

HAWAIIAN HOMES COMMISSION
Minutes of July 20 and 21, 2015
Meeting Held in Kapolei, O‘ahu, Hawai‘i

Pursuant to proper call, the 665th Regular Meeting of the Hawaiian Homes Commission was held at the Department of Hawaiian Home Lands, 91-5420 Kapolei Parkway, Kapolei, Hawai‘i, beginning at 9:39 a.m.

PRESENT Jobie M. K. Masagatani, Chair
 Doreen N. Canto, Commissioner, Maui
 Gene Ross K. Davis, Commissioner, Moloka‘i
 David B. Ka‘apu, Commissioner, West Hawai‘i
 Michael P. Kahikina, Commissioner, O‘ahu
 William K. Richardson, Commissioner, O‘ahu
 Renwick V. I. Tassill, Commissioner, O‘ahu
 Kathleen P. Chin, Commissioner, Kaua‘i

EXCUSED Wallace A. Ishibashi, Commissioner, East Hawai‘i

COUNSEL Craig Y. Iha, Deputy Attorney General

STAFF William J. Aila Jr., Deputy to the Chairman
 Niniau Simmons, NAHASDA Manager, Office of the Chair
 Paula Aila, Hale Manager, Office of the Chair
 Hokulei Lindsey, Administrative Rules Officer, Office of the Chair
 W. Kamana‘o Mills, Special Assistant, Office of the Chair
 Michelle Brown, Secretary to the Commission, Office of the Chair
 Leah Burrows-Nuuanu, Secretary to the Commission, Office of the Chair
 Francis Apoliona, Compliance Officer, Office of the Chair
 Dean Oshiro, Acting Homestead Services Division Manager
 Norman Sakamoto, Development Officer, Land Development
 P. Kahana Albinio, Acting Property Dev. Mgr., Income Property Branch
 Kaleo Manuel, Acting Administrator, Planning Division
 Shelly Carreira, Land Agent, Land Management Division
 Karen Lucero, Homestead Assistant, Homestead Svc. Division
 Stewart Matsunaga, Master Plan Community Dev Mgr.
 Nancy McPherson, Planner, Planning Division
 Juan Garcia, Homestead District Supervisor
 Rodney Lau, Admin. Services Office
 Jenna Gray, Admin. Service Office
 Keala Pruet, Homestead Applications, Homestead Svc. Division
 Ku‘uwehi Hiraishi, Info. Specialist, Information and Community Relations

AGENDA Chair Masagatani sought approval of the agenda. The minutes for the meeting of November 2013 were distributed for Commissioner’s review. Approval will be sought at the start of tomorrow’s meeting.

Moved by Commissioner Kahikina, seconded by Commissioner Davis, to approve the agenda. Motion carried unanimously.

A – PUBLIC TESTIMONY ON AGENDIZED ITEMS

Item A-1, Homelani Schaedel, President of Malu‘ōhai Residents Association. Testifying on Item C-2 Approval of an interim policy on the sale of homestead leases or vacant or undeveloped lots or undivided interests.

Homelani Schaedel commented it is difficult to provide feedback on agenda items when material is not provided ahead of time. The intent of the Undivided Interest Award Program was to help people who were on the waitlist. They were given a tangible lease for a “to be developed” project. DHHL recognized that while it can build homes, it was necessary to help prepare our beneficiaries to financially qualify for a loan. Those who were on the waitlist the longest had the greatest challenge in qualifying for a loan. In conjunction with this type of lease award, the Home Ownership Assistance Program was designed to work with the undivided interest lease awardees by providing financial literacy training and address credit and savings issues to financially qualify for a loan.

Another benefit of the program was the ability to plan for succession before a project is developed. For example, if her sister had received such an award, her children who do not meet the blood quantum would have been able to succeed her in the lease. Regrettably, she passed at age 45, three years before the program began. When she thinks of how long and difficult it was for Prince Kuhio to get the Hawaiian Homes Commission Act of 1920 passed, it is frustrating to see the actions of people who have no regard for the opportunity and privilege of being a beneficiary of the trust. Instead, they have and continue to abuse the program by selling their lease and getting back on the waitlist. Shortly after these types of cases were awarded, people started selling leases. Prices for Kanehili started at \$45,000. As the cost of home started to rise, sale prices for these leases have risen to more than \$75,000. For those who choose to benefit financially by selling their lease of a vacant or an undivided, undeveloped lot do so without regard for the intent and purposes of the Hawaiian Homes Commission Act of 1920. They dishonor the legacy of Prince Kuhio. She supports this recommendation to set a policy to stop this type of abuse of the trust.

Commissioner Chin asked if there are circumstances when selling a lease would be acceptable. H. Schaedel stated she would hope this Commission would look at requests on a case by case basis because there are circumstances where the lessee has no other option. She looks forward to hearing what other people think about the policy. She does not think it will sway her, but she would like to hear other opinions.

Item A-2, Michelle Kauhane, President& CEO - Council for Native Hawaiian Advancement (CNHA), Re: Item No. C-2 Approval of an interim policy on the sale of homestead leases or vacant or undeveloped lots or Undivided Interests.

Michelle Kauhane agreed that there is an issue with the sale of leases and it has become problematic because of the notion that those on the waitlist are being passed over. However, she wants the Commission to contemplate that an undivided interest lessee who has a lease in hand can only transfer the lease to a 25% [blood qualified] Hawaiian if the relationship is articulated in the Act. When looking at a sale of a lease, the seller is required to sell the property to Hawaiian

with not less than one-half Hawaiian blood. Hawaiians sell leases because waitlisted folks are tired of waiting. Waitlisted Hawaiians who are eligible and can afford it are purchasing it as a one-half Hawaiian from another one-half Hawaiian. They are not jumping someone on the waitlist but are buying their way up that waitlist because they are tired of waiting.

On the other hand, if a Hawaiian had a home on the property, they can sell that home, transfer it to a one-quarter Hawaiian, and get back on the list to buy another home and transfer it again to a one-quarter Hawaiian.

Those are two separate issues and it is easier to say the DHHL doesn't support it for vacant lots because there are no improvements. Technically, where there is an improvement on the lot, the waitlist is being jumped by allowing a one-half Hawaiian to transfer to a one-quarter Hawaiian and acquire another property.

She articulated the difference between the two situations and in general stated she does not support the sale of leases. She understands why it is happening. People on the waitlist are afraid of dying without something to transfer to their children who are not one-half Hawaiian. That fear causes them to purchase an undivided interest lease. She asks Commissioners to compare how many improved lots are being transferred as opposed to the undivided interests being sold.

The second point is that looking at the Act as part of the settlement in the Nelson lawsuit, this Commission must acknowledge or show that there is no homesteading requirement for the lands DHHL is leasing to the general public. That specific policy is not being talked about. The Commission is allowing non-homesteading purposes like the DeBartolo Mall to occur which essentially is allowing lands to be leased for non-homesteading purposes. Those lands could have been another housing subdivision. The existing settlement requires the Commission to show that those lands are not required for homesteading purposes. This is why people are selling their leases and why there is a market of one-half Hawaiian buyers for those leases.

In general, CNHA is not supportive of selling leases but the Commission has to look deeper on why those sales are occurring.

Commissioner Kahikina asked for M. Kauhane's thoughts on what policies he should be focusing on. M. Kauhane stated there needs to be clarification of the undivided interest program. When those leases were originally issued, the Department told those people it was something for them to look forward to, so that while the infrastructure is being built, they can work on their finances to become qualified. This was also a real lease in their hand which can be turned over to their successors.

Commissioner Richardson stated if undivided interest sales are allowed it is basically advocating for an economic lottery. It is basically passing land to the richer as opposed to those who have been waiting on the list. M. Kauhane stated she thinks the Department is doing the same thing by requiring someone to qualify for a \$300,000 mortgage. If you are number 1 on the waitlist and you cannot qualify for a \$300,000 home, then the person is being skipped over for someone who can. If you put that into the undivided interest context, they got it for free because there were no income qualifications. The undivided interest list has more of the underserved and needy beneficiaries because if they could have afforded a turn-key home, they would have taken it. Some are still not able to qualify for a home so they sell their lease. When she selected her home, she was number 3426, there were 326 homes available. She still got a home because many didn't qualify for the house. She agrees there needs to be more non-profit developer models like habitat.

Commissioner Richardson asked how Ms. Kauhane proposes the Commission acquire the resources needed for infrastructure if it cannot general lease its lands so it can bring the cost of housing down for beneficiaries? M. Kauhane stated the Department needs to continue to advocate at the state legislature. The Department needs to partner with beneficiary communities to help to advocate for the appropriate resources. The State needs to be reminded that it continues to violate its own constitution. The federal government has programs for native people that we haven't fully explored. Commissioner Richardson asked M. Kauhane if she really thinks the State will ever fund the Department adequately. M. Kauhane stated we have to try. If the State can afford to give the Hawai'i Tourism Authority \$80 million, it can give DHHL more than it currently does. Leasing land to non-beneficiaries is not the only way to get resources.

RECESS

10:03 AM

RECONVENED

10:11 AM

B – WORKSHOP PRESENTATIONS

ITEM B-1 Workshop on Proposed Administrative Rules Amendment

Rules Officer Hokulei Lindsey provides the following workshop presentation:

Overview:

- Administrative Rules.
- DHHL Process.
- Chapter 91, Hawaii Revised Statutes.

Policy and the draft rule changes.

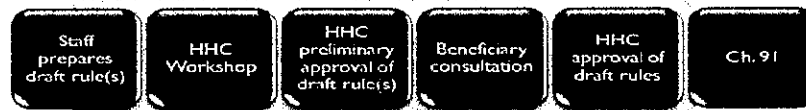
- “Housekeeping” and updates.
- Substantive changes.

Administrative Rules

- “Filling in the details.”
 - Implement legislative acts.
 - Establish operating procedures for state agencies.
- Rulemaking is governed by Chapter 91, HRS.

Admin rules are used to “fill in the details.” Statutes typically provide only the skeleton or general structure of a program. The agency charged with implementing a given statute will need to fill in the details in order to carry out the program on a day to day basis. For example, HHCA sec 207 provides that the department can lease to native Hawaiians. We know from sec 201 that a native Hawaiian is someone not less than one-half blood quantum. But the HHCA does not explain how someone is to prove 50% blood quantum or how the department is to lease lands to native Hawaiians. Those are details filled in by administrative rules. In Hawaii, rulemaking is governed by Ch 91, HRS

DHHL (Proposed) Process



We have a somewhat intensive pre-Chapter 91 process. Part of any agency's due diligence would be to identify rules and policies that need to be addressed, as well as engaging in dialogue with their governing board. While other departments may also turn to stakeholders for input, DHHL has a special program to consult with beneficiaries. Beneficiary consultation happens in this pre-Chapter 91 process to ensure beneficiary concerns are taken into account early and in a focused setting. Proposed rules are identified and prioritized. This helps with updates to bring consistency and address the Department's future plans. The goal is for the rulemaking process to be regular: annually, or maybe semi-annually

Chapter 91, HRS

- Hawaii Administrative Procedure Act.
 - Ensures uniformity and openness in the procedures used by state agencies.
 - Rulemaking:

Ch. 91 applies to all agencies of the state and ensure uniformity and openness in procedures used by agencies. If a department somehow fails to meet these procedural requirements, the proposed rules cannot be adopted.

Chapter 91, Rulemaking Process

After the DHHL process and with HHC approval we move forward into Chapter 91. This part of the rulemaking process can be very detail oriented with its timing and notice requirements, as well as its specific formatting requirements.



Policy and the Draft Rule Changes.

- Physical addresses and contact information.
- New definitions.
- Rulemaking procedures.

Department contact information needs to be updated. Some definitions are being added. Outstanding additions to the Definitions (undivided interest, priority and preference) as well as some stylistic changes. Just like our rules must implement the HHCA, they also must implement Chapter 91. The proposed changes update some of the hearing requirements to conform with current standard practices.

Three Priorities

- Genetic testing.
- Agricultural subsistence lots.
- Transfer of homestead leases.

The approach to this presentation is policy-based. I wanted to provide background for each rule priority so that we have a common starting point from which to understand the rules. The most detail-oriented topic is the genetic testing issue.

