

HAWAIIAN HOMES COMMISSION
Minutes of November 16 and 17, 2015
Meeting held in Kula, and Paukukalo, Maui, Hawai'i

Pursuant to proper call, the 669th Regular Meeting of the Hawaiian Homes Commission was held at the Kula Community Center, Kula, Maui, Hawai'i, beginning at 9:30 a.m.

PRESENT Jobie M. K. Masagatani, Chair
Doreen N. Canto, Commissioner, Maui
Gene Ross K. Davis, Commissioner, Moloka'i
Wallace A. Ishibashi, Commissioner, East Hawai'i
David B. Ka'apu, Commissioner, West Hawai'i
Michael P. Kahikina, Commissioner, O'ahu
William K. Richardson, Commissioner, O'ahu
Renwick V. I. Tassill, Commissioner, O'ahu
Kathleen P. Chin, Commissioner, Kaua'i

EXCUSED None

COUNSEL Craig Y. Iha, Deputy Attorney General

STAFF William J. Aila Jr., Deputy to the Chairman
Niniau Simmons, NAHASDA Manager, Office of the Chair
Paula Aila, Hale Manager, Office of the Chair
Hokulei Lindsey, Administrative Rules Officer, Office of the Chair
Leah Burrows-Nuuanu, Secretary to the Commission, Office of the Chair
Dean Oshiro, Acting Homestead Services Division Manager
Norman Sakamoto, Development Officer, Land Development
P. Kahana Albinio, Acting Property Dev. Mgr., Income Property Branch
Andrew Choy, Planner, Planning Division
Nancy McPherson, Planner, Planning Division
John Peiper, Land Agent/Enforcement Officer, Office of the Chair
Shelly Carreira, Land Agent, Land Management Division
Stewart Matsunaga, Master Plan Community Dev Mgr.
Juan Garcia, Homestead District Supervisor
Ku'uwehi Hiraishi, Info. Specialist, Information and Community Relations
Mona Kapaku, District Supervisor Maui

ORDER OF BUSINESS

CALL TO ORDER

Chair Masagatani called the meeting to order at 9:38 a.m.

ROLL CALL

Nine (9) members were present at roll call.

APPROVAL OF AGENDA

Chair Masagatani announced Item F-3 was moved to follow Public Testimony. The July 29 & 30 Public Hearing minutes were distributed and will be approved at the start of the Tuesday meeting. The February 2014 and July 21 & 22, 2015 minutes were deferred. The NextEra matter will be addressed on Tuesday.

MOTION/ACTION

Moved by Commissioner Canto, seconded by Commissioner Chin, to approve the agenda.
Motion carried unanimously.

PUBLIC TESTIMONY ON AGENDIZED ITEMS

ITEM A-1, Dick Mayer Re: Agenda Item F-2

D. Mayer submitted written testimony and highlights important portions during his oral testimony:

1. What is the status of the figures and information provided in July?
2. Will the beneficiaries and the public be able to read the proposed final agreement before the mid-August HHL Commission meeting? Otherwise public testimony at that meeting may be irrelevant.
3. Multiple HHL Commission considerations:
 - a. Maximize financial and other benefits to HHL and its beneficiaries
 - b. Pono use of resources (land, environment, cultural sites, the locally affected community, etc.)
 - c. Being assured of the long-term operational and financial viability of this windfarm operation
 - d. Overall effect of the project on Maui's energy needs
 - e. Recognition of the one-time nature of this decision and its long-term impacts
4. Two separate dimensions
 - a. HHL Board is obligated to get maximum benefits for HHL and its beneficiaries
 - b. HHL Board will need to decide on the proper distribution of benefits
5. Seek out additional proposals by allowing for multiple, competitive "Rights of Entry (ROE)" and subsequent proposals a few years later.
6. Seek out and utilize unbiased, superior financial and legal expertise. Have the potential lease applicants pay to HHL a fee high enough to contract for this expertise.
7. Establish a fixed submission deadline, e.g., December 31, 2017.
8. Determine all of the necessary permit requirements and agencies that will need to give approval:
9. Possibilities: DLNR; Maui Planning Commission (SMA); SHPD (Cultural sites); federal agencies; Public Utility Commission; Legislature; Maui County Council; etc. Delay HHL Commission decision a few months (after mid-August) to get all the information required to make the right decision.
10. Provide the applicant with a "check list" of items that will be required in the submission. Require an EIS, and not just an "EA with a FONSI"
11. Beware of the inherent conflict of interest in having NextEra be both the operator of the windfarm (seller of the power produced) and the purchaser of the power if it owns the island-wide utility. It may work against the HHL and Maui's electricity rate payers.
12. Provide strict conditions in the agreement that make it clear in perpetuity that the produced power will not be sold off-island. NO Undersea cable!
13. Make sure that a robust battery system/capability will be integrated into the project.

ITEM A-2, Malia Forbes Green, Moloka'i Homesteader. Re: Agenda Item C-2

M. Green stated she is a fourth generation homesteader from Moloka'i. Her great-grandmother was an original Kalama'ula homesteader and her mother became a Ho'olehua homesteader when it opened up. Her grandfather Charles Meyer was a project manager for DHHL for 40 years. Her

mother Yola Noelani Meyer-Forbes went away to college, got her law degree and has been helping homesteaders ever since. All the while, farming and raising her family on Moloka‘i.

She has one-quarter Hawaiian koko [blood] and her children have even less. As Hawaiians, they are connected to the land just as much as their kupuna who were the first recipients of homestead lots. It’s not something you own but a part of your family itself. Before her father passed, he told her that he could not leave her with an inheritance but he did leave her 10-acres of fruit trees so that they would never go hungry.

She hopes the department can do something so that families do not have to be displaced.

ITEM A-3, Faith Tuipolotu – Molokai Homesteader. Re: Agenda Item C-2

F. Tuipolotu stated she is also from Moloka‘i and is a third generation homesteader. Farmer. When she turned 18 the first thing her father did was sign her up for a homestead. She went away to college in 1978, and in 1981 her name was called. After school she came back to Moloka‘i and decided to farm. She planted all sorts of fruit trees and kukui nut trees for her children and grandchildren. All of her children know how to farm and they are grateful to her and her husband for showing them how to work.

She supports the lowering of the blood quantum, not for her children but for her grandchildren. Like many Hawaiians, she did not marry a Hawaiian and her grandchildren do not have enough koko.

ITEM A-4, Kamakaleihiwa Purdy Avelino. President – Opio Board of Ahupua‘a O Molokai. Re: Agenda Item C-2.

K. Purdy-Avelino provided her mo‘oku‘auhau [genealogy]; she is the daughter of Kilia Purdy, granddaughter of Tudi Purdy and great-granddaughter of Kalei Lindsey Purdy of Waimea. He was one of the first settlers in Ho‘olehua. He was blessed with Lot #6. She is a fifth generation homesteader.

She is the President of the Opio Board under the Ahupua‘a O Moloka‘i and felt it was her kuleana to speak in support of future generations regarding lowering the blood quantum for transferees. Hawaiians need to look to our past for a righteous future. Prince Kūhiō wanted the blood quantum to be 1/32nd percent so all of his people could be on the land.

One of her professors asked her, “he aha ka mea e ho‘ohawaii ai I ka Hawai‘i?” what is it that makes you Hawaiian? Is it the blood that you have or the passion to build on the foundation our kupuna left.

ITEM A-5, Blossom Feiteira, President Association for Hawaiians on Homestead Lands Re: Agenda Items F-3, G-2, C-2, C-3 and D-6

B. Feteira stated her support of items F-3 and G-2. Both the Waimea and Anahola Homestead Associations are examples of beneficiaries who have thrived because they were given the tools to accomplish their goals. Kumu Camp organizers cleaned up an area that was known for illegal activity. They’ve replaced those kinds of activities with economic development and positive programs. These programs give other homestead associations hope for equal success in our own communities.

With regard to items C-2 and C-3, nothing was provided in the material. She reserves her testimony for these items until she has reviewed them. Chair Masagatani stated the items were available on the DHHL website along with the rest of the packet. The department has just started making the packet available online. B. Feteira thanked the department for the effort.

B. Feteira stated she is in strong support of item D-6 as she is transferring her lease to her son and her daughter. They have qualified for a home loan outside of the department. They are ready to go and it is a wonderful legacy to pass on to her grandchildren.

