

HAWAIIAN HOMES COMMISSION
Minutes of January 14 - 15, 2013
Meeting Held in Kapolei, Oahu

Pursuant to proper call, the 635th Regular Meeting of the Hawaiian Homes Commission was held at the Department of Hawaiian Home Lands, 91-5420 Kapolei Parkway, Kapolei, Hawaii, beginning at 9:40 a.m.

PRESENT Jobie M. K. Masagatani, Chairman Designate
 Imaikalani Aiu, Commissioner, Kauai
 Perry O. Artates, Commissioner, Maui
 Leimana DaMate, Commissioner, West Hawaii
 Gene Ross K. Davis, Commissioner, Molokai
 J. Kama Hopkins, Commissioner, Oahu
 Michael P. Kahikina, Commissioner, Oahu
 Ian B. Lee Loy, Commissioner, East Hawaii
 Renwick V. I. Tassill, Commissioner, Oahu

COUNSEL S. Kalani Bush, Deputy Attorney General

STAFF Derek Kimura, Executive Assistant to the Chairman
 Linda Chinn, Administrator, Land Management Division
 Francis Apoliona, Compliance Officer
 Darrell Yagodich, Administrator, Planning Office
 Dean Oshiro, Acting Administrator, Homestead Services Division
 Kamanao Mills, Special Assistant, Office of the Chairman
 Juan Garcia, District Supervisor, Homestead Services Division
 Kahana Albinio, Acting Property Development Manager, Land Management
 Division
 Carolyn Darr, Land Agent, Land Management Division
 Kaleo Manuel, Planner, Planning Office
 Julie Cachola, Planner, Planning Office
 Nancy McPherson, Planner, Planning Office
 Halealoha Ayau, Acting District Supervisor, Molokai
 Bob Freitas, Planner, Planning Office
 Paul AhYat, Compliance Officer Assistant
 Elaine Searle Secretary to the Commission

AMENDED

AGENDA Commissioner Hopkins moved, seconded by Commissioner Artates, to amend the agenda and convene with Items F-2, F-3, and F-4 after Section C items.

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
HAWAIIAN HOMES COMMISSION WORKSHOP/AGENDA
91-5420 Kapolei Parkway, Kapolei, Hawai'i
January 14, 9:30 a.m. and January 15, 2013, 12:30 p.m.

ORDER OF BUSINESS

Roll Call
Approval of Agenda

A - WORKSHOP PRESENTATIONS

- A-1 Native Hawaiian Preference
- A-2 Water Policy Plan - Water Reservations
- A-3 Energy Policy Update

B - PUBLIC TESTIMONY ON AGENDIZED ITEMS

C - OFFICE OF THE CHAIRMAN

- C-1 Authorization to Issue a Request for Proposals (RFP) for Utilization of Approximately 2,143 Acres of Land, Anahola, Island of Kaua'i
- C-2 Resolution No. 268 - Senator Daniel K. Inouye
- C-3 Resolution No. 269 - Senator Daniel K. Akaka
- C-4 Issues Under Discussion With Department of Interior - Status Report
- C-5 Native American Housing and Self Determination Act (NAHASDA) – Status Report

D - HOMESTEAD SERVICES DIVISION

- D-1 HSD Status Reports
Exhibits:
 - A - Homestead Lease and Application Totals and Monthly Activity Reports
 - B - Delinquency Report
- D-2 Approval of Various Lease Awards (see exhibit)
- D-3 Rescission of Homestead Lease Award and Reinstatement of Application - La'i'opua Villages 4 & 5, Undivided Interest - **ISAAC KALANIMAU TOM**, Lease No. 10635
- D-4 Approval of Various Assignment of Leasehold Interest in Recently Approved Lease Award - **TAMMY E. OBA**, Lease No. 11314
- D-5 Ratification of Loan Approvals (see exhibit)
- D-6 Approval of Consent to Mortgage (see exhibit)
- D-7 Schedule of Loan Delinquency Contested Case Hearings (see exhibit)
- D-8 Homestead Application Transfers / Cancellations (see exhibit)

- D-9 Commission Designation of Successors to Application Rights (see exhibit)
- D-10 Ratification of Designation of Successors to Leasehold Interest and Designation of Persons to Receive Net Proceeds (see exhibit)
- D-11 Approval of Assignment of Leasehold Interest (see exhibit)
- D-12 Approval of Amendment of Leasehold Interest (see exhibit)
- D-13 Cancellation of Lease - **BERNADETTE KOKO-SHIMOJO**
- D-14 Hawaiian Homes Commission's April 24, 2001, and February 26, 2002, Decisions - **SKYLLA VILLANUEVA**, Lease No. 3442, Lot No. 112A, Ho'olehua, Moloka'i, Hawai'i

F – LAND MANAGEMENT DIVISION

- F-1 Issuance of License, Keaukaha Community Association, Keaukaha, Island of Hawai'i
- F-2 Issuance of Right-of-Entry Permit, Kaua'i Island Utility Cooperative (KIUC), Waimea/Kekaha, Island of Kaua'i
- F-3 Issuance of Right-of-Entry Permit, Kekaha Community Association, Waimea/Kekaha, Island of Kaua'i
- F-4 Authorization for Direct Negotiation for Proposals for Renewable Energy Development, Island of Maui

J - GENERAL AGENDA

- J-1 Request to Address Commission - Bo Kahui, La'i'opua 2020
- J-2 Request to Address Commission - Josephine Tanimoto, La'i'opua Lessee
- J-3 Request to Address Commission - Danelle Kala Lindsey, Kaupe'a Lessee
- J-4 Request to Address Commission - Kawai Warren, Kekaha Hawaiian Homes Association

RECESS

NOTE: No Community Meeting Scheduled for January, 2013

If you require an auxiliary aid or accommodations due to a disability, please contact 808-620-9590 at least five (5) working days prior to the scheduled meeting or email kuuwehi.hiraishi@hawaii.gov.

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

HAWAIIAN HOMES COMMISSION AGENDA

91-5420 Kapolei Parkway, Kapolei, Hawai'i

January 15, 2013, 12:30 p.m.

G - PLANNING OFFICE

- G-1 Removal of Moratorium on Subdivisions and Transfer of Agriculture and Pastoral Leases
- G-2 Authorize the Chairman to Take Actions to Secure the Control and Use of Water in Waimea, Kaua'i, Through State Administrative Actions


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.

- 1. Communications Between Commissioners and Between Commissioners and DHHL Staff
- 2. Honokaia Ohana et al. v Masagatani et al., Civil No. 09-1-1615-07
- 3. In the Matter of Changing Counsel for HHC and DHHL, and Changing Administrative Rules
- 4. Claim for Replacement of Septic System - Leonard Low, Lalamilo, Waimea, Hawai'i

ANNOUNCEMENTS AND ADJOURNMENT

- 1. Next Meeting – February 19, 2013, Kapolei, Hawai'i
- 2. Other Announcements
- 3. Adjournment



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

COMMISSION MEMBERS

Imaikalani P. Aiu, Kaua'i
Perry O. Artates, Maui
Leimana DaMate, West Hawai'i
Gene Ross K. Davis, Moloka'i

J. Kama Hopkins, O'ahu
Michael P. Kahikina, O'ahu
Ian B. Lee Loy, East Hawai'i
Renwick V. I. Tassill, O'ahu

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MOTION/ACTION

Commissioner Lee Loy moved, seconded by Commissioner Hopkins, to convene with executive session, Item No. 1. Request for Independent Counsel, after Section B. Motion carried unanimously.

A - WORKSHOP PRESENTATIONS

ITEM A-1

SUBJECT: Native Hawaiian Preference

Land Management Administrator Linda Chinn stated that the general leasing program, as set forth under Section 204 of the Hawaiian Homes Commission Act (HHCA), allows the department to generate revenue for the purposes of the HHCA, and, through the Island Regional Plan, identifies strategic parcels of land for long-term leasing for commercial and industrial use, and sets the annual rent for each particular property, based on fair-market appraisal, pursuant to Chapter 171 of the Hawaii Revised Statutes (HRS).

As of June 30, 2012, 126 general leases existed, statewide, generating \$10.16 million in annual revenue. Four general leases were received from the State as part of the Act 14 transfer - three on Kauai, and one in Hilo (Industrial Steel), which will add \$350,000 in annual rent.

Two provisions in the HHCA govern a general leasing process. Today's agenda addresses Sections 204(a)2 and 220.5, which allow the department to general lease, according to Chapter 171.60, in project development.

In the original HHCA, it said that the department may manage available lands not required for homesteading purposes, lease lands for revenue generating purposes to the general public, with the same terms, conditions, and restrictions applicable to the disposition of public land in Chapter 171. An amendment made in 1978, at the Hawaii Constitutional Convention, under Section 204, added "provided further that the department is expressly authorized to negotiate, prior to negotiation with the general public, the disposition of a lease to a native Hawaiian or organization controlled by native Hawaiians, for commercial-industrial use, with the procedures set forth in Section 159 and notice requirement of 171.16 and lease limitation of 171.17."

Commission action in 1981 adopted a general leasing policy, as described by the amended constitution, which provides a native Hawaiian an opportunity to respond first to the offering. Parts of the requirements are to apply, have a kumu Ohana form, personal information, and no less than 50% native Hawaiian blood quantum. After verification, notices are sent to qualified applicants and a sealed bid on the lease needs to be submitted at a designated auction time. The selection will be offered to the highest bidder. Chapter 171 provides that the lease rent shall be based on appraised lease value, preventing the department from leasing to native Hawaiians below market rent. On October 23, 2001, the commission rescinded the general leasing policy,

that was adopted on September 24, which gave preference to native Hawaiians. The commission supported the recommendation of the department.

In 1981 to 2001, sixteen (16) general leases were issued under the general policy and eleven (11) non-performing leases were terminated or cancelled. The native Hawaiian preference policy has not increased the proportion of native Hawaiian general leases. During the twenty (20)-year period, neither general public nor native Hawaiian leases were generated from that bidding process, said L. Chinn. The preference policy was removed, due to the question of constitutionality in the Barrett vs. State of Hawaii case. The commission then indicated that it preferred greater business assistance efforts beyond the policy to help achieve the goal of increasing the native Hawaiian businesses on general lease lands; thus, the department teamed with Alu Like to foster more native Hawaiian businesses to improve the goal of leasing Hawaiian home lands. In 2001, after rescinding the preference policy, the department was able to increase revenue from under \$6 million to over \$10 million. Tenants included Home Depot, Safeway, Target, and the DeBartolo project, which, at full build-out, is estimated to bring in \$4.7 million, to the Trust, noted L.Chinn.

If the commission considers re-qualifying native Hawaiians for general leases, L. Chinn expressed that consideration be given to experience, a business plan, and financial capability, in moving the projects forward, as these were some of the hindrances experienced with prior general leases. Projects over one acre are challenging, as there may be up-front costs to consider. If a native Hawaiian entity can compete on these larger scales, L. Chinn encourages them to submit their bid on the project.

A diagram displayed how a general lease process is executed, which could take up to 12 months to completion. Today's input involves steps the commission would like to see established in the native Hawaiian preference policy. L. Chinn responded to a question on "upset rent," which is a market rent determined by an independent appraiser for fair market value; thus, when a sealed bid is submitted, the bid amount cannot go below the appraised amount. Commissioner Hopkins asked why some leases were cancelled. L. Chinn responded that part of the requirements include a three-year, build-out plan, which covered rent, insurance, and architectural plans. Many found they could not afford the rent, which is non-refundable. Generally, it takes 12 months to re-auction the land, resulting in two to three years of lost revenue. Commissioner Hopkins inquired about the DeBartolo project in Kapolei. An RFP (Request for Proposal) was issued in 2006 for the shopping center, noted L. Chinn. An option was signed in 2008 which obligates DeBartolo to pay \$500,000 annually. Commissioner Lee Loy asked about leases being cancelled. L. Chinn noted that the department attempts to work out a plan, or offer some leeway, prior to terminating a lease. Planning Administrator Darrell Yagodich noted that 20 years ago, there was a business assistance program involving 125 native Hawaiian businesses. Most could not benefit from DHHL lands because they had flower shops, restaurants, and construction companies, which lacked high-volume traffic. DHHL could not provide the kind of necessary resources for them, to take a raw piece of land and build it up. L. Chinn noted that appraisals are based on highest and best use of the property and its location, with a higher value placed on land with infrastructure.

Commissioner Lee Loy inquired whether a preference issue for native Hawaiians would require federal authorization. Chair noted that further discussions may be pursued with federal representative Lisa Oshiro, Office of Native Hawaiian Relations, Department of Interior. Commissioner Hopkins requested to adjourn in executive session, to clarify with counsel, on questions and issues pertaining to Section 204(a)2.

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Lee Loy, to adjourn to executive session to discuss the above-stated matter. Commissioner DaMate opposed the motion. Motion carried.

RECESS 10:40 a.m.

EXECUTIVE SESSION

The Commission convened in executive session pursuant to Section 92-5(a), HRS, to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities on the above-mentioned item.

MOTION/ACTION

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

RECONVENE 11:07 a.m.

ITEM A-2

SUBJECT: Water Policy Plan - Water Reservations

Planner Kaleo Manuel and Consultant Jonathan Likeke Scheuer, PhD, presented a refresher workshop on the Hawaiian Homes Commission's (HHC) authority and rights to water reservations and licenses. The initial workshop was presented in July 2013. An outline of the water policy plan and water rights presentation was shared with the commission and made a part of these minutes as Exhibit A, for presentation Item A-2.

The State is currently updating its water policy plan with a direct focus on Hawaiian home lands. The State should know what type of water is needed, and where it is needed, on all of its lands and the Land Development Division has been coordinating with all of the Counties, to ensure the department's need for water.

J. Scheuer presented several major authority water usages by Department of Hawaiian Home Lands:

Water Reservations – The specific power of the Commission on Water Resource Management; the State of Hawaii, as a trustee of water, has the responsibility to reserve water for DHHL uses for homesteading.

Water Licenses – These are lease-like agreements issued by the State of Hawaii for water that originates on state land, and used by private entity for hydro-power generation and agricultural uses. DHHL receives a 30% of revenue generated from any water licenses.

Public Trust Status - Public Trust uses have priority over other uses. Kamehameha III held on to water as a public trust for the benefit of the people, which was not to be privately held. A series of court decisions in the late kingdom, as a territory, began to treat water more and more like private property that could be bought and sold. This was reversed in the 1970's through court decisions, re-establishing the water in Hawaii as a Public Trust.

Priority Development - In designated water management areas, DHHL has the ability to enforce permitting requirements to develop water onto its lands.

Acquire Water Licenses - Section 221 allows DHHL to secure, from the Board of Land and Natural Resources (BLNR), any license that has been issued to a private user to develop their lands. The department has this power, although historically, it has not practiced it.

Issue Legal Agreements for Transmission - HHC has power to issue various agreements to transmit water to DHHL: licenses, leases, or rights-of-entry to other parties.

Deliver Water to Homesteaders and Non-Homesteaders - DHHL has the power within the HHCA, to deliver water for homesteaders and non-homesteaders, and to derive revenue from water users.

Information was presented on the Water Reservations and Water Licenses:

Water Reservation - A "kapu" on water. For a particular area, for a particular use, this water cannot be used by any other entity. This is described in two areas in the Water Code: HRS 174C-48(d), 101(a), and HAR 13-171-60. DHHL may get a water reservation anywhere in the State of Hawaii, regardless if it is designated as a water management area. The process to submit a request was provided in a handout, to be made a part of these minutes as Exhibit B, Item A-2.

Water Licenses - Issued by BLNR and governed under HRS 171-58. One of the largest water licenses used by a private entity is Hawaii Commercial and Sugar Company and East Maui Irrigation, taking water from East Maui and delivering it to Upcountry and Central Maui for sugar irrigation. Kauai Island Utility Cooperative uses its water for hydro purposes on Kauai.

There are no administrative rules on how a license is supposed to be issued. Under the HHCA, the department has a right to seek a water license from the State and petition for a Declaratory Ruling by the Department of Land and Natural Resources (DLNR), based on Section 221.

Questions and Answers (Q&A)

Q - Which one takes precedence over the other?

A - Water Reservations and Water Licenses are both important processes and work hand in hand.

Q - What are the processes for drilling a well on property and developing a water source?

A - There has been only one individual who applied for a license to drill a well on property, which was referred to the Water Commission.

AMENDED AGENDA

Moved by Commissioner Hopkins, seconded by Commissioner Aiu to convene with Items F-1 through F-4, after Item C-1; then, convene in executive session after public testimony, to discuss Item No. 1. Response from the Attorney General on Request for Independent Counsel.

ITEM A-3

SUBJECT: Energy Policy Update

Planning Administrator Darrell Yagodich and Planner Julie Cachola presented an update of a status report on the Energy Policy, which was presented in October 2012, and transmitted to the department for review. J. Cachola corrected errors on Page 1; "Purpose of the Workshop", No. 1, change ~~December 2012~~ to October 2012; In "Summary Historical Background", No. 1, In 2001, Hawaii established a renewable portfolio goal. ~~in~~ In 2004, the ~~goals~~ goal was replaced with a renewable portfolio standard; and, No. 4, delete (~~see Exhibit A~~). J. Cachola reviewed the schedule of the energy policy initiatives and a timeframe of these activities. She said there is an existing policy in place, and this addresses the amendments proposed by the Commission's Ad Hoc Committee.

Chair inquired whether legal due diligence and policy due diligence are items that the department is addressing in determining which draft recommendations are proposed. J. Cachola verified this, and, added that the existing energy policy will be reassessed and come before the commission, again, for an update. Commissioner Hopkins recommended that Office of Native Hawaiian Relations be added to the list of key informants.

B - PUBLIC TESTIMONY ON AGENDIZED ITEMS

Bo Kahui, Lai Opua 2020 - Re: Item C-5 - Lai Opua 2020 submitted a NAHASDA grant for \$21 million. B. Kahui is disappointed that only \$740,000 was proffered from NAHASDA funding. Lai Opua 2020 is ready to proceed and aspires to enhance its funding resources, noted B. Kahui, and is hopeful the commission validates its request for additional NAHASDA funding. Testimony submitted to be made a part of these minutes as Exhibit A, Public Testimony.

Kekoa Enomoto, Waiohuli Undivided Interest (UI) Lessees Association - Re: Item A-2, K. Enomoto read verbatim, her testimony, relating to a water policy plan in support of water reservations for the 320 Waiohuli UI lessees, 56 prospective Waihee residential lots, 66 Keokea farm lots, Kula Ag Park, and the Pulehunui Master Plan. She urged the commission to be proactive in seeking water. K. Enomoto's testimony to be made a part of these minutes as Exhibit B, Public Testimony.

Canen Hookano, Kauai Beneficiary - Re: Item C-1, C. Hookano represented his Ohana in Anahola. He asked the commission to schedule a meeting in Anahola, to inform the Anahola community, with regard to the use of 2,000 acres for the use of a renewable energy project. He requested deferral on this item. Item F-3, C. Hookano agreed to grant Kekaha Community Association access to the West Kauai mauka lands. Re: Item F-2, C. Hookano requested denying KIUC (Kauai Island Utility Cooperative) access to West Kauai Mauka lands.

Robin Danner, Kauai Homesteader - Re: Item C-1, The 1978 Constitutional Convention stated that the Hawaiian Homes Trust was relieved of having to generate revenue, thus, the purpose of the Nelson suit would obligate the State to subsidize funding for the Department of Hawaiian Home Lands. R. Danner contended that Hawaiian home lands should be used for homesteading, mercantile, and commercial purposes for native Hawaiians, with advice from DOI on policy changes to native Hawaiian preference on commercial lands. She affirmed that native Hawaiians should be stakeholders, along with other agencies, due to improved homestead community leadership. Re: Item A-2, R. Danner strongly supported the water policy plan. Re: Item A-3, R. Danner applauded the revised renewable energy policy, which places beneficiaries at the center, and recommended that DOI be advised of any decisions. Re: Item C-5, R. Danner recommended that HCDC's "Residential Employment and Improvement Program," to assist homesteaders with home improvements, be approved for NAHASDA funding. Re: Item F-1, R. Danner supported issuing a license to the Keaukaha Community Association in Hilo. Re: Item F-2, R. Danner supported a right-of-entry for both KIUC (Kauai Island Utility Cooperative) on Kauai, and, Kekaha Community Association, Kekaha, Kauai in Item F-3.

Sherry Cummings-Yokotake, Anahola Homesteader - S. Yokotake noted that the Anahola Hawaiian Homestead Association members are available to answer any questions posed about its projects in Anahola, Kauai.

Alan Murakami, Attorney - Re: Item A-1, A. Murakami agreed that the information on the native Hawaiian preference was instructive, and commended the commission for recognizing some of the severe problems that it invites, especially in light of Act 302 that promotes the policy of self-governance and self-determination. Re: Item A-2, Native Hawaiian preferences should be recognized, with respect to water and energy. It should be made available to native Hawaiian beneficiaries. He urged that the purpose clause in HHCA, Section 101, calling for adequate supply of water for homesteads, to be developed, is important. Without water, land is virtually worthless.

Paul Richards - President, Waimanalo Homestead Association and Na Kuhio Ike - Re: Item A-2, P. Richards shared that a Waimanalo lessee dug a well on his property in the 1940's and sustained his family's water needs over a number of years. He submitted testimony on Items A-3 and F-4, in support of energy and geothermal alternative explorations on Hawaiian home lands, which may provide financial possibilities. He recommended a pre-determined benefits package be available to beneficiaries, for the duration of the project, for the advantage of the Trust and its beneficiaries. He recommended that profits generated from the alternative energy resource be reinvested or funded towards an endowment fund, with an emphasis on energy, science, mathematical, and research programs for beneficiaries.

