

**HAWAIIAN HOMES COMMISSION**  
**Minutes of April 21-22, 2014**  
**Meeting Held in Kalamaula, Molokai**

Pursuant to proper call, the 650th Regular Meeting of the Hawaiian Homes Commission was held at the Kulana Oiwi Conference Room, 600 Maunaloa Highway, Kalamaula, Molokai beginning at 10:00 a.m.

**PRESENT** Jobie M. K. Masagatani, Chairman  
Leimana DaMate, Commissioner, West Hawaii  
Gene Ross K. Davis, Commissioner, Molokai  
Doreen N. Gomes, Commissioner, Maui  
Wallace A. Ishibashi, Commissioner, East Hawaii  
Patricia W. Sheehan, Commissioner, Kauai (ar: 1:20 p.m.)  
Renwick V. I. Tassill, Commissioner, Oahu

**EXCUSED** J. Kama Hopkins, Commissioner, Oahu  
Michael P. Kahikina, Commissioner, Oahu

**COUNSEL** Craig Y. Iha, Deputy Attorney General

**STAFF** Darrell Young, Deputy to the Chair  
Linda Chinn, Administrator, Land Management Division  
Dean Oshiro, Acting Administrator, Homestead Services Division  
Sandra Pfund, Administrator, Land Development Division  
Kaleo Manuel, Acting Administrator, Planning Division  
Halealoha Ayau, Molokai District Supervisor, Molokai District Office  
Julie Cachola, Planner, Planning Division  
Niniau Simmons, NAHASDA Manager, Office of the Chair  
Shelly Carreira, Land Agent, Land Management Division  
Gerald Lau, Loan Collection Specialist, Homestead Services Division  
Paul AhYat, Hearings Officer Assistant  
Elaine Searle, Secretary to the Commission

**AMENDED AGENDA**

The Commission will convene with Item F-4 after Public Testimony. Item F-2 and the executive session item regarding the Attorney General's Opinion will be deferred until tomorrow. Moved by Commissioner Gomes, seconded by Commissioner Ishibashi, to approve the agenda, as amended. Commissioner Tassill voted "no." Motion carried.

**COMMENT**

Commissioner Tassill expressed displeasure over media coverage on the matter pertaining to the presence of hazardous material in Kalaeloa. The Chair explained that this matter may be addressed later, at a more appropriate time, in the agenda.

## MINUTES

Commissioner Davis moved, seconded by Commissioner Gomes, to defer approval of minutes until tomorrow. Motion carried unanimously.

### A - WORKSHOP PRESENTATIONS

#### **ITEM A-1 U.S. Department of Housing and Urban Development Assessment of Native Hawaiian Housing Needs**

Deputy to the Chair Darrell Young reviewed the U.S. Department of Housing and Urban Development's (HUD) assessment of Native Hawaiian housing needs, which is part of a larger national study that includes American and Alaskan natives that will assist HUD and Congress in understanding native housing needs. To aid in this study, 500 native Hawaiians will be selected from the DHHL application waitlist. Staff has been involved in this study since 2010 and conducted its own workshop in 2012. Chuck Hanson, a member of Econometrica., part of the study team, addressed the commission in February 2013 when a Memorandum of Understanding (MOU) was approved between HUD and DHHL, said Deputy Young. DHHL mailed out 2,400 randomly selected seeking beneficiary participation by signing a Consent to Release form. To fulfill its obligation, DHHL will need to receive 833 signed release forms by May 15, 2014. DHHL will then forward the contact information of those who signed the Consent to Release form to the HUD team. The assessment will begin in the summer of 2014. As a token of appreciation, participants will receive \$25 from the HUD study team.

### B - PUBLIC TESTIMONY ON AGENDIZED ITEMS

#### **ITEM B-1 Bob Hall and Tamar DeFries, Pacific Growth, Re: F-2,**

Pacific Growth representatives Bob Hall and Tamar DeFries offered support for Item F-2, which is an interim license agreement addressing Molokai Homestead Farmers Alliance's (MHFA) request to manage Lanikeha Community Center in Hoolehua. The goal of Pacific Growth is to serve as a financial consultant to this beneficiary-driven endeavor, noted B. Hall. T. DeFries commended the Molokai community for its leadership in taking on this task. She said that she is humbled at being part of this process.

### F - LAND MANAGEMENT DIVISION

#### **ITEM F-4 Amendment to General Lease No. 293, Kalaeloa Solar One, LLC, Kalaeloa, O'ahu**

##### RECOMMENDATION

Land Management Administrator Linda Chinn recommended approval for an extension of time for payment on a ground-lease rent for General Lease (GL) No. 293, Kalaeloa Solar One, LLC (KS1), Kalaeloa, Oahu, subject to conditions listed.

##### MOTION

Moved by Commissioner Davis, seconded by Commissioner Gomes.

##### DISCUSSION

GL No. 293 was issued in 2010, to develop, operate, and maintain a solar project. A portion was subleased to Sun Power, which produces energy for Hawaiian Electric. L. Chinn is pleased with its partnership and recommended Kalaeloa Solar One (KS1) be given additional time to address

its financial issues. A \$130,000 payment was submitted to DHHL for its first extension, as KS1 wants until May 2015 to negotiate with HECO on rates. With a new partner able to provide financial assistance, KS1 would be capable of fulfilling its projected goals. Testimonial support was received from Kapolei Community Development Corporation (KCDC) President Shirley Swinney. KS1 representative, Harry Jackson, Keahole Solar Power (KSP), expressed his eagerness to bring this project to fruition. He is thankful for the support displayed by L. Chinn and staff, in allowing them time to work through their issues. BVR Consulting LLC, Vice-President Chris Lee, a new KS1 partner, expressed a willingness to provide KS1 all the help necessary.

Discussions were held to work towards a \$424,000 repayment plan to the department over the next few years. The new partnership will likely come before the commission in August under an Assignment of Lease. The community benefits will include a percentage of revenue created by the project which supports the community in educational and renewable energy programs, job creation, and an educational facility selected by the department. This represents a 1% benefits package that will be paid into a community program.

