

HAWAIIAN HOMES COMMISSION
Minutes of August 19 and 20, 2013
Meeting Held in Wailuku, Hawaii

Pursuant to proper call, the 642nd Regular Meeting of the Hawaiian Homes Commission was held on August 19, 2013, at the Paukukalo Community Center, 657 Kaunualii Street, Wailuku, Hawaii, beginning at 9:30 a.m.

PRESENT Jobie M. K. Masagatani, Chairman
Leimana DaMate, Commissioner, West Hawaii
Gene Ross K. Davis, Commissioner, Molokai
J. Kama Hopkins, Commissioner, Oahu
Wallace A. Ishibashi, Commissioner, East Hawaii (ar: 10:10)
Michael P. Kahikina, Commissioner, Oahu
Patsy W. Sheehan, Commissioner, Kauai (ar: 10:55)
Renwick V. I. Tassill, Commissioner, Oahu

COUNSEL Craig Y. Iha, Deputy Attorney General

STAFF Darrell Young, Deputy to the Chairman
Mona Kapaku, District Branch Manager, Maui District Office Supervisor
Puni Chee, Manager, Information and Community Relations Office
Linda Chinn, Administrator, Land Management Division
Carolyn Darr, Land Agent, Land Management Division
Francis Apoliona, Compliance Officer
John Peiper, Enforcement Officer
Sandy Pfund, Administrator, Land Development Division
Darrell Yagodich, Administrator, Planning Office
Dean Oshiro, Acting Administrator, Homestead Services Division
Rodney Lau, Administrative Services Officer
Norman Sakamoto, Land Development Specialist, Office of the Chair
Stewart Matsumoto, Community Development Manager, Land Development
Division
Kaleo Manuel, Planner, Planning Office
Julie Cachola, Planner, Planning Office
Nancy McPherson, Planner, Planning Office
Elaine Searle Secretary to the Commission

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

A - WORKSHOP PRESENTATIONS

ITEM NO: A-1

SUBJECT: Department of Hawaiian Home Lands Development Budget FY2014

Administrative Services Officer, Rodney Lau, noted that the HHC approved an interim budget in June FY 2014 and today's amended budget completes the 2014 budget. The budget proposal to the Hawaiian Homes Commission totaled \$77 million, funded through the Hawaiian Home Lands Trust Fund and other federal and state resources, including the Native American Housing and Self-Determination Act (NAHASDA), and the U.S. Department of Agriculture (USDA), and appropriations from the Legislature.

There are two major projects earmarked for FY2014: East Kapolei IIB and Keokea-Waiohuli. S. Pfund stated that the Land Development Division's (LDD) 2014 budget is for \$48.3 million; 30% for existing homesteads and 70% for new homestead development. In a power point presentation, S. Pfund described some of the current land projects that LDD is working on:

Kanehili-East Kapolei, East Kapolei II, and Kakaina Subdivision in Waimanalo. There are approximately 403 units in Kanehili, and approximately 100 more to construct. In order to complete the homes in Kanehili, a sound and safety wall needs to be constructed along the (North-South Road) Kualakai Parkway. Above the KROC Center site, Special Olympics plans to build its offices and recreational fields. Above the Special Olympics site is East Kapolei Increment IIC, consisting of a 130-lot subdivision with Road E under construction next to Increment IIC. Once the road is completed, Increment IIB will have access to 160 additional lots for this fiscal year. Increment IIA is a third increment to be developed. The East-West Road connects to other developments such as Hoopili, a private construction. Park sites, a middle school, and an elementary school are planned for this area.

Kakaina Subdivision in Waimanalo has 45 homes under construction. A survey was completed by the Office of the Chair and homestead preference was for a turn-key house lot. S. Pfund noted that the intent is to have a mixture of three types of home development; turnkey, self-help, and owner-builder type homes.

Keokea-Waiohuli, Phase 1, Maui Scattered Lots, Lower Kula Water, and Molokai Water Improvements. There are three sections in Kula: Kula Residential Lots, Keokea-Waiohuli and Keokea Farm Lots. There were approximately 300 Undivided Interest (UI) awards issued for the Keokea-Waiohuli area. The focus is to meet the UI award commitment for house and homestead opportunity. In this upper Kula region, one of the main concerns is the high cost of developing the steep terrain. The department's budget includes funding for drainage improvements. S. Pfund noted that some planned lots were eliminated due to the threat of the 100-year flood situation. Residents in this area prefer vacant lot awards, to allow them the opportunity to build their own homes. In order to continue with the Keokea development, a lower Kula Water-Bypass Line was required to be built by the Maui County. An EIS (Environmental Impact Statement) was completed recently and construction will begin at a cost of \$1.4 million for the

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Water-Bypass Line. On the island of Molokai there is a USDA RD (U.S. Department of Agriculture Rural Development) application for major improvements to the water system servicing the homestead residences in this area. In the meantime, a fiberglass water tank needs to be replaced immediately, expressed S. Pfund.

On the island of Hawaii there are projects earmarked for the Makuu Offsite Water System, Villages of Lai Opua 4, Kawaihae Water System, Lalamilo Development Phase 2A, and Kau Water System. The Makuu design project is completed and a loan grant from USDA RD was awarded. Additional funding is needed for this \$10 million project to prepare for the production well. It will provide water to the high service area and serves as one of the top priority projects for the Makuu region. Lots are currently without water. Lalamilo Phase 1 West and East is the Fredco project that was completed earlier. Department of Transportation (DOT) has the road barricaded. Until the department creates a channelized intersection into the subdivision, it will remain closed. This road project is close to construction. The master plan for Lalamilo is for a 400-lot buildout to incorporate Lalamilo Phase 1 and Phase 2. Eighty-three lots are under construction and mass grading is currently in progress. Construction will be completed in the second quarter of 2014.

