

HAWAIIAN HOMES COMMISSION
Minutes of October 22-23, 2012
Meeting Held in Lahaina, Maui

Pursuant to proper call, the 632nd Regular Meeting of the Hawaiian Homes Commission was held at the Lahaina Civic Center, 1840 Honoapiilani Highway, Lahaina, Hawaii, at 9:40 a.m.

PRESENT Jobie M. K. Masagatani, Chairman Designate
 Imaikalani Aiu, Commissioner, Kauai
 Perry O. Artates, Commissioner, Maui
 Leimana DaMate, Commissioner, West Hawaii
 Gene Ross K. Davis, Commissioner, Molokai
 J. Kama Hopkins, Commissioner, Oahu
 Michael P. Kahikina, Commissioner, Oahu
 Ian B. Lee Loy, Commissioner, East Hawaii
 Renwick V. I. Tassill, Commissioner, Oahu

COUNSEL S. Kalani Bush, Deputy Attorney General

STAFF Michelle Kauhane, Deputy to the Chairman
 Derek Kimura, Executive Assistant
 Linda Chinn, Administrator, Land Management Division
 Francis Apoliona, Compliance Officer
 Darrell Yagodich, Administrator, Planning Office
 Dean Oshiro, Acting Administrator, Homestead Services Division
 Sandra Pfund, Administrator, Land Development Division
 Juan Garcia, Administrator, District Homestead Operations Branch
 Kaleo Manuel, Planner, Planning Office
 Julie Cachola, Planner, Planning Office
 Mona Kapaku, Manager, Maui District Office
 John Peiper, Enforcement Officer
 Jane Gordon, Maui District Office Homestead Assistant
 Ray Kala Enos, Land Issues Officer
 Carolyn Darr, Land Agent, Land Management Division
 Kuuwehi Hiraishi, Information Specialist, Information and Community Relations
 Elaine Searle, Secretary to the Commission

PULE Commissioner Tassill

AMENDED AGENDA

Commissioner Hopkins moved, seconded by Commissioner Artates, to amend the agenda, to convene with Item F-1 after "C" agenda items. Motion carried unanimously.

MOTION/ACTION

Moved by Commissioner Artates, seconded by Commissioner Hopkins to approve the agenda as amended. Motion carried unanimously.

A - WORKSHOP PRESENTATIONS

ITEM NO. A-1

SUBJECT: FHA 247 Loan Program

Deputy Kauhane presented an overview of the FHA 247 loan program. Each month, one loan will be reviewed, which will include the delinquency, default issues, and claims the department has against these programs and how reform measures may be implemented to improve DHHL's financial exposure, improve collection efforts, and increase efficiency in contested case process. The project is based on three primary factors: 1) portfolio growth since early 1990's; 2) increase in loan guarantees; and 3) 2012 legislative budget which required the State Auditor to review HSD's loan portfolio. Access to capital is critical to complete the department's mission. Prior to 1981, when the department's first MOU (memorandum of understanding) with USDA was signed, the department was limited to the number of homes that could be built based on the resources available in the Trust funds, noted Deputy. Since then, a number of MOU's have been signed, inclusive of the year 2008.

The current FHA 247 portfolio represents a total of 2,749 loans with an average loan size of \$143,000, providing 67% of the total portfolio of guaranteed loans. The program is an agreement with HUD (Housing and Urban Development) that insures mortgages for the purchase of homes on Hawaiian home lands. Premiums range from 3.3% to 3.8%. Each time a home is purchased or refinanced, a credit gets placed into a HUD account, and anytime a claim is made, HUD pays a claim to the lender. This portfolio is external to DHHL, where loans could be secured from Bank of America, Home Street Bank, Wells Fargo, etc. In the year 2000, there were 300 loans (\$20,000,000) originated, and up to June 2012, 623 loans (\$121,900,000) were originated.

An MOU was signed in 2006, saying FHA 247 was limited to a loan to value ratio of 75%, which meant that only 75% of the value of the home could be borrowed, which reduced the risk to the Trust. Because FHA loans were limited, premiums were also limited in placing funds into the mortgage insurance account. Claims in 2009 totaled \$6,000,000 and in 2011, \$8,000,000, requiring the Trust to deposit \$2.5 million into the mortgage insurance account in November 2011. Nearly 29 claims were paid by HUD since the program began, representing over \$32,000,000. Those loans are reassigned to the department after cancellation.

There are deficiencies of when DHHL is aware of the HUD loan delinquencies. It may take an average of nine months from the time a claim is paid to the time of reassignment of the loan to the department. I prior years, it took two to three years for the loan to be reassigned to the department. Some reform options being considered are:

- 1) limiting financial exposure to the department;
- 2) improving service and collection methods; and
- 3) addressing the contested case hearing process.

Another option is to track collection of assigned loans and restrict funds so they go back into the reimbursement account.

Of the 269 loans, approximately 221 loans, of which were paid out in accrued interest and penalties, exceed the original loan amount. The department needs to work with HUD to modify those kinds of costs. Exploring a risk-based pricing that may allow a borrower to pay a higher fee is something the department needs to investigate. A suggestion is to hire staff totally focused on collection efforts. Authorizing the Chair to approve a contested case hearing may bring the delinquent loan to fruition faster while eliminating approval first by the commission. A comprehensive strategy will need to address policy and procedures on servicing and collection efforts.

PUBLIC TESTIMONY

Jamie Akiona, - Re: Item D-12 - Due to family activities and schooling in the Wailuku area, Ms. Akiona is requesting the commission approve a lease transfer between Elizabeth Kahae-Lu'uloa and herself. Ms. Akiona noted they are not related, but share the same circumstances.