ITEM A-6 Robin Danner, Chairman - State Council of Hawaiian Home Associations. Re: Agenda Items C-2, C-3, and F-3.

R. Danner testified as a beneficiary and the first woman SCHHA Chairman. She requested a copy of the C-2 submittal and asked to add a legislative priority to amend Act 302 to take out language that says "subject to congressional approval." She provided prepared language for the proposed amendment. The SCHHA would also amend the preamble portion to take out commitments by the federal government. Act 302 has not been implemented because of that language. She also provided an Attorney General submittal that supports the amendment of Act 302, and makes recommendations for the language.

With regard to Item C-2, SCHHA supports the department's legislative initiative of lowering the blood quantum. The SCHHA has done 2 years of listening sessions in every homestead association on this subject. The outcome was that there are 29,000 beneficiaries on the waitlist with 50% or more Hawaiian blood and they should be priority. SCHHA would like to amend the Act to maintain 50% for the original lease, genealogy descendancy in the family tree, who can tie to the original lessee. SCHHA has drafted legislation if the commission is inclined, to introduce a bill.

With regard to Item C-3, R. Danner thanked the commission for adding Part 50, the federal regulations, on the agenda. She asked for the commission's support of the proposed rule. The comment period ends on December 30, 2015. It is unknown if the Obama Administration will do a final Rule, but if they did, it would just sit there until Hawaiians decide to use it as a doorway. Part 50 recognizes small "n" beneficiaries, the beneficiaries of the Hawaiian Homes Commission Act (HHCA), above and beyond all Hawaiians, in a way that beneficiaries of the HHCA have an extra opportunity to approve or veto the ratification of a constitution to give big "N" Hawaiians protection by the small "n" Hawaiians, so that when there is a legal challenge, HHCA beneficiaries have the strongest legal defense because they have the oldest trust relationship with the federal government.

For agenda Item F-3, SCHHA's position on land dispositions is that the commission has had very few opportunities to act on land dispositions for beneficiaries. There were 28 land dispositions approved by the commission to non-Hawaiians SCHHA asks the commission to approve any 204 or 207 land dispositions for or by a native Hawaiian beneficiary or a homestead association controlled by beneficiaries. They support a general lease to the Waimea Homestead Association because they are beneficiary controlled.

Commissioners Tassill and Kahikina asked R. Danner for reaction to the DHHL's proposed resolution. R. Danner stated the language should be stronger and one of the Whereas phrases made it seem like the department didn't know the protections it already holds.

ITEM A-7 Kekoa Enomoto – Beneficiary Re: Item G-2 Kumu Camp

K. Enomoto stated she is the secretary of two Maui homestead associations but is testifying as an individual today to support the approval of the FONSI (Finding of No Significant Impact) of the final environment assessment for the Kumu Camp project in Anahola, Kaua'i. She is a member of a cultural advisory council for the Grand Wailea Resort and a Valley Isle cultural practitioner and kupuna. She commended the project as an exceptional beneficiary initiative with remarkable ingenuity.

ITEM A-8 Gayla Ann Haliniak, President Kalama'ula Homestead Association. Re: Item C-2 Approval of Legislative Proposal 2016

G. Haliniak-Lloyd stated she is a fourth-generation homesteader from Kalama'ula, Moloka'i and is the President of the Kalama'ula Homestead Association. Kalama'ula was one of the first homestead settlements in Hawaii. She lives on a 1-acre homestead lot and has 16 grandchildren living with her. Most of her grandchildren do not have the 25% Hawaiian blood required to succeed their homestead lease. Lowering the blood quantum for successorship is the only way to keep the next generation on the homesteads. She and her husband are teaching their grandchildren to grow their own vegetables, taro and fruits. She knows it will be a struggle to change the law, but is thinking about the future generations of homestead successors.

ITEM A-9 Kapua Lauifi – Kalama'ula Homesteader Re: Item C-2 Approval of Legislative Proposal 2016

K. Lauifi stated the language of the proposed bill is a good step but needs to be even stronger. The amount requested is not low enough and future generations will have to ask to lower the blood quantum again. She urged the commission to lower it even further, so beneficiaries won't have to worry about it for at least another generation.

ITEMS FOR DECISION MAKING

LAND MANAGEMENT DIVISION

ITEM F-3 Issuance of a General Lease, Waimea Hawaiian Homestead Association, Inc., Waimea, Pu'ukapu, Island of Hawai'i.

RECOMMENDED MOTION/ACTION

Acting Land Management Division Administrator Peter "Kahana" Albinio presented the Item. That the Hawaiian Homes Commission (HHC) grant its FINAL approval to issue a sixty-five (65)-year General Lease to Waimea Hawaiian Homestead Association Inc., a 501(c)3 non-profit community organization, to use a 161-acre parcel of Hawaiian home lands in Puukapu, identified by Tax Map Key No. (3) 6-4-038:011 (por.), and as shown as the cross-hatched area on Exhibit "A." The final approval is subject to the terms and conditions listed in the submittal.

MOTION

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

The HHC declared a FONSI based on the FEA of the project at its May 18- 19 2015 meeting. DHHL conducted a beneficiary consultation meeting in Waimea to amend the DHHL Island Plan land use designation for this project on March 5, 2015 and the HHC accepted the beneficiary consultation report from that meeting and additional comments received on the project during the

30-day comment period as public record of beneficiary input and feedback at its April 20-21 2015 meeting. The WNCDC obtained IRS 501c3 status on October 2, 2014.

K. Albinio introduced Michael Hodson President of WHHAI. M. Hodson stated the process for obtaining the lease took 46 months from start to finish. He stressed that the project is the community's plan and effort. The community saw the need and they did it, it's not something that was handed to them by someone else. The plan is not perfect but it is empowering his community to be self-sustaining and self-enriching. Getting started is the most important part. If there is a problem, fix it, but don't stop them from starting.

Commissioners Tassill, Commissioner Ka'apu and Ishibashi offered words of encouragement and mahalo for M. Hodson's effort in seeing the project through.

Chair Masagatani thanked M. Hodson for coming and for his work in his community.

ACTION

Motion carried unanimously.

OFFICE OF THE CHAIRMAN

ITEM C-1 Approval of Hawaiian Homes Commission Calendar for 2016

RECOMMENDED MOTION/ACTION

Chair Masagatani offered the following:

That the Hawaiian Homes Commission (HHC) approve the 2016 Commission Meeting Calendar.

Chair Masagatani highlighted the more notable details of the 2016 HHC Meeting Calendar. The November meeting will be on Lāna'i, but the price of overnight accommodations is too high, so the community meeting will be held on Sunday during the day. The commission will fly in to Lanai in the morning, and then O'ahu later that evening. The 2-day business meetings for November will be convened in Kapolei on Oahu. The September meetings are scheduled for the 19th and 20th.

MOTION/ACTION

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

ITEM C-2 Approval of Legislative Proposal 2016.

Chair Masagatani stated the actual language of the legislative bill was being copied by staff so the item will be deferred to later in the agenda, allowing Commissioners time to review the document.

Note: This item was taken at the end of the agenda on day one, following Item G-1.

ITEM C-3 Approval of a Hawaiian Homes Commission Resolution in Support of the United States Department of the Interior Proposed Rules 43 C.F.R. part 50, Procedures for Reestablishing a Formal Government-to-Government Relationship with the Native Hawaiian Community

RECOMMENDATION

Administrative Rules Officer Hokulei Lindsey presented the motion.

To approve a Hawaiian Homes Commission resolution in support of the United States Department of the Interior proposed rule 43 C.F.R. Part 50, Procedures for Reestablishing a Formal Government-to-Government Relationship with the Native Hawaiian Community.

MOTION

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

DISCUSSION:

On October 1, 2015, the United States Department of the Interior (“DOI”) published notice of proposed rulemaking for Procedures for Reestablishing a Formal Government-to-Government Relationship with the Native Hawaiian Community, 43 C.F.R Part 50. The administrative process leading to this announcement dates back to June 2014 when the DOI issued an Advanced Notice of Proposed Rulemaking (“ANPRM”) and solicitation of comments for whether the Secretary of the Interior (“Secretary”) should propose an administrative process for reestablishing a government-to-government relationship with the Native Hawaiian community. Having found widespread support, the DOI announced its proposed rule last month. The proposed rule would establish an administrative procedure and criteria for the Secretary to use if the Native Hawaiian community forms a government, which then seeks a formal government-to-government relationship with the United States.

