

**STATE OF HAWAI'I
OFFICE OF HAWAIIAN AFFAIRS
560 N. NIMITZ HIGHWAY, SUITE 200**

**COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT
MINUTES**

July 8, 2015 1:30 p.m.

ATTENDANCE:

Chairperson John Waihe'e, IV
Vice-Chairperson Peter Apo
Trustee Lei Ahu Isa
Trustee Dan Ahuna
Trustee Rowena Akana
Trustee Haunani Apoliona
Trustee Hulu Lindsey
Trustee Robert Lindsey

EXCUSED:

Trustee Colette Machado

BOT STAFF:

Claudine Calpito
Crayn Akina
Davis Price
Kama Hopkins
Kauikeaolani Wailehua
Lady Elizabeth Garrett
Lehua Itokazu
Liana "Ani" Pang
Louise Yee Hoy
Melissa Wennihan
Reynold Freitas
U'ilani Tanigawa

ADMINISTRATION STAFF:

Kamana'opono Crabbe, Ph.D., Pouhana / CEO
Auli'i George, CMTY OUT
Christopher Lum Lee, RES
Derek Kauano'e, ADV-GOV
Jim McMahon, ADV
Jim Patterson, PROG
Jocelyn Doane, PUBL
Joseph Kuhio Lewis, CMTY ENGMT
Kamakana Aquino, RES
Leona Kalima, CULTU
Monica Morris, ADV
Sterling Wong, PUBL

GUESTS:

Kamana'o Mills
Keali'i Makekau
Michelle Kauhane

I. CALL TO ORDER

Chair Waihe'e calls the Committee on Beneficiary Advocacy and Empowerment for Wednesday, July 8, 2015 to order at **1:31 p.m.**

Chair Waihe'e notes for the record that **PRESENT** are:

MEMBERS			AT CALL TO ORDER (1:31 p.m.)	TIME ARRIVED
CHAIR	JOHN	WAIHE'E, IV	PRESENT	
TRUSTEE	DAN	AHUNA	PRESENT	
TRUSTEE	HAUNANI	APOLIONA	PRESENT	
TRUSTEE	CARMEN "HULU"	LINDSEY	PRESENT	
TRUSTEE	ROBERT	LINDSEY	PRESENT	
TRUSTEE	LEI	AHU ISA	PRESENT	Arrived at 1:33pm
VICE-CHAIR	PETER	APO	PRESENT	Arrived at 1:35pm
TRUSTEE	ROWENA	AKANA	PRESENT	Arrived at 1:52pm

At the Call to Order, **FIVE (5) Trustees are PRESENT**, thereby constituting a quorum.

EXCUSED from the BAE Meeting are:

MEMBERS			COMMENT
TRUSTEE	COLETTE	MACHADO	MEMO – REQUESTING TO BE EXCUSED

II. APPROVAL OF MINUTES

- A. April 22, 2015
- B. May 6, 2015

Trustee Hulu Lindsey moves to approve the minutes of April 22 & May 6, 2015.

Trustee Ahuna seconds the motion.

Chair Waihe'e asks if there is any discussion. There is none.

Chair Waihe'e asks if anyone votes NO or ABSTAINS. There are no replies.

						1:32 p.m.	
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEI	AHU ISA						Arrived at 1:33pm
DAN	AHUNA		2	X			
ROWENA	AKANA						Arrived at 1:52pm
VICE-CHAIR PETER	APO						Arrived at 1:35pm
HAUNANI	APOLIONA			X			
CARMEN HULU	LINDSEY	1		X			
ROBERT	LINDSEY			X			
COLETTE	MACHADO						EXCUSED
CHAIR JOHN	WAIHE'E			X			
TOTAL VOTE COUNT				5	0	0	4

MOTION: [X] UNANIMOUS [] PASSED [] DEFERRED [] FAILED

Chair Waihe'e notes for the record that all members present vote 'AE (YES) and the **MOTION CARRIES.**

