

**HAWAIIAN HOMES COMMISSION**  
**Minutes of June 18-19, 2012**  
**Meeting Held in Kapolei, O`ahu**

Pursuant to proper call, the 628th Regular Meeting of the Hawaiian Homes Commission was held at the Department of Hawaiian Home Lands, 91-5420 Kapolei Parkway, Kapolei, Hawai`i, beginning June 18, 2012 at 9:40 a.m.

**PRESENT**     Ms. Jobie M.K. Masagatani, Chairman Designate  
                 Mr. Perry O. Artates, Commissioner, Maui  
                 Ms. Leimana DaMate, Commissioner, West Hawai`i  
                 Mr. J. Kama Hopkins, Commissioner, O`ahu  
                 Mr. Michael P. Kahikina, Commissioner, O`ahu  
                 Mr. Ian B. Lee Loy, Commissioner, East Hawai`i  
                 Mr. Renwick V.I. Tassill, Commissioner, O`ahu

**EXCUSED**     Mr. Henry K. Tancayo, Commissioner, Moloka`i  
                 Mr. Imaikalani Aiu, Commissioner, Kaua`i,

**COUNSEL**     Deputy Attorney General S. Kalani Bush

**STAFF**        Michelle Ka`uhane Deputy to the Chairman  
                 Linda Chinn, Administrator, Land Management Division  
                 Darrell Yagodich, Administrator, Planning Office  
                 Dean Oshiro, Acting Administrator, Homestead Services Division  
                 Juan Garcia, Administrator, District Homestead Operations  
                 Rodney Lau, Administrative Services Officer  
                 Norman Sakamoto, Land Development Specialist  
                 Sandy Pfund, Administrator, Land Development Division  
                 Stewart Matsunaga, Master Planner, Community Development  
                 Crystal Kua, Administrator, Information & Community Relations  
                 Francis Apoliona, Compliance & Community Relations Officer  
                 Julie Cachola, Planner, Planning Division  
                 Bob Freitas, Planner, Planning Division  
                 Ross Kapeliela, Applications Supervisor, Homestead Services Division  
                 Darrell Ing, Real Estate Development Specialist  
                 Kahana Albinio, Supervisor, Acting Land Development Manager  
                 Vernon Nishimura, Mortgage-Loan Specialist  
                 Jenna Yamauchi, Program-Budget Analyst  
                 Jeff Fujimoto, DHHL Engineer  
                 Kip Akana, Compliance Officer, Assistant  
                 John Peiper, Land Agent, Enforcement Officer  
                 Paul Ah Yat, Hearings Officer, Assistant  
                 Bill South, Homestead Development Coordinator

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS  
Amended  
**HAWAIIAN HOMES COMMISSION WORKSHOP/AGENDA**  
Hale Pono'i Hall, 91-5420 Kapolei Parkway, Kapolei, HI  
June 18, 2012, 9:30 a.m. & June 19, 2012, 8:30 a.m.

**ORDER OF BUSINESS**

Roll Call  
Approval of Agenda  
Approval of Minutes of April 23, 2012 and May 14, 2012

**EXECUTIVE SESSION**

The Commission anticipates convening in executive session Pursuant to Section 92-5(a)(4), HRS, to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities on this matter.

1. Rules and Responsibilities of Members of the Hawaiian Homes Commission
2. Richard Nelson, III, Kaliko Chun et al.v HHC, Civil No. 09-1-161507

**A - WORKSHOPS**

A-1 Operating Budget and Interim Development Briefing

**B - PUBLIC TESTIMONY ON AGENDIZED ITEMS**

**C - OFFICE OF THE CHAIRMAN**

- C-1 Native Hawaiian Development Program - Native American Housing and Self-Determination Act (NAHASDA)
- C-2 Strategic Plan Update (deleted)
- C-3 Resolution of Appreciation No. 266 - Henry Kanuha Tancayo

**D - HOMESTEAD SERVICES DIVISION**

- D-1 HSD Status Reports
  - Exhibits:
    - A - Homestead Lease and Application Totals and Monthly Activity Reports
    - B - Delinquency Report and Status of Contested Case Hearings
    - C - DHHL Guarantees for USDA-RD Mortgage Loans

- D-2 Approval of Various Lease Awards
- D-3 Rescission of Homestead Lease Award and Reinstatement of Application  
East Kapolei I, Undivided Interest
- D-4 Use of Keahole Settlement Fund (Information Only)
- D-5 Use of Native Hawaiian Housing Block Grant Funds – Kanehili Phase 7  
(East Kapolei I Subdivision), Kapolei, O`ahu (Information Only)
- D-6 Ratification of Loan Approvals
- D-7 Approval of Consent to Mortgage
- D-8 Refinance of Loans
- D-9 Schedule of Loan Delinquency Contested Case Hearings
- D-10 Homestead Application Transfers / Cancellations
- D-11 Adjustment to Residential Waitlist – **Milton E. Ching**
- D-12 Adjustment to Residential Waitlist - **Monte A.K. Kamaka**
- D-12 Adjustment to Residential Waitlist – **Monte A.K. Kamaka**
- D-13 Cancellation from Residential Waitlist - **Miguel K. UU, Jr.**
- D-14 Reinstatement of Cancelled Application – **Miguel K. UU, III**
- D-15 Ratification of Designation of Successors to Leasehold Interest and Designation of  
Persons to Receive Net Proceeds
- D-16 Approval of Assignment of Leasehold Interest
- D-17 Approval of Amendment of Leasehold Interest
- D-18 Designation of Successor – **Albert Lewi**
- D-19 Cancellation of Lease – **Blossom K. Phillips-Courtney**
- D-20 Designation of Successor – **George H. Mia**
- D-21 Status Update, Implementation of Hawaiian Homes Commission's Directive  
Regarding Lot No. 112-A, Ho`olehua, Moloka'i, Hawai'i

#### **E– LAND DEVELOPMENT DIVISION**

- E-1 Authorization to Negotiate and Enter into Various Agreements Between Nā Ku Pa`a  
O Kuhio and the Department of Hawaiian Home Lands for Pi'ilani Mai Ke Kai  
Project, Phase 2, Construction of Water System Improvements

#### **F– LAND MANAGEMENT DIVISION**

- F-1 Amendment to License No. 512, Kanuikapono Charter School  
Anahola, Island of Kaua'i
- F-2 Issuance of License to Nā Kupa`a o Kuhio, Pi'ilani Mai Ke Kai, Anahola  
Island of Kaua'i
- F-3 Amendment to General Lease No. 245, Waiakea Center, Inc., Waiakea  
Island of Hawaii
- F-4 Amendment to General Lease No. 281, Nanakuli Hawaiian Homestead Community  
Association, (NHHCA), Nanakuli, Island of Oahu
- F-5 Issuance of General Lease, Kamehameha Schools, Ma'ili, Island of O`ahu
- F-6 Ratification of Consents and Approvals by Chairman, Hawaiian Homes  
Commission

- F-7 Notices of Default and Revocations, Statewide
- F-8 (For Information and Discussion Only) Land Request from Homestead Community Development Corporation, Anahola, Island of Kaua'i

#### **H - ADMINISTRATIVE SERVICES DIVISION**

- H-1 Approval of FY 2013 Operating Budget for the Department of Hawaiian Home Lands
- H-2 Approval of FY 2013 Interim Development Budget for the Department of Hawaiian Home Lands
- H-3 Approval of FY 2013 Loan Program Budget for the Department of Hawaiian Home Lands
- H-4 Transfer of Hawaiian Home Receipts Money at the End of the Fourth Quarter, FY 2012

#### **J - GENERAL AGENDA**

- J-1 Request to Address Commission – **Samuel Keli'ikoa**
- J-2 Request to Address Commission – **Annie M. Aea**
- J-3 Request to Address Commission - **Native Hawaiian Legal Corporation**

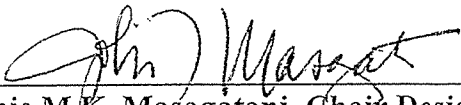
#### **EXECUTIVE SESSION**

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.

- 3. Kalima v SOH, DHHL, Civil No. 99-0-4771-12(EHH) (Class Action)
- 4. Petition for Certiorari to US Supreme Court, Corboy v Louie
- 5. Resolution of Property Tax Liability
- 6. Potential Conflicts of Interests of Commissioners Under HRS 84-14(a)
- 7. Honokaia 'Ohana et al. vs DHHL et al., Civil No. 09-101615-07
- 8. In the Matter of Piliialoha, et al. v Thomas Rogers, Civil No. 07-1-002185
- 9. Alternate Land Use for Pastoral & Agricultural Homestead Leases

#### **ANNOUNCEMENTS AND ADJOURNMENT**

- 1. Next Meeting – July 23, 2012, Waimea, Hawai'i
- 2. Other Announcements
- 3. Adjournment

  
\_\_\_\_\_  
Jobie M.K. Masagatani, Chair Designate

## COMMISSION MEMBERS

Imaikalani P. Aiu, Kaua'i  
Perry O. Artates, Maui  
Leimana DaMate, West Hawai'i  
J. "Kama" Hopkins, O'ahu

Michael P. Kahikina, O'ahu  
Ian B. Lee Loy, East Hawai'i  
Henry K. Tancayo, Moloka'i  
Renwick V.I. Tassill, O'ahu

The next community meeting will be held on Monday, July 23, 2012 at 6:00 p.m.  
Prince Kuhio Hall, 64-756 Mamalahoa Hwy., Kamuela, HI 96743

Special Accommodations (such as Sign Language interpreter, large print, taped materials) can be provided, if requested at least five (5) working days before the scheduled meeting on the respective island by calling (808) 620-9590.

# HAWAIIAN HOMES COMMISSION

## SIGN IN SHEET TESTIMONY

Date & Time: JUN 18 2012

Re: \_\_\_\_\_

Location: \_\_\_\_\_

| FULL NAME (PLEASE SIGN) | ADDRESS (STREET, CITY, ZIP) | E-MAIL                      | BUSINESS / MOBILE       |
|-------------------------|-----------------------------|-----------------------------|-------------------------|
| 1. Blossom Feidera A.C  | AHHH                        | Blossom 9610804valencia.com | 446-5572 #2 Exec 402514 |
| 2. Home Schaefer        | Maui Ohai #1, F-5, F-8      | homeschaefer@maui.org       | 520-2267                |
| 3. Camille Kalama D-21  | 1164 Bishop St. Ste 1205    | camille.kalama@maui.org     | 521-2302                |
| 4. Ann Murakami #2      |                             |                             |                         |
| 5.                      |                             |                             |                         |
| 6.                      |                             |                             |                         |
| 7.                      |                             |                             |                         |
| 8.                      |                             |                             |                         |
| 9.                      |                             |                             |                         |
| 10.                     |                             |                             |                         |
| 11.                     |                             |                             |                         |
| 12.                     |                             |                             |                         |

Carolyn Darr, Land Agent, Land Management Division  
Kehau Quartero, Labor Comp Specialist  
Renee Kondo, Legal Assistant  
Gil Fernandez, Mortgage Loan Specialist  
Wayne Jitchaku, Mortgage Loan Specialist  
Blaine Fergstrom, Community Development Specialist  
Elaine Searle, Secretary to the Commission

**PULE &** Commissioner Kama Hopkins  
**MELE** Hawai'i Aloha

**AGENDA** Commissioner K. Hopkins moved, seconded by Commissioner P. Artates, to approve the agenda. Motion carried unanimously.

**MINUTES** Commissioner K. Hopkins moved, seconded by Commissioner M. Kahikina, to approve the minutes of April 23, 2012 and May 14, 2012 as circulated. Motion carried unanimously.

**OATH OF OFFICE:**

Jobie M.K. Masagatani was sworn in as Chairman Designate by Deputy Attorney General S. Kalani Bush.

**MOTION/ACTION**

Moved by Commissioner K. Hopkins, seconded by Commissioner I. Lee Loy, to convene in Executive Session. Motion carried unanimously.

**EXECUTIVE SESSION** 9:45 A.M.

Pursuant to section 92-5(a)(4), HRS, the commission convened in executive session to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities on these following matters.

1. Rules and Responsibilities of Members of the Hawaiian Homes Commission
2. Richard Nelson, III, Kaliko Chun, et al. v HHC, Civil No. 09-1-161507

**RECONVENE:** 11:30 A.M.

Moved by Commissioner K. Hopkins, seconded by Commissioner P. Artates to reconvene in regular session. Motion carried unanimously.

### MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner M. Kahikina to convene with public testimony, then Items F-5, F-4, F-2, E-1 and F-1. Item A-1 to be addressed later in the agenda. Motion carried unanimously.

### **B - PUBLIC TESTIMONY ON AGENDIZED ITEMS**

Testifier: Blossom Feiteira, President, Association of Hawaiians for Homestead Lands re: Item F-3 – Amendments to GL No. 245, Waiakea Center, Inc. & Item F-1 -License No. 512, Kanuikapono Charter School

Blossom Feiteira - Re: Item F-3 - o GL No. 245, Waiakea Center, Inc.: Supports homestead communities be in control of funds and how funds will be utilized toward economic self-sufficiency. Re: Item F-1 – Kanuikapono Charter School, Anahola – Ms. Feiteira supports Kanuikapono Charter School expansion of its charter school operations.