The Department of Hawaiian Home Lands (“DHHL” or “Department”) recommends the Hawaiian Homes Commission (“HHC”) adopt a resolution in support of the DOI’s proposed rule to reestablish a government-to-government relationship with the Native Hawaiian community. Through the promulgation of the rule alone, the U.S. would reaffirm its commitment to the special political and trust relationship that exists with the Native Hawaiian peoples, and legal protection would be strengthened for the HHCA and the related interests of beneficiaries.

Although DHHL commented in general support of the ANPRM, the Department also made two key recommendations:

1. That any rule include protections for the Hawaiian home lands, including lands leased to homestead beneficiaries, that would prevent inclusion in the yet-to-be determined Native Hawaiian government without adequate input and control over this decision by beneficiaries; and
2. That any rule consider the input of the Hawaiian home lands beneficiary communities as distinct from the input of the general Native Hawaiian community, and preserve the opportunity for beneficiary communities to move forward, if so desired, even if the broader Native Hawaiian community is not interested in an administrative process at this time.

Proposed Rule, 43 C.F.R. Part 50

The rule proposed by DOI would establish an administrative procedure and criteria for the Secretary to use if the Native Hawaiian community forms a government, which then seeks a formal government-to-government relationship with the United States. Implicit in the structure is

that the Native Hawaiian community must organize to form a governing entity because the rule does not create that entity nor does it explicitly provide a roadmap for the forming a governing entity. It does, however, set forth criteria and other standards that the Secretary would consider in determining whether to reestablish a formal government-to-government relationship with the Native Hawaiian community.

Commissioner Kahikina stated he supports the resolution and asked if H. Lindsey heard what R. Danner offered as some amendments to the resolution and how she felt about them. H. Lindsey stated in terms of the comment period something could be added about specific timeframes which are missing. In terms of including language about being able to take land into trust, depending on interpretation, it may already be in the proposed rule. She would seek counsel's advice on how to approach it.

Chair Masagatani noted a request by Deputy AG Iha to recuse the commission into executive session.

MOTION/ACTION

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

EXECUTIVE SESSION IN 11:24 AM

EXECUTIVE SESSION OUT 12:12 PM

Chair Masagatani suggested amending the motion to change the word "reestablish" and "reestablishment" in the fifth and eight WHEREAS sections, to "establish" and "establishment" respectively; and remove the seventh WHEREAS paragraph entirely.

MOTION ON AMENDMENT/ACTION

Moved by Commissioner Davis, seconded by Commissioner Ishibashi to change the word "reestablish" and "reestablishment" in the fifth and eight WHEREAS sections, to "establish" and "establishment" respectively; and remove the seventh WHEREAS paragraph entirely. Motion carried as stated.

ACTION ON AMENDED MOTION

Motion carried unanimously.

G - PLANNING OFFICE

ITEM G-2 Declare a Finding of No Significant Impact (FONSI) for a Final Environmental Assessment (FEA), Kumu Camp Project, Anahola, Kaua'i, Hawai'i TMK (4) 4-8-007:001

RECOMMENDED MOTION/ACTION

DHHL Planners Andrew Choy, Bob Freitas and Nancy McPherson presented the submittal. That the Hawaiian Homes Commission (HHC) declare a Finding of No Significant Impact (FONSI) based on the information provided in the Final Environmental Assessment (FEA) for the Kumu Camp Project.

MOTION

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

DISCUSSION

N. McPherson introduced McKenna White from Planning Solutions Inc. and Robin Danner from HCDC (Homestead Community Development Corporation). N. McPherson provided an overview of the project's compliance with Chapter 343, Hawai'i Revised Statutes (HRS), and Environmental Review.

N. McPherson asked to amend item #9 in the following area of the submittal:

Mitigation Measures Agreed to by HCDC in the Final EA

- 9) Will engage in beneficiary outreach and consultation prior to any expansion efforts.

N. McPherson stated staff will come back to the commission later to seek a formal land disposition with additional comments and conditions.

Commissioner Chin asked who submitted the amended mitigation #9. N. McPherson stated it was the Office of Hawaiian Affairs. Staff was not familiar with either individual, which is part of the reason for the amendment. M. White was unfamiliar with the individuals and neither submitted comments on the EA.

Commissioner Richardson stated the EA seemed to be a bare-bones effort, he asked how much was budgeted for the assessment. M. White stated the EA tried to cover areas where impact might be perceived. The original budget was \$19,000.00. Commissioner Richardson stated he was concerned about public discussions for alternative sites, which were not addressed in the EA. M. White stated they dealt with the issue but eliminated them from further analysis because there wasn't a similar site that would serve the Anahola community in the same way at a similar cost level.

Commissioner Canto asked about the waste water system requirement. R. Danner stated the homestead association has contracted and has a design for an individual wastewater system. The requirement is that the EA has to be completed and a FONSI approved before implementing the system. They are using porta-pottys because the IWS engineering is presented after the approval of an EA.

R. Danner responded to Commissioner Richardson's question about the budget of the EA. The firm used for Kumu Camp is the same firm that did the multi-million dollar solar farm EA so they are familiar with the Anahola area. The EA is not as in-depth because it is not a hotel or a building, but a camp.

Commissioner Ka'apu stated in 2011, AHHA (Anahola Hawaiian Homestead Association) received authorization to create the camp site but the documentation shows the camp was not approved. There was a cease and desist order which meant activities were not approved. Is the FONSI for 5, 8 or 11 acres? The document isn't clear. If approved, what is the actual size of parcel covered by the FONSI? M. White stated the camp is currently on 5 acres, the analysis was done for 8 acres, but they want to expand to 11 acres in the future. The FONSI covers the 8 acres. Commissioner Ka'apu asked where the additional tentalows would be placed. M. White stated the location for the additional tentalows has not been determined.

Commissioner Ka'apu asked M. White to explain the status of the mobile kitchen. In one section it is described as a Department of Health certified mobile kitchen, in another it is not a mobile kitchen or even used and is described as a shelter for campers. There is also a blurb about it being cleaned elsewhere. What it is and why is it part of the assessment. M. White stated it was original

set to be used as a mobile kitchen but subsequently it was changed to be a windbreak and a place to prepare food they brought with them. R. Danner stated the intent was to have a certified kitchen for campers to cook for themselves. The Girl Scouts use it to prepare their pancakes etc.

Commissioner Ka'apu asked about the imu pit as there was no description of what impact it would have since it is not part of the waste water system. R. Danner stated they have many homestead families holding reunions at the camp and offer the imu for their use. If it is a mitigation matter, she is willing to do so. She added there are a lot of fishermen who use Kumu Camp to clean their fish, it's something they hadn't thought about it.

Commissioner Ka'apu stated there are cold water showers but the run off wasn't evaluated. R. Danner stated the showers are the rinse-off type without soap. The showers that have soap are in the comfort station which will feed into the individual waste water system. Once the FONSI is approved they will move forward with the waste water system to allow them to install hot water to the comfort station. Right now they only have the cold water showers like the county parks.

Commissioner Ka'apu noted the EA lacks recognition of the split in the community. The community impact methodology has an interesting criterion because it segregates out the dichotomy of views. M. White stated the EA summarized input from various meetings of community stakeholders. There have been many opportunities for the community to provide input. R. Danner stated Mr. Cobb-Adams refused to participate in the community consultations and EA comment process. She reads a list of supporters including one from a former drug user, community volleyball coordinator, kumu hula and Kahu Mau, Pastor of the local protestant church.

R. Danner stated the EA did not become an issue until DHHL policies changed under the new administration. Prior to that, EA's were not required except for general leases. Kumu Camp was authorized and even awarded money by the department prior to the change in policy. That is why it's an EA after-the-fact. The project has gone through four different directors and have abided by the department's rules in each administration change. Chair Masagatani stated the EA is required by law and not necessarily a change in policy. Compliance to the law in prior administrations was different. This administration is trying to get the project compliant, this EA is one of the steps needed. This project is a little different than others and there is no long term disposition at this time. There is a portion of land that is under dispute as far a title goes. The department needs to get that determination as well.

Commissioner Kahikina stated he is still bothered about the Kaua'i meeting where Mr. Cobb-Adams was allowed to make accusations about him and others. He is also bothered about the scrutiny placed on this project while others in similar situations get approved.

Commissioner Ishibashi stated his concern is related to burials in the area. M. White stated burials in the area was a concern to them as well. AHHA paid for an archaeological survey before they started the project, on their own. They also met with SHPD and DHHL at the site and determined that the proposed use for the area would not affect any subsurface archeological sites.