III. COMMUNITY CONCERNS*

Michelle Kauhane shares CNHA’s perspective on where they are at regarding the proposed rules for the Hawaiian Homes Commission Act. She shares with the committee copies of 4 different documents: CNHA annual policy priorities, Hawaiian Homes Commission Resolution Number 283 “urging the United States Department of the Interior to consult with the Department of Hawaiian Home Lands and the Beneficiaries of the Hawaiian Homes Commission Act Regarding Proposed Rules 43 C.F.R. parts 47 & 48”, The Hawaiian Homes Commission Act (Title II), and CNHA/SCHHA Consultation on Federal Rules on Hawaiian Home Lands (printed PowerPoint slides) and reviews and highlights information contained in the handouts.

IV. NEW BUSINESS

A. ACTION ITEM BAE 15-04: Approval of Nominee for the Native Hawaiian Revolving Loan Fund (NHRLF) Board of Directors

Trustee Ahuna moves to approve Ms. Jessica Kaneakua to serve as the Hawai’i Island Representative for the NHRLF Board of Directors.

Trustee Hulu Lindsey seconds the motion.

Chair Waihe’e asks if there is any discussion. There is none.

Chair Waihe’e calls for a ROLL CALL VOTE.

						1:41 p.m.	
TRUSTEE		1	2	‘AE (YES)	A’OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEI AHU ISA				X			
DAN AHUNA		1		X			
ROWENA AKANA							Arrived at 1:52pm
VICE-CHAIR PETER APO				X			
HAUNANI APOLIONA				X			
CARMEN HULU LINDSEY			2	X			
ROBERT LINDSEY				X			
COLETTE MACHADO							EXCUSED
CHAIR JOHN WAIHE’E				X			
TOTAL VOTE COUNT				7	0	0	2

MOTION: [X] UNANIMOUS [] PASSED [] DEFERRED [] FAILED

Chair Waihe’e notes for the record that all members present vote ‘AE (YES) and the MOTION CARRIES.

IV. NEW BUSINESS

B. Discussion of Proposed Rule of the U.S. Department of the Interior under the Hawaiian Homes Commission Act (HHCA) relating to Procedures for Land Exchanges and for HHCA Amendments

Chair Waihe'e turns it over to Ka Pouhana Kamana'opono Crabbe.

Pouhana Crabbe: Good Afternoon Trustees, presenting on this item today will be Senior Public Policy Advocate Jocelyn Doane.

Senior Public Policy Advocate Doane: Aloha Trustees and mahalo for the opportunity to provide this update. It was at one of our meetings on Moloka'i last month that some beneficiaries had some concerns about the rules. Some trustees wanted an update, so forgive me for what could potentially be one of the most technical updates we've ever given. It's overly complicated and we really tried to do our best to make sure we understood what the rules would do; which required us to understand what the law currently requires and the processes laid out in the statutes now. We also hope to understand some of the concerns that have been raised and some of the reasons why people felt like we needed rules. So with all that said, we will move into the PowerPoint presentation.

Senior Public Policy Advocate Doane talks about the information listed in the PowerPoint presentation below (this is an updated version of the PowerPoint that was sent to the Trustees after the conclusion of the meeting). Highlights that are not included in the PowerPoint are included in text within the slides.

DOI Proposed Rule
Hawaiian Homes Commission Act (HHCA)
Procedures for Land Exchanges &
HHCA Amendments

07/08/15
BAE
Public Policy

Resources

- DHHL Deputy William Aila
- DHHL Staff
- CNHA & Members
- NHLC Staff
- Public Submitted Comments

Senior Public Policy Advocate Doane: Listed on slide 2 under "Resources" are some of the people that we've been speaking with, since the request, a couple of weeks ago.

