

HAWAIIAN HOMES COMMISSION
Minutes of January 19 and 20, 2016
Meeting held in Kapolei, O‘ahu, Hawai‘i

Pursuant to proper call, the 671st Regular Meeting of the Hawaiian Homes Commission was held at the Department of Hawaiian Home Lands, 91-5420 Kapolei Parkway, Kapolei, Hawai‘i, beginning at 9:39 a.m.

PRESENT Jobie M. K. Masagatani, Chair
Gene Ross K. Davis, Commissioner, Moloka‘i (ar. 10:15 am)
Doreen N. Canto, Commissioner, Maui
Kathleen P. Chin, Commissioner, Kaua‘i
Wallace A. Ishibashi, Commissioner, East Hawai‘i (ar. 10:15 am)
David B. Ka‘apu, Commissioner, West Hawai‘i
William K. Richardson, Commissioner, O‘ahu

EXCUSED Michael P. Kahikina, Commissioner, O‘ahu
Wren Wescoatt III, Commissioner, O‘ahu

COUNSEL Matthew Dvonch, Deputy Attorney General

STAFF William J. Aila Jr., Deputy to the Chairman
Niniau Simmons, NAHASDA Manager
Paula Aila, Hale Manager
Hokulei Lindsey, Administrative Rules Officer
Leah Burrows-Nuuanu, Secretary to the Commission
Francis Apoliona, Compliance Officer
Norman Sakamoto, Development Officer,
P. Kahana Albinio, Acting Property Dev. Mgr.
Kaleo Manuel, Acting Administrator, Planning Division
Dean Oshiro, Acting Homestead Services Administrator
Ku‘uwehi Hiraishi, Info. Specialist,
Susie Richey, Office of the Chair
Andrew Choy, Planner
Gil Fernandez, Mortgage Loan Specialist
John Pieper, Enforcement Officer
Lehua Kinilau-Canto, Legislative Analyst

ORDER OF BUSINESS

CALL TO ORDER

Chair Masagatani called the meeting to order at 9:39 a.m. She welcomed newly appointed Deputy to the Chairman William Aila and his secretary Susan Richey. She also introduced new Hale Manager Paula Aila to the DHHL ‘ohana.

ROLL CALL

Commissioners Ishibashi and Davis’ flights were delayed. Five (5) members were present at roll call.

APPROVAL OF AGENDA

Chair Masagatani stated the minutes for February 2014 were distributed and will be approved on the Tuesday agenda. Item J-3 will be taken before the Workshops.

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

PUBLIC TESTIMONY ON AGENDIZED ITEMS

ITEM A-1 Marion Kanani Kapuniai, Re: G-1.

M. Kapuniai said she was unable to prepare comments for this meeting because the meeting packets are not available in a timely manner. To comment on the agenda and actions taken by the Commission, she needs time to review the material. Chair Masagatani stated the packets are available on-line by Saturday before the meeting.

She disagrees with the information provided about rainfall in Honokāia. The water catchment option has proved to be a hardship. Some of her neighbors have been hauling water for miles because the water catchment system is insufficient.

Beneficiaries asked for a meeting to know what has been planned for them regarding the Honokāia Project. She is on the lot that the proposed system will run through, yet there has been no communication, no discussion, no courtesy extended about taking a parcel thirty feet wide from her leased property. She does not want the pipes to run underground. The Department needs to communicate with the beneficiaries who are affected by this Project. She would like to know what the next step is after the FONSI is accepted.

ITEM A-2 Michelle Kauhane, O'ahu Mokupuni President SCHHA & Kaupuni President. Re: Agenda Item F-1.

M. Kauhane thanked the Department for posting the agenda and packets online for beneficiaries to download.

While she is not against an easement to HPU, she wanted to comment on how quickly the land disposition was handled. While beneficiaries and beneficiary organizations, like M. Kapuniai and Kumu Camp, have been waiting for a decision regarding a land disposition since 2012, HPU, a non-beneficiary organization, applied with a signed document on December 31, and today, January 19 it is here for your approval.

The SCHHA's position remains that any time the Commission authorizes a disposition under section 204, it should justify and declare that it is not required for homesteading purposes.

Regarding item H-1, Commissioners should be looking at the budget it approved against the actual expenditures on a quarterly basis.

ITEM A-3 Charla Manly, NHLC Attorney for Ag Applicant L. Costa Sr. Re: C-1.

C. Manly stated she is testifying to provide the Commission with background about her client and to give them his story. Mr. Lawrence Cost Sr. is 81-years old and has been on the waitlist for a pastoral lot since 1996. While they were waiting for an award, they leased private land to start ranching. Over the last 20-years they built a substantial ranching operation with over 450 head of cattle. They were evicted from their leased land and are at a point where they need help and a plan for the future.

GENERAL AGENDA

ITEM J-3 KIPUKAI KUALI'I – President, Anahola Hawaiian Homestead Association (AHHA). RE: Items G-2 Kumu Camp EA and J-3

K. Kuali'i provided testimony for the Kumu Camp Environmental Assessment (EA) and urged the Commission to approve the Finding of No Significant Impact (FONSI). At every step in developing Kumu Camp, they have worked closely with the department to comply in a timely manner with everything that was asked of them.