Blossom Feiteira, Association of Hawaiians for Homestead Lands - Re: Item No. C-2, D-12, A-1 and C-3: Item C-1, Supports an MOU between DHHL and Maui County that allows (7) seven families, participating in a self-help program, the ability to move into their homes. Re: Item No. D-12, Strongly supports approval of the transfer of leases between two unrelated families. Re: Item No. A-1, Congratulated Deputy Kauhane on her presentation of loan program FHA 247. Re: Item No. C-3, Agreed with proposal to 2013 Legislature to access other resources to improve the welfare of those below the poverty level.

Jessie Makaimoana, - Re: Item No. C-3 - She is unable to refinance with her current lender due to her inability to pay the monthly mortgage. She is concerned of a possible contested case hearing being brought against her, and is hopeful the proposal for federal resources may aid people like her. Chair recommended that she seek guidance on specific questions with one of the staff member present.

C - OFFICE OF THE CHAIRMAN

ITEM NO: C-1

SUBJECT: Acceptance of Energy Ad Hoc Committee Report

RECOMMENDATION

That the commission accept the draft report (Exhibit A) and meeting minutes (Exhibit B) submitted by the Energy Ad Hoc Committee

MOTION/ACTION

Moved by Commissioner Kahikina, seconded by Commissioner DaMate.

DISCUSSION

Energy Ad Hoc Committee Chair Kahikina said the purpose of the Ad Hoc committee was to review current policies and promote the intent of the Act. After review, members said it lacked its beneficiary responsibility. He read a mission statement "to enable native Hawaiians, the broader community, working together to aid efforts, to achieve energy self-sufficiency and sustainability." The Ad Hoc committee shared sentiments that the Hawaiian Home Land Trust, through malama aina, be a leader in facilitating the use of new development on renewable energy on Hawaiian home lands to promote the well-being of the beneficiaries of Hawaiian Homes Commission Act.

Commissioner Kahikina read a Revised Draft of Energy Priorities:

- 1) **Advance renewable energy initiative that malama aina and complement the Hawaiian Homes Commission Strategic Plan;**
 - a) advocacy - to facilitate and increase beneficiary advocacy locally and nationally;
 - b) Trust status - expedite renewable energy initiatives;
 - c) standing committee - establish a standing energy committee to oversee Trust energy policies.
- 2) **Trust will facilitate access to and use of renewable energy by existing and new lessees in residential, pastoral, or agriculture homesteading;**
 - a) Homestead resources - support and facilitate grants and loans, rebates and past credits, energy and other resources, increase in renewable energy;
 - b) Residential - promote renovations, retrofits, and affordable new home construction, and, exceed a minimum efficiency standard established in the state;
 - c) Farm ranchers - promote farming and ranching initiatives in renewable energy.
- 3) **Trust will promote access to and use of renewable energy by non-homesteading land licenses, leases, and permit holders;**
 - a) public entity business resources - support and facilitate grant and loan rebate tax credits, energy incentives and other resources to increase renewable energy use;
 - b) public business facility - promotes operation and development of energy facility by lessees, licenses, and, permit facility by lessees, licenses and permit holders.

4) Trust will generate revenues through energy development on Hawaiian home lands with its beneficiaries and with industry to advance beneficiary homesteading and beneficiary commerce;

- a) identify sites - in consultation with homestead associations, identify sites in the land inventory of the Trust suitable to energy development that generates land lease revenue and go beyond market value through negotiations;
- b) homestead associations - invite homestead associations to present energy projects, conception Trust lands, prior to any public bid or disposition of Trust lands to the general public;
- c) homestead benefit agreement - in consultation with homestead associations, develop and implement a standard benefits agreement for every land instrument on an energy development project or subsidiary thereof, including the percentage of gross revenue from an energy project;
- d) land revenue sharing - share 20% of the land use revenue on energy development with any homestead association subsidiary that provides a significant energy project.

DISCUSSION

This is "one great step forward" said Commissioner Tassill, with many other steps to follow. Commissioner Hopkins recommends that Ad Hoc committees foster good relationships with staff and vet issues prior to presentation to the commission and Commissioner DaMate concurred. Planning Administration Yagodich addressed Commissioner Lee Loy's inquiry on land revenue sharing on priority item No. 4(d). He said this section needs be reviewed to address the impact of taking 15% of funds and placing it into a NHRF (Native Hawaiian Rehabilitation Fund) fund and 20% distribution to homestead communities with an additional 1% to 2% to be utilized towards another entity. With legislature potentially covering operating costs from the pending Nelson case, a possibility exists that monies will divert towards homestead development. Commissioner Lee Loy wants assurance the department 1) is aware of its fiduciary responsibility, and 2) is consistent with the application. This is a draft energy policy report from the Ad Hoc committee and staff will need to analyze any recommendations with time to vet with community associations, noted Chair. Commissioner Kahikina differs with D. Yagodich's explanation on the intent of the Act, stating his fiduciary responsibility is first to the beneficiaries. He recommended hiring separate counsel to represent the commission.

ACTION

Motion carried unanimously.

ITEM NO: C-2

SUBJECT: Approval of Memorandum of Understanding Between DHHL and Maui County Regarding HOME Community Housing Development Organization Funds

RECOMMENDATION

To approve the MOU between DHHL and County of Maui regarding the use of HOME Community Housing Development Organization (CHDO) Funds on Hawaiian home lands and authorize the Chair to execute the MOU.

MOTION

Moved by Commissioner Hopkins, seconded by Commissioner Artates.

DISCUSSION

An MOU, approved by the Attorney General's office, would allow the use of county funds for an existing project on Molokai involving seven self-help homes guaranteed by the department, explained Deputy Kauhane. Construction has since ceased until the department can come to terms with Maui County on how funding is to be disbursed. By way of an owner-occupancy agreement, everything was completed without input from the department and the Attorney General's office, noted Deputy AG Bush, and participants were listed as the owners, in fee, which is untrue.

