STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

January 11, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF: 07KD-140

KAUAI

Issuance of Revocable Permit to Green Energy Team LLC, Wailua, Lihue, Kauai, Tax Map Key: (4) 3-9-02: 20

At its November 16, 2007 meeting, the Board deferred action on agenda item D-3 (attached as Exhibit 1) to its January 11, 2008 meeting. Agenda item D-3 was a request by the Green Energy Team LLC (Applicant) for a revocable permit covering 2,160 acres of State land at Wailua on the island of Kauai to operate a tree farm as a biomass fuel source for a renewable electrical energy generation facility.

During the interim the Board requested the Agribusiness Development Corporation (ADC) to work with the Applicant, East Kauai Water Users' Cooperative, Kalepa Koalition, DLNR Kauai Board Member, DLNR, Division of Forestry and Wildlife and DLNR, Land Division, to come up with a co-existence plan between the Applicant and any State permittees affected by the Applicant's request.

Attached, as Exhibit 2, is a summary report by ADC on co-existence meetings between the above participants, dated January 3, 2008. While most of the issues have been resolved there are still a few remaining. Also, participation by the State permittees in a co-existence plan is with the understanding that the 6,700 acres of State land at Kalepa, formerly leased by the Lihue Plantation Company, Ltd., will be transferred to ADC's management jurisdiction.

RECOMMENDATION: That the Board:

A. Approve in principle the issuance of a revocable permit to the Applicant covering lands at Kalepa, Kauai yet to be determined, subject to the following:

1. A co-existence plan between the Applicant and any State permittees affected by the issuance of a revocable permit to the Applicant.

2. This approval in principle shall not be deemed to be an approval of a revocable permit to the Applicant as staff shall return to the Board at a later date for approval of

the revocable permit disclosing the negotiated terms and conditions.

B. Approve in principle the set aside of the 6,700 acres of State land at Kalepa, formerly leased to the Lihue Plantation Company, Ltd., to the Agribusiness Development Corporation, subject to the following:

1. The existing revocable permits at the time of the set aside.

2. This approval in principle shall not be deemed to be an approval of a set aside to the Agribusiness Development Corporation as staff shall return to the Board at a later date for approval of the set aside disclosing the negotiated terms and conditions.

Respectfully Submitted,

Gary Martin, Land Agent

APPROVED FOR SUBMITTAL:

LAURA H. THIELEN. Chairperson

DEFERRED

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

November 16, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF: 07KD-104

KAUAI

Issuance of Revocable Permit to Green Energy Team LLC, Wailua, Lihue, Kauai, Tax Map Key: (4) 3-9-02: 20

APPLICANT:

Green Energy Team LLC, a domestic limited liability company, whose business and mailing address is 4313 Kapuaa Road, Kilauea, HI 96754.

LEGAL REFERENCE:

Sections 171-13 and -55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government (Crown) land of Wailua situated at Wailua, Lihue, Kauai, identified by Tax Map Key: (4) 3-9-02: 20, as shown on the attached map labeled Exhibit A.

AREA:

2,160 acres, more or less.

ZONING:

State Land Use District: Agricultural
County of Kauai CZO: Agricultural

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act.

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES

CURRENT USE STATUS:

The subject 2,160-acre parcel is encumbered by Revocable Permit Nos. S-7278, S-7279, S-7280, S-7282 and S-7341 for agricultural and/or pasture purposes.

Deferred
~~APPROVED~~ BY THE BOARD OF LAND AND NATURAL RESOURCES AT ITS MEETING HELD ON
November 16, 2007

EXHIBIT "1"

CHARACTER OF USE:

Plant, maintain, harvest and operate a tree farm as a biomass fuel source for a renewal energy generation facility.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

MONTHLY RENTAL:

$2,085 per month, based on staff appraisal dated September 10, 2007, attached as Exhibit B.

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

An environmental assessment was prepared by the Applicant covering the construction, maintenance and operation of the project's plant facility on land owned by the Applicant. The final environmental assessment has also been prepared, which includes the comments received and the applicant's responses to same. Publication of the project's finding of no significant Impact (FONSI) in the OEQC's Environmental Notice will be forthcoming shortly.

The Applicant's agricultural use of the subject State land is exempt from the preparation of an environmental assessment. The "Division of Land Management's Environmental Impact Statement Exemption List," approved by the Environmental Council and dated April 28, 1986, under Exemption Class No. 1, exempts "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features involving negligible or no expansion or change of use beyond that previously existing."

However, the Applicant shall be required to prepare a 10-year Management Plan for approval by the Department's Division of Forestry and Wildlife. The Plan shall address the harvesting of Albizia and include an inventory map of all existing stands of Albizia on State lands. The Plan shall contain strategies for eradicating Albizia from all State lands by the end of the Plan's term.

DCCA VERIFICATION:

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Applicant in good standing confirmed:	YES

REMARKS:

The subject 2,160-acre parcel is a portion of the 6,700 acres of

State land formerly leased to the Lihue Plantation Company, Ltd. for sugarcane cultivation until its closure in December 2000. The subject State land is currently encumbered by five revocable permits issued for agricultural and/or pasture purposes. Originally, seven permits were affected, but since two permits together totaled only 21 acres they were remove from the list of affected permits.

The Applicant proposes to construct and operate an agricultural waste (biomass) to energy facility to provide Kauai with a renewable energy source for the generation of electrical power. The 6.4-megawatt facility will help reduce the State's dependency on foreign oil. Such renewable energy facilities, as the proposed, are necessary in order to meet the mandates of Title 15, Chapter 269, Part V, Hawaii Revised Statutes, as amended, which requires that twenty percent of Hawaii's electrical utility companies' power come from renewable energy sources by the end of year 2020.

The facility will be constructed on six acres of land owned by the Applicant located in the Koloa district on the island of Kauai. The facility will create electrical power through a process known as gasification. It starts with a biomass fuel, in this case, wood chips superheated to a gaseous form, then interacted with water resulting in steam pressure that turns an electrical turbine generator.

The Applicant will sell the electricity produced by the facility to the Kauai Island Utility Cooperative (KIUC) under a long-term purchase power agreement. KIUC awarded the Green Energy Team LLC a power purchase agreement on March 26, 2007.

This type of electrical generation facility is dependent upon a sustainable biomass fuel source to operate uninterrupted. The subject State land is where the Applicant would like to plant Eucalyptus and Albizia trees as the biomass fuel source for the electrical generation facility.

According to the firm of Detor and Williams, Certified Public Accountants, by its letter dated June 22, 2007, based on its review, "The financial projections and assumptions, and representations of Green Energy Hawaii, LLC as to its ability to achieve those projections and assumptions, … provide for a project that is financially viable for the purposes of a land use agreement with the State of Hawaii, Department of Land and Natural Resources." However, requested financial projections indicating revenues, expenses, cash flow, etc., have not yet been received by the Department from the Applicant.

The Applicant considered many alternative types of trees as biomass fuel sources. All of the tested species produce considerably less biomass than Eucalyptus and Albizia.

Both types of trees are fast growing and dry quickly making them excellent biomass fuel sources. Additionally, due to Albizia's strong nitrogen fixing characteristic it will act as a natural fertilizer for the Eucalyptus trees reducing the need to use chemical fertilizers by 95

percent. Accordingly, the environment benefits by reduced runoff of nitrates and phosphates to the outlying reefs.

However, Albizia has been considered an invasive species since the 1970's. Originally from Indonesia, it was first introduced to Kauai during the depression years of the 1930s as part of Franklin D. Roosevelt's conservation corps planting programs. Currently, it is found all over Kauai except at the higher elevations and in dry areas.

The subject State land contains about 500 acres of Albizia trees. The spread of Albizia island-wide has been attributed to Hurricane Iniki in 1992. At this time there are literally millions of Albizia trees on Kauai.

The Albizia is a major component in the Applicant's renewable energy project's economics. By using the Albizia as a biomass fuel and fertilizer, what is now an invasive species will become a product having commercial value and also create agricultural jobs for Kauai.

The Albizia grown, maintained, and harvested on the subject State land will be done under controlled conditions to prevent it from spreading beyond the permit area. Additionally, the Applicant is willing to harvest any existing Albizia on both public and private lands if granted entry and reasonable access to such lands. This would be a step toward reversing the spread of this invasive species through public and private cooperation with benefits to both and also to the environment.

During the growth stage of the Albizia its natural fertilizing characteristic also encourages growth of ground cover grasses, which makes it compatible with other uses such as pasturing. Accordingly, the Applicant developed a "Renewable Energy Coexistence Plan," attached as Exhibit C, that would allow all of the current permittees affected by this request their continued use of up to 75 percent their permit areas. The Applicant has met with the current permittees or their representatives to inform them of this renewable energy project and its coexistence plan that would not displace any of the affected permittees.

All of the affected permits, however, would be cancelled and those permittees who opt to stay under the coexistence plan will enter into separate use agreements with the Applicant.

Comments by the East Kauai Water Users' Cooperative, which currently manages the State land portions of the former Lihue Plantation Company, Ltd. East Kauai irrigation system, under Revocable Permit No. S-7310, are attached as Exhibit D.

Comments by the Kalepa Koalition, which represents the thirteen State permittees that currently encumber the 6,700 acres formerly leased to Lihue Plantation Company, Ltd., 2,160 acres of which are affected by the Applicant's request, are attached as Exhibit E.

The affected permits contain a buyback condition, which states, "Should a long-term lease for the entire Kalepa property be offered at

public auction within 10 years from the date of permit commencement, or prior to final subdivision approval, whichever shall first occur, any buyback consideration shall be limited to: permittee expenditures for fencing (at $2.50/foot), security gating, and permanent irrigation improvements." The Applicant has indicated that it shall be responsible for any consideration due the affected permittees under this provision.

The Applicant prefers to enter into a directly negotiated twenty-year lease with the State covering the subject State land. Section 171-95(b), Hawaii Revised Statutes, as amended, allows the Board to issue direct leases to renewable energy producers. Few, if any, renewable energy producers would be comfortable with the uncertainty of the alternative public auction process. Considerable time and money is expended by renewable energy producers in conducting the highly technical due diligence that is necessary for these types of operations.

Although the Applicant is a renewable energy producer, the Department of the Attorney General does not believe, in this situation, a direct lease would apply because of the distant proximity of the subject State land from the energy generation facility. Consequently, a lease in this case would have to be pursuant to Section 171-32, which states, "Unless otherwise specifically authorized in this chapter or by subsequent legislative acts, all dispositions shall be by lease only, disposed of by public auction…."

Therefore, with the Board's approval, a revocable permit shall be issued initially covering the subject area. During the interim permit period, legislation will be introduced at the next legislative session amending Section 171-95, Hawaii Revised Statutes, as amended, to allow direct leases on State agricultural lands to growers and producers of organic materials used in the production of biofuels.

Comments on the use of the subject State land by the Applicant were requested from the following agencies: the Department of Land and Natural Resources, Divisions of Historic Preservation, Forestry and Wildlife and the Commission on Water Resource Management; The Department of Agriculture, the Agribusiness Development Corporation and the Office of Hawaiian Affairs; the County of Kauai, Departments of Planning and Water; and the Federal Natural Resources Conservation Service. The following comments were received:

Division of Forestry and Wildlife: The applicant shall provide DOFAW with a 10-year management plan for the harvesting of Albizia including an inventory map of all existing Albizia stands on State parcels. The management plan must be approved by DOFAW prior to any harvesting of trees on State land. The management plan will also contain strategies for eradicating Albizia completely out from all State parcels by the end of the management plan period. In support of this application, DOFAW will commit to working with the applicant to develop a workable management plan that will be agreeable to all parties.

Commission on Water Resource Management: Based on the information submitted, we understand that the water source for the project* will be

from either of two locations: 1) the adjacent agricultural ditch system across the road from the plant, or 2) the Mauka Reservoir. The Commission does not require a Stream Channel Alteration Permit (SCAP) application to be submitted for the proposed project because the proposed scope of work will not alter the bed and banks of a stream channel.

*The electrical plant facility.

Office of Hawaiian Affairs: Since the 2,181 acres in question are ceded lands, OHA has a responsibility to ensure the use of such lands is for the betterment of the Hawaiian people. Sustainable tropical forestry techniques used to produce biomass for electricity production will preserve agriculture on Kauai, reduce CO2 emissions, and reduce the need for foreign oil. There are, however, various environmental and cultural concerns with such a project.