In December, they provided letters of support for Kumu Camp. K. Kuali'i also provided a complete list of projects in a document titled *Quarterly HCDC General Project Report, December 2015*. He highlighted several of the projects including:

- Youth Center Facility at the Anahola Clubhouse
- Anahola Resource Office Buildings
- Anahola Marketplace
- Anahola Café & Certified Kitchen

ITEMS FOR INFORMATION

- **WORKSHOP PRESENTATIONS**
- **ITEM B-1 Implementing Second Homes on Residential Homestead Lots on O'ahu**

RECOMMENDED ACTION

None. For information only.

DISCUSSION

Deputy Director William Aila Jr. and Planner Nancy McPherson present the following:



Identifying the Need

- O'ahu has a severe affordable housing shortage
- Need a way to provide affordable housing to more beneficiaries, e.g.
 - Extended family with housing, economic challenges
 - Kupuna & students

- Generate additional income to pay mortgage, stay in home

Lessee Responsibilities

- Be in good standing with lease terms
- Have adequate infrastructure
- Comply with State Landlord/Tenant Code
- Submit a signed rental agreement with qualified tenant (50% blood quantum)
- No short-term rentals (less than 6 mos.)
- Pay GET or other applicable taxes on rental income

Unintended Consequences

- Declaring zoning for existing non-conforming subdivisions, e.g., Nānākuli could create new problems
- May be difficult to enforce requirement that tenant be qualified (50% BQ)
- If denied a rental, non-native Hawaiian could sue
- Potential impacts to existing neighborhoods, esp. traffic/parking
- If value of improvements gets too high & returns to DHHL, could be unable to resell

Moving Forward - Strategies

- Initially, limit Pilot Project to O‘ahu
- Analyze O‘ahu homestead areas – not all will be eligible
- Model process DHHL already using to handle ag subdivision requests
- Require renters to be pre-qualified (already on applicant waitlist)

Moving Forward - Options

- When to conduct Beneficiary Consultation – now, for pilot project, or later, for full implementation?
- When to amend Rules - now, for pilot project, or later, for full implementation?
- Combine BC and Rules Consultations?
- Mirror City & County’s ADU development standards, or develop our own?

Commissioner Canto asked why the Department isn’t looking at the neighbor islands for a pilot project. Deputy Aila answered the Department is unclear whether the creation of an additional dwelling counts against the Department’s water credits when planning for future developments. The answer is clear on O‘ahu but remains an issue on the neighbor islands. Each area is going to be unique in terms of infrastructure constraints.

Commissioner Ka‘apu commented the Department wanted to amend the language of certain sections within the lease, so if this project moves forward all lease changes should be made at the same time. He had concerns about not having enough staff to enforce the Department’s current policies. Ensuring that renters are 50% Hawaiian will only add responsibilities and increase workload. How do we enforce it? Will we enforce it? What is the penalty to those who break the rules? He encouraged the Department to thoroughly vet the issues before moving forward with a pilot project. Deputy Aila stated renters would have to be a qualified native Hawaiian, and the Department’s remedy would be to address infractions as a lease violation through a contested case hearing. Commissioner Ka‘apu said contested cases take too long. He would rather see something in the rules

that give the Department standing to bring summary possession action. Deputy Aila agreed that more personnel is needed to enforce the rules.

Commissioner Davis said it is a positive step in the right direction to help people bring their families together.

Commissioner Ishibashi stated his concern about bed and breakfast operations. Deputy Aila replied, rentals must be for no less than six months and to a qualified native Hawaiian.

Commissioner Chin echoed Commissioner Ka'apu's comments about enforcement. She asked that the beneficiaries be given the opportunity to weigh in in terms of the rules. She asked to keep beneficiaries informed about the pros and cons of the project.

Chair Masagatani asked where the language limiting the number of structures on a lot is located. Deputy Aila answered the restriction is in the lease. Ag and pastoral leases allow for an additional structure called farmers quarters. Chair Masagatani asked if rentals are subject to the Landlord-Tenant Code. If there were a dispute between the lessee and tenant, the lessee (landlord) is responsible and would seek remedy through the court system. She asked if the City and County has agreed to enforce this Code on the home lands. Deputy Aila answered, no.

Commissioner Kaapu asked if NAHASDA funds can be used for an additional dwelling unit. Niniau Simmons, NAHASDA Manager, stated there is a home repair program for elderly kupuna to do extensions or remodels for American with Disabilities Act (ADA) compliance.

RECESS

11:00 AM

RECONVENED

11:12 AM

Chair Masagatani stated Kali Watson and Allen Murakami asked to provide testimony on Item B-1.

K. Watson stated there are existing rules, zoning laws, and other ordinances already in place to assist the Department with implementation. He suggested the Department avoid rulemaking for this issue.

A. Murakami stated homelessness is a critical problem here in Hawai'i. The Ohana Units seem to be a good place to start to show the Department is trying to address the problem.

