



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTIETH LEGISLATURE, 2020**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2113, RELATING TO HAWAIIAN HOME LANDS.

**BEFORE THE:**

SENATE COMMITTEE ON HAWAIIAN AFFAIRS

**DATE:** Tuesday, January 28, 2020 **TIME:** 1:15 p.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** Clare E. Connors, Attorney General, or  
Ryan K. P. Kanakaole, Deputy Attorney General

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Chair Shimabukuro and Members of the Committee:

The Department of the Attorney General provides the following comments on this bill.

This bill amends section 204 of the Hawaiian Homes Commission Act of 1920 (HHCA) to require the Department of Hawaiian Home Lands (DHHL) to give preference to native Hawaiians over the general public when leasing available lands for commercial, industrial, or other business purposes. This bill also amends section 171-59, Hawaii Revised Statutes (HRS), to create a process through which DHHL is to lease available lands pursuant to section 204 of the HHCA. Finally, this bill requires DHHL to submit annual reports to the Legislature regarding its leasing activities under section 204 of the HHCA.

The finding on page 3, lines 4-10, of the bill that DHHL's exercise of authority under section 204 of the HHCA ". . . may constitute prohibited rulemaking. . ." is not supported by the Hawaii Administrative Procedures Act (HAPA), chapter 91, HRS. Section 204 of the HHCA authorizes DHHL to negotiate with native Hawaiians before the general public when it leases available lands for commercial, industrial, or other business purposes. DHHL's exercise of this authority is a matter of management relating to the custodial responsibilities entrusted to the agency, which is not "prohibited rulemaking" under HAPA. We therefore recommend deleting the language beginning on page 3, line 4, and continuing to page 3, line 10, of the bill.

The process for DHHL to lease land for commercial, industrial, and other business purposes found on page 13, line 3, to page 14, line 20, of the bill should be codified in the HHCA, rather than chapter 171, HRS. Chapter 171 establishes the Board of Land and Natural Resources and the Department of Land and Natural Resources, and generally sets forth requirements for managing the State's public lands. For clarity, we therefore recommend codifying the process found on pages 13-14 of the bill as an amendment to section 204(a)(2) of the HHCA, rather than section 171-59, HRS.

The term, "culturally appropriate manner," found on page 13, lines 8-9, of the bill is also vague. We therefore recommend defining the term in the bill.

Thank you for the opportunity to provide these comments.

DAVID Y. IGE  
GOVERNOR  
STATE OF HAWAII

JOSH GREEN  
LT. GOVERNOR  
STATE OF HAWAII



WILLIAM J. AILA, JR.  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES  
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879  
HONOLULU, HAWAII 96805

TESTIMONY OF WILLIAM J. AILA, JR, CHAIRMAN  
HAWAIIAN HOMES COMMISSION  
BEFORE THE SENATE COMMITTEE ON HAWAIIAN AFFAIRS  
HEARING ON JANUARY 28, 2020 AT 1:15PM IN CR 016

**SB 2113, RELATING TO HAWAIIAN HOME LANDS**

January 27, 2020

Aloha Chair Shimabukuro, Vice Chair Kahele, and members of the Committee:

The Department of Hawaiian Home Lands (DHHL) submits comments on this bill that requires DHHL to negotiate with native Hawaiians before offering Hawaiian home lands for lease to the public by auction.

Lands designated for commercial and industrial use amount to just over 2,800 acres of land representing a little over 1 percent of trust lands. The Department must adhere to high fiduciary duties normally owed by a trustee to its beneficiaries in dealing with eligible native Hawaiians collectively or individually. In keeping with this small amount of land designated for commercial and industrial use and the trust obligation owed to beneficiaries, the Department considers how the land and revenue derived therefrom can serve the most beneficiaries, particularly those who have yet to be served by the trust.

DHHL has concerns about the unintended consequences of amending section 204 of the Hawaiian Homes Commission Act (HHCA) and especially chapter 171 of the Hawaii Revised Statutes. Reference is made in several areas of the proposed language in section 3 of the bill (page 14) to board notification and selecting a lessee, which would mean the Board of Land and Natural Resources in direct conflict with section 206 of the HHCA.

The Department took the liberty of preparing draft language for Part I of the bill if this Committee is inclined to move some version of this bill forward.