Testifier: Homelani Schaedel, President, Malu`ohai Residents Association re: Item F-1, Amendment to License to Kanuikapono Charter School; Item F-5 General Lease to Kamehameha Schools, Ma`ile, O`ahu; & Item F-8 – Land Request from HCDC, Anahola,

Testifier: Homelani Schaedel re: Item F-8 – Ms. Schaedel questions the use of “Request for Trust Lands” forms created by CNHA’s Native Hawaiian Policy Center. She proposes DHHL to utilize its own forms.

Ms. Schaedel recommends commission define and establish the process of utilizing Resolution 260 & 265. She supports Items F-1: Kanuikapono Charter School’s request for additional lands; and supports Item No. F-5 Kamehameha School’s General lease in Ma`ili.

**ITEM NO: F-5**

**SUBJECT: Issuance of General Lease, Kamehameha Schools, Ma`ili, Island of O`ahu**

### RECOMMENDATION

That Hawaiian Homes Commission grant issuance of general lease to Kamehameha Schools (KS) to use a portion of Hawaiian home lands at Ma`ili, O`ahu, subject to conditions.

### MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner M. Kahikina.



## DISCUSSION

The learning center to include educational, community and cultural uses will be used by KS with annual lease rent of \$73,720. A 60-foot wide road will be built by KS, not exceeding \$2.5 million. Chief of Staff Walter Theommes, KS, addressed a three-prong strategy to best determine what works best in this and other programs. The goal is providing homes and education in this community.

## ITEM NO: F-4

**SUBJECT: Amendment to General Lease No. 281, Nanakuli Hawaiian Homestead Community Association (NHHCA), Nanakuli, Island of O`ahu**

## RECOMMENDATION:

A four-part motion: 1) To subject the leased premises GL (general lease) No. 281 with Declaration of Condominium Property Regime (CPR) filed by DHHL as fee simple owner; 2) To amend GL No. 281 be encumbered by four separate units created covenants; 3) To amend GL No. 281 withdrawing Unit 1 and issue two new leases for Unit 1: (a) a short-term lease to HCDB during development of Hale Makana O Nanakuli Housing Project; and (b) new 65-year GL to HCDB, effective upon completion of project; 4) authorize Chairman to execute all actions.

## MOTION

Moved by Commissioner R. Tassill, seconded by Commissioner P. Artates.

## DISCUSSION

Land Management Administrator Linda Chinn requested Part 3 to include: Short term ground lease to Hawaiian Community Development Board or "**Nanakuli Hawaiian Homestead Community Association (NHHCA).**"

## AMENDED MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner P. Artates to amend Part 3 motion as recommended. Motion approved. Commissioner Kahikina recused from voting.

## DISCUSSION

Intent is to enable NHHCA to finance each component of the planned development without impacting the rest of the project, and maintain a new 65-year lease, noted Ms. Chinn. Kamehameha Schools (KS) is initiating plans for an educational format at the proposed Village Center with NHHCA.

The shopping center contains Longs Drugs. Other projects involve KS and UH West O`ahu campus and its educational component. Waianae Coast Academy will implement a pediatric and pharmaceutical program.

**ACTION**

Motion carried. M. Kahikina recused from voting.

**ITEM NO: F-2**

**SUBJECT: Issuance of License to Nā Kupa`a o Kuhio Pi`ilani Mai Ke Kai, Anahola, Island of Kaua`i**

**RECOMMENDATION**

To approve a license as easement to Nā Kupa`a o Kuhio for development of a water system on Hawaiian home lands in Anahola Phase II of Pi`ilani Mai Ke Kai subdivision for 35 years; To allow Nā Kupa`a to construct a water system of the proposed subdivision.

**MOTION**

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

**DISCUSSION**

Construction planned for September, 2012 on 51 single-family lots. Department of Agriculture Rural Development funding is for \$835,000. One part includes a grant of \$339,000.

**AMENDED MOTION/ACTION**

Moved by Commissioner K. Hopkins, seconded by Commissioner L. DaMate to amend and include in Item 6, page 1 "License shall be subject to other terms and conditions deemed prudent and necessary by the Hawaiian Homes Commission or its "**Chairman Designate.**" Motion carried unanimously.

**ACTION**

Motion carried unanimously.

**ITEM NO: E-1**

**SUBJECT: Authorization to Negotiate and Enter into Various Agreements Between Nā Kupa`a O Kuhio and the Department of Hawaiian Home Lands for Pi`ilani Mai Ke Kai Project, Phase 2, Construction of Water System Improvements**

### RECOMMENDATION

That Hawaiian Homes Commission authorizes Chairman Designate to negotiate terms and conditions and executive agreements between Nā Kupa`a O Kuhio and DHHL in obtaining funding from USDA RD for Pi'ilani Mai Ke Kai, Phase 2, Water System Improvements:

- 1) Project Agreement, 2) Lease of Water System Improvements, 3) Memorandum of Lease, 4) Assignment of Income, 5) Agreement between DHHL and Nā Kupa`a.

### MOTION

Moved by Commissioner K. Hopkins, seconded by Commissioner P. Artates.

### DISCUSSION

Commissioner L. DaMate questioned whether native Hawaiians qualify to bid on the project. Letters of interest are open to everyone and all factors are considered when reviewing selections, noted Land Development Administrator Sandy Pfund.

### MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner L. DaMate to adjourn in executive session. Motion carried unanimously.

### EXECUTIVE SESSION 12:30 P.M.

Pursuant to section 92-5(a)(4) HRS , the commission convened in executive session to consult with its attorney concerning the commission's powers, duties, immunities, privileges and liabilities on this matter.

### RECONVENE 12:47 P.M.

### MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner L. DaMate to convene in regular session. Motion carried unanimously.

### ITEM NO. E-1 (cont)

SUBJECT: Authorization to Negotiate and Enter into Various Agreements Between Nā Kupa`a o Kuhio and DHHL for Pi'ilani Mai Ke Kai Project, Phase 2, Construction of Water System Improvements

## DISCUSSION

DHHL is incapable of acquiring grants and they rely on Nā Kupa`a to acquire both loan and grant funding from USDA, noted LDD Administrator Sandy Pfund. Once completed, Nā Kupa`a assumes a 35-year amortized loan which the department is then obligated to repay.

## ACTION

Motion carried unanimously.

### ITEM NO: F-1

### SUBJECT: Amendment to License No. 512, Kanuikapono Charter School

## RECOMMENDATION

To grant additional lands to Kanuikapono Charter School to be used for expansion of its charter school located in Anahola, Kaua`i, subject to conditions listed.

## MOTION

Moved by Commissioner K. Hopkins, seconded by Commissioner P. Artates.

## DISCUSSION

Conditions listed by LMD Administrator Linda Chinn included:

- Additional acreage approximately 7.5 acres above Pi`ilani Mai Ke Kai project
- Continue to pay the license at \$1560 per year
- Construct and maintain a two (2) acre community park
- Provide a licensed surveyor

Ku`uipo Torio Kauhane, Director, Kanuikapono Charter School (KCS), says partnership with CNHA and AHHA affords valuable opportunities. KCS Board member Robin Danner assures accountability in continuing the school's 50% native Hawaiian requirement, to post jobs at the school, to provide opportunities to local contractors and include annual updates. Ms. Danner noted a statement will be included in the agreement between school and community to assure community usage of the park. Chair Masagatani recommended deferral to all points. Ms. (Ku`uipo) Kauhane says school begins in August and any delays would infringe on the school's timetable. Chair pointed out the property is "gratis" and knowing what it could have afforded the Trust, is vital.

## AMENDED MOTION/ACTION

Moved by Commissioner K. Hopkins to add in Item No. 10 "Other terms and conditions deemed prudent by the Hawaiian Homes Commission or it's **"Chairman Designate"**, seconded by

Commissioner M. Kahikina. Motion carried unanimously.

**ITEM NO: A-1**

**SUBJECT: Operating Budget and Interim Development Briefing**

**RECOMMENDATION**

At the request of its attorney representing the department in a current lawsuit re: Richard Nelson, III v HHC, Chair Designate Masagatani requested to convene in executive session to discuss the matter.

**MOTION/ACTION**

Moved by Commissioner P. Artates, seconded by Commissioner K. Hopkins to address Item A-1 in executive session. Motion carried unanimously.

**EXECUTIVE SESSION 1:25 P.M.**

Pursuant to section 92-5(a)(4), HRS, the commission convened to executive session to consult with its attorney on questions and issues pertaining to the commission's powers, duties, immunities, privileges and liabilities in this matter.

**RECONVENE 3:05 P.M.**

Moved by Commissioner K. Hopkins, seconded by Commissioner I. Lee Loy to reconvene in regular session and continue with "J" agenda items. Motion carried unanimously.

**J AGENDA**

Chair Designate Masagatani maintained that commission has the ability to engage in discussions in "J" agenda; however, no action will be rendered.

**ITEM NO: J-1**

**SUBJECT: Request to Address Commission – Samuel Keli`ikoa**

**MOTION/ACTION**

None. For Information Only.

DISCUSSION

Compliance Officer Francis Apoliona provided background information of a cancelled lease assigned to Don Keli`ikoa. Don's brother, Samuel Keli`ikoa appeared before the commission to request reconsideration, claiming responsibility for the outstanding violation. There are no grounds for consideration as respondent Don Keli`ikoa failed on numerous occasions to address his lease violations. A writ of summary possession is in progress to reclaim this lease, noted Officer Apoliona.

Sam Keli`ikoa offered to relocate his family to O`ahu. He stated he is not a current applicant on Hawaiian home lands. Chair Designate Masagatani will have staff consult with its attorney to mitigate any possible options.

**ITEM NO: J-2**

**SUBJECT: Request to Address the Commission - Annie Aea**

MOTION/ACTION

None. For Information Only.

Annie Aea appeared previously before the commission to address her dilemma with morning and afternoon school traffic on Kama`aha and Kapolei Parkway. She is awaiting correspondence from the department on whether her vinyl fence will be replaced with a stone wall alongside Kama`aha Street. Commissioner K. Hopkins visited the site. It was determined no safety or hazard conditions exist under state or county guidelines. Therefore, the department was not bound to use funds under the health and safety regulations, noted Chair Designate Masagatani. Replacement costs ranged from \$35,000 - \$45,000. Chair Designate Masagatani proposed if materials should be made available, would Ms. Aea agree to build the wall herself. Ms. Aea said she was unable to comply.

MOTION/ACTION

Moved by Commissioner M. Kahikina, seconded by Commissioner K. Hopkins to convene with Item F-8. Motion carried unanimously.

**ITEM NO: F-8**

**SUBJECT: (For Information and Discussion Only) Land Request from Homestead  
Community Development Corporation, Anahola, Island of Kaua`i**

MOTION/ACTION

None. For Information Only

## DISCUSSION

Homestead Community Development Corporation (HCDC) requested a lease of 22 years for 2,137 acres of Hawaiian home lands in Anahola to clear invasive Albizia trees, to deliver feed stock to Green Energy at its biomass production facility to generate power into the Kaua'i Island Utility Corporation (KIUC) grid system. The department wants assurances the proposed project is feasible, sustainable and capable of paying the rent. A review by the department will be completed by July 2012 and presented at October's meeting. Robin Danner, CEO, HCDC presented material to be made a part of these minutes as Exhibit "A." A preliminary payment of \$25,000 is being offered for the first 2 years. The intent of the project is to restore "ag" lands.

Since these are substantial lands, internal discussions are deemed necessary to vet out the needs and usages of these lands. All aspects in sustaining this project need to be considered before commission approval, noted LMD Administrator Chinn. Ms. Danner expressed this tree removal project is important to this community. Should it fail, the lands will be transferred back to the Trust. Staff findings will be presented at the August meeting.

### ITEM NO: J-3

### SUBJECT: Request to Appear Before HHC - Petition for Declaratory Ruling as to the Application of HAR Sec. 10-03-2 to Mr. Leighton Pang Kee's Hawaiian Homestead Lease Application

## MOTION/ACTION

None. For Information Only.

Native Hawaiian Legal Corporation (NHLC) Attorney Alan Murakami decries an agenda item (A-1) was deferred to executive session. Attorneys-at-Law Camille Kalama and Ashley Obrey, represented Mr. Leighton Pang Kee in his quest to be added to the department's waitlist as a 50% native Hawaiian through a DNA testing which matched his alleged (deceased) father's brother. She urged DHHL to provide a clear policy on DNA testing to qualify him.

Current procedures limit the department's capability to implement DNA testing as proof of blood quantum as the department relies on its own historical chart, expressed Applications Officer Kana'i Kapeliela. To further the cause, Ms. Kalama recommended consulting with a geneticist at Department of Health. She added Kamehameha Schools utilizes a DNA policy standard. A kumu `Ohana process was implemented by NHLC in determining Mr. Pang Kee's genealogy, noted Ms. Kalama. His relatives are ready to testify on his behalf.

## MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Lee Loy to recess until tomorrow at 8:30 a.m. Motion carried unanimously.

**HAWAIIAN HOMES COMMISSION**  
**Minutes of June 19, 2012**  
**Meeting Held in Kapolei, O`ahu**

Hawaiian Homes Commission reconvened its monthly meeting June 19, 2012 at Department of Hawaiian Home Lands, 91-5420 Kapolei Parkway, Kapolei, Hawai`i, June 19, 2012 at 8:40 a.m.