#### ACTION

Motion carried unanimously.

### G - PLANNING DIVISION

#### **ITEM G-1 Extend Existing Water Rates for the DHHL Molokai and Anahola Water Systems**

#### RECOMMENDATION

Acting Administrator Kaleo Manuel recommended that the commission:

1. Direct and delegate the chairman the responsibility to prepare a comprehensive water rate assessment on all water systems owned and operated by the Department of Hawaiian Home Lands; and
2. Extend existing water rates (including water delivery, system, and meter fees) for all consumers on the DHHL Molokai and Anahola Water Systems until June 30, 2016, or until such an assessment is prepared and presented to the commission for action, whichever comes first.

#### MOTION

Moved by Commissioner DaMate, seconded by Commissioner Gomes.

#### DISCUSSION

The department owns and operates four water systems in the State of Hawaii; one exists on Molokai; others are in Anahola, Kauai, Kawaihae and Puukapu on the island of Hawaii; information on these systems will be presented at next month's commission meeting in Kamuela, said K. Manuel. The operating systems run in the "red" averaging 1,000 users, and requiring substantial subsidies. He said that the goal has always been to realize the true costs in operating these systems and how to breakeven. Overall, Molokai has the highest energy rate in the nation. It costs the department an average of \$50,000 per month to pump water from the ground for beneficiaries. Since the creation of these systems, the department continued to charge low rates to assist homesteaders with affordable water. The recommendation is to review each of the systems, its costs, and what the department charges for all of the systems. Action today focuses on the Molokai and Kauai systems and how rates are being charged for those systems.

In 2004, a 10-year rate structure was established, which expires on June 30, 2014. Before expiration, the department wishes to extend those rates, until a comprehensive rate assessment is completed over the next two years. K. Manuel said that \$1 million is lost annually to upkeep these water systems.

The Anahola Water System primarily services over 79 agricultural lots. Maintenance of this system is contracted to PurWater Systems, a certified water operator. In 1992, the water rate per gallon was at .92 cents; then, in 2004, the commission approved a tiered rate (the more use, the more pay). A specific rate charge for agricultural customers with the fee structure is similar to Maui County rates.

Acting Molokai District Supervisor Halealoha Ayau said that the Molokai Water System serves approximately 2,400 customers. He noted that the Molokai staff is certified as Grade 2 Water System Operators. The system is approximately 60 years old and costs over \$600,000 per year to maintain. An application was placed with USDA RD (U.S. Department of Agriculture Rural Development), separate from the water system's grant, to address alternative energy resources for the well site. This grant will relieve the burden of the high electrical costs. To qualify for this grant, the Molokai Water System costs needed to be at 275% or higher than the national average. The Molokai Water System qualified at 278% higher than the national average.

H. Ayau shared that the Molokai staff provide safe potable water and maintain 600 fire hydrants, which is a daunting task. Resources and improvements are necessary in keeping all systems running efficiently. Historically, water rates were set comparable to Maui County water rates, which is incorrect, as Maui spreads the cost among all of its users, noted K. Manuel. If the department rates were charged based on what it costs to operate the system, the rates would be 2 to 3 times higher. He added that if energy efficiency were improved and upgrades done, the numbers would decrease.

Commissioner DaMate recommended building wells at Kawaihae and Kau areas. Land Development Administrator Sandra Pfund said that a water assessment study is nearly complete for Kawaihae. She articulated that the best suggested alternative was to take an existing exploratory well and turn it into a production well. The water would then need to be treated. Another option would be to use the plant as a redundancy well with the Kohala Ranch System, to provide redundancy to the Kawaihae system.

Kapaakea Homesteaders Association President, Leila Wallace, expressed how her cost for water is higher than Kalamaula and Hoolehua homesteaders. She receives her water from Maui Department of Water Supply. The Chair thanked Ms. Wallace for her comments and conveyed that current discussions will continue on the system that the department operates at a deficit of \$1 million per year. Today's action relates to extending the existing rate for those systems, to allow the department time to determine what the true costs are to operate the system and where the rates should be set.

Commissioner Ishibashi said that until there is some relief from high energy costs, the pumping costs will continue to be elevated. He suggested incorporating some type of credit for the electrical portion while continuing to expand solar, geothermal, and wind energy options. He inquired about current rates for those other than homesteaders. K. Manuel said action was taken in 2004 to approve rates for homesteaders and non-homesteaders. The tables on Page 5 in the submittal demonstrate the rates for domestic water usage, agriculture water usage, and a meter fee charge of \$5.60. Non-homestead rates are featured on Page 6. Commissioner Davis questioned the differences between domestic and ag water uses. K. Manuel noted that to receive an ag rate, a homesteader must apply for an ag rate and demonstrate a need for agricultural activity on the property.

K. Manuel summarized that one of the goals of the Water Policy Plan (WPP) is to address the amount of pipes, wells, and fire hydrants that the department maintains, to better understand how to manage those systems with proper staff and charge rates that reflect those values. Beneficiaries are disproportionately affected by any increase in water rates that other users to the system may not feel it in their pockets. The Chair inquired whether the issue of pumps breaking down has affected the relationship with Maui County. According to H. Ayau, there have been breakdowns in the past; and via an inter-connect system, Maui County has provided continuous water service to Hawaiian homesteaders and vice versa. All inter-connect systems have meters, so there is compensation for water used. The commissioners thanked K. Manuel and staff for the tremendous work in addressing the WPP and in dealing with concerns for each of the islands. In developing this WPP, the department wants to be explicit that homesteaders shall have preference to water in time of shortage.

ACTION

Motion carried unanimously.