Replanting agricultural areas with a monoculture of Albizia and/or Eucalyptus may negatively impact native plant and animal communities that have begun to repopulate fallow lands. Natural resources, such as indigenous plants and animals, serve as important cultural resources to Native Hawaiians that are to be both treasured and preserved. Have species of endemic trees been considered for this tropical forestry project? Equally, Native Hawaiians should be afforded reasonable access to the area in question for cultural and traditional purposes. We note that consideration must be given to applicable cultural gathering and access rights during the planting, growth, and harvesting stages on the 2,181 acres in question.

Although extensive ground disturbance does not seem necessary for such a project, should iwi kupuna or Native Hawaiian cultural or traditional deposits be found during any disturbance or excavation, OHA requests assurances that work will cease, and the appropriate agencies will be contacted pursuant to applicable law.

County of Kauai, Department of Planning: We have no objections.

County of Kauai, Department of Water: Any actual subdivision or development of this area will be dependent on the adequacy of the source, storage and transmission facilities existing at that time. The project site is located outside of the Department's service area. Water service is not available to the lot from the Department of Water (DOW), County of Kauai.

Comments were also received from the **East Kauai Water Users' Cooperative** and the **Kalepa Koalition** and are attached as Exhibit D and Exhibit E, respectively.

Additionally, eleven letters from State legislators, State and County government officials, private sector executives, community leaders and agricultural associations were received supporting the Applicant's request to use the subject State land for growing, maintaining and harvesting trees as a biomass fuel source for its gasification energy generation facility.

The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

2. Authorize the issuance of a revocable permit to the Green Energy Team LLC, covering the subject area to plant, maintain, harvest and operate a tree farm as a biomass fuel source for a renewable energy generation facility under the terms and conditions cited above, which are by this reference incorporated herein, and subject further to the following:

    a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;

    b. The publication of the final environmental assessment covering the Applicant's energy generation facility with a finding of no significant impact in the OEQC's Environmental Notice;

    c. The preparation of a 10-year management plan for the harvesting of Albizia including an inventory map of all existing stands of Albizia on State parcels. The management plan must be approved by the Department's Division of Forestry and Wildlife prior to any harvesting of trees on State land. The management plan shall contain strategies for eradicating Albizia completely from all State parcels by the end of the management plan period;

    d. The Green Energy Team LLC shall post a bond with the Department in an amount sufficient to restore the subject State land to its previous condition should the land be abandoned or not be used as a tree farm for the production of biomass fuel stock.

    e. Review and approval by the Department of the Attorney General; and

    f. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

3. Authorize the cancellation of Revocable Permit Nos. S-7278, S-7279, S-7280, S-7282, and S-7341, subject to the following:

   a. The buyback condition contained in the above revocable permits relating to the buyback of permittee expenditures for fencing (at $2.50/foot), security gating and permanent irrigation improvements; and

   b. Any payments due the permittees under the buyback condition shall be at the Applicant's cost and expense.

Respectfully Submitted,

Gary Martin

Gary Martin
Land Agent

APPROVED FOR SUBMITTAL:

Laura H. Thielen, Chairperson

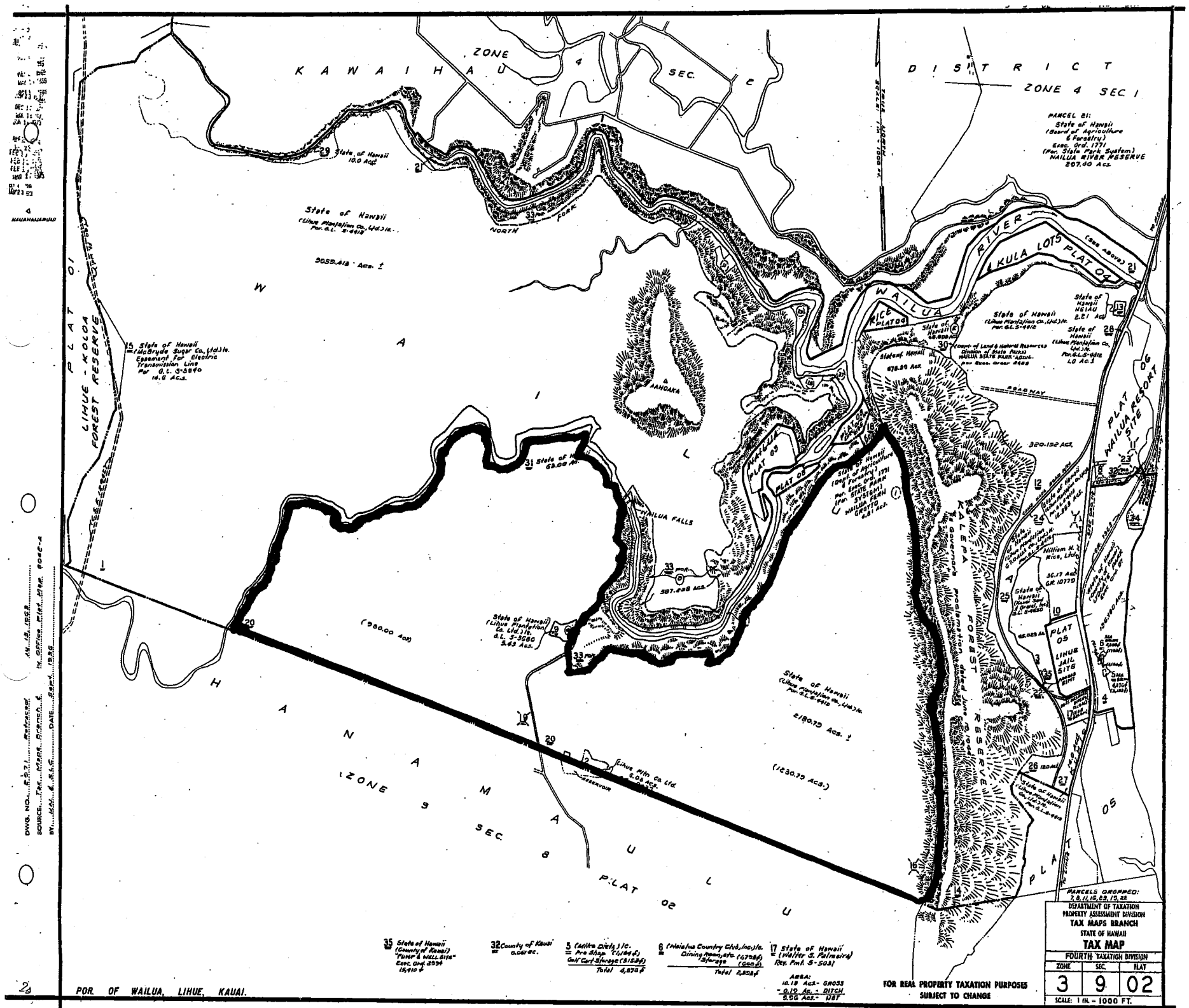

EXHIBIT "A"

Subject Site Location

LINDA LINGLE
GOVERNOR OF HAWAII

LAURA H. THIELEN
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

September 10, 2007

MEMORANDUM

TO: Laura H. Thielen, Interim Chairperson

THROUGH: Russell Y. Tsuji, Land Division Administrator

FROM: Cyrus C. Chen, Real Estate Appraisal Manager

SUBJECT: In-House Valuation Recommendation – Revocable Permit for Tree Growing Purposes

PSF No.: 07KD-104
Applicant: Green Energy Team, LLC
Location: Wailua, Lihue, Kauai
Land Area: 2,180 acres
Tax Map Key: (4) 3-9-02: 20
Char. of Use: Grow, maintain and harvest fast growing, high yielding biomass trees as a fuel supply to be sold to Kauai Island Utility Cooperative

We have been requested to provide a monthly rent amount for the issuance of a revocable permit for tree growing purposes on the above-referenced property. This rent amount will be included in staff's submittal to the Board for approval of this permit and will not be effective unless such approval is received.

Staff requested information from the applicant on their Power Purchase Agreement (PPA), which is confidential with respect to the public. However, a representative of the Green Energy Team gave permission to Kauai Island Utility Cooperative (KIUC) to divulge certain details of the PPA. Staff was briefed by David Bisell of KIUC on the current power rates and estimated projected capacity of the Green Energy Team energy plant.

Current rates on Kauai are approximately $0.17 per kilowatt hour (KWH). The projected energy generating capacity of the plant is estimated to be 6.4 megawatt hours (MWH). There are 8,760 hours per year. Mr. Bisell estimates an average of 70% generating efficiency factor. Multiplying the capacity of 6.4 MWH by the number of hours per year, then applying a 70% efficiency ratio, results in a total of approximately 39,245 MWH generated per annum. Applying the current rate of $0.17 per KWH amounts to a total revenue projection of $6,671,000 per year. Mr. Bisell indicates margins are typically in the range of 15% for the energy supplier. Thus, annual revenues to Green Energy Team are estimated to be $1,000,000 per year. Staff, in

EXHIBIT "B"

reference to other energy ventures in the State, concludes a 2.5% rate of return on revenues is reasonable.

Therefore, as of the date of this document, the monthly market rent for the revocable permit to Green Energy Team, LLC, is recommended to be $2,085 per month or $25,000 per year.

Special Assumptions and Limiting Conditions

1) This document does not take the place of an appraisal and does not constitute an appraisal, which adheres to the Uniform Standards of Professional Appraisal Practice.

2) Neither the subject property nor the comparable was inspected by the staff appraiser.

Approved/Disapproved:

for Laura H. Thielen, Interim Chairperson — Date: 09/17/07

cc: District Branch Files
Central Files

Renewable Energy Coexistence Plan Proposal
State Parcel (4) 3-9-02:20

Introduction

We've been out to State Parcel (4) 3-9-02:20, viewed the current ranching, farming and horseback riding activities (uses), as well as mapped out how to control and manage the current Albizia.

As a result of our studies, we believe that we can coexist with the current uses. In this way, all 63,500 citizens of Kaua'i will in effect be farming the parcel - as energy will be produced with trees harvested from the parcel, as well as providing for continuation of current uses as follows:

Coexistence Plan

- ✓ **Year 1**
  Plant one quarter of the parcel*

  Current uses continue on 3/4 of the parcel

- ✓ **Year 2**
  Plant an additional quarter of the parcel*

  Current uses continue on 1/2 of the parcel, and potentially up to 3/4**

- ✓ **Year 3 and going forward:**
  Harvest one quarter

  Plant an additional quarter of the parcel*

  Current uses continue on 1/2 of the parcel, and potentially up to 3/4**

Notes:

* Excluding any areas currently covered with Albizia

** We will consider even opening up the area planted the prior year - should the trees be tall enough. Our experience is that they will be, and should they be - we will open up the area for grazing, providing 3/4 of the parcel.

Comments

- ➢ Regarding any currently planted portions of the parcel with fruit etc, we plan to not use that portion, nor disturb the area

- ➢ Horseback riding activities provided an area for a barn or stable, some open pasture, as well as treed areas for riding

- ➢ Moving livestock into Hawaiian Mahogany's 3,700 acres during planting, or perhaps other parcels will be considered

- ➢ Please be informed that any livestock which develops a taste for the bark of trees or provides operational disturbances would have to be moved to separate fenced areas or removed

EXHIBIT "C"

Important Details Proposed

RP Holder and Terms

- ✓ RP held for renewable energy, with commitment to operators to identical term duration (ie if agreement with the State is month to month or twenty years - operators would have the same terms). Terms such as insurance etc will be required of operators, though no fees will be charged to the current permit holders. As such, the parcel will essentially be offered for free use for current permittees in cooperation with renewable energy activities.

Fair Payment for Fencing

1) Payout if elect not to move forward with operating agreement or
2) Payment for fencing deposited to a fund per RP, to be applied to fencing costs going forward, transportation costs etc.