On Kauai Island, there are two ongoing projects: Piilani Mai Ke Kai and Anahola Farm Lots. There is a water tank that services the farm lots in Anahola and repairs to the tank are being budgeted for this year. Piilani Mai Ke Kai Phase 2 is under construction for 51 lots which began in June 2013. Material submitted is made a part of these minutes as Exhibit A for Item A-1.

RECESS 10:10 a.m.

The meeting was recessed to welcome newly appointed Commissioner Wallace A. Ishibashi, representing East Hawaii Island. After a brief Oath of Office ceremony, the meeting was reconvened.

RECONVENE 10:15 a.m.

A-1 (cont.)

Commissioner Hopkins queried as to why the department continues to build homes, though money is tight and filling these homes becomes a challenge. S. Pfund clarified that self-help programs are being utilized in this year's budget, to offer additional affordable homes. Some projects received funding under the USDA RD (U.S. Department of Agriculture, Rural Development), and availability of these funds help to leverage the department's Trust Fund as the department continues to move forward. Bringing infrastructure to a raw piece of land is a tremendous effort, and Kapolei is an example of this. In other situations, some homesteaders prefer a particular area, but due to heightened costs, the department's budget may not afford building lots there. In addition, working with homesteaders to qualify is essential in discerning what the issues are, added S. Pfund.

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In the meantime, several land owners plan to meet with the U.S. Department of Fish and Wildlife Services (FWS), to entertain discussion on the critical habitat situation of native plants endemic to West Hawaii, Island of Hawaii. The protection of these plants could potentially limit the number of homesteads projected in the area, explained S. Pfund.

The methodology for Regional Plans and how they relate to preferences for homesteading - The methodology is to include beneficiaries in the discussion, and address where they prefer to reside, and to ensure that they qualify, said S. Pfund. The Commission then determines whether the area is feasible for homesteading opportunities. When a master infrastructure plan for Kapolei was prepared, cost-sharing included the East-West Road with developers of the Hoopili Subdivision and sewer sharing costs with a low-density apartment project developed by HHFDC (Hawaii Housing Finance and Development Corporation).

Planning, designing, and construction of a project take a minimum of six years to process, noted Chair. Other than water assessments, this year's budget had limited planning money for new projects. Commissioner Hopkins inquired as to why there is lack of a permanent policy. D. Yagodich pointed out that DHHL is land rich, and depends on other resources to develop its own projects. D. Yagodich added that the Island Plans and consultations are subject to the Commission's decision which the department is looking at rules to aid in implementation.

The Chair recommended that the \$1 million planning funds allocated for Papakolea, in the current fiscal year, be reflected as a line item in the Development Budget.

RECESS: 10:55 a.m.

The meeting was recessed to welcome newly appointed Commissioner Patricia W. Sheehan, representing Kauai Island. After a brief Oath of Office ceremony, the meeting was reconvened.

RECONVENE 11:12 a.m.

ITEM NO: A-2
SUBJECT: Update on Oahu Island Plan

Planner Nancy McPherson presented a power point of the Oahu Island Plan. A draft plan will be prepared including today's comments that will be reviewed at the September meeting. In addition, minor changes will be made to the agricultural program plan which will be featured at the next month's regular meeting. With the lack of pastoral lands and limited agriculture lands on Oahu, the application's waitlist is high. The Planning Office proceeded to address creative ways to address higher density living on Oahu. Handouts of the Land Use Plans, Land Use Designation of Oahu Island Plan, a copy of the power point, Executive Summary of the Applicant Survey, Oahu Applicant Beneficiary Study for the Oahu Plan, and a Preference Survey are made a part of these minutes as Exhibits A thru E for Item A-2. The Commission will have an opportunity to review these handouts as a complete draft will be forwarded to each member.

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The Land Use categories were approved by the commission approximately ten years ago, noted D. Yagodich, and with the completion of all of the island plans, statewide, the commission may now decide to amend any one of them moving forward. The energy needs have changed over the last several years, which at one time were non-existent.

PBR Representative Scott Abrego summarized an SMS Executive Section report of a survey of applicants, on Oahu, who prefer living in the downtown area. Alternative housing considered single, Kauhale (multi-dwelling unit type living), kupuna housing, multiplex rentals, and dorm complex with a preference for single-family living while the kupuna housing as the least preferred choice.

Based on 8,154 acres of homestead lands on Oahu, there are 4,289 lessees, 4,228 residential homestead lots, and 61 agricultural lots. D. Yagodich said that Oahu has over 10,000 residential applicants and over 3,000 agricultural applicants. Exhibits A thru E are included as a part of these minutes for Item A-2.

AMENDED AGENDA

Moved by Commissioner Hopkins, seconded by Commissioner Artates, to convene in executive session to address executive session item No. 1, prior to addressing Item A-3. Motion carried unanimously.

RECESS 12:55 p.m.

EXECUTIVE SESSION

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

1. Background and Status Update on Hawaii DeBartolo, LLC Project, Ka Makana Alii Center

RECONVENE 2:25 p.m.