Executive Director David Finley, Molokai Affordable Homes Community Development Corporation, affirmed that Maui County is constructing seven homes for seven beneficiaries on Molokai through a self-help process. As a result of the MOU being approved today, the subsidized rent will aid each family with an additional \$42,000 towards a mortgage note, leaving them with a mortgage balance of approximately \$137,000. It was noted that DHHL did not provide any Trust funds for this project. Mr. Finley articulated this is a three-year program, and next year, they expect to assist eight beneficiaries. Similar to the NAHASDA program, the beneficiary, as an owner-occupant, will be required to fulfill the owner-occupancy agreement of residing there for a minimum of 15 years.

ACTION

Motion carried unanimously.

ITEM NO: C-3

SUBJECT: 2013 DHHL Legislative Proposals

RECOMMENDATION

That the Hawaiian Homes Commission approve legislative proposals, prepared and submitted, for inclusion in the Administration's legislative package for the 2013 Legislative Session.

MOTION

Moved by Commissioner Hopkins, seconded by Commissioner Kahikina.

DISCUSSION

Land Issues Officer, Kala Enos, reported that the department submitted three draft proposals to the governor's policy office for inclusion in the Administration's 2013 legislative package, which are currently under review by the Department of the Attorney General, Department of Budget and Finance and the Office of the Governor.

In proposal HHL-01, the proposal amends Section 226 of HHCA to designate the department as a housing entity for the purpose of accessing federal resources. The department plans and builds finances, and maintains infrastructure, subdivisions, homes and communities, but is ineligible for certain federal assistance, noted Kala Enos. Although the department performs all of the tasks of a housing agency, the affirmative language must be inserted.

In proposal HHL-02(13), relating to genealogy and blood quantum, this proposal amends Section 338-18, HRS, to allow a representative of HHL to aid in health and statistics records to determine genealogy and blood quantum of a person applying for a homestead lease. The department relies on the Department of Health statistical records for eligibility of applicants and will need to restore access to these records.

In proposal HHL-03(13), relating to DHHL, this proposal amends HHCA section 202(b) requesting that general funds be available for DHHL temporary, exempt positions and that Article XII, Section 1 of the state constitution make available sufficient sums available for development of homestead lots, homestead loans, rehabilitation projects and for DHHL administrative and operational costs.

DISCUSSION

Kala Enos noted that proposal HHL-01(13) may not require congressional consent, but may accept Department of Interior consent. Commissioner DaMate said she never envisioned DHHL as a developer. Many things that the department engages in is what a housing agency does, conveyed Kala Enos. D. Yagodich added that the Planning Office appealed to be included in a HUD grant program, to access federal funds as a developer, as this department builds infrastructure, builds homes, finances loans, and much, much more. Chair pointed out that the department was not eligible for the financing because it did not have the appropriate housing designation as a housing finance agency. Commissioner DaMate indicated she would support the appeal as long as it would not negate other components of the Trust, such as agriculture, pastoral, and aquaculture.

In relation to proposal HHL-03(13), there are 40 temporary, exempt positions in the department which last anywhere from 2 to 6 years - from clerk typists to higher level positions, which allow the department some flexibility in operations, to receive general funds and fill positions immediately, articulated Chair.

Commissioner Hopkins questioned the capacity of the state's Department of Budget and Finance to oversee how this department spends its Trust funds. Unlike the Office of Hawaiian Affairs (OHA), which sets itself apart from the executive branch, Hawaiian home lands does not enjoy the same kind of privileges, noted Chair. Deputy AG Bush clarified that under provisions for HHCA (Hawaiian Homes Commission Act) Section 226, qualification for federal programs - "the department shall be qualified to participate in federal programs that render assistance in certain program areas which are mandated." Commissioner Lee Loy added that the department is entitled to federal funding and recommended the department seek DOI (Department of Interior) opinion. Commissioners Tassill and Kahikina added their support of these entitlements.

AMENDED MOTION

Moved by Commissioner Lee Loy to amend that "the Hawaiian Homes Commission approve the legislative proposals for inclusion in the Administration's legislative package for the 2013 Legislative Session, **except for HHL-01(13), which will be held pending an opinion from the appropriate federal agencies, including HUD and DOI,**" seconded by Commissioner Tassill.

DISCUSSION

Commissioner Hopkins recommended excluding the HHL-01(13) proposal, as federal agencies would likely need a year to respond. Commissioner Lee Loy added that the department's purpose has been, is, and will be, a housing and financing entity. Commissioner Kahikina expressed that the matter should be vetted in the legislature. Commissioner Lee Loy asked Kala Enos for his thoughts on the amendment to which Kala Enos responded that he is uncertain, as federal opinions take time to decipher, which may inevitably lead to a dropped proposal. Commissioner DaMate said it is too late to plan in the fall as legislative packages should commence in the spring. She requested that the legislative chair become active in developing a strategy, and build a legislative army of beneficiaries. Commissioner Kahikina suggested launching a blood quantum mechanism, similar to OHA and the Roll Commission, as the HHCA lacks provisions for this type of benefit. He questioned the use of Trust funds for temporary staff positions and recommended having a standing committee report that can address it. Because of the concern expressed by the Commissioners, Chair was in favor of the amendment. She proposed addressing the definitional requirements for the federal funding prior to taking it to the state legislature. A roll call vote was taken on the amended motion.

**Hawaiian Homes Commission Minutes - October 22, 2012
Lahaina, Maui**

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AOLE

EXCUSED

ARTATES	KAHIKINA
DAMATE	LEE LOY
DAVIS	TASSILL
HOPKINS ®	MASAGATANI

N/A

AIU

® with reservation

ACTION ON AMENDED MOTION

Motion carried unanimously.

ACTION ON ORIGINAL MOTION

Motion carried unanimously.

