

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

June 28, 2013

To: Chairman and Members, Hawaiian Homes Commission

From: Norman Sakamoto  
Land Development Special Assistant

Linda Chinn, Administrator  
Land Management Division

Subject: Decision on Lease Agreement with Green Energy Team LLC  
Kamalomalo/Anahola, Kauai

RECOMMENDED MOTION/ACTION

That the Hawaiian Homes Commission (HHC) grants its approval on the issuance of a general lease (Lease) to Green Energy Team LLC (LESSEE) for the use of approximately 2,143.151 acres of Hawaiian Home Lands in Kamalomalo/Anahola, Kauai, identified as Tax Map Key No. (4) 4-7-002:004, 4-8-002:001, 4-8-003:006 and 4-8-003:022, and as shown on Exhibit "A," attached hereto. The issuance of the general lease shall be subject to the following conditions:

1. The leased premises shall contain approximately 2,143.151 acres, more or less of Hawaiian Home Lands in Kamalomalo/Anahola, Kauai, and subject to the following (1) exclusions and (2) conditions as shown on Exhibit "B:"

(1) Exclusions:

- The Lease shall exclude the five (5) kuleana parcels identified under TMK No. (4) 4-8-004:001, 003, 005 & 006 and (4) 4-8-002:002 totaling 8.306 acres.
- The dams, reservoirs, and appurtenant structures, as well as the area within 100 feet of these structures totaling 85 acres.
- All lands NOT considered as "Arable" by LESSEE'S definition, which have the following characteristics:
  - a. A slope of less than ten percent (10%);
  - b. Accessible with biomass harvesting and hauling equipment;
  - c. Having a minimum two (2) feet of arable soil;

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- d. Having a surface of a minimum five (5) acres in one bloc; and
- e. Not having any legal restrictions with respect to diversified agriculture.

(2) Conditions:

- LESSEE shall develop, improve, maintain, operate, and/or replace identified non-exclusive easements over roads and ditches to provide access to land and water;
- The subsistence agricultural area (267 acres) shall be cleared of all Albizia trees and stumps, within five (5) years of lease commencement;
- Other area to be mutually identified (approximately 89 acres) shall be cleared of all Albizia trees, within five (5) years of lease commencement;
- Two (2) acres of the 44.23 acres designated for community use shall be cleared of all Albizia trees and stumps; said area shall be improved as a grass field to be used as a picnic area for the Anahola community; and
- LESSEE shall acknowledge and uphold the conservation land use designation area and its permitted and restricted uses.

2. The leased parcels shall be used to clear the 1,175 acres of arable land of existing Albizia trees and to replant and harvest biomass crops over the term of the lease and to deliver feedstock to Green Energy and its biomass energy production facility in Koloa, Kauai; LESSEE agrees that the Arable Land on the Premises currently covered by Albizia will be cleared by LESSEE, including removal of stumps, restoration of road and ditches, implementation of soil and water conservation measures to control soil erosion and to restore soil structure and fertility. This includes about eleven (11) miles of road and eight (8) miles of ditches.

3. The term of the Lease shall be for twenty (20) years and shall commence on the effective date of this lease.

4. Upon approval by the HHC, LESSEE pays a good faith deposit of \$25,000 which will be applied to the Lease.

5. Commencing on the Effective Date of the Lease, LESSEE shall pay annual rent as follows:

<u>Period</u>	<u>Rent</u>
Effective Date to December 31, 2015	\$43.08/arable acre/year, \$50,691
January 1, 2016 to December 31, 2034	Annual increase of base rent of \$43.08/arable acre at applicable Honolulu Consumer Price Index for Urban Consumer (CPI-U), maximum 2.5%

6. LESSOR shall have the right to withdraw, in addition to the area identified above under Paragraph 1, all areas subject to the legal authority granted by the Hawaiian Homes Commission Act Section 204(a)(2), and LESSOR agrees to pay a withdrawal fee if the total acres of arable land falls below 819 acres.