Genetic Testing

- Whether results of genetic tests should be accepted as part of the application and verification process for the Hawaiian Homes program.

The primary question we needed to ask was whether results of genetic tests should be accepted as part of the application process.

Our current application and verification process requires an applicant submit birth certificates or birth records which can verify 50% Hawaiian blood quantum. If qualifying blood quantum cannot be determined by birth records, DHHL may accept secondary documents, which include marriage certificates, death certificates, family history charts, etc.

First issue to dispel: we are talking only about genetic tests that link family members, and specifically parent and child. NOT a genetic test to establish Hawaiian ancestry. This is probably the most conservative step we could take other than saying no.

- Why?
 - *Pang Kee v. Masagatani*.
 - Applicant situations:
 - Adoption, hānai, only one parent listed on birth certificate, alternative reproductive technology.

The department was sued. We are filling a gap to protect the trust.

Native Hawaiians are a diverse people, our communities are diverse, and our families are diverse. Our applications staff come across all manner of circumstances and family situations. Some of which are very sensitive. Our applications staff are also usually that first gate-keeper that sometimes has to say “no.” One goal is to help some applicants who wouldn’t otherwise qualify.

Sometimes, the birth records and secondary documents fall short in verifying a particular individual. In this type of situation, genetic testing could link the applicant to a known beneficiary and as such may help the applicant qualify.

- Approach:
 - Existing approaches.
 - Reliable testing and reliable results.
 - Protect the parties.
 - Ease of implementation.
 - Clarify application processing.

Look to existing approaches. We did not want to reinvent the wheel or explore uncharted territory. Used language from Uniform Parentage Act, HRS Chapter 584 (UPA). I also got input from and used some language from KS regarding testing labs and chain of custody requirements.

We wanted to ensure the results that the department would accept are reliable and have a documented and verified chain of custody.

It is important to protect the parties. Some of the situations will be sensitive and extremely personal. Part of this means the department can only go so far in helping the applicant acquire information and at a certain point the applicant is responsible for pursuing what may be necessary to obtain the testing, if testing is what they want. The department would not require testing, it is a last resort option for the applicant to consider and pursue, if desired. If records are sealed, and applicant wants genetic testing, the applicant must pursue to unseal. Also, limit use of DHHL determination to DHHL purposes; DHHL is not family court.

The rule should be easy for staff to implement; defined standards and cut offs so that staff isn't interpreting test results. Clarify application processing by conforming the rule to the information contained on the application form.

H. Lindsey introduces Dr. Tim Donlon, who is an expert and is knowledgeable about the specific issues DHHL needs to address. He will present some very basic information about genetic testing, and can answer any questions you may have about how the rule may function in different circumstances.

T. Donlon used an example of one situation to try to explain the 13 core markers and possible outcomes. His example briefly reviews likelihood ratios when both parents are tested versus other testing situations.

COMBINED LH RATIO	SUPPORT OF HYPOTHESIS
< 0.40	EVIDENCE DOES NOT SUPPORT HYPOTHESIS
0.40 - 1.6	NEUTRAL
1.6 - 10	LIMITED SUPPORT
10 - 100	MODERATE SUPPORT
100 - 1,000	STRONG SUPPORT
>1,000	VERY STRONG SUPPORT

- Degree of certainty:
 - "...a power of exclusion of greater than ninety-nine point zero per cent (99.0%) and a minimum combined paternity or maternity index of five hundred to one."

This degree of certainty will work whether the father is unknown or whether, in the less common circumstance, the mother is unknown. The power of exclusion and the CPI come directly from the UPA, HRS sec 584-11. This standard is not so strict so that the "trifecta" is needed to determine parentage but it is strict enough for confidence to be reasonably placed in a "positive" result.

Examples that would work:

Father alleged but not listed

Egg donor (unknown father/sperm donor; assuming identity of alleged donor known)

Sperm donor (assuming the identity of the alleged donor was known)

Examples that would NOT work:

Sibling

Grandparent

Aunt or uncle

- Key aspects of the draft rule:
 - Definition of “genetic tests.”
 - Timing: when in the application process.
 - Define the conditions/circumstances under which testing becomes an option.
 - Degree of certainty of the results.

H. Lindsey stated at this point the draft proposal limits genetic testing to only parents and children. Genetic testing will not prove how much Hawaiian someone has, only that they are the son or daughter of someone already approved on the list. The rule is as narrow as DHHL could go without saying “no” to the entire process.

Commissioner Chin stated the goal is to link yourself to a parent or alleged parent on the list. She clarified that this is simply an option for beneficiaries and not a requirement.

H. Lindsey stated it is just an option for those who need it. The timing for this process within the application process is such that all the other options will be exhausted before the genetic testing option. Most beneficiaries can be qualified through birth certificates. For those who choose this option, it will be at their choice and their expense. This rule is saying the Department will accept genetic testing as it is outlined in the rule.

T. Donlon stated the future of genetic testing is such that one day technology will be able to quantify the amount of a specific race a person has.

Agricultural Subsistence Lots

- How can the department better respond to beneficiaries’ increasing interest in leases that promote a rural lifestyle?

The HHCA allows three types of leases to native Hawaiians: residential, agricultural, and pastoral. Each of these leases have a specified acreage which cannot be exceeded: Ag lots cannot exceed 40 acres.

- Why?
 - Hawaiian Homes Agricultural Task Force and Beneficiaries Survey.
 - DHHL General, Island, and Regional Plans.
 - Maximize use of agricultural lease and minimize non-compliance.

For 20 years, demand has increased for leases that promote a rural lifestyle and DHHL plans have contemplated subsistence lifestyle lots. One may imagine a vegetable garden, some chickens, maybe a goat, and a simple residence maybe off-grid or with modest infrastructure. In this same time period, the waiting list for agricultural lots has grown at a rate faster than, and exceeds, residential on all islands except Oahu.

How can the department respond to the interest in rural lifestyle lots?

Agricultural subsistence lots: DHHL plans, beneficiary studies, and 20 years

- Approach:

- Respond to beneficiary interest in rural/subsistence lifestyle in a cost efficient manner for the trust.
- Integrate vision of the Hawaiian Homes Agricultural Task Force.
- Address urban and rural housing demand.

The draft rule responded to beneficiary interest in a rural/subsistence lifestyle by providing leases to smaller Ag lots upon which a mix of subsistence farming and/or pastoral uses could occur, and upon which the lessee would reside. The added benefit for the trust is that subsistence Ag lots will be cost 3-4 times LESS to develop than a traditional Ag lot. So this rule is like a two for one: we respond to demand for “rural lifestyle” lots and it provides a cost efficiency for the trust.

The draft rule integrated aspects of the Task Force recommendations by providing smaller ag lots where lessees can reside and subsistence farm, it eliminates the 2/3 cultivation requirement that may be attached to a larger ag award, and adds flexibility to provide options for beneficiaries and to make compliance with lease terms more manageable.

The rule is also aimed at addressing urban and rural housing demands. Many on the Ag list are also on the residential list. Under this rule, acceptance of a subsistence award would remove the beneficiary from the residential list once a home is constructed. This should help to manage the waiting lists and the increase in lots that can accommodate a residence should help to address housing needs.

- Key aspects of the draft rule:
 - Differentiates between agricultural awards of 1.0 acres or less and awards of greater acreage.
 - Requires lessee reside on a lot of 1.0 acres or less.
 - Maintains existing rules for awards of greater than 1.0 acres.

Differences between subsistence and supplemental or commercial Ag:

- smaller lot, anything less than 1 acre is a subsistence award
- residence on the lot is required
- no farm plan
- mix of crops and animals can be raised

Maintain the current Ag program; rules for larger acreages do not change.

A lessee with a subsistence award may apply for an additional acreage award

Commissioner Richardson stated the Department has a hard time enforcing the current Ag awards, and doesn't see how it will manage many smaller lots. H. Lindsey stated because there is no requirement to farm

Transfer of Homestead Leases:

- Whether the department should engage in greater due diligence before presenting lease transfer requests to the Hawaiian Homes Commission.

The HHCA (sec 208(5)) and DHHL's administrative rules (10-3-36) allow for the transfer of homestead leases with the approval of the commission and provide some general conditions which the lessee and transferee must comply with. At present, information like the sales price and the reason for the transfer are treated as voluntary disclosures. Whether the sales price reported is the actual price is not necessarily reported nor is the profit realized reported. While many lessees provide a reason for the transfer, some simply write “selling.” There may also be non-compliance with lease conditions.

- Why?
 - Beneficiary concerns.
 - Information from beneficiary focus groups.
 - Significant number of requests to transfer.

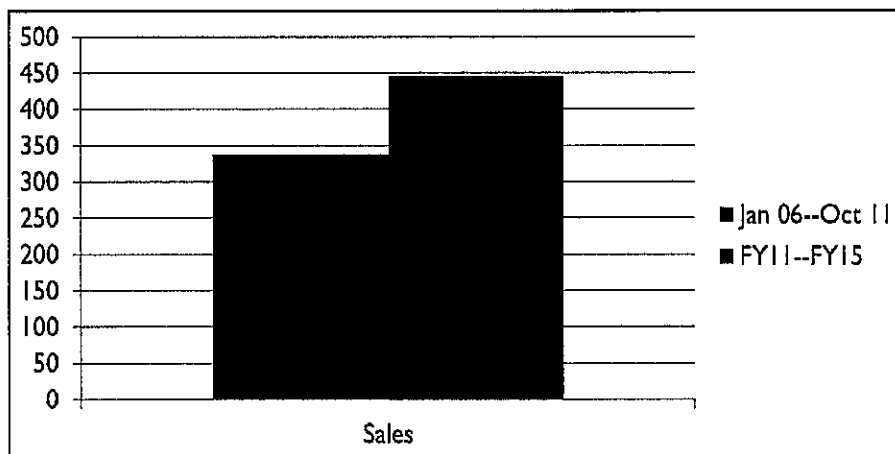
In 2007, a consultant for the department conducted focus group discussions with beneficiaries and staff to better understand reported concerns related to the transfer of homestead leases. The perception of unfair profit was uniformly identified across communities as the top primary concern. This issue presents most often in the situation of selling an unimproved lot or undivided interest—here the lessee profits without having made any financial investment in the lot and essentially makes money off the subsidy provided by DHHL.

Another concern voiced by beneficiaries and staff concerns the practice of list jumping. This happens in a number of ways but the list jumping we can address immediately and comparatively easily is the situation that arises when the transferee is not on the waiting list. The transferee only needs to be a qualified native Hawaiian or a lineal family member of at least 25% blood quantum. The result is that if the transferee is not on the list, the department verifies blood quantum as part of the transfer process and the transferee effectively “jumps” ahead of everyone on the list and everyone in the application queue. So far this year, 85 transfers were made to beneficiaries not on the waiting list (62 on list).

The focus group discussions from 2007 revealed that a majority, 69%, of participating beneficiaries thought that limits should be set on the transfer of homestead leases. (26% thought transfers should not be allowed except for in emergency or extenuating circumstances). Only 5% thought transfers should occur freely.

Each month the HHC approves numerous requests to transfer. Last fiscal year, 259 requests were presented to the HHC and in FY14 247 requests were presented—that’s 506 transfers in a two year period. In terms of sales, a quick scan of the classifieds in the OHA paper show that there is a market for homestead leases and realtors that specialize in their transfer.