Ditch Maintenance

Maintenance of the East Kauai Water Users' Cooperative ditch system

Highest and Best Use

- ➢ No longer an either / or scenario. Greatest societal value for Kaua'i through coexistence of feedstock for electrical energy, grazing and diversified agriculture

Our Vision is Combined Use

- To include energy feedstock (tree plantations), ranching, and diversified agriculture

- Receptive to diversified agriculture allocation - over coming 10 years, gradual growth to 200 acres possible, respecting most appropriate areas with irrigation potential

We're truly looking forward to working together with you, to co-exist with combined use - while sustainably providing renewable energy to benefit everyone on Kaua'i

The life of the land is perpetuated in righteousness

60086

East Kauai
Water Users' Cooperative
4334 Rice Street, Suite 202
Lihue, Kauai Hawaii 96766
Phone: 808-246-6962
Fax: 808-245-3277

RECEIVED
LAND DIVISION
2007 OCT 25 A 10:23
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DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

October 22, 2007

TO: Laura H. Thielen
Chairperson, DLNR
Kalanimoku Bldg.
1151 Punchbowl St.
Honolulu, HI 96813

RE: **Comment on Proposed Use of Kauai Land for Biomass Production**

Aloha, Ms. Thielen:

My name is Jerry Ornellas. I am the president of the East Kauai Water Users' Cooperative. I was made aware a few days ago of a proposal by Green Energy Hawaii to take over 2,000 acres of State land behind Kalepa ridge. The TMK parcel involved is 3-9-2:20, hereafter referred to as "parcel 20." The Coop holds Revocable Permit 7310 for the water system on this parcel and is actively managing it. Green Energy's plan is to plant 2,000 acres of albezia trees to be harvested as biomass for a power plant.

Executive Summary:

1. The Coop strenuously opposes the use of this valuable agricultural land for biomass production. The technology is unproven for Hawaii.

2. As proposed, the albezia plantation will remove 2,000 acres of irrigable land managed by the Coop from use in the foreseeable future, cutting in half the Coop's potential income.

3. Parcel 20 is already occupied by farmers, ranchers and a horse riding business, all of whom would be displaced or impaired by the proposal. The proposed transfer to this land to ADC and issuing of long-term licenses to this group may not happen.

4. Should the business fail, the 2,000 acres of land would be left completely covered in albezia and unusable for agriculture without very expensive clearing operations.

EXHIBIT "D"

History of land and system:
Most of this parcel is irrigable, class B agricultural land served by the Cooperative's ditch system for which we have a Revocable Permit 7310 from DLNR first issued in April, 2002. It had been a prime sugar production area for the last 80 years and only in 2001 became available to local residents for farming, ranching and horse operations.

The Cooperative is strenuously opposed to the use of this parcel for growing trees, especially the invasive species, albezia. This parcel and the adjacent ones should be preserved for food production. The lands have access to water and proximity to the urban core. The water system is the one of the last ones in the State not being utilized to its full capacity.

Should agricultural lands be used for biomass production?
Use of agricultural lands for energy production is a national issue. For example, remember on the mainland how ethanol was to be the solution to our energy problems? And then it was reported by the Associated Press in 2006, "Biofuels such as ethanol are 'not a practical long-term solution,' and their widespread use—even from non-food crop sources—could have a 'devastating' impact on agriculture, two researchers at the Magleve Research Center of the Polytechnic University of New York, argued recently." This is a biofuel project, driving a generator rather than a car. We don't want our very limited and valuable agricultural lands to be a testing ground for unproven technology.

Albezia trees will grow almost anywhere on Kauai. It makes no sense to us to use prime agricultural land for this purpose. Substandard land can be used for plantations, and arrangement made with the State and private land owners to harvest existing stands of albezia. We understand Green Energy does not believe harvesting existing stands is, at the moment, economically viable. But, as electrical rates continue to rise, such harvesting should become viable.

Curtails Coop income:
At the present time, the Water Cooperative is dependent upon subsidies provided by the State legislature who recognize the value of the system which extends throughout East Kauai. This Kalepa parcel represents the future security of the system, as once that parcel came into full agricultural production, the Cooperative would be self sufficient. Taking it out of agricultural production entirely would leave the Cooperative dependent upon the State. The Cooperative manages 21 miles of ditch and three reservoirs, including Wailua Reservoir, one of the largest in the state.

Denying the agricultural use of a significant portion of the Coop's system reduces the Coop's potential income. In effect, the State is asking the Coop to subsidize the Green Energy project. If Green Energy is going to take our irrigable lands out of use, then the Cooperative should be paid annual fees for those lands. It is common practice on the mainland to

change lessees of irrigable lands a standby rate whether they use the water or not, because the system has to be maintained in any case.

Land already in use:

Parcel 20 is part of 6,700 acres of land given to 13 farmers and ranchers informally organized as the Kalepa Koalition. The taking of parcel 20 as originally proposed was to be done by canceling the revocable permits of seven of these parcel holders, giving them 30 days to vacate the parcels they have worked on for the last six years. William Sanchez, Tony Reis and Lester Calipjo all have their land in cattle raising; Rudy Bunao is raising cattle and truck crops; Laura Butler Brady has a horsemanship business; Kelly Gooding is raising experimental crops for mainland firms, and Godwin Esaki has a two-acre parcel for a proposed fruit and vegetable processing plant. All of these tenets were to be summarily evicted, despite the considerable time and money each has put into their parcel under the belief, encouraged by DLNR, that their revocable permits would eventually be turned into long-term leases or licenses, specifically through the transfer of the land to the Agribusiness Development Corporation.

Rather incredulous, Green Energy and even DLNR Honolulu staff claimed they did not know parcel 20 was already let out on revocable permits. When Green Energy met with the nearly the entire Kalepa Koalition on October 17, hardly ten days after anyone on Kauai first heard of the project, they were met with strenuous objections from the seven parcel holders about to be evicted.

An alternative proposal was entertained that each of the 13 members would give up 1/3rd of their parcels to tree production under agreements with Green Energy. The group was told that if they enter into contracts with Green Energy, they would be eligible for long-term leases or licenses under legislation now under consideration. If the land remains with DLNR, then those who do not want to give up land will be left on RPs.

This is a complete change from the scenario of the last six years when each thought they would receive a long-term license after the transfer to ADC, as discussed at length with DLNR staff. The water system is also supposed to go to ADC, for the same reason, a long-term license, and a change of plans with the land may impact our own long-term prospects.

We are equally opposed to this solution involving all 13 members, as the entire area is prime agricultural land. Water is available to several parcels outside of parcel 20, and we have discussed a plan with the US Bureau of Reclamation to develop a pressurized irrigation water delivery system through the entire area using the Stable Storm diversion.

Unproven technology

We are very concerned at the speculative nature of the project. The technology is unproven for Hawaii, with the greatest threat being the failure

of the operation after the albezia stands have been established. The land is then useless for agriculture unless the albezia trees and stumps are cleared, a very expensive process. At best they could be bulldozed and piled in windrows, a process quite disturbing to our thin topsoil. The various statements made about the fertilizer value of albezia in the submittals to DLNR are exaggerated, and in some cases, wrong. In our high rainfall area, the value to the soil would be negligible a few years after the trees were removed.

Conditions of use:
If this project is approved by DLNR, then we request these two provisions be included in any agreement with Green Energy:

1. Green Energy post a bond sufficient to clear the 2,000 acres of trees and return the land to its previous state should the company fail any time in the future. This bond should be reviewed and adjusted yearly to keep with inflation, especially of fuel costs.

2. Green Energy pay the Water Cooperative a standby charge of $80/acre/year for presently irrigable land put into albezia. This is the charge of the Cooperative to farmers who would utilize the system. As the land is being removed from service, then the Cooperative should be compensated.

In summary, I am personally dismayed at this proposal. I and dozens of East Kauai residents have worked for years to secure the water system and acquire the individual parcels of former sugar cane land. For the first time in nearly a century, decent, farmable land has become available to the ordinary person. Now the State is planning not only to take this land away from the ranchers and farmers and potentially ruin it with vast stands of abandoned albezia, but to do so for a speculative project of unproven economic value.

East Kauai Water Users' Cooperative

Jerry Ornellas
President

cc:
Sandy Kunimoto, Chairperson
Hawaii Department of Agriculture
1428 S. King Street
Honolulu, HI 96814

Ron Agor, Kauai Representative
Board of Land and Natural Resources

4374 Kukui Grove, Suite 204
Lihue, HI 96766

Tommy Oi
Kauai District Land Agent, DLNR
3069 Eiwa Street, #306
Lihue, HI 96766

Alfredo Lee, Agribusiness Development Corporation
State Office Tower
235 S. South Beretania St., Room 205
Honolulu, Hawaii 96813

Representative James Kunane Tokioka
15th Representative District
Hawaii State Capitol, Room 322
415 South Beretania Street
Honolulu, HI 96813

Jay Furfaro
Kauai County Council
4396 Rice Street, Room 206
Lihue, Hawaii 96766

Bill Spitz
Office of Economic Development
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Lihue, HI 96766-1300

Timothy W. O'Connell
Assistant to the State Director
USDA/Rural Development
154 Waianuenue Ave., Room 303
Hilo, HI 96720

Dean Okimoto
Hawaii Farm Bureau
2343 Rose Street
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Alan Takemoto
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2343 Rose Street
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Max Graham, Attorney-at-law
4334 Rice Street, Suite 202
Lihue, HI 96766

The life of the land is perpetuated in righteousness

60159

Kalepa Koalition
6277 Puuopai Place
Kapaa, Hawaii 96746
Phone/Fax: 808-822-3392

RECEIVED
'07 NOV -5 A9:20
DEPT OF LAND & NATURAL RESOURCES STATE OF HAWAII

November 1, 2007

TO: Laura H. Thielen
Chairperson, DLNR
Kalanimoku Bldg.
1151 Punchbowl St.
Honolulu, HI 96813

RECEIVED
LAND DIVISION
2007 NOV -6 A 10:09
DEPT. OF LAND & NATURAL RESOURCES STATE OF HAWAII

RE: **Response of Kalepa Koalition to Green Energy LLC Bid for TMK 3-9-2:20**

The Kalepa Koalition of 13 parcel holders is opposed to the granting of a revocable permit to Green Energy for the following reasons:

1. Seven existing parcel holders actively using the land for agriculture, ranching and horseback riding would lose their revocable permits even though they remain in compliance with all conditions. No one can remember an instance on Kauai when an RP holder lost an RP except through non-compliance or public auction. The takeover of the land is also premature as the Green Energy power plant has yet to receive needed government approvals.

2. We agree Kauai needs to develop alternative sources of energy. However, we believe turning 2,200 acres of prime irrigated agricultural land into an albizia plantation is a short-sighted and inappropriate use. There are thousands of acres of existing stands of this invasive species to be harvested and marginal lands which could be used for planting. We believe Green Energy is seeking this particular parcel because it is convenient for them, flat and rent is low; not because they have no alternatives.

3. The State Constitution, Title 11, Section 3 (http://www.hawaii.gov/lrb/con/conart11.html), says, "The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands." Just because Green Energy can more cheaply raise albizia on this prime parcel does not alleviate the State of its obligation to conserve and protect the land.

4. The International Monetary Fund fund recently questioned whether it was advantageous (http://tothecenter.com/news.php?readmore=3368) for rich countries to turn to biofuel production in the face of rising oil prices. The UN called for a five-year moratorium on the use of arable land for biofuel production (http://www.un.org/News/briefings/docs/2007/071026_Ziegler.doc.htm) pending further study.

5. The concept of coexistence proposed by Green Energy for the cattle and horses is unworkable as both animals are adverse to guinea grass grown under albizia trees without intense management techniques which involves growth maintenance i.e. mechanical shredding and /or intensive grazing (which may cause debarking of the tree trunks). There is no useful crop that can be grown under the closely planted trees

EXHIBIT "E"

and the associated canopy which would preclude sunlight filtration. The fertilizer value of this invasive tree is illusory.

6. Due to the fracture of the parcel as a whole 6500 acres, The transfer of the land to the Agribusiness Development Corporation under the Department of Agriculture (see http://www.hawaii.gov/lrb/rpts07/agri.pdf, page 24), now in process for five years, would likely not happen to the detriment of the remaining parcel holders who would have no means to obtain long-term licenses for their parcels.

7. Should Green Energy cease operation, restoring the land to its present state to return it to agricultural use would be extremely expensive.

