

**HAWAIIAN HOMES COMMISSION**  
**Minutes of February 18 and 19, 2014**  
**Meeting Held in Kapolei, Oahu**

Pursuant to proper call, the 648th Regular Meeting of the Hawaiian Homes Commission was held at the Department of Hawaiian Home Lands, 91-5420 Kapolei Parkway, Kapolei, Hawaii, on February 18, 2014, beginning at 10:05 a.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** Darrell Young, Deputy to the Chairman  
Derek Kimura, Executive Assistant  
Linda Chinn, Administrator, Land Management Division  
Dean Oshiro, Acting Administrator, Homestead Services Division  
Niniau Simmons, NAHASDA Manager, Office of the Chair  
Norman Sakamoto, Land Development Officer, Office of the Chairman  
Juan Garcia, Homestead District Supervisor, Homestead Services Division  
Kaleo Manuel, Acting Planning Program Manager, Planning Division  
Dre Kalili, Policy and Program Analyst, Office of the Chair  
Kamanao Mills, Special Assistant, Office of the Chairman  
Elaine Searle, Secretary to the Commission

**MINUTES** Approval of minutes to be determined at tomorrow's agenda.

**AGENDA** Commissioner Hopkins moved, seconded by Commissioner Ishibashi, to approve the agenda. Motion carried unanimously.

**A - WORKSHOP PRESENTATIONS**

**ITEM A-1 Update on Aina Mauna Legacy Program**

Land Agent Mike Robinson, Land Management Division, presented a power point on the Aina Mauna Legacy Program beginning with the department's mission "to manage land effectively and partner for healthy, self-sufficient communities." M. Robinson said that the Aina Mauna Legacy Program Plan was approved in 2009 to establish three (3) primary goals: (1) to restore landscape productivity; (2) to develop a self-sustaining and conservation-type program; and, (3) to develop an outreach program involving beneficiaries. The Humuula land mass covers 56,000 acres and the responsibility

includes protecting and managing native plants, pre-homesteading activities for the future, as well as providing economic and social benefits for the trust in perpetuity.

M. Robinson is continuing to pursue the Christmas tree and the koa research as a potential money-making opportunity. Other opportunities include generating parking for the Mauna Kea management area and a proposal to repair the Puu Oo Ranch House. As a result of five full-time logging jobs, \$1.3 million has been generated. Two of the three koa salvage sales have gone directly to native Hawaiians. Research is addressing the frost resistance and moth infestation that has defoliated the koa trees on Hawaii Island. Koa researchers at UH Hilo (University of Hawaii at Hilo) are addressing the Psyllid infestation and are helping aid the department to be rid of it. The department collected seedlings from 33 of the best koa trees for future plantings. Growers import over 183,000 trees each year and pocket \$2.2 million from douglas fir tree sales. DHHL planted over 1,500 Christmas trees on a 2-acre parcel that will mature and be ready for market in five (5) years. M. Robinson added that the Hawaii County Forestry Association will host workshops for interested growers.

An ecotourism business approached the department to provide overflow parking for those visiting Mauna Kea. A lunch wagon and a convenience store near the Mauna Kea Access Road could present additional revenue. M. Robinson noted that the Humuula Sheep Station is in need of repair and can bunk 15 guests. The Paniolo Preservation Society (PPS) is willing to restore the sheep station by bringing in historians and preservationists to assess the area. The Puu Oo Ranch House is also in need of repair. A local helicopter tour operator, who sprays for gorse, submitted a proposal to help maintain the cabin at Puu Oo Ranch, which was vandalized. He is willing to invest funds in the project if permission is granted to land his helicopter with tourists, have lunch, then depart. The tour operator is committed to offering a fee for each tourist he brings in, added M. Robinson. Security issues have been a major problem and M. Robinson has confronted trespassers. Police have been summoned on occasion; however, response time has been hampered as the area requires a four-wheel drive vehicle for access. Fire and theft are some of the concerns, and a request for additional manpower has been submitted. Other agencies have hired security for the night hours when activity heightens, added M. Robinson.

There is a 10,000-gallon water catchment system, which is filled annually. The area receives approximately 100 inches of precipitation each year, making water one of the least worries. The ground and water catchment complement each other. Because the department has one of the first koa seed orchards, salvaged lands, and fenced-in bird quarters, researchers periodically request to work there. DHHL supports this and provides them a right-of-entry (ROE) permit. In turn, the researchers provide M. Robinson with free information from their research. The Chair recommended informing PPS of a pending parking lot planned for the area.

Commissioner Ishibashi visited the Humuula site and was impressed with the vast amount of work accomplished with the gorse and the general managing of the lands. One of his fears is security, as gates and fences appear to have been heavily damaged. He deems it helpful to move beneficiaries on the land to help protect it. He commended Mike Robinson on his fine efforts in the area. He also noted the need to protect the area

from those on drugs and thieves. Ecotourism can play a major role at Hale Pohaku with the growth of tourism and the expansion of telescopes on Mauna Kea. Ecotourism could also create a means to protect beneficiary assets. Commissioner Davis agreed that this should be a model for all Hawaiian home lands as it promotes diversity in homesteading.

## **ITEM A-2 Humuula Hydrology Study**

Director Donald Thomas, Center for the Study of Active Volcanoes (CSAV) has been conducting volcano studies on the Island of Hawaii since 1972, as well as evaluating ground water and thermal resources. He expressed that a drilling research in Hilo discovered fresh water at a depth nearly 10,000 feet below sea level, which created a new interest in understanding how ground water reached that point. He was invited to Pohakuloa Training Area at Mauna Kea for a similar project and is sharing his preliminary results of that work.

