEVELOPMENT DIVISION

ITEM E-1 Approval of Lease Award – Ernestine K. Kaauamo

MOTION/ACTION

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

G - PLANNING DIVISION

ITEM G-1 Procedure for Processing Agricultural and Pastoral Subdivision Requests

MOTION/ACTION

None, for information only.

DISCUSSION

This submittal highlights the process taken last January 2013 when the commission took action to remove the ag and pastoral moratorium and allowed for subdivision of lots, articulated K. Manuel. The commission approved nine criteria in May 2013, which is being presented in today's workshop, on accepting applications for these types of subdivisions.

Documents were distributed to commission members regarding procedural and internal documents, Steps 1 to 48. The Chair stated that the internal documents will assist those who are not in compliance, by allowing those who have constructed homes be permitted to subdivide their lots, thus, affording them the ability to become compliant.

Commissioner Hopkins questioned whether the department provides assistance in obtaining county approvals. K. Manuel recommended that the lessee work with the county and its appropriate divisions, to address their subdivision needs. He also recommended that lessees allow department staff to help guide them through these procedures, as each county has its own ordinance and code requirements. Some county planning departments have expedited the process by providing a "one-stop-shop." Commissioner Sheehan inquired whether the farm plans are long and arduous and similar to other ag plans filed with the counties. B. Freitas said previous farm plans consisted of one (1) page. However, a new criterion was established in 2003, based on a contested case hearing. A template was created, coinciding with other state agencies, and used in the Helenihi Lawsuit (Helenihi vs HHC, et al., Civil No. 08-1-2245-10) in Panaewa, Hawaii. The current farm plan is a standardized document tied directly to the department's previous farm plan which is being enforced due to lawsuits. B. Freitas conveyed that the department has a service contract with the University of Hawaii to provide training sessions for pastoral and agricultural lessees, enabling them to seek funding programs provided by USDA.

K. Manuel pointed out that not everyone supports the subdivision of ag and pastoral lands, such as those who support larger tracts for commercial uses, maintaining that ag is for ag purposes and one of the primary mandates of this Trust. Commissioner Davis shared his concerns regarding the historical preservation of some sites on Molokai that are in decrepit conditions. K. Manuel said there is no current policy in place; however, the department could assess the significant criteria in order to list it. As a long-term Trust, these are issues that will need to be dealt with. Deputy AG Iha said that if the situation ties into a county requirement, presumably the department could exempt it. He will research in terms of where a property is condemnable.

DHHL Planning Office prepared a document to assess lessees who are eligible to subdivide a lot. K. Manuel conveyed it would ultimately be based on the infrastructure, location, lot size, and water. He added that Molokai cannot subdivide lots due to above-water capacity usage. An informational packet and a procedural document will be available on the DHHL website, and applications can now be submitted for the January 31 deadline.

To identify farming communities that need assessing, the Chair modeled Makuu and Panaewa as areas that have many ag lease properties, but not much in the way of utilization. The department may offer to get back some of the land, if the lessee is less inclined to farm it, or to convert to a smaller subsistence lot. The hope is to gather more information as to what a new ag program could look like and to have a better assessment of ag lands while interfacing with other state agencies, said the Chair. Commissioner Davis inquired about hiring a new CTAHR (College of Tropical Agriculture and Human Resources) agent on Molokai. B Freitas said that the department is in the process of hiring new CTAHR agents for Molokai and Hawaii Island.

MOTION/ACTION

Moved by Commissioner Tassill, seconded by Commissioner Ishibashi, to recess the meeting until tomorrow. Motion carried unanimously.

RECESS

4:15 p.m.

HAWAIIAN HOMES COMMISSION
Minutes of January 14, 2014
Meeting Held in Kapolei, Oahu

RECONVENE 3:30 p.m.

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

COUNSEL Craig Y. Iha, Deputy Attorney General

STAFF Dean Oshiro, Acting Administrator, Homestead Services Division
Juan Garcia, Homestead District Supervisor, Homestead Services Division
Lea Takara, Homestead Assistant, Homestead Services Division
Elaine Searle, Secretary to the Commission

APPROVAL OF MINUTES

MOTION/ACTION

Moved by Commissioner Gomes, seconded by Commissioner Tassill, to approve the minutes of January 2013. Motion carried unanimously.

J - GENERAL AGENDA

ITEM J-1 Request to Address the Commission – Manase Nalani Purdy

Alice Greenwood testified on behalf of her friends Manase and Nalani Purdy and addressed the commission regarding Manase Purdy's request to convey sole successorship of his property located at 85-1159 Kaneaki Street, Waianae Valley, to Sheldon Kapua, Diana Kapua Purdy's (Manase's deceased wife) grandson, whom he helped to raise.