K. Watson stated regarding the use of NAHASDA money, the Department can use the money to build rentals.

LAND MANAGEMENT DIVISION

ITEM F-1 Approval to Issue License as Easement to Hawaii Pacific University, Waimanalo, Island of O'ahu, TMK No. (1)-4-1-014:005(por.) & 011(por.)

RECOMMENDED ACTION

For Information Only. Acting Land Management Division Administrator Peter “Kahana” Albinio presented the following:

That the Hawaiian Homes Commission (HHC) approve the issuance of a license easement to Hawai‘i Pacific University, as Licensee, to construct, use, maintain, repair, replace and remove existing pumps and pipelines traversing over, under and across portions of Hawaiian home lands identified by TMK Nos.: (1) 4-1-014:00 5 (por.) & :011(por.), situated in Waimanalo, Island of O‘ahu and more specifically delineated and described in Exhibits "A" and "A-1", "B" and "B-1" attached hereto and which are essential for supplying saltwater to its marine life scientific research facility located on a portion of TMK No. (1) 4-1-014:004 owned by the State of Hawai‘i, DLNR but held under GL No. 3709 by the Hawaii Pacific University.

K. Albinio introduced Sam Moku from Hawai‘i Pacific University (HPU). His team included President Dr. Jeffrey Bannister, Executive Vice President of Administration and General Counsel Janet Cloenhammer, Executive Director of Oceanic Institute (OI) Sean Moss, Deputy Legal Counsel Kate Lloyd, and Facility Engineer Randy Honky. Also joining them was Dr. Michael Chun who served as a member of their Board.

Dr. Bannister stated that HPU recently merged with Oceanic Institute (OI) and is currently conducting research on ocean resources including research on energy and food supply. Access to seawater resources in Waimānalo is critical if the research is to continue, and this is only possible with DHHL’s help.

Dr. Moss added that OI has been conducting applied aquaculture research in Waimanalo for 55 years in marine conservation and food security. Their most valuable asset, aside from the people who work at OI, are the wells that provide high-quality seawater to the facility. He shared some of the research activities including how OI scientists developed the first disease-free population of shrimp, which helped with what is now a \$26 million industry. Hawaii is the epicenter of the global supply of what we call SPF specific pathogen free brood stock to Asia. They have also developed techniques for rearing thousands of fingerlings of moe and mullet, which they have released into coastal waters as a resource for local fishermen. They are also providing thousands of fingerlings to two fishponds on O‘ahu and one on Moloka‘i. They recently provided an alternative source of yellow tang by understanding its life cycle and developed aquatic feed using locally sourced ingredients like papaya. They work with schools in the area, local stakeholders, and NOAA researchers, teaching new biotechnology techniques.

S. Moku provided a visual description using a map of the geographical location of the wells. The general lease is with DLNR. OI is asking DHHL for an easement where the pipes run underground. The pumps are visible, but the pipes are not.

Commissioner Kaapu asked if an EIS is required if repairs need to be made to the pipes. S. Moss answered an EIS would not be needed for repairs and maintenance. Commissioner Kaapu said he would like to see educational benefits to DHHL

beneficiaries. J. Bannister said he would be happy to set aside \$12K per year for a beneficiary to access the Presidential Honors Program.

Commissioner Richardson asked about oyster restocking to local fishponds. S. Moss stated that OI is working with UH-Hilo and with farmers in He'eia to help with the polyblora blister worm problem.

Commissioner Ishibashi asked how much water is pumped from the ocean every day. R. Honky stated they can pump 10,000 gallons per minute.

Chair Masagatani asked if DHHL has done a beneficiary consultation with the local community. K. Albinio stated the Department has not done one yet.

Chair Masagatani thanked everyone involved for the information provided and answering the questions posed by the Commission. The item will be discussed again later on the agenda. She asked for a motion to convene in Executive Session.

MOTION

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

12:00 PM

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

1. Update on Nelson Case- Richard Nelson, III et al., v HHC, Civil No. 07-1-1663
2. Authority to Use Management Discretion to Settle Rent Disputes in Negotiating and/or Mediating General Lease Rent Reopening's

EXECUTIVE SESSION OUT

2:47 PM

ITEMS FOR DECISION MAKING

Chair Masagatani announced Item F-1 is deferred until the Department can hold an informational beneficiary meeting in the Waimānalo area, consistent with what the Department has been doing with long term land disposition licenses.

OFFICE OF THE CHAIRMAN

ITEM C-1 Authorization to Conduct Contested Case Hearing Before the Commission on Pastoral Application of Lawrence Costa, Sr.

RECOMMENDED MOTION/ACTION

Deputy Director William Aila Jr. presented the submittal.

Motion: to approve the request for a contested case hearing submitted by Lawrence Costa, Sr. dated July 21, 2015. The Department requests that the contested case be heard by a hearings officer prior to being presented to the Hawaiian Homes Commission.

Mr. Costa is an applicant for a pastoral homestead lease on Hawai'i Island. He is currently ranked 800 on the Hawai'i Island Pastoral waiting list. Mr. Costa's son owns and operates a ranch that was recently evicted from private lands. The ranch has since relocated to another privately leased parcel. Mr. Costa's stated desire is to get a pastoral homestead lease to pass on to his son so he can continue his ranching operations.