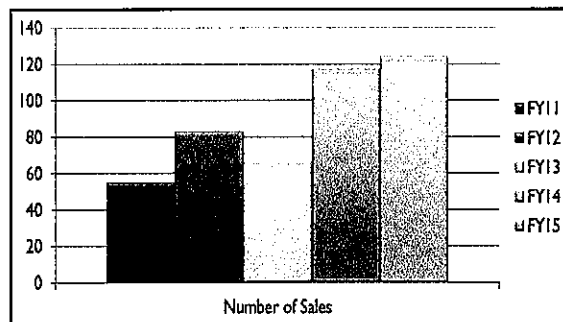
And the number of sales appears to be increasing:



It was reported to the HHC in 2012 that from Jan 2006 thru Oct 2011, leases sold totaled 337. (*Of those, 35 were for vacant lots and 14 were for undivided interests.*) From FY11 thru FY15, there were 446 sales; that’s a 32% increase. Not surprisingly, most requests involve residential leases, and most sales are for leases to improved residential lots. The majority of these types of

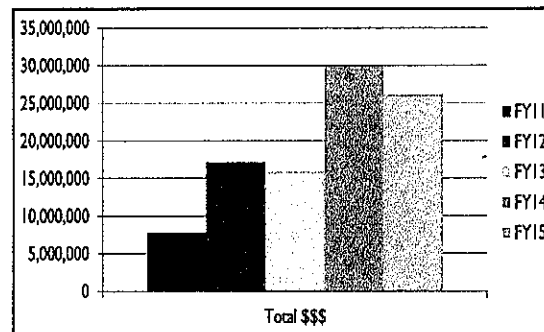
transfers should be easily approved. The transfer of leases is not necessarily a bad thing, and, in some cases it is necessary. (It may also be a sign of success.) The ability to transfer the lease is part of the original act. The question is one of whether the department can address some of the abuses and unfairness that occurs with some of these transactions.

When the lot is unimproved or vacant, or the lease is an undivided interest, there is an unfairness to a sale of that lease. When the transferee is not on the waiting list, the process is circumvented, and another sense of unfairness arises.



Number of Sales

FY11 = 55
FY12 = 83
FY13 = 67
FY14 = 117
FY15 = 124



Total money exchanged in homestead lease sales

FY11 = \$7.7 mil
FY12 = \$17 mil
FY13 = \$15.9 mil
FY14 = \$29.9 mil
FY15 = \$26.1 mil

High Price Per Lease Type:

Residential:

FY11 = \$350K (Waimanalo)
FY12 = \$590K (Waimanalo)
FY13 = \$505K (Kaupe'a)
FY14 = \$480K (Kalawahine)
FY15 = \$500K (Kewalo)

Ag:

FY11 = \$60K (Keokea)
FY12 = \$75K (Keokea)
FY13 = \$80K (Panaewa)
FY14 = \$400K (Waikane)/(\$100K Keokea)
FY15 = \$120K (Keokea)

Transfer of Homestead Leases

Approach:

Data and past practice.

- How other native trusts address transfers and sales of leases by its beneficiaries.
- Balance and fairness in the spirit of the trust.

Data and past practice:

Looking back at past practice, in the 1950s, the request to transfer was offered to the waiting list in order of priority. It also appears as though the transferee was required to be on the list because the lessee was advised of the proposed transferee's relative priority on the list, and at that point permitted to withdraw the request to transfer.

That practice had changed by the 1980s when pursuant to the admin rule, transfers were allowed only after the lessee had the lease for 7 years, unless there was an emergency situation (not defined). That requirement was abandoned in 1983, at which point the rule became substantively what it is today. **amendment to transfer to 25% relative proposed in 1999 (appv'd in 2003).

How do other trusts manage transfers of leases

Looking for analogies to other native land trusts, Indian Country has what is called the "restricted fee." These lands are held by individual Indians, alienation or encumbrance is subject to approval by the Secretary of Interior. In addition, many tribes also have jurisdiction over these lands and have regulations for their transfer. There is some variation with some tribes not allowing transfer to anyone other than a descendant or return to the tribe. Among the approaches, the most reasonable restrictions are those that allow the transfer only by gift or devise, and may not be transferred for value.

- Key considerations for a draft rule:
 - Vacant or undeveloped lots and undivided interests can only be transferred by gift or succession.
 - Transferee must be a qualified family member or a beneficiary on the waiting list.
 - Maximum sales price for developed lots set at the appraised value of improvements.
 - Lessee cannot sell a self-help home until the affordability period ends.
 - Set a retention period before any lessee can sell, subject to certain "emergency" situations.
 - The infrastructure subsidy is returned and used for development of homestead lots.

Commissioner Ka'apu asked for the actual rules to be distributed to Commissioners. H. Lindsey stated aside from the language relating to transfers, she will email the Commissioners a draft later in the afternoon.

Commissioner Kahikina stated the sale of undivided interests is 100% profit. So the beneficiary who sold his lease for \$95,000, didn't do anything to get that money. H. Lindsey stated the current Rules are so old that it doesn't even have a definition of what an undivided interest lease is. Agenda item C-2 will deal specifically with an interim policy for undivided interests and undeveloped lands.

Commissioner Chin stated the amount of money that goes into processing one of these transfers should be quantified so that when the Commission takes this issue to beneficiaries or the governor, they can see why we are making these changes. Chair Masagatani stated the cost of infrastructure the Department puts into an area helps the seller increase his price, yet none of that money comes back to the Department. Beneficiaries can sell land for more money if the infrastructure is already in. Commissioner Chin stated depending on the type of lot, all improvement costs by the Department should come back to the Department.

Commissioner Richardson asked if it was ever a consideration to put a tax on transfers. H. Lindsey stated she has discussed it with the AG's office and it may become a topic to include in the rule. Chair Masagatani added the Department has the ability to charge fees.

Chair Masagatani stated the intent is to take a look at the Rules every so many years so that there isn't such a back log of issues by the time the Commission goes out again.

Commissioners Richardson and Commissioner Canto thanked H. Lindsey for all of her hard work and effort in putting all of this together.

RECESS

12:03 PM

RECONVENED

12:12 PM

Chair Masagatani asked the Commissioners to indulge an agenda change to move agenda Items F-1 and F-2 next. There are members from the community present to speak on behalf of those items.

F - LAND MANAGEMENT DIVISION**ITEM F-1 Approval of Issuance of Right of Entry Permit to University of Alaska at Fairbank, Ka'u, Hawai'i.****RECOMMENDATION**

Deputy William Aila Jr. recommended the following:

That the Hawaiian Homes Commission approve the issuance of a twelve (12) months Right-Of-Entry Permit (Permit) to the University of Alaska Fairbanks (PERMITTEE) to enter onto portions of Hawaiian home lands at Ka'u, Island of Hawaii, identified as portion of Tax Map Keys (3) 9-3-001:003 (See Exhibit "A"), subject to the following conditions:

1. The Permit shall be issued for the purpose of conducting unmanned aircraft research as a part of the Pan Pacific UAS Test Range Complex of which State of Hawaii is a member;
2. The term of the ROE shall be for twelve (12) months, with testing program calls for a total of fifteen (15) flights over the course of the ROE with the bulk of the flights occurring during the first three (3) months;
3. The fee for this Permit shall be \$1,500.00 per flight/landing or \$22,500.00 for the fifteen flights over the course of the ROE;
4. All trailers, containers, toilets temporary in nature during the scheduled office space, power generation, shipping and equipment will be mobile, wheeled and moved in and out on a flatbed trailer landing;
5. No digging, grading and/or paving of the area will be allowed for this purpose;
6. PERMITTEE shall be required to obtain all necessary Federal State, and/or County, permits for this research project;
7. PERMITTEE shall be required to provide the necessary insurance coverage, naming the Department of Hawaiian Home Lands as additional insured;
8. Any extension of time should PERMITTEE not complete the project on time will be subject to the approval of the Chairman of the Hawaiian Homes Commission. Such request for an extension shall be submitted in writing to PERMITTOR no later than thirty (30) days prior to expiration;
9. PERMITTEE shall be required to have an informational meeting at Ka'u with the native Hawaiian communities prior to the commencement of the ROE;
10. The Permit document is subject to the review and approval of the State of Hawaii Department of the Attorney General; and
11. All other terms and conditions deemed prudent by the Hawaiian Homes Commission or the Chairman of the Hawaiian Homes Commission.

MOTION

Moved by Commissioner Richardson, seconded by Commissioner Davis.

DISCUSSION

Deputy Aila introduces Mr. Marti Rogers, Director of the University of Alaska Fairbanks ACUASI, Ken Slover, consultant and Burt Lau with Kobayashi, Sugita & Goda Attorneys at Law.

University of Alaska Fairbanks (UAF) is a Land, Sea, and Space grant university and international center for research, education, and the arts. UAF Geophysical Institute research areas included unmanned aircraft technology, seismology, tectonics, atmospheric sciences, snow, ice, permafrost and more.

UAF has requested to conduct unmanned research as part of the Pan Pacific UAS Test Range Complex. This research project requires access to accessible airspace, steady winds that are not too strong, a flat and unobstructed landing area for the unmanned vehicle, an area to set up a test control center with parking. They have identified Ka'u as the location for this research project (See Exhibit "B").

The Ka'u site will be used to land an Unmanned Air Vehicle (UAV) that will be launched from another location on the island. The aircraft is quite large but relatively very light which requires a flat and soft area to land on. The aircraft is a solar powered flying wing with a wingspan of forty-two (42) meters.

Commissioner Richardson asked if the data gathered will be shared with the University of Hawai'i. M. Rogers stated there is no signed agreement about data sharing but that they have a very good relationship with the University. The data regarding the flight is in the public domain. They have been working with Chancellor Straney of UH Hilo on their unmanned aircraft project. UH Hilo is also a part of the Pan-Pacific UAS Test Range Complex (ACUASI)

Commissioner Kahikina asked what kinds of data will be gathered. M. Rogers stated the aircraft is testing all kinds of equipment relating to maintaining a system at a high altitude for long periods of time. They hope to keep the aircraft in the air for months by the end of the trials. Commissioner Kahikina asked if there are cameras on the aircraft. M. Rogers stated there are cameras pointing only along the wing to monitor the aircraft but no cameras are point downward toward the ground. They are very aware of concerns over privacy and stated there should be no issues at all about the cameras.

Commissioner Davis asked for an explanation of how an aircraft will land without impacting its landing site. K. Stover explained the purpose of the project is about communications and delivering internet services to people that don't have it today. Approximately 2/3rds of the world doesn't have connectivity to the internet. This is a test program for the vehicle itself and ultimately a world-wide network to deliver internet to rural areas. It will be like a high altitude Wi-Fi. M. Rogers stated the aircraft is less than a thousand pounds and lands on four motor pods. The reason the site is ideal is because it is flat and the winds are very consistent. When they recover the aircraft, it comes in slowly, no faster than a person can walk. There is no infrastructure required, all that is needed is a grassy flat spot.

Commissioner Richardson asked if UAF will be remotely piloting the aircraft and whether or not it will be able to detect other aircraft. M. Rogers stated the aircraft will be remotely piloted and in terms of safety, UAF has been doing these types of missions for 14 years and will require permission and oversight by Hawai'i aviation authorities as well as the Federal Aviation Administration. At the end of the testing period the aircraft will be at the 70,000 foot level, above all other aircraft and even storms.

Commissioner Ka'apu asked if the project has any impact on cultural sites in the area. Deputy Aila stated staff has already used the cultural kīpuka website put together by OHA and the sites identified are not in the particular area. Staff is consulting with other agencies including the State Historic Preservation Division (SHPD) to investigate cultural sensitive locations in the area. Commissioner Ka'apu asked what reports will be provided after the investigation is complete. Deputy Aila stated the Section 106 process has to be completed prior to starting the project. If there are any other sites that are not already recorded, DHHL will work with the applicant to modify the operations accordingly. Commissioner Ka'apu stated if anyone checked for glider bumps which were used to deter gliders from landing during World War II. Deputy Aila stated the area identified is very flat but that UAF is committed to having an archaeologist walk the site again to check for things.

Chair Masagatani suggested amending the motion to move item #11, to become #12 and crafted a new #11 to say "the permit would indicate no launching until the completion of the Section 106 process and issuance of a finding of no adverse effect or adverse effect with mitigation."

MOTION TO AMEND/ACTION

Moved by Commissioner Davis, seconded by Commissioner Chin to amend the motion move item #11, to become #12 and added a new #11 to which stated "the permit would indicate no launching until the completion of the Section 106 process and issuance of a finding of no adverse effect or adverse effect with mitigation." Motion carried as stated.