MOTION/ACTION

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

ITEM NO: A-3

SUBJECT: Evaluation Criteria and Process for Land Acquisitions

Planning Administrator Darrell Yagodich presented a workshop on land acquisitions, its criteria and process. According to D. Yagodich, the Hawaiian Homes Commission Act (Act) allows the department to acquire land and exchange land of equal value, public or private, with exchanges addressed to the Secretary of the Interior for approval. The law also provides funding to acquire property to be included as part of the Hawaiian home lands "available lands." D. Yagodich said that the Department of Hawaiian Home Lands (DHHL) has the authority to condemn lands for water purposes, which is stated in the Act. D. Yagodich also pointed out that the department is allowed to receive donations or gifts of land, which may be accepted with conditions, and may or may not be a part of available lands; they could be sold and used for other purposes, as these lands do not carry the same requirements as other Hawaiian home lands.

Another criterion is that the acquisition meets program objectives, which are Homesteading, Revenue Producing, Rehabilitation, and Land Acquisitions which need to be tied to the objectives of the program. In a land exchange method, it would be helpful to have an agreement between the parties on the method of evaluation, thus alleviating some problems that may arise. The criterion needs to reflect beneficiary preferences, as some beneficiaries may prefer one area over another. Development issues for a property also need to be taken into consideration such as environmental issues, the land uses around the property, and growth of the area, noted D. Yagodich. Infrastructure and capacity building also play a major role in determining whether an area is suitable. Public facilities such as schools and parks, also are major determinants. In revenue producing lands, the department would determine if the property has a market that is not overdeveloped and whether it will become successful.

Once due diligence is completed, recommendations are made to the commission, then taken to impacted communities through beneficiary consultations, said D. Yagodich. A Land Acquisition Report is prepared from community comments and then the commission reviews the information and makes a decision to proceed or not. Whatever the land conveyances, the department would prepare the documents and submit it to the Department of Interior. These documents include: appraisal reports, surveys, and Land Exchange Fees, as well as due diligence reports. The Secretary of Interior then has 120 days to approve or disapprove the land exchange. The final action is recorded in the Bureau of Conveyances. The Hawaii State Tax Department is also notified of the change in ownership. The purchase is then complete, noted D. Yagodich. Exhibit A attached as a part of these minutes for Item A-3.

B – PUBLIC TESTIMONY ON AGENDIZED ITEMS

Item No. B-1, Carol Lee Kamekona, Waiohuli Undivided Interest Lessees Association,
Re: Item No. A-1, C. Kamekona read verbatim, her testimony, on the \$6 million budget item to mitigate flooding at the Waiohuli Undivided Interest Homestead (WUIH) that is justified to assist their homestead. The funding will impact 320 native Hawaiians who have waited a long time to build on their lands. She supported the funding required for this endeavor. Her testimony was submitted as Exhibit "A" for Item B-1.

Item No. B-2, Walter Kamanu, Beneficiary, Re: Item F-1, W. Kamanu said there is a spiritual battle going on within him, speaking for his moopuna. He wanted to share the word “kuleana” title, jurisdiction, claim, ownership, etc., “hanaino” to mistreat, cruel, money, hewa (bad), mistake, fault, wicked, etc., and “pilikia” trouble of any kind, tragedy, nuisance, money. There were many developments happening on Maui. W. Kamanu named several people who advocated for development on the aina who met various misfortunes. He heard the voices of Kahikinui calling to him to return to Kahikinui. He thanked the commission for allowing him to share his manao on the matter.

Item No. B-3, Blossom Feiteira, Association for Hawaiian Homestead Lands, Re: A-1, B. Feiteira inquired whether the improvement of residential lots will be for turnkey, vacant lots, or a combination of both. According to Chair, the decision has yet to be determined and will be based on a project-by-project analysis. B. Feiteira suggested to retrofitting existing buildings with PV’s, in order to save money. **Re: Item A-2,** B. Feiteira expressed that the “Kauhale” living concept of kupuna living with their keiki restores the spiritual needs of a family, while instilling good morals and values. **Re: Item D-5,** B. Feiteira said that some people are at risk with their loan amount being no more than 50% of the FHA county maximum. Some of the lessees, although making payments on time, still experience hardships and could use the help of lower interest rates. **Re: Item F-1,** B. Feiteira inquired what potential renewable energy projects are in store for Pulehunui and Honokowai. She recommended that Kahikinui Association, an established homestead community, be allowed to actively participate in the development of these types of ventures on Maui. **Re: Item C-1,** B. Feiteira noted that although the DCCR’s (Declaration of Conditions, Covenants, and Restrictions) are delegated to the communities, there is no authority to act on non-payment of dues. In other words, the community associations may request for dues payment, but they have no enforcement authority to carry it out. B. Feiteira deems the department should take action on behalf of the associations that suffer from this challenge to collect, and for those that continue to pay, who carry the burden of maintaining their community.

Item B-4, Daniel Ornellas, Waichu Kou 3, D. Ornellas will forgo his testimony until tomorrow’s agenda.

ITEM NO: C-1

SUBJECT: For Information Only – Background and Status Report on Declaration of Covenants, Conditions and Restrictions and Kanawai Issues

MOTION/ACTION

Moved by Commissioner Hopkins, and seconded by Commissioner Kahikina to defer Item C-1 and “F” Agenda Items to the following day’s agenda, after the executive session. Motion carried unanimously.

ITEM NO: D-1
SUBJECT: HSD Status Reports

Exhibit:

- A - Homestead Lease and Application Totals and Monthly Activity Reports
- B - Delinquency Report

MOTION/ACTION

None, for information only.

ITEM NO: D-2
SUBJECT: Ratification of Loan Approvals (see exhibit)

MOTION

Moved by Commissioner Sheehan, and seconded by Commissioner Ishibashi.

DISCUSSION

Deputy AG Iha recommended adjourning to executive session, to discuss the legal issues relating to Item No. D-2.

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Davis, to adjourn to executive session. Motion carried unanimously.

