

HAWAIIAN HOMES COMMISSION
Minutes of November 20 & 21, 2017
Paukūkalo Community Center, 657 Kaunualii Street, Wailuku, HI 96793

Pursuant to proper call, the 693rd Regular Meeting of the Hawaiian Homes Commission was held at the Paukūkalo Community Center, Wailuku, Hawaii, beginning at 9:30 a.m.

PRESENT Jobie M. K. Masagatani, Chairman
Randy K. Awo, Commissioner, Maui
Kathleen P. Chin, Commissioner Kaua'i
Wallace A. Ishibashi, Commissioner, East Hawaii
David B. Ka'apu, Commissioner, West Hawaii
Michael P. Kahikina, Commissioner, O'ahu
Wren Wescoatt, Commissioner, O'ahu

EXCUSED Molokai Seat, Vacant
O'ahu Seat, Vacant

COUNSEL Matthew Dvonch, Deputy Attorney General

STAFF William Aila Jr., Deputy to the Chairman, Office of the Chair
Paula Aila, Hale Manager
Kahana Albinio, Acting Administrator, Land Management Division
Kaleo Manuel, Acting Manager, Planning Office
Francis Apoliona, Compliance Officer
David Hoke, Enforcement Officer
Akoni Shannon, Enforcement Office
Dean Oshiro, Acting Administrator, Homestead Services Division
Stewart Matsunaga, Community Development Manager, Land Development
Leah Burrows-Nuuanu Secretary to the Commission
Mona Kapaku, Maui District Office Manager
Shelly Carreira, Land Manager
Bryan Cheplic, ICRO
Joann Aiwohi, Homestead Housing Specialist IV
Susie Richey, Secretary to Deputy Director
Debra Aliviado, Customer Service Manager
Julie Cachola, Planner

ORDER OF BUSINESS

CALL TO ORDER

Chair Masagatani called the meeting to order at 9:30 a.m.

Seven (7) members were present at roll call. Molokai Commission seat was vacant. O'ahu seat was vacated by the sudden passing of Commissioner Kahele Richardson on November 10, 2017.

Chair Masagatani asked for a moment of silence in honor of Commissioner Richardson's service to beneficiaries and the community in general.

APPROVAL OF AGENDA

Chair Masagatani noted Items D-19 to D-22, should be D-18 to D-21. Item C-5 is moved to the Tuesday agenda.

MOTION/ACTION

Moved by Commissioner Ka'apu, seconded by Commissioner Ishibashi, to approve the agenda. Motion carried unanimously.

APPROVAL OF MINUTES

Chair Masagatani asked if there were any comments or edits to the September 22 & 23, 2014 or, October 27 & 28, 2014 minutes.

MOTION/ACTION

Moved by Commissioner Wren, seconded by Commissioner Ishibashi, to approve the HHC Minutes for September 22 & 23, 2014 and October 27 & 28, 2014. Motion carried unanimously.

PUBLIC TESTIMONY ON AGENDIZED ITEMS

ITEM A-1 Irene Plunkett Mina – Waiohuli Undivided Interest Awardee

Irene Plunkett-Mina is a farmer and has been on the agriculture waitlist since 1980. She and her husband started the Hawai'i Farmers Union for Maui with over 2000 members and 15 chapters. She makes her living growing microgreens on 2000 square feet of land in Wailuku. She graduated from the Ag Leadership Program. There are many kanaka who want to farm.

Commissioner Awo asked how much land is needed to be a successful farmer on Maui. I. Mina stated they are successful with 2,000 square feet.

Commissioner Ishibashi asked for an update on the Sakugawa ROE. How much time did he need to remove his cattle from the land and how much of that time is remaining. Acting Land Management Administrator Kahana Albinio updated the Commission that Mr. Sakugawa was notified that the land would be coming back to the Department.

Commissioner Ka'apu asked if Mr. Sakugawa's ROE can be decreased to allow the beneficiaries to get on the parts that are better for farming sooner, rather than later. He asked that the processing of the decrease be started immediately. He asked for a timeframe to give farmers an idea of how long this process will take. Chair Masagatani stated the discussion is on the Tuesday agenda.

ITEM A-2 Vincent Mina – Founder of the Hawai'i Farmers Union

V. Mina is married to Irene Plunkett Mina and started farming 28 years ago as a result of his wife's craving for sunflower greens when she was pregnant. He is an Italian painter from Philadelphia who started farming at the age of 40. Hawaiians are culturally farmers because they had to be to feed everyone. It saddens him to have walked on the banks of lo'i kalo that no longer have kalo growing. Farmers need support with land, water, and technical assistance. Whatever the Department can do to help is appreciated.

ITEM A-3 Kahu Laki Kaahumanu – Royal Order of Kamehameha

L. Kaahumanu invited Commissioners and attendees to their annual Christmas Block Party for the homeless. They have over 500 attendees including the bikers for Toys for Tots. He shared brochures of the prefabricated homes used by their program to help house widows and orphans. He is the president of Ex-Felons for Christ, an organization that helps children from broken families.

ITEM A-4 Kekoa Enomoto, Norman Abihai, Robert Pahia, Aukai Hatchi, Ioane Keana'aina, Keith Dixon – Pa'upena Community Development Corporation

K. Enomoto provided an introduction on behalf of Pa'upena Community Development Corporation (CDC), and presented their testimony regarding agenda item G2 Upcountry and South Maui planning updates. Pa'upena CDC is seeking a two-year due-diligence Right of Entry, or ROE, to Waiohuli-Kēōkea homelands acreage. The Pa'upena CDC board met last Tuesday and agreed to seeking a ROE of 1,000 of the acres. Upon successful management of the 1,000 acres in the first year, Pa'upena would seek to expand its ROE to cover 2,000 acres in year 2. To demonstrate Pa'upena's capacity to undertake a two-year due diligence ROE each person at the table will speak toward a different part of the plan.

N. Abihai stated his topic is agriculture. He felt the members of their team have the capacity to ask for a 5-year due diligence ROE and encouraged the Commission to put beneficiaries on the land.

Commissioner Wescoatt thanked the members of Pa'upena CDC for testifying again this year and that it was last year's testimony reinforced the Commission's effort toward a change in the way ROEs are issued. The Commission pursuing how to get ROE permits to beneficiaries so that they can get on the land.

K. Enomoto stated she felt the Department is obstructive in providing ROE permits to beneficiaries. There were fifteen questions on the application to prove their capability which is why they are before the Commission. She did not fill out the application and wanted to know if non-beneficiaries are made to fill out the application as well.

R. Pahia worked for the University of Hawai'i Kula Ag Research Station where he specialized in hybrid taro. His expertise is related to genetic work to save the industry. After retiring from the University, he started growing kalo full time. Finding land and water security is difficult on Maui. He has 300 acres of land through a partnership with a developer who needed to set aside land for conservation. He is currently subleasing land to nine farmers. Regarding the 2-year due-diligence ROE, he felt it was too short of a time because to be good stewards, the group should do a conservation plan and an archaeological survey. There are a lot of preliminary steps they need to put in place before creating an ag park, including figuring out the water situation. As a group, they have the wherewithal to succeed.

K. Dixon stated he worked for the Department of water supply for 18 years before moving to the highways division. He understands the construction and maintenance of water systems. He has been raising cattle for almost 40 years. He knows that one cow will drink 15-20 gallons of water per day. He has had up to 80 head of cattle on 300 acres of land. They have a good relationship with the neighboring ranches and some of them are willing to help.

Andrew Hatchi added Pa‘upena CDC has a ten-year conceptual plan, and the first thing is to get the land. They want to start with ranching and then move to farming. His priority is affordable housing. The mindset of growing children needs to change. Affordable housing helps keep kids off the street and out of prisons.

J. Keana‘aina shared his family are coffee farmers and ranchers from Kona. Prior to that they were aquaculture farmers. He lives in Kēōkea and has 100 feet of greenhouses for tomatoes. The ground is all rock in Kēōkea so everything is grown in pots. He would like to share his knowledge with beneficiaries interested in farming.

Kanoa Dixon has been ranching with his dad all his life. He has worked on Haleakala Ranch for several years and knows the type of land the Sakugawa Ranch has had. He’s been learning about grass management and other parts of ranching that are difficult to learn from a book.

Chair Masagatani asked if ag and ranching are compatible uses for the acreage in question. Does the acreage have to remain intact or can it be cut up into smaller sections for more beneficiary opportunities? The goal is to get the lands into homesteading eventually. But in the meantime, the Commission wants to allow beneficiaries access for farming and agriculture.

K. Dixon stated his research was based on 1,000 acres. The minimum would be to divide it into 6 parcels and a maximum of 20 parcels, and rotate the cattle among the paddocks. They would also need deer fencing which is about \$12/ft.

