


STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

June 14, 2013

TO: Chairman and Members, Hawaiian Homes Commission
FROM: Norman Sakamoto 
Land Development Special Assistant
SUBJECT: Update of Department of Hawaiian Home Lands
Green Energy Team Negotiations

RECOMMENDED MOTION/ACTION

None; for information only.

DISCUSSION

The following events or activities have transpired as related to the proposed lease with Green Energy Team LLC (Green Energy):

Date	Day	Purpose
Feb. 19, 2013	Monday	Status report to HCC
Feb. 22, 2013	Friday	Mailed the meeting information to Beneficiaries and Applicants
March 8, 2013	Friday	Beneficiary Consultation
March 14, 2013	Thursday	HHC Public Hearing (1 st Hearing)
March 15, 2013	Friday	HHC Public Hearing (2 nd Hearing)
March- April		Discussed options
May 2, 2013	Thursday	Focus Group meeting
May 20, 2013	Monday	Focus Group meeting
May 20, 2013	Monday	GET and Anahola Hawaiian Homes Association Testimony received at Molokai HHC
May 20-21, 2013		Beneficiary Consultation report Accepted at the HHC meeting
May 20, 2013		GET requests approval by June 30
May 22, 2013		Informed GET that the July HHC Meeting on Kauai would be the earliest time to hold the approval vote
May 28, 2013		Proposed Coexistence Plan to HCC
June 14, 2013	Friday	HHC Update

A beneficiary consultation meeting and two public hearings were conducted to present information to the community and to allow for community input. A special meeting of the Commission was planned for April 2013 to approve the lease. However, due to the many comments, concerns, and testimonies received at the meeting and hearings, the special meeting was postponed. The concerns were outlined in the Beneficiary Consultation Report. To address the concerns, staff outlined a series of recommendations, and, the Staff Responses and Recommendations to the Beneficiary Consultation Report for the Anahola Renewable Energy Project is attached as Exhibit A.

Given the overwhelming attendance at the public hearings and beneficiary consultation meeting, and the myriad of concerns that were raised, the Department of Hawaiian Home Lands (DHHL) has committed to conduct an informational meeting for the Anahola beneficiary community on the lease terms prior to any final recommendations being brought to the Hawaiian Homes Commission for decision.

To provide interested beneficiaries with sufficient notice, DHHL should mail out the meeting notice to any scheduled informational meeting at least two weeks prior to the meeting.

The following actions remain to be accomplished:

1. Continue to work on Lease terms between the State of Hawaii and Green Energy. This includes a preliminary review by the Office of the Attorney General (AG). (The April 25, 2013, draft lease is with the AG for review.)
2. Work with Green Energy to revise terms of the proposed lease, including options to the community benefits package.
3. Schedule the follow-up informational meeting for the Anahola community. A two-week lead time is suggested. (Tentative mail out date is June 18, 2013).
4. Conduct the informational meeting. (Tentative date is July 2, 2013).
5. Gather verbal and written feedback. (July 2 to 9, 2013).
6. Propose changes to lease provisions if needed.
7. Attorney General review. (July 15, 2013).
8. Post the agenda for the meeting. (Tentative date is July 15, 2013).
9. Seek HHC approval to authorize the Chairman to execute the lease upon adequately addressing comments raised through the public hearing process. (Earliest action [Commission meeting scheduled for Kauai]: July 22, 2013).

RECOMMENDATION

None.

BENEFICIARY CONSULTATION REPORT
ANAHOLA RENEWABLE ENERGY PROJECT

STAFF RESPONSES AND RECOMMENDATIONS

Department of Hawaiian Home Lands
Planning Office
June 14, 2013

The Beneficiary Consultation Policy specifies that the Beneficiary Consultation Report should document:

1. The major comments received;
2. Respond to the major comments; and
3. Provide recommendations to the Hawaiian Homes Commission based on the comments received.

On May 20, 2013, the Hawaiian Homes Commission (HHC) accepted the testimonies and comments received from the two (2) Public Hearings and one (1) beneficiary meeting conducted during the month of March, 2013 for the Anahola Renewable Energy Project. The Department analyzed the content of the individual testimonies and grouped the individual comments into eight (8) major areas of concern. The table below identifies the Department's responses and recommendations to those eight (8) major areas of concern. With the Department's responses and recommendations, the Planning Office's Beneficiary Consultation reporting requirements are completed.

ISSUE OR CONCERN	STAFF RESPONSES AND RECOMMENDATIONS
<i>COMMUNITY REPRESENTATION</i>	
<p><i>Sense of mistrust towards HCDC and AHHA</i></p> <p>Many comments revolved around the theme that HCDC and AHHA are organizations that do not represent the interests of the Anahola homesteaders or their community.</p>	<p>Staff notes the sentiment expressed by beneficiaries toward HCDC and AHHA and we understand that community representation is a big issue for Anahola. The Department cannot respond to questions raised regarding HCDC's and AHHA's community meetings. This can only be addressed between the organization and the community. As a result, no recommendations are presented.</p>

ISSUE OR CONCERN	STAFF RESPONSES AND RECOMMENDATIONS
<i>FAIR MARKET RENT/COMPENSATION</i>	
<p><i>Why is DHHL getting only 2% of gross and not 100%?</i></p> <p>Question on whether the project compensation (lease rent, 2% of gross, and in-kind services) is commensurate with industry standards.</p>	<p>In order to determine fair market rent, the Department reviewed the 3rd party appraisal and determined that the proposed lease rent was reasonable.</p> <p>Regarding the 2% of gross revenue payments, staff recommendations are twofold:</p> <ol style="list-style-type: none"> 1. That the Department request the assistance of the State Energy Division (DBEDT), the National Renewable Energy Laboratory (NREL), and the National Energy Laboratory of Hawai'i Authority (NELHA) to review the entire compensation package and make recommendations to ensure that compensation is commensurate with industry standards. 2. That the Department receive this revenue in addition to the ground lease rent. <p>DHHL notes that there will be in-kind improvements to the land in terms of clearing the albizia and roads built to agricultural standards.</p>