AMENDED AGENDA

Moved by Commissioner Hopkins, seconded by Commissioner Kahikina to convene with Items No. F-1 and D-12 after a short recess. Motion carried unanimously

RECESS: 12:40 p.m.

RECONVENE: 1:15 p.m.

ITEM NO: F-1

SUBJECT: Issuance of License, L & R Farm Enterprises LLC, Hoolehua, Molokai

RECOMMENDATION

That the Commission issue a ten (10)-year license to L & R Farm Enterprises LLC for a total of 95 acres of Hawaiian home lands located at Hoolehua, subject to the conditions as listed, affirmed Land Management Administrator Linda Chinn.

MOTION

Moved by Commissioner Hopkins, seconded by Commissioner DaMate.

DISCUSSION

The purpose of the request of a ten-year license is to allow the DeCoite family to qualify for a U.S. Department of Agriculture loan. They need to acquire a length of time for use of the land which would then qualify them to pursue an environmental quality incentive loan program provided by Natural Resource Conservation Service (NRCS) which would aid the DeCoite's in technical and financial assistance in planning and implementing conservation practices, conveyed Ms. Chinn. The request would require converting from a Revocable Permit to a 10-year license to qualify for the loan.

Lynn DeCoite appealed to the commission to agree to these terms set by NRCS as they have invested their money to improve the land. Commissioner DaMate inquired whether provisions of water must be included on these home lands. Ms. DeCoite indicated they currently farm the area and have a water meter. As an option, Commissioner Tassill recommended offering the DeCoite, a twenty (20) to thirty (30)-year lease. Commissioner Lee Loy suggested to Ms. DeCoite if she would prefer a twenty (20)-year license to which Ms. DeCoite responded affirmatively. According to Ms. Chinn, the department has no plan within the next ten (10) years to award or develop these lands. Commissioner Lee Loy suggested that if the department would be amenable, he would recommend language be inserted, which would allow L & R Enterprises LLC to return in five (5) years to request an extension of the license for up to twenty (20) years. Planning Administrator D. Yagodich said plans would not hinder the department in agreeing to a twenty (20)-year license. Commissioner Lee Loy proposed to allow for the loan intentions, then, return to the commission within a five (5) year period to approve a twenty (20)-year license. Ms. DeCoite said they would prefer a ten (10)-year license, then revisit in another ten (10) years with a possibility of receiving a twenty (20)-year license. She explained that farming is difficult and investing in Hawaiian home lands is a plus, but their objective is in recouping their investment. Mr. DeCoite validated his wife's comments. Commissioner Lee Loy then withdrew his proposal. Commissioner Kahikina requested to have the department submit policies and procedures on how those determinations are made in the awarding of licenses, and how it affects the Chapter 171 process in relation to the general public and native Hawaiians.

AMENDED MOTION

Moved by Commissioner Hopkins to allow a request for an extension of ten (10) years at the end of the initial ten (10)-year term, seconded by Commissioner DaMate.

DISCUSSION

Chair noted that this extension of the licensing would be added as condition No. 9. Commissioner Tassill noted that commission members will likely not be here in the next 10 years. Therefore, he would recommend the DeCoite reconsider the matter and ask for twenty (20) years outright. Deputy AG Bush clarified conditions to the commission that should the DeCoite so choose to accept the conditions, the future commission would have no say in the matter, as the condition would be stipulated in the lease, as amended.

Planning Administrator D. Yagodich confirmed that the department has no plans to develop this general agricultural land within the next twenty years.

MOTION WITHDRAWN

Motion was withdrawn on the amended motion.

AMENDED MOTION

Moved by Commissioner DaMate to approve a twenty (20)-year term license, seconded by Commissioner Tassill.

DISCUSSION

Commissioner Lee Loy elaborated that the commission is in support of the DeCoite's request; however, any default in any one of these conditions may revoke the license. Chair articulated that with this amendment, condition No. 1 would be amended to read "**twenty (20)-year.**" Administrator Chinn responded to Commissioner Hopkins that HAR 207 allows changing a "revocable permit" to a "license." Only once was this situation ever applied, and it was due to a federal law funding, which required the lessee to have a long-term license.

ACTION ON AMENDED MOTION

Motion carried unanimously.

DISCUSSION

Commissioner DaMate requested reconsideration for option No. 9 to extend the license to twenty (20) years once the original license has expired. The DeCoite may come back to the commission and ask for a new license for twenty (20) years, noted Administrator Chinn, unless there is an option for an additional twenty (20) years. The Planning Office would by then, have an updated plan and a defined use of those lands and would rather not commit to forty (40) years now.

2rd AMENDED MOTION

Moved by Commissioner DaMate to add condition 9, "**the term of the license be twenty (20) years with an option to extend an additional twenty (20) years,**" seconded by Commissioner Hopkins.

DISCUSSION

To satisfy department and commission concern on the amendment, Commissioner Hopkins has generally suggested "with the approval of the Hawaiian Homes Commission." He recommended

to give the licensee the option to request for an additional twenty (20) years subject to the approval of the Hawaiian Homes Commission.

3rd AMENDED MOTION.

Moved by Commissioner Hopkins, seconded by Commissioner Lee Loy to change condition 9, to **"the term of the license be twenty (20) years with an option to request for an additional twenty (20) years, subject to the approval of the Hawaiian Homes Commission."**

DISCUSSION

Commissioner Kahikina reiterated his request for written policies on departmental practices. Commissioner Hopkins concurred, adding that the commission needs to emphasize a policy that if the company is owned by native Hawaiians, it should be included in the policy, and if not owned by a native Hawaiian, it would need to be addressed.

ACTION ON 3rd AMENDED MOTION

Motion carried unanimously to approve 3rd amended condition No. 9 with option to request for additional twenty (20) years, subject to approval by Hawaiian Homes Commission.

ACTION ON ORIGINAL MOTION

Motion carried unanimously.

