

HAWAIIAN HOMES COMMISSION

Minutes of February 18, 2020

Hale Pono'i, Kapolei, O'ahu, Hawai'i

Pursuant to proper call, the 720th Regular Meeting of the Hawaiian Homes Commission was held at Hale Pono'i, 91-5420 Kapolei Parkway, Kapolei, O'ahu, Hawai'i, beginning at 9:30 a.m.

PRESENT William J. Aila Jr., Chairman
Randy K. Awo, Maui Commissioner
Zachary Z. Helm, Moloka'i Commissioner
David B. Ka'apu, West Hawai'i Commissioner
Michael L. Kaleikini, East Hawai'i Commissioner
Pauline N. Namu'o, O'ahu Commissioner
Dennis L. Neves, Kauai Commissioner
Patricia A. Teruya, O'ahu Commissioner

EXCUSED Russell K. Kaupu, O'ahu Commissioner

COUNSEL Ryan Kanaka'ole, Deputy Attorney General

STAFF Tyler I. Gomes, Deputy to the Chairman
Paula Aila, Finance and Development Specialist
Kahana Albinio, Acting Land Management Division Administrator
Dean Oshiro, Acting Administrator, Homestead Services Division
Andrew Choy, Acting Manager, Planning Office
Stewart Matsunaga, Acting Land Development Division Administrator
Leah Burrows-Nuuanu Secretary to the Commission
James Du Pont, West Hawai'i District Office Supervisor
Cedric Duarte, ICRO Officer Information & Community Relations Office
Gigi Cairel, Grant Specialist Planning Office
David Hoke, Enforcement Officer
Niniau Simmons, NAHASDA Manager
Lehua Kinilau-Cano, Legislative Analyst
Juan Garcia, O'ahu District Supervisor
Nancy McPherson, Planner
Shelly Carreira, Land Agent
Darryl Ing, Real Estate Development Specialist
Jane Pascual, ICRO Specialist
Michael Lowe, ICRO Specialist
Marjorie Adkins, ICRO Office Assistant
Oriana Leao, Secretary to Deputy Director
Michelle Inafuku, Secretary, Land Development Division

ORDER OF BUSINESS

CALL TO ORDER

Chair Aila called the meeting to order at 9:39 a.m. Eight (8) members were present at roll call. Commissioner Kaupu was excused.

Chair Aila notified all public testifiers and J-Agenda speakers that the Commission decided to summarize its meeting minutes to get them drafted before the next meeting. If speakers want their testimonies to be reflected in more detail, they should be submitted in writing to the Commission's

Secretary by email via the Commission's page on the DHHL website. Written testimonies will be added as an exhibit to the approved minutes.

APPROVAL OF AGENDA

Chair Aila noted Item F-1 was removed from the Agenda. Item F-2 on the Wednesday Agenda should have been re-numbered to Item F-1. Item C-1 will be deferred to Wednesday. Item E-3 was deferred to the April meeting.

MOTION/ACTION

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

APPROVAL OF MINUTES

Chair Aila asked if there were any comments or edits to the November, December, and January Minutes. Commissioner Teruya submitted written amendments. Approval of the minutes was deferred to the Wednesday agenda.

PUBLIC TESTIMONY ON AGENDIZED ITEMS

ITEM A-1 Germaine Meyers Re: Agenda Item 1.C. and Item 1.D.

G. Meyers provided her interpretation of Administrative Rules regarding minutes be brought before the Commission for approval the following month of the meeting, no later. She noted the November and December 2019 Minutes. Regarding Item 1.D., she was confused about the verbiage "approval of acceptance" and noted errors in the January draft Minutes.

Chair Aila stated acceptance is a way Commissioners feel comfortable with accepting minutes when they weren't present at the meetings. He asked Deputy AG R. Kanaka'ole if his assertion was correct.

Deputy AG R. Kanaka'ole stated approval of minutes is a ministerial act. The Commissioners don't need to approve previous meetings' minutes to have been present at those meetings. Approved minutes act as the official record of the Commission's past discussions and actions; approval of minutes does not retroactively ratify previous actions. In the case law that he has reviewed, a lack of or missing minutes does not void past board actions. Where minutes are missing from a certain time period, and there are issues raised regarding actions that occurred during that time period, courts have allowed the admission of other records that relate to the board action, be it notes, other types of documents referencing the action and even testimony that was submitted during that time.

While the law requires that public boards keep minutes, and the boards and their staff should make every effort to comply with that law, the failure to do so does not doom actions taken at the affected meeting as long as there is some other evidence that can be produced to prove that the meetings, discussions, and actions did in fact occur. As far as acceptance of minutes versus approval of minutes, this is form over substance, and Deputy AG R. Kanaka'ole believes that the verbiage is such to meet the comfort level of the Commission because certain Commissioners have expressed concerns regarding "approving" minutes for meetings that they were not present at.

Deputy AG R. Kanaka'ole further provided that with regards to DHHL's administrative rules as well as Chapter 92, HRS, particularly regarding the voidability of board actions, that law does not apply to the statute requiring minutes. Section 92-11, HRS, regarding voidability provides that: "any final action taken in violation of sections 92-3 and 92-7" may be voidable, Section 92-3, HRS, is regarding the requirement of open meetings and allowing the public to provide testimony, Section 92-7, HRS, applies to notice which is posting of the agenda.