A passive sensing type of activity was used to determine the likelihood of water at an established elevation. A drilling program was incorporated to investigate the geology and hydrology of the Saddle Road Region. D. Thomas noted that he always believed that the ground water accumulated within the island, and, in moving towards the shoreline, the groundwater's thickness became smaller. An 80-year old study revealed that the islands have little capacity to store water. It was assumed that in the Saddle Road area, one needed to drill to a 5,000 to 6,000 feet elevation. Sophisticated geophysical techniques allowed an individual to view 2 to 4 kilometers deep into the ground. In doing so, it allowed for the detection of electrical conductivity of the area below the bore holes. By looking at the electrical conductivity of the rocks, one was able to determine where the water was. Because of the low resistivity at varying locations, drilling was done near the Mauna Kea Access Road near the Hawaiian home lands property. No work was done since 1960 because it was believed to be void of water.

The first bore hole was drilled at a depth of 5,786 feet below ground surface, which revealed soil, clay, and pahoehoe and aa rock. Perched aquifers appeared to be like swimming pools, supporting the rainfall recharge coming into the system, and it proved to be more valuable than expected. Water samples collected at 2,900 feet proved to be good-quality drinking water, similar to the Honolulu municipal water supply. The next bore hole is being readied near the western edge of Mauna Kea. If the water body is continuous there, it would encompass an 8 to 9-mile area, which will ensure that substantial groundwater exists in the Saddle Road Region. Based on the conductivity of the geophysical outcome, it would likely mean that water exists under the Hawaiian home lands on the eastern side. A Right-Of-Entry (ROE) was given to their geological team by Parker Ranch, to complete surveys and Dr. Thomas is seeking a similar ROE with the department, to identify the extent of these groundwater resources and to better understand if deep thermal activity exists. An area near the eastern flank extending to Mana Road has a potentially high level of groundwater. Installing a station would not disturb the ground and would only last for 10 days. The objective is to map where the best chance of finding higher-elevation water that could service the Humuula area. A second test hole is to gage the extent of the resources. Water will be pumped to prepare it for chemical analysis and test for its quality. It will likely be of a different composition and will depend on the temperature.

There was a period when Mauna Kea had continuous snow coverage from 1799 to 1826; a mini ice age, said Dr. Thomas. Today, it is a rarity. One hypothesis is that a layer of permafrost supporting Lake Waiau could have melted, thus causing the lake to dissipate. Climate changes are affecting the summit region, which is acquiring less snowfall than earlier times, and that affect Lake Waiau. DLNR (Department of Land and Natural Resources) provided geothermal funding for their research, statewide, added Dr. Thomas. Because of the thermal activity around Mauna Kea, it proved beneficial to include water resource testing.

#### AMENDED AGENDA

Moved by Commissioner Gomes, seconded by Commissioner Davis to convene with Item F-3 after Public Testimony. Motion carried unanimously.

#### **ITEM A-3 NAHASDA Program Update**

NAHASDA Manager Niniau Simmons updated the commission on activities completed in the past year, which may not have appeared in the DHHL annual report. Most of the significant changes have been in staffing with the hiring of a new NAHASDA staff member. In July 2013, the policies and procedures were codified for the home repair assistance programs. The most significant thing occurring now is that a lease is being finalized for an office in Hilo. NAHASDA was able to engage service providers who are funded by the National Mortgage Settlement in Hawaii, and are working with the Department of the Attorney General to bring eligible beneficiaries, who are struggling with credit or budget issues, to qualify for the deferred sales price program. One of the main challenges is to ensure that the borrowers are qualified. N. Simmons thanked the department for committing NAHASDA monies for program year 2008, to affect a spend-down by January 2014 of \$3.9 million. N. Simmons provided a list of probable activities that will be presented at the next commission meeting for the NAHASDA annual housing plan, which is due on April 17, 2014.

#### AMENDED AGENDA

Moved by Commissioner Hopkins, seconded by Commissioner Kahikina, to convene with Item F-1 after Item F-3. Motion carried unanimously.

RECESS 12:30 p.m.

RECONVENE 12:45 p.m.

#### **B - PUBLIC TESTIMONY ON AGENDIZED ITEMS**

**Item B-1, Kekoa Enomoto, Waiohuli Homestead Lessee, Secretary, Keokea Farmers and Waiohuli Undivided Interest Lessees, Re: Item C-1,**

Kekoa Enomoto said she was granted a Right-of-Entry (ROE) to the makai Waiohuli-Keokea area for an organized hike on February 8, 2014. Rancher Jerry Sakugawa, who

holds the ROE to this parcel, was unaware of this and was initially reluctant to open the gate to allow them access. K. Enomoto said their purpose then was to bond with the aina, which contains wiliwili trees, lush lands, and a natural landmark - Puu o Kali, a cinder cone. According to K. Enomoto, native Hawaiians have access to gathering rights under a Hawaii State statute. While on the hike, she and others visualized 3,000 homesteaders on 5,100 acres of Keokea-Waiohuli lands. She aspires to organize Undivided Interest (UI) lessees, statewide, and to lobby for all of these (UI) beneficiaries to be granted a first right-of-refusal, in the order of application received. She is advocating for a month-to-month ROE to be parlayed into 3,000 homesteads on 5,100 acres, as most have been waiting since 2005.

Commissioner Hopkins inquired if native Hawaiian gathering rights apply to DHHL lands, as families generally need to demonstrate that they have been doing this for over a period of time. If not, then permission may be questionable. Administrator L. Chinn said that if a ROE is issued for a limited period, the department will work with a tenant to ensure proper notice is given to both parties. Commissioner Gomes witnessed cattle being transported from the Sakugawa Ranch while lessees were traversing the highway during the hike. She wanted assurance that safety and awareness be maintained for all parties.

