

**HAWAIIAN HOMES COMMISSION**  
**Minutes of July 21 and 22, 2014**  
**Meetings held in Hale Ponoī, Kapolei, Hawai‘i**

Pursuant to proper call, the 653rd Regular Meeting of the Hawaiian Homes Commission was held at the Department of Hawaiian Home Lands, 91-5420 Kapolei Parkway, Kapolei, Hawaii, beginning at 9:30 a.m.

**PRESENT**

Jobie M. K. Masagatani, Chairman  
Gene Ross K. Davis, Commissioner, Molokai  
Doreen N. Gomes, Commissioner, Maui  
Wallace A. Ishibashi, Commissioner, East Hawaii  
David B. Kaapu, Commissioner, West Hawaii  
Michael P. Kahikina, Commissioner, Oahu  
William Richardson, Commissioner, Oahu  
Renwick V. I. Tassill, Commissioner, O‘ahu  
Vacant, Commissioner, Kaua‘i

**COUNSEL**

Craig Iha, Deputy Attorney General  
Diane Taira, Deputy Attorney General

**STAFF**

Darrell Young, Deputy to the Chairman, Office of the Chair  
Norman Sakamoto, Development Officer, Office of the Chair  
Kamanao Mills, Special Assistant, Office of the Chair  
Niniau Simmons, NAHASDA Manager, Office of the Chair  
Rodney Lau, Administrative Services Officer  
Linda Chinn, Administrator, Land Management Division  
Kahana Albinio, Property Development Supervisor, Land Management Division  
Puni Chee, Administrator, Information & Community Relations Office  
Blaine Fergerstrom, Community Development Specialist, ICRO  
Francis Apoliona, Compliance Officer  
Kip Akana, Enforcement Officer  
Paul Ah Yat, Enforcement Office  
Kaleo Manuel, Acting Manager, Planning Office  
Ulu Lota, Legislative Analyst, Planning Office  
Bob Freitas, Planner, Planning Office  
Gigi Cairel, Grants Specialist, Planning Officer  
Nancy McPherson, Planner, Planning Office  
Andrew Choy, Planner, Planning Office  
Dre Kalili, Policy & Program Analyst, Office of the Chair  
Dean Oshiro, Acting Administrator, Homestead Services Division  
Juan Garcia, Supervisor, Oahu District Office  
Sandra Pfund, Administrator, Land Development Division  
Stewart Matsunaga, Community Development Manager, Land Development  
Elaine Searle Secretary to the Commission

**ORDER OF BUSINESS**

**CALL TO ORDER**

Chair Masagatani called the meeting to order at 9:38 a.m.

Note: Commissioner William Kahele Richardson was sworn in as one of three O‘ahu Commissioners prior to the start of the meeting. Commissioner Sheehan submitted a letter of resignation leaving the Kaua‘i Commissioner position vacant. Until a replacement is found the commission will be a body of eight (8) members.

## **APPROVAL OF AGENDA**

Chair Masagatani noted the approval of Minutes for May 2013 and Item F-1 was moved to Tuesday.

## **MOTION/ACTION**

Commissioner Gomes moved, seconded by Commissioner Davis, to approve the agenda. Motion carried unanimously.

## **PUBLIC TESTIMONY ON AGENDIZED ITEMS**

### **ITEM A-1: Germaine Meyers, Re: Item G-1.**

G. Meyers is a lessee of Nānākuli homestead. She expressed concerns about meeting minutes being approved and available in a timely manner. She asked for an explanation of why the minutes are more than a year behind.

G. Meyers stated she attended all four O‘ahu Island Plan meetings and outlined concerns regarding traffic and quality of life for native people. She is also opposed to all proposed development in the Kona Moku until existing infrastructure and traffic problems are mitigated. The O‘ahu Island Plan is missing concerns about the department’s revocable permit program awarding to non-Hawaiians at low prices before native Hawaiians.

### **ITEM A-2: Kimo Kelii, Re: Item G-1.**

K. Kelii is a fourth generation flower grower on the Waianae Coast. He attended regional plan meetings in Nānākuli and is disappointed that the mana‘o from those meetings was not integrated into the O‘ahu Island Plan. He asked the department to seriously consider taking over the navy base for the beneficiaries of the trust. He expressed concern about the department’s revocable permit program and felt the department was negligent in evaluating and administering its policies.

K. Kelii added that commissioners should be addressed formally because the informal nature of the Hawaiian culture can lead to favors and decisions that affect the lives of beneficiaries.

### **ITEM A-3: Jocelyn Doane, Senior Policy Analyst Office of Hawaiian Affairs Re: Item G-2.**

J. Doane testified on behalf of the Office of Hawaiian Affairs in support of the department’s Water Policy Plan. OHA commended the HHC and DHHL staff for their initiative and investment in developing a comprehensive Water Policy Plan. She added the department did well with its outreach efforts informing its beneficiaries statewide of important water rights and legal principles. The plan is a critical first step in ensuring that DHHL can use its limited resources to pursue its goals in an efficient and sustainable manner.

### **ITEM A-4: Mililani Trask, Re: Item C-1.**

M. Trask served as a member of the Federal-State Task Force on Hawaiian Home Lands. She was qualified as an expert before the Senate Committee on Insular Affairs. Commissioners have an obligation to the small “n” Hawaiians, as defined in the Admissions Act, Section 4. The

Department of Interior's proposed rule changes refer to the large "N" Hawaiians. There is a longstanding oversight trust obligation to DHHL and its lessees and beneficiaries. The federal government has not met that obligation. NAHASDA was a struggle because folks were saying Hawaiians don't have self-determination because Hawaiians aren't a tribe. They were wrong, the funding came without a rule change, and it took 20 years to get.

Commissioners need to stand up and seek entitlements from the Department of Agriculture and the Department of Energy. She estimated that there are 87,000 native Hawaiians left, and 25% are on DHHL's waiting list. Commissioners have an obligation to the 87,000 and should be focusing on getting federal entitlements for them. She is not opposed to getting federal entitlements, but the commission needs to focus on its own beneficiaries and securing those entitlements first. NAHASDA is the only federal entitlement the department has right now. She is not opposed to federal recognition, but the commission needs to focus.

Chair Masagatani summarized that M. Trask is not opposed to the policy of federal recognition, but the process that the DOI outlined is not appropriate for Hawaiians, given our history and experience. M. Trask agreed and added DHHL are the only ones in the state that can stand up and say the federal government already has a trust obligation and a previous relationship with DHHL. DHHL has already demonstrated that under NAHASDA what DHHL does with its beneficiaries is already self-determination and you want similar rights and entitlements to energy and agriculture money.

**ITEM A-5: Tamar DeFries, Re: Item C-1**

T. DeFries testified on behalf of Hui Makaainana a Kalawahine in requesting DHHL not take a position on the Department of Interior's proposed rulemaking for federal recognition. It is not clear how the proposal will impact the Hawaiian Homes Commission Act, 1920, as amended, DHHL lessees, and DHHL lands. She believes those most vulnerable to the impact of the proposed rules are those who are already on the homestead. Other people are making decisions that affect beneficiaries without consultation. She asks that DHHL and the Commission partner with the lessees to find the best way to protect and further the trust by engaging DOI in consultation and on their terms.

DHHL already has a trust obligation and has had one since 1921. There are too many people on the waitlist to not demand the entitlements that are based on law already. The federal government should already be funding DHHL programs.

**ITEM A-6: Reginald Harris, Re: Item D-10**

R. Harris is an attorney testifying on behalf of Frank Kawaiakapuokalani Hewett. F. Hewett supports the cancellation of the lease of Alexander W. Winchester and that DHHL order an appraisal so the net proceeds of the improved value be paid to the estate of Alexander W. Winchester. His client is the sole beneficiary named in Mr. Winchester's will. Mr. Winchester specifically disinherited his siblings in his will.

**RECESS**

**10:58 a.m.**

**RECONVENE**

**11:11 a.m.**

**WORKSHOPS**

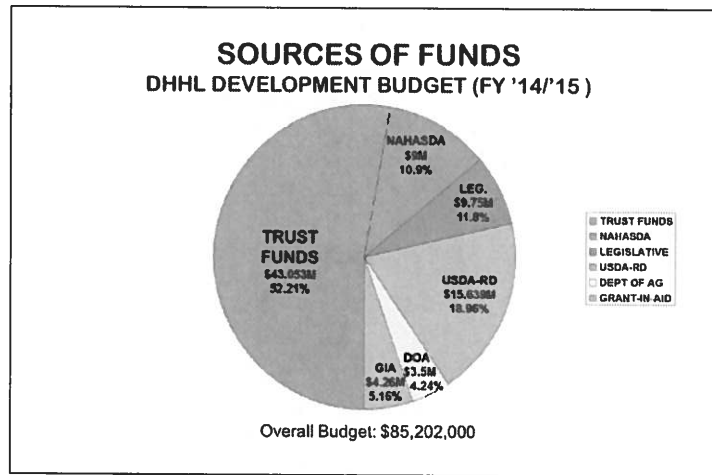
**ITEM B-1      FY 2014-2015 Development and Trust Fund Budget**

## RECOMMENDATION

None. For information only.

## DISCUSSION

Administrative Services Officer Rodney Lau and Land Development Division Administrator Sandra Pfund presented the following workshop.