COMMENT

Commissioner Hopkins inquired whether any RP (revocable permit) licensee may ask for an extended license. Customarily, it is not a policy, however, should a native Hawaiian, utilizing the land, have a requirement from any federally funded loan or grant that need some commitment, then the department reviews the terms of the license, noted Ms. Chinn.

ITEM NO: D-12

SUBJECT: Approval of Assignment of Leasehold Interest - James L. K. Akiona, Lease No. 774, Waiohuli, Maui; Elizabeth H. K. Kahae-Luulua, Lease No. 9507, Waiehu Kou 2, Maui; Martin Kahae Lease No. 5005, Hoolehua, Molokai

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Artates to adjourn to executive session to address this above-stated matter.

RECESS: 2:05 p.m.

EXECUTIVE SESSION

The Commission convened in Executive Session pursuant to section 92-5 (a), HRS, to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities on matters pertaining to Item D-12.

MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner Lee Loy to reconvene in regular session. Motion carried unanimously

RECONVENE: 2:13 p.m.

ITEM NO: D-12 (cont.)

SUBJECT: Approval of Assignment of Leasehold Interest - James L. K. Akiona, Lease No. 774, Waiohuli, Maui; Elizabeth H. K. Kahae-Luulua, Lease No. 9507, Waiehu Kou 2, Maui; Martin Kahae Lease No. 5005, Hoolehua, Molokai

AMENDED MOTION

Moved by Commissioner Hopkins to amend and add condition No. 9 "**This approval applies to this transaction only,**" seconded by Commissioner Artates.

DISCUSSION

This is a unique situation and DHHL needs to be aware of these types of issues, noted Commissioner Lee Loy, to which a policy needs to be developed for transfers being addressed before this commission.

ACTION

Motion carried unanimously.

ITEM NO: D-1

SUBJECT: HSD Status Reports

MOTION/ACTION

None, for information only.

ITEM NO: D-2

SUBJECT: Approval of Various Lease Awards (Amendment)

MOTION/ACTION

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

ITEM NO: D-3

SUBJECT: Amendment to Approval of Advancement of Net Proceeds - Jacqueline M. Hill

MOTION/ACTION

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

ITEM NO: D-4

SUBJECT: Approval of Consent to Mortgage (see exhibit)

MOTION/ACTION

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

ITEM NO: D-5

SUBJECT: Refinance of Loans (see exhibit)

MOTION/ACTION

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

ITEM NO: D-6

SUBJECT: Schedule of Loan Delinquency Contested Case Hearings (see exhibit)

MOTION/ACTION

Moved by Commissioner Lee Loy, seconded by Commissioner Hopkins. Motion carried unanimously.

ITEM NO: D-7

SUBJECT: Homestead Applications Transfers/Cancellations (see exhibit)

MOTION/ACTION

Moved by Commissioner Lee Loy, seconded by Commissioner Hopkins. Motion carried unanimously.

ITEM NO: D-8

SUBJECT: Commission Designation of Successors to Application Rights - Public Notice 2007, 2011, (see exhibit)

MOTION/ACTION

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

ITEM NO: D-9

SUBJECT: Reinstatement of Deferred Applications (see exhibit)

MOTION/ACTION

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

ITEM NO: D-10

SUBJECT: Ratification of Designation of Successors to Leasehold Interest and Designation of Persons to Receive Net Proceeds (see exhibit)

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Artates. Motion carried.

ITEM NO: D-11

SUBJECT: Approval of Assignment of Leasehold Interest (see exhibit)

MOTION

Moved by Commissioner Hopkins, seconded by Commissioner Artates.

DISCUSSION

Acting Administrator Dean Oshiro requested Item No. 12, Page 5, regarding lessee Leif K. and Racquel W. Mokuahi be withdrawn, to allow for further clarification.

AMENDED MOTION/ACTION

Commissioner Hopkins amended the motion to withdraw Item No. 12, Leif K. and Racquel W. Mokuahi as recommended, seconded by Commissioner Artates. Motion carried unanimously.

DISCUSSION

Commissioner Hopkins requested further clarification on Items No. 18 and 19 on the transfers.

ACTION

Motion carried unanimously.

ITEM NO: D-13

SUBJECT: Approval of Amendment of Leasehold Interest (see exhibit)

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Artates.

DISCUSSION

Commissioner Hopkins requested staff to expound on Item No. 9, Skylla Villanueva. According to Acting Administrator Dean Oshiro, this lease was a territorial lease and is being updated to a State of Hawaii lease. The lease type was listed as residential; yet, the property is too large to be classified as residential. It should be listed as an agriculture lease. In addition, the lessee's name is being changed from Skylla Bundy to Skylla Villanueva.

MOTION/ACTION

Moved by Commissioner Hopkins to adjourn in executive session to consult with counsel on this matter, seconded by Commissioner Artates. Motion carried unanimously.

RECESS: 2:37 p.m.

EXECUTIVE SESSION

The Commission convened in Executive Session pursuant to section 92-5(a), HRS, to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities on Item No. D-13.

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Artates to reconvene in regular session, and continue with Item No. D-13. Motion carried unanimously.

RECONVENE: 2:45 p.m.

ITEM NO: D-13 (cont.)

SUBJECT: Approval of Amendment of Leasehold Interest (see exhibit)

ACTION

Motion carried unanimously.

ITEM NO: D-14

SUBJECT: Designation of Successor - Rory R. Kekahuna, Lease No. 9855, Maluohai

MOTION/ACTION

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

ITEM NO: D-15

SUBJECT: Approval of Amendments to Leases to Designate Utility Easements, Keokea-Waiohuli Development, Phase 1, Maui, Hawaii, Leimomi Elliot, Lease No. 7418; Guy Kiaha, Lease No. 7419 and Patrick Blackburn, Lease No. 7429

MOTION/ACTION

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

ITEM NO: E-1

SUBJECT: Ratification of the Settlement Committee Decision to Hire an Expert Witness for Civil No. 09-1-1615-07 ECN), Honokaia Ohana et al., v. Masagatani, et al., Honokaia, Honokaa, Hawaii

MOTION

Moved by Commissioner Hopkins, seconded by Commissioner Lee Loy.

