

HAWAIIAN HOMES COMMISSION
Minutes of September 23 and 24, 2013
Meeting Held in Kailua-Kona, Hawaii

Pursuant to proper call, the 643rd Regular Meeting of the Hawaiian Homes Commission was held on September 23, 2013, at the West Hawaii Civic Center, 74-5044 Ane Keohokalole Highway, Kailua-Kona, Hawaii, beginning at 10:15 a.m.

PRESENT Jobie M. K. Masagatani, Chairman
 Leimana DaMate, Commissioner, West Hawaii
 Gene Ross Davis, Commissioner, Molokai (ar: 10:30 am)
 J. Kama Hopkins, Commissioner, Oahu
 Wallace A. Ishibashi, Commissioner, East Hawaii
 Michael P. Kahikina, Commissioner, Oahu
 Renwick V. I. Tassill, Commissioner, Oahu

EXCUSED Patricia W. Sheehan, Commissioner, Kauai

COUNSEL Craig Y. Iha, Deputy Attorney General

STAFF Darrell Young, Deputy to the Chair
 Rodney Lau, Administrative Services Officer
 Kamano Mills, Special Assistant, Office of the Chair
 Linda Chinn, Administrator, Land Management Division
 Niniau Simmons, NAHASDA Manager, Office of the Chair
 Puni Chee, Administrator, Information and Community Relations Office
 Sandra Pfund, Administrator, Land Development Division
 Norman Sakamoto, Land Development Specialist, Office of the Chair
 Dre Kalili, Policy and Program Analyst, Office of the Chair
 Kahana Albinio, Property Development Supervisor, Land Management Division
 Dean Oshiro, Acting Administrator, Homestead Services Division
 Kaleo Manuel, Planner, Planning Office
 Andrew Choy, Planner, Planning Office
 Francis Apoliona, Compliance Officer
 John Peiper, Enforcement Division
 Kuuwehi Hiraishi, Information Specialist, Information and Community Relations
 Office
 Elaine Searle, Secretary to the Commission

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

ITEM NO: A-1

SUBJECT: DHHL Supplemental Budget Requests for Fiscal Year 2014-2015

Administrative Services Officer Rodney Lau presented a workshop on Fiscal Year (FY) 2014-2015 Supplemental Operating and CIP Budget which is to be submitted to the governor for consideration to the administration's executive budget for the 2014 legislative session. Commission members were provided a handout which reflected the FY 2015 supplemental budget request. Column one contained the original request from November 2012. Column two featured the General Fund Act 134 of 2013, which is the approved legislative budget. Column three contained the FY 2015 Supplemental Budget adjustment. Column four contained the FY 2015 Supplemental Budget request from the Department of Budget and Finance (B&F). The department's request in November 2012 was for \$27.1 million for administrative and operating costs, which was completed in two parts: 1) – basic budget based on a 5-year history of the department's administrative and operating costs; 2) – additional costs that would allow the department to operate with sufficient sums. In addition, the department requested a CIP (Capital Improvement Project) plan for infrastructure projects, which represented budget items such as repair and maintenance type items that, because of insufficient funding became CIP related type of projects. R. Lau noted that rehabilitation projects were under Article XII, Section 1, Purposes 1, 2, and 3, which are currently being discussed at the legislature.

The legislature appropriated \$9.6 million in general funding to the department in non-recurring appropriation for FY 2014-2015. The legislature appropriated \$1 million out of a \$1.5 million design request for Papakolea Sewer Repairs and no funding was provided to the lot development loans and rehabilitation program. The department analyzed the shortfall and determined that \$17.49 million would be the request for a supplemental budget for general funding for administrative and operating costs of the department. The department would continue the \$17.3 million infrastructure request, plus two additional infrastructure projects, which would include dams and reservoir construction on Kauai.

With the shortfall from what the legislature appropriated and what was funded through the department's Trust Fund, there was a need to substitute the FY 2015 projects, in addition to continuing the FY 2014 project requests which totaled \$98 million. Exhibit "A" addresses in detail the department's request to B&F, which is necessary to run the department.

The Chair clarified that the information R. Lau presented in November 2012 Exhibit "A" was submitted to B&F last year. Because the department did not receive funding then, a request in the same amount of \$98.795 million for FY 2015 CIP funding was being made. The CIP existing infrastructure projects were, at one time, repair and maintenance issues that should have been addressed through the operating budget, said R. Lau. Because nothing was accomplished, it became a CIP project issue. Commissioner DaMate inquired if the \$1 million funding for Kau Water System was available. Sandra Pfund noted that an assessment was being conducted for the Kau Water System, and there were options to consider for potable and ag land use water. Once the study is completed, \$500,000 will be utilized for a preliminary engineering report on the proposed construction project; the other portion will be for an environmental review record. An application may be submitted to USDA RD (U.S. Department of Agriculture Rural

Development) for rural water funding, once reports are submitted. For the Voice of America site in Waianae, the department is seeking design and construction funds of \$800,000 to begin its first (1st) Phase of approximately 200 lots on 40 acres. This project is in partnership with Kamehameha Schools (KS) for its KS Learning Center. Both entities will share infrastructure costs.

The \$98 million request is in recognition of what needs to be done, and there is not sufficient staff to accomplish everything on the list. Of that amount, \$27.122 million covers 200 staff and 11 temporary staff positions, said R. Lau. The department is requesting 64 additional staff positions utilizing administrative and operating costs from the department's general funds. Commissioner Kahikina asked whether tax credits for low income housing was being utilized. S. Pfund said that the department was conversing with experts in that field. Commissioner Tassill asked about acquisition of commercial properties in Kona. Administrator Linda Chinn said the department has a 200-acre parcel across Kona Airport and 200 acres near Honokohau Harbor-Kaloko area which faces water issue challenges. Material was submitted as exhibits A to C for Item A-1.

ITEM NO: A-2

SUBJECT: Guaranteed Loans Portfolio

Acting Homestead Services Administrator Dean Oshiro presented a workshop on Guaranteed Loans Portfolio. As of June 30, 2013, the department guaranteed 600-plus loans for nearly \$50 million. The cap set by the legislature is \$100 million. USDA RD has approximately 370 loans worth \$40.7 million and RD (Rural Development) services 80%-below median income. The DHHL loan portfolio has about 31 loans for \$4 million with 41 loan advances for \$2.5 million. Habitat for Humanity has 73 loans for \$4.1 million with clients 60% below the median income and 26 delinquent loans at \$1.3 million. The department has an agreement with OHA (Office of Hawaiian Affairs) for loans serviced by First Hawaiian Bank which covers 193 outstanding loans for \$2.4 million. These loans were utilized for self-help, home improvements, and downpayment assistance, and 9 delinquent loans for \$137,000. FHA construction loans are not insured but once construction is completed, the lender will flip the loan into an FHA 247 loan or FHA 184 loan. The City and County of Honolulu has done 28 home-repair loans with about \$579,000 and reported 12 loans delinquent at \$325,000, said D. Oshiro.

Lenders have either a Memorandum of Understanding (MOU) or Memorandum of Agreement (MOA) with the department, which outlines the rules and responsibilities of both the lender and the department, including the process of the program and how it operates. A lender submits a guaranteed request to the department which the Loan Services Branch reviews. Then it is forwarded to the Chair's office for approval or denial. Upon approval, a submittal is presented to the commission for information. The lender will then fund and service the loan.

If the loan defaults, the lender forwards a letter to the department, listing the borrower's name and the amount to be repaid by the department, which includes principal, interest, and late fees. A check is then issued to the lender for the full amount. The mortgage and note are then

assigned back to the department for servicing, at which point the Loans Services Branch takes over all collection efforts, said D. Oshiro.

The MOU with RD stipulates that the department advances payments on behalf of the lessee to maintain the account until the obligation is satisfied, said D. Oshiro. Thus, the lessee's loan is maintained with RD. Hopefully, the department can have the lessee pay off the monies advanced on their behalf. The department takes all of the risks while the lender takes no risks. The responsibility then rests with the department to resolve the matter. He stated that the general loan funds are being utilized for these advances and no monies are being set aside. Also, there is no fee assessment to the lender, as practiced in other private lending institutions. Some lenders do guarantee loans in excess of 100% which means minimal closing, if any, on certain programs and products.

Commissioner Hopkins asked why no fees are being assessed. D. Oshiro said there are no rules that apply for this type of opportunity which would require changes to Administrative Rules. Commissioner Kahikina inquired as to how the department can get lenders to inform the department earlier about these defaults. In today's environment, some of the older MOA's and MOU's need to be amended to place more reliability on lenders, said D. Oshiro. Perhaps tightening up the MOA's and MOU's may be an appropriate way to place more liability on some of the lenders to assist the lessees. Refinancing does not tender more money to the lessee as the intent is to place the lessee in good standing. D. Oshiro conveyed that 90% of the cases that come before the commission for cancellation wind up as workouts. Loan officers are working with the lessee to qualify for a lower interest, but the lessee has to meet the criterion of the department. Since its implementation, the first group to be considered for a lower loan product is scheduled to come before the commission next month, said D. Oshiro.

The Chair conveyed that there is a provision in the FHA 247 MOU that states that lenders notify the department after 30 days if a loan is delinquent. The concern is engaging the HUD (U.S. Department of Housing and Urban Development) certified counselors at that point when the lender is still involved, and determining what kind of leverage the department would have in terms of loss mitigation efforts. Working with the FHA 247 loan program is similar to working with a huge company. Having recommendations from CNHA (Council for Native Hawaiian Advancement) and HCA (Hawaii Community Assets) are ways in which it can be addressed. What kind of standard does the department have to address this type of procedure, inquired Commissioner Tassill. D. Oshiro said there is a procedure in place that addresses collections and procedures, and what the commission generally sees is the end result. The commission does not see the workouts and service providers who do not appear before a contested case process. Instead, they see these lessees in the refinance submittal presented by HSD (Homestead Services Division).

Private lenders have their own collection policies and procedures, which may or may not be proprietary information, said D. Oshiro, and the Chair is looking at HUD for some kind of commitment to have their lenders follow a similar procedure policy. Commissioner Tassill queried about how some beneficiaries are able to come before the commission to offer a settlement on their entire mortgages and were denied, while others in the same situation were

approved. He deems this as a double standard. D. Oshiro said the department treats each case on its own merit. D. Oshiro said it is not proper to place them into categories of a 30, 60, and 90-day delinquency, as each lessee has their own situation that may be unique to others. Each beneficiary has issues relating to medical and/or personal matters. It is the department's obligation to hear them out and to see how the department can assist. It is difficult to make the same proposal for two different families. The Chair asked at what point is the department unable to offer assistance to a family. Deputy AG Iha said that once the commission issues a Final Order in a contested case process to cancel the lease, the lessee's only recourse is to appeal to the Circuit Court, then to the Intermediate Court of Appeals, then to the Hawaii Supreme Court. If they do not appeal, then the decision becomes a Final Order and the lease is cancelled at that point. The commission loses jurisdiction to reinstate the lease. The lessee would then need to go through a waitlist, or whatever the Administrative Rules specify, as to how to present that property again. Even if the family were to come in with full payment, the department is no longer in a position to rectify the circumstances. Deputy AG Iha said that generally, if that is the only fact being presented, he would say "yes." Commissioner Hopkins requested that the commission be informed of all successful workout plans.