MOTION

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

Chair Masagatani suggested an amendment to the motion to delegate authority to the Chairman to select a hearings officer.

MOTION ON AMENDMENT/ACTION

Moved by Commissioner Davis, seconded by Commissioner Canto, to amend the motion to read, "To approve the request for contested case hearing submitted by Lawrence Costa, Sr. dated July 21, 2015. The Department requests that the contested case be heard by a hearings officer prior to being presented to the Hawaiian Homes Commission, and delegates to the Chair such authority to select a hearings officer." Motion carried unanimously.

ACTION ON AMENDED MOTION

Motion carried unanimously.

PLANNING OFFICE

ITEM G-3 For Information Only -- Draft Environmental Assessment for the Ho'olehua Water System (PWS 230), Pālā'au, Ho'olehua, Nā'iwa, Kahanui, Kalama'ula, Island of Moloka'i, Multiple TMK's (portions)

RECOMMENDED ACTION

None. For Information Only.

Acting Planning Program Manager Kaleo Manuel introduced Grants Specialist Gigi Cairel, who presented the submittal:

- The DEA for the DHHL improvements project for the Ho'olehua Water system has been completed;
- Based on the findings of the DEA, staff anticipates a Finding of No Significant Impact (FONSI) for the proposed project;
- The 30-day mandatory public review and comment period will begin February 8, 2015 and will end on March 7, 2016;
- Staff will present the final Environmental Assessment (FEA) to the HHC in March or April 2016 and will seek HHC approval for a FONSI declaration.

G. Cairel noted a correction to the “background” section of the submittal on page 2; there are 587 connections to the water system, which includes schools, the airport, and the post office.

There are portions of the water system that are more than 80 years old and need to be totally replaced or repaired. While there aren’t any problems with water quality, the repairs are intended to address water service, distribution, and areas of low pressure. There are also issues with accessing storage tanks and some of the roadways need to be repaired. the cost of this project is a little over \$25 million, and the Department hopes to access federal grant funds from both the U.S. Department of Agriculture and from the U.S. Department of Housing and Urban Development, specifically the NAHASDA program.

Acting Moloka‘i District Manager Halealoha Ayau stated the water system is 80 years old and there have been no major upgrades or major maintenance projects to the system. Overall, the system is close to its breaking point, and we are already starting to see it happen.

Chair Masagatani asked how much water is provided by the system, to the users. H. Ayau stated the daily allocation is 360,000 gpd (gallons per day). The actual use is in the range of 450,000 gpd. Chair Masagatani stated DHHL has the reservation and the priority right to the water, but the allocation doesn’t match the actual use. She asked how many users are non-beneficiaries. H. Ayau stated they do not know what the breakdown looks like.

Commissioner Davis asked for an explanation on funds the Department is trying to access. G. Cairel stated after the EA is posted and approved and the preliminary engineering piece is submitted and reviewed, USDA has committed to provide \$13 million or 45%. This is one of several applications that are due by June 30th. We should be notified by September 30th.

HOMESTEAD SERVICES DIVISION

ITEM D-1 HSD Status Reports

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

ITEM D-2 Ratification of Loan Approvals

RECOMMENDED MOTION/ACTION

Homestead Services Division Administrator Dean Oshiro recommended the following.
Motion: to ratify the approval of the following loan previously approved by the Chairman, pursuant to section 10-2-17, Ratification of chairman's action, of the Department of Hawaiian Home Lands Administrative Rules.

Chair Masagatani asked for a brief Executive Session to confer with counsel.

MOTION/ACTION

Moved by Commissioner Chin, Seconded by Commissioner Ishibashi to convene in Executive Session pursuant to HRS 92-5 (a) (4). Motion carried with Commissioner Chin opposed.

EXECUTIVE SESSION IN

2:30 PM

EXECUTIVE SESSION OUT

2:47 PM

Commissioner Chin asked that the Department find a way to make sure their dues are being paid.

MOTION/ACTION

Moved by Commissioner Davis, seconded by Commissioner Ishibashi. Motion carried unanimously.

ITEM D-3 Approval of Consents to Mortgage

RECOMMENDED MOTION/ACTION

Homestead Services Division Administrator Dean Oshiro recommended the following.
Motion: 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.

ITEM D-4 Approval of Streamline Refinance of Loans

RECOMMENDED MOTION/ACTION

Homestead Services Division Administrator Dean Oshiro recommended the following.
Motion: to approve the refinancing of loans from the Hawaiian Home General Fund.

MOTION/ACTION

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

ITEM D-5 Approval to Schedule Loan Delinquency Contested Case Hearings

RECOMMENDED MOTION/ACTION

Homestead Services Division Administrator Dean Oshiro recommended the following. Motion: to authorize the scheduling of the following loan delinquency contested case hearings as shown.

MOTION/ACTION

Moved by Commissioner Davis, seconded by Commissioner Ka‘apu. Motion carried unanimously.

ITEM D-6 Approval of Homestead Application Transfers/Cancellations

RECOMMENDED MOTION/ACTION

Homestead Services Division Administrator Dean Oshiro recommended the following. Motion: to approve the transfers and cancellations of applications from the Application Waiting Lists for reasons described in the submittal.