MOTION/ACTION

Moved by Commissioner Hopkins to convene in executive session to discuss with counsel on issues pertaining to this matter. Motion carried unanimously.

RECESS: 2:50 p.m.

EXECUTIVE SESSION

The Commission convened in Executive Session pursuant to section 92-5 (a), HRS, to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities on the above-mentioned item.

RECONVENE: 3:25 p.m.

ITEM NO: E-1(cont)

SUBJECT: Ratification of the Settlement Committee Decision to Hire an Expert Witness for Civil No. 09-1-1615-07 ECN), Honokaia Ohana et al., v. Masagatani, et al., Honokaia, Honokaa, Hawaii

MOTION TO WITHDRAW

Commissioner Hopkins withdrew his motion and moved to defer the matter for 30 days, seconded by Commissioner Artates. Motion carried unanimously.

F - LAND MANAGEMENT DIVISION

ITEM NO: F-2

SUBJECT: Notices of Default and Revocations, Statewide

MOTION/ACTION

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

DISCUSSION

Commissioner Hopkins inquired on the types of businesses and problems encountered by these businesses. WKL Enterprises, located in Hilo, has several tenants. Leleiwi Electric, a native Hawaiian company, currently suffers from the economic down turn. Land Management is attempting to work with both entities for a solution, noted Ms. Chinn.

ACTION

Motion carried unanimously.

ITEM NO: F-3

SUBJECT: For Information Only; Request for License for Various Uses, Statewide

MOTION/ACTION

None, for information only.

DISCUSSION

Land Management Administrator Linda Chinn said they are working on several requests for extension of existing licenses, and the department is proceeding with Resolution 260 process on all of them. This will be presented to the commission either in November or December for commission consideration. Seven existing licenses will be expiring, and information will be forthcoming then.

G - PLANNING DIVISION

ITEM NO: G-1

SUBJECT: Memorandum of Agreement with the University of Hawaii - Hawaii
Community College for the Purpose of Providing Agricultural Technical
Assistance, East Hawaii

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Lee Loy. Motion carried unanimously.

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner DaMate to convene in executive session to discuss Item H-1, DHHL Biennium Budget Submission, FB 2013-2015

RECESS: 3:48 p.m.

EXECUTIVE SESSION

The Commission convened in Executive Session pursuant to section 92-5 (a), HRS, to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities on matters pertaining to Item H-1.

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Artates to reconvene in regular session. Motion carried unanimously.

RECONVENE: 4:15 p.m.

RECESS: 4:15 p.m.

Regular meeting to reconvene tomorrow at 8:30 a.m. at Lahaina Civic Center, Lahaina, Maui

HAWAIIAN HOMES COMMISSION
Minutes of October 23, 2012
Meeting Held in Lahaina, Maui

RECONVENE: 8:35 a.m.

PRESENT Jobie M. K. Masagatani, Chairman Designate
Leimana DaMate, Commissioner, West Hawaii
Gene Ross K. Davis, Commissioner, Molokai
J. Kama Hopkins, Commissioner, Oahu
Michael P. Kahikina, Commissioner, Oahu
Ian B. Lee Loy, Commissioner, East Hawaii
Renwick V. I. Tassill, Commissioner, Oahu

EXCUSED Imaikalani Aiu, Commissioner, Kauai
Perry O. Artates, Commissioner, Maui

COUNSEL S. Kalani Bush, Deputy Attorney General

STAFF Michelle Kauhane, Deputy to the Chairman
Derek Kimura, Executive Assistant
Linda Chinn, Administrator, Land Management Division
Francis Apoliona, Compliance Officer
Darrell Yagodich, Administrator, Planning Office
Dean Oshiro, Acting Administrator, Homestead Services Division
Sandra Pfund, Administrator, Land Development Division
Juan Garcia, Administrator, District Homestead Operations Branch
Kaleo Manuel, Planner, Planning Office
Julie Cachola, Planner, Planning Office
Mona Kapaku, Maui District Operations Manager
John Peiper, Enforcement Officer
Jane Gordon, Maui District Office Homestead Assistant
Kala Enos, Land Issues Officer
Carolyn Darr, Land Agent, Land Management Division
Kuuwehi Hiraishi, Information and Community Relations Office
Elaine Searle, Secretary to the Commission

MOTION/ACTION

Commissioner Hopkins moved, seconded by Commission Lee Loy to adjourn to executive session. Motion carried unanimously.

RECESS: 8:35 a.m.

EXECUTIVE SESSION

The Commission convened in Executive Session pursuant to section 92-5 (a), HRS, to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities on the following matter.

1. Nelson Case: "Sufficient Sums" from DHHL Funding, Richard Nelson III, Kaliko Chun et al., v. HHC, Civil No. 09-1-161507

MOTION/ACTION

Moved by Commissioner Lee Loy to reconvene in regular session, seconded by Commission Hopkins. Motion carried unanimously.

RECONVENE: 9:45 a.m.

MOTION/ACTION

Moved by Commissioner Hopkins seconded by Commissioner DaMate to convene in contested case hearings. Motion carried unanimously.

RECESS: 9:45 a.m.

RECONVENE: 1:25 p.m.

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Lee Loy to convene in executive session. Motion carried unanimously.

RECESS: 1:25 p.m.