Signed by the parcel holders present November, 1, 2007:

A William Sanchez:

B Lara Butler/Keapana Horse:

C Rudy Bunao:

D Tony Reis:

E Les Milnes:

F Godwin Esaki (inc HSPA#3):

G Saiva Siddhanta Church:

H GE Farms (Mervin Rapozo):

I Derrick Rapozo:

J Gerald Sanchez: (absent)

K Lester Calipjo:

L Kenneth Bray:

M Milton Ching:

HSPA #1 Kelly Gooding:

Kalepa Koalition
6277 Puuopai Place
Kapaa, Hawaii 96746
Phone/Fax: 808-822-3392

TO: Morris Atta
Administrator, DLNR Land Division
Kalanimoku Bldg.
1151 Punchbowl St.
Honolulu, HI 96813

November 6, 2007

RE: **Proposal for Albizia Planation by Green Energy LLC, # PSF 07 KD-10**

Aloha, Morris:

This letter is to provide background information on the 6,700 acres of Kalepa lands, a part of which, TMK 3-9-2:20, is proposed to be given to Green Energy Hawaii for an albizia plantation. This is your file number # PSF 07 KD-104. The Kalepa Koalition is comprised of the 13 parcel holders of that 6,700 acres.

History of the 6,700 acres Post-Amfac
The parcel in question and adjacent parcels totally some 6,700 acres had been under lease to Amfac for many years. Upon the closure of Amfac, the land was divided into 13 parcels and these were given out to local Kauai residents for ranching, farming and a horseback riding business. In 2005, efforts were set in motion to transfer this land to the Agribusiness Development Corporation under the Department of Agriculture. ADC would then issue long-term licenses to the parcel holders. ADC was created by the State to transition lands formerly under sugar cane to productive agricultural use.

Based on this plan, the 13 parcel holders set about creating their operations, investing large amounts of time and significant funds. They did so even though the parcels were under Revocable Permits which could, in theory, be canceled in 30 days. Parcel holders believed, and DLNR encouraged this belief, that they could not lose these RPs unless they were in outright default of the terms. They knew that it was possible for a party to call for an auction on the land, and that should that party succeed at the auction, they would lose their parcels. For this reason, a buy-back clause for fencing, security improvements and irrigation was included in the RPs. Parcel holders have invested tens of thousands of dollars—some hundreds of thousands—in developing their land, and these are people of modest means.

At the time, DLNR staff said only an auction on the entire 6,700 acres would be considered. This came up also in an inquiry by Saiva Siddhanta Church, one of the 13 parcel holders, as to whether they could, as an eleemosynary corporation, direct negotiate for the center parcel. They were informed it was all or nothing. One of the reasons to keep the parcels together is that the access road runs from Maalo Road to Kaumoo Road through all the parcels, and separating them would create access issues.

Nature of the Kalepa Koalition
The Kalepa Koalition is at present an informal organization set up to address the combined tenancy and associated common use areas of the Kalepa lands. It is not an agricultural cooperative or incorporated business. It has functioned as needed to work with the State on the issuing of the original RPs, and to address a few common issues that have arisen in the meantime. Its largest project has been to install security gates on the boundaries of the parcels and to buy and manage a controlled-key system for those gates.

Request for Transfer to ADC to be Implement
Until the Green Energy proposal was made, we believed the transfer of the land and the water system from DLNR to the Agribusiness Development Corporation, as submitted to the board July 22, 2005, PSF No. :05KD-134, would go through once certain issues raised at that meeting were addressed. The staff submittal and minutes of that meeting are attached. On page 6, the submittal states:

"Staff agrees that the ADC is the agency best suited to manage those resources. The Kalepa Lands are reserved and used for agricultural purposes. The principal purpose and function of the East Kauai Water System is to provide a water distribution system for agricultural purposes. Management and maintenance of those lands and critical agricultural infrastructure clearly fits within the ADC's mandate to promote and support the development of agriculture in Hawaii. The set aside will allow the ADC to perform its management responsibilities for agricultural development without the requirement of returning to the Board for various operational and management issues. Once the set aside is finalized, the ADC will be able to enter into leases with the existing revocable permit holders and facilitate others who desire to occupy portions of these lands."

At the present time, there are no substantial issues with regard to the land. There are issues with the water system which have been difficult to address. For that reason, DLNR has been considering separating the water system out and proceeding with the land transfer. Under ADC, the parcel holders could receive long-term licenses for their parcels, something not possible under DLNR.

Transfer to ADC remains our collective objective, as we agree with the staff report that ADC is the "agency best suited."

With this letter, it is our formal request that PSF No. :05KD-134 be reviewed, the land separated from the water system and the submittal returned to the board.

Respectfully submitted,

Leslie P. Milnes, Interim Chair

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

July 22, 2005

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:05KD-134

Kauai

Set Aside to Agribusiness Development Corporation for Agricultural Purposes, Lands in Hanamaulu and Wailua, Kauai, and Waters and Water Distribution Systems in the Drainage Basins of North Wailua, Kapaa, Anahola, and Hanalei Rivers, Kawaihau and Hanalei, Kauai, Various Tax Map Key Numbers.

APPLICANT:

Agribusiness Development Corporation

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes (HRS), as amended.

LOCATION AND AREA:

1) Kalepa Lands: Portion of Government lands, and any improvements located thereon, consisting of approximately 6,766 acres of lands formerly leased to the Lihue Plantation Company in Hanamaulu and Wailua, identified by various Tax Map Key numbers, as shown on the attached map labeled Exhibit A.

2) East Kauai Water System: Portion of Government lands, waters, and any improvements located thereon, that constitute the existing water transportation infrastructure system, situated in the Drainage Basins of North Wailua, Kapaa, Anahola, and Hanalei Rivers, with a water distribution area that stretches from the "Blue Hole" diversion at the base of Mt. Waialeale to the Mimino Reservoir in the north, to Kalepa Ridge in the east and the boundary with Lihue Land Company to the south above Hanamaulu, in Kawaihau and Hanalei, Kauai, identified by various Tax Map Key numbers, and as more particularly described in C.S.F. No. 7106 and as shown on the attached Map No. C.S.F. 7106-A labeled Exhibit B.

ITEM D-1

ZONING:

State Land Use District: Agricultural, Conservation and Urban
County of Kauai CZO: Agriculture, Open and Residential

TRUST LAND STATUS:

1) Section 5(b) lands of the Hawaii Admission Act
2) DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES for water taken; NO for the water transportation infrastructure

CURRENT USE STATUS:

Currently there are 15 revocable permit holders occupying the property and two water permits issued to the original members of the cooperatives. These occupants are as follows:

Permittees:

Antone Reis	RP #6198	13.83 acres
Elester Calipjo	RP #7160	5.43 acres
Saiva Siddhanta Church	RP #7274	406 acres
Leslie P. Milnes	RP #7275	752.37 acres
William & Alison Sanchez	RP #7278	769 acres
Elester Calipjo	RP #7279	432 acres
Rodolfo N. Bunao	RP #7280	247 acres
Lara Butler	RP #7282	156 acres
Kelly Gooding	RP #7289	19 acres
Milton & Melanie-Anne Ching	RP #7240	342 acres
G.E. Farms, Inc.	RP #7273	388 acres
Kenneth Bray	RP #7335	287 acres
Derek Rapozo	RP #7336	563 acres
Antone Reis	RP #7341	369.7 acres
Kapaa Banana Co. Inc.	RP #7399	733 acres

Water Permit:

East Kauai Water Users Cooperative	RP#7310
Kauai Island Utility Cooperative	RP#7340

Memorandum of Understanding:

Dated October 7, 2002 between East Kauai Water Users Cooperative and the State of Hawaii, by and through its Department of Land and Natural Resources ("Department"), regarding the management and proposed use of the Wailua Reservoir as a public fishing area and waterbird and wildlife habitat.

PURPOSE:

To transfer management jurisdiction over the subject government lands, waters, and improvements for agricultural and related purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

REMARKS:

Water System Background
The current East Kauai Water System is part of an extensive water collection, delivery and distribution system including the drainage basins of Wailua, Kapaa, Anahola and Hanalei that was originally covered by GL S-3827. General Lease No. S-3827 was a 30-year water license issued to the East Kauai Water Company (Amfac) for the diversion and use of water for irrigating the Lihue Plantation. In broad terms, the water system was divided into three sections, the Anahola-Kealia section, the central Wailua-Kapaa section, and the Hanamaulu-Lihue section. All of the water provided by the East Kauai water system was used to irrigate sugar cane cultivated by Lihue Plantation Company. Over time, many portions of the system have fallen out of active use as sugar operations scaled down, then finally closed. At the time of the expiration of GL S-3827 in May 1995, the system consisted of three regional sections: the Hanamaulu, Wailua-Kapahi and Makaleha sections. For all intents and purposes, active and in-demand portions of the original East Kauai system under the control of the DLNR are now limited to the Wailua-Kapaa and Lihue-Hanamaulu sections.

Currently, the East Kauai Water Users Cooperative ("EKWUC") are managing and operating the Wailua-Kapaa portion of the system plus the Kalepa portion of the Lihue-Hanamaulu section under Revocable Permit No. S-7310. RP S-7310 was approved by the Board of Land and Natural Resources ("Board") on January 11, 2001. Kauai Island Utility Cooperative manages and operates the remainder portion of the existing Lihue-Hanamaulu section of the system under RP S-7340. RP S-7340 covers the diversion and portions of a transmission ditch (Iliiliula North Wailua ditch) including water collected from Waikoko Stream which combined are commonly known as the Blue Hole diversion, which is the most mauka diversion of the North Fork of the Wailua River. RP S-7340 was approved by the Board on December 13, 2002.

KIUC Request for 65-Year Water Lease/Contested Case
Kauai Island Utility Cooperative ("KIUC") is interested in using what has been historically a part of an agricultural irrigation system, to power two hydroelectric plants obtained from AMFAC

that were used to generate power for Lihue Plantation consumption. An important source of water needed to power the plants came from the Blue Hole diversion. The conveyance of these plants to KIUC by AMFAC was part of a settlement concerning satisfaction by AMFAC for their power production contract with KIUC at the Lihue mill. KIUC sought to obtain a 65-year water lease from the Board to enable it to acquire capital improvement financing for upgrading and maintaining the hydroelectric plants. On December 10, 2004, the Board heard the proposal for the sale of water lease but took no action on the matter due to an oral request for a contested case hearing on the matter made by the Office of Hawaiian Affairs ("OHA") and the Native Hawaiian Legal Corporation ("NHLC") on behalf of Life of the Land ("LOL"). On December 20, 2004, the Department received a petition from the Office of Hawaiian Affairs contesting the BLNR's proposed sale of the 65-year Lease. The Board approved the appointment of a Hearing Officer to rule on the pending petition for a contested case hearing. The case is pending the appointment of a hearing officer.

Water Delivery to State Land

AMFAC sold 17,000 acres of its property, including land served by the Blue Hole diversion, to Lihue Land Company. Unfortunately, this conveyance did not include any reservation in favor of the State, ditch easements or rights of way to guarantee that irrigation water will continue to flow through Lihue Land's property to water the State's 6,766-acre Kalepa lands.

Staff has had several discussions with Grove Farm, Lihue Land's managing agent, regarding delivery of water from the Blue Hole Diversion to the State lands at Kalepa. Lihue Land has agreed in principle to supply 10 million gallons per day to the Kalepa lands subject to continued adequate flows received from the Blue Hole Diversion. Lihue Land intends to charge a fee for maintenance of the ditch system on Lihue Land's property below the hydros. KIUC currently pays for all ditch maintenance above the hydros.

Staff has been discussing the terms for a water transmission agreement with Lihue Land. Lihue Land has indicated its willingness to enter into such an agreement provided it is reimbursed for its maintenance costs for the portion of the water system between the lower hydro and its boundary with the State lands in the Kalepa area. Lihue Land estimated that cost would be approximately $1,000 per month, conservatively. Any fees or costs required by Lihue Land would be passed on to the EKWUC. Lihue Land has further offered to phase in the amounts payable under the agreement, starting with $100 per month, in appreciation of the financial difficulties being experienced by EKWUC.

EKWUC is currently paying the $100 monthly fee being assessed by Lihue Land for maintaining that portion of the water system. EKWUC claims it is unable to pay the full projected monthly cost of $1000 for that maintenance and believes that KIUC should pay for any costs associated with transmission of the water to State land arguing that KIUC should be obligated to return any water diverted from State land back to State land.

Requiring KIUC to pay for the maintenance of the entire non-State owned portion of the irrigation system or to return the water to State land is complicated by the fact that Lihue Land must be a willing party to any such requirement. KIUC has no alternate means to transport the water to State land once the diverted water passes through the hydros and is dumped into the South Fork of the Wailua River on Lihue Land's property other than using Lihue Land's ditch system. Additionally, per discussions with the Attorney General's office, Lihue Land may become a riparian of this dumped water and may not, therefore, be legally obligated to provide the diverted water to State land.