G. Meyer stated the Attorney General has not been enforcing Title 10 all these years and is giving advice to her and the beneficiaries. Chair Aila stated no, the Attorney General is giving advice to the Commission.

G. Meyers asked for the record that the Chair and the Department publicize what the Attorney General stated to the beneficiaries. Put it written on the record.

Chair Aila stated the statement that Deputy AG R. Kanaka'ole made will be put onto the DHHL website.

ITEMS FOR DECISION MAKING

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 Aila asked Commissioners if there were any Items from the Consent Agenda they want to be moved to the Regular Agenda.

Commissioner Ka'apu asked since Item C-1 was deferred to Wednesday, would it be more appropriate to have the Consent Agenda approved after Item C-1 has been discussed.

D. Oshiro stated if the Consent Agenda is approved, it would still apply because documents have not been prepared. He stated staff would wait till after the Commission has made a decision.

Commissioner Ka'apu was ok with that. Chair Aila asked for a motion to approve the Consent Agenda.

- ITEM D-2** Ratification of Loan Approvals (see exhibit)
- ITEM D-3** Approval of Consent to Mortgage (see exhibit)
- ITEM D-4** Approval of Homestead Application / Cancellations (see exhibit)
- ITEM D-5** Approval of Designation of Successors to Leasehold Interest and Designation of Persons to Receive the Net Proceeds (see exhibit)
- ITEM D-6** Approval of Assignment of Leasehold Interest (see exhibit)
- ITEM D-7** Approval of Amendment of Leasehold Interest (see exhibit)
- ITEM D-8** Approval to Issue Non-Exclusive Licenses for Rooftop Photovoltaic Systems for Certain Lessees (see exhibit)
- ITEM D-9** Conditional Approval of Subdivision, Transfer of a Portion of Lease and Amendment – **LUCRETIA L. LINDSEY**, Pastoral Lease No. 2686, Lot No. 2, Nienie, Hawai'i

MOTION/ACTION

Moved by Commissioner Helm, seconded by Commissioner Ka'apu, to approve the Consent Agenda. Motion carried unanimously.

REGULAR AGENDA

OFFICE OF THE CHAIRMAN

- ITEM C-1 Authorize the Chairman to Finalize Homestead Lease Conditions Associated with the Prohibition of Illegal Activity and/or Nuisance.**

DEFERRED TO WEDNESDAY.

PLANNING OFFICE

- ITEM G-1 Adopt the Moloka'i Regional Plan Update (2020) and Authorize the Dissemination of the Regional Plan Update**

RECOMMENDED MOTION/ACTION

Acting Planning Office Manager Andrew Choy and Grant Specialist Gigi Cairel recommended the following:

Motion that the Hawaiian Homes Commission:

1. Adopt the Moloka'i Regional Plan Update (2020) (Exhibit B);
2. Authorize dissemination of the Moloka'i Regional Plan Update (2020).

MOTION

Moved by Commissioner Helm, seconded by Commissioner Namu'o, to approve the motion as stated in the submittal.

DISCUSSION

Commissioner Ka'apu asked what the Commission can expect between acceptance of the Regional Plan and next year. He asked if there is an evaluation process to check on the progress of projects.

A. Choy stated the adoption of the plan would be a signal to staff to budget for the priority projects, especially the kuleana homesteads. The Planning Office will provide an update of the Regional Plan regarding that particular community. Communities with multiple regional plans, like West Hawai'i, an annual update is given on the implementation status.

G. Cairel stated for each priority project; there are clear steps as to what the Department's role is and what the community's role is. There are times when projects default to the Department, but there is clarity in what the Department would handle and what the community would handle.

Commissioner Ka'apu asked if that is normally part of the submittal or in addition to the submittal between the community and the Planning Office. G. Cairel stated it is detailed within the plan itself, and there are write-ups of each project in the plan with those steps.

A. Choy stated the length of the regional plans' time between the updates is seven years as specified in the Administrative Rules. Due to staffing issues, the average has been about ten years. The Moloka'i Regional Plan was last approved in 2010.

Commissioner Awo asked what the baseline criteria were that causes the Department to determine who they consult on a particular project. What does the Regional Plan consist of when the Department engages with beneficiaries? A. Choy stated per Administrative Rules for Regional Plans and Regional Plan updates; the Department is required to consult with the lessees in the region as well as the applicants who reside in the area.

Commissioner Ka'apu was concerned about the timeframe of 7-10 years, considering lots of things can change. If the motion is approved, will the plan be current in 3 years and still a priority item for Hawaiian Homes Commission Meeting February 18 & 19, 2020 Kapolei, O'ahu, Hawai'i

the beneficiaries. If people lose interest, it sits on the shelf. The priority is presented to the Commission of what the community wants to do, but the Commission doesn't really get deep into if it's feasible, if the community will be or not be able to accomplish things within the timeframe.

A. Choy stated the most appropriate time for the Commission to opine on a draft plan would be when the staff presents the Commission with the informational items. Regarding optimal time, A. Choy stated they go with the Administrative Rules. He stated it takes at least 3-5 years to get traction going on projects. It also allows staff sufficient time to evaluate the progress of the plan and to initiate the update of the plan during the implementation process.