ACKNOWLEDGEMENT

Chair welcomed both Representative Faye Hanohano and former West Hawaii Commissioner Dickie Nelson who attended today's proceedings.

ITEM NO: A-3

SUBJECT: DHHL 2014 Legislative Proposals

Dre Kalili, Program and Policy Analyst, presented a workshop covering five legislative proposals that address today's agenda Item No. C-2. D. Kalili described the five proposals:

1. HHL-01(14) Affordable Housing Credits passed in 2009 Session, amended in 2012, and sunsets in June 30, 2015. DHHL would like to extend it beyond 2015, to receive credits from Counties for units built on Hawaiian home lands, and transfer credits to developers. It brings value where it was non-existent. Over the years, the department received additional land and money to develop more homesteads which increased competition for developers.
2. HHL-02(14) Uniform Information Practices Act (UIPA) is in response to requests received by media for beneficiary files; rules are specific as to how information may be released. It is required to be in writing by a beneficiary under Hawaii Revised Statute (HRS) 92F. Application files and lessee files are to be added to the protected list of personal finances and other information that should not be released.
3. HHL-03(14) Authority to lease space within a facility or building that is owned and controlled on DHHL lands.

4. HHL-04(14) Explore the ownership of mineral rights on DHHL lands and amends HRS Chapter 182 to clarify minerals on and under Hawaiian home lands are reserved to DHHL.
5. HHL-05(14) Act 195 in 2011 Session established the Native Hawaiian Roll Commission (NHRC). There is a section in the law which requires that HHCA (Hawaiian Homes Commission Act) to be amended to carry out the purposes of the Act. The language may expose the department to legal challenges, along with the fact that amendments to the HHCA are not necessarily required in order for Act 195 to be carried out.

D. Kalili articulated there was one request for legislative proposals that was received from a beneficiary requesting CIP (Capital Improvement Project) funds to develop the Waiohuli Undivided Interest community, which is not included.

Administrator Linda Chinn conveyed that some industrial leases will be expiring and some warehouse will be returned to inventory. The department has the ability to offer a short-term lease on warehouse space, as a building sits vacant while attempting to acquire a long-term lease. Re: Item No. 4 – Commissioner DaMate inquired whether minerals will be defined or directed in a general sense. What is being presented is a conceptual idea submitted by the Department of the Attorney General to the Department of Budget and Finance (B&F) and then to the Office of the Governor, said D. Kalili. The sense is that mineral rights are being reserved for the state, but the department wants to insert language allowing mineral rights in or under Hawaiian home lands to be reserved exclusively for the Department of Hawaiian Home Lands. If counsel advises a more detailed definition, then it would be changed; however, for the most part, the intent is to keep it broad. Material was submitted as Exhibit A for Item A-3.

D. Kalili indicated that Item No. 5, regarding the NHRC Section 3 did not make it to the final bill. There was some interest by the legislature to repeal the language as there is language in the bill that may expose the department to a legal challenge. It would then require Act 195 to be amended. Deputy AG Iha advised the commission to convene in executive session, as responses appear to be leading into more legal aspects.

MOTION/ACTION

Moved by Commissioner Tassill, and seconded by Commissioner Kahikina, to adjourn to executive session to consult with its counsel on these above-stated matters. Commissioner DaMate opposed the motion. Motion was carried.

RECESS

11:42 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-mentioned item.

MOTION/ACTION

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

RECONVENE 11:55 p.m.

DISCUSSION (cont.)

Commissioner Tassill inquired about molasses spillage, mineral rights at the bottom of the ocean, and cinder collecting at a quarry in Waimea. The Chair expressed that above-surface mineral rights have not been an issue, rather the concern is for mineral rights under DHHL lands. Deputy AG Iha said that no opinion has been issued on the matter. The issue is under review as it relates to the U.S. Fish and Wildlife Service's (Fish and Wildlife) moratorium on the removal of the cinders at Puupapapa. Deputy AG Iha indicated that other federal and state laws come into play with this matter. Commissioner Tassill is concerned that it may affect mineral conservation rights in Villages of Lai Opuu where getting to the land is a problem. Chair shared that a Fish and Wildlife community meeting is planned for this evening with regard to the critical habitat designation of these lands.

Commissioner Hopkins inquired whether a response was given to beneficiaries on submitting CIP (Capital Improvement Project) requests. D. Kalili said that no CIP budget requests were submitted as the department defers to the governor's policy office for guidance on what requests should be submitted. CIP items are addressed through a budget and finance process not through a legislative process. Commissioner Hopkins asked whether the department checks with other unencumbered funds from other departments that lapse, and whether the department could utilize these funds for its own projects. For the active appropriations, when a contract gets unencumbered, those monies go into a project adjustment fund and is at the purview of the Governor on whether those funds could be appropriated or transferred to any other department for its own project, explained R. Lau. He added that funding could, in fact, be appropriated from a project adjustment fund, if the Governor so chooses. Commissioner Hopkins asked about some of the reasonings that Counties use to not support the department. D. Kalili noted that some Counties are concerned that developers may deal directly with the department and no affordable housing units would be available for them. A concern is that the Counties may not want to offer a one-for-one housing credits as it would mean losing out on affordable housing benefits. Chair added that it has been a slow process in securing a signed credit from some of the Counties.

Commissioner DaMate inquired whether the interpretation of the commission would still prevail even with the lack of administrative rules in Item No. 3. Deputy AG Iha explained that the Attorney General's office represents this commission, which is the head of a state agency. DHHL is required to follow State law similar to any other state agency. He has yet to review this particular matter and has no opinion. The Chair asked if HRS (Hawaii Revised Statutes) 171 or HHCA (Hawaiian Homes Commission Act) has to provide an explicit authority to do something; if not, then the interpretation would mean that the commission does not have the authority. Deputy AG Iha said "there are certain times where authority is implied and other times authority

needs to be explicit. Whether it has the authority to do something, the commission's interpretation is given great weight." L. Chinn said that Section 204, Hawaiian Homes Commission Act (HHCA), refers everything to Chapter 171 for authority in leasing lands. Raw land is generally done through auction. There is a provision for a month-to-month permitting, but nothing in Chapter 171 addresses warehouse space leasing. The department deems it does not have the authority to negotiate beyond that. The next step would be to work with the AG to identify the section and amend or accomplish it, noted Chair.

RECESS 12:26 p.m.

RECONVENE 12:36 p.m.

ITEM NO: A-4

SUBJECT: Roundtable Project on Community Solutions to 2013 Department of Hawaiian Home Lands Audit Report

Robin Danner, CNHA (Council for Native Hawaiian Advancement) CEO, and SCHHA (Sovereign Councils of the Hawaiian Homelands Assembly) member, and Blossom Feiteira, Association of Hawaiians for Homestead Lands (AHHL) President, facilitated a roundtable group project with 26 volunteers to aid DHHL and the commission on its audit report. Previous audits were held in 1993, 2002, and 2013, said R. Danner. She said that only a portion of the working documents is being presented, as it was too costly to reproduce. A Senate hearing led by Senator Brickwood Galuteria was held on the recent audit findings. R. Danner said that Senator Clayton Hee shared comments that the auditor's report was off base in terms of blaming Hawaiians for the high delinquency and that Hawaiians do not have access to loss mitigation practices. Senator Donna Kim expressed that she does not wish to see these findings repeated in 10 years.

The roundtable group (Group) met in July, August, and September 2013 to resolve some of the audit report issues. The mission statement was to advise the Governor and the Secretary of Interior to better effectuate the purposes of the Hawaiian Homes Commission Act and to accelerate the distribution benefits of the Trust obligation. R. Danner said the group read a 70-page report which had 131 recommendations that was submitted 30 years ago. In a state audit report of 1993, the report looked at management and land conditions. The 2002 audit report contained only financial issues. The 2013 audit report focused on the direct-loan portfolio of \$79 million of Trust funds. R. Danner read excerpts of the 1993 summary findings that said that "HHC (Hawaiian Homes Commission) and DHHL (Department of Hawaiian Home Lands) have not effectively carried out their respective responsibilities under the HHCA (Hawaiian Homes Commission Act) to return native Hawaiians to the land" and produced 12 findings and 11 recommendations. In 2002, another audit focused on financial matters. The 2013 audit was limited to HSD (Homestead Services Division) and its Direct Loan Portfolio where "HHC failed to meet its fiduciary obligations... and the department has lax management of lessee loans", with 2 overall findings and 20 recommendations. R. Danner said this administration has the

opportunity to knock these findings down. Beneficiaries are talented, know the subject matter, and can be part of the solution. Some of the repeat results included:

1. Beneficiaries still wait for lands;
2. Insufficient commission oversight and assertion of authority;
3. Action items on the agenda;
4. Department needs to compile commission decisions;
5. Recommendation for Commission Orientation Manual;
6. Accountability for a systems issue;
7. Strategic plan from commission is needed;
8. DHHL provides insufficient information and reports to commission;
9. Lacks written policies and procedures;
10. Lacks effective management control and supervision;
11. Poor loan delinquencies and management portfolio.

R. Danner shared the results of 11 major products for DHHL addressing 8 major findings. She listed the findings:

1. Poor loan management and delinquencies;
2. No written policies/procedures;
3. Insufficient data;
4. HHC not properly informed;
5. Restrictive HHC agenda;
6. Poor accountability of DHHL and Staff;
7. Failure to meet fiduciary duties;
8. Many repeat of findings.

R. Danner recommended loss mitigation efforts be made available to prevent delinquencies and foreclosures through forbearance. Lessees can alert the department of potential delinquency due to financial circumstances. Modifications are common practice, except for DHHL. R. Danner said the group compiled a list of studies and stories where the loss mitigation efforts is saving the housing market and can save the beneficiaries and the 14 to 20% delinquency ratios. To access the loss mitigation, it would be beneficial to produce a borrower assessment kit, whereby every beneficiary is treated the same in addressing the debt-to-income ratio and the job status, prior to contested case hearings. R. Danner recommended a moratorium on lease cancellations until the commission has debated the matter on lessees having the same rights.