**PRESENT** Ms. Jobie M.K. Masagatani, Chairman Designate  
Mr. Imaikalani Aiu, Commissioner, Kaua`i  
Mr. Perry O. Artates, Commissioner, Maui  
Ms. Leimana DaMate, Commissioner, West Hawai`i  
Mr. J. Kama Hopkins, Commissioner, O`ahu  
Mr. Michael P. Kahikina, Commissioner, O`ahu  
Mr. Ian B. Lee Loy, Commissioner, East Hawai`i  
Mr. Renwick V.I. Tassill, Commissioner, O`ahu

**EXCUSED** Mr. Henry K. Tancayo, Commissioner, Moloka`i

**COUNSEL** Deputy Attorney General, S. Kalani Bush

**PUBLIC TESTIMONY ON AGENDIZED ITEMS (cont)**

Testifier: Blossom Feiteira - Ms. Feiteira, Association of Hawaiians for Homestead Lands (AHHL) re: Item A-1 Operating Budget and Interim Development Briefing which was convened in executive session. She deems beneficiaries have a right to comment on matters relating to items listed in the workshop in support of the department. She approves the Supreme Court's decision to mandate the state's requirement to fund this department. AHHL has a formula to access funding from the state by the actual cost the department incurs as opposed to what the state has proffered to the department. Once litigation has been addressed and no longer considered privileged, the information would be made available, noted Chair Designate Masagatani.

**ITEM NO: C-1**

**SUBJECT: Native Hawaiian Development Program - Native American Housing and Self-Determination Act (NAHASDA)**

**RECOMMENDATION**

- 1) Approval of the five-year Native Hawaiian Housing Plan (NHHP) covering the period October, 2012 - Sept, 2017; and, Exhibit "A";
- 2) Approval of the annual Native Hawaiian Housing Plan (NHHP) 2012-2013; Exhibit "B";
- 3) Approval FY 2012-2013 NAHASDA program budget for DHHL, Exhibit "C"



### MOTION

Moved by Commissioner K. Hopkins, seconded by Commissioner P. Artates.

### DISCUSSION

A recent workshop on HAHASDA provided information on a five-year plan, detailed in an annual report. Deputy Chairman Michelle Ka`uhane pointed out seven goals in Exhibit "A" for low-income affordable housing for native Hawaiians.

- 1) increasing inventory on Hawaiian home lands to meet unmet needs;
- 2) provide supplemental assistance to families through services such as HOAP in down payments
- 3) increase energy efficient homes and partnerships;
- 4) reduce the number of homes in repair or replacement;
- 5) promote safe and healthy community centers
- 6) create jobs and opportunities through self-determination
- 7) enhance DHHL's capacity of DHHL to continue managing these goals.

Moloka'i water systems are in dire need of improvements. Funding through NAHASDA grants and USDA loans will offset these costs, noted Deputy Ka`uhane. Papakolea can also meet some demographics of becoming a candidate for funding of its aging sewer system. As long as it addresses low income target communities, HUD may approve funding. Other strategies may need to be employed to explore other funding methods..

Commissioner I. Lee Loy suggested resources be set aside for self-help lessees unable to afford homes they desire. On the job training programs can be employed to offer hands-on type construction, conveyed Commissioner P. Artates. Partnerships with Kula No Na Po'e offers opportunities with community colleges on home construction, and monies are set aside for labor and material on these initiatives, articulated Grant Specialist Trish Paul.

Trish Paul and Blossom Feiteira visited homesteads throughout the islands and provided information on energy efficiency resources. A budget needs to be submitted to determine if NAHASDA could provide assistance.

### **ITEM NO: C-3**

### **SUBJECT: Resolution of Appreciation No. 266 – Henry Kanuha Tancayo**

### RESOLUTION

Resolution 266 to acknowledges Henry K. Tancayo for his years of service as a commissioner.

MOTION/ACTION

Moved by Commissioner Lee Loy, seconded by Commissioner Kahikina. Motion carried unanimously.

**ITEM NO: D-1**

**SUBJECT: HSD Status Reports**

MOTION/ACTION

None, for information only.

**ITEM NO: D-2**

**SUBJECT: Approval of Various Lease Awards**

MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner I. Aiu. Motion carried unanimously.

**ITEM NO: D-3**

**SUBJECT: Rescission of Homestead Lease Award and Reinstatement of Application  
East Kapolei, I, Undivided Interest**

MOTION/ACTION

Moved by K. Hopkins, seconded by Commissioner M. Kahikina. Motion carried unanimously.

**ITEM NO: D-4**

**SUBJECT: Use of Keahole Settlement Fund (Information Only)**

MOTION/ACTION

None. For Information Only.

**ITEM NO: D-5**

**SUBJECT: Use of Native Hawaiian Housing Block Grant Funds - Kanehili Phase 7,  
(East Kapolei I Subdivision), Kapolei O`ahu (Information Only)**

MOTION/ACTION

None. For Information Only.

**ITEM NO: D-6**

**SUBJECT: Ratification of Loan Approvals**

MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner L. DaMate. Motion carried unanimously.

**ITEM NO: D-7**

**SUBJECT: Approval of Consent to Mortgage**

MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner M. Kahikina. Motion carried unanimously.

**ITEM NO: D-8**

**SUBJECT: Refinance of Loans**

MOTION

Moved by Commissioner K. Hopkins, seconded by Commissioner M. Kahikina.

DISCUSSION

Acting Homestead Services Administrator Dean Oshiro noted these two loans were brought to a contested case hearing. Commission granted lessees additional time to bring their notes into good standing after consistent payments of least six months.

ACTION

Motion carried unanimously.

**ITEM NO: D-9**

**SUBJECT: Schedule of Loan Delinquency Contested Case Hearings**

MOTION/ACTION

Moved by Commissioner I. Aiu, seconded by Commissioner M. Kahikina. Motion carried unanimously.

**ITEM NO: D-10**

**SUBJECT: Homestead Application Transfers/Cancellations**

MOTION/ACTION

Moved by Commissioner M. Kahikina, seconded by Commissioner K. Hopkins. Motion carried unanimously.

**ITEM NO: D-11**

**SUBJECT: Adjustment to Residential Waitlist - Milton E. Ching**

MOTION

Moved by Commissioner K. Hopkins, seconded by Commissioner M. Kahikina.

DISCUSSION

Applications Supervisor Kana`i Kapeliela walked the commission through the events of Mr. Milton Ching's rescission of his undivided lease and the request to transfer his reinstated O`ahu lease application to the Kaua`i waitlist which the department accepted as of January 25, 2011.

ACTION

Motion carried unanimously.

**ITEM NO: D-12**

**SUBJECT: Adjustment to Residential Waitlist - Monte A.K. Kamaka**

MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner M. Kahikina. Motion carried unanimously.

**ITEM NO: D-13**

**SUBJECT: Cancellation from Residential Waitlist - Miguel K. UU, Jr.**

MOTION

Moved by Commissioner K. Hopkins, seconded by Commissioner M. Kahikina.

DISCUSSION

The department inadvertently cancelled Mr. Miguel K. U`u, III's application instead of his father's as they both share the same name. Commission acknowledged efforts of the staff in correcting its errors and recommend additional steps be taken to ensure proper identification.

ACTION

Motion carried unanimously.

**ITEM NO: D-14**

**SUBJECT: Reinstatement of Cancelled Application - Miguel K. UU, III**

MOTION/ACTION

Moved by Commissioner R. Tassill, seconded by Commissioner P. Artates. Motion carried unanimously.

**ITEM NO: D-15**

**SUBJECT: Ratification of Designation of Successors to Leasehold Interest and  
Designation of Persons to Receive Net Proceeds**

MOTION

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

DISCUSSION

Since 2006 supporting documents need to qualify a successor upon receivership of a lease at district offices, noted Acting Homestead Administrator Dean Oshiro. In prior years, it was not the practice. The department is attempting to audit older designated successorship records but is having difficulty as many successors have failed to provide forwarding addresses.

EXECUTIVE SESSION 9:52 A.M.

Pursuant to Section 92-5(a)(4), HRS, the Commission consulted with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities on this matter.

RECONVENE 10:02 A.M.

Moved by Commissioner K. Hopkins, seconded by Commissioner P. Artates to reconvene in regular session. Motion carried unanimously.

**ITEM NO: D-15 (cont)**

**SUBJECT: Ratification of Designation of Successors to Leasehold Interest and Designation of Persons to Receive Net Proceeds**

ACTION

Motion carried unanimously.

**ITEM NO: D-16**

**SUBJECT: Approval of Assignment of Leasehold Interest**

MOTION/ACTION

Moved by Commissioner P. Artates, seconded by Commissioner L. DaMate. Motion carried unanimously.

**ITEM NO: D-17**

**SUBJECT: Approval of Amendment of Leasehold Interest**

MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner P. Artates. Motion carried.

**ITEM NO: D-18**

**SUBJECT: Designation of Successor - Albert Lewi**

MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner P. Artates. Motion carried unanimously

**ITEM NO: D-19**

**SUBJECT: Cancellation of Lease - Blossom K. Phillips-Courtney**

MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner P. Artates. Motion carried unanimously

**ITEM NO: D-20**

**SUBJECT: Designation of Successor - George H. Mia**

MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner P. Artates. Motion carried unanimously.

**ITEM NO: D-21**

**SUBJECT: Status Update Implementation of Hawaiian Homes Commission's Directive Regarding Lot No. 112-A, Ho`olehua, Moloka`i, Hawai`i**

MOTION/ACTION

None. For Information Only.

DISCUSSION

Commissioner K. Hopkins addressed a Commission decision made in 2002. Chair Designate Masagatani suggested staff review and initiate recommendations on the decisions made then which may propose a different action now as circumstances have changed. Attorney Camille Kalama representing Tanya Joao, Skylla Villanueva's sister, noted she could possibly represent both sisters as co-lessees as Tanya is the designated successor.

An engineering firm has been working with staff to mediate the situation in a cost effective manner, noted Homestead Services Administrator Dean Oshiro. Commissioner Hopkins may offer another option plan.

**ITEM NO: F-3**

**SUBJECT: Amendment to General Lease No. 245, Waiakea Center, Inc., Waiakea, Island of Hawai`i**

RECOMMENDATION

That the Commission grant its approval to amend Paragraph 4, Page 5 of GL 245 titled "Community Benefit Contribution" 1) in addition to annual rent, lessee shall contribute not less than \$100,000 per year for duration of GL 245 towards community benefit fund, received and

distributed by the Lessor, used exclusively by East Hawaii Hawaiian homes community associations recognized by Lessor in promoting community development, educational and/or cultural programs and projects for the benefit of native Hawaiian residents of East Hawai'i; 2) all other terms and conditions of GL 245 shall remain in full effect and force.

#### MOTION

Moved by Commissioner K. Hopkins, seconded by Commissioner M. Kahikina.

#### DISCUSSION

Land Management Administrator Linda Chinn explained Waiakea Center, Inc. wishes the department to distribute, in percentages, to the community as discussed. Seven communities met and agreed to the manner of disbursements, noted Commissioner Lee Loy. Consideration will be given should other associations be created. The department will monitor usage and reduce amounts if utilized inappropriately, noted Ms. Chinn. As a member of one of the associations, Commissioner Lee Loy recused from voting.

#### ACTION

Motion carried unanimously.

#### ITEM NO: F-4 (cont)

**SUBJECT: Amendment to General Lease No. 281, Nanakuli Hawaiian Homestead Community Association, (NHHCA), Nanakuli, Island of O`ahu**

#### RECOMMENDATION

Land Management Administrator Linda Chinn requests language be added to Part 3 in the four-part motion presented yesterday in General Lease No. 281. The language to read (a) a short-term ground lease to Hawaiian Community Development Board **and/or Nanakuli Hawaiian Homestead Community Association (NHHCA)** for and during the development of Hale Makana O Nanakuli Housing Project; and (b) a new 65-year general lease to HCDB **and/or NHHCA** effective upon the completion of the project ....be added to the previous amended motion.

#### 2<sup>nd</sup> AMENDED MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner P. Artates to add verbiage as stated by Ms. Chinn. Motion carried. Commissioner M. Kahikina recused from voting due to his association with NHHCA.



**ITEM NO: F-6**

**SUBJECT: Ratification of Consents and Approvals by Chairman, Hawaiian Homes Commission**

**MOTION/ACTION**

Moved by Commissioner K. Hopkins, seconded by Commissioner M. Kahikina. Motion carried. Commissioner P. Artates recused from voting due to his association with Waiohuli homestead.

**ITEM NO: F-7**

**SUBJECT: Notices of Default and Revocations, Statewide**

**MOTION/ACTION**

No notice of default to report.

**ITEM NO: H-1**

**SUBJECT: Approval of FY 2013 Operating Budget for the Department of Hawaiian Home Lands**

**RECOMMENDATION**

Due to a pending litigation, information on the operational budget will remain closed. Commissioner K. Hopkins has a inquiry on the operational budget.

**MOTION/ACTION**

Moved by Commissioner Lee Loy, seconded by Commissioner Artates to convene in executive session. Motion carried unanimously.

**EXECUTIVE SESSION 10:35 A.M.**

Pursuant to Section 92-5(a)(4), HRS, commission convened in executive session to consult with its attorney on questions pertaining to the commission's powers, duties, privileges, immunities and liabilities in this matter.

**RECONVENE: 11:25 A.M.**

**MOTION/ACTION**

Moved by Commissioner R. Tassill, seconded by Commissioner P. Artates to reconvene in regular session and continue with Item No. H-1. Motion carried unanimously.