**Item B-2 Anna Monte, Lessee, Keokea Farm Lots, Re: Item D-10**

Anna Monte has had a lease in Keokea since 1986, and is awaiting approval to transfer it. She deemed she has met all requirements and would like resolution in this matter. Commissioner Hopkins asked Acting Administrator Dean Oshiro to assist with her request. Deputy AG Iha recommended convening in executive session to clarify questions that Commissioner Hopkins had brought forth regarding Item D-10. Commissioner Hopkins suggested deferral of the matter until later in the agenda.

**LAND MANAGEMENT DIVISION**

**ITEM F-3 Approval to Issue a General Lease to Kauai Island Utility Cooperative, Anahola, Hawai'i**

**RECOMMENDATION**

Land Management Administrator Linda Chinn requested approval for an issuance of a general lease to Kauai Island Utility Cooperative (KIUC) for an Anahola Solar Project on a sixty acre parcel of Hawaiian home lands located at Anahola, Kauai. Issuance of the general lease is subject to the following conditions:

1. Area is 60 acres -- 53 acres for solar farm; 2 acres, electrical substation; 5 acres, futureservice center;
2. Term is for 25 years;
3. Annual ground rent -- \$144,114;
4. Commencement date -- Date of when project is placed into service, or February 1, 2015;
5. Up to five years to request lease extension, to fifty-five years;
6. Annual ground lease rent after extension approved;

7. Annual ground lease adjusted on Year 11, Year 16, and Year 21;
8. Extended term reopened and re-determined on Year 26, and every 10 years;
9. Relocation/removal 12B array further back, leaving frontage open;
10. Initiate construction of service center within first five years of lease;
11. Maintain upkeep of former 12B array location (2.5 acres and 5-acre parcels);
12. Provide DHHL \$1 million for roadwork and facility fund for Anahola region;
13. Construct a gated, paved service road for future access from Kuhio Highway;
14. Provide metes and bounds of the 60-acre parcel;
15. Sublease leased premises to wholly-owned subsidiary KIUC Renewable Solutions One;
16. Option to withdraw lands at the end of Year 25;
17. Agree to provide micro-grid capabilities with substation and distribution system;
18. Agree to the decommissioning costs to be transmitted to DHHL as a payment;
19. Agree to provide programs, incentives, grants, etc., for reduction of energy and utility costs benefiting Anahola community;
20. Maintain existing infrastructure to include repair, re-route, or replace any systems disturbed;
21. Provide GIS/GPS and survey information to DHHL;
22. Broadband services provided by Sandwich Isles Communications, Inc.;
23. Provide annual report to DHHL regarding amounts paid and activities to benefit community;
24. Standard terms and conditions of a general lease;
25. General Lease document subject to final review and approval by AG's office.

#### MOTION/ACTION

Moved by Commissioner Sheehan, seconded by Commissioner Gomes.

#### DISCUSSION

CEO David Bissell, KIUC (Kauai Island Utility Cooperative) and Power Supply Manager Brad Rockwell appeared before the commission to provide a history on the Anahola solar project. D. Bissell said that this project is a 12-megawatt (MW) solar array project, which is expected to produce about 5% of the energy supply for the island of Kauai; KIUC is ready to begin construction. Commissioner Sheehan asked whether the relocation of the solar array 12-MW would be visible from the roadway. According to D. Bissell plans are being assessed as to what types of screening would be suitable from the highway; they are open to ideas. Commissioner Sheehan questioned whether Item 19 will be over and above the homestead benefits package. D. Bissell said there is a 2010 Memorandum of Understanding (MOU) between KIUC and the department. KIUC has many other programs in place, and as they begin work in the Anahola area, KIUC would make these more available to the community. Commissioner Sheehan is pleased that there is some accountability and opportunity for educational advantages for the beneficiaries. D. Bissell pointed out that the service center would house the distribution linemen's trucks, equipment, storage area, and a community center for meetings. Commissioner DaMate asked about the direct benefits to Anahola beneficiaries. D. Bissell said that once the project goes into service, a success fee of \$150,000 is paid, as well as a cash output between \$40,000 to \$50,000, a commitment by KIUC to provide tours of the facility, and a KIUC offer on "how to design" program in renewable energy.

The Chair conveyed there was a prior existing license which could not accommodate two dispositions for the same property. In the original license, there was a homestead benefits agreement that was negotiated between KIUC and HCDC (Hawaiian Community Development Corporation), which did not involve DHHL. Both KIUC and HCDC requested a conversion from a license to a general lease. In this transaction, DHHL could initiate direct negotiations on the general lease terms with KIUC only as an alternative energy producer, based on DHHL's statutory authority. The focus has always been to maximize the return to the trust, said the Chair, which included the package with the rents, road improvements, in-kind services, the \$1 million, the setback of the array, and other benefits included in the staff recommendation. The homestead benefits discussion is not part of the lease because it is a separate transaction. The goal was to maximize the return to the trust.

MOTION/ACTION

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

RECESS 1:48 p.m.

EXECUTIVE SESSION

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

MOTION/ACTION

Moved by Commissioner Tassill, seconded by Commissioner Sheehan, to reconvene to the regular meeting. Motion carried unanimously

RECONVENE 2:25 p.m.

DISCUSSION

Commissioner Hopkins said that a request was made by the Kauai beneficiaries to have this decision finalized on Kauai; however, due to time constraints, Commissioner Hopkins yielded the decision to Commissioner Sheehan. Commissioner Sheehan pointed out that the matter has been toiling for awhile and she deemed that the sooner an agreement is reached, the better. The Chair explained that in the case of the Green Energy Team LLC decision, it had to be held on that island, but not all Kauai decisions can be decided on Kauai island, since the commission only travels there once a year. The Chair added that the department does provide opportunities for informational meetings and for beneficiary input.