MOTION/ACTION

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

ITEM D-7 Commission Designation of Successors to Application Rights – Public Notice 2014

RECOMMENDED MOTION/ACTION

Homestead Services Division Administrator Dean Oshiro recommended the following. Motion: to designate the following individuals as successors to the application rights of the deceased applicants who did not name qualified successors.

MOTION/ACTION

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

ITEM D-8 Cancellation of Deceased Applicants from Waiting List – Public Notice 2014

RECOMMENDED MOTION/ACTION

Homestead Services Division Administrator Dean Oshiro recommended the following. Motion: to cancel the list of applications of deceased applicants pursuant to Sections 10-3-8(c) and (d) of the Hawai‘i Administrative Rules (HAR).

MOTION/ACTION

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

ITEM D-9 Ratification of Designation of Successors to Leasehold Interest and Designation of Persons to Receive the Net Proceeds.

RECOMMENDED MOTION/ACTION

Homestead Services Division Administrator Dean Oshiro recommended the following. Motion: 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 Homes Commission Act, 1920, as amended. This designation was previously approved by the Chairman.

MOTION/ACTION

Moved by Commissioner Davis, seconded by Commissioner Ishibashi. Motion carried unanimously.

ITEM D-10 Approval of Assignment of Leasehold Interest.

RECOMMENDED MOTION/ACTION

Homestead Services Division Administrator Dean Oshiro recommended the following. Motion: to approve the assignment of the leasehold interest, pursuant to section 208, 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

Moved by Commissioner Davis, seconded by Commissioner Canto.

Commissioner Ka'apu stated for #5, he visited the parcel and there are no valuable improvements. He will ask that the item have further due diligence.

Chair Masagatani suggested an amendment the motion to remove items #5 and #24, for further due diligence by staff.

MOTION ON AMENDMENT/ACTION

Moved by Commissioner Kaapu, seconded by Commissioner Canto to amend the motion remove items #5 and #24, for further due diligence by staff. Motion carried as stated.

ACTION ON AMENDED MOTION

Motion carried unanimously.

ITEM D-11 Approval of Amendment of Leasehold Interest

RECOMMENDED MOTION/ACTION

Homestead Services Division Administrator Dean Oshiro recommended the following. Motion: to approve the amendment of the leasehold interest listed.

MOTION/ACTION

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

ITEM D-12 Approval to Issue Non-Exclusive Licenses for Rooftop Photovoltaic Systems for Certain Lessees.

RECOMMENDED MOTION/ACTION

Homestead Services Division Administrator Dean Oshiro recommended the following. Motion: to approve the issuance of a non-exclusive license to allow the Permittee to provide adequate service related to the installation, maintenance, and operation of a photovoltaic system on the premises leased by the respective Lessees. The non-exclusive license is necessary as the Lessee cannot issue his/her own licenses.

MOTION/ACTION

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

LAND MANAGEMENT DIVISION

ITEM F-1 Approval to Issue License as Easement to Hawaii Pacific University, Waimanalo, Island of O'ahu, TMK No.(1)4-1-014:005(por.) & 011(por.)

Note: Item F-1 was deferred from action on this agenda.

ADMINISTRATIVE SERVICES OFFICE

ITEM H-1 Approval of Inter-Fund Transfer for FY 2016 Development Budget

RECOMMENDED MOTION/ACTION

Administrative Services Officer Rodney Lau presented the following. Motion: that the Commission approve the transfer of \$13,500,000 from the Hawaiian Home Administration Account to the Hawaiian Home Operating Fund.

DISCUSSION

On July 21, 2015, the Hawaiian Homes Commission approved the Fiscal Year 2016 Development Budget in the amount of \$110,488,000. The approved Development Budget provided the Hawaiian Home Lands Trust Fund and the Hawaiian Home Operating Fund as sources of financing for the projects. With the end of the annual settlement payments in June 2015, DHHL proposes to fund some of the projects solely from the Hawaiian Homes Operating Fund to finance the project costs. Pursuant to Section 213 (f) (3) of the HHCA, monies in excess of the amount approved by the Legislature or made available for the fiscal period may be transferred to the Hawaiian Home Operating Fund. It is recommended that \$13,000,000 be transferred from the Hawaiian Home Administration Account to the Hawaiian Home Operating Fund to finance the projects identified in the submittal.

MOTION/ACTION

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

PLANNING OFFICE

ITEM G-1 Declaration of a Finding of No Significant Impact for Honokāia Non-Potable Water System, Hāmākua, Hawai‘i, TMK (3) 4-6-001:001-046; (3) 4-7-007:005

RECOMMENDED MOTION/ACTION

Acting Planning Program Manager Kaleo Manuel, Planner Andrew Choy and Engineer Jeffrey Fujimoto presented the submittal.

Motion: 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 proposed DHHL Honokāia Water System.