**ITEM NO: H-1(cont)**

**SUBJECT: Approval of FY 2013 Operating Budget for the Department of Hawaiian Home Lands**

**MOTION**

Moved by Commissioner K. Hopkins, seconded by Commissioner P. Artates. Roll call vote:

`AE: I. Aiu, P. Artates, L. DaMate, K. Hopkins, M. Kahikina, I. Lee Loy, R. Tassill, J. Masagatani. A`ole 0. Excused: H. Tancayo.

**ACTION**

Motion approved. 8 - 0.

**ITEM NO: H-2**

**SUBJECT: Approval of FY 2013 Interim Development Budget for the Department of Hawaiian Home Lands**

**MOTION**

Moved by Commissioner K. Hopkins, seconded by Commissioner M. Kahikina.

**DISCUSSION**

A full development Budget to be presented in July.

**ACTION**

Motion carried unanimously

**ITEM NO: H-3**

**SUBJECT: Approval of FY 2013 Loan Program Budget for the Department of Hawaiian Home Lands**

**MOTION/ACTION**

Moved by Commissioner M. Kahikina, seconded by Commissioner P. Artates. Motion carried unanimously.

**ITEM NO: H-4**

**SUBJECT: Transfer of Hawaiian Home Lands Receipts Money at the End of the Fourth Quarter, FY 2012**

MOTION/ACTION

Moved by Commissioner P. Artates, seconded by Commissioner M. Kahikina. Motion carried unanimously.

MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner P. Artates to adjourn to Executive Session. Motion carried unanimously.

EXECUTIVE SESSION 11:35 A.M.

Pursuant to section 92-5(a)(4) HRS, commission adjourned to executive session to consult with its attorney on questions and issues pertaining to the commission's powers, duties, privileges, immunities and liabilities.

3. Honokaia `Ohana v HHC & DHHL, Civil No. 09-00395
4. Alternate Land Use for Pastoral and Agricultural Homestead Leases

MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner L. DaMate to reconvene in regular session. Motion carried unanimously.

MOTION/ACTION

Moved by Commissioner K. Hopkins, seconded by Commissioner I. Aiu to adjourn the regular meeting. Motion carried unanimously

ADJOURNMENT 12:20 P.M.

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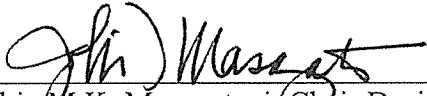
**ANNOUNCEMENTS AND ADJOURNMENT**

**NEXT MEETING** July 23-24, 2012, Kamuela, Hawai`i


**ANNOUNCEMENTS** Next community meeting to be held at Prince Kuhio Hale, 64-756  
Mamalahoa Highway, Kamuela, Hawai`i at 6:00 p.m.

**ADJOURNMENT** 12:20 p.m.

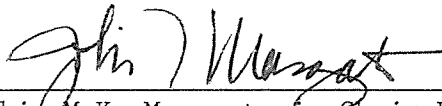
Respectfully submitted:

  
\_\_\_\_\_  
Jobie M.K. Masagatani, Chair Designate  
Hawaiian Homes Commission

Prepared by:

  
\_\_\_\_\_  
Elaine G. Searle  
Secretary to the Commission

APPROVED BY:  
The Hawaiian Homes Commission  
At Its Regular Monthly Meeting Of  
August 21, 2012

  
\_\_\_\_\_  
Jobie M.K. Masagatani, Chair Designate

## Hawaiian Homes Commission Workshop Meeting

June 18, 2012

Aloha Chair Masagatani and Commissioners,

I'm Homelani Schaedel, President of Malu'ōhai Residents' Association. On behalf of our board and the 226 families living in our homestead; congratulations on being designated by Governor Ambercrombie as the Chair of the Commission and Director of the Department of Hawaiian Home Lands. You bring a wealth of experience and skills and we are ready to support you as we have past Chairs and Directors and we look forward to working with you.

This morning I'm addressing Agenda items F-1, F-5, and F-8. My concerns are not directed at the request for amendment of license, issuance of a general lease, or discussion on land requests. I will reserve commenting when those items are discussed.

Documentation supporting items F-1, F-5 and F-8 include a Land Request Form similar to that of which was introduced with Resolution 260 at the Commissioners' meeting on March 19, 2012, approved by the Commission on April 23, 2012 and became effective May 1, 2012.

The heading of the form reads: Request for Trust Land from the Hawaiian Home Land Trust, Department of Hawaiian Home Lands.

Item F-1 and F-5 identify the form at the bottom, as **"DHHL Land Request Form"**, followed with verbiage stating, **"Form Created/Updated by the Native Hawaiian Policy Center, Administered by CNHA 12/01/11"**.

Item F-8 is different from Item F-1 and F-5 in that it does reference that it is a DHHL Land Request Form. Instead, it displays CNHA's logo with the verbiage, **"Request Form Created/Updated by the Native Hawaiian Policy Center, Administered by CNHA 12/01/11"**.

Perhaps this was an oversight by the Office of the Chairman who holds the authority and approval before submission to the AG's office. The form appears as a CNHA form and not a DHHL form. If the form is in the revision process, the existing Land Request Form should be used until the final form is reviewed and approved by the AG's office. It is inappropriate to have CNHA's logo or any reference to CNHA on a DHHL's form and I request that it be removed and the revision date noted at the bottom of the form.

**Section II: Type of Organization – Homestead Organization – governed by HHCA beneficiary members is identified as: Non-profit is Democratically Elected by and for HHCA Beneficiaries or a Subsidiary thereof.**

I have asked these question many times. What is a Democratically Elected Organization? What process does the staff have to validate that the organization was democratically elected before the Commission approves or denies a request for land?

*Testimony*  
6-18-12

With the approval of Reso 260 and 265 it is imperative that the term "Democratically Elected" be clearly defined and a process put in place so the staff can have the proper tools to implement the Resolutions the Commission recently approved.

I would like to go on record to request the Commission define and establish this process before they approve any requests from HHCA Beneficiaries or Subsidiaries.

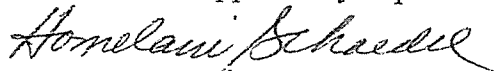
Which brings me to the next item on the form in the same section. **Capacity Assessed by DHHL Kulia Ika Nu'u Program: Yes or No.**

Kulia did have a process to identify Democratically Elected Homestead and Beneficiary Organizations. So, why is there a reference to Kulia when the Commission ended that program on January 24, 2012 and Reso 260 was not approved until April 23, 2012? Unless you plan to re-instate Kulia, I request that line be removed from the form.

What was the recommendation from the Commission to staff as to how HHCA beneficiaries and beneficiary organizations be notified of the implementation of Reso 260? In particular; the effective date, required use of the Land Request Form, how to obtain a form, and the comment period?

Yes, my testimony addresses issues on something as simple as a form which can be easily corrected. My greater concern is the message it carries with inaccuracy and appearance of impropriety. In the future I would like to see a process which includes recommendations and budget support by the Commission to assist staff in doing things right the first time, because they don't have time to do it over again. This process must include components to address the basics of Who, What, When, Where, and How.

Mahalo for the opportunity to present my testimony,

A handwritten signature in black ink, reading "Homelani Schaedel". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Homelani Schaedel



## **ANAHOLA HAWAIIAN HOMES ASSOCIATION & KANUIKAPONO INC**

### **HOMESTEAD BENEFITS AGREEMENT**

WHEREAS, the Anahola Hawaiian Homes Association (AHHA) and the nonprofit Kanuikapono Inc (KI), collectively the "Parties" to this Homestead Benefits Agreement (this "Agreement"), are organizations with an intrinsic leadership responsibility to the communities, citizens, and constituencies they serve; and

WHEREAS, AHHA established in 1982, is the non-profit, member organization of the Anahola Hawaiian homestead region and communities consisting of individual homestead resident member households supporting the mission of promoting the well-being of homesteads and protecting the Hawaiian Homes Commission Act; and

WHEREAS, KI, is a nonprofit tax exempt organization dedicated to the support of the Kanuikapono public charter school that perpetuates and teaches Hawaiian culture, located on Hawaiian Home Lands in the Anahola homestead; and

WHEREAS, KI is in need of additional trust lands to expand the school campus, and seeks a long term land instrument at less than market value lease rents; and

WHEREAS, AHHA supports the work of KI in operating a school within the Anahola homestead as a benefit to the community, and acknowledges that the acreage of trust lands dedicated to KI removes lands from the inventory of homesteading under the purposes of the HHCA; and

WHEREAS, the Hawaiian Homes Commission has approved a License for an additional 7 acres of Anahola trust lands as a portion of Tax Map Key No. 4-8-3-19 (site) from the State of Hawaii, Department of Hawaiian Home Lands (DHHL) to KI, under § 207 of the Hawaiian Homes Commission Act of 1920 (HHCA); and

WHEREAS, AHHA and KI enter into this Homestead Benefits Agreement to memorialize collaborative goals and objectives and to enumerate the commitments of the Parties to the terms by which KI will provide direct benefits to the constituencies of the Parties, to the Hawaiian Home Land Trust and all of the people of Kauai.

**NOW THEREFORE**, AHHA and KI agree to the following:

HHC Item No. F-1  
Exhibit A  
Date 6-18-12

1. **Project Signage.** KI will be responsible for the cost and the placement of signage at the Site throughout the land instrument term that denotes the use of Hawaiian Home Lands for the school site.
2. **Beneficiary Consultation.** KI with the assistance of AHHA will conduct beneficiary consultation on the development plans of site.
3. **Annual Report.** KI will produce a status report on the progress, accomplishments and activities of the educational activities occurring on the site, and present such report annually at an AHHA hosted community homestead meeting.
4. **Enrollment.** KI will endeavor to achieve a goal of 50% or greater of students residing in the Anahola region being served on the property.
5. **Employment Outreach.** The Parties will jointly use reasonable best efforts to conduct outreach, referrals and job postings at the AHHA bulletin board, of Anahola homestead and/or Kauai residents to be considered for employment when job openings are available at KI and to encourage the use of Anahola and/or Kauai business vendors for products and services, involved in the operation of KI programs or property maintenance.
6. **Internships, Fellowships & Employment Training.** The Parties will use reasonable best efforts to develop and make entry level opportunities available for educational related internships and fellowships targeted for homestead residents, regardless of homestead location or island of residence, to broaden experience and achieve workforce training goals in the education and land/facility stewardship field.
7. **Compliance with Laws and Agreements.** Notwithstanding the above, the Parties agree that their efforts and obligations under this Agreement shall at all times be and remain in full recognition of, and consistent and in compliance with, any and all applicable laws, collective bargaining agreements, contractual obligations, and land instrument requirements.

Together, AHHA and KI hereby enter into this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2012 to further the direct benefits to the Hawaiian Home Land Trust and its beneficiaries wherein lands have been provided at less than market value and reduce the land inventory available for beneficiary homesteading.

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Lorraine Rapozo  
President  
Anahola Hawaiian Homes Association

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Ipo Torio Kauhane  
Executive Director  
Kanuikapono Inc





PO Box 646  
Anahola, Hawaii 96703  
Tel: 808.820.8029  
info@ahha96703.org  
www.ahha96703.org

Date: June 13, 2012

To: Hawaiian Homes Commission  
Department of Hawaiian Home Lands

Fr: Lorraine Rapozo, AHHA President  
Robin Puanani Danner, AHHA Board Officer

Re: 30 Day Comment Period on Land Request by Kanu Ika Pono  
Deadline: June 15, 2012

Aloha,

The Anahola Hawaiian Homes Association (AHHA) has reviewed the request for just over 7 acres of lands to extend the campus of the Native Hawaiian Charter School. We support the land use purpose subject to the following:

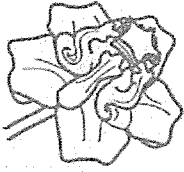
1. **Fair market lease rents to the Hawaiian Home Land Trust** – while the lessee organization is a Native Hawaiian public charter school, it is not a beneficiary organization controlled and governed by HHCA beneficiaries. There are no guarantees that the current leadership will remain or continue the focus on Native Hawaiian culture. For these two reasons, we expect our trust to receive market value land rents throughout the term of the lease. Or at a minimum, a lease agreement that states lease rents are fair market value or a lesser amount for any year where no less than 50% of the students attending the school are residents of Hawaiian home lands.

This ensures that the Hawaiian Home Land Trust and its beneficiaries are duly compensated for lands not made available for homesteading, or in the event of a lesser lease rent, is assured that the school is continually focused on attracting homestead families to the school.

2. **Execution of a Homestead Benefits Agreement** - as AHHA has consistently advocated, every land instrument issued on trust lands wherein the land use is for non-homesteading use, a Homestead Benefits Agreement must be a standard requirement. Similar to item 1 above, we support the expansion of the charter school in our homestead, and we expect a Homestead Benefits Agreement to be negotiated and executed with AHHA to include but not limited to the following:
  - a. **Signage.** Site must have visible signage that the lands are Hawaiian Home Lands;
  - b. **Annual Report.** Lessee required to report annually at an AHHA homestead community meeting, enrollment data and statistics of homestead family involvement;

*Our Place for Home, Family, Future*

HHC Item No. F-1  
Exhibit B  
Date 6-18-12



- c. **Employment Outreach.** Lessee required to post school job openings at the AHHA office community bulletin board and for distribution by AHHA to homestead households;
- d. **Contracting Outreach.** Lessee required to post contract opportunities for services at the school at the AHHA office community bulletin board and for distribution by AHHA to homestead households;
- e. **Lease Rents.** Lessee to pay fair market value lease rents or a lesser amount if 50% or more of enrollment of students are residents of homesteads. If a lesser amount, lessee is required to provide financial statements of the school and its designated non-profit;
- f. **Consultation.** Lessee to conduct consultation with AHHA and homestead residents on the development plan of the parcel, and to incorporate relevant recommendations in the Homestead Benefits Agreement that may result from consultation.