R. Pahia stated the question about the fragility of the land will be answered after the conservation plan and archaeological surveys are completed. He knows that agriculture and ranching are compatible. Farmers on the mainland use a technique where they grow unirrigated cover crops and get paid when the cattle gains weight from eating it.

Commissioner Ka‘apu commented that the thought was to give beneficiaries who weren’t on the land yet, who don’t have a lease, the chance to make a living. By listening to everyone speak, it sounds like there still needs to be a lot of planning. He encouraged K. Enomoto to complete the fifteen questions being asked of the group. He would like to hear more about the farming part. The Commission will have to decide whether it goes to one group, or maybe several groups. The Commission wants it to work, so its willing to get into the details about this first project. The worst thing is for it to not work.

Commissioner Awo added that he can see about the potential the group has, and agrees that a conservation plan and an archaeological survey is needed.

Commissioner Kahikina felt that Pa‘upena CDC should be asking for a general lease. There are no policies and procedures for beneficiaries to get right of entry permits. He disagrees with making beneficiaries jump through hoops when non-beneficiaries haven’t done the same.

Commissioner Ishibashi stated that on the Big Island plantation workers used their severance payments to farm and lost everything. They were not working together and not organized. They failed because they couldn’t address some issues but he has faith in Pa‘upena CDC. He thinks they are on the right track and wants to remind them to be organized and work together.

RECESS

11:00 AM

RECONVENE

11:17 AM

ITEM A-6 Blossom Feiteira – President Association Hawaiians for Homestead Lands

B. Feiteira testified about Item G-2, she is happy to see the planning work going forward. The beneficiaries need an economic engine in Pulehunui to sustain themselves. The Maui beneficiaries are ready to support the Department with its budget at the Legislature.

Commissioner Awo asked for a status update on the maintenance of the Paukukalo park. Chair Masagatani stated the County of Maui does not want to renew its license to the park so the Department is bringing the park back into its inventory of lands. The Maui District Office has funds to help manage it after a Park Advisory group is established with the Paukūkalo and Wai‘ehu Kou Associations as members.

B. Feiteira stated the first step is to get the area homestead associations to put together a leadership team to work out the specifics of management.

Commissioner Awo asked if it is viable to have the homestead association take on the management. Do they have the capacity? B. Feiteira stated the community is empowered by being able to set up priorities for the park recognizing what is most important to them and their families. She recommends a short-term plan to get their feet wet and then maybe later if all goes well, they can look at a long-term land disposition.

ITEMS FOR DECISION MAKING

CONSENT AGENDA

RECOMMENDED 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 they want moved to the Regular Agenda.

Commissioner Chin asked to move Items D-6, D-12, D-13 and D-14 to the Regular Agenda. The loan amounts are coming in very high and while she doesn't want to limit beneficiaries on what they choose to do with their property, she is concerned about the impact to the trust.

HOMESTEAD SERVICES DIVISION

- ITEM D-2 Approval of Consent to Mortgage**
- ITEM D-3 Approval of Streamline Refinance of loans**
- ITEM D-4 Approval to Schedule Loan Delinquency Contested Case Hearings**
- ITEM D-5 Approval of Homestead Application Transfers / Cancellations**
- ITEM D-7 Reinstatement of Deferred Application - NORMAN W.L. KON, SR.**
- ITEM D-8 Approval of Designation of Successors to Leasehold Interest and Designation of Persons to Receive the Net Proceeds**
- ITEM D-9 Approval of Assignment to Leasehold Interest**
- ITEM D-10 Approval of Amendment of Leasehold Interest**
- ITEM D-11 Approval to Issue Non-Exclusive Licenses for Rooftop Photovoltaic Systems for Certain Lessees**

- ITEM D-15** **Commission Designation of Successor – OIKALANI KAUAHIKAUA, Residential Lease No. 4855, Lot No. 78A-1, Nānākuli, O‘ahu**
- ITEM D-16** **Cancellation of Lease – REBECCA K. PAUL, Residential Lease No. 11277, Lot No. UNDV079, Waimanalo, Oahu**
- ITEM D-19** **Approval to Schedule Contested Case Hearing – Due to Nonresponsive Designated Successor – BRANSCOMBE M. RICHMOND, Residential Lease No. 7666, Lot No. 276, Waiohuli, Maui**
- ITEM D-20** **Commission Designation of Successor – KELLEN K. KAPAKU, Residential Lease No. 3462, Lot No. 21, Paukūkalō, Maui**
- ITEM D-21** **Approval to Request to Schedule Contested Hearing – MARIE ROBELLO, Lease No. 10282, Lot No. 68, Waiohuli, Maui**
- ITEM D-22** **Commission Designation of Successor – WALLACE W. AHUNA, Residential Lease No. 1424, Lot No. 209 A-1, Keaukaha, Hawaii**

MOTION/ACTION

Moved by Commissioner Awo, seconded by Commissioner Ishibashi to approve items consent agenda, except for D-6, D-12, D-13, D-14. Motion carried unanimously.

REGULAR AGENDA

OFFICE OF THE CHAIRMAN

- ITEM C-1** **Resolution No. 291 – Resolution of Appreciation – Doreen Nāpua Canto**

RECOMMENDED ACTION

NAHASDA Manager Niniau Simmons presented the following:

That the Hawaiian Homes Commission approve Resolution No. 291 – Resolution of Appreciation – Doreen Napua Canto.

DISCUSSION

Deputy Director William Aila Jr. read the resolution in its entirety.

MOTION/ACTION

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

LAND DEVELOPMENT DIVISION

- ITEM E-1** **Approval of Various Lease Awards**

RECOMMENDED ACTION

Acting LDD Administrator Norman Sakamoto presented the following:

Motion to approve the award of Department of Hawaiian Home Lands Residence Lot Leases to the applicants listed below for 99 years, subject to the purchase of the existing improvements on the lot by way of a loan or cash.

DISCUSSION

Kawaihae Residential Lots Habitat Offering 2016, Kawaihae, Hawai‘i.

NAME	APP DATE	LOT NO.	TMK	LEASE NO.
Kalai, Pauahi N.	09/28/1999	128	3-6-1-009:045	12820
Kaulukukui, Shawna K.	02/28/1996	66	3-6-1-009:008	12821
Maio, Joann I.	03/11/1987	111	3-6-1-009:028	12822

N. Sakamoto stated these are vacant lots that were part of an offering several years ago. The families are Habitat qualified and Habitat for Humanity will be helping to construct their homes. There were five families, but two have elected to defer.

MOTION/ACTION

Moved by Commissioner Ka'apu, seconded by Commissioner Ishibashi to approve the motion as stated in the submittal. Motion carried unanimously

OFFICE OF THE CHAIRMAN

ITEM C-4 Approval of 2018 Hawaiian Homes Commission Meeting Schedule

RECOMMENDED MOTION/ACTION

Chair Masagatani recommended the following:

Approval of the 2018 Hawaiian Homes Commission Meeting Schedule.

DISCUSSION

Chair Masagatani explained the rationale for the meeting schedule. She noted the Commission goes to Maui twice a year except for years when the Commission goes to Lāna'i for a community meeting. Next year the Commission will also do an extra community meeting in Ka'ū, Hawai'i Island.

MOTION/ACTION

Moved by Commissioner Kahikina, seconded by Commissioner Ishibashi to approve the 2018 Hawaiian Homes Commission Meeting Schedule. Motion carried unanimously

ITEM C-2 Resolution No. 292 – Resolution of Appreciation – William Kahele Richardson

RECOMMENDED ACTION

NAHASDA Manager Niniau Simmons presented the following:

That the Hawaiian Homes Commission approve Resolution No. 292 – Resolution of Appreciation – William Kahele Richardson.

DISCUSSION

N. Simmons read the resolution in its entirety.

MOTION/ACTION

Moved by Commissioner Ka'apu, seconded by Commissioner Ishibashi to approve the motion as stated in the submittal. Motion carried unanimously

ITEM D-6 Approval Commission Designation of Successors to Application Rights - Public Notice 2016 (see exhibit)

RECOMMENDED MOTION/ACTION

Acting Homestead Services Division Administrator Dean Oshiro presented the following:

To designate the following individuals as successors to the application rights of deceased applicants who did not name qualified successors.

DISCUSSION

Commissioner Chin recused herself from the discussion and action citing a conflict. Chair Masagatani noted the recusal and asked for a motion to approve.

MOTION/ACTION

Moved by Commissioner Ka'apu, seconded by Commissioner Awo to approve the motion as stated. Motion carried unanimously.

**ITEM D-12 Commission Designation of Successor – BENJAMIN K. KELIIHOLOKAI,
Residential Lease no. 1758, Lot No. 87, Waimanalo, O'ahu**

RECOMMENDED MOTION/ACTION

Acting Homestead Services Division Administrator Dean Oshiro presented the following:
To approve the designation of Leiluluhipolanikeakahaumaliookalani Keliiholokai Makaanani (Lei) and Cecelia Wahineaukai Keliiholokai (Cecelia), as successors to Benjamin Keliiholokai's 50% tenant-in-common interest to Residential Lease No. 1758, Waimanalo, Oahu for the remaining term of the lease.