ACTION

Motion carried unanimously.

## **F - LAND MANAGEMENT DIVISION**

### **ITEM F-1 Approval to Issue Right-to-Entry Permit, Replanter Energy, LLC, Panaewa, Hawai'i**

#### **RECOMMENDATION**

Administrator L. Chinn recommended approval for a Right-of-Entry (ROE) permit to Replanter Energy, LLC to use a portion of Hawaiian home lands in Panaewa, to temporarily house air-quality data collection equipment for a proposed clean-energy facility project.

#### **MOTION**

Moved by Commissioner Gomes, seconded by Commissioner Ishibashi.

#### **DISCUSSION**

Noe Kalipi represented the TiLeaf Goup, an advocacy firm, which provides policy advocacy, communications, and marketing, and helps with renewable energy companies. Administrator L. Chinn pointed out that there will be a one-time ROE fee of \$1,000.

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

Moved by Commissioner Hopkins, seconded by Commissioner DaMate, to allow for terms of the project to be extended for six months. Motion carried unanimously.

#### **ACTION ON ORIGINAL MOTION**

Motion carried unanimously, as amended.

## **C - OFFICE OF THE CHAIRMAN**

### **ITEM C-1 Revocable Permit/Right-of-Entry Program Status Report Update**

#### **MOTION/ACTION**

None, for information only.

#### **DISCUSSION**

Deputy to the Chair Darrell Young presented a summary and status on Revocable Permits (RP) and on the Right-of-Entry program.

He conveyed that the department will meet with the Paniolo Preservation Society to ensure that the proposed use and expectation on the Right-of-Entry (ROE) is compatible with the Aina Mauna Legacy Program that was discussed earlier. A meeting was held in early January with Ben Char, Allan Silva, and the Manawalea Riding Group (MRG), and it appeared that an amicable solution would resolve compliance issues; however, a recent complaint regarding a blocked easement may have been driven by personality issues. DHHL prefers not to manage easements in RP territory and anticipated that it would be addressed early on. In addition, the issue with Hiroshima Trucking, who parks trucks at the Waimanalo site, needs to be addressed as it appears that another pad is being laid.



Staff will revisit the site and remind Ben Char that these activities may impact the ability for MRG to acquire an ROE.

Save Oahu's Race Tracks (SORT) sent a letter, which was responded to, and which triggered another letter to the department. Deputy Young said that he and Deputy AG Iha plan to respond to the latest letter. At this point, SORT owes the department \$30,000 in lease rent and utilities, which the department is willing to work out with SORT, said Deputy Young. In the meantime, SORT worked out a pending fine with the City and County Deputy Corporation Counsel, to reduce a \$75,000 fine to a \$7,500 fine. There is still another \$50,000 due in fines. The department continues to receive complaints of dirt being trucked in to the parcel, and staff has repeatedly reminded SORT to provide a mass-grade permit. Recently, the department received a response letter implying they did not owe the department anything. The department responded with a list of reasons why SORT was obligated to pay. Commissioner Tassill queried whether there was substantial evidence on the violations for both Char and Grace or was it just hearsay. Deputy Young said that G. Grace admitted at a Senate Hearing that he brought in 1,500 truck loads of dirt which the department had no record of. G. Grace also mentioned that he received it as a gift. There needs to be documentation on how it was hauled, whether the dirt was clean, and other environmental ramifications. In B. Char's situation, Deputy Young observed a cesspool and the occupancy of a home, similar to another RP residential issue on Kauai. Deputy Young expressed that each permittee should be treated similarly.

The department partnered with a representative of HCDC (Hawaiian Community Development Corporation) on achieving compliance on an EA (Environmental Assessment) to bring Kumu Camp, on Kauai, to a point where a ROE can be issued and, eventually, to a disposition that the commission will determine, explained Deputy Young. Staff is awaiting new RP rules and regulations and clearing up of the non-compliant permits. Airing it publicly may provide the permittee an opportunity to view how this program will change and consider whether they want to continue as an RP holder.

Commissioner Hopkins saw firsthand the conditions and concerns of the department regarding B. Char's RP. He was alarmed over the extent of time it took before termination for both B. Char and SORT. Deputy Young said that DHHL is not opposed to the business concept but not at the risk of its beneficiaries. One of the glaring issues brought to the attention of the Department of the Attorney General (DAG) is the overdue rent, utilities, and lapse of proper insurance. In addition, the soil needed to be tested for contamination. Deputy Young said DHHL will work diligently to ensure these issues meet compliance. Not having the opportunity to receive the \$30,000 from SORT weighs heavily, added Commissioner Hopkins.

Commissioner Sheehan questioned why permittees in Hanapepe are terminating their land usage. L. Chinn explained that homesteaders are not willing to expend additional insurance fees to maintain these small strips of land which are adjacent to their residential lots. Commissioner Hopkins said utilizing these lands, as part of their homestead, help to upkeep these lands; otherwise, it would be left in the hands of the department. L. Chinn conveyed that a similar situation happened in Waimanalo where remnant land was incorporated into homestead leases. In the Hanapepe lots, the original intent was to keep a buffer zone between residential and pasture lands.

**ITEM C-2 Approval of DHHL Labor Compliance Policy**

RECOMMENDATION

NAHASDA Manager Niniau Simmons recommended approval of the Labor Compliance Policy as part of the department's ongoing efforts to comply with the Davis-Bacon Act, as amended.

MOTION

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

**E - LAND DEVELOPMENT DIVISION**

**ITEM E-1 Approval of Various Lease Awards (see exhibit)**

MOTION/ACTION

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

**D - HOMESTEAD SERVICES DIVISION**

**ITEM D-1 HSD Status Reports**

Exhibits:

A – Homestead Lease and Application Totals and Monthly Activity Reports

B – Delinquency Report

C – DHHL Guarantees for USDA-Rural Development Mortgage Loans

D – DHHL Guarantees for USDA-RD Construction Loans

MOTION/ACTION

None, for information only.

