

**HAWAIIAN HOMES COMMISSION**  
**Minutes of July 23-24, 2012**  
**Meeting Held in Kamuela, Hawai'i**

Pursuant to proper call, the 629th Regular Meeting of the Hawaiian Homes Commission was held at the Department of Hawaiian Home Lands, West Hawai'i District Office, 64-756 Mamalahoa Highway, Kamuela, Hawai'i beginning at 10:40 a.m.

**PRESENT**     Ms. Jobie M.K. Masagatani, Chairman Designate  
                  Mr. Imaikalani Aiu, Commissioner, Kaua'i  
                  Mr. Perry O. Artates, Commissioner, Maui  
                  Ms. Leimana DaMate, Commissioner, West Hawai'i  
                  Mr. Gene Ross K. Davis, Commissioner, Moloka'i  
                  Mr. J. Kama Hopkins, Commissioner, O'ahu  
                  Mr. Michael P. Kahikina, Commissioner, O'ahu  
                  Mr. Ian B. Lee Loy, Commissioner, East Hawai'i  
                  Mr. Renwick V.I. Tassill, Commissioner, O'ahu

**COUNSEL**     S. Kalani Bush, Deputy Attorney General

**STAFF**        Michelle Ka'uhane Deputy to the Chairman  
                  Derek Kimura, Executive Assistant  
                  Linda Chinn, Administrator, Land Management Division  
                  Sandy Pfund, Administrator, Land Development Division  
                  Francis Apoliona, Compliance Officer  
                  Darrell Yagodich, Administrator, Planning Office  
                  Rodney Lau, Administrative Services Officer  
                  Juan Garcia, Administrator, District Homestead Operations  
                  Kaleo Manuel, Planner, Planning Division  
                  Julie Cachola, Planner, Planning Division  
                  Bob Freitas, Planner, Planning Division  
                  Nancy McPherson, Planner, Planning Division  
                  Jeff Fujimoto, Engineer, Land Development Division  
                  James DuPont, Supervisor, West Hawai'i District Office  
                  John Peiper, Enforcement Officer  
                  Ku'uwehi Hiraishi, Information Specialist  
                  Blaine Fergerstrom, Community Development Officer  
                  Elaine Searle Secretary to the Commission

**PULE** Commissioner Hopkins

### **OATH OF OFFICE**

Gene Ross Davis sworn in as new commissioner of Moloka'i by Deputy Attorney General Kalani Bush

**AGENDA** Commissioner Artates moved, seconded by Commissioner Hopkins, to approve the agenda. Motion carried unanimously.

**MINUTES** None were approved.

### **AMENDED AGENDA**

Moved by Commissioner DaMate, seconded by Commissioner Artates to convene with Item No. H-1 after Item No. C-1. Motion carried unanimously.

### **A - WORKSHOP PRESENTATIONS**

**ITEM NO. A-1**

**SUBJECT: Water Policy Plan**

Presenter: Kaleo Manuel, Planner, and Johnathan Likeke Scheuer, Consultant

This presentation provided information on historical background, water rights held by the commission and an update on the Water Policy Plan presented by Planner Kaleo Manuel and water consultant Johnathan Likeke Scheuer. It also addressed the legal perspective on water rights held by the department.

Water Law - comes from Traditional Practices, Kingdom Law, Common Law, HHCA (Hawaiian Homes Commission Act) and State Water Code as adopted by the State of Hawai'i. Water was intended for everyone during the Mahele. Over time, laws evolved changing the use of water to become privatized. In 1970, court rulings changed it back to become a public trust resource. Board of Land and Natural Resources (BLNR), as negotiators, has a fiduciary responsibility to ensure this Trust receives 30% of appropriated revenue from water licenses issued anywhere in the state.

Water Code is divided into two areas: 1) designated as water management areas where Hawaiian Homes Commission has rights for first availability of water and 2) undesignated areas where it is

"first come, first served" status. Although rarely implemented, in sections 220 and 221 of the HHCA, the commission may petition for water usage from BLNR (Board of Land and Natural Resources) if water is needed from another private user. Any obligations managed by the various counties on behalf of the state are to be taken on by the counties in relationship to water. Exhibits "A to C" will be a part of these minutes, referencing Hawaiian Homes Commission (HHC) water rights, update on its Water Policy Plan, water management areas and rights related to water held by HHC.

Over the past year, data collection was taken from internal records, water systems, legislation, Attorney General's opinion and other leaders throughout the state. An initiative to identify water demands on each parcel of land held is being implemented by the department and DLNR (Department of Land and Natural Resources) through a state water project plan. The department intends to apply reservations to all of these lands which encompasses over 200,000 acres. A draft policy will be implemented by December 2012 and approved by this commission once it has been vetted through community consultations.

#### MOTION/ACTION

Moved by Commissioner Aiu, seconded by Commissioner Hopkins to convene with Item A-3. Motion carried unanimously.

#### ITEM NO. A-3

#### SUBJECT: Waimea and Kawaihae Regional Plans

Presenter: Kaleo Manuel and Julie Cachola, Planners

Waimea Nui Regional Plan - formerly Lalamilo-Pu'ukapu Regional Plan. A diverse community encompassing 30,000 acres includes pastoral, agricultural and residential lands with eight (8) primary areas. Most of Waimea lands are already utilized: 562 leases are in Pu'ukapu with a majority in pastoral leases. Projects: Pu'ukapu Hybrid System, to service 186 pastoral lots; Lalamilo Phase II; realignment of Waiaka Bridge, Waimea Trails and Greenways and Kanu o Ka Aina Charter School. Five community projects are: 1) Waimea HHL community complex; 2) revision of agricultural & pastoral program; 3) develop affordable homesteading; 4) assess property tax requirements; and 5) assess building codes.

Kawaihae Regional Plan – encompasses 10,153 acres - 75% agricultural, 20% residential, and 3% industrial. Rainfall in the region ranges from 150 inches topside to 7 inches in the lower region. Primary projects are: 1) Kailapa Resource Center, 2) Water development, 3) Kawaihae bypass, 4) Pelekane Bay improvements, 5) Management of Kawaihae regarding interment site. In addition to a power point presentation, handouts were provided to be made a part of these minutes as Exhibits "A to C." Kailapa Homestead Community President, Diane, and husband Gabe Kaneali'i were introduced. A question and answer period followed regarding future plans of the department, and exercising kuleana ocean rights and water sustenance in the community.

## **B - PUBLIC TESTIMONY ON AGENDIZED ITEMS**

1) Blossom Feiteira – (A-1) Make water a priority for all beneficiaries and have commission determine the Trust as its own subdivision. (C-1) Approves update on strategic plan; (F-6) Supports request for ROE (right-of-entry) project for Kailapa community; (F-7) Supportive of Waimea Homestead Community. She requests final approval by the commission after a 30-day comment period.

2) Sheri Wahinekapu - (A-1) Request department to investigate utilization of one (1,000,000) million gallon water tank situated in Honokaia either on county or state land near Hawaiian home lands. Due to current litigation efforts, comments on Honokaia water matters have been limited in discussion.

3) Mike Hodson – (A-1) Explore the possibility to partner with federal government as preparations are readied to drill a well in Pohakuloa for its military; (A-3) Awaiting commission support to move regional plans forward; (F-7) Supports self-sufficiency of the beneficiary.

3) Robin Danner – 1) Recommends posting agenda on website; 2) (A-1) Commended DHHL Planner Manuel on water plan report and insight to Ad Hoc water commission ; 3) Suggests adding \$10 million to CIP (capital improvement project) budget for Honokaia water system project; 4) Support legislation to include \$44.7 million for infrastructure and CIP budget; 5) requests disclosure of Trust account balance after operating and CIP costs are addressed; 6) direct DHHL to identify CIP projects statewide and provide funding of \$500,000 or \$15,000 per homestead association for a signage project.

4) Kawai Warren – (A-1) Kekaha community recognizes water as critical and anticipates an impact decision on water usage. (A-2) Anticipating work with Ag matrix on 1,000 acres in West Kaua'i; ensuring agricultural or pastoral usage afforded by the matrix, and consideration of commercial agricultural leases be addressed after full exploration of the beneficiary waitlist.

7) Diane Kaneali'i – (A-1) Commended staff's water report. Ms. Kaneali'i pointed out that commission be diligent and mindful that upland water development affects the lands downside. Ms. Kaneali'i noted a potential conflict of interest of the water consultant who may have family employed at Kahua Ranch and who is initiating plans for a water resource project. She requested water information of a development project in Waikoloa by Aina Le'a.

## **A - WORKSHOP PRESENTATION (cont.)**

**ITEM NO. A-2**

**SUBJECT: Agricultural Matrix**

Presenters: Darrell Yagodich, Planning Administrator and Bob Freitas, Planner

Prince Kuhio expressed what he was thinking when the Hawaiian Homes Commission Act was passed, "You must save yourself by work – hard work. It rests with those who go upon the land, under the rehabilitation scheme, to prove that they can and will remain upon the soil and get a living from it." This was evident when homesteaders moved to Moloka'i to become successful farmers to further the Prince's goal to preserve agricultural activities.

The Ag Task Force was formed in 1998 to include homesteaders from each island, applicants, Department of Agriculture (DOA), resource personnel and commission members. Recommendations were developed to preserve agricultural resources and farming activities. Agricultural applications total 17,000, and pastoral, 2,800, with a current status of 1,001 agricultural and 400 pastoral leases. The last agricultural development was in 1984, and 1991 for pastoral. It was determined 80% of lessees prefer a subsistence lot instead of a commercial lease. Only 5% of ag lands were being utilized. Recommendations were to:

- not award new ag leases until a strategy could be established;
- focus on subsistence; one residence, no subdividing;
- support a subsistence type lease for homesteading usage;
- establish zoning to control ag activities, limited resources;
- develop series of business activities – Ag park concept;
- create Ag Resources management division;
- new farmers screened and trained in ag activities;
- strengthen the University of Hawaii Co-op program;
- file formal ranch plan to offer services;
- develop agriculture infrastructure and water rights;
- partnering with others to do exploratory wells;
- managing renewable energy projects;
- product marketing assistance and transportation;
- expand market share products;
- support facilities.

Recommendations were adopted in the year 2000. Unfortunately, residential development has been the prime objective for 20 years; thus, no funding allocated over the years for agricultural related use. Many principles expressed by the Task Force are established in the Hawai'i Island Plan but no official agriculture plan embraces all these recommendations. Many of these recommendations are subject to different administrations and commissions yet a formal plan has not been adopted which has caused some delays. The Ag Matrix categories consist of: 75% of applicants who want a place to live because that is where they grew up and will be satisfied with

1 to 5 acres; Ag Park concept is a place to develop farming support activities; 15% supplement their income from non-agriculture uses; 10% utilize ag lands and make their money from their ag activities. Materials presented are made a part of these minutes as Exhibits "A to B".

### AMENDED AGENDA

Moved by Commissioner Hopkins, seconded by Commissioner Lee Loy to convene with Item No. D-17. Motion carried unanimously.

### ITEM NO. D-17

### SUBJECT: Designation of Successor - Alexander W. Winchester

### RECOMMENDED MOTION

Two - Action Item:

- 1) Vacate HHC ratification of Alexander W. Winchester Designation of Successorship of Successor to DHHL leasehold interest dated August 30, 2007;
- 2) Approve designation of Albert V.T. Winchester and Joseph K. Winchester and Thella Marie Asing, as joint tenant successors to their late brother's residential lease No. 3948, Lot No. 2, Waimanalo, O'ahu subject to terms and conditions of the lease and not limited to a mortgage held with Chase Bank as of March 18, 2008.

### MOTION

Moved by Commissioner Kahikina, seconded by Commissioner Lee Loy.

### DISCUSSION

Joint successors to Alexander W. Winchester's lease were notified April 4, 2012, of their brother's outstanding mortgage to his lease. Joseph K. Winchester, a successor, appeared before the commission questioning validity of the loan and queried how his brother was able to qualify for a loan as he was unemployed.

Homestead District Supervisor Juan Garcia articulated that the department mandated a public notice, seeking qualified successors, to the lease as the deceased lessee designated unqualified persons to succeed to his lease. Three of Alexander Winchester's siblings applied and were granted successorship.

The department consented to the original loan of \$98,610 with the private lender. When a loan defaults, it must first be assigned to HUD (Housing and Urban Development) prior to being reassigned to DHHL. The department has access to the loan balance once this transpires. The commission will approve the designation, subject to the designated successors accepting the responsibility of the existing loan. One of the issues remaining is the non-related individual occupying the property with permission by the deceased lessee. A lien exists on the property, and as successors, any debt is subsequently passed on to the designated successors.

Deputy Ka'uhane stated when a lessee applies for a loan the promissory note is between the beneficiary and lender. The department's responsibility is to qualify the beneficiary as a 50 % native Hawaiian and ensure no outstanding taxes are due. Chair recommended amending Item No. 2... terms and conditions of the lease including but not limited to the ~~mortgage held with Chase Bank as of March 13, 2008~~ **outstanding indebtedness tied to the lease as approved by the commission.**

#### AMENDED MOTION

Moved by Commissioner Hopkins, seconded by Commissioner DaMate, to amend Item No. 2 as recommended by the Chair.

#### DISCUSSION

Becoming a successor to a lease is taking responsibility in the indebtedness of the lease. However, when Joseph Winchester and his siblings applied as successors to their brother's lease, DHHL was unable to provide information on the loan balance. In this instance, the mortgage is with a private lender and insured by the federal government. If there is a default and not enough of an insurance claim to pay it, then it comes back to the department. Identifying a particular amount due is a problem, noted Chairman. The department would not be liable for the lack of information as they have consented to the mortgage, and there is a process which is applied through payment of it. Had Chase Bank filed a claim with FHA, current rules under HUD indicate they would not need to pay the claim because the individual is deceased, and there is no interest in it, conveyed Deputy A.G. Bush. The department, under the Hawaiian Homes Commission Act (HHCA), must then recoup the debt from the successor lessee.

#### AMENDED ACTION

Motion carried unanimously.

#### ACTION

Motion carried, as amended, on the original motion.

#### ITEM NO: C-1

#### SUBJECT: Strategic Plan Update

#### MOTION/ACTION

None. For Information Only.

### COMMENT

Commissioners congratulated Deputy Ka'uhane and staff for the updates and with meeting the goals in its strategic plans. The current trend in delinquency has improved. Grant recommendations will be available at next month's meeting.

### ITEM NO.: H-1

### SUBJECT: Approval of FY 2013 Development Budget for the Department of Hawaiian Home Lands

### RECOMMENDATION

That the Commission approves the FY 2013 Development Budget for DHHL and authorize Chairman to shift funding of expenditures between cost elements and funds as warranted, but not to exceed the total budget.

### MOTION

Moved by Commissioner Artates, seconded by Commissioner Tassill.

### DISCUSSION

Administrative Services Officer Rodney Lau presented amendments to the Development Budget, FY 2013 that was presented to the commission at the July 16, 2012 workshop.

- Line Item No. 47 - expand project title to include an emergency repair;
- Line Item No. 56 - reduce request from \$500,000 to \$250,000;
- Line Item No. 60 - reduce request from \$250,000 to \$1,000;
- Line Item No. 61 - reduce request from \$250,000 to \$1,000
- Line Item No. 36 - insert new private title "Kawaihae Water Source Feasibility Assessment" for \$250,000;
- Line Item No. 53 - add new line "Parcel Feasibility Revenue and Planning" - \$250,000;
- Line Item No. 52 - add new line "Water Inventory Assessment and Plans" - \$250,000.

### DISCUSSION

Line Item 52 was split in half to add Line Item No. 53; each at \$250,000. It was deemed necessary to secure critical data system with a GIS system to assist Planning office in displaying areas where DHHL water is located, and in determining what kind of credits and agreements the department has with neighboring counties, noted Land Development Administrator Sandy Pfund. Occasionally, emergency repairs need to be addressed; thus, it is deemed prudent to expand the category "emergency repair" so matters may be addressed immediately, with either a call to the Chairman or consult with this commission.

Commissioner Artates recommends Line Item No. 64, "Kahikinui road repair" be reduced from \$100,000 to \$50,000 and add Line Item No. 71 of \$50,000 to the Land Management Division for signage. Due to Semper Construction Company spending \$1,000,000 million on road improvements, which included 6,500 lineal feet for Kahikinui community, it would be deemed unnecessary to provide \$100,000 of the original budgeted amount for road repairs, added Linda Chinn, Administrator, LMD.

#### AMENDED MOTION/ACTION

Moved by Commissioner Artates, seconded by Commissioner Hopkins to approve reducing Line Item No. 64, as recommended, and adding \$50,000 to Line Item No 71, for signage. Motion carried unanimously.

#### DISCUSSION

Commissioner DaMate recommends reducing Line Item No. 63 "Gorse Containment Project" by \$100,000 and create another line item for development of the water assessment system for the Ka'u area. In assessing the Gorse Containment Project, LMD Administrator Linda Chinn indicated this would limit aerial spray of gorse control in some areas.

#### MOTION/ACTION

Moved by Commissioner Lee Loy, seconded by Commissioner Tassill to adjourn in executive session to discuss this matter further. Motion carried unanimously.

#### EXECUTIVE SESSION - 2:55 p.m.

Pursuant to section 92-5(a) and (4), HRS, the commission convened in executive session to consult with its attorney on questions pertaining to powers, duties, privileges, immunities and liabilities on Item No. H-1.

#### RECONVENE -3:10 p.m.

#### MOTION/ACTION

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

**ITEM NO.: H-1 (cont)**

**SUBJECT: Approval of FY 2013 Development Budget for the Department of Hawaiian Home Lands**

**2nd AMENDED MOTION**

Moved by Commissioner DaMate, seconded by Commissioner Lee Loy to add a Line Item No. 42 of \$100,000 for Ka'u Water Assessment.

**DISCUSSION**

In relation to a specific objective, Commissioner Aiu inquired as to how this applies to the strategic plan. Commissioner Lee Loy affirms the inclusion of the water assessment in Ka'u is in accordance with the strategic plan to deliver homestead opportunities. Ka'u has lots of land, an underground water resource and access to those resources. The problem is delivery of those resources. Commissioner Kahikina emphasized that Trust funds are being spent. Commissioner DaMate referenced two items appearing in the department's strategic plan 1) Objective 2, Item #8 – approval granted on May 14, 2012 which completed the Ka'u Regional Plan identifying water as a priority project; and 2) protecting the interest of the beneficiary by affording Ka'u beneficiary the opportunity to either farm or pasture lands. This assessment could provide water to 25 farmers and 20 ranchers.

**AMENDED ACTION**

Motion carried unanimously.

**DISCUSSION**

According to Chair Masagatani, the department will begin preparing budget proposals for the upcoming legislative year within a month. Should the department secure general obligation bond financing for CIP (capital improvement project), next year's budget could likely be smaller. Commissioner Kahikina expressed his intention to add \$10.5 million to the Honokaia water project and \$500,000 for signage. He would then propose to make recommendation for reimbursement from the state legislature. Commission Aiu suggested these recommendations be introduced separately.

**MOTION/ACTION**

Moved by Commissioner Lee Loy, seconded by Commissioner Tassill to convene in executive session to discuss this matter further. Motion carried unanimously.

**EXECUTIVE SESSION** - 3:25 p.m.

Pursuant to section 92-5(a) and (4), HRS, the commission convened in executive session to consult with its attorney on matters pertaining to the Commission's powers, duties, privileges, immunities and liabilities on this matter.

**RECONVENE** - 3:40 p.m.

**MOTION/ACTION**

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

**ITEM NO.: H-1 (cont)**

**SUBJECT: Approval of FY 2013 Development Budget for the Department of Hawaiian Home Lands**

**3<sup>rd</sup> AMENDED MOTION/ACTION**

Moved by Commissioner Kahikina, seconded by Commissioner Tassill to add \$10.5 million to the Honokaia water project. Motion failed.

**4th AMENDED MOTION**

Moved by Commissioner Kahikina, seconded by Commissioner DaMate to increase Line Item #71 from \$50,000 to a \$500,000 budget for posting signage.

**DISCUSSION**

Until other communities actively support funding for signage, Commissioner Aiu defers support of the motion. Chair Designate concurs this is a good beginning. She commended Commissioner Artates for suggesting a budget adjustment on Kahikinui road repairs. In the meantime, her concerns lie with the uncertainty of future budgets, and the support needed for all homestead association activities.

**ACTION**

**`AE** (2)

**A`OLE** (7)

KAHIKINA  
TASSILL

AIU  
ARTATES

DAMATE  
DAVIS

HOPKINS  
LEE LOY

MASAGATANI

Motion failed.

## DISCUSSION

Commissioner Hopkins requested staff to provide 1) quarterly budget reports; and, 2) delivery of diverse homestead opportunities.

## 5<sup>th</sup> AMENDED MOTION

Moved by Commissioner Hopkins to remove Line Items #39, #40 and #43; Lalamilo Phase 2A, Increment I, Lalamilo Phase 2A, Increment II, and Pi'ilani Mai Ke Kai, Phase 2 respectively, seconded by Commissioner Lee Loy.

## DISCUSSION

Commissioner Hopkins believes deferral of these projects for another year would improve the financial well being of the Trust; in addition, there are still vacancies in the Pi'ilani Mai Ke Kai homestead. Commissioner Aiu supports the spirit of the motion but disagrees as bidding has been secured, and money was tendered to develop and design the Pi'ilani Mai Ke Kai project. Then, too, several commissions have sanctioned this project over the years.

Administrator Sandy Pfund pointed out the impact this would create should these projects be cancelled. Pi'ilani Mai Ke Kai project was scheduled to begin July 15<sup>th</sup> to include the hiring of a construction manager for site work in preparation for house lots, not to construct homes. Federal funds have been expended through ARRA (American Recovery and Reinvestment Act) stimulus funds. USDA has vested heavily in this project and has already afforded several awards. Lalamilo's contract is ready to be executed with a contractor. Water lines and two (2) water storage tanks were built in preparation for this project. Further delays would create stagnated water and affect ARRA funding. Plans are being readied to dedicate these two water tanks to Hawai'i County. Commissioner Hopkins affirmed his commitment to balance the budget.

A roll call vote was taken to address elimination of Item #39, Lalamilo Phase 2A, Increment I - \$991,000; Item #40, Lalamilo Phase 2, Increment II - \$900,000 and Item #43, Pi'ilani Mai Ke Kai, Phase 2 - \$4.952 million.

## AMENDED ACTION

`AE (3)

A'OLE (6)

HOPKINS  
KAHIKINA ®  
LEE LOY

AIU  
ARTATES  
DAMATE

DAVIS  
TASSILL  
MASAGATANI

Motion failed.

## DISCUSSION

Commissioner Hopkins expressed mahalo to staff for their commitment and work on the budget and declared he will cast a "no" vote based on the limits of the budget. Commissioner DaMate congratulated staff and conveyed diligence in seeking funding through the state legislature. Chair Masagatani requested a roll call vote on the budget.

## ACTION

Ae (8)

A'ole (1)

AIU  
ARTATES  
DAMATE

DAVIS  
KAHIKINA ®  
LEE LOY

TASSILL  
MASAGATANI

HOPKINS

Motion carried, as amended.

## COMMENT

Commissioner Tassill requested that commissioners be advised on action bills before the legislature. Chair Designate Masagatani recommended addressed the Honokaia Settlement in Executive Session prior to reconvening in regular session to address Item Nos. E-1, E-2, F-2 and Item No. J-1.

## MOTION/ACTION

Moved by Commissioner Aiu to adjourn to executive session before reconvening in regular session, seconded by Commissioner Artates. Motion carried unanimously.

## EXECUTIVE SESSION - 4:15 p.m.

Pursuant to section 92-5(a) and (4), HRS, the commission convened in executive session to consult with its attorney on matters pertaining to the commission's powers, duties, privileges, immunities and liabilities on this matter.

2. Honokaia `Ohana et al. v. DHHL et al., Civil No 09-101615-07

MOTION/ACTION

Moved by Commissioner DaMate, seconded by Commissioner Lee Loy to reconvene in regular session and to commence with Item No. E-1. Motion carried unanimously.

ITEM NO. E-1

SUBJECT: Authorization to Enter into Various Agreements Between Nā Kupa'a O Kūhio and DHHL - Maku'u Water System Improvements, Puna, Hawai'i

MOTION/ACTION

Moved by Commissioner Artates, seconded by Commissioner Aiu to adjourn to executive session to discuss Item No. E-1 further.

EXECUTIVE SESSION - 4:35 p.m.

Pursuant to section 92-5(a) and (4), HRS, the commission convened in executive session to consult with its attorney on matters pertaining to the Commission's powers, duties, privileges, immunities and liabilities on the above-mentioned item.

RECONVENE -

Moved by Commissioner DaMate, seconded by Commissioner Aiu, to reconvene in regular session. Motion carried unanimously

ITEM NO. E-1 (cont.)

SUBJECT: Authorization to Enter into Various Agreements Between Na Kupa'a O Kūhio and DHHL - Maku'u Water System Improvements, Puna, Hawai'i

RECOMMENDATION

Land Development Administrator Sandy Pfund presented terms and conditions in executing agreements between Nā Kupa'a O Kūhio (Nā Kupa'a) and DHHL for Maku'u Offsite Water System, Phase 2: Production well, Reservoir and supporting facilities.

MOTION

Moved by Commissioner DaMate, seconded by Commissioner Lee Loy.

DISCUSSION

Maku'u Offsite Water System Phase 2 will provide potable water to DHHL existing lots in Maku'u Farm Lots and Maku'u Agricultural Lots currently without water and to new lots being planned. Water capacity will include up to 900 lots of 20,000 sq. ft. for development period of 20 years, subject to approval by Department of Water Supply (DWS). Na Kupa'a will oversee development of the multi-water system and provide \$5.2 million dollars: \$2.1 million in grants and \$3.1 million in loan funds, said Ms. Pfund.

Commissioner Lee Loy conveyed the need to provide Maku'u agriculture lots adequate water and to include design of the mauka Maku'u agricultural lots as well as maintain good relations with Nā Kupa'a.

AMENDED MOTION

Moved by Commissioner Hopkins, seconded by Commissioner Tassill to include in the recommended motion that **"Hawaiian Homes Commission authorizes the Chairman Designate to negotiate terms and conditions and seek commission approval before execution of the following agreements between Nā Kupa'a and Department of Hawaiian Home Lands ("DHHL") .....**

ACTION

'AE (2)

A'OLE (7)

HOPKINS  
TASSILLI

AIU  
ARTATES  
DAMATE

DAVIS  
KAHIKINA  
LEE LOY  
MASAGATANI

Motion failed.

DISCUSSION

The total cost of the Maku'u Water System project is estimated at \$8.5 million with DHHL's share at \$1.8 million. In addition, NAHASDA funding will afford additional resources besides Nā Kupa'a grants and loans. It appears that water credits generated from this area are distinct and cannot be transferred to other areas not connected to its water system, unless amended with approval by DWS, noted Nā Ku Pa'a board member, Riley Smith. Further discussion involved the cost share obligations and revenue sources and paying down the department's costs.

ACTION

Motion carried unanimously.

**ITEM NO. E-2**

**SUBJECT: Resolution No 267 – Agreements Between DHHL and Nā Kupa`a O Kūhio for Financing and Construction of Kaka`ina Water and Wastewater System Improvements**

RECOMMENDATION

Land Development Administrator Sandy Pfund assured the commissioners of the underwriting criteria of documents relating to the agreements between Department of Hawaiian Home Lands and Nā Kupa`a O Kūhio, for the financing and construction of the Kaka`ina Water and Wastewater System Improvements.

MOTION/ACTION

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

COMMENT

Nā Kupa`a board member, Riley Smith presented material as part of these minutes as Exhibit "A" listing various obligated water funds received from USDA RD totaling \$9.8 million in loan funds and \$6.4 million in grant funds. Funding was obtained through its non-profit status. Information provided revealed where these funds were allocated. He introduced Pat Brandt and Dale Inoa and offered his assistance to the department on its water projects.

**ITEM NO. F-2**

**SUBJECT: Issuance of Right-of-Entry Permit, Papakolea Community Development Corporation, Puowaina, O`ahu**

RECOMMENDATION

Authorize issuance of a Right-of-Way (ROE) permit to Papakolea Community Development Corporation (PCDC) for use as part of Hawaiian home lands for the purpose of developing a master development plan and initial survey of the lands.

MOTION

Moved by Commissioner Hopkins, seconded by Commissioner DaMate.

## DISCUSSION

Richard Soo, president, of Papakolea Community Development Corporation and Kalawahine Streamside Association appeared before the commission to demonstrate his support for this permit request.

## ACTION

Motion carried unanimously.

### ITEM NO. J-1

**SUBJECT: Request to Address the Commission - Mele Spencer, President  
Keaukaha-Panaewa Farmers Association**

## MOTION/ACTION

None. For Information Only.

## DISCUSSION

Keaukaha-Panaewa Farmers Association President, Mele Spencer, appeared before the commission to update the commission on its mission to support Keaukaha-Panaewa lessees in establishing a viable and sustainable farm community, preserve Hawaiian culture and to become self-sufficient. She shared how the community has been empowered through seminars with the completion of its strategic plan and viable open market.

Ms. Spencer is requesting renegotiations of the CTAHR (College of Tropical Agricultural and Human Resources) contract to allow technical support in its agriculture programs and workshops to fit its homestead needs. The concentration of organic farming does not fit the need for diversified agriculture and pastoral communities. She questioned the validity of land used by a charter school for 20 approximately acres. One recommendation is to allow testimony to be mailed or e-mailed to DHHL as part of an official record.

### ITEM NO: D-1

**SUBJECT: HSD Status Reports**

## MOTION/ACTION

None. For information only.

### ITEM NO: D-2

**SUBJECT: Approval of Various Lease Awards**

MOTION/ACTION

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

**ITEM NO: D-3**

**SUBJECT: Rescission of Homestead Lease Award and Reinstatement of Application and Commission Designation of Successor to Application Rights**

MOTION/ACTION

This matter was deferred.

**ITEM NO: D-4**

**SUBJECT: Rescission of Homestead Lease Award and Reinstatement of Application - Pi'ilani Mai Ke Kai, Undivided Interest**

MOTION/ACTION

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

**ITEM NO: D-5**

**SUBJECT: Rescission of Homestead Lease Awards and Reinstatement of Applications - La'i'opua Villages 4 & 5, Undivided Interest**

MOTION/ACTION

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

**ITEM NO: D-6**

**SUBJECT: Ratification of Loan Approvals**

MOTION/ACTION

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

**ITEM NO: D-7**

**SUBJECT: Approval of Consent to Mortgage**

**MOTION/ACTION**

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

**ITEM NO: D-8**

**SUBJECT: Refinance of Loans**

**MOTION/ACTION**

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

**ITEM NO: D-9**

**SUBJECT: Schedule of Loan Delinquency Contested Case Hearings**

**MOTION/ACTION**

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

**ITEM NO: D-10**

**SUBJECT: Homestead Application Transfers / Cancellations**

**MOTION/ACTION**

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

**COMMENT**

Commission wants further clarification on the sale of leases whether these are transfers or outright sale of leases. This will need to be addressed by the Attorney General's office due to disclosure issues.

**ITEM NO: D-11**

**SUBJECT: Commission Designation of Successors to Application Rights - Public Notice  
2006, 2008, 2009, 2010, 2011**

**MOTION/ACTION**

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

**ITEM NO: D-12**

**SUBJECT: Reinstatement of Deferred Applications**

**MOTION/ACTION**

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

**ITEM NO: D-13**

**SUBJECT: Ratification of Designation of Successors to Leasehold Interest and  
Designation of Persons to Receive Net Proceeds**

**MOTION/ACTION**

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

**ITEM NO: D-14**

**SUBJECT: Approval of Assignment of Leasehold Interest**

**MOTION/ACTION**

This item is deferred until tomorrow's agenda.

**ITEM NO: D-15**

**SUBJECT: Approval of Amendment of Leasehold Interest**

**MOTION/ACTION**

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

**ITEM NO: D-16**

**SUBJECT: Cancellation of Lease - Patrick S. Kahuilā**

**MOTION/ACTION**

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

**ITEM NO: D-18**

**SUBJECT: Approval of Payment of Net Proceeds - 1) Ammon I. Kaleo, 2) Corinna U. Wilcox**

**MOTION/ACTION**

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

**ITEM NO: D-19**

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

**MOTION/ACTION**

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

**ITEM NO: D-20**

**SUBJECT: Approval of Agricultural Burning on DHHL Lease Lands**

**MOTION/ACTION**

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

**COMMENT**

Burning permits are required for health and safety issues. Process for agricultural waste burning is a two step process. The lessee must secure a permit request from Department of Health

(DOH), have DHHL acknowledge proof of permit before returning it back to DOH for final approval.

RECESS - 4:50 p.m.

**HAWAIIAN HOMES COMMISSION  
Minutes of July 24, 2012  
Meeting Held in Kamuela, Hawai'i**

RECONVENE - 8:43 a.m..

PULE: Commissioner Tassill

PRESENT Mr. Perry O. Artates, Vice-Chairman  
Mr. Imaikalani Aiu, Commissioner, Kaua'i  
Ms. Leimana DaMate, Commissioner, West Hawai'i  
Mr. Gene Ross K. Davis, Commissioner, Moloka'i  
Mr. J. Kama Hopkins, Commissioner, O'ahu  
Mr. Michael P. Kahikina, Commissioner, O'ahu  
Mr. Ian B. Lee Loy, Commissioner, East Hawai'i  
Mr. Renwick V.I. Tassill, Commissioner, O'ahu

EXCUSED Ms. Jobie M.K. Masagatani, Chairman Designate

COUNSEL Deputy Attorney General S. Kalani Bush

MOTION/ACTION

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

ITEM NO: J-1

SUBJECT: Request to Address the Commission - Bo Kahui - La'i'opua 2020

MOTION/ACTION

None. For Information Only.

## DISCUSSION

Dora Aio-Leamons, president of Villages of La'i'opua (formerly Kaniohale), appeared before the commission asking assistance to schedule contested case hearings for seven (7) lessees seriously delinquent in association dues. The Kanawai enforcement process requires lessees to be in good standing with their association dues. Any delineation from this process leaves the association with no recourse but to notify the lessee the amount in arrears and if unsuccessful in collecting the dues, the lessee faces a possible contested case hearing where he could possibly lose his homestead. Delinquent association fees currently total \$70,000.

Bo Kahui provided an update of the La'i'opua 2020 progress on Habitat for Humanity West Hawai'i engagement in a "Blitz Building." Patrick Hurney, Executive Director, Habitat for Humanity noted there are nearly 100 volunteers from the mainland and 200 to 300 local volunteers scheduled to build five (5) homes in ten (10) days. He requested the commission to approve one of the lessees scheduled to receive a home, while he awaits plan approval from Hawai'i County. Deputy Ka'uhane informed the commission that all documents need to be submitted from the lessee to ensure a debt capability by the lessee. If not, the department is liable for this debt. Although the commission desired to assist the lessee in receiving the home through an electronic voting process, the HRS 92 ruling does not allow for "J" agenda items to be voted on. It requires public notification 6 days in advance for such action, and the commission needs an opportunity to voice its opinion to "agree or oppose" this request.

Arlen Gunter, Project Manager for the La'i'opua 2020 community center and medical center provided some schematics of the Phase I progress of these initiatives. He is awaiting approval of a grant from VERSA. Mr. Gunter provided a timeline of events: 2012 – Design development; 2013 - Infrastructure begins; 2014 - Vertical build up; 2015 – Completion.

Ground breaking will commence in December 2012. Bo Kahui solicited support from this commission as he pursues funding from NAHASDA (Native American Housing and Self Determination Act. OHA (Office of Hawaiian Affairs) has submitted a support letter on his behalf for La'i'opua 2020's request of \$14 million for infrastructure, and the building of its community center.

## ITEM NO: J-3

### SUBJECT: Request to Address the Commission - Nalayne Mahealani Kahau

## MOTION/ACTION

None. For Information Only.

## DISCUSSION

Nalayne Mahealani Kahau (Asing) and her son, Adam Asing, appeared before the commission to dispute a judicial decision two years prior regarding a 7,000 sq. ft. parcel of land they believe to

be one (1) acre which she claims her father, William Kahau, was awarded. Department records indicate no record validates that claim. Additionally, Ms. Kahau's mother (Mrs. William Kahau) failed to sign lease documents after her husband passed away. By refusing to accept the lease after it was inventoried and reapportioned to contain approximately 7,000 sq. ft, consistent with the size lots awarded in the area, there may be uncertainty as to who is the current lessee. It was noted Mrs. William Kahau did designate Ms. Williamae Alama, another daughter, as successor.

**EXECUTIVE SESSION** - 9:50 a.m.

Pursuant to section 92-5(a) and (4), HRS, the Commission convened in executive session to consult with its attorney on questions pertaining to the Commission's powers, duties privileges, immunities and liabilities on the preceding item.

**RECONVENE** -10:02 a.m.

**ITEM NO: J-3 (cont.)**

**SUBJECT: Request to Address the Commission - Nalayne Mahealani Kahau**

**DISCUSSION**

Mahealani Kahau stated her sister, Williamae Alama, addressed this matter before the district court and the circuit court to no avail. Ms. Kahau provided materials as part of these minutes as Exhibit "A".

**ITEM NO: E-3**

**SUBJECT: Renewal 5-Year Agreement, Hawai'i Community College Model Home Project**

**MOTION**

Moved by Commissioner DaMate, seconded by Commissioner Kahikina.

**DISCUSSION**

As part of their learning experience, each year Hawai'i Community college students build a home for a lessee. Professional plumbers and electricians are contracted to complete certain required portions of the home. As part of the purchase price, appliances are included. Commissioner Lee Loy recommends not having appliances included in the mortgage price, giving the lessee an option to purchase. He requested justification of the building costs for this year's model, as projected costs have loomed to nearly \$199,000.

ACTION

Motion carried unanimously.

**ITEM NO: F-3**

**SUBJECT: Issuance of Right-of-Entry Permit, Hawaiian Electric Company, Inc.  
Kamoa-Pu'ueo, Hawai'i**

MOTION

Moved by Commissioner DaMate, seconded by Commissioner Kahikina.

DISCUSSION

This property is situated on Revocable Permit (RP) lands. Recommendation is to defer the matter until Land Management staff consult with a HELCO representative on significant contributions to beneficiary. Commissioner DaMate suggested HELCO work with community to offer reduced electrical rates once its community building has been completed, within the next year.

AMENDED MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Tassill to defer this matter.  
Motion carried unanimously.

**ITEM NO: F-4**

**SUBJECT: Ratification of Consents and Approvals by Chairman, Hawaiian Homes  
Commission**

RECOMMENDATION

Ratify consents and approval by Chairman for 1) Consent to Mortgage, General Lease (GL) No. 275, Big Island Carbon for a mortgage of \$15 million; 2) Improvement plans of GL 156, Bacon Finance & Realty Corp, Hilo and 3) Consent to sub-lease, License Agreement No. 460, St. Mary's Gate, Keaukaha.

MOTION

Moved by Commissioner DaMate, seconded by Commissioner L. Lee Loy.

DISCUSSION

LMD Administrator Linda Chinn clarified that all general leases are appraised at fair market value and a general lessee is required to provide consent to mortgage, have approval of construction plans, and any subleasing or other activity proposed on the lease before presentation and approval.

Commissioner DaMate recommended a "preference to beneficiaries" clause be added to the non-profit school in Keaukaha contract (LA 460) as the school is situated in the Hawaiian home lands community. With a lender in place in the general leases, the department's liability is minimized. This is unlike a homestead lease where the department guarantees a loan. Commissioner Hopkins inquired why no percentage rents are collected. Percentages are negotiated when it involves a sub-leasing agreement, clarified Ms. Chinn. The department collects fair market value for ground rent. Based on HRS 171 and legislative requirements, the department must comply with fair market rent and take on the position as landlord.

Commissioner DaMate recommended adding a "preference to beneficiaries" clause for native Hawaiian beneficiary farmers in the area to supply macadamia nut products to Big Island Carbon, LLC (GL 275). Commissioner Aiu cautioned whether this would warrant a constitutionality issue. Evaluation of the proposal will need to be reviewed by the Attorney General's office. It was further revealed Big Island Carbon has an existing clause offering training to native Hawaiians in its production plant.

AMENDED MOTION/ACTION

Moved by Commissioner DaMate, seconded by Commissioner Kahikina to include language in the alternative energy plant: GL 275 - to work with farmers in Keaukaha/Panaewa to supply macadamia nuts; GL 156 - provide community benefits package by offering cold storage equipment; GL 460 - a community benefits package from the pre-school in Keaukaha. Motion carried unanimously.

**ITEM NO: F-5**

**SUBJECT: Notices of Default and Revocations, Statewide**

MOTION/ACTION

None. No notices of default to report.

**ITEM NO: F-6**

**SUBJECT: Issuance of Right-of-Entry Permit, Kailapa Community Association, Kawaihae, Hawai'i**

MOTION

Moved by Commissioner DaMate, seconded by Commissioner Kahikina.

DISCUSSION

Kailapa Community Association (KCA) President, Diane Kaneali'i appealed to restrict a 72-acre wellness park be limited to outside visitors through signage postings and acquire exclusive entry to preserve the area's rich archaeological sites and trails. Ms. Kaneali'i recommended classes be available to those wanting to visit the site. The department will assist KCA towards securing this right-of-entry (ROE). Differentiating visitors from homesteaders or locals may be a concern. The purpose is to manage the access and to become aware of what's kuleana, noted Ms. Kaneali'i. Commissioner Lee Loy supports ROE with the understanding the department would confer with KCA within the two years. One concern is securing the area once exclusive rights are granted. Education is important when it excludes others from a particular area and may lead to a negative impact, cautioned Commissioner GR Davis. A group of fishermen have expressed a desire to preserve and protect the site; therefore, a plan will be devised to preserve this historical site.

ACTION

Motion carried unanimously.

**ITEM NO: F-7**

**SUBJECT: For Information Only - Land Request from Homestead Community Development Corporation, Waimea, Hawai'i**

MOTION/ACTION

None. For Information Only.

Waimea Homestead Association President Mike Hodson expressed his frustration in working towards the benefit of the Waimea homesteads in securing the last 161 acres of available land in Waimea, to develop a certified kitchen complex, a waste digester, a place to sell produce, a cemetery and other planned entities in material presented to be made a part of these minutes as Exhibit "A". He proposes a long term lease be granted to allow this homestead community to become self-sufficient and successful with the economic backing of the department. Commissioner Hopkins requested this matter be agendized for a vote at the objection of Deputy Attorney General K. Bush.

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner DaMate to adjourn in executive session to discuss this matter further. Motion carried unanimously.

**EXECUTIVE SESSION** -12:15 p.m.

Pursuant to section 92-5(a) and (4), HRS, the commission convened in executive session to consult with its attorney on questions pertaining to the Commission's powers, duties privileges, immunities and liabilities on the above item.

**RECONVENE** -12:35 p.m.

**MOTION/ACTION**

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

**ITEM NO: F-7 (cont.)**

**SUBJECT: For Information Only - Land Request from Homestead Community  
Development Corporation, Waimea, Hawai'i**

**DISCUSSION**

It was determined this matter may be addressed for action at the next regular meeting in August, noted Deputy Ka'uhane. Having the matter voted on today would be in violation of the "Sunshine Law" as this item was agendized as "for information only." It was further noted this is the last parcel of Hawaiian home lands available in Waimea and the department needs to do its due diligence before converting these lands from agricultural to commercial use. Subsequently, Land Management Administrator Linda Chinn offered a 30-day Right-of-Entry (ROE) to Waimea Hawaiian Homestead Association to complete its due diligence.

**EXECUTIVE SESSION** -12:45 p.m.

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 matters.

1. Honokaia `Ohana v HHC & DHHL, Civil No. 09-00395
2. Claim for Replacement of Septic System, Leonard Low-Lalamilo, Waimea, Hawai'i
3. Alama v. Kahana`oi, Civil No. 11-1-0987-05 (GWBC) (Ejectment)

**RECONVENE** - 2:00 p.m.

MOTION/ACTION

Moved by Commissioner Lee Loy, seconded by Commissioner Aiu to reconvene in regular session to address Item D-14. Motion carried unanimously.

**ITEM NO. D-14**

**SUBJECT: Approval of Assignment of Leasehold Interest**

MOTION

Moved by Commissioner Lee Loy, seconded by Commissioner Kahikina.

DISCUSSION

It was determined that lessee Josephine Tanimoto, Item No. 16, is in violation of her lease, and thus, requires for this matter to be addressed in a contested case hearing format before the lease assignment can be processed.

AMENDED MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Kahikina to disallow transfer of Lease No. 7093, Lot No. 37, Kawaihae, Hawai'i until the violation has been cleared. Motion carried unanimously.

**ADJOURNMENT:** 2:05 p.m.

MOTION/ACTION

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

**ANNOUNCEMENTS AND ADJOURNMENT**

**NEXT MEETING**

August 20 - 21, 2012, Lana'i City, Island of Lana'i, Hawai'i

**ANNOUNCEMENTS**

The next community meeting will be held at the Hale Kupuna O Lana'i, 1144 Ilima Ave., Lana'i City, Hawai'i, August 20, 2012.

**ADJOURNMENT**

2:05 p.m.

Respectfully submitted:



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

Prepared by:



Elaine Searle, Secretary  
Hawaiian Homes Commission