ACTION

Motion carried unanimously.

ITEMS FOR INFORMATION/DISCUSSION

GENERAL AGENDA

REQUEST TO ADDRESS THE COMMISSION

ITEM J-1 Kekoa Enomoto – Pa'upena Community Development Corporation (PCDC)

K. Enomoto stated she represents the PCDC. She introduced PCDC's Fiscal Officer Leilani Mueller. K. Enomoto stated she distributed her testimony cataloging the beneficiary-driven daily activities involving Pa'upena CDC for the past week. Please refer to the testimony for the daily activities from Sunday to Sunday of Pa'upena CDC.

K. Enomoto addressed Item G-1 and stated in speaking with Liko Wallace, President of the New Naiwa Homestead Association, the concern is Naiwa is invisible with respect to the update of the Maui Regional Plan. According to L. Wallace, \$1.5 million has been appropriated for the planning and design of Naiwa, \$8 - \$9 million is in the DHHL budget for construction of infrastructure, and \$350,000 for an environmental document. E. Enomoto stated Naiwa should be made visible.

Regarding Item E-1, she stated she would like to see a DHHL Land Development Division Manager based on Maui for the projects on Maui. For Items J-3 and J-4, the Kahikinui Homestead Association is willing to share their mana'o with Moloka'i. She stated the Ualapu'e beneficiaries want Ka Ohana O Kahikinui beneficiaries to advise them about the kuleana process.

ITEM J-2 Kau'ilani Almeida – Panaewa Hawaiian Home Lands Community Association (PHHLCA)

K. Almeida stated she distributed information on PHHLCA. She is present for the moratorium in their community and to address the January 2nd email from DHHL regarding PHHLCA's newly elected President. What she believed the email read is that the question of DHHL came from the claim, December 2nd claim that K. Almeida was made aware by the Department. K. Almeida requested the moratorium be lifted.

Submitted testimony – Exhibit J-2

MOTION/ACTION

Moved by Commissioner Ka'apu, seconded by Commissioner Namu'o to convene in an 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**10:55 AM**

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**11:31 AM**

Chair Aila thanked everyone for their patience. He asked Ms. Almeida to talk with Deputy AG Ryan Kanaka'ole about the next steps.

Commissioner Kaleikini stated he is committed to helping the community move forward.

RECESS**11:32 AM****RECONVENE****11:36 AM**

Note: Deputy AG Alana Rask replaced Deputy AG Ryan Kanaka'ole, starting at 11:37 a.m.

REQUEST TO ADDRESS THE COMMISSION**ITEM J-4 Benjamin Rodrigues – Ka Ohana O Kahikinui (KOOK)**

B. Rodrigues gave an update of the KOOK's 6-month report. B. Rodrigues read from the report, which was distributed to the Commission.

Commissioner Ka'apu stated financial projections show KOOK will have lots of extra funds, and it looks like they have been very successful. Still, there are accumulated funds that are not directly related to KOOK's purpose, making taxable income. B. Rodrigues stated it is a U-Bid; he is unsure of the terminology. He stated any excess money would be redistributed to the community via restoration efforts and empowering the community to create their businesses and initiatives. Vendors are taking the initiative to partner with the Ohana, and through the partnerships, a percentage of sales is given back to the community.

Commissioner Ka'apu stated he noticed KOOK is charging the residents \$60 per month to be a member. B. Rodrigues stated that it is for the vending space.

Submitted testimony - Exhibit J-4.

MOTION/ACTION

Moved by Commissioner Neves, seconded by Commissioner Helm to convene in an 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**12:15 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. Bankruptcy Proceedings Associated with Paniolo Cable and Sandwich Isles Communications

EXECUTIVE SESSION OUT**1:31 PM**

REQUEST TO ADDRESS THE COMMISSION

ITEM J-6 Rosennette Makua – Transfer of Lease

R. Makua represented her husband, Glenn Makua of Moloka'i. They are having problems with transferring the lease to Alexander Kalanihuia Jr. She stated the subject is problems and resolutions with transferring the lease. Her declaration of complaints is intended for the staff and supervisors of DHHL on O'ahu and Moloka'i. It's her understanding that administrative complaints and issues are handled primarily by the Chairman. R. Makua submitted detailed testimony.

Submitted testimony – Item J-6, Exhibits A, B, and C.

ITEM J-8 Princearchikins

Princearchikins stated he was just informed that his blood quantum had passed. He stated he wants to continue on to be his mother's successor.

ITEM J-7 Germaine Meyers

G. Meyers stated her presentation is specifically about the schools that contain asbestos. She mentioned Nanakuli Elementary, Nanakuli High & Intermediate, Ka Waihona Charter School, Maili Elementary, and Nanaikapono School, which is now asbestos-free.

She stated if anyone can provide her evidence that asbestos is not dangerous, she would like a written statement that it is okay for the children to be at the schools that contain asbestos. She stated the Department of Education did not share that with her.

Submitted testimony – Exhibit J-7: Presentation on Asbestos

ITEM J-9 Princeslehuanani Kumaewakainakaleomomona – Waitlist

Princess stated she just turned 58 and has 16 grandbabies. She asked the Commission to please get her on her land before she dies. She has been waiting for 28 years.