DISCUSSION

The Honokāia Water System project is tied to a settlement agreement that resulted from litigation against DHHL. The water system is a gravity fed non-potable water system that will be connected to the County of Hawai‘i, Department of Water Supply (DWS) system. The Honokāia Water System consists of metal storage tank reservoir(s), approximately 40,000 linear feet of transmission lines and laterals, individual sub-meters, pressure reduction valves, air release valves, and appurtenant infrastructure. The system will benefit 46 lots within a DHHL pastoral subdivision in Honokāia, 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 DHHL roads that provide access to the lots, except for the DWS connection, which is located on an adjacent DHHL lot.

J. Fujimoto stated they are at the pre-final stage of the design. The project design includes four water units. The design allows for expansion in the future as well. Chair Masagatani asked how much water is in one unit of water. J. Fujimoto responded that four units is equivalent to 400-600 gallons of water per day for each lot.

K. Manuel added that the project is on a parcel that was previously four TMKs, which is why there are four units of water. These were subdivided into individual lots that are supplemental pastoral lots. Lessees are not permitted to build on these lots. The design of the system is dictated by the court settlement which was a result of the litigation.

A. Choy reviewed the criteria for Environmental Assessments. He also highlighted comments received during the comment period. Marion Kapuniai provided comments that there was not enough beneficiary consultation. A. Choy stated the Department sent out pre-consultation letters and through the Draft EA public consultation period, the Department was open to input. Commissioner Kaapu stated there was an expectation that there would be a meeting with the beneficiaries to discuss the System.

K. Manuel indicated that because the project was dictated by a settlement agreement, staff was directed to work directly with the plaintiffs’ representative. N. Sakamoto agreed that it is a unique situation and if the FONSI is approved, staff would engage with the beneficiaries of the other lots.

Chair Masagatani asked for a brief Executive Session to confer with counsel.

Moved by Commissioner Chin, Seconded by Commissioner Ishibashi to resolve into Executive Session pursuant to HRS 92-5 (a) (4). Motion carried. Commissioner Chin opposed.

EXECUTIVE SESSION IN

3:34 PM

EXECUTIVE SESSION OUT

3:51 PM

Commissioner Chin asked if the project calls for any other easement agreements that the department doesn't already have. N. Sakamoto stated there is one parcel for sure and possibly another parcel as well.

MOTION/ACTION

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

ITEM G-2 Additional DHHL Due Diligence for Kumu Camp Project and Second Request for Declaration of a Finding of No Significant Impact, Anahola, Kaua'i, TMK (4) 4-8-007:001 (portion)

RECOMMENDED MOTION/ACTION

Acting Planning Program Manager Kaleo Manuel and Planner Nancy McPherson who presented the following submittal.

Motion: 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, as verified by additional due diligence exerted by DHHL staff in December 2015.

DISCUSSION

The Kumu Youth Academy ("Kumu Camp") located on five (5) acres of an eight (8) acre Department of Hawaiian Home Lands (DHHL) property that is immediately adjacent to Anahola Beach Park on TMK No. (4)4-8-007:001, has been in continuous operation since 2012 but has not yet been able to secure an executed disposition from DHHL. The Anahola Hawaiian Homestead Association (AHHA), through its nonprofit arm, the Homestead Community Development Corporation (HCDC), has requested a 35-year general lease, at gratis, for the Kumu Camp project and hired Planning Solutions, Inc. to prepare an Environmental Assessment as required by Hawaii Revised Statutes (HRS) Chapter 343.

The Final Environmental Assessment (FEA) and request for a Finding of No Significant Impact (FONSI) for the Kumu Camp Project was submitted for informational purposes to the Hawaiian Homes Commission (HHC) at the October 19-20, 2015 Commission meeting held at Lihue, Kaua'i. Based in part on testimony received from community members at the October 19-20, 2015 meeting regarding the Kumu Camp project, the HHC requested at their November 16, 2015 meeting in Paukukalo, Maui, that DHHL staff perform additional due diligence regarding the project's potential impacts.

At its December 2015 meeting, the HHC expressed concerns regarding adequacy of discussion and/or disclosure in the FEA in the following areas:

- Study of alternatives,
- Shoreline access for traditional and customary use of shoreline resources,
- Wastewater impacts,
- Cultural impacts, and
- Impacts to the economic and/or social welfare of the Anahola Community.

A Beneficiary Consultation will be held February 27, 2016, at the Anahola Clubhouse in Anahola, Kaua'i to gather information and mana'o from Anahola Homestead area residents for the Hawaiian Homes Commission to consider regarding the Kumu Camp Project's operations and HCDC's request for a long-term disposition. Results from the consultation will be submitted to the Hawaiian Homes Commission at its April meeting.

Deputy Director William Aila Jr. added that the present location of the camp is one of the few places along the coastline where the elevation is higher than the new FEMA flood maps. The Department of Health (DOH) is willing to review an individual wastewater system regardless of the status of the EA. The current waste water application has expired which provided AHHA with an opportunity to move a better application forward to the DOH including the additional facilities.

Commissioner Kaapu asked why staff is recommending approval of the FONSI now instead of waiting until after the scheduled beneficiary consultation. Waiting until after the consultation would provide additional information as to whether the community is being served appropriately. The report showed that staff visited with just one side of the community, and the comments are a snapshot of a single day. He has a concern regarding the movable food truck with oil and food disposal waste. Further, he also expressed concern regarding the impact wastewater from large groups of people will have on the environment. The Department's job is substantive rather than procedural, the approving agency needs to make sure the environment is being protected. The Kapaakai case said that the cultural and social impacts need to be considered as well. The Commission should wait until after the beneficiary consultation is completed before taking any action on the FONSI.