MOTION

Moved by Commissioner Kahikina, seconded by Commissioner Ishibashi to approve the motion as stated.

DISCUSSION

Commissioner Chin asked who lives on the property. D. Oshiro stated the lease started with one person. He named two successors who became tenants in common. The tenants in common have spouses and named their own successors who are not related by blood. He agrees that these situations have led to complications.

Chair Masagatani asked DAG Matthew Dvorch if eliminating the option requires administrative rules. M. Dvorch stated the Department will need rules to deny a successor.

Commissioner Kahikina commented that the Department's newsletter could be used to provide beneficiaries with information about successorships and how it could affect the family. Chair Masagatani said basic information when naming successors is a good suggestion.

Commissioner Ka'apu asked that staff talk to the family to explain the situation and options.

ACTION

Note: This Item was deferred.

**ITEM D-13 Commission Designation of Successor – JEANETTE M. HANAWAHINE,
Residential Lease No. 1758, Lot No. 87, Waimanalo, Oahu**

RECOMMENDED MOTION/ACTION

Acting Homestead Services Division Administrator presented the following:
To approve the designation of Kuuleilani K. Petty-Hanawahine (Kuulei), as successor to Jeanette Hanawahine's 50% tenant-in-common interest to Residential Lease No. 1758, Waimanalo, Oahu for the remaining term of the lease.

Note: This Item was deferred.

ITEM D-14 Commission Designation of Successor – MONA J. AMARAL, Residential Lease No. 18133, Lot No. 169, Nānākuli. Oahu

RECOMMENDED MOTION/ACTION

Acting Homestead Services Division Administrator Dean Oshiro presented the following:
To approve the designation of Warren E. Amaral (Warren), as successor to Residential Lease No. 18133, Nānākuli, O‘ahu, for the remaining term of the lease.

DISCUSSION

Commissioner Chin stated the timeline of the events is confusing. She asked what the process is for building a home or making improvements to their lot. D. Oshiro stated the normal process is that a lessee will submit a request for improvements and a building permit application. Not all lessees follow protocol and they get building permits without the Department being aware.

Commissioner Ka‘apu added this situation could be another public relations feature in the newsletter about notifying the Department when a lessee passes away.

Commissioner Kahikina suggested the Department allow beneficiaries to go online to provide information updates. Commissioner Wescoatt agreed and hoped the Department is already moving in that direction. He asked is the data if digitized.

Chair Masagatani stated there is an administrative rule change in the hopper to allow beneficiaries to change their addresses in ways, such as on-line, rather than in writing as it is currently stated. Most of the data is digitized. The ability for staff in neighbor island offices to view beneficiary data is the priority. The internal APEX (applicant lessee data base) system is thirty-years old and custom built. The Department is just starting to look at what it will take to revise the system yet still be compatible with the other database systems used in the Department.

Commissioner Wescoatt suggested setting a target to get to, and a schedule of when we want to get there, so Commissioners can track the progress. Maybe start with small changes, so at least people can do small things like change their address online or know when offers come out electronically. A little bit of information will be a huge improvement to what the Department is doing right now.

Chair Masagatani stated the Department is working on operational improvements, however, at the current time staff that are working on implementing these improvements also have other major responsibilities. So progress is slow.

Chair Masagatani explained the difficulties involved with staffing positions and getting positions approved. Commissioner Wescoatt stated the Commission sets the priority for the Department, given its limitations. When the Commission sets its priorities, the Department should follow through. If the Department says it can only do five things by March, the Commission must identify what five things are the most important to get done.

Commissioner Ishibashi stated if the Department can compartmentalize just a small section to start where beneficiaries can update their information on-line.

Commissioner Chin commented that she understands the limitations and the frustrations of Commissioners and hopes there is a middle ground. She understands that the Commission

should be setting policy and direction. She agreed with Commissioner Wescoatt that if the Commission sets the Department in a direction, it should move in that direction. Providing access to beneficiaries to change their contact information is a small bite that should be attainable.

B. Feiteira stated that from a beneficiary perspective, communicating and interfacing with the Department is very difficult. DHHL needs to get sufficient sums to do the most basic things. It boils down to funding. There needs to be a short-term solution and a long-term solution. It took five years to get the Department to post the HHC meeting packets on the website.

Commissioner Ka'apu stated the reason for electronic medical records is because under Obama Care to get paid, providers needed to migrate to electronic files.

Commissioner Awo suggested hearing from staff about their information technology frustrations so the Commission can move in concert with them to make things better for everyone. He felt it would be helpful to hear from the staff.

Chair Masagatani stated next month Commissioners will hear a presentation from Ward Research on beneficiary experience as a customer of DHHL.

Commissioner Chin was concerned that if the underlying machine that drives the Department is not working properly, it doesn't matter how much staff you throw at it, it won't move.

MOTION/ACTION

Moved by Commissioner Ishibashi, seconded by Commissioner Ka'apu to approve the motion as stated. Motion carried unanimously.

MOTION/ACTION

Moved by Commissioner Ka'apu, seconded by Commissioner Ishibashi, to convene in executive session pursuant to Section 92-5 (a)(4), HRS. Motion carried unanimously.

EXECUTIVE SESSION IN 1:08 pm

EXECUTIVE SESSION OUT 2:05 pm

Chair Masagatani thanked everyone for their patience as the Commission convened in executive session.

LAND MANAGEMENT DIVISION

ITEM F-1 Approval to Issuance of Right of Entry Permit to Kohala Watershed Partnership for Fence Project, Phase II, Kawaihae, Hawaii, TMK No. (3)61001003

RECOMMENDED MOTION/ACTION

Acting Land Management Division Administrator Kahana Albinio presented the following: That the Hawaiian Homes Commission (HHC) authorize the issuance of a Right of Entry Permit, covering the subject area as described below for construction and installation of approximately 9 miles of ungulate proof fencing thereby controlling erosion within the larger Honokoa Watershed to prevent land-based pollutants from damaging the coral reef. Approval and issuance of this Right of Entry permit (ROE) shall be subject to the conditions in the submittal.

DISCUSSION

Chair Masagatani asked what is the term of the ROE. K. Albinio responded the ROE is for one-year. Maintenance of the fence may require a longer-term disposition.

Commissioner Chin asked who is accountable for making sure the meat gets to those who want it. K. Albinio stated the Kailapa Community Association helps notify the other homestead community associations.

MOTION/ACTION

Moved by Commissioner Ishibashi, seconded by Commissioner Ka'apu to approve the motion as stated. Motion carried unanimously.

ITEM D-17 Approval of Subdivision, Transfer of a portion of Lease and Amendment to Lease No. 9054, Lot A, Keoniki-Kauniho, Waimea, Hawaii – FLORA BEAMER SOLOMON

RECOMMENDED MOTION/ACTION

Deputy Director William Aila Jr., Acting Homestead Services Division Administrator Dean Oshiro and West Hawai'i District Office Manager James DuPont presented the following: To approve the request of Flora Beamer Solomon to subdivide Department of Hawaiian Home Lands ("DHHL") Pastoral Lease No. 9054, Lot A, Keoniki, Waimea, Hawaii, consisting of 125 acres, and further identified as TMK: 3-6-5-001:010 into Lots A-1, A-2 and A-3, subject to the conditions in the submittal.

DISCUSSION

Commissioner Kahikina asked if the ROE is a part of the submittal. J. DuPont stated the ROE is not part of the sub division approval. The ROE is adjacent to the ranch. Commissioner Kahikina clarified that there are three structures on the property. J. DuPont replied that there are more than three structures. The West Hawai'i District Office was unaware of the improvements. They are bringing things into compliance by having the building permits submitted after the fact.

Commissioner Ka'apu stated that part of the deferral from the last agenda was to ensure that an easement was executed by the lessee that would grant DHHL access to the 105 acres and any parcels above it. J. Dupont stated the easement was already provided to access the 105 acres.

Commissioner Ka'apu stated that one thing Commissioners wanted in the letter was to convey to the lessee that she was not in compliance with her lease by not getting permission from DHHL to build the additional structures. The Commission wanted to make it clear. He was disappointed that the point was watered down. He also wants to understand what kind of structures are we talking about. By not understanding the size of the buildings it's hard to know what the Department's liability for the value of the structures. J. DuPont stated there was a real property tax assessment on each of the structures in the October submittal. He added there are at least five letters to the Solomon family clearly stating the lease violation.

Commissioner Ka'apu stated for the record it is important that it be clearly stated in this submittal and exhibits.

