

→ Van Matsushige

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

Mauie -
Kauai -

June 23, 2009

To: Chairman and Members, Hawaiian Homes Commission

From: Linda Chinn, Administrator
Land Management Division



Subject: Issuance of License Agreement, Sopogy, Inc., Kalaeloa,
Oahu

→ 12/2010 generations

RECOMMENDED MOTION/ACTION

That the Hawaiian Homes Commission (HHC) approve the issuance of an exclusive, non-benefit license agreement (License) to Sopogy, Inc. (LICENSEE) for the use of approximately 34 acres (1,481,040 square feet) of Hawaiian Home Lands in Kalaeloa, Oahu, identified as a portion of Tax Map Key No. (1)9-1-13:28, and shown as the diagonally-lined area on Exhibit "A", attached hereto, for the development, operation, management and maintenance of a solar power plant subject to the following conditions:

1. The site shall be used for constructing solar thermal panels (collectors), a thermal storage system and a "power block" that generates alternating electrical current to be fed onto the Hawaiian Electric Company grid, as well as other facilities to be used in conjunction therewith.
2. The initial term of the License shall be for twenty (20) years commencing on the date the system is placed in service. The Chairman of the HHC (Chairman) shall be authorized to extend the term of the license for good cause to be shown by LICENSEE.
3. Upon approval of the HHC, the Chairman shall be authorized to issue the License which will allow LICENSEE to conduct due diligence studies and HRS Chapter 343 compliance to be followed by site preparation and construction, provided LICENSEE pays a good faith deposit of \$25,000.00. Said deposit shall be applied to the rent once the system is placed in service, however the deposit shall be forfeited if the project is not placed in service within a reasonable time (approximately 18 months) and LICENSEE fails to provide LICENSOR with compelling reasons, beyond LICENSEE'S control, that justify a full or partial refund.

4. The rent commencement date shall be the date the system is placed in service. The annual rent for the first ten (10) years of the License shall be \$355,200.00, payable in monthly installments of \$29,600.00. Annual rent for years 11 to 15 will be \$444,000.00 (a 25% increase) and for years 16 to 20 the rent will be \$499,500.00 (a 12.5% increase). Should the LICENSEE request and be granted an extension beyond the initial 20-year term, the License, the Chairman of the HHC shall be authorized to negotiate changes to the License deemed prudent, if any.

5. LICENSEE shall pay a non-refundable processing and documentation fee totaling \$275.00.

6. The Premises shall be rented "as is" and LICENSEE understands that there are no existing utility services to the site. LICENSEE agrees to pay for all the costs of establishing and maintaining utility services to the property and pay for all consumption of utilities on the licensed premises, as may be needed by LICENSEE, including interim services that may be provided by the U. S. Navy.

7. No residential use shall be permitted on the premises, including overnight camping.

8. LICENSEE shall purchase liability insurance with a minimum coverage of \$2 million and name the Department of Hawaiian Home Lands as an additional insured.

9. LICENSEE shall pay all real property taxes assessed by the City and County of Honolulu for the licensed area.

10. LICENSEE shall be responsible for the security of the licensed premises and all of LICENSEE'S personal property thereon. LICENSEE shall be allowed to install a security system provided DHHL has reviewed and approved the type of system to be installed.

11. LICENSEE shall invest 1% of the project's net annual profit to fund a renewable energy program benefiting native Hawaiians, such as a vocational curriculum administered through the Hawaiian Language Immersion Schools or other educational facilities selected by the LICENSOR. Funds could also be used to establish a short certification course for students interested in learning about renewable energy. Additionally, as part of the educational outreach, LICENSEE is willing to make presentations in various schools selected by LICENSOR, which

will cover all forms of alternative energy as well as provide career opportunity information.

12. LICENSEE shall comply with all federal, state and county regulations or requirements regarding environmental issues and the safe handling and disposal of toxic or hazardous materials. LICENSEE shall be responsible for environmental clean up of any contamination or hazardous materials found on the site that is caused by LICENSEE'S activities on the Premises.