**C - OFFICE OF THE CHAIRMAN**

**ITEM C-1 Approval of 2014 Native Hawaiian Housing Block Grant (NHHBG) Annual Housing Plan**

DISCUSSION

Niniau Simmons, NAHASDA Manager, conveyed congratulatory wishes on the 90<sup>th</sup> Anniversary Celebration of the Settlement of Kalamaula, the first homestead of the Hawaiian Homes Commission Act (HHCA). She expressed mahalo to Prince Jonah Kuhio Kalaniana'ole, along with Reverend Steven L. Desha, Hawaii Territorial Legislator H. L. Holstein, and Mayor John C. Lane, for their contributions to the Hawaiian Homes Commission Act (HHCA). In 2015, a 90-year celebration will be held for Palaa and Hoolehua at Lanikeha, Molokai. Today's agenda is to approve the Native Hawaiian Housing Block Grant (NHHBG), which was granted a week's stay for submittal (April 25, 2014) by HUD (U.S. Department of Housing and Development).

MOTION/ACTION

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

**ITEM C-2 Monthly Legislative Update (for information only)**

MOTION/ACTION

None, for information only

DISCUSSION

Deputy to the Chair Darrell Young presented an update of bills currently pending at the legislature for approval, as listed.

**D - HOMESTEAD SERVICES DIVISION**

**ITEM D-1 HSD Status Reports**

MOTION/ACTION

None, for information only.

Exhibits:

A – Homestead Lease and Application Totals and Monthly Activity Reports

B – Delinquency Report

C – DHHL Guarantees for USDA-RD Development Mortgage Loans

D – DHHL Guarantees for FHA Construction Loans

E – DHHL Guarantees for USDA-RD Construction Loans

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

MOTION/ACTION

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

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

MOTION/ACTION

Moved by Commissioner Davis, 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 DaMate. Motion carried unanimously.

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

MOTION/ACTION

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

**ITEM D-6 Commission Designation of Successors to Application Rights – Public Notice 2011, 2012 (see exhibit)**

MOTION/ACTION

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

**ITEM D-7 Cancellation of Deceased Applicants from Waiting List – Public Notice 2008, 2009, 2012 (see exhibit)**

MOTION/ACTION

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

**ITEM D-8 Ratification of Designation of Successor to Leasehold Interest and Designation of Person to Receive Net Proceed (see exhibit)**

MOTION/ACTION

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

**ITEM D-11 Cancellation of Lease – Leona M. Atcherley, Lease No. 5080, Lot No. 11, Waianae, Oahu**

MOTION

Moved by Commissioner Gomes, seconded by Commissioner Davis.

DISCUSSION

Commissioner DaMate questioned whether the legal successor to Ms. Atcherley's estate would be her lawyer as it appears that Ms. Atcherley had no descendants or successors to her estate. For clarity in determining who qualify as successors, Commissioner DaMate recommended that Item 2 of the recommended motion be changed to read: "to pay the net proceeds of the improvements value, if any, to the legal representatives of Decendant's estate."

AMENDED MOTION/ACTION

Moved by Commissioner DaMate, seconded by Commissioner Tassill, as recommended. Motion carried unanimously.

ACTION

Motion carried unanimously, as amended.

**ITEM D-12 Delegate to the Chairman the Authority to Enter Into Right-of-Entry Agreements with Solar Companies to Allow Lessees to Lease a Photovoltaic System**

MOTION

Moved by Commissioner Davis, seconded by Commissioner DaMate.

DISCUSSION

Some solar energy entities have proposed leasing photovoltaic systems to homeowners, said Acting Administrator Dean Oshiro, Homestead Services Division. In the situation when a Hawaiian home lands homestead lessee enters into such a lease agreement with a solar company, it is considered a sub-lease, which is not allowed for a non-native Hawaiian entity. To assist the lessee in acquiring the use of a photovoltaic system and maintenance of the equipment, the department recommended allowing a Right-of-Entry (ROE) agreement which would eliminate having 5 to 8 lessees appearing before the commission each month to seek approval. Normally, when a situation comes before the department for approval, staff ensures that the lessee is in good standing with a proper building application, a homeowner's insurance, sewer fees, etc.

ACTION

Motion carried unanimously.

**ITEM D-13 Request to Surrender Lease – Dayna G. Ng, Residential Lease No. 7118, Lot No. 172, Kawaihae Residential Subdivision, West Hawaii District, Island of Hawaii**

MOTION/ACTION

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

**ITEM D-14 Request to Surrender Lease – Aala Petersen, Residential Lease No. 10736, Lot No. UNDV110, Lai Opuua, Island of Hawaii**

MOTION/ACTION

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

**ITEM D-15 Request to Approve Payment to Homeowner Associations for Cancelled/Surrendered Lots in DHHL Inventory**

MOTION

Moved by Commissioner Davis, seconded by Commissioner DaMate.

DISCUSSION

Homestead Services Division Acting Administrator D. Oshiro noted that those community associations with Declaration of Covenants, Conditions, and Restrictions (DCCRs) no longer have the ability to collect dues from cancelled or surrendered leases; the department lacks the authority to pay association dues for the monthly upkeep and maintenance of the common areas. An affirmative action will address this.

ACTION

Motion carried. Commissioner Tassill was excused when the vote was taken.

**ITEM D-16 Request to Approve Third Party Agreement – Spencer N. Akana for Pastoral Lot Lease No. 03541, Lot No. 8, Puukapu, Kamuela, Hawaii**



MOTION/ACTION

Moved by Commissioner DaMate, seconded by Commissioner Davis. Motion carried. Commissioner Tassill was excused when the vote was taken.

**E - LAND DEVELOPMENT DIVISION**

**ITEM E-1 Approval of Various Lease Award – Anna Rose P. Azevedo**

MOTION

Moved by Commissioner Davis, seconded by Commissioner Gomes.

DISCUSSION

Land Development Administrator Sandra Pfund said that this home was built by the Hawaii Community College in 2014, sold for \$176,650, and will be delivered in May 2014.

ACTION

Motion carried. Commissioner Tassill was excused when the vote was taken.