Chair Masagatani noted a request by Deputy AG Iha to recuse the commission into executive session.

MOTION/ACTION

Moved by Commissioner Davis, seconded by Commissioner Canto to convene in executive session pursuant to section 92-5 (a) (4), HRS. Motion carried unanimously. Commissioner Tassill not present during vote.

EXECUTIVE SESSION IN
EXECUTIVE SESSION OUT

1:31 PM
2:42 PM

Chair Masagatani thanked everyone for their patience while the Commission had legal questions answered. There are three aspects which make the project more challenging for the department and commission. 1) Location on the shoreline and access points to the shoreline. 2) Project started before being in compliance and disposition discussions occurred prematurely. 3) Voices of support and opposition on both sides.

She recognized all the hard work that has already done into the project and even with limited resources AHHA did try to bring forward an EA.

Unfortunately, there isn't enough information about whether the project affects the economic and social welfare of the community. The commission also needs to address future amendments to the Island Plan, and the kind of disposition is legally possible for the long-term of this project. Both of those discussions require a beneficiary consultation which would also help to get a better understanding of the impact of the project on the community. The department can also undertake an alternatives analysis.

MOTION

Moved by Commissioner Kaapu, seconded by Commissioner Davis to not accept the Final Environmental Assessment (FEA) for the Kumu Camp Project, subject to insufficient information in some of the areas.

Chair Masagatani noted DHHL will conduct a beneficiary consultation which will have to be done anyway for the land use amendment. M. White stated normally beneficiary consultation is not required for the Section 343 process. Chair Masagatani stated in some cases consultations done before the final EA are accepted. R. Danner asked the commission to compartmentalize the process and just approve the Section 343 process. They are not asking for a land disposition, just a Finding of No Significant Impact. M. White asks that HCDC be allowed to submit a revised Final EA, so as not to penalize the association for the requested additional information by the department. Chair Masagatani stated if allowed by law, the department would take the suggestion into consideration.

R. Danner reviewed a chronological outline of the project which highlighted the administrative changes in the department and correlating changes to compliance requirements.

Commissioner Kahikina asked for a copy of the policies and procedures being used to determine whether to recommended EAs for approval by the Commission.

Deputy AG Iha stated the rules that govern Section 343 don't allow or disallow amendments to a Final EA, he needs to do a more in-depth analysis and get back to the Commission. He prefers discussing the item in an executive session.

Chair Masagatani stated she will defer the item until after the scheduled executive session at the end of the agenda. She moved on to cover the rest of the business items.

HOMESTEAD SERVICES DIVISION

ITEM D-1 Homestead Services Division Status Reports

Chair Masagatani asked if Commissioners had any questions on the following reports:

- Homestead Lease & Application Totals and Monthly Activity Reports
- Delinquency Report
- DHHL Guarantees for FHA Construction Loans

Note: Commissioner Tassill left the room at 3:40 p.m.

ITEM D-2 Approval of Consent to Mortgage

RECOMMENDED MOTION/ACTION

Acting Homestead Services Division Administrator Dean Oshiro recommended the following: To approve the following consents to mortgages for Federal Housing Administration (FHA) insured loans, Department of Veterans Affairs (VA) loans, United States Department of Agriculture, Rural Development (USDA, RD) guaranteed loans, United States Housing and Urban Development (BUD 184A) guaranteed loans and Conventional (CON) loans insured by private mortgage insurers.

MOTION/ACTION

Moved by Commissioner Davis, seconded by Commissioner Canto. Motion carried unanimously. Commissioner Tassill not present during vote.

ITEM D-3 Approval to Schedule Loan Delinquency Contested Case Hearings

RECOMMENDED MOTION/ACTION

Acting Homestead Services Division Administrator Dean Oshiro recommended the following: To authorize the scheduling of the following loan delinquency contested case hearings as shown in the attachment.

MOTION/ACTION

Moved by Commissioner Davis, seconded by Commissioner Canto. Motion carried unanimously. Commissioner Tassill not present during vote.

ITEM D-4 Approval of Homestead Application Transfers/Cancellations

RECOMMENDED MOTION/ACTION

Acting Homestead Services Division Administrator Dean Oshiro recommended the following: To approve the transfers and cancellations of applications from the Application Waiting Lists for reasons described:

MOTION/ACTION

Moved by Commissioner Davis, seconded by Commissioner Canto. Motion carried unanimously. Commissioner Tassill not present during vote.

ITEM D-5 Ratification of Designations of Successors to Leasehold Interest and Designation of Persons to Receive Net Proceeds

RECOMMENDED MOTION/ACTION

Acting Homestead Services Division Administrator Dean Oshiro recommended the following: To ratify the approval of the designation of successor to the leasehold interest and person to receive the net proceeds, pursuant to Section 209, Hawaiian Home Commission Act, 1920, as amended. This designation was previously approved by the Chairman.

MOTION/ACTION

Moved by Commissioner Kahikina, seconded by Commissioner Davis. Motion carried unanimously. Commissioner Tassill not present during vote.

ITEM D-6 Approval of Assignment of Leasehold Interest

RECOMMENDED MOTION/ACTION

Acting Homestead Services Division Administrator Dean Oshiro recommended the following: To approve the assignment of the leasehold interest, pursuant to Section 208, Hawaiian Homes Commission Act, 1920, as amended, and subject to any applicable terms and conditions of the assignment, including but not limited to the approval of a loan.

MOTION/ACTION

Moved by Commissioner Davis, seconded by Commissioner Kahikina. Motion carried unanimously. Commissioner Tassill not present during vote.

ITEM D-7 Approval of Amendment of Leasehold Interest

RECOMMENDED MOTION/ACTION

Acting Homestead Services Division Administrator Dean Oshiro recommended the following: To approve the amendment of the leasehold interest listed in the submittal.

MOTION/ACTION

Moved by Commissioner Chin, seconded by Commissioner Davis. Motion carried unanimously. Commissioner Tassill not present during vote.

ITEM D-8 Approval to Issue a Non-Exclusive License for Rooftop Photovoltaic Systems for Certain Lessees

RECOMMENDED MOTION/ACTION

Acting Homestead Services Division Administrator Dean Oshiro recommended the following: To approve the issuance of a non-exclusive license to allow the Permittee to provide adequate services related to the installation, maintenance, and operation of a photovoltaic system on the premises leased by the respective Lessees.

MOTION/ACTION

Moved by Commissioner Davis, seconded by Commissioner Richardson. Motion carried unanimously. Commissioner Tassill not present during vote.

ITEM D-9 Commission Designation of Successor – FREDERICK JAY SNIFFEN, SR., Lease No. 10417, Lot No. UNDV, Waiohuli, Maui.

RECOMMENDED MOTION/ACTION

Acting Homestead Services Division Administrator Dean Oshiro the following:

1. To approve the designation of Theresa Elizabeth Kenolio Sniffen (Theresa), as successor to Residential Lease No. 10417, Undivided Interest, Waiohuli, Maui, for the remaining term of the lease.

MOTION/ACTION

Moved by Commissioner Canto, seconded by Commissioner Davis. Motion carried unanimously. Commissioner Tassill not present during vote.

ITEM D-10 Commission Designation of Successor – JOSEPHINE L. KIESEL-LEE, Lease No. 9169, Lot No. 37, Kahikinui, Maui

RECOMMENDED MOTION/ACTION

Acting Homestead Services Division Administrator Dean Oshiro the following:

To approve the designation of Jess Keisel Lee (Jess), as successor to his late grandmother, Josephine L. Kiesel-Lee's Pastoral Lease No. 9169, Lot No. 37, Kahikinui, Maui, for the remaining term of the lease, subject to his acceptance of the terms and conditions of the lease.

MOTION/ACTION

Moved by Commissioner Canto, seconded by Commissioner Kahikina. Motion carried unanimously. Commissioner Tassill not present during vote.

LAND MANAGEMENT DIVISION

ITEM F-1 Approval to Issue Master Benefit License to Maui Electric Company, Limited for Homestead Developments, County of Maui (Various TMKs)

RECOMMENDED MOTION/ACTION

Acting Administrator to the Land Management Division Peter "Kahana" Albinio recommended the following: That the Hawaiian Homes Commission approve the following:

1. The issuance of a Master Benefit License to Maui Electric Company, Limited, for the right and privilege to build, construct, reconstruct, rebuild, repair, maintain, operate or remove poles, anchors, guy wires, pull boxes, handholes, transformer vaults, switchgears, and overhead and/or underground lines, appliances and/or equipment over, across, under and through portions of Hawaiian home lands parcels under homestead development in the County of Maui for the sole purpose of providing electric service to the homestead parcels; and
2. Authorize to the Chairman to approve addendums to the Master License to add additional homestead subdivisions and lots.