13. LICENSEE is aware that there may be sensitive archeological sites on the Premises and shall exercise caution when undertaking any disturbance of the existing ground surface. If a suspected archeological site is discovered, LICENSEE shall comply with all governmental requirements for properly handling such discovery.

14. Other standard terms and conditions of similar licenses issued by DHHL.

15. The License shall be subject to the review and approval of the Department of the Attorney General.

16. Other terms and conditions deemed prudent by the Chairman of the Hawaiian Homes Commission.

DISCUSSION

Sopogy Inc. is a Hawaii-owned corporation that built and operates a similar solar power project on the island of Hawaii (at NELHA). Recently, Sopogy was given approval to set up solar test equipment on a small portion of DHHL's parking lot in Kapolei. Sopogy's test results determined that there was good potential within the Ewa/Kapolei area for solar energy generation and has requested the use of approximately 34 acres in Kalaeloa for further evaluation as a viable solar power plant. If approved, a license will be issued that will allow Sopogy to conduct such evaluation of the site.

While there are many issues still to be resolved, primarily between Sopogy and Hawaiian Electric Company, Inc. (HECO), such as inter-connection and power purchase agreements, a license shall allow Sopogy to move forward in its negotiations with HECO while conducting other site evaluation studies and an environmental assessment in compliance with Chapter 343 of the Hawaii Revised Statute.

LMD feels that the rent proposed herein, although lower than estimated fair market rent (if the property and economy could support other industrial uses at this time), is reasonable because it will be a part of DHHL'S contribution to the State of Hawaii's renewable energy initiative, is in keeping with DHHL'S *Ho'omaluo Energy Policy* recently adopted by the HHC, and will provide benefits to native Hawaiians as expressed in item #11, herein.

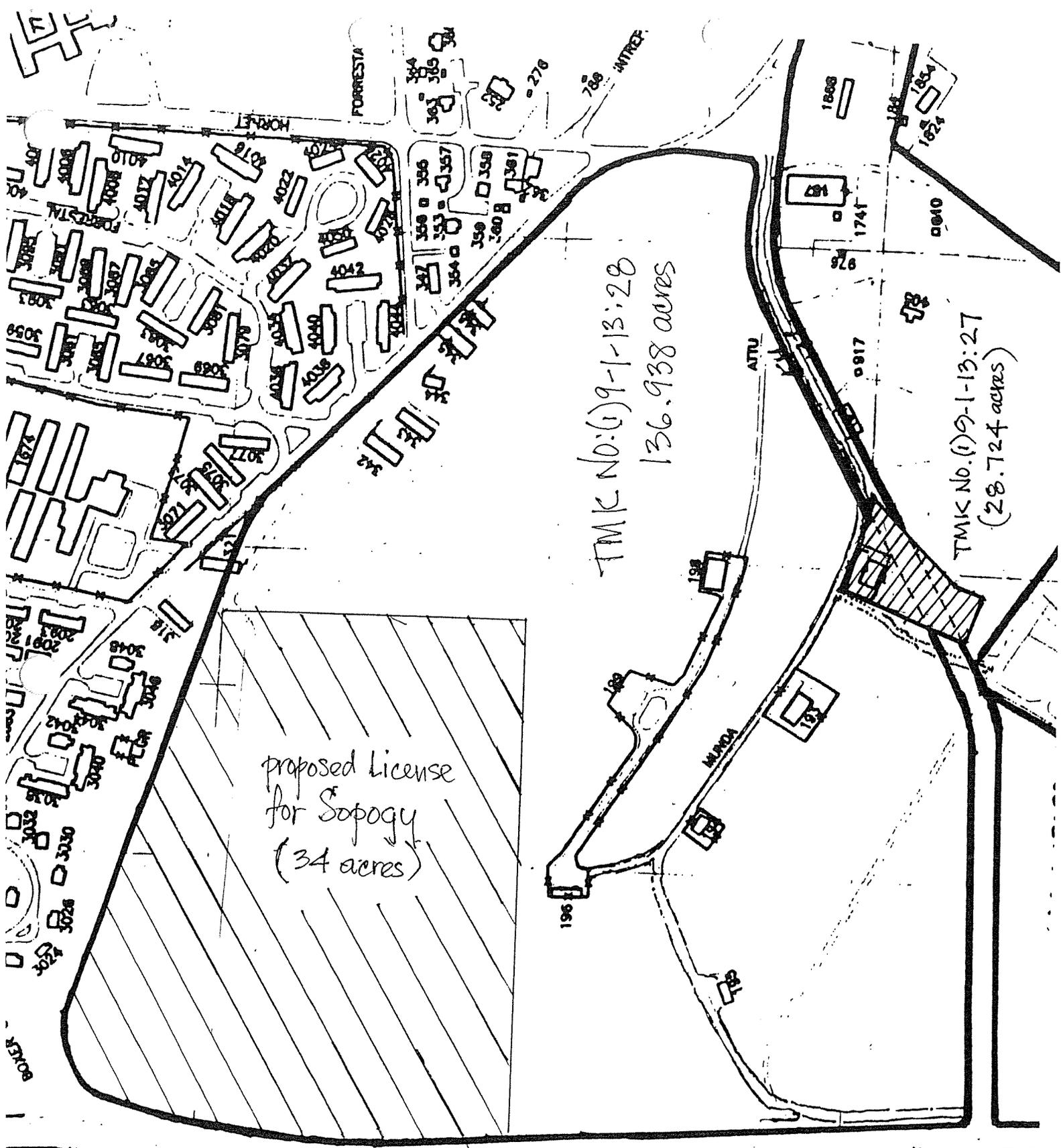
The authority for the Hawaiian Homes Commission to issue licenses is found in Section 207(c)(1), HHCA, 1920, as amended. The procedure to implement this or similar type licenses is found in Sections 10-4-21 and 10-4-22, DHHL Administrative Rules, 1998, as amended.