In 1995, M. Purdy met with staff to begin the process of transferring his lease to Sheldon Kapua. At that time, S. Kapua was underage and unable to qualify as the successor. Since M. Purdy wanted his wife's grandson to succeed to her lease, he added two additional successors to the lease who were related to Diana Kapua. One was Sheldon's mother Victoria and her sister, Violet. Subsequently, when M. Purdy applied for a loan, both sisters were listed, not as successors, but as signees, said A. Greenwood. M. Purdy is requesting to have Sheldon Kapua, named as sole successor to his lease, as this is the

person who helped his tutu with home improvement upgrades, repairs to the property, and assisted with mortgage payments. Manase Purdy is willing to adopt Sheldon, if necessary, to allow him to succeed to the lease. M. Purdy is also requesting removal of two non-related names from his lease, as their contributions have been nil.

The Chair clarified that this portion of the meeting allows the public an opportunity to address the commission; however, the commission is unable to resolve any issues. M. Purdy said he is baffled at these circumstances, as his sister had a similar circumstance. He said he was told that S. Kapua was too old to succeed. Homestead Assistant Lea Takara, Oahu District Office, testified that she worked with M. Purdy when his wife passed away. Diane Purdy (deceased) had designated several successors, yet M. Purdy succeeded to the lease. When M. Purdy arranged to sign the Successorship solely in his name, it was at that time, the people he named to succeed him were designated as his wife's children. Because he did not adopt any of them, the designation was invalid. He was firm in his intention that he wanted his wife's family to benefit from her lease, not his family. It was later determined that Diane's children had adequate blood quantum (50% NHQ) Native Hawaiian Quantum, and therefore two of his wife's children were added to the lease, providing them a "tenants in common" lease with the ability to succeed each other. In L. Takara's transaction log, she said there was mention only of the daughters and nothing of other successors. Had Mr. Purdy intended for his grandson to be named as successor, it would have been notated then. L. Takara explained that she listed the requirements - only adults may be added to a lease, whereby a minor can be named as a successor. Only a biological or legal relationship to the boy would allow Mr. Purdy to name him as a successor. In this case, he did not qualify to be named as a successor. If Mr. Purdy wishes to adopt him, and the grandson qualifies as a 25% NHQ, then he would have a legal relationship, and qualify as a successor. L. Takara does not understand the statement made by M. Purdy as one being "too old" to be on a lease. If a person is named as a successor, he/she can qualify as a minor; if a transferee, then the individual needs to be 18 years old. Perhaps the language may have been misconstrued, suggested Commissioner Gomes. Juan Garcia indicated that an adoption would qualify the grandson to be named as a successor to the lease. Currently, there are three (3) co-lessees, who are not blood related to M. Purdy, and all are 50% NHQ. If any outstanding loans exist, lessees would need to pay off any existing loan or assume the loan. J. Garcia added that any legal adoption would sever a biological connection with a sibling.

The Chair articulated there are two issues involved in this situation. In a transfer of lease, the lease can be transferred while still alive. People generally accomplish this when they sell their lease, and is referred to as an assignment of lease. Successorship refers to people who pass away and certain family members can be designated successors, and refers to the legal standing of the relationship. In this situation, the department was under the belief that M. Purdy wanted to transfer his lease to his step-children. M. Purdy expressed that he planned to have them become successors temporarily until he got his grandson in. Had the department allowed M. Purdy the opportunity to have his grandson become the successor, it likely would not have become problematic. The Chair sensed that sometimes there can be confusion between what the department says the lessee wants, how the matter is perceived by the lessee, and to what actually transpired. Based

on the report that staff provided, a transfer lease was initiated to step-children Violet Koki, Calvin Guzman, and Victoria Rivera. Only two signed the lease. M. Purdy's intention was to place his wife's children on the lease, as successors, in case anything should happen to him. It was not his intention for the step-children to be on the lease permanently. J. Garcia requested permission to work with legal counsel on how to proceed with M. Purdy's situation. The Chair suggested M. Purdy provide her with a written request, and state his intentions, and allow the department to follow-up on the options. M. Purdy restated that he wishes to remove the other co-lessees from the lease, and allow his wife's grandson to become the successor. Commissioners concurred to have staff work out M. Purdy's intentions.

ANNOUNCEMENTS AND ADJOURNMENT

NEXT MEETING Next Meeting: February 18, 2014, Kapolei, O'ahu

ANNOUNCEMENT No. community meeting scheduled for February 2014.


MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Kahikina to adjourn the meeting. Motion carried unanimously.

ADJOURNED


4:08 p.m.

Respectfully submitted:



Jobie M. K. Masagatani, Chairman
Hawaiian Homes Commission

Prepared by:



Elaine G. Searle, Secretary
Hawaiian Homes Commission

APPROVED BY:

The Hawaiian Homes Commission
At Its Regular Monthly Meeting On
Tuesday, October 21, 2015



Jobie M. K. Masagatani, Chairman
Hawaiian Homes Commission