S. Pfund reviewed the islandwide projects existing and new.

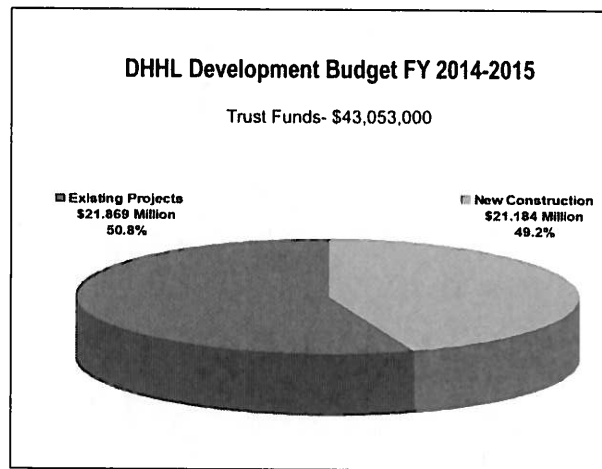
<p style="text-align: center;"><b>Land Development Division</b></p> <p style="text-align: center;"><b>Proposed Development Budget</b></p> <p style="text-align: center;"><b>Fiscal Year 2014-2015</b></p> <p style="text-align: center;">July 21 &amp; 22, 2014</p>	<p style="text-align: center;"><b>Trust Fund Development Budget</b></p> <p style="text-align: center;"><b>New Project Development</b></p> <ul style="list-style-type: none"><li>ISLANDWIDE PROJECTS (New): \$ 11,177,000</li><li>STATEWIDE PROJECTS (New): \$ 6,306,000<ul style="list-style-type: none"><li>Scattered Lots Program</li><li>UH Model Home Project</li><li>HIFDC Payments (GET Exemption Fees)</li><li>Federal Funds Reimbursements</li><li>Legal Services</li></ul></li><li>OTHER: \$ 3,701,000<ul style="list-style-type: none"><li>Interim Construction Financing</li></ul></li><li><b>NEW PROJECTS (TOTAL): \$ 21,184,000</b></li></ul>
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<p style="text-align: center;"><b>Trust Fund Development Budget</b></p> <p style="text-align: center;"><b>Existing Project Development and Maintenance</b></p> <ul style="list-style-type: none"><li>Maintenance of DHHL Common Areas (Statewide): \$ 2,557,000</li><li>Maintenance of Common Areas Pending Conveyance to the County: \$ 1,760,000</li><li>Infrastructure &amp; Structural Remediation for Existing Homesteads (Statewide): \$ 6,801,000</li><li>HIFDC Payments (Land Transfer Agreement and Maluhai Payments): \$ 1,733,000</li><li>Mitigation Work Within Existing Projects: \$ 8,018,000</li><li><b>EXISTING PROJECTS (TOTAL): \$21,869,000</b></li></ul>	<p style="text-align: center;"><b>RECAP</b></p> <p style="text-align: center;"><b>FY '14/'15 Trust Fund Development Budget</b></p> <table><tr><td><b>LAND DEVELOPMENT DIVISION</b></td><td></td></tr><tr><td>Part A (New Projects):</td><td>\$ 17,483,000</td></tr><tr><td>Part B (Existing Projects):</td><td>\$ 18,388,000</td></tr><tr><td><b>OFFICE OF THE CHAIRMAN</b></td><td>\$ 6,930,000</td></tr><tr><td><b>PLANNING OFFICE:</b></td><td>\$ 250,000</td></tr><tr><td><b>HOMESTEAD SERVICES DIVISION</b></td><td>\$ 2,000</td></tr><tr><td><b>LAND MANAGEMENT DIVISION:</b></td><td>\$ 0</td></tr><tr><td><b>TOTAL TRUST FUND DEVELOPMENT BUDGET:</b></td><td><b>\$ 43,053,000</b></td></tr></table>	<b>LAND DEVELOPMENT DIVISION</b>		Part A (New Projects):	\$ 17,483,000	Part B (Existing Projects):	\$ 18,388,000	<b>OFFICE OF THE CHAIRMAN</b>	\$ 6,930,000	<b>PLANNING OFFICE:</b>	\$ 250,000	<b>HOMESTEAD SERVICES DIVISION</b>	\$ 2,000	<b>LAND MANAGEMENT DIVISION:</b>	\$ 0	<b>TOTAL TRUST FUND DEVELOPMENT BUDGET:</b>	<b>\$ 43,053,000</b>
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S. Pfund added the U.S. Fish and Wildlife has a pending designation of critical habitat for one of the department's parcels in La'i Opuia. This could affect the budget in terms of loss of land for housing development and/or increased funding required for mitigation of those sites. It is an ongoing negotiation.

Chair Masagatani stated the \$3.7M line item titled interim construction financing is for two potential projects, one with the Office of Hawaiian Affairs and the other with the U.S.

Department of Agriculture Rural Development (USDA-RD). The OHA proposal was for a shared interim construction financing product offered 0%. The other is for the East Kapolei IIB project, there were challenges in the way the title transferred over to DHHL. This line item is intended to be a mechanism to keep the project moving forward while a resolution is being worked out with USDA-RD.



## **ITEMS FOR DECISION MAKING**

### **PLANNING DIVISION**

#### **ITEM G-4 Resolution of Appreciation No. 278 – Darrell Yagodich**

##### **RECOMMENDED**

Acting Planning Program Manager Kaleo Manuel presented the following:  
Motion to adopt Resolution of Appreciation No. 278 honoring Mr. Darrell Yagodich.

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

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

##### **DISCUSSION**

K. Manuel read the resolution including the following excerpts:

WHEREAS, Darrell C. Yagodich directed and managed staff regarding federal initiatives and federal policy that forged a better understanding of the Department of Interior's role and relationship to the Department and which sought new federal funding sources, including \$400 million in HUDFHA loans, \$100 million in HUD-NAHASDA funding, and USDA-RD loans, self-help housing grants, and water and wastewater grants and loans; and

WHEREAS, Darrell C. Yagodich headed a special team created in 1990 to define and assert Department claims against the federal and state governments, which in 1995 resulted in the transfer of 16,518 acres of state land and 97 5 acres of federal land to the Trust and over \$600 million dollars of cash payments to the Trust; and

WHEREAS, Darrell C. Yagodich has mentored many planners through a special managerial style, characterized as being: a facilitator, a patient manager, an excellent listener who really cares for his staff, and a manager with a gentle touch that empowers his staff to greater levels of achievement; and

WHEREAS, Darrell C. Yagodich has a deep love for the Hawaiian people and our homestead communities and has left a wealth of knowledge and literature and a planning legacy that will serve as the foundation for all future planning of the Hawaiian Home Lands Trust; and

WHEREAS, Darrell C. Yagodich has served the State of Hawai'i for forty years, and for thirty-five of those years he has served the Department of Hawaiian Home Lands with great wisdom, insight, dedication, and aloha, and he is revered by his colleagues, members of the Hawaiian Homes Commission, members of the Planning Office, and the trust's beneficiaries.

NOW, THEREFORE, BE IT RESOLVED, by Hawaiian Homes Commission on this 21<sup>st</sup> day of July, 2014, honoring Darrell C. Yagodich, in appreciation of his many contributions to the Department of Hawaiian Home Lands and for his years of Service to the Hawaiian Home Lands Trust; and

BE IT FURTHER RESOLVED, that this Commission commend and acclaim Darrell C. Yagodich for his lifetime of outstanding service and achievement as it has significantly advanced the mission and mandate of the Hawaiian Homes Commission Act and the vision and legacy of our Prince Jonah Kuhio Kalaniana'ole; and

**RECESS** **12:40 p.m.**

**RECONVENE** **1:00 p.m.**

**ITEM G-1 Adoption of Final Oahu Island Plan**

**RECOMMENDED**

Acting Planning Program Manager Kaleo Manuel and Planner Nancy McPherson presented the following: That the Hawaiian Homes Commission:

1. Adopt the O'ahu Island Plan (2104) and recommended land use designations identified by area on the attached; and
2. Authorize dissemination of the O'ahu Island Plan.

**MOTION**

Moved by Commissioner Richardson, seconded by Commissioner Davis

**DISCUSSION**

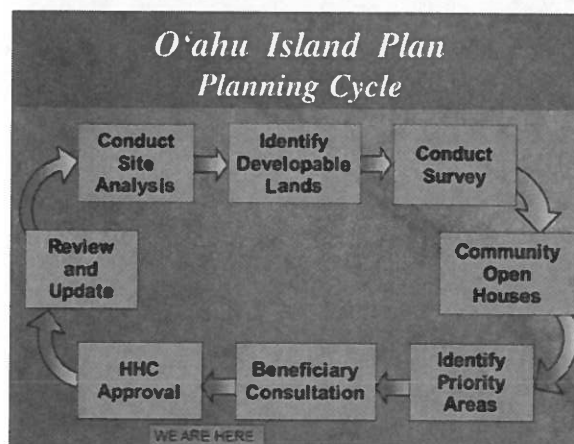
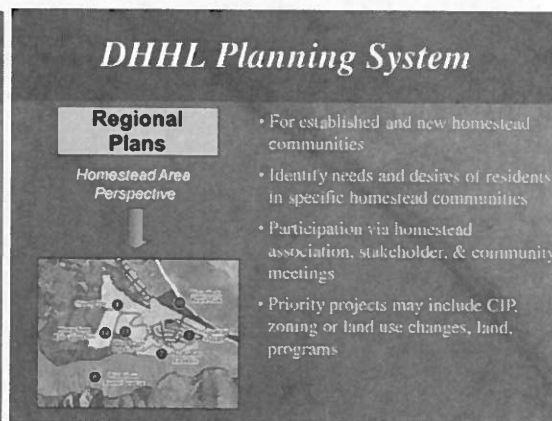
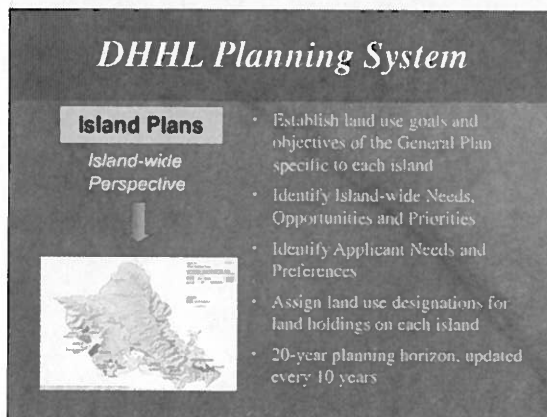
Purpose of the O'ahu Island Plan

The O'ahu Island Plan studies and plans for the overall growth and development potential of Hawaiian home lands on O'ahu from an island and regional perspective. It looks at major infrastructure needs and opportunities and aims to designate land uses for both homesteading and non-homesteading uses, as well as identifying priority areas for homestead development.