**ITEM D-2 Ratification of Loan Approvals (see exhibit)**

MOTION

Moved by Commissioner Gomes, seconded by Commissioner Sheehan.

MOTION/ACTION

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

RECESS

4:37 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 to address the above-mentioned item.

### **MOTION/ACTION**

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

**RECONVENE**            4:44 p.m.

### **ACTION**

Motion carried unanimously.

## **ITEM D-3    Approval of Consent to Mortgage (see exhibit)**

### **MOTION/ACTION**

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

## **ITEM D-4    Approval of Streamline Refinance of Loans (see exhibit)**

### **MOTION/ACTION**

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

## **ITEM D-5    Approval to Schedule Loan Delinquency Contested Case Hearings (see exhibit)**

### **MOTION/ACTION**

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

## **ITEM D-6    Approval of Homestead Application Transfers/Cancellations (see exhibit)**

### **MOTION/ACTION**

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

## **ITEM D-7    Commissioner Designation of Successors to Application Rights – Public Notice 2012, 2013 (see exhibit)**

### **MOTION/ACTION**

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

**ITEM D-8 Ratification of Designation of Successors to Leasehold Interest and Designation of Persons to Receive Net Proceeds (see exhibit)**

MOTION/ACTION

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

**ITEM D-9 Approval of Assignment of Leasehold Interest (see exhibit)**

MOTION/ACTION

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

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

MOTION/ACTION

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

**ITEM D-11 Approval of Subdivision of Lot, Transfer of a Portion of Lease, Amendment of Lease No. 410, Lot No. 181, Nanakuli, Oahu – Clyde K. Mole and Vernon K. Mahelona**

MOTION/ACTION

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

**ITEM D-12 Request to Surrender Lease – George Shin, Residential Lease No. 10183, Lot No. 22, Lalamilo Residential Subdivision, West Hawaii District, Island of Hawaii**

MOTION/ACTION

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

**ITEM D-13 Approval of Subdivision, Transfer of a Portion of Lease Amendment of Lease No. 4052, Lot No. 18-A, Keaukaha, Hawaii – Mitzi K. Kuamoo**

MOTION/ACTION

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

**F - LAND MANAGEMENT DIVISION**

**ITEM F-2 Approval to Issue Right-of-Entry Permit to Ahupuaa Molokai, Hoolehua, Hawaii**

This item was withdrawn.

**ITEM F-4     Amendment to License No. 755, United States Coast Guard, Waimanalo, O'ahu**

RECOMMENDATION

Land Management Administrator Linda Chinn recommended approval of an amendment to Page two (2), Paragraph 1, License No. 755:

1. "Remove in its entirety: ~~To Have and to Hold the same unto the licensee, for a term of twenty years, commencing on May 13, 2011, unless sooner terminated as hereinafter provided;~~" and,
2. Replace it with paragraph 2, in its entirety, as it appears on the submittal.

MOTION

Moved by Commissioner Tassill, seconded by Commissioner Sheehan.

DISCUSSION

The reasoning for amending this license is because the U.S. Coast Guard, a federal authority, was audited by the Office of Management and Budget, and told that they do not have the authority to sign a lease that is a 20-year long lease, as it receives its appropriations annually. Therefore, this license will reflect that appropriations for this lease will be done annually, noted L. Chinn.

ACTION

Motion carried unanimously.

**ITEM F-5     Preliminary Approval of Stipulated Settlement Agreement, General Lease No. 275, Big Island Carbon, LLC, Kawaihae, Hawaii in Bankruptcy Case No. 12-13023 (D. Del)**

RECOMMENDATION

Land Management Administrator Linda Chinn recommended that the commission grant preliminary approval of the Stipulation Settling Certain Claims of the State of Hawaii, Department of Hawaiian Home Lands, and Extending the time of the Trustee, to assume or reject the non-residential lease of real property under General Lease No. 275 issued to Big Island Carbon, Kawaihae. A draft stipulation provides that (1) a cash payment of \$300,000 is made within three business days after the Chapter 7 Trustee's receipt of deposit from Tiger (Tiger Group), which is due upon entry of the sale/agent appointment approval order of the Bankruptcy Court;(2) a sum of \$75,000, as rent, at \$12,500 per month for approximately six months, to allow Tiger and Chapter 7 Trustee access to the property, to conduct sales from January 27, 2014, to July 31, 2014, to be paid no later than July 31, 2014; (3) DHHL agrees that the time for the Chapter 7 Trustee to assume or reject the Lease shall be extended until July 31, 2014; (4) DHHL is granted a general unsecured claim in the amount of \$350,000; (5) in the event the lease is rejected, DHHL can file for rejection damage within 30 days of the automatic rejection date, July 31, 2014; (6) DHHL will be apprised of the sales process and will be consultant to any sales; (7) In the event that the stipulation and the sale/agent appointment approval order is not

entered by the Bankruptcy Court, then the relief set forth in the stipulation shall be null and void, and all parties shall retain all rights, remedies, and defenses.

#### MOTION

Moved by Commissioner Gomes, seconded by Commissioner Sheehan.

#### DISCUSSION

The General Lease 275 is an industrial lease in Kawaihae to convert macadamia nut shells into carbon, which can be used for filtration. The facility is 95% complete and was just shy of \$2 million to complete, but lost all of its funding. The facility is worth \$50 million and Synergy, a lender, has an outstanding \$5 million secure credit while Kona Investment has an \$11 million secure credit. It is hopeful that the Bankruptcy Trustee can find a user to take over the final improvements of this facility. Tiger is a reputable business that has been assigned to locate a reputable firm to take over the lease. If not, then the equipment will likely be sold off in pieces. Once Tiger is deemed the agent, they will have 12 weeks to find a buyer or user. If unsuccessful, then a public auction will be conducted for a period of 4 weeks. This will all be completed by July 31, 2014.