External Comments

- Reaffirms HHCA status as federal law & federal govt's responsibilities
 - Draft and concept will not ensure DOI's accountability to nHs
 - Better ways for DOI to support nHs
 - Additional bureaucracy
 - Should explain how the DOI will be responsive and accountable
- Land Exchanges
- Overly burdensome
 - Process & requirements could delay land exchange
 - HHCA beneficiaries should have input on DHHL land exchanges
 - Rules should not arbitrarily or unfairly evict HHCA homesteaders.
- HHCA Amendments
- Rules will provide structure and certainty, reaffirm federal kuleana
 - DOI should be educating Congress to ensure approval

Relevant Statutory Authorities

- HHCA, 1921
 - Rehabilitating native Hawaiians
 - U.S. Congress right to alter, amend, or repeal
 - Authorizes DHHL to exchange land w/Secretary approval
- Admissions Act, 1959
 - Requires Hawai'i to Adopt HHCA
- Article XII, Hawai'i Constitution (HHCA)
- HHLRA, 1995
 - HHCA Amendment Procedures
 - Federal Land Exchanges
 - DHHL Claims against Federal Government

Senior Public Policy Advocate Doane: As the Trustees are probably familiar with, slide 4 – *Relevant Statutory Authorities*, lists the statutory authorities that we needed to review.

Overarching Mana'ō

- Clarify Secretary processes to review land exchanges & HHCA amendments [Parts 47 & 48]
- Clarify and reaffirm federal, state & DHHL responsibilities in furtherance of the HHCA and its beneficiaries [Summary/Background]
- Reaffirm the HHCA's status as Federal law [Summary/Background]
- Reiterates/Increases Authority of Secretary [Parts 47 & 48]
- Unduly burden DHHL or HHC*
- Interpretation of "rehabilitation" concerning [Parts 47 & 48]
- Lack of Coordination DHHL*
- Lack of Consultation with DHHL Beneficiaries*

HHCA Amendments

HHCA Amendments Applicable Statutory Provisions

- HHCA, 1921
 - U.S. Congress right to alter, amend, or repeal
- Admissions Act § 4
 - All Amendments require Congressional Approval, except
 - State can amend specifically enumerated administrative sections, and benefits to lessees, as long as it does not:
 - Reduce or Impair Hawaiian home-loan fund, Hawaiian home-operating fund, and the Hawaiian home-development fund.
 - Allow additional encumbrances on HHL
 - Change qualifications of lessees
 - Allows proceeds & income from "available lands" to be used for purposes other than HHCA

HHCA Amendments

- 1959 – 1995: 80 HHCA amendments
 - 68 Congressional Approved
 - 11 no State submission (and no DOI review)
 - 1 repealed

HHCA Amendments HHLRA

- HHLRA Clarifying Procedures
 - State enacts amendment
 - DHHL → DOI w/in 120 days
 - Secretary determination w/in 60 days
 - If congressional approval required → Congress
 - If congressional approval not required → LAW
- Federal Oversight, when congressional approval required Secretary:
 - Explains how proposal advances Interest of beneficiaries
 - Recommends approval/disapproval to congress

HHCA Amendments

- 1995 – 2015: 20 HHCA amendments
 - 12 Secretary determined congressional approval not required
 - 3 Secretary determined congressional approval required, no congressional approval
 - 4 no State submission (and no DOI review)
 - 1 pending in DOI, awaiting clarification

Part 48 - HHCA Amendments Rule Provisions

- Addresses Compliance Issues [Parts 48.15, 48.35]
- Clarifies status of applicable provisions of HHCA [Parts 48.35, 48.40, 48.45]
- Reaffirm Federal kuleana [Parts 48.10, 48.35]
- Impact to native Hawaiians considered [Parts 48.15, 48.25]
- Big Picture – leadership & commitment

Part 48 - HHCA Amendments Rule Provisions

- Reiterates Federal oversight role
 - Review by Secretary required for ALL Amendments [Parts 48.10, 48.50]
 - Reiterates Criteria for Secretary** [Parts 48.20]
 - May Expand Federal Authority [Parts 48.20]
 - Requires congressional approval if decrease benefits [Parts 48.20(a)]
 - Requires affirmative action by Secretary for proposals that does not require congressional approval [Parts 48.40(a)]
- Clarifies effective date
 - Congressional approval required: date of congress enactment [Parts 48.45(b)]
 - Congressional approval not required: date of notification letter to Congress chairs [Parts 48.45(a)]