The Group suggested setting up a method for risk tolerance when reviewing a loan as there are certain criteria to measure risk assessment. A rating was established such as, A, B, C, etc. Direct Loan collection processing was devised for 15, 30, 45 days, to determine what actions the department needed to take when a loan becomes delinquent. The Group encouraged DHHL to use HUD-certified counseling agencies over free-lance consultants. A two-page standard loan portfolio report would offer a guide for an overall direct loan program on new loans and a narrative to answer the auditor's criticism. A system was created, to report to the commission on a delinquency loan ratio with various lenders. A report would allow the commission to see what

homes are boarded-up or turned over to the Trust. One of the criticisms of the auditor said that DHHL had no idea of the cost analysis of running a loan portfolio. With regard to Item No. 5 on a restrictive HHC agenda, the recommendation would require the Attorney General to provide an opinion of how HAR Section 10-2-8 is supposed to be implemented so that action items are placed on the agenda. With regard to Item No. 6, a staffing resolution was drafted to assist the commission in obtaining a report from the agency on staffing changes. With regard to Item 7, the Group supported Senator Hee's legislation that passed the Senate, which would then provide HHC access to its own independent counsel. The Group drafted an amendment to create a practice from the judiciary committee on nominations to the commission. With regard to Item 8, the Group set an agenda or request to either the Senate or the House to hold an annual hearing on the progress of the audit. The legislature, which has ultimate responsibility for any oversight, would then conduct an annual checkup. The Group would continue to fill out, in writing, the section of the manual, to address how the inventory of homes should be handled and how timely payouts of net proceeds should be reported to the commission. The Group will research any federal assistance available, to address any findings outside of the Department of Interior (DOI).

Commissioner Hopkins asked if the department can utilize forbearance on department lands that is leased compared to other lands that may enjoy this type of mitigation. People living on Hawaiian home lands do not have their homes foreclosed, instead their lease is cancelled, said R. Danner. She added that in 2011, Senator Hee put into law a 12-month moratorium on foreclosures on any Hawaii homeowner until mediation policies and procedures were incorporated. R. Danner deems that DHHL should adopt similar policies and procedures. Commissioner Hopkins is hopeful that options will be available for beneficiaries. He fears ramifications of a lawsuit should the commission entertain a moratorium. B. Feiteira said there are reasons why some sections of the law are broad. If everything were regulated, one may end up in a box that they cannot escape from. Commissioner DaMate said it was difficult to accept the audit report and considers criticism towards the commission to be one-sided. She requested reviewing the report and obtaining background information of the members of the Group. She added that many good changes have happened since. R. Danner defended the capability of the Group members, saying that some were homesteaders. She said that even the Group had issues with each other, but they all came together for a common purpose.

The Chair asked for clarification that FHA lenders are utilizing loss mitigation efforts in the FHA 247 portfolio and whether that is being exercised. B. Feiteira confirmed this process is being exercised. She added that the work accomplished by this Group was to find solutions to the issues and present them to the department and the commission, and she deems it a first step in re-establishing a solid foundation between the beneficiaries and the Commission. It is not the fault of DHHL nor the Commission, noted R. Danner rather the kuleana of the beneficiaries who are willing to help. R. Danner said that people are suffering due to foreclosures and delinquency notices, as demonstrated by the high suicide rate, alcoholism, and drug abuse. Commissioner Davis expressed his mahalo towards the efforts of the Group to assist the department. Initially, he was critical of the audit, but now deems it as a stepping stone, to keep abreast of the changing times in rehabilitating our people. Material submitted as Exhibit A for Item A-4.

PUBLIC TESTIMONY ON AGENDIZED ITEMS

Item No. B-1, Robin Danner, Native Hawaiian Roll Commission Re: A-3, R. Danner supported the repeal of Act 195, Section 3. The language is poorly written; however, the intention of the section was to convey that Act 195 cannot, nor does it, amend the Hawaiian Homes Commission Act (HCCA). Repealing it will cause less confusion. If the commission is inclined to revise Act 195, she recommended that former Governor Waihee be contacted beforehand. R. Danner congratulated the commission and leaderships of the homesteads for a total enrollment of 17% in the NHRC.

Item No. B-2, Blossom Feiteira, Association of Hawaiians for Homestead Lands, Re: Item C-2, B. Feiteira supported all of the proposals, which are aimed at bringing opportunities and benefits to beneficiaries on and off the lands. **Re: Item H-2,** B. Feiteira said AHHL stands in opposition to transferring funds to the Hawaiian Home Trust Fund. AHHL wishes for funds to remain in the Hawaiian Home Receipt Fund, thus allowing funds to be retained in the General Loan Fund to assist those in need. **Re: Item H-3,** B. Feiteira supports amending the NAHASDA budget.

Item No. B-3, Kanani Kapuniai, Re: Item G-1, K. Kapuniai recommended deferral of this item until tomorrow to allow others to testify on the subject matter. **Re: Item H-1,** K. Kapuniai cannot make an intelligent comment because she was unable to view the submittal beforehand. **Re: Item C-2,** K. Kapuniai recommended that any references to HHCA, Act 195, Section 3, be added to the body of the submittal, to ensure understanding of the subject matter. She recommended that information on the Contested Case Hearing be made available. She questioned as to how the commission is capable of making decisions on these items. The Chair conceded that this is an area the department needs to improve upon and she will offer to have these items available when the agenda is posted.

Item No. B-4, Bo Kahui, Lai Opua 2020, Re: Item A-1, B. Kahui is thankful for the amount of investment dollars received for Villages of Lai Opua infrastructure. He deems CIP projects are moving ahead, to include funding mechanisms for community development projects. He pondered whether to "piggy-back" with the department or to have his community venture out to to seek funding for its community projects. He would be amenable to working with the department in developing its Lai Opua 2020 1st Phase project. **Re: Item H-1,** B. Kahui said he seeks guidance from the commission in submitting CIP (capital improvement project) requests to the legislature. He is collaborating with Land Development Division staff on the electrical infrastructure for its Villages of Lai Opua project. **Re: Item A-2,** B. Kahui said Villages of Lai Opua Master Association lacks adequate credit consultation. Its association has been teaming up with Hawaii Community Assets in Hilo. Many lessees are delinquent in association dues and some are at risk to losing their homes. He said that lessees require financial assistance on creative ways to meet their obligations. **Re: Item A-3,** B. Kahui said he supports the HHL-03(14) legislative proposal to sublease space within a larger parcel, to generate more revenue for the beneficiaries. He also supports HHL-04(14). **Re: Item G-2,** B. Kahui said that taking thousands of acres of DHHL lands, for the preservation and the reforestation efforts by U.S. Fish and Wildlife Service's proposal, hinders benefits for the native Hawaiians.

RECESS 2:05 p.m.

RECONVENE 2:20 p.m.

ITEM NO: C-1

SUBJECT: Approval of Request to Amend 2013 Hawaiian Homes Commission Calendar

MOTION/ACTION

Moved by Commissioner Hopkins, and seconded by Commissioner Ishibashi to move the commission meeting dates of October 21-22, 2013 to October 28-29, 2013. Motion carried unanimously.

ITEM NO: C-2

SUBJECT: Approval of 2014 DHHL Legislative Proposals

MOTION

Moved by Commissioner Hopkins, and seconded by Commissioner Davis to approve the legislative proposals for inclusion in the Administration's legislative package for the 2014 Legislative Session.

DISCUSSION

Commissioner DaMate said she objects to giving the State more authority for Item HHL-03(14) on whether this department can or cannot lease space. She does agree with all of the other proposals. A roll call vote was taken.

AE (5)

AOLE (0)

HOOKUU (3)

DAMATE *

DAVIS

HOPKINS

ISHIBASHI

MASAGATANI

* with reservations

KAHIKINA

TASSILL

SHEEHAN

ACTION

Motion carried unanimously.

ITEM NO: C-3

SUBJECT: Dams Assessment – Anahola, Kauai Status Report – For Information Only

RECOMMENDATION

None, for information only.

DISCUSSION

Land Development Special Assistant Norman Sakamoto said that DHHL owns 4,228 acres in Anahola that was used by Lihue Plantation up to 20 years ago. Because of the Kaloko Dam breach in 2006, the State enacted a Hawaii Dam and Reservoir Safety Act (HDRSA), which sets requirements to review its five dams under DHHL lands. Dams that meet a certain threshold in the HDRSA that go below the regulatory limits of 25 feet or more in height or a capacity of 50-acre feet or more the size of the pool, or 17 million gallons, are regulated. The State hired a firm in 2007 to assess all of the dams. Consultants are now working with the department to evaluate engineering and non-engineering related factors that may include fully removing the reservoirs, partially removing the reservoirs that stay below the regulatory limit, or fully restoring it. There are also costs to be considered, added N. Sakamoto.

The purpose of today's update is to inform the commission of a community informational meeting scheduled for October 9, 2013, said N. Sakamoto. The department is preparing to meet timely requirements before the meeting. The department will visit various communities to provide recommendations and feedback from the USGS (U.S. Geological Survey) Anahola Stream Study. When ready, a line item will be added to the CIP (capital improvement project) request to address these potentially hazardous matters.

N. Sakamoto said that four (4) reservoirs that being paired: Upper Anahola and Lower Anahola, and Kealia Field 1 and Kealia Field 2. One option, at minimum, is to partially restore one in each pair. Currently, there is no final recommendation. Removing them would mean to breach the dams with a possibility of restoring them. N. Sakamoto pointed out that there currently is no source of water to any of the dams.

Planner Kaleo Manuel revealed that there are some opportunities for ag land use in the mauka region of Anahola, which the 2005 Kauai Island Plan identified in its land uses. There may be areas suitable for homestead ag opportunities, contingent on the department revamping its ag program. A study was completed by USGS on how much water may be diverted without affecting the larger eco-system. From the initial onset, lots of money is required to address the dilapidated state of getting water to the area, since its last use in the late 1980's. Once the new ag program is activated, the Planning Office will be able to determine how much water is necessary. The Anahola Stream comes from the state and government-owned lands, so water resources may be secured by the department. The Kealia Ahupuaa streams are privately owned by Russell McClusky who also owns the land that the streams flow through. When we insert our rights to water, it will need to be on government-owned lands or in watersheds. Historically,

there were two diversions; one, the upper Anahola and the other, the lower Anahola, which once fed the reservoirs and larger irrigation system. There is no stream on DHHL lands.

ITEM NO: D-1

SUBJECT: HSD Status Reports

MOTION/ACTION

None, for information only.

- 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

ITEM NO: D-2

SUBJECT: Ratification of Loan Approvals (see exhibit)

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner DaMate, to recess to executive session to consult with counsel on Item No. D-2. Motion carried unanimously.

RECESS 2:48 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 Hopkins, seconded by Commissioner DaMate, to reconvene to regular meeting. Motion carried unanimously.

RECONVENE 2:52 p.m.

ITEM NO: D-2(cont.)

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner DaMate, to approve Item D-2. Motion carried unanimously.

ITEM NO: D-3

SUBJECT: Approval of Consent to Mortgage (see exhibit)

MOTION/ACTION

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

ITEM NO: D-4

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

MOTION/ACTION

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

ITEM NO: D-5

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

MOTION/ACTION

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

ITEM NO: D-6

SUBJECT: Cancellation of Deceased Applicants from Waiting List – Public Notice 2008, 2009 (see exhibit)

MOTION/ACTION

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

ITEM NO: D-7

**SUBJECT: Cancellation of Deceased Applicants from Waiting List – Public Notice 2012
(see exhibit)**

MOTION/ACTION

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

ITEM NO: D-8

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

MOTION/ACTION

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

ITEM NO: D-9

SUBJECT: Reinstatement of Deferred Applications (see exhibit)

MOTION/ACTION

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

ITEM NO: D-10

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

MOTION/ACTION

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

ITEM NO: D-11

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

MOTION/ACTION

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

ITEM NO: D-12

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

MOTION/ACTION

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

ITEM NO: D-13

SUBJECT: Approval of Subdivision, Transfer of a Portion of Lease, Amendment of Lease – Paulann L. Lum

MOTION/ACTION

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

AMENDED AGENDA

Moved by Commissioner Hopkins, seconded by Commissioner DaMate, to defer Item G-1 until tomorrow, and to approve the November 2012 minutes. Motion carried unanimously.