RECESS 3:21 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 Kahikina, seconded by Commissioner Ishibashi, to reconvene to regular session. Motion carried unanimously.

RECONVENE 3:38 p.m.

ITEM NO: D-2 (cont.)

SUBJECT: Ratification of Loan Approvals (see exhibit)

DISCUSSION

Acting Homestead Services Administrator Dean Oshiro addressed “typos” on page 2 of Item D-2. John Mahelona’s loan should read, John Mahelona and **Nalani Mahelona**. In Addition, Timothy Kanehe’s dwelling is being constructed by the **Maui** Habitat for Humanity.

ACTION

Motion carried unanimously.

ITEM NO: D-3

SUBJECT: Approval of Consent to Mortgage (see exhibit)

MOTION/ACTION

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

ITEM NO: D-5

SUBJECT: DHHL Loans Refinancing Product

MOTION

Moved by Commissioner Kahikina, and seconded by Commissioner Hopkins.

DISCUSSION

Acting Homestead Services Administrator D. Oshiro communicated that there was no mechanism in place to assist lessees paying higher interest rates, as commercial market rates were comparatively lower. Since then, a proposal was devised similar to a FHA (Federal Housing Administration) financing rate to assist lessees with refinancing. Lessees were

subsequently given an opportunity to lower their interest rate, if they maintained consistent payment over a certain period of time with approval by the commission.

ACTION

Motion carried unanimously

ITEM NO: D-6

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

MOTION/ACTION

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

ITEM NO: D-7

SUBJECT: Cancellation of Deceased Applicant from Waiting List – Public Notice 2003, 2007, 2009 (see exhibit)

MOTION/ACTION

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

ITEM NO: D-8

SUBJECT: Commission Designation of Successors to Applications Rights – Public Notice 2009, 2012 (see exhibit)

MOTION/ACTION

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

ITEM NO: D-9

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

MOTION/ACTION

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

ITEM NO: D-10

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

MOTION

Moved by Commissioner Hopkins, and seconded by Commissioner Kahikina.

AMENDED MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Kahikina, to defer this item, until a particular matter has been cleared. Motion carried unanimously.

ITEM NO: D-11

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

MOTION/ACTION

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

ITEM NO: D-12

SUBJECT: Commission Designation of Successor – Joseph Kekahuna, Lease No. 7262, Nanakuli, Oahu

MOTION/ACTION

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

ITEM NO: D-13

SUBJECT: Approval of Designation of Successors Leasehold Interest – George E. H. Helekahi, Lease No. 4654, Waianae, Oahu

MOTION/ACTION

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

ITEM NO: D-14

SUBJECT: Request for Contested Case Hearing – Elizabeth Sanborn, Department of Hawaiian Home Lands Residential Lot Lease No. 1571, Lot No. 115A, Keaukaha, Hawaii

RECOMMENDATION

Acting Administrator D. Oshiro noted that the department's recommendation is to deny the request for a contested case hearing. The department will continue its investigation on whether there have been lease violations or unlawful situations regarding this matter.

MOTION

Moved by Commissioner Kahikina, and seconded by Commissioner Hopkins.

DISCUSSION

After an initial investigation, it was determined that there was no lease violation to substantiate a request for a hearing. It was revealed that Ms. Sanborn is actually related to her neighbor, Ms. Holbrook, in Keaukaha, and they have had long-standing feuds, expressed Acting Administrator D. Oshiro. The dispute stems from the subdivision of a piece of property. Other relatives, who are neighbors of Ms. Holbrook, have filed complaints against her as well. The department intends to pursue further investigation on the matter.

ACTION

Motion carried unanimously.

AMENDED AGENDA

Moved by Commissioner Hopkins, seconded by Commissioner Kahikina, to convene with Items J-1, J-2, and J-3. Motion carried unanimously.

ITEM NO: J-1

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

MOTION/ACTION

None, for Information Only.

ITEM NO: J-1

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

MOTION/ACTION

None, for Information Only.

Sandwich Isle Communications (SIC) CEO Albert Hee and SIC Attorney Janeen Olds assured the commission that there are no financial repercussions to DHHL regarding unflattering articles that appeared in the news media, regarding its statewide communication services to Hawaiian home lands. A. Hee stated that the Federal Communications Commission (FCC) has decided to change its program, resulting in a problematic situation for SIC. A. Hee assured the commission that communication services will be maintained and that there is no ongoing illegal activity. He reiterated that the FCC has decided to change the rules without any changes to the underlying statute, and Congress has been unable to garner ample support to clarify with FCC what the statute represents. SIC is limited to certain areas of communication by the FCC. A. Hee noted that wireless and broadband services are being promoted through affiliate companies.

ITEM NO: J-2

SUBJECT: Request to Address Commission - Waiehu Kou Phase III Community Association

MOTION/ACTION

None, for information only.

Waiehu Kou Phase 3 Association Inc. (WK3) President, Roy Oliveira, and Vice President, Daniel Ornellas, appeared before the commission, to address several areas of concern, They have received no feedback regarding a Native American Housing and Self-Determination Act (NAHASDA) grant and a HACBED (Hawaii Alliance for Community-Based Economic Development) assessment workshop. The Chair noted that the information on a NAHASDA grant, which was denied, was submitted in 2012, and brought before the commission in 2013. Chair will follow up with the Planning Office on the HACBED workshop. There are licensed, unemployed contractors in its association, who would welcome work in its own backyard, expressed D. Ornellas. Administrator Sandra Pfund communicated that invitation for contract bids are posted on the DHHL website and the State Procurement Office's websites. It would be prudent to review these websites periodically. The Chair said she will discuss the matter with ICRO Administrator Puni Chee on how the department can expand information to homestead communities.