The O'ahu Island Plan provides baseline physical and demographic information; establishes land use designations to encourage orderly social, physical, and economic development; identifies priority areas for homestead development; and estimates the costs for both on-site and off-site infrastructure improvements for the priority areas.

Information provided in the O'ahu Island Plan will enable the Department of Hawaiian Home Lands, to better coordinate its developments with other State and County, as well as private sector projects, plans and activities. Benefits include providing opportunities to better coordinate major off-site infrastructure needs such as roads, water and sewer development. The plan defines

the DHHL's "foreseeable water needs" for use by the Commission on Water Resource Management and the City and County of Honolulu, pursuant to the State Water Code.



#### O'ahu Island Plan Goals

- Guide development of existing DHHL trust lands via land use designations
- Incorporate existing Regional Plan community priorities
- Evaluate need for additional lands
- Evaluate ways to increase densities
- Develop protocols for working with the City & County of Honolulu

#### O'ahu Island Plan Priorities and Recommendations

- Remaining O'ahu Inventory for Homesteading: 825 acres
- Over the Next 20 Years: 3,370 units

- Years 1 to 10: Kapolei 1,190 units
- Years 11 to 20: Wai‘anae Coast 655 units
  - Mā‘ili 270 units
  - Lualualei 130 units
  - Nānākuli Expansion/In-Fill 140 units
  - Wai‘anae Expansion/In-Fill 115 units
- Years 11 to 20: Waimānalo 15 units
- Years 15 to 20+: Nānākuli mauka 1,690 units
- Acquire Homestead-Ready Lands (Raw and Improved)
- Acquire Land in Areas Preferred for Homesteading:
  - Kapolei, Central, Windward, and Honolulu
- Alternative Housing Options to Increase Density
  - Duplex, Multi-Plex, Apartment
  - ‘Ohana Units, Rentals
- Alternative Agricultural Options to Increase Options to Farm

<h2 style="text-align: center;">O‘ahu Island Plan</h2> <h3 style="text-align: center;">Opportunities for Community Mana‘o</h3>	
<i>Applicant Preference Survey</i>	<i>Responses accepted March 12 to May 10 (App. A)</i>
<i>Open Houses</i>	<i>Daytime events held on April 20, 27, &amp; May 4 (App. B)</i>
<i>Beneficiary Consultation</i>	<i>Evening events held on July 16<sup>th</sup> (Waipahu HS), July 17<sup>th</sup> (Farrington HS) and July 18<sup>th</sup> (Kalaheo HS) (App. C)</i>
<i>Hawaiian Homes Commission and Community Meetings (Workshops &amp; Updates, including a Beneficiary Consultation Report)</i>	<i>Feb. 20, 2013 (Kapolei), Mar. 19, 2013 (Kapolei), Apr. 22, 2013 (Kapolei &amp; Waimanalo), Jul. 22, 2013 (Kaua‘i), Aug. 19, 2013 (Maui), Oct. 28, 2013 (Maui)</i>
<i>Hawaiian Homes Commission Meeting (Adoption of Final Plan)</i>	<i>Dec. 17, 2013 (Kapolei) (Deferred)</i>
<i>Additional Beneficiary Consultation</i>	<i>Feb. 10 (Mā‘ili), Feb. 11 (Kapolei), Feb. 12 (Waimānalo), Feb. 13 (Honolulu), 2014</i>
<i>Hawaiian Homes Commission Meeting (Informational Submittal)</i>	<i>June 16, 2014</i>
<i>Hawaiian Homes Commission Meeting (Adoption of Final Plan)</i>	<i>July 21, 2014</i>

Chair Masagatani stated the first round of consultations occurred before the final draft came to the commission in December 2013. There was a subsequent round of consultations done on the final plan with minor changes identified from the consultation process.

#### ACTION

Motion carried as stated. Commissioner Tassill voted: Yes-with Reservations.

#### **ITEM G-2 Adoption of Final Water Policy Plan**

#### RECOMMENDED

Acting Planning Program Manager Kaleo Manuel presented the following:

That the Hawaiian Homes Commission:

1. Adopt the Final Water Policy Plan (2104) (Exhibit A); and
2. Authorize dissemination of the Water Policy Plan (2014).



## MOTION

Moved by Commissioner Gomes, seconded by Commissioner Kahikina.

## DISCUSSION

### *Background and Purpose*

The necessity of water to the well-being of Hawaiians has been understood since ancient times.

M. Kaleo Manuel discussed the background and purpose for the Water Policy Plan.

### *Process*

The WPP was developed over the course of three years and involved various tasks and activities identified in Table I. The outcome of this work is the proposed Final Water Policy Plan.

### *Final Water Policy Plan*

The Final Water Policy Plan contains the following components:

1. A statement of a Vision and Mission for water;
2. Values related to water;
3. Policies;
4. Goals;
5. Delegation of Authorities and Reporting; and
6. Identification of Legal Authorities, Related Plans and Policies, References, and Definitions.

The vision statement reiterates the original intent and vision of the HHCA as it relates to water, and is composed of direct quotes from the HHCA. The mission statement contains language directly from, and is consistent with, the Act and the General Plan goals and objectives related to water resources approved by the HHC in 2002.

Values support the vision and mission, in providing "contextual lenses" for application of and compliance with policy statements. The values of the WPP are also common themes of beneficiary, Department staff, and HHC input and discussions that arose in the development of the policy.

Consistent with and driven by the values mentioned above, the policy statements of the WPP seek to achieve the mission and the vision related to water. These policy statements also comprehensively reference the kuleana and authorities of the Department and HHC related to water.

K. Manuel added staff was asked to prioritize the twelve policies into a smaller, more succinct list. The policies were reprioritized and arranged to the following:

### **Policies**

The HHC and the DHHL are seeking to be proactive in our management of water. Our Priority Policies are to:

1. Expressly determine and plan for future water needs and actively participate in broader water management, use and protection efforts in Hawai'i in order to secure water.
2. Aggressively exercise, reclaim, and protect Hawaiian home land water kuleana.
3. Develop, manage, and steward water in a manner that balances cost, efficiency measures, and public trust uses in the short and long term.
4. Affirmatively communicate our decisions, our reasoning, and our performance in managing, stewarding, and using water before and after making major water decisions.

Additionally, the HHC and the DHHL should consider in their work the following statements:

5. Educate beneficiaries, the DHHL, HHC, and other stakeholders continually on our water kuleana.

6. Foster self-sufficiency of beneficiaries by promoting the adequate supply of water for homesteading when developing or managing water.
7. Foster the self-determination of beneficiaries by seeking ways for beneficiaries to participate in the management of water by delegating authority related to water subject to the discretion of the HHC as described in the HHCA.
8. Make water decisions that incorporate traditional and place-based knowledge of our people and are clear and methodical in their reasoning.
9. Make efforts to understand, maintain, and improve the quality of water as it moves into and through our lands and is used by beneficiaries.
10. Affirmatively consider the development and use of alternative sources of water and efficiency measures in water decision-making.
11. Ensure that water decisions are consistent with other departmental policies, programs, and plans including but not limited to the energy policy and agricultural program.
12. Explicitly consider water availability and the costs to provide adequate water when developing new homestead areas, designating land uses, issuing land dispositions, or exchanging properties.

### **Goals**

To make progress on achieving our Mission and complying with our Policies, the Priority Goals of the HHC and the DHHL are to:

1. Affirmatively communicate with beneficiaries regarding water decisions, performance, and water rights on a regional and annual basis.
2. Aggressively, proactively, consistently and comprehensively advocate for the kuleana of the beneficiaries, the DHHL, and the HHC to water before all relevant agencies and entities.
3. Develop and manage a Water Assets Inventory (WAI).
4. Support watershed protection and restoration on DHHL lands and source areas for DHHL water.

Additional goals that DHHL and the HHC shall seek to achieve, based on the availability of resources, organized by Mission activities, are:

#### **Part I. Understand our trust water assets**

1. Revise the DHHL submittal template to the HHC for water related decisions.
2. Revise budgets to show the total costs of a) water system management b) all spending on water issues.
3. Staff and organize the DHHL consistent with importance of water to the trust.

#### **Part II. Plan for our water needs**

4. Determine current and foreseeable future needs based upon periodic reviews of water availability projections that incorporate climate change, projected beneficiary demand, alternative sources and efficiency measures.
5. Design homesteads and manage lands to create and enhance water availability, optimizing costs, use of alternative sources, and efficiency measures.