MOTION/ACTION

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

Note: Commissioner Tassill returned at 3:51 p.m.

ITEM F-4 Approval of Issue Right-of-Entry, Hawai'i USDA Forest Service Albizia Research Project, Hilo and Pi'ihonua Makai, Hawai'i, Tax Map Key Nos. (3) 2-1-025: 002,003, 004, and 005 (por) and (3) 2-6-009:005 (por)

RECOMMENDED MOTION/ACTION

Acting Administrator Land Management Division Peter "Kahana" Albinio and Land Agent Shelly Carreira, recommended the following:

That the Hawaiian Homes Commission grant its approval to issue a one (1) year Right of Entry to access implement an Albizia Research Project on approximately seventeen and one half (17.5 acres) Hawaiian home lands situated in Pi'ihonua Farm Lots (2. acres), Island of Hawaii, further identified by Tax Map Key number (3)2-6-09:005 (por), and Hilo, Hawaii (15 acres) identified by Tax Map Key numbers (3)2-1-25:002; 003; 004; and 005 (por). Approval is subject, but not limited to the conditions listed in the submittal.

MOTION

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

DISCUSSION

Commissioner Davis asked that a condition be added whereby trees affected by the study that are expected to die, be removed by the researchers.

ACTION

Motion carried. Commissioner Kahikina opposed.

ITEMS FOR INFORMATION

G - PLANNING OFFICE

ITEM G-1 For Information Only – Update on Water Use Permit Applications in Kualapu'u Moloka'i and the Remand of the Kuku'i Hawai'i Supreme Court

RECOMMENDED MOTION/ACTION

Planner Andrew Choy introduced consultant Dr. Jonathan Scheuer who offered the update.

Recent actions by the Commission on Water Resource Management (CWRM) have reopened proceedings regarding the use of groundwater in the Kualapu'u Aquifer on the island of Moloka'i that have been going on for over a quarter century. These proceedings can substantially affect the rights and actual water use of the Department of Hawaiian Home Lands (DHHL) and beneficiaries on the island. The purpose of this submittal is to update the Hawaiian Homes Commission (HHC) on this ongoing and rapidly developing issue.

Brief Background

The matters involved here are complex and involve multiple separate proceedings before the CWRM and two cases before the Hawai'i Supreme Court (HSC), and have spanned decades. Seven key issues are particularly relevant to the matters now at hand:

- 1) Designation of groundwater on Moloka'i by CWRM;
- 2) DHHL's water reservation in the Kualapu'u Aquifer;
- 3) The filing of a Water Use Permit Application by Moloka'i Ranch in the Kualapu'u Aquifer, and a subsequent HSC case;
- 4) The filing of a different Water Use permit Application by a Moloka'i Ranch subsidiary in a neighboring aquifer,

Instead, CWRM is proceeding with 1) reconsideration of the pending WUPA in Kualapu'u, and is also 2) proceeding with the remand of the Kukui decision. These actions raise key implications for the DHHL.

CONCLUSION

The recent CWRM actions in these matters - noticing of the WUPAs in Kualapu'u and remanding of the Kukui decision - are highly significant matters for the HHC, DHHL, and beneficiaries. Consistent with Goal 2 of the HHC Water Policy Plan, the DHHL shall in these proceedings "Aggressively, proactively, consistently and comprehensively advocate for the kuleana of the beneficiaries, the DHHL, and the HHC to water before all relevant agencies and entities."

Commissioner Richardson stated it seemed as if the water commission has some animosity toward DHHL. J. Scheuer stated a new water deputy has been hired who doesn't have the benefit of the history of the case and all of its intricacies.

Chair Masagatani stated it was a situation where the water board wanted to clear some of their longstanding cases, Moloka'i being one of them. DHHL wants to see the reestablishment of the working group so discussions can be held in an informal context, rather than through litigation. Everyone is waiting on the USGS study to help run models based on science.

Commissioner Ka'apu stated in Kona the department was able to secure a reservation of water in a non-designated area, Moloka'i is a designated area and with the recognition of DHHL water rights, he doesn't understand it.

ITEM C-2 Approval of Legislative Proposal 2016.

RECOMMENDED MOTION/ACTION

DHHL Deputy Director William Aila Jr. presented the following item for approval by the commission:

To approve the legislative proposal, to reduce the Hawaiian blood quantum from one-quarter to one-eighth for the following relatives of the lessee to be designated as a successor to the leasehold interest: husband, wife, children, grandchildren, brothers, or sisters, for inclusion in the Administrator's legislative package for the 2016 Legislative Session.

MOTION

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

Deputy Aila stated the issue of reducing the blood quantum for successorship has been a reoccurring theme firmly expressed by attendees at our current beneficiary consultation meetings on our new rules package. There is a compelling request by the Department of Hawaiian Home Lands beneficiaries to pursue this legislation.

Pursuant to Section 209 of the Hawaiian Homes Commission Act of 1920, as amended, a lessee may designate as a successor to the lease the following relatives of the "lessee who are (1) one-quarter Hawaiian, husband, wife, children, grandchildren, brothers, or sisters, or (2) native Hawaiian father and mother, widows and widowers of the children/ widows and widowers of the brothers and sisters/ or nieces and nephews, "

A draft of the legislative proposal was prepared by the Chairman's office for inclusion in the Administrator's legislative package for the 2016 Legislative session. The draft will be under review by the Attorney General, the Department of Budget and Finance, and the Governor.

Commissioner Tassill stated his only concern is that those on the waitlist do not lose their position. Deputy Aila stated new offerings will continue to go to the top of the waitlist.

Commissioner Ishibashi asked to amend the language of the bill to reduce the blood quantum level even further.

Commissioner Richardson stated he is opposed to reducing the blood quantum level.

ACTION ON AMENDED MOTION

Moved by Commissioner Chin, seconded by Commissioner Ishibashi, to amend the motion to reduce the blood quantum from one-quarter to one-thirty-second. (roll call vote)

Commissioner	1	2	'AE (YES)	A'OLE (NO)	KANALUA ABSTAIN	EXCUSED
Commissioner Canto			X			
Commissioner Chin	X		X			
Commissioner Davis			X			
Commissioner Ishibashi		X	X			
Commissioner Ka'apu			X			
Commissioner Kahikina			X(2)WR		X(1)	
Commissioner Richardson				X		
Commissioner Tassill			X			
Chair Masagatani			X			
TOTAL VOTE COUNT			8	1		
MOTION: <input type="checkbox"/> UNANIMOUS <input checked="" type="checkbox"/> PASSED <input type="checkbox"/> DEFERRED <input type="checkbox"/> FAILED						
Motion passes with eight (8) Yes, and one (1) No. Kahikina - yes with reservations.						

ACTION ON AMENDED MOTION

Commissioner	1	2	'AE (YES)	A'OLE (NO)	KANALUA ABSTAIN	EXCUSED
Commissioner Canto			X			
Commissioner Chin	X		X			
Commissioner Davis			X			
Commissioner Ishibashi		X	X			
Commissioner Ka'apu			X			
Commissioner Kahikina			X			
Commissioner Richardson				X		
Commissioner Tassill			X			
Chair Masagatani			X			
TOTAL VOTE COUNT			8	1		
MOTION: <input type="checkbox"/> UNANIMOUS <input checked="" type="checkbox"/> PASSED <input type="checkbox"/> DEFERRED <input type="checkbox"/> FAILED						
Motion passes with eight (8) Yes, and one (1) No.						

Chair Masagatani thanked everyone for their patience and asked for a motion to convene in executive session.

MOTION/ACTION

Moved by Commissioner Davis, seconded by Commissioner Canto to convene in executive session pursuant to Section 92 5(a)(4), HRS. Motion carried unanimously.

EXECUTIVE SESSION IN

4:57 p.m.

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

1. Proposed Right-of-Entry Permit and General Lease to Boulevard Associates, LLC and Delegate to the HHC Chairman the Authority to Negotiate the Final Terms and Conditions of the Lease at Kahikinui, Islands of Maui, Tax Map Key No. (2) 1 -9-001:003 (por)

EXECUTIVE SESSION OUT

6:15 p.m.

