

**HAWAIIAN HOMES COMMISSION**  
**Minutes of August 18 and 19, 2014**  
**Meetings held at Hale Kupuna O Lāna‘i, Lāna‘i City, Hawai‘i**

Pursuant to proper call, the 654th Regular Meeting of the Hawaiian Homes Commission was held at Hale Kupuna O Lāna‘i, 1144 Ilima Avenue, Lāna‘i City, Hawai‘i, beginning at 9:35 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  
                  Michael P. Kahikina, Commissioner, Oahu  
                  William Richardson, Commissioner, O‘ahu (arrived 11:15 am)  
                  Renwick V. I. Tassill, Commissioner, O‘ahu  
                  Vacant, Commissioner Kaua‘i

**EXCUSED**     David B. Kaapu, Commissioner, West Hawaii

**COUNSEL**     Craig Iha, Deputy Attorney General

**STAFF**        Darrell Young, Deputy to the Chairman, Office of the Chair  
                  Norman Sakamoto, Development Officer, Office of the Chair  
                  Niniau Simmons, NAHASDA Manager, Office of the Chair  
                  Rodney Lau, Administrative Services Officer  
                  Linda Chinn, Administrator, Land Management Division  
                  Puni Chee, Administrator, Information & Community Relations Office  
                  Francis Apoliona, Compliance Officer  
                  Kip Akana, Enforcement Officer  
                  Paul Ah Yat, Enforcement Office  
                  Kaleo Manuel, Acting Manager, Planning Office  
                  Gigi Cairel, Grants Specialist, Planning Officer  
                  Nancy McPherson, Planner, Planning Office  
                  Dre Kalili, Policy & Program Analyst, Office of the Chair  
                  Dean Oshiro, Acting Administrator, Homestead Services 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 9:42 a.m.

Commissioners Richardson was on his way. Commissioner Kaapu was excused. Six (6) members were present at roll call.

**APPROVAL OF AGENDA**

Chair Masagatani noted Item F-4 and E-3 will be moved to the front of the agenda. Approval of Minutes deferred to Tuesday.

### MOTION/ACTION

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

## **ITEMS FOR DECISION MAKING**

### **LAND MANAGEMENT DIVISION**

#### **ITEM F-4      Approval to Issue Right-of-Entry Permit, University of Hawaii for its Institute of Geophysics and Planetology School of Ocean and Earth Sciences and Technology, Humuula, Hawaii**

### RECOMMENDED ACTION

Land Management Administrator Linda Chinn presented the following:

That the Hawaiian Homes Commission grant its approval to issue a Right-of-Entry permit (ROE) to the UNIVERSITY OF HAWAII for its Institute of Geophysics and Planetology School of Ocean and Earth Sciences and Technology to enter portions of Hawaiian home lands which include portions of the Humuula Saddle region's eastern flank of Mauna Kea situated at Humuula, Island of Hawaii, identified by TMK Nos. (3) 3-8-001-007,002, and 009, as delineated by the shaded area (See Exhibit "A") . The ROE will allow for field teams, under the supervision and direction of its CENTER FOR THE STUDY OF ACTIVE VOLCANOES (CENTER) to install monitoring devices and conduct geophysical data surveys to assess the potential for groundwater and hydrothermal resources and better define their locations within this region. This approval is subject, but not limited to the 12 conditions listed in the submittal.

### MOTION

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

L. Chinn introduced Dr. Don Thomas who stated their surveys measure electrical conductivity of the ground, which is tied to whether the rock is saturated with water or is dry. In the initial survey they were able to distinguish between rock that was dry and rock that was saturated with water. The survey would provide a better idea of the depth at which DHHL would likely find a potable water supply. The water supply could be as shallow as 750 feet, or as deep as 1,000 feet.

Commissioner Ishibashi asked where the funding is coming from. D. Thomas answered they have enough money to do some surveys and have asked the State for additional funding to finish the study.

### ACTION

Motion carried unanimously.

### **LAND DEVELOPMENT DIVISION**

#### **ITEM E-2      Approval of an Interim Construction Loan to Na Kupaa O Kuhio for the East Kapolei IIB Subdivision, Kapolei, Oahu**

### RECOMMENDED ACTION

Land Development Division Administrator Sandy Pfund presented the following:

That the Hawaiian Homes Commission approve the issuance of an interim construction loan to Na Kupa'a O Kuhio ("Na Kupa' a) in the amount of \$3.701 million dollars from the Department of Hawaiian Home Lands Trust Fund to fund construction and project management services for the East Kapolei IIB subdivision, Kapolei, Oahu.

#### MOTION

Moved by Commissioner Kahikina, seconded by Commissioner Gomes to approve the motion as stated in the submittal.

1. On September 24, 2004, the Board of Land and Natural Resources ("BLNR") approved the issuance of a quitclaim deed to the Department of Hawaiian Home Lands ("DHHL") for the lands comprising the East Kapolei IIB subdivision, which is a portion of Lot 18066 as shown on Map 1410 of Land Court application 1069.
2. On February 5, 2009, the Department of Land and Natural Resources ("DLNR") and DHHL executed an unrecorded quitclaim deed for the subject parcel of 26.794 acres. (Exhibit A)
3. The quitclaim deed was issued in advance of registering the parcel in the Land Court of the State of Hawai'i because several sequential subdivisions of land for development of DHHL's East Kapolei Development under Land Court application 1069 needed to be petitioned and approved in Land Court prior to subdivision of East Kapolei IIB increment.
4. DHHL secured the unrecorded quitclaim deed in order to ensure site control of the parcel since significant investments of funds were being made to develop the parcel for homesteading. Evidence of site control by DHHL was also required by the Department of Planning and Permitting, City and County of Honolulu ("C&C"), in order to exempt the project from C&C zoning ordinance.
5. The East Kapolei lands were acquired by the DLNR, State of Hawaii, from the Estate of James Campbell. The Campbell lands were registered in Land Court, which was originally established in 1903 as a means to confirm and register land ownership. Certificates of title were issued to owners of land registered in Land Court and documents run in sequence from the first issuance in 1903. Unlike Regular System property, title to ownership of property in Land Court is guaranteed by the State of Hawaii. Properties placed in Land Court go through a lengthy process of a judicial review of the survey of the parcel, title abstract and determination of ownership.
6. The Land Court petition to subdivide and transfer to DHHL the East Kapolei IIB lot (lot 18066) under Land Court application 1069 was submitted to Land Court but is expected to take upwards of 6 months to a year to be successfully registered and approved by Land Court.

#### ACTION

Motion carried unanimously.

### **PUBLIC TESTIMONY ON AGENDIZED ITEMS**

#### **ITEM A-1: Mark Adams, Re: Item D-11.**

M. Adams stated that he is a full blooded Hawaiian and supports the passage of Item D-11 Policy Clarifying Transfer Rights of Lessees Who are less than 50% Hawaiian: Proposed Amendments to Administrative Rules to Conform to Legislative Amendments concerning Lease Transfers. He related an incident to where a family member nearly lost their home to foreclosure. He was able to rescue this family's home because of his qualification as a 50% native Hawaiian. The blood

quantum is an obstacle that Prince Kūhiō did not intend and he asked the Commission to remove the obstacle in the interest of the people.

**ITEM A-2: Aileen Wong, Patti Silva and Ben Char Re: Item F-6.**

In March 2012, P. Silva said there was a list of violations against Revocable Permit (RP) 173 which Ben Char and Manawalea Riding Center attempted to correct. She asked for assistance from the department to help them rectify all remaining violations. Over 100 signatures and comments were received in support of Ben Char's work in the community and she asked that reconsideration be proffered to them to continue their work as a riding center, offering services to special needs individuals throughout the island. A. Wong said that Manawalea (Riding Center) and B. Char worked together as one, and she deemed this riding school as a melting pot for the community to come together and work as one. She said the center is important to the children to better themselves through exercise, therapy, and as a healing spot.

B. Char said he is a Hawaiian beneficiary and apologized for the style in which he has assisted people. He does not wish to deprive the children and adults from receiving therapy and help, and asked for resolution in order to continue this program. He admitted to having litigation issues, and is willing to correct these felonious matters. Commissioner Tassill asked permission to address the Commission, as he was chastised for speaking publicly in support of Ben Char and RP 173. Deputy AG Iha said he would prefer to address the Commission in executive session. Chair then requested to convene in executive session, to consult with counsel on this matter.

**MOTION/ACTION**

Moved by Commissioner Davis, seconded by Commissioner Gomes, to convene in executive session pursuant to HRS Section 92-5 (a)(4). Motion carried unanimously.

**EXECUTIVE SESSION IN** 12:26 p.m.

**EXECUTIVE SESSION OUT** 12:36 p.m.

**ITEM A-3: Winifred Basques, Re: Item D-11 Blood Quantum**

W. Basques requested an explanation of Item D-11. Chair Masagatani clarified the interpretation of an existing Hawaiian Homes Commission Act (HHCA) transfer rights of a lessee who is less than 50% Hawaiian and a proposed amendment to transfer a lease from a 25% native Hawaiian to another 25% qualified native Hawaiian.

W. Basques queried about Castle and Cooke presenting 50 acres of Lāna'i land to DHHL in 1999 with a stipulation that 25 homes should be built by 2009. Because the job was left unfinished by the original builder and time had expired, she inquired whether Castle and Cook would now request for the return of the land. Chair Masagatani explained that the department worked it out with Castle and Cooke for an extension. W. Basques then asked for assistance on a transfer of her lease on Maui to her son. Chair Masagatani suggested that staff could better assist her one on one.

## **ITEMS FOR DECISION MAKING**

### **OFFICE OF THE CHAIRMAN**

#### **ITEM C-1      Approval of Native Hawaiian Housing Block Grant 2014 Annual Performance Report**

##### **RECOMMENDED ACTION**

NAHASDA Manager Niniau Simmons presented the following:

To approve the 2014 Annual Performance Report of the Native Hawaiian Housing Block Grant (NHHBG)

##### **MOTION**

Moved by Commissioner Kahikina, seconded by Commissioner Ishibashi to approve the motion as stated in the submittal.

##### **DISCUSSION**

Each year, the department provide an annual report on Eligible Activities Undertaken as denoted in the Native American Housing Assistance and Self Determination Act. The attached report was disseminated for public comment commencing on July 15, 2014 and ending on August 14, 2014 in a format that summarizes activities completed for each of the open block grant years. The report is due to the US Department of Housing and Urban Development on August 31, 2014.

The department is pleased to report that it has expended \$2.9 million and closed Program Year 7; has expended \$2.7 million from Program Year 8; has obligated the balance of \$6.5 million from Program Year 8; has obligated an additional \$8.7 million from Program Year 9; all within the last 12 months.

This year's annual report tells HUD about all the activities the department accomplished with the 2008, 2009, 2010, 2011, and 2012 housing plans, noted N. Simmons with a summary appearing on the cover sheet of the submittal which includes total amounts expended in 2008 and 2009. N. Simmons thanked Sandra Pfund and the Land Development team for their assistance in articulating a spend-down that kept within the amalgamated totals of the submitted budget of March 2013. The report includes the department's monitoring of itself, sub-contractors, compliance components, and every lot and infrastructure project that involves NAHASDA funding. It also includes monitoring of housing-quality standards, home-repair programs, self-help building, and even the passing of a labor compliance policy, noted N. Simmons. She said that other divisions within the department that utilize NAHASDA funding, provided effective service delivery by maintaining rigorous compliance efforts. Since May 2013, NAHASDA has moved towards the 103D Procurement Code Compliance and utilized the State's contract format.

With regard to sub-recipient monitoring, N. Simmons said there were no findings for Nānākuli Housing Corporation and Helen N. Wai. However, there was one finding for the Council for Native Hawaiian Advancement (CNHA) for a violation of HRS 414D-151 which prohibits a non-profit organization from making a loan to an officer or director(s). A detailed monitoring of that item is listed in this report.

N. Simmons stated the public comment period rendered only one comment.

Chair Masagatani suggested the Commission vote on the report tomorrow to allow more time to review the lengthy document.

**ITEM C-2 Native Hawaiian Housing Block Grant Package Home Financing –  
Keaukaha/Kalamaula Vacant Lots**

**RECOMMENDED ACTION**

NAHASDA Manager Niniau Simmons presented the following:

To approve a pilot program to develop a packaged home financing product utilizing funds from the Native Hawaiian Housing Block Grant for 40 identified lots in Keaukaha Hawai'i and 79 identified lots in Kalamaula, Moloka'i.

**MOTION**

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

**DISCUSSION**

Vacant lot lessees in Kalamaula (79) and Keaukaha (39), the two oldest homesteads in the Trust's inventory, would be eligible for financing utilizing a first mortgage with the second mortgage that requires no payment for loan qualification.

**Eligibility criteria**

1. 80% area median income as defined by the US Department of Housing and Urban Development; and
2. a beneficiary as determined by the Hawaiian Homes Commission Act; and
3. the lessee of record for the vacant lot in the Keaukaha or Kalamaula homesteads; and
4. being enrolled/willing to enroll, and successfully complete, financial literacy education prior to move in; and
5. be willing to enroll, and successfully complete, post-homeownership training for a period of at least two years from home completion.

**NHHBG Package Home Loan Product**

The criteria above will be used to qualify families for the following owner financing:

The package home cost, including shipping, would be covered as a second mortgage that requires no payment for thirty years (affordability period) and then is forgiven. The lessee will qualify on the actual construction cost (first mortgage) and the term of loan shall not exceed sixty (60) years.

Commissioner Kahikina asked if there is a recapture process if the lessee that qualified for the program passes and the successor decides to sell the home. N. Simmons stated there is a formula that will recapture the portion of the loan that is forgiven.

Commissioner Ishibashi thanked staff for reaching the homesteaders in the older communities to help lessees build on the vacant lots.

**ACTION**

Motion carried unanimously.

**RECESS**

**1:15 p.m.**

**RECONVENE**

**1:35 p.m.**

## **PLANNING OFFICE**

### **ITEM G-1      Approval of Memorandum of Understanding Between Department of Hawaiian Home Lands and U.S. Fish and Wildlife Service Related to Critical Habitat in North Kona, Hawaii**

#### RECOMMENDED ACTION

Acting Planning Program Manager Kaleo Manuel presented the following:

That the Hawaiian Homes Commission (HHC) approve the Memorandum of Understanding (MOU) between the Department of Hawaiian Home Lands (DHHL) and the U.S. Fish and Wildlife Service (FWS) substantively in the form attached hereto in Exhibit A, provided that minor non-substantive changes can be made. Any substantive changes will require approval by the HHC.

#### MOTION

Moved by Commissioner Kahikina, seconded by Commissioner Davis to approve the motion as stated in the submittal.

#### DISCUSSION

DHHL acquired lands, pursuant to Act 14 of the Hawai'i State Legislature Special Session Laws of Hawai'i 1995, over the course of 10 years from 1996-2006 from the Hawai'i Housing Finance Development Corporation (HHFDC) . Since that time, DHHL has awarded 504 residential leases (Village 3, Village 5, and Undivided Interest) in the Villages of La'i 'Opua. DHHL is currently in the process of preparing 117 lots in Village 4 for vertical construction by grading and installing necessary infrastructure improvements. At total build out, there will be 1,264 residential homesteads in the Villages of La'i 'Opua. In addition, it is anticipated that there will be 1,132 future residential homesteads in Keahuolu and Kalaoa, bringing the estimated total DHHL residential homesteads in the North Kona region to 2,396.

Within the Villages of La'i 'Opua, there exists three (3) large plant preserves and four (4) mini plant preserves, totaling approximately 44.8 acres, for the protection of endangered species that include the uhiuhi (*Mezoneuron kawaiensis*) and aupaka or wahine noho kula. These preserves were developed and are currently managed by DHHL. DHHL currently has a contract with Hawai'i Forest Industry Association (HFIA) to maintain and manage these preserves.

K. Manuel provided a background on the Endangered Species Act which is overseen by the FWS whereby they determine whether certain species meet criteria of endangerment. When listing new species via a federal register, FWS designates a critical habitat for the conservation for that particular species. K. Manuel said that critical habitat is similar to a zoning, so that when there is any type of federal nexus; i.e. where federal funding, permitting, or action is required, the proposed developer or entity needs to consult with FWS on proposed impacts to the habitat of that species. There is no determiner on cost nor how long this process will take as each process is different because of the type of species. Ultimately, these processes take time and may be costly. Because the department utilizes federal funding and requires certain permits, the Interior Department would require a review under Section 7 Consultation, said K. Manuel. The MOU focuses on conservation agreements to demonstrate pro-active efforts to protect the conserved species, allowing the Secretary of Interior to take this into consideration and remove the critical habitat designation on DHHL's lands and the need for the department to consult with them.

The department owns approximately 1,500 acres of land in North Kona which was acquired from Hawaii Housing Finance Development Corporation (HHFDC) over a period of 10 years,

1996-2006, via Act 14, Hawaii State Legislature Special Session Laws of Hawaii, 1995. The total build-out is expected to produce 2,400 residential homesteads which was planned out by HHFDC and included lands set-aside for preservation purposes which Hawaii Forestry Industry Association manages for the department. The department spent \$2 million to build the preserves which include erecting fences, weeding, and developing fire breaks. It costs the department \$1,100 per acreage per year to manage. Some of the funding included getting the community involved in the managing of these preserves. Unfortunately, only those with licenses may handle these endangered species. Money that was spent on outreach and community involvement has fizzled out. The focus this past year was to put money into the ground and concentrate on plantings.

In October 2012, the department received a notice from FWS to designate critical habitat on 18,000 acres and they listed 15 species as endangered in the North Kona region on Hawaii Island that included both private and public lands (a map was provided to display the area involved). It was determined that 585 acres of DHHL land was designated for critical habitat and would require the department to go through Section 7 Consultation to come up with a management process, noted K. Manuel. The deadline to comment on these proposed rules was December 2012. The department submitted written comments on December 17, 2012 asking to be excluded from having critical habitat designations to be placed on our lands.

Because of the importance of this process, a workshop was presented on April 23, 2013 before the Commission. FWS also presented their mandate. This allowed the department to present its own mandate to service our beneficiaries and to determine where both mandates collide, noted K. Manuel. FWS extended the comment period to April 30, 2013. FWS was also required to determine the economic impact of this designation. The department determined that the economic impact is vast given that \$40 million was already invested in infrastructure to develop homestead lots in Lai Opuu. Further, the time required to go through a Section 7 Consultation will result in additional delays for beneficiaries in acquiring their homes. FWS came up with a draft economic analysis which the department and land owners disagreed with as a true economic impact. As a result, a public hearing was held on May 15, 2013 which the Chair and other staff attended, and comments were submitted on the draft economic analysis on May 29, 2013 including a request to exclude DHHL's lands. The department submitted additional comments in September 2013 which is summarized here.

The department and seven (7) other landowners entered into a mediation process with the FWS in September 2013 to come up with a comprehensive solution to lessen the burden to all the landowners. The department entered into one-on-one negotiations with FWS to resolve outstanding issues and eliminate the critical habitat designation from DHHL lands via an MOU, said K. Manuel. The draft MOU presented today includes:

1. 97.05 acres designated as critical habitat and set aside as "preserve lands" for conservation and recovery of species and their lowland dry system.
2. 70.5 acres of the 97.05 acres will be fully managed by the department. The other 20 acres is located in an archaeological preserve. The existing preserve is approximately 46.75 acres and managed for 40 years. Two other parcels totaling 23.75 acres will be managed for 20 years;
3. A commitment by DHHL of no more than \$3.229 million for the management of the preserve lands for 40 years;
4. DHHL and FWS will work together as a commitment to contribute to the conservation and recovery of endangered species;



5. FWS will consider DHHL's commitment to protect threatened and endangered species under this MOU on our properties;
6. Start date of MOU is July 1, 2015.

K. Manuel noted that every five years the department would need to go through procurement to secure funding for the scope of the project. The MOU would last for 40 years or until funds are depleted. The department and FWS understands the importance of protecting endangered species and will work together to conserve and recover them. The department hopes to be recognized for its commitment of \$3.2 million and 97.05 acres of land. FWS will initiate a multi-island package which will cover all islands. The department will ask that it be excluded to the extent possible by law. K. Manuel said this MOU will allow the department to develop its lands without obstacles. By focusing on this conservation up front and setting aside 100 acres of land, it will help the department to develop the remaining parcels and commit the department to a long-term relationship with FWS. The Chair said that working to get to this point in the MOU been a difficult process and she credited staff in its pursuit to come up with a workable plan.

Land Development Division Administrator Sandra Pfund agreed that this action will keep the management of the preserves (97.05 acres) to a small footprint and will not impede the development of the rest of DHHL's lands. Without this agreement, every time the department wants to develop a section, FWS may initiate more conditions and requirements, costing the department additional expenses. She said a budget was formulated based on how much it would cost to maintain the preserve with a maximum cap of \$3.229 million. She said that every five years, a new 5-year plan will be created to maintain accurate budgeting for planting and maintenance purposes. K. Manuel said the Endangered Species Act is an unfunded mandate and is implemented at the expense of the private or public sector to maintain and conserve these species.

The HHC in its July 2014 meeting approved the development budget that included \$3.229 million for the MOU between DHHL and the FWS related to critical habitat in North Kona, Hawai'i.

Approval of this MOU will ultimately benefit DHHL for the following reasons:

- DHHL will have the ability to develop, now and in the future, a total of 2,400 residential homesteads, community facilities, and infrastructure for beneficiaries.
- DHHL is setting aside only 6% of its land holdings in North Kona for critical habitat.
- DHHL is committing to approximately \$81,000/year for the management of its preserve lands (approximately \$1,150/acre per year) over the term of the MOU.
- DHHL is taking a proactive role and approach to conserving, protecting, and recovering threatened and endangered species as a native Hawaiian trust and a large land owner in the region.
- DHHL and the FWS are committing to a long-term relationship between the agencies that is mutually beneficial.

#### ACTION

Motion carried unanimously.

### **HOMESTEAD SERVICES DIVISION**

#### **ITEM D-2 Approval of Consent to Mortgage**

#### RECOMMENDATION

Applications Supervisor Kanai Kapeliela recommended the following:

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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 (BUD 184A) guaranteed loans and Conventional (CON) loans insured by private mortgage insurers.

MOTION/ACTION

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

**ITEM D-3      Approval of Streamline Refinance of Loans**

RECOMMENDATION

Applications Supervisor Kanai Kapeliela recommended the following:  
To approve the refinancing of loans from the Hawaiian Home General Loan Fund.

MOTION/ACTION

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

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

RECOMMENDATION

Applications Supervisor Kanai Kapeliela recommended the following:  
To authorize the scheduling of the following loan delinquency contested case hearings as shown in the submittal.

MOTION/ACTION

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

**ITEM D-5      Commission Designation of Successor to Application Rights – Public Notice 2013, Janice Mantanona**

RECOMMENDED MOTION/ACTION

Applications Supervisor Kanai Kapeliela recommended the following:  
To designate Janice Mantanona as a successor to the application rights of deceased applicant who failed to designate a successor.

DISCUSSION

The following qualified applicant passed away on or after October 26, 1998, without naming a successor. Pursuant to 10-3-8 (c) of the Hawaii Administrative Rules, a public notice listing the names of deceased applicants and calling for possible successors to their application rights was published in the Star-Advertiser newspaper on the last two consecutive Sundays of November 2013. A request to succeed to the decedents' application rights was submitted within the required 180 days following the last date of publication. A prospective successor was the sole respondent and is deemed by the department to have met the requirements of successorship.

HSD recommends approval of the following designee:

1. a. Deceased Applicant: Cheryl A. Torres  
Date of death: January 12, 2013  
Successor to application rights: Janice Mantanona  
Relationship: Sister  
Island: Kauai Islandwide  
Type: Residential  
Date of Application: April 3, 2003  
Date of Public Notice: November 2013

1. b. Deceased Applicant: Cheryl A. Torres  
Date of death: January 12, 2013  
Successor to application rights: Janice Mantanona  
Relationship: Sister  
Island: Kauai Islandwide  
Type: Pastoral  
Date of Application: April 3, 2003  
Date of Public Notice: November 2013

**MOTION/ACTION**

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

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

**RECOMMENDATION**

Applications Supervisor Kanai Kapeliela recommended the following:  
To approve the transfers and cancellations of applications from the Application Waiting Lists for reasons described:

**MOTION**

Moved by Commissioner Davis, seconded by Commissioner Kahikina.

**RECOMMENDATION**

Applications Supervisor Kanai Kapeliela recommended amending the recommendation to remove Harry K. Kawamura, page 2, who submitted a request to have his application cancelled.

**AMENDED MOTION/ACTION**

Moved by Commissioner Kahikina, seconded by Commissioner Gomes, to remove H. K. Kawamura from the list. Motion carried unanimously.

**MAIN MOTION AS AMENDED**

Motion carried unanimously.

**ITEM D-7 Reinstatement of Deferred Applications**

**RECOMMENDATION**

Applications Supervisor Kanai Kapeliela recommended the following:  
To reinstate an application that was deferred due to the applicant not responding to two successive contacts as required by the department's Administrative Rules.

MOTION/ACTION

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

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

RECOMMENDATION

Applications Supervisor Kanai Kapeliela recommended 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 Kahikina, seconded by Commissioner Davis. Motion carried unanimously.

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

RECOMMENDATION

Applications Supervisor Kanai Kapeliela recommended the following:

To approve the assignment of the leasehold interest, pursuant to section 208, 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 Davis, seconded by Commissioner Kahikina. Motion carried unanimously.

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

RECOMMENDATION

Applications Supervisor Kanai Kapeliela recommended the following:

To approve the amendment of the leasehold interest listed below.

MOTION/ACTION

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

**ITEM D-11      Policy Clarifying Transfer Rights of Lessees Who are Less than 50% Hawaiian: Proposed Amendments to Administrative Rules to Conform to Legislative Amendments Concerning Lease Transfers**

RECOMMENDATION

Applications Supervisor Kanai Kapeliela read the two recommendations:

1. To adopt a policy clarifying that a lessee who is less than 50% Hawaiian may transfer his or her leasehold interest to a native Hawaiian or to the following qualified relatives who are at least one-quarter Hawaiian: husband, wife, child, grandchild, brother or sister;
2. To commence rulemaking proceedings to amend Sections 10-3-36 and 10-3-61 of the Hawaii Administrative Rules (HAR) as follows: (listed on the submittal).

### MOTION

Moved by Commissioner Kahikina, seconded by Commissioner Davis to approve the motion as stated in the submittal.

### DISCUSSION

K. Kapeliela said a question was raised about Section 208 in the Act (Hawaiian Homes Commission Act) which states that a lessee who is not less than 25% may transfer his or her leasehold interest to a brother, sister, or a sibling who is 25% Hawaiian. At the same time, if a successor names his or her child who is 25% Hawaiian and a successor to the lease, the child would be able to qualify to receive the lease upon the death of the parent. Deputy AG Iha stated that there are potentially different readings of Section 208, but in its strictest sense he would not say that a 25% lessee cannot transfer to a 25% child. The action is to clarify and confirm the department's interpretation of a 25% lessee's right to transfer is not limited by virtue of them being a 25% lessee. He said they can transfer to the same kinds of people that a 50% lessee can transfer to. It clarifies that the commission will adopt the interpretation that a lessee is treated the same way. If a 50% lessee can transfer to a 25% brother, sister, or child, then a 25% lessee can transfer to a brother, sister, or child. K. Kapeliela articulated that this policy clarifies what the department has been practicing and interpreting over the years. Deputy AG Iha said that Section 209's interpretation is that nieces and nephews are required to be 50% native Hawaiian in order to qualify for a transfer of lease.

### ACTION

Motion carried unanimously.

## **ITEM D-12 Approval for Advancement of Net Proceeds – Chad G. A. DePonte**

### RECOMMENDATION

Applications Supervisor Kanai Kapeliela recommended the following:

To authorize the advance payment of net proceeds in the amount of \$15,000 from the General Home Loan Fund.

### MOTION/ACTION

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

## **LAND DEVELOPMENT DIVISION**

## **ITEM E-1 Approval of Lease Awards, Kalamaula, Moloka'i**

### RECOMMENDATION

Land Development Division Administrator Sandra Pfund recommended the following:

Approve the awards of Department of Hawaiian Home Lands Residence Lot Leases to the applicants 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

NAME	APPL DATE	LOT NO	TAX MAP KEY	LEASE NO
Cenal, Anatalia L.K.	10/29/90	5	2-5-2-032:005	12733
Willing, Shanna	01/26/11	45	2-5-2-032:005	12734
Gramberg, Keoki K.B.	06/24/09	116	2-5-2-033:050	12735

With the execution of the foregoing leases, 5 single family home awards have been completed for the Kalamaula Residential Lots Habitat Offering 2012.

MOTION/ACTION

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

**LAND MANAGEMENT DIVISION**

**ITEM F-1      Approval to Issue License, Department of Defense, State Civil Defense (DOD-SCD), Keaukaha Hawai'i**

RECOMMENDATION

Land Management Administrator Linda Chinn recommended the issuance of a license to the Department of Defense (DOD) for the replacement, relocation, and reinstallation of a Civil Defense communication device, a warning siren, at Keaukaha Elementary School, subject to conditions listed.

MOTION/ACTION

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

**ITEM F-2      Consent to License Agreement between City and County of Honolulu and the State Department of Defense for Installation, Operation and Maintenance of Civil Defense Disaster Warning and Communication Device Purposes over Hawaiian Home Lands under License No. 547, Oahu**

RECOMMENDED MOTION/ACTION

Land Management Administrator Linda Chinn presented the following:

That the Hawaiian Homes Commission (HHC) grant its consent to a license agreement to be executed between City and County of Honolulu, Department of Parks and Recreation (LICENSEE), the State Department of Defense (DOD), and the State Department of Accounting and General Services (DAGS) for Installation, Operation and Maintenance of Civil Defense Disaster Warning and Communication Devices Purposes on portions of Hawaiian home lands situated in Waimanalo & Nanakuli, Island of Oahu, identified more specifically by Tax Map Key Nos. (1)4.1.003:016(por.) (Waimanalo Beach Park), 4.1.003.019(por.) (Kaiona Beach Park), 4.1.014.005(por.) & .002(por.) (Kaupo & Makapuu Beach Parks) and 8. 9. 001.001 (par.) (Nanakuli Beach Park), under License No. 547 to the City and County (Exhibit "A-1 - A-3"), subject to the following conditions:

1. The purpose of this blanket consent is to allow the LICENSEE to work with DOD and DAGS to implement a statewide disaster warning and communication system on the five (5) beach parks on Hawaiian home lands under License No. 547;
2. DOD/DAGS shall be responsible for ensuring compliance with Chapter 343, HRS, as amended; and
3. Other terms and conditions as may be prescribed the Hawaiian Homes Commission to best serve the interests of the State.

### DISCUSSION

State Department of Defense (DOD) is implementing a statewide disaster warning and communication system, by either replacing the old sirens or installing new equipment ("Project"). The planned locations, with a total of about 500, cover all major islands on sites including beach parks, schools, harbors, airports, etc. DAGS is DOD's consultant in the planning and construction of the Project. Some proposed locations are on Hawaiian home lands' beach parks licensed to the LICENSEE under License No. 547.

DOD, DAGS, and the City entered into a Memorandum of Agreement dated June 1, 2011 to provide a framework for the respective responsibilities among the parties. It was also agreed that a site-referenced license agreement, containing construction drawing and maps of the equipment and other conditions would be issued by the City to the DOD. A boiler template for the license is attached as Exhibit "C".

Upon review of the situation, particularly, regarding the number of possible locations, staff believes that MOA and the license mentioned in the preceding paragraphs adopted by the City, DOD, and DAGS provide a good path forward to achieve the objectives of the Project: namely, installing the required devices in a timely manner for public safety purposes and defining responsibilities of the stakeholders.

### MOTION/ACTION

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

## **ITEM F-3      Approval to Issue License, Aha Punana Leo, Inc., Nanakuli, Oahu**

### RECOMMENDATION

Administrator Linda Chinn recommended approval to issue a license to Aha Punana Leo, Inc. for the purpose of continuing a Hawaiian educational and cultural learning program at the former Nanaikapono Elementary School in Nanakuli for students, Pre K to Kindergarten, and to utilize two classrooms with approximately 2,000 sq. ft.

### MOTION/ACTION

Moved by Commissioner Kahikina, seconded by Commissioner Davis as stated in the submittal. Motion carried unanimously

## **ITEMS FOR INFORMATION**

### **HOMESTEAD SERVICES DIVISION**

#### **ITEM D-1      HSD Status Reports**

**A - Homestead Lease and Application Totals and Monthly Activity Reports**

**B - Delinquency Report**

**C – DHHL Guarantees for Habitat for Humanity Loans**

### **LAND MANAGEMENT DIVISION**

#### **ITEM F-6      For Information Only - Proposed Recommendation from the Governor's Ad Hoc Advisory Group on Revocable Permits Program, Statewide**

## RECOMMENDED MOTION/ACTION

None, for Information Only.

## DISCUSSION

Land Management Administrator Linda Chinn briefed the Commission on the month-to-month Revocable Permit (RP) land usage. Of the total land holdings of 203,500 acres, only 20% is on homestead lands, with the remaining lands managed by the Land Management Division, noted L. Chinn. The month-to-month land usage allows individuals to use the land to prevent dumping, squatting, and other illegal uses; and allows for the land to remain in decent condition. Approximately 15% of the total RP land holdings generate between 19% to 24% of the department's revenue.

The Hawaiian Homes Commission (HHC) established the following policies:

1. All lands not immediately required for homesteading, general leasing, and other purposes for long-term durations, shall be available to the general public for a month-to-month tenancy through the issuance of a RP;
2. Maximize DHHL's annual revenues from available lands through good land management practices, conducted on lands utilized by way of RP's;
3. Reduce the acreage of available lands utilized under RP's while increasing DHHL's revenue derived from land dispositions.

On March 30, 1984, the HHC adopted the following policies:

1. Minimum rent charge of \$20 per month;
2. Package method of annual renewal of RP's;
3. Allow only one RP per household;
4. Invoice and bill RP's if less than \$200 per annual basis.

On March 31, 1985, the HHC adopted the following policy:

1. Authorize the Chair to issue, amend, renew, and terminate RP's

On October 31, 1986, the HHC adopted the following policy:

1. Agricultural use of more than 40 acres must consider possible impact to native Hawaiian farmers on the same island on availability of water, market share, and pricing.

Issues were raised about mismanagement and non-transparency of the lands through RP use, noted L. Chinn. To address these concerns, she said that Governor Abercrombie convened an Ad Hoc Advisory Group to help DHHL review the program and make recommendations to improve it. Members included the Attorney General David Louie, Department of Land and Natural Resources Chairperson William Aila, and Department of Budget and Finance Director Kalbert Young. On June 27, 2013, DHHL provided the Advisory Group with background information on the current RP program and shared the challenges faced in administering the program. On July 23, 2013, this board (HHC) adopted the interim process to address the transition period pertaining to all RP's that the department stop all expired RP's and transition all those in compliance to a Right-of-Entry (ROE) and to work with those not in compliance to become eligible for a ROE, then to establish a new program that can be presented. On June 2014, the advisory group introduced a draft recommendation (exhibit A).

L. Chinn is hopeful that a new program will be introduced next month, to be presented in informational meetings, take input, and then present a final program that can be implemented in a few months. L. Chinn noted that an informational packet was presented to the Commission last month which listed the department's recommendations, not a part of the advisory group's



recommendation. A step-by-step policy will be then be reviewed and implemented by the Commission.

Chair Masagatani noted two things not mentioned were staff's internal recommendation to have RP's last for a period of three years, and then to repeat for another three-year period. L. Chinn confirmed recommending this to the advisory group, to allow the RP term to last for a term of three years, with the opportunity to rebid, including other who may be interested. L. Chinn is considering moving some of the RP's to longer terms, or general leases, if the land is not ready for development. Commissioner Kahikina would prefer placing more native Hawaiians on the land, rather than focusing on non-homesteading issues where the public would benefit from the use of these lands. He expressed disappointment at the selection of an Ad Hoc Advisory Group, expressing that the Commission could have resolved the issues at hand.

**MOTION/ACTION**

Moved by Commissioner Gomes, seconded by Commissioner Davis, to convene in executive session. Motion carried unanimously.

**EXECUTIVE SESSION IN**

**3:12 p.m.**

The Commission anticipates convening in executive meeting pursuant to Section 92-5(a)(4), HRS, to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities on these matters.

1. In the Matter of SORT, LLC, and George Grace III, vs. Masagatani, et al., Civil No. 14-1-1365-06 ECN
2. In the Matter of Ben Char vs. Masagatani, et al., Civil No. 14-1-1366-06

**EXECUTIVE SESSION OUT**

**4:04 p.m.**

**MOTION/ACTION**

Moved by Commissioner Kahikina, seconded by Commissioner Gomes, to recess the meeting until tomorrow. Motion carried unanimously.

**RECESS**

**4:04 p.m.**

**HAWAIIAN HOMES COMMISSION**  
**Minutes of August 19, 2014**  
**Meetings held at Hale Kupuna O Lāna‘i, Lāna‘i City, Hawaii**

**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  
Matthew Dvonch, Deputy Attorney General

**STAFF** Darrell Young, Deputy to the Chairman, Office of the Chair  
Niniau Simmons, NAHASDA Manager, Office of the Chair  
Linda Chinn, Administrator, Land Management Division  
Puni Chee, Administrator, Information & Community Relations Office  
Francis Apoliona, Compliance Officer  
Kaleo Manuel, Acting Manager, Planning Office  
Dre Kalili, Policy & Program Analyst, Office of the Chair  
Sandra Pfund, Administrator, Land Development Division  
Elaine Searle Secretary to the Commission

**ORDER OF BUSINESS**

**CALL TO ORDER**

Chair Masagatani called the meeting to order at 9:40 a.m

**APPROVAL OF MINUTES**

Chair Masagatani asked for a motion to approve the minutes of June 2013.

**MOTION/ACTION**

Moved by Commissioner Kahikina, seconded by Commissioner Ishibashi, to approve the minutes of June 2013. Motion carried unanimously.

**ITEMS FOR DECISION MAKING**

**OFFICE OF THE CHAIRMAN**

**ITEM C-1 Approval of Native Hawaiian Housing Block Grant 2014 Annual Performance Report**

Chair Masagatani asked if Commissioners had any questions about the report after reviewing it overnight. The motion to approve the report was made yesterday by Commissioner Kahikina, seconded by Commissioner Ishibashi.

ACTION

Motion carried unanimously.

**PUBLIC TESTIMONY ON AGENDIZED ITEMS**

**ITEM A-1: Aileen Wong Re: Item F-9.**

A. Wong noted that Manawalea Riding Center (MRC) provides therapy for handicapped children and adults, ages 2 to 73. It is a place that serviced Boy Scouts, Girl Scouts, Job Corps personnel, and those from around the world. A petition circulated among the community has given them over 2,000 affirmative reviews, and they would like to continue to service the community. She said they are still working on clearing up violations and would like to continue to work with DHHL on resolving any outstanding issues; and continue to provide the services, islandwide and worldwide, that allow these children to improve. She noted that the staff is made up of volunteers and the community supports them.

**ITEM A-2, Patty Silva, Re: Item No. F-9,**

P. Silva asked for the opportunity to work with the department in clearing up all issues which were not blatantly committed. These issues arose due to Ben Char's commitment to help others which was misconstrued as not being in compliance with the lease agreement. She stated that MRC was created as an environment for people with afflictions to come and be healed with the help of the animals, and Ben Char has been an integral part of this riding center, the heart of this whole program. Without him, MRC would not survive as he is the one who selects and trains the animals to work with the children. This behavior also relates to the children. A high percentage of clients are Native Hawaiians and some scholarships are provided by Bishop Estate or schools. This should signify the importance of their services. Many improvements have been made to the site. P. Silva said they are prepared to correct any changes that need to be made.

**ITEM A-3, Ben Char, Re: Item No. F-9,**

B. Char expressed his efforts at keeping Manawalea Riding Center (MRC) from closing. He is proud of his board members and thanked them for their support as he could not have accomplished the work without them. He said he leaves it in the hands of the Commission to determine the future of MRC and the issue on whether or not they would be able to continue the program for the kids and adults. Commissioner Davis thanked B. Char for his testimony and said he can relate to the love and benefit of a horse program, assisting children and adults with disabilities. He recognizes the issues of bringing people into compliance with their leases. He asked B. Char how he would remedy the situation to become compliant. B. Char said they have cleaned out the property, moved out the people who lived there, and asked what other actions are warranted for them to become compliant?

**ITEM A-4, Jeanette Grace, Re: Item No. F-8,**

J. Grace said this may be her last opportunity to express her thoughts on Save Oahu Race Tracks Inc. (SORT). She said they were grateful to acquire Parcel 24, in Kalaeloa, in search for a new racetrack, as it allowed them to build their dream, to recreate a racetrack for the displaced racing community. It has been a challenge along the way, noted J. Grace, especially when outside complaints complicated their issues with rent or other violations. She said at one point the

department was willing to extend a helping hand, then, after a complaint was filed, the department reacted less favorably. She said they were grateful for the opportunity to make something for the community; including spectators, racing enthusiast, families, and community members. It is sad to have it all come down to this, said J. Grace. She said the Commissioners are voting on an item to which they were never privy to, from the beginning, and which SORT was never afforded an opportunity to sit down and discuss all of the issues, to bring clarity to the situation. She has two folders of e-mails. Whatever resolution is decided, she feels comfortable in expressing her thoughts on the matter.

**ITEM A-7, George Grace, Re: Item No. F-8,**

G. Grace said he felt sad to have destroyed the Kalaeloa Race Track. He shared his pain and thought with others had hoped they experienced it, too. His ambition was to offer motorsport enthusiasts an opportunity to share their passion. He said Parcel 24, in Kalaeloa, was the ideal parcel for this venture. An exemption was granted to him when he started his project, and was rescinded seven months later. While administrations changed, problems still went unresolved. He said he is not a villain, and followed protocol for the use of permits, etc. He said he traveled island-to-island to address the Commission, only to have less than quorum present. Losing a file, being discredited by the media for lack of insurance are some of his other issues. He deemed there is prejudice and discrimination against him, yet he does not wish to sue the department. It was not fair to him when land was given, then taken away, due to archaeological artifacts found. He discovered that he is one of two entities that have a permit in Kalaeloa.

**ITEM A-8, Michael Kitchen, Re: Item No. F-8,**

M. Kitchens, a retired military veteran, said he witnessed the closure of Hawaii Raceway Track in 2006. The entire racing community banded together to support George Grace in building a new racetrack. George Grace was given a Revocable Permit (RP) by the department and permission to bring in two feet of dirt and materials to begin building the facility. A notice was sent to the City and County of Honolulu (C&C) but no notice was received from them. M. Kitchens said that from then on, everything went downhill beginning with a fall-out between Evelyn and Franklin Souza and the Grace's. There was no back-up, either, from DHHL's Land Management Division (LMD). Anonymous complaints were made to the department, which resulted in a permit requirement, after G. Grace was told he did not need one. The added dirt needed to be removed, after spending time and money on it. M. Kitchens said G. Grace attempted to secure a permit and surveying expenses just to continue the project. Since G. Grace was not a construction company, he could not secure a bond. Having to pay rent, yet unable to host a racing event, was an impossible feat, noted M. Kitchens. He said he and other volunteers worked tirelessly to assist G. Grace in making this racetrack a reality. Without the proper permitting, there was nothing they could accomplish, including non-motorsport activities. M. Kitchens asked how can anyone generate income, when money was spent moving dirt around for a potential event. M. Kitchens said that G. Grace should be given an opportunity to succeed.

**ITEM A-9, Winnie Basques, Re: Item No. n/a,**

W. Basques inquired about the possibility of a strip mall being planned on DHHL commercial property. She also said that Castle and Cooke gave DHHL land for homesteading with a stipulation that if the homes were not built within a certain time period, the land offering would be forfeited.

## **ITEM A-10, Sabrina Grace Re: Item No. F-8,**

S. Grace said she is only 33% native Hawaiian and supports all Hawaiians as being equal. She does not support a Hawaiian Kingdom. She believed that Duke Aiona, a candidate for Governor, would bring change to DHHL, if elected.

### MOTION/ACTION

Moved by Commissioner Gomes, seconded by Commissioner Davis to convene in executive session. Motion carried unanimously.

## **EXECUTIVE SESSION IN**

**10:32 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 following matter.

1. Leighton Pang Kee vs. Masagatani, et al., Civil No. 12-1-2403-09

## **EXECUTIVE SESSION OUT**

**10:50 a.m.**

## **WORKSHOP PRESENTATIONS**

### **ITEM B-1 License No. 372 to Waimana Enterprises, Inc.**

Land Management Administrator Linda Chinn stated Waimana Enterprises, Inc. (Waimana), License No. 372, is a native Hawaiian corporation that provides broadband communication services to residential, agricultural, pastoral, commercial and industrial lessees on Hawaiian home lands. They construct and install infrastructure, exclusively, on Hawaiian home lands. In 1994, the Commission authorized the Chairman to review and make recommendations on the proposal from Waimana to provide beneficiaries with broadband telecommunication services. The Commission approved the exclusive license to Waimana in December 1994 at a comparable rate and the exclusive benefits license would fulfill the purposes of advancing native Hawaiians.

In 1996, Sandwich Isles Communications (SIC) was issued a partial assignment of the rights, title, and interest. This service provides landline services to un-served areas on Hawaiian home lands and all projects developed after 1996 is being served by SIC. SIC has constructed a fiber-optic network connecting all Hawaiian home lands. L. Chinn showed a map that displays the undersea cable that travels from the Big Island, Maui, Molokai, Oahu, and Kauai. L. Chinn said that DHHL also provides land for SIC offices, constructed on Hawaiian home lands, which is the brain of SIC services.

In 2012, the Commission approved a partial assignment of the wireless portion of Sandwich Isles Wireless which provides cell phone service to beneficiaries through Sprint. A request is being made today for another partial assignment in Item F-5 for ClearCom Inc. (ClearCom)

L. Chinn provided the terms for License 372, begun in May 1995. Normal rent is for \$1 for the entire term and Waimana has agreed to offer employment opportunities to qualified beneficiaries of Hawaiian home lands as well as construct and install all telecommunications infrastructure at their cost for all new projects developed after January 1996, providing better service to the beneficiaries. Waimana agreed to provide ½% of net profit to DHHL for job training education

employment for qualified beneficiaries. For projects developed before 1996, Waimana has the option to purchase or install infrastructure on all lands at its cost and once this is exercised, no other communication provider can provide service on Hawaiian home lands. Exercising this license agreement will not require DHHL to fund the initial infrastructure for broadband development. Waimana is asking commission's approval to the 3<sup>rd</sup> partial assignment of License 372 to ClearCom, wholly-owned subsidiary of Waimana. This will allow ClearCom to provide service to Hawaiian home lands not serviced by SIC.

SIC CEO Alvin Hee explained that SIC had an exclusive license with DHHL for quality telecommunication services. Money is borrowed from Department of Agriculture Rural Utility Service which offers long-term, low-interest loans. Financial support from the Universal Service Fund which is administered by the FCC (Federal Communications Commission) is used to repay these loans. A. Hee said at the time telecommunications was changing from copper to fiber and SIC happened to be in the middle of it. Fiber is better than anything else, including wireless, which is a cheaper and less robust alternative to fiber. In Kauai, there is a trunk that runs from Anahola to Kekaha that joins the marine fiber that comes to Oahu. SIC tries to build things harmonious to the area, placing everything underground. Not much has been done on Oahu as there are many alternatives. The concentration has been on the neighbor islands due to limited alternatives, noted A. Hee. Additional conduits have been placed underground, so as not to dig-up the ground again. The big cost is the initial placement of the additional lines underground. What every other telecommunication entity has done is to dig-up the ground again and place another conduit.

A. Hee explained there are two things about telecommunications. Hawaiian Tel viewed the State of Hawaii as two classes; Honolulu and the rest of the state. Honolulu was provided one degree of service while the rest of the state was provided a lesser degree of service. He said that Hawaiian home lands has the best of service in the State. He added that \$12 million was spent in fiber-optic in Kahikinui on Maui when there were only 12 homes. Everything that was built is blended in with the aesthetics of the land. A. Hee said SIC does not trench upon the beaches as other companies do. They drill from shore and extend out to 60 feet. It is an expensive process, but many of the lands are on Hawaiian home lands, and he wants to deter damage to the reef.

A. Hee said when the department and Commission approached him about this project in the 1990's, it took five years to determine how this federal program would work. Hawaiian Tel were naysayers to this program, but A. Hee offered to pay for everything. It was a huge leap of faith by this Commission to give A. Hee the opportunity to move forward. A. Hee provided a video featuring interviews with remote neighbor island beneficiaries who lacked a viable telecommunications network.

**RECESS** **12:10 p.m.**

**RECONVENE** **12:15 p.m.**

### **ITEMS FOR DECISION MAKING**

#### **LAND MANAGEMENT DIVISION**

**ITEM F-8 To the Extent Necessary, Reaffirm the Department's and Commission's Actions taken with respect to SORT, LLC, George Grace III, Kalaeloa Raceway Park, LLC, and Former Revocable Permit 411, Kalaeloa, Oahu, including but not limited**

**to, the Commission's June 16, 2014 Action, the Department's June 18, 2014 Letter to SORT and Grace, and the Filing and Prosecution of the Action Entitled, Department of Hawaiian Home Lands, State of Hawaii vs. Save Oahu's Race Tracks, LLC et al., DC Civil No. 1RC14-1-5358; and Authorize Continued Efforts by the Department to Regain Possession of the Subject Premises, Tax Map Key No. (1)9-1-013:040**

RECOMMENDED MOTION/ACTION

Deputy Director Darrell Young and Land Management Division Director Linda Chinn presented the following:

That the Hawaiian Homes Commission grants the following:

1. To the extent necessary, reaffirm the Department of Hawaiian Home Lands' ("Department") and Hawaiian Homes Commission's ("Commission") actions taken with respect to SORT, LLC, George Grace, III, Kalaeloa Raceway Park, LLC, and former Revocable Permit No. 411, located at Kalaeloa, Oahu, further identified by Tax Map Key No. (1) 9-1-013:040 (See Exhibit "A"), including but not limited to, the Commission's June 16, 2014 action, the Department's June 18, 2014 letter to SORT and Grace, and the filing and prosecution of the action entitled, Department of Hawaiian Home Lands, State of Hawaii v. Save Oahu's Race Tracks, LLC et al., DC Civil No. 1RC14-1-5358; and
2. To the extent necessary, authorize continued efforts by the Department to regain possession of the subject premises under the former Revocable Permit No. 411.

MOTION/ACTION

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

**ITEM F-9 To the Extent Necessary, Reaffirm the Department's and Commission's Actions taken with Respect to Ben Char and Former Revocable Permit 173, Waimanalo, Oahu Including but not Limited to, the Commission's June 16, 2014 Action; and Authorize Continued Efforts by the Department to Regain Possession of the Subject Premises, Tax Map Key No. (1)4-1-008:095(P)**

RECOMMENDED MOTION/ACTION:

Deputy Director Darrell Young and Land Management Division Director Linda Chinn presented the following:

That the Hawaiian Homes Commission grants the following:

1. To the extent necessary, reaffirm the Department of Hawaiian Home Lands' ("Department") and Hawaiian Homes Commission's ("Commission") actions taken with respect to Ben Char, and former Revocable Permit No. 173, located at Waimanalo, Oahu, further identified by Tax Map Key No. (1) 4-1-008:095 (See Exhibit "A"), including but not limited to, the Commission's June 16, 2014 action; and
2. To the extent necessary, authorize continued efforts by the Department to regain possession of the subject premises under the former Revocable Permit No. 173.

MOTION/ACTION

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

**ITEM F-5      Approval for Partial Assignment of License No. 372 from Waimana Enterprise, Inc. to ClearCom, Inc., Statewide**

**RECOMMENDED MOTION/ACTION**

Land Management Division Director Linda Chinn presented the following:

That the Hawaiian Homes Commission grant its approval to a Partial Assignment of License No. 372, from Waimana Enterprises, Inc., a native Hawaiian corporation, as Assignor, to ClearCom, Inc., a native Hawaii corporation, as Assignee, in order to provide broadband services under License No. 372 to Hawaiian home lands.

The consent to the Partial Assignment is subject to the terms in the submittal.

1. The term shall be effective as of the date of approval by the Hawaiian Homes Commission for the term of the license;
2. Assignee shall submit for Licensor's review and approval all construction and installation plans;
3. This consent shall not authorize, nor deemed to authorize any further or other assignment of License No. 372;
4. This consent shall not be deemed nor construed to be a waiver of any of the terms, covenants or provisions of this License; all rights of Licensor under this License being hereby reserved;
5. All rights of the Licensor or against the Licensee under the License Agreement are reserved; and

**MOTION/ACTION**

Moved by Commissioner Gomes, seconded by Commissioner Davis.

**DISCUSSION**

Chair Masagatani asked what distinguishes ClearCom from Sandwich Isles Communication (SIC). A. Hee answered that it is a geographical difference not a technological difference. SIC is heavily regulated as a borrower and a receiver of federal funds, its area is a part of not the whole of Hawaiian home lands. ClearCom was created to be an unregulated company.

Chair Masagatani stated so ClearCom was intended to be the competitor of HawaiianTel and Oceanic to provide services to existing communities. A. Hee said ClearCom was formed to cross and connect all Hawaiian home lands. Regulations were not clear about if SIC could own facilities off Hawaiian home lands, so at that time ClearCom was formed so there was no issue with the SIC regulations. They now know that SIC can own facilities off site. ClearCom has evolved and is now a general contractor that provides broadband services and has the ability to do business in Honolulu or anywhere else. They are not trying to do that, it's just for homesteaders who want services beyond the recognized area under SIC.

Commissioner Richardson asked to get a schedule of the loans being negotiated by SIC. He requested a deferment of the vote to give everyone time to better understand the timeframes of the financing.

Commissioner Kahikina asked for the total amount of debt service. A. Hee replied overall about \$400 million. Not all of the money was borrowed from the feds, the interisland infrastructure was financed by commercial means.

Chair Masagatani announced the item was deferred to the next agenda.



MOTION/ACTION

Moved by Commissioner Kahikina, seconded by Commissioner Ishibashi, to adjourn to executive session. Motion carried unanimously.

**EXECUTIVE SESSION IN**

**12:34 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 matter.

1. Item F-7, Approval to Issue License, Hawaiian Telcom, Inc. and Oceanic Time Warner, Lalamilo, Island of Hawaii

**EXECUTIVE SESSION OUT**

**1:00 p.m.**

**ITEM F-7      Approval to Issue License, Hawaiian Telcom, Inc., and Oceanic Time Warner, Lalamilo, Island of Hawaii**

This matter was deferred to next month's agenda.

**ANNOUNCEMENTS AND ADJOURNMENT**

**NEXT MEETING**

The next regular monthly meeting will be held on September 22, 2014 at Paukukalo Community Center, 657 Kaunualii St., Wailuku, Maui.


MOTION/ACTION

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

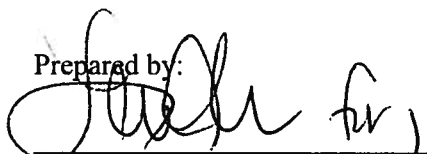
**ADJOURNMENT**

**1:02 p.m.**

Respectfully submitted:

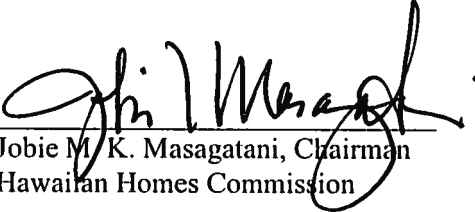
  
Jobie M. K. Masagatani, Chairman  
Hawaiian Homes Commission

Prepared by:

  
Elaine G. Searle  
Secretary to the Commission

APPROVED BY:  
The Hawaiian Homes Commission  
At Its Regular Monthly Meeting On

Tuesday, September 19, 2017

  
Jobie M. K. Masagatani, Chairman  
Hawaiian Homes Commission