Commissioner Awo stated it was his understanding that the Commission wanted to address Ms. Solomon's situation publicly to go over the violation and what is required to bring the lease into compliance. Deputy Directory W. Aila stated he was there and did not have the same understanding. The directions they received from the Commission were to make sure that

everything was in compliance before the Department brought the item back before the Commission. The only remaining item was a structure that could be used as an office, but was being used to store beds. She was notified to bring it into compliance as an office.

Deputy Aila added, regarding compliance issues and consistency, many beneficiaries in the past went to the different counties for building permits and were told they didn't need one, like in Kaua'i County. At some point the Department will have to address similar violations, keeping in mind that this is just the first to be brought forward.

Commissioner Ka'apu responded that he understands the issue of not going to the counties for permits in some cases, but he is bothered by lessees not coming to the Department to get permission.

Chair Masagatani asked Deputy AG M. Dvorch if the Department was obligated to compensate a lessee's estate for a structure that was built without approval by the Department. M. Dvorch stated a case could be made that the structure was not approved there is no value.

Commissioner Ishibashi asked what the value of the cinder was. J. DuPont stated the cinder pit on the original Solomon lot led to the discovery of the endangered plant which led to the relocation of the Solomon family to this parcel.

Chair Masagatani summarized the instructions to staff: The submittal should be much more explicit that there was noncompliance on the part of the lessee. It should outline the actions that have been taken by the lessee consistent with the procedures that were identified by the Commission to complete the subdivision and bring the lessee into compliance. The submittal needs to lay out in the discussion so that it is in the record straight as to what the history has been with this lessee.

Commissioner Kahikina commented that the action will set a precedence. There were others who were made to take their structures down such as Stewart Hanchett in Kauai. Chair Masagatani stated in that case it was a revocable permit which is a little different.

Commissioner Ka'apu stated he spoke to beneficiaries after the Hilo meeting who felt the Solomon's were getting special treatment because Deputy was assisting them at the table and he wouldn't necessarily do that for every beneficiary. There were a lot of people in the audience shaking their heads which is why he wants it to be clear that she was not in compliance and this is what she needed to do to come into compliance.

Commissioner Awo stated he doesn't think it would hurt to address Ms. Solomon and lay everything out on the table.

Commissioner Ka'apu reminded staff to include the easement in the submittal. Chair Masagatani also reminded staff to include what the procedures were to allow for the subdivision and to outline what the lessee has done to come into compliance.

Commissioner Ka'apu added that when he reads M. Solomon's letter, it makes him angry because she doesn't accept responsibility for not getting permission from the Department.

J. DuPont stated a lot of people in Waimea are watching this case because they think special treatment was provided to this family. Despite repeated efforts to bring them into compliance, there was no motivation for them to do so until now.

Commissioner Chin asked why the contested case hearing never occurred. J. DuPont stated lease violations were not a priority given the limited resources available for contested case hearings. Commissioner Chin commented that this violation should have been addressed.

Commissioner Ishibashi stated one of the biggest issues he took away from the previous discussion is the blood quantum issue. How is the Department awarding M. Solomon a lot when she and her sister are not beneficiaries? They stated themselves that they are 25% and not 50%. He requested an explanation be included in the submittal.

Commissioner Chin stated it doesn't sit right in her na'au.

RECESS 3:15 pm

RECONVENE 3:25 pm

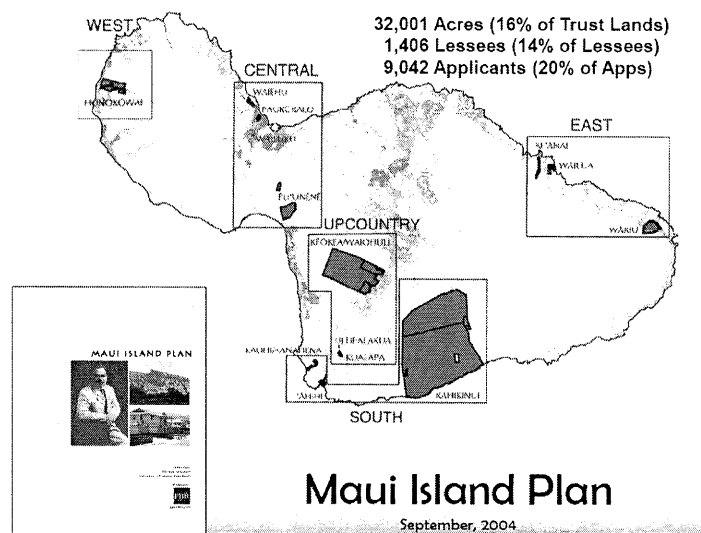
ITEM G-2 Upcountry and South Maui Planning Updates

RECOMMENDED MOTION/ACTION

None. For information only.

Planner Julie Cachola provided an oral presentation of the submittal.

The Maui Island Plan, adopted by the HHC in September 2004,



Waiohuli and Kēōkea Regional Plan Priority Project Updates

- Develop Water Source and Infrastructure
- Development of Community Facilities
- Kihei to Kula Road through HHLs
- Implement Cultural Preserve Plans
- Address Safety Concerns

Water

- \$2M Design and Construction of Ag Off-Site Water System
- Negotiated Agreement with DWS for 500,000 gals of source water

Cultural Preserve

- \$1M Design and Construction, Repair and Maintenance of Archaeological preservation improvements.

Road Safety

- \$2.1M Design and Construction, Repair and Maintenance of roadway safety and drainage improvements

Community Facilities: Waiohuli

- 50-year License
- \$1.5M Grant-in-Aid completed Phase I construction: certified kitchen, lanai, Hale Halawai Cultural Zone, garden, amphitheater, paved parking
- \$500K GIA for construction of Phase II: expansion of event facilities, establishment of a health and wellness component (native garden, fitness trail)
- Community renewable energy initiative feasibility assessment.

Community Facilities: Kēōkea

- Right-of-Entry for marketplace and nursery
- Completed a site plan for their community center
- Submitted a Land Use Request for a long-term license

Kahikinui Priority Projects

- Homestead Facilitation Program
- Improve and Develop Roadway Network
- Resource Management
- New Stewardship Economy for Kahikinui

Priority Projects

Resource Management

To protect and expand the native forest, native flora and fauna, water resources, cultural resources, and the lives and homes of our homestead community

Threats:

- Ungulates-cattle, goats, deer
- Invasive species-gorse
- Fire
- Unauthorized Access-Hunters

Response:

- Fire wise Community:
- Completed a Community Wildfire Protection Plan
- Community Wildland Fire Assessment
- Fencing project
- Ungulate Removal Plan

J. Cachola introduced Ka 'Ohana O Kahikinui Secretary Charmaine Day who also introduced Andrea Buckman of Leeward Haleakala Watershed and Ainoa Kieokamalie the current president of Ka 'Ohana O Kahikinui.

C. Day provided an update of the association's ongoing projects including reforestation, ungulate removal project, and paddock installation. They are relining the existing reservoir to build their own herd for meat. Sandwich Isles put up a little shed to use as a community center. They also have a community garden. They want to restore the church and erect a community market place. A. Buckman added that that fence is starting on December 15th and will take 4-6 months. They are thankful for the assistance of the Department of Land and Natural Resources (DLNR) and the Department of Health (DOH). They also received a small grant to do clearing on the side of the road to provide access for fire services.

Commissioner Awo congratulated the women for their pioneering spirit. It demonstrates for other beneficiaries that no obstacle is insurmountable when you have the will.

Commissioners Ishibashi and Kahikina offered additional accolades for the families and the way they've sustained themselves in Kahikinui. A. Kieokamalie stated the Department needs to help new families understand the Kahikinui Declaration of Conditions, Covenants and Restrictions (DCCR) and what they are getting into. There are expectations and folks can't just build whatever they want. C. Day stated they really need more people to join the community to make the work easier for everyone.

ITEMS FOR INFORMATION/DISCUSSION

GENERAL AGENDA

ITEM J-4 Jessica Kailani Ross – Leiali'i Lessee

J. Ross is a Leiali'i lessee with two daughters struggling to keep her home. She is a high school teacher in Lahaina. In 2011, the State of Hawai'i balanced the budget by putting teachers on furlough. She also had a second job with College Connections. She also had a landscaping company that also folded around the same time. She started to fall behind on her payments and began accruing the late fees. She went to American Savings Bank (ASB) to ask to refinance her loan. They denied her saying her debt to income ratio was too high. They said they would recommend that DHHL cancel her lease if she did not pay.

D. Oshiro offered that Ms. Ross' loan was one of those that were bought back to the Department as part of the ASB settlement.

Chair Masagatani stated the Department worked with ASB to develop a new private mortgage insurance lending product for the Leiali'i project. It was the first of its kind and the Department learned a lot through the program. There were issues and the Department no longer uses the ASB lending program.