ITEM J-10 Al Hee – Paniolo Cable

A. Hee stated he came to see the Commission again to ask that the Commission take action. It has nothing to do with his license or with Sandwich Isles, but the perception that Hawaiian Home Lands is not going to protect the Trust the way it should.

A. Hee stated that he is asking for the Commission to send a letter to the bankruptcy court saying that the Commission intends to protect and take all actions to protect the Trust as by law.

Chair Aila asked for his edification, what the assets are. Are they the cables that run in the conduits? A. Hee stated there are buildings, cables, conduits, equipment whether they are on the homes or in the buildings or in remote sites; there are wireless repeaters, \$400 million worth of infrastructure that is servicing Hawaiian Home Lands.

Testimony not submitted.

MOTION/ACTION

Moved by Commissioner Awo, seconded by Commissioner Ka'apu to convene in an 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

2:48 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. Bankruptcy Proceedings Associated with Paniolo Cable and Sandwich Isles Communication

EXECUTIVE SESSION OUT

3:25 PM

RECONVENED

3:29 PM

Chair Aila stated that the Commission would take up Mr. Hee's request for consideration given the discussions that occurred in the executive session.

REGULAR AGENDA

PLANNING OFFICE

ITEM G-2 For Information Only – Status Update on Plan Implementation in the Kapolei Region

RECOMMENDED MOTION/ACTION

None. For information only. Acting Planning Office Manager Andrew Choy and Legislative Analyst Lehua Kinilau-Cano presented the following:

L. Kinilau-Cano stated the update is for the Kapolei Regional Plan area. In terms of the O'ahu Island Plan, the Kapolei area represents about 15% of the lands on O'ahu, with a considerable amount of land being designated as commercial and industrial.

L. Kinilau-Cano stated that the Kapolei Regional Plan was completed in November 2010, with many of the projects that have reached some level of completion. The five priority projects were:

1. The Kapolei Heritage Center & Community Commercial Development
2. The new school development
3. To engage beneficiaries in a planning charette process
4. To develop and pedestrian/bike path network to community resources, and
5. To preserve & develop parks to service the homestead community

The Kapolei Community Development Corporation will give updates of the projects at the community meeting being held Tuesday, February 18, 2020, at the Kapolei High School Café.

See submittal Item G-2.

ITEM G-3 For Information Only – Status Update on Plan Implementation in the Waianae and Nānākuli Region

RECOMMENDED MOTION/ACTION

None. For information only. Acting Planning Office Manager Andrew Choy and Legislative Analyst Lehua Kinilau-Cano presented the following:

L. Kinilau-Cano stated the Waianae and Nanakuli status update on the plan implementation did not get to be presented in December as scheduled due to time constraints. On O`ahu, 50% of the lands are in the Waianae/Nanakuli region. The Nanakuli Regional Plan was updated in July 2018, and the Waianae Regional Plan was updated in December 2018.

The Nanakuli Regional Plan identified five priority projects:

1. Disaster preparedness
2. Improve community access to non-homesteading areas
3. Street repairs and improvements for health and safety in the Region
4. Establish community-based education programs, and
5. Identify and pursue opportunities for “Pono Economic Development” and community action

The Waianae and Lualualei Regional Plan also identified five priority projects:

1. Increase capacity for specific community-based projects
2. Improve community access to non-homesteading areas
3. Homestead infrastructure and maintenance
4. Safety and community enforcement and
5. Disaster preparedness and coordination

Tables in the submittal describe each priority project and report on the current status of the project.

See submittal Item G-3.

ITEM G-4 For Information Only – Draft Papakolea Regional Plan Update (2020)

RECOMMENDED MOTION/ACTION

None. For information only. Acting Planning Office Manager Andrew Choy and Planner Nancy McPherson presented the following:

N. McPherson stated that the Papakolea Regional Plan is being updated. The Papakolea Regional Plan, which covers Papakolea, Kalawahine, and Kewalo, was adopted by the HHC in 2009. It has been ten years, and the Department initiated the process to re-evaluate and update the Papakolea Regional Plan in 2019.

The Papakolea Regional Plan priority projects identified based on the community’s vision are as follows:

1. Native Hawaiian Culture and Community Center
2. Replace Existing Community Center
3. Hawaiian Homestead Kupuna Supportive Living Center
4. Kupuna Day Care Services
5. Traffic Safety Program

The Papakolea Regional Plan draft is in progress. More information can be found in the submittal.

See submittal Item G-4

WORKSHOP

LAND DEVELOPMENT DIVISION

ITEM E-1 For Information Only – In Progress Draft Environmental Assessment, Puunani Homestead Subdivision

RECOMMENDED MOTION/ACTION

None. For information only. Acting Land Development Division Administrator Stewart Matsunaga presented the following:

DISCUSSION

S. Matsunaga did a slide presentation and informational briefing on the status of the Pu`unani Homestead Subdivision project. He presented summary highlights of the In-Progress Draft Environmental Assessment (EA). He provided an opportunity for Commissioners to offer comments on the In-Progress Draft EA before publication in the Office of Environmental Quality Control's Environmental Notice Bulletin. The Draft EA will not be published until it is fully vetted, and the Cultural Impact Assessment (CIA) is completed.