Commissioner Chin stated her concern is that this particular FONSI is being scrutinized more than any other project. This project is different because the EA was requested after the fact, but the FONSI in her mind is a procedural issue. She is unwilling to set the precedent that every FONSI that comes before the Commission requires a beneficiary consultation.

Commissioner Canto stated she is in support of the project.

Commissioner Davis stated his concern is about access. N. McPherson reviewed the map provided in the submittal. K. Manuel stated there is ample access for practitioners to access the shoreline resources.

Chair Masagatani stated this project has been a learning process for everyone involved. She thanked Commissioner Kaapu for his thoroughness and stated the long-term disposition has yet to be determined regardless of the FONSI. She asked for clarification

as to what the difference is between an EA and EIS for this project. The difference between the two documents is that an environmental assessment is usually a brief report that is intended to determine whether there are impacts to the natural or human environment. If you find that there are impacts then you would move to the EIS process, for a more in-depth study of the impact that you have assessed are adverse to the environment, whether it is the natural environment or the social human environment.

K. Manuel added that any mitigation measures agreed to as part of the project could be incorporated into the final land disposition. It could be a lease term that the lessee agrees to which is actually enforceable. The EA is not an enforceable document it is only a disclosure document. The Department must tie the mitigation measures to some type of enforceable document like a lease or a license.

Commissioner Richardson said because this project is a beneficiary driven endeavor and he doesn't want to create a procedural trap for any beneficiary driven project in the future, he will vote to support the FONSI.

| Commissioner | 1 | 2 | 'AE (YES) | A'OLE (NO) | KANALUA ABSTAIN | EXCUSE D |
|--|---|---|------------------|---------------|--------------------|-------------|
| Commissioner Canto | | X | X | | | |
| Commissioner Chin | X | | X | | | |
| Commissioner Davis | | | X | | | |
| Commissioner Ishibashi | | | X | | | |
| Commissioner Ka'apu | | | | X | | |
| Commissioner Kahikina | | | | | | X |
| Commissioner Richardson | | | X | | | |
| Commissioner Wescoatt | | | | | | X |
| Chair Masagatani | | | WR | | | |
| TOTAL VOTE COUNT | | | 6 | 1 | | 2 |
| MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED | | | | | | |
| Motion passes with six (6) YES, (1) NO. two (2) Excused. | | | | | | |

GENERAL AGENDA -Requests to Address the Commission

ITEM J-1 Patrick Kahawaiolaa – President, Keaukaha Community Association

P. Kahawaiolaa stated the first issue he had was to support the transfer of a lease in Item D-6. The second issue is the *Comprehensive Proposal for use of the Āina Mauna Legacy Lands*

KCA became acquainted with the Āina Mauna lands in 2008 when seven Kupuna from Keaukaha Community Association, Panaewa Hawaiian Homes Lands Community Association, Maku'u Farmers Association and Keaukaha-Panaewa Farmers Association

went on a huaka'i to view the devastation that the gorse was causing in Humu'ula/Pi'ihonua. Feral cattle were the cause of the spreading gorse and removing the same from the mountain was a paramount concern for the Department to control the gorse. After visiting and seeing the koa forest, Pu'uo'o ranch and the surrounding areas, we all came away from that committed that we as native Hawaiian community leaders in East Hawaii had an obligation to empower our respective communities to do the following:

1. REMOVAL OF FERAL CATTLE

A pilot project provides the east Hawaii community associations with 1-2 head of cattle to be distributed to our kupuna in Keaukaha, Panaewa and Maku'u. Whenever cattle were available, we serviced 40-60 kupuna with approximately 5-6 pounds of free meat. Over the approximately 3 and half year since we began this pilot project, we have slaughtered about 25 heads of cattle and provided more than 2000 pounds of packaged stew and hamburger meat to beneficiaries.

2. GAME MANAGEMENT (SHEEP AND GOATS)

The DHHL is now into game management with another beneficiary resource: sheep and goat herds. Eradication is not an option. Our beneficiaries have good ideas to help manage, but we need to develop plans to have transparency in the Department's enforcement policies. There has been no enforcement on the mountain for over three years. KCA is asking for at least one representative on this Āina Mauna Legacy Program Implementation Advisory Council.

3. COMMUNITY PASTURE

Community pasture is another reasonable use for the trust lands. A community pasture program on Hawaii Island was never reestablished even though one was requested when the Honomu trust lands became available.

4. GORSE CONTROL

KCA wants to find a variety of ways to stop gorse, working as a partner to find new ways to combat this invasive species. One idea is to work with the College of Pharmacy to see if gorse has any medicinal value at all.

5. ECOTOURISM

KCA has several native Hawaiian beneficiary tour companies prepared to shuttle those wanting to reach the summit of Mauna Kea given proposed rules to limit vehicular traffic to the summit for star gazing events.