RECESS

6:16 p.m.

HAWAIIAN HOMES COMMISSION
Minutes of November 16 and 17, 2015
Meeting Held in Kula, and Paukukalo, Maui, Hawai'i

PRESENT Jobie M. K. Masagatani, Chair
Doreen N. Canto, Commissioner, Maui
Gene Ross K. Davis, Commissioner, Moloka'i
Wallace A. Ishibashi, Commissioner, East Hawai'i
David B. Ka'apu, Commissioner, West Hawai'i
Michael P. Kahikina, Commissioner, O'ahu
William K. Richardson, Commissioner, O'ahu
Renwick V. I. Tassill, Commissioner, O'ahu
Kathleen P. Chin, Commissioner, Kaua'i

EXCUSED None.

COUNSEL Craig Y. Iha, Deputy Attorney General

STAFF William J. Aila Jr., Deputy to the Chairman
Niniau Simmons, NAHASDA Manager, Office of the Chair
Paula Aila, Hale Manager, Office of the Chair
Hokulei Lindsey, Administrative Rules Officer, Office of the Chair
Leah Burrows-Nuuanu, Secretary to the Commission, Office of the Chair
Kip Akana, Compliance Officer, Office of the Chair
John Peiper, Land Agent/Enforcement Officer, Office of the Chair
Dean Oshiro, Acting Homestead Services Division Manager
Norman Sakamoto, Development Officer, Land Development
P. Kahana Albinio, Acting Property Dev. Mgr., Income Property Branch
Andrew Choy, Planner, Planning Division
Nancy McPherson, Planner, Planning Division
Allen Yanos, Property Development Agent, Income Property Branch
Jeffrey Fujimoto, Engineer, Design & Construction Branch
Julie Cachola, Planner, Planning Division
Shelly Carreira, Land Agent, Land Management Division
Stewart Matsunaga, Master Plan Community Dev Mgr.
Ku'uwehi Hiraiishi, Info. Specialist, Information and Community Relations

ORDER OF BUSINESS

CALL TO ORDER

Chair Masagatani called the meeting to order at 12:16 PM. She thanked everyone for being patient while the commission held contested case hearings.

ROLL CALL

Nine (9) members were present at roll call.

APPROVAL OF MINUTES

Moved by Commissioner Canto, seconded by Commissioner Davis to approve the Minutes of September 2013. Motion carried unanimously.

Deputy Director Aila asked for an executive session to brief the commission on updated details regarding the Kahikinui proposed Right-of-Entry Permit.

MOTION/ACTION

Moved by Commissioner Davis, seconded by Commissioner Canto to convene in executive session pursuant to Section 92 5(a)(4), HRS. Motion carried unanimously.

EXECUTIVE SESSION IN

12:04 p.m.

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

1. Proposed Right-of-Entry Permit and General Lease to Boulevard Associates, LLC and Delegate to the HHC Chairman the Authority to Negotiate the Final Terms and Conditions of the Lease at Kahikinui, Islands of Maui, Tax Map Key No. (2) 1 -9-001:003 (por)

EXECUTIVE SESSION OUT

12:30 p.m.

Chair Masagatani thanked beneficiaries for their patience, she called the first speaker on the Public Testimony sign-up sheet.

PUBLIC TESTIMONY ON AGENDIZED ITEMS

Item A-1, Donna Sterling, F-2: Approval to issue right-of-entry permit and general lease to Boulevard Associates, LLC.

D. Sterling stated she is a full-time resident of Kahikinui homestead Lot 41, Nawini Road, since May 2001. She is a former three-time officer of Ka 'Ohana O Kahikinui homestead organization, and the founding president of the non-profit Helekunihi Cultural Foundation dedicated to the reforestation of Native Hawaiian plants at Kahikinui, and to the preservation and protection of its archaeological sites.

Regarding the proposed Kahikinui wind project, the Maui MokuPuni leaders asked Maui Commissioner Canto to advocate before the Hawaiian Homes Commission for the following:

- Ka 'Ohana O Kahikinui to partner with DHHL and Nextera in negotiations.
- NextEra funding to Ka 'Ohana O Kahikinui during the ROE (right-of-entry) period.
- 1 percent to 2 percent of gross revenues yearly to Ka 'Ohana O Kahikinui, equal to \$1.2 million to \$2.4 million annually for the first 20 years, but renegotiable after the initial five years.

Kahikinui homesteaders want to achieve a measure of capacity and economic self-sufficiency for their homestead community. In order to achieve this goal, Kahikinui must sit at the table when negotiating the final terms and conditions of the general lease.

She asked the Commission to amend submittal F-2 to include language that Ka Ohana O Kahikinui be a beneficiary partner in any and all future negotiations including the negotiations for the final terms and conditions of the lease agreement of the general lease to Boulevard Associates LLC. In the delegation of authority from the Hawaiian Homes Commission to the Chairperson, that Ka Ohana O Kahikinui will examine the final terms of the general lease and that Ka Ohana O Kahikinui is consulted in the agreed upon amount of revenue that will be allocated to Ka Ohana O Kahikinui for the duration of the general lease. She adds that prior to the execution of the

general lease agreement, the Chairperson shall convene a meeting with the full board of directors and it's members of Ka Ohana O Kahikinui to inform the community of the terms of the general lease.

She concluded by reminding the Commission of their fiduciary responsibilities under Hawai'i Administrative Rules, Title 10-2-19.

Item A-2 Blossom Feiteira, President of Association of Hawaiians for Homestead Lands.

B. Feteira stated HHL is an advocacy group looking out for the interests of 27,000 applicants on the waitlist. This is a unique opportunity to have two key partners, your homestead organization and renewable energy provider involved in a sustainable project on Hawaiian homelands. She agreed with the previous speaker that allowing the homestead organization a place at the table is important. The department is playing a key role in meeting the renewable energy goal enacted by the governor. She is happy to know the revenue being brought forward by this project will help sustain not only the beneficiary organization but also the department.

ITEMS FOR DECISION MAKING

LAND MANAGEMENT DIVISION

ITEM F-2 Approval to Issue Right-of-Entry Permit and General Lease to Boulevard Associates, LLC and Delegate to the HHC Chairman the Authority to Negotiate the Final Terms and Conditions of the Lease at Kahikinui, Islands of Maui, Tax Map Key No. (2) 1 - 9-001:003 (por)

RECOMMENDED MOTION/ACTION

DHHL Deputy Director William Aila Jr., Acting Administrator Land Management Division Peter "Kahana" Albinio and Land Agent Allen Yanos, presented the submittal.

That the Hawaiian Homes Commission (HHC) authorizes the following:

1. The issuance of a Right-of-Entry ("ROE") permit for due diligence activities for the purpose of developing a wind project generating up to 60MW of energy on land at the Southeastern portion of Tax Map Key No. (2) 1-9-001:003 (portion) at Kahikinui, Island of Maui, covering approximately 500 acres within the delineated area shown on Exhibit "A" attached hereto ("the Project Location Area"). Issuance shall be upon the terms and conditions in Exhibit "B" attached hereto;
2. A General Lease to Boulevard Associates, LLC, an affiliate of NextEra Energy, Inc., a Florida corporation, ("Boulevard Associates") for the development, construction, operations and maintenance of the aforesaid wind project upon the terms and conditions in Exhibit "B"; and
3. Delegation of authority to the HHC Chairman to negotiate the final terms and conditions of the General Lease.

MOTION

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

DISCUSSION

Deputy Aila summarized briefly the terms of the agreement.

Initially the right of entry will include the use of 500 hundred acres and once the final footprint of the final project is determined, it will be 30 acres, more or less for the final project. The department will issue an easement for the roads and the department will have co-use the all of the

roads. The ROE will grant Boulevard Associates 3-years right of entry. They have agreed to an upfront payment of \$350,000, in good faith, which is nonrefundable. Should Boulevard Associates request the 3rd year, the additional payment of \$175,000 for the ROE becomes due on the anniversary of the 3rd year.

There is a provision for an extension of the ROE should the due diligence require additional time. At that point, the ROE fee will go up to \$200,000, per additional year.

The term of the general lease shall be coterminous with the terms of the PPA, but in no event longer than 25 years from the commercial operation date. The lease term shall commence upon the receipt of all necessary entitlements for the commencement of construction at which time the ROE will be canceled at the effective date of the Lease.