MAIN MOTION AS AMENDED

That the Hawaiian Homes Commission approve the issuance of a twelve (12) months Right-Of-Entry Permit (Permit) to the University of Alaska Fairbanks (PERMITTEE) to enter onto portions of Hawaiian home lands at Ka'u, Island of Hawaii, identified as portion of Tax Map Keys (3) 9-3-001:003 (See Exhibit "A"), subject to the following conditions:

1. The Permit shall be issued for the purpose of conducting unmanned aircraft research as a part of the Pan Pacific UAS Test Range Complex of which State of Hawaii is a member;
2. The term of the ROE shall be for twelve (12) months, with testing program calls for a total of fifteen (15) flights over the course of the ROE with the bulk of the flights occurring during the first three (3) months;
3. The fee for this Permit shall be \$1,500.00 per flight/landing or \$22,500.00 for the fifteen flights over the course of the ROE;
4. All trailers, containers, toilets temporary in nature during the scheduled office space, power generation, shipping and equipment will be mobile, wheeled and moved in and out on a flatbed trailer landing;
5. No digging, grading and/or paving of the area will be allowed for this purpose;
6. PERMITTEE shall be required to obtain all necessary Federal State, and/or County, permits for this research project;
7. PERMITTEE shall be required to provide the necessary insurance coverage, naming the Department of Hawaiian Home Lands as additional insured;
8. Any extension of time should PERMITTEE not complete the project on time will be subject to the approval of the Chairman of the Hawaiian Homes Commission. Such request for an extension shall be submitted in writing to PERMITTOR no later than thirty (30) days prior to expiration;
9. PERMITTEE shall be required to have an informational meeting at Ka'u with the native Hawaiian communities prior to the commencement of the ROE;
10. The Permit document is subject to the review and approval of the State of Hawaii Department of the Attorney General; and

11. The permit would indicate no launching until the completion of the Section 106 process and issuance of a finding of no adverse effect or adverse effect with mitigation.
12. All other terms and conditions deemed prudent by the Hawaiian Homes Commission or the Chairman of the Hawaiian Homes Commission.

ACTION

Motion carried unanimously, as stated.

ITEM F-2 Approval of Issuance Right of Entry Permit, Wai‘anae Coast Comprehensive Health Center, Nānākuli, O‘ahu

RECOMMENDED MOTION

Deputy William Aila Jr. presents the following:

That the Hawaiian Homes Commission (HHC) grant its approval to issue a Right of Entry Permit to the Waianae Coast Comprehensive Health Center (WCCHC), on property located in Waianae, Oahu, Tax Map Key No. (1) 8-6-001:022 (por) containing a land area of approximately 30,000 s.f. for a period of 30 months effective August 1, 2015 through January 31, 2018 (see exhibit "A") subject to the following conditions:

1. The effective dates of the month to month permit will start on August 1, 2015 and expire on January 31, 2018;
2. The Permittee will use the area as a construction mobilization and storage area only during their building of a new emergency room facility to be constructed on the adjoining parcel (see Exhibit "A");
3. The Permittee will pay a monthly fee of \$1,400.00 per month, plus a one-time documentation & processing fee of \$175.00;
4. The month to month permit will expire on January 31, 2018, but may be terminated earlier without cause with 30 days advance written notice by either the Permitter or Permittee;
5. The Permittee must erect temporary chain link fencing and/or gates to separate it from the unused Makai portion of Tax Map Key No. (1) 8-6-001:022 (see Exhibit "A");
6. The Permittee may remove existing chain link fencing on the Mauka end of the premises, import gravel/soil, grade the premises, and other measures needed to support the storage and traversing of heavy machinery/equipment and heavy construction material on the demised premises;
7. The Permittee will fully restore the premises (including but not limited to the chain link fence and earth grading) to its original or better condition;
8. Permittee will follow all the required government laws, regulations, and ordinances related to the activities conducted on the premises including but not limited to environmental studies/assessments;
9. Permittee will obtain all necessary licenses & permits, needed to conduct their activity on the premises including but not limited to storing of chemicals, fuels, waste, vehicles, motor equipment & operation, stockpiling, etc.;
10. Permittee shall furnish a Certificate of Insurance which verifies the premises is covered by a General Comprehensive Public Liability Insurance Policy in an amount acceptable to the Department and naming it as an additional insured;
11. The Right of Entry Permit will be subject to review and editing by the State Attorney General's office; and
12. The Chairman of the Hawaiian Homes Commission is authorized to set forth any additional terms and conditions which shall ensure and promote the purposes of the Hawaiian Home Lands trust.

DISCUSSION

The Waianae Coast Comprehensive Health Center (WCCHC) is located in the midst of the region that houses the highest concentration of Hawaiian home land beneficiaries in the world. If a medical emergency occurs in this neighborhood, a few minutes of delay could make the difference between life, permanent medical impairment, or even death. The high demand of the current emergency room facility at WCCHC compelled their administrators to seek an expansion of their current facility to satisfy the demand for a high quality emergency service on the Waianae Coast. The subject Hawaiian home lands parcel is vacant and located adjacent to their planned facility. Granting this right of entry will assist WCCHC, a nonprofit entity, in achieving a cost effective and timely completion of the much needed medical facility in a predominantly Native Hawaiian community.

FEE CALCULATION

The subject parcel is classified as industrial and per square footage value, based on the City & County Real Property Tax Assessment is \$7.00. At 8% rate of return the annual fair market rent for the term of this ROE would be \$16,800.00 (or \$1,400.00 per month)

Mary Ann Ocean thanked Commissioners for their time. She reported phase 3 is the last part of the project to replace the 40 year old facility. The last part will remove the emergency room building which was built in 1973. They will construct a new 2 story facility to replace it.

Deputy Aila stated the new facility is important to the people who live west of the Queens Hospital facility in Ewa. Commissioner Kahikina stated his grandson recently needed emergency care and his is thankful for the services they provided.

ACTION

Motion carried unanimously, as stated.

ITEM B-2 Workshop on DHHL FY 2015-2016 Development Budget

Land Development Division Administrator Norman Sakamoto and Administrative Services Office Administrator Rodney Lau presented Item B-2. R. Lau stated the Development Budget will be funded by two trust funds; the Hawaiian Home Lands Trust Fund and the Hawaiian Homes Operating Fund. Next month the Commission will be asked to approve a transfer to the Hawaiian Homes operating fund. The books are still being closed so a definitive transfer amount has not been finalized. Also included are the NAHASDA federal fund budget and legislative appropriations which includes one CIP appropriation and grant in aid appropriations.

N. Sakamoto reviewed a chart showing sources of funds. This is not the sufficient funds budget where DHHL will ask the legislature for funding to do what needs to be done. This budget is the money we have going forward for this year from July 1, 2015 – June 30, 2016.

Commissioner Richardson asked what the budget would look like if the Legislature funded DHHL appropriately. N. Sakamoto stated \$300 million which includes the Anahola dam project; Papakōlea sewer project; Kanehili, East Kapolei 2B and Kakaina developments to name a few of the larger projects DHHL has on its list.

In Kakaina the infrastructure for the 45 lots should be done in August or September. After completion a determination of how many will be turnkey versus self-help or owner/builder still

needs to be made. Those lots are undivided interests. In Waimanalo there is one more self-help lot being developed.

Keokea and Waiohuli subdivisions need drainage work. There are 46 lots being redesigned for the area. The undivided interest list for the area is approximately 200 persons long. There are some scattered lots that continue to be worked on.

Molokai projects include flood mitigation work, cemetery paving provisions, and water tank construction projects.

Hawaii Island projects continue to be a challenge. The unexploded ordinance issue in the Lālāmilo homestead area is enormous. The Kawaihae road issue is still pending the finalization of paper work for the utility pole relocation. In Maku'u the water transmission lines and exploratory well was affected by the current lava flow. In Panaewa a ten-acre lot came back to DHHL's inventory. They are working on a plan to have 16 half-acre lots which is parallel to the subsistence Ag lot discussion Commissioners had earlier. The roadway prevents the subdividing of the lot into 1-acre lots. In Ka'u one of the challenges is getting water to the lessees. There is a project assessing various water sources. In La'i 'Ōpua Village IV there are 118 lots being constructed and will be completed in September. This is where the rent-with-option-to-purchase project is being explored to alleviate the loan qualification problems lessees are having. There are drainage problems at the West Hawaii District Office. Bids have gone out to contractors for that project.

Commissioner Ka'apu stated that he visited the La'i 'Ōpua Village and had concerns about non-native fill in the form of concrete being used. He wondered if the contractor was bringing in the fill. N. Sakamoto stated he would look into the situation.

N. Sakamoto stated in Honokō'ia there was a settlement agreement which will show up in the budget because the contract design was over budget so it will be redesigned. In Kawaihae the Planning Division is exploring ways to partner with Kōhala Ranch on ways to get water.

On Kauai the water tank is being redesigned to alleviate problems with pressure in the lines. DHHL receives \$3 million from the legislature for 4 water reservoirs in Anahola. Two of the dams will be lowered and two will be removed in the process.

Commissioner Kahikiha asked if there were any changes from the last presentation of the budget. N. Sakamoto stated there are no changes. The GIA's are all listed on page 4 of the exhibit. Most of the funds have been released, but some required changes at the Legislature. La'i 'Ōpua 2020 funding for \$950,000 and Waiohuli funding for \$1.5 million have been released. DHHL had \$9.4 million in GIA funds to manage which is a lot for us. Chair Masagatani stated it shows how the homestead associations have stepped up in terms of going after the funding themselves.

Commissioner Ka'apu asked what the results of the well testing in Kawaihae were. Acting Planning Manager Kaleo Manuel stated the salinity levels are too high for potable standards and the costs to de-salinate the water are substantial. DHHL is looking for other sources or a possible partnership with Kohala Ranch. They are trying to work out an agreement to swap water from our well with them because they need landscaping water and we need potable water. Commissioner Ka'apu mentioned that the electricity used to pump the water is the most expensive part of the process. K. Manuel stated technology is catching up to the process where solar is being considered as a viable energy source to make the process cheaper. Unfortunately, the scope of this project didn't cover the assessment. It was purely the pump test and how to get the water to the well. There are already requests from the Kailapa to use water for landscaping

but the cost of the water is too high at this point. DHHL has asked the legislature, for the last four years, for CIP funds to explore more sources of water in the area, but no funds were allocated.

Chair Masagatani stated that one-third of the money is just for maintaining existing infrastructure. She asked where a private company would absorb those kinds of costs. Commissioner Ka'apu stated in a private development the purchaser of the home would absorb the costs.

Chair Masagatani stated the trust will shoulder approximately 8 million dollars without putting anyone on the land. N. Sakamoto stated it is DHHL's hope that the state will fund the department adequately so that these maintenance costs can be covered. Chair Masagatani asked if the maintenance costs are recurring or one-time. Some of the costs are divided over a period of years. For instance the drainage basin costs are listed for \$130,000.00 for this fiscal year but the total cost of the project is more than \$1 million.

Chair Masagatani stated there should be a way all the different agencies can come together to get some kind of maintenance fee assessment so that it doesn't come out of the trust fund. The maintenance costs have become significant enough to be 1/3 of DHHL's development budget. Commissioner Ka'apu stated on Hawai'i Island, the county takes care of the drainage systems. Commissioner Kahikina stated here on O'ahu, the county doesn't do it. N. Sakamoto stated a bill was passed that clarified the city's responsibility for the sewers. DHHL is working to get the sewer systems up to par to a point where the County will take it. O'ahu is the biggest challenge.

C - OFFICE OF THE CHAIRMAN

ITEM C-1 Approval of Administrative Rules Development, Review, and Amendment Process.

RECOMMENDATION

Administrative Rules Officer Hokulei Lindsey, recommended approval of the proposed process for the consideration of administrative rule amendments, proposed new rules, or title compilations.

MOTION

Moved by Commissioner Kahikina, and seconded by Commissioner Chin.

DISCUSSION

Administrative Rules Officer Hokulei Lindsey presented the following.

Title 10, Hawaii Administrative Rules, governs the Department of Hawaiian Home Lands. Administrative rules provide departmental transparency and accountability to beneficiaries and the public. Administrative rules are also important to departmental functionality. The development process, therefore, should be accessible and provide opportunity for timely input.

Exhibit "A" illustrates the proposed process and a generalized timeline. The diagram joins two essential components: an internal process and an external process. The internal process entails preparation of draft rules by staff, review and approval by the Commission to proceed, and beneficiary meetings and/or consultation. The fundamental component of the internal process is substantive conversation and input among those parties most affected: beneficiaries, the department, and the Commission. The external process is mandated by Chapter 91, Hawaii Revised Statutes. The statutory process opens review and comment to the public at large and

ultimately leads to adoption of the final rules by the Commission, approval by the Governor, and official publication to make the rules effective.