7. LESSEE shall abide by the following development timeline requirements:

- LESSEE shall submit to LESSOR for approval, a phasing plan for the project that includes the Albizia removal phases as well as biomass planting and harvesting phases. This plan should be parcel and biomass crop specific containing maps to depict locations of the phasing plan. This plan shall be submitted for approval three (3) months prior to any clearing or planting.
- Within two (2) years after the Effective Date and before clearing and replanting the land, LESSEE shall provide a Natural Resource Conservation Service (NCRS) approved water and soil conservation management plan.
- LESSEE shall commence to harvest the Albizia trees within three (3) years after the Effective Date of this lease.
- The Subsistence Agriculture area (267 acres) shall be cleared of Albizia trees, including the stumps, within five (5) years of the Commencement date of this lease and returned to the department.
- LESSEE shall promote best management practices to control the effects of invasive species and to nurture the restoration of native Hawaiian plants while maintaining DLNR Forestry approved tree species in plantation format. LESSEE shall submit a Management Plan within three (3) months after receipt of all required permits and

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assessments required under the Lease. This plan shall include the farm plan and the forestry plan. This plan shall be submitted to LESSOR for approval.

- Any significant changes to project timelines, financing, conceptual design, business concept or utilization and acreage requirements shall be submitted to LESSOR within ninety (90) days.

8. LESSEE shall agree to a community benefit package that includes providing employment and contracting opportunities to native Hawaiian beneficiaries and funding a Project Fund directed to improvements to the 267 acre Subsistence Agricultural area and to prepare potential homesteaders for the opportunity to access those lands.

9. LESSEE shall utilize current Global Information System (GIS)/Global Positioning System (GPS) technology to identify coordinates and parcel limits on plans and maps. Metes and bounds surveys are not required unless the proposed activities abut the property lines of non-DHHL owners. Parcels should be staked out in the field for identification and location relative to the phasing plans. Maps and permanent markers will mark or depict boundaries and specific points of interest.

10. LESSES shall pay a non-refundable processing and documentation fee totaling \$275.00 prior to issuance of the Lease.

11. The Premises shall be leased "as is" and LESSEE understands that there are no existing utility services to the site. LESSEE 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 leased premises, as may be needed by LESSEE.

12. LESSEE shall not be allowed to sublease all or any portion of the Premises.

13. No residential use shall be permitted including overnight camping.

14. No Livestock production operations shall be conducted on the Premises unless approved by LESSOR.

15. LESSEE shall procure and maintain during the term of the Lease, at LESSEE'S sole expense, insurance policies, including but not limited to Commercial Property Insurance, Liability

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Insurance, Umbrella Liability etc., in amounts not less than the amounts specified in the Lease, and naming the Department of Hawaiian Home Lands as additional insured.

16. LESSEE shall pay all real property taxes assessed by the County of Kauai for the leased area.

17. LESSEE shall be responsible for the security of the leased premises and all of LESSEE's personal property thereon and provide cultural, recreational and hunting access.

18. LESSEE shall comply with all federal, state and county regulations or requirements including those relative to forestry, plantation farming and archaeological, cultural, historical sites and burials. In addition, LESSEE shall comply with regulations and requirements regarding environmental issues and the safe handling and disposal of toxic or hazardous materials. LESSEE shall be responsible for environmental clean up of any contamination or hazardous materials found on the site that is caused by LESSEE'S activities on the Premises.

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

20. At any time during the term or upon termination of this Lease, LESSOR, for good cause, may require LESSEE to conduct at LESSEE'S own expense, a Level One (1) Hazardous Waste Evaluation and a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the State Department of Health, the State Department of Agriculture, and the State Department of Land and Natural Resources, of any hazardous materials and hazardous materials claims attributable to the discharge of any hazardous materials on the Premise during the term of this Lease by willful or negligent action or inaction of LESSEE or its agents, contractors or invitees; provided that LESSEE shall not be responsible for any such discharge of hazardous materials on the Premises by LESSOR or its agents, contractors, permittees or invitees or for any hazardous materials found on the Premises that were on the Premises prior to the Effective Date of this Lease . The termination of this Lease will not be approved by LESSOR unless this evaluation and abatement provision have been executed where required. This provision shall survive and

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continue in effect after termination of this Lease.