EXECUTIVE SESSION

The Commission convened in Executive Session pursuant to section 92-5 (a), HRS, to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities on the following item

2. Leighton Pang Kee v. DHHL, Civil No. 12-1-2403-09

MOTION/ACTION

Commissioner Hopkins moved to proceed with the above-executive item, to authorize the department to initiate rulemaking regarding the use of DNA, to be used in determining relationships; in addition, to allow the Department of the Attorney General to hire an expert witness up to the amount of \$25,000, to cover such costs with an option to request additional funding from this commission if deemed necessary, seconded by Commissioner Lee Loy. Motion carried unanimously.

RECONVENE: 1:50 p.m.

H - ADMINISTRATIVE SERVICES OFFICE

ITEM NO: H-1

SUBJECT: DHHL Biennium Budget Submission, FB 2013 - 2015

RECOMMENDATION

That the Commission approve the submission of the DHHL Biennium Budget Request, Fiscal Biennium 2013-2015, which is subject to the Governor's review, and to authorize the Chairman to adjust the budget request as appropriate before it is incorporated into the Executive Budget.

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Lee Loy. Motion carried unanimously.

J - GENERAL AGENDA

ITEM NO: J-1

SUBJECT: Request to Address the Commission – Albert Hee, Sandwich Isle Communications

MOTION/ACTION

None, for information only.

DISCUSSION

Sandwich Isles Communications (SIC) President Albert Hee said the FCC overhauled its rules at the end of last year, which aligned Hawaiian home lands to tribal lands. This is a major step forward in providing this commission more say with communications. It ensures anyone wishing to provide telecommunication services to the home lands to come before the commission first, to request utilizing these federal funds. Mr. Hee envisions all homesteaders having the ability to communicate with live video with one another. Infrastructure will deploy emergency phones similar to government facilities. Currently, SIC is awaiting FCC approval to hold discussions with Hawaiian Telcom, to assume service in some of the homestead areas now being serviced by them. This will prove a positive impact as SIC is able to provide enhanced services to the homesteads, noted Mr. Hee.

ITEM NO: J-2

SUBJECT: Request to Address the Commission – Mililani Trask, Innovations Development Group

MOTION/ACTION

None, for information only.

DISCUSSION

Mililani Trask invited the commission to a presentation on Oahu to further address a proposal on geothermal energy. It is her hope that OHA and DHHL can interface with others on geothermal development. The Innovations Development Group (IDG) model is global, working with native people in establishing criteria for advancing the rights of native peoples in the development of their lands and the utilization of its resources, said Ms. Trask. In Hawaii, the state government is the Trustee of the native Hawaiian. All developments need to ensure cultural consideration, environmental sustainability, and social responsibility to the land owner. Ms. Robbie Cabral touched on a stakeholder benefits package, which locks in on a 2% of gross income, to be shared with a community trust. She said that working with communities, and providing a cash flow, aids in community capacity building. Some benefits include scholarships and job training.

Ultimately, Hawaii may move to a hydrogen economy as IDG has been approached by a hydrogen institute to form a partnership to generate hydrogen. These are some by-products utilized for geothermal growth. Ms. Trask submitted material to be made a part of these minutes as Exhibit "A."

ITEM NO: J-3

SUBJECT: Request to Address the Commission – Kawai Warren, Kekaha Hawaiian Homestead Association

MOTION/ACTION

None, for information only.

DISCUSSION

Kekaha Hawaiian Homestead Association (KHHA) President Kawai Warren updated the commission on the Puu Opae Water Ag Plan. He expressed eagerness in continuing to meet KHHA's goals by organizing the homestead communities in Kekaha and Waimea to input their ideas and mana'o into something that is dear to them and their lands. The local cultural practices help protect the West-Kauai water laws. He is hopeful that the resources from this project will sustain longevity for their lands. The homesteaders on the Westside are eager to pass information on to future generations by encouraging the younger families to care for the aina, making things grow and to nourish them. Balance is important as the Moku on the Westside is very huge, articulated Mr. Warren. He said putting the people on the land, with the tools needed to succeed, will maintain a focus of unity, aloha, and sharing. Economists and researchers are interested in assisting them to become sustainable on their land, encompassing approximately 1,500 acres of prime farm lands.

ITEM NO: J-4

SUBJECT: Request to Address the Commission – Roy Oliveira and Dan Ornellas, Waiehu Kou, Phase III

MOTION/ACTION

None, for information only.

DISCUSSION

Waiehu Kou III (WK3) President, Roy Oliveria, addressed concerns on delinquent association assessments for WK3 community, which include the common areas. Vice-President Daniel Ornellas read a "Notice of Lien," which obligates assessments for common expenses by the association allowed through DCCR's, (Declaration of Covenants, Conditions and Restrictions), and Hawaiian Homes Commission Act, (HHCA) Section 216. He noted there are 27 delinquencies which account for nearly \$34,954.00 of lost funds. Current fees are \$30 per month

which encumbers common area maintenance and programs to enhance the community's needs and safety. It would appear some of these home owners have reneged on their responsibility to the association, expressed D. Ornellas. He is recommending that the commission:

- 1) Issue a Notice of Lien to each delinquent lessee as identified in Exhibit "A";
- 2) Compensate WK3 for common expenses; seven (7) lots are directly controlled by DHHL through forfeiture of lease or lease cancellation, representing \$4620.00;
- 3) Work with WK3 to establish and release liens on properties in default;
- 4) Recognize liens issued by WK3, through DHHL procedures relating to lease reconsideration, re-awards, transfers, successions, consents-to-mortgage, loan refinancing, and related contested case hearings.

Currently, landscaping services are cut to once a month and common areas are not being watered, leaving the community park in a dust bowl with no improvements. The projected income was expected to bring in \$41,400 per year, and the common area, \$38,000 per year. Unless these 27 lessees pay, WK3 would then be required to dip into emergency funds to pay for management, insurance, and landscaping bills, said Mr. Ornellas.