Mahalo for the opportunity to comment on this land request for trust lands in the Anahola homestead.

cc: Ipo Torio Kauhane & Puna Dawson



Homestead • Community  
Development • Corporation



**Kauai Field Office – PO Box 646 Anahoa Hawaii 96703 • 808.596.8155**

Date: April 30, 2012

To: Linda Chinn, DHHL Land Management Division Manager

Fr: Robin Danner, President, Homestead Community Development Corporation  
Lorraine Rapozo, President Anahola Hawaiian Homes Association

Re: Request for Hawaiian Homes Commission Action on an Anahola Agricultural Project

The Homestead Community Development Corporation (HCDC) is an HHCA beneficiary led CDC. We specialize in the development of projects on Hawaiian Home Lands where homestead associations are active partners with DHHL in non-homesteading land use transactions, as well as experts in the execution of Homestead Benefit Agreements to maximize value to the trust and its beneficiaries.

On behalf of the Anahola Hawaiian Homes Association (AHHA), we are pursuing a land restoration project that will clear invasive Albizia trees covering approximately 1,175 acres, and place into agriculture cultivation up to 2,137 acres, including the Albizia covered lands. The project is a win-win for the trust, since it will clear the invasive species at no cost to the trust, and bring these lands back to use as homesteading or commercial lands at the end of the project. In addition, our approach includes annual lease revenues to the trust for a 20 year period.

To discuss and review the merits of the project and the land use request by HCDC, we have attached a Land Use Request Form, and a DRAFT submittal document with all of the pertinent information anticipated to be required by the Hawaiian Homes Commission.

Mahalo for the opportunity to discuss our project concept and the potential revenues and benefits on May 2, 2012 at your office. We welcome the review, recommendations and suggestions of DHHL in making this project a success for the restoration of these lands, the trust and its beneficiaries.

Enclosures: Draft HHC Submittal  
Land Use Request Form  
Map of Subject Lands  
Map of Agricultural Land Quality  
Map of DHHL Land Use Plan on Subject Lands  
Appraisal Summary Report

HHC Item No. F-8  
Exhibit A  
Date 6-18-12

**DRAFT Hawaiian Homes Commission Action Submittal – Revision Date 04/30/12**

Date: [Current Date]

To: Chairman and Members, Hawaiian Homes Commission

Fr: Land Management Division

Re: Approval of License to Homestead Community Development Corporation

**Section I. About the Land Applicant**

**This land request is made by:**

- ☐ Private or Member Nonprofit
- ☐ Commercial Enterprise
- ☐ Government Agency
- ☒ Homestead Beneficiary Controlled Nonprofit or Subsidiary Thereof

**Applicant, if a Nonprofit, has been assessed under the DHHL Kulia Ika Nuu Program:**

- ☒ Yes      ☐ No

**The Applicant will pay land rent values:**

- ☒ Market Value Land Rents      ☐ Less Than Market Value Land Rents
- ☒ Land Rents Shared at 80/20 (Must be a Homestead Beneficiary Nonprofit or Subsidiary)

**Transaction will include a Homestead Benefits Agreement Component:**

- ☒ Yes      ☐ No

**Section II. Recommended Motion/Action**

A. That the Hawaiian Homes Commission (HHC) approve and authorize the Chairman **to issue an exclusive 22-year license under HHCA section 207 (c)(1) to the Homestead Community Development Corporation (HCDC)** for the use of up to 2,137 acres of Hawaiian Home Lands in Anahola, Kauai, identified as a portion of Tax Map Key Numbers as follows:

|              |                        |
|--------------|------------------------|
| 4-7-2-4      | 994.120 Acres          |
| 4-8-2-1      | 643.735 Acres          |
| 4-8-3-6      | 360.204 Acres          |
| 4-8-3-22     | <u>139.092 Acres</u>   |
| <b>Total</b> | <b>2,137.151 Acres</b> |

Of the 2,137 acres, approximately 1,175 acres are arable and adequate for crop growth, leaving 962 acres throughout the four TMKs that are not suitable.

The acreage will be dedicated first and foremost to the removal of a thick blanket of invasive Albizia trees that have overgrown the 1,175 acres of the landscape since the land was returned by the

plantations to the Department in 2000. Secondly, these lands will be re-dedicated to agricultural uses, by upgrading the road system, irrigation system and implementing a replanting program.

This section of the HHCA is the section most commonly used by DHHL to issue non-homesteading lands to nonprofit organizations for public purposes, and to homestead beneficiary organizations for community based economic and community development projects, at low to no cost. It should be noted however, DHHL has also used this section to issue licenses to for-profit entities as well.

HCDC is eligible under section 207 (c)(1)(A), as a nonprofit organization providing public purpose services, and the project itself serves an extraordinary public purpose. In addition, HCDC is further eligible under section 207 (c)(1)(B), as it is the tax exempt arm of the Anahola Hawaiian Homes Association, controlled by native Hawaiians as described in 207(c)(1)(B).

During the License period of the first 2-years, HCDC shall conduct an EA if required, and develop a plan for a portion of the acreage to be dedicated to community use, and an agricultural incubator, while successfully completing the Albizia clearing and restoration project. License revenues will begin on the 3<sup>rd</sup> year through the 22<sup>nd</sup> year, producing revenue to the Trust for a period of 20 years.

**B. That the Hawaiian Homes Commission (HHC) approves and authorizes the Chairman to accomplish item A above subject to the following conditions:**

1. **Purpose:** The site shall be used to clear 1,175 acres of Albizia trees, which render the lands useless for any type of homesteading, agriculture, pastoral, or other commercial activity, and to put all of the lands into agricultural use, replanted and harvested over the term of the license and general lease, to deliver feedstock to Green Energy and its biomass production facility to generate power to be fed onto the Kauai Island Utility Cooperative (KIUC) grid.
2. **Term:** The term of the License shall be 22 years with commencement of payments on the 2<sup>nd</sup> year anniversary of the date of execution of the License. The License shall indicate the ability of the Licensee to return the lands to DHHL at any time during the initial 2 years of due diligence. Any extensions of such License is subject to approval by the HHC.
3. **Authority of Chairman & Deposit:** Upon approval of the HHC of this submittal, the Chairman shall be authorized to issue the License to HCDC, which will allow Licensees to conduct due diligence studies and HRS Chapter 343 compliance followed by site preparation, financing and investment preparation, provided Licensee pays a good faith deposit of \$25,000. Said deposit shall be applied to rent, however, the deposit shall be forfeited if the License is cancelled by the Licensee within a reasonable time (approximately 24 months) and Licensee fails to provide Licensor with compelling reasons beyond Licensee's control that justifies either a full or partial refund.
4. **Revenue & Commencement:** The initial 2-year License shall be gratis, with a \$25,000 deposit. The rent commencement date for up to 2,137 acres shall be the 2 year anniversary date of execution of the License.

The total rent per acre per year of arable lands (1,175 acres out of 2,137 acres) is \$40 in conformity with the independent appraisal. Yearly index tied to CPI capped at 2.5%, resulting in an average per acre per year pricing of \$47. On average, this pricing will yield \$55,225 per year.

Over the life of 20 years, the revenue to the trust and its mission on average totals \$1,104,500 with 20% or \$220,900 of that amount directed under a Homestead Beneficiary Agreement to HCDC for projects in the Anahola homestead region. This approach is entirely in keeping with the tenets of the HHCA and the mission of the trust to promote self determination and economic self reliance of homestead organizations.

Rent provisions above and beyond the minimum stated herein, such as, but not limited to, annual rent increases and/or option fees, shall be subject to negotiations and established prior to execution of the License or Lease, provided such negotiated rents shall not be less than those shown above nor shall rent for any subsequent year of the License or Lease be less than that for the year immediately preceding.

5. **Subdividing:** Under the terms of the License, if executed, the Licensee shall be permitted to subdivide the land parcel subject to compelling reasons agreed to by DHHL.
6. **Sublease:** Under the terms of the License, if executed, the Licensee shall be authorized to sub-lease to Green Energy, unless the License is executed to both HCDC and Green Energy as co-developers of the land restoration on the premises.
7. **Fees:** Licensee and Lessee shall pay a non-refundable processing and documentation fee totaling \$275.00 for the license transaction.
8. **“As Is” Status & Residential Prohibition:** The premises shall be rented “as is” and the Licensee understands that there are no existing utility services to the site, and further 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 premises, as may be needed by the Licensee.  
  
No residential use shall be permitted on the premises, except for overnight security stays to ensure security of equipment and/or crops.
9. **Liability Insurance:** Licensee and Lessee shall purchase liability insurance with a minimum coverage of \$2 million and name the Department of Hawaiian Home Lands as an additional insured.
10. **Real Property Taxes:** Licensee and Lessee shall pay all real property taxes assessed by the County of Kauai for the premises.
11. **Security & Personal Property:** Licensee shall be responsible for the security of the premises and all of the personal property of the Licensee thereon, and further, shall be allowed to install security fencing for public safety and a security system provided the Lessor has reviewed and approved the type of system to be installed.
12. **Homestead Benefits Agreement:** Licensee shall execute a Homestead Benefits Agreement (HBA) between the HCDC and Green Energy, before the execution of a License. The terms of the HBA may address benefits to the Anahola region of HHCA beneficiaries and/or the larger Kauai community, and should include economic and employment benefits, community development including capacity building and education, as well as philanthropic support of Hawaiian culture, youth and elders.

13. **Regulations & Requirements:** 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 cleanup of any contamination or hazardous materials found on the site that is caused by activities on the premises.
14. **Archeological Sites:** 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. The Environmental Assessment to be performed pursuant to Chapter 343 will explicitly address archeological sites on the Premises.
15. **Attorney General Review:** The License instruments shall be subject to the review and approval, of the Department of the Attorney General.
16. **Other Standard Terms and Conditions:** Other standard terms and conditions of similar Land Instruments issued by DHHL or other terms and conditions deemed prudent by the Chairman of the Hawaiian Homes Commission.

### **Section III. Authority & Discussion**

**HHC Authority** - 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.

In addition, the authority for the Hawaiian Homes Commission to issue general leases is found in section 204(a)(2), HHCA 1920, as amended. The procedure to implement this or similar type of lease is found in section 10-4-1, DHHL Administrative Rules, 1998, as amended.

With respect to a lease to an eleemosynary organization (nonprofit, such as HCDC), Hawaii Revised Statute 171-43.1, as amended, authorizes the Commission to lease, at nominal consideration or any rental amount the Commission deems appropriate; by direct negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501 (c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended; and on such other terms and conditions as the Commission may determine. The lands shall be used by such eleemosynary organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service.

The same DHHL rules permit DHHL, subject to the approval of the commission, to negotiate and consummate the rental rate (or value) of a license or lease, when prudent management does not dictate that the rental rate be established by appraisal. That said, the rental rate is based on an appraisal summary report by Medusky & Co, Real Estate Consultants headquartered in Honolulu.

**About Requesting Parties** – HCDC is a Hawaii nonprofit corporation, tax exempt under the IRS section 501(c)(3), formed in 2009 as the tax exempt community development corporation arm of the Anahola Hawaiian Homes Association (AHHA). AHHA has been a homestead association for the Anahola homestead region since 1982, and recognized by DHHL and the Commission as such for at least 25 years, when DHHL encouraged the unification of homestead associations under the Statewide Council of the Hawaiian Homestead Associations (SCHHA), now known as the Sovereign Councils of

the Hawaiian Homeland Assembly. Moreover, DHHL and the Commission, further certified AHHA's CDC as stage 4 under the Kulia Ika Nuu capacity program in February of 2011, one of the highest ratings available.

The mission of HCDC is to *develop, own or have an interest in, the operation of projects, facilities and assets that are controlled by and benefit homestead associations and communities, the Hawaiian Home Land Trust, and the Native Hawaiian people.*

HCDC is the designated nonprofit arm of the following homestead associations:

1. Anahola Hawaiian Homes Association;
2. Association of Hawaiians for Homestead Lands (waitlist org);
3. Kaupea Hawaiian Homestead Association;
4. Waimea Hawaiian Homestead Association

HCDC develops community facilities, nonprofit offices, cultural centers, youth serving facilities, economic development structures and other projects that serve the homestead beneficiaries of the Hawaiian Homes Commission Act. It is governed by a 100% HHCA beneficiary board, with dedicated seats for homestead association officers elected by homestead members.

Green Energy is a renewable energy development business headquartered on Kauai. Its primary business venture is the construction and operation of a bio-mass facility to be located near Koloa, Kauai, which will convert feedstock to energy for sale under a Power Purchase Agreement to the island's utility, Kauai Island Utility Cooperative. Green Energy is required by its financiers to have at least 2,128 in agricultural producing lands to ensure an adequate level of feedstock to the bio mass facility. The company has the pre-requisite lands through its own lands and leased lands from the state Department of Agriculture, Agribusiness Development Corporation. A partnership with HCDC will create 43% more agricultural lands than is required, strengthening the financing model.