Josiah Hoohuli - Re: Item F-4, Paul Richards provided testimony for J. Hoohuli. J. Hoohuli supported renewable energy development as part of its energy policy, to include geothermal exploration on Hawaiian home lands by qualified entities. He recommended that community associations receive a pre-determined benefits package over the duration of the project. He agreed with Paul Richards on how resources are to be reinvested through an endowment fund for the educational needs of beneficiaries.

Pat Brandt, CEO, Innovations Development Group, and Kapolei Homesteader - Re: Item F-4, P. Brandt urged the commission to support Item F-4 on due diligence and to malama the things that we, as natives, are responsible for. Preliminary data indicated that DHHL may have energy resources. She added there has been no comprehensive inventory of energy resources on DHHL lands, nor has there been a plan to achieve this with private-sector technology partners. Renewable energy development opportunities are increasing and the time is ripe to achieve this goal. HECO and MECO projects have surfaced, which play a significant role for the department to negotiate energy development in renewable energy. Testimony submitted is to be made a part of these minutes as Exhibit C, Public Testimony.

Mililani Trask, IDG - Re: Item F-4, M. Trask urged the commission to pass Item F-4 on renewable energy development. She is awaiting the department's bid on a 200 megawatt RFP (Request for Proposal) posted some time ago, which is planned to be addressed soon on a PUC (Public Utilities Commission) agenda. Maui has significant energy resources in Pulehunui, Kahikinui, and Honokowai, but the department lacks the capability to fund and test its resources. She reiterated the importance of bringing this benefit to the department, by passing this item. M. Trask said the commission has a Trust obligation to not let this opportunity slip away.

Commissioner Lee Loy added that its Ad Hoc Energy Committee submitted a report, and today's representation is the first inclination of its findings. Chair articulated that the recommendation by the Ad Hoc Energy Committee was accepted in October, 2012. Today's report contains the status of that recommendation. Testimony submitted is to be made a part of these minutes as Exhibit D, Public Testimony.

Tamar deFries for Hulu Lindsey - Re: Item F-4, T. deFries submitted testimony for H. Lindsey, who is in support of Item F-4, to develop renewable energy projects on Hawaiian home lands. Her testimony is made a part of these minutes as Exhibit E, Public Testimony. T. deFries also spoke in favor of Item F-4, and thanked Chair for sharing information on a budget review at a recent community meeting. She supports the La'i`Ōpua 2020 program, and what it will render to beneficiaries living in the Westside of Hawaii Island.

Blossom Feiteira, Association of Hawaiians for Homestead Lands (AHHL) - Re: Item C-1, B. Feiteira, conveyed to the commission that HCDC (Homestead Community Development Corporation) initiated the original land license request for the Anahola renewable energy project. Re: Item F-1, B. Feiteira supported the issuance of a license to the Keaukaha Community Association. Re: Item F-3, B. Feiteira supported the vision and intent for the Right-of-Entry permit to Kekaha Community Association. She noted that AHHL submitted a draft Resolution 265, to establish a partnership in Waimea, Kauai, for agriculture opportunities. A decision of an MOU (memorandum of understanding) has yet to come before the commission, and the process of due diligence is long overdue. She requested having this placed on next month's agenda. Re: Item F-4, B. Feiteira requested that the commission meet with the Maui community, prior to negotiations with energy providers.

Homelani Schaedel, President, Maluohai Residents Association - Re: Item C-1, H. Schaedel supported Scenario B - to provide public notice of its intention to lease public lands through negotiations; to establish reasonable criteria for the selection of the lessee, and to determine the applicants who meet the criteria for election. She supported consideration of the "haves" and "have nots" - in relation to those associations who do not have available lands to work with. Ancestral chiefs needed to be strong and healthy to make decisions for all, similar to commission decisions for beneficiaries of the trust. She welcomed beneficiary consultation, in relation to the energy policy.

Phoebe Eng, Adviser, Kekaha Hawaiian Homestead Association - Re: Item F-3, The Right-of-Entry (ROE) is a milestone for the community of Kekaha. This action will result in a growth period for the beneficiaries in water rights, and in consultations with attorneys, DHHL Planners, and KIUC (Kauai Island Utility Cooperative). Re: Item A-1, the charges of the Department of Interior and Office on Asian and Pacific Islander Affairs is clearly a listening tool on what its relationship is to the department and the native Hawaiian community. The native Hawaiian community does not have the same status as Native American tribes. A note of caution on the questioning of the federal level for jurisdiction, on issues pertaining to the state

protective water rights, and the status of native Hawaiians to their lands. Re: Item C-1, P. Eng preferred this subject be vetted further, to display Kauai Island's strong representation.

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Lee Loy, to adjourn to executive session. Motion carried unanimously.

RECESS 1:45 p.m.

EXECUTIVE SESSION

The Commission convened 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 the matter listed below.

1. Response from the Attorney General on Request for Independent Counsel.

MOTION/ACTION

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

RECONVENE 3:15 p.m.

AMENDED AGENDA

Moved by Commission Hopkins, seconded by Commission Lee Loy to convene with Item F-1 prior to Item C-1. Motion carried unanimously.

ITEM NO: F-1

SUBJECT: Issuance of License, Keaukaha Community Association, Keaukaha, Island of Hawaii

RECOMMENDATION

Administrator Linda Chinn recommended approval of a benefits license to Keaukaha Community Association (KCA), for the purpose of continuing its native Hawaiian Learning Center operation for early childhood education, a learning center for computer skills and a sewing center for families in Keaukaha, for a period of 10 years, with an option for an additional 5 years.

MOTION

Moved by Commissioner Hopkins, seconded by Commissioner Lee Loy.

DISCUSSION

L. Chinn introduced Mapuana Waipa, Keaukaha Community Association member. M. Waipa appealed to extend a 10-year license to KCA. She noted that KCA works in partnership with Queen Liliuokalani Children's Center, Kamehameha Schools, as well as OHA (Office of Hawaiian Affairs) and DHHL, in providing afterschool and night-time tutoring for students. M. Waipa thanked the commission for consideration of this proposal.

ACTION

Motion carried. Commissioners DaMate and Lee Loy were excused when the vote was called.

C - OFFICE OF THE CHAIRMAN

ITEM NO: C-1

SUBJECT: Authorization to Issue a Request for Proposals (RFP) for Utilization of Approximately 2,143 Acres of Land, Anahola, Island of Kauai

RECOMMENDATION

The recommended action is that Hawaiian Homes Commission authorize the Department of Hawaiian Home Lands to issue a Request for Proposals (RFP) of approximately 2,143 acres of land in Anahola, Island of Kauai. The authorization would allow for advertising the RFP with set criteria; expend budgeted funds for the purposes of appraisals, advertising, related costs; authorize the Chair to implement the process for selecting potential lessees; authorize the Chair to negotiate terms and conditions, and to retain outside legal counsel, if necessary, for the purpose of lease negotiations, stated Norman Sakamoto, Land Development Specialist.

MOTION

Moved by Commissioner Hopkins, seconded by Commissioner Aiu.

DISCUSSION

Two options are available for income generating and returning land to DHHL with the clearing of Albizia trees for future uses, noted N. Sakamoto. He provided two scenarios:

Scenario A: HHCA (Hawaiian Homes Commission Act) does not allow a non-competitive lease license to HCDC (Homestead Community Development Corporation) as set forth in the

proposal. Counsel advised that leasing to an alternative energy producer may be allowed, provided that requirements of HRS Sections 171.95 and 171.3 are met, noted N. Sakamoto. Green Energy and HCDC continue to affirm that HCDC be named either as a primary lessee, a co-lessee, or licensee of the property. The remaining course of action involves: 1) terms of the lease, 2) two public hearings, and 3) homestead benefits agreement, etc.

Scenario B: Utilize Section 204(a)2 of HHCA, 1920, as amended, to general lease, which would require: 1) public notice with intention to lease to anyone securing the lease, and filing an application no later than 45 days after first publication of notice; 2) establish criteria for selection of lessee; and 3) selection of a lessee who submits the highest offer in the sealed bid, if criteria is met by two or more applicants, and deposited with the department.

Robin Danner, HCDC president, HCDC for Anahola, Kauai and Waimea, Island of Hawaii, commented that the project ensures 20 years of income to the Trust, with 1,100 acres of cleared Albizia, with the return of some lands for agricultural use. Negotiations begun in August 2012 resulted in all terms agreed upon, except for final language on a land withdrawal section of the license, and disposition of a license to HCDC, to sublease to GET (Green Energy Team) or as co-licensees. DHHL and the AG's (Attorney General) office claim HCDC is not eligible to be on the license, but does not state why, noted Ms. Danner. She asserted that DHHL has deliberately taken an April 30, 2012, proposal; revised it; removed HCDC from the project, and submitted its own project. She recommended that the commission reject DHHL's request to issue an RFP, to make public the AG's opinion on eligibility, and approve the original HCDC/GET request, authorizing the department to issue a license to both of their entities. She purported that HCDC qualifies under two DHHL rulings, as a 1) eleemosynary, and 2) public-purpose entity. A statement was read from Frank Cummins, complimenting HCDC's plans for future homesteading usage.

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Aiu, to adjourn to executive session. Motion carried unanimously.

RECESS 3:48 p.m.

EXECUTIVE SESSION

The Commission convened 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 the above-stated matter.

MOTION/ACTION

Moved by Commissioner Lee Loy, seconded by Commissioner Artates, to reconvene in regular session. Motion carried unanimously.

RECONVENE: 4:02 p.m.

WITHDRAWN MOTION

Commissioner Hopkins withdrew his motion. There was no seconded to this motion.

DISCUSSION

Alan Murakami, NHLC (Native Hawaiian Legal Corporation) counsel for HCDC, testified that deferring this item sets a bad precedent. He believed the law states clearly that a board may lease, at a nominal consideration, to an eleemosynary organization, by direct negotiation without recourse to public auction, and he contended that HCDC is an eleemosynary organization and a mercantile entity; citing rules that apply to this status. He encouraged the commission to amend their decision and endorse the issuance of the RFP as submitted, to allow native Hawaiians the ability to make money and enhance their economic self-sufficiency through the use of Trust lands, as provided under Hawaiian Homes Commission Act, Sections 204 and 207.

Commissioner Hopkins conveyed that based on discussions in executive session, it would be pointless to amend the decision. Commissioner Lee Loy added that information shared in executive session will eventually unfold as discussion continues. A. Murakami expressed frustration with staff and the attorney general's office. He is considering a contested case hearing, based on inconclusive evidence provided by DHHL. He contends that the proposal by HCDC is the right way. He recommended that the commission pursue independent counsel, to resolve the issue.

ITEM NO: F-2

SUBJECT: Issuance of Right-of-Entry Permit, Kauai Island Utility Cooperative (KIUC),
Waimea/Kekaha, Island of Kauai

RECOMMENDATION

That the Hawaiian Homes Commission approve the issuance of a Right-of-Entry (ROE) to Kauai Island Utility Cooperative (KIUC), strictly for purposes of accessing and conducting due diligence studies at Waimea/Kekaha, Island of Kauai, to assess potential hydro-renewable energy usage, expressed Administrator L. Chinn.

MOTION

Moved by Commissioner Aiu, seconded by Commissioner DaMate.

DISCUSSION

L. Chinn noted that due diligence will last for a period of two (2) years for a hydro and irrigation project, utilizing the Kokee Ditch Irrigation System. The community and other interested parties would continue to have access to the property. CEO David Bissell, KIUC, was available to answer questions. A request was made to view a copy of the "Request Form for Non-Homesteading Land Use Purposes."

AMENDED MOTION

Moved by Commissioner Hopkins, seconded by Commissioner Lee Loy, to add: **"Item No. 15, Verification that no other comments were received through the Request for Non-Homesteading Land Use Purposes, and that a copy be provided to the commission."**

DISCUSSION

KIUC initially had a 30-day ROE, but required additional time. This approval will provide KIUC that opportunity. Commissioner Lee Loy inquired whether any other community organizations were involved in conversations regarding this project. D. Bissell affirmed that conversations took place with KHHA (Kekaha Hawaiian Homestead Association) and HCDC (Homestead Community Development Corporation) over the past year. Commissioner Hopkins requested a vote on the amended motion.

AMENDED ACTION

Motion carried unanimously.

DISCUSSION

N. Sakamoto conveyed that no formal project has been formulated, as only informal meetings have taken place. Planner Kaleo Manuel noted that the Planning Division spent several months discussing numerous homestead issues, which included the use of Waimea uplands. The assertion of water rights will be presented in tomorrow's submittal. Three of the projects are compatible with hydro/renewable energy development. One of the priority projects in the area encourages agricultural usage and was discussed with beneficiaries, at length. L. Chinn conveyed that the ROE should provide beneficiaries an opportunity to assess and study what they plan to accomplish.

The department is in discussions with DLNR (Department of Land and Natural Resources) for the possibility of a hydro project with KIUC. Workshops will be presented to the commission regarding the elements of the entire project, prior to any decision-making, added Chair.

President Kawai Warren, Kekaha Hawaiian Homestead Community (KHHC), articulated how the community spent several months, establishing its farm plan. More information is needed on the feasibility. Having KIUC investigate the possibilities will bring potential growth to the area. D. Bissell noted that the first phase will involve a study phase, which could subsequently move into permitting and hydro planning. D. Bissell affirmed that KIUC is committed to the people of Kauai, and that no project will move forward unless the people support it. D. Bissell explained how the project is being conceived, to eventually provide resources for agricultural needs. A status report will be submitted after one year's study. The Chair recapped that the submittal will address water/irrigation and farm planning usage.

ACTION

Motion carried unanimously.

ITEM NO: F-3

SUBJECT: Issuance of Right-of-Entry Permit, Kekaha Community Association, Waimea/Kekaha, Island of Kauai

RECOMMENDATION

That approval be granted for the issuance of a Right-of-Entry (ROE) to Kekaha Hawaiian Homestead Association (KHHA) for the purpose of accessing Hawaiian home lands at Waimea/Kekaha, Kauai, noted Administrator L. Chinn.

MOTION

Moved by Commissioner Aiu, seconded by Commissioner Tassill.

DISCUSSION

Kekaha Hawaiian Homestead Association (KHHA) envisions Puu Opae as a cultural area where Hawaiians will reconnect with the land and water, to ensure their self-sufficiency. A limited ROE was issued to KHHA, providing continuous access, as needed. Exhibit A of this Item F-3 provides a summary of things accomplished and things to be accomplished. A two-year period will offer them time for eventual review and approval at a later time. Another entity has expressed an interest in providing another plan. The department will provide a response to them, noted Chair.

K. Warren emphasized that a home rule Kekaha community has a farm plan, to sustain a system that provides jobs as they work their plan. This is a small opportunity for lands to be offered for sustainability, with huge returns in the end for the State. Commissioner Lee Loy encouraged both KIUC and KHHA to develop a partnership and sustainability in helping each other.

K. Warren encouraged the commission, to direct DHHL planners to be part of this win-win process for everyone.

ACTION

Motion carried unanimously.

ITEM NO: F-4

SUBJECT: Authorization for Direct Negotiation for Proposals for Renewable Energy Development, Island of Maui

RECOMMENDATION

That Hawaiian Homes Commission authorize DHHL to conduct direct negotiations with alternative energy developers for renewable energy development on Hawaiian home lands, on Maui, as identified on three tracks: Kahikinui, Pulehunui, and Honokowai. The renewable energy projects can be in biomass, wind, solar, hydroelectric, algae or other types. Authorization to allow the following:

1. To publish a public notice of solicitation from developers of alternative energy that will reduce reliance on fossil fuel; provide renewable energy producers an opportunity to participate; require renewable energy producer to submit letter of intent, within 14 days, information required by HRS 171-95.3;
2. To authorize the Chair to select one or more developers to directly negotiate a lease for each respective tract, and reserve the right to develop geothermal energy within the Kahikinui Tract;
3. To authorize the Chair to negotiate terms and conditions of the general lease with potential developers, subject to final approval of negotiated agreement by Hawaiian Homes Commission;
4. Retain outside legal counsel, as necessary.

MOTION

Moved by Commissioner Tassill, seconded by Commissioner Artates.

DISCUSSION

If approved, the notice needs to be published this Friday, noted L. Chinn. The last day to submit a bid is February 1, 2013. HECO's (Hawaiian Electric Company) final RFP (Request for

Proposal) requires sixty (60) days for a response. Commissioners Hopkins and DaMate look forward to these negotiations moving forward and encouraged everyone to not "miss the boat." L. Chinn noted that due to timeline issues, much of LMD resources are focusing on this project. She explained that the lack of resources, to develop Pulehunui for agricultural homesteading, would allow development of solar energy during the interim 20-year period.

Planner K. Manuel clarified that general "ag" lands are referred to as, lands away from any type of infrastructure, a designation for lands held for future ag use. General ag-zoned lands have a lot of permitted uses. It usually means these are lands not readily available for homesteading, due to a lack of infrastructure, which generally relates to water, access, utilities, sewer, etc.

Commissioner Lee Loy recommended, to amend Item No. 2, Page 2, and append, "with commission approval." The purpose of the proposed amendment is to ensure that the commission approves and authorizes that particular selection, whenever it is made, but prior to negotiations. Instead, Chair recommended insertion here: ...potential developers of alternative energy, "**subject to commission approval**," to direct negotiate a lease

Approving this amendment would entail sending out letters of interest, a due diligence period, and recommendation by staff to the Chair; and, finally, a decision by the commission, to confirm the recommendation. Negotiations for the lease would then ensue. The Chair is comfortable having it vetted first, even though some delays may be encountered.

AMENDED MOTION

Moved by Commissioner Lee Loy to amend Item No. 2, Page 2, to insert after potential developers of alternative energy "**subject to commission approval**," seconded by Commissioner Hopkins.

DISCUSSION

Commissioner Kahikina inquired when the request for Form 260 would be utilized. According to L. Chinn, it will be a part of the submission for the proposal. The Energy Ad Hoc Committee's proposal, for a benefits package, will be part of the negotiations portion.

AMENDED ACTION

Motion carried unanimously.

DISCUSSION

Commissioner Artates described how important this timeframe is for a "one-shot-deal." This allows many opportunities by utilizing homestead lands, and it appears that this commission is on track with renewable energy. Commissioner Kahikina added that there is no limit to the

possibilities this may create, which may alleviate the energy costs for homestead beneficiaries. L. Chinn noted that staff will meet with leadership of the three impacted beneficiary communities.

ACTION

Motion carried unanimously.

AMENDED AGENDA

Moved by Commissioner Hopkins, seconded by Commissioner Kahikina, to convene with Item No. J-3. Motion carried unanimously.

ITEM NO: J-3

SUBJECT: Request to Address the Commission – Danelle Kala Lindsey, Kaupea Lessee

MOTION/ACTION

None, for information only.

DISCUSSION

Waimanalo beneficiary Randall Lindsey appeared with his sisters, D. Kala Lindsey, a Kaupea lessee, and Abby Reed, a Maluohai lessee. R. Lindsey thanked the commission for providing them the time to address their concerns. R. Lindsey quoted a segment of the Hawaiian Homes Commission Act, and its mission, to placing Hawaiians on the land and assuring them long-term tenancy. He hoped to achieve a similar outcome for his sister, who is facing a difficult situation at her place of residency. The Chair conveyed that this segment of the agenda provides community an opportunity to share their concerns; however, the commission is unable to render action and may refer the matter to staff, to investigate the circumstances.

R. Lindsey requested that his sister, Kala Lindsey, be relocated to an area near him in Waimanalo, to afford his sister protection and comfort from the abuse and harassment she suffers from next-door neighbors. Police were summoned to investigate false complaints against her and she is embarrassed by these unwarranted accusations. She passed on seeking a TRO (temporary restraining order) against them and avoids going home. Her sister, Abby, noted that this concern was reported to the department two years ago. D. Oshiro, Homestead Services Acting Administrator noted that the Oahu District Office intends to investigate the matter further. The Chair noted that although the department understands the situation, there would need to be compelling circumstances for relocation. Other options would be to transfer or surrender the lease. The Chair recommended that K. Lindsey be present when the matter comes before the commission for a decision. R. Lindsey apologized for airing their problems before the

commission and thanked the commission for listening. Commission members empathized with K. Lindsey, on her circumstances, and wished her well.

ITEM NO: C-2

SUBJECT: Resolution No. 268 - Senator Daniel K. Inouye

RECOMMENDATION

Adopt a Resolution honoring the late Senator Daniel K. Inouye.

MOTION

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

ITEM NO: C-3

SUBJECT: Resolution No. 269 - Senator Daniel K. Akaka

RECOMMENDATION

Adopt Resolution No. 269 honoring Senator Daniel K. Akaka.

MOTION/ACTION

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

ITEM NO: C-4

SUBJECT: Issues Under Discussion With Department of Interior - Status Report

MOTION/ACTION

None, for information only.

DISCUSSION

Dre Kalili, Policy Program Analyst, addressed ongoing discussions between DHHL and the Department of Interior (DOI) with regard to the department's oversight relationship. This update provided a broader overview of what is being discussed, including a Memorandum of

Understanding (MOU) established in 1987 between these two agencies, on the process of approving amendments to the Hawaiian Homes Commission Act (HHCA). The department is reviewing the process and procedures established by the Hawaiian Home Lands Recovery Act, and how to implement them. Discussions will continue on the general oversight relationship, including potential amendments of the HHCA, and consideration to include a representative of the DOI as ex-officio of this commission.