Wailua Reservoir Memorandum of Understanding ("Wailua Reservoir MOU")

The Wailua Reservoir is a part of the East Kauai Water System that covers an area of approximately 61.59 acres. It was originally created for the purpose of sugarcane irrigation and fell into disuse when sugar production ended. Due to the excellent development potential for recreational and educational opportunities, the Department entered into a Memorandum of Understanding dated October 7, 2002 with EKWUC to allow the Department's Division of Aquatic Resources ("DAR") to manage the Wailua Reservoir as a public fishing area and pursue integration of the reservoir and the surrounding DLNR and other adjacent lands into a comprehensive recreational and educational facility. DAR is currently working with the Hawaii Nature Center, Inc. to implement a proposal to create a unique environmental education and recreational facility at the reservoir.

EKWUC Rent Dispute

Over the course of the last several years, EKWUC has been delinquent in payment of rent under RP S-7310. Staff sought resolution of the delinquency at the December 10, 2004 Board meeting by confirming staff's in-house valuation of $1,971 per month for RP No. S-7310 to be effective October 1, 2003. EKWUC objected to staff's recommendation and argued that as a nonprofit cooperative, it was entitled to a reduced rent that was comparable to other similarly situated nonprofit permittees. The Board rejected staff's recommendation and instead requested staff to pursue setting aside the East Kauai Water System to the Department of Agriculture ("DOA") or the Agribusiness Development Corporation ("ADC") within the ensuing three months. The Board also approved a rent reduction for EKWUC that changed the rent

under RP S-7310 to $156 per year during the interim period until the water system is set aside to the DOA or ADC.

Set Aside to Agribusiness Development Corporation
At the December 10, 2004 meeting, the Board requested a proposal to set aside the Kalepa Lands and East Kauai Water System to the DOA or ADC. The DOA rejected staff's request to accept the set aside of the lands and water system and suggested that the ADC would be the more appropriate agency to oversee those resources. Staff agrees that the ADC is the agency best suited to manage those resources. The Kalepa Lands are reserved and used for agricultural purposes. The principal purpose and function of the East Kauai Water System is to provide a water distribution system for agricultural purposes. Management and maintenance of those lands and critical agricultural infrastructure clearly fits within the ADC's mandate to promote and support the development of agriculture in Hawaii. The set aside will allow the ADC to perform its management responsibilities for agricultural development without the requirement of returning to the Board for various operational and management issues. Once the set aside is finalized, the ADC will be able to enter into leases with the existing revocable permit holders and facilitate others who desire to occupy portions of these lands.

At its March 18, 2005 board meeting, the ADC agreed to accept the set aside of the Kalepa Lands and East Kauai Water System to the ADC commencing March 1, 2006 (See Exhibit "C" attached hereto). The DOA will be considering ratification of the ADC's action in the near future.

Agency Comments:
The following agency comments, in addition to other concerns that may be identified, will be included in a memorandum of agreement as a condition to the issuance of the Executive Order between the Department and ADC.

1. DLNR-Water Resource Management. (dated July 5, 2005; copy of letter attached as Exhibit "D")

The Commission on Water Resource Management ("CWRM") recommended coordination with the county to incorporate this project into the county's Water Use and Development Plan. CWRM further recommended that the ADC consider reactivating the inactive stream and ditch gauges in the affected watershed areas. CWRM noted the Stream Channel Alteration Permits would be required for alterations to the bed or banks of the stream channels; Stream Diversion Works Permits would be required for construction or alteration of any stream diversion works; and a Petition to Amend the Interim Instream Flow Standard would be required for any new or expanded diversion of surface water.

Staff Comments:

Staff agrees with CWRM's recommendation to coordinate with the county to ensure that ADC's plans for the water system compliment and conform to the county's Water Use and Development Plan. Staff recommends deferring any decisions regarding the reactivation of inactive portions of the water system to the ADC.

2. DLNR—Division of Forestry and Wildlife.

The Division of Forestry and Wildlife submitted no comments.

3. DLNR—Division of Aquatic Resources.

Division of Aquatic Resources submitted no comments.

4. DLNR—State Parks. (July 8, 2005)

The State Parks Division requested an extension of one week to respond.

Staff Comments:

Due to board submittal deadlines, comments from the State Parks Division will be incorporated at the time of the Board meeting.

5. DLNR—Historic Preservation Division.

Historic Preservation Division submitted no comments.

6. Natural Resource Conservation Service.

Natural Resource Conservation Service submitted no comments.

7. Department of Agriculture.

Department of Agriculture submitted no comments.

8. Agribusiness Development Corporation. (July 8, 2005)

Agribusiness Development Corporation replied that they had no comments at this time but requested to be made aware of any other comments or changes as they became available.

9. Department of Hawaiian Home Lands.

Department of Hawaiian Home Lands submitted no comments.

10. Office of Hawaiian Affairs.

The Office of Hawaiian Affairs ("OHA") indicated that their office will be submitting their comments at or prior to the board

meeting. OHA indicated that they will be objecting to the transfer of management authority to ADC primarily based on three concerns: (1) Due to the large quantity of ceded lands covered by this action, OHA insists that the ADC be prohibited from selling any of the ceded lands; (2) OHA seeks assurances that the 20% pro rata share of revenues from the ceded lands will be preserved; and (3) OHA believes it is inappropriate to include or transfer the "Blue Hole" diversion portion of the water system in the proposed action in view of the fact that it is the subject of an ongoing contested case hearing.

Staff Comments:

It is our understanding that there is a moratorium on the sale of ceded lands pending the outcome of a case involving OHA. OHA's concerns regarding the sale of ceded lands could be addressed by prohibiting those sales as condition of this board action. OHA's entitlement to receive its 20% pro rata share of any revenues generated from ceded lands will not be affected by the shift in management authority over state resources from one state agency to another. While staff does not believe that this proposed board action will affect the conduct or outcome of the ongoing contested case hearing regarding KIUC's application for a long-term water lease, transfer of management authority over the "Blue Hole" diversion portion of the system could be delayed until complete resolution of the contested case is achieved to address that concern of OHA.

Comments from Interested Parties:
A draft of the application was routed for comments to the East Kauai Water Users Cooperative and Kauai Island Utility Cooperative.

The following comments have been received:

1. East Kauai Water Users Cooperative. (dated July 11, 2005; copy of letter attached as Exhibit "E")

EKWUC submitted written comments noting that the Wailua River MOU covers the use of the Reservoir for public fishing purposes only. EKWUC suggests that the expanded use of the Reservoir as a comprehensive recreational and educational facility contemplated by DAR may require an additional memorandum of understanding.

EKWUC also commented verbally that they are currently paying the $100 monthly charge being assessed by Lihue Land for maintenance of the lower portion of the Hanamaulu Ditch leading back to state lands.

Staff Comments:

EKWUC's comment regarding the scope of the Wailua River MOU does not affect this proposed action. EKWUC's verbal comment was incorporated into this submittal on page 4.

2. Kauai Island Utility Cooperative. (dated July 7, 2005; copy of letter attached as Exhibit "F")

KIUC requested that DLNR retain jurisdiction over the "Blue Hole Diversion" portion of the water system until the issues concerning their application for a long-term lease are resolved. KIUC is concerned that the transfer of management authority to the ADC may require starting a process that has already taken several years, over again.

KIUC also commented that the issue of who should pay for the maintenance of the lower Hanamaulu Ditch portion of the system on Lihue Land property was settled previously. Prior Board action required that EKWUC bear those costs.

KIUC also noted two minor corrections that were incorporated in this submittal.

Staff Comments:

KIUC's concerns regarding the delay in their seeking and obtaining a long-term lease could be allayed by delaying the transfer of management authority over the "Blue Hole" diversion portions of the water system to the ADC until the contested case is resolved and the water lease is issued, if approved by the DLNR. KIUC's comment regarding the responsibility for the maintenance costs of the lower Hanamaulu Ditch portion of the system is correct and need not be addressed further at this point.

Existing Tenants/Uses:
As cited above, there are fifteen revocable permit holders and two water permit holders on the property to be set aside to ADC. The EKWUC has been discussing the proposed set aside to ADC and supports its consummation so that its member permittees can seek greater longevity on their permitted lands under long-term leases.

ADC is equally willing to accept the set aside subject to the existing permittees and the MOU, including the water permits that have been issued to the coalition members to irrigate these lands and to KIUC for its hydroelectric power plants.

RECOMMENDATION:

That the Board:

1. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands, waters, and improvements to the Agribusiness Development Corporation under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:

   A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;

   B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;

   C. Review and approval by the Department of the Attorney General;

   D. Subject to the existing revocable permit holders and the Wailua Reservoir MOU;

   E. Provided that transfer of management authority over the "Blue Hole" diversion portion of the Water System that is the subject of a proposed long-term water lease to KIUC that is the subject of the contested case hearing requested by OHA and LOL, be effective only upon the resolution of the contested case, and the execution and issuance of the long-term water lease to KIUC, if approved by the BLNR;

   F. Provided further, that during the period that management authority over the "Blue Hole" diversion portion of the Water System is retained by the DLNR, commencing from the effective date of this Set Aside, ADC shall receive all of the excess revenues generated from the "Blue Hole" diversion portion of the Water System after deducting DHHL's 30% share, OHA's 20% share, CWRM's 25% share, and DLNR's incidental management costs and expenses;

   G. Provided further, that ADC shall be prohibited from selling any ceded lands that are subject to this Set Aside;

   H. Provided further, that if any of the lands, waters, and improvements covered by this Set Aside become unsuitable for or is used in a manner inconsistent

with the mission of the ADC, ADC shall return management authority for those resources to the DLNR; and

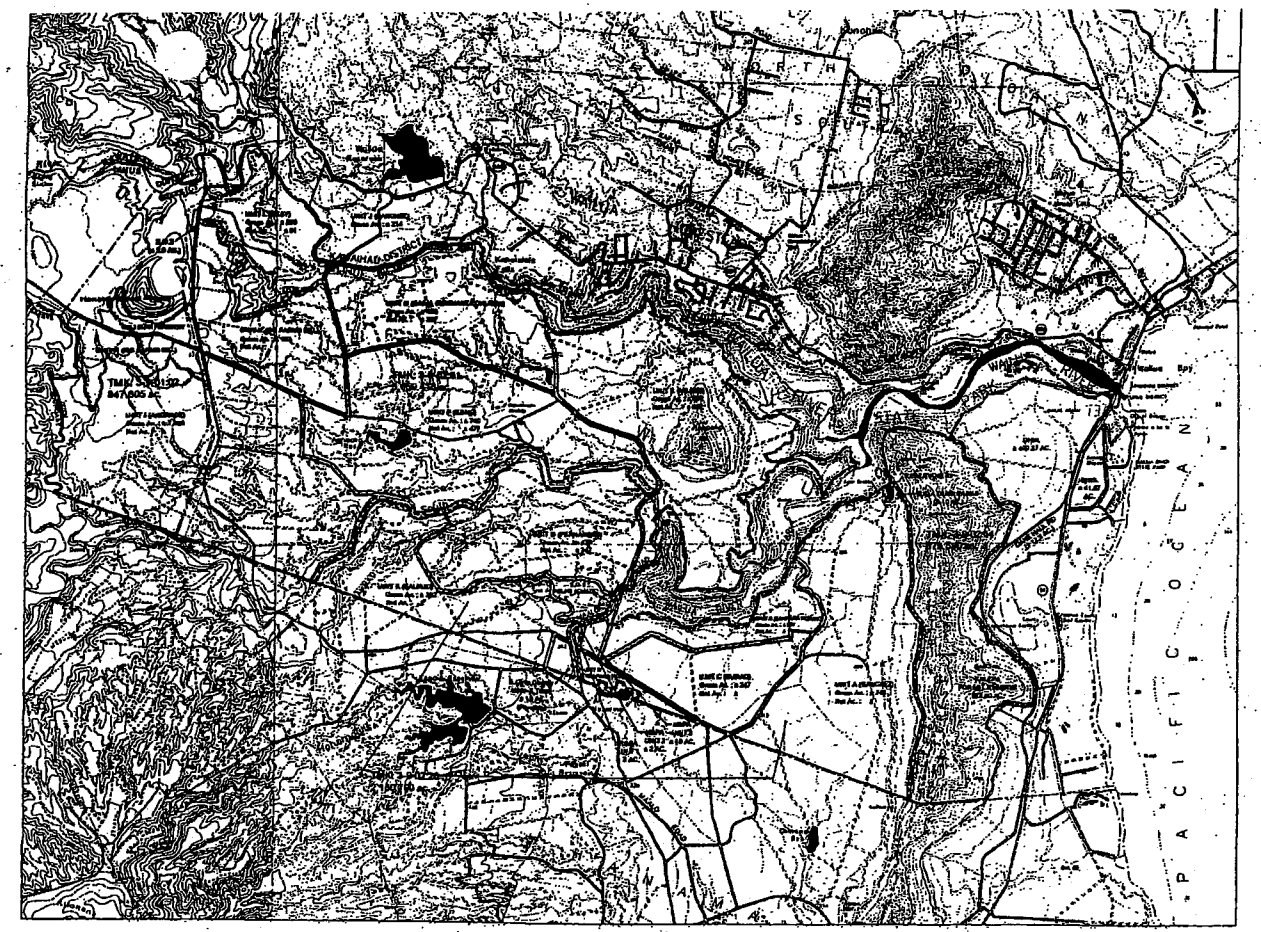
I. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Morris M. Atta
Special Projects Coordinator

