

**HAWAIIAN HOMES COMMISSION**  
Minutes of April 17, 2017  
Kulana Oiwi Multi-Purpose Conference Room  
Kalama`ula, Moloka`i, Hawai`i

Pursuant to proper call, the 686th Regular Meeting of the Hawaiian Homes Commission was held at Kulana Oiwi, 600 Maunaloa Highway, Kalama`ula, Moloka`i, Hawai`i, beginning at 9:30 a.m.

**PRESENT** Jobie M.K. Masagatani, Chairman  
Doreen N. Canto, Maui Commissioner  
Kathleen P. Chin, Kaua`i Commissioner  
Gene Ross K. Davis, Moloka`i Commissioner  
David B. Ka`apu, West Hawai`i Commissioner  
William K. Richardson, O`ahu Commissioner

**EXCUSED** Wallace A. Ishibashi, East Hawai`i Commissioner  
Michael P. Kahikina, O`ahu Commissioner

**COUNSEL** Craig Iha, Deputy Attorney General

**STAFF** William Aila Jr., Deputy to the Chairman, Office of the Chair  
Paula Aila, ICRO Manager  
Kahana Albinio, Acting Land Management Division Administrator  
Dean Oshiro, Acting Homestead Services Division Administrator  
Kaleo Manuel, Acting Planning Office Manager  
Norman Sakamoto, Acting Land Development Division Administrator  
Leah Burrows-Nuuanu, Secretary to the Commission  
Halealoha Ayau, Water Specialist  
Bryan Cheplic, ICRO  
Debra Aliviado, Customer Service Manager  
Allen Yanos, Property Development Agent  
Gigi Cairel, Grant Specialist  
Susie Richey, Secretary

**ORDER OF BUSINESS**

**CALL TO ORDER**

Chair Masagatani called the meeting to order at 9:25 a.m. Seven (7) members were present at roll call. Commissioners Ishibashi and Kahikina were excused.

**APPROVAL OF AGENDA**

**MOTION/ACTION**

Moved by Commissioner Kahikina, seconded by Commissioner Namu`o, to approve the agenda. Motion carried unanimously.

**APPROVAL OF MINUTES**

Approval of Minutes deferred to next month.

## **PUBLIC TESTIMONY ON AGENDIZED ITEMS**

### **ITEM A-1 Sam Makaiwi, Jr. Re: Item C-4 DLNR**

Godfrey Akaka, Jr., retired Fire Captain, opposed Item C-4. Sam Makaiwi Jr., Kili Mawae, and Joseph Mawae Sr. also opposed Item C-4. They have been lifelong stewards of Mo`omomi. Yama Kaholoaa stated that homesteaders utilize Mo`omomi as a subsistence fishing area, and want to exercise their gathering rights. Native Hawaiians need to teach their children and grandchildren how to fish and to malama.

### **ITEM A-2 Beverly Pauole and Judy Caparida Re: Moloka`i Hawaiian Homestead Kupuna Advisory**

J. Caparida testified that the mission statement for their group is to provide wisdom, education, and knowledge; to stand up for righteousness, for the present, the future and the betterment of the Hawaiian people through Prince Kuhio's legacy. Her daughter signed up when she was 18 years old, she is now 53 years old and still waiting for her homestead. B. Pauole is a retired State employee and stated concerns about kupuna's getting their paperwork in order before passing on. They are still waiting for a response from the Department regarding their October 2016 letter of request for kupuna housing.

## **ITEMS FOR DECISION MAKING**

### **REGULAR AGENDA**

#### **LAND MANAGEMENT DIVISION**

#### **ITEM F-1 Issuance of License to Kekaha Hawaiian Homestead Association for 231 acres at Pu`u Opae, Kaua`i Island, TMK (4)1-2-002:023(por.)**

#### **RECOMMENDED MOTION/ACTION**

Acting Land Management Division Administrator, Kahana Albinio, recommended the following: Motion that the Hawaiian Homes Commission approve the issuance of a License agreement to Kekaha Hawaiian Homestead Association for Pu`u `Opae, Kekaha, Island of Kaua`i, TMK (4)1-2-002:023 (por.)

#### **MOTION**

Moved by Commissioner Canto, seconded by Commissioner Davis, to approve the motion as stated in the submittal.

#### **DISCUSSION**

K. Albinio stated that the Kekaha Hawaiian Homestead Association (KHHA) gave a presentation to the Commission at last month's Commission meeting. Kawai Warren stated KHHA worked with DHHL on the Pu`u `Opae Farm and Irrigation plan for 6-years. The plan offered the West Hawai`i beneficiaries and agricultural and pastoral waitlisters an opportunity to farm Pu`u `Opae Lands. KHHA is asking for a 25-year renewable license on 231-acres which is consistent with the beneficiary consultation reports that were presented in the past 4-years. K. Warren stated that the gratis rent for 25-years is just compensation for rehabilitating the land and the native Hawaiians. KHHA asked the Commission to amend the following conditions of the license and direct the staff to implement the amendments. KHHA also asked permission from the Commission to vote

on the license agreement with the amended conditions today. In the conditions, there is a 10-year initial term that KHHA wanted to be amended for a 25-year renewable license commencing upon execution. KHHA also wanted the 5-year renewable amended to a 10-year renewable. In condition #1, "The License may be extended by the Chairman of the Hawaiian Homes Commission (HHC)," KHHA wanted this omitted. Per the Pu'u `Opae Irrigation timeline, once the environmental assessments are completed, with DHHL's approval, the building of several structures will begin. Regarding rent, KHHA wanted a formula on objectivity based on indices for the project. KHHA will contribute \$1.5 million in infrastructure funding improvements to the DHHL lands resulting in an annual material labor contribution of \$46,000 per year.

K. Albinio stated that staff mirrored a previous license that was recently issued, following a process of issuing licenses to homestead community associations. Chair Masagatani suggested the following:

20-years commencing upon execution of the license agreement, and the license may be extended by the Chairman of the Hawaiian Homes Commission for an additional 5-year term up to a total of 25-years provided that Licensee has satisfactorily fulfilled the purposes for which the license was issued, and may be extended beyond 25-years with the approval of the Commission.