Thank you for your consideration of our testimony.



## S.B. NO. 2113

1 households surveyed, 11 percent were living on Hawaiian  
2 Homestead Land (12,755 households) in 2019, similar to 2016.  
3 Also, among Native Hawaiian households, 20 percent had at least  
4 one member on the waitlist to receive a DHHL award (23,883  
5 households) on which then intend to reside." The study  
6 continues to explain that "an additional 21,399 Native Hawaiian  
7 households stated that they have a household member eligible to  
8 apply for a Hawaiian Home Lands lease but were not yet a  
9 leaseholder nor an applicant." [by approximately seventy five  
10 percent, and there may be as few as twenty five thousand  
11 eligible native Hawaiians remaining. During this time, as well  
12 documented in reports by the auditor and others, the department  
13 of Hawaiian home lands has struggled to place native Hawaiians  
14 on their land, challenged by a lack of funding and its own  
15 bureaucratic shortcomings. More recently, the department has  
16 sought to maximize its income by focusing on its authority to  
17 dispose of lands that it determines are not necessary to lease  
18 to native Hawaiians for housing, by leasing it to the general  
19 public pursuant to the provisions of chapter 171, Hawaii Revised  
20 Statutes.]

21 The legislature also finds that the lands designated for  
22 commercial and industrial use amount to just over 2,800 acres

## S.B. NO. 2113

1 representing a little over 1 percent of the trust lands.  
2 W[w]hile the department of Hawaiian home lands is expressly  
3 authorized to negotiate, prior to negotiations with the general  
4 public, the disposition of Hawaiian home lands to a native  
5 Hawaiian, or organization or association owned or controlled by  
6 native Hawaiians, for commercial, industrial, or other business  
7 purposes, the department must adhere to fiduciary duties  
8 normally owed by a trustee to its beneficiaries in dealing with  
9 eligible native Hawaiians collectively or individually. In  
10 keeping with this small amount of land designated for commercial  
11 and industrial use and the trust obligation owed to  
12 beneficiaries, the department considers how the land and revenue  
13 derived therefrom can serve the most beneficiaries, particularly  
14 those who have yet to be served by the trust. [~~has adopted a~~  
15 ~~defacto policy declining to do so. Rather, the department~~  
16 ~~requires native Hawaiians to compete in a bidding war against~~  
17 ~~well-financed for-profit corporations, often from the mainland,~~  
18 ~~who may not employ native Hawaiians, use native Hawaiian~~  
19 ~~subcontractors and suppliers, or have any ongoing commitment to~~  
20 ~~native Hawaiian self-sufficiency or cultural preservation.~~  
21 ~~Instead, these entities seek only to maximize profits for their~~  
22 ~~investors. This policy is contrary to the purpose of the~~

## S.B. NO. 2113

1 ~~Hawaiian Homes Commission Act, not reflected in the department's~~  
2 ~~administrative rules, and may constitute prohibited rulemaking~~  
3 ~~in violation of the Hawaii Administrative Procedures Act,~~  
4 ~~chapter 91, Hawaii Revised Statutes. See, e.g., Nuuanu Valley~~  
5 ~~Ass'n v. City and County of Honolulu, 119 Hawaii 90, 194 P.3d~~  
6 ~~531 (2008).~~

7 ~~The legislature further finds that in addition to the~~  
8 ~~department of Hawaiian home lands' failure to place the vast~~  
9 ~~majority of eligible native Hawaiians on their land, its policy~~  
10 ~~not to first negotiate with its own beneficiaries in the~~  
11 ~~development of their own commercial, industrial, and other~~  
12 ~~business purposes, works to prevent them from becoming~~  
13 ~~independent, self-sufficient, and self-reliant. Rather than~~  
14 ~~capitalizing native Hawaiians' own projects with land and~~  
15 ~~empowering them to support themselves and their communities on a~~  
16 ~~day-to-day basis, the department empowers only itself, and keeps~~  
17 ~~its beneficiaries in a patronizing state of dependency.~~

18 ~~The purpose of this Act is to:~~

19 ~~(1) Require the department of Hawaiian home lands to~~  
20 ~~negotiate with native Hawaiians for the development of~~  
21 ~~their own commercial, industrial, and other business~~

# S.B. NO. 2113

1           ~~purposes before offering land sought by them to the~~  
2           ~~general public, and~~

3           (2) ~~Require the department of Hawaiian home lands to~~  
4           ~~report annually to the legislature regarding each~~  
5           ~~disposition of available land for commercial purposes,~~  
6           ~~including when disposition of lands was ultimately~~  
7           ~~made to the general public and why its negotiations~~  
8           ~~with native Hawaiians did not succeed.]~~



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Director of Council Services  
Traci N. T. Fujita, Esq.