**ITEM E-2 Authorization to Negotiate and Enter into Various Agreements Between Na Kupaa o Kuhio and the Department of Hawaiian Home Lands for the Construction of the East Kapolei IIB Water and Wastewater Systems, Kapolei, Oahu, Hawaii, Tax Map Key: (1) 901017:110 portion**

RECOMMENDATION

Land Development Administrator Sandra Pfund recommended that the commission authorize the Chair to negotiate the terms and conditions and execute the agreements between Na Kupaa O Kuhio (Na Kupaa) and the Department of Hawaiian Home Lands (DHHL) in support of obtaining conditionally awarded funds from the U.S. Department of Agriculture Rural Development (USDA RD) for the East Kapolei IIB Water and Wastewater Systems. The documents recommended for approval are listed on page 1 of the submittal, items 1 thru 5.

MOTION

Moved by Commissioner Hopkins, seconded by Commissioner DaMate.

DISCUSSION

S. Pfund provided background on Na Kupaa, a non-profit established to assist the department with securing funds from USDA RD for rural water and wastewater systems. The department was informed that it could not apply directly for grant funds from the USDA RD. Na Kupaa was formed as a non-profit entity that could apply, in partnership with DHHL, to USDA for grant funds. Currently, Na Kupaa includes a board of directors and its executive director, Patricia Brandt. S. Pfund provided a flow chart on how the partnership works. DHHL identifies the project they wish to develop, Na Kupaa submits the application to USDA, and USDA provides Na Kupaa a letter of conditions that will need to be met in order to be funded. A joint procurement is then prepared for the project. For the East Kapolei IIB site development of 160 house lots, the water and wastewater portion of the construction contract will be paid by Na Kupaa. The amount awarded is \$3.7 million; 60 % will be loan money, while 40% is in grant funds. The loan money is spent down first. This allows the department to leverage its funding to secure grant money. S. Pfund said the department is responsible for the road paving, roadways and utilities and fine grading of the lot. The rest will be in a construction contract for water and wastewater with Na Kupaa. S. Pfund pointed out that the national allocation in April 2011 to USDA for water and wastewater was \$451 million in grant funds, \$900 million in loans, with a total of \$1.531 billion allocated nationally. Overall, the State of Hawaii received only \$2.4

million in grants and \$6.6 million in loans, for a total of \$9 million. Former Senator Daniel Inouye was instrumental in setting aside grant monies for DHHL, which accumulated over time. The set-aside funding is now at \$20 million. This is proven to be a great benefit for the department, said S. Pfund. She shared information on all of the statewide projects and foresees the set-aside funds to assist various water system projects, statewide.

ACTION

Motion carried unanimously.

RECESS 12:20 p.m.

RECONVENE 12:35 p.m.

**J - GENERAL AGENDA**

**ITEM J-2 Request to Address the Commission – William Kaholoa‘a Sr.**

MOTION/ACTION

None, for information only.

DISCUSSION

William (Yama) Kaholoa‘a appeared along with Godfrey Akaka and S. Makaiwi Jr. He questioned why he and others are restricted from accessing department lands in Moomomi and are required to obtain verbal approval; whereas, previously, approval was always granted. The situation has escalated and additional stipulations have been implemented. S. Makaiwi Jr. said he was born on Molokai, like his parents. This is the first time for him to exercise his right to freedom of speech. His conviction in life is to teach his children the value of education. He said that the ocean is like a fun factory, where one goes to enjoy and gather food. His background is with the military where he spent 38 years as a combat sniper/instructor. His issue today is being denied a Right-of-Entry to enter another property at Moomomi Beach, which belongs to The Nature Conservancy (TNC).

W. Kahololaa explained that TNC staff and visitors cross onto DHHL lands, then Molokai Ranch lands, in order to access their property. Molokai Ranch provided TNC a portion of Moomomi lands, and that hundreds of travelers from the mainland traverse over DHHL lands without permission. However, he and others are being denied the same rights as others who are crossing these lands. He and others want equal access to cross over DHHL lands and other lands to reach Moomomi. Godfrey Akaka said that TNC has teamed-up with Hui Malama o Moomomi (Hui Malama) and are limiting their access. G. Akaka referenced the Hawaii State Constitution, Article 12, Section 7, which addresses traditional gathering rights of Hawaiians, and he is being denied that right to gather. Propaganda is being spread that Moomomi resources are being depleted. He denies that and will continue to perpetuate his way of life, in order to care for and feed his family.

Commissioner DaMate said she was aware that Hui Malama was practicing a konohiki (fishing rights under control) style of preservation or kapu system to protect the lobster and the limu, which allows families to fish during certain periods of time. From what she was told, it was never the intention to block any native Hawaiian from gathering food. W. Kahololaa said Hui Malama has no data to validate that statement. He said that Hui Malama wanted to manage from Pelekunu to Ilio Point through a Molokai community-based, resource-management plan, but it did not materialize. He said that Hui Malama no longer exists. Palaa Moku and Aha Kiole were other names used with the same self-appointed organization, added W. Kahololaa. He said that

98% of the community does not support Aha Kiolo o Molokai. He recommended that TNC use other entries to their property. The Chair recommended that a letter be written, expressing these concerns.

Commissioner Davis said a meeting that he attended at the University of Hawaii (UH) addressed native Hawaiians rights. He sees the correlation between both situations. He asked Deputy AG Iha for a ruling on the matter. Deputy AG Iha said he would need to review it, but added that gathering is generally a constitutional right which applies to undeveloped land. G. Akaka reiterated that the Hawaii State Constitution, Article 12, Section 7 protects native Hawaiian rights for subsistence, cultural, and religious purposes, for those who inhabited these Hawaiian Islands prior to 1778. The Chair said she would require additional background on TNC's role and how it impacts the beneficiaries, in order to see what the next steps are.

RECESS 1:15 p.m.

RECONVENE 1:55 p.m.

## **F - LAND MANAGEMENT DIVISION**

### **ITEM F-1 Approval to Issue Right-of-Entry Permit, Department of Land and Natural Resources – Division of Forestry and Wildlife, Aina Mauna, Hawaii**

#### RECOMMENDATION

Land Management Administrator Linda Chinn recommended approval by the commission of a Right-of-Entry permit to the Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife (DOFAW) to enter onto portions of Hawaiian home lands at Aina Mauna/Humuula, to replace approximately 5.5 miles of an existing fence line that separate their lands from the department lands at Piihonua makai and allow them to store fencing material at the Humuula Sheep Station, subject to conditions listed.