APPROVED FOR SUBMITTAL:

Peter T. Young, Chairperson



Legend

- Existing TMK Boundary
- Parcel Boundary (Revocable Permit and Executive Order)
- Paved Roads
- Primary Ag. Roads
- Secondary Field Roads
- Ditches & Streams

EXHIBIT "A"

Figure 5
Existing Parcel Areas
(Executive Order & Revocable Permit Parcels)

KĀLEPA

LINDA LINGLE
Governor

ALFREDO A. LEE
Executive Director

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

January 3, 2008

Summary
Co-existence Meetings, Kalepa Lands, Kauai

As per request by the Board of Land and Natural Resources at its November 16, 2007 meeting, the Agribusiness Development Corporation (ADC) convened a series of three co-existence meetings at the Department of Agriculture (DOA) conference room on Kauai between December 3 and December 20, 2007. Participants included representatives from Green Energy Team LLC (G.E.), Hawaii Mahogany (H.M.), East Kauai Water Users Cooperative, Kalepa Koalition, DLNR board, DLNR's Division of Forestry and Wildlife, DLNR's Land Division, and ADC. Between 19 to 23 people participated at each meeting. The meetings were facilitated by Nancy Ralston from the HDOA and recorded by Lynn Owan from ADC.

Objective: To come up with a co-existence plan to allow biomass production within the 6,700 acres of state-own Kalepa agriculture land without (1) jeopardizing future diversified agriculture opportunities; (2) displacing of any current tenants; and (3) further spreading of albizia trees, an invasive species.

Given the pending status of the project, the majority of the tenants were willing to give concessions in exchange for an expedited transfer of the land and the irrigation system to ADC in hopes of obtaining long-term licenses or leases.

Major issues resolved:

1. No new planting of albizia trees; G.E./H.M. will substitute with Eucalyptus urophylla/grandis.

2. G.E./H.M. to harvest existing albizia trees on state land for 10 years.

3. No forestry projects on irrigated lands (Parcel 20) as they are reserved for diversified agriculture use.

EXHIBIT "2"

4. G.E./H.M. agreed to reduce their request of the state-own Kalepa land from 2,000 acres to 1,000 acres and will seek the balance somewhere else.

5. Kalepa Koalition agreed to come up with 1,000 acres among its members (preferably contiguous and not more than 15° slope. Former sugar cane land is acceptable.)

Actions required of DLNR:

1. DLNR to (1) issue a revocable permit (RP) to G.E.; and (2) readjust and recalculate rent on other RP's since the acreage will be reduced.

2. Pursue transferring of the land to ADC at its January 11 meeting. (If possible, include the East Kaua'i irrigation system in the transfer.)

3. Issue right of entry allowing G.E./H.M. to harvest albizia trees on state land (DOFAW and RP Holders' parcels).

4. If transfer is approved, above items 1 & 3 should be in place prior to transferring to ADC.

Issues not resolved due to time constraints:

1. A map of the 1,000 acres, i.e., which RP holder will be giving up how many acres and at what location.

2. Who will pay for the fencing costs since the parcels will have to be reconfigured?

3. Common element roads.

Further actions:

1. Kalepa Koalition members to meet and come up with a map of the 1,000 acres no later than January 3 and will forward the map to DLNR Land Division.

2. ADC to prepare a final report by January 3 and share with the participants.

3. Kalepa Koalition members agreed to sign an addendum to ADC's report to demonstrate their support of the coexistence plan.

The meeting on December 20 ended in good spirits and with hopes that the Kalepa lands could accommodate a forestry project to support electricity generation on Kauai.

ADC would like to thank all participants for putting in many hours of time and efforts at the meetings, and particularly to Ron Agor, Les Milnes, Rev. Katir, Jerry Ornellas, Sam Lee, and others who have provided leadership during difficult negotiating moments.

Attachments: Minutes from the Dec 3, 17, and 20 meetings.
Addendum (Kalepa Koalition member signatures)

Co-existence Meeting No. 3, Kalepa Lands
Thursday, December 20, 2007
Lihue, Kauai

Meeting Summary

Participants: Alfredo Lee; Bill Cowern; Eric Knutzen; Godwin Esaki; Jerry Ornellas; Joe Bunao; Lara Brady; Larry Feinstein; Les Milnes; Mervin Rapozo; Milton Ching; Ron Agor; Sam Lee; Arumugaswami; Senthilnathaswami; Tommy Oi; William Sanchez; Tony Reis;
Facilitator: Nancy Ralston
Recorder: Lynn Owan

Homework from last meeting:

	Task	**By**	**Report**
a.	History regarding the decision to transfer the Kalepa Land	Tommy Oi	No minutes were taken
b.	Status of the transfer to Kalepa land from DLNR to ADC.	Ron A.	Possible to get transfer of the land. Transfer of the water system would be separate. It is possible to transfer the RP for water deliver to ADC for management.
c.	RP Holders: Acreage for the co-existence plan scenario (Kalepa Koalition)	Les Milnes	• The Koalition members present are agreeable to provide the 1,000 acres needed by G.E.; several members have not participated or have missed more than 2 meetings. • Parcels may need to be reconfigured. • Need one more week to address acreage of each tenant on a map. • The Koalition needs to come to consensus on use of irrigated lands and how to transfer areas. • G.E. should contact members who are interested in a buy-out within 48 hours. • Koalition is shooting for a decision by **12/31/07**, no later

			than **1/2/08** **See below for concerns**
d.	Common Element Roads	Sanniyasin Arumugaswami	There needs to be a method to determine how the roads will be taken care of.

CONCERNS:

Timing

- G.E. needs to know acreage in time to prepare for BLNR meeting on 1/11/08.
- G.E. needs to know when they can plant; when they can harvest existing albizia.
- Fencing solutions are needed.

Pricing

- What is the cost based on? ADC may do a market appraisal in the future, after the transfer. Change in fees could take 2-3 years. Eric will find out more about the process and work with Alfredo. There may already be set fees until a new appraisal is done. BLNR can make recommendations.
- G.E. would want a third party to arbitrate.
- Tommy requested that Ron work on transferring the existing RPs to ADC.
- Alfredo clarified that things might change because the ADC Board did not have a chance to participate in the discussions. The project will have to be approved by the DOA also.
- Koalition would like a "whole package". They would like a configuration before the transfer, including adjusted rents.
- Prior to transfer to ADC, adjustment to the RP areas and recalculated rents should be made by DLNR, reflecting the transfer of acreage from current RP holders to G.E.
- The ADC Board needs to approve the transfer of East Kauai land from DLNR to ADC. Long-term leases can be negotiated after the transfer if the ADC Board approves.

Fencing

- Fencing is a big issue.
- If necessary, put up fences (this is usually standard language in RPs).
- Example: Thirteen parcels could be delineated and become 26 parcels to show what is contiguous and transferred to G.E.
- Need to agree on fences moved at whose expense.

Common Element Roads

- Needs to be added to the list of things to do.

Other

- Is it possible to have a cooperative agreement for G.E. to harvest re-growth?
- G.E. needs access rights to State land to harvest albizia.
- G.E. is willing to remove existing albizia on RP holders' parcels.
- Binding arbitration
- Two-step plan for BLNR submittal: 1) Les will prepare a map of the 1,000 acreage **by 12/31/07**. 2) Bill will review map and make comments **by 1/2/08**.

Co-existence Plan Components:

Nancy asked Sam to review again but due to time constraints, this couldn't be done.

Next Steps:

- Ron to call Koalition members who have not come to the meetings or missed 2 meetings.
- ADC will prepare a draft report to BLNR and send to Ron for comments. If possible, Ron will get approval from BLNR on 1/3/08 to submit the report.
- Alfredo will provide a courtesy copy of the BLNR report to the committee members (Kalepa, State Agencies, G.E. and EKIS).
- Alfredo needs to have the Koalition's written agreement **by 1/3/08**, including an exhibit with the Koalition members' signatures who agree.
- **1/11/08:** BLNR Meeting

Co-existence Meeting No. 2, Kalepa Lands
Monday, December 17, 2007
Lihue, Kauai

Meeting Summary

Participants: Alfredo Lee; Alvin Kyono; Eric Knutzen; Godwin Esaki; Jerry Ornellas; Kelly Gooding; Joe Bundo; Ken Bray; Lara Brady; Larry Feinstein; Les Milnes; Mervin Rapozo; Milton Ching; Ron Agor; Sam Lee; Senthilnathaswami; Satyanatha; Tommy Oi; William Sanchez;
Facilitator: Nancy Ralston
Recorder: Lynn Owan

Homework from last meeting:

	Task	**By**	**Report**
a.	Look for alternative lease sites	Tommy Oi	Other biggest unencumbered land is 20 acres
b.	Cost factor of and use of irrigation land (impact on irrigation system)	Jerry Ornellas	1,100 acres irrigated; potential $100,000 revenue to the Coop
c.	Alternative biomass production sites on forestry lands	Alvin Kyono	DOFAW has a 200-acre parcel northwest of current parcel; fairly level, but muddy; replanted with eucalyptus and mahogany. Concern: one road in and out; $40,000 income from eco-tourism could be affected
d.	Will DLNR replant where albizia is/was	Alvin Kyono	Replant with high-value hard wood or native species; Eucalyptus or europhylla/grandis for biomass; DOFAW would only replant on 200 acres of Forestry lands—not on other lands; earliest to do anything would be 2 years
e.	DHHL results	Eric Knutzen	DHHL wants eradication but this is not sustainable; DOT may be interested in having clearing done; due to cost it is not workable (DOT and DHHL will have to pay G.E.); cane haul road access is limited;
f.	Is there an alternative to albizia?	Alvin Kyono	Eucalyptus europhylla/grandis and earpod for nitrogen fixing
g.	Grove Farm potential	Eric Knutzen	Grove Farm can't commit for 20 years; short term leases may be o.k.

h.	How does proposed project fit into master plan?	Tommy Oi	2003 Master Plan commissioned by DLNR; forestry refers to high-value hard wood not biomass; land is to be kept unforested so can respond quickly to ag opportunities; ranching can be an interim use and land can be withdrawn for crop farming; at Parcel 20 long-term ranching may be discontinued to give way to diversified agriculture;
i.	Can RP holders also profit from G.E.	Eric Knutzen	Per G.E./Hawaiian Mahogany agreement, cannot. Per Hawaiian Mahogany, there is no room for 3rd party.
j.	Land transfer from DLNR to ADC	Ron Agor and Alfredo Lee	DLNR has not made decision; SB987 2007 gives priority to renewable energy; priority processing is not same as resource allocation priority. Ron agreed to advocate for the transfer of the parcel from DLNR to ADC at the next BLNR meeting on 1/11/08.

The group reviewed the 23 "major issues" from the 12/3/07 meeting and agreed that 20 of the 23 issues have been addressed. Three items were deferred.

"Possible Solutions" and subsequent discussion:

- No new albizia
- Clearing of existing albizia for 10 years – no replanting.
- Help from DOFAW to obtain permits for DOFAW-managed lands. Facilitation by ADC, DLNR Land Division, etc.
- Reduce required (G.E.) acres by finding alternative sites
- State or county to approach Grove Farm to secure 2,000 acres; offer some kind of incentives
- Economics a major factor
- Willingness from several people to give up property along the road, but G.E. responsible to fix road. Lease-holder would choose most appropriate interior roads for roadside planting.
- Remove irrigated parcels from equation
- Need to look beyond Parcel 20; look at the entire 6,700 acres (4,200 acres cane land)
- Consider Kalepa Master Plan and its recommendations
- ADC in control of issuing licenses to RP holders, with ability to sublicense to G.E.
- There are 3 TMKs total
- G.E. may consider offering stock options to RP holders as incentives in the future.