If the Bankruptcy Trustee rejects the lease, and the department proceeds with the stipulation, the \$5 million to Synergy and the \$11 to Kona Investment will be dissolved, leaving the department not liable. The matter will come before the commission again, once the final stipulation has been completed. L. Chinn deemed Exhibit B as the likely final stipulation, if no further changes are made. She added that if the lease is rejected, the department may claim for damages. Deputy AG Iha explained that the Bankruptcy Trustee is asking for an additional 6 months to determine what options will be considered as part of the lease. Currently, the focus is finding someone to assume and operate the lease from Big Island Carbon. Beyond that, the options may be to just sell the plant for scrap and pay everyone off. The Chair called for an executive session to consult with counsel further on the matter.

#### MOTION/ACTION

Moved by Commissioner Tassill, seconded by Commissioner Davis, to adjourn to executive session to consult with counsel. Motion carried unanimously.

RECESS                    5:13 p.m.

#### EXECUTIVE SESSION

The Commission convened in executive session pursuant to Section 92-5 (a), 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 Tassill, seconded by Commissioner Sheehan, to reconvene to the regular meeting. Motion carried unanimously.

RECONVENE            5:25 p.m.

ACTION

Motion carried unanimously.

**ITEM F-6 Ratification of Consents and Approvals by Chairman, Hawaiian Homes Commission**

MOTION/ACTION

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

MOTION/ACTION

Moved by Commissioner Tassill, seconded by Commissioner Davis to recess until noon tomorrow.

RECESS

5:28 p.m.

**HAWAIIAN HOMES COMMISSION**  
**Minutes of February 19, 2014**  
**Meeting Held in Kapolei, Oahu**

The 648<sup>th</sup> regular monthly meeting was reconvened on Tuesday, February 19, 2014, at 12:45 p.m., at the Department of Hawaiian Home Lands, 91-5420 Kapolei Parkway, Kapolei, O'ahu, Hawai'i.

**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** Darrell Young, Deputy to the Chair  
Sandra Pfund Administrator, Land Development Division  
Niniau Simmons, Manager, NAHASDA, Office of the Chair  
Dean Oshiro, Acting Administrator, Homestead Services Division  
Juan Garcia, Acting District Superintendent, Homestead Services Division  
Kanai Kapeliela, Applications Officer, Homestead Services Division  
K. Manuel, Acting Planning Program Manager, Planning Division  
Lloyd Pagaduan, Homestead Assistant, Homestead Services Division  
Debbie Kikuta, Applications Officer, Homestead Services Division  
Ranette Kamaka, Applications Clerk, Homestead Services Division  
Karen Lucero, Homestead Assistant, Homestead Services Division  
Rowena Kaulia, Homestead Assistant, Homestead Services Division,  
Irene Clark, Office Assistant, Homestead Services Division  
Michelle Hitzman, Homestead Housing Specialist, Land Development Division  
Sharon Mendoza, Loans Specialist, Homestead Services Division  
Kamanao Mills, Special Assistant, Office of the Chair  
Elaine Searle, Secretary to the Commission

**MINUTES** Moved by Commissioner Hopkins, seconded by Commissioner Kahikina, to approve the minutes of February 2013. Motion carried unanimously.

**ITEMS FOR INFORMATION**

The Chair conveyed that within the "J" agenda segment of the meeting, the commission may ask questions but is unable to render any action. In the meantime, however, staff may be directed to follow up on issues.



## **ITEM J-2 Request to Address the Commission – Donald W. Kaanapu**

### MOTION/ACTION

None, for information only.

Donald Kaanapu and his wife addressed the commission to request relocating from his current homestead of 18 years in Waianae to a homestead in Kapolei. Based on information provided in a letter to the commission and previous documents submitted to the department, D. Kaanapu deemed that this is sufficient information for relocation. Commissioner Hopkins asked Acting Administrator Dean Oshiro if he was familiar with the situation, to which D. Oshiro replied that staff is working to address D. Kaanapu's request. He said that D. Kaanapu provided the department one police report and a parking violation notice, nothing else. In dealing with some of the safety issues, it is difficult for staff to evaluate and present such matters to the commission without additional paperwork to verify that a lessee's safety is a risk to warrant relocation. The department receives numerous relocation requests. On the other hand, health matters generally have adequate information to justify a move.

D. Kaanapu encountered problems with various neighbors over the past eight years. He does not wish to expose his family to the continuous threats which have been ongoing. Even the department's Enforcement Team was called upon to assist. A recent incident involved his neighbor weed whacking his grass and the debris was hitting D. Kaanapu's window. Commissioner DaMate noted that the last report appeared in February 2013 and queried whether other incidences occurred. D. Kaanapu is employed by the Navy Joint Intelligence Operations Center and has SCI (Sensitive Compartmented Information) clearance, and when illegal cars are parked in front of his home over a period of time, he becomes suspicious. Ms. Kaanapu said they already explained everything to staff and do not wish for it to be repetitive.

The Chair explained that the commission is a policy-making body, which allows people to address the commission. What staff has represented reveals that there are many, many requests for relocation for health and safety. She is not diminishing the importance of this situation for the Kaanapus, but there are varying complexities. What the commission is seeking is based on a policy standpoint and whether the standard set by the Kaanapus' circumstances could be replicated as a policy across the state. This is an issue that needs to be considered in looking at this case, said the Chair. Understanding the circumstances of the case does come into play. It is a process, and due diligence is being conducted by staff in its investigation.