Koa Forest restoration is also an integral part of ecotourism as these majestic trees have a story to tell.

John McBride stated he has tour business and would like to partner with the associations to provide economic tourism opportunities for homesteaders. He submitted a proposal to the Commission in December.

Warren Matsumoto stated he helped manage 26,000 acres through a former company. There are thousands of head of cattle on Humu'ula. The only way to control the gorse is to control the cattle.

Chair Masagatani thanked everyone for coming to testify. The Commission has heard clearly that the Keaukaha community wants to be involved in whatever happens on the mountain.

Motion

Moved by Commissioner Davis, seconded by Commissioner Chin to amend the agenda to allow Mr. Hans Wedemeyer, identified as Item J-7, scheduled for tomorrow's agenda, to testify today instead. Motion carried unanimously.

ITEM J-7 Hans Wedemeyer – CEO, Hokuloa Inc.

H. Wedemeyer stated he is asking for a status update on a project with DHHL that started six years ago. He asked why it is taking so long and if there is anything he can do to help move the project along. He has invested \$6.5 million dollars in the lease extension. He also asked for an update on the solar farm and water well projects.

ITEM J-2 Bo Kahui – Executive Director, La'iopua 2020, Villages of La'iopua Association

B. Kahui testified first as a member of the Villages of La'i'opua. He presented a Resolution adopted by the Board of Directors on January 13, 2016, and a Delinquency Summary report showing a total \$122,202.64. He highlighted some of the larger delinquencies on the list with the largest being more than \$6,000. He asked the commission to order contested case hearings for the most egregious offenders, or at least a letter from the Department.

B. Kahui added regarding the feral cattle program referred to earlier, the Villages of La'i'opua Association did participate in the cattle and sheep programs. He supported the effort and indicated that there were a few issues with the cost of slaughtering the cattle, but overall, it was a good program.

Turning to La'i'opua 2020, B. Kahui addressed request for \$225,000 from DHHL to help sustain La'i'opua 2020. Over the last ten years, they have successfully erected a medical center and a dental center, but the commercial center has not gotten off the ground yet. He encouraged the Department to provide La'i'opua 2020 with the funding it has requested.

Chair Masagatani thanked Mr. Kahui for his time and informed him that the Department does not have any grant funding program at this time to cover operational costs.

B. Kahui stated that beneficiaries are struggling to keep their programs alive, and he urged the Commission to seriously consider the proposal.

RECESS

6:29 PM

HAWAIIAN HOMES COMMISSION
Minutes of January 20, 2016
Meeting Held in Kapolei, O‘ahu, Hawai‘i

PRESENT Gene Ross K. Davis, Commissioner, Moloka‘i
 Doreen N. Canto, Commissioner, Maui
 Kathleen P. Chin, Commissioner, Kaua‘i
 Wallace A. Ishibashi, Commissioner, East Hawai‘i
 Michael P. Kahikina, Commissioner, O‘ahu
 William K. Richardson, Commissioner, O‘ahu

EXCUSED Jobie M. K. Masagatani, Chair
 David B. Ka‘apu, Commissioner, West Hawai‘i
 Wren Wescoatt III, Commissioner, O‘ahu

COUNSEL Matthew Dvonch, 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
 Leah Burrows-Nuuanu, Secretary to the Commission, Office of the Chair
 Francis Apoliona, Compliance Officer, Office of the Chair

ORDER OF BUSINESS

CALL TO ORDER

Vice Chair Davis called the meeting to order at 11:09 AM

ROLL CALL

Chair Masagatani was excused to attend the Opening Ceremonies of the 2016 Hawai‘i State Legislature. Commissioners Kaapu and Wescoatt were excused.
Six (6) members were present at roll call.

APPROVAL OF MINUTES

Approval of Minutes for February 2014.

MOTION/ACTION

Moved by Commissioner Chin, seconded by Commissioner Richardson to approve the HHC meeting minutes of February 2014.

PUBLIC TESTIMONY ON AGENDIZED ITEMS

None.

GENERAL AGENDA

Note: Item J 7– Hans Wedemeyer testified on the Tuesday agenda, and J-6 Princeslehuana Kumaewakainakaleomomona, asked to be deferred to February.

ANNOUNCEMENTS AND ADJOURNMENT

NEXT MEETING

The next regular meeting will be held at the main office in Kapolei, O‘ahu, on February 22 & 23, 2016.

MOTION/ACTION

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

ADJOURNMENT

11:13 AM

These minutes were reviewed and meet the requirements for minutes as outlined in HRS §92-9(a).

Respectfully submitted:



Jobie M. K. Masagatani, Chairman
Hawaiian Homes Commission
(May 2012-May 2019)

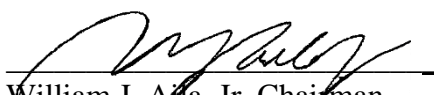
Prepared by:



Leah Burrows-Nuuanu, Commission Secretary
Hawaiian Homes Commission

APPROVED BY:

The Hawaiian Homes Commission
At Its Regular Monthly Meeting On
December 20, 2022



William J. Afa, Jr. Chairman
Hawaiian Homes Commission