21. Other standard terms and conditions of similar leases issued by DHHL.

22. The Lease shall be subject to the review and approval of the Department of the Attorney General.

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

## DISCUSSION

### Background

In September 2010, Green Energy approached the Department of Hawaiian Home Lands ("Department") regarding the possibility of cutting Albizia trees for its proposed biomass operation as well as possibly leasing land for a biomass farm. At that time their financing and project approvals were pending. The Department asked them to contact the department when their project had firmed up.

In April 2012, Homestead Community Development Corporation (HCDC) and Green Energy submitted a joint proposal to the Department seeking to license the land.

Based on the authority for land dispositions available to the Department and the request to act on approving the land disposition quickly, a recommendation was brought to the HHC for action.

In September 2012, the HHC authorized the department to negotiate terms with Green Energy working with HCDC.

The Attorney General and the parties worked to determine what form of land disposition would be proper based on the specific issues and parties involved. The urgency and request to move quickly for the sake of the project financing was also considered.

In January 2013 HCDC agreed to withdraw their condition to be named as a primary lessee/licensee or as a co-lessee/licensee to the property.

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Subsequently, in March 2013, the Beneficiary Consultation meeting and two Public Hearings were conducted. A Special Meeting to approve a lease was tentatively scheduled for April 2013.

#### Anahola Renewable Energy Project Public Meetings and Hearings

The Beneficiary consultation meeting was held on March 8, 2013 and two Public Hearings were held on March 14<sup>th</sup> and 15<sup>th</sup>, 2013. A total of 490 attended the three meetings. The testimony and community sentiment was against the proposed lease. Concerns raised include the following (as reported in the Beneficiary Consultation Report and the Staff Responses and Recommendations Report submitted to the HHC in May and June respectively):

- Sense of mistrust towards the Homestead Community Development Corporation and the Anahola Hawaiian Homestead Association
- Why is DHHL getting only 2% of the gross revenue and not 100%
- Process not Pono
- What about the existing revocable permits?
- Why is the length of the lease so long?
- What is the plan for the 267 acres for agricultural uses by the native Hawaiians?
- What are the project specifics? Without this information, how can we assess its impacts- plus or minus?
- How will the community benefit agreement be fairly distributed and managed?

Given the overwhelming attendance at the public hearings and beneficiary consultation meeting, and the myriad of concerns that were raised, the Department committed to another 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.

Green Energy has stated that they will not honor their offer to lease the land after June 30, 2013. Based on that statement, the informational meeting was scheduled for June 27, 2013 with a Special Meeting of the Hawaiian Homes Commission scheduled for June 28, 2013 on the island of Kauai to vote on the proposed lease.

#### Proposed Changes to the Lease

The following summarizes Proposed Changes to the Lease in response to concerns raised at the Beneficiary Consultation and Public Hearings:

- Lease Term- The lease term was reduced from 30 years to 20 years.
- Community Benefits- Project Fund- A Project Fund will be established in order to receive a 2% set aside from Green Energy based on the thermal value of the harvested wood. The Project Fund will be used to support the 267 acre Subsistence Agricultural area and to prepare potential homesteaders for the opportunity to access those lands.
- Community Benefits- Annual report- Annual reports will be provided to the Anahola Community regarding the use of Project Funds.
- Sub-Leasing- No subleasing will be allowed
- Existing Revocable Permits- Both Green Energy and DHHL will work with the existing RP holders.
- Access Provisions- Mauka access would be allowed for cultural and recreational purposes, including hunting.
- Early Withdrawal of Lands- DHHL has the ability to withdraw lands from the lease agreement without fee or penalty provided at least 819 arable acres remain in the lease. If the minimum arable acreage remaining in the Green Energy lease falls below 819 acres, replacement lands are required and a penalty fee will be assessed.

The Department recommends approval based on the provisions articulated above.