- There is a bill for DLNR to do direct negotiation with energy companies (SB 987?)
- Parcel 20 is approximately 2,200 acres; consider portions that are not irrigated. 1,200 to 1,400 acres are irrigable. Field acres = 1,800. 400-600 acres are non-irrigated

What is not negotiable?

- Planting or replanting of Albizia
- Need for irrigated parcels for ranchers and farmers.

Possible Solutions (by Eric Knutzen):

- No planting of new albizia
- G.E. is willing to reduce from 2,000 acres to1,000 but need to find 1,000 acres elsewhere.
- Clearing of existing albizia for 10 years
- Need DOFAW and/or Land Division to facilitate permits to harvest on state lands
- G.E. needs to be RP holder if acreage is lowered to 1,000 acres (bankers need something long-term) and no fence buy back agreement

Sam Lee offered the following solution and the group agreed to pursue this co-existence scenario:

1-RP holders agree to donate land from their parcels to meet G.E. 1,000 acres
2-DLNR to issue RP to G.E. and issue re-adjusted RP's to the ranchers;
3-DLNR transfer parcel with adjusted RP's to ADC
4-ADC may issue 20-year license in the future (direct negotiation)

Other discussion/clarifications:

- G.E. will allow tenants (who have given up acres) to co-use the parcels (if liability issues are addressed)
- Irrigated land in Parcel 20 is off the table
- Common area roads
- Big concession for the East Kauai Water Users Cooperative if water system is not transferred to the ADC at the same time as the land

Assignments for next meeting:

- Tommy O.: History regarding the decision to transfer the Kalepa land.
- Ron A.: Status (and potential provisions) of the transfer of Kalepa land from DLNR to ADC
    - Ron will advocate to have the land transfer item added to the agenda for the January 11, 2008 BLNR meeting.
- RP holders: Come up with acreage for the co-existence plan scenario
    - G.E. does not require a contiguous 1,000-acre parcel. Parcels must be reasonably sized, not undesirable lands.

- Less than 15° grade and accessible by road
- Contiguous
- Mark on map (Les: everybody should have a map, if not Rev. Katir can help)

Agenda item for the next meeting:

- Common area roads

Next Meeting:

December 20, 2007, 1:00 p.m. to 3:00 p.m.
Kauai DOA Conference Room

Co-existence Meeting, Kalepa Lands
Monday, December 3, 2007
1:00 p.m. – 3:00 p.m.
Lihue, Kauai

Participants: Alfredo Lee; Alvin Kyono; Bill Cowern; Derek Rapozo; Eric Knutzen; Godwin Esaki; Jerry Ornellas; Kelly Gooding; Ken Bray; Lara Brady; Larry Feinstein; Les Milnes; Lesther Calipjo; Lynn Owan; Mervin Rapozo; Mike Constantinides; Milton Ching; Paul Conry; Ron Agor; Sam Lee; Sannyasin Aurmugaswami; Sherwood Conant; Tommy Oi; William Sanchez;
Facilitator: Nancy Ralston

Alfredo Lee, ADC welcomed the group and provided background on the project. BLNR asked ADC to convene a group to develop a coexistence plan for TMK (4) 3-9-02: 20. BLNR requested a report from the ADC by Friday, 1/11/08.

After self introduction, attendees all agreed that they were committed to working on a coexistence plan.

Large Issues
Attendees were asked to voice their major concerns which were recorded and posted on the wall.

To prioritize the issues, attendees were divided into 4 groups

- East Kauai Irrigation System
- Green Energy
- Kalepa Koalition
- State Agencies

Each group was given 7 votes.

Votes Received	Issue No.	Concerns
****	1	Use of irrigated land
**	2	Current tenants retaining position on the parcels
**	3	Albizia is an invasive species
	4	Different tree
**	5	How does proposed project fit into master plan for the parcel?
*	6	Environmental assessment particular to Kalepa Lands
*	7	2,000 acres required to plant trees
*	8	Can required acreage be less?
**	9	Can RP holders also profit from Green Energy (G.E.)
**	10	Transfer of parcel to ADC
*	11	Are there alternative lands (unused)?

	12	Can G.E. use existing Albizia trees?
	13	G.E. taking over parcels from others giving up voluntarily
*	14	Alternative state land and environmental
	15	Is it appropriate to discuss conveyance at this time?
	16	Native Hawaiian issues
	17	$0.396 per KW
	18	State mandate renewable energy
**	19	State mandate food production
*******	20	G.E. needs guaranteed supply
	21	Time table
	22	Can G.E. purchase from other sources

- Attendees decided to focus on the issues with at least 2 votes: 1, 2, 3, 5, 9, 10, 19 and 20.
  - All the issues will remain on the list
  - Attendees decided not to discuss No. 19
  - ADC agreed to include a notation regarding No. 18 and 19 in the report to the BLNR.

Solutions:

- Consider using a portion of the entire Kalepa land to solve G.E.'s requirements.

Due to time constraints, the participants deferred discussion of possible solutions until the 12/17/07 meeting.

Homework:

The following individuals agreed to do research on the following topics and report back at the next meeting:

Issue No.	Topic	Name
1, 20	Look for alternative lease sites	Tommy Oi
1	Cost factor of and use of irrigation land (impact on irrigation system)	Jerry Ornellas
2, 20	Alternative biomass production sites on forestry lands	Alvin Kyono
2, 3, 20	Will DLNR replant where albizia is/was	Paul Conry/Alvin Kyono
3, 20	DHHL results	Eric Knutzen
3	Is there an alternative to albizia	Paul Conry and Bill Cowern
5	Grove Farm potential	Eric Knutzen
5	How does proposed project fit into master plan for parcel.	Tommy Oi
9	Can RP Holders also profit from G.E.	Eric Knutzen

10	Transfer of parcel from DLNR to ADC	Ron Agor and Alfredo Lee

Next meeting(s)
December 17, 2007, 11:00 a.m. to 3:00 p.m.
December 20, 2007, 11:00 a.m. to 3:00 p.m. (if needed)

Kalepa Koalition
6277 Puuopai Place
Kapaa, Hawaii 96746
Phone/Fax: 808-822-3392

TO: Alfredo Lee
Agribusiness Development Corporation
235 S. South Beretania St., Room 205
Honolulu, Hawaii 96813

January 3, 2008

RE: **Transference of Portions of Kalepa Lands to Green Energy LLC**

Aloha,

As a result of the three meetings facilitated by DOA on December 3, 17 and 20, and subsequent discussions among Koalition members, we have arrived at the following:

1. In our attempt to provide a thousand acres for Green Energy, RP holders have identified portions of their parcels that they are willing to part with. Ideally, it is a quarter of their acreage, which would generate 1,125 acres, and allow for adjustment with respect to irrigated lands which are not to go into forestry.

2. In some cases parcel holders identified less that 25% of their acreage due to their specific circumstances as explained in their letter to Ron Agor.

3. The total acreage thus made available is 949 acres, of which 68 is irrigated (see attached spreadsheet).

4. Those areas not affected by cattle grazing may be planted immediately upon issuing of RP. Those areas with cattle will be available within six months or sooner, as may be agreed upon with individual parcel holders.

5. Harvesting of existing albizia trees on areas retained by the parcel holders to be worked out between the parcel holder and GE, at the discretion of the parcel holder.

6. This acreage is offered under the following conditions:

a. The transfer of all 6,700 to ADC from DLNR be completed and long-term licenses be issued to existing parcel holders who desire to continue with their parcels under ADC's terms and rent.

b. There are no additional plantings of albizia. Existing plantings may be harvested for a period of ten years and then eradicated as requested by DOFAW.

c. Biomass species to be approved by BLNR, DLNR Division of Forestry and Wildlife (DOFAW), ADC and Department of Agriculture.

d. Should GE's business fail, first right of refusal to reoccupy forfeited areas offered to original parcel holder.

e. A general maintenance agreement shall be established through ADC and all parcel holders to address roads, bridges and all common element areas including security gates.

f. GE to become a member of the Koalition and share in the common expenses. As an interim agreement, GE would be obligated to at least 25% of such expenses, with the remaining parcel holders dividing the rest of the expenses equally. GE's use of heavy equipment on the road should be evaluated, as it is much more damaging. Should ADC require an agricultural cooperative be formed by the parcel holders, GE to become a member.

g. Disagreements to be settled by binding arbitration by ADC.

h. GE assumes the following responsibilities:

1. Pay existing RP holders for fencing, security and irrigation improvement under the buy-back clause specified in the existing RPs for the areas which GE takes over.

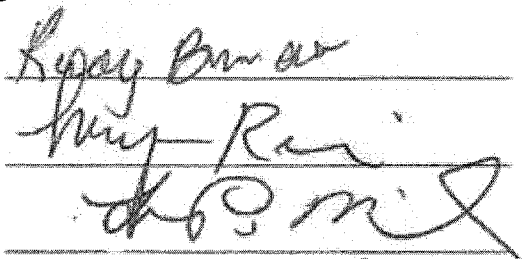
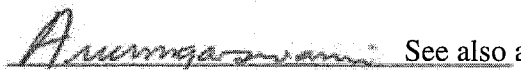
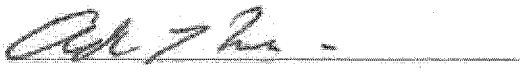
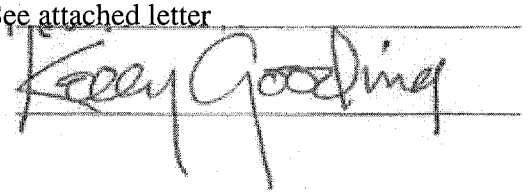
2. GE is responsible to install new boundary fencing where required to separate grazing areas from their plantings. They may relocate fencing they have acquired under the buyback for this purpose. If the boundary of the GE parcel is an existing fence installed originally as a cross fence by the parcel holder, then GE to pay 50% of the cost of that fence at $2.50/foot.

3. GE to pay Kalepa Koalition bank account $1,725, which is 25% of the cost of the security gate system which has been established and maintained by the Kalepa Koalition. GE to follow Koalition practices with regard to keeping gates locked.

4. GE may acquire non-duplicable keys to the gate system at a cost of $20 each from the Koalition key master, which is Saiva Siddhanta Church.

5. Some parcel holders have EQIP grants used for cross fencing, irrigation and stock water facilities and forage management practices. GE's forestry project is not eligible for EQIP grants. NRCS said they will require repayment of those portions of grants issued for land which is now going to GE. GE will, therefore, take responsibility for expenses or refunds requested by NRCS as a result of removal of land from the existing RP holder.

The undersigned have agreed to these conclusions and statement of conditions.