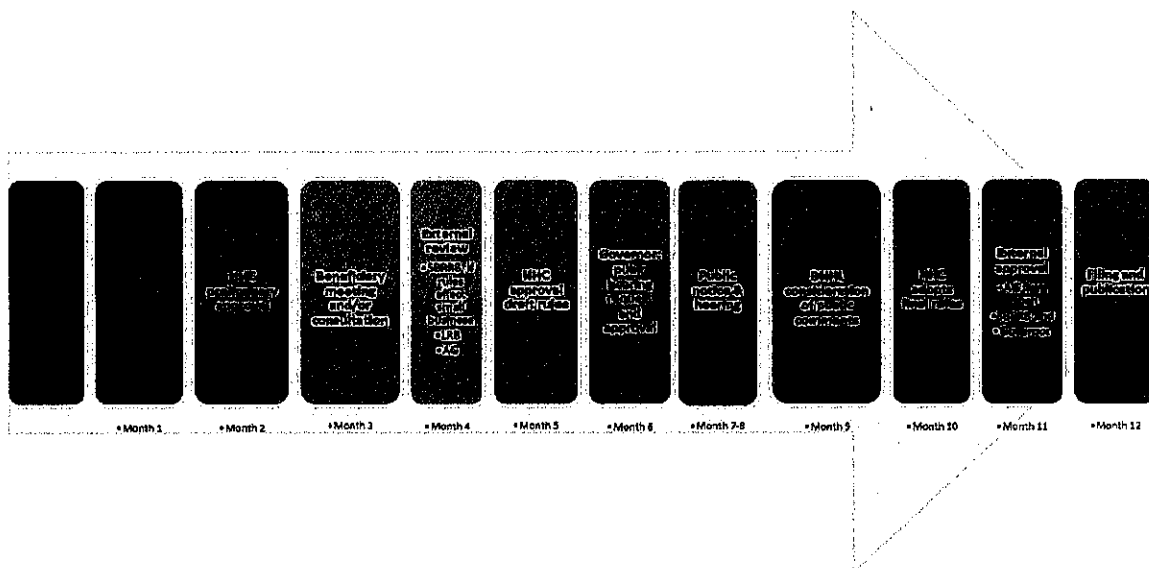
The submittal deals with approval for the internal process and how rules are identified and brought before the Commission and then beneficiaries. It is also an approval of the generalized timeline.

Commissioner Chin asked that the language in the third box be changed to “HHC preliminary approval to proceed.” There may be some confusion that the HHC is granting approval of the rules. Chair Masagatani stated the Commission would be approving the draft language that will go to the beneficiaries. Commissioner Chin stated it’s a matter of perception that the Commission already approved something before the beneficiaries provided input.

Commissioner Canto asked that the acronym in month 4 be spelled out to say Small Business Regulatory Review Board.

MOTION TO AMEND/ACTION

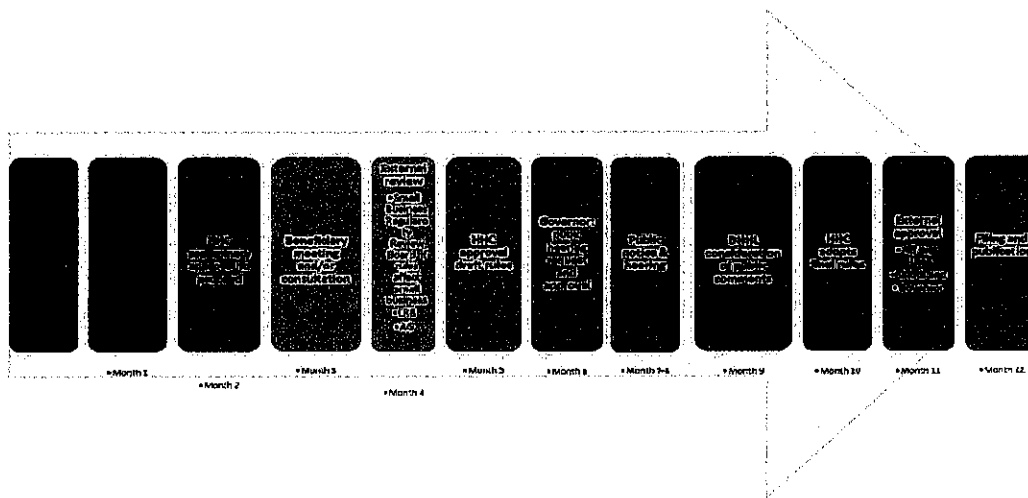
Moved Commissioner Canto and seconded by Commissioner Chin to amend the motion to add



the language “to proceed” to box 3, and spell out the acronym SBRRB in box 5, so that it reads “Small Business Regulatory Review Board.” Motion carried.

MAIN MOTON AS AMENDED/ACTION

To approve the proposed process for the consideration of administrative rule amendments, proposed new rules, or title compilations. Motion carried.



ITEM C-2 Approval of an Interim Policy on the Sale of Homestead Leases to Vacant or Undeveloped Lots or Undivided Interests

RECOMMENDATION

Administrative Rules Officer Hokulei Lindsey, presented the following:

To adopt an interim policy directing the Department of Hawaiian Home Lands (“DHHL”) to undertake closer review of requests to sell homestead leases to vacant or unimproved lots, or undivided interests whereby:

1. DHHL will gather information regarding (a) whether the lessee is in compliance with all lease conditions; (b) the transferee’s ability to comply with Hawaii Administrative Rules section 10-3-36; (c) how the sales price was determined and agreed upon; and (d) if the transferee is not a qualified family member (spouse, child, or grandchild who is at least one-quarter Hawaiian), the reason for the transfer to a more distant family member or non-family. This information will be provided to the Hawaiian Homes Commission (“HHC”).
2. Pursuant to section 208 of the Hawaiian Homes Commission Act, the HHC may approve such sales on a case by case basis.

This policy will take effect September 1, 2015.

MOTION

Moved by Commissioner Davis, seconded by Commissioner Chin to approve the motion as stated.

DISCUSSION:

The HHC approves numerous sales and transfers of homestead leases each month pursuant to section 208, HHCA, and section 10-3-36, HAR. Concerns have been raised by beneficiaries, staff, and commissioners for years about what can be described as “unfair profiting off the trust.” It is a relatively small number of transfers that fall into this category but their frequency is common enough and their price tags significant enough to raise reasonable questions.

To fall into this category, a transfer must involve: (1) the sale of the lease; and (2) the lease must be for a vacant or undeveloped lot, or an undivided interest. The combination of these two elements results in a situation of “something for nothing” or a profit at the expense of the trust and the transferee/beneficiary. Twelve requests to sell leases to unimproved or vacant lots were presented to the HHC from January to June 2015. Of those, three were reported as selling for

\$100,000 or more, the remaining six were reportedly sold for between \$1,000 and \$65,000. One request to sell an undivided interest was presented during the same time period with a reported sales price of \$95,000.

In comparison, a transfer of these types of leases as a gift or through succession does not pose the same issue nor, generally, does the sale of a lease to a developed or improved lot in which the lessee has paid for the vertical improvement, typically a home. It is the specific situation involving an exchange for money where the lessee has not made a similar financial investment in the lot.

While DHHL develops amendments to its administrative rules to address the regulation of these types of sales, the HHC may exercise its discretion by adopting an interim policy directing the Department to undertake closer review of requests to sell homestead leases to vacant or unimproved lots, or undivided interests. DHHL's review, as expressed in the motion above, is an inquiry designed to obtain details about whether the lessee is in compliance with the lease terms, the transaction and the condition of the lot (if relevant), the circumstances surrounding the decision to sell, and information about the ability and willingness of parties to comply with lease conditions and HAR requirements. This information, provided to the HHC, will aid the Commission in arriving at sound determinations regarding the approval of these types of sales.

In order to provide notice to beneficiaries of the policy change, the Commission should also set a future effective date of September 1, 2015 such that all requests to sell leases to undeveloped or unimproved lots, or undivided interests received by DHHL after August 30, 2015 will be subject to the interim policy.

Commissioner Chin asked for a quick executive session to clarify a question about her duties, rights and responsibilities. Chairperson Masagatani asked for a motion to recuse into executive session.

MOTION

Moved by Commissioner Chin, seconded by Commissioner Canto, to recuse the Commission into Executive Session. Motion carried unanimously.

EXECUTIVE SESSION IN

2:01 PM

The Commission convened in executive session pursuant to section 92-5 (a) (4), HRS, to consult with its legal counsel on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities on the above-stated matter.

EXECUTIVE SESSION OUT

3:05 PM

Chair Masagatani stated after thoroughly discussing the item, commissioners request the motion be amended to remove section (c) of #1, "how the sales price was determined and agreed upon; and" moving section (d) "and if the transferee is not a qualified family member (spouse, child, or grandchild who is at least one-quarter Hawaiian), the reason for the transfer to a more distant family member or non-family. This information will be provided to the Hawaiian Homes Commission ("HHC"), to become the new section (c). Also, #2 will be removed entirely.

MOTION TO AMEND/ACTION

Moved by Commissioner Ka'apu, seconded by Commissioner Canto to amend the motion as stated by Chair Masagatani. Motion passed with 7 ayes, 1 abstention (Commissioner Richardson) and 1 excused (Commissioner Ishibashi)

MAIN MOTON AS AMENDED/ACTION

Moved by Commissioner Davis, To adopt an interim policy directing the Department of Hawaiian Home Lands ("DHHL") to undertake closer review of requests to sell homestead leases to vacant or unimproved lots, or undivided interests whereby:

1. DHHL will gather information regarding (a) whether the lessee is in compliance with all lease conditions; (b) the transferee's ability to comply with Hawaii Administrative Rules section 10-3-36; and (c) if the transferee is not a qualified family member (spouse, child, or grandchild who is at least one-quarter Hawaiian), the reason for the transfer to a more distant family member or non-family. This information will be provided to the Hawaiian Homes Commission ("HHC"). This policy will take effect September 1, 2015.

Seconded by Commissioner Chin

Commissioner	1	2	'AE (YES)	A'OLE (NO)	KANALUA ABSTAIN	EXCUSED
Commissioner Canto			X			
Commissioner Chin		X	X			
Commissioner Davis	X		X			
Commissioner Ishibashi						X
Commissioner Ka'apu			X			
Commissioner Kahikina			X			
Commissioner Richardson			X			
Commissioner Tassill				X		
Chair Masagatani			X			
TOTAL VOTE COUNT			7	1		1
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED						
Motion passes with seven (7) Yes, (1) Abstain vote.						

D – HOMESTEAD SERVICES DIVISION

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

RECOMMENDATION

Homestead District Supervisor Juan Garcia recommended 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 Kahikina, seconded by Commissioner Canto. Motion carried unanimously.

ITEM D-3 Approval of Consents to Mortgage (see exhibit)

RECOMMENDATION

Homestead District Supervisor Juan Garcia recommended 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 (BUD 184A) guaranteed loans and Conventional (CON) loans insured by private mortgage insurers.

MOTION/ACTION

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

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

RECOMMENDATION

Homestead District Supervisor Juan Garcia recommended the following: To approve the refinancing of loans from the Hawaiian Home General Loan Fund.

DISCUSSION

The following lessees have met the "Streamline/Interest rate reduction loan" criteria, which was approved by the Hawaiian Homes Commission at its August 19, 2013 meeting. This criteria includes twelve (12) consecutive monthly payments, borrower's current interest rate is higher than the current DHHL interest rate, current with their Homeowners Insurance, Real Property Tax, Lease Rent, county sewer/refuse fees, and does not have any advances made by DHHL on the borrowers behalf.

HSD's recommendation for approval is based on actual payment history, over the past twelve (12) months and the review of the above-mentioned criteria. Streamline/Interest Rate Loan refinancing will provide lessees a chance to simply reduce their interest rate and payments without DHHL having to credit and/or income qualify the borrower.

The following lessee(s) has met the aforementioned criteria and is recommended for Streamline/Interest rate criteria and is recommended for reduction loan refinance program. Shannon Hopeau, Lease 9761, Malu'ohai.