## AUTHORIZATION

Section 204(a)(2) of the Hawaiian Homes Commission Act, 1920, as amended, reads in part... "In the management of any retained available lands not required for leasing under Section 207(a), the department may dispose of such lands to the public, including native Hawaiians, on the same terms, conditions, restrictions and uses applicable to the disposition of public lands as provided in Chapter 171, Hawaii Revised Statutes, provided that the Department may not sell or dispose of such land in fee simple..."

Section 171-95, Hawaii Revised Statutes, as amended, authorizes disposition to public utilities and renewable energy producers public lands for terms up to, but not in excess of, sixty-five years at such rental and on such other terms and conditions as the board may determine. For the purpose of this section, "renewable energy producer" means "any producer of electrical or thermal energy produced by wind, solar energy, hydropower, landfill gas, waste-to-energy, ocean thermal energy conversion, cold seawater, wave energy. Biomass, including municipal solid waste, biofuel...that sells all of the net power produced from the demised premise to an electric utility company regulated under Chapter 269..."

Section 171-95.3, Hawaii Revised Statutes, as amended, authorizes in part that issuance of any lease or renewal of a lease of public lands to renewable energy producers, as defined in Section 171-95, without public auction, is allowed only pursuant to a public process that includes public notice under Section 1-28.5 providing other interested renewable energy producers opportunity to participate in the process, provided further that the renewable energy producer shall be required to submit as part of the proposal for the board's evaluation the following: (1) time line; (2) description of financial plan; (3) description of conceptual design; (4) description of business concept; and (5) description of landscape and acreage requirements.

## Direct Negotiation Process Report

Pursuant to the authority granting direct negotiation with renewable energy producers, DHHL conducted two (2) public hearings on March 14 and 15, 2013 on the island of Kauai. The number of people attended the public hearings are shown below:

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Public Hearing	Estimated Attendance	No. Sign In	No. of Testimonies
March 14, 2013 at King Kaumuali'i School	150	124	51
March 15, 2013 at Aston Aloha Beach Hotel	90	85	50
Signed Petition Against Renewable Energy Project			696
Written Testimony			37

As part of the requirement under Section 171-95.3, Green Energy provided the following information about the proposed project for the HHC's review and evaluation.

(1) Time line:

Green Energy is proposing a 20-year general lease term which will allow about five (5) rotations of tree plantation harvesting. This term will allow Green Energy to recoup its investments of \$6 million to clear away the Albizia, the stumps, upgrade the road infrastructure, etc.

(2) Description of Financial Plan

Green Energy negotiated a 20-year Power Purchase Agreement (PPA) with Kauai Island Utility Cooperative (KIUC), which was approved by the Public Utility Commission on October 31, 2011. This PPA will provide moderate and acceptable equity returns to Green Energy. In October 2012, Green Energy closed financing after having obtained all necessary entitlements and a loan-guarantee from the federal Rural Utility Service. Debt is provided by Deutsche Bank New York and the owners provided equity.

(3) Description of Conceptual Design:

Green Energy will be growing tropical hardwoods approved by the state of Hawaii Department of Forestry and Wildlife and USDA's Natural Resources Conservation Services for its biomass stock. The tree plantations are organized in small blocks, between 675 and 850 trees per acre and about 30-40 feet tall. Green Energy is committed to best management practices to avoid erosion, insure water quality, and provide fire control.

(4) Description of Business Concept:

Green Energy intends to use the lands for the production of biomass for its energy production facility in Koloa. The technology is a state of the art, highly efficient one that is proven, and financeable. The sale of energy to KIUC is Green Energy's only source of income.

(5) Description of Landscape and Acreage Requirements:

Green Energy requires a minimum 819 acres of arable lands. The Anahola-Kamalomalo mauka lands that are considered as arable will be cleared of Albizia and restored at the end of the lease term to make them available for homesteading purposes.

The Department of Hawaiian Home Lands has complied with the requirements as required under Section 171-95.3.

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

RECOMMENDATION

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

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## Proposed Green Energy Biomass Project -- Lease Area



0 0.125 0.25 0.5 0.75 1 Miles

## Proposed Green Energy Biomass Project -- Lease Area with Exclusions



0 0.125 0.25 0.5 0.75 1 Miles