ITEM NO: E-1

SUBJECT: Recession of Homestead Lease Award and Reinstatement of Application – Waiohuli Undivided Interest – Allison C. K. Chan

MOTION/ACTION

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

ITEM NO: E-2

SUBJECT: Resolution No. 273 – Authorizing Agreements Between Department of Hawaiian Home Lands and Na Kupaa O Kuhio, for Piilani Mai Ke Kai, Phase 2, Water System Improvements

RECOMMENDATION

Administrator Sandra Pfund recommended adoption of Resolution No. 273, which summarizes and restates the various agreements between Na Kupaa O Kuhio (Na Kupaa) and the Department of Hawaiian Home Lands (DHHL) in support of obtaining conditionally awarded funds from the U.S. Department of Agriculture Rural Development (USDA RD) for the Piilani Mai Ke Kai Project, Phase 2, Water System Improvements.

DISCUSSION

Chair queried whether DHHL is close to a loan closure with Piilani Mai Ke Kai. S. Pfund indicated with a “yes”. As part of the closing of the loan, the grant money is from USDA RD. It goes to our partner Na Kupaa, said S. Pfund. There are some agreements that need to be signed to insure USDA RD underwriting requirements. In 2012, many agreements were approved and authorization was given to the Chair to sign these documents. DHHL received \$471,000 in loan funds at 2.75% for the Water System Improvements, and \$339,000 in grant money. Part of the strategy is to work with Na Kupaa to access the grant money to draw down some of the water and sewer system costs.

Commissioner Hopkins asked for clarification on some of the statements. S. Pfund reiterated that USDA RD funds only cover water and sewer systems for rural areas, and subdivision costs for roads, grading, and houselots are the responsibility of DHHL. If there should be any change in costs, then DHHL would assume responsibility for the difference.

MOTION/ACTION

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

ITEM NO: G-1

SUBJECT: Approval of Community Economic Development Pilot Program, Waimea, Hawaii

This item was deferred.

ITEM NO: G-2

**SUBJECT: Acceptance of Beneficiary Consultation Report for the Aina Mauna Program
Demonstration Game Management Pilot Project**

RECOMMENDATION

Planner Kaleo Manuel recommended that the Hawaiian Homes Commission accept this Beneficiary Consultation Report as the official public record of beneficiary input and feedback relative to the Aina Mauna Legacy Program Demonstration Game Management Pilot Project.

MOTION

Moved by Commissioner Hopkins, and seconded by Commissioner DaMate.

DISCUSSION

Commissioner Hopkins thanked staff for preparing this report. He asked whether this is the typical amount of input or whether it exceeded the department's expectations. Planner K. Manuel said invitations were sent to all beneficiaries (5,000) on the Island of Hawaii. Statistically, 7% to 10% of the beneficiaries attend, said K. Manuel. This particular consultation was slightly under but those who did attend gave substantial comments. Planner Andrew Choy said that the two meetings held in July were a culmination of a year-long consultation process that Land Management Division started by formulating an advisory group, made up of hunters and resource management personnel that attended community meetings and formally presented information about the project. Land Agent Mike Robinson is the person responsible for the Aina Mauna Legacy Project, added Chair. Commissioner DaMate said that this project was deemed a pilot project to manage the hunting development program. She has issues with DLNR (Department of Land and Natural Resources) issuing hunting permits and asked if this infers that beneficiaries cannot hunt on DHHL lands, namely Humuula lands, and that it has to be opened to the public? Deputy AG Iha said that this matter is being researched and he is not aware of some of the information shared by Commissioner DaMate. Deputy AG Iha recommended adjourning to executive session to discuss the matter further.

MOTION/ACTION

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

RECESS 3:22 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 Hopkins, and seconded by Commissioner DaMate, to convene in regular session. Motion carried unanimously.

RECONVENE 3:50 p.m.

ACTION

Motion carried unanimously.

ITEM NO: H-1

SUBJECT: Approval of DHHL Supplemental Budget Requests for Fiscal Year 2014-2015

RECOMMENDATION

Administrative Services Officer Rodney Lau recommended that the Commission approve the Fiscal Year 2014-2015 Supplemental Operating and Capital Improvement Program (CIP) budget presented for submittal to the Governor for consideration in the Administration's Executive Budget request to the 2014 Legislature, and to authorize the Chairman to adjust the Operating and CIP budgets as appropriate before they are incorporated into the Administration's Executive Budget.

The Chair clarified that the budget that is before this Commission is the budget that the department will be testifying for before the Legislature this year, regardless if it makes the Governor's budget.

MOTION

Moved by Commissioner Hopkins, seconded by Commissioner DaMate.

DISCUSSION

Commissioner DaMate questioned a line item (FY 2015) in the budget for Kalamaula and Kapaakea Aquaculture Plan. She asked whether this is a pilot program. K. Manuel believes this project would be considered a pilot project as Molokai has many aquaculture opportunities. In Kalamaula, there is an existing grove that has a spring and an old aquaculture fish pond. Then, too, Alii Fish Pond has an existing license that is managed by an association.

ACTION

Motion carried unanimously.

ITEM NO: H-2

SUBJECT: Approval of Request to Transfer Hawaiian Home Receipts Money at the End of the First Quarter, FY 2014

RECOMMENDATION

Administrative Services Office Rodney Lau recommended approval to transfer the entire receipts deposited in the Hawaiian Home Receipts Fund as of September 30, 2013, to the Hawaiian Home Trust Fund.

MOTION

Moved by Commissioner DaMate, seconded by Commissioner Hopkins.

DISCUSSION

Commissioner Hopkins said he always has difficulty with this issue. The difficulty is in the lack of funding, by the legislature, to adequately fund this department. He said these funds should be positioned into helping our beneficiaries. The Chair noted that the department is attempting to put the receipts into a Trust Fund. The department could deposit funds into the Operating Fund or the General Loan Fund as well as the Hawaiian Home Loan Fund. The Chair expressed that because of the unpredictability of maintaining flexibility early, in terms of the department's cash flow, there are still expenses that need to be funded, such as the water systems. If there is a lack of sufficient resources for this, the department could potentially suffer significant consequences. More information for this fiscal year will be available in May, noted Chair. A roll call vote as taken.

AE (4)

DAMATE
DAVIS
ISHIBASHI
MASAGATANI

AOLE (2)

HOPKINS
TASSILL

HOOKUU (2)

KAHIKINA
SHEEHAN

ACTION

Motion failed.

ITEM NO: H-3

SUBJECT: Approval of Amendment to FY 2014 DHHL Development Budget, Native American Housing and Self-Determination Act (NAHASDA)

RECOMMENDATION

Administrative Services Officer Rodney Lau recommended approval of Amendment No. 1, to increase the Department of Hawaiian Home Lands' Native American Housing Assistance and Self-Determination Act (NAHASDA) Development Budget.

MOTION/ACTION

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

ACKNOWLEDGEMENT

NAHASDA Manager Niniau Simmons thanked Mayor William Keno'i and staff for the use of this facility. Commissioner Tassill also offered his mahalo. Commissioner Hopkins requested a short recess before adjourning the meeting.

RECESS 4:25 p.m.

RECONVENE 4:31 p.m.

MOTION/ACTION

Motion by Commissioner Hopkins, seconded by Commissioner DaMate, to recess the meeting until tomorrow at 9:00 a.m. Motion carried unanimously.

RECESS 4:32 p.m.

HAWAIIAN HOMES COMMISSION AGENDA
Minutes of September 24, 2013

RECONVENE 9:09 a.m.

The regular monthly meeting was reconvened on Tuesday, September 24, 2014 at 9:09 a.m. at the King Kamehameha Kona Beach Hotel, 75-5660 Palani Road, Kailua-Kona, Hawaii.

PRESENT Jobie M. K. Masagatani, Chairman
Leimana DaMate, Commissioner, West Hawaii
Gene Ross Davis, Commissioner, Molokai
J. Kama Hopkins, Commissioner, Oahu
Wallace A. Ishibashi, Commissioner, East Hawaii
Renwick V. I. Tassill, Commissioner, Oahu

EXCUSED Michael P. Kahikina, Commissioner, Oahu
Patricia W. Sheehan, Commissioner, Kauai

COUNSEL Craig Y. Iha, Deputy Attorney General

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

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner DaMate, to convene in hearings, prior to the regular monthly meeting. Motion carried unanimously.

RECESS 9:12 a.m.

MOTION/ACTION

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

RECONVENE 9:27 a.m.

MOTION/ACTION

Moved by Commissioner DaMate, seconded by Commissioner Hopkins, to approve the minutes of November 2012 meeting. Commissioner Hopkins excused himself from voting due to his absence from this meeting. Motion carried.

ITEM NO: A-5

SUBJECT: Update on Loan Delinquency Tracking System and Lease Cancellation Prevention

Kamanao Mills, Special Assistant, Office of the Chair, and Helen Wai, Lease Cancellation Consultant, presented an update on the department's loan delinquency tracking system created by a task force made up of different divisions and offices within DHHL that responded to the audit report from the Hawaii State Auditor. The main tracking system is called "APPX" which tracks all applicants, lessees, and loans. Information is gathered each month and a trial balance is created which lists delinquencies from a 30-day to 90-day period within the department. A commission report is presented each month. As data is being updated, so is the tracking system. The hope is to tie the tracking system into the "APPX" system to make it user friendly to all offices and divisions, so that Loans Branch, E-Team, and Fiscal Office can utilize one system. This would aid in presenting contested case processes which is not unique to the department. The plan is to use Chapter 5 into the tracking system which can in turn be incorporated into the APPX system. K. Mills then demonstrated what a tracking system looks like, redacting personal information. He noted that all 180-day delinquencies have been incorporated into the system providing a history of a particular lessee. It will assist in resolution of cases based in the information provided in the data system. Currently, there are 101 delinquent loans being tracked in the system, which includes the FHA 247 loan delinquencies. K. Mills provided a contested case tracking system of which 95% models Chapter 5, HAR (Hawaii Administrative Rules). Commissioner Hopkins thanked staff for addressing the criticisms that were put forth in the audit and making an attempt to cure them.