**Erosion of State authority? Expansion of secretary authority?

Administrative All 24	Proposed Rules
1. ALL amendments 2. Except state can amend specifically enumerated administrative sections, and increase benefits to beneficiaries, as long as they do not: <ul style="list-style-type: none"> a. Reduce or impair Hawaiian home-land fund, Hawaiian home-operating fund, and the Hawaiian home-leasehold fund. b. Addition of encumbrances on HHL. c. Change qualifications of lessees. d. Allow proceeds & income from "available land" to be used for purposes other than HHCA. 	1. For ALL Amendments except specifically enumerated administrative sections 2. Specifically enumerated admin sections if proposal: (48.20) <ul style="list-style-type: none"> a. Decreases benefits to beneficiaries. (48.20(a)) b. Reduces or impairs Special Trust Funds. (48.20(b)) c. All laws for add'l encumbrances on HHL. (48.20(c)) d. Change qualifications on who may be lessee (48.20(d)) e. Allows use of proceeds & income for purposes other than HHCA. (48.20(e)) Decreases benefits to beneficiaries determined by weighing: (48.25) <ul style="list-style-type: none"> • How advances or impacts current lessees? • How advances or impacts wait listees? • How proposal weigh interest of benefit to arrestees yet awarded and lessees? • Do the benefits to the lessees outweigh any detrimental impact to wait listees yet awarded? • Do benefits to wait listees outweigh detriment to lessees?
Congressional Approval <u>NOT</u> Required. Specifically enumerated administrative sections that do not affect administrative All 24.	Congressional Approval <u>NOT</u> Required: proposals that do not merit above criteria.

Part 48 - HHCA Amendments Rule Provisions

- Clarifies State (DHHL) Responsibilities
 - how proposal amendments would advance beneficiary interests [48.15(b)(1)]
 - Description of events that led to enactment [48.15(b)(2), 48.15(b)(4), 48.15(b)(5), 48.15(b)(6)]
 - Record of views expressed [48.15(b)(7)]
 - Description of DHHL outreach (if any) [48.15(b)]
- DHHL mana'o = informative for Secretary

Part 48 - HHCA Amendments Concerns

- Secretary = one person = cabinet member
- No Recourse for Secretary determination
- Administrative burden [48.15]
- Additional Materials – need clarification
- Overly ambitious
- Notice to DHHL
- May make good amendments difficult

DHHL Land Exchanges

Senior Public Policy Advocate Doane: The Rules would cover any land exchange that the Department wants to take, whether it be with the Federal government, the State or Private.

Part 47 - Land Exchanges

Federal Lands: Applicable Statutory Provisions

- HHCA: DHHL, with approval of Secretary, may exchange the title to available lands
 - Consolidate holdings
 - Better effectuate purposes of Act
- HHLRA: Secretary or DHHL can initiate
 - Report must 1) describes land, fair market value, 2) surveys & appraises, 3) identifies benefits
 - NO EXPLICIT CRITERIA
 - Secretary must approve or disapprove w/in 120 days
- NHPA, NAGPRA, NEPA, HHLRA § 203

Part 47 - Land Exchanges

Private & State Land: Applicable Provisions

- HHCA: DHHL, with approval of Secretary, may exchange the title to available lands
 - Consolidate holdings
 - Better effectuate purposes of Act
- NO CRITERIA for approval
- EA/EIS, Historic Preservation

Part 47 - Land Exchanges Rule Provisions

- Establishes Criteria for Secretary approval
 - Advance interests of beneficiaries [47.20, 47.30]
 - HHL must be of equal or lesser value [47.35]
- Exchanges must:
 - Supports perpetuation & administration of HHL [47.30(a)]
 - Benefits in non-HHL > HHL (based on factors) [47.30(b)]
 - Intended use of HHL ≠ conflict with native Hawaiians interest in adjacent HHL [47.30(c)]