J. Ross stated she has been assigned to work with Hawaiian Community Assets twice so far. Both times the person she was working with changed jobs and she was left in limbo. As she was doing research, she found out that the Department was offering loans at 2% interest. No one offered her a loan.

Since then, she has increased her income by completing a master's degree program so the Department is telling her that she can afford her note now. She's paying at the ASB interest rate of 5 ¼%. If there are opportunities to ease the burden on beneficiaries, she believes the Department should offer them. J. Ross asked the Commissioners to offer beneficiaries more affordable loan products.

Chair Masagatani asked staff to assign Helen Wai to assist K. Ross with lease cancellation prevention since Ms. Ross' experience with Hawaiian Community Assets was not favorable. She thanked K. Ross for attending.

RECESS

4:48 p.m.

HAWAIIAN HOMES COMMISSION
Minutes of November 21, 2017
Paukūkalo Community Center, 657 Kaunualii Street, Wailuku, HI 96793

PRESENT Jobie M. K. Masagatani, Chairman
Randy K. Awo, Commissioner, Maui
Kathleen P. Chin, Commissioner Kaua'i
Wallace A. Ishibashi, Commissioner, East Hawaii
David B. Ka'apu, Commissioner, West Hawaii
Michael P. Kahikina, Commissioner, O'ahu
Wren Wescoatt, Commissioner, O'ahu

EXCUSED Molokai Seat, Vacant
O'ahu Seat, Vacant

COUNSEL Matthew Dvonch, Deputy Attorney General

STAFF William Aila Jr., Deputy to the Chairman, Office of the Chair
Paula Aila, Hale Manager
Kahana Albinio, Acting Administrator, Land Management Division
Kaleo Manuel, Acting Manager, Planning Office
Francis Apoliona, Compliance Officer
David Hoke, Enforcement Officer
Akoni Shannon, Enforcement Office
Dean Oshiro, Acting Administrator, Homestead Services Division
Stewart Matsunaga, Community Development Manager, Land Development
Leah Burrows-Nuuanu Secretary to the Commission
Mona Kapaku, Maui District Office Manager
Shelly Carreira, Land Manager
Bryan Cheplic, ICRO
Joann Aiwohi, Homestead Housing Specialist IV
Susie Richey, Secretary to Deputy Director
Debra Aliviado, Customer Service Manager
Julie Cachola, Planner

ORDER OF BUSINESS

CALL TO ORDER

Chair Masagatani reconvened the meeting at 9:03 a.m.

PUBLIC TESTIMONY ON AGENDIZED ITEMS

ITEM A-1: Norman Abihai – Pa'upena Community Development Corporation

N. Abihai asked for more information about HHC Agenda Item D-17. Chair Masagatani explained that the item involved a 125-acre pastoral lease that is being subdivided because there are violations regarding the number of structures on the property. She explained that the moratorium on subdivision of agricultural and pastoral leases was lifted so beneficiaries can subdivide if they meet the minimum lot size requirements.

N. Abihai asked what the next step should be for Pa‘upena CDC to start the project they presented to the Commission, and what would be the best lease to ask for. Chair Masagatani suggested they take it one step at a time and that Pa‘upena leadership meet with the Planning staff in terms of capacity issues.

N. Abihai asked how long would it take to get access to the land. Chair Masagatani stated it depends on what Pa‘upena and the Department decide is the first step and what needs to be done. She has the authority to approve a one-day right of entry to assess the land. Longer dispositions require approval by the Commission.

ITEMS FOR INFORMATION/DISCUSSION

WORKSHOPS

PLANNING DIVISION

ITEM G-3 Environmental Impact Statement Preparation Notice for Pūlehunui Regional Infrastructure Master Plan, Pūlehunui, Kula Moku, Maui, TMKs (2)3-8-008:008, 034, 035, and 036

RECOMMENDED ACTION

None. For information only.

Acting Planning Program Manager Kaleo Manuel, Acting Land Development Manager Norman Sakamoto and PBR Consultant Tom Witten presented the following:

DISCUSSION

This briefing will also provide the HHC with an opportunity to comment on the Draft Environmental Impact Statement Preparation Notice (EISPN) (Exhibit A) that we plan to publish in December in the Office of Environmental Quality Control's (OEQC) Environmental Notice Bulletin pursuant to Hawaii Revised Statutes (HRS) Chapter 343 requirements.

Pursuant to the 2014 Memorandum of Understanding (MOU) DHHL will undertake a regional infrastructure planning effort on behalf of four State departments, (DLNR, DHHL, Department of Public Safety (DPS), and the Department of Accounting and General Services (DAGS)). The proposed project will involve a coordinated regional infrastructure alternatives analysis for water, wastewater, and key roadways. On DHHL lands specifically, land use programs are anticipated to involve commercial, light industrial, and agriculture-supporting uses, and agricultural use by DHHL beneficiaries. A portion of Pūlehunui South may accommodate supporting regional infrastructure, pending consultation and appropriate technical studies. DHHL is underway with the preliminary engineering to analyze regional alternative approaches to water and wastewater infrastructure, in tandem with any related refinements to its land use programs.

These processes will be informed by the completion of additional technical studies, continued coordination with the State agency stakeholders, and consultation with the beneficiary community. A Draft EIS will follow to address the impacts of regional infrastructure alternatives. Comments received during the DEIS public comment period will be considered in the selection of infrastructure alternatives and refinement of DHHL's land use programs.

NEXT STEPS

- Publish EISPN – Winter 2017.
- Beneficiary Meetings to refine DHHL's land use programs, finalize technical studies and conceptual plans; and incorporate into EIS– January-April 2018.
- Draft EIS will be prepared to evaluate alternatives considering project goals and potential impacts.
- Draft EIS will be shared with the Commission prior to publication in the OEQC Environmental Notice – May-July 2018.
- Comments to the Draft EIS will be accepted during a statutory 45-day comment period.
- EIS will be amended or augmented as necessary in response to comments. A preferred alternative will be identified. Final EIS will be prepared.
- Final EIS will be shared with the Commission prior to submittal to the Governor for acceptance – August-November 2018
- Once EIS process is completed, the project will move into the design phase, which is already contracted, and will focus on sewer and wastewater infrastructure because DHHL has a CIP appropriation of \$17.5 million from the legislature for wastewater and sewer improvements.

DHHL is serving as the master developer to put in the regional infrastructure. Originally it was undetermined who would take the lead and serve this role. Since 2014, DLNR started moving independently with their own money for their 285-acre industrial park. The engineers that are working with DHHL are also working with DLNR and so as studies overlap, the goal is to find the best solutions to achieve the objectives of the MOU as far as development efficiencies.

The other part of this effort was to comment on the draft EISPN which is the first general statement of the scope of the project as it is currently envisioned. The goal is to identify the regional infrastructure issues, come up with the solutions and alternatives and preferred plans, and take the project through the whole environmental review process.

Commissioner Wescoatt asked if DLNR is still involved in this process. K. Manuel answered that they are since the regional infrastructure solutions and alternatives being identified include them as a landowner served by these facilities.

Chair Masagatani stated that the MOU was drafted during the previous administration when this area was identified as where the new correctional facility was going to be located. DAGS and DPS were driving the redevelopment discussion. At some point DLNR decided to look at their parcel on their own. With this administration, DPS shifted its priority to O'ahu. The project was still a priority for the Maui legislators so DHHL agreed to do the legwork for the backbone infrastructure that is being paid for by the state. It solves the regional infrastructure issues that require resolution before DHHL can use its land. These regional infrastructure issues include addressing water, wastewater, and transportation concerns. DHHL can also include its agricultural lands in the planning design and construction work as well.

Commissioner Wescoatt asked what's the benefit to beneficiaries? Chair Masagatani stated the lands become much more valuable and DHHL has a lot more control over the options that are considered.

K. Manuel stated these parcels were acquired, and while it is not a priority project in the Island Plan, the opportunity presented itself. With sugar no longer being an economic engine, and beneficiaries pushing for agriculture opportunities, the biggest benefit is getting beneficiaries on

the land to access ag. From January through April staff will be doing a planning charrette with Maui beneficiaries to figure out how to make it work. In addition to the ag parcel there is also another commercial light industrial parcel. This would be the first revenue generating parcel on the island for DHHL. All of this is contingent upon getting infrastructure to the central region.

Commissioner Wescoatt encouraged everyone to keep in mind that it could generate revenue. K. Manuel expressed that water is very contentious in this area. Once EISPN is public we expect input from the other stakeholders.

Commissioner Wescoatt stated that DHHL should keep the end uses as broad as possible because needs change and people get better ideas. Once the EIS is done and the boundaries are specified, then it's easier for developers to respond to a RFP. He prefers DHHL be the landowner specifying for developers what the Department wants done. The Department will end up with better projects and beneficiaries get their needs met earlier.