K. Mills introduced Helen Wai, who was contracted with DHHL to provide portfolio delinquency prevention services. H. Wai said she is a homesteader, resides in Princess Kahanu Estates, and has been a consultant since 2001. She served as a Community Service Manager with Hawaiian Community Assets (HCA) and served with another foundation in Waianae for a self-help housing project. She provided counseling services and home-buyer education to DHHL applicants and undivided interest lessees from 2007 to 2011. She says she is well versed in this arena and has experienced working on a national level with American Indians and Alaska

natives. Her experiences have energized her to help others. On August 1, 2013, H. Wai said she was contracted by this department and received referrals from the loans services branch to offer counseling services. K. Mills gave a brief background on how services were procured, which is similar to the previous HOAP (Home Ownership Assistance Program) program that was implemented in 2009 to 2011. The method of selection was comprised of a review committee and a selection committee that interviewed three (3) interested applicants and utilized a mandated score sheet, said K. Mills. The Chair added that the service provided does not preclude the opportunity to work with other providers or replace other service providers. Commissioner Hopkins asked if there were any crossovers from HCA to H. Wai before she was contracted by DHHL. One of the intake questions a client is asked is whether they are working with a housing counseling agency. If the lessee does not respond, H. Wai said she is clueless to their situation. Recently, a service provider called her about a lessee she was assisting. She deemed it her obligation to protect the confidential information between her and a client. She deems it the responsibility of the client to request in writing, in disclosing information. The Chair stated that H. Wai is in contract with the department, and there may be some overlap with information that the department shares with her. HCA would need to clarify which clients they are assisting to clear up any confusion. Commissioner Kahikina asked H. Wai about her employment with CNHA. H. Wai explained that prior to becoming an independent contractor with CNHA in 2005, she had her own consultant business. She worked under Michelle Kauhane at HCA and billed CNHA for her time. When first contracted by CNHA, she continued to provide other contract work which they both had agreed upon. At that time, no one was offering foreclosure prevention. When an RFP came out from DHHL for foreclosure prevention, H. Wai applied for it, as HCA was not offering that type of business. When H. Wai informed M. Kauhane of her intention, she was terminated. H. Wai was not aware of HCA's intention to expand to this type of service. Chair asked if there is an existing contractual relationship between H. Wai and HCA, to which H. Wai said "no." The last time she was employed with HCA was in 2006 to 2007 and was contracted by CNHA. Chair questioned H. Wai whether the information submitted, as part of this competitive process, was under her own business as Helen N. Wai LLC and whether she had any contractual business with either CNHA or HCA, to which H. Wai confirmed that she did not. Commissioner Tassill asked about where information on a contested case hearing goes once it is resolved. K. Mills explained that it is forwarded to the Homestead Services Division and the Enforcement Office. Commissioner Davis said he is thankful that the department is taking a pro-active role by assisting beneficiaries with options. He wished that homesteaders would step-up to the plate to provide services for others as well. Commissioner Tassill deemed the presentation by H. Wai was on the mark and should be implemented as such. Material was submitted as exhibit A for Item A-5.

RECESS 10:28 a.m.

RECONVENE 10:40 a.m.

ITEM NO: A-6

SUBJECT: Update on Ka Makana Alii Project – Hawaii DeBartolo, LLC, East Kapolei, Oahu

Attorney Danton Wong of Chun Kerr LLP introduced DeBartolo President Ed Kobel, Chief Operating Officer for the Hawaii DeBartolo development, and members of his staff Karen Piltz and Adrian Yoshihara, and Erin Nellis, DeBartolo Development Manager. E. Kobel updated the commission on DeBartolo's Kapolei project "Ka Makana Alii" featuring a slide-show. The project sits on 67 acres across the DHHL Kapolei office. According to E. Kobel, this project will aid in DHHL's many housing projects and provide numerous jobs. His company is a 70-year old, family-owned business that developed 121 regional malls throughout the United States. He said that a burrow pit sits on the Phase 2 project, which is six football fields long and six stories deep, that will need to be filled. Phase 1 has a fast-food restaurant, pharmacy, and big-box stores, which will be open-aired, similar to the Ala Moana Shopping Center. Their target is to build a couple of department stores, a theater, and affordable hotel properties. Commissioner Kahikina asked how long will it take to develop a shopping center of this magnitude. E. Kobel conveyed that it takes approximately 15 years to complete.

A demographic study was completed prior to the roadways being built to determine traffic conditions for this regional-size mall. Amendments have been made to adjust for the future rail system, and DeBartolo has incorporated the theme of "live, work and play" concept, that was originated by the City and County of Honolulu 30 years ago. E. Kobel deems this project to be a regional, economical driver and a job creator for many years to come. He anticipates \$600,000,000 revenue will come directly to the department. In addition, the department stands to gain a "participation rent," which translates to additional compensation for sales over a certain amount. He foresees "participation rent" to be in the neighborhood of \$500,000,000 which could facilitate many more homes for native Hawaiians. The employment base should measure up to 11,000 jobs in construction with direct and indirect jobs for the project and the region. This mall will create a town-center setting for community groups to congregate and enjoy family. Nordic PCL, a local firm, has been selected as the major contractor as well as a local architectural firm and local consultants.

Commissioner Kahikina said that there were milestones that were not achieved and he is inclined to oppose the project. As a beneficiary, he is of the opinion that the project appears to lack opportunities for native Hawaiians. E. Kobel said it took 2 years to work out a lease in 2008 as the economy then basically stopped. No capital was available and retailers were not expanding their businesses. Rather than abandon the project, they recommitted themselves to completing the project and the department's mission and decided to phase-in the project, whereby they requested and received an amendment to allow for flexibility in planning. Because the market has rebounded, they are anticipating a bigger Phase 1 build-out from the smaller Phase that was amended with the previous Chair. Currently, they have invested \$14 million into the project. At the end of the term of the lease, the department will end up owning the property. Income is projected to begin in December and now that the economy has recovered, they intend to break ground next year. Over 4,000 sq. ft. of tenants have committed to the project. He predicts this venture to be the crown jewel of all the assets that the department has discretion over. Posting of construction jobs could benefit native Hawaiians and beneficiaries, although not guaranteed.

Another component to the businesses is the creation of a local farmers market designed into the project. Another lessee asked for space to display her hand-made clothing. E. Kobel said he would be happy to assist anyone wanting to create their place in the business end.

A draft MOA (Memorandum of Agreement) with DOT (Department of Transportation) is one of the last hurdles, to gain access to the project site. They anticipate finalizing the deal within the next two weeks with the Railroad Society. Lease agreements, to secure tenants, is happening now and everyone they spoke to said "yes" to the project. He has brought in international capital to tour the project. Tenants will be comprised of local and non-locals and the flavor of its uniqueness and public comments lend confirmation that this will be a place for families to congregate on the western side of the island. DeBartolo is well aware of the cultural and significance it represents to the people of the community. Exhibit A submitted for Item A-6.

PUBLIC TESTIMONY ON AGENDIZED ITEMS

Item No. B-5, Benjamin Sadowsky, Unite Here, Local 5, Hotel and Kaiser Workers, Re: Item F-6, B. Sadowsky said that DHHL is taking the risk by signing a lease extension for the option period for the DeBartolo project in Kapolei where no rent was collected for over three months. This brings on uncertainties with the potential profitability of a shopping center. Rental costs will depend on acreage developed and for the rest of the project, it is uncertain what will transpire with Phase 2. With regard to the retail portion, there is a participation rent on top of the base fee, but not in relation to the hotel. The hotels will provide for fewer jobs and less taxes because of limited hotel services. It is hoped that wages will be adequate, but no guarantees were provided on the wage standards. He recommends that the commission should not consider extending the lease option and that the developer assumes more risk for the project. A locally based company found jobs to be far fewer at limited hotel services (33 per 100 rooms). The amount of jobs and the quality of the jobs remain to be seen.

Item No. B-6, Homesteaders Mike and Tricia Hodson, and Sonny Shimaoka, Waimea Hawaiian Homesteaders' Association, Inc., Re: Item F-2, M. Hodson indicated that (WHHA) Waimea Hawaiian Homesteaders' Association, Inc. has built a capacity in creating its own community development corporation. He noted that WHHA board members are in agreement to rescind a past approval to issue a gratis license to Homestead Community Development Corporation (HCDC), to conduct due diligence studies for a proposed community facility in Puukapu, Waimea. From the beginning, it was the intention of WHHA that it would create its own CDC and build a capacity and move on, and this was agreed to between HCDC and WHHA. **Re: Item F-3,** M. Hodson professed that he understood the budgeting matters with the Kulia Ika Nuu program and the exhaustion of available funding. He communicated that Item F-3 affords them an opportunity to move forward. He requested tweaking Paragraph 2, page 3 which says, "Once this work is complete, however, FINAL approval for a long-term general lease to WHHA/WNCDC ~~can~~ **shall** be brought to the HHC for action." Sonny Shimaoka says this project can set precedent and be a model to other homestead communities. Both M. Hodson and S. Shimaoka shared their excitement about this community endeavor. Commissioner Tassill commended WHHA leaders for the progress that was accomplished.

Item No. B-7, Kahau Mahoe-Theone, Blossom Feiteira, Hawaii Community Assets, Re: Item A-5, K. Mahoe-Theone stated her qualifications as a HUD-certified counselor with HCA and her commitment to fulfilling financial education and lease-cancellation services to beneficiaries of the Trust. HCA applied for NAHASDA funds to execute services for DHHL to support this effort. They are requesting to execute this grant award to implement critical services to beneficiaries. DHHL has contracted Helen N. Wai LLC and Hale Mahaolu to deliver these cancellation services and they are stunned by DHHL's posture to engage with an independent contractor who is a realtor who holds a license with Primary Properties. Although the license is on hold, there appears to be a conflict of interest. In addition, Hale Mahaolu has no track record of providing services to DHHL beneficiaries. HCA has continued to serve the Trust since its inception. It appears that HCA is begging to partner with DHHL. They would like to know how to earn the department's respect. In addition, confusion among beneficiaries has escalated. K. Mahoe-Theone said that some of their clients have been told to not seek assistance from HCA. This adds to the confusion and places HCA in an awkward position. She added that HCA is the only state-wide counseling agency with a mission to serve native Hawaiian communities. She deems it questionable to store sensitive personal information at their home for risk of identity theft. DHHL is confused about the value of partnering with HUD-certified agencies. HCA has the ability to leverage federal, state, and private resources and does not rely on DHHL to cover 100% of costs to provide services to the beneficiary. HCA questioned on DHHL's lease cancellation program since 1983. Commissioner DaMate understood that there was no conflict between the hiring of a contractor and the work that HCA is doing. According to NAHASDA Manager Niniau Simmons, Jeff Gilbreath was awaiting arrival of an insurance binder, as the contract was being routed for execution. The binder was recently received and it appears that HCA is ready for service next month. N. Simmons informed the commission that HHFDC (Hawaii Housing and Finance Development Corporation) received a grant and partnered with Hale Mahaolu, to provide services for Maui. She spoke with Executive Director Jeff Gilbreath upon receiving his letter regarding the above comments and added there was a misunderstanding between service provider Helen Wai and a family. She emphasized that under the scope of the contract with Helen Wai, the department provides referrals directly to Helen Wai, and if the department does not know who HCA is working with, there may be overlapping. It was then determined that HCA would provide a monthly report on all of the lessees they assist. This would aid the Homestead Services Division in making future referrals.