A	William Sanchez:	
B	Lara Butler/Keapana Horse:	Agreeable to conditions and see attached letter
C	Rudy Bunao:	
D	Tony Reis:	
E	Les Milnes:	
F	Godwin Esaki (inc HSPA#3):	See attached letter
G	Saiva Siddhanta Church:	 See also attached letter
H	GE Farms (Mervin Rapozo):	See attached letter
I	Derrick Rapozo:	
J	Gerald Sanchez:	Agreed by phone
K	Lester Calipjo:	
L	Kenneth Bray:	See attached letter
M	Milton Ching:	See attached letter
HSPA #1	Kelly Gooding:	

					Percent	Designated Acres	Actual percentag	Acres with	Irrigated *			
			Acres:		of Net	by Parcel Holder	of net acres:	special				
Unit	RP#	Holder	Gross	Net	0.23			conditions			Phone	
A	7278	William Sanchez	769	748	172	182	0.24				639-4848	
B	7282	Lara Butler-Brady	156	156	36	0	0.00		Irrigated		823-9303	
C	7280	Rudy Bunao	247	247	57	68	0.28		Irrigated		Joe 635-0931/346-5633	
D	7341	Tony Reis	469	347	80	90	0.26				246-1431 (work)	
E	7275	Les Milnes	752	562	129	143	0.25				639-0152	
F	7399	Godwin Esaki	733	477	110	40	0.08				639-4325	
G	7274	Saiva Siddhanta Church	407	327	75	86	0.26				639-1029	
H	7334	GE Farms (Mervin Rapozo)	417	344	79	35	0.10				482-1741	
I	7336	Derrick Rapozo	563	208	48	60	0.29				652-6282	
J	7276	Gerald Sanchez	214	214	49	54	0.25				639-1521	
K	7279	Lester Calipjo	432	392	90	92	0.23				645-0257	
L	7335	Kenneth Bray	287	127	29	28	0.22			acres wasteland area	651-4687	
M	7333	Milton Ching	342	215	49	125	0.58				635-3271	
HSPA #1	7289	Kelly Gooding	19	19							246-9419	
HSPA #2		Open	2	2								
HSPA #3		Godwin Esaki	2	2			(Note: Milton Ching's calculation is based on his taking over Tony Reis 90 acres					
							and giving up all of his parcel to Green Energy. His 125 acres given up plus					
							90 of Reis equals his total acreage of 215.)					
		Kauai County	18	18			(Note: Kenneth Bray's 28 acres is a former pasture that is not part of his					
		DOFAW	54	54			field acres, but is accessible and flat enough.)					
		Fisheries	37	37								
		Parks	5	5		to GE:		Undecided acreage				
		Acreage Totals:	5,925	4,501	*1,004*	*1,003*		*0*				
					Irrigated:	68	(Note: Irrigated land is not supposed to go into forestry)					
		TMK 3-9-01:02	848									
		TMK 3-9-02:01	3,059									
		TMK 3-9-02:20	2,181									
		TMK 4-2-1:3	214									
			6,302									

TO: THE BOARD OF LAND AND NATURAL RESOURCES

FROM LARA BUTLER-BRADY DBA KEAPANA HORSEMANSHIP

RE :GREEN ENERGY PROPOSAL FOR KALEPA LANDS TMK#2-9-20

DEAR BOARD,

THANK YOU FOR THE OPPORTUNITY TO COMMENT ON THIS PROPOSAL AS IT ESPECIALLY AFFECTS ME AND MY ENTIRE EFFORT AND INVESTMENT. I HAVE 207 GROSS ACRES AND 156 FIELD ACRES AND ALL OF THESE ARE IRRIGATED LANDS AND THEREFORE ARE AMONG THE FINEST AGRICULTURAL ACREAGE AND ON THE ISLAND AND STATEWIDE. THEY ARE ALSO THE LAST OF THE LARGE PARCELS OF LANDS IN THE DLNR SYSTEM TO BE SECTIONED OFF AND THE CHOICES MADE AT THIS TIME ARE OF PARAMOUNT IMPORTANCE TO THE ISLANDS FUTURE FOOD PRODUCTION INDUSTRY.

NONE OF MY UNIT IS USEABLE FOR GREEN ENERGY CROP AND I HAVE OFFERED USE TO PARTNERS THAT STAND TO LOSE AREA BUT TO LOSE 30% OF MY PROJECT WOULD KILL ANY PROFITS I COULD STAND TO EARN WITH PLANS FOR A COMPETITIVE ARENA COMPLEX THAT THIS ISLAND NEEDS AND DOES NOT HAVE. GREEN ENERGY IS ASKING FOR ME TO COMPLETELY CHANGE ALL MY PLANS. I NEVER WOULD HAVE STARTED IF I KNEW I WOULD LOSE LAND JUST WHEN I AM ABLE START CONSTRUCTION. I HAVE PLANS FOR EVERY INCH OF SPACE I HAVE LEASED AND POTENTIAL SUB-LESSEE'S TO PUT ACREAGE INTO FOOD CROPS. THIS IS THE ORIGINAL MASTER PLAN WITH ADC TAKING OVER THE MAIN ADMINISTRATION OF THE ENTIRE PARCEL. UNTIL THIS BECOMES A REALITY, RP HOLDERS ARE SUFFERING FROM LACK OF BANK CAPITAL AND THE RIGHTS TO MAKE A LIVING FROM THE LAND. I HAVE INVESTED OVER A MILLION IN CAPITAL AND 8 YEARS OF TIME, MEETINGS, AND EFFORT.

WHEN I APPLIED TO LEASE LAND I WENT THROUGH A VERY LONG AND HARD PROCESS TO EVEN APPLY AND SEVERAL YEARS AT THE BOARD TABLE JUST TO GAIN THE RIGHT OF ENTRY KEYS. THEN AN 8 MONTH WAIT FOR COSTS AND 4 YEARS IN COUNTY PLANNING. GREEN ENERGY IS NOT AWARE OF PROCESS OR BELIEVE THAT IT WOULD APPLY TO THEM JUST LIKE EVERYONE ELSE.
I AM HESITANT TO WORK WITH GREEN ENERGY BECAUSE THEY HAVE NO PAPERWORK, PERMITS, LAND, OR ANY OF THE "DUCKS IN A ROW" GREEN ENERGY HAS SIGNED A MULTIMILLION DOLLAR CONTRACT BEFORE THEY HAVE A PRODUCT TO DELIVER AND WE ARE BEING RUSHED TO PROPOSE A WAY TO LET THEM TAKE OUR LANDS.

THEY WILL NOT COMPENSATE US AT ALL. WE HAVE NOT BEEN OFFERED MONEY, POWER, STOCK OPTIONS OR ANY INCENTIVE TO SEE THIS COMPANY SUCCEED WHILE AT THE SAME TIME BEING ASKED TO "HELP ME OUT, HERE" WITH NO BENEFIT TO THE EXISTING RANCHERS AND FARMERS.

JAN-02-2008 WED 02:59 PM AGOR ARCH 808 246 1091 P. 01

EVERY MEMBER OF KALEPA KOALITION HAD TO ENDURE TO OBTAIN THE PROPERTY. NOTHING WAS GIVEN, IF ANYTHING WE HAD TO GO TO ALL THE RISK WITH NOTHING BUT PROMISES.

I WAS GIVEN 2 DAYS NOTICE TO RESPOND TO THIS PROPOSAL AND IT HAS BEEN RUSH ,RUSH, EVER SINCE. WHAT'S THIS HURRY? I DIDN'T GET TO HURRY THE PROCESS, NOR ANY OTHER LAND APPLICANT. THAT WOULD BE DISCRIMINATION AND PREFERENTIAL TREATMENT.

GREEN ENERGY WILL ONLY ACCEPT THE BEST LAND AVAILABLE , FLATTEST AND CONVENIENTLY CLEARED BY PRESENT RP HOLDER AT THEIR EXPENSE.
GREEN ENERGY WANTS US TO GIVE THEM ALL OUR EXISTING ALBIZIA, LET IT GROW BACK AGAIN AND THEN WANTS US TO PAY THEM TO CLEAR THE LAND. HELICOPTERS, COUNTY ROAD BIOMASS AND CLEARING LANDS FOR PULP IS "TO EXPENSIVE" AND THEY EVEN GRUMBLE THAT THE LANDS ARE ALL BROKEN UP AND "INCONVENIENT" FOR THEM. WE MUST GIVE AND COMPROMISE OUR WHOLE PROJECT TO SUIT THEM, we are under Duress without regard to our financial consequences.
I FIND THIS AMOUNT OF GALL HARD TO SWALLOW AND I DO NOT WANT TO DO BUSINESS WITH THE APPLICANT.

GREEN ENERGY IS WELCOME TO ALL MY ALBIZIA TREES AND MUST COME AND TAKE THE TREES AT THEIR OWN EXPENSE.
I ASK THE BOARD TO UPHOLD THE CURRENT MASTER PLAN WITH ADC TAKING OVER THE LAND AND WATER PERMITS FOR THIS PROPERTY AND NOT CHANGE PLANS 8 YEARS INTO THE WORK.

MAHALO NUI LOA,

Lara Butler Brady

LARA BUTLER-BRADY

December 30, 2007

Mr. Ron Agor, Kauai Land Board Member
Lihue, Kauai 96766

RE: Kalepa Koalition Lands-Green Energy

Dear Mr. Agor:

I am a "Native Hawaiian" and have spiritual and culture ties to the *ahupua'a* lands of Wailua, my great great grandfather, Mailolo(k), was born in 1843, resided in Wailua-mauka, raised kalo and died there in 1899. My great great great grandfather, John Hobbs, Jr. was born in 1833, raised cattle in Wailua, prior to the establishment Lihue Plantation Company, he died in 1877.

I am the lessee for Unit "M", Kalepa Koalition, my unit comprises of 212 net acres and I have been a lessee for six years. During my first lease year, I was actively growing kalo and banana's, my crop was destroyed by wild pigs. I begun raising cattle and have invested in excess of $25,000.00 in fencing, waterline, water tank, and other equipment.

I am in total **OPPOSITION** in giving 25% (50 acres) of my unit to Green Energy Inc., for the following reasons.

#1- I would greatly be impacted by the loss of land, and financially have a ripple effect.

#2- I have used and fenced approx. 95% of my unit, while other members have not even touched a greater portion of theirs.

#3- I have patiently waiting for a long term lease, and continue to wait.

#4- My future goals once a long term lease is attained is to expand cattle and do diversify planting of crops.

I ask of you, that my Unit, NOT be consider in the upcoming negotiation with Green Energy Inc.

Sincerely.

Milton K.C. and Melanie Ann P. Ching
5369 Kawaihau Road
Kapaa, Kauai 96746-2108

Mervin L. Rapozo
GE Farms, Inc.

6458 Olu Lane Kapaa, Hawaii 96746 (808)822-1629/482-1741

January 2, 2008

Mr. Ron Agor
Board Member
Department of Land and Natural Resources-Land Division
3060 Eiwa St. Rm. 205-A
Lihu'e, HI 96766

Dear Mr. Agor:

RE: Kalepa Koalition
RP No. 7334

Thank you for your time as a Board Member for the Island and County of Kaua'i and to listen to my concerns and my objection at this time in trying to accommodate Green Energy (GE.)

At the inception of Kalepa Koalition I was conveyed a month to month lease. During my tenure with the state, I have had to relinquish property twice (which decreased my acreage from the original conveyance), once to a member claiming Kanaka Maoli status; which meant having to cut back a total of 35 head of cattle.

To give another 25% of my property would mean another 25 head for a total of approximately $10,000 in loss revenue.
Had I not had to give up parcels prior, I would have no objections to convey to GE. at this time.

From the inception of my lease pursuant to the State's requirement to work on a conservation plan, I have been working on a contract with NRCS. I've had to expend monies to purchase water tanks, fencing, water pipes, and field preparations according to their specs and plans.
In spite of the hardship I can only relinquish 35 acres of my property at this time

Should you need to speak with me, please feel free to contact me on my cell phone at 482-1741.

Respectfully,

Mervin L. Rapozo

JAN-02-2008 WED 03:00 PM AGOR ARCH 808 246 1091 P. 04

Saiva Siddhanta Church
Kauai's Hindu Monastery
107 Kaholalele Road
Kapaa, Hawaii 96746-9304•USA
Phone: (808) 822-3012

January 2, 2008

To Ron Agor
Kauai Member, Board of Land and Natural Resources

Saiva Siddhanta Church is prepared to yield 86 acres out of its 327 field acres of unit G to be given to Green Energy Hawaii in exchange for the transfer of the Kalepa lands to ADC and eventual issuance of a long-term license by ADC to the Church for the remaining area.

Under the buyback section of our Revocable Permit, GE is responsible to reimburse our cost of fencing, security and irrigation improvements.

We have planted 3,000 linear feet of ironwood trees in a double row, four feet apart, as a security perimeter to the parcel area being taken over by GE. Our cost was $1,500. In addition, we installed one gate which will now be shared with GE at a cost of $300. To the $1500 for the tree barrier we add $150 for their share of the gate for a total of $1650 to be reimbursed by GE. These are all the improvements upon the land they will take over. We have in addition a planting of $300 worth of teak trees which are not eligible for buyback under the RP and are being abandoned by us.

We concur with the additional conditions which are spelled out in a letter from the Kalepa Koaltion as a whole. These conditions are meant to insure: 1) that no parcel holder is out of pocket as a result of this land transfer to GE; 2) that GE shares properly in the existing security gate system; 3) that GE participate fairly in the future maintenance of the property specifically the common element road; and 4) that GE cooperate with the Kalepa Koalition in the transfer to ADC.

Thank you,

Saiva Siddhanta Church

Rev. Swami Arumugam Katir
808 822 7032 ext 227