**About Land Valuation and Land Description** – HCDC purchased a market value summary appraisal on the lands requested in this submission, to ensure an impartial and objective measure of best value. At \$40 per acre per year on arable acres, the appraisal compares favorably over the acreage leased by Green Energy from a different state agency, consisting of 1,000 acres of arable land, at \$15 dollars per acre per year starting in 2010, stepping to \$20 in 2013, and \$35 dollars per acre per year in year 2017 – 2033.

The 2,137 acres of land consist of four different TMKs, and are bordered to the north by Aliomanu and Moloaa and to the south by Kealia and Kapaa. Forest reserve land is to the west, and other Hawaiian Home Lands as well as the coastline and Pacific Ocean are to the east. Following is a breakdown of the proposed land use AFTER the Albizia trees are cleared:

| <u>Acres</u>       | <u>Proposed Use</u>                   |
|--------------------|---------------------------------------|
| 908 Acres          | Replanted for Bio Mass Facility       |
| 75 Acres           | Roads/Ditches/Community Use           |
| 192 Acres          | Optional Replanting or Other Ag Pilot |
| <b>1,175 Acres</b> | <b>Total Arable Acreage</b>           |
| 962 Acres          | Not Suitable (Gullies, etc)           |
| <b>2,137 Acres</b> | <b>Total Land Request</b>             |

The Land Study Bureau Soil Classification for these lands is as follows:



B - 11%      C - 32%      D – 11%      E – 46%

\*this classification is an agricultural productivity rating – A is the highest with E being the lowest.

The DHHL Classification of these lands are as follows:

|                                   |                        |                                                                                                                                                                                                                                       |
|-----------------------------------|------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Community Use                     | 44.23 Acres<br>(2%)    | Common areas for community uses. Includes space for parks and recreation, cultural activities, CBED and other public amenities                                                                                                        |
| General Agricultural              | 716.22 Acres<br>(34%)  | Prime agricultural areas. Commercial level agriculture.                                                                                                                                                                               |
| Pasture:                          | 148.46 Acres<br>(7%)   | Large lot agriculture specifically for pastoral use. Marginal lands. Pastoral waiting list. Some commercial level pastoral activity. Farm plan required. Fencing required                                                             |
| Subsistence Agriculture:          | 267.42 Acres<br>(13%)  | Small agriculture/aquaculture lots. Marginal to good lands. Lifestyle areas intended to allow for home consumption of agricultural products. Occupancy required. Agriculture waiting list. Close proximity to existing infrastructure |
| Conservation or Special District: | All Remaining<br>(44%) | e.g., water sheds, endangered species, sensitive historic and cultural sites - Areas requiring special attention. Natural Hazard areas, open spaces, mixed uses, resorts, green-ways                                                  |

Mapping of the area by DHHL included in this submission indicates the arable agricultural areas, the conservation areas, and a small section for community use. Most of the lands are unused, with peripheral strips used under Revocable Permits on a non-intensive level for cattle ranching.

The State of Hawaii has classified most of the property as Agriculture, with a small northern unusable portions classified as Conservation. The County General Plan designation is Agriculture and Open.

**About the Project & Anahola Regional Plan** – HCDC is seeking to address a major homesteading challenge in the Anahola region of Kauai – the absolute inability of any use of the lands in question for homesteading or commercial use, due to the invasive Albizia trees. As one homestead leader said:

*“It’s too late for my generation to see these lands in homesteading, but it’s not too late for my generation to do something to make these lands available for the next generation. We must clear the Albizia now, give the lands life again, and return them to the Trust to give to the next generation of Hawaiians.”*

This project is more about land restoration than it is about Bio-Mass feedstock for a Bio-Mass facility being built on Kauai. Since the return of these lands to the Trust when the plantation shut down on Kauai in 2000, they have become over-run by invasive species, have not been utilized, except for a handful of Revocable Permits for grazing. This project first and foremost, is focused on an economical way to clear hundreds of acres of Albizia trees, made possible by coordinating with Green Energy to use the trees as feedstock to the Bio-Mass facility. The project is structured to achieve the goal at no cost to the Trust, and will replant the lands to more friendly crops to restore the soils, and create a renewable energy agricultural industry inside the homestead.

The Anahola Regional Plan, approved by the HHC, does not address the lands under consideration by this submittal. The Anahola Regional Plan does not advance, nor restrict the notion of restoring homestead lands in the region that are currently not productive, but are zoned for agriculture use.

**About Project Capital and Financing** – During the first 2 year License period, HCDC will partner with Green Energy to complete any necessary environmental assessments, cultural impact studies, beneficiary planning and consultations, and inventory roads and water improvements necessary, as well as finalization of a homestead benefits agreement. The source of capital and man power to achieve these initial actions will be from HCDC’s balance and income statements, as well as the financial strength of Green Energy and its investment financiers, the Deutsche Bank as well as a USDA loan guarantee.

**Estimated Cost of Land Preparation & Infrastructure Improvements – \$6.5 million**

The structure of this land transaction positions the Trust to provide a 2-year License to lands that are over-run with Albizia, have not generated revenue to the Trust in nearly 2 decades, and creates the opportunity for a 20-year period to generate market rate revenues, while adding \$6.5 million in improvements and Alibizia removal. Perhaps, most important, the land transaction will result in over 1,000 acres of lands being repaired and prepared for homesteading use.

**Homestead Benefits Agreement** – The terms of our initial Homestead Benefits Agreement (HBA) is the result of beneficiary consultation held between November 2011 – January 2012, through six sessions in Anahola and distribution statewide to other beneficiary associations.

1. **Predevelopment Costs** – HCDC will be reimbursed for pre-development costs which include staffing and volunteer hours, community outreach sessions, beneficiary consultation and inquiries, project due diligence, research, proposal reviews, beneficiary planning sessions, and coordination with Green Energy, stakeholders, and potential contractors to maximize homestead employment and contracting.

**Direct Value Over First Year:** \$ 45,500

2. **Development Fee** - \$32,500 one time development fee upon the conclusion of the due diligence under the License period of 2 years. This fee will be directed by HCDC to an Anahola regional project fund, will leverage additional capital requirements for existing HCDC projects and programs underway, and will establish the Anahola beneficiary workforce and employment program on the project.

**Direct Value Over First 2 Years:** \$ 32,500

3. **Land Lease Value & Revenue Sharing** – The land lease revenue established at fair market value of \$40 per acre per year plus step ups (average of \$47 per acre per year), based on a professional appraisal to benefit the purpose of the trust totals \$1,104,500 with 80% or \$883,600 to DHHL and 20% or \$220,900 to HCDC. HCDC will dedicate these revenues to our Anahola regional project fund and on-going projects.

**Direct Value Over Project Life:** \$ 1,104,500

4. **Land Restoration & Land Improvements** – The 1,175 acres currently covered in Albizia trees will be removed, stumps removed, roads and drainage restored, soil and water conservation measures implemented to avoid erosion and restoration of soil structure and fertility. This includes 11 miles of roads and 8 miles of ditch systems. Where possible, HCDC or other local firms will be utilized to perform improvements. In addition, HCDC will coordinate outreach with Green Energy to coordinate employment fairs and contractor briefings.

**Direct Value Over 24 Month Period:** \$6,500,000

This direct cost improvement to the lands increases the land lease value in item #3 of \$40 per acre per year by another \$277 per acre per year.

5. **Homestead Participation Revenue** - 2% of the gross (not net), equivalent value of thermal power of \$0.30 per MWh harvested from the lands, except for the Albizia tree harvest will be paid in addition to the land lease revenues. The average estimated revenue annually is \$39,222 which will be dedicated to employment training and outreach by HCDC for homestead residents. Initial revenues will not occur until 4 years after crops are planted.

**Direct Value over Project Life:** \$ 784,440

6. **O & M Contract Revenue + Albizia Removal Labor** – Operations and Maintenance services, where possible will utilize HCDC or other local firms, to perform services including agriculture labor, tree removal, maintenance, dirt moving, inspections, troubleshooting, security and other relevant services. O&M costs are estimated at \$175,000 annually.

**In-Direct Value over Project Life:** \$ 3,500,000

7. **Project Signage** – All signage on the project will indicate the ownership of the land, as Hawaiian Home Lands, provided by the native Hawaiian people. Time and material value estimated at \$15,000.

**Direct Value of over 1 Month:** \$ 15,000

8. **Internships, Fellowships & Employment Training** – HCDC and Green Energy will develop internships, fellowships and employment recruitment for homestead residents, and waitlist beneficiaries, regardless of homestead location or island to broaden experience and workforce goals in the general renewable and agricultural fields.

**Direct Value over Project Life:** funded from #5

9. **Junior/Senior High School Adjunct Teaching** – Green Energy will develop curriculum and teach an adjunct course twice annually on agricultural technologies, including engineering, design, operations and maintenance and finance mechanisms. Subject matter expertise valued at 10,000 for a 2 week course taught twice each year.

**Direct Value over Project Life:** \$ 20,000

10. **Agricultural Operation Capacity Building** – Green Energy will assist and share non-proprietary information with HCDC to build its capacity in all aspects of developing, financing and operating an agricultural operation for feedstock.
11. **Leaders Partnership** – Green Energy and HCDC will establish a project advisory committee from the homestead community for the life of the project, coordinate an annual executive briefing of Green Energy and Homestead executives, and coordinate an annual orientation of Green Energy management on the HHCA and Native Hawaiian issues. This aspect of the HBA, will also include opportunities to distribute shared press releases and announcements.

12. **Homestead Access and Community Picnic Area** – Green Energy and HCDC will develop and publish homestead accessibility procedures to the lands, including a community picnic area on 2-4 acres, and other purposes.

HCDC's interest in bringing this project to the trust lands and the homestead community of Anahola, is entirely about homestead land restoration, self-reliance, beneficiary participation in economic opportunities, economic impact and community development in our region, and maximizing our lands for the purposes of the trust which includes DHHL and the beneficiaries.

Under the initial approach of our Homestead Benefits Agreement, the direct funding estimates are as follows:

**Homestead Direct Funding Impact**

HCDC funding for culture, youth, elders, job training & operations: \$1,103,340

*Subtotal of Funding Impact to Homestead:* **\$1,103,340**

**DHHL Direct Funding Impact**

DHHL funding for 80% of land lease revenue: \$ 883,600

DHHL Avoided Cost for Land Restoration & Signage \$6,515,000

*Subtotal of Funding Impact to DHHL:* **\$7,398,600**

**Total Direct Project Impact & Value to Trust** **\$8,501,940**

**In-Direct Funding Impact**

Homestead business & employment potential: \$3,500,000

*Subtotal of In-Direct Funding Impact to Homesteads* **\$3,500,000**

**Total Project Impact & Value** **\$12,001,940**

As shown in the above revenue estimates and financial benefits, and more importantly, the fact that this project will not only generate revenue to the Trust, but also restore hundreds of acres of Trust lands to be able to use the land for agricultural purposes, and be included in the land inventory available for homesteading are all excellent reasons for HCDC to pursue this project.

**About Beneficiary Consultation** – HCDC's leadership are all beneficiaries of the HHCA, and were vital advocates to implementing a Beneficiary Consultation policy at DHHL. As a result, consultation is a cornerstone of every project embarked upon. HCDC implemented consultation during the months of November 2011, December 2011 and January 2012, on the outline of a land restoration project on the lands identified. Six sessions were held during the period, with over 100 participants. In addition, HCDC distributed its Consultation Kit statewide to homestead organizations for notification and input on the project during the 3-month comment period. The content of the initial HBA components are all results of consultation with AHHA and the beneficiary community.

Regardless, HCDC still intends to conduct additional Beneficiary Consultation post License execution. Its leadership believes it is prudent to provide the maximum opportunities to provide input for a successful project, and in particular, to help design community use areas, homestead access policies to the lands and identify any impacts to the Revocable Permittees.

**Section IV. Summary**

The Land Management Division recommends approval of this submission, to authorize the Chairman to execute a License to HCDC at gratis for the initial 2 year period and market value lease rents for the

remaining 20 year period at a floor of \$40 per acre per year priced on 1,175 arable acres within a larger acreage of 2,137.

This land transaction enables HCDC and Green Energy to take all of the necessary steps, including environmental assessments and cultural impact reviews, execution of a Homestead Benefits Agreement based on additional consultation, and to complete project designs that maximize the removal of the invasive species, and re-engage the lands into agricultural uses.

As a Trust, this project is an excellent opportunity to engage directly with a homestead organization to benefit the goals of the Trust, advance renewable energy sources for the State, avoid significant costs to restore over 1,000 acres of Trust lands that have not generated revenues, nor are able to serve homesteading needs in its current condition, and will create agricultural economic development opportunities for the homestead community and region.

## Request for Trust Lands from the Hawaiian Home Land Trust

This application is completed by an interested party in receiving lands dedicated under the Hawaiian Homes Commission Act. HHCA lands are to be used for homesteading purposes for beneficiary native Hawaiians (residential, and agricultural or pastoral), and when necessary, in the best interest of the trust and its beneficiaries, for public purpose, commercial and multipurpose use.