S. Matsunaga stated he went to Maui and fronting the Pu`unani Homestead Project were 34 exceptional trees that are part of the Maui County code. He and Dowling Company went to see the Arborist Committee, and the Committee proposed to de-list the trees due to being a health hazard. He is hopeful the Council will agree with the landscaping plans fronting the project.

Commissioner Awo asked S. Matsunaga if the current situation with Sandwich Isles Communications present concern in terms of service. S. Matsunaga stated the Department would be opening the offer to all Utilities to participate and see what the best for the beneficiaries is. His understanding of the exclusivity is it's unenforceable. Commissioner Awo expressed his gratitude to all who made the project a reality.

S. Matsunaga stated the slide presentation summarizes all the text in the submittal. See submittal and PowerPoint Presentation for Item E-1.

ITEM E-2 For Information Only – East Kapolei Project Updates

RECOMMENDED MOTION/ACTION

None. For information only. Acting Land Development Division Administrator Stewart Matsunaga and Real Estate Development Specialist Darrell Ing presented the following:

S. Matsunaga introduced D. Ing to do the presentation. D. Ing stated East Kapolei is Kanehili plus Kauluokahai as opposed to the Villages of Kapolei, which is Kaupea and Malu`ohai.

Commissioner Helm asked what the average cost for the turn-key homes was. D. Ing stated he believes it's around \$300k-\$375k up to 4-bedrooms. The turn-key homes are from 2-bedrooms/1-bath to 4-bedrooms/2-1/2 baths.

Commissioner Ka`apu asked if there were any restrictions on lessees buying the homes and turning around and selling it for huge profits. He suggested a holding period of 10-years because it is affordable housing. Chair Aila stated it could be discussed with staff and figure out what would be appropriate.

ITEM E-4 For Information Only – Papakolea Topography and Slope Mitigation

RECOMMENDED MOTION/ACTION

None. For information only. Acting Land Development Division Administrator Stewart Matsunaga presented the following:

S. Matsunaga stated Papakolea is the oldest subdivision on O'ahu, which started development in the 1940s. There are lots of conservation areas in Papakolea which are challenging to build on. Some ridges and homes are at the edge of the slopes, which are eroding and causing rockfalls.

S. Matsunaga stated there are an array of issues in Papakolea; severe upslopes and downslopes, erosion, sewer system problems, kupuna having a hard time with access, traffic, narrow streets, limited parking, and homes with cantilevered driveways and carports. The foundations are not stable. The Department is trying to address what it can. S. Matsunaga stated it would take millions of dollars to mitigate. The Commission will see requests in the budget for these types of mitigation actions.

MOTION/ACTION

Moved by Commissioner Neves, seconded by Commissioner Awo, to recess and continue tomorrow. Motion carried unanimously.

RECESS

5:24 PM

HAWAIIAN HOMES COMMISSION

Minutes of February 19, 2020

Hale Pono'i, Kapolei, O'ahu, Hawai'i

Pursuant to proper call, the 720th Regular Meeting of the Hawaiian Homes Commission was held at Hale Pono'i, 91-5420 Kapolei Parkway, Kapolei, O'ahu, Hawai'i, beginning at 9:30 a.m.

PRESENT

William J. Aila Jr., Chairman
Randy K. Awo, Maui Commissioner
Zachary Z. Helm, Moloka'i Commissioner
David B. Ka'apu, West Hawai'i Commissioner
Michael L. Kaleikini, East Hawai'i Commissioner
Russell K. Kaupu, O'ahu Commissioner
Pauline N. Namu'o, O'ahu Commissioner
Dennis L. Neves, Kauai Commissioner
Patricia A. Teruya, O'ahu Commissioner

EXCUSED

None

COUNSEL

Alana Rask, Deputy Attorney General

STAFF

Tyler I. Gomes, Deputy to the Chairman
Jobie Masagatani, Executive Assistant to the Chairman
Paula Aila, Finance and Development Specialist
Kahana Albinio, Acting Land Management Division Administrator
Dean Oshiro, Acting Administrator, Homestead Services Division
Andrew Choy, Acting Manager, Planning Office
Stewart Matsunaga, Acting Land Development Division Administrator
Leah Burrows-Nuuanu Secretary to the Commission
Cedric Duarte, ICRO Officer Information & Community Relations Office
Gigi Cairel, Grant Specialist Planning Office
David Hoke, Enforcement Officer
Niniau Simmons, NAHASDA Manager
Oriana Leao, Secretary to Deputy Director
Lehua Kinilau-Cano, Legislative Analyst
Juan Garcia, District Supervisor, Homestead Services Division
Vernon Nishimura, Mortgage Loan Specialist, HSD
Gerald Lau, Collection Specialist, HSD
Wayne Jichaku, Mortgage Loan Specialist, HSD
Gilbert Fernandes, Mortgage Loan Specialist, HSD
Nancy McPherson, Planner, Planning Office
Shelly Carreira, Land Agent, Land Management Division
Jane Pascual, ICRO Specialist
Michael Lowe, ICRO Specialist
Marjorie Adkins, ICRO Office Assistant

ORDER OF BUSINESS

CALL TO ORDER

Chair Aila called the meeting to order at 9:10 a.m. Nine (9) members were present at roll call.