There are rules that need to be adhered to in their homestead, noted Ms. Kaanapu. Harassment and rule violations have been prevalent. Commissioner Hopkins asked how many times they contacted staff to remedy the situation. D. Kaanapu said he contacted Officer Peiper and the police on various occasions to report illegal vehicles parked in front of their home for days. D. Oshiro shared that most of the requests for relocation have been for health-related issues, such as limited medical opportunities. D. Kaanapu said he loves his home, takes immaculate care of it, and wishes he had a quality of life. The Chair asked whether he would consider selling his home. D. Kaanapu said that he may consider that as an alternative. He would first like to attempt to meet the criteria for

relocation. The Chair mentioned that (selling) does not require someone from the waitlist. It can be sold to any eligible native Hawaiian. With open-market transactions, one may acquire a higher price for the home. In the DHHL's appraisal methodology, the home is valued for its replacement costs. There is no guarantee for relocation as one would likely wait for a property to become available. D. Kaanapu said they may sell the home or seek another course of action. Commissioner Kahikina asked D. Kaanapu whether he may want to swap their home for another. The Chair said that the commission will work with staff, to hopefully reach some kind of resolution.

Commissioner Gomes was excused from the meeting.

## **A - WORKSHOP PRESENTATIONS**

### **ITEM A-4 Application Processing Methodology**

Applications Officer Kanai Kapeliela presented a powerpoint of DHHL's application process. He explained the definition of a native Hawaiian: "any descendent of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778," which is found in the Hawaiian Homes Commission Act (HHCA), 1920 (as amended). Native Hawaiians are the targeted beneficiary class and the application process ensures that all prospective beneficiaries are evaluated by the same standard approach. The methodology offers a process in determining percentage with genealogical resources by tracing everyone back until ancestors of pure descent are found. Once found, then staff can come forward and assign Hawaiian percentages, which then determines the applicant's net result of this process.

Historical sources fall under two sources:

- Primary sources – created after an event by someone who had personal knowledge of the event;
- Secondary sources – compiled from primary sources or written from memory after the event.

In the primary source, birth certificates are the most primary record, followed by marriage certificates, and then death certificates. Death certificates are considered much less reliable. If a birth certificate is non-retrievable, the department will require an applicant to produce a Department of Health (DOH) "No Record Certification" voucher. Where the DOH cannot provide a government-issued birth record, and No Record of Birth Certificate was submitted, then DHHL will accept a marriage record. The same would be true for the death certificate, if no birth or marriage certificate is provided.

In the 1920's, government-issued primary records of births, marriages, or deaths stated solely Hawaiian ancestry. In the 1940's Hawaiians began to marry non-Hawaiians, thus birth certificates displayed part-Hawaiian lineage. In the event that DHHL cannot determine Hawaiian ancestry percentage for an individual, staff may examine secondary records to supplement the primary information. Some of these records include: siblings records, baptismal certificates, LDS (Latter Day Saints) Mormon group sheets, school records, and medical records. Looking at the family charts provide another area for

further information. Census records hold more credibility than secondary records, as the head of household would have likely answered the questions accurately. Consistency of records is very important, as sometimes what a name looks like does not necessarily match with what the record states. All records are looked at and are evaluated as a whole.

Sometimes when new information becomes available, after someone qualifies as an applicant, it is the fiduciary responsibility of the department and the commission to examine the new information to establish blood quantum. D. Kapeliela said there are only 8 staff members to handle the 26,000 applicants on the waitlist. It would be difficult to determine genealogies for everyone. The burden of proof is on the applicant to prove that he/she is a native Hawaiian.

There are times when people ask about adoptions. Logically, the department determines quantum only through biological parents and not through legal or adoptive parents. DHHL has limited access to court-sealed documents, to determine whether an adoptive individual qualifies for DHHL benefits. Although affected individuals may apply for this instance through staff, the adoption information is confidential, said K. Kapeliela.

All the pertinent information on the document is transferred exactly as it appears to a pedigree chart or a "Kumu Ohana" chart. If the record says "Chinese-Hawaiian," that is what is written on the chart; not "Part-Hawaiian." This cumulative record provides information from each ancestor in an applicant's bloodline. If alterations are made, it is noted on the same chart.

Commissioner Hopkins questioned whether HAR (Hawaii Administrative Rules) 10-3-2(a) allows an applicant to utilize a sibling or a parent's record to qualify the applicant. K. Kapeliela conveyed that there is a consent form, which allows the department to access a person's genealogical record to clear an individual's blood quantum. This saves much time and expense. The consent form is for the purpose of the department and not for the purpose of others to access. The current methodology process was formulated in the late 1980's. He added that all situations are not the same, as everything is taken on a case-by-case basis.

## **G – PLANNING OFFICE**

### **ITEM G-1 Approval of Draft Water Policy Plan for Statewide Beneficiary Consultation**

#### **RECOMMENDATION**

Acting Planning Administrator Kaleo Manuel requested that the Hawaiian Homes Commission (HHC) approve the Draft Water Policy Plan for statewide beneficiary consultation.

#### **MOTION**

Moved by Commissioner DaMate, seconded by Commissioner Kahikina.

## DISCUSSION

K. Manuel said that the Planning Office formulated a Water Policy Plan over the past two years, to create a statewide framework plan and to help guide the commission and the department in making water decisions. Decisions on water issues have not been consistent as many decisions were made on a case-by-case basis. Having policies in place is critical for the continuity of this trust, expressed K. Manuel. He said that Jonathan Scheuer, Ph.D, water consultant to the department, was available to answer any questions. Thus far, the Planning Office completed its research and collected data to move forward. Tables of completed activities were included in the submittal. Educational and outreach meetings were held with beneficiaries throughout the state during October and November 2013. Minutes and discussions are attached as Exhibit F. All of the information gathered from a policy document that was drafted appear in Exhibit A. K. Manuel walked the commission through the Draft Water Policy Plan, which will go out to the communities for consultation, input, etc. Many of the documents are hyper linked. Clicking on to the DHHL website, under Hawaiian Homes Commission Act (HHCA), under water, will offer a specific citation in the law.