### **Section I: Name of Applicant Requesting Trust Lands**

**Name of Requesting Organization:** Homestead Community Development Corporation

**Address of Organization:** 1050 Queen Street, Suite 200 Honolulu, HI 96814 (headquarters)

**Officers and/or Principal Representatives:** Robin Puanani Danner, Lorraine Rapozo, Blossom Feiteira, Liberta Alboa, Mike Hodson

**Mission of Organization:** To develop community and economic development projects that serve beneficiaries of the HHCA

**Date Incorporated:** 2009

**State of Incorporation:** Hawaii

### **Section II: Type of Organization**

☒ **Requesting Organization – Non-Profit**

**Type of Non-Profit:**

|                                                                                                    |
|----------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Private Nonprofit – governed by self appointed board                      |
| <input type="checkbox"/> Member Nonprofit – governed by voting members                             |
| <input checked="" type="checkbox"/> *Homestead Organization – governed by HHCA beneficiary members |

\*Non-profit is Democratically Elected by and for HHCA Beneficiaries or a Subsidiary thereof

**Capacity Assessed by DHHL Kulia Ika Nuu Program:** ☒ Yes ☐ No

**Current Capacity and Service to HHCA Beneficiary Community:** HCDC is the CDC of 4 homestead associations. HCDC has developed a 10-acre outdoor marketplace and certified kitchen valued at over \$500,000, is under development of a 5 acre Youth Academy in Anahola, a 3-acre, \$400,000 community facility in Kekaha, and is in the preliminary planning stages to develop a service center in Kapolei.

☐ **Requesting Organization – Individual or Business**

|                                      |                                                        |                                      |
|--------------------------------------|--------------------------------------------------------|--------------------------------------|
| <input type="checkbox"/> Individual  | <input type="checkbox"/> Sole Proprietorship           | <input type="checkbox"/> Partnership |
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Limited Liability Corporation | <input type="checkbox"/> Other       |

**Is an Individual HHCA Beneficiary/is Owned by an HHCA Beneficiary** ☐ Yes ☐ No

☐ **Requesting Organization – Government Agency**

|                                  |                                |                                 |
|----------------------------------|--------------------------------|---------------------------------|
| <input type="checkbox"/> Federal | <input type="checkbox"/> State | <input type="checkbox"/> County |
|----------------------------------|--------------------------------|---------------------------------|

### **Section III: Land Request Instrument, Terms & Purpose**

Applicant requests the following land transaction instrument:

|                                             |                                           |                                    |
|---------------------------------------------|-------------------------------------------|------------------------------------|
| <input type="checkbox"/> Right of Entry     | <input type="checkbox"/> Revocable Permit | <input type="checkbox"/> Easement: |
| <input checked="" type="checkbox"/> License | <input type="checkbox"/> General Lease    | <input type="checkbox"/> Other:    |



**Land Description:** Four TMKs consisting of 2,137 acres of agricultural zoned lands, of which 1,175 are arable, but completely covered in invasive Albizia trees, rendering the lands unusable.

**Term:** 22 Years      **Payment Amount:** ☐ Undetermined ☒ Market value land rents  
☐ Gratis/or Less than Market value land rents ☐ \$ \_\_\_\_\_

\*If Gratis or Less than Market – Explain Why the Trust Should Not be Compensated: \_\_\_\_\_

**Land Use or Purpose:** HCDC will engage in a land restoration project to remove the invasive species, estimated at \$6.5 million, to malama the soils to replant and harvest proper crops over the license term. The ultimate goal is to prepare these lands for the next generation of beneficiaries to create 1,175 acres of lands that they can use.

**Land Use Benefit to the Trust and/or its Beneficiaries:** Market value lease revenue, but more importantly, the clearing of 1,175 acres of land at no cost to the trust, that currently are not usable for any homesteading purposes, and have sat fallow for 15 years since their return from the plantations.

**If Applicant is Not a Homestead Beneficiary Organization or a Subsidiary Thereof, Describe How the Applicant is Partnered with Such Organizations:** n/a – Applicant is the nonprofit CDC of the Anahola Hawaiian Homes Association.

#### **Section IV. Relevant HHCA Sections to Non-Homesteading Trust Land Disposition**

The HHCA addresses non-homesteading public purpose licenses, such as community facilities, commercial or multi-purpose functions, when such purpose supports the overall mission and well-being of the trust and its HHCA beneficiaries. Homesteading purposes, with is the primary purpose of the HHCA is found under Section 207(a).

**Section 207(c)** – This application relates to which of the following four categories under Section 207(c) of the Hawaiian Homes Commission Act wherein a License may be issued:

- ☐ Section 207(c)(1) – Railroads, Telephone Lines, Electric/Utility Lines, Gas Mains, etc; OR
- ☒ Section 207(c)(1)(A) – Churches, hospitals, public schools, post offices and other improvements for public purposes; OR
- ☒ Section 207(c)(1)(B) – Theatres, garages, service stations, markets, stores and other mercantile establishments (all of which shall be owned by native Hawaiians or by organizations formed and controlled by native Hawaiians); OR
- ☐ Section 207(c)(2) – Reservations, roads and other right of way, water storage and distribution facilities and practice target ranges of the United States;
- ☐ None of the Above

**Section 204(1)** – Lands not required for leasing under 207(a) (homesteading), DHHL may issue a general lease for public, commercial or multipurpose use, provided that Section 204 (2) is not implemented. This application is a commercial or multipurpose use:

- ☐ Land use or improvements WILL generate commercial profit to the applicant
- ☒ Land use or improvements WILL NOT generate commercial profit to the applicant



**Section 204(2)** – Lands not required for leasing under 207(a) (homesteading), DHHL is expressly authorized to negotiate, prior to negotiations with the general public, the disposition of Hawaiian home lands or any improvements thereon to a native Hawaiian, or organization or association owned or controlled by native Hawaiians, for commercial, industrial or other business purposes in accordance to section 171HRS.

- ☒ This Land Request IS made by an \*HHCA Homestead Beneficiary Organization.
- ☐ This Land Request IS NOT made by an \*HHCA Homestead Beneficiary Organization or individual or business owned and controlled by HHCA Beneficiaries.

**Section V. Beneficiary Consultation, Applicant Capacity and Land Use Benefit Analysis**

Trust Lands represent a finite amount of land, with thousands of HHCA eligible beneficiaries awaiting an award under the Residential, Agricultural or Pastoral Homesteading program, as well as dozens of Homestead Associations controlled by HHCA Beneficiaries working on homestead based development projects.

As a result, the applicant acknowledges that part of the process of considering applications for trust lands should include the following:

**1. Beneficiary Consultation**

- a. A Notice of All Land Requests to License/Lease Hawaiian Home Lands for non-homesteading purposes should be sent to all Homestead Associations with an opportunity for beneficiaries of the trust to comment and provide input.
- b. All input received should be provided to the Hawaiian Homes Commission.

**2. Applicant Capacity**

- a. If a Nonprofit Organization – should be assessed by DHHL Kulia i ka Nuu capacity program to determine financial, programmatic, governance and leadership capacity and determine legal structure. Additional information may be required to be submitted to DHHL.
- b. If an Individual/Business – should be assessed by DHHL to determine financial and leadership capacity and legal structure. Additional information may be required to be submitted to DHHL.

**3. Land Use Benefit Analysis**

- a. The land requested should have a direct or significant indirect benefit to the trust or to the beneficiaries of the trust. Additional information may be required to be submitted to DHHL.
- b. The land requested should comply with the spirit and intent of Section 207(c) and Section 204(2) by engaging beneficiary organizations. Additional information may be required to be submitted to DHHL to determine how Beneficiary Organizations are directly connected to the land request use.

The following authorized representative, submits this request for Hawaiian Home Lands:

Homestead Community Development Corporation  
**Print Individual or Organization Name**

April 30, 2012  
**Date**

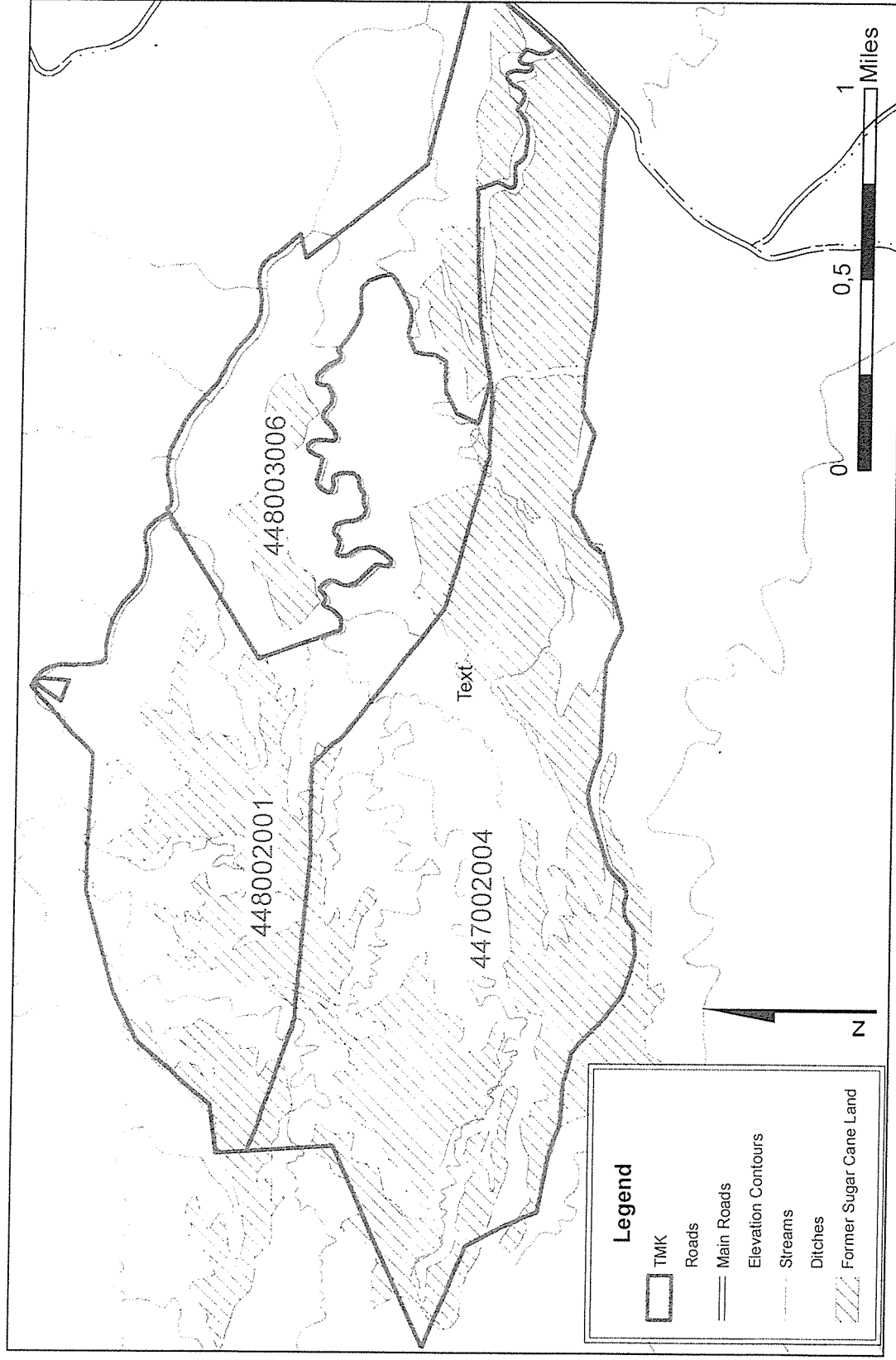
Robin Puanani Danner, HCDC Board President  
**Authorized Representative Name & Title**