Chair Aila stated Item C-1 is a carry-over from yesterday. Sonia Gomes, who was listed on the J-Agenda, will be allowed to testify if she is present. The Minutes for November, December, and January will be up for approval. The Commission will break at noon for executive session and lunch. Two Commissioners have asked to make a statement and an announcement.

Commissioner Awo thought yesterday's discussion on asbestos was important. He stated Commissioners should have an understanding of the proper venue in which these kinds of concerns should be addressed. The research he found is from the State of Hawai'i, Department of Health, Indoor, and Radiological Health Branch. He stated this is the agency that the Department and Commission should work with as the proper venue to address these kinds of important issues.

The information Commissioner Awo read was copied from the website and attached as a submittal.

Commissioner Teruya announced that the Homestead Associations in the Waianae moku is presenting the "Legacy of Prince Kuhio" 100th Anniversary of the Hawaiian Homes Commission Act of 1920 at Waianae Sunset on the Beach, Saturday, March 14 and Sunday, March 15, 2020, from 12 noon to 10 pm at Maili Beach Park. The Royal Hawaiian Band will entertain on Saturday night.

Commissioner Teruya's flyer has been attached as a submittal.

APPROVAL OF AGENDA

MOTION/ACTION

Moved by Commissioner Helm, seconded by Commissioner Neves, to approve the agenda as amended with the carry-over items. Motion carried unanimously.

APPROVAL OF MINUTES

Approval of Amended Minutes for November 2019, December 2019 and January 2020.

MOTION/ACTION

Moved by Commissioner Teruya, seconded by Commissioner Kaleikini, to approve the agenda as amended. Motion carried unanimously.

PUBLIC TESTIMONY ON AGENDIZED ITEMS

ITEM A-1 Germaine Meyers

G. Meyers testified on Items C-1, D-10, and F-2. Regarding Item C-1, her concern is if the Commission authorizes the Chair to finalize homestead lease conditions, her thought is there should be an action item that she may be used as arguments as a beneficiary. The Chair should propose, instead of finalizing, lease conditions.

G. Meyers suggested anytime there is a conflict of interest related to a lease or employee, a Commissioner should recuse themselves. It should be no different than last month's meeting where she heard that Commissioner Teruya recused herself for using the parking lot at Ulu Ke Kukui. G. Meyers stated they should be included in policies and procedures related to any of the leases, and employees, administration, or Commissioners should disclose their conflicts.

G. Meyers stated one of the conflicts that she brought up, as an example, the Hawai'i Green Growth Board of Directors include Mr. Shim, who is also a Board of Director for the Hawai'i Public Housing Authority. DHHL's Chairman Bill Aila; at the time he was the Deputy Director of the Department. G. Meyers was concerned with Hawai'i Green Growth, that Commissioners consider that Mr. Shim is the President and CEO of, O'ahu Economic Development Board.

In 2012, a new market tax credit application award of \$40 million went to Punawai O Puuhonua for economic development. In 2016, \$55 million was awarded to Nanakuli Village Center and Waianae Coast Comprehensive/Nanakuli Health Care Center. Hawai'i Green Growth was a fiscal sponsor and executive committee member of the non-profit. She asked the Commission to investigate the matter to determine if it is an example of a conflict of interest.

ITEMS FOR INFORMATION/DISCUSSION

WORKSHOPS

HOMESTEAD SERVICES DIVISION

ITEM D-10 For Information Only – Workshop on United States Department of Housing and Urban Development (HUD) Federal Housing Administration Section 247 Program

RECOMMENDED MOTION/ACTION

None. For Information Only. Acting Homestead Services Division Administrator Dean Oshiro and Lora Han Chief Counsel, HUD presented the following:

L. Han stated that her presentation would be limited to Section 247, the Claims Process, and what her role is. She is an attorney and is HUD's legal counsel. She cannot give advice outside of HUD.

Section 247 is a smaller program and an offshoot of the traditional FHA 203(b) program, which is for all FHA loans that are not native Hawaiian. Section 247 was created in the late 80s to provide the native Hawaiian population with an opportunity and ability to take out loans. Section 247 was created because of the special restrictions and requirements to be able to benefit from Hawaiian Home lands. Section 247 allows lenders to have an avenue to do what they need to do, but not requiring the laws (indiscernible) that exist.

L. Han offered a slide presentation regarding the claims process with Section 247. Before a claim is approved, the documents must go through her for review. She has the final say whether the claim passes or not.

Commissioner Kaupu asked at the time the borrower is in default, and the Chief Counsel has done all her work, at the front, the Department will kick in insurance for the lender, then does HUD take an assignment of the loan? L. Han stated there are multiple steps since the lender can't foreclose on a Hawaiian Home Land loan. The borrower applies for an application for insurance by the Feds. When their loan package is submitted to the Chief Counsel, they have made an assignment to HUD. Once the loan is approved, she makes the assignment to DHHL.

Commissioner Kaupu stated the Department is criticized for how it administers the default loans. The criticism should be to the lender.

L. Han stated Section 247 is a small program, and it may seem like a lot. However, looking at it nation-wide, it is not that different in terms of what the Department is taking back on bad loans. The native Hawaiian borrower does not operate differently from a non-native Hawaiian borrower, in her opinion, based on the rates she looks at. The lenders are FHA lenders across the board; they are not the Section 247 lenders, they are lenders for all borrowers, whether native Hawaiian or not.