The lease rent amounts are undisclosed because of the requirement for this information to remain confidential because it may give other bidders of the power purchasing agreement an unfair advantage. That information will become available and become public once the power purchasing agreement is completed.

Chair Masagatani asked if the lease rent amounts negotiated is a fair return for this property. Deputy Aila stated the consultants were pleased with these negotiated amounts.

Deputy Aila continued that there was a previous project success fee that was initially part of the negotiations but it was determined that construction could not occur during the right of entry. Construction had to occur on a lease document, so in dealing with the project, negotiations will continue. Once the construction begins and the lease executed, the lease payments will accrue from that time on. The actual payment is deferred until 45 days after the commercial operations date. In no event, no later than 18 months after the commencement of the lease, if the delay in the commercial operation is attributed to the lessee. That gives us some certainty in terms of timing for payment.

The community benefits package is part of the public record already. \$200,000 plus an additional annum that will be due once the PPA is negotiated and confirmed.

There is a surrender fee, in which the company promises to post the bond for the removal of all of improvements. The department at that time shall have an option within the last two years of the lease, of making a bid for the remaining assets of the windfarm. The company in its surrender clause also should it surrender early, agrees to a payment equal to two years of the base rent and additional rent. Boulevard Associates agrees to comply with all federal, state and county regulations. They shall provide proof of general liability insurance policy at a level that is acceptable to the department. They shall comply with all of the required mitigation measures as required by chapter 343. A material breach is considered a violation the lease.

Note: Commissioners Kahikina and Ishibashi depart at 12:15 p.m.

Chair Masagatani stated there is also discussion of financial guarantees. Deputy Aila stated the owner of Kahikinui Windfarm will provide the department with a financial statement listing the assets of the company and a letter of guarantee indicating that the department is in a first preferred position in the event of default.

ACTION

Motion carried as stated. Commissioners Kahikina and Ishibashi excused.

GENERAL AGENDA – Requests to Address the Commission

ITEM J-5 JANEEN-ANN A. OLDS – Sandwich Isle Communications (SIC)

J. Olds addresses the status of ETC (Eligible Telecommunications Carrier) with the PUC (Hawai'i State Public Utilities Commission). The PUC is jeopardizing SIC's ability to provide telecommunication service to HHL beneficiaries. DHHL can help alleviate the problem by issuing SIC a conditional certification.

In 1995, when Mr. Hee was first introduced to DHHL a number of the Hawaiian home land communities were only receiving party line service from Hawaiian Tel. SIC came in and successfully built a network that surpassed what Hawaiian Tel provided at the time or would ever have provided.

A critical component to SIC's ability to build and develop the network was via the High Cost Support [federal universal service high-cost program]. It was based on an evaluation by the federal communications commission as well as the rural utility service. Every year SIC goes through a certification process through the PUC who determine if SIC is ETC eligible to receive the high cost universal service funds.

Due to issues with Mr. Hee's conviction, the PUC withheld certification pending an audit conducted by USAC (Universal Service Administrative Company).

The lack of the certification means that SIC was denied Universal Service funds for the gap period that cannot be recovered. The PUC's action needlessly damaged SICs future abilities. In the past, the PUC has taken the position that the HHC can certify SIC and as a result they have been able to retain their certification. SIC wanted to be in the que when the audit was complete in order to get funds as soon as possible.

This year SIC completed their tribal consultation as required, but DHHL did not submit a letter confirming that they had engaged in the tribal consultation with DHHL and OHA, as well as, DHHL can still certify SIC. It can be a conditional certification pending the USAC audit.

J. Olds requested the HHC provide a conditional certification, which the PUC is unwilling to do. They will continue to meet with the homestead communities to urge their support as well.

Commissioner Richardson thanked J. Olds for attending. He asked about information in the news about reports that there are percentages of incomplete infrastructure on different islands. He asked how the stats were derived. J. Olds stated engineers probably took a percentage of the overall network and how much was built. J. Olds stated SICs obligation is to follow the department's development and provide telecommunications services to the new developments. To date she is not aware that they have not met the obligation.

Commissioner Richardson asked how the department can have access to the NOC (Network Operations Center) to determine is service is available to the areas they think they are. J. Olds stated SIC can work with the DHHL to provide those assurances but stated beneficiaries would notify the department if they were not being served.

Commissioner Kaapu asked how much money is at risk if SIC does not get its certification. J. Olds believed it is a \$1million per month.

Commissioner Richardson asked if SIC did not get an ETC, it would put SIC at severe risk of failure. He asked if the company viable if it can get the high cost funding reinstated. J. Olds stated it would make it challenging to continue to operate after a period of time. If SIC can get the high cost funding it is viable.

Chair Masagatani asked for the dates SIC held consultations with DHHL. J. Olds stated she will provide that information as soon as possible.

Commissioner Richardson asked if the certificate was not available and the company failed, would the infrastructure deteriorate rapidly in terms of value. Or can it be resold. J. Olds stated the network is comprised of two parts, SIC has the terrestrial infrastructures by contract.

Chair Masagatani asked that SIC touch bases with DHHL tenant Ka Makana Alii, whatever can be done to address their concerns is helpful. J. Olds stated SIC did get a recent request about Wi-Fi and they are addressing it. She asked that if there are further concerns to contact SIC, they want the department to be successful.

ITEM J-3 TERRY MILLER, LAURA JOHNSON, HARRY JOHNSON – Imogene Maio Lease.

L. Johnson read into the record testimony written by her cousin Terry Miller. She read her own testimony into the record followed by the reading of her husband Harry Johnson's testimony by her son. Written testimonies attached.

Chair Masagatani asked Maui Officer Manger Mona Kapaku to provide background for the Commission. M. Kapaku stated Imogene Maio passed away before her transfer was complete. Ms. Maio was in the process of transferring her lease to her cousin Terry Miller when she passed. There were no eligible successors, even after public notice.

Commissioner Davis stated this is not the first time this has happened. It is more common than people think. It is unfortunate that these situations happen so often. The commission doesn't like displacing families, but the rules are clear.

Chair Masagatani stated the case is heartbreaking and we've had many but the commission and the department is limited in our authority. Legally there may be nothing the commission can do. The department can work with the family in terms of a schedule for vacating, being sensitive to relocation needs. She thanks the family for coming and providing their testimony.

ITEM J-1 MAHEALANI MEHEULA, Community Service Specialist, Hawaiian Community Assets.

M. Meheula provided a report of Hawaiian Community Assets Maui County Beneficiary Service Report.

Overview. During the September 2014 Hawaiian Homes Commission meeting, Hawaiian Community Assets (HCA) reported its plans to close its Maui office. Despite the demand for services, the office was closed due to lack of available contracts to serve Maui County beneficiaries. In light of HCA closing its Maui office, the Hawaiian Homes Commission agreed to waive past due rent owed to the State Department of Hawaiian Home lands in exchange for in-kind service to Maui County beneficiaries.

Services. Since September 2014, Hawaiian Community Assets has served 37 native Hawaiian beneficiary families through 1 mortgage assistance fair, 4 financial literacy/homebuyer education workshops, and 52 counseling sessions.

Access to Capital. HCA offers its native Hawaiian clients access to capital through its financial products that assist beneficiary families in reaching their financial or housing goals. Eligible clients must complete a financial literacy/homebuyer education workshop and counseling through HCA to qualify for the products.

- MATCH Savings Account/Individual Development Accounts. 2:1 match on \$1,000 saved by the client for a financial or housing goal. Clients must save into a bank account with no withdrawals for a period of 3 to 24 months to qualify for the match funds.
- Micro-loans. Up to \$5,000 to reduce debt, build credit, or secure/sustain affordable housing.

Results. During the service period, HCA reported the following results:

Total Workshop Graduates:	24
Match Savings Enrollees:	28
Match Savings Graduates:	5
Purchased Homes	1
Secured Work Out Plans	4

HCA asked to provide more services to Maui County because it is where most of the homesteaders reside. They would like the opportunity to continue to provide services to the homesteaders of Maui County. HCA submitted a proposal to continue services to Maui County but they have not heard back from DHHL.

Commissioner Canto asked where HCA's funding comes from. M. Meheula stated HCA has a number of grants from difference sources. OHA is one of the bigger funding sources.

Commissioner Tassill thanked M. Meheula for their work with the beneficiaries. M. Meheula stated HCA is excited to start the foreclosure prevention project as well.