D. Ornellas discussed enlarging street signage and house numbering for Kaulana Napua Circle and Kaulana Napua Place, which has created confusion for visitors and emergency vehicles alike

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in locating these streets. S. Pfund noted that the roads are dedicated and maintained by Maui County and would likely require approval by the homeowners to change anything. Once approved, the County of Maui may be petitioned for changes.

As of June 30, 2013, there are 27 homesteads that are delinquent with association dues, noted D. Ornellas. This default represents \$37,000 for these families and addressing the issue continues to be problematic. He pointed out that the department is responsible for five vacant lots of which WK3 has lost \$6,936 in revenue. Chair acknowledged the need for the department to be prudent in meeting these obligations. She recommended WK3 to address a letter to her requesting payment. Chair requested that the information on the 27-plus delinquent households be submitted to the department, to cross-check against the cases that are delinquent.

The DCCR's (Declaration of Covenants, Conditions, and Restrictions) are necessary to improve the lives of the Waiehu Kou communities, said R. Oliveira, and he will continue to utilize its system. Chair recognized the dilemma each association faces, and stated that in order to be successful, the department needs to support its enforcement. The commission concurs on the importance of this issue and appreciates WK3 for pointing out the specific concerns.

ITEM NO: J-3

SUBJECT: Request to Address Commission – Tasha Kama, Maui Beneficiary

Tasha Kama conveyed that she is a beneficiary of a 2-acre Keokea farm lot on Maui. Her husband, David Kama, a claimant, in the Kalima vs. Abercrombie Case, applied in 1972, and has yet to receive a homestead lot in Waimanalo. She is requesting guidelines to proceed in applying for a DHHL loan, as she was asked to provide a deposit to her contractor for a home she is planning to build in Keokea. She considers it her right to receive a loan from the department, if she is unable to acquire it elsewhere. Her request is to satisfy a loan of \$182,290 to her contractor. Material submitted to be made a part of these minutes as Exhibit A for Item J-2.

D. Oshiro responded that the lessee has the opportunity to apply to the department for a loan, yet the auditor's report was very critical of the department's handling of loans issued to unqualified people. D. Oshiro offered to consult with Loans Agent Jeremy Caneso-Bantolino on the subject matter. Ms. Kama submitted material, to be made a part of these minutes as Exhibit "A" for Item J-2.

ITEM NO: D-10 (cont.)

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

DISCUSSION

According to D. Oshiro, the simultaneous transaction listed on Page 4, Items No. 8 and No. 9 was confirmed that the second transfer between Faye Ilima Kamai Visaya and Kaili Kea Murbach is a mother-to-daughter transfer.

ACTION

Motion carried unanimously.

ITEM NO: E-1

SUBJECT: Approval of Various Lease Award (see exhibit)

MOTION/ACTION

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

ITEM NO: E-2

SUBJECT: Rescission of Homestead Lease Awards and Reinstatement of Applications
- Waimanalo Undivided Interest (see exhibit)

MOTION/ACTION

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

ITEM NO: E-3

SUBJECT: Rescission of Homestead Lease Awards and Reinstatement of Applications
- Waiohuli Undivided Interest (see exhibit)

MOTION/ACTION

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

MOTION/ACTION

Moved by Commissioner Hopkins, and seconded by Commissioner Kahikina to defer Items C-1, Items F-1 to F-3 and Item H-1 until tomorrow. Motion carried unanimously.

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Kahikina, to recess the meeting until tomorrow at 12:30 p.m.

RECESS 4:55 p.m.

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RECONVENE

The 642nd Regular Meeting of the Hawaiian Homes Commission was reconvened on August 20, 2013 at the Paukukalo Community Center, 657 Kaunualii Street, Wailuku, Maui at 12:30 p.m.

PRESENT Jobie M. K. Masagatani, Chairman
Leimana DaMate, Commissioner, West Hawaii
Gene Ross K. Davis, Commissioner, Molokai
J. Kama Hopkins, Commissioner, Oahu (ar: 12:40)
Wallace A. Ishibashi, Commissioner, East Hawaii
Patricia W. Sheehan, Commissioner, Kauai
Renwick V. I. Tassill, Commissioner, Oahu

EXCUSED Michael P. Kahikina, Commissioner, Oahu

COUNSEL Craig Y. Iha, Deputy Attorney General
Daniel A. Morris, Deputy Attorney General

STAFF Darrell Young, Deputy to the Chairman
Mona Kapaku, District Branch Manager, Maui District Office Supervisor
Linda Chinn, Administrator, Land Management Division
Carolyn Darr, Land Agent, Land Management Division
Francis Apoliona, Compliance Officer
John Peiper, Enforcement Officer
Sandy Pfund, Administrator, Land Development Division
Rodney Lau, Administrative Services Officer
Elaine Searle Secretary to the Commission

AMENDED AGENDA

Moved by Commissioner Sheehan, seconded by Commissioner DaMate, to amend the agenda and convene with Items H-1, F-1 through F-3, and continue with Item C-1. Motion carried unanimously.

MOTION/ACTION

Moved by Commissioner Tassill, seconded by Commissioner DaMate, to adjourn to executive session, to discuss Executive Session Item No. 2. Motion carried unanimously.

RECESS 12:32 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 following matter.

- 2. Honokaia Ohana, et al., vs Masagatani, et al., Civil No. 09-1-1615-07

MOTION/ACTION

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

RECONVENE 12:54 p.m.