A suggestion was made at a Nanakuli meeting, on Oahu, to create a new water commission, said Commissioner Kahikina. K. Manuel conveyed that the Planning Office will review it, comment on it, take it in as part of the evaluation process, and make recommendations to the commission.

Dr. J. Scheuer, spoke on the language derived from the HHCA on water and the overall goal. The mission statement reflects the major areas of responsibility that the department undertakes in order to achieve that vision: He listed four directives or statements derived with some beneficiary input. They are:

1. Waiwai – abundant water is critical to the mission of the trust;
2. Waihona – respect for cultural knowledge of water; to collect it meaningfully within the department;
3. Malama – relationship with water is different from just providing water to homesteaders without consideration of what happens to the water before and after;
4. Laulima – makou (we, exclusive) and kakou (we, inclusive); responsibility within the Hawaiian community as a Hawaiian organization; being cognizant of the effect on other communities. Water does not obey property lines; it will cross from one area to another area, and it requires one to work with other stakeholders.

Policies – J. Scheuer said there are 8 core policy goals listed to achieving the vision.

Goals – Fairly represent the concerns of the beneficiaries. There are 5 parts with 23 goals listed. Having a comprehensive inventory of water assets is very critical, noted J. Scheuer. All of the information collected was matched against the general plan that the commission approved.

Delegation – The commission may delegate authority to the Chairman. It calls for the development of an implementation program for this Draft Water Policy Plan. He conveyed that one must hold on to the cultural truths of the inter-connectivity of water

and acknowledged Commissioner DaMate for her keen interest and contribution as a member of this commission.

Next steps – K. Manuel said that nine (9) preliminary consultation meetings are being planned for all of the homestead communities beginning March 31, 2014, and will end April 16, 2014. The goal is to take comments, revise the draft plan, and come back by June 2014, for approval by the commission. J. Scheuer deems this to be the first water policy statement ever passed by the commission, in the history of the HHCA, which is a huge accomplishment. The Chair acknowledged the hard work and dedication by Planning Office staff and J. Scheuer

Note: Commissioner Tassill was excused from meeting.

The Chair recommended changes to the Draft Water Policy Plan: Page 1, Mission, ...and Department of Hawaiian Home Lands (DHHL) ~~shall ensure~~ **shall strive to ensure the availability....**; Page 2, Policies, Item 3, (append) ...other Public Trust water uses **to the extent possible.**; Item 5, Foster self-determination of beneficiaries by **seeking ways for beneficiaries to participate in the management of water.**; and Page 3, Goals, Item 22, (append) **and full repair of the System.**

#### AMENDED MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Sheehan, to approve the Draft Water Policy Plan, as amended, by the Hawaiian Homes Commission for statewide beneficiary consultation. Motion carried unanimously.

#### ACTION ON MAIN MOTION

Motion carried unanimously, as amended.

### **ITEM J-3 Commissioner Concerns – Molokai Water Issues, Commissioner GR Davis**

#### MOTION/ACTION

None, for information only.

#### DISCUSSION

Commissioner Davis shared some of his concerns regarding Molokai water, as it comes second to the land, with land being the most important. The MIS (Molokai Irrigation System) services water to the farming community in Hoolehua. The department's potable water system services the farm and residential lands to the lower regions. He is concerned about the change-out of aging components. The staff has been working towards drawing down federal USDA funds without expending trust funds and he realizes this takes much time. Hopefully, there is a strategy to update the system. The pressing issue is the availability of water and the moratorium that exists on subdividing Ag lots. Commissioner DaMate noted that DLNR (Department of Land and Natural Resources) has a bill before the legislature for \$4 million for a watershed initiation with a large portion of it concentrated on Molokai. She suggested establishing a partnership with DLNR on its hunting program.

K. Manuel said that the department provides domestic water to 600 users in Hoolehua and a portion of Kalamaula, at a deficit of \$1 to 1.2 million each year. To address the deficit, the commission will need to increase its water rates. Land Development Division Administrator Sandra Pfund noted that the department is seeking to utilize wind or solar energy to lessen the costs to run its water pumps. K. Manuel said that Molokai Acting Homestead District Supervisor Halealoha Ayau has a grant application with the University of Hawaii to secure funding to reduce fossil fuel expenses. A submittal will be presented next month, to request the setting of interim rates for one year while the department conducts a water-rate study, to look at various scenarios on how better to manage and reduce costs on our systems.

A request was made to defer the executive session item until next month.

**MOTION/ACTION**

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


**ANNOUNCEMENTS AND ADJOURNMENT**

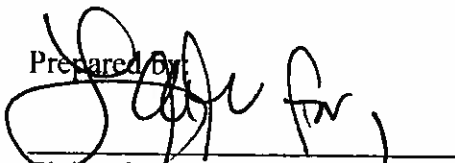
**NEXT MEETING** The next meeting will be held on March 17, 2014, Department of Hawaiian Home Lands, 91-5420 Kapolei Parkway, Kapolei, Oahu.

**ANNOUNCEMENT** The next community meeting will be held at Ka Ho'oilina na Kuhio Center, 41-253 Ilaulole Street, Waimanalo, Oahu.


**ADJOURNMENT** 3:55 p.m.

Respectfully submitted:

  
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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 January 20, 2016.

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