Chair Masagatani thanked M. Meheula for reporting back to the Commission and for the concerns shared.

ITEM J-2 LAHELA WILLIAMS, Program Coordinator, Hawaiian Community Assets.

ITEM J-4 DONNA KAMAHELE – Hawai'i Island designated beneficiary.

ITEM J-6 JOHN ORNELLAS, Lanai Land Swap

ITEM J-7 BO KAHUI, Executive Director, La'i'ōpua 2020

Note: The aforementioned asked to reschedule or no longer wished to speak.

ITEM J-8 KAHAU MAHOE-THEONE – Accessory Dwelling Units

K. Mahoe-Thoene asked if there were any updates on the Accessory Dwelling Unit proposal. The team has met with Deputy Aila to discuss details of the proposal. She is available to answer any questions the Commission might have. She reminded Commissioners that there are timelines for those involved in the project like Job Corps Hawai'i.

Chair Masagatani stated ADUs is something the department is interested in but there are a number of issues. Having a clear program is needed and probably something that will benefit from rulemaking.

Deputy Aila stated there are issues regarding the language of leases for having a second dwelling on a parcel, questions of landlord-tenant codes, and what entity is charged with certification of native Hawaiian renters. Staff is attempting to work through the issues and develop a procedure and plan to address accessory dwelling units. The department did accept the building plans submitted by the K. Watson.

Commissioner Canto asked if the PI is working with County separately. Deputy Aila stated the primary focus is Oahu because neighbor islands do not have ADU language yet. Whatever is developed to will be a model for all islands.

RECESS 2:15 p.m.
RECONVENE 2:22 p.m.

APPROVAL OF MINUTES

Chair Masagatani asked for a motion to approve the minutes of July 29 & 30, 2015.

MOTION/ACTION

Moved by Commissioner Chin, seconded by Commissioner Canto. Motion carried unanimously.

ITEMS FOR INFORMATION

PLANNING OFFICE

ITEM G-3 For Information Only – Draft Environmental Assessment for the Kailapa Community & Resource Center/Emergency Shelter, Kawaihae, Hawai‘i TMK (3) 6-1-010:008

RECOMMENDATION

None. For Information Only. Planning Division representatives Andrew Choy, presented a power point summary.

The purpose of the informational briefing was to update the HHC on the status of this Kailapa Community Association project and provide the HHC an opportunity to provide comments on the DEA prior to publication in the Office of Environmental Quality Control's Environmental Notice Bulletin. The project identified as a Priority Project in the 2010 DHHL Kawaihae Regional Plan.

The DEA was posted on the DHHL website for review at: <http://dhhl.hawaii.gov/wp-content/uploads/2015/02/KAILAPA->

A. Choy presented a slide show outlining the history of the project, DEA findings and next step for EA completion.



Next Steps for EA Completion

- DEA anticipated to be published in the December 8, 2015 OEQC bi-monthly bulletin;
- 30-day public comment period on the DEA ends January 7, 2016;
- Revise DEA per public comments and complete Final EA January – February 2016;
- Present Final EA to HHC; HHC issues FONSI declaration for the project (February or March 2016);
- HHC FONSI declaration for the project and Final EA submitted to OEQC for publication in OEQC bi-monthly bulletin.

Next Steps for Overall Project Implementation

- Beneficiary consultation on land use amendment;
- HHC approves land use designation amendment to the Hawaii Island Plan for the project area TMK No. (3)-6-4-038:011;
- KCA continue to obtain additional funding for project development;
- KCA complete design and engineering work for this project;
- KCA coordinate with applicable federal, state, and county agencies regarding obtaining necessary permitting and entitlements needed prior to construction beginning.

Conclusion

- The DEA for the KCA Community Resource Center / Emergency shelter has been completed;
- Based on the findings of the DEA, staff anticipates a finding of no significant impact for the proposed project;
- The 30-day mandatory public review and comment period will begin December 8, 2015 and end on January 7, 2016;
- Staff will present the FEA to the HHC in March or April 2016 and will ask the HHC for a FONSI declaration.

ITEM G-4 For Information Only – Draft Environmental Assessment for Honoka‘ia Water System, Waimea Nui, Hawai‘i, TMK (3) 2-6-001:001-046; (3) 4-7-007:005,

RECOMMENDATION

None. For Information Only. Planner Andrew Choy and Land Development Division Engineer Jeffrey Fujimoto presented the outline.

The Honoka‘ia Water System project is tied to a settlement agreement because of litigation against DHHL. The water system is a gravity fed non-potable water system that will be connected to the County of Hawaii, Department of Water Supply (DWS) system. The Honoka‘ia Water system consists of metal storage tank reservoir(s), approximately 40,000 linear feet of transmission lines and laterals, individual submeters and, pressure reduction valves, air release valves, and appurtenant infrastructure. The benefitted properties are 46

lots within a DHHL pastoral subdivision in Honoka‘ia, on Old Mamalahoa Highway near Honokaa. These lots are owned by the Department of Hawaiian Home Lands (DHHL) and leased by various lessees. All improvements would be located on portions of some of these lots or on the private DHHL roads that provide access to the lots, except for the DWS connection, which would occur on an adjacent DHHL lot.

Conclusion

- The DEA for the Honoka‘ia Non-Potable Water System Project has been completed;
- The 30-day mandatory public review and comment period began October 8, 2015. The comment period is extended to November 30, 2015;
- Based on the findings of the DEA, staff anticipates a finding of no significant impact for the proposed priority projects of the Honoka‘ia Non-Potable Water System Project;
- Staff will present the FEA to the HHC in December 2015 and will ask the HHC for a FONSI declaration.

ITEM G-5 For Information Only – Land Use Request from Edward K. Taniguchi for Land Located in Anahola, Kaua‘i TMK (4) 4-7-002:004 (por.)

RECOMMENDATION

None. For Information Only. Planning Division representatives Andrew Choy and Robert Freitas presented the update.

BACKGROUND

On the Island of Kauai DHHL has only developed pastoral homesteads in Waimea. There is currently one pastoral lessee actively ranching on (3) of the (5) lots in the region. Two (2) pastoral homestead lots are currently un-awarded. The pastoral land in Waimea is very remote and accessible only by four wheel-drive.

Historically, the homestead population has grown in the Anahola region and the Kauai Island plan continues to support development in Anahola which is planned to include future agricultural and pastoral development.

DHHL owns 4,228 acres of land in the Anahola and Kamalomalo‘o region extending from the shoreline mauka to the Kealia Forest Reserve (Exhibit A). There are lands in this area that are not in homesteading but are planned for homestead development. A large portion of the land are managed via short-term revocable permits.

Mr. Taniguchi submitted a land use request form on October 23, 2015 for 300-500 acres of pastoral land located in Anahola, Kaua‘i TMK (4)4-7-002:004(por.)

Hawaii Administrative Rules (HAR) Section 10-3-30 Kuleana Homestead Leases allows the Commission to establish a homestead program for settlement on unimproved available Hawaiian Home Lands. This rule sets up the criteria necessary to develop a Kuleana homestead area and further review and analysis will be required.

NEXT STEPS

DHHL staff will continue to develop a strategy to assist Mr. Taniguchi and will report back once all of the details are confirmed. In the interim, staff anticipated bringing to the HHC a request to issue a Right of Entry to Mr. Taniguchi as an interim disposition until a homestead pastoral disposition, either traditional or Kuleana, is made available.

Chair Masagatani thanked staff for their presentations. She thanked the members of the audience for their patience and taking time to attend the annual Kaua'i HHC meeting. She stated the members of the Commission have asked for an executive session to discuss an unresolved issue from the day's agenda.

MOTION/ACTION

Moved by Commissioner Davis, seconded by Commissioner Canto to convene in executive session pursuant to Section 92 5(a)(4), HRS. Motion carried unanimously.

EXECUTIVE SESSION IN 3:00 p.m.
EXECUTIVE SESSION OUT 3:23 p.m.

ANNOUNCEMENTS

NEXT MEETING

The next regular meeting will be held at Hale Pono, Kapolei. December 14 & 15, 2015. The next community meeting will be held on December 14, 2015, at the KaWaihona O Ka Na'auao Charter School Cafeteria.


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

ADJOURNED 3:48 PM

Respectfully submitted:



Jobie M. K. Masagatani, Chair
Hawaiian Homes Commission

Prepared by: 

Leah Burrows-Nuuanu, Commission Secretary
Hawaiian Homes Commission