AMENDED AGENDA

Moved by Commissioner Hopkins, seconded by Commissioner Sheehan, to amend the agenda, and permit the commission to reauthorize the settlement agreement, subject to the terms and conditions already approved in the Honokaia Settlement Agreement.

DISCUSSION

This amendment is a non-substantive amendment to the agenda, which affects only one member, and does not alter the terms and conditions of the settlement, noted the Chair. Deputy AG Dan Morris affirmed that the commission previously authorized the settlement of the Honokaia litigation. Today's action is to authorize a settlement with one particular party removed as a signatory to the agreement because the party wishes to be excluded from the settlement agreement and has been dismissed from litigation. A roll call vote was taken.

AE (7)

AOLE (0)

EXCUSED (1)

DAMATE SHEEHAN
DAVIS TASSILL
HOPKINS MASAGATANI
ISHIBASHI

KAHIKINA

ACTION ON AMENDED AGENDA

Motion carried unanimously.

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner DaMate, to authorize the Deputy Attorney General to proceed with the closure of this case, subject to the terms and conditions already approved by the Commission. Motion carried unanimously.

B – PUBLIC TESTIMONY ON AGENDIZED ITEMS

B-5, Aimoku Pali – President, Kaohano Kahikinui, Re: Item F-1, A. Pali shared his manao for a potential windmill project in Kahikinui, Maui. He requested that Kahikinui homesteaders be given the opportunity to negotiate directly with the energy contractor, as residents who can relate to the needs of its community. The Chair noted that questions may be directed to Administrator L. Chinn, when the item is brought before the commission.

B-6, Kapalehua Kimokea - a Beneficiary, Re: Item F-1, K. Kimokea supported renewable energy in Kahikinui and offered his assistance to provide panels for the renewable energy project. He added that this will be a big asset in furthering the education of the Ohana and acquiring lighting to the rural areas. He generally works in this region and wants to show support for the Ka Ohano Kahikinui. He thanked the commission for listening. Material submitted to be made a part of these minutes as Exhibit A for Item B-6.

B-7 Brian Aikala, Beneficiary - Re: Item F-1, B. Aikala expressed that a renewable energy company “Vivent” offered homeowners on Maui an opportunity to place photovoltaic panels on their roofs. However, the County of Maui and MECO put a stop to it. He would like to know whether the department could negotiate with both entities, as this involves the Waiehu Kou subdivisions. He deems this as a tremendous benefit to the homesteaders. Commissioner Davis conveyed a similar scenario that happened on Molokai, where once it reached a saturation point, everything came to a standstill. B. Aikala indicated that Hawaiian home lands is capable of putting their (photovoltaic panels) on every home if they wanted to, as it appears that everything now is going in that direction to save energy costs. He deems that a beneficiary has a right to opine his ideas in the matter. He thanked the commission, for allowing him to share his ideas.

ITEM NO: H-1

SUBJECT: Approval of Fiscal Year 2014 Development Budget for the Department of Hawaiian Home Lands

RECOMMENDATION

Administrator Rodney Lau recommended that the commission approve FY 2014 Development

Budget for the Department of Hawaiian Home Lands and authorize the Chairman to shift funding of expenditures between cost elements and funds as warranted, not to exceed the total budget.

MOTION

Moved by Commissioner DaMate and seconded by Commissioner Ishibashi.

AMENDED RECOMMENDATION

Administrator R. Lau recommended amending the action, to increase the Development Budget, by \$1 million, under "Part B Statewide Projects" for the Papakolea Sewer System Improvements, Oahu. The \$1 million figure comes from the General Obligation Bonds which was appropriated in the previous legislative session, explained R. Lau. The Chair pointed out that this would involve the overall budget, and not the Trust Fund budget.

AMENDED MOTION

Moved by Commissioner Tassill, seconded by Commissioner Ishibashi, to increase the Development Budget by \$1 million under "Part B, Existing Projects," for Papakolea Sewer System Improvements, Oahu, under the Leg/Fed Funds.

DISCUSSION

Administrator R. Lau reiterated that funding for this line item would come from the General Obligation Bonds appropriated at the last legislative session and would not affect the Trust Fund budget.

ACTION ON AMENDED MOTION

Motion carried unanimously.

DISCUSSION

Chair conveyed that line item 55, one of two initiatives from the Chairman's Office, reflected a joint, interim construction project with OHA (Office of Hawaiian Affairs), to secure \$1.5 million with 0% interest that developers could utilize to build homes. She explained that when a beneficiary purchases a home, the mortgage funds would be utilized to pay back this interim construction loan. This type of option could save a homeowner anywhere between \$2000 to \$4000. Line Item 54, a Trust Fund Investment item, was set aside to acquire expertise in expanding its Trust Funds. DHHL has the authority to invest monies outside of the State but has never utilized it and that action would necessitate approval by this commission.

Line Item 16 – The department is seeking to allocate funding, to renovate the former Kapuni home on Molokai for a kupuna-assisted care facility. The initial response has been positive and

would require approval from the commission to authorize the program. It was determined that the home was unable to be re-awarded at the highly appraised value.

Commissioner Hopkins inquired about the costlier expenses for the Kakaina Site Construction, Item 7, Part A, New Projects. Land Development Administrator Sandra Pfund explained that the added expenses for the Kakaina project involved redesign delays and road closure issues, as neighbors to the project opposed entry to the DHHL Kakaina project. Commissioner Hopkins also inquired about the critical habitat impact to the Villages of Lai Opuu. The Chair noted that there is some impact with the Villages of Lai Opuu, Villages 1 and 2, and some evidence of exemption by US Fish and Wildlife Service for Villages of Lai Opuu, Village 4. She indicated the designation will be decided later this year.