L. Han stated that she is the person who says, “we’re going to pay, or we’re not going to pay” or “get the money back.” The claims are reviewed to make sure that they are following the rules.

Commissioner Ka’apu asked if there is a way for the Department to get a notice from the lenders when the borrowers are behind. It gives the Department an opportunity to make face-to-face contact even if the lender is on the mainland. Dean Oshiro stated that the Department does get a notice from the lenders.

L. Han stated there are things that the lenders are required to do, and the regulations define what default is, and one of those things is it’s 30-days, and they have to provide notice to DHHL. She stated some lenders are better than others.

Chair Aila asked the land does not have value because the lease value is \$99 over the course of the lease. There are people telling the Department it needs to unlock that value, and Chair Aila stated he does not understand what they are talking about. He asked if L. Han had an opinion on that. She stated she does not.

PowerPoint submitted – Exhibit D-10

ITEMS FOR DECISION MAKING

REGULAR AGENDA

ITEM C-1 Authorize the Chairman to finalize homestead lease conditions associated with the prohibition of illegal activity and/or nuisance.

RECOMMENDED MOTION/ACTION

Executive Assistant Jobie Masagatani presented the following:

Motion that the Hawaiian Homes Commission grants its approval to authorize the Chairman to finalize homestead lease conditions associated with the prohibition of illegal activity and/or nuisance.

MOTION/ ACTION

Moved by Commissioner Ka’apu, seconded by Commissioner Awo, to approve the motion as stated in the submittal. Motion carried. Commissioner Kaleikini left the room and was not present for the vote.

ITEMS FOR INFORMATION/DISCUSSION

WORKSHOPS

LAND MANAGEMENT DIVISION

ITEM F-1 For Information Only – Application & Review Process for New Revocable Permit Pilot Program

RECOMMENDED MOTION/ACTION

None. For Information Only. Acting Land Management Division Administrator Kahana Albinio and Deputy to Chairman Tyler Gomes and EA Jobie Masagatani presented the following:

PowerPoint:

- Revocable permits allow for a presence on DHHL lands
- Supplements DHHL's annual revenue
- Are short-term, 30 days month-to-month and annually renewable

DISCUSSION

Chair Aila asked what the concern is about a bidding conflict. K. Albinio stated being fair and transparent. His experience with bidding auctions is the competition between native Hawaiians and those with more money. There are native Hawaiians that feel it should only be offered to beneficiaries. In this process, it is a challenge.

Commissioner Teruya if the process is fair and transparent now. K. Albinio stated the Department kept the process as it was done before when everything went to the Chairman's office. Commissioner Teruya asked if it was going to hurt any existing ROE's. K. Albinio stated it would affect the newer applicants interested in obtaining an ROE.

Deputy Tyler Gomes stated the idea is not to touch the existing ROEs but to select two or three parcels that are ideal for trying out the pilot program. If it is a successful program and the Department is able to mitigate against, for example, those with money outbidding native Hawaiians. If the pilot proves effective, as the Department moves forward in granting additional new ROEs, this is the criteria that would be used. It also addresses the concern about whether or not the Department could give a preference to a native Hawaiian for an ROE in light of the other rules that the Department is required to follow.

Commissioner Ka'apu is concerned because the selection is 2-3 properties. He thinks the Department needs to go through the process of weeding out which properties should be long-term dispositions. The Department can maximize income from those long-term people. He has concerns about the criteria for giving points to people that work in Hawai'i, but that discriminates against a beneficiary who was on the mainland and returned to Hawai'i but hasn't worked in Hawai'i but worked elsewhere.

Commissioner Neves stated there's all these rules and regulations, but the Department still has to enforce them. Whether a person is on an ROE or RP, the Department needs to make regular visits and make sure the tenants are up to date. 30-days back rent needs to be taken care of; don't wait till the end of the year and say, "we've got a problem."

Executive Assistant to the Chair Jobie Masagatani stated by way of context; the Department was under severe criticism around 2012 regarding the revocable permit program similar to DLNR. RPs have primarily been a land management tool, and the RPs were renewed year after year. The question regarding amounts of rent earned from the RPs came up, and since then, the RP program has been in limbo. Recommendations were made to the Department, such as having an appraiser look at the valuations that were appropriate for the land use, and not having

the RPs extend beyond 5-years without a competitive process. Staff has tried to balance the need to manage the lands, earn a fair return and also provide an opportunity for beneficiaries gain access to the land or have a chance to compete without compromising the Trust through any kind of legal challenge regarding a preference that may or might not have the ability to provide in this program.

Commissioner Ka`apu asked where are the parcels being considered located. K. Albinio stated the Department identified a parcel in Shafter Flats, Mapunapuna to start the pilot project.

PowerPoint submitted – Item F-1

RECESS 10:44 AM

RECONVENED 10:54 AM

PLANNING OFFICE

ITEM G-5 For Information Only – Cultural Water Assets Inventory GIS Project

RECOMMENDED MOTION/ACTION

None. For Information Only. Acting Planning Office Manager Andrew Choy and GIS Consultant Dominique Cordie presented the following:

DISCUSSION

The consultant briefly summarized the submittal and important unmet deadlines that eventually led to the request to terminate the lease.