  
**Signature**





# DHHL Anahola Lands - Green Energy Project Area



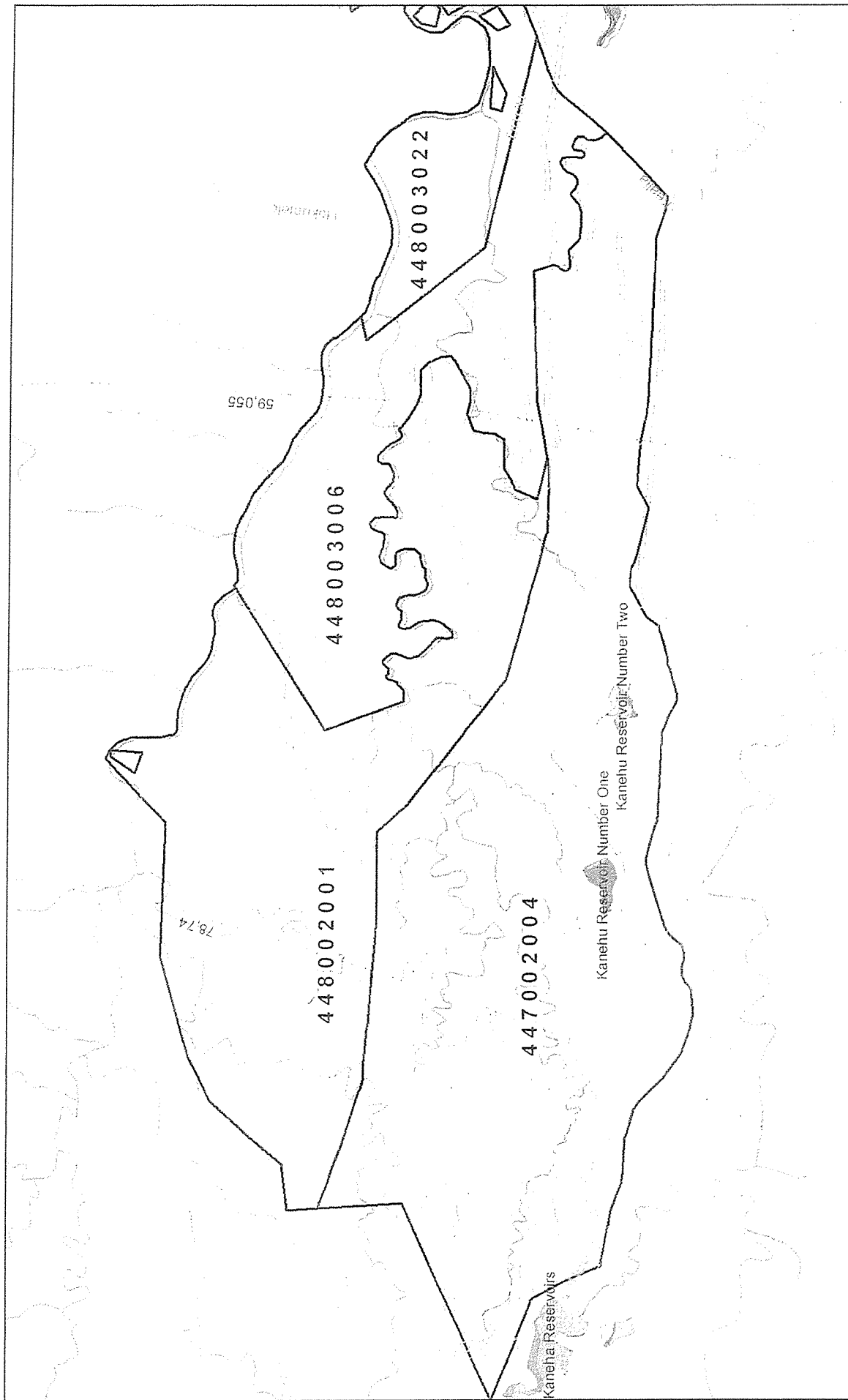


Exhibit C  
Land Study Bureau Soil Classification

AAHA - GREEN ENERGY HOMESTEAD LAND PREPARATION PROJECT

**Legend**

|   |   |   |            |                      |
|---|---|---|------------|----------------------|
| A | C | E | TMKs       | Lakes and Reservoirs |
| B | D |   | Main roads | Streams              |
|   |   |   | Ditches    | Rainfall             |
|   |   |   |            | Elevation contours   |

Agricultural Productivity Rating  
(A highest -> E lowest)

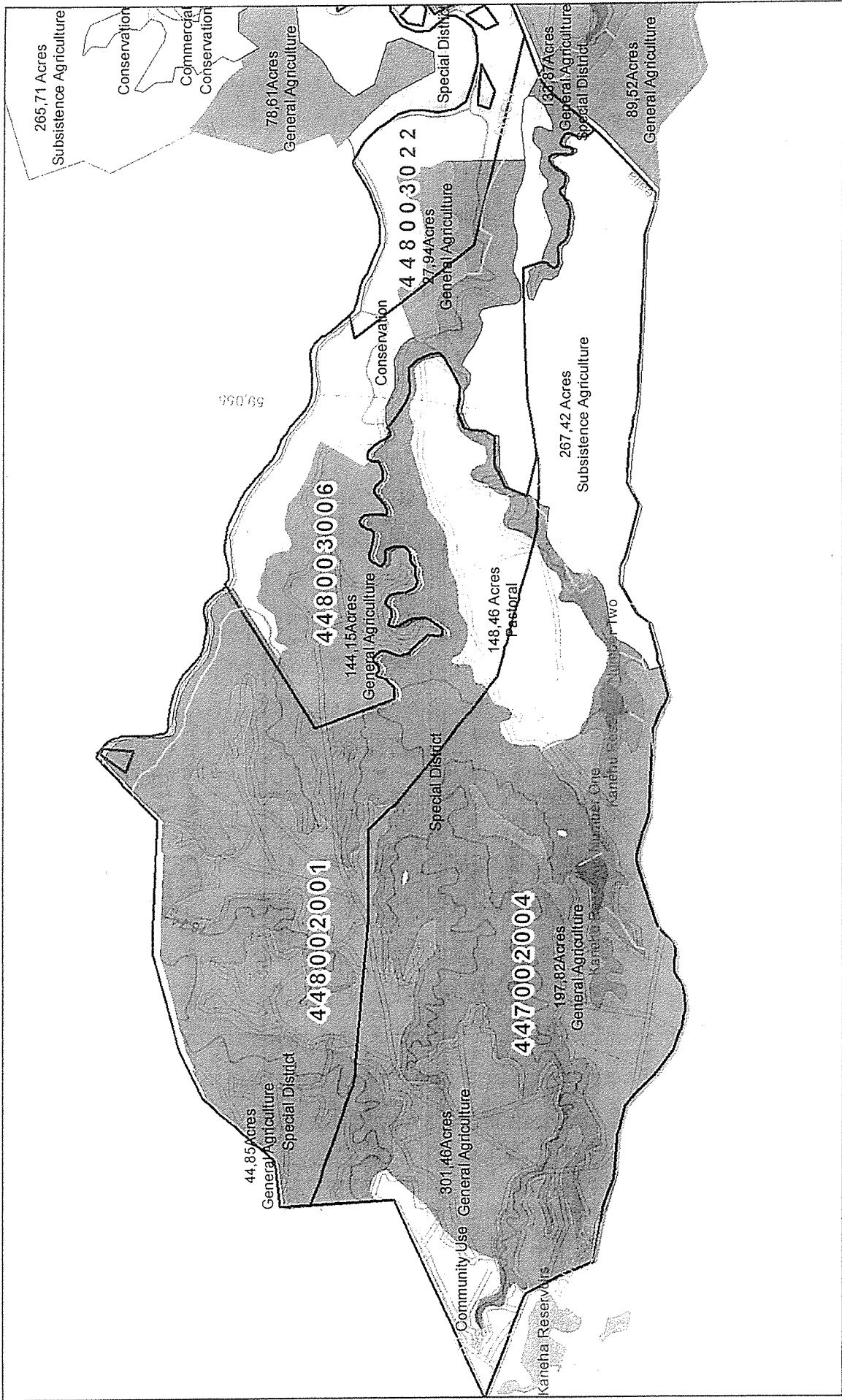


Exhibit B  
 " DHHL Land Utilization Plan "

AHHA - GREEN ENERGY HOMESTEAD LAND PREPARATION PROJECT

**Legend**

|  |                     |  |                         |
|--|---------------------|--|-------------------------|
|  | Community Use       |  | Pastoral                |
|  | Conservation        |  | Special District        |
|  | General Agriculture |  | Subsistence Agriculture |



**Before the Hawaiian Homes Commission**  
Testimony of Ashley K. Obrey and Camille K. Kalama  
(Native Hawaiian Legal Corporation)  
on behalf of Leighton Niakala Pang Kee  
June 18, 2012

On behalf of Leighton Niakala Pang Kee, we ask this Commission to reconsider the Department of Hawaiian Home Land's (DHHL) arbitrary denial of Mr. Pang Kee's application for a Hawaiian Home Lands lease based on the refusal of the DHHL to adopt a rule or interpret an existing rule justifying the acceptability of DNA as evidence to prove the requisite blood quantum. Additionally, we ask the Commission to set a clear policy accepting DNA test results as a means to prove that an applicant is qualified pursuant to the statute.

Like others who have turned to the Native Hawaiian Legal Corporation (NHLC) for help, Mr. Pang Kee has the problem of trying to prove that he qualifies for Hawaiian Home Land benefits when his deceased biological father is not on his birth certificate. As noted in his application and his petition for declaratory ruling on this matter, Mr. Pang Kee's mother, now-deceased, is of no less than 81.25 percent Hawaiian ancestry. This means that he is 40.625 percent Hawaiian from his mother, and he needs to prove that he is at least 10 percent Hawaiian from his father. Mr. Pang Kee's biological father is at least 50 percent Hawaiian, which would more than qualify Mr. Pang Kee as Native Hawaiian for Hawaiian Homes purposes.

Mr. Pang Kee applied for a DHHL lease in March 2012, using DNA evidence indicating that he was related to his deceased father's full biological brother, Mr. Rodney Kukonu, as uncle and nephew by a probability of 96.365 percent. It is worth noting that Mr. Kukonu is a current lessee on a homestead in Nanakuli. In support of his application, Mr. Pang Kee also submitted other relevant vital records as well as an affidavit of a cousin who attested to the circumstances of his birth.

In May, the DHHL notified Mr. Pang Kee that his application was denied, providing the following reason:

The Department has not made the decision whether to accept DNA test results as evidence of Hawaiian ancestry, much less the degree of certainty the Department will accept as proof of Hawaiian ancestry through DNA testing, nor does the Department possess the expertise necessary to interpret and evaluate DNA test results. Therefore, at the present time we are unable to use your test results to determine whether you have the requisite Hawaiian ancestry to qualify for Department benefits.

To deny a potential lessee his application simply because the DHHL has not decided, or has refused to decide, on its interpretation regarding DNA testing is unacceptably arbitrary.

First, the statute and rules do not preclude the use of DNA evidence. Indeed, Hawai'i Administrative Rules § 10-3-2, which governs qualifications of applicants, provides that an applicant "shall provide the department with documented proof that the applicant is: (1) At least eighteen years of age; and (2) A native Hawaiian." Section 10-3-3(b), entitled "Application processing", further provides in relevant part that

[w]ithin thirty days after the submission and filing of the completed application and all such other documents...the chairman or chairman's designee shall make a determination as to whether the applicant qualifies as an applicant. The determination shall be based upon the application form, birth, marriage, and death certificates, such other documents as the department may require the applicant to produce, and any investigation the department may conduct.

(Emphases added). There is no language in the rule that limits evidence to vital records; rather, the language is broad and gives the DHHL the flexibility to consider almost any type of evidence.

Second, it is no excuse that the DHHL does not “possess the expertise necessary to interpret and evaluate DNA test results.” As a state agency, the DHHL has a number of resources at its disposal. The Department of Health (DOH), for example, has its own geneticist. Thus, the DHHL could easily consult with the DOH for expertise on this issue. We also know that Kamehameha Schools (KS) accepts DNA test results for its qualification process and, therefore, KS could also be consulted as to its method of evaluating and interpreting results.

Finally, the DHHL must fulfill its trust duties to Native Hawaiians. As such, it must place Native Hawaiians on the land “in a prompt and efficient manner” -- not create additional insurmountable obstacles for them to get on the land.<sup>1</sup> Here, Mr. Pang Kee's natural father was never placed on his original birth certificate, and his mother's husband adopted Mr. Pang Kee during his childhood. Accordingly, he does not have the vital records to prove his genealogy. In light of the statutes of limitations and other jurisdictional issues<sup>2</sup>, NHLC's attempts to amend other clients' birth certificates in the courts have thus far been a challenge. Therefore, Mr. Pang Kee must rely on other types of evidence, including affidavits and his very strong DNA test results, which are not precluded by the DHHL's rules.

As a matter of policy and principles of trust law, potential beneficiaries should not have to deal with insurmountable burdens of proof to qualify for homestead land. Pursuant to the Hawaiian Homes Commission Act (HHCA), the State owes “a high duty of care” to Native Hawaiians. *See Ahuna v. DHHL*, 64 Haw. 327, 336, 640 P.2d 1161, 1167 (1982); *accord Kalima v. State*, 111 Hawai'i 84, 87-88, 137 P.3d 990, 993-94 (2006) (“The HHCA, together with the Hawai'i Admission Act, impose upon the State the duties and obligations of trustee to oversee the operations carried out under the authority of the HHCA.”). This trust obligation, undertaken by the federal government in enacting the HHCA, was assumed by the State when it was admitted to the United States. *See Ahuna*, 64 Haw. at 338, 640 P.2d at 1168. The Commission is the specific state entity charged with implementing this fiduciary duty. *Id.* It must adhere to “high fiduciary duties normally owed by a trustee to its beneficiaries.” *Id.* One key duty of a trustee is to deal fairly with his/her beneficiary in implementing the trust.

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<sup>1</sup> Section 101 of the HHCA establishes that two of the principal purposes of the Act is:

- (1) Establishing a permanent land base for the benefit and use of native Hawaiians, upon which they may live, farm, ranch, and otherwise engage in commercial or industrial or any other activities as authorized in this Act;
- (2) Placing native Hawaiians on the lands set aside under this Act in a prompt and efficient manner and assuring long-term tenancy to beneficiaries of this Act and their successors[.]

<sup>2</sup> The DOH continues to argue that there is no controversy between our clients and the DOH.

Consequently, it is incumbent upon the nine of you to address this issue, which is timely considering the proposed rule changes currently under review. Under these circumstances, the DHHL's inaction places Mr. Pang Kee in a dilemma -- he has scientifically based evidence of his blood quantum, but the DHHL will not consider it. Rather than refuse this evidence, the Commission should direct the DHHL to accept DNA test results as one form of evidence of one's qualification for Hawaiian Home Land benefits.

We note that Mr. Pang Kee's case is not an isolated incident; we know for a fact that there are other potential DHHL beneficiaries whose fathers are not listed on their birth certificates. Further, in our experience, the court puts the most weight on DNA evidence in paternity-related cases due to its scientific basis. Additionally, courts in criminal prosecutions rely on DNA evidence to imprison, as well as exonerate, defendants. Therefore, DNA test results should also be an acceptable form of evidence for HHCA purposes.

Given the aforementioned, we respectfully ask that the Commission reconsider the DHHL's denial of Leighton Pang Kee's application for a homestead lease and further direct the DHHL to enact a policy accepting DNA test results.

If DNA evidence is enough to put Hawaiians in jail, it should certainly be enough to put them back on the land.