ISSUE OR CONCERN	STAFF RESPONSES AND RECOMMENDATIONS
PROCESS AND TRANSPARENCY	
<p><i>The process was not pono.</i> Concern that the process was not transparent. It was a done deal with no early notice. We felt left out.</p>	<p>The Department was not included in the negotiation discussions between the Green Energy Team and HCDC/AHHA and was not involved in any of the 6 community meetings conducted by HCDC. Therefore, the Department has no record of meeting attendees, presentation, discussion or comments.</p> <p>In order to inform and get input from beneficiaries, the Department conducted a Beneficiary Consultation meeting in Anahola and held two Public Hearings on Kauai and provided a 30-day comments period.</p> <p>Information received was posted on our website and included:</p> <ol style="list-style-type: none"> 1) what was presented by the Department and the Green Energy Team; 2) what was handed-out; 3) a list of attendees; 4) a summary of each testimony; 5) all written testimonies; 6) signatures for 2 petitions; and 7) a summary of the major issues raised by beneficiaries. <p>The Department has committed to present the final proposal to the Anahola community for their review and input before any decision-making or approval by the Hawaiian Homes Commission.</p>

ISSUE OR CONCERN	STAFF RESPONSES AND RECOMMENDATIONS
EXISTING REVOCABLE PERMITS	
<p><i>What about the existing revocable permits?</i> Concern about displacing existing month to month revocable permit ranchers</p>	<p>The original proposal included all lands mauka of Kealia road, which amounts to 2,137 acres and would have affected some of the RP ranchers. Out of the total 2,137 acres, 1,175 acres are considered arable land. Green Energy requires only 850 acres of arable land.</p> <p>The Department will work with GET to reduce the total acreage encumbered under the lease so that remaining lands may be used to accommodate beneficiaries and existing users pursuant to the DHHL Kauai Island Plan land use designations.</p> <p>In addition, the existing RP program is under review and the future program and requirements still need to be determined.</p>

ISSUE OR CONCERN	STAFF RESPONSES AND RECOMMENDATIONS
LENGTH OF LEASE	
<p><i>Why is the length of the lease so long?</i> Concern about committing land for 20-30 years to one entity</p>	<p>In order for the project to succeed, GET needs a commitment of at least 850 acres of arable land for 20 years.</p> <p>DHHL recommends that:</p> <ol style="list-style-type: none"> 1. The lease term not exceed 20 years; 2. The 267 acres identified for future agricultural beneficiary use be leased for no more than 5 years; and 3. The Department may withdraw additional lands as needed for homesteading purposes.

ISSUE OR CONCERN	STAFF RESPONSES AND RECOMMENDATIONS
AGRICULTURAL HOMESTEAD LOTS	
<p><i>What is the plan for the 267 acres for agricultural uses by native Hawaiians?</i></p> <ul style="list-style-type: none"> -Our goal is for beneficiaries to reside on the land and have the access to resources and capacity to grow crops, hunt, and fish. -We need irrigation water to open up the land for farming. - The educational component is critical for Hawaiian youth to learn skills and Anahola specific knowledge of its natural and cultural resources. - We envision a community-based economic development or individual mercantile component. -Concern that DHHL will not be able to develop the agricultural lots within the next five years. 	<p>Future agricultural land utilization will be determined after the Department's Agricultural Program Plan is updated in 2014. Resources will be required including funding for infrastructure (irrigation water, roads, etc.) and staffing. Research and planning has already started to look at water sources for future uses in Anahola.</p> <p>The Department plans to develop an Anahola Agricultural Development Plan in order to determine future land uses and agricultural opportunities for beneficiaries.</p>

ISSUE OR CONCERN	STAFF RESPONSES AND RECOMMENDATIONS
IMPACTS ON LAND UNKNOWN	
<p><i>What are the project specifics? Without this information, how can we assess its impacts – plus or minus?</i></p> <ul style="list-style-type: none"> - Concern about eucalyptus trees to be planted and how it will affect the land and water. - How will they handle erosion and runoff of dirt and sediment to offshore Anahola? - Impact on our fishing and limu beds? How much traffic? Trucks? - Will they use pesticides? - Will they take water for the eucalyptus trees? 	<p>The Department recommends that GET submit a forestry management plan, which addresses environmental impacts and identifies mitigation efforts, for review and approval before commencing work to address concerns raised by beneficiaries and meeting attendees.</p> <p>The GET has also addressed initial environmental comments and concerns by drafting an FAQ sheet that is attached.</p>

ISSUE OR CONCERN	STAFF RESPONSES AND RECOMMENDATIONS
<i>BENEFIT AGREEMENT</i>	
<p><i>How will the community benefit agreement be fairly distributed and managed?</i></p> <ul style="list-style-type: none"> - Concern about 2% of annual gross sales (\$22,000-\$39,000) being too small to fund the long list of benefits articulated in the agreement - Concern about what portion would be spent on staff and administrative expenses vs. providing direct benefits to the community - Beneficiaries recommend that Green Energy Technology LLC (GET) and the Department throw out the existing draft benefit agreement and start over in order to have greater participation/representation in developing a new homestead benefits agreement. 	<p>DHHL recommends that the percentage of gross revenue received be set aside in a project fund to help in the development of the 267 acres of agricultural lands (e.g. planning, design, training, and infrastructure development) based on beneficiary concerns related to representation, transparency, and accountability and to focus on agricultural development.</p>