#### DISCUSSION

Two years prior, DLNR asked to replace the fencing on the mauka side, between the department's property and the Mauna Kea Observatory. Today's request will completely replace the existing fence line on the portion where Waiakea Forest Reserve exists. L. Chinn expressed that the department has a good rapport with DOFAW personnel. DOFAW affords a forest ranger, at the entrance, to ensure all hunters have permits to enter the lands.

#### MOTION/ACTION

Moved by Commissioner Davis, seconded by Commissioner Sheehan. Commissioner DaMate recused from voting on this item. Motion carried. Commissioner DaMate recused from voting.

### **ITEM F-3 Approval to Issue Right-of-Entry Permit, Nextera Energy, Kahikinui, Maui**

#### RECOMMENDATION

Land Management Administrator L. Chinn recommended issuance of a Right-of-Entry to Nextera Energy Resources for placement of a Sonic Detection and Ranging (SODAR) wind monitoring device at Kahikinui, for \$100 per month for two years. The SODAR is a mobile unit, and it has not been determined where it will be placed.

MOTION/ACTION

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

**ITEM F-5 Ratification of Defaults and Revocation, Statewide**

DISCUSSION

Land Management Administrator Linda Chinn recommended ratification of the notices of default against those who failed to cure defaults within a prescribed time. She noted that Lease 146, WKL Enterprises, submitted payment of \$2,850 and now has a balance of \$2,850. This particular lessee pays at the end of a three-month period. Prior to this new monthly billing method, invoicing was done quarterly. GL No. 205, Kawaihae Millwork, was shut down after the recent passing of Mr. Felton. Mr. Felton had a judgment on his income from a lawsuit where all the money he had was paid towards a garnishment.

MOTION

Moved by Commissioner Gomes, seconded by Commissioner Sheehan.

DISCUSSION

Mr. Felton's family is attempting to dissolve the business, settle his assets, and clear all of his delinquencies. In the meantime, the lease is being surrendered back to the department within the next two months, noted L. Chinn.

ACTION

Motion carried unanimously.

**ITEM F-6 Ratification of Actions Taken by Chairman, Hawaiian Homes Commission, Statewide**

MOTION/ACTION

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

**ITEM F-7 Approval to Execute Right-of-Entry and Right-to-Purchase Agreement with Campbell Company LLC, East Kapolei, Oahu**

RECOMMENDATION

Land Management Administrator Linda Chinn requested approval for the Chairman to execute a Right-of-Entry and Right-to-Purchase Agreement with James Campbell Company LLC (Campbell), subject to the final review and approval by the Department of the Attorney General. A copy of the Right-of-Entry and Right-to-Purchase Agreement is attached as Exhibit A.

MOTION

Moved by Commissioner Davis, seconded by Commissioner Gomes.

DISCUSSION

L. Chinn said there are two maps attached to the submittal, which display 67 acres of land released to DeBartolo. To access the DeBartolo site from Roosevelt Avenue, the lands of three landlords would need to be crossed; one is owned by the State Department of Transportation (DOT) representing the Hawaii Railroad line; another is a strip of land which DLNR (State Department of Land and Natural Resources) owns and they will provide an easement to access the property. The department is seeking to purchase a strip of land from Campbell, which will

allow a Right-of-Entry to DeBartolo to complete its due diligence in designing the roadways in order to enter the property. Currently, there is no road. The initial access of the Phase 1 shopping center is through a little road. This agreement will allow DHHL to get on the property to initiate the design of the road, which is the Right-of-Entry. Then too, DHHL is seeking to purchase a strip of land from Campbell for future access when Phase 2 is ready to develop and where additional access points are needed. The purchase price is \$50,000. The Right-of-Entry will end in December 2015. HECO (Hawaiian Electric Company) is also interested in the underground utility easement. Whoever gets there first will acquire the property from Campbell, added L. Chinn.

ACTION

Motion carried unanimously.

**ITEM F-8 Approval to Execute Memorandum of Understanding with Hawaii DeBartolo, LLC, East Kapolei, Oahu**

RECOMMENDATION

Land Management Administrator Linda Chinn recommended authorizing the Chair to execute a Memorandum of Understanding (MOU) with Hawaii DeBartolo, LLC (DeBartolo), subject to the final review and approval by the Department of the Attorney General, on the agreement of terms and conditions by which the Department of Hawaiian Home Lands (DHHL) will proceed with the acquisition of the Campbell remnant parcel.

MOTION

Moved by Commissioner Gomes, seconded by Commissioner Davis.

DISCUSSION

L. Chinn said that the department is transferring to DeBartolo all the conditions and requirements set forth by Campbell in this in the Right-of-Entry and Right-to-Purchase Agreement. Compliance with the conditions and requirements will rest with DeBartolo. Performance of the survey of the parcel towards its acquisition will not require department funds or anything to do with the subdivision.

ACTION

Motion carried unanimously.

MOTION/ACTION

Moved by Commissioner Gomes, seconded by Commissioner Sheehan, to adjourn to executive session. Motion carried unanimously.

RECESS

2:35 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 following matter.

1. In the Matter Regarding Leonard Low

MOTION/ACTION

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

RECONVENE            3:20 p.m.

MOTION/ACTION

Moved by Commissioner Tassill, seconded by Commissioner Sheehan, to recess the meeting until 10:00 a.m. tomorrow.

RECESS                3:20 p.m.

**HAWAIIAN HOMES COMMISSION**  
**Minutes of April 22, 2014**  
**Meeting Held in Kalamaula, Molokai**

The 650<sup>th</sup> Regular Monthly Meeting of the Hawaiian Homes Commission was reconvened at Kulana Oihi Conference Room, 600 Maunaloa Highway, Kalamaula, Molokai, on Tuesday, April 22, 2014, beginning at 10:30 a.m.