A study of the water system in Anahola was completed for Part B, Items No. 46 and 47. The \$500,000, for Item 46 is for design and replacement of a new tank, and preliminary engineering and environmental reports; then to USDA RD for funding and reconstruction. Item No. 47 is to repair the current tank.

The slope stabilization and rockfall mitigation efforts in Papakolea will cost \$4 million to repair the slope. There is a placeholder for now until the Hawaii State Legislature provides funding resources for this. Commissioner Hopkins asked if Papakolea lessees were informed of the rock fall mitigation efforts. According to Administrator S. Pfund, notices were sent to alert lessees that site inspections would be conducted on their property. An arborist is also involved, with the saving of the trees. S. Pfund reviewed Part B, Item 49, on the various common areas being maintained by the department on all islands. Commissioner Hopkins requested for an update on the homes affected by the rockfall mitigation efforts in Kalawahine. Due to limited resources, he recommended that a policy be in place to guide how funds are allocated. Commissioner DaMate also agreed with establishing a policy. Commissioner Hopkins said he would participate in reviewing a policy, but is inclined to have the department determine if it is a priority. He recommended incorporating the current practice as its policy. The department currently provides a 6-year financial plan to the legislature, noted the Chair. Having a general guideline should aid the department, noted Commissioner Hopkins.

ACTION ON ORIGINAL MOTION

Motion carried unanimously, as amended.

ITEM NO: F-1

SUBJECT: Status Update, Maui Alternative Energy

MOTION/ACTION

None, informational purposes only.

DISCUSSION

The Public Utilities Commission (PUC) issued a set of five orders that will delay HECO's (Hawaiian Electric Company) Request for Proposal for renewable energy projects on Maui, which involve the undersea cable. Thus, Land Management Administrator Linda Chinn recommended proceeding with a renewable wind and solar project on Maui with National Renewable Energy Lab and DBEDT (Department of Business, Economic Development and Tourism) for wind and solar, at Kahikinui. The 11 (eleven) entities that submitted a letter of interest will be invited to submit their best and final bid, based on certain criteria. According to L. Chinn, MECO (Maui Electric Company) cancelled its request for a 200 MW (megawatt) renewable energy power source on Maui, indicating it was not necessary. As a result, Pulehunui and Honokohau will not be considered for bio-mass energy, for now. The 200 MW undersea cables from Maui to Oahu will be based on the developer's proposal to HECO. Lanai is still being considered as a renewable energy source but it will involve further study. Much of the profit has been taken away from the energy companies, due to the increase of solar energy, and the sooner the department can become involved with the energy business, the better the opportunity for our people to benefit, noted Commissioner Ishibashi. The Chair conveyed her concerns for renewable energy projects that take the energy off island via a cable and questioned whether there will be realistic proposals from potential developers. L. Chinn agreed that the department should continue to move forward with its criteria, for the best deal possible.

ITEM NO: F-2

SUBJECT: Approval to Issue Right-of-Entry (ROE) Permit to Yamada Paint Contracting, Inc., dba GW Construction, Keaukaha, Hawaii

RECOMMENDATION

Administrator L. Chinn recommended approval by the commission to issue a Right-of-Entry (ROE) to Yamada Paint Contracting, Inc., dba GW Construction, to use a portion of Hawaiian home lands at Keaukaha for a temporary, above-ground waterline, to support the Keaukaha Elementary School Cafeteria construction project, subject to conditions listed.

MOTION

Moved by Commissioner DaMate and seconded by Commissioner Hopkins.

AMENDED MOTION/ACTION

Motion by Commissioner Hopkins to amend condition 3a. "The term of the ROE permit can be extended for an additional six (6) year months at the option of ~~the Chairman~~ of the Hawaiian Homes Commission. PERMITTEE must apply for the extension six (6) months prior to expiration of the term and approval shall be subject to the Chairman and the Hawaiian Homes

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Commission's review and evaluation of Permittee's progress, seconded by Commissioner DaMate. Motion carried unanimously.

DISCUSSION

Commissioner Hopkins inquired whether a fee for this type of usage is standard. After further discussion, it was determined that a fee should be charged for the use of department lands. A user fee of \$240 is being imposed, a minimum requirement under the existing program, noted L. Chinn

ACTION

Motion carried unanimously, as amended.

ITEM NO: F-3

SUBJECT: For Information Only – Update on Land Disposition, Haiku Valley, Oahu

MOTION/ACTION

None, for Information Only.

DISCUSSION

Administrator L. Chinn provided an update on Haiku Valley and the land disposition afforded to certain groups. Kai Loa Inc., a charter school, is the only entity that has a long-term use agreement for ten (10) acres. Dispositions were also issued to: City and County of Honolulu, Board of Water Supply, and Koolaupoko Hawaiian Civic Club. A stakeholders' meeting was held in June 2013, which addressed some key issues such as trespassing and vandalism. Another stakeholders' meeting is being planned to continue with further discussions. Enforcement Officer F. Apoliona conveyed that law enforcement training is being conducted there, to maintain a presence, so violators are deterred from entering the premises. However, it appears that violations continue to thrive in spite of these efforts. Commissioner Tassill believes a 24/7 presence would be warranted. L. Chinn suggested that a land exchange would relieve the department of these costly responsibilities. Commissioner Hopkins added that the original owners, Kamehameha Schools (KS), may be amenable to exchanging lands. Chair has been in exploratory discussions with KS, in relation to these efforts. Commissioner Tassill suggested working with OHA (Office of Hawaiian Affairs) on the matter. Commissioner Hopkins noted that beneficiaries have expressed their desire to reside in downtown Honolulu. Perhaps OHA or KS may be inclined to exchange lands with the department. At this point, OHA would be a better entity to partner with through either donated lands or land exchange, added Commissioner Hopkins.