#### **Part III. Aggressively understand, exercise and assert our water rights**

6. Secure adequate and enforceable reservations of water for current and foreseeable future needs for all of its lands across the islands.
7. Partner with trust beneficiaries in water advocacy efforts.
8. Engage in updates to all Hawai'i Water Plan elements to ensure DHHL water needs and rights are addressed.
9. Advocate that all Water Use Permit Applications (WUPA) properly address the water rights of DHHL and other Hawaiian water rights.
10. Advocate that County Boards of Water Supply and other County agencies that affect water have the spirit of the HHCA faithfully carried out to protect DHHL water uses as a Public Trust use of water and manage rates so they are affordable by beneficiaries.
11. Ensure that all legal provisions for the licensing of state water are followed.

**Part IV. Develop and protect water sources**

12. Carefully weigh alternatives regarding the dedication or DHHL management of new water systems.
13. Methodically and consistently manage and allocate water credits.
14. Support the drilling of wells by beneficiaries for their own use on lots where appropriate.
15. Partner with Department of Health and others on water quality education and outreach.
16. Continue to pursue development of agricultural water systems.

**Part V. Manage water systems**

17. Secure revenue and reduce operation costs so DHHL water systems break even financially over the long term.
18. Increase security and reliability for DHHL water users.
19. Pursue resolution by the Department of Agriculture of prior audit findings in the management of the Moloka'i Irrigation System and full repair of the System

AMENDED MOTION/ACTION

Moved by Commissioner Kahikina, seconded by Commissioner Richardson to amend the motion to replace the policies in the submittal with the prioritized policies distributed at the table. Motion carried unanimously as stated.

2<sup>nd</sup> AMENDMENT TO MAIN MOTION/ACTION

Moved by Commissioner Richardson, seconded by Commissioner Kahikina to insert the word "reclaim" to the prioritized policies item #2. The item would read: 2. Aggressively exercise, reclaim, and protect Hawaiian home land water kuleana. Motion carried unanimously as stated.

MAIN MOTION AS AMENDED/ACTION

That the Hawaiian Homes Commission:

1. Adopt the Final Water Policy Plan (2104) (Exhibit A, as amended); and
2. Authorize dissemination of the Water Policy Plan (2014).

Commissioner Kaapu felt unsure about the delegation of authority portion of the action and after numerous attempts to craft language at the table Chair Masagatani tabled the discussion for the day and asked to bring the item back the next day with suitable language to satisfy the commission's concerns.

**ITEM G-3      Extend the Implementation Period of the Native Hawaiian Development Program Plan**

RECOMMENDED

Acting Planning Program Manager Kaleo Manuel and Grants Specialist Gigi Cairel presented the following:

That the Hawaiian Homes Commission (HHC) extends the implementation period of the Native Hawaiian Development Program Plan (NHDPP) for two (2) years through June 30, 2016.

MOTION

Moved by Commissioner Davis, seconded by Commissioner Gomes

DISCUSSION

*Purpose*

The Native Hawaiian Development Program Plan (NHDPP) was approved by the HHC in January 2012 for the time period of Fiscal Year (FY) 2012-2014 (Exhibit A). During this time, the Department of Hawaiian Home Lands (DHHL) has been implementing the NHDPP in the

areas of individual development (i.e., scholarships, homeownership assistance, and agricultural lessee assistance) and community development (i.e., community liaison and leadership conference).

Recently, DHHL hired a Grants Specialist which increased the department's capacity to implement other NHDPP components, specifically the following:

- a) Homesteading Opportunities Assistance Program or "HOAP"
  - Pilot agricultural program for individual peer-to-peer learning
- b) Hawaiian Home Lands Trust Grants for beneficiary organizations
- c) Training and Technical Assistance for beneficiary organizations

It is DHHL's intent to implement the above mentioned tasks in the first year of the implementation period. During the second year, DHHL will assess and evaluate the NHDPP and submit a new NHDPP for FY 2016-2018 as required by rules. The future submittal will feature the entire NHDPP program and request funds, as appropriate, at that time.

The department conducts a full beneficiary consultation process for the NHDPP biennial update. This process includes conducting a total of 8 on-island beneficiary consultations; providing for a 30-day public comment period; compiling and analyzing beneficiary comments and preparing responses; and, finally, preparing final recommendations to the HHC and submitting a draft NHDPP with a record of comments received. In addition, the department will assess and evaluate the current NHDPP, which includes both individual development assistance and community development assistance.

Estimated budget: \$30,000

Includes staff time to prepare materials, compile and analyze comments, prepare recommendations and draft the NHDPP; staff travel; printing and postage; and meeting room rental.

#### **Funding**

The NHDPP is funded directly by the Native Hawaiian Rehabilitation Fund (NHRF) which was created by the 1978 Constitutional Convention to finance various activities intended to exclusively benefit native Hawaiians. This includes, but is not limited to, educational, economic, political, social, and cultural processes by which the general welfare and conditions of native Hawaiians are improved and perpetuated. The source of revenue for this fund is primarily derived from thirty percent of state receipts, derived from lands previously cultivated and cultivated as sugarcane lands and from water licenses.

The HHC at its June 16-17, 2014 meeting approved a budget of \$1,000,000 for the implementation of the NHDPP.

Commissioner Kahikina asked if milestones or benchmarks are set to evaluate the program. G. Cairel stated there will be an evaluation component and the Planning Office will have an evaluation of the programs as well. There will be a measure of milestones met and recommendations for what a program could look like in the future.

#### **ACTION**

Motion carried unanimously as stated.

### **HOMESTEAD SERVICES DIVISION**

Chair Masagatani moved item D-10 to the front.

**ITEM D-10      Approval to Cancel Lease – Alexander W. Winchester, Lease No. 3948, Lot No. 2, Waimanalo, Oahu**

**RECOMMENDED MOTION/ACTION**

Acting HSD Administrator Dean Oshiro presented the following:

1. To set aside the Hawaiian Homes Commission's approval of the designation of Albert V. T. Winchester, Joseph K. Winchester, and Thella Marie Asing, as joint tenant successors (Successors), to Lease No. 3948, Lot No. 2, Waimanalo, Oahu (Lease); and
2. To approve the cancellation of the Lease as there is no successor to the Lease interest; and
3. To approve the payment, in the amount of the appraised value of the improvements less any outstanding debts attached to the Lease, to the estate of the late Alexander W. Winchester (Decedent); and
4. To approve the re-award of the homestead lot to the next qualified applicant on the wait list.

**MOTION**

Moved by Commissioner Davis, seconded by Commissioner Kahikina.

**DISCUSSION**

The interest in the lease was transferred to the Decedent by way of the Transfer Through Successorship and Amendment to Lease No. 3948 instrument, dated December 12, 1977.

On December 19, 2007, the Decedent executed a note, with First Horizon Home Loans, for \$98,610.00. The note was secured by a mortgage which was consented to by the Department of Hawaiian Home Lands, in accordance with the Agreement between the Department and the United States Department of Housing and Urban Development (HUD)

Prior to his death, the Decedent designated individuals that were not qualified successors to the lease interest.

The Decedent passed away on July 29, 2011 without having designated a qualified successor to the lease. The successors made claim to the decedent's interest in the lease. At its meeting on July 23, 2012, the Hawaiian Homes Commission approved the designation of the successors, subject to their acceptance of the terms and conditions of the lease including but not limited to the outstanding indebtedness tied to the lease.

The successors disputed the lien created by the existing note and the mortgage because they believed that the decedent was not financially qualified for the loan and that the Department had a duty to ensure that the decedent was qualified for the loan. The successors retained the services of an attorney and at their request, documentation regarding the lease and the mortgage were provided through their attorney.

At its meeting on February 19, 2013, the Commission denied the successors request for a contested case hearing for contesting the lien created by the outstanding loan.

The transfer through successorship instrument was transmitted to the successors, through their attorney on December 12, 2012, for execution to affirm their successorship interest and their acceptance of the terms and condition of the lease, including the obligations to the existing loan.

At its meeting on June 16, 2014, the Commission considered this matter but decided to defer action, to give the successors thirty (30) days from June 16, 2014, to sign and to date, the

appropriate documentation. The Department has not yet received the executed transfer through successorship lease instrument.

Joseph Winchester, brother of the decedent addressed the Commission and pointed out that the Department ratified and designated someone who should not have been qualified. The Department allowed him to live in the house for 2 ½ years. The family was told to stay away from the property. Now the family was told to sign the papers when the place is a wreck. Regarding the loan, the Department made a mistake in qualifying his brother for the loan and the money wasn't used on home improvements, it was used to pay off other things.

Chair Masagatani clarified that the loan was a FHA 247 insured loan, it is not a guaranteed loan nor a direct loan. The Department was not a party to the loan granted. She stated the motion before the Commission is whether to cancel the lease. The family was named as the rightful successors and can take over the lease, but the lease comes with the mortgage.

J. Winchester stated he does not understand how the loan was approved when he proved to the Department that his brother should not have qualified for the loan. Chair Masagatani stated the Department had nothing to do with the loan. The action before the Commission is whether to cancel the lease. Accepting the lease would mean accepting the mortgage.

J. Winchester added the disbursements of the loan were put toward other bills. Chair Masagatani stated the mortgage was not guaranteed by DHHL and the Department will not challenge the validity of the mortgage.

Chair Masagatani asked if Mr. Winchester and the other siblings whether or not they are willing to succeed to the lease and the mortgage. J. Winchester stated no.

#### MOTION/ACTION

Moved by Commissioner Davis, seconded by Commissioner Gomes, to convene in executive session to confer with counsel on this matter. Motion carried unanimously.