Commissioner Awo recognized the value of the presentation, but he asked how it can be accessed. A. Choy stated it is currently in a specific GIS software similar to Google Earth. The goal is to convert the presented information into a format accessible in an environment similar to Google Earth.

A. Choy stated there are two key positions that have to be filled to accelerate the project, and that is a Water Policy Specialist and a GIS Specialist. There are only two or three other people, besides A. Choy, who can access the information currently.

Submittal Item No. G-5

ITEM G-6 For Information Only – DHHL submittal of Moloka`i Water Use Permit Application (WUPA) to the State Commission on Water Resource Management (CWRM)

RECOMMENDED MOTION/ACTION

None. For Information Only. Acting Planning Office Manager Andrew Choy and Water Consultant Dr. Jonathan Scheuer presented the following:

DISCUSSION

J. Scheuer stated this issue had been litigated for three decades on the island of Moloka`i. He talked about the pending water use permit application (WUPA) that is planned to be filed. After 30-years of litigation, there has been some resolution on issues related to groundwater in central Moloka`i. Moloka`i Ranch and the Maui Department of Water Supply are poised to file their

water use permit application for the Kualapu`u Aquifer. On January 31, 2020, the US Geological Survey published the results of the study that was in the making for the past 10-years that DHHL and others funded.

In 1990, Moloka`i groundwater was designated by the State Water Commission as a water management area, which triggered the need for a water use permit application. Within a year of the date of designation, the Department was awarded some water for what is applied for. Moloka`i Ranch applied at the same time for about 1.1 mgd for both existing uses on the west side of Moloka`i and for future use for development. In 2001 the Ranch was issued its permit for the amount it applied for. It was appealed by the Hawaiian Homes Commission, DHHL, OHA, and some of the beneficiaries. In 2007 the Hawai`i Supreme Court ruled in favor of HHC, DHHL, OHA, and the beneficiaries.

The court clarified that the uses and the reservations of water for DHHL are one of the four protected public trust uses of water, and that they are always suppose to be satisfied before any private commercial uses are allowed.

Dr. Scheuer stated that in 2015 the Ranch owners were trying to sell the Ranch without a reliable water source. The price they could get on the open market was considerably lower and they convinced the Water Commission staff at that time that they had a complete application. The Water Commission staff believed that all three were competing for the same water source so they wanted to consider all three water use permit applications at the same time. The Department made it clear that it objected and reminded them that they were suppose to award water to the Department of Hawaiian Home Lands prior to awarding water to private commercial users.

Currently, there are no current active water use permit applications in front of the Water Commission for water on Moloka`i. Moloka`i Ranch is drafting theirs, and Maui County wants to submit a new water use permit application. The Department has a water use permit application, too. The Maui Department of Water Supply is seeking to pump .9 mgd, and the Moloka`i Ranch is seeking to pump 1.17 mgd.

The Department is asking for .595 mgd is what the Department's current infrastructure is designed to reliantly pump. The USGS study shows that .595 can be sustainably pumped without chlorides or salt rising to high in the well. This amount will allow the Department to issue new meters, but it will not allow for all of the future needs. If you aggregate potable and non-potable needs, looking at a 20-time frame from the last island plan, the Department would need over 1mgd of potable water and another 6 mgd of non-potable water for existing plan development. If the general agricultural lands are included, the figure is another 35 mgd.

Dr. Scheuer stated that on the staff level they are advocating that the Water Commission not consider all three water use permits at the same time but to take up the Department's first and award the Department the water it seeks.

REGULAR AGENDA

HOMESTEAD SERVICES DIVISION

ITEM D-1 HSD Status Reports

A. Homestead Lease and Application Totals and Monthly Activity Reports

B. Delinquency Report

Chair Aila asked if Commissioners had questions about the HSD Monthly Reports.

MOTION/ACTION

Moved by Commissioner Helm, seconded by Commissioner Neves to convene in an 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

12:04 PM

EXECUTIVE SESSION OUT

1:05 PM

ANNOUNCEMENTS AND ADJOURNMENT

NEXT MEETING

The next meeting will be held on March 16 & 17, 2020, in Kapolei, O'ahu, Hawai'i. The Community meeting is scheduled for Waimanalo.

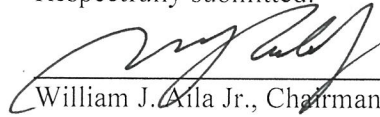
MOTION/ACTION

Moved by Commissioner Ka'apu, seconded by Commissioner Helm, to adjourn the meeting. Motion carried unanimously.

ADJOURNMENT

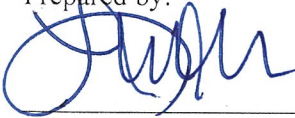
2:58 P.M.

Respectfully submitted:



William J. Aila Jr., Chairman
Hawaiian Homes Commission

Prepared by:

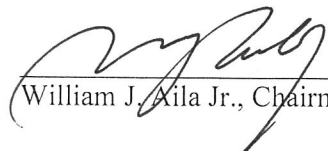


Leah Burrows-Nuuanu, Commission Secretary
Hawaiian Homes Commission

APPROVED BY:

The Hawaiian Homes Commission at its regular monthly meeting on:

March 16, 2020



William J. Aila Jr., Chairman