**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

January 26, 2020

TO: The Honorable Maile S.L. Shimabukuro, Luna Ho‘omalu  
Senate Committee on Hawaiian Affairs

FROM: Tamara Paltin, Councilmember for West Maui  
Maui County Council

SUBJECT: **HEARING OF JANUARY 28, 2020; SUPPORT OF SB 2113, RELATING  
TO HAWAIIAN HOME LANDS**

Thank you for the opportunity to offer testimony in **SUPPORT** of this important measure. The purpose of this bill requires the Department of Hawaiian Home Lands (DHHL) to negotiate with Native Hawaiians before offering Hawaiian Home Lands for lease to the public by auction.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this support in my capacity as an individual member of the Maui County Council.

Recognizing that the Hawaiian Homes Commission Act of 1920 established the Hawaiian Home Lands trust 100 years ago to ensure the self-sufficiency of the Hawaiian people through the land, I believe it is imperative for the land assets of the DHHL be used to either house or otherwise benefit the beneficiaries outlined in the Act. By supporting this bill, the development and empowerment of future Native Hawaiians to be self-reliant and industrially independent is furthered as initially intended in the Hawaiian Homes Commission Act of 1920.

Thank you, once again, for the opportunity to testify and for your consideration.

Center for Hawaiian Sovereignty Studies  
46-255 Kahuhipa St. Suite 1205  
Kane'ohe, HI 96744  
(808) 247-7942  
Kenneth R. Conklin, Ph.D. Executive Director  
e-mail [Ken\\_Conklin@yahoo.com](mailto:Ken_Conklin@yahoo.com)  
Unity, Equality, Aloha for all



To: SENATE COMMITTEE ON HAWAIIAN AFFAIRS

For hearing Tuesday January 28, 2020

Re: SB 2113 RELATING TO HAWAIIAN HOME LANDS.

Requires the department of Hawaiian home lands to negotiate with native Hawaiians before offering Hawaiian home lands for lease to the public by auction. Requires annual report regarding negotiations.

#### TESTIMONY IN OPPOSITION

The clear purpose of this bill is to require that when DHHL decides to raise funds by leasing land for commercial development, preference must be given to native Hawaiians or companies owned by them rather than leasing to the general public. The bill uses highly pejorative language decrying a "de facto policy [whereby] the department requires native Hawaiians to compete in a bidding war against well-financed for-profit corporations, often from the mainland, who may not employ native Hawaiians, use native Hawaiian subcontractors and suppliers, or have any ongoing commitment to native Hawaiian self-sufficiency or cultural preservation. Instead, these entities seek only to maximize profits for their investors."

In other words this bill would allow DHHL to award commercial leases to a highly favored racial group at lease rents far below market value by cutting out potential bidders of the wrong racial groups who otherwise would generate higher lease rent to provide money which DHHL is always complaining it needs. DHHL would no doubt demand (probably through lawsuits, as we have repeatedly seen) that the legislature appropriate tax dollars from the general fund to make up the difference for whatever might be deemed "sufficient funding."

This bill goes far beyond merely requiring DHHL to give a racial preference in awarding leases for commercial development.

This bill actually authorizes DHHL to negotiate any commercial lease in secret with native Hawaiians before even making known to the general public that a parcel of land is on offer to be leased, thus guaranteeing that the lease can be awarded for a bid below market value because potential bidders are racially excluded from competing or even knowing about it.

Indeed, language in the bill appears to allow a DHHL bureaucrat to single out a particular individual native Hawaiian friend of theirs, to notify such an individual in secret that a particular parcel of land is available for lease, and then to make a secret deal with that individual to lease that parcel for an absurdly low rent in return for whatever bribes or personal favors the friend might secretly give in return to the bureaucrat.