MOTION/ACTION

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

Note: Commissioner Chin leaves the room – 3:32 pm.

ITEM D-5 Approval to Schedule Loan Delinquency Contested Case Hearings (see Exhibit)

RECOMMENDATION

Homestead District Supervisor Juan Garcia recommended the following: To authorize the scheduling of the following loan delinquency contested case hearings as shown below.

DISCUSSION

The department has been working to resolve the problem of loan delinquencies. The past due delinquent loan status with lessees continues to be a problem for the department; therefore, we recommend that contested case hearings be scheduled.

MOTION/ACTION

Moved by Commissioner Kahikina, seconded by Commissioner Davis. Motion carried unanimously, as submitted. Commissioner Chin was not present during the vote.

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

RECOMMENDATION

Homestead District Supervisor Juan Garcia recommended the following: To approve the transfers and cancellations of applications from the Application Waiting Lists for reasons described:

MOTION/ACTION

Moved by Commissioner Davis, seconded by Commissioner Kahikina. Motion carried unanimously as submitted. Commissioner Chin was not present during the vote.

ITEM D-7 Commission Designation of Successors to Application Rights – Public Notice 2014, Viheart L. Smith

RECOMMENDATION

Homestead District Supervisor Juan Garcia recommended the following: To designate the following individual successors to the application rights of deceased applicants who failed to designate a successor prior to his or her passing.

MOTION/ACTION

Moved by Commissioner Davis, seconded by Commissioner Kahikina. Motion carried unanimously as submitted. Commissioner Chin was not present during the vote.

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

RECOMMENDATION

Homestead District Supervisor Juan Garcia 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 Davis, seconded by Commissioner Kahikina. Motion carried unanimously, as stated. Commissioner Chin was not present during the vote.

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

RECOMMENDATION

Homestead District Supervisor Juan Garcia 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, as stated. Commissioner Chin was not present during the vote.

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

RECOMMENDATION

Homestead District Supervisor Juan Garcia recommended the following: To approve the amendment of the leasehold interest listed.

MOTION/ACTION

Moved by Commissioner Davis, seconded by Commissioner Kahikina. Motion carried unanimously, as stated. Commissioner Chin was not present during the vote.

ITEM D-11 Approval to Issue Non-Exclusive Licenses for Rooftop Photovoltaic Systems for Certain Lessees. (see exhibit)

RECOMMENDATION

Homestead District Supervisor Juan Garcia recommended the following: To approve the issuance of a non-exclusive license to allow the Permittee to provide adequate service related to the installation, maintenance, and operation of a photovoltaic system on the premises leased by the respective Lessees. The non-exclusive license is necessary as the Lessee cannot issue his/her own licenses.

MOTION

Moved by Commissioner Davis, seconded by Commissioner Kahikina.

Chair Masagatani asked for a quick executive session to clarify a question about Commissioner's duties, rights and responsibilities. She asked for a motion to recuse into executive session.

MOTION/ACTION

Moved by Commissioner Davis, seconded by Commissioner Tassill, to recuse the Commission into Executive Session. Motion carried unanimously. Commissioner Chin was not present during the vote.

EXECUTIVE SESSION IN

3:25 PM

The Commission convened in executive session pursuant to section 92-5 (a) (4), HRS, to consult with its legal counsel on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities on the above-stated matter.

EXECUTIVE SESSION OUT

3:45 PM

Note: Commissioner Canto recused herself from taking action on D-11, citing she is one of the lessees receiving a photovoltaic system.

ACTION

Motion carried unanimously, noting the recusal of Commissioner Canto and absence of Commissioner Chin.

ITEM D-12 Commission Designation of Successor – ROXANNE A. SAVILLA, Lease No. 423, Lot No. 196, Nānākuli, O'ahu

RECOMMENDATION

Homestead District Supervisor Juan Garcia recommended the following:

To approve the designation of Terry-Allen K. K. A. Brown (Terry-Allen), "successor to his late mother's Residential Leas No. 423, Lot No. 196, for the remaining term of the lease, subject to Terry-Allen obtaining a loan to pay off Department Contract o Loan No. 17151 and Contract of Loan No. 18719 within 90 days of the completion of the lease successorship

MOTION/ACTION

Moved by Commissioner Davis, seconded by Commissioner Tassill. Motion carried unanimously, as stated. Commissioner Chin was not present during the vote.

ITEM D-1 Homestead Services Division Status Reports

RECOMMENDED MOTION/ACTION

None. For Information only.

Chair Masagatani asked if Commissioners had any questions on the following reports:

- Homestead Lease & Application Totals and Monthly Activity Reports
- Delinquency Report
- DHHL Guarantees for FHA Construction Loans

Commissioners had no questions for M. Garcia. Chair Masagatani thanked him for is submittals and reports.

F - LAND MANAGEMENT DIVISION

ITEM F-3 Approval of Issuance Right of Entry Permit to American Piping and Boiler, Haiku, O'ahu.

RECOMMENDATION

Deputy William Aila Jr. and Land Agent Shelly Carreira recommended the following:
That the Hawaiian Homes Commission (HHC) grant its approval to the issuance of a Right of Entry (ROE) permit to American Piping and Boiler Co., as PERMITTEE, for approximately 6,400 square feet of Hawaiian home lands located at Haiku, Oahu, identified by TMK No. (1) 4-6-015-014 (par.), and further shown in Exhibit "A" for the purpose of storing construction materials related to a well restoration project taking place on City and County of Honolulu, Board of Water Supply lands.

Approval of this right of entry permit is subject to the following conditions:

1. The term of the right of entry permit shall be month to month for up to twelve (12) months, effective August 1, 2015 and terminating on July 31, 2016;
2. This Right of Entry may be cancelled by PERMITTOR, at PERMITTOR'S sole discretion and for any reason whatsoever, at any time during the twelve (12) month period, upon 30 days advance notice in writing to PERMITTEE;
3. The Premises shall be used for STORING OF CONSTRUCTION MATERIALS RELATED TO NEARBY BOARD OF WATER SUPPLY WELL RENOVATION PROJECT. No other uses or sub-tenancy shall be permitted without the express written approval of PERMITTOR. PERMITTEE'S use shall comply with all applicable governmental laws, regulations, rules permitting requirements, pertaining to such use;

4. PERMITTEE shall pay one-time fee of \$200.00 for the term of this ROE. In addition to rent, PERMITTEE shall perform "in-kind" services for DHHL to include securing three (3) doors and one (1) window at the Omega Station;
5. PERMITTEE shall pay a non-refundable processing and documentation fee of \$175.00;
6. During the period of the ROE, PERMITTEE shall keep the Premises and all improvements thereon in a strictly clean and sanitary and orderly condition, and shall not make, permit nor suffer any waste, spoil, nuisance, nor any unlawful, improper or offensive use of the Premises;
7. PERMITTEE shall be responsible for the security of the Premises and all of PERMITTEE'S personal property thereon;
8. The term "Premises", when it appears herein, includes and shall be deemed to include the lands described above and all improvements whenever and wherever erected or placed thereon;
9. PERMITTEE shall allow PERMITTOR, and the agents and representatives thereof, at all reasonable times, free access to the Premises for the purpose of examining the same and/or determining whether the covenants herein are being fully observed and performed, or for the performance of any public or official duties. In the exercise of such rights, PERMITTOR and government officials shall not interfere unreasonably with PERMITTEE and PERMITTEE'S use and enjoyment of the Premises;
10. PERMITTEE shall, at its own expense, effect, maintain and keep in force throughout the life of this ROE, a comprehensive public liability insurance policy, with limits of not less than \$1,000,000.00 for each occurrence, naming the Department of Hawaiian Home Lands as additionally insured;
11. This ROE shall be non-transferable, and PERMITTEE may not in any manner transfer to, mortgage, pledge, sublease, sublet, or otherwise hold or agree so to do, for the benefit of any other person or persons or organization of any kind, its interest in this ROE, the Premises and the improvements now or hereafter erected thereon;
12. PERMITTEE shall release, defend, indemnify and hold harmless PERMITTOR, its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of PERMITTEE and/or PERMITTEE'S officers, employees, agents, or contractors occurring during or in connection with the exercise of this ROE. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this ROE.
13. PERMITTEE shall not cause or permit the escape, disposal, or release of any hazardous materials. PERMITTEE shall not allow the storage or use of such materials;
14. Other standard terms and conditions of similar Right of Entry permits issued by DHHL
15. The Right of Entry document is subject to the review and approval of the Office of the Attorney General, State of Hawaii; and
16. Upon approval of the Hawaiian Homes Commission, the Chairman shall be authorized to issue the Right of Entry permit and to set forth any additional terms and conditions deemed prudent and necessary.

MOTION

Moved by Commissioner Kahikina, seconded by Commissioner Davis.

DISCUSSION

Commissioner Ka'apu stated there needs to be a better way to value the property being leased. In this case the company is storing their supplies at the site while doing work for the Board of Water Supply. The Board of Water Supply is paying for the services at a normal rate, not based on the fact that the land is designated conservation land.

ACTION

Motion carried unanimously, as stated. Commissioner Chin was not present during the vote.

G - PLANNING OFFICE

ITEM G-1 Acceptance of Beneficiary Consultation Report, National Park Service Draft General Management Plan for Kalaupapa National Historic Park, DHHL TMK's (2) 6-1-001:001 and (2) 5-2-013:006. Kalaupapa and Pāla'au, Moloka'i.

RECOMMENDATION

Acting Planning Program Manager Kaleo Manuel recommended the following:

That the Hawaiian Homes Commission (HHC) accepts this Beneficiary Consultation Report as the public record of beneficiary input and feedback relative to the National Park Service Draft General Management Plan for Kalaupapa National Historic Park, Kalaupapa and Pāla'au, Molokai.

MOTION

Moved by Commissioner Canto, seconded by Commissioner Davis.

DISCUSSION

An informational submittal on this subject was presented to the HHC at its regularly scheduled meeting of June 15, 2015 (refer to Item G-1 and Exhibits, from June HHC Meeting). The submittal provided some brief historic background and a description of DHHL and National Park Service (NPS) interactions to date regarding the development of a General Management Plan (GMP) for the Kalaupapa National Historic Park (NHP).

A previous submittal was submitted to the HHC in June 2015 as a status report intended to provide an update to the HHC on the Planning Office's continued efforts to consult with beneficiaries on the Draft GMP and the timeline for the planning process moving forward. This submittal constitutes the formal Beneficiary Consultation report describing beneficiary input and feedback obtained during the two (2) consultation meetings held on Molokai on May 26 and May 27, 2015 as well as comments received during the subsequent 30 day comment period, and is hereby submitted to the HHC for acceptance.

Note: Commissioner Chin returned to the meeting at 3:54 pm.

CONCLUSIONS AND NEXT STEPS

The National Park Service has considered and responded to a number of comments from beneficiaries and DHHL in the Draft GMP. However, there are some significant comments that have not yet been clearly addressed or responded to. The NPS has graciously allowed DHHL to have additional time to conduct Beneficiary Consultation on the Draft GMP and will accept comments from DHH until July 15, 2015. A formal comment letter has been drafted and was submitted to NPS on July 15, 2015.

A major area of concern expressed in the comments is the proposed expansion of park boundaries to include several North Shore valleys, which is perceived as a federal "land grab" with the potential to impede beneficiaries' ability to access resources for subsistence and traditional and customary practices. Also of major concern is the Draft GMP's overall lack of recognition of the protection of traditional and customary practices articulated in Article 12, Section 7 of the Hawai'i State Constitution, as well as the lack of recognition of the purposes of the Hawaiian

Homes Commission Act and the rights of its beneficiaries to benefit from use of Hawaiian Home lands. The Section 106 consultation process is seen as being poorly managed and inadequate for the level of importance due the protection of the rights of n/Native Hawaiians.