The same DHHL Rules permit DHHL, subject to the approval of the commission, to negotiate and consummate the rental rate (or license value) of a license, when prudent management does not dictate that the rental rate be established by appraisal. Further, the Governor's renewable energy initiative authorizes State Departments to enter into direct negotiations with renewable energy producers.

Chapter 343, Environmental Assessment: The proposed will be subject to Chapter 343 compliance, however, the project is not expected to cause major impacts on the environment or surrounding community and therefore a Finding of No Significant Impact (FONSI) is anticipated. Said FONSI shall be subject to the review and acceptance of the HHC.

RECOMMENDATION

Land Management Division recommends approval of the requested motion/action as stated.



proposed license
for Sopogy
(34 acres)

TMK No. (1)9-1-13:28
136.938 acres

TMK No. (1)9-1-13:27
(28.724 acres)

EXHIBIT "A"

Item No. D-5

ITEM NO: D-4

SUBJECT: Issuance of License Easement, County of Hawai`i, Ane Keohokalole Highway, Kealakehe, Hawai`i

CORRECTION: The license easement should be issued to the County of Hawai`i instead of the Department of Finance. License should be issued to the Department of Public Works.

MOTION

Moved by Commissioner T. Morikawa, seconded by Commissioner M. Kamaka..

DISCUSSION

Hawai`i County representative, Gerald Takase, is hoping to break ground by the end of 2009 with a completion date scheduled for 2012. DHHL has been assisting the County in meeting its aggressive deadline.

ACTION

Motion carried unanimously.

ITEM NO: D-5

SUBJECT: Issuance of License Agreement, Sopogy, Inc., Kalaeloa, O`ahu

MOTION

Moved by Commissioner M. Kamaka, seconded by Commissioner P. Artates.

DISCUSSION

Van Matsushige, Project Developer for Sopogy, Inc., explained why the solar thermal storage system being built in Kalaeloa is limited to a 4 megawatt project. A 5 megawatt project would have required a bidding process with Hawaiian Electric. The time frame is to have this system operational in 2010. Sopogy's goal is to develop alternative electric projects throughout Maui, Kaua`i and the Big Island and to work in conjunction with the Hawai`i clean energy initiative. Students at Konawaena High School participated in this hands-on outreach project, learning the technological environmental benefits of solar thermal system.

ACTION

Motion carried unanimously.