This bill not only authorizes generalized racist behavior apart from individualized favors -- this bill is also a recipe encouraging nepotism, bribery, and corruption by individual DHHL bureaucrats wishing to enrich their individual buddies who remain hidden behind the scenes. The bill is sponsored by an individual Senator whose signature is illegible, "by request" from an unknown person, in return for favors we can only imagine. Hey, that's exactly the scenario this bill would authorize when DHHL awards leases for commercial development! I mention that not to disparage the most honorable sponsoring Senator, of course, but merely to illustrate the depth of distrust and conspiracy theorizing that passage of this bill would engender.

**SB-2113**

Submitted on: 1/23/2020 8:36:51 AM

Testimony for HWN on 1/28/2020 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
kenneth kudo	Individual	Oppose	No

## Comments:

I am totally against benefits going to native Hawaiians. They are no longer an oppressed, handicapped race. They constantly seek pity by grievance and complaints of oppression when in fact none are true. They do this to appear to be in need of exclusive benefits over all other races when in fact, all races today have equal needs. Since 1893, they have received equal rights and opportunities as all other races in Hawaii. Their complaint that their language has been banned is totally untrue. The only law banning language from schools came in 1896 setting standards for schools in Hawaii by establishing a common English language for use in schools. There was never any other ban. They complain about "illegal U.S. annexation" which again is totally untrue. Queen Liliuokalani was legally "ousted" by a Constitutional Monarchy in 1893 by members in government who had every right to do so. The Republic that was created requested U.S. annexation, and the U.S. government had every right to proceed with their internal procedure methods to acquire the necessary 2/3 Senate vote and President's approval, which they did by Joint Resolution. The annexation is approved and recognized as legal and legitimate by over 163 nations around the world. Despite this, Native Hawaiians today spread propaganda in schools creating a whole generation of anti-Americans causing civil disobedience, hate crimes, division, and if left unchecked, eventual destruction in and of Hawaii. Benefits being handed out to native Hawaiians is like a carrot before a donkey. It causes upright, productive Hawaiians to become jack asses who create, follow, and rely on undeserved free handouts paid for by the general public who receive nothing.

**SB-2113**

Submitted on: 1/26/2020 6:32:16 PM

Testimony for HWN on 1/28/2020 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Benton Kealii Pang, Ph.D.	Individual	Support	No

Comments:

My name is Benton Kealii Pang. I support SB2113. This bill requires the department of Hawaiian home lands to negotiate with native Hawaiians before offering Hawaiian home lands for lease to the public by auction. It also requires annual reporting. Pass SB2113. Mahalo.

Benton Kealii Pang, Ph.D.

**SB-2113**

Submitted on: 1/26/2020 8:31:58 PM

Testimony for HWN on 1/28/2020 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kama Hopkins	Individual	Oppose	No

Comments:

# La'i'Opua Community Development Corp.

P.O. Box 3230  
Kailua- Kona, HI 96745

[email...bokahui65@gmail.com](mailto:bokahui65@gmail.com)  
Phone.....808-896-2252

Date: January 28, 2020

**LATE**

To: Senator Maile Shimabukuro, Senate  
Senate Hawaiian Affairs Committee, Chair  
Committee on Hawaiian Affairs, Members

Re: Support Senate Bill 2113 Related to DHHL & HRS 171

Aloha Sen Shimabukuro and Members of the Senate Committee on Hawaiian Affairs,

Respectfully, Laiopua Community Development Corp, O'oma Homestead Alliance, and Na Hale A'ali'i Housing Corporation support Senate Bill 2113.

Laiopua Community Development Corporation and O'oma Homestead Alliance Corporation, LLC and Na A'ali'i Hale Corp are all native businesses owned and controlled by native Hawaiians.

The proposed bill seek to address the "unjust practice" by DHHL to place native Hawaiian lands out to public bid without first offering opportunities to native Hawaiian beneficiaries.

For years DHHL has employed HRS 171 as a means to seek the greatest return on its land investment rather than offer lands to beneficiaries to meet DHHL's Congressional mandate to empower native Hawaiian beneficiaries to become socially and economically self-sufficient, self-reliant, and independent.

On behalf of O'oma Homestead Alliance, Laiopua Community Development Corporation, and Na Hale A'ali