Chair noted this concern will be placed on the next agenda for informational status, and she will assign staff to ascertain whether consultants may be able to assist. According to D. Ornellas, delinquencies appear to be clumped together with neighbors talking to one another. He said that having a lien placed in the lessees file would bring it to the department's attention immediately should the lessee want to transfer or sell. Commissioner DaMate noted the similarities between WK3 and Villages of La'i'opua in West-Hawaii, which faces a similar dilemma.

ITEM NO: J-5

SUBJECT: Request to Address the Commission – Blossom Feiteira, Association of Hawaiian Homestead Lands

MOTION/ACTION

None, for information only.

Blossom Feiteira stated she is awaiting word on a draft MOU (memorandum of understanding) circulated at last month's meeting regarding a partnership between its beneficiary organization and the commission for a Kauai water and agriculture irrigation project. Ms. Feiteira conveyed that two homestead organizations are working on similar projects for the same area with regard to water irrigation; Association of Hawaiians for Homestead Lands' (AHHL) project in communion with Homestead Community Development Corporation (HCDC) and the Kekaha Hawaiian Homestead Association's (KHHA) project. Ms. Feiteira said it should not appear that they are in competition with each other. She would like clarification on the vetting process as their discussions have been ongoing since March 2011, and she wants to engage this project to move forward. Chair noted that staff is reviewing the draft, and she is awaiting responses of the

department's position on the memorandum before a draft is prepared. In the meantime, a request to bring the matter before the commission will need to be submitted by AHHL. According to Commissioner Lee Loy, there doesn't appear to be a conflict between the two projects.

Ms. Feiteira concurred. She believes Kawai Warren and KHHA are capable of succeeding with its own community project. In response to the needs of the agricultural homesteaders, AHHL's goal is to acquire irrigation in the Waimea, Kauai region. They have yet to collaborate with Kekaha community association members to see how they can assist each other, noted Ms. Feiteira. Chair suggested that AHHL share its MOU with Kekaha board members and thanked Ms. Feiteira for her assistance in bringing this matter to the commission's attention.

ITEM NO: J-6

SUBJECT: Request to Address the Commission – Alexander Nakoa, Lessee, Waiehu Kou III

MOTION/ACTION

None, for information only.

Mr. Nakoa appealed before the commission to have his monthly mortgage payments reduced, based on his compliance of payments set forth, in February 2012, at a contested case hearing. A correction was noted for a letter dated August 18, 2012, which was inadvertently addressed to former Director and Chairman, Ray Soon. Mr. Nakoa submitted material which comprised of letters of reconsideration, copies of receipts, and a financial update, to be made a part of these minutes as Exhibit "A."

ITEM NO: J-7

SUBJECT: Request to Address the Commission – Robin Danner, Council for Native Hawaiian Advancement

MOTION/ACTION

None, for information only.

Ms. Danner was unavailable to address the commission.

ITEM NO: J-8

SUBJECT: Request to Address the Commission – Angeline Kelley-Aina

MOTION/ACTION

None, for information only.

DISCUSSION

Ms. Kelley-Aina appeared before the commission to state she received notice from Chase Manhattan (Chase) that her mortgage was paid off. She later received a notice from DHHL to say she defaulted on a loan. She indicated her mortgage balance with Chase was approximately \$125,000, yet, later, she received a notice from DHHL showing a balance due of \$155,000. Ms. Kelley-Aina said her brother-in-law, now deceased, built the home for her on Hawaiian home lands, and advised her that everything was taken care of, and that she could now move in. Ms. Kelley-Aina expressed that she is on a fixed income and wanted proof of claim she took a loan out with Hawaiian home lands.

Ms. Nina Kahau-Asing, who assisted Ms. Kelley-Aina, informed the commission that Ms. Kelley-Aina's brother-in-law was a contractor and built the home for Ms. Kelley-Aina. Ms. Kahau-Asing portrayed Ms. Kelley-Aina as "free and clear" of any outstanding debt to the department, since Ms. Kelley-Aina stated she did not obligate any agreement with the department. Material submitted to be made a part of these minutes as Exhibits "A", "B", and "C", which include a letter from Ms. Kelley-Aina, a loan closing notice from Hawaii Community Lending, a promissory note for Chase, a USDA RD guaranteed Rural Housing loan default notice, and default notice from DHHL with respect to a USDA RD loan with Chase.

Chair thanked Ms. Kelley-Aina for bringing this matter to the attention of the commission. She articulated to Ms. Kelley-Aina that once a loan is defaulted, the department guarantees the loan. The loan is then assigned back to the department where it becomes the obligation of the lessee to repay the department. Ms. Kahau-Asing reiterated that Ms. Kelley-Aina needs to see the original note.

MOTION/ACTION

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

ADJOURNMENT: 3:50 p.m.

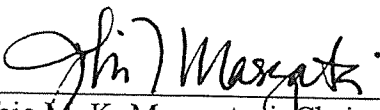
ANNOUNCEMENTS AND ADJOURNMENT

NEXT MEETING November 19, 2012, Kapolei, Oahu

ANNOUNCEMENT Next community meeting will be held at the Waimanalo Community Center "Ka Hooilina Na Kuhio," 41-253 Ilauhole, Waimanalo, Oahu.

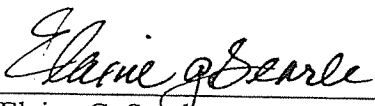
ADJOURNMENT 3:50 p.m.

. Respectfully submitted:



Jobie M. K. Masagatani, Chairman Designate
Hawaiian Homes Commission

Prepared by:



Elaine G. Searle
Secretary to the Commission

APPROVED BY:
The Hawaiian Homes Commission
At Its Regular Monthly Meeting Of
June 17, 2013



Jobie M. K. Masagatani, Chairman
Hawaiian Homes Commission