Commissioner Kahikina asked how many beneficiary meetings will staff hold. K. Manuel stated there will be a series of charrettes. The goal is to take advantage of the state funding and really engage DHHL beneficiaries.

Commissioner Ishibashi asked if the area was all designated as Ag on the Maui Island Plan. K. Manuel stated that most of Central Maui is designated IAL, Important Agriculture Lands. DHHL land is still labeled as Ag in the Maui Island Plan. During the County's planning process DHHL advocated to have its commercial/industrial lens piece included in the Urban Growth boundaries, but the County did not include DHHL's lens piece in the Urban Growth Boundary so our Plan is inconsistent with the County's Plan. Ultimate land use authority for DHHL lands, however, lies with the Hawaiian Homes Commission. DHHL has its own planning process and the document will reflect language the Department has consistently used.

Chair Masagatani asked what are the areas above DHHLs property that aren't labeled. The DHHL Consultant stated the areas are undesignated and the County areas were not included in the plan per their request.

K. Manuel stated the next step will be to bring the draft EIS to the Commission before it goes out to print.

OFFICE OF THE CHAIRMAN

ITEM C-3 DCCR/Planned Communities Administrative Rules

RECOMMENDED MOTION/ACTION

None. For information only.

DHHL Rules Officer Hokulei Lindsey presented the following:

DISCUSSION

At the September 2017 meeting of the Hawaiian Homes Commission, staff presented a workshop about the status of the relationship between the Department of Hawaiian Home Lands and the DCCR associations on Hawaiian home lands. Later that month, the DHHL convened a meeting with the DCCR association's leadership to discuss the same topic and to get the DCCR associations' leadership's input on draft administrative rules that would govern the relationship between the associations and the Department. The invitation was emailed to all the DCCR

associations; eight associations responded to the invitation and seventeen current and next generation leaders attended the meeting.

The meeting was split into a morning and an afternoon session. The morning was dedicated to the relationship with the Department and the draft administrative rules, while the afternoon was set aside for training conducted by HANO (Hawaii Alliance of Nonprofit Organizations). Staff presented two PowerPoints, the first focused on the relationship between the DHHL and the DCCR associations and the second highlighted several important provisions in the draft administrative rules. Following the second PowerPoint, the attendees were split into two discussion groups. Facilitated discussion about the draft administrative rules focused on four questions:

- **What are your association's three toughest/biggest issues?**

Comments/Themes

- Poor enforcement: including payment and collection of assessments as well as compliance with the DCCRs;
- Unclear relationship with DHHL: including communication and support, and no enforcement "hammer;" and
- Lack of member participation: understanding the purpose and intent of the DCCRs and why the DCCRs matter.

H. Lindsey stated comments tend to connect difficulty with enforcement of the DCCRs with the unclear relationship with the DHHL. One comment put it plainly: "Board tries to lay down the law ... if DHHL doesn't weigh in, we're stuck. We're married; without DHHL's support we cannot move forward.

- **How can DHHL best help you address those issues?**

Comments/Themes

- Enforcement: associations should have a collection process for assessments including multiple notifications, clear expectations, and payment schedules; associations can have a management company deal with assessments and collection; and the HHC/DHHL should hold contested cases (throughout the year, not just on island) and cancel leases. The sentiment was clear that real consequences were necessary to demonstrate the seriousness of noncompliance and nonpayment.
- Relationship with DHHL: better and timely communication including notification when new owners come in; make sure the DCCRs are part of the escrow disclosure; continue seminars, gatherings, and education; and increase on-island representation (decentralize); be clear about purpose and intent including a purpose clause in the rules that says how the associations fit in and improve the larger community.
- Member participation: association organize community pa'ina; create different ways for people to participate.
- (organizers, "worker bees," etc.): make room on the board for next generation members; association communicate to members in multi-layered ways (in person, website, email, fliers).

Many of the solutions suggested involved a combination of DHHL and association action.

- **If you were starting over as a DCCR community, what would you change?**

The comments reveal a sense that the solutions are connected: if there is clear communication and expectations, and enforcement from DHHL, then it becomes easier for the association to enforce the DCCRs, collect assessments, and build community. But if lessees come in without information and expectations set according to the DCCRs, it is hard for associations to function. A significant majority of the group was clear about wanting to move forward with contested cases and lease cancellation.

Many of the things they would change directly relate to the toughest issues that were identified: better communication from the DHHL, a clearly identified and understood relationship between DHHL and the associations, and new lessee orientation. In addition, comments expressed a desire to be included in the planning of their community as early as possible so that they could have common areas that fit their community vision.

- **If you were starting over in a DCCR community, what would you most like to know as a new/prospective lessee?**

Comments identified wanting to know the critical components of their specific DCCRs. The other comments seemed to revolve around basic, core elements of being a lessee: can I lose my lease; what are the consequences for noncompliance; better understanding related to the privilege and responsibility of living on Hawaiian Home Lands.

Commissioner Kahikina asked if the draft rules will address the problems in these communities. H. Lindsey stated in working with the AG's the rules cover most of the concerns expressed by the leaders to the extent that the Department is able. It takes a big step toward outlining the roles and responsibilities of the association. The process is laid out for the associations.

H. Lindsey added in the discussion with leaders, staff tried to explain what it meant to hold a contested case hearing and how it could affect their neighborhood. They will need to live next door to the person they send to a contested case hearing.

There is a gap in what's happening when new lessees take over leases. From the Homestead Services Division side, they're saying that the information goes to the associations. The associations are saying that they don't get the notifications. There is a gap between what is supposed to happen and what is really happening.

Commissioner Ka'apu asked if the proposed rules put everyone on the same playing field. H. Lindsey stated each community must "opt-in" and the way they determine that depends on how their association works and how they vote on things. DAG M. Dvonch stated the Kalawahine opinion left it to DHHL to determine how those communities participate.

Commissioner Ka'apu asked if the Department is assisting the associations to make sure their process is not flawed. DAG M. Dvonch replied that the AG's office would be more comfortable referring the associations to their own attorneys on how to best comply with their own rules.

Chair Masagatani stated the Department could identify what it needs from the associations as an "opt-in", and maybe provide a technical assistance opportunity with people who have expertise in planned community organizations.

Commissioner Awo stated the rules place a heavy burden on the associations. H. Lindsey responded, the rules encourage independence from the Department. The associations must

exhaust every means they have before coming to the Department. The positive thing is that it gives the lessee several chances before a lease cancellation before the Commission. Many of the associations have already been down the civil path and still are unable to collect.

Commissioner Wescoatt asked if it is the lessee or the association that needs to opt-in. DAG M. Dvorch stated the association needs to opt-in.

H. Lindsey stated if the Commission decides to move forward with the rules, the draft that will go out is attached to the submittal.

Commissioner Wescoatt stated there are 20,000 people on the waitlist that would love to pay those association dues. The Commission has just as much responsibility to them as they do those who have leases. He doesn't have patience for lessees who cannot pay their \$35 per month.

Commissioner Ka'apu stated the Department should make sure the DCCRs are part of any escrow where the lease is changing hands, so people must sign and agree to be bound by the DCCRs. It should be on a check list.

Commissioner Kahikina stated that Princess Kahanu Estates has fundraisers. He asked Helen Wai to provide information on her association dues. H. Wai stated their dues were \$20 per month for many years but are going up in the coming months. The association has its own attorney and hires people to work with members to pay their dues.

Chair Masagatani thanked everyone for the discussion.

RECESS

10:55 a.m.

RECONVENE

11:14 p.m.

OFFICE OF THE CHAIRMAN

ITEM C-5 For Information Only – Revocable Permit Program Revisions – Issues and Proposed Plan of Action

RECOMMENDED MOTION/ACTION

None. For information only.

Acting Land Management Division Administrator Kahana Albinio, Acting Planning Program Manager Kaleo Manuel and Legislative Analyst Lehua Kinilau-Cano presented the following:

DISCUSSION

The purpose of this workshop is to review the issues identified by the Hawaiian Homes Commission ("HHC") with the Revocable Permit (RP) program and to share a proposed plan of action to address these concerns.

By way of overview, it is important to note that a RP is most appropriate for available Hawaiian home lands that are intended for homesteading in less than 20 years. Thus, these available lands would not be appropriate for general leasing or other long-term dispositions beyond 20 years. In addition, a RP is often used as a tool for the management and stewardship of available lands that would otherwise be an expense to the Department. All uses would be temporary and exempt from preparing an Environmental Assessment under HRS Chapter 343, per DHHL's exemption list.