Blossom Feiteira said she was a founder of HCA, which serviced beneficiaries. There is no reason for any competition amongst services as there is ample work for everyone. Between the miscommunication, service providers, and the department, it is turning into a competition and impacting our community. With the assistance of the commission, it should be clear that everyone is on the same page and that the beneficiary receives quality service, provided by quality providers, as it is not beneficial for beneficiaries to be exposed to this.

Chair thanked B. Feiteira and K. Mahoe-Theone for their testimony and added that because of these new contracts being implemented, communication may have faulted. She agrees with B. Feiteira that there is more than enough work for everyone. Working together will be positive for

everyone. N. Simmons said she spoke earlier today with HCA providers and she and Kamanao Mills will arrange to meet with all contract providers to better utilize the process.

Item No. B-8, Russell Kaupu, Re: Item F-6, R. Kaupu shared his background as an applicant on Hawaiian home lands and serves as general counsel for the MacNaughton Group (MG). He is opposed to the amendment to the option for the DeBartolo project. He provided written testimony to be made a part of these minutes as Exhibit "A" for Item No. B-8. As a development group, they do not oppose the project. The project and commercial development to provide resources to rehabilitate Hawaiian people is commendable; MG declined to bid on the project when first approached. They are engaged in two phases of Kapolei Commons and are preparing for the third phase. MG felt that the DeBartolo project went beyond what they believe is achievable for West Oahu. A super regional mall cannot be sustained on this property. Had they known that an entity could sit on a property for several years then come back when things rebounded, they would have participated. R. Kaupu said the department should hold DeBartolo to task and stay on schedule. Commissioner Hopkins asked whether MG believes this project is a viable project. R. Kaupu deems that the project presented today is viable and ambitious. If someone could do it, they would. The biggest obstacle requires co-tenancy and those that can work well together. If certain retailers commit to the project, it demonstrates credibility. It is one thing to have square footage of a pre-leased commitment, but how many will fall in place is a big question. The worse scenario is waiting another year. If they have it, great! MG suspects that DeBartolo lacks all of the leasing requirements.

Item No. B-9, Carroll Cox, Re: Item J-1, C. Cox inquired as to how PASHA acquired its revocable permit (RP), which was amended, and questioned why they were allowed to take an RP and lease to other companies such as Grace Pacific, Roads and Highway Builders (RHB), and others. He questioned why the department does not serve as landlord since it is their land. He said that actions taken against Kalaeloa Raceway Park (KRP) are shameful, in comparison to the courtesy extended to the DeBartolo development. As a radio-show host and founder of Environ Watch, an environmental group, he portrays himself as a civil and human rights advocate. He deems that the race track owners have received unfair and unlawful treatment. A search warrant was issued to them but not for the right reasons. C. Cox said KRP has been beaten, so to speak, at the hands of the Department of Hawaiian Home Lands (DHHL). He asked that DHHL view the race track as an entity that would generate revenue and play a major role in the community, by taking cars off the street, offering entertainment, and a swap meet venture. He has documented DHHL staff, facilitating in the name of big business to benefit the beneficiaries, but the real beneficiary, who has an interest in generating business and recognizing their dream, is not afforded the opportunity. C Cox said that RHB received courtesy treatment when they lacked an NPDES (National Pollution Discharge Elimination System) document. They are under the PASHA umbrella and a DHHL land agent encouraged PASHA to acquire a NPDES permit, to incorporate RHB under its permit. The problem is that there is no NPDES permit by PASHA, so there should have been a notice of violation. C. Cox uncovered a practice through the department's land agent Kalei Young, whereby RHB was given access and keys to circumvent the DOT (Department of Transportation) road and weight inspection. He is witness to a "trail of tears" for a beneficiary who is attempting to make an effort to sustain himself. A company was denied an opportunity to crush rocks in a certain area, but was told "no." Shortly

thereafter, Close Construction and RHB were situated in the same general area. He has witnessed how the department reaches out to DeBartolo and solar farms to get what they want under the flag of the beneficiary. His documentation in the handling of the race track smacks one in the face of what is being preached. The race track people are beneficiaries but they are getting hammered and accused of destroying a pond. As a former federal agent, C. Cox expressed that the Navy was disposing of materials in the pond, prior to this. He deems himself as being the enemy. He asks that the department view him as a benefit to the department. There is injustice and disparity in reaching out to companies like RHB and Close Construction.

C. Cox said he supports the native Hawaiian people and would like to know who the beneficiary is. Is it the one who promises \$600,000,000 or the 6,000 who want to sustain themselves to generate economic benefits for other native Hawaiians? There is a disconnect here somewhere, noted C. Cox. He noted that Mr. Grace was given permission by former Chair Micah Kane to go ahead and initiate his activities of stock piling, grading, and doing the work (himself). As a result, Evelyn Souza (former partner) filed a complaint against G. Grace, and Chairman Kane decided to throw George to the dogs and tell the media. Mr. Grace was cited, under the direction and order of former Chair Kane, for stock piling and grading. In the meantime, no complaint was issued to RHB, for grinding and grubbing, and Close Construction, for stockpiling, so he decided to file a complaint and now they hold a permit. Another concern was for shipment of gravel from Sause Brothers instead of buying locally. PASHA intends to benefit from this shipment, not the beneficiaries, expressed C Cox.

Item No. B-10, Donnalyn Kalei, Re: Item A-6, Donnalyn Kalei, of Hilo, commented on a statement made by Commissioner Kahikina on how to put our people to work and a statement by E. Kobel saying that he is accountable by federal standards. She said there are exceptions to that statement; such as, recruiting and hiring of minority-owned businesses, and women-owned businesses, and for low-income HUD requirements. D. Kalei explained that developers may add a statement to its contract, allowing people in Nanakuli to work. D. Kalei deemed that a DeBartolo scholarship foundation created for \$100,000 is an insult, as WalMart, in Hilo, offers the same amount. She recommended that income to the department be considered in percentages, as developers earn much more than what they offer in community benefits.

Item No. B-11, Kanani Kapuniai, Re: Items G-1, F-2 and F-3, K. Kapuniai noted that earlier comments on these matters addressed her immediate concerns.

Item No. B-12, Blossom Feiteira, President, Association of Hawaiians for Homestead Lands, Re Item No: A-6, B. Feiteira said she supports the DeBartolo Development which will encompass 25% of total revenue for DHHL aside from another 68,000 acres of land under Revocable Permits. She asked the commission to hold DeBartolo accountable to meeting their benchmarks. This development will bring significant dollars to this Trust, and she asked that other native Hawaiians have some consideration, as they, too, seek to conduct business on Hawaiian home lands. Sections 204 and 207 (HHCA) allows for these types of land dispositions be available to beneficiaries, to allow for economic self-sufficiency. Native-owned businesses are being penalized with no assistance and no capacity building efforts by the department.

Revenues need to be allocated to native beneficiaries so they can be successful as they seek economic opportunities. **Re: Items F-2 and F-3**, B. Feiteira supports Waimea Hawaiian Homestead Association (WHHA) in its efforts to move forward with their own community project, to impact the entire Waimea region. It sends a message to other community organizations on how they too can become successful. She agrees with a change in Item F-3 from a "will be" to a "shall be" to settle all concerns for final approval on the lease. **Re: Item G-1**, B. Feiteira said she looks to the department to assist in capacity building for the long term.

Item No. B-13, Bo Kahui and Dora Aio, President, Villages of Lai Opuu, Re Item No: A-6, B. Kahui said he is bracing for construction of their medical clinic and is seeking methods to build community capacity. He has yet to see a sustainable project from off-the-ground, as they, themselves, continue to struggle. It takes serious investment capital and DeBartolo has it. The MacNaughton Group (MG) was one that Lai Opuu 2020 sought out, to assist with Lai Opuu 2020's commercial venture. Lai Opuu 2020 is a small development company of native Hawaiians attempting to make things happen for its community. He is unaware of issues regarding the race track and the DeBartolo project, but would venture to say that these two leases are totally different. He is in support of the DeBartolo project. Dora Aio said it has been 13 years in getting their project to this point. She wants to be around to see their medical clinic thrive. She said their community supports the DeBartolo project which, in turn, will assist them and others.

ITEM NO: F-1

SUBJECT: Finding No Significant Impact (FONSI), Anahola Solar Project, Anahola Kauai

RECOMMENDATION

Land Management Administrator Linda Chinn recommended accepting a Finding of No Significant Impact (FONSI) as presented in the Final Environmental Assessment and FONSI report dated July 2013 for the Kauai Island Utility Cooperative Solar Project in Anahola, Kauai.

MOTION

Moved by Commissioner Hopkins and seconded by Commissioner Kahikina.

DISCUSSION

Commissioner Hopkins asked if there is perspective to expand this project. According to KIUC CEO David Bissell, the substation size will have additional space to allow for expansion in the future, if necessary. Commissioner Hopkins inquired whether there will be challenges, similar to the situation that happened with HCDC (Hawaii Community Development Corporation) partnering with an outside entity. Chair clarified that the license anticipates a conversion to a general lease which does require the licensee (KIUC and HCDC) to request that conversion. The

department has yet to receive a response from them. Once a response is obtained, the department will proceed from there. Deputy AG Iha advised that a request will need to come before the commission for approval. Chair inquired whether this parcel is consistent with the department's regional plan in terms of its usage. L. Chinn confirmed that there is a provision for renewable energy and commercial industrial use in the Kauai Island Plan. The solar farm consists of a 55-acre parcel, slightly larger than what was envisioned. Commissioner Hopkins queried if any dissension exists among the community that will inhibit progress. According to D. Bissell, none of the correspondence received thus far has hindered the progress of the solar project.

ACTION

Motion carried unanimously.

ITEM NO: G-1

SUBJECT: Approval of Community Economic Development Pilot Program, Waimea, Hawaii

RECOMMENDATION

Planner Kaleo Manuel recommended that the commission authorize the Chairman to undertake the following pilot project:

1. Conduct due diligence, planning, feasibility, environmental assessment, and subdivision application in collaboration with the Waimea Hawaiian Homestead Association (WHHA) covering 161 acre property identified as TMK: (3)6-4-38:11 in Waimea Nui, Hawaii, for a community economic project;
2. Provide a report to the HHC with findings and recommendations.

MOTION/ACTION

- Moved by Commissioner DaMate and seconded by Commissioner Hopkins. Motion carried unanimously.

ITEM NO: F-2

SUBJECT: Rescission of Authorization to Issue License to Waimea Hawaiian Homestead Association/Homestead Community Development Corporation, Waimea, Hawaii

RECOMMENDATION

Land Management Administrator Linda Chinn recommended that the commission rescind its approval of August 20, 2012, under Agenda Item No. F-4 to issue a gratis license to Homestead

Community Development Corporation (HCDC) and Waimea Hawaiian Homestead Association (WHHA) to conduct due diligence studies for a proposed community facility on the 161 acres.

MOTION/ACTION

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

ITEM NO: F-3

SUBJECT: Preliminary Approval to the Issuance of a General Lease to Waimea Hawaiian Homestead Association, Inc., Waimea, Hawaii

RECOMMENDATION

Administrator L. Chinn made a correction to Page 3, paragraph 2 in the discussion portion of the submittal "environmental studies are being completed since the contract ~~will~~ shall be a DHHL contract."