ITEM NO: C-1

SUBJECT: For Information Only – Background and Status Report on Declaration of Covenants, Conditions, and Restrictions and Kanawai Issues

Deputy to the Chair, Darrell Young provided a status report on Kanawai matters. He introduced Waiehu Kou III (WK3) president, Roy Oliveira who indicated that WK3 wrote to the Chairman, seeking financial redress and reimbursement for dues owed to the association by lessees delinquent in monthly payments. WK3 is seeking contested case proceedings towards the advancement of these funds. This type of process would be similar to the normal foreclosure processing outside of the department, stated D. Young. As of October 2012, delinquent dues were at \$34,954.27, based on a \$30 per month rate, said R. Oliveira. Twenty-seven (27) lessees are in default, 90 days or more, that make up the bulk of the delinquency. DHHL is also responsible for seven (7) other parcels, through either lease cancellations or forfeitures. Currently, the amount due is \$6,000. Because of these concerns, WK3 wishes to defer some of the services it now provides to lessees. Similar concerns have been expressed by other planned communities, such as Princess Kahanu Estates and Villages of Lai Opuu, added R. Oliveira.

This briefing is to inform the commission of the complexity of DCCR's (Declaration of Covenants, Conditions, and Restrictions) governance model, as it relates to DHHL, to identify issues and concerns, and to develop a plan of action for approval by the Commission. Deputy Young identified three characteristics of a planned community association:

- 1) membership is mandatory and/or automatic;
- 2) certain documents bind all owners, governed by the community association; and;
- 3) mandatory lien-based assessments charged to each owner.

These associations then provide services for the owners and develop a sense of community. Chair noted that one of the issues, with a multi-family condominium project, is the issue of payment, on common-area expenses. If payments are not made, a roof does not get fixed, or the elevator will stop working, etc.

Governing documents create a binding relationship between the owner and its association, establishing a mechanism of funding, and sets forth rules and standards that people need to abide by. All community associations have these fees that owners must adhere to - paying monthly, quarterly, or annually, similar to an Ahupuaa system. When you lived in that Ahupuaa system, you provided something to that community. Homestead associations are petitioning the department to have the same kinds of benefits while residing on DHHL lands.

Eleven (11) of the fourteen (14) planned homestead communities came with DCCR's, established by other parties, when lands were transferred to DHHL: Princess Kahanu Estates, Maluohai, Kaupea, Kanehili, Lei Alii, Villages of Lai Opuu, Waiehu Kou 2, 3, and 4, Kaupuni, and Lalamilo. DHHL established DCCR's for three undivided interest parcels: Kumuhau, Piilani Mai Ke Kai, and Kalawahine Streamside (multi-family). In January 2008, a proposed solution was presented to the commission on the issue of enforcement of DCCR's and the collection of dues referred to as "Kanawai Enforcement Procedures." The department

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recognizes its responsibilities to support these communities, noted Deputy Young. He intends to form a team of staff from Homestead Services Division (HSD), Land Development Division (LDD), and Planning Office (PO), to include Deputy AG's review of existing DCCR's for each of the fourteen (14) communities, to address the issues and concerns, and then, to develop a plan of action within the next 60 to 90 days. The Chair suggested working with associations that have leadership, to assess their immediate issues and work from there.

Commissioner DaMate stated that this is the closest to a resolution for Villages of Lai Opuia residents, and she applauds the effort to tackle this serious issue. Commissioner Hopkins expressed concern over the unpaid lots coming back to the department. He recalled that some lots were in the Villages of Lai Opuia development and queried as to how this could be corrected. Deputy Young noted that it would revert back to the department, and the department would pay up to a point where the home would be reissued. It also serves the department well to understand that type of relationship to get those homes out as quickly as possible, to generate more revenue in mortgages, and to keep the department from being pegged, with association dues. One of the solutions may be to establish a board in Honolulu, where decisions are made. Benchmarks will need to be set, by securing a continuity of board members, who will continue to manage its monies, dues, assessments, and obligations in running its associations. Deputy Young entertained the idea of visiting homestead communities on a regular basis to assess each particular situation. Chair acknowledged the accomplishments of Deputy Young toward resolving these issues. WK3 President Roy Oliveira requested to be part of the in-house meetings.

MOTION/ACTION

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

ADJOURNMENT 2:38 p.m.


ANNOUNCEMENTS AND ADJOURNMENT

NEXT MEETING September 23, 2013, Kailua-Kona, Hawaii

ANNOUNCEMENTS The next community meeting will be held on September 23, 2013,
at West Hawaii Civic Center.

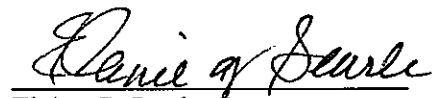
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Respectfully submitted:



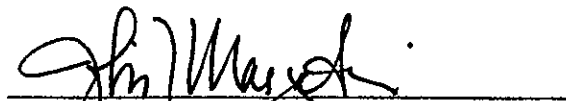
Jobie M. K. Masagatani, Chairman
Hawaiian Homes Commission

Prepared by:



Elaine G. Searle, Secretary
Hawaiian Homes Commission

APPROVED BY:
The Hawaiian Homes Commission
At Its Regular Monthly Meeting Of
October 28, 2014



Jobie M. K. Masagatani, Chairman
Hawaiian Home Commission