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

**EXCUSED** J. Kama Hopkins, Commissioner, Oahu  
Michael P. Kahikina, Commissioner, Oahu

**COUNSEL** Matthew Dvonch, Deputy Attorney General

**STAFF** Darrell Young, Deputy to the Chair  
Linda Chinn, Administrator, Land Management Division  
Dean Oshiro, Acting Administrator, Homestead Services Division  
Puni Chee, Administrator, Information and Community Relations Office  
Shelly Carreira, Land Agent, Land Management Division  
Gerald Lau, Loans Collection Specialist, Homestead Services Division  
Paul AhYat, Hearings Officer Assistant  
Kip Akana, Enforcement Officer  
Elaine Searle, Secretary to the Commission

**MINUTES**

Commissioner Davis moved, seconded by Commissioner Gomes, to approve the minutes of March 18-19, 2013. Motion carried unanimously.

**B - PUBLIC TESTIMONY ON AGENDIZED ITEM**

**ITEM B-3 - Wade Lee, Re: J-2,**

W. Lee is a 4<sup>th</sup> generation homesteader from Hoolehua and one of the founders of Hui Malama o Moomomi (Hui Malama). He said that fishermen have always maintained the right to fish along the coastline around Molokai and that right has never been relinquished. In the Molokai Regional Plan, Hui Malama was one of the resource management groups along with The Nature Conservancy (TNC) to manage areas from Ilio Point to Pelekunu. Because of the success of the management plan, individual land owners solicited their help. Konohiki (land or fishing rights under the control of a an overseer) provided an opportunity for those wanting to fish. There is enough fish for everyone to gather, and that is why the konohiki was devised; to place a kapu on different species at different times. He added that Hui Malama has been in existence since 1995.

The grass and hina kahakai (low, spreading beach plant with clustered, silvery leaves used for tea and medicine) have been replenished and no erosion of coral is evident when entering the ocean. A road was rerouted to aid in eliminating the dirty opala (rubbish) from entering the ocean. Fencing was added because heavier 4-wheel drive vehicles were killing certain vegetation. Hui Malama was unable to continue the management of Moomomi because of liability insurance costs, thus, it was returned to the department to manage. He challenged those who frequent the area to become resource managers, to care for the lands, not be waha nui (big mouths) and take from the land. He asked that the land be returned to Hui Malama to care for and to manage again, and have the department assume insurance liability costs. He requested for the Master Plan to be revamped.

The Chair inquired whether there is a formal relationship between Hui Malama and TNC. W. Lee explained that Hui Malama sits on a board with other land Trusts. He conveyed that fences were cut at Moomomi, to gain fishing access through TNC lands. Violators were caught and are now present, to request access to the ocean. He said the reason why TNC stopped offering passes is because the honu (turtle) started to breed. Commissioner DaMate inquired if anything can be done to protect the Moomomi area. She requested to have this item addressed, again, later.

Commissioner Davis elaborated on the Moomomi gate. He said there is a fear of having a gate in this day and age, as the Molokai Ranch syndrome that everything was “kapu” (keep out) and every gate was locked. It is a sensitive subject with the Molokai community. He believes the community should take the initiative to become one, as a people, and take care of this aina. The younger generation of people have somewhat drifted from the love of the land. Kupuna need to teach the younger generation, but one has to have access to the land, in order for this teaching to be passed on. Commission Tassill said it is the responsibility of the benefactor to step up to the plate, to listen to the community, and to carry out what the beneficiary has entrusted to them. Other places are faced with similar situations, not only Moomomi. The liability issue prevents one from moving forward. We need to get back to the past and begin all over again.

#### **B-4 - William “Yama” Kaholoaa, Re: Item F-2,**

W. Kaholoaa testified in support of the Molokai Homestead Farmers Alliance and stated that it is comprised of honest individuals. The homesteaders need to come together, as Commissioner Davis mentioned, and they need to work together in establishing whatever the alliance proposes.

#### **B-5 - Marlene Kammy Purdy, Former President of Ahupuaa o Molokai, Re: Item F-2,**

K. Purdy said there is a younger, newly elected Ahupuaa o Molokai (Ahupuaa) board comprised of ambitious leaders. The board is headed by Hoolehua homesteader Lynn DeCoite and many kupuna, including her, support their efforts. Previously, the Ahupuaa managed only the Lanikeha Hall, not the kitchen portion; but now, the new board members will endeavor to take over the entire kuleana of Lanikeha Hall bringing new energy and ideas.

### **LAND MANAGEMENT DIVISION**

#### **ITEM F-2 Approval to Issue Interim License Agreement – Molokai Homestead Farmers Alliance, Hoolehua, Molokai**

##### **RECOMMENDATION**

Land Management Administrator Linda Chinn recommended approval to issue an interim license agreement to Molokai Homestead Farmers Alliance (Farmers Alliance) for the purpose of



managing and maintaining the Lanikeha Community Center's community-based commercial kitchen, to include the meeting hall. The interim license agreement will allow the Farmers Alliance to secure funding and finalize its non-profit status, subject to conditions as listed in items 1 through 11.

#### MOTION

Moved by Commissioner Gomes, seconded by Commissioner Sheehan.

#### AMENDMENT TO RECOMMENDATION

L. Chinn recommended an amendment to the named licensee from Molokai Homestead Farmers Alliance (Farmers Alliance) to MHFA, Inc., the entity applying for the non-profit 501(c)(3) exemption.

Commissioners Gomes and Sheehan withdrew their motion to allow the changes to the amended recommendation.

#### MOTION

Moved by Commissioner Gomes, seconded by Commissioner Sheehan. Commissioner Davis recused from voting.

#### DISCUSSION

L. Chinn provided a background on the Lanikeha Center which was previously under management of the Molokai Community Service Council (MCSC). The Ahupuaa o Molokai (Ahupuaa) managed the community hall portion, and MCSC managed the kitchen portion. Occasionally, there were challenges with conflicting reservations by these two entities. After a meeting with the community, a proposal was agreed to have it under one entity. Lynn DeCoite, Hoolehua farmer, said it was time for the farmers to give back to the community, by having a facility that was attractive to the community and administered efficiently.