L. Chinn recommended approval by the commission to grant a 65-year lease to Waimea Hawaiian Homestead Association (WHHA), to use a portion of the lands in Puukapu, Island of Hawaii, identified as TMK: (3) 6-4-038:011 for the development of a community facility, to include cultural, educational, and economic components. The preliminary approval is intended to provide WHHA, the Waimea Nui Development Corporation (WNDC), its beneficiary CDC organization, and its financier, with sufficient comfort to expend resources and pursue financial commitments. Preliminary approval is subject to basic terms and conditions listed, subject to the final approval by the Hawaiian Homes Commission (HHC).

MOTION/ACTION

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

ITEM NO: F-4

SUBJECT: Approval of Request to Surrender License No. 365, Issued to Panaewa Hawaiian Home Lands Community Association and Haola, Inc., Panaewa, Hawaii

RECOMMENDATION

Administrator Linda Chinn recommended that the commission grant approval to the following:

1. Removal of Haola, Inc, as a co-licensee with Panaewa Hawaiian Home Lands Community Association (PHHLCA), under License No. 365, leaving PHHLCA as the sole licensee under the license;
2. Accept the request to surrender the lands under License No. 365 by PHHLCA, for the 12-acre parcel under TMK: (3) 2-2-047-075;
3. Grant preliminary approval to issue a new 30-year license to PHHLCA to use the 12.77-acre parcel of HHL in Panaewa for the continued development of the Kamoleau Master Plan. Preliminary approval is intended to provide the community and its financier with sufficient resources to expend resources and pursue financial comments.

The preliminary approval is subject to the basic terms and conditions similar to License No. 365 and final approval by the Hawaiian Homes Commission at the appropriate time.

MOTION/ACTION

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

ITEM NO: F-5

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

MOTION/ACTION

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

ITEM NO: F-6

SUBJECT: Approval to Amend Option to Lease, Hawaii DeBartolo, LLC, East Kapolei, Oahu

RECOMMENDATION

Administrator Linda Chinn recommended approval to extend a request made by DeBartolo LLC to exercise the option under the Amendment to and Restatement of Option to Lease executed on January 12, 2012, granting an additional twelve months of time from December 1, 2013, to November 30, 2014, subject to the following conditions:

1. Approval shall be the last and final extension of time under the Amendment to and Restatement of Option to Lease agreement dated January 12, 2012;
2. DeBartolo shall pay DHHL \$1.8 million for the one-year extension on December 2, 2013. If DeBartolo fails to timely exercise its option, DHHL is entitled to retain the entire \$1.8

million which will then be used to pay DHHL Option Waiting Period Payments at the rate of \$100,000 per month. If DeBartolo does exercise its option, any unused portion of the \$1.8 million will be applied as a credit against the annual base rent payable by DeBartolo under the Lease.

3. Option Waiting Period payments made prior to December 1, 2013, shall be refundable only if the title company is unwilling to issue a title policy which insures that DHHL has the authority to lease the subject premises for the shopping center development, and if, as a result thereof, DeBartolo elects to withdraw from the Project;
4. DHHL agrees to defer Phase 1 annual base rent totaling \$9.1 million in Lease Years 4 through 10. DeBartolo agrees to repay the deferred rents, together with interest at a floating rate equal to Bank of Hawaii's base rate plus 1% compounded annually from the date of each deferral until the same is repaid, repayment to be made in equal monthly installments commencing in Lease Year 11 and continuing through Lease Year 25. The floating interest rate will carry a floor of 4.5% and a ceiling of 6.5% until Year 10; from Year 11 on, the interest rate will carry a floor of 4.5% and a ceiling of 8%;
5. DHHL agrees that DHHL's obligation with regards to the Borrow Pit fill under the Option to Lease shall remain in full force and effect in that DHHL will maintain the availability of up to 400,000 cubic yards of dredge material from DOT (Department of Transportation) at Kalaeloa Harbor site until December 31, 2015, and will be responsible for any costs assessed by DOT for use of material at the harbor. However, DHHL shall not be responsible for replacing any portion of the stockpile of dredged material which is found to be unsuitable for use as fill on the subject premises;
6. DHHL and DeBartolo agree on mutual release of any claims arising out of the negotiations up to this point in time;
7. Other minor technical changes to the Option to Lease, General Lease, Reciprocal Easement Agreement, and Utility Easement Agreement, and;
8. Any and all amendment documents shall be subject to review and approval of the Department of the Attorney General.

MOTION

Moved by Commissioner Tassill, seconded by Commissioner Hopkins.

DISCUSSION

Chair recommended adjourning to executive session to consult with its counsel on Item No. 2.

MOTION/ACTION

Moved by Commissioner Hopkins, and seconded by Commissioner Ishibashi, to consult further with counsel on the preceding matter. Motion carried unanimously.

RECESS

1:48 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.

RECONVENE 2:15 p.m.

AMENDED MOTION/ACTION

Moved by Commissioner Tassill, seconded by Commissioner Davis, to defer this matter for one month.

DISCUSSION

Commissioner Tassill said he originally supported the motion; however, after further consideration, he recommended deferral. Commissioner Ishibashi said that through the dynamics of negotiations, the department is at a critical stage. He, too, agreed to defer for another month. He described the project as being a good project and appreciates DeBartolo coming forward to move on it. The Chair commented on the viability of the project moving forward. It is welcoming to know where DeBartolo is on the lease and to the extent that it can be shared with staff on where the leasing is at. The Chair noted that the department received crucial testimony from another branch of government which is a critical piece that has to be reviewed. The motion on the table was to defer. The Chair requested a roll call vote. Exhibits A to I submitted for Item F-6.

AE (7)

AOLE (0)

HOOKUU (1)

DAMATE
DAVIS
HOPKINS
ISHIBASHI
KAHIKINA
TASSILL
MASAGATANI

SHEEHAN

ACTION

Motion carried unanimously.

COMMENT

Ed Kobel thanked the commission. The Chair thanked E. Kobel for making the trip to Hawaii and thanked everyone for their patience and reminded those who signed up to testify in the "J"

agenda that the commission does not relegate taking action in this venue. However, commissioners may ask questions relative to their concerns.

Note: Commissioner Tassill is excused from the meeting.

ITEM NO: J-1

SUBJECT: Request to Address the Commission – George Grace, Kalaeloa Raceway Park

MOTION/ACTION

None, for information only.

DISCUSSION

George Grace shared his family background, being raised in Waianae with limited education. Although he dropped out of high school, he has provided for his family, owns several businesses, and employs 60 workers, 95% of them Hawaiians. G. Grace said his name was circulated in a malicious way within the department and today provided him a chance to share his story. Over the past six years, he has encountered resistance from the department to maintain an RP (Revocable Permit) parcel in Kalaeloa. At one time, he sought legal advice but decided against proceeding with it because he deemed that no one would win. He has goals he wants to set, but is held down by DHHL. He is at the end-of-the-road with the commission giving DHHL the right to evict people who are not compliant. He speaks out for others as they, too, were allowed to do certain things on their property. His issue is not being compliant with the City and County. He met with Deputy to the Chair Darrell Young who indicated there would be no hearing. He is at the mercy of the agency that placed him in that situation; they will be the judge. The commission, he feels, should not allow that to happen without hearing everyone's side of the story. The press release said that the agency gives everyone 30 days to become compliant. "How you going do that?," said G. Grace. When someone puts a shed up for their business, it takes longer to get a permit for that. "Some of the problems they created going disappear, without the commission knowing," said G. Grace, "and us local people, trying to make something happen, is going to get slapped by the agency that's supposed to be protecting the Hawaiian people."

G. Grace said he carries with him all of the e-mails, citations, letters, conversations, and everything pertaining to this RP that transpired over the last six years. The issue only breeds animosity and it does not make sense. His problem is simple to fix and he chose not to fight. He met with the Governor, the Chair, and L. Chinn last year, and yet his problem has not been resolved. He has seen the comings and goings of land agents, deputies, and new chairs and each time he has to explain himself about this issue.

As an RP permittee, he presumed that notice would have been forwarded to him; instead, he found out through a news coverage regarding his dilemma. He acknowledged that some of the

policies and procedures need to change, and some changes are occurring. He has one problem and the commission can pull his permit, go to court, or otherwise. He said if this can be done to him, it can be done to anyone else. He recommended that a tracking system similar to the one presented earlier today, be used for RP's. Today, he is thankful to have the opportunity to speak. Although he has yet to receive his 30-day notice, he will send a notice to the department, from his attorney, as he wants resolution to his problem. He added that we need to move forward and stop being at each other's throats. If not, he has no choice but to take legal action and file a complaint with the U.S. Department of Interior. The gloves are off and there is going to be a fight, although he considers himself to be humble; however, he doesn't want the commission to leave it to the purview of the agency (DHHL). Commissioner Hopkins inquired whether everyone was contacted about the June 2013 action. He recalls in a comment that only the commission could cancel a permit. Land Management Administrator L. Chinn said that an initial inspection was made several months ago, but a follow-up inspection has yet to be completed. Commissioner Hopkins said this is one of 9 RP's in question and he anticipates that something will be accomplished. Sabrina Grace said she has been assisting her brother on this matter since 2010. They called the police, had a search warrant executed on them, and the Department of the Attorney General determined that it would cost them \$10,000 to pay for the search warrant. She wants some consideration similar to what the "big guys" are getting. She indicated that her brother built the race track with his own money. S. Grace said many considerations were provided to those patrons who could not pay entry fees and food booth fees. She recommended that the commission see for themselves how people survive in Kalaeloa. She urged the commission to think and vote independently and support the people, not the government.

Commissioner Hopkins inquired about the monthly charges for Kalaeloa Raceway Park (KRP). Administrator L. Chinn said it is \$2,000 per month for the current RP and includes reimbursement for utilities. The water bill averages \$200 to \$600 a month. Commissioner Hopkins inquired if there are letters to verify this, to which L. Chinn confirmed there were. G. Grace said when he was issued the letter, he began his project and trucked 1,500 truckloads of dirt onto the property to build the track, which he believed was under the scope of the plans that he submitted. He had to remove all of the dirt from the property because the department rescinded the letter. He said it was costly as he had to continue to pay the rent and the insurance as well. A land agent recommended that he ask for a rent waiver due to his lack of earnings, which he tried for and was denied. He then inquired if he could utilize 51 acres of property to generate income to help him weather the storm. He was denied and further advised to take care of the City and County issues first. Three years later, he finally was able to open the raceway park. On the very first day, the department showed up to close him down. He said he has issues that need to be addressed with the agency (DHHL) and the City and County, and he will not back out because he deems that he is right. The problem with the City and County is a jurisdictional matter. He sent a representative to the City and County to determine who held permits in Kalaeloa, only the solar company had one. He wanted the same consideration as others, to be treated fairly. He went to the Governor's office to meet him, DHHL Chair, and L. Chinn, to which the Governor expressed that it would be fixed. Chair said that one of the positive outcomes of that conversation is that the department is reviewing all of its RP's. Hopefully, all issues will be remediated and fair across the board. Chair explained that the commission is in transition with the RP program and the assessment committee has not finalized its

recommendations. To simplify matters, the department is transitioning 180 RP's to a Right-of-Entry process for those who are compliant. G. Grace said that he has been screaming for the past six (6) years over unresolved issues. He expressed that this commission will force him to do something that will be unpleasant. He spoke aggressively of "taking people on" to retain his parcel. Chair asked G. Grace whether he received mixed messages from the City and the State governments. He replied "yes." He has had no assistance from either the City or State government, nor would he accept their assistance. He is not asking for special treatment, instead he is requesting that someone take a look at his situation and help him resolve it before it ends up becoming a bigger problem. He said that he has been humble and patient, but six years is long enough.