Part 47 - Land Exchanges Concerns

- Duplicative
- Need for Extensive Process is Questionable
 - Land Exchange Proposal [47.45, 47.50]
 - Minimum Requirements
 - Land Exchange Packet [47.60]
- Could delay/prevent land exchanges
- Beneficiary consultation discretionary [48.65(b)]
- Questionable Requirements
 - Relocating Tenants [47.50(a)(8)(i)]
 - Appraisal [47.55]
 - Post Transactional Requirements [47.70]
 - Permission to enter properties [47.50(a)(7)]
 - Costs associated with exchange [47.50(a)(5)(ii)]

Chair Waihe'e: Based on what Senior Public Policy Advocate Doane presented, does anyone have any concern with any part of the information? I would like to get a consensus from this BAE committee that allows OHA Advocacy to proceed with its remarks on behalf of our whole office.

Pouhana Crabbe: If anyone does have thoughts that they would like to add, please get it to OHA Administration by this Friday so that Advocacy may begin drafting our testimony. Out of respect to DHHL, Kamana'o Mills is here and I would like to allow him some time to speak.

Kamana'o Mills: Aloha Trustees, it is good to be sitting here again. The DHHL Chair apologizes that she could not be here today. She is in court and William Aila is prepping for the upcoming Hawaiian Homes Commission meeting in which this is also part of their agenda. I have to hand it to Jocelyn, as that was one of the best PowerPoint presentations that I have seen in covering all of the policy points; you did a fantastic job. I would also like to thank OHA for your support in this. There is nothing more I can add to Jocelyn's presentation, she hit all of the points really well.

Chair Waihe'e: Thank you Kamana'o.

Pouhana Crabbe: Perhaps we may want to reconsider the reconvening of regular joint meetings between DHHL and OHA.

Kamana'o Mills: That would be maika'i.

The BAE committee agrees

V. UNFINISHED BUSINESS

None

VI. BENEFICIARY COMMENTS*

None

VII. ANNOUNCEMENTS

None

VIII. ADJOURNMENT

Trustee Apoliona moves to adjourn the BAE meeting.

Trustee Ahuna seconds the motion.

Chair Waihe'e asks if there is any discussion. There is none.

Chair Waihe'e asks if any members vote NO or ABSTAIN. There are no dissenting votes.

						3:04 p.m.
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEI AHU ISA			X			
DAN AHUNA		2	X			
ROWENA AKANA			X			
VICE-CHAIR PETER APO			X			
HAUNANI APOLIONA	1		X			
CARMEN HULU LINDSEY			X			
ROBERT LINDSEY			X			
COLETTE MACHADO						EXCUSED
CHAIR JOHN WAIHE'E			X			
TOTAL VOTE COUNT			8	0	0	1

MOTION: [X] UNANIMOUS [] PASSED [] DEFERRED [] FAILED

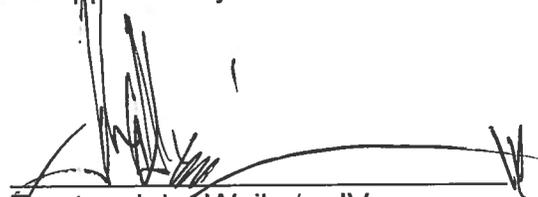
Chair Waihe'e adjourns the BAE meeting at 3:04 p.m.

Respectfully submitted,



Melissa Wennihan
Trustee Aide
Committee on Beneficiary Advocacy and Empowerment

As approved by the Committee on Beneficiary Advocacy and Empowerment on August 13, 2015.



Trustee John Waihe'e, IV
Chair
Committee on Beneficiary Advocacy and Empowerment

ATTACHMENT(s):

- Notice of Excused Absence (1)
- Community Sign-In Sheet dated July 8, 2015 (1)
- Beneficiary Comment and Community Concern Form (1)