Commissioner Lee Loy questioned whether the department engaged in DOI involvement in the oversight of the HHCA and the State's administration of the Act. The Chair noted that she spoke with DOI Assistant Secretary Rhea Suh, subsequent to her visit with DHHL. Page 3 summarizes specific ideas on the DOI listening session and the possibility of enlisting a DOI official as an ex-officio member of this commission. The department will need to consult with the Department of the Attorney General (AG) to understand its implications, and follow-up with an analysis, to determine what this role would require.

Commissioner Lee Loy said he, too, met with Assistant Secretary Rhea Suh, and questioned why the federal government's approach to the HHCA had been a hands-off approach, allowing the State to administer this Trust as it sees fit. Issues on undeveloped lands for homesteading, infrastructure, water, etc., have left beneficiaries frustrated, to a point where they felt compelled to sue the State, such as the Nelson lawsuit, involving funding for DHHL, and the Kalima lawsuit, regarding the non-awarding of lands. He proposed that having DOI in the ex-officio role would offer another perspective for consideration. The Chair will follow up with the AG regarding including DOI in an ex-officio status. The Chair added that right now DOI representative, Lisa Oshiro, may sit in to observe all HHC meetings, but currently is unable to participate in executive session.

RECESS 6:04 p.m.

MOTION/ACTION

Moved by Commissioner Hopkins, seconded by Commissioner Artates, to recess the meeting until tomorrow. Motion carried unanimously.

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HAWAIIAN HOMES COMMISSION
Minutes of January 15, 2013
Meeting Held in Kapolei, Oahu

RECONVENE 12:33 p.m.

PRESENT Jobie M. K. Masagatani, Chairman Designate
 Imaikalani Aiu, Commissioner, Kauai
 Perry O. Artates, Commissioner, Maui
 Leimana DaMate, Commissioner, West Hawaii
 Gene Ross K. Davis, Commissioner, Molokai
 Michael P. Kahikina, Commissioner, Oahu
 Ian B. Lee Loy, Commissioner, East Hawaii
 Renwick V. I. Tassill, Commissioner, Oahu

EXCUSED J. Kama Hopkins, Commissioner, Oahu

COUNSEL S. Kalani Bush, Deputy Attorney General

STAFF Derek Kimura, Executive Assistant, Office of the Chair
 Linda Chinn, Administrator, Land Management Division
 Francis Apoliona, Compliance Officer
 Darrell Yagodich, Administrator, Planning Office
 Dean Oshiro, Acting Administrator, Homestead Services Division
 Kamanao Mills, Special Assistant, Office of the Chair
 Juan Garcia, District Supervisor, Homestead Services Division
 Kahana Albinio, Acting Property Development Manager, Land Management
 Division
 Carolyn Darr, Land Agent, Land Management Division
 Kaleo Manuel, Planner, Planning Office
 Julie Cachola, Planner, Planning Office
 Nancy McPherson, Planner, Planning Office
 Halealoha Ayau, Acting District Supervisor, Molokai
 Bob Freitas, Planner, Planning Office
 Elaine Searle Secretary to the Commission

C - OFFICE OF THE CHAIRMAN

ITEM NO: C-5

SUBJECT: Native American Housing and Self Determination Act - Status Report

MOTION/ACTION

None, for information only.

DISCUSSION

NAHASDA Manager Niniau Simmons expressed mahalo to the late Daniel K. Inouye for his contributions to housing initiatives for native Hawaiians. In addition, she thanked Special Assistant Kamanao Mills; Deputy Michelle Kauhane; and NAHASDA staff members Trish Paul, Sharon Mendoza, and Warren Kasashima, who carried the NAHASDA program, in the absence of a manager. She summarized by saying that the City and County of Honolulu returned the NAHASDA home repair program to the department, which consisted of 27 families in various stages of eligibility, working through the process of NAHASDA home repairs. She recommended contracting out to another entity to address the backlog. She summarized what direction the program needs to travel in the next six months and planned to present two informational workshops in February, which are potential action items: 1) Block Grant processing, and 2) Spend-down plan as determined by a 30-day, 90-day, and 180-day timeline. The spend-down portfolio would be comprised of activities outlined in the housing plan passed in June 2012, made up of recipient programs, delinquencies, and land purchases. Some sub-recipients, such as La'i Ōpua 2020, need to be aware that monies potentially received are based on the population served that is 50% native Hawaiian and whose income is at 80% of the Area Median Income or below. Funding is also provided on a cost-reimbursement basis. Reimbursement funds are provided after the work is completed. Sub-recipients are aware of the requirements and DHHL staff can provide technical assistance, wherever needed. The information provided in the December 2012 presentation proved helpful in today's summation, said N. Simmons. Commissioner Lee Loy agreed with N. Simmons' conclusive comments, which imply the application of transparency and consistency ... hallmarks of a reputable program.

A main concern is the re-authorization of Title VIII for appropriations. Without appropriations, no authorization of funds will be available. Commission members thanked N. Simmons for her comments, and look forward to February's workshop.

D - HOMESTEAD SERVICES DIVISION

ITEM NO: D-1

SUBJECT: HSD Status Reports

Exhibits:

A – Homestead Lease and Application Totals and Monthly Activity Reports

B – Delinquency Report

MOTION/ACTION

None, for information only.

ITEM NO: D-2

SUBJECT: Approval of Various Lease Awards (see exhibit)

MOTION/ACTION

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

ITEM NO: D-3

**SUBJECT: Rescission of Homestead Lease Award and Reinstatement of Application –
Lai Opua Villages 4&5, Undivided Interest – Isaac Kalanimau Tom, Lease
No, 10635**

MOTION/ACTION

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

ITEM NO: D-4

**SUBJECT: Approval of Various Assignment of Leasehold Interest in Recently Approved
Lease Award – Tammy E. Oba, Lease No. 11314**

MOTION/ACTION

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

ITEM NO: D-5

SUBJECT: Ratification of Loan Approvals (see exhibit)

MOTION/ACTION

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

ITEM NO: D-6

SUBJECT: Approval of Consent to Mortgage (see exhibit)

MOTION/ACTION

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

ITEM NO: D-7

SUBJECT: Schedule of Loan Delinquency Contested Case Hearings (see exhibit)

MOTION/ACTION

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

ITEM NO: D-8

SUBJECT: Homestead Application Transfers/Cancellations (see exhibit)

MOTION/ACTION

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

ITEM NO: D-9

SUBJECT: Commission Designation of Successors to Application Rights (see exhibit)

MOTION/ACTION

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

ITEM NO: D-10

SUBJECT: Ratification of Designation of Successors to Leasehold Interest and Designation of Persons to Receive Net Proceeds (see exhibit)

MOTION/ACTION

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

ITEM NO: D-11

SUBJECT: Approval of Assignment of Leasehold Interest (see exhibit)

MOTION

Moved by Commissioner Artates, seconded by Commissioner Kahikina.

DISCUSSION

Recommendation by Chair, to address the resale of leases at a future time. Commissioner Lee Loy recommended to have this matter addressed in next month's Executive Session.

AMENDED MOTION/ACTION

Commissioner Lee Loy moved, seconded by Commissioner DaMate that Item No. 6, regarding Leimomi Lum, be removed pending further clarification that a lawsuit that she is involved in has been settled. Motion carried unanimously.

ACTION

Motion carried unanimously.

ITEM NO: D-12

SUBJECT: Approval of Amendment of Leasehold Interest (see exhibit)

MOTION/ACTION

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

ITEM NO: D-13

SUBJECT: Cancellation of Lease – Bernadette Koko-Shimojo

MOTION/ACTION

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

ITEM NO: D-14

SUBJECT: Hawaiian Homes Commission's April 24, 2001 and February 26, 2002, Decisions – Skylla Villanueva, Lease No. 3442, Lot 112-A, Hoolehua, Molokai, Hawaii

MOTION

Moved by Commissioner Artates, seconded by Commissioner Kahikina.

DISCUSSION

Homestead Services Administrator D. Oshiro said that after a survey was completed, it was determined that Skylla Villanueva's home sits on a lot within the boundary of Lot No. 112-B and does not straddle two properties, as earlier designated. Subsequent to that discovery, discussions commenced with Ms. Villanueva, department staff, and the Department of the Attorney General to provide resolution. Ms. Villanueva is requesting to combine Lot 112-A (toothbrush Lot) to include Lot 112-B, thus affording her nearly 40 acres. Historically, the original home sat on Lot 112A. The current house sits on Lot 112B, due to a miscalculation by the department in building the home on the wrong lot. Four scenarios are being considered and staff is recommending scenario No. 4, which is to "Consolidate Lot 112A with Lot 112B, and amend the lessee's homestead lease to demise the resulting parcel, subject to the lessee entering into a written agreement with Lot 27 lessee for temporary access to his lot."

One of the concerns is access to Lot 27 (Mendez), whose land is landlocked. Commissioner Davis recommended that Anahaki Avenue be re-established as an access point for Lot 27, instead of accessing through Lot 112B. He stated that drawing a line right up the middle may resolve the issue. According to Deputy AG Bush, Ms. Villanueva insisted she would not sign unless she acquired all 40 acres. In this particular situation, there is no probability in cancelling her lease to Lot 112A, an "ag" lot. Unless she signs, this issue may likely become a stalemate, and Ms. Villanueva will be living on unencumbered property. Chair is perplexed why Ms. Villanueva is in a position to make demands, as there is an unencumbered lease that could potentially be awarded to another applicant. A recommendation was made by Deputy AG Bush to adjourn in executive session, to discuss the issue further.

MOTION/ACTION

Moved by Commissioner Tassill, seconded by Commissioner Aiu, to adjourn to executive session. Motion carried unanimously.

RECESS

1:25 p.m.

EXECUTIVE SESSION

The Commission convened 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 the above-subject matter.

MOTION/ACTION

Moved by Commissioner Artates, seconded by Commissioner Kahikina, to reconvene in regular session. Motion carried unanimously.

RECONVENE 1:52 p.m.

ITEM NO: D-14 (cont)

SUBJECT: Hawaiian Homes Commission's April 24, 2001 and February 26, 2002, Decisions – Skylla Villanueva, Lease No. 3442, Lot 112-A, Hoolehua, Molokai, Hawaii

DISCUSSION

Chair noted that the department will withdraw this matter for future consideration, by the commission.

G - PLANNING DIVISION

ITEM NO: G-1

SUBJECT: Removal of Moratorium on Subdivisions and Transfer of Agriculture and Pastoral Leases

RECOMMENDATION

Planning Administrator Darrell Yagodich recommended that the commission remove the moratorium on subdivisions of agricultural and pastoral leases, as authorized under Section 10-3-26 of Department of Hawaiian Home Lands' Hawaii Administrative Rules (HAR) subject to:

1. DHHL shall develop an implementation plan, to implement Section 10-3-26 which will include a) criteria for reviewing subdivision requests for recommended approval by the HHC; b) information required of lessees in the application; c) internal process and proposed time frame, to review applications received; and, d) other information needed, to help clarify the process;
2. Target date, to present this implementation plan to the HHC for discussion is the May 2013 HHC meeting, with final approval expected in June 2013;

3. DHHL shall conduct outreach meetings across the state, to discuss implementation plans prior to the May 2013 regular commission meeting.

MOTION

Moved by Commissioner DaMate, seconded by Commissioner Lee Loy.

DISCUSSION

According to Administrator D. Yagodich, the Planning Division staff will meet with District Managers to review rules and compliance issues, which need to be redefined. The process would involve identifying who is responsible for paying costs associated with subdivisions, relationships with the County, and time frames in which procedures need to be completed. After review, this matter will appear before the commission for approval. Commissioner Lee Loy recommended the process be completed by April 2013, as the subdivision framework already exists. Chair noted that while the focus of the work would be limited to the specifics required for implementation and feedback from the communities, there are still a number of items to be vetted, such as gentlemen estates, policy issues, as well as lot subdivision being an action, subject to the commission's discretion for approval. This will take time for staff to complete. Commissioner Lee Loy recommended that the department not hold up the opportunity for lessees to use the HAR provisions, and lessees applying for subdivisions should be given an opportunity to measure up to the provisions of the lease.

AMENDED MOTION

Moved by Commissioner Lee Loy, to adjust the target implementation date by 30 days, to April 2013, with final approval to be completed by May 2013, seconded by Commissioner DaMate.

ROLL CALL VOTE

AE

ARTATES

DAVIS

KAHIKINA

LEE LOY

TASSILL

AOLE

AIU

DAMATE

MASAGATANI

EXCUSED

HOPKINS

ACTION

Amended motion carried.

ACTION

Original motion, as amended, carried unanimously.

ITEM NO: G-2

SUBJECT: Authorize the Chairman to Take Actions to Secure the Control and Use of Water in Waimea, Kauai, through State Administrative Actions

MOTION/ACTION

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

J - GENERAL AGENDA

ITEM NO: J-1

SUBJECT: Request to Address the Commission – Bo Kahui, La'i' Ōpua 2020

MOTION/ACTION

Bo Kahui presented his comments earlier in Public Testimony.

ITEM NO: J-2

SUBJECT: Request to Address the Commission – Josephine Tanimoto, Lai Opua Lessee

MOTION/ACTION

Ms. Tanimoto failed to appear.

ITEM NO: J-4

SUBJECT: Request to Address the Commission – Kawai Warren, Kekaha Hawaiian Homes Association

MOTION/ACTION

None, for information only.

DISCUSSION

Kekaha Hawaiian Homes Association President, Kawai Warren, thanked the commission for consideration for a right-of-entry to the Kekaha mauka lands. He articulated that during the plantation years, Hawaiians were forced to leave their taro and piggery farms in search of other resources, to maintain their families. Now is the time to begin rehabilitating Hawaiians by providing water. He explained that the westside of Kauai has been the No. 1 site for testing pesticides, including GMO (genetically modified organism), which contaminated the water and the future of Kekaha beneficiaries. The pesticides sprayed in the areas caused much illness, especially to the children. The community seeks ways to restore the lands, through irrigation and farming, and to aid the State by creating jobs and rehabilitating the people and the lands. KHHA looks forward to working with DHHL and KIUC in developing these lands as clean, sustainable lands. He requested that the Planning Division work collaboratively with them and identify new sources of funding. He recommended that the commission deny HCDC's (Homestead Community Development Corporation) request for an MOU (Memorandum of Understanding) because KHHA will initiate its own farm plan from the DHHL waitlist. KHHA is agreeable to sharing its resourcefulness with DHHL. The Chair thanked K. Warren for sharing his manao and for affording time to attend today's meeting.

RECESS 4:15 p.m.

MOTION/ACTION

Moved by Commissioner Artates, seconded by Commissioner Aiu, to adjourn to executive session. Motion carried unanimously.

EXECUTIVE SESSION

The Commission convened 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 these matters.

2. Communications between Commissioners and Between Commissioners and DHHL Staff
3. Claim for Replacement of Septic System – Leonard Low, Lalamilo, Waimea, Hawaii

MOTION/ACTION

Moved by Commissioner Aiu, seconded by Commissioner DaMate, to reconvene to the regular meeting. Motion carried unanimously.

RECONVENE 5:20 p.m.

ADJOURNMENT 5:20 p.m.

Moved by Commissioner Artates, seconded by Commissioner DaMate, to adjourn the regular meeting. Motion carried unanimously.

ANNOUNCEMENTS AND ADJOURNMENT

NEXT MEETING

February 19, 2013, Kapolei, Oahu

ANNOUNCEMENTS

No community meeting scheduled for February, 2013.

ADJOURNMENT

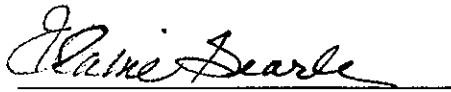
5:20 p.m.

Respectfully submitted,



Jobie M. K. Masagatani, Chairman Designate
Hawaiian Homes Commission

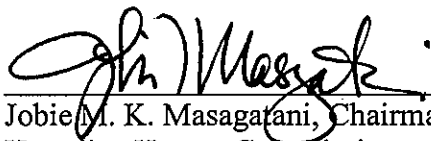
Prepared by:



Elaine Searle, Secretary
Hawaiian Homes Commission

APPROVED BY:

The Hawaiian Homes Commission
At Its Regular Monthly Meeting On
January 14, 2014.



Jobie M. K. Masagatani, Chairman Designate
Hawaiian Homes Commission

HAWAIIAN HOMES COMMISSION

SIGN IN SHEET

TESTIMONY

Date & Time: JAN 14 2013

Re: HHC Workshop / Agenda

Location: 91-5420 Kapolei Pkwy

FULL NAME (PLEASE SIGN)	ADDRESS (STREET, CITY, ZIP)	Reference ITEM NO.	TELEPHONE
1. Bo Kahui	74-8899 Leleia St ES, W		
2. Kekoa Flennoia	393 Puco Drive, Kula ⁹⁰⁷⁴⁰	A2	(808) 276 2713
3. CANEAL Hoo Kano	5431 HANAA RD	C1, F2, F3	635-2966
4. John Doe			
5. Robin Demer		Varoom	
6. Alan Murce Kama	1664 Bishop St #1205	Varoom	521 2302
7. P. Richards	44-155 Pololu St	Uuimama	
8. Pat Brandt	91-1011 Kuehiki St	Kapolei	808-3860435
9. William Todor	PO 6377 Hb	Hb	708 990-0525
10. Carmen Huh Lindsey	Off		
11. Blossom Feitua	AH44L	C-1; G-2, F-2, F4	446-5572
12. Homelani Schoedel	91-1016 Koonakaani St	F-4	520-2267

FULL NAME (PLEASE SIGN)	ADDRESS (STREET, CITY, ZIP)	Reference ITEM NO.	TELEPHONE
13. Pruebe Eng	POB 718 Waimea HI	F-2, F-3	808 635-6145 F2
14. Tamar deFries	2031 Haalelepa Pl.	F-4	478-9627 F3
15.			
16.			
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19.			
20.			
21.			
22.			
23.			
24.			

HAWAIIAN HOMES COMMISSION

SIGN IN SHEET TESTIMONY

JAN 15 2013

Date & Time: _____

Re: HHC KGEN DA

Location: 91-5420 Kapolei Pkwy, Kapolei

FULL NAME (PLEASE SIGN)	ADDRESS (STREET, CITY, ZIP)	Reference ITEM NO.	TELEPHONE
1. <u>ANIELA HOOKANO</u>	<u>Beneficiary</u>	<u>G-2</u>	<u>635-2966</u>
2. <u>Blossom Fritina</u>			
3. <u>Phoebe Eng</u>		<u>G-2</u>	
4. <u>David Sissell</u>			
5. <u>Jason Hines</u>		<u>G-2</u>	
6.			
7.			
8.			
9.			
10.			
11.			
12.			



Department of Hawaiian Home Lands

Land Management Division

Presentation to the Hawaiian Homes Commission on General Leasing Program

January 14, 2013

WKS/KD A-1
1-14-13

Land Management Division

General Leasing Program

Purpose:

- Generate revenue for purposes of the Act;
- Provide Long Term (minimum 25-year) Use for commercial, industrial purposes, on strategic parcels of Hawaiian home lands as identified and designated by the department for such use; and
- Annual rental be determined by fair market appraisal pursuant to Chapter 171, Hawaii Revise Statutes.

Land Management Division

• As of June 30, 2012

126 general leases statewide

\$10.176M in annual revenue



Hawaiian Homes Commission Act

• Two (2) provisions in Hawaiian Homes Commission Act govern general leasing process:

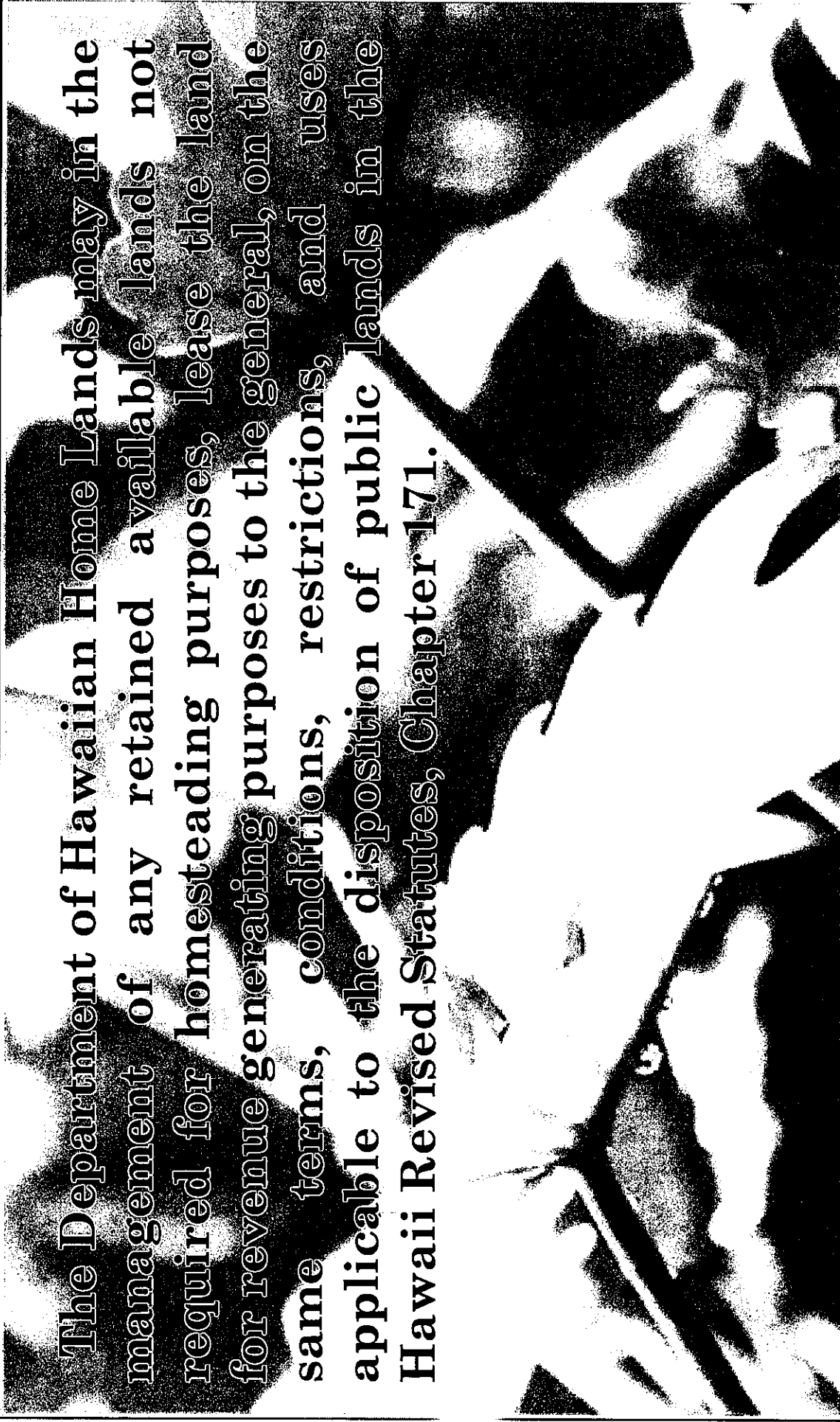
Section 204(a)(2) – 171-59, HRS

Section 220.5 – 171.60, HRS

Hawaiian Homes Commission Act

Section 204(a)(2)

The Department of Hawaiian Home Lands may in the management of any retained available lands not required for homesteading purposes, lease the land for revenue generating purposes to the general, on the same terms, conditions, restrictions, and uses applicable to the disposition of public lands in the Hawaii Revised Statutes, Chapter 171.



Amendment to Section 204

The 1978 Constitutional Convention amended Section 204(a)(2) by adding the following:

“...provided further that the department is expressly authorized to negotiate, prior to negotiations with the general public, the disposition of a lease of Hawaiian home lands to a native Hawaiian, or organization or association owned or controlled by native Hawaiians, for commercial, industrial, or other business purposes, in accordance with the procedure set forth in section 171-59, Hawaii Revised Statutes, subject to the notice requirement of section 171-16(c), Hawaii Revised Statutes, and the lease rental limitation imposed by section 171-17(b), Hawaii Revised Statutes.”

HHC Action of 9/24/1981

The Hawaiian Homes Commission adopted a General Leasing Policy authorizing department to implement the native Hawaiian preference as described and defined in the Section 204(a)(2), Hawaiian Homes Commission Act, as amended.



Native Hawaiian Preference Policy Process as Approved by HHC

Prior to making any general lease offering available to the general public, native Hawaiians or qualified native Hawaiian organizations shall be given the opportunity first to respond to any offering by submitting the following items:

- Application Form
- Kumu Ohanà form
- Personal Information as required
- Meet following qualification requirement:

Native Hawaiian Preference Policy

The qualification requirement is:

- ✓ An individual qualifying for a negotiated lease as a native Hawaiian must have no less than one-half (1/2) part of the blood of the races inhabiting the Hawaiian Islands previous to 1778;
- ✓ A native Hawaiian organization or association shall be an organization or association in which the controlling interest is held by a native Hawaiian or native Hawaiians that qualify as native Hawaiians as defined above; and
- ✓ DHHHL to review and certify application(s) as submitted under the native Hawaiian preference policy.

If Native Hawaiian Preference requirement is satisfied

• Native Hawaiian(s) shall submit sealed bid on lease rent at auction, which cannot be less than the upset rent established by fair market appraisal contracted for by the department.

** Chapter 171, provides that lease rents shall be based on appraised value. (Secs. 171-17(b) and 171-33, HRS). Therefore, the statutes prevents the department from leasing to native Hawaiians at below-market rent. In short, the preference is not and economic benefit to native Hawaiians.

** No requirement for financial, business, or technical qualification to submit bids is necessary.

HHC Action of 10/23/2001

The Hawaiian Homes Commission rescinds general leasing policy adopted on September 24, 1981 which gave preference to native Hawaiian(s) on general lease offering.



HHCA Action of 10/23/2001

**** Commission support for recommendation were as follows:**

• 16 general leases issued under the preference policy, with 11 either being terminated by DEHEIL or cancelled by mutual agreement (69%); High lease attrition rate results in lost revenue to the trust from non-performing leases;

• NEH preference policy has not increased proportion of native Hawaiian general lessees, who constituted 7% of general leases in 1981 and the same proportion in 2001;

• National and/or international tenants discouraged from considering bidding on potential leases due to uncertainty of preference policy; and

• The preference has attracted the attention of those who question the constitutionality of the HHCA in general.

• Greater business assistance efforts beyond the native Hawaiian preference policy could better achieve the goal of increasing the number of native Hawaiian businesses on general lease lands.

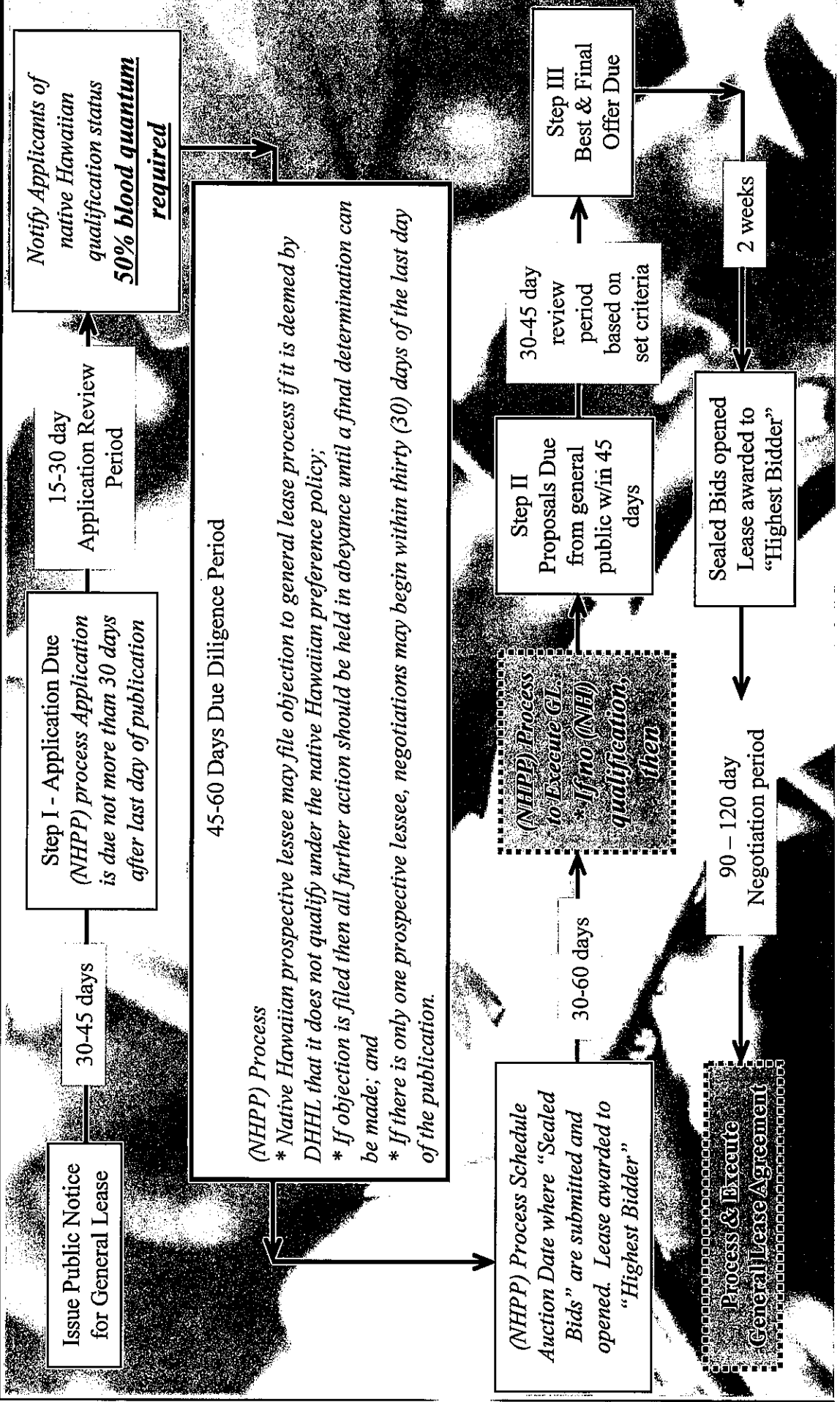
• Plan in teaming up with a recognized business service provider, such as Alu Like to employ more targeted efforts to foster Hawaiian businesses which could better achieve goal of having more Hawaiian businesses on Hawaiian home lands.

RECOMMENDATION

- **Re-establishing the native Hawaiian preference policy**

- ✓ To require native Hawaiians to meet set criteria prior to qualifying for preference bidding process, including financial, business, and operational qualification;
- ✓ To require native Hawaiians preference on parcels less than one acre, but direct with the general public over one acre; and
- ✓ To establish a business assistance program, such as the home ownership assistance program.

Native Hawaiian Preference Policy Lease Process

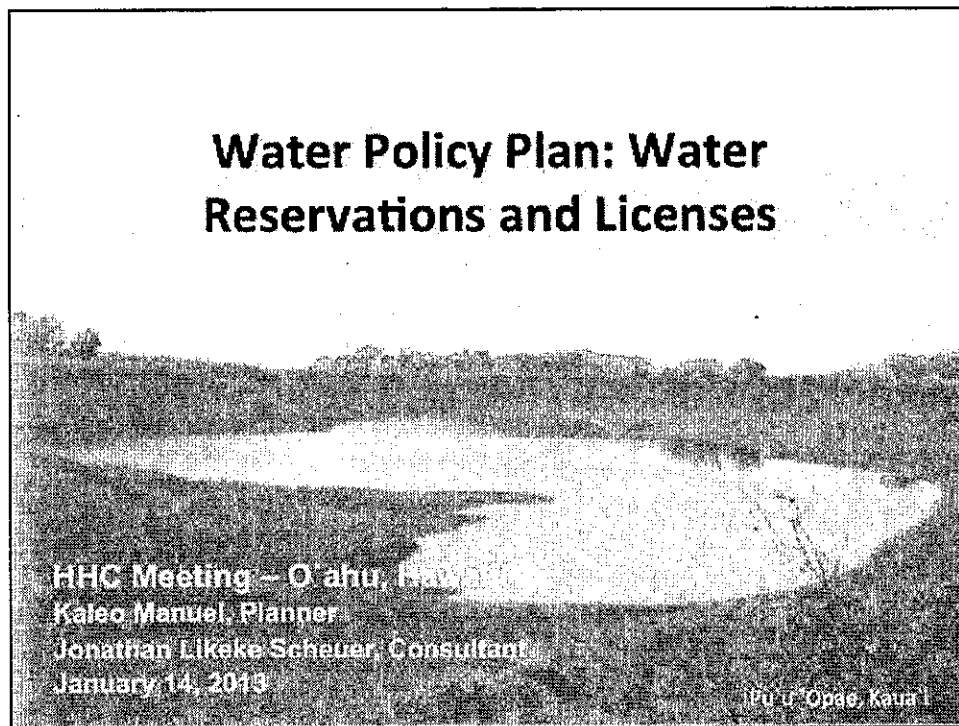




Department of Hawaiian Home Lands

Mahalo!





Kaleo to begin with introductions and first three slides
Photo is of the Puu Opae reservoir on our lands in Waimea, Kaua'i



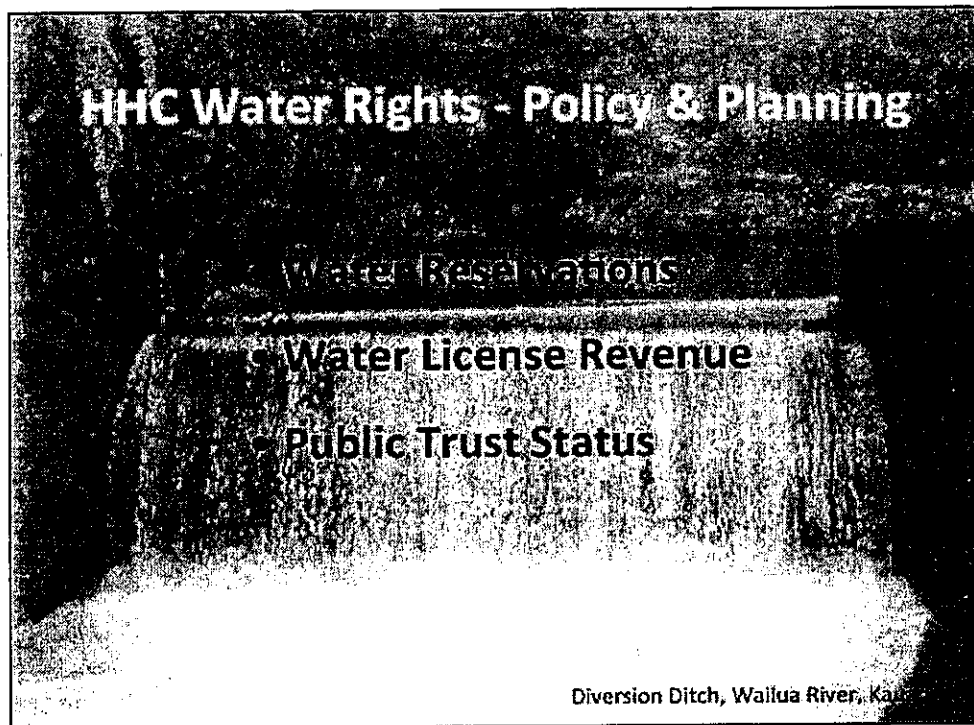
- Overview of the presentation
- Previous review of powers was covered at 7/23/2012 meeting of the HHC; review here will continue from there
- There are also handouts – one from 7/23 meeting, another is a high level diagram of the reservation and licensing processes

What is the Water Policy Plan?

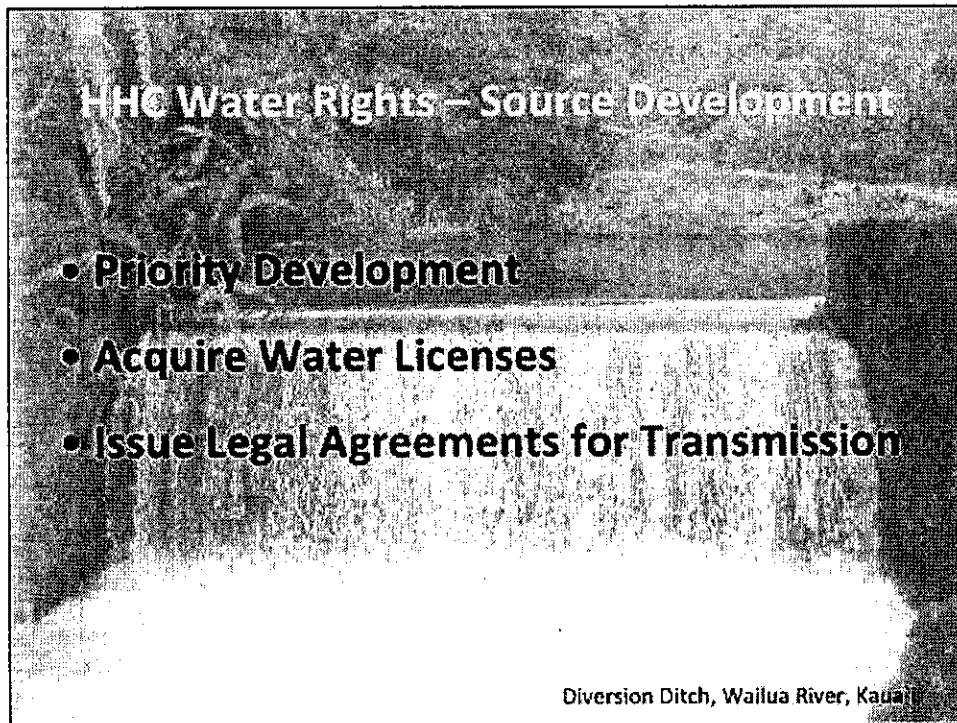
- **3-5 page document providing 3-6 year guidance**
- **Simultaneously working on**
 - **Statewide estimates of water use through the SWPP**
 - **Expanding DHHL presence on water policy issues**
 - **Addressing high priority needs areas (e.g. Waimea Kaua'i, Pulehunui Maui)**

Koke'e Ditch, Kaua'i

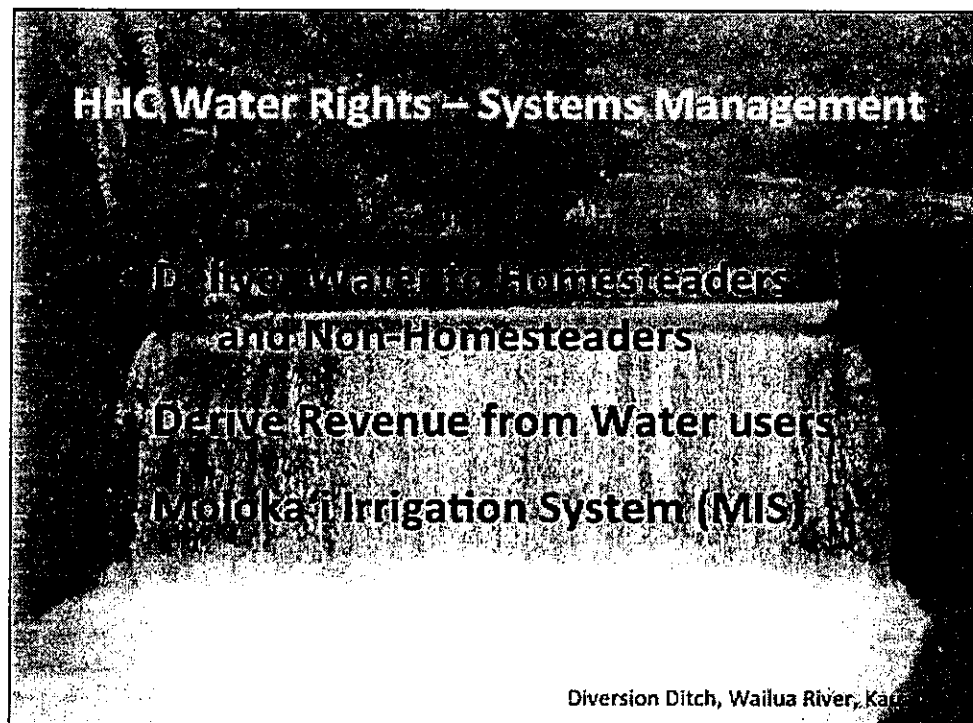
- What will the Water Policy Plan be?
 - A 3 – 5 page document developed collaboratively by the Commission, the Staff, and myself, working with beneficiaries and stakeholders, and approved by the Commission
 - It will be a guide for the next 3-6 years on how water should be approached strategically by the department, to use its legal powers and other tools to achieve the mission of the Department – providing homesteads (residential, agricultural, aquacultural, ranching)
 - Simultaneously:
 1. Working on estimates of water for DHHL lands via the update to the SWPP – End of process will result in reservations statewide for our foreseeable needs
 2. Staff has been increasing its presence on water issues; for instance regularly attending meetings of the CWRM, participating in County Water Planning processes – better coordination and communication
 3. There are few high priority areas where there are immediate water issues that need to be addressed - mostly related to availability of water and therefore competition for resource



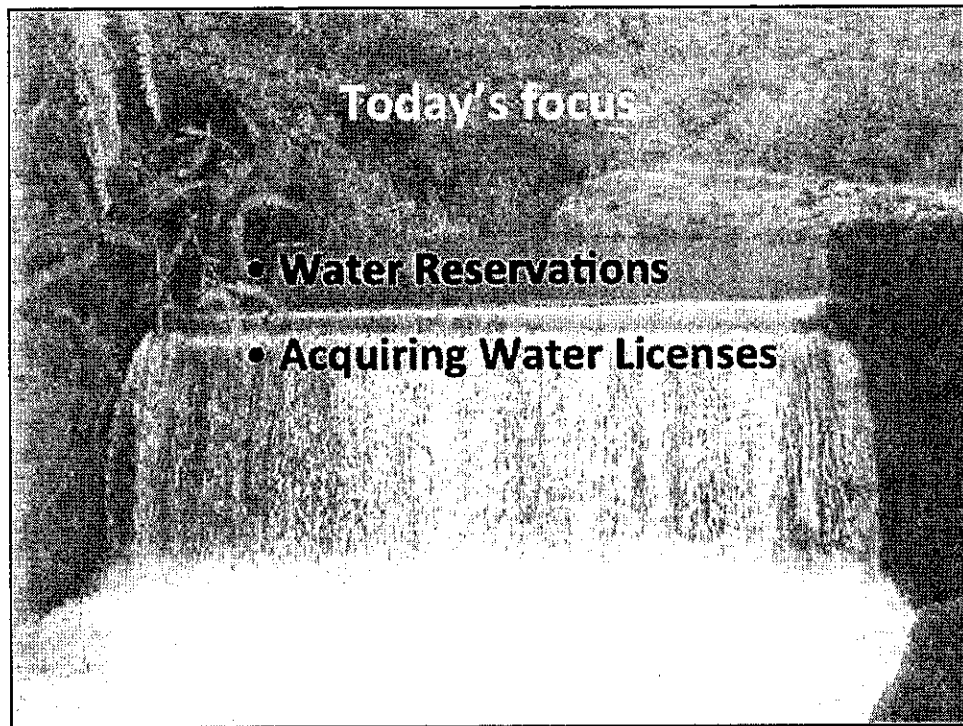
- Photo is of the Blue hole diversion ditch, Wailua, Kauaʻi.
- 1st main authority: Water Reservations – the right to have the state set aside water for future use of the department
 - Described in the state water code
 - Requires work by DHHL to justify needs, update, advocate to Commission on Water Resource Management (CWRM)
 - We are working on reservations statewide
- 2nd main authority: water license revenue
 - 30% of revenue from water licenses
 - Comes from the Hawaii State Constitution (HSC)
 - Requires work by DHHL to monitor, audit, advocate
- 3rd main authority: DHHL Uses are a Public Trust (PT) use
 - PT uses are uses that inherently have priority over other uses
 - Other PT uses are traditional and customary (T&C) uses, recreational, ecological, domestic
 - PT status of HHC uses clearest for homesteading purposes (221)
 - Described in kingdom law, court cases, constitution, water code
 - Requires advocacy of many kinds



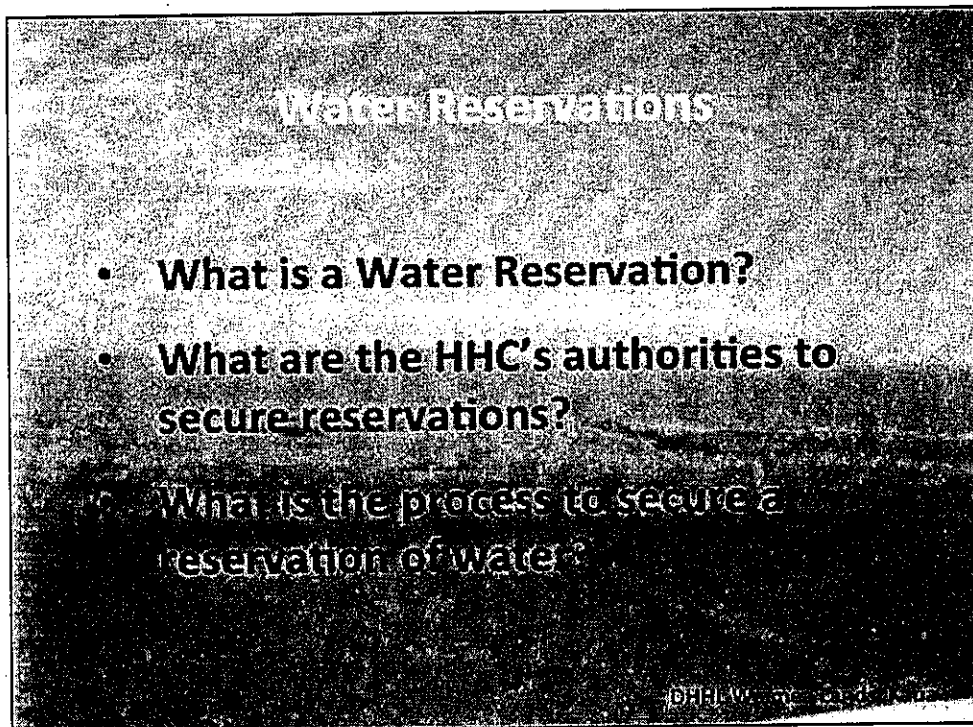
- Priority development in designated areas
 - In theory applicable everywhere, in practice only in designated water management areas
 - Covered under the water code
 - Requires proactive development, work on designation, balancing use with other PT uses
- Acquire water covered by state licenses
 - Ability to get state water (mostly surface) when it needs water
 - Described extensively in the HHCA
 - Requires maintaining info on licenses and needs
- Issue leases & other legal agreements for transmission
 - Allows HHC to lease/license land to others for water development
 - Allows “dedication” to counties”
 - Described extensively in the HHCA
 - Controversial: requires analysis, transparency



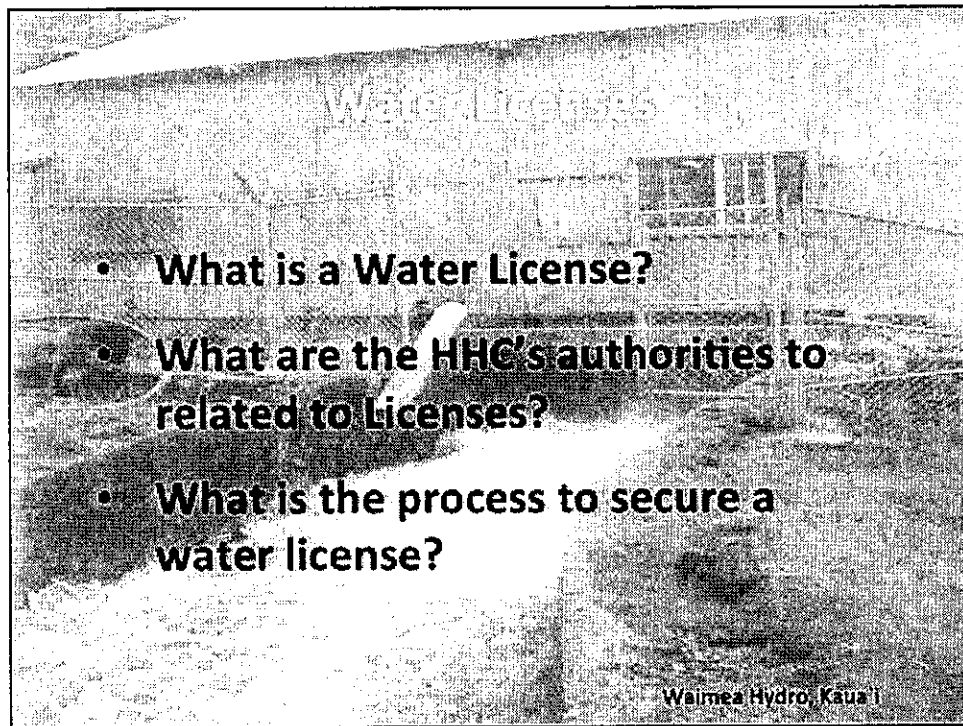
- Deliver water to homesteaders and non homesteaders
 - Power to own and manage water systems
 - Acquire systems
 - Could even involve recycled water
 - Not sell wholly owned systems
 - Extensively described in HHCA: Although relationship to Public Utility Commission (PUC) is unclear
 - Requirements are extensive, especially for drinking systems: reliability, safety, compliance, training
- Derive revenue from water users
 - Specific power in HHCA to derive revenue from non homesteaders as well
 - Power to set rates yourself (Although relationship to Public Utility Commission (PUC) is unclear
 - Requires managing short and long term needs, challenges to rate setting and collecting



- Today's workshop, part of our overall efforts, is focused on reservations and licenses
- There are some intensifying issues in West Kaua'i; as a result of that there is an action for your consideration tomorrow related to these two points



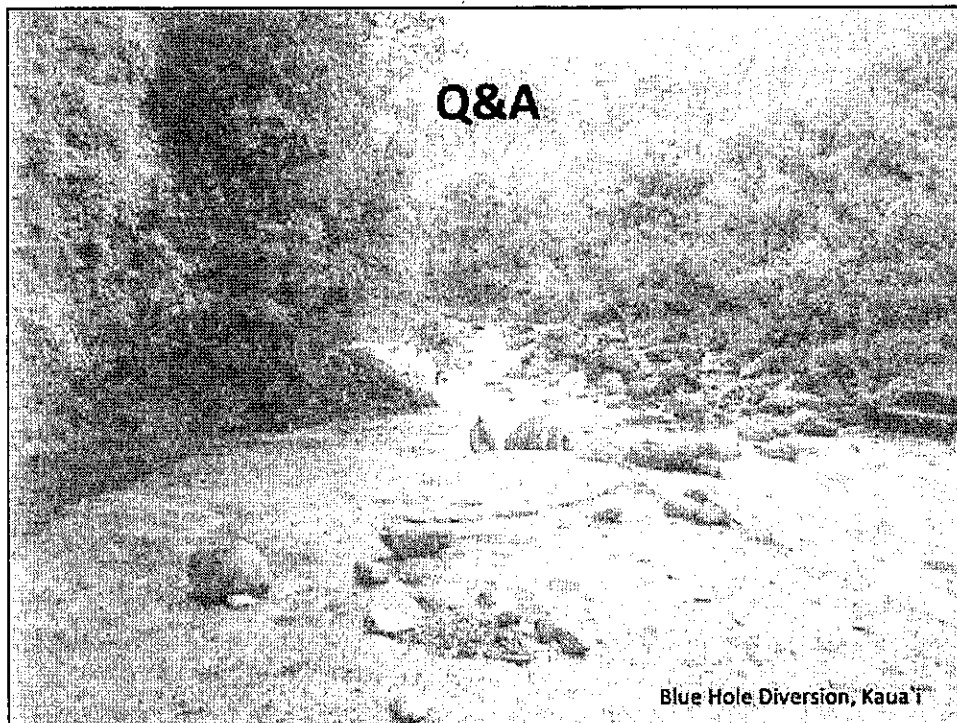
- A water reservation is essentially a “kapu” on water for future use
 - It is NOT a water use permit or other permit; it simply sets aside water from a particular area for a particular use, preventing allocation of that water to another user
 - It is set by the Water Commission, historically by rule
- Water Reservations are described in two areas of the water code and in admin rules (HRS 174C-48(d), 101(a)), HAR 13-171-60)
- Relationship to designation:
 - In designated areas, any entity can seek a reservation of water
 - In non designated areas, only DHHL can seek a reservation
 - Its enforceability outside management areas is unclear
- DHHL’s authority to obtain a reservation are described in those sections and tied into sections 101 and 221 of the HHCA, to fulfill the overall purposes of the Act
- The admin process to gain a reservation is covered by the admin rules
 - Whether those are applicable to reservation in non designated areas is not absolutely clear
- In general, the overall process is (see handout)
 - DHHL to submit a request, based on the approved land uses in the area and an identified source
 - CWRM staff reviews
 - CWRM initiates rulemaking process



- Water licenses – sometimes referred to as leases – cover the use of water emanating from state lands by another party. They are generally governed by HRS 171-58
- There are a number of significant water licenses across the state – notably in East Maui (to East Maui Irrigation / Alexander & Baldwin, and on Kauaʻi (Wailua River to Kauai Island Utility Cooperative)
- The HHC has a number of key powers related to licenses
 - Under Sec. 221, it has the right to obtain a water license from the state, even when that water is already licensed to another party (221(b-d), esp)
 - It also has a right to 30% of license revenue (HSC Art XII Sec 1, HHCA Sec 213(i), HRS 171-58(g) HRS 174C-101(b))
- There are no Admin rules covering the issue of water licenses
- There is a provision in the administrative rules for a petition of declaratory order (HAR13-1-27) which could possibly be used.
- While complex, it basically involves submitting a petition to Board of Land and Natural Resources asking it to declare that a certain law applies, in this case HHCA 221 to the circumstances at hand

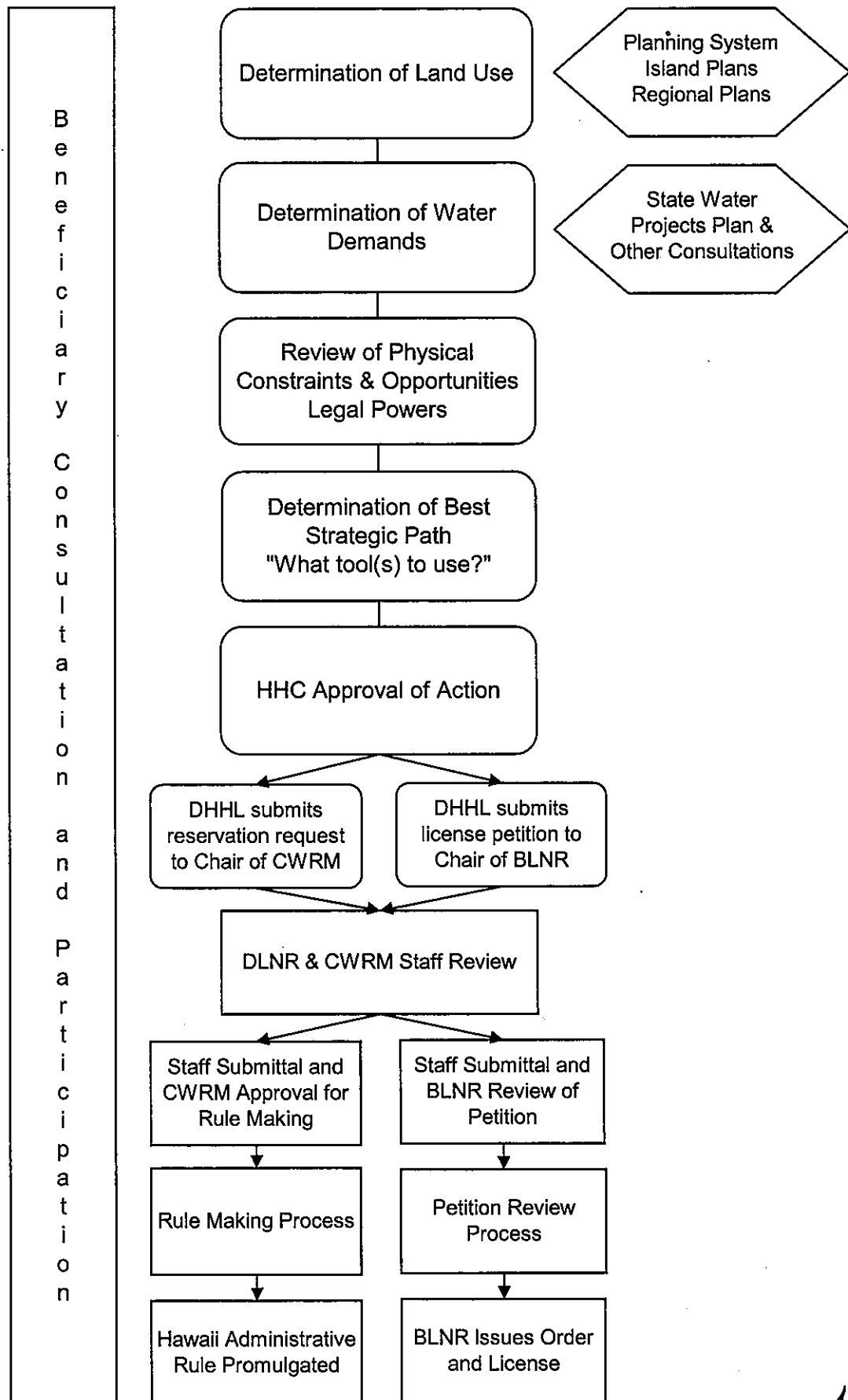


- While the HHC has many significant powers related to water, they do not exist in isolation from other interests or each other.
- For instance, kuleana (appurtenant) rights are superior to the rights of the HHC
- Also, HHC rights to revenue and ability to gain a license have some trade off – no revenue from a license that you hold.
- 221 uses are one public trust use of water; others include traditional and customary rights, water in streams or underground that support the procreation of fish and wildlife, scenic and recreational uses, and the domestic uses of the general public.
- While Public Trust (PT) uses have priority over other private uses, there is not an established priority among PT uses. One PT uses that completely harms another PT use would likely be subject to balancing / scrutiny.



- Kaleo concludes. Remember:
 - Reservations last were issued over 20 years ago; to our knowledge the HHC has never sought a water license, so this is new ground
 - The downside to that is that the process could be slower than desired, and complicated
 - The upside is that it illustrates this Commission's proactive and strategic approach to water.

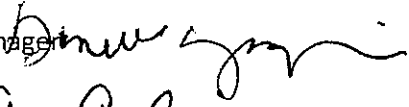
SIMPLIFIED WATER RESERVATION AND LICENSE PROCESS

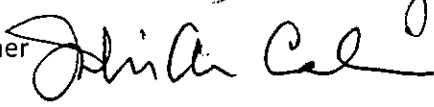


STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

January 14, 2013

TO: Chairman and Members, Hawaiian Homes Commission

THROUGH: Darrell Yagodich, Planning Program Manager 

FROM: Julie-Ann Cachola, Planner 

SUBJECT: ITEM A-3: ENERGY POLICY UPDATE WORKSHOP

Purpose of this Workshop:

1. To provide a quick summary of Commission decisions and departmental initiatives in alternative energy leading up to the HHC's acceptance of the Ad Hoc Energy Committee's policy recommendations in December 2012.
2. To identify our general approach and criteria that will be used to evaluate the energy policy recommendations developed by the Ad Hoc Energy Committee.
3. To identify a general timeframe for these activities, including HHC approvals.

Summary Historical Background:

1. In 2001, Hawaii established a renewable portfolio goal in 2004, the goal was replaced with an enforceable renewable portfolio standard.
2. In January 2008, Governor Lingle signed a MOU with the U.S. Department of Energy to establish the Hawaii Clean Energy Initiative.
3. From September 2008 to January 2009, the Department convened brainstorming meetings with staff and other stakeholders (utilities, PUC, Dept of Energy, cultural practitioners, community leaders) to create a draft energy policy, which was then taken out for statewide beneficiary consultation.
4. In January 2009, the HHC approved the Ho'omalūō Energy Policy which contained 5 objectives and 25 related activities. Under the Energy Policy, a number of initiatives and actions have been implemented (see Exhibit A).
5. In July 2011, the HHC established a Geothermal Ad Hoc Committee to explore the viability of generating sustainable revenue and providing reduced cost energy through the development of geothermal resources. In September 2011 the Geothermal Ad Hoc Committee presented its report of findings and the HHC supported a continued vetting process for geothermal energy production on Hawaiian Home Lands.
6. In November 2011, the HHC established an Ad Hoc Committee on Alternative Energy to assess the viability, feasibility and options for alternative energy projects on Hawaiian Home Lands. In October, 2012, the HHC accepted the Ad Hoc Committee's report titled: "Hawaiian Home Land Trust Energy Priorities." The Report recommended new language for the Energy Policy's mission statement and presented 4 Policy Priorities.

General Approach and Criteria to Evaluate the Energy Policy Initiatives

1. Staff will conduct targeted interviews with Key Informants to identify changes in the alternative energy arena and its implications for the Department. Key informants include: HEI/HECO, PUC, DBEDT, Energy Office, National Renewable Energy Laboratory (NREL), U.S. Department of Energy, Bureau of Ocean Energy Management, Hawai'i Natural Energy Institute, Hawai'i Energy, *Office of Native Hawaiian Relations.*
2. Staff would seek assistance, as indicated, or would conduct reviews in-house, based on the following criteria:

REVIEW CRITERIA	Notes
1. Legal Review: HHCA, State Constitution Article XII Section 1	1. Department of the Attorney General Review
2. HHCA	2. DHHL Policy analysis to ensure support for the purposes of the HHCA and Program.
3. Hawaii Clean Energy Initiative	3. Assistance from DBEDT, Energy Division and the National Renewable Energy Laboratory (NREL) to ensure alignment of policies.
4. Ho'omalū Energy Policy	5. Review for consistency and determine how best to incorporate priority policies.
5. Island Plans/Regional Plans	5. In-House review to determine consistency with priority projects related to alternative energy.
6. DHHL Budget	6. DHHL budget analysis of estimated implementation costs and impacts.
7. Input received during beneficiary consultation meetings.	7. In-House beneficiary consultation report and policy implications.

3. Staff will develop a draft revised Energy Policy, presentation, meeting flyers, proposed roll-out strategy and dates for statewide beneficiary consultation to the HHC for approval to proceed.
4. Conduct statewide beneficiary consultation meetings on revised energy policy
5. Amend the draft revised Energy Policy based on beneficiary input received.
6. Develop beneficiary consultation report and submit to the HHC for approval.
7. Conduct HHC workshop on final draft revised Energy Policy.
8. Prepare final Energy Policy for HHC approval.

General Timeframe for Activities:

Major Activities	Timeframe
1. Interviews	Nov 2012-Feb 2013
2. Policy Reviews	Jan-Feb 2013
3. Draft revised Energy Policy	Feb-March 2013
4. HHC Approval of Draft for Consultation	March 2013
5. Beneficiary Consultation	March -April 2013
6. HHC final approval	May 2013

La'i'opua 2020

a 501 C-3 non-profit corporation
74-5599 Luhia Street #E5
Kailua Kona, 96740

Phone.....808-327-1221
Fax808-327-1223
email.....bokahui@yahoo.com

January 14, 2013

Hawaii State Capitol- Rm.
415 South Beretania St.
Honolulu, HI 96813

Subject: Capital Improvement Project Biennium Funding Request

Aloha _____,

La'i'opua 2020 & West Hawaii Community Health Center (WHCHC) are submitting this Capital Improvement Project (CIP) Biennium funding request for a total amount of \$8,664,740. The year by year request is below. This CIP Biennium request addresses our need to complete the necessary infrastructure required to move forward with the construction of the medical clinic and community center facilities.

FY 2013- 2014	\$7,362,140 grading, off-site civil, fill, pad prep for MC and CC
FY 2014- 2015	\$1,302,600 final grading, paving, landscaping, etc.

As you are aware, WHCHC received a \$5M Health Resource Service Administration (HRSA) grant for the purpose of constructing a medical facility. However, HRSA funds were only for vertical construction. Funds are still needed to complete the infrastructure installation. It is important to note that these HRSA funds must be spent by April 2015 when the medical facility must be completed. To achieve the 2015 deadline, infrastructure funding is required so the site can be prepared for vertical construction.

The FY-2013- 2014 CIP request for \$7,362,140 specifically addresses all the necessary on site and off site infrastructure cost required to prepare the entire site for vertical construction of both the medical facility and the community center. These costs include the Phase 1 Entry to the site, grading and fill of the site, civil engineering and infrastructure construction such as sewer, water, electrical, grading for roads and parking, and lighting for Phase 1 of the entire project. Once completed, the medical facility vertical construction will commence.

The FY-2014-2015 CIP request for \$1,302,600 will complete the final infrastructure construction to include final site work, grading, paving, and landscaping. Once the installation of the infrastructure is complete, L2020 will leverage this CIP request and seek additional funding opportunities from USDA federal grant & loan program, other federal programs such as NAHASDA, and private funding.

Further, L2020 and WHCHC are looking to leverage all project funds (federal, state, local, private) to secure New Market Tax Credits. NMTC are available to designated communities such as La'i'opua and can provide an additional 30% in capital for every investment dollar. So if this CIP request is approved, an additional \$2.6 million could become available to complete other phases of the project which would exceed our match for FY-2013-14 of \$7.34M CIP request.

B1 - Testimony, Q-5

We have included several attachments that describe the status of our project and support our CIP funding request.

Exhibit A	<u>FY 2013-2014</u>	\$7,362,140
	1. Off Site Construction Cost	\$ 932,400
	2. Phased One Entry Civil Cost	\$1,483,100
	3. Medical Clinic Civil Cost	\$2,644,040
	4. Community Center Civil Costs	\$2,302,600
<u>FY 2014-2015</u>		\$1,302,600
	1. Off-Site	\$ 53,500
	2. Entry	\$140,300
	3. Medical Center	\$644,900
	4. Community Center	\$463,900

Exhibit B **Pre-Development Task Sheet**
List of Completed pre-development entitlements associated with the construction of the medical clinic community center facilities.

Exhibit C **Project Timeline**
Project Timeline for constructing medical clinic and community center

It's important to note that L2020 has conducted and completed numerous tasks (see Exhibit B) to include the necessary environmental studies, archeological report, geo-technical studies, preliminary engineering reports, requisite DHHL and County subdivision Plan Approval, and CV-7.5 Zoning approvals. More importantly, La'i'opua 2020 has completed and has received its Mass grading plans and permits are in the process of being issued. Further, L2020 has completed its civil engineering development plans which are associated with this CIP request.

Upon the receipt of the *National Pollutant Discharge Elimination System (NPDES)* permit expected in March 2013, La'i'opua 2020 is schedule to begin the Mass Grading and Grubbing in the 3rd quarter of 2013 (see Exhibit C) subject to the approval of this CIP request. In conclusion, La'i'opua 2020 is shovel ready to encumber this Biennium CIP request for FY-2013-14 in the amount of \$7,362,140 and for FY-2014-15 in the amount of \$1,302,600.

On behalf of La'i'opua 2020 and West Hawaii Community Health Clinic, we submit this Capital Improvement Project request and seek your support to submit a CIP Bill. We also ask that you consider our request as your number one priority. We believe we have demonstrated our readiness to encumber these funds and begin construction of our medical clinic and community center facilities.

Please contact me if you have any questions.

Mahalo Nui,

Craig "Bo" Kahui, Executive Director
La'i'opua 2020

CC: La'i'opua 2020 Board
West Hawaii Community Health Center- Richard Taaffe

EXHIBIT A

Summary Infrastructure Cost Estimates	pg. 1
On-Off Site Cost Estimates	pg. 2
Phase 1 Entry	pg. 3
Phase 1 Medical Clinic	pg. 4
Phase 1 Community Center	pg. 5

La`i`Opua 2020 Community Center Development
Infrastructure Cost Estimates
October 2012

Summary	FY-2013 2014	FY-2014 2015	Total
Offsite	\$932,400.00	\$53,500.00	\$985,900.00
Phase 1 Entry	\$1,483,100.00	\$140,300.00	\$1,623,400.00
Phase 1 Medical Center	\$2,644,040.00	\$644,900.00	\$3,288,940.00
Phase 1 Community Center	\$2,302,600.00	\$463,900.00	\$2,766,500.00
Total	\$7,362,140.00	\$1,302,600.00	\$8,664,740.00

La'I'Opua 2020 Community Center Phase 1
 Cost Estimate
 October 2012

Offsite Item	Quantity	Unit	Unit Price	FY-2013 2014	FY-2014 2015	Total
Sitework						
Demo and remove concrete sidewalk & A.C. Pa	1	LS	\$ 10,000	10,000		\$ 10,000
Excavation	120	CY	\$ 20	2400		\$ 2,400
2-1/2-inch Asphalt Concrete Pavement	3,200	SF	\$ 10		32000	\$ 32,000
6-inch Layer Aggregate Base Course	60	CY	\$ 50		3000	\$ 3,000
6-inch Asphalt Curb	350	LF	\$ 20		7000	\$ 7,000
Curb Ramp	2	EA	\$ 5,000		10000	\$ 10,000
Striping	1	LS	\$ 1,000		1000	\$ 1,000
Erosion Control	1	LS	\$ 500		500	\$ 500
Electrical						
Estimated				920,000		\$920,000
Sub-total Offsite				932,400	53,500	\$985,900

La'i Opua 2020 Community Center Phase 1 Entry
Infrastructure Cost Estimate
October 2012

Phase 1 (Entry)				FY 2013	FY 2014	
Item	Quantity	Unit	Unit Price	2014	2015	Total
<u>Sitework</u>						
Clear and Grub	0.6	Acres	\$ 2,000	\$ 1,200		\$ 1,200
Excavation	0	CY	\$ 20	\$ -		\$ -
Embankment	11,500	CY	\$ 30	\$ 345,000		\$ 345,000
2-1/2-inch Asphalt Pavement	9,600	SF	\$ 10		\$ 96,000	\$ 96,000
6-inch Layer Aggregate Base	180	CY	\$ 50		\$ 9,000	\$ 9,000
4-inch Concrete Sidewalk	1,200	SF	\$ 10		\$ 12,000	\$ 12,000
6" Select Borrow	20	CY	\$ 40		\$ 800	\$ 800
Traffic Signs	1	LS	\$ 3,000		\$ 3,000	\$ 3,000
Striping	1	LS	\$ 6,000		\$ 6,000	\$ 6,000
Erosion Control	1	LS	\$ 2,000		\$ 2,000	\$ 2,000
<u>Water System</u>						
8-inch PVC Waterline	200	LF	\$ 120	\$ 24,000		\$ 24,000
6-inch PVC Waterline	140	LF	\$ 110	\$ 15,400		\$ 15,400
Fire Hydrant Assembly	1	EA	\$ 7,500	\$ 7,500		\$ 7,500
8" D.C. Meter	1	EA	\$ 10,000	\$ 10,000		\$ 10,000
Gate Valve	5	EA	\$ 2,000		\$ 10,000	\$ 10,000
Connect to Existing Waterline	1	EA	\$ 500		\$ 500	\$ 500
Cut and Plug for future connection	2	EA	\$ 500		\$ 1,000	\$ 1,000
<u>Drainage System</u>						
6' Deep Seepage Pit	2	EA	\$ 15,000	\$ 30,000		\$ 30,000
<u>Electrical System</u>						
Estimated	1	LS	\$1,050,000	\$1,050,000		\$ 1,050,000
Sub-total Phase 1 Entry				\$1,483,100	\$140,300	\$ 1,623,400

La'I'Opua 2020 Community Center Phase 1
 Cost Estimate
 October 2012

Phase 1 (Community Center)				FY 2013	FY 2014	Total
Item	Quantity	Unit	Unit Price	2014	2015	
<u>Sitework</u>						
Clear and Grub	3	Acres	\$ 2,000	\$ 6,000		\$ 6,000
Excavation	1,400	CY	\$ 20	\$ 28,000		\$ 28,000
Embankment	37,300	CY	\$ 30	\$ 1,119,000		\$ 1,119,000
2-1/2-inch Asphalt Concrete Pavement	35,200	SF	\$ 10		\$ 352,000	\$ 352,000
6-inch Layer Aggregate Base Course	650	CY	\$ 50		\$ 32,500	\$ 32,500
4-inch Concrete Sidewalk	5,900	SF	\$ 10		\$ 59,000	\$ 59,000
6" Select Borrow	110	CY	\$ 40		\$ 4,400	\$ 4,400
Traffic Signs	1	LS	\$ 7,000		\$ 7,000	\$ 7,000
Striping	1	LS	\$ 1,000		\$ 1,000	\$ 1,000
Erosion Control	1	LS	\$ 8,000		\$ 8,000	\$ 8,000
<u>Water System</u>						
8-inch PVC Waterline	910	LF	\$ 120	\$ 109,200		\$ 109,200
6-inch PVC Waterline	60	LF	\$ 110	\$ 6,600		\$ 6,600
Copper Water Lateral	40	LF	\$ 30	\$ 1,200		\$ 1,200
Fire Hydrant Assembly	3	EA	\$ 7,500	\$ 22,500		\$ 22,500
Gate Valve	12	EA	\$ 2,000	\$ 24,000		\$ 24,000
Connect to Existing Waterline	1	EA	\$ 500	\$ 500		\$ 500
Cut and Plug for future connection	2	EA	\$ 500	\$ 1,000		\$ 1,000
<u>Sewer System</u>						
8-inch PVC Sewerline	630	LF	\$ 120	\$ 75,600		\$ 75,600
6-inch PVC Sewerline	100	LF	\$ 110	\$ 11,000		\$ 11,000
Sewer Manhole	2	EA	\$ 15,000	\$ 30,000		\$ 30,000
Drop Sewer Manhole	1	EA	\$ 35,000	\$ 35,000		\$ 35,000
Connect to Existing Sewer Line	1	EA	\$ 500	\$ 500		\$ 500
<u>Drainage System</u>						
6' Deep Seepage Pit	3	EA	\$ 15,000	\$ 45,000		\$ 45,000
<u>Electrical System</u>						
Estimated	1	LS	\$ 787,500	\$ 787,500		\$ 787,500
Sub-total Phase 1 Community Center				\$ 2,302,600	\$ 463,900	\$ 2,766,500

La'I'Opua 2020 Community Center Phase 1
 Cost Estimate
 October 2012

Phase 1 (Medical Center)				FY 2013	FY 2014	
Item	Quantity	Unit	Unit Price	2014	2015	Total
<u>Sitework</u>						
Clear and Grub	4.5	Acres	\$ 2,000	\$ 9,000		\$ 9,000
Excavation	6,100	CY	\$ 20	\$ 122,000		\$ 122,000
Embankment	50,650	CY	\$ 30	\$1,519,500		\$1,519,500
2-1/2-inch Asphalt Concrete Pavement	45,500	SF	\$ 10		\$455,000	\$ 455,000
6-inch Layer Aggregate Base Course	850	CY	\$ 50		\$ 42,500	\$ 42,500
4-inch Concrete Sidewalk	5,800	SF	\$ 20		\$116,000	\$ 116,000
6" Select Borrow	110	CY	\$ 40		\$ 4,400	\$ 4,400
Traffic Signs	1	LS	\$ 10,000		\$ 10,000	\$ 10,000
Striping	1	LS	\$ 7,000		\$ 7,000	\$ 7,000
Erosion Control	1	LS	\$ 10,000		\$ 10,000	\$ 10,000
<u>Water System</u>						
8-inch PVC Waterline	1,050	LF	\$ 120	\$ 126,000		\$ 126,000
6-inch PVC Waterline	40	LF	\$ 110	\$ 4,400		\$ 4,400
Copper Water Lateral	30	LF	\$ 30	\$ 900		\$ 900
Fire Hydrant Assembly	2	EA	\$ 7,500	\$ 15,000		\$ 15,000
Gate Valve	6	EA	\$ 2,000	\$ 12,000		\$ 12,000
Connect to Existing Waterline	1	EA	\$ 500	\$ 500		\$ 500
Cut and Plug for future connection	1	EA	\$ 500	\$ 500		\$ 500
<u>Sewer System</u>						
Connect to Existing Sewer Line	1	EA	\$ 500	\$ 500		\$ 500
<u>Drainage System</u>						
6' Deep Seepage Pit	4	EA	\$ 15,000	\$ 60,000		\$ 60,000
<u>Electrical System</u>						
Estimated	1	LS	\$773,740	\$ 773,740		\$ 773,740
Sub-total Phase 1 Medical Center				\$2,644,040	\$644,900	\$3,288,940

EXHIBIT B

La'i'opua Community Center Development

Preliminary Development Entitlements Tasks & Milestone
Completed

La'i'opua 2020 Community Center Development
La'i'opua 2020 & Contractor Tasks Sheet
Preliminary Entitlements & Category Range of Requirements/ Parameters & Milestones
(Exhibits Available upon Requests)

	Parameters	Requirements	La'i'opua 2020 Project: Milestones & Tasks Completed
Building Site Criteria	Physical parameters required for site development; Completed	Size/buildable area	L2020 Building TMK 7-4-021:002 Lot B1 (26+ Acres), Ex. A-Site Map
		Slope hazard/soil depth	The site's slope is between 3 %– 15% grade of the property. Ex. B-Topo Map, Ex. B1-Topo Map
		Tsunami and flood inundation	Site location not within the tsunami & flood inundation area. Ex. C- Tsunami & Flood Map
		Lot configuration	Ex. AA-COH-Subdivision Map Approved
	Operational constraints such as roadways and utilities Completed	Roadways	Internal roads design complete.
		Water	L2020 has secured 16 water credits for the first phased development for Community Center & Medical Clinic
		Wastewater	Site has sewer credits to the current Sewerage Treatment Plant. L2020 has constructed an interim sewer connection. Permanent sewer connection pending new Ane Keahokalo Hwy highway construction completion June 2012.
		Drainage	Consultants RM Towill to complete drainage report.
		Power and communications	Keanulehu Drive serves the site; EX. C-1 Preliminary Engineering Report Completed and Adopted
		Pedestrian/alternative transportation accessibility	Pedestrian access and alternative transportation accessibility is planned on Ane Keahokalo Hwy and mauka makai routes with newly planned roads Site is located within the Transit Oriented Development
	Environmental Assessment Completed	Cultural/archaeological Flora/fauna Air quality/noise Environmental hazards (e.g. hazardous materials)	Federal Environmental EA and Archeological studies completed. No Findings of Significant Impact was determined. Data recovery of site 13207 completed . Botanical Study completed with no impact to flora & fauna. Soil Survey completed . Ex. D Federal- Environmental Review Complete, Ex. E-Archeological Report, Ex. F-Botanical Report, Ex. I Geotechnical/ Soils Survey
Building Site Criteria	Design	Community Center Complex	Group 70 International (G70) contracted to complete community center architectural design- Pre-design complete
	Design	Medical Clinic Complex	Sandwich Isles Development/ Arcadia Design (SID) to complete medical clinic design- Pre-design complete: Design Development initiated Dec 2012
	Grubbing & Grading Permit Imminent	County of Hawaii (COH) Plan Approval	COH Plan approval pending County review for first phase development grubbing & grading and infrastructure installation, <i>ie. Sewer, water, electrical, date, parking, roads, landscaping</i>
	Meets sustainable design objectives	Leadership in Energy and Environmental Design (LEED)	Not required, but highly recommended
	Ceded land status		Non-ceded property;
Community Criteria	Governmental/land use Approvals Completed	State Land Use District	Urban
		County General Plan	Urban
		County Zoning	Zoned Commercial Village- (CV7.5) Ex. G- DHHL Zoning Declaration, Ex. G1 County Zoning Approval, Ex. G2- Final Subdivision Approval
		Special Management Area	Outside SMA area
	Relationship to surrounding community		No displacement of residents Native Hawaiian Community and Surrounding Communities support L2020 vision for the community center program & services.
	Location in relationship to population centers and commercial activity		Site location in increasing populated growth with an estimated 4100 mix units planned for the area. Office & Business centers planned adjacent to Community Center development
	Surrounding land uses	Compatibility to adjacent uses or services	A. Police station and cell block is less the 1 mile to site location, and custody transfers present minimal risk. B. Commercial & Retail Services planned-TMK 7-4-021:003 C. County Civic Center D. Regional Park Planned 194 acres E. Judiciary Complex moves to Kealahou.
Cost Considerations	Land ownership	DHHL State-owned	State owned; Land transferred to La'i'opua 2020 with a 65 year general lease. L2020 has sub-lease authority Ex. H- L2020 Community Center Lease;
	Site acquisition	La'i'opua 2020 receives DHHL License & site control	State DHHL executed 65 year General License with La'i'opua 2020 August 2009
	Demolition of existing structures		No structures exist on the site location
	Required on- and off-site improvements		Site requires on-off site improvements; sewer, water, electric, and data.
	Location in relationship to other support services		Proposed site is adjacent to mixed use commercial property with potential to serve and offer other activities and services.
	Insurance		La'i'opua 2020 has secured insurance for the site

EXHIBIT C

La'i'opua Community Center Development

Project Timeline & Construction Schedule

La'l'opua 2020 Project Timeline

			Objective # 1				Objective # 2				Objective # 3						
			2012				2013				2014				2015		
			1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	
Task Name																	
C = Complete																	
Architectural Design Team	Project Design and Development		L2020	C													
	Hire Architect																
	Hire Project Manager																
	Staffing Model																
	Space Program																
	Schematic Design																
	Design Development	Architectural	C		C	C	PC	PC	X	X							
	Construction Documents								X		X						
	Owner Review										X						
	Construction Permit										X						
	Site Plan		C									X		X			
	Grading Plan	Civil			C												
	Grading Permit																
Site Development Plan				C	C												
Civil Contractor	Bid Processes		Civil														
	Civil Bidding and Negotiations																
	Civil Bid Award						X										
	Design Assist Contract Award	Architectural															
	Construction Contract Award																
	Site Preparation																
	Mass Grading Plans / Approval																
	Site Work Plans / Permit		Civil				C	PC	X								
	Mobilization																
	Grading and Grubbing							X									
Underground Utilities									X		X						
Pad Preparation										X		X					
Vertical Construction																	
GC	Concrete																
	Foundation Excavation											X					
	Foundation Forms											X					
	Form Inspection											X					
	Foundation Pour											X					
	Backfill											X					
	Slab Prep											X					
Slab Pour											X						
GC	Rough Construction																
	Rough Framing											X		X			
	Building Wrap													X			
	Rough Mechanical													X			
	Rough Electric													X			
	Rough Plumbing													X			
	Fire Suppression Piping													X			
L2020 Project Timeline cont.			2011	2012				2013				2014				2015	
				1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter
GC	Rough Inspections																
	Insulation													X			
GC	Finishes - Interior																
	Drywall														X		
	Acoustical Ceilings														X		
	Finish Carpentry														X		
	Interior Painting															X	
	Mechanical, Electrical, Plumbing Trims															X	
	Floorcoverings															X	
	Hardware															X	
	Mech. Elec. Plumb - Inspections															X	
	Equipment Installation															X	
Signage																X	
GC	Finishes - Exterior																
	Roofing														X		
	Glazing														X		
	Siding and Trims														X		
	Ext. Painting															X	
Ext. Fixtures and Signage																X	
Civil Contractor	Final Site Work																
	Final Grading															X	
	Paving															X	
	Sidewalks																X
	Traffic Signs																
	Striping																
	Seeding and Landscape																X
GC/L2020	Final																
	Final Building Inspection																X
	Certificate of Occupancy																X
	Move-in																X
Contract Close-out																	X
Verif. Const. Start																	
C = Completed Task																	
Site Work Start																	
PC = Partial Complete																	
Project Complete																	

**Testimony of Waiohuli Undivided Interest Lessees Association to
Hawaiian Homes Commission**

1/14/13 at DHHL Kapolei

Aloha mai e nā Hawaiian Homes commissioners,

I am Kekoa Enomoto of Maui, testifying on behalf of the 289 beneficiaries represented by `Ahahui `Āina Ho`opulapula O Waiohuli, otherwise known as the Waiohuli Undivided Interest Lessees Association, on the **agenda item concerning water reservations and a water policy plan.**

Last week I attended a Maui Island Water Use and Development Plan community meeting held Jan. 9 at Mayor Hannibal Tavares Community Center in Pukalani.

At that time, Maui County officials unveiled a five-stage approach to formulate a Maui Island Water Use and Development Plan, and indicated the Department of Hawaiian Home Lands would enter the process at Stage IV, with a step to "incorporate state water projects plan."

On behalf of present and future Maui lessees, I support a DHHL water policy plan with water reservations for the following:

- ~~320~~ Waiohuli Undivided Interest residential homesteads.
- ~~56~~ prospective Waihe`e residential lots (across from Wai`ehu Kou IV homestead), possibly to be awarded with initial preference given to Waiohuli Undivided Interest Lessees.
- Agricultural water allotments for ~~66~~ Kēōkea farm lots, that currently are given only a residential allotment of 600 gallons daily.
- Extension of the agricultural nonpotable water line from the state Kula Ag Park to the Kēōkea farm lots.
- Pulehunui Masterplan provisions for a Native Hawaiian culture center and/or business center complex.

Last month, Stewart Matsunaga of DHHL Master Planned Community Development section along with Maui Commissioner Perry Artates and District Operations Manager Mona Kapakū met with Waiohuli Undivided Interest Lessees Association members. At that meeting, Matsunaga indicated that some or most of 98 first-increment Waiohuli Undivided Interest lots already have infrastructure of roads and utilities, and may become available to lessees relatively soon. We are grateful for this face-to-face interaction and thrilled at the prospect of beneficiaries getting onto the `āina eight long years after they signed their leases in June 2005.

With this imminent scenario, I urge appropriate water reservations in the DHHL water policy plan as well as a **DHHL-generated survey (pledged four months ago) to assess financial profiles and housing needs** of the 289 Waiohuli Undivided Interest Lessees and others; so Waiohuli Undivided Interest Lessees may become *actual* Waiohuli Phase-2 residential lessees.

Indeed, I urge the commission to be *proactive* in seeking water reservations due under the State Water Code to thousands of wait-list beneficiaries representing 21,000 homestead requests throughout the archipelago.

Mahalo.

B-2 TESTIMONY ON
HHC Item No. A-2
Exhibit
Date 1-14-13

HCDC

Homestead • Community
Development • Corporation



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

Date: January 14, 2013

To: Hawaiian Homes Commission

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.

Since October 2011, on behalf of the Anahola Hawaiian Homes Association (AHHA), we have been working on 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 lands at the end of the project. In addition, our approach includes annual lease revenues to the trust for a 20 year period.

We completed our due diligence, our consultation on homestead benefits agreement, and submitted our formal land use request to DHHL on April 30, 2012. It was posted for 30 day comment on June 6, 2012 and placed on the June 2012 HHC agenda for an information only briefing by LMD.

60 days later, DHHL staff did not bring forward to the Commission, our Land Use Request dated April 30, and instead put forward, essentially a request for permission from the Commission to undermine a beneficiary project we proposed and shared in good faith. Not only was the request made by the DHHL Interim Director, the LMD Manager, and the Planning Manager unethical, it was immoral. The Commission rejected DHHL's attempt to remove the beneficiaries from our own project, requiring DHHL to include HCDC in negotiations with Green Energy. Since August 2012, negotiations have resulted in all terms agreed upon, except for the final language on the lands withdrawal section of the license and the disposition of the license to either HCDC with the approval to sublease to GET, OR to both HCDC and GET as co-licensees (HCDC as an eligible eleemosynary nonprofit organization, and GET as an energy development firm). DHHL and the Attorney General, without citing a legal basis or conducting a rational discussion, claim HCDC, a tax exempt nonprofit AND a beneficiary controlled organization, is not eligible to be on the license at all, even in the face of numerous prior issuances.

Since April 30, 2012, 8 months have gone by and HCDC has yet to have its original request acted on by the Hawaiian Homes Commission. Instead, DHHL has inserted itself to thwart our request as beneficiaries of our own trust, to be considered by our Commission. DHHL has with intent, for 8 months, refused to place on the agenda, our beneficiary request submitted in compliance with Hawaii Administrative Rules. DHHL has with deliberate intent, taken the content of our April 30 proposal, revised it to be their own, removed us from our own project, and has only allowed their proposal to be put before the Commission for action – first in August, and now in January. Every other agenda item

ON HHC Item No. C-1
Exhibit A
Date 1-14-13
B-4 Testimony

on the topic of our project has been “for information only” to prevent the Commission from its authority to act.

Now before you, is a request by DHHL to discard negotiations and to place the lands we requested 8 months ago at fair market value, to be put out for public bid. Please be advised, that HCDC and GET will not respond to any Request for Proposal. After 8 months, DHHL has run out the clock on our private financing sources, we simply do not have the luxury of the additional months that it will take DHHL to issue an RFP, to respond and to finalize a license. We must either conclude negotiations and obtain an action by the Commission, or the financing source will require other lands on Kauai to replace our project.

We request that the Commission decline the DHHL request to issue an RFP. We request that the Commission act on the original HCDC/GET request, which was to authorize a license issued to either HCDC with the ability to sublease, OR to authorize a license issued to both HCDC and GET as co-licensees.

Commissioners, only the Commission, not DHHL, not the Chairman, not the Attorney General, only the Commission as a body, has the authority to make land disposition decisions. DHHL, the Chairman, the Attorney General, Norman Sakamoto, all can provide you with their opinions, as can we, and our legal counsel – but at the end of the day, the Commission has all authority under the Hawaiian Homes Commission Act. We ask you to require DHHL to fully disclose the results of our negotiations, and with specificity, to direct the Attorney General to make public its opinion on the eligibility of HCDC, a tax exempt nonprofit and a beneficiary controlled organization to be on the license. We further ask that you follow the HHCA, follow HRS 171, and follow what this Commission has done in numerous prior land dispositions with nonprofits and beneficiary organizations – to direct DHHL to issue a license to both HCDC and GET.

With these actions taken by the Commission, we can move forward beyond DHHL, and work with the Attorney General’s office to resolve the issue of disposition, to either appeal, or step away from our own project. Without the actions above, we are essentially negotiating with a ghost and with rumors and gossip. Please take action to 1) deny DHHL’s request to RFP our lands; 2) direct the Attorney General to make public its opinion on our eligibility; and 3) approve HCDC and GET to be co-licensees. These actions provide all of us with a clear path.

Mahalo.

Enclosures: Original Submittal to DHHL for HHC Agenda Scheduling
HCDC Project Timeline to Date

Hawaiian Homes Commission Action Submittal – April 30, 2012

To: Chairman and Members, Hawaiian Homes Commission

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 direct 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>
Total	2,137.151 Acres

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.

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 3rd year through the 22nd year, producing revenue to the Trust for a period of 20 years.

B. That the Hawaiian Homes Commission (HHC) approves and directs 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 2nd 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 sublease 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 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 Homesteaders 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 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
1,175 Acres	Total Arable Acreage
962 Acres	Not Suitable (Gullies, etc)
2,137 Acres	Total Land Request

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 (2%)	Common areas for community uses. Includes space for parks and recreation, cultural activities, CBED and other public amenities
General Agricultural	716.22 Acres (34%)	Prime agricultural areas. Commercial level agriculture.
Pasture:	148.46 Acres (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 (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 (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 Albizia 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.

Sections 204 & 207 of the Hawaiian Homes Commission Act on Land Use

Section 204. Control by Department of Available Lands.....

(2) Any available land,.....not leased as authorized by section 207(a) of this Act.....

In the management of any retained available lands not required for leasing under section 207(a), the department may dispose of those lands or any improvements thereon to the public, including native Hawaiians, on the same terms, conditions, restrictions, and uses applicable to the disposition of public lands in chapter 171, Hawaii Revised Statutes;

provided that the department may not sell or dispose of such lands in fee simple except as authorized under section 205 of this Act;

provided further that the department 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 with the procedures set forth in chapter 171, Hawaii Revised Statutes.

Section 207. Leases to Hawaiians, licenses. (a) The department is authorized to lease to native Hawaiians the right to the use and occupancy of a tract or tracts of Hawaiian home lands within the following acreage limits per each lessee.....

(b) The title to lands so leased shall remain in the State. Applications for tracts shall be made to and granted by the department, under such regulations, not in conflict with any provisions of this title, as the department may prescribe. The department shall, whenever tracts are available, enter into such a lease with any applicant who, is in the opinion of the department, is qualified to perform the conditions of such lease.

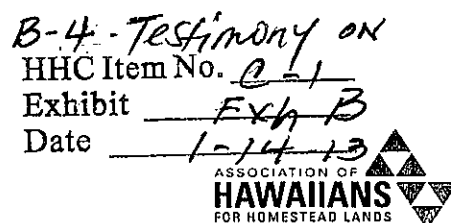
(c)(1) The department is authorized to grant licenses as easements for railroads, telephone lines, electric power and light lines, gas mains, and the like.

The department is also authorized to grant licenses for lots within a district in which lands are leased under the provisions of this section for:

(A) Churches, hospitals, public schools, post offices, and other improvements for public purposes; and

(B) Theaters, 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).

(c)(2) The department is also authorized to grant licenses to the United States for reservations, roads, and other rights-of-way, water storage and distribution facilities, and practice target ranges.



Land Dispositions Allowed of Hawaiian Home Lands Under the Hawaiian Homes Commission Act

UNESCO	IMCA Section	Field No.
207(1)	207(1)	100
207(2)	207(2)	100
207(3)	207(3)	100
207(4)	207(4)	100
207(5)	207(5)	100
207(6)	207(6)	100
207(7)	207(7)	100
207(8)	207(8)	100
207(9)	207(9)	100
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207(99)	207(99)	100
207(100)	207(100)	100

***Note: Policy Priority is to Require Homestead Benefit Agreements on any land use 2,3,4,5,6,&7**
Policy Priority is to Promote 3, 4 & 6 to native Hawaiian controlled orgs (homestead associations)



§171-16 Notices. (a) Auctions. Public notice of any proposed disposition by auction shall be given at least once statewide and once in the county where the land being disposed of is located. Notice of the auction shall contain the following:

- (1) Time and place of the auction;
- (2) General description of the land, including the address and tax map key;
- (3) Specific use for which the disposition is intended; and
- (4) Upset price or rental to be charged. The maps showing the metes and bounds description and the classification of the land shall be kept in the office of the board of land and natural resources and of its land agent in the county in which the land is situated, and shall be open for inspection at all reasonable hours.

(b) Drawings. Whenever a disposition by drawing by lots is proposed, public notice inviting applications to participate in the drawing shall be given once statewide and once in the county where the land being disposed of is located. The notice shall contain:

- (1) The qualifications required of applicants;
- (2) A general description of the land, including the address and tax map key;
- (3) Specific use for which the disposition is intended; and
- (4) Date by which all applications must be filed, which date shall be not less than fourteen days after the last notice.

Within forty-five days after the closing date for applications, the board shall select those qualified to participate in the drawing, notify all applicants as to whether or not they qualified, and conduct the drawing.

The notice of selection of applicants qualified to participate in the drawing, together with the notice of drawing, shall be mailed to each applicant, whether or not the applicant, in fact, qualified. The notice of the drawing shall state the time and place of the drawing. Upon completion of the drawing, the award shall be announced within one week, and the lease or patent issued within ninety days after the drawing or when the conditions of the sale are fulfilled.

(c) Negotiation. Public notice of a proposed disposition by negotiation shall be given at least once statewide and once in the county where the land being disposed of is located; provided that the notices are not required for permits, and dispositions of remnants. The notice shall invite proposals and state in general terms the size, location, and prices or rental of lots to be sold or leased, the terms of sale or lease, and the last date on which application will be received by the board, which date shall not be less than thirty days after the last date of the notice. The notice shall also state the times and places at which more detailed information with respect to the sale or lease may be secured by interested persons.

(d) Exchanges; quitclaim; submerged and reclaimed lands; reservations and easements. Whenever it is proposed to exchange public lands for private land pursuant to section 171-50, quitclaim public land or any interests of the State in private land pursuant to

B-4 Testimony
ON C-1 1-14-13

section 171-51, dispose of submerged or reclaimed public land pursuant to subsections (b) and (d) of section 171-53, dispose of a land license by negotiation pursuant to section 171-54, or dispose of reserved rights and easements pursuant to section 171-57, public notice of the disposition shall be given at least once statewide and once in the county where the land or other interests being disposed of are located. The notice shall state in general terms the size and location of the public lands proposed to be disposed.

(e) In addition to giving public notice, any public notice required under this section shall also be posted on the Internet in an easily-located manner. [L 1962, c 32, pt of §2; am L 1963, c 28, §2; am L 1965, c 239, §9; Supp, §103A-16; am L 1967, c 234, §§2, 4; HRS §171-16; am L 1974, c 78, §1; gen ch 1985; am L 1998, c 2, §34; am L 2001, c 202, §1]

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[Next](#)

Sate of Hawaii Department of Hawaiian Home Lands
Hawaiian Homes Commission
91-5420 Kapolei Parkway
Kapolei, Hawaii 96707

January 14, 2013

Aloha Hawaiian Homes Commissioners,

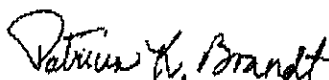
The Innovations Development Group is happy to support Agenda Item F-4. Since we presented our business model to you on Maui, we have had discussions with DHHL staff, some of the Commissioners and Legislators about the potential energy opportunities in areas where preliminary data indicates that DHHL may have energy resources. To date, there has been no comprehensive inventory of energy resources on DHL lands, nor has there been a plan to achieve this in partnership with private sector technology, science and financial partners who have the expertise & investment capitol to work with the department on energy production.

Agenda Item F-4 puts DHHL on the path to achieve this goal. It is common knowledge in the Hawaii Energy sector that renewable energy development opportunities are increasing. HECO has now posted RFP's for geothermal development on Hawaii & has confirmed that there will be another RFP for Maui soon. Existing RFP's for Oahu require up to 200 MWe of energy from sources from the neighbor islands. In addition, there are significant opportunities for renewable energy resource development relating to federal & private sector needs & uses outside the HECO framework. Authorizing the DHHL to direct negotiate for proposals for renewable energy development on Maui is timely for Maui, but it is of great import to other lessees on other islands where DHHL energy resources are located who will also need the DHHL's support to develop energy for the Homestead.

IDG supports the purpose & intent of Item F-4 and urges the Commissioners to vote favorable on this measure. There is a window of opportunity for DHHL which may not come again and DHHL Commissions should take advantage of this. The existing RFP's will not remain available for long so DHL should act efficiently and expeditiously on this matter at this time.

Renewable Energy production results in significant revenue & business opportunity, these are revenues DHHL badly needs to address its budget shortfall and increasing infrastructure costs. Approving Item F-4 will put DHHL in a position to directly negotiate development of its energy resources for the benefit of its lessees and programs.

Sincerely,



Patricia K. Brandt
IDG CEO

B-7 Testimony on
HHC Item No. F-4
Exhibit A-1
Date 1-14-13



Indigenous Consultants, LLC

Mililani B. Trask, Principal

P.O.Box 6377 ♦ Hilo, HI 96720

Mililani.trask@gmail.com



State of Hawaii Department of Hawaiian Home Lands
Hawaiian Homes Commission
91-5420 Kapolei Parkway
Kapolei, Hawaii 96707

January 14, 2012

Aloha DHHL Commissioners,

The Indigenous Consultants welcomes Agenda Item F-4 and the accompanying effort of the DHHL to move forward, utilizing our existing statutory framework, to pursue renewable energy development of its energy resources. It is common knowledge that the DHHL & its lessees are in dire need of funding for their programs. Neither the State nor the Federal Government can supplement the increasing costs for DHHL's expanding homestead program. DHHL must find some way to generate income on its own for its programs.

Authorizing the Department to 'Direct Negotiate' with private sector is the process created by state law to facilitate State agencies ability to work collectively with private sector to achieve the goals of the HCEI & attain energy self-sufficiency. The time has come for the DHHL to avail itself of these statutes & processes so that it can develop energy for its needs as well as a reliable revenue stream for its future.

DHHL must begin somewhere, and focusing on Maui is appropriate given the outstanding HECO RFP's seeking energy for Maui and Oahu in the collective amount of 250 mwt). Geothermix data indicates there is promise for geothermal energy development in Kahiki Nui, in fact private land owners with parcels abutting DHHL lands have already initiated testing and entered into agreements with energy producers. Pulehunui is an area known for its wind & sun. Honokowai preliminary data suggests it has potential for solar development. DHHL needs to participate in the development of these areas, as we may never see another opportunity for DHHL if private sector wins these bids.

I encourage DHHL Commissioners to vote to support the Authorization of DHHL to direct negotiate for renewable energy development on its lands. Renewable Energy Development will bring a steady reliable revenue stream to the DHHL as well as energy that can be used to support industrial, commercial, agricultural & pastoral programs of its beneficiaries.

Regards,

Mililani B. Trask

Mililani B. Trask – Indigenous Consultants LLC

B-8. Testimony ON
HHC Item No. *F-4*
Exhibit *A-1*
Date *1-14-13*

Testimony of Trustee Hulu Lindsey
1-14-2013 DHHL mfg. page 1 of 1

ALOHA MAI KAKOU E LADIES AND GENTLEMEN OF OUR PRESTIGIOUS HAWAIIAN HOMES COMMISSION. I AM HULU LINDSEY, MAUI TRUSTEE OF THE OFFICE OF HAWAIIAN AFFAIRS. I AM DELIGHTED TO BE HERE TO SPEAK FOR MYSELF AND NOT REPRESENTING THE OHA BOARD OF TRUSTEES. I AM HERE TO ENCOURAGE YOU TO VOTE IN FAVOR OF F-4, AUTHORIZING DEPARTMENT OF HAWAIIAN HOME LANDS TO CONDUCT DIRECT NEGOTIATION WITH ALTERNATIVE ENERGY DEVELOPERS FOR PROJECTS OF RENEWABLE ENERGY DEVELOPMENT ON HAWAIIAN HOME LANDS ON THE ISLAND OF MAUI IN THE KAHIKINUI, PULEHUNUI AND HONOKOWAI TRACTS.

I FEEL VERY STRONGLY THAT NOW IS THE TIME FOR HAWAIIAN HOMES TO GET INVOLVED WHERE THERE ARE ABUNDANT NATURAL RESOURCES THAT ARE PERFECT FOR PRODUCING RENEWABLE ENERGY, ALLOWING FOR THE GENERATION OF POTENTIAL REVENUES OFF OF OUR HAWAIIAN LANDS. THE YEAR 2015 IS FAST APPROACHING WHEN DHHL WILL NO LONGER BE RECEIVING THE \$30 MILLION ANNUAL FUNDING UNDER THE ACT 14 SETTLEMENT. DEVELOPING RENEWABLE ENERGY PROJECTS ON HAWAIIAN HOME LANDS IS AN EXCELLENT OPPORTUNITY TO REPLACE THE LOST FUNDING.

I AM A LESSEE OF THE WAIOHULI HOMESTEAD. PRIOR TO MY APPOINTMENT TO THE OHA BOARD OF TRUSTEES AND SUBSEQUENT ELECTION, I WAS INVOLVED IN DISCUSSIONS WITH OUR HOMESTEADERS ABOUT THE POSSIBILITY OF SUPPORTING THE DEVELOPMENT OF GEOTHERMAL ON HAWAIIAN LANDS IN THE KAHIKINUI AREA IN PARTNERSHIP WITH PRIVATE SECTOR TECHNOLOGY, SCIENCE AND FINANCIAL PARTNERS WHO HAVE THE EXPERTISE AND INVESTMENT CAPITAL TO WORK WITH THE DEPARTMENT ON ENERGY PRODUCTION. THE CONSENSUS OF THE GROUP WAS TO SUPPORT A DEVELOPER WHOSE BUSINESS MODEL INCLUDED SHARING A PORTION OF THE PROFITS WITH THE COMMUNITY IN WHICH THE DEVELOPMENT IS LOCATED AND DEVELOPING ENERGY FOR THOSE HOMESTEADS IN THE VICINITY.

IT IS MY HOPE THAT MY FELLOW COLLEAGUES AT OHA WILL WANT TO PARTICIPATE IN THE DEVELOPMENT OF OUR NATURAL RESOURCES AND PERHAPS PARTNER WITH THE DEPARTMENT OF HAWAIIAN HOME LANDS IN PRODUCING

B-9 Testimony ON
HFC Item No. F-4
Exhibit A-3
Date 1-14-12

Testimony Trusten Hoken Leuchly
1-14-2013 DHHL Mtg page 2 of 2

RENEWABLE ENERGY FOR THE BENEFIT OF OUR NATIVE HAWAIIANS AND ALL HAWAII. IT IS AN EXCITING TIME IN HAWAII AS HAWAIIAN ELECTRIC COMPANY RELEASES REQUESTS FOR PROPOSALS FOR RENEWABLE ENERGY DEVELOPMENT. LET US BE AT THE FOREFRONT AS WE PARTNER WITH PRIVATE GROUPS TO DEVELOP OUR OWN ENERGY RESOURCES.

I ENCOURAGE YOU TO SUPPORT THE PASSAGE OF AGENDA ITEM F-4. MAHALO!

November 13, 2012

Department of Hawaiian Homes
91-5420 Kapolei Parkway
Kapolei, HI 96707

DEPT. OF HAWAIIAN
HOME LANDS

2012 DEC -4 PM 2: 04

COPY

Chair Masagatani:

Aloha. My name is Kalā Lindsey and I am a Homesteader from Kaupe'a in Kapolei. I live at 91-1016 Haulele Street. I have been living in a world of fear and intimidation and am desperately seeking your assistance. As we know, the dream of owning a home is difficult, if not impossible. Thanks to the Lord, and the legacy of Jonah Kūhiō Kalaniana'ole, I was able to achieve this dream.

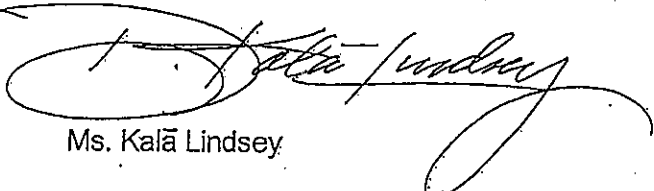
Currently, my dream is being threatened and my life is in turmoil. Unfortunate detrimental circumstances compel me to seek your help as my right and ability to live safely in my home has been compromised.

Kahea and Louis Akana, my neighbors, have harassed and threatened me with false claims and continue to create a hostile environment where I feel I can no longer tolerate. I am a single mother trying to conquer everyday challenges. Their constant persecution has worn down my desire to be resolute and my ability to thrive. I have attached a summary of the events that lead me to your mercy.

At this point, I am requesting to be scheduled on the agenda for the next available Commissioner's meeting to present my case. I am also asking the Hawaiian Homes Commission for the following assistance:

1. Provide assistance for my son and I to relocate to a healthier environment so we can feel safe and live a normal, happier, healthier life in our home. This will allow my family to flee from the tyranny that the Akana's continue to impose upon me.
2. Provide assistance for me to refinance my home or to reallocate my equity towards a new or used home of similar value.
3. Provide safe housing in accordance with the Hawaiian Homes Commission Act of 1921.
4. Evaluate the complaints that I forwarded to the Enforcement Branch, Mr. Peiper, and provide a written statement of the results of his investigation.
- ~~5. Assist me in determining if I should file a complaint for a "Contested Case Hearing" which is explained in the Lessee's Handbook.~~
6. If advised, assist me in filing such complaint.
7. Advise me of any other assistance that might help me to avoid conflict with my neighbors and help me to restore peace and serenity to my family's life.
8. If required, assist me in writing the appropriate motions for consideration at the next DHHL Commissioners meeting.

Mahalo,


Ms. Kalā Lindsey

Cc: DHHL Commissioners

HHC Item No. J-3
Exhibit A
Date 1-14-13

11/13/2012

Department of Hawaiian Homes
91-5420 Kapolei Parkway
Kapolei, HI 96707

Chair, Jobie Masagatani
Perry Artates – Maui
Gene Ross Davis – Moloka'i
Jeremy Kamakanealoahā Hopkins – O'ahu
Imaikalani P. Aiu – Kaua'i

Ian Lee Loy – East Hawai'i
Michael P. Kahikina – O'ahu
Renwick V.I. "Uncle Joe" Tassill – O'ahu
Leimana K. Damate – West Hawai'i

Aloha Chair Masagatani and Honorable Commissioners,

My name is Kalā Lindsey. I live at 91-1016 Haulele Street, Kapolei, HI 96707, Kaupe'a Division, Phase 1, with my 14 year old son, Solomon.

I have been living the American Dream of owning a home, here in Hawaii since November, 2, 2007. I have been given the privilege of owning my own home, and blessed with the opportunity to live where I can have relief for my family, while conquering life's challenges with purpose, focus and determination in everything I do.

My dream has turned into a nightmare, because of what has been forced on me by Kahea and Louis Akana since 2008. Till today, I am still the victim of the abusive, destructive ways of the Akana's. I am living in fear of being terrorized, threatened, and I am the convenient target of malicious lies and vindictive acts. I am experiencing trauma on a daily basis, and it is affecting my daily life.

I have filed numerous complaints over the years with Villages of Kapolei Association, and I have sought assistance from DHHL's Enforcement Officer John Peiper, for protection with no follow up, until the next time Kahea and Louis decide to lash out and terrorize me, and the cycle starts all over again. Quick action is requested to avoid eminent harm and danger to my home and my family.

I live like a prisoner in my own home. I still have to live through my days distracted and bothered by what I have been through, and also of what I will be falsely accused of next. I am also afraid for what my son and I face in the future from the Akana children, who will surely inherit their parents' example and behaviors.

Kahea Akana is the aggressor and Louis follows. My home, my family, my life has been violated and subjected to their abusive, dangerous, unpredictable ways that continue to disrupt my personal and professional life.

I cannot tell you why I am experiencing the abuse and terror inflicted on my home and family by the Akana's. I have done nothing wrong to them. I have had to make alterations in my life because I have to live with their evil ways, like stay out of sight in fear of being accused of frivolous allegations. I've asked VOKA and DHHL for help, only to have my concerns fall on deaf ear.

At this point, the repercussion and effect upon my health and my family is seriously detrimental if the circumstances that befall my family is overlooked. I saw the danger right off around mid 2008, and simply closed my doors to the "ugliness" Kahea brought to my home. I minded my own business, and continued to focus on my family, and my life. I had no clue their ugliness would be my problem.

- I am experiencing trauma with increased levels of stress, grief, anxiety, fatigue, apprehension, fear, as a result of Kahea and Louis Akana's intent to harm my home, my family, my peace.
- I am the victim of Kahea's stalking, obsessive, fixation of destruction and hate. I have been intimidated, harassed, confronted, taunted, falsely accused of malicious allegations every time I step out of my home by Kahea and Louis.
- The close proximity of our homes make me a convenient target of Kahea Akana's willful intent to destroy neighborly conduct, who stalks me and is fixated on causing me harm.
- Officers are called to my home without probable cause, being falsely accused, constantly in fear of being arrested and taken out of my home away from my son. Facing prosecution for something I never did or am aware of committing is frightening.
- I am now, smack dab in the middle of yet another frivolous accusation by Kahea Akana. I honestly don't know how to cope with someone else's sickness, when I myself am dealing with my own burdens. I am worn out. Right now, I feel like I am teeter tottering on the edge. The way the Akana's tear others down sickens me.
- I worry everyday I am away at work for the safety and well-being of my son while he is home alone after school until I get home at night. God forbid my son be accused of vicious lies concocted by Kahea Akana's delusions and deceptions.
- I am constantly upset, in a panic state, crying on my way to work, while at work, on my way home from work, when I get up in the morning, when I go to sleep at night, in my sleep, screaming because I have been forced to live with Kahea's sickness.
- I have lost valuable, countless hours at work, and at home, documenting, recording, reporting, filing documents with VOKA, DHHL, HPD, COURT; robbed of my peace, wasting my vacation hours because I have to address each frivolous accusation made against me; I am distracted at work; I feel violated; I feel sick.
- I hate to go to my home! I hate to go outside and work in my yard or water the grass, or go on one side of the house, or even be seen by them in fear of being falsely accused or confronted or intimidated or taunted. I am in the middle of such ugliness right now, and have fled my home in fear of being arrested.
- ~~• I have sought solace from anyone willing to listen to the unbelievable situation I live in my own home, burdened with someone else's illness, and it is directly affecting my well-being, and I am currently seeking professional help.~~
- I have had Kahea Akana's finger poked in my face, telling me, "you better not cross that line".
- I have had a boundary line weed-wacked between our yards and planter strips by Louis Akana so I don't cross it, yet, they can cross over to my yard.
- I have had Kahea Akana and Louis Akana direct unwelcomed, offensive coarse language towards me while I was mowing my lawn.
- I have had Kahea Akana force her offensive, lude sexual remarks and physical movements pointing her finger to her vagina, back and forth, saying, "you need sex" towards me. Her grotesque display and words from "her mouth and her mind" is unbelievable.

- I have had to pick up their rubbish, rocks, grass cuttings, barbecue soot they intentionally shoot down in front of my driveway or throw in the back of my yard, as a result of the Akana's disregard for my property, and to cause me grief. My son and I have conducted ourselves as good neighbors, and continue to conduct ourselves in righteousness.
- I believe there is no resolution at this point, beyond repair. The damage is done because of the conditions my family is forced to live under. I cannot change their ways. I can only change me, and I have.
- I have come to realize and accept the thought of giving up my dream, just so my family does not meet demise.

I cannot tell you where it went wrong. I don't know why I am the target. I understand there are other families on Haulele Street that fall victim to the Akana's wrath. I make no claims in understanding the disorder Kahea suffers from. I don't know why anyone would intentionally cause so much damage. It is not normal!!!!

Kahea would be waiting for me to come home so she can download on me, or gain my alliance against the families on Haulele Street...families I don't even know, from all the trouble she caused during the day. I had no clue, what I was doomed for. I was the unsuspecting neighbor, in the middle of the Akana and Martin's drama. I tried to be a good neighbor. I listened, I consoled, I comforted, I tried to build up both Kahea Akana and Brooke Martin. That's just what you do for each other. I witnessed Kahea's extreme behaviors, depressed, dependent to stalking, obsessive, heated anger.

The one-sided vicious attacks towards my family has pushed me beyond restoring peace, living next to someone who harbors hate, malice, ill-will, hurt, anger, with intent to cause harm to others. I cannot survive a healthy life if I continue to be subjected to their terror. My strength, my peace, my sanity is worn with every day this situation continues. **I JUST WANT OUT!** I want out of the situation that is continuously pulling my name, and my family down and causing me grief, pain and suffering.

I have put forth my best efforts to live under the stressful conditions forced on me by not retaliating, by avoiding, by staying out of sight, and just live my life. I have not responded, provoked, initiated, teased, or whatever...to Kahea and Louis. Me, the single mom trying to make ends meet, trying to conquer my days with strength, and hope to succeed in life, all to lead by example for my son.

I live a growing Christian life with responsibility to teach values of respect, honor, integrity, to my beautiful 14 year old son. I am the 4th of 6 children born to Edwin Naleilehua Lindsey Sr., of Waialua, Molokai, and Joy Keafohifani Ah Mook Sang of Papakolea. We were raised in Waimanalo, with simple, Hawaiian values instilled in us.

I am a professional graphic artist. I've earned an A.A. degree in Liberal Arts, and an A.S. in Commercial Art, with hopes to pursue a B.A. in Multimedia Visual Communications/Web Development. I am a long-time employee of Hawaiian Telcom and compose artwork for a team of 40+ sales reps who depend solely on me to support their advertising sales objectives.

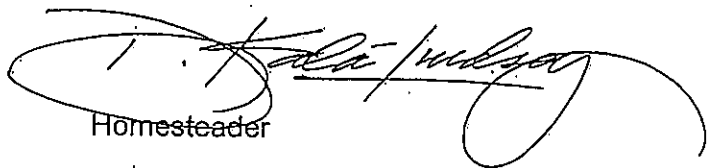
I've worked hard to achieve a good life for my son and I. I follow all the rules, I am an upstanding citizen with no run-ins with the law, other than the fact, that my name is being dragged down because of the Akana's. I have no ill-will towards their family, never have, never will.

I ask that you stop my story from being written any further by the Akana's. I declare that their history is not mine, and that their ways will not attach itself to my family. There is no question, God has put a period to this horror story. I ask that you allow me to write my own story. I ask that my family not be subjected to the ill-will of their wrongful intentions any longer. I simply want to continue to focus on my family, and my health and my life, in a safe, peaceful, righteous home.

With great humility, I plea to the Department of Hawaiian Homes Chair and Commissioners to hear my concerns, today, that my family has suffered as I just want to go on with my life in goodness. I am asking from the deepest part of my core to please consider my request to relocate my family into a healthy neighborhood and community, where my son and I can thrive, and live pono, in a neighborhood where we can celebrate each other's dreams, and live normal, happy lives, perhaps to Waimanalo or Kanehili.

There is no place like home. Waimanalo will always be my home. I will be so fortunate to find your favorable decision in relocating my family to Waimanalo. I am also open to other options you may have available in order to rectify the life I live in fear of, that is causing me grief, pain and suffering.

Ms. Kalā Lindsey



Homesteader

The statements herein, are true and to the best of my recollection.



Brief outline of events leading up to life I live today:

2007 – Moved in to Kaupe'a, Phase I

Met Martins and Akana's – immediate neighbors. Welcomed new neighbors into my home as we celebrated each other's homeownership dreams turned reality.

Note: My house was the last home on Haulele Street to be occupied. My home was vacant for a period of 5 to 6 months after other families moved in on Haulele Street.

During this time, my driveway was abused by immediate surrounding neighbors, their visitors, friends, guests, for their convenience to park and turn around their vehicles. I noticed tire marks on my driveway and suspected trespassing while we were away at work or school. The abuse did not stop. It continued after we moved in. Suspicions were confirmed after I installed security cameras.

My screen sliding door was missing and found rubbish and canvass was in the back yard after I moved in. Shioi Construction delivered new screen sliding door after I inquired that it was missing, and confirmed that my home was broken into while vacant.

Noticed unusual occurrences and signs of intrusion, disrespect around my property while I was away at work. Louis Akana and Baron Martin would cross over my grass to each other's house instead of using sidewalk. The bikes, the rubbish, the blatant disregard to me was just unbelievable.

I came home to frequent dog crap on my grass (Martin's pet), trash, bikes on my front lawn, and cars on driveway.

2008 – I welcomed and nurtured a healthy relationship with my new neighbors. I opened up my home, my garage, as we celebrated each other's homeownership and blessings. I often fed both the Akana family and Martin family. I did all the things you would normally do.

I found myself in the middle of drama with Brooke and Baron Martin. I was often called upon to help Brooke from Baron, Baron from Brooke, Kahea from Brooke, Brooke from Kahea. I witnessed harsh reality of how these people tore each other down. On separate incidences, I was called to Martin home to help Brooke stop Baron from hanging himself. I was also awakened at 3:00am by Brooke to borrow my cell phone since Brooke assaulted her husband. It was discovered that their family had drug issues.

The Martin's eventually lost their home and new neighbors moved in. Not having to worry about both sides of neighbors, no more dog crap to deal, no more fights, was such a relief!!! Little did I know what I was in for with the Akana's.

2009 – Kahea's destructive warpath begins.

Kahea confronts and accuses my son and nephew of hitting her house with golf ball. I did not react, retaliate, accuse. I remember Kahea came to my home as soon as I arrived home from work, and was in a disturbed, angry state. Her demeanor was as if I committed an offense towards her. She left and said, "go, call the cops, I no care!" No soon after that, Louis Akana rang my doorbell. He tried to justify what his wife just did, and accuse my son of throwing golf balls in the back of their yard. I said, "I don't know what golf balls you're talking about." We still had all 3 golf balls we own. What just happened? I was still trying to understand what I was dealing with. I had no clue!

I went into survival mode and protected my home and my family as best I knew how, with what resources I had. I installed security cameras in December 2009. I felt safer, being able to see outside of my home with my son home alone. I'm tired of documenting, I'm tired of recalling all the hurt and disgust.

2010 – By December 2010, I was furloughed, 12/20 to 1/3/2010. I could stay home and enjoy my time off with my son, and take care of my home. Full days off, for 2 weeks! I was so excited to just relax and looking forward to it. My right to ask all the children running back and forth on my lawn, littering, riding their bikes to pick up their rubbish was violated by Kahea's misconstrued and manipulated into something not normal.

2011 – I was furloughed again, December 2011. That meant, Kahea will be focused on me and my activities because I'm home. Sure enough, I was accused of taking pictures of Louis Akana and children. I left my home to exercise about 7am. Arrived back home about 7:45, to find the Akana children stuck on my grass with their bikes. Louis Akana was doing yard work, and ignored that the children were trespassing. Only after I arrived home, did he attempt to correct his children. I merely documented, the only way I know how to, of the 'opala and grass cuttings they always leave behind for me to clean up. Next thing you know, Louis goes and tells Kahea, and Kahea calls police.

No soon after this incident, I came home to find torn pieces of paper strewn all over the back of my yard. It was their copy of my TRO I tried to initiate. I filed a police report.

2012 – see below

Harassment Charges filed against me – Malicious, false allegations are forced on me by Kahea and Louis Akana

1. December 28, 2010, 8:45pm - HPD Report #10-465173

Harassment charge: Falsely accused of swearing at Laie Akana.

I was read my Miranda rights and gave a statement. Arresting officer L. Fontes didn't see need to arrest me, and I was advised to put a TRO in place.

Never did I swear at any child that day, I simply asked Elijah Ho who's rubbish was that on my front lawn, he said his brothers, Laie was kind enough to pick it up, went to throw it down the storm drain and I said, "wait, not over there, go throw it in the trash can". Kahea Akana, the accuser, did not witness anything that day because she was nowhere in sight to supervise her kids.

2. January 26, 2012, 2:25pm – HPD Report #12-033815

Harassment charge: Surveillance cameras positioned on my property but observing activity on a separate property.

I invested in surveillance camera system to secure my property only, not theirs! I asked assistance from Enforcement Officer John Peiper to have aggregate rocks coming out from their side of the fence to be cleaned up. Their rocks was now my problem. It was mixing into my grass

I invested in. I also didn't want to ruin the blades on my McCrane mower I just invested in. The alternative to maintain the grass on that side of my house was to use the weed whacker. I would get cuts and bruises on my legs, and asked Mr. Peiper for help. They were yelling and swearing and taking pictures while they attempted to clean up the rocks. My son and I have cleaned up whatever we could in order to keep that side maintained, and collected buckets full. There is still a lot of rocks still coming out from under the fence that hasn't been cleaned up.

3. October 23, 2012 – HPD Report #12-314957

Unknown allegations as of 11/5/12

Picked up certified notice on 10/31/12 from mailbox, so upset, my whole day stolen – PTO day

Picked up HPD letter on 11/2/12 from post office

Called Officer J. Hussey on 11/5/12, 7:41am - I declined to make statement regarding "unknown" harassment charge. Officer Hussey informed me that he will forward case to prosecuting attorney.

11/7/2012, 8:40am – met with Officer Jason Hussey to make a statement at HPD before going to work. (see document attached) I am suffering anxiety and stress because of this false allegations against me, again!

December 4, 2012

Aloha Chair Jobie Masagutani,

I would like to add the enclosed letter from my doctor in support of my request to be relocated.

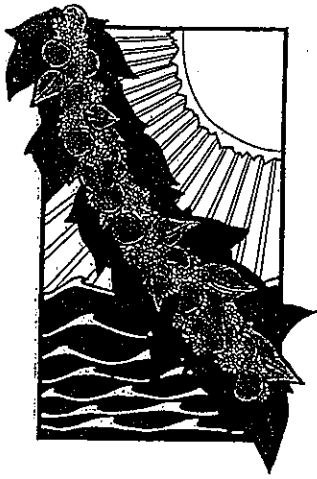
Please reference request letter that was submitted on November 14, 2012.

I have enclosed a sample/copy of that letter.

Please call me at 728-8068 should you have any questions or concerns.

Mahele,
CC Commissioners Kala Lindsey

HHC Item No. J-3
Exhibit B
Date 1-14-13



I Ola Lāhui

Rural Hawaii Behavioral Health Program

677 Ala Moana Blvd. Suite 904 Honolulu, Hawaii 96813 ∞ www.iolalahui.org ∞ phone (808) 525-6255 ∞ fax (808) 525-6256

November 13, 2012

To: Jobie Masagatani
Chair
Department of Hawaiian Homes

From: R. Mahana Chang, Psy.D.
Licensed Clinical Psychologist

DEPT. OF HAWAIIAN
HOME LANDS
2012 DEC -4, PM 2:04

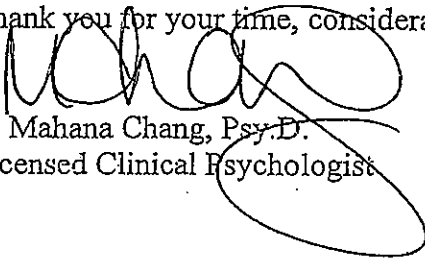
Dear Chair Masagatani,

I am writing this letter on behalf of Ms. Danell Kala Lindsey, who is currently a patient under my care. Ms. Lindsey is receiving treatment to address symptoms of Post-traumatic Stress Disorder, which is directly related to the abuse she has incurred from her neighbors over the past 4 years. Ms. Lindsey's symptoms include panic and anxiety, marked by increased physical arousal, intense fear and a sense of helplessness; daily re-experiencing of past abuse/threats; intense psychological distress when she is at home; and persistent efforts to avoid interactions with her neighbors, which has limited her participation in activities outside of her home. Her current symptoms significantly impact her ability to function effectively both at home and at work.

Due to Ms. Lindsey's current living situation and prolonged exposure to her abusers, she continues to live in fear for her safety as well as the safety of her 14-year-old son, thus thwarting her efforts towards emotional and psychological stability. While Ms. Lindsey actively attends and engages in weekly individual psychotherapy, progress will be minimal as long as her living situation persists. Any assistance that can be offered towards Ms. Lindsey's relocation would greatly improve her psychosocial functioning, as well as her overall safety and well-being.

Should you have any questions or concerns, please do not hesitate to contact my office at (808) 525-6255.

Thank you for your time, consideration and efforts.


R. Mahana Chang, Psy.D.
Licensed Clinical Psychologist

HHC Item No. J-3
Exhibit B
Date 1-14-13

Medicine Pediatrics Associates
Nadine Tenn Salle, MD
550 S. Beretania St., Suite 502
Honolulu, HI, 96813
Phone: (808) 521-9404 Fax: (808) 521-9406



DEPT OF HEALTH
HONOLULU
2012 DEC -4 PM 2:03

November 21, 2012

Re: Lindsey, Danell
(DOB: 08/09/1963)


To Whom It May Concern:

Ms. Danell Lindsey has been my patient since May 2007. She is typically a soft spoken, even tempered woman. Ms. Lindsey is raising her son, Solomon Lindsey-Akerman, on her own. As Solomon's pediatrician, I would also like to mention that he is a very even tempered, intelligent child.

Recently, Ms. Lindsey has come in struggling with visible distress. I have had to treat her for insomnia and generalized stress. When asked about stressors that she is struggling with, she recounts issues that have occurred with her neighbors and the police. I am taken aback by the amount of police reports that have been called on her by her neighbors. Seeing Ms. Lindsey changes from being a soft spoken, even tempered woman to a person in distress, I support that she and her son would do well if they were to be removed from the current circumstances.

If you have any questions, please contact me at my office.

Sincerely,


Nadine Tenn Salle, M.D.

HHC Item No. J-3
Exhibit C
Date 1-14-13

PLEASE CC COMMISSIONERS