Commissioner DaMate inquired whether an RP can be turned into a General Lease. According to L. Chinn, the lands in Kalaeloa are not ready for General Leasing as there is no infrastructure to support it. Commissioner DaMate perceived that some people who received RP's appear to invest so much of their lives and money into their project, and it is difficult to correct. The RP is supposed to be a temporary designation. G. Grace indicated that when he went to the City and the State to acquire a racetrack, nothing could be done. He then decided to take matters into his own hands. He went to DHHL, and was told that the land would be available only on a temporary basis. He recalled that former Chair Kane told him that when people received lands, they did nothing with it. He told G. Grace to show him what he could do and then come back and ask us. G. Grace said that this was his only hope, and he took it upon himself to start from there. Commissioner DaMate asked G. Grace if there was an expectation that this would turn into something permanent. G. Grace said "yes." G. Grace said he owns his own portable toilet and generator business, which do not require infrastructure. L. Chinn conveyed that although the land could be available for general leasing, the department still needed to proceed through its HHCA Section 171 public auction process, which provided an opportunity for others to bid on the same parcel. Offering a general lease requires infrastructure, said L. Chinn, and Kalaeloa lacks this prerequisite. G. Grace deemed that the intention was there for him to stay on the property permanently, and when he submitted plans, the department was not amenable. Ancient artifacts were found on the property, therefore the land was deemed inappropriate for G. Grace's use. G. Grace conducted his own study, which revealed there was nothing there; however, the Hawaiian Civic Club said otherwise. The Hawaiian Civic Club is not certified in this area, said G. Grace. However, Commissioner DaMate noted that if it involved Hawaiian Civic Clubs, it likely involved cultural characteristics.

Commissioner Ishibashi deems this matter as appalling. He cannot apologize for the inefficiency of the department as this is only part of the audit. G. Grace said there is no sense in apologizing; as it is not benefiting him, but, perhaps the next guy. He anticipates bigger problems, not only for him, but for others as well. Commissioner Ishibashi conveyed that the department is moving in the right direction and changes are coming.

C. Cox criticized the fine notices that G. Grace received; however, and noted in another instance that Close Construction was permitted to set up without securing a stockpiling permit. The explanation provided by the City and County was that the property was under Hawaiian home lands, and the City and County's authority did not extend there. The Chair pointed out that the

City's jurisdiction on the homestead lands is a fair issue and needs to be clarified. What inspectors or people at the counter say is an issue that needs to be addressed with the City and County. When it deals with Hawaiian home lands, there is still an obligation to comply, and the department has jurisdiction of its land use. C. Cox indicated that no one can operate a portable potty on any lands in Kalaeloa, as EPA (U.S. Environmental Protection Agency) requirements entail that everyone be on a septic tank. Should he decide to file a complaint, the department's RP's will not be worth "two nickels," said C. Cox. He said that Deputy to the Chair Darrell Young informed the Grace family that his hands were tied due to statements made to the media by the commission regarding this situation. C. Cox said that this racetrack is a doable thing that should benefit everyone. He pointed out that none of the leases can operate on these lands without EPA compliancy. He could make claims against a clean water violation and a failure on the part of Hawaiian home lands to elevate its lands up to standard, so as to ensure that everyone conforms to EPA standards. He urged the commission to assist G. Grace.

Commissioner DaMate asked C. Cox if he is a native Hawaiian beneficiary, to which he replied "no." He explained that he is a citizen with a particular interest in this matter. Chair asked G. Grace if he is clear about the violation. G. Grace said he is on the RP list that the department wishes to be rid of, and he is determined to fight because this is all that he has. It is noted that Jeanette Grace was party to this testimony. Materials submitted as exhibits A and B for Item J-1.

ITEM NO: J-2

SUBJECT: Request to Address the Commission – Bo Kahui, Lai Opua 2020, and Dora Aio-Leamons, Villages of Lai Opua

MOTION/ACTION

None, for information only.

DISCUSSION

Bo Kahui, CEO, Lai Opua 2020, Dora Aio-Leamons, President, Villages of Lai Opua Master Association (VOLMA), Patrick Hurney, Executive Director, Habitat for Humanity, and Richard Kaniho appeared before the commission. D. Aio-Leamons said that the amount of overdue association/maintenance fees is staggering for VOLMA. She submitted a list of serious delinquencies. The Chair noted that Deputy to the Chair Darrell Young has been given the lead to address DCCR's (Declaration of Conditions, Covenants and Restrictions); the department recognizes the seriousness of these issues and plans to engage with DCCR community leaders to move these matters forward as the department initially established these rulings. D. Aio-Leamons expressed their willingness to preserve their beautiful subdivision by ensuring that sprinklers, landscaping, etc., are maintained. B. Kahui said VOLMA is seeking immediate sanctions for 28 leases for contested case hearings. Some homesteaders are bankrupt, other lots are vacant or returned to the department, and he is requesting immediate resolution to the situation. A list was sent to D. Young, and VOLMA is awaiting action. Commissioner DaMate noted that this issue was brought up twice in two years and she believes the matter is being

resolved. B. Kahui informed the department that construction of their Lai Opua 2020 project is moving forward and received clearance from U.S. Fish and Wildlife Service. With new market tax credit, the community development had to be postponed due to insufficient capital. They have reached a temporary non-disclosure with Forest City with respect to new market tax credit.

P. Hurney and R. Kaniho provided a briefing on the NAHASDA (Native American Housing and Self-Determination Act) RFP (Request for Proposal) and the completion of 14 homes on DHHL lands in Kawaihae and the Villages of Lai Opua. P. Hurney spoke of an ongoing community project at Kuhio Village in Waimea, spending over \$150,000 in community funds and grants towards reroofing and painting homes, to bring some homes to ADA compliance. R. Kaniho projected that this project should continue another six years, and he serves as its construction manager. He is a homesteader and sees firsthand what is happening within Kuhio Village. He shared information on the number of homes that have been remodeled and other new construction projects. He said that the neighborhood revitalization project has become a big part of his life, and he wanted to express his aloha for being given an opportunity to share his talent and to continue to work in partnership with the department. P. Hurney communicated that they will continue the momentum and do good work. Commissioner DaMate said that the people being assisted are the leaders and kupuna in the area. Material submitted as exhibits A and B for Item J-2.

Chair thanked both representatives for playing an important role in this partnership. She shared that changes are coming in the way of procuring the services of sweat equity providers on each island that would ensure for a more direct relationship on projects moving forward.

ITEM NO: J-3

SUBJECT: Request to Address the Commission – Josephine Tanimoto, Kawaihae Lessee

MOTION/ACTION

None, for information only.

DISCUSSION

Kawaihae lessee Jojo Tanimoto said she received her undivided residential lease in 1986, before infrastructure was available. She asked the commission, then, to allow her to build a home but was turned down. By adhering to the contract in her lease, she succeeded in acquiring a Hawaii County permit, which allowed her to build a storage structure. She was able to have the commission sign off on a liability issue, thus releasing the commission from any burden. When infrastructure was finally completed, she was told that her lease was non-compliant because of a storage structure. She said her children were raised in that storage shed. She is currently requesting to transfer the lot to a daughter so she can build her home. She was notified that the storage structure is a non-compliant structure. A second situation has come up where her brother is unable to transfer his lot to his daughter because she has less than 50% quantum blood to

qualify. She therefore is requesting assistance from the commission to allow the transfer of her brother's lot to her own daughter.

She indicated that the boundaries were realigned after she built her storage structure, due to water flowing between her property and her neighbor's property. The department built a water culvert to address the matter. Since then the water has ceased flowing due to another neighbor's elevated lot. Subsequently, she is requesting that the original boundary to her property be reinstated as the water has since diminished. All that matters is to allow the transfer of her lot to a daughter, and allow the transfer of her brother's lot to her eldest daughter. Due to limited time constraints and further research necessary, the Chair recommended that this matter continue in Hilo, in November. The Chair suggested that J. Tanimoto should have clarification on what the next steps are from the department's standpoint and what the issues are on non-compliance.

ITEM NO: J-5

SUBJECT: Request to Address the Commission –Thalia H. Lehano, Waimea Lessee

MOTION/ACTION

None, for information only.

DISCUSSION

Thalia Lehano asked how long (length of time) the process is to become a lessee, as her mother passed away last June, and she only recently received her mother's lease in August. She asked for an explanation on why it took this length of time to complete the successorship. She said she continually checked in with staff on the progress of her successorship. She said that staff in Kapolei told her four (4) to six (6) months, while staff on Hawaii Island said six (6) to eight (8) months. She is concerned whether the next successor will experience the same problems as she did. She repeated her request to find resolution to becoming a successor to a lease. The Chair expressed that the department has lost critical staffing and effort is being made to fill those positions that provide these kinds of services to lessees. T. Lehano displayed annoyance that staff did not return her calls. Material was submitted as exhibit A for Item J-5.

ITEM NO. J-6

SUBJECT: Request to Address the Commission – Geoff Walker

MOTION/ACTION

Geoff Walker was amenable to having this matter deferred until November, when the commission convenes its regular monthly meeting in Hilo.

ADJOURNMENT 4:28 p.m.

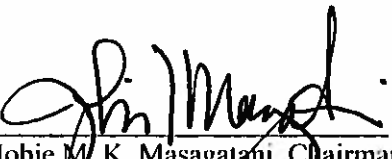
ANNOUNCEMENTS AND ADJOURNMENT

NEXT MEETING Waiohuli-Keokea, Kula, Maui

ANNOUNCEMENTS The next community meeting will be held in Waiohuli-Keokea, on Maui, October 28, 2013.

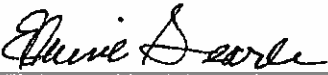
ADJOURNMENT 4:28 p.m.

Respectfully submitted:



Jobie M. K. Masagatani, Chairman
Hawaiian Homes Commission

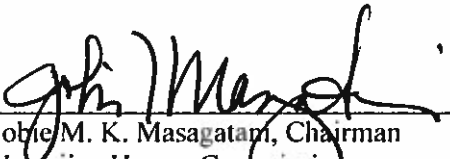
Prepared by:



Elaine G. Searle, Secretary
Hawaiian Homes Commission

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

February 18, 2015



Jobie M. K. Masagatani, Chairman
Hawaiian Homes Commission