

**HAWAIIAN HOMES COMMISSION**  
**Minutes of October 28 and 29, 2013**  
**Meeting Held in Maui, Hawaii**

Pursuant to proper call, the 644<sup>th</sup> Regular Meeting of the Hawaiian Homes Commission was held at St. John's Episcopal Parish Hall, 8992 Kula Highway, Kula, Maui, beginning at 10:07 a.m. on October 28, 2013.

**PRESENT** Jobie M. K. Masagatani, Chairman  
Leimana DaMate, Commissioner, West Hawaii  
Gene Ross Davis, Commissioner, Molokai  
Wallace A. Ishibashi, Commissioner, East Hawaii  
Michael P. Kahikina, Commissioner, Oahu  
Patricia W. Sheehan, Commissioner, Kauai  
Renwick V. I. Tassill, Commissioner, Oahu

**EXCUSED** J. Kama Hopkins, Commissioner, Oahu

**COUNSEL** Craig Y. Iha, Deputy Attorney General

**STAFF** Darrell Young, Deputy to the Chair  
Puni Chee, Administrator, Information and Community Relations Office  
Linda Chinn, Administrator, Land Management Division  
Mona Kapaku, District Branch Manager, Maui District Office Supervisor  
Niniau Simmons, NAHASDA Manager, Office of the Chair  
Dre Kalili, Policy and Legislative Analyst, Office of the Chair  
Francis Apoliona, Compliance Officer  
John Peiper, Enforcement Division  
Dean Oshiro, Acting Administrator, Homestead Services Division  
Kaleo Manuel, Planner, Planning Office  
Nancy McPherson, Planner, Planning Office  
Kuuwehi Hiraishi, Information Specialist, Information and Community Relations Office  
Elaine Searle, Secretary to the Commission

**AGENDA** Moved by Commissioner Kahikina, seconded by Commissioner Tassill, to approve the agenda. Motion carried unanimously.

**MINUTES** No minutes approved.

**ITEM NO: A-1**

**SUBJECT: Loan Portfolio – Risk Assessment**

Deputy to the Chair Darrell Young; NAHASDA Manager Niniau Simmons; and Dean Oshiro, Acting Administrator, Homestead Services Division, presented a workshop on the department's loan portfolio and how it could become a risk to the Trust. The loans being presented are direct loans that originated from the department, guaranteed, and/or other insured loans that have defaulted and were returned to the department. Previously, if there was some form of payment from a lessee, defaulted loans were not cancelled.

Of the 192 delinquent accounts in the department's tracking system, 90 leases are controlled by the department, 23 leases have compliance issues and are being considered for workouts, and another 23 leases are being considered for cancellation. Deputy Young provided a chart, listing the procedural steps of a contested case hearing to the final cancellation steps of a lease. NAHASDA Manager N. Simmons summarized the final six steps: cancellation notice, opportunity for consideration, scheduling request for consideration, application for writ of summary possession, eviction, and case closed.

Commissioner Kahikina said they all appear to be severely delinquent and asked if this is similar to the State's landlord – tenant system. Deputy AG Iha explained that for DHHL leases, the commission administratively cancels the lease. However, lessees do have an opportunity to appeal the commission's decision to the Circuit Court, and then to the Appeals Court. The department secures a writ of possession from the District Court if the lessee fails to vacate. During that period of time, the lease has been cancelled.

The department is attempting to reach out to private lenders, to service the department's existing portfolio and to potentially seek new lenders in the credit union areas which is member centered, conveyed the Chair. Commissioner DaMate asked if commission members can lend a hand to lessees without interfering with the operations. AG Iha indicated that it is largely an operational issue but he will review the options and report back at the next meeting.

**PUBLIC TESTIMONY**

**Item B-1 Kika G. Bukoski – Local Construction Trade Unions Representative;**  
**Re: Item F-6,** Kika Bukoski said he is affiliated with the Hawaii Building and Construction Trades Council and represents 80% of the labor force on any given construction project. He spoke of the support available to beneficiaries who have the opportunity to work on these types of projects. He supported the proposed Ka Makana Alii project.

**Item B-2, Russell Kaupu – McNaughton Development Group; Re: Item F-6,** Russell Kaupu, said he is associated with another real estate group called Kobayashi Group where its commercial developments are known as MK Development. He testified last month against the extension of time for the Ka Makana Alii project. Today, he is re-affirming his statement. The McNaughton Development Group supports the project and its development, and he wants the department to stand firm and call this group to task on its current agreement. The one-year

extension would delay the project. He deemed it is time to get started now, if this project is a realistic one.

**Item B-3, Blossom Feiteira - Association of Hawaiians for Homestead Lands,**  
**Re: Item A-1,** B. Feiteira thanked the DHHL staff for a comprehensive loan delinquency report. B. Feiteira recommended that the department work with outside counseling agencies to resolve some of the issues that affect lessees and their delinquencies. **Re: Item F-6,** B. Feiteira agreed with continuing the Ka Makana Alii project and requested that a one-year extension be granted to Hawaii DeBartolo. She deemed this project to provide substantial income to the department's Trust as well as to the beneficiaries through the NHRF (Native Hawaiian Rehabilitation Fund) fund. **Re: Item F-7,** B. Feiteira said that the Kahikinui beneficiary community should have a stronger input on the management of its lands. Once rules are finalized and come back to the community for final review, she anticipates this will bring resolution for everyone. **Re: Item F-4,** B. Feiteira requested that this matter concerning the Nanakuli community be deferred until the commission meets on Oahu, to allow the Nanakuli beneficiaries to voice their opinion on its own development. **Re: Item F-7,** B. Feiteira reminded the commission that Ka Ohana O Kahikinui submitted a land use request for a license agreement on its land to explore other renewable energy alternatives. They have yet to receive a response from the department.

**Item B-4 Charles Villalon, Beneficiary,** C. Villalon requested that an early emergency notification system be established to warn beneficiaries of impending weather conditions affecting the Kula homesteaders. He recommended having FM Band radios, to keep residents updated on serious weather conditions as homesteaders experienced the ravages of a recent storm that swept homes off their foundations in Waiohuli. C. Villalon made a request to have land available for commercial uses, to afford homesteaders other means to supplement their incomes for such events as farmers' market, craft fairs, concession stands, etc. He offered to facilitate a restroom via donations. The Chair suggested that C. Villalon share these types of concerns at the evening community meeting scheduled for tonight.

RECESS 10:52 a.m.

RECONVENE 11:00 a.m.

**ITEM NO: F-6**

**SUBJECT: Approval of One Year Extension of Option to Lease with Hawaii DeBartolo, LLC, East Kapolei, Oahu, and Terms and Conditions Thereof**

**RECOMMENDATION**

Administrator Linda Chinn noted that this item is being resubmitted from last month, to approve an extension of time for Hawaii DeBartolo, LLC, to exercise the options under its agreement, and restatement of Option to Lease executed on January 12, 2012, which grants an additional twelve months from December 1, 2013, to November 30, 2014, subject to the eight conditions as listed in this submittal.

### MOTION

Moved by Commissioner Sheehan and seconded by Commissioner Davis.

### DISCUSSION

Administrator L. Chinn noted that 36 testimonies were submitted to be made a part of these minutes, which comprised 85% in support of this recommended motion. The Chair noted that there are still unanswered questions regarding benefits to the community. In addition, State Representative Sharon Har raised some concerns regarding transportation. Hawaii DeBartolo CEO Ed Kobel explained that there is a Memorandum of Agreement (MOA) between with the Department of Transportation (DOT) and the Department of the Attorney General (AG) regarding the rail land for which there was extensive communication with HRS (Hawaii Railroad Society) on making an interim stop at the DeBartolo site. E. Kobel said that DeBartolo has no voice in the matter. With regard to community benefits, E. Kobel recommended establishing a community foundation that would have a board member from the commission, a member from the development company, and an at-large committee member that would oversee the revenue directly from the project and to meet the needs of the community. Jon-Eric Greene, Colliers International, a Real Estate Specialist in Hawaii, was involved with the Ka Makana Alii project from its inception, seven years ago, and the various activities of the Hawaii DeBartolo, LLC while working through the ebbs and flows of the Hawaii retail community. J. Greene submitted testimony that addressed questions that were raised relative to market demands. He noted that this project is an ambitious project for Kapolei and it is the first regional mall to be built after over 30 years. The vision of a second city for Kapolei is what the Campbell Estate envisioned it to become, a vibrant community to "live, work and play." This is an opportunity for the Hawaiian community and the general community to have a true mall, with dining, retail, and entertainment for cultural activities, etc. He pointed out that Colliers International puts out market reports quarterly and the Kapolei vacancy rate has dropped 6% from 10.6% to 4.2% with new development in the Ewa Plains. Regional malls have the lowest vacancy rate; and for Hawaii, the vacancy rate is 1.5%.

### MOTION/ACTION

Moved by Commissioner Tassill, seconded by Commissioner DaMate, to adjourn to executive session to consult with counsel on this subject matter. Motion carried unanimously.

RECESS                      11:07 a.m.

### EXECUTIVE SESSION

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

MOTION/ACTION

Moved by Commissioner DaMate, seconded by Commissioner Davis, to reconvene to the regular meeting. Motion carried unanimously.

RECONVENE 3:51 p.m.

ITEM NO: F-6 (cont.)

SUBJECT: Approval of One-Year Extension of Option Term, Option to Lease, Hawaii DeBartolo, LLC, East Kapolei, Oahu, and Terms and Conditions Thereof

DISCUSSION

The Chair apologized for the length of time it took the commission to discuss with counsel the terms and complexities of this important matter as there was much interest and concern expressed within the beneficiary community that required the commission's attention. She stated that there is a current motion to accept the department's recommendation.

MOTION TO RESCIND

Commissioner Sheehan rescinded her motion, seconded by Commissioner Davis.

MOTION/ACTION

Moved by Commissioner DaMate, seconded by Commissioner Kahikina, to defer this action to a special commission meeting to be held on the Island of Oahu before November 15, 2013, and that the commission grant the Chairman the authority to extend the current option until December 31, 2013, and complete the documentation associated with the transaction.

DISCUSSION

Commissioner DaMate expressed the need to have Oahu beneficiaries participate in this decisive development which she wholeheartedly supports. The secretary re-read the motion, as requested by Commissioner Tassill. Commissioner Tassill expressed concern about the development and concurred with Commissioner DaMate about having a special meeting on Oahu.

Hawaii DeBartolo (HD) Attorney Danton Wong, Chun Kerr LLP, expressed regret for not submitting testimony of earlier meetings with the community in July and August. He collected 37 testimonial letters from those who attended those meetings; all of whom were supportive of the development. These testimonial letters were submitted as a part of these minutes, Exhibits 1 to 37, for Item F-6. D. Wong indicated that a newsletter was sent out to the community from which HD also received responses and support from unsolicited sources. He thanked the commission for its support. According to D. Wong, this issue has been ongoing since June 2013 when the commission met in Kapolei. Last month, the commission voiced their concerns and

HD considered it to have been addressed. Further delay puts the project in limbo, especially when a request was submitted last year, in order to secure construction financing. Since June 2013, HD had expressed to their tenants that the extension is not a big deal, and, yet again, another deferral, giving their competitors an advantage, expressed D. Wong. The Chair reiterated that the meeting will be held in another two weeks, to provide the commission time to complete documentation associated with the decision. D. Wong expressed that the option to take down the lease expires in November 2013. Commissioner DaMate confirmed that her responsibility as a commissioner is to the Trust and the people of Kapolei. Commissioner Sheehan conveyed that this is a huge project for the department, and the homesteaders need to feel that they are part of this process, too. Commissioner Ishibashi expressed that today's discussion was time-consuming and there was no intent to undermine negotiations in any way. He added that this is a very important process and the commission is requesting only two weeks. The Chair clarified that this department has a primary responsibility for a specific group of people, who are the native Hawaiians, as defined under the Hawaiian Homes Commission Act.

### ACTION

Motion carried unanimously.

### ITEM NO: C-1

**SUBJECT: Beneficiary Consultation Report on Rulemaking to Implement Hawaiian Homes Commission Act, Section 228**

### RECOMMENDATION

Dre Kalili, Policy and Legislative Analyst, recommended that the commission:

1. Approve Beneficiary Consultation Report on Rulemaking to implement Hawaiian Homes Commission Act, (HHCA) Section 228; and
2. Authorize staff to transmit the draft rule language to the Department of the Attorney General for review and approval to initiate the formal rulemaking process.

### MOTION

Moved by Commissioner DaMate, seconded by Commissioner Ishibashi.

### DISCUSSION

A proposed draft rule language was brought before the commission in July, which is required by HHCA, Section 228, for implementation, said D. Kalili. To prepare for this, eight, statewide, beneficiary consultation meetings were held in late August with a total of 256 signed-in beneficiaries and 187 comments that were submitted. During a 30-day comment period following the meetings, eight (8) additional comments were received. As there were no recommendations to amend the draft ruling, a recommendation for approval is being presented. D. Kalili articulated that the draft language is the same one that was presented in July. Pursuant to Chapter 191, the draft rules will be transmitted to the Department of the Attorney General

(AG) for review. Once this has been completed, a draft will be sent to the Governor, who may grant the authority for public hearings on these rulings. Public hearings will be noticed and a period for response will be provided, added D. Kalili.

ACTION

Motion carried unanimously.

**ITEM NO: D-1**

**SUBJECT: HSD Status Reports**

Exhibits:

- A - Homestead Lease and Application Totals and Monthly Activity Reports
- B - Delinquency Report
- C - DHHL Guarantees for USDA-RD Loans
- D - DHHL Guarantees for FHA Construction Loans

MOTION/ACTION

None, for information only.

**ITEM NO: D-2**

**SUBJECT: Ratification of Loan Approvals (see exhibit)**

MOTION/ACTION

Moved by Commissioner DaMate, seconded by Commissioner Sheehan, to add lessees Billy Joe Freitas, Sr. and Joshua Kay-Malina to the list. Motion carried unanimously.

MOTION/ACTION

Moved by Commissioner Kahikina, seconded by Commissioner Davis, to recess to executive session to discuss Item D-2. Motion carried unanimously.

RECESS

4:25 p.m.

EXECUTIVE SESSION

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

MOTION/ACTION

Moved by Commissioner Kahikina, seconded by Commissioner Davis, to reconvene the regular meeting. Motion carried unanimously.

RECONVENE 4:44 p.m.

**ITEM NO: D-2 (cont.)**

AMENDED MOTION

Moved by Commissioner Kahikina, seconded by Commissioner Davis, to amend the language of the Billy Joe Freitas, Sr. lease and to approve the loan amount. A roll call vote was taken .

<u>AE (6)</u>	<u>AOLE (0)</u>	<u>HOOKUU (2)</u>
DAMATE		HOPKINS
DAVIS		TASSILL
ISHIBASHI		
KAHIKINA		
SHEEHAN		
MASAGATANI		

ACTION ON AMENDED MOTION

Motion carried, as amended.

**ITEM NO: D-3**

**SUBJECT: Approval of Consent to Mortgage (see exhibit)**

CORRECTION

Acting Administrator Dean Oshiro, Homestead Services Division, noted one correction. Michael Hoopii should be Michele Hoopii, on page 4.

MOTION/ACTION

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

**ITEM NO: D-4**

**SUBJECT: Approval of Refinance of Loans**

MOTION/ACTION

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

**ITEM NO: D-5**

**SUBJECT: Approval of Streamline Refinance of Loans**



MOTION/ACTION

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

**ITEM NO: D-6**

**SUBJECT: Approval to Schedule Loan Delinquency Contested Case Hearings (see exhibit)**

MOTION/ACTION

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

**ITEM NO: D-7**

**SUBJECT: Approval of Homestead Application Transfers/Cancellations (see exhibit)**

MOTION/ACTION

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

**ITEM NO: D-8**

**SUBJECT: Commission Designation of Successors to Application Rights - Public Notice 2011, 2012 (see exhibit)**

MOTION/ACTION

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

**ITEM NO: D-9**

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

MOTION

Moved by Commissioner Kahikina, seconded by Commissioner Davis.

DISCUSSION

Commissioner DaMate questioned if an estate can be designated to receive proceeds from a leasehold interest. Deputy AG Iha said he will verify the information on whether proceeds can be given to an estate.

ACTION

Motion carried unanimously.

ITEM NO: D-10

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

MOTION

Moved by Commissioner Kahikina, seconded by Commissioner Davis.

DISCUSSION

Acting Administrator D. Oshiro noted that Walter Rawlins, Jr. recently submitted a request to cancel the transaction to transfer his lease.

AMENDED MOTION/ACTION

Moved by Commissioner Kahikina, seconded by Commissioner Sheehan, to remove Walter Rawlins, Jr. from the Assignment of Leasehold Interest as it appears on Page 7, Item No. 17. Motion carried unanimously.

ACTION ON ORIGINAL MOTION

Motion carried unanimously, as amended.

ITEM NO: D-11

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

MOTION/ACTION

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

ITEM NO: D-12

SUBJECT: Approval of Subdivision, Transfer of a Portion of Lease, Amendment of Lease – Thelma P. Calles

MOTION/ACTION

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

**ITEM NO: D-13**

**SUBJECT: Request for Relocation – Donald W. Kaanapu, Sr.**

**MOTION**

Moved by Commissioner Kahikina, seconded by Commissioner Davis.

**DISCUSSION**

The Chair said that prior to accepting this request for relocation, the department will need to conduct due diligence and investigate the well-being of Mr. Kaanapu.

**MOTION/ACTION**

Moved by Commissioner Kahikina, seconded by Commissioner Davis, to adjourn to executive session to consult with counsel on this matter. Motion carried unanimously.

**RECESS**                    5:00 p.m.

**EXECUTIVE SESSION**

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

**MOTION/ACTION**

Moved by Commissioner Davis, seconded by Commissioner Ishibashi, to reconvene in regular session. Motion carried unanimously.

**RECONVENE**                5:20 p.m.

**ITEM NO: D-13 (cont.)**

**SUBJECT: Request for Relocation -- Donald W. Kaanapu, Sr.**

**MOTION/ACTION**

Moved by Commissioner Kahikina, seconded by Commissioner Sheehan, to rescind the original motion and defer this request until December 2013. Motion carried unanimously.

**ITEM NO: D-14**

**SUBJECT: Request to Surrender Lease – Priscilla J. Calvo**

**MOTION/ACTION**

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

**ITEM NO: E-1**

**SUBJECT: Recession of Homestead Lease Award and Reinstatement of Application  
- Lai Opuu Undivided Interest - Jessie N. Grace**

**MOTION/ACTION**

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

**ITEM NO: G-1**

**SUBJECT: Oahu Island Plan, Beneficiary Consultation Report**

**MOTION/ACTION**

None, for information only.

Compact Disks (CD's) of the Oahu Island Plan (OIP) will be mailed to commission members, or if preferred, the OIP can be downloaded from the DHHL website. A final approval of the Oahu Island Plan will be brought before the commission in December, noted Planner Kaleo Manuel.

**MOTION/ACTION**

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

**RECESS** 5:25 p.m.

**STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS  
HAWAIIAN HOMES COMMISSION AGENDA  
October 29, 2013, 12:00 p.m.**

The 644<sup>th</sup> regular monthly meeting reconvened at the Paukukalo Community Center, 657 Kaunualii Street, Wailuku, Maui, October 29, 2013, at 12:50 p.m..

**PRESENT** Jobie M. K. Masagatani, Chairman  
Leimana DaMate, Commissioner, West Hawaii  
Gene Ross Davis, Commissioner, Molokai  
Wallace A. Ishibashi, Commissioner, East Hawaii  
Michael P. Kahikina, Commissioner, Oahu  
Patricia W. Sheehan Commissioner, Kauai  
Renwick V. I. Tassill, Commissioner, Oahu

**EXCUSED** J. Kama Hopkins, Commissioner, Oahu

**COUNSEL** Craig Y. Iha, Deputy Attorney General

**STAFF** Darrell Young, Deputy to the Chair  
Puni Chee, Manager, Information and Community Relations Officer  
Mona Kapaku, District Branch Manager, Maui District Office Supervisor  
Kamano Mills, Special Assistant, Office of the Chair  
Niniau Simmons, NAHASDA Manager, Office of the Chair  
Linda Chinn, Administrator, Land Management Division  
Kahana Albinio, Property Development Manager, Land Management Division  
Francis Apoliona, Compliance Officer  
John Peiper, Enforcement Officer  
Dean Oshiro, Acting Administrator, Homestead Services Division  
Kaleo Manuel, Planner, Planning Office  
Kuuwehi Hiraishi, Information Specialist, Information and Community Relations Office  
Elaine Searle, Secretary to the Commission

**AMENDED AGENDA**

Moved by Commissioner Tassill, seconded by Commissioner Ishibashi, to defer Item No. F-4. Commissioner Kahikina recused from voting. Motion carried.

**PUBLIC TESTIMONY ON AGENDIZED ITEMS**

**Item B-3, Blossom Feiteira, President, Association of Hawaiians for Homestead Lands,**  
**Re: Item F-4,** B. Feiteira is pleased that Item F-4 will be deferred until the commission meets on Oahu. **Re: Item F-7,** B. Feiteira is favorable for plans to develop renewable energy in Kahikinui, Maui. She reiterated that Ka Ohana Kahikinui, a beneficiary organization, has

established themselves in Kahikinui without much support from the department. B. Feiteira pointed out that the group submitted a land use request for a license agreement, for acreage in Kahikinui, to develop their own renewable energy plan. She asked that the commission entertain that request separate from other renewable energy opportunities there.

**Item B-4, Kekoa Enomoto, Applicant, Re: Item D-5**, K. Enomoto thanked the department for her pending savings of \$280 a month. **Re: Item D-11**, K. Enomoto said she is pleased to support approval of amendment of leasehold interest and to convey mahalo to the commission and department for approval of the first right-of-refusal by Waiohuli Undivided Interest (UI) lessees Carol Takatsuka and daughter Joy Takatsuka, to parlay a Waiohuli UI lease to a Waiehu Kou 4 homestead. K. Enomoto proposed a first right-of-refusal for the remaining 900 UI lessees for available lots, according to their date of application. **Re: Item C-1**, K. Enomoto supports the water policy workshops scheduled to begin on Wednesday. She provided verbatim testimony to be made a part of these minutes as Exhibit A for Item B-4. The Chair informed K. Enomoto that one of recent legislative measures submitted to the governor's office was to clarify that the mineral resources, under the homelands, actually belong to DHHL. The Chair expressed that the support received from Maui County in the legislature is critical, as it relates to geothermal resources.

**Item B-5, Ainoa Kaiokamalie, Kahikinui resident, Re: Item No. F-7**, A. Kaiokamalie said he spent the past 15 years fencing off the forest in Kahikinui. He expressed support for the federal government to take care of fencing and to protect the forest resources for the current and future residents of Kahikinui.

## **F – LAND MANAGEMENT DIVISION**

**ITEM NO: F-2**

**SUBJECT: Approval to Issue Right-of-Entry Permit, Molokai Community Service Council, Hoolehua, Molokai**

### **RECOMMENDATION**

Administrator Linda Chinn recommended that the commission grant approval to issue a Right-of-Entry (ROE) permit to Molokai Community Service Council (MCSC), a Hawaii non-profit corporation, for the use of approximately 1,400 square feet of commercial-kitchen space at the Lanikeha Community Center for the purpose of operating and maintaining a community-based commercial kitchen.

### **MOTION**

Moved by Commissioner DaMate, seconded by Commissioner Kahikina.

### **DISCUSSION**

Administrator L. Chinn said that the license expired with the previous entity, and a new partnership agreement was being worked on. The department would like to have the licensee

continue with the kitchen usage; consequently, the department is amenable to providing them an ROE for six-months. A more permanent disposition will be addressed later. Commissioner DaMate asked if the \$20 fee will remain the same, to which L. Chinn responded "yes." In response to an inquiry by Commissioner Kahikina regarding differences in processing fees, L. Chinn noted that ROE fees cost \$175; \$100 for processing and \$75 for documentation. Disposition for a license fee is \$275; \$200 for processing and \$75 for documentation.

ACTION

Motion carried unanimously.

ITEM NO:F-3

SUBJECT: Approval to Issue Right-of-Entry Permit, Paukukalo Hawaiian Homestead Community Association, Inc., Paukukalo, Maui

RECOMMENDATION

Administrator L. Chinn recommended that the commission grant approval to issue a Right-of-Entry (ROE) permit to the Paukukalo Hawaiian Homestead Community Association, Inc. (PHHCA), to enter on Hawaiian home lands at the Paukukalo Armory site, to permit PHHCA, Inc. preliminary due diligence field work for future development of a community center there. The ROE is for a two-year period.

MOTION

Moved by Commissioner Tassill, and seconded by Commissioner Ishibashi.

DISCUSSION

The department received the Armory site in Paukukalo as part of the 16,500-acre settlement from DLNR several years ago, stated L. Chinn. In addition, the community favors the site as its community center for Paukukalo, and condition #6 requires them to meet certain bench marks.

ACTION

Motion carried unanimously.

ITEM NO: F-4

SUBJECT: Approval to Amend General Lease No. 281, Nanakuli Hawaiian Homes Community Association, Nanakuli, Oahu

MOTION/ACTION

None. This item was deferred.

**ITEM NO: F-5**

**SUBJECT: Status Update – Revocable Permit Conversion**

**MOTION/ACTION**

None. This is for information only.

**DISCUSSION**

Deputy to the Chair Darrell Young presented an update on the Revocable Permit (RP) conversion process and reported that 181 revocable permits were allowed to expire as of June 30, 2013, and that the commission voted to issue interim Right-of-Entry (ROE) permits at the July 22, 2013, meeting. He also reported that 148 (82%) of the 181 RP's were successfully converted. Nine RP's were cancelled, some for non-renewal purposes, and the remaining 24 (13%) were for non-compliance. They were issued notices to cure or remedy their outstanding violations with a deadline of November 29, 2013. Samples of non-compliance for the 24 violators included delinquent rent or no-payment of utility, cleared or expanded boundary without clearance from the department, multiple unauthorized buildings on the premises, residential use of the permit, other businesses located on the premises that are inconsistent with the use statement as applied for by the applicant, unauthorized storage, and inadequate insurance. Inability to cure or remedy these defaults by November 29, 2013, will be recommended for termination by this commission, stated D. Young. Pending final review by the AG's (Department of the Attorney General) office, a revised RP program will be completed by the end of the year and submitted to the commission for consideration.

The Chair stated that despite the articles appearing in the newspaper about this situation, this is not what is creating the energy to assess this RP program. In part, there was interest from our oversight agency, Department of Interior (DOI), and a commitment by the Governor, to support this program. Many other agencies that utilize RP's also face similar issues. The department is seeking to make the program better overall. According to Deputy Young, most of the non-compliant permittees appear to lack proper insurance.

Commissioner DaMate challenged the issuance of an ROE for Native Hawaiian General Services and requested an investigation be completed. She also recommended that the Kau community be given an opportunity to input their ideas on this Right of Entry (ROE). The Chair expressed how the department is in the process of reforming its RP program and is awaiting recommendation from an assessment committee. In the interim, permittees who are in compliance were issued a 12-month ROE. In preparation for these inspections, the department intends to speak to the permittee to hear what they have to say, as the relationship is with the permittee, explained L. Chinn. Commissioner Ishibashi noted that NHGS is planning to attend the next meeting in Hilo where this can all be addressed. The Chair recommended a status update be available for that particular ROE at next month's meeting. Commissioner Tassill expressed that the purpose of the Act is to take care of downtowners (native Hawaiians), but he sees the out-of-townners (non-Hawaiians) as having an advantage. The Chair clarified with Commissioner Tassill that the RP program is eligible to any entity that is interested in taking a short-term permit, and does not



prescribe to limiting it to any one particular race. Commissioner Tassill restated that the purpose of the Act is to take care of the Hawaiians, and he would like to see more native Hawaiians be given an opportunity to acquire lands as permittees and for us to seek ways in which to qualify the native Hawaiians. Upon the advice of counsel, the commission convened in executive session to discuss this matter further.

MOTION/ACTION

Moved by Commissioner Kahikina, seconded by Commissioner Davis, to adjourn to executive session to consult with its attorney on the above-stated matter. Motion carried unanimously.

RECESS 1:34 p.m.

EXECUTIVE SESSION

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

MOTION/ACTION

Moved by Commissioner Tassill, seconded by Commissioner Davis, to reconvene the regular meeting. Motion carried unanimously.

RECONVENE 2:00 p.m.

ITEM NO: F-7

SUBJECT: For Information Only – History and Update on Stakeholders Meeting at Kahikinui Mauka

MOTION/ACTION

None, for information only.

Administrator Linda Chinn provided the history and update on the stakeholders' meeting that was held with staff on September 30, 2013, at Kahikinui Mauka. Living Indigenous Forest Ecosystems (LIFE) was the licensed holder and the department is assisting in renewing its license. Various groups are involved with Hawaiian petrel mitigation, wind farm, and fencing off forest areas, to keep cattle out. Staff met collectively and separately with all of the individual groups to determine what the function of each group represents. If appropriate, L. Chinn expressed that she would allow for various uses of the permit, and there would need to be some kind of control on the use of department lands. She requested additional time to conduct due diligence, to figure out what are some of the ongoing relationships in Kahikinui.

Andrea Buckman, Leeward Haleakala Watershed Restoration Partnership (LHWRP) clarified that they are not part of DLNR's (Department of Land and Natural Resources) Watershed

Partnerships Program. L. Chinn clarified that DLNR has land adjacent to DHHL and may continue with its fencing project. However, if fencing is being done on DHHL lands, then it would become an issue that needs addressing. The Chair asked for the department to clarify the information with DLNR. A. Buckman described working with the community over a number of years and she asked that they be allowed to continue working with the community and the department and keeping within appropriate procedures. She said that DLNR provided the grant for this phase of the fencing, and that the project developed over a period of time. She described the area as immense, thus requiring a multiple number of stages of fencing. A. Buckman said she has been working with DHHL Planner Julie Cachola and not with the Land Management Division. She would like to continue to work on the project towards accomplishing that goal. The Chair inquired if the fencing project encompassed the lands that were licensed to LIFE. The original grant was awarded in 1995 to LIFE, and subsequently, the funds were transferred to the LHWRP partnership, as LIFE did not have the capacity to staff it.

The Chair recognized the department's relationship to LIFE and LIFE's relationship to LHWRP. Now that the LIFE's license is no longer in place, then LHWRP needs to direct disposition from the department. The Chair thanked A. Buckman for keeping the department abreast of the changes made over the past several years and how they have been operating. Kahikinui resident Aimoku Pali said that LIFE and KGLMO (Kahikinui Game and Land Management Ohana) have been the umbrellas under Ka Ohana Kahikinui where both had licensing agreements. He would be amenable to acquiring fencing from DLNR to prevent the "pipi" from entering their areas and utilize the fencing as a firebreak. L. Chinn explained that she is not opposed to the project and only wants to ensure that proper documentation and agreements are in place. Commissioner Davis commended Kahikinui homesteaders for being conservation minded as local ranchers on Molokai benefited from doing the same.

Commissioner DaMate suggested partnering with OHA (Office of Hawaiian Affairs) to maintain the road to Kahikinui, which can, at times, create dangerous passage. She recognized Senator Kalani English as another resource for Kahikinui homesteaders. The Chair noted that the department is working towards a game management pilot program on the Big Island which may impact the department's ability to manage game on all Hawaiian home lands.

Walter Kanamu, President, KGLMO, shared how their organization maintained the roadway, hunting, and fencing in Kahikinui. Their group originated through LIFE and the Ka Ohana Kahikinui, to manage the upper 7,500 acres. He said that LIFE is comprised of native Hawaiians and others who work for the privilege of hunting in this area. The proper liability for hunting has been addressed and they have no issues with firearms. Although contact was made with DOFAW (DLNR's Division of Forestry and Wildlife), LIFE continues to manage its own lands with much of the game coming from pheasants and quail, propagated in the same region. Hunter education workshops are held and each member is required to participate in the courses. Members are highly regulated, must be familiar with the area, and cannot enter the area without a sponsor.

## **J – GENERAL AGENDA**

### **ITEM NO: J-1**

### **SUBJECT: Request to Address the Commission – Kika “G.” Bukoski**

Kika Bukoski, spokesperson for Allan Silva and co-permittee for Revocable Permit (RP) 173, appeared on his behalf. He said that A. Silva supports the department’s efforts to review the RP program and does not deny that there are violations regarding this permit. A. Silva has been addressing these violations within his control. Both A. Silva and Ben Char have been recognized by the department as two separate portions and both have maintained their area. Since 2006, A. Silva attempted to separate himself from Ben Char, without success.

Communication between B. Char and A. Silva was once good. Subsequently, there was a falling out and A. Silva was unaware what B. Char was doing on his property. K. Bukoski spoke of the advantages of the Manawalea Riding Academy (MRA) for individuals with debilitating conditions. K. Bukoski said even his son assisted MRA, but there were rules that were not being adhered to and A. Silva tried unsuccessfully to encourage B. Char to comply. The portion that A. Silva occupies is fenced off and the citation on his property was an inoperable vehicle which has since been removed. K. Bukoski volunteered to assist B. Char in resolving his issues, as A. Silva stands to lose his property too. Because of the new ROE directive, L. Chinn said she no longer has the authority to take action, as this permittee is non-compliant. She recommended that LMD be given the authority to issue a separate ROE for A. Silva because should someone get hurt on B. Char’s parcel, A. Silva is still liable. K. Bukoski said there is a Certificate of Insurance vesting DHHL as additional insured, an application, and a check for \$175, if the department is willing to accept A. Silva’s application. A. Silva is ready to make the necessary repairs to the stables, to board horses again, and mitigate all issues.

The Chair inquired whether there are extenuating violations on A. Silva’s portion, to which K. Bukoski replied “no.” According to L. Chinn, there were numerous violations to this property and both permittees were given time to correct it. In the prior years there was no insurance issued on the property and citations were sent to correct the violations. Only last week A. Silva secured insurance for his portion. K. Bukoski informed the commission that A. Silva was under the impression there was insurance and letters addressed to B. Char were not cc’d to him making it difficult for A. Silva to comply. K. Bukoski pointed out that a certified letter sent in September required B. Char to have an action plan on how he was planning to address violations on the property. To date, A. Silva has received no response from the department on this matter and is unable to respond to other communications which may have been sent. K. Bukoski requested to appear at the next meeting to attain resolution. The Chair suggested that this matter will likely come before the commission in December.

Commissioner Sheehan asked for clarification on the portion of land that both A. Silva and B. Char share. A. Silva has .7 acres while B. Char has the remainder of 1.9 acres. A. Silva fenced in his portion while B. Char expanded usage of land. K. Bukoski determined that the average rate of revenue for eight stables on Oahu brings in \$1,326 per acre. Permit No. 173 brings in

42%, above the average revenue rate for stable usage and A. Silva is proposing to offer an additional 10% more.

K. Bukoski conveyed that if A. Silva is not allowed to continue, then, it would be inconceivable for him to repair the stables. K. Bukoski reiterated his request to separate the two parcels. He welcomed a site visit, as administrations may assess matters differently. K. Bukoski noted that A. Silva was allowed to raise pigeons, which may be interpreted differently now. The Chair recommended that an inspection be made to address K. Bukoski's concerns. The Chair also noted that the most important issue is that A. Silva be compliant as best as can be. Commissioner Tassill informed the commission that B. Char will attend the December meeting to also address his concerns. K. Bukoski noted that if B. Char addresses the commission, the entire RP could be in jeopardy. That was the reasoning in seeking an exception to separate the parcel, he added. The Chair pointed out that the department cannot deny B. Char from appearing as it is his right. Whether that will or will not impact this body remains to be seen. Staff will seek due diligence on the issues being presented, as there is a distinct request for separation from this parcel, and issue an ROE, expressed the Chair. Documentation that was presented will aid in the evaluation, and it is improbable to determine where the department will end up in its recommendation. Commissioner Tassill said that B. Char has also indicated he wants separation of the parcel. If that is the case, the Chair suggested that B. Char provide that in writing, to make the deliberations more manageable.

#### MOTION/ACTION

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

ADJOURNMENT 3:18 p.m.

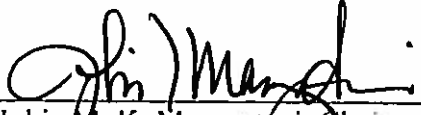
#### ANNOUNCEMENTS AND ADJOURNMENT

NEXT MEETING November 18, 2013, Hilo, Hawaii

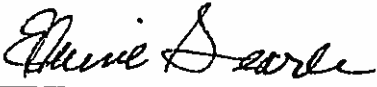
ANNOUNCEMENTS Next community meeting will be held on November 18, 2013, at Hilo, Hawaii.

ADJOURNMENT 3:18 p.m.

Respectfully submitted:


  
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Jobie M. K. Masagatani, Chairman  
Hawaiian Homes Commission

Prepared by:

  
\_\_\_\_\_  
Elaine G. Searle, Secretary  
Hawaiian Homes Commission

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

\_\_\_\_\_  
March 17, 2015

  
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Jobie M. K. Masagatani, Chairman  
Hawaiian Homes Commission