The HHC, in its continued effort to implement the recommendations of the Governor's Ad Hoc

Advisory Group convened for assisting DHHL in improving its Revocable Permit program, have identified the following issues:

- Offer Revocable Permits to qualified beneficiaries first. Staff will be notifying all beneficiaries and existing Revocable Permit holders in the first quarter of 2018 via mailout and on DHHL's website in coordination with ICRO and the district offices about the competitive process for disposition of available Hawaiian home lands on a short-term basis. Criteria will be developed to vet proposals for review and recommendations will be made in the second quarter with the intent of issuing Revocable Permits by island beginning July 1, 2018. This process would occur on an annual basis with the intent of notifying beneficiaries to provide an opportunity to submit proposals.
- Consider longer than month-to-month terms for beneficiary based organizations
As part of the proposal process noted above, consideration will be given to allow longer than month-to-month terms but less than 20 years for beneficiary based organizations so these dispositions wouldn't need to cycle before the HHC every year. These dispositions would be determined on a case by case basis.
- Fair market value for commercial/industrial uses
Staff has initiated the process to seek professional appraisal services to assist the Department in determining a methodology/approach to establishing Fair Market Rent on Commercial/Industrial parcels for short-term Revocable Permit dispositions. The intent is to have these services in place in the first quarter of 2018.

The initial steps should begin to address the issues identified by the HHC with the Revocable Permit program.

K. Manuel added that when staff did the assessment there were approximately 140 right of entry permits and approximately a third of them are beneficiary organizations or beneficiary individuals. Prioritization is a topic needing discussion if the goal is to give beneficiaries the first shot. All 140 permittees will have to reapply. If no beneficiary comes forward, a non-beneficiary tenant can be considered as an interim management tool.

Commissioner Chin asked if process wise reviewing 140 permits on an annual basis is too much. The time it will take to go through applications and verify things and by the time the Department awards the permits, half the year is gone. She doesn't want to set an expectation the Department cannot meet.

K. Manuel stated RPs are month to month for one year. Right of Entry Permits (ROE) are more for studies and access. Chair Masagatani stated the Department has been treating them the same. For consistent land use designations like parks and community centers, the Department could consider a license.

K. Albinio added beneficiary organizations like Waiohuli Homestead Association want a long-term license and if they are successful with execution of their plan and securing funding, there could be an option to extend for another 5 years. It is also important to remind them about the 20-year timeframe for getting the land ready for homesteading.

K. Manuel suggested that land use designation changes for community organizations is needed. Staff is focusing on beneficiary organizations because the Department can go directly to them and give them licenses. Individuals cannot get a long-term disposition, under Chapter 171, under

the law long-term dispositions must go out to bid. The Department uses short-term dispositions for land management and RPs and longer-term dispositions are mainly for organizations. Long-term dispositions for individuals is another process the Commission needs to tackle.

Commissioner Ka'apu commented that the rub is going to be how dispositions are crafted for individuals on the waitlist and balance it against an association's desire access to land under ROEs. It will be difficult to balance. If there is a way to make other lands available to organizations and associations for their uses, it might ease the tension. The Department could use economies of scale lenses toward the associations. He cautions it is still not fulfilling the idea to get folks on the waiting list dispositions to gain knowledge on a skill they can use when they get a lease.

Commissioner Kahikina stated it would be helpful to identify land that can be considered.

K. Manuel stated the other thing is identifying land that would fit RP program. Some RPs are in general ag designated lands that can go for longer term dispositions. Staff is currently trying to map all the RPs and provide an analysis of the land. They think no more than 30% of the properties fall into this list.

Chair Masagatani stated if the Commission does look at longer term leases or licenses. Tenants need to be reminded that it is their obligation to prepare the land for homesteading so they are aware that there is an infrastructure investment expectation. It changes the dynamic.

Commissioner Ka'apu said he supports longer-term dispositions for beneficiary based organizations, he would still like to incorporate a reporting component to ensure land use is in the best interest of the organization.

Commissioner Wescoatt stated he envisioned 140 parcels where the Department wants to have someone on there to take care of the property until it can be homesteaded. The priority could be to beneficiaries or waitlist beneficiaries, and where applicable, to earn revenue. Sometimes a candidate can hit all criteria. The Department wants someone who is qualified. Rather than set up separate process, he was thinking there would be one application for everyone. There would be a box to check if you are a beneficiary and another one for if you're on the waitlist. Everyone would explain their qualifications, how much they would pay and how long they would use it. DHHL decides how to weigh the application based on a score sheet and everyone is scored the same way. Applicants could state what investments they'll make over the timeframe. The Department would set the criteria and how many points allocated to each. Beneficiaries clearly get advantage because the Department would assign more points for that qualification. He envisions one system for every parcel, then revenue doesn't disappear just because the applicant is a beneficiary organization. Industrial parcels could earn more.

Chair Masagatani thanked Commissioners for the discussion and added that purpose of this workshop is to capture issues and to flush out what Commissioners are thinking.

Commissioner Ka'apu stated the issue was to get land into beneficiary hands.

K. Manuel offered that the RP program under Chapter 171 was purely a land management tool. The intention wasn't to make money. In Kalaeloa RPs are making money, so it might make sense to give them longer dispositions to get more money. But longer-term dispositions will need environmental compliance under Chapter 343. Revenue generating parcels, per the Island Plan process was specifically articulated to be reflected in the land use designations for commercial and industrial. In the general plan, the policy of the Commission was to set aside no

more than 1% of its lands for commercial industrial purposes and revenue generation. When the Department did its Island Plans throughout the state it was important to not cross that 1% threshold which equates to 20,000 acres. At this point, the Department hasn't surpassed the acreage limit. Short-term RPs need to be exemptible under Chapter 343, whereby the impact on the land is not so great that there is a potential for environmental, cultural or community impact. Those are all the moving pieces within the program Commissioners must think through. RP is one of the four primary dispositions the Department uses to manage its land. Staff was trying to keep the discussion as simple and high level as possible because it is in the implementation that it gets tricky.

Chair Masagatani asked what the four types of dispositions are. K. Manuel listed the following:

- ROE (Right of Entry) – data collecting access, no ground disturbing activities
- RP (Revocable Permit) – land management and presence
- License – easements, parks, public facilities,
- General Leases -

Commissioner Ishibashi stated the main idea is that beneficiaries understand what is available to them. He asked if there could be a rate structure for beneficiaries.

K. Manuel replied that there could be a rate structure but the Department doesn't know what the upset price is. Staff needs to figure out what the fair market value is when talking about commercial industrial. The amount of lands proposed to be developed in the next 20 years is 34,000 acres. The goal is to get have no more than 30, month-to-month RPs per year.

Commissioner Chin Agreed that the applications should be the same across the board. She wants to see wait lists as a priority and believes enforcement is important in the management process.

Commissioner Kahikina suggested a weighted scale for joint ventures. Sometimes beneficiaries learn from non-beneficiaries.

Chair Masagatani asked counsel if there is a potential for applicants to litigate because the Department is not getting fair market value for business decisions that could help more than just the one beneficiary.

Deputy AG M. Dvonch stated it would be appropriate to factor non-monetary benefits to the trust when making those types of business decisions.

Chair Masagatani asked Commissioners to prioritize staff's efforts given the Department's limited resources.

Commissioner Ka'apu stated the problem with the process is that DHHL does not know the value of what is being leased. Until the Commission understands what the market value of the parcels is, it is going to be very difficult to say which leases should be short-term and which should be long.

Commissioner Chin asked if Commissioner Ka'apu meant all 140 parcels or just the commercial-industrial parcels. Commissioner Ka'apu's replied some parcels are less critical to the calculation but specifically where the Department makes the most money is his concern.

Commissioner Wescoatt agreed that determining fair market value is the highest priority. He added that the consultant should also be asked for each parcel whether longer terms changes the

evaluation. In terms of priority, he suggested the next would be focusing on policy to set the direction. He felt it was less important to address the interests of one specific group and would prefer working on a system rather than one offs.

Chair Masagatani stated the Department is looking for a methodology and assessment of regions, there are several regions. The method staff uses now is it take an assessment, apply an 8% rental factor and divide it in half.

Commissioner Chin stated the perception will be that the Commission is more worried about money than about getting beneficiaries on the land.

Commissioner Wescoatt stated the evaluation exercise is important for all commercial industrial land, not just the RP land. The Department needs to know what the market will bear. The analysis could be focused in areas where there are more commercial industrial parcels.

Commissioner Ka'apu replied that since the methodology in place has not been tested, we could be giving away the farm. For the health of the trust, the Department needs to check its methodology. He believed the discussion about process is separate.

Commissioner Awo asked staff what they felt was achievable and in what timeline. K. Albinio stated the market assessment is pending procurement and contracting. They expect the analysis to be completed by the end of the fiscal year.

Commissioner Kahikina stated the valuation is important.

K. Manuel concluded that one of the primary reasons for the analysis is that there is a perception that DHHL makes things up. The Department need to know if the approach even appropriate, so decisions can be made fairly.

Chair Masagatani thanked everyone for the discussion.

RECESS 12:26 p.m.

RECONVENE 12:37 p.m.

OFFICE OF THE CHAIRMAN

ITEM C-6 Kūhiō Lease Issues

RECOMMENDED MOTION/ACTION

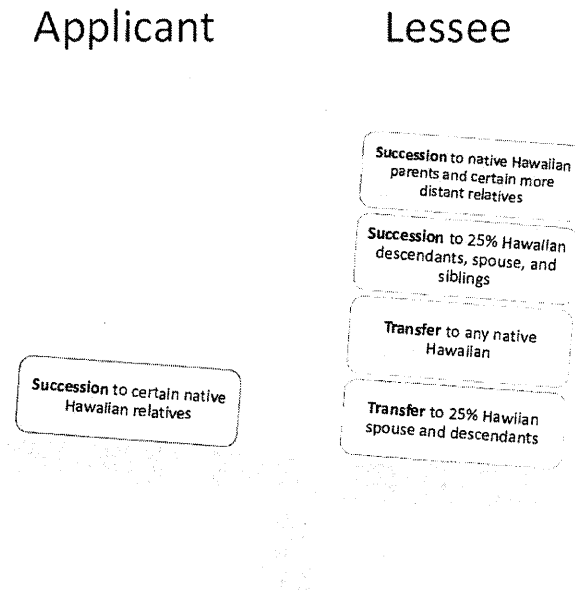
None. For information only.

DISCUSSION

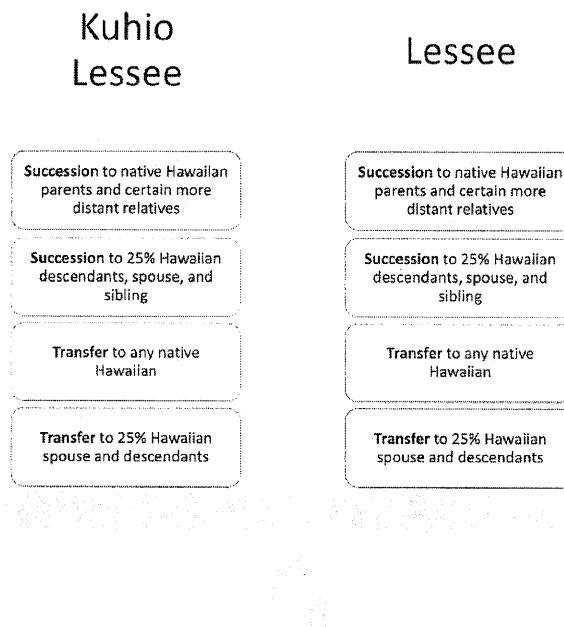
DHHL Rules Officers Hokulei Lindsey presented the following:

The Kūhiō Award concept came from one question: how can a wait list beneficiary's interest to provide opportunities under the Hawaiian Homes Commission Act for their family be protected when that beneficiary does not have native Hawaiian qualified family and development processes for DHHL cannot keep pace with beneficiary need?

The DHHL currently has two types of beneficiaries: those on the land and those on the wait list. Although the people who comprise these two groups are qualified under the Hawaiian Homes Commission Act and, as such, are equally beneficiaries of the Trust, there is disparity that can impact a wait list beneficiary's ability to pass a homestead to their family. Unlike a lessee, an applicant cannot designate a successor who is one-quarter Hawaiian nor can an applicant make a transfer during his or her lifetime.



The Kūhiō Award would provide the opportunity for a wait list beneficiary to plan for family through succession and transfer rights like those of a lessee. Thus:



Several practical big picture issues remain unresolved, including which parcel or parcels, if any, should be identified in the Kūhiō lease. Issues about transfer and succession also exist: whether

joint tenancy or tenancy in common should be allowed in the transfer or succession of a Kūhiō lease and whether multiple transfers should be allowed.

B. Feiteira testified in support of the Kūhiō Leases and added that the Department can learn from the Undivided Interest program by not stating when, where or how the leases will be given. It is about leaving a legacy. Kupuna on the waitlist realize they will never get a lease. They are too old, they are too decrepit, and they cannot afford a new mortgage at this stage of their lives. They just want to be able to leave something for their children or grandchildren.

Chair Masagatani stated some people believe the congressional intent of the program is to take care of the 50% Hawaiians and the Department has not met that obligation. She added that when her mom passes away, their family line can no longer benefit from the program, but the next 50% Hawaiian on the list will have their chance, instead of her as a 25% Hawaiian.

Commissioner Ka'apu shared his concern is that legally the leases need to be tied to a physical piece of property. He suggested a scenario like using one residential for 3000 Kūhiō lease interests so the Department can continue to do what it needs to with the rest of its land. AG opinion about whether the Department can do this. DAG M. Dvorch stated the AG's office has never received an invitation to opine on the issue. He suggested the discussion be held in executive session.

Commissioner Chin asked DAG M. Dvorch is a lease needed to be tied to a specific tax map key. DAG M. Dvorch stated that it did not. She cautioned that implementation will be huge especially for a state Department that cannot connect digitally to its satellite offices. The program would mean going from managing almost 10,000 leases to more than 30,000 leases. An application doesn't generate lease transactions, but a lease can have transfers, successorships and the like.

B. Feiteira stated one way to manage it is to do it incrementally somehow to make it manageable.

Chair Masagatani agreed there will be an impact on the workload.

Commissioner Wescoatt asked if having a lease give a beneficiary more standing to sue the Department if that land never comes through. DAG M. Dvorch stated it does increase the exposure of the Department because it could be an affirmative promise made by the Department to give a piece of land to a specific person. B. Feiteira added that more lawsuits have been brought against the Department by those on the waitlist than any other class.

Commissioner Awo stated he is inclined to support the concept but he needed more time to educate himself. He asked B. Feiteira for time to discuss the details further.

Commissioner Wescoatt stated he understands the concept but thinks it is essentially just creating another list.

Commissioner Ishibashi liked the concept and thinks it is heading in the right direction, but that it still needs more discussion.

Chair Masagatani thanked H. Lindsey and B. Feiteira for the discussion.

HOMESTEAD SERVICES DIVISION

ITEM D-1

HSD Status Reports

A - Homestead Lease and Application Totals and Monthly Activity Reports

B – Delinquency Report

Commissioner Chin asked how long it takes before a delinquent loan is sent to a contested case. D. Oshiro stated when a loan has been delinquent for 120 days the loan officer requests a contested case hearing from the Commission. A hearing officer is scheduled and the hearing is held on the island where the lease is held. After the hearing officer sends his recommendation the Commission can hear the case. For neighbor island lessees, the case will wait till the next time the Commission is on that island. The process can take a year before the Commission is aware of the delinquency.

Commissioner Chin asked how long it takes before a cancelled lease is reawarded. D. Oshiro stated once the Commission issues the order, there is a judicial waiting period of 30 days. If the lessee is out of the house it can be rewarded after a home inspection and appraisal is completed. If the lessee resists, legal steps are taken to clear the property which can take months.

Commissioner Wescoatt asked why the October numbers jumped significantly. He asked if 25% delinquency good? D. Oshiro stated the trend is that as we get closer to the holidays, the delinquencies tend to increase.

Chair Masagatani stated the Department is getting some assistance from a consultant for analysis of DHHL's portfolio. She asked if there is a way to identify which of the 180-day loans have been through contested case hearings.

ANNOUNCEMENTS AND ADJOURNMENT

NEXT MEETING

The next regular monthly meeting will be held on December 18 & 19, 2017 at Kapolei, O'ahu.

MOTION/ACTION

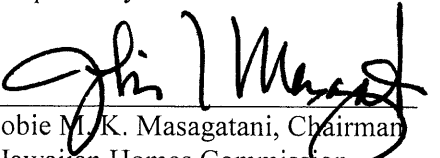
Moved by Commissioner Kahikina, seconded by Commissioner Awo to adjourn the meeting.

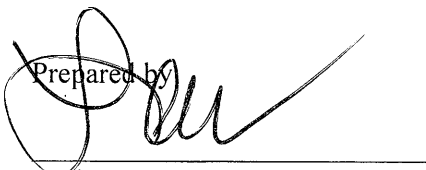
Motion carried unanimously.

ADJOURNMENT

1:02 p.m.

Respectfully submitted:


Jobie M. K. Masagatani, Chairman
Hawaiian Homes Commission

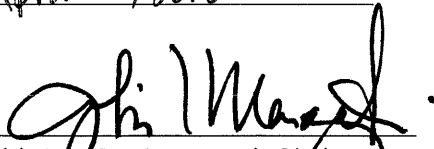

Prepared by
Leah Burrows-Nuuanu

Secretary to the Commission

APPROVED BY:

The Hawaiian Homes Commission at Its Regular Monthly Meeting On

April 16, 2018



Jobie M. K. Masagatani, Chairman
Hawaiian Homes Commission