Chair Masagatani stated that it gives KHHA 20-years, an additional 5-years with the Chairman's approval, and anything beyond 25-years, KHHA will have to come back to the Commission.

#### AMENDED MOTION/ACTION ON ITEM #1

Moved by Commissioner Canto, seconded by Commissioner Davis, to approve a term of 20-years commencing upon execution of the license agreement, and the license may be extended by the Chairman of the Hawaiian Homes Commission for an additional 5-year term up to a total of 25-years provided that Licensee has satisfactorily fulfilled the purposes for which the License was issued, and may be extended beyond 25-years with the approval of the Commission. Motion carried unanimously.

#### DISCUSSION

Commissioner Ka`apu suggested Item #2, to leave it gratis for the first 5-years, and it can be adjusted bi-annually based on its performance and take out the fair market rent; thus, the Department can determine if they should be charged if KHHA should have a cooperative. Chair Masagatani asked to make it 10-years because 5-years comes up quickly. Chair Masagatani stated the following suggested amendment:

#### AMENDED MOTION/ACTION ON ITEM #2

Moved by Commissioner Davis, seconded by Commissioner Wescoatt, to approve The fee for the term of the License shall be gratis for the first 10-year period and shall be adjusted every 5-years after that, based on the Licensee's performance. Motion carried unanimously.

#### DISCUSSION

Chair Masagatani stated that she understood the concern for Item #11d. The Department's goal is to make sure that the beneficiaries in the community have a chance to weigh-in because sometimes, organizations have their agendas. Commissioner Wescoatt suggested just to include surveys. Commissioner Chin suggested tying the reports to the community to the same time frame of the fees, thus making all the time frames the same. Chair Masagatani stated that Item #11d

could be amended to note “and/or surveys,” or an alternative other than letters to get to the beneficiaries as one of the terms in the actual license itself.

ACTION ON MAIN MOTION AS AMENDED

Motion carried unanimously.

**CONSENT AGENDA**

**HOMESTEAD SERVICES DIVISION**

RECOMMENDED MOTION/ACTION

Acting Homestead Services Division Administrator Dean Oshiro presented the following:  
To approve the Consent Agenda as listed in the submittal.

DISCUSSION

Chair Masagatani asked Commissioners if there were any Items from the Consent Agenda that they wanted to move to the Regular Agenda. Commissioner Ka`apu requested that Item D-9 be moved to the Regular Agenda.

- ITEM D-2** Approval of Consent to Mortgage (see exhibit)
- ITEM D-3** Approval of Refinance of Loans (see exhibit)
- ITEM D-4** Approval of Streamline Refinance of Loans (see exhibit)
- ITEM D-5** Approval to Schedule Loan Delinquency Contested Case Hearings (see exhibit)
- ITEM D-6** Approval of Homestead Application Transfers / Cancellations (see exhibit)
- ITEM D-7** Commission Designation of Successors to Application Rights – Public Notice 2015 (see exhibit)
- ITEM D-8** Approval of Designation of Successors to Leasehold Interest and Designation of Persons to Receive Net Proceeds (see exhibit)
- ITEM D-10** Approval of Amendment of Leasehold Interest (see exhibit)
- ITEM D-11** Request to Schedule Contested Case Hearing for Lease Violations (see exhibit)
- ITEM D-12** Cancellation of Lease – **RAVILAND K. AI**, Agricultural Lease No. 10177, Lot No. 162-A, Panaewa, Hawaii
- ITEM D-13** Commission Designation of Successor – **ADAM KAIWI, SR.**, Residential Lease No. 8187, Lot No. 52, Waimanalo, Oahu
- ITEM D-14** Commission Designation of Successor – **JOSEPHINE K. KAILIKINI**, Residential Lease No. 1586, Lot No. 15, Waiakea, Hawaii
- ITEM D-15** Request to Schedule Contested Case Hearing – Successorship to **JAMES P. AKIONA, SR.** Lease by **HAROLD AKIONA** and **SHERILYNN WAHINEKAPU**, Honokaia Pastoral Lease No. 1, Lease NO. 10155 and Lot No. 1-5, Lease No. 9043
- ITEM D-16** Commission Designation of Successor – **ALEXANDER H.K.P. LEAMOHALA**, Pastoral Lease No. 9121, Lot No. 101, Kahikinui, Maui

MOTION/ACTION

Moved by Commissioner Davis, seconded by Commissioner Chin to approve the Consent Agenda, noting the removal of Item D-9. Motion carried unanimously. Motion carried unanimously with the removal of Item D-9.

## REGULAR AGENDA

### **ITEM D-9** Approval of Assignment of Leasehold Interest (see exhibit)

#### RECOMMENDED MOTION/ACTION

Acting Homestead Services Division Administrator Dean Oshiro presented the following: Motion that the Hawaiian Homes Commission approve the Assignment of Leasehold Interest in which there are 27 assignments.

#### MOTION/ACTION

Moved by Commissioner Davis, seconded by Commissioner Canto, to approve Item D-9 as stated in the submittal.

#### DISCUSSION

Commissioner Ka`apu stated that a few of the transfers are vacant land, assignments #23, #21, and #19. D. Oshiro stated that the policy refers to the sale of vacant lots. The mentioned lots are not sold, so they do not fall under the interim policy.

Chair Masagatani asked Administrative Rules Officer Hokulei Lindsey to speak on the new rules. H. Lindsey stated that regarding transfers of vacant lots, unimproved lots and undivided interests, the new rules prohibit the sale of those lots, but it allows transfers, for no consideration, to qualified relatives under the Hawaiian Homes Commission Act, and waitlisters.

D. Oshiro explained that there's no way the Department can verify that there's no monetary exchange outside of escrow for these transfers. The Department has to take the lessee's word. The Department needs the lessee and the transferee to sign a document. If it is later determined that there was a monetary exchange, there could be grounds for fraud. Commissioner Ka`apu stated that he would like to see that document created so that the Commission can see if it is done under a canopy of perjury or not. D. Oshiro stated that when the documents are executed, they have to be notarized.

#### ACTION

Motion carried unanimously.

## PLANNING OFFICE

### **ITEM G-1** Approval of Recommendations for Capacity Building Grants Awards

#### RECOMMENDED MOTION/ACTION

Acting Planning Office Manager Kaleo Manuel and Grant Specialist Gigi Cairel presented the following:

Motion that the Hawaiian Homes Commission (HHC) approves a \$96,818 allocation from the Native Hawaiian Rehabilitation Fund (NHRF) to fund the following organization for capacity building grants:

- \$33,310 to Ahupua`a o Moloka`i
- \$5,000 to Ahahui Aina Ho`opulapula o Waiohuli
- \$5,000 to Kailapa Community Association
- \$5,000 to Kalalea/Anahola Farmers Hui
- \$5,000 to Kekaha Hawaiian Homestead Association

- \$5,000 to Keokea Homestead Farm Lots Association
- \$5,000 to Moloka`i Hawaiian Home Lands Kupuna Committee
- \$5,000 to Moloka`i Homestead Farmers Alliance
- \$5,000 to Papakolea Community Development Corporation
- \$5,000 to Papakolea Hawaiian Civic Club via sponsor PAC Foundation
- \$5,000 to Pi`ihonua Hawaiian Homestead Community Association
- \$5,000 to Princess Kahanu Estates Association
- \$4,900 to Kaumana Hawaiian Homes Community Association
- \$3,608 to Paukukalo Hawaiian Homes Community Association

Motion that the Hawaiian Homes Commission approves carrying over to the 2017-2018 fiscal year, any of the approved allocated funds that cannot be encumbered by contract by June 1, 2017.

**MOTION**

Moved by Commissioner Canto, seconded by Commissioner Davis, to approve the motion as stated in the submittal.

**DISCUSSION**

Beneficiary’s testimonies were given in support of their Associations, and to thank the Commission.

**ACTION**

Motion carried unanimously.

**MOTION**

Moved by Commissioner Helm, seconded by Commissioner Awo to convene in executive session pursuant to Section 92-5(a)(4), HRS, to consult with its attorney on questions and issues pertaining to the Commission’s powers, duties, privileges, immunities, and liabilities. Motion carried unanimously.

**EXECUTIVE SESSION IN 12:00P.M.**

The Commission anticipates convening in executive meeting pursuant to Section 92-5(a)(4), HRS, to consult with its attorney on questions and issues pertaining to the Commission’s powers, duties, privileges, immunities, and liabilities on these matters.

1. Approval of mediation agreement in the matter concerning water allocation in the Waimea Watershed Area on Kaua‘i
2. Mediated Settlement Agreement between DHHL, Ben Char, and Manawale`a Riding Center relating to Civil No. 1RC15-1-11007, District Court of the First Circuit, Ko`olaupoko Division, State of Hawaii, Waimanalo, O`ahu Island, Various TMKs

**EXECUTIVE SESSION OUT 2:25 P.M.**

**ITEMS FOR DECISION MAKING**

**REGULAR AGENDA**

**OFFICE OF THE CHAIRMAN**

**ITEM C-1 Approval of mediation agreement in the matter concerning water allocation in the Waimea Watershed Area on Kaua'i**

RECOMMENDED MOTION/ACTION

Deputy to the Chairman William Aila presented the following:  
Motion that the Department of Hawaiian Home Lands authorize the Chairman to execute approval of the mediation agreement in the matter concerning the water allocation in the Waimea Watershed Area on Kaua'i.

MOTION/ACTION

Moved by Commissioner Chin, seconded by Commissioner Davis, to approve the motion as stated in the submittal. Motion carried unanimously.

**LAND DEVELOPMENT DIVISION**

**ITEM E-1 Approval of Various Lease Awards (see exhibit)**

RECOMMENDED MOTION/ACTION

Acting Land Development Division Administrator Norman Sakamoto presented the following:  
Motion that the Hawaiian Homes Commission approve the awards for the Department of Hawaiian Home Lands' resident lot leases for the applicants listed, for 99-years subject to the purchase of the existing improvements on the lot by way of a loan or cash.

MOTION/ ACTION

Moved by Commissioner Davis, seconded by Commissioner Chin, to approve the motion as stated in the submittal. Motion carried unanimously.

**ITEM E-2 Correction to Previous Approval of Rescission of Homestead Lease Award and Reinstatement of Application – Ella M. K. McComber**

RECOMMENDED MOTION/ACTION

Acting Land Development Division Administrator Norman Sakamoto presented the following:  
Motion to approve the correction to the previous approval of the rescission of the homestead lease award and reinstatement of application for Ella M. K. McComber.

MOTION/ACTION

Moved by Commissioner Davis, seconded by Commissioner Chin, to approve the motion as stated in the submittal. Motion carried unanimously.

**ITEMS FOR INFORMATION/DISCUSSION**

**WORKSHOPS**

**LAND MANAGEMENT DIVISION**

**ITEM F-3 Request to Amend General Lease No. 281, Nānākuli Hawaiian Homestead Community Association (NHHCA), Nānākuli, O'ahu Island, TMK (1)8-9-002:001**

RECOMMENDED MOTION/ACTION

None. For information only. Acting Land Management Division Administrator Kahana Albinio presented the following:

Motion that the Hawaiian Homes Commission grants the request for the Nanakuli Hawaiian Homestead Community Association (NHHCA) to amend their general lease.

DISCUSSION

Kali Watson Project Director for the Nanakuli Hawaiian Homestead Community Association (NHHCA) requested the Commission's approval to revise the property description in General Lease No. 281 for the NVC to accurately reflect all the Condominium Property Regime units designated as Units Nos. 3, 4, and 5. Additionally, K. Watson requested an extension on the commencement date of the lease rent payable to the Department in the amount of \$110,000.00 per year.

K. Watson stated that it's difficult to get a bank to fund a huge project like this, so as a result, the bank has asked for some equity. The equity is generated by keeping 12-months of the rent from the tenants along with the waiver of the Department in the amount of \$110,000. As the amount accumulates, it'll be close to \$900,000, and that will be used to reduce the \$10.7 million loan, which then will create equity associated with the Homestead Association. He asked the Department to waive the rent as he and the other developers are waiving the developer's fee. The Department will get their rent; first, the broker will get his commission, and then the developers will get their developer fees from the rental stream from the tenants, which may take about 7-years to get their developer fees.

Commissioner Wescoatt asked who will own the project. K. Watson stated that would be Nanakuli Hawaiian Homestead Community Association.

Commissioner Ka`apu asked if something were to go wrong, what would happen to the property. K. Watson stated an example would be if the Nanakuli Homestead did not pay its rent, the way it is written, Longs can step into the shoes of the Homestead Association. As it stands now, the loan and everything is with the Association.

Chair Masagatani stated when the commercial health facility is built, it would be the Association that would own the improvements and is responsible for the space leases. The pad leases and all the buildings are being done by the tenants. So the pad leases would be Longs, Waianae Comprehensive, Popeyes, and Wendy's. K. Watson stated that the Nanakuli Hawaiian Homestead Community Association worked on this project for 10-years.

**ITEM F-4      Request to Assignment of General Lease Nos. S-3831, S-3840, S-4647 to DCI Paradise, LLC, a Hawaii limited liability corporation, Wailua, Kaua'i Island, TMK Nos. (4)3-9-006:016 and 020**

RECOMMENDED MOTION/ACTION

None. For information only. Acting Land Management Division Administrator Kahana Albinio presented the following:

That the Hawaiian Homes Commission grants the request for the assignment of General Lease Nos. S-3831, S-3840, S-4647 to DCI Paradise, LLC, a Hawai'i limited liability corporation, Wailua, Kaua'i Island



## DISCUSSION

K. Albinio introduced David Pratt of DCI Capital and Andrew Chang of DCI Paradise LLC. K. Albinio stated that Item #6, it shouldn't be there, and #7 was put in because it's a standard condition.

D. Pratt requested the assignment of the leases and stated that he was present to answer any questions. Chair Masagatani addressed A. Chang and stated that she wasn't sure if he has had any dealings with a state entity or a State of Hawai'i entity. She stated that the Department of Hawaiian Home Lands (DHHL) is different in its mission and has a fiduciary obligation reaffirmed in court decisions to look specifically and exclusively at the interest of its beneficiaries, the native Hawaiians. A. Chang stated that he did not have prior experience with a business like Hawaiian Homes, but he does have experience with the State of Hawai'i. He has 152 affordable housing units for 20-years, north of Kapolei. Mr. Chang's assistance stated that they work with two different State programs for Section 8 vouchers and affordability.

## **GENERAL AGENDA**

### **REQUEST TO ADDRESS THE COMMISSION**

#### **ITEM J-1 Tammy I. Levi – Hoolehua Lease Transfer**

T. Levi appealed for reconsideration for her simultaneous transfer request application. Commissioner Davis stated that he received a notarized letter from Darlene Bernard. T. Levi stated there was no indication if they denied the request or not. Chair Masagatani stated that the Commission could treat Ms. Levi's presence as an official request for reconsideration.

Chair Masagatani stated that it would be best that Ms. Bernard provide the Commission with another letter stating that she is still in agreement with the original request. One of the considerations was whether the new lessee would be able to meet the terms and conditions of the lease, like utilizing the land for agriculturally related purposes. It would be helpful to the Commission to see how the ag lot will be utilized. Commissioner Davis stated that the farm plan gets dealt with at the lessee level, not so much at the transfer level.

#### **ITEM J-3 U'i Kahue – Lot No. 25 Puukapele**

U. Kahue testified that she is on Lot No. 25 in Puukapele, Ho'olehua. She and her brother were listed as successors to their father's lease with the provision that they qualified financially and by blood quantum. She stated that her brother never made a mortgage payment for the lease, and she is asking the Department to investigate and reconsider his authority as a lessee.

Commissioner Richarson asked if she would be able to afford paying her brother half the value of the house. Chair Masagatani stated that as long as the lease is in good standing, Ms. Kahue can apply to subdivide. Dean Oshiro stated that the area is in a blackout area and subdividing is not allowed due to limited water. Chair Masagatani stated that the lessees might be able to access a contested case hearing process. Regarding U. Kahue's second question regarding the name of her spouse not being on the lease, Chair Masagatani stated that the Department's relationship is with the lessee.

**ITEM J-5 Harry K. Purdy III – Ho`olehua Agriculture Lot 4B**

H. Purdy testified that he wants to acquire 35-acres of agriculture land as an addition to his 5-acres of homestead lot in Ho`olehua. He asked what he had to do and what the rules are for him to acquire the 35-acres. He distributed maps of his lot 4A and of 4B the 35-acres he wants to acquire. He stated that he has been accessing lot 4B for 17 years via a Revocable Permit #0233 at \$444 per year. He wants to acquire 4B because his macadamia nut farm business is expanding and needs more space. He is 100% self-sufficient since 1982 and has raised his four children and put them through school all with the works on his farm. From 2015 the Commission voted for him to pay \$1 per year instead of \$444 per year. He was told he had to go on an ag waitlist for the land he wants. He requested the Commission to add the 35-acres to his 5-acres lease.

**ITEM J-8 Hala Pa-Kala – President Kamiloa/One Alii & Kapaakea Homestead Associations**

H. Pa-Kala testified about parity for homesteaders in Kapaakea for water access. She stated that their homestead is on the County water system. She stated that the homesteaders are not getting answers to their questions. She would like to see Kapaakea Homestead get water. She stated that Kapaakea pays more than what Ho`olehua pays for water.

**ITEM J-7 Faith Tuipulotu and Rosie David- Moloka'i Homestead Farmers Alliance**

R. Davis stated that Faith Tuipulotu had to leave. They submitted about four drafts of their business plan and still are working on the narrative. Challenges working with the business plan affected their timeline and budget, and so creating revenue will not happen until sometimes in May. Rosie stated that she is assisting with the grant writings for the farmers, and the business plan helps in getting the grants. Rosie stated that the plan started with two pages and it's up to 30 pages including the spreadsheets. She thanked the DHHL's Land Management and Planning staff for their assistance.

**ITEM J-9 Patti Silva – Manawale`a Riding Center**

Howard Luke Counsel for Manawale`a stated that they wanted the Commission to know what the Center does for children and adults with disabilities. Manawale`a decided not to settle the mediation because they disagree with the \$1500 per month rent being assessed. Manawale`a asked the Commission to allow them to continue serving the community. Manawale`a asked the Commission to reduce the amount of lease rent.

Commissioner Richardson commented that the Commission's fiduciary responsibility is to housing. P. Silva stated that there are beneficiary children that utilize the facilities. Chair Masagatani asked if Manawale`a considered talking to other state agencies, DOA, ADC, DLNR, which may be more suitable landlords for the project. P. Silva stated that she did inquire.

## **ITEMS FOR DECISION MAKING**

### **REGULAR AGENDA**

#### **LAND MANAGEMENT DIVISION**

##### **ITEM F-2 Annual Renewal of Right of Entry Permits, Moloka'i Island (see exhibit)**

###### **RECOMMENDED MOTION/ACTION**

Acting Land Management Division Administrator Kahana Albinio presented the following: Motion that the Hawaiian Homes Commission (HHC) approve the following actions while developing a process of making short-term agricultural and pastoral land dispositions available to beneficiaries:

###### **MOTION**

Moved by Commissioner Davis, seconded by Commissioner Canto, to approve the motion as stated in the submittal

###### **DISCUSSION**

K. Albinio stated that there are 3-parts to this motion:

- A. Renew all Moloka'i Island Right of Entry Permits(s) as listed on Exhibit "A" and identified by approximate location on the Moloka'i Island Map Exhibit "A-1" that are in compliance and issued temporary approvals, as of July 1, 2016, granted by the Hawaiian Homes Commission at its June 2016 meeting under Agenda Item No. F-3 attached hereto as Exhibit "B."
- B. The annual renewal period shall be on a month-to-month basis for up to twelve (12) months, but no longer than April 30, 2018, or at the next scheduled HHC meeting on Molokai Island, whichever occurs sooner.
- C. Authorize the Chairman to negotiate and set forth other terms and conditions that may be deemed to be appropriate and necessary.

Chair Masagatani stated that Commissioner Wescoatt is recusing himself on the right of entry No. 499. Chair stated that the amended motion would be as follows:

###### **AMENDED MOTION/ACTION**

Moved by Commissioner Wescoatt, seconded by Commissioner Davis, to renew all Moloka'i Island Right of Entry Permits except No. 499. approve the amended motion as stated. Motion carried unanimously.

###### **ACTION ON MAIN MOTION AS AMENDED**

Motion carried unanimously.

## **ITEMS FOR INFORMATION/DISCUSSION**

### **REGULAR AGENDA**

#### **PLANNING OFFICE**

##### **ITEM G-3 Legislative Update 2017**

RECOMMENDED MOTION/ACTION

None. For information only. Acting Planning Program Manager, Kaleo Manuel, turned the presentation over to HHL Legislative Analyst, Lehua Kinilau-Cano.

DISCUSSION

L. Kinilau-Cano thanked the Commissioners for taking up the item because the Legislature will open the conference on the budget on Tuesday at 2:00 p.m. The concern was the \$6.8 million for the fringe benefits costs, but it is unknown how that will turn out. House Bill 451, Hawaiian Home Lands Successors, Blood Quantum, has a defective effective date on the Bill, and so the Bill has to go into conference.

**ITEM G-6 Mo`omomi, Molokai – Background Data**

RECOMMENDED MOTION/ACTION

None. For information only. Acting Planning Program Manager, Kaleo Manuel, turned the presentation over to Planner and Moloka`i Liaison, Nancy McPherson.

DISCUSSION

N. McPherson stated that Mo`omomi is in a remote area and a favorite place for homesteaders to access the shoreline for traditional uses. Pelekunu and Mo`omomi are considered the backside of the northern coastline of Moloka`i, and a safe shoreline access point. There used to be cattle grazing, but it had some negative effects on the land. During the acceleration period, there were pastoral lots that were created, but those were not subdivided. The road, going through Hawaiian Home Lands, is the only main access to Mo`omomi and Kawa`aloa Bay. DHHL land stops before Kawa`aloa Bay on the pastoral side. N. McPherson said that Farrington Avenue bends right into Mo`omomi Road.

Chair Masagatani stated because Mo`omomi is an extremely controversial subject on Moloka`i, she wanted an invitation extended to Suzanne Case for the Tuesday meeting. Chair Masagatani stated that before a decision is made, at least the Commission will be able to hear from DLNR as to what the program is, what is being proposed, what the issues are and where they are. DLNR can answer any questions the Commission may have because they will have a legal representative at the Tuesday meeting. Chair Masagatani anticipated that there would be people who will want to testify. Kaleo Manuel stated that Mo`omomi was the pilot to model community subsistence fishing.

**RECESS**

**6:12 P.M.**

**HAWAIIAN HOMES COMMISSION**  
Minutes of April 18, 2017  
Kulana Oihi Multi-Purpose Conference Room  
Kalama`ula, Moloka`i, Hawai`i

Pursuant to proper call, the 686th Regular Meeting of the Hawaiian Homes Commission was held at Kulana Oihi, 600 Maunaloa Highway, Kalama`ula, Moloka`i, Hawai`i, beginning at 9:30 a.m.

**PRESENT** Jobie M.K. Masagatani, Chairman  
Doreen N. Canto, Maui Commissioner  
Gene Ross K. Davis, Moloka`i Commissioner  
David B. Ka`apu, West Hawai`i Commissioner  
William K. Richardson, O`ahu Commissioner

**EXCUSED** Kathleen P. Chin, Kaua`i Commissioner  
Wallace A. Ishibashi, East Hawai`i Commissioner  
Michael P. Kahikina, O`ahu Commissioner

**COUNSEL** Craig Iha, Deputy Attorney General

**STAFF** William Aila Jr., Deputy to the Chairman, Office of the Chair  
Paula Aila, ICRO Manager  
Kahana Albinio, Acting Land Management Division Administrator  
Dean Oshiro, Acting Homestead Services Division Administrator  
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Halealoha Ayau, Water Specialist  
Bryan Cheplic, ICRO  
Debra Aliviado, Customer Service Manager  
Allen Yanos, Property Development Agent  
Gigi Cairel, Grant Specialist  
Susie Richey, Secretary

**ORDER OF BUSINESS**

**CALL TO ORDER**

Chair Masagatani called the meeting to order at 9:28 a.m. Six (6) members were present at roll call. Commissioners Chin, Ishibashi, and Kahikina were excused.

**PUBLIC TESTIMONY ON AGENDIZED ITEMS**

**ITEMS FOR DECISION MAKING**

**REGULAR AGENDA**

**LAND MANAGEMENT DIVISION**

**ITEM F-5 Approval to Amend General Lease No. 281, Nanakuli Hawaiian Homestead Community Association (NHHCA), Nanakuli, O’ahu Island, TMK (1)8-9-002:001**

RECOMMENDED MOTION/ACTION

Acting Land Management Division Administrator, Kahana Albinio, presented the following recommendation:

1. That the Hawaiian Homes Commission approve the Fourth Amendment to General Lease No. 281, issued to Nanakuli Hawaiian Homestead Community Association (NHHCA), to use a parcel of Hawaiian home lands at Nanakuli, identified by Tax Map Key No. (1) 8-9-002:001 for its mixed-use development project subject to the following conditions:
  - a) Article Three, Section 1 of General Lease No. 281, be amended to reflect that the commencement date of the Annual Base Rent as previously amended and referenced under Paragraph 4. Annual Base Rent the Third Amendment of General Lease No. 281, yet to be drafted, as approved by the Hawaiian Homes Commission at its December 19-20, 2016, regular monthly meeting under Agenda Item No. F-2, more specifically, Condition No. 1. (b) (See Exhibit “A”) shall NOW be the date at the end of a maximum thirty (30) month period of which eighteen (18) months shall cover the Construction period (May 1, 2017 – October 31, 2018) and twelve (12) months shall cover a Rent Stabilization period (November 1, 2018 – October 31, 2019) as required under the April 3, 2017, Discussion Term Sheet issued by American Savings Bank. Based on the attached Nanakuli Development Schedule – Revised 3-7-17 (See Exhibit “B”) the Annual Base Rent commencement date shall now be November 1, 2019.
2. All other terms and conditions under General Lease No. 281 shall remain in full force and effect with the 4<sup>th</sup> Amendment to General Lease No. 281 documenting the amendment as described and referenced above; and
3. The Chairman of the Hawaiian Homes Commission is authorized to set forth any additional terms and conditions which shall ensure and promote the purposes of the demised premises.

MOTION

Moved by Commissioner Davis, seconded by Commissioner Canto, to approve the motion as stated in the submittal.

DISCUSSION

Chair Masagatani addressed Kali Watson stating that if the Commission approved the recommended motion, page 6 of his term sheet stated that for verification, the lessor (DHHL) would provide the initial twelve (12) months. She asked Kali if that would address the condition. Kali said yes, it’s for the twelve (12) months stabilization period. K. Watson stated that the loan would then kick in. Chair Masagatani clarified stating that the Department will not see any lease rent till November 1, 2019? K. Watson stated that he is hoping for July 2019. He stated that the Association, DHHL, the developers would not get any money until after the stabilization period, only the bank gets money during the stabilization period.

ACTION

Motion carried unanimously.



ACTION

Motion carried unanimously.

**ITEMS FOR INFORMATION/DISCUSSION**

**WORKSHOP AGENDA**

**OFFICE OF THE CHAIRMAN**

**ITEM C-4 Presentation by Department of Land and Natural Resources staff regarding Proposed Mo’omomi North Coast of Moloka’i Community-Based Subsistence Fishing Area Designation.**

RECOMMENDED MOTION/ACTION

None. For discussion only. A presentation was made by DLNR’s staff, David Sakoda, for the purpose to reaffirm and protect native Hawaiian traditional and customary subsistence fishing, cultural, and religious practices, in accordance with HRS §188-22.6, and to protect the diversity, abundance, and accessibility of the marine resources upon which those practices rely. The boundaries are from Kalaeoka`ilio (Ilio Point) in the west to Kaholaiki Bay in the east, from the shoreline out to one nautical mile. The following are the proposed rules for the Mo’omomi north coast of Moloka`i community-based subsistence fishing area:

<b>General Regulations</b>
<ul style="list-style-type: none"> <li>• No night diving from 6pm to 6am (exception: lamalama or “torching” is allowed)</li> <li>• No SCUBA spearfishing (including rebreathers and/or other underwater breathing devices)</li> <li>• No commercial fishing, except for akule and ta’ape (recreational/charter fishing operations are not included under commercial fishing)</li> </ul>
<b>Regulations for Kawa’aloe Bay Nursery Area Only (see map for boundaries)</b>
<ul style="list-style-type: none"> <li>• Fishing or gathering in Kawa’aloe Bay is not allowed, except for the following allowed activities: <ul style="list-style-type: none"> <li>○ Gather a’ama crab from the shoreline by hand-harvest only</li> <li>○ Gather limu from the shoreline from 6 am-6 pm by hand-harvest only</li> <li>○ Throw net from 6 am-6 pm</li> <li>○ Hook-and-line from the shoreline from 6 am-6 pm using artificial lures only</li> </ul> </li> <li>• No swimming, surfing, body boarding, snorkeling, diving, operating a vessel, or engaging in any other in-water recreational activity (to minimize disturbance by non-subsistence activities)</li> </ul>

D. Sakoda stated that what he covered was what the community or Hui Malama O Mo`omomi proposed for protecting subsistent fishing practices in Mo`omomi and Kawa`aloe Bay. The State took the presentation to public scoping meetings to get the public’s feedback. The comments were developed into a rules package based on what was presented and the comments received, then it will be presented at the public hearing. The proposal does not affect access in any way. Access is via DHHL land and private property in which the owners can regulate access across their land as they wish.

Chair Masagatani stated that she had heard it more than once that people felt they weren’t able to present their feedback. She asked if DLNR intends to go out before the Chapter 91 process so people can have the opportunity to express their concerns to DLNR. Mr. Sakoda stated that he does not know, but the public scoping meetings are meant to explain what the proposals are and to get feedback on the substance of the proposal.



Chair Masagatani asked who was going to be taking the proposal out to the community. D. Sakoda stated that Russell Sparks, a biologist on Maui and himself. Chair Masagatani asked if there would be an opportunity to have a dialogue about the proposed rules before the Chapter 91 process. Mr. Sakoda stated that DLNR was not planning to. It is still early in the process, but if DHHL wants to put in a request, he is sure Chair Case will consider it.

Chair Masagatani asked why DLNR not allow the commercial fishing around Moloka`i. Mr. Sakoda stated that off shore fishing is not the only problem, but a lot of the problem is people from Moloka`i taking too much or inappropriately. The rules have to apply equally to everybody. Mr. Poepoe, stated that the problems are not from off island people but from the people on Moloka`i. In the past, every September 1<sup>st</sup> when lobster season opened, Mo`omomi looked like a carnival; people laid nets which caused the population of lobsters to fall. He stated that he collects data and the numbers have decreased. All the privileges people have had at Mo`omomi have been abused.

## **ITEMS FOR INFORMATION/DISCUSSION**

### **REGULAR AGENDA**

#### **OFFICE OF THE CHAIRMAN**

##### **ITEM C-2 Workshop on Water System and Planning System Administrative Rules**

##### **RECOMMENDED MOTION/ACTION**

None. For information only. HHL Administrative Rules Officer, Hokulei Lindsey, presented the workshop on the water system and planning system administrative rules.

##### **DISCUSSION**

H. Lindsey stated that there were new rules to discuss relating to the water system and the planning system. The Hawaiian Homes Commission Act (HHCA) §221(f), systems under the exclusive control of the Department of Hawaiian Home Lands (DHHL), is understood to be from source to delivery. DHHL has 3-regulated public water systems: Ho`olehua, Anahola and Kawaihae, and they are subject to the Safe Drinking Water Act (SDWA) and the Department of Health's regulations. DHHL has an unregulated water system which is in Pu`ukapu. DHHL's 3-regulated water systems provide its beneficiaries with good quality and safe drinking water. Adopting rules for these systems aid the management of the resources and the age of the water systems. The rules are aimed at the technical, managerial and financial well-being of the systems. Commissioner Richardson asked if DHHL is losing lots of money with the systems. H. Lindsey stated that finding out how much money is being lost is complex. In response to Commissioner Richardson's question, H. Lindsey stated that the rules would be targeting both the financial liabilities and the maintenance of the systems. Chair Masagatani asked if the rules were set in place, and knowing the reality of DHHL's situation, would the Department meet operations at the required level? The Department has to be able to live by the rules it is set in place. Halealoha Ayau stated that the rules would help to provide best practices and management for the system going forward.

The Planning System Rules define how management decisions are made about programs, i.e., how does the Department manage lands and resources, what are the criteria for the planning and program decisions, and how are the activities coordinated. The Department has a planning system that was adopted as a policy by the Hawaiian Homes Commission in 2002, but the policy does

not contain a mandate. The Planning system rules would ensure consistency through the changes in Administrations.

## **ITEMS FOR DECISION MAKING**

### **REGULAR AGENDA**

#### **OFFICE OF THE CHAIRMAN**

##### **ITEM C-3 Approval to Proceed to Beneficiary Consultation for Water System and Planning System Rules**

###### **RECOMMENDED MOTION/ACTION**

HHL Administrative Rules Officer, Hokulei Lindsey, presented the following:  
Motion that the Hawaiian Homes Commission approve proceeding to beneficiary consultation for the proposed new rules for the water systems and planning system.

###### **MOTION/ACTION**

Moved by Commissioner Canto, seconded by Commissioner Davis, to approve the motion as stated in the submittal. Motion carried unanimously.

###### **MOTION**

Moved by Commissioner Wescoatt, seconded by Commissioner Canto to convene in executive session pursuant to Section 92-5(a)(4), HRS, to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities. Motion carried unanimously.

#### **EXECUTIVE SESSION IN**

**12:05 PM**

The Commission anticipates convening in executive meeting pursuant to Section 92-5(a)(4), HRS, to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities on these matters.

1. Update on Nelson Case- Richard Nelson, III et al., v HHC, Civil No. 07-1-1663
2. Update on issues related to Sandwich Isles Communications.
3. Commission review on contested case procedures under Chapter 91, Hawai'i Revised Statutes

#### **EXECUTIVE SESSION OUT**

**2:20 PM**

## **ITEMS FOR INFORMATION/DISCUSSION**

### **REGULAR AGENDA**

#### **PLANNING OFFICE**

##### **ITEM G-5 For Information Only - Update on Moloka'i Water Projects and Issues**

###### **RECOMMENDED MOTION/ACTION**

None. For information only. Acting Manager, Planning Office, Kaleo Manuel presented the update for the Moloka'i Water Projects and Issues

## DISCUSSION

K. Manuel stated that the biggest issue was the water rights in Kualapu`u, so the focus was on DHHL's interest as a Trust for the Kualapu`u aquifer. There were four focus points:

1. Background disputes
  - a. In 1992 Moloka`i designated as a groundwater management area
  - b. Water withdrawals required permits subject to the rights of the Department of Hawaiian Home Lands (DHHL)
  - c. DHHL required to obtain water use permit (WUP)
  - d. Moloka`i Ranch, its subsidiaries, Moloka`i Public Utilities, DWS and DHHL all have wells in close proximity to each other in the Kualapu`u
2. USGS Moloka`i groundwater study
  - a. In 2009, DHHL, OHA and DWS funded the USGS to develop a groundwater model of Moloka`i
  - b. The study estimated the hydrologic effects of additional groundwater withdrawal scenarios on: salinity and water levels near existing wells, and coastal discharge in order to effectively manage groundwater withdrawals from central and eastern Moloka`i.
3. The current Commission for Water Resource Management (CWRM) proceedings on water use permit applications (WUPAs)
  - a. CWRM published three WUPAs on October 2015:

**Table I. Outstanding WUPA in the Kualapu`u Aquifer**

WUPA No.	Well Name/ Well No.	Applicant Name	Proposed water use (mgd)
00973	"Well 17"/ 4-901-001	Moloka`i Public Utilities, Inc. (a MR subsidiary)	1.026
00499	Kualapu`u Mauka/ 0801-003	Maui Department of Water Supply	0.900
00448	Kauluwai 1 & 2/ 4-801-001 & 002	Department of Hawaiian Home Lands	0.637

4. Latest development
  - a. On February 17, 2017, CWRM issued an order dismissed the contested case in Kuku`i Moloka`i Inc., but on March 17, 2017, Moloka`i Public Utilities appealed the dismissal. The appeal goes straight to the Hawai`i Supreme Court which has not yet scheduled deadlines for briefs.
  - b. DHHL staff is aware that MPU has done things that will allow them to transmit water from Well 17 across the island without the use of the Moloka`i Irrigation System (MIS). The current WUPA does not reflect the change.

K. Manuel stated that Well 17 is the most productive well with good quality water. Well 17 is privately owned by the Moloka`i Ranch.

Chair Masagatani stated that the Kukui litigation that was based on the WUPA that Moloka`i Ranch submitted, did not take into consideration DHHL's needs. K. Manuel stated that the Water Commission made a decision to dismiss the case. Chair Masagatani asked if the DHHL's WUPA

#448 is updated. K. Manuel stated that the DHHL's WUPA #448 is from 1998 and has not been updated; however, CWRM would be asking the parties to submit updated applications.

Chair Masagatani asked what recourse does DHHL have to Moloka'i Ranch because they've been using the water without permission. How can that be justified when DHHL has told its beneficiaries that they cannot subdivide because of not having permission to the water. K. Manuel stated that for any infraction in the water code, CWRM could fine an illegal user of water up to \$25,000 per day per incident.

#### **ITEM G-4 Quarterly Grants Status Report End of 1<sup>st</sup> Quarter**

##### RECOMMENDED MOTION/ACTION

None. For information only. Acting Manager, Planning Office, Kaleo Manuel turned the presentation over to Grants Specialist, Gigi Cairel, for the quarterly grants status report for the end of the 1<sup>st</sup> Quarter.

#### **ITEM G-2 Moloka'i Regional Update**

##### RECOMMENDED MOTION/ACTION

None. For information only. Acting Manager, Planning Office, Kaleo Manuel and Planner & Moloka'i Liaison, Nancy McPherson, presented the Moloka'i Regional update.

##### DISCUSSION

Chair Masagatani asked if the Kukui Nut project was still a viable project. N. McPherson stated that it's been on hiatus, but there's still some interest. K. Manuel stated that Lanikeha is like an ag processing and community facility. Lanikeha provides a space for farmers to add valued products. There were discussions of a farmers market. Chair Masagatani stated that several of the regional projects are done, and the homesteads have moved on to newer priorities. K. Manuel stated that the liaisons on island have helped to keep things relevant, even if the projects have shifted, the Department has kept abreast of what currently happens. It's been seven years and an update is needed to re-identify priorities.

## **REGULAR AGENDA**

### **OFFICE OF THE CHAIRMAN**

#### **ITEM C-5 Draft 2017 Native Hawaiian Housing Block Grant Annual Housing Plan**

##### RECOMMENDED MOTION/ACTION

None. For information only. NAHASDA Manager, Niniau Simmons, presented the draft for the 2017 Native Hawaiian Housing Block Grant annual housing plan.

##### DISCUSSION

N. Simmons stated that the draft housing plan is due to HUD May 31, 2017. The Commission will take action on the housing plan next month on Hawai'i island. Most of the activities are the same from last year. The balance is \$23 million dollars. Chair Masagatani asked Niniau if she remembered what the balance was when she started with the Department. N. Simmons stated that she started with the Department in 2012, and in March 2013 the Commission approved the spend down plan in the amount of \$75 million dollars. N. Simmons stated that \$40 million dollars was spent in the last 4 years and about \$13 million was contracted. The housing plan updates the

additional homestead areas of Discovery Harbor, Lanai, and the potential loans that may be done at Kakaina, Waiohuli and Pi`ilani Mai Ke Kai. N. Simmons stated that any feedback Commissioners might have should be given 2-weeks before the May 22 meeting.

## **HOMESTEAD SERVICES DIVISION**

### **ITEM D-1 HSD Status Reports**

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

### MOTION

Moved by Commissioner Canto, seconded by Commissioner Richardson to convene in executive session pursuant to Section 92-5(a)(4), HRS, to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities. Motion carried unanimously.

### **EXECUTIVE SESSION IN 3:10 PM**

The Commission anticipates convening in executive meeting pursuant to Section 92-5(a)(4), HRS, to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities on these matters.

### **EXECUTIVE SESSION OUT 3:38 PM**

## **ANNOUNCEMENTS AND ADJOURNMENT**

### **NEXT MEETING**

The next meeting will be held on May 22 & 23, 2017, in Waimea, Hawai`i

### MOTION/ACTION

Moved by Commissioner Wescoatt, seconded by Commissioner Canto, to adjourn the meeting. Motion carried unanimously

### **ADJOURNMENT 3:45 PM**

Respectfully submitted:

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Jobie M. K. Masagatani, Chairman  
Hawaiian Homes Commission

Prepared by:

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Leah Burrows-Nuuanu, Commission Secretary  
Hawaiian Homes Commission