The facility will be used as a backup for an emergency shelter, as well. A GIA (Grant-In-Aid) grant for \$2.5 million was submitted to the legislature to aid in the renovation of the facility. L. DeCoite said they are seeking outside partnerships to help move this project forward, so that everyone can enjoy it. Farmers Alliance Vice-President Faith Tuipulotu, a Hoolehua homesteader, expressed her support in awarding this venue to the capable hands of the farming community. Farmers Alliance Treasurer Viola Lishman, another Hoolehua homesteader, deemed it a wonderful opportunity for farmers to add extra value by displaying products made by Hoolehua farmers. L. DeCoite introduced several members who supported the Farmers Alliance request.

This is a temporary interim agreement, noted L. Chinn, and once the 501(c)(3) status and financing are in place, the matter will come before the commission, again, to request conversion to a long-term license agreement. Any upgrades to the facility will be part of the conversion process. A beneficiary community informational meeting was held and the report appears as Exhibit C. There were 36 letters of support submitted for this project along with other verbal, community support. Material was submitted to be made a part of these minutes as exhibit A for Item F-2.

#### MOTION/ACTION

Moved by Commissioner Gomes, seconded by Commissioner DaMate, to adjourn to executive session to consult with its counsel. Motion carried unanimously.

**EXECUTIVE SESSION IN**            **11:15 a.m.**

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.

**EXECUTIVE SESSION OUT**            **11:30 a.m.**

**DISCUSSION**

Commissioner Sheehan inquired when will approval of the 501(c)(3) be anticipated. L. DeCoite expects it will take another few weeks. Commissioner Sheehan hoped that the Farmers Alliance can then proceed with the final approval. L. DeCoite foresees it being addressed before the commission within the next two months. Commissioner Ishibashi said this is a prime example of having farmers controlling their destiny, and he applauds their commitment to work towards this common goal. Commissioner Tassill described how alliance is a path, one path, kakou (all of us), and it should be spread throughout the entire state. Commissioner Gomes said she visited the site and saw much promise and vision for the community coming together. She deemed the use of the facility as an emergency shelter as appropriate because of its location at a high elevation. The Chair was recused from voting on the matter.

A roll call vote was taken.

<u>AE</u> (5)	<u>AOLE</u> (0)	<u>RECUSED</u> (2)	<u>EXCUSED</u> (2)
DAMATE		DAVIS	HOPKINS
GOMES		MASAGATANI	KAHIKINA
ISHIBASHI			
SHEEHAN			
TASSILL			

**ACTION**

Motion was carried.

**ITEM J-3    Request to Address the Commission – Harry Purdy**

**MOTION/ACTION**

None, for information only.

**DISCUSSION**

The Chair said that staff drafted a letter, for her review, based on testimony provided a year ago. Harry Purdy, a third generation homesteader in Hoolehua, appeared before the commission and read a statement by Prince Jonah Kuhio Kalaniana'ole about returning the Hawaiians to the land. He asked whether the land that he lives on will allow him to perpetuate and sustain him. At last year's presentation, he provided a power point that featured everything he accomplished on his land; the 5 acres he lives on, and the 35 acres he has from the department under a revocable permit. He is awaiting response for the 35 acres of agricultural lands he has utilized over the past 10 years. He pointed out in the Hawaiian Homes Commission Act (HHCA), Section 7, it states that the department is "authorized to lease to native Hawaiians, the right to use occupancy of a tract or tracts of Hawaiian home lands within the following acreage per each lessee of not more than 40 acres of agricultural lands." Forty-acre tract lots on Molokai were given out in the 1920's. His lot was then Lot 4. Today, it is known as Lot 4-a and Lot 4-b. He indicated the HAR (Hawai'i Administrative Rules) Section 10-3-25 outlines how the department can provide additional acreage to native Hawaiians. A lessee of an agricultural or pastoral lot may apply for additional acreage of the same class, (he acquired 5 acres of agricultural lands) and, a lessee shall

be eligible for lot selection provided the lessee has actively cultivated and used the agricultural or pastoral lot and is in compliance with all terms and conditions. He deemed he accomplished these requirements. He has not yet received a response to his request. He should not complain after paying \$400 annually for an (RP), but he would prefer paying \$1. The macadamia nut farm has been operating for 30 years, and the 35-acre parcel for the past 10 years. He would like to realize a 100% profit for the additional macadamia trees and successfully pass the land down to his grandchildren. He wants the department to allow him to work there, not only to live there. The Chair apologized for the initial request to go unanswered and asked if by giving him the land, would it deny the next applicant on the waitlist.

H. Purdy explained that Gladys Kupau had the original 40-acre lease, and when pineapple declined, she decided to return the 35 acres to the department in 1968, since she and her family could no longer maintain the lot. Frank Kupau, her son, was the lessee of record when Gladys Kupau passed away. He blocked off the back portion of the 35-acre of land from the 5 acre front portion, leaving no access to the back portion. H. Purdy requested that the lots be rejoined and returned to the original 40-acre lease. He would forgo reimbursement for plantings, water lines, and a water meter that he installed. The Chair acknowledged that accountability for responding to his request lies with the department. Marlene Kamuela Purdy (Kammy Purdy) introduced herself as H. Purdy's wife and spoke in support of her husband's wishes. She would like to set a precedence to have this land stay in their family, mimicking Native American Indians who received their land in perpetuity. Each member of the Purdy family is responsible and understands the value of hard work. The Chair said there will be a decision by this administration by the end of the next month, and if it can be agendized then. She will consult with Molokai Commissioner Davis on the matter. H. Purdy recommended that the commission visit the agricultural lands and take note of how 50 to 70% of the lands are not being utilized. Commissioner DaMate said this is impacting three generations and she would strongly recommend that the commission take a stand to support it. Commissioner Tassill concurred and recognized another third-generation family of Molokai Acting District Supervisor Halealoha Ayau, whose grandfather was Papa Ayau. Commissioner Davis gave his support to the Purdy family and that of James Duvauchelle who requested for a land swap.