Tied to these concerns are issues of access to DHHL lands and the desire for some kind of priority system so that beneficiaries and Kalaupapa 'ohana are not out-competed for access to Kalaupapa by the general public. There also is a strong desire for those 'ohana that were unwillingly displaced due to the creation of the Hansen's disease settlement to be supported in reconnecting to the lands of their ancestors. There is also a strong wish for the NPS to place more emphasis on the pre-settlement history and on grounding the visitor experience in a truly Hawaiian sense of place, history and culture

There is concern that DHHL does not yet have a strong enough involvement in negotiations with NPS, the Department of Health (DOH), and the Department of Land and Natural Resources (DLNR) regarding planning for the transition once no more patients are living in Kalaupapa. Beneficiaries have many questions and ideas about potential scenarios for the evolution of political jurisdiction, land exchanges, or acquisitions, and ownership of existing structures and facilities. There are also many concerns and questions about the terms of DHHL's lease to the NPS and what happens as those terms come up for renegotiation.

Some conclusions and preliminary recommendations are that:

- Negotiations and discussions with state and federal agencies responsible for Kalaupapa be formalized by DHHL with the potential to result in Memoranda of Understanding and/or Cooperative Agreements;
- DHHL works with NPS and others toward the formation of a Task Force or Working Group focused on the transition plan and protection of rights of traditional and customary practices as requested by beneficiaries;
- DHHL staff consult with the appropriate staff at the Office of Hawaiian Affairs regarding the Draft GMP; and
- DHHL consult with the Attorney General's Office and the Department of Interior regarding potential jurisdictional changes and the potential for land exchange or acquisition.

Chair Masagatani stated the issue about NPS expanding to the north shore valleys is something new. K. Manuel stated the NPS is required to look at areas around the actual park site to determine if more land should be included. The community is not supportive of the expansion idea and DHHL is not a party to those discussions. The land being looked at is owned by DLNR, The Nature Conservancy and Pu'u O Hoku Ranch.

Commissioner Ka'apu asked how many patients are left. K. Manuel stated there are nine patients living in Kalaupapa. He noted when the last patient dies and the Department of Health is no longer in control, Kalawao County will be without a governing structure. A serious discussion needs to occur between all parties before the Department of Health leaves.

K. Manuel also stated one of the major gaps highlighted by Ka Ohana O Kalaupapa and OHA is the Management Plan doesn't specifically state when or how the beneficiaries who have been accessing Kalaupapa all these years will be allowed to do so in the future. They asked NPS to consider Hawai'i's Constitution and Article 12 Section 7. The NPS has committed to the federal 106 process before any type of approvals can be given. This is a good time to be engaged in the

planning process because there is good leadership in Kalaupapa. The Superintendent has a connection to the Moloka'i community and her heart is in the right place.

Commissioner Davis stated he is concerned about the future of Kalaupapa. His priorities are ordered: patients, their families and then the Top Side community. The whole peninsula is sacred and he wants to honor those who had to spend their lives here away from their families in harsh conditions. It is important to preserve the settlement and keep the sanctity of its history intact as much as possible.

Commissioner Tassill stated he is not in favor of Kalaupapa becoming a showcase and wants it to be a sanctuary because it is a place of healing.

ACTION

Motion unanimously carried, as stated.

H – ADMINISTRATIVE SERVICE OFFICE

ITEM H-1 Approval of Developmental Budget FY 2015 - 2016

RECOMMENDED

Administrative Services Officer Rodney Lau recommended the following:

That the Commission approve Fiscal Year 2016 Development Budget as outlined in Exhibit A 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 Tassill, seconded by Commissioner Davis.

DISCUSSION

The Development 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 emphasis on providing improved residential lots and subsistence agricultural lots;
- The need to repair and upgrade aging infrastructure on Hawaiian Home Lands; and
- The need to initiate the planning and design of new homestead projects to provide an inventory for future development.

R. Lau stated the Development 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.

Commissioner Chin asked what GIA funds are and why DHHL is involved. R. Lau stated Grants in Aid are grants from the Legislature to organizations using DHHL as the administrator.

ACTION

Motion unanimously carried, as stated.

EXECUTIVE SESSION

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.

MOTION/ACTION

Moved by Commissioner Davis, seconded by Commissioner Kahikina, to recuse the Commission into Executive Session. Motion carried unanimously.

EXECUTIVE SESSION IN

4:47 PM

1. Hui Maka'ainana a Kalawahine v. Hawaiian Homes Commission, et al., Civil No. 08-1-1855, CAAP No. 11-0000377
2. Kalawahine Streamside Construction Defects Mediation

EXECUTIVE SESSION OUT

5:08 PM

RECESS

5:09 p.m.

Meeting Held in Kapolei, O'ahu, Hawai'i

Pursuant to proper call, the 665th Regular Meeting of the Hawaiian Homes Commission was continued at the Department of Hawaiian Home Lands, 91-5420 Kapolei Parkway, Kapolei, Hawai'i, beginning at 10:13 a.m.

PRESENT

Jobie M. K. Masagatani, Chair
Doreen N. Canto, Commissioner, Maui
Gene Ross K. Davis, Commissioner, Molokaʻi
David B. Kaʻapu, Commissioner, West Hawaiʻi
Michael P. Kahikina, Commissioner, Oʻahu
William K. Richardson, Commissioner, Oʻahu
Renwick V. I. Tassill, Commissioner, Oʻahu
Kathleen P. Chin, Commissioner, Kauaʻi

EXCUSED

Wallace A. Ishibashi, Commissioner, East Hawai'i

COUNSEL

Craig Y. Iha, Deputy Attorney General

STAFF

William J. Aila Jr., Deputy to the Chairman
Niniau Simmons, NAHASDA Manager, Office of the Chair
Paula Aila, Hale Manager, Office of the Chair
Hokulei Lindsey, Administrative Rules Officer, Office of the Chair
Michelle Brown, Secretary to the Commission, Office of the Chair
Leah Burrows-Nuuanu, Secretary to the Commission, Office of the Chair
Norman Sakamoto, Development Officer, Land Development
Linda Chinn, Administrator, Land Management Division
Kahana Albinio, Acting Property Dev. Manager, Income Property Branch
Kaleo Manuel, Acting Administrator, Planning Division
Rodney Lau, Admin. Services Office
Jenna Gray, Admin. Service Office
Dean Oshiro, Acting Homestead Services Division Manager
Ku'uwehi Hiraishi, Info. Specialist, Information and Community Relations

NOTE:

The Commission reconvened at 10:13 AM on Tuesday, July 21, 2015, and immediately resolved into Executive Session as per the agenda.

Chair Masagatani asked for a motion to resolve into executive session.

MOTION

Moved by Commissioner Kahikina, seconded by Commissioner Richardson, to recuse into Executive Session. Motion carried unanimously.

EXECUTIVE SESSION IN

10:14 AM

The Commission convened in executive session pursuant to section 92-5 (a) (4), HRS, to consult with its legal counsel on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities on the above-stated matter.

1. Update on Nelson Case – Richard Nelson, III et al., v HHC, Civil No. 07-1-1663

EXECUTIVE SESSION OUT

11:16 AM

Chair Masagatani called for a recess to continue contested case hearings. The agenda noted the hearings may take as long as 2 hours.

Note: The Commission recessed to conduct contested case hearings

RECESS

11:18 AM

RECONVENED

1:36 PM

APPROVAL OF MINUTES

Chair Masagatani asked for a motion to approve the minutes of November 2013. She notes the January 2014 minutes are still being processed and will be added to a future agenda.

DISCUSSION

Commissioner Chin suggested that current minutes be completed first and when there is time, the backlog be addressed. Commissioner Ka'apu and Kahikina agreed.

MOTION/ACTION

Moved by Commissioner Canto, seconded by Commissioner Davis. Motion carried, Commissioner Ka'apu abstained.

J – GENERAL AGENDA

Note: J-1 Isette Smythe was not present at the start of the J Agenda. Chair Masagatani returned to J-1 upon her arrival.

Item J-2, Request to Address the Commission – KIMBERLY MOKUAHI,

Kimberly Mokuahi stated she and her family live on a homestead in Papakōlea. She is a dialysis patient and her mother-in-law who also lives in the home is also disabled. The home is in dire need of reconstruction and they qualified for a reconstruction loan of \$400,000, but it required keeping a portion of the foundation intact. The blue prints are not on file because the home is so old. Without the foundation blue prints they can only apply for a construction loan which the bank says will be less than \$400,000.00 and will not provide enough money to build the home they want. The demolition alone will cost an enormous amount because of the slope of the property and its proximity to the neighboring homes. They've had five contractors look at the property but they will not put their stamp on the construction because there are no blue prints showing how the foundation was made. They are requesting DHHL help with the demolition of the old home. K. Mokuau stated she asked for a medical transfer but because the lessee, her husband Leiff, is not the disabled person, it wouldn't be considered. Chair Masagatani stated

relocations are rare and usually for reasons of health and safety like the lava flow in Maku'u and is not as clear cut as house for house, or lot for lot.

K. Mokuahi stated they are asking DHHL to cover the demolition costs so that the loan can go toward the construction of the home. Chair Masagatani stated one option is that DHHL could help with a direct construction loan that would be enough to cover both the demolition and the construction. She does not think a grant for the demolition is something DHHL can do for one lessee, but it may be able to help with financing.

Chair Masagatani summarized that one possible option is to look at the medial relocation, but noted past practice has been to base decisions on the health of the lessee, not necessarily their family members. Another consideration is that lots in Papakōlea do not become available very often. K. Mokuahi can put in a request and it will be considered.

The other option is to work with DHHL staff to see if direct financing is available to them. There are unique circumstances to this situation that may be cause for consideration. Another option would be to adjust the size of the home to meet financing available with demolition included.

Puni Kekauoha added the struggle is that the home was originally custom built by the homeowner's friends and family. The foundation is solid tile. K. Mokuahi's mother-in-law uses a walker and struggles to climb the 30 stairs in the home. K. Mokuahi stated when it rains the water comes into the living room because the roof is caved in. The family just wants to build a safe home where her mother-in-law and grandson can live without worrying about their home falling in.

K. Mokuahi inquired if DHHL has any homes available to rent because the family would be displaced during demolition and construction. Chair Masagatani stated unfortunately DHHL does not rent homes. Chair Masagatani asked Homestead Services Supervisor Juan Garcia to talk with K. Mokuahi to discuss the options.

Item J-1, Request to Address the Commission – ISETTE SMYTHE, Family member of Nānākuli Lessee.

Isette Smythe stated that it has been 3 years since their contested case came before the Commission and she is here requesting an update on the situation. She asked if the Meyers family will be staying in the home even though Emma is not a relative. Chair Masagatani stated the final order is still with the Attorney General's office and without the order she cannot state what the decision of the Commission was until the order is issued. Once the order is issued appropriate action will be taken. She will ask the AGs office for an update. Three years is a long time to wait and the situation needs to have closure so everyone can move on. Once the final order is sent, the parties can either ask for a reconsideration or appeal the decision to circuit court.

I. Smythe stated the Meyers family is saying that they were already awarded the home. Chair Masagatani stated the order has not been finalized and the situation is the same as it was after the conclusion of the contested case hearing.

Item J-3, Request to Address the Commission – PUNI KEKAUOHA, Consultant of Kula no na Po'e Hawaii (KNNPH).

Puni Kekauoha stated she is a co-lessee of a homestead in Papakōlea, O'ahu. She spoke on behalf of Kula no na Po'e Hawai'i (KNNPH), to provide the Commissioners with a copy of the

Papakōlea Homestead Health Survey Report. The report was just completed days prior and mailed to the residents of the Papakōlea Homestead. The survey was made possible through a grant from the University of Hawai'i-Cancer Research Center. In an effort to better understand the unique differences of the homestead community and the issue related to the health and well-being of the Hawaiian homestead communities of Papakōlea, Kewalo and Kalawahine. The survey was sent out to 390 homes. Out of the 390 homes, 30% of homes responded which is approximately 130 homes. It confirmed that chronic health diseases are prevalent in our homestead.

The survey included a wide range of questions about all kinds of things from education to autism. The survey even included questions about sovereignty and governance. According to the University, 7 families out of 190 responses is affected by autism, which is a lot and may be a cause for concern.

It is important to state that there was a lot of data collected and that all of the data was kept with Papakōlea. The data continues to be analyzed for other areas of concern.

KNNPH would like to recommend working with DHHL to establish clear policies on health and well-being. The Hawaiian Homes Commission Act is not just about the rehabilitation, but the revitalization of the people and you cannot raise a nation without healthy people. The Hawaiian people need to be well in order to survive. KNNPH would like DHHLs support in taking the survey out to the other homesteads across the state. It really is a community needs assessment tool, but based on health and well-being.

KNNPH would like to work with DHHL to take the tool that has already been developed and use it in one homestead on every island. It took \$20,000 to train community people to understand the survey. Staff members entered data in a way that it would be useful. The Paukukalo Community on Maui and Kanehili Community on Hawai'i Island have already indicated they are interested. It is KNNPHs request that DHHL help get the survey into those communities by financially supporting the project.

Commissioner Ka'apu confirmed that the data provided by the homesteaders is self-reported and not verified. He asked what the next step is to getting the Papakōlea community to be healthier. P. Kekauoha stated in Papakōlea they have the Pili Ohana Program and for the past 11 years they have working with 300 individuals with assessments and education on making better diet and exercise choices. They have a 10 week diabetes management and care program to help the more than 130 people with diabetes in the community. They have another program where nursing students are assigned to homes with families of diabetes and stroke patients. The nurses go into the homes and actually provide a respite for the care givers.

P. Kekauoha stated the surveys show improvement in the area of cancer awareness but within the last two years there has been an increase in the incidences. The full report will be sent out at a later date, the pamphlet shown is just a summary.

Chair Masagatani suggested P. Kekauoha put together a proposal that outlines the partners and goals. DHHL does not have a grants program but the Native Hawaiian Health Program will start planning its programs and it would be good to have something they can look at.

Commissioner Kahikina asked what has been successful for Papakōlea in terms of changing the mindset of the people to be more health conscious. P. Kekauoha stated it is a matter or mentoring by the staff. Staff has to hold hands, mentor and follow through. Hawaiians are stubborn people and it takes a lot of checking-in and follow up. Pili 'Ohana is a project based in research that

allows the University to learn from the community and at the same time the Community builds capacity. She thanks the Commission for its time and will work on putting together a proposal for its dissemination pilot project.

Item J-4, Request to Address the Commission – HANS WEDEMEYER, CEO Hokuhoa Inc.

Hans Wedemeyer stated he would like a status update on the issues he brought before the Commission at its last meeting. He asks for an update on the Solar Farm in Kawaihae, the Potable Water Well, Lease Extensions and his request for a letter to be drafted to keep the banks engaged.

The Solar Farm in Kawaihae is an opportunity for DHHL to earn \$100,000/year for a 100+ acre site that it owns and currently leases out for \$2700/year for right of entry. A 30 megawatt solar installation will provide 30 jobs during the construction phase and 12 full time jobs thereafter. He has been working with Energy Research Systems for several years, they are establishing a 14 acre solar farm on one of his properties.

Ten years ago he started discussions with DHHL regarding a potable water well that sits on his property in Kawaihae. He would like to discuss a tradeoff for the water which is currently producing 135,000 gallons of potable water a day. The well is situated at 825 foot elevation and abuts DHHL's development in Kawaihae, overlooking your reservoir tank.

The final two issues involved lease extensions and allowing him to lease the property next to his warehouse.

Chair Masagatani stated she did not get the opportunity to discuss the lease issue with the Department of Interior to determine if the amendment requires consent of Congress. She has another telephone conference scheduled and will try to get a discussion going. H. Wedemeyer asked that DHHL provide a letter to his lender to let them know that it is still going to happen. He asks that DHHL work with him and his lender to maintain the interest rate. Chair Masagatani stated the letter was drafted and is on her desk for review.

Chair Masagatani thanked Mr. Wedemeyer for coming.

Item J-5 Request to Address the Commission – HOMELANI SCHAEDEL, President of Malu'ohai Residents Association.

Homeland Schaedel read into the record the following testimony:

Aloha Chair Masagatani and members of the Commission,
My name is Homelani Schaedel, President of Malu'ohai Residents' Association. Mahalo to the Office of the Chair for placing me on today's agenda and the opportunity to address you on following matters of concern:

- First, I would like to recognize the informative and detailed presentation Hokulei did yesterday. It was obvious she put a lot of work and research into providing data to support her recommendation. I'm encouraged by the questions and your interests to address these issues.

In addition to the sale of vacant and undeveloped lots, and undivided interest; she addressed the sale of self-help homes and reimbursement of infra structure costs when an improved property is sold.

In 2005, shortly after 45 self-help homes were completed in Malu'ohai I learned that two (2) were homes sold. One (1) which the lessee did not even occupy the home sold for \$270,000 clearing a profit of \$200,000, the other sold for \$260,000. These were 3 bedrooms 2 bath homes similar in design to the turnkey homes with purchase prices of \$125,000- \$130,000 in 2001. Recently, a self-help home was sold for \$365,000.

This is a small example of two (2) lessees who abused the Trust and the integrity of the Habitat for Humanity Self-Help Affordable Housing Program because there was no "Buy Back" requirement. Had such a requirement been in place at the onset of this project, several beneficiaries in the last ten (10) years would have been removed from the Wait list.

I'm not sure what can be done for recently completed self-help programs, but implementing a "Buy Back" provision for future DHHL Self-Help Programs is essential to eliminating the opportunity for beneficiaries to take advantage of or continue to mistreat the Trust.

- In 2000 infrastructure costs paid by DHHL for developing Malu'ohai's 226 lots was over 12 million dollars; that equates to about \$53,000 per lot. However, that figure does not include other costs associated with developing a turn-key this phase; such as architectural, legal, construction management, marketing, impact fees, or cost of interim financing which averaged \$41,000 for 111 lots at an additional cost of 4.5 million dollars. Combined, DHHL paid over \$94,000 to provide me an affordable home with 4 bedrooms and 3 baths which I purchased for \$173,000. The County's 2015 Real Property Assessment values my home at \$611,700. The current market value of my home with the improvements I've made is \$570,000.

The attachment I've provided are two (2) separate mailers that I receive almost monthly in the mail. The one on the top I received in April which is what actually prompted me to address you today. The one on the bottom I received last week, the pictures are of homes in each of the three (3) homesteads here in Kapolei.

The combined sales price of the 17 properties is \$6,840,205.00. If only 10% of the sales price were recovered and reimbursed to DHHL for infrastructure cost, that would be \$684,000 that could be used to develop more homes for those on the Wait List.

Upon the sale of a lease to someone other than a qualified family member or for special and specific exceptions approved by the Commission: a minimum wait time of five years should be implemented before being allowed to get back on the Wait List.

- I had to leave before Rodney's presentation of the Developmental Budget yesterday, so I'm not aware if there were any questions related to the annual payment of \$38,000 to the Villages of Kapolei Association (VOKA).

I'm aware this annual payment is the result of DHHL not developing the number of units required by HHFDC due to the size of Jots in Malu'ohai. Estimated payments by DHHL to VOKA since 2001 is approximately \$532,000. Effective January 2015 VOKA

association dues was increased from \$35.00 to \$38.75 per month. Although this is the first increase, I'm concerned because the annual payment agreement is in perpetuity.

HHFDC is in the process of exiting the Villages of Kapolei project, while I know DHHL's financial resources are limited; negotiating a onetime payment instead of continuing annual payments before HHFDC turns the project over to VOKA would be cost effective to the department.

While I'm on the subject of VOKA, I contemplated whether I should address this matter. After careful consideration, and input from my community the matter warrants your consideration.

When a homeowner in the other villages don't pay their Homeowner's Association dues (HOA), VOKA will follow the required collection process which can result in foreclosure proceedings. However, this does not apply to a lessee in Malu'ōhai or Kaupe'a.

When a lessee is delinquent, VOKA refers the delinquency to DHHL, who in turn pays the lessee's delinquent association dues.

One can conclude that if the lessee is delinquent in their association dues, they are more than likely delinquent on their mortgage payment.

In my experience of over thirty (30) years of mortgage loan servicing/lending which included nine (9) years of servicing DHHL homestead loans; the primary reason for delinquency of these loans was not medical, divorce, loss of job or job re-location; it was because lessees over extended their income.

Through funding from various agencies the department has awarded millions of dollars to different vendors to provide financial counseling before signing a lease and when lessee's loan becomes delinquent. Unfortunately, I've sat in this room for many years and have seen the same names appear on Homestead Services Schedule of Loan Delinquency Contested Case Hearings.

Currently, an overburden Homestead Services staff in addition to processing and validating new applicants, service 956 loans of which almost 25% is in various stages of delinquency requiring different processes for monitoring and collection.

We are not without compassion or aloha for our people, but at some point we need to ask...if the Commission and DHHL is accountable to advance the purposes of the trust, why are lessees not held accountable to the conditions of their lease?

What message does it send when the same lessees, or lessees who by choice decide a new vehicle, a vacation, or even a luau for a family member takes precedence over paying their mortgage and/or associations dues?

Under section 214 b-4 of the Act says..."the department may, upon failure of the lessee to cure the default within sixty (60) days, cancel the lease and pay the outstanding balance in full..." Instead of saying "may" it should say "will" except for special and specific conditions approved by the Commission.

- Finally, the cost of maintaining Malu'ōhai's streetlights, trimming trees, signage, and occasional sidewalk repair averages approximately \$85,000 to \$100,000 annually. We

are only one (1) of fourteen (14) homesteads on O‘ahu and in comparison to Nānākuli, Waianae, Waimanalo, and Papakōlea we are relatively new.

On April 17, 2015, I submitted our Safety & Maintenance Project consisting of sixty-two (62) pages to Land Development Division (LDD) and met with them May 20, 2015 to discuss our project and critical issues which they are currently in the process of resolving; including the enclosure matter brought before you in January.

There are more critical maintenance problems in other homesteads on O‘ahu for review and resolution. The City and County of Honolulu continues to avoid their kuleana for infrastructure maintenance, costing DHHL millions of dollars.

LDD is hiring a consultant to identify deficiencies within homesteads for the purpose of meeting the City's requirement for turning over infrastructure maintenance. LDD will need funding to correct these deficiencies and additional resources to move through the process of finalizing a License Agreement with the City, hopefully sooner rather than later to save DHHL millions of dollars in infrastructure maintenance costs.

It would be in the best interest of the Trust for future development projects to follow the City's requirements instead of exercising DHHL's exemption to ensure turnover and acceptance of infrastructure maintenance within a maximum of three (3) years of completing a project.

In conclusion, I've attached a short survey sent to members of our association in June. It reflects the mana'o of lessees on the matters I've brought before you.

You along with DHHL staff face challenges and criticism daily. Know that we appreciate all of your efforts to advance and protect the Trust. We should all be mindful that "The past is our lesson, the present is our gift, the future is our motivation".

Chair Masagatani thanked H. Schaedel for her testimony and for acknowledging the comprehensive nature of all issues facing DHHL within the confines of resources. H. Schaedel stated the beneficiaries need to know what the big picture plan is so that they can get behind its efforts.

ANNOUNCEMENTS AND ADJOURNMENT

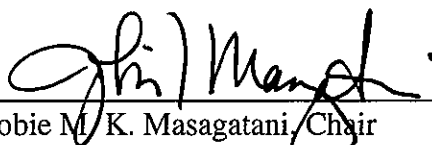
NEXT MEETING The next regular meeting will be held at the Lahaina Civic Center in Lahaina, Maui, August 17 & 18, 2015.

ANNOUNCEMENT The next community meeting will be held on August 17, 2015, at the Lahaina Civic Center.

ADJOURNMENT 3:48 PM

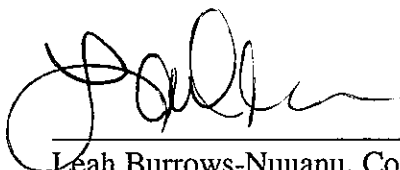
Moved by Commissioner Kahikina, seconded by Commissioner Chin, to adjourn the meeting. Motion carried unanimously.

Respectfully submitted:



Jobie M. K. Masagatani, Chair
Hawaiian Homes Commission

Prepared by:



Leah Burrows-Nuuanu, Commission Secretary
Hawaiian Homes Commission

APPROVED BY:

The Hawaiian Homes Commission
At Its Regular Monthly Meeting On
Tuesday, October 20, 2015



Jobie M. K. Masagatani, Chairman
Hawaiian Homes Commission