#### **EXECUTIVE SESSION IN**

**3:20 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**

**3:37 p.m.**

Chair Masagatani asked J. Winchester and T. Asing individually and for the record whether or not they accept the lease with the mortgage as stated. She reiterated that if they do not accept the lease, it will be cancelled and rewarded to the next qualified beneficiary on the waitlist. She asked them to respond individually.

T. Asing stated she knows that there is a mortgage, what she does not accept is that the mortgage was made with numerous errors. Chair Masagatani clarified the question is whether T. Asing accepts the lease. T. Asing stated she does not accept the lease and will seek legal assistance. J. Winchester agreed with T. Asing and felt DHHL has an obligation to review outside loans for validity.

Chair Masagatani asked for an amendment to the motion to include the words “and affirm” to motion item number “2. To approve and affirm the cancellation of the lease as there is no successor to the Lease interest; and”

**AMENDED MOTION/ACTION**

Moved by Commissioner Richardson, seconded by Commissioner Kahikina to amend the motion to add the words “and affirm” to item #2 of the motion. Motion carried unanimously.

J. Winchester asked that the motion be provided to him in writing. Chair Masagatani stated the motion will be a part of the minutes.

**ACTION ON MAIN MOTION AS AMENDED**

Motion carried unanimously.

**RECESS**

**3:52 p.m.**

**RECONVENE**

**4:01 p.m.**

**LAND MANAGEMENT DIVISION**

**ITEM F-5      Approval for Assignment of Option to Lease from Hawaii DeBartolo LLC to Kapolei Hawaii Property Company LLC, East Kapolei, Oahu**

**RECOMMENDED MOTION**

Land Management Administrator Linda Chinn presented the following:

That the Hawaiian Homes Commission grant its approval to the requested assignment of the Option to Lease, as Amended and Restated on January 12, 2012, and as further Amended on November 29, 2013, from Hawaii DeBartolo, LLC ("DeBartolo") to Kapolei Hawaii Property Company, LLC, a Delaware limited liability company ("Kapolei Property") This assignment is subject to the following conditions:

1. Approval of the form of Assignment of Option Agreement, Consent and Agreement Document prepared by DeBartolo by the deputy Attorney General; and subject to approval by the department of the Attorney General
2. All the terms and conditions of the Option to Lease Agreement, as amended, shall remain in full force and effect;
3. The issue of whether Kapolei Property has adequate funds/financing to complete the project will be reserved for review and determination by the Department until Kapolei Property gives notice of its intent to exercise the option; and
4. Other conditions deemed prudent by the Hawaiian Homes Commission.

**MOTION**

Moved by Commissioner Davis, seconded by Commissioner Kahikina.

**DISCUSSION**

**Property Background**

The parcel of land is located in East Kapolei consisting of an area of 67.270 acres, and further identified as a portion of Tax Map Key No. 1-9-1-016:142 (See Exhibit "A"). The Department of Hawaiian Home Lands (DHHL) received this parcel of land as part of the 16,518 acres of land settlement with the State of Hawaii under Act 14 of the 1995 State Legislature.

Prior to the transfer, the land was under the jurisdiction of Housing and Development Corporation of Hawaii (HDCH). HDCH petitioned the Land Use Commission to reclassify certain lands in Ewa, including this parcel, from Agricultural District to Urban District. The LUC granted the reclassification, subject to twenty-seven (27) conditions on the future use of the land, including

but not limited to zoning, noise restriction, and drainage requirements. On February 11, 2013, a Declaration of Conditions was filed and recorded at the Bureau of Conveyances. With this filing the LUC process was completed.

In February 2006, DHHL issued a Notice of Disposition for General Lease by way of a public auction for the property with pertinent information provided in an Information Packet. DHHL subsequently deemed DeBartolo Development LLC, now Hawaii DeBartolo LLC ("DeBartolo"), as the sole qualified bidder for the project, and entered into lease negotiations with DeBartolo in May 2006.

The project, envisioned by DeBartolo, consists of retail, entertainment, and office facilities, with the ability to expand for future hotel use. The Information Packet initially designated the zoning as BMX-3, Community Business Mixed Use, however, and DHHL agreed to designate up to 82,000 square feet as BMX-4, Central Business Mixed Use District, to allow for the hotel component. A copy of the most current site plan is attached herewith as Exhibit "B." Commissioner Kahikina asked if the developer agreed to do the park for Kanehili. L. Chinn stated they are in discussions with the Kanehili Homestead Association. There will be options for Kanehili and DeBartolo has committed to support the park.

#### MOTION/ACTION

Moved by Commissioner Tassill, seconded by Commissioner Davis, to convene in executive session to confer with counsel on this matter. Motion carried unanimously.

**EXECUTIVE SESSION IN 3:47 p.m.**

**EXECUTIVE SESSION OUT 4:01 p.m.**

Chair Masagatani asked for an amendment to the motion as follows:

1. Approval of the form of Assignment of Option Agreement, Consent and Agreement Document prepared by DeBartolo ~~by the deputy Attorney General; and subject to approval by the Department of the Attorney General; and~~
2. All the terms and conditions of the Option to Lease Agreement, as amended, shall remain in full force and effect;
3. The issue of whether Kapolei Property has adequate funds/financing to complete the project will be reserved for review and determination by the Department until Kapolei Property gives notice of its intent to exercise the option; and
4. ~~Other conditions deemed prudent by the Hawaiian Homes Commission.~~

#### AMENDED MOTION/ACTION

Moved by Commissioner Kahikina, seconded by Commissioner Ishibashi to approve the amendments as stated. Motion carried unanimously.

#### ACTION ON MAIN MOTION AS AMENDED

Motion carried unanimously.

**ITEM F-4 Approval for Assignment of Lease and Amendment of Lease, General Lease No. 293, Kalaeloa Solar One, LLC, Kalaeloa, Oahu**

#### RECOMMENDED MOTION

Land Management Administrator Linda Chinn presented the following:  
That the Hawaiian Homes Commission grant its approval to



A. Assignment of General Lease No. 293 (GL 293) from Kalaeloa Solar One LLC (KS1), as Assignor, to Huliamaahi Solar LLC, as Assignee, subject to the following conditions:

1. The standard terms of the Department of Hawaiian Homes Lands' Consent to Assignment of Lease document;
2. The review and approval of the Consent document by the Department of the Attorney General;
3. Assignee to furnish a Certificate of Insurance which verifies the issuance of a General Comprehensive Public Liability Insurance Policy in an amount acceptable to the Department and naming it as an additional insured;
4. Assignee to furnish a Certificate of Insurance which verifies the issuance of a Multi-peril Insurance Policy, that includes coverage against loss or damage by fire, in an amount equal to the maximum insurable value of all buildings and improvements on the demised premises and naming the Department as an additional insured;
5. Assignee to acknowledge in writing on the acceptance of the amended terms and conditions of General Lease No. 293 as proposed below; and
6. Assignee to acknowledge in writing on the sublease agreement with Kalaeloa Solar Two LLC (KS2) and the direct payment of the sublease rent to the Department of Hawaiian Home Lands.

B. Amendment to the terms and conditions of General Lease No. 293, subject to the following:

1. Payment of the balance of penalty fees in the amount of \$210,000.00 due to the Department as fees attributed to Assignor's delay in placing the facility into service;
2. Extension of the lease term for a period to equal to the lesser of (i) 25 years; or (ii) a period equal to the entire PPA term beginning at commercial operation date of the project, but not less than 20 years post-execution of the amended lease agreement;
3. Adjustment of the acreage under the lease from the current 78 acres to approximately 67 acres, with final acreage to be determined by the completed survey;
4. Annual lease rent payment under the sublease to KS2 shall remain the same; the annual lease rent payment under for the remaining leased area under KS1 shall be adjusted proportionately from \$455,695.14 to \$338,604.00 annually subject to final survey of amended acreage;
5. Annual lease rent payment shall be due from the commercial operation date or March 2, 2015, whichever is earlier;
6. In addition to the 1% of net annual profit due under the lease, Assignee agrees and acknowledges the responsibility to pay the \$324,000.00 community benefit due under KS2, starting from the commercial operation date, from revenue received from the annual production and excess energy, and shall be paid in full within twelve (12) years;
7. Except as amended, all of the terms, conditions, covenants, and provisions of GL No. 293 shall continue and remain in full force and effect;
8. The review and approval of all documents by the Department of the Attorney General; and
9. Any and all other terms and conditions deemed prudent and necessary by the Hawaiian Homes Commission.

#### MOTION

Moved by Commissioner Gomes, seconded by Commissioner Ishibashi.

#### DISCUSSION

The Hawaiian Homes Commission (HHC) approved the issuance of General Lease No. 293 to Kalaeloa Solar One LLC (KS1) on May 18, 2010. The purpose of the lease was to develop, construct, operate and maintain a 5-MW solar power production facility on Hawaiian home lands

at Kalaeloa, Oahu. The original lease was to be developed utilizing Concentrated Solar Power ("CPS") technology. The initial term of the lease was for twenty (20) years, effective September 3, 2010.

On December 14, 2010, the HHC granted approval to the First Amendment to GL 293, which added an additional 48 acres of land to the original site in order to expand the solar facility for a total of approximately 82 acres under the lease. The purpose is to allow for the development of another 5-MW solar project. The HHC also granted approval for the sublease of a portion of the leased premises to Kalaeloa Solar Two, LLC, (KS2) (SunPower Corporation) for the operation, management, and maintenance of a solar power production facility utilizing photovoltaic ("PV") technology.

Commissioner Richardson asked if the land in question is contiguous to any other DHHL property. L. Chinn stated DHHL has a total of 555 acres in Kalaeloa, the parcel in question is 135 acres. Commissioner Richardson asked if excess power generated beyond the PPA can be used for other DHHL properties. L. Chinn answered that staff is having a consultant look at providing infrastructure to micro-grid the Department's parcels.

Shirley Swinney, President of the Kapolei Community Development Corporation commented that they have worked for a year and a half with LMD on the community benefits package to make sure it is used for the Kapolei regional project. The group met with all of the parties involved and maintained the same position on the benefits package agreement. The community wanted specific language to be inserted into the recommendation about what the funds are to be used for.

The KCDC is concerned that people will come and go, but the intent of the funding that is understood today may not be the understanding in the future.

Chair Masagatani asked if the PPA isn't yet established and the project is on hold with HECO, why is there an urgency to get this approval. L. Chinn stated there are local contractors that need the plan in advance to be ready to mobilize as soon as HECO is ready to go. If the project isn't online by March 2015, the lease is cancelled.

Chair Masagatani offered an amendment to item #6 of the amended terms:

6. In addition to the 1% of net annual profit due under the lease, Assignee agrees and acknowledges the responsibility to pay the \$324,000.00 community benefit due under KS2, starting from the commercial operation date, from revenue received from the annual production and excess energy, and shall be paid in full within twelve (12) years; subject to a payment plan to be approved by the Hawaiian Homes Commission

#### AMENDMENT TO MOTION/ACTION

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

#### ACTION ON MAIN MOTION AS AMENDED

Motion carried unanimously.

## LAND DEVELOPMENT DIVISION

### ITEM E-1 Approval of Lease Award – Daniel W.T.K. Pelekane Tamashiro

#### RECOMMENDED MOTION

Approve the award of Department of Hawaiian Home Lands Residence Lot Lease to the applicant listed below for 99 years, subject to the purchase of the existing improvements on the lot by way of a loan or cash.

#### KALAMAULA RESIDENCE LOTS UNIT 1, KALAMAULA, MOLOKAI

<u>NAME</u>	<u>APPL DATE</u>	<u>LOT NO</u>	<u>TAX MAP KEY</u>	<u>LEASE NO</u>
Pelekane Tamashiro, Daniel W.T.K.	01/26/11	64	2-5-2-032:064	12732

With the execution of the foregoing lease, 2 single family home awards have been completed for the Kalamaula Residential Lots Habitat Offering 2012.

#### MOTION/ACTION

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

## HOMESTEAD SERVICES DIVISION

### ITEM D-2 Ratification of Loan Approvals

#### RECOMMENDED MOTION

Acting HSD Administrator Dean Oshiro presented the following:  
To ratify the approval of the following loan previously approved by the Chairman, pursuant to section 10-2-17, Ratification of chairman's action, of the Department of Hawaiian Home Lands Administrative Rules.

#### MOTION/ACTION

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

### ITEM D-3 Approval of Consent to Mortgage

#### RECOMMENDED MOTION

Acting HSD Administrator Dean Oshiro presented the following:  
To approve the following consents to mortgages for Federal Housing Administration (FHA) insured loans, Department of Veterans Affairs (VA) loans, United States Department of Agriculture, Rural Development (USDA, RD) guaranteed loans, United States Housing and Urban Development (HUD 184A) guaranteed loans and Conventional (CON) loans insured by private mortgage insurers.

#### MOTION/ACTION

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

**ITEM D-4      Approval of Streamline Refinance of Loans**

RECOMMENDED MOTION

Acting HSD Administrator Dean Oshiro presented the following:

To approve the refinancing of loans from the Hawaiian Home General Loan Fund.

MOTION/ACTION

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

**ITEM D-5      Approval to Schedule Loan Delinquency Contested Case Hearings**

RECOMMENDED MOTION

Acting HSD Administrator Dean Oshiro presented the following:

To authorize the scheduling of the following loan delinquency contested case hearings as shown below.

Flores, John Jr. & Flores, Darrellane L.

Talbert, Julie Ann L.

Kamaka, Bert K.

Noeau, Brian M.

Armitage, Carinthia U.

Kawauchi, Sari N.

Kalaniopio, William Jr.

MOTION/ACTION

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

**ITEM D-6      Approval of Homestead Application Transfers / Cancellations**

RECOMMENDED MOTION

Acting HSD Administrator Dean Oshiro presented the following:

To approve the transfers and cancellations of applications from the Applications waiting lists for reasons described in the exhibit.

MOTION/ACTION

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

**ITEM D-7      Ratification of Designation of Successor to Leasehold Interest and Designation of Person to Receive Net Proceed (see exhibit)**

RECOMMENDED MOTION

Acting HSD Administrator Dean Oshiro presented the following:

To ratify the approval of the designation of successor to the leasehold interest and person to receive the net proceeds, pursuant to Section 209, Hawaiian Homes Commission Act, 1920, as amended. This designation was previously approved by the Chairman.

MOTION/ACTION

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

**ITEM D-8      Approval of Assignment of Leasehold Interest (see exhibit)**

RECOMMENDED MOTION

Acting HSD Administrator Dean Oshiro presented the following:

To approve the assignment of the leasehold interest, pursuant to Section 208, Hawaiian Homes Commission Act, 1920, as amended, and subject to any applicable terms and conditions of the assignment, including but not limited to the approval of a loan.

MOTION/ACTION

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

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

RECOMMENDED MOTION

Acting HSD Administrator Dean Oshiro presented the following:

To approve the amendment of the leasehold interest listed in the submittal. There are 15 amendments of lease.

MOTION/ACTION

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

**ITEM D-11      Commission Designation of Successor – Richard I. Colipano, Lease No. 6111, Lot No. 100, Kalamaula, Molokai, Hawaii**

RECOMMENDED MOTION

Acting HSD Administrator Dean Oshiro presented the following:

To approve the designation of Shirley Ann L. Burrows, (Shirley), successor, to her late brother, Richmond I. Colipano's, 1/3 tenant in common leasehold interest in Residential Lease No. 6111, Lot No. 100, Kalamaula, Molokai, for the remaining term of the lease.

MOTION/ACTION

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

**ITEM D-12      Commission Designation of Successor – Violet K.M. Makua, Lease No. 2226, Lot No. 148, Kewalo, Oahu**

RECOMMENDED MOTION

Acting HSD Administrator Dean Oshiro presented the following:

To approve the designation of John O. Makua, (John), successor, to his late mother, Violet K. M. Makua's, Residential Lease No. 2226, Lot No. 148, Kewalo, Oahu, for the remaining term of the lease, subject to his acceptance of the terms and conditions of the Lease.

MOTION/ACTION

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

## LAND MANAGEMENT DIVISION

### **ITEM F-1      Approval to Issue License Easement, Hawaiian Telcom, Inc., Lalamilo, Island of Hawai'i**

Item was deferred.

### **ITEM F-2      Approval to Issue License Easement, Department of Water Supply, County of Hawai'i, Pu'ukapu Island of Hawai'i**

Item deferred to Tuesday.

### **ITEM F-3      Approval for Payment Plan on Deficient Rent, General Lease No. 110, Yamada and Sons, Inc., Panaewa, Hawai'i**

#### RECOMMENDED MOTION

Land Management Division Administrator Linda Chinn presented the following:

That the Hawaiian Homes Commission grant its approval to the proposed payment plan on deficient rent affecting General Lease No. 110, issued to YAMADA & SONS, INC., a Hawaii corporation, identified more specifically by TMK: (3) 2.1.025:001,:041,:042, &:084, as delineated in gray-shade on tax map attached hereto as Exhibit "A", subject, but not limited to the following terms and conditions:

1. After applying the portion of rent as remitted over the thirty-two (32) month period covering November 2011 – June 2014 in the amount of \$364,116.07 against the reopened and redetermined rent of \$706,560.00 due and payable to the Department of Hawaiian Home Lands for the same period, the final deficient balance equates to \$342,443.93 (see attached schedule Exhibit "B");
2. Based upon an amortized interest rate of four percent (4.0%) on the deficient balance of \$342,443.93 a monthly installment of FOURTEEN THOUSAND EIGHT HUNDRED SEVENTY AND 60/100 DOLLARS (\$14,870.60) is established (see attached schedule Exhibit "C"). When this amount is combined with the current base monthly rental of \$22,080.00 established as of November 1, 2011, a total monthly rental of \$36,950.60 shall become due and payable on the first day of every month for the twenty-four (24) - month period commencing on August 1, 2014 and expiring on July 1, 2016;
3. Should the terms and conditions as proposed be satisfied and the deficient rent balance be cured in full within the twenty-four (24) -month period, the payment plan shall cease and desist immediately with the base monthly lease rental installment of \$22,080.00 remaining intact;
4. Should the LESSEE desire to cure any outstanding balance before the expiration of the two (2)year term as described above, the payment plan shall cease immediately without any pre-payment penalty and the base monthly lease rental installment of \$22,080.00 remaining intact;
5. Failure to remit the payments as described above when due and payable will result in an immediate recommendation to terminate the general lease agreement without recourse and legal action will be initiated to collect the outstanding lease rent balance;
6. General Lease No. 110 shall be amended accordingly to reflect the terms and conditions as specified above and shall be made effective as of August 1, 2014;
7. The Chairman of the Hawaiian Homes Commission may set forth other terms and conditions deemed prudent and necessary;
8. The Amendment to Lease document shall be subject to the review and approval of the State of Hawaii Department of Attorney General; and

9. All other terms and conditions of General Lease No.110 shall continue to remain in full force and effect.

MOTION/ACTION

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

**ITEM F-6      Ratification of Defaults and Revocation, Statewide**

RECOMMENDED MOTION

Land Management Division Administrator Linda Chinn presented the following:  
That the Hawaiian Homes Commission ratify the Notices of Default/Revocation issued to the parties highlighted in gray on Exhibit "A"

General Leases were provided with a 60-day cure period. Termination action will be taken against those who fail to cure within the prescribed period.

Right-of-Entry

Island	ROE No.	Permittee	Monthly Rent	Total Due
Oahu	636	<b>Panui, Inc.</b>	\$1,600.00	\$9,600.00
Oahu	631	J. Jeremiah Trucking, Co.	\$900.00	\$15,251.00
Oahu	632	Xtreme Trucking	\$975.00	\$13,341.00
Oahu	607	Kahu Trucking	\$700.00	\$8,786.29
Oahu	595	R & KA Equipment	\$1,797.50	\$8,343.99
Oahu	624	Myrtle Kaahaaina	\$250.00	\$3,579.27
Oahu	602	Paling & Sons Trucking	\$686.00	\$2,286.00
Oahu	520	Island Wide Towing	\$7,200.00	\$59,000.00

MOTION/ACTION

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

**ITEM F-7      Ratification of Actions Taken by the Chairman, Hawaiian Homes Commission, Statewide**

RECOMMENDED MOTION

Land Management Division Administrator Linda Chinn presented the following:  
That the Hawaiian Homes Commission ratify the consents and approvals granted by the Chairman, Hawaiian Homes Commission.

General Lease No. 202

Prince Kuhio Plaza LLC

General Growth Properties Inc., the management agent for the Prince Kuhio Plaza, transmitted following sublease agreement for DHHL's review and consent:

Sublessee:      PIER 1 IMPORTS (U.S.), INC., a Delaware corporation

General Lease No. 276

Hawai'i Debartolo, LLC

Sublessee:      1. Macy's West Stores, Inc. 2. H & M Hennes & Maruitz L.P.

MOTION/ACTION

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

**ITEM F-8      Approval for Assignment of Lease from Big Island Carbon LLC to an Entity to be Approved by the Bankruptcy Trustee, General Lease No. 275, Kawaihae, Hawaii**

This item was withdrawn.

**OFFICE OF THE CHAIR**

**ITEM C-2      Draft Native Hawaiian Housing Block Grant (NHHBG) Annual Performance Report**

RECOMMENDED MOTION

None. For Information Only

Each year, the department must provide an annual report on eligible activities undertaken as denoted in the Native American Housing and Self Determination Act (NAHASDA). The attached report, as a draft, will be disseminated for thirty days of public comment commencing on July 15th and a final version submitted for commission approval on August 18.

Highlights of the past year include:

- Obligating \$17 million in infrastructure development
- Development & implementation of the HALE Program
- Implementation of the Home Assistance Program
- Increasing NAHASDA funded positions
- Provided financial capability training to over 30 community stakeholders

Chair Masagatani stated the draft is for the commission's review and analysis. If there are any questions, comments or edits please email Niniau directly.

**RECESS**

**5:30 p.m.**



## Meeting held in Hale Pono‘i, Kapolei, Hawai‘i

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the Commission will grant the Correa family right of entry permit because they have been a blessing to the land and the community.

#### **ITEM A-9, Homelani Schaedel Re: C-1**

H. Schadeal stated although she is the president of the Maluohai Community Association her testimony is as an individual. While opinions about federal recognition vary in her community, they do agree on the creation of the pathway through the Department of Interior (DOI) so that in the future it would be there as an option. Of the nineteen questions posed by the DOI, she could not get beyond the first question. In her entire life she had never heard the term “small n” Hawaiian. She submitted questions asking what is the difference between a native Hawaiian and a regular Hawaiian? There needed to be more education about the document and some of the definitions.

### **ITEMS FOR DECISION MAKING**

#### **ADMINISTRATIVE SERVICES DIVISION**

#### **ITEM H-1 Approval of Fiscal Year 2015 Development and Trust Fund Budget for the Department of Hawaiian Home Lands**

##### **RECOMMENDED ACTION**

Administrative Services Officer Rodney Lau presented the following:

That the Commission approve Fiscal Year 2015 Development and Trust Fund Budget for the Department of Hawaiian Home Lands and authorize the Chairman to shift funding of expenditures between cost elements and funds as warranted but not to exceed the total budget.

##### **MOTION**

Moved by Commissioner Gomes, Seconded by Commissioner Davis to approve the motion as stated in the submittal.

##### **DISCUSSION**

Attachment A provides the means of financing for the projects recommended to fund the Development and Trust Fund Budget for fiscal year 2015.

The Development and Trust Fund Budget responds to issues and priorities expressed by the Commission. In addition, the following principles guided the preparation of the list of projects:

- The department's commitment to providing improvements for the Undivided Interest Lots that have been awarded, and to completing other projects that have been initiated;
- The development of new homesteads for award, with particular emphasis on providing improved residential lots;
- The need to repair and upgrade aging infrastructure on Hawaiian Home Lands;
- The need to initiate the planning and design of new homestead projects to provide an inventory for future development; and
- Design and construct projects that are awarded USDA Rural Development loan/grant funds through Na Kupa'a O Kuhio. These projects leverage federal funding resources to reduce the amount of funds needed from DHHL trust funds for its projects.

Because the Development and Trust Fund Budget is based on estimated costs, the department, with Chairman's approval, may need to shift funding of expenditures between cost elements and funds as warranted but in no event will any expenditure be funded if the total budget is exceeded.

Attachment B provides a listing of grant-in-aid projects appropriated by Act 122 that were passed in the 2014 Legislative Session. These projects were financed by general obligation bonds.

Approval of this budget submittal will result in the corresponding amendment to the Native Hawaiian Housing Plan 2014 to the United States Department of Housing and Urban Development. The Commission's approval of the recommended motion is respectfully requested.

**ACTION**

Motion carried unanimously.

**PLANNING DIVISION**

**ITEM G-2 Adoption of Final Water Policy Plan**

*Note: this item was carried over from the previous day. The motion was made and amended on Monday and the discussion continued rendering additional amendments to the main motion.*

**RECOMMENDED**

Acting Planning Program Manager Kaleo Manuel presented the following: That the Hawaiian Homes Commission:

1. Adopt the Final Water Policy Plan (2104) (Exhibit A); and
2. Authorize dissemination of the Water Policy Plan (2014).

**MOTION (Monday)**

Moved by Commissioner Richardson, seconded by Commissioner Davis to approve the action as stated in the submittal.

**MOTION TO AMEND /ACTION (Monday)**

Moved by Commissioner Kahikina, seconded by Commissioner Richardson to amend the motion to replace the policies in the submittal with the prioritized policies distributed at the table. Motion carried unanimously as stated.

**2<sup>nd</sup> MOTION TO AMEND /ACTION (Monday)**

Moved by Commissioner Richardson, seconded by Commissioner Kahikina to insert the word "reclaim" to the prioritized policies item #2. The item would read: 2. Aggressively exercise, reclaim, and protect Hawaiian home land water kuleana. Motion carried unanimously as stated.

**3<sup>rd</sup> MOTION TO AMEND /ACTION**

Moved by Commissioner Kaapu, seconded by Commissioner Richardson to insert the underlined language to the Water Policy Plan:

**Delegation of Authorities and Reporting**

1. Delegation
  - a. The Hawaiian Homes Commission delegates authority to the Chairperson to prepare an Implementation Program for this Water Policy Plan, which shall be subject to the approval by the Hawaiian Homes Commission. The Program shall identify tasks to implement each goal, and shall specify tasks that apply statewide as well as tasks that apply to different islands or regions under each goal.
2. Reporting
  - a. The Chairperson shall submit the proposed Implementation Program to the Hawaiian Homes Commission annually in conjunction with the Department's budget request.
  - b. The Chairperson shall annually report on progress on execution of the approved

Implementation Program and overall progress towards achieving the goals of and maintaining compliance with the Water Policy Plan.

3. Consultation

- a. The Chairperson shall consult with the Hawaiian Homes Commission on any major water issues not contained in the implementation program.

Motion carried unanimously.

MAIN MOTION AS AMENDED/ACTION

That the Hawaiian Homes Commission:

1. Adopt the Final Water Policy Plan (2104) (Exhibit A, as amended); and
2. Authorize dissemination of the Water Policy Plan (2014).

Motion carried unanimously as amended.

**LAND MANAGEMENT DIVISION**

**ITEM F-2      Approval to Issue License Easement, Department of Water Supply, County of Hawaii, Puukapu Island of Hawaii**

RECOMMENDED MOTION

Land Management Administrator Linda Chinn presented the following:

That the Hawaiian Homes Commission (HHC) approve the issuance of a perpetual, non-exclusive License easement to Department of Water Supply - County of Hawaii "DPW" for purposes of constructing seepage-stability berm improvements along a portion of the southern boundary on that certain Hawaiian home lands parcel situated in the Forest Reserve of Puukapu, Island of Hawaii, identified more specifically by Tax Map Key (3) 6-5- 001:017(por.) as delineated by gray shade on Exhibit "B".

Approval and issuance of this non-exclusive license easement shall be subject to the following conditions:

1. The purpose of this license and use of the premises as described is strictly for the LICENSEE to construct seepage-stability berm improvements and necessary earthquake repairs to the Waikoloa Reservoir No. 1 which upon completion will be operated and maintained by the LICENSEE;
2. The easement shall cover an area of approximately five thousand six hundred seventy-nine (5,679) square feet or 0.13 acres of the Hawaiian home lands parcel as identified above and described more specifically in Attachment 1 of Exhibit "C" attached hereto;
3. The license term shall be perpetual and become immediately effective upon full execution of the license easement document;
4. The license fee shall be gratis however, LICENSEE shall remit a non-refundable processing and document fee in the amount of \$275.00;
5. The license shall NOT be assignable to a third party;
6. LICENSEE'S work shall conform to federal, state and county (government agencies) standards. Licensee shall obtain applicable permits and approvals from government agencies prior to the commencement of any work on the property that requires such permits and approvals.
7. LICENSEE shall not undertake any construction whatsoever on the licensed premises until LICENSOR has reviewed and approved the plans in writing (which approval shall not be unreasonably withheld or delayed);
8. LICENSEE shall bear any and all associated costs for installation, operation and maintenance of the proposed seep-stability berm and necessary Waikoloa Reservoir No. 1 earthquake repairs;

9. LICENSEE shall be solely responsible for the security of all equipment stored on the Premises. LICENSEE shall be allowed to install security fencing, however, if LICENSEE intends to install other types of security systems, LICENSEE must first request and obtain PERMITTOR'S written approval;
10. Entry under the LICENSE is limited to LICENSEE'S employees, agents, contractors and subcontractors solely for the purpose stated herein;
11. LICENSEE will exercise due care and diligence to prevent injury to persons and damages to or destruction of property belonging to DHHL;
12. LICENSEE shall keep and maintain the Premises and any and all equipment and personal properties of LICENSEE upon the Premises in a strictly clean, neat, orderly and sanitary condition, free of waste, rubbish and debris and shall provide for the safe and sanitary handling and disposal of all trash, garbage and other refuse resulting from its activities on the Premises;
13. LICENSEE shall comply with all applicable governmental laws, rules, regulations, and procedures relating to the operation and activities under this LICENSE. Upon termination of this LICENSE, LICENSEE shall be responsible for environmental testing and subsequent cleanup of any contamination or hazardous materials found on the site that may have been caused by LICENSEE's use;
14. The Chairman of the HHC is authorized to impose such other conditions deemed prudent and necessary; and
15. The license document will contain the standard terms and conditions of similar licenses issued by DHHL and shall be subject to other terms and conditions deemed prudent and necessary by the Chairman of the Hawaiian Homes Commission and shall further be subject to review and approval by the Office of the Department of the Attorney General, State of Hawaii.

L. Chinn offered the following amendment:

4. The license fee shall be \$1,500.00 however, LICENSEE shall remit a non-refundable processing and document fee in the amount of \$275.00;

#### MOTION TO AMEND/ACTION

Moved by Commissioner Davis, seconded by Commissioner Richardson to approve the amendment as stated:

4. The license fee shall be \$1,500.00 however, LICENSEE shall remit a non-refundable processing and document fee in the amount of \$275.00;

Motion carried unanimously.

#### MAIN MOTION AS AMENDED/ACTION

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

#### MOTION/ACTION

Moved by Commissioner Gomes, seconded by Commissioner Kahikina to resolve into 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.

### **EXECUTIVE SESSION IN**

**12:15 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.

1. Background on Federal Recognition, including prior challenges to the constitutionality of the Hawaiian Homes Commission Act, as amended.

**ITEMS FOR DECISION MAKING****ITEM C-1      Re-affirming the Hawaiian Homes Commission Support of Mechanisms to Achieve Federal Recognition****RECOMMENDED MOTION/ACTION**

That the Hawaiian Homes Commission:

- (1) Re-affirms its support of federal recognition of a Native Hawaiian governing entity, and mechanisms to achieve federal recognition, as a means of protecting the Hawaiian Homes Commission Act and the interest of its beneficiaries from constitutional challenges; and
- (2) Supports the Department's outreach efforts and initiatives to advocate for and inform beneficiaries and Native Hawaiians about federal administrative rulemaking as a mechanism to achieve formal federal recognition.

**DISCUSSION**

The Hawaiian Homes Commission and the Department of Hawaiian Home Lands have consistently argued that the Hawaiian Homes Commission Act represents Congress' recognition that native Hawaiians are entitled to the same benefits and protections afforded the other native people of the United States. At the same time, however, each has acknowledged that formal federal recognition of a Native Hawaiian governing entity would provide the most effective protection against constitutional challenges to the programs and benefits the Department administers and delivers. As such, the Commission and Department have a longstanding record of consistent support of mechanisms to achieve federal recognition, which to date, have been proposed legislation considered by the U. S. Congress.

**MOTION/ACTION**

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

**ITEMS FOR INFORMATION****GENERAL AGENDA****REQUESTS TO ADDRESS THE COMMISSION****ITEM J-1:      Desmond Manaba, Right-of-Entry No. 503, Hoolehua, Molokai**

D. Manaba provided commissioners with a packet containing an update on the Moloka'i Wildlife Management (MWM) Company, which is owned by D. Manaba, currently holder of DHHL ROE license #503, Hoolehua, Moloka'i. MWM is a venison ranch that provides fresh, USDA certified Axis venison meat to markets throughout the state of Hawai'i. They also provide deer herd management to farmers and ranchers on Moloka'i.

D. Manaba asked the Commission to:

- 1) Approve an application for commercial water meter adjacent to the ranch: to raise deer feed, and expand deer farming capacity as USDA protocols do not allow washing products or equipment with agricultural water.
  - Currently trucking water to facility, commercial water is efficient and cheaper
  - Commercial water will have more pressure than the present gravity fed system
- 2) Approve MWM to raise organic pigs.

- Customer market for organic pigs
  - Offal can be cooked and fed to pigs to meet zero waste strategy.
- 3) Approve lease of vacant DHHL RP properties located across the highway or current leased area.
- The area is not suitable for agriculture but is perfect for deer.
  - USDA inspector suggested the parcel is suitable for ante mortem inspection as humane harvesting could occur without danger to residential areas.

Chair Masagatani asked Land Management Division staff to review the request and provide the appropriate updates to the commission.

**ITEM J-3: Yuklin Aluli, Esq. Re: DHHL v Correa et al., Civil No. 1RC13-1-7813**

Y. Aluli represented the Correa Ohana who have had a revocable permit with DHHL for almost 30 years. They asked to continue as stewards of the Waimānalo parcel via a ROE. The family is willing to pay market rent if and offered to negotiate the price. The current tax assessed value of the property is \$900,000, but since it is in a conservation zone they think a rate of return of 4% is acceptable. They understand the Department is at the beginning of a process of being more transparent and efficient. They understand that DHHL took back all revocable permits and gave everyone right of entry permits. The Correa Ohana was not offered a right of entry permit. Previously they were able to obtain commercial liability insurance, but this time around they were only able to get residential insurance. She noted the farm is unique in that there are very few places on O‘ahu where horses can be used commercially. The Department would benefit by having presence in the area to keep illegal dumping at bay and prevent squatters from settling in. Y. Aluli stated they provided testimony from many friends and family who attest to the educational and cultural use of the land under the Correa’s permit. She asked that DHHL consider all of the factors when deciding on the case.

Butch Correa stated the record is clear of their stewardship on the land and what they’ve been doing on the land. Many community organizations use the parcel for education and cultural events. He admitted that they were cited for grading, but they immediately remediated the problem and took care of their fine. They thought things were okay because they felt that they had resolved the issues. They understand the department is trying to fix things and they want to be a part of it. They asked to remain on the land until the department has something better planned for the area.

Y. Aluli added that if the department is concerned about the writ of possession, they are willing to work with the department to figure out a way to keep the family on the property to continue being stewards of the land.

**ITEM J-2: Jeff Gilbreath, Executive Director, Hawaiian Community Assets**

J. Gilbreath asked to be placed on a future agenda as a workshop.

**ITEM J-3: Maureen Ann Kanani Marshall**

M. Marshall stated they requested a contested case hearing in April and have attended every Commission meeting since to get an update on whether the hearing was granted. They have been told that staff is analyzing the file to see if a contested case hearing should be granted but they do not understand why it would take four months to do that. They have already been through a contested case hearing about the lot so the paperwork should already be as clear as it is going to get. M. Marshall asked for a copy of her mother’s lease, but later stated that there is no lease because her mother refused to sign one. The family is contesting the successorship transfer to the

oldest sister because their mom never signed the lease and therefore could not have transferred it to their sister. M. Marshall also asked for an answer to her letter about the house being abandoned and why the department is allowing this violation.

Chair Masagatani stated the department was able to contact the lessee and was told the house needs repair and has health and safety issues. The department is looking into it and plans to respond in writing. She thanked the Marshall's for attending and for their patience.

## **ANNOUNCEMENTS AND ADJOURNMENT**

### **NEXT MEETING**

August 18, 2014, Lanai City, Lanai, Hawai'i. The next community meeting will be held at Hale O Kupuna O Lanai, August 18, 2014, at 6:00 p.m.

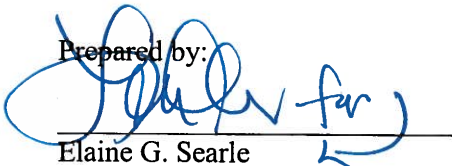
**ADJOURNMENT** 4:15 p.m.

Respectfully submitted:



Jobie M. K. Masagatani, Chairman  
Hawaiian Homes Commission

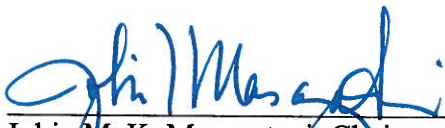
Prepared by:



Elaine G. Searle  
Secretary to the Commission

### **APPROVED BY:**

The Hawaiian Homes Commission  
At Its Regular Monthly Meeting On  
Tuesday, October 17, 2017



Jobie M. K. Masagatani, Chairman  
Hawaiian Homes Commission