## **ITEM J-1 Request to Address the Commission – Mahealani Kahanaoi**

### MOTION/ACTION

None, for information only.

### DISCUSSION

M. (Asing) Kahanaoi introduced both she and her younger sister Kanani Marshall. Both sisters grew up in their Papakolea homestead lot. Mehealani said she and her older sister (Williamae) had a misunderstanding, and Mahealani was forced to move from her father's home in Papakolea as Williamae was awarded her father's lease. In the process of moving, she discovered a copy of her father's (W. Kahau) lease and conveyed that the lease was actually a one-acre parcel, not the 7,732 sq. ft. parcel that the department stipulates it to be. She said the lease document the department has is an altered document, and her copy is the same as the original document.

M. Kahanaoi provided a history of the original Moreira property, which was transferred in 1952 to the department. Margaret Moreira, the original owner, held a general lease and built three (3) homes on a portion of the 33-acre parcel; two of which she rented out. When W. Kahau was given the lease in 1970, he demolished the other two homes and he and his family lived in the third home, while a new home was built. M. Kahanaoi said the department initiated a plan to build 12 homes on the Moreira property and needed an easement, thus the reason her father's lot was cut down to 7,732 sq. ft.

M. Kahanaoi said she remembered that her father had the lease pinned to the wall for years, until the department threatened to cancel his lease because he delayed completing the signing of a new lease number. When a copy of the signed lease was returned to them, it described the property as being 7,732 sq. ft. In January 1971, W. Kahau did sign the lease but did not sign a successorship. He passed away in 2001. When Mrs. Kahau appeared at the department to sign as his successor, she refused to sign as she challenged the lease to be one acre, not 7,732 sq. ft. lot. M. Kahanaoi said her mother was denied an opportunity to challenge this discrepancy in the lease, and till her passing away in 2009, Mrs. Kahau did not sign the lease. In 2010 all four siblings appeared before the commission to request a contested case hearing. A hearing occurred and the eldest sister signed the 7,732 sq. ft. lease, without her siblings' knowledge. A court hearing was held and the lease was awarded to her eldest sister Williamae. M. Kahanaoi is here to inform the commission that her older sister has abandoned the home.

At a recent community meeting in Papakolea, a plan was devised to clear the area above Moreira Street to build additional homes. She noted that the area that includes the Moreira property is forestry land that contains a watershed. If the land is cleared, it will be devastating for the homesteaders, as the rains will likely deluge Tantalus Drive.

The Chair asked M. Kahanaoi who is the lessee on record to her father's property. M. Kahanaoi confirmed that her eldest sister has the lease. The Chair questioned whether she is in litigation with her sister. M. Kahanaoi did not respond. The Chair noted that this matter has appeared three times before the commission and a contested case hearing has already determined the outcome. She asked Acting Administrator Dean Oshiro of Homestead Services Division to explain the circumstances of this case. D. Oshiro said that a hearing was conducted and a decision was made by the commission several years ago that qualified Williamae Alama (M. Kahanaoi's eldest sister) to become the rightful lessee of that property.

M. Kahanaoi reiterated that her eldest sister abandoned the property and continues to dwell at her current residence of 30 years. The Chair asked whether a request was made to conduct an investigation into the alleged lease violation for lack of occupancy. M. Kahanaoi said no one expected something like this would occur. In terms of the lease investigation, the Chair said the department can pursue an investigation based on the points raised.

M. Kahanaoi accused the staff of collusion and fraud, in preventing her and her family to view the lease records. She feels connected to the land and wants closure; otherwise, she is prepared to sue. K. Marshall asked if counsel is necessary in a contested case hearing. The department is one of the parties, and in some cases is represented by a Deputy Attorney General. An individual in a contested case hearing can also have counsel present. It appears that a decision was made in a talk story session with Hearings Officer Boyd Mossman which M. Kahanaoi and K. Marshall attended.

#### MOTION/ACTION

Moved by Commissioner Davis, seconded by Commissioner Sheehan, to adjourn to executive session. Motion carried unanimously.

#### EXECUTIVE SESSION IN            1:30 p.m.

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.

#### EXECUTIVE SESSION OUT            2:00 p.m.

**EXECUTIVE SESSION IN            2:05 p.m.**

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.

1. AG Opinion No. 14-1 – Management and Dispositions of Geothermal Resources on DHHL Lands

**EXECUTIVE SESSION OUT            2:30 p.m.**

**ANNOUNCEMENTS AND ADJOURNMENT**

**NEXT MEETING**


Next regular meeting is in Kamu'ela, Hawai'i, May 19, 2014. A community meeting will be held on May 19, 2014 at Prince Kuhio Hale, Kamu'ela, Hawai'i at 6:00 p.m.

**MOTION/ACTION**

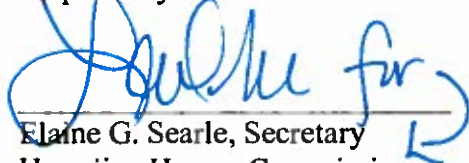
Moved by Commissioner Gomes, seconded by Commissioner Tassill, to adjourn the regular meeting. Motion carried unanimously.

**ADJOURNMENT                            2:31 p.m.**

Respectfully submitted:

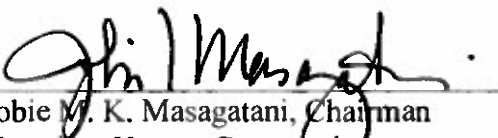
  
\_\_\_\_\_  
Jobie M. K. Masagatani, Chairman  
Hawaiian Homes Commission

Prepared by:

  
\_\_\_\_\_  
Elaine G. Searle, Secretary  
Hawaiian Homes Commission

APPROVED BY:

The Hawaiian Homes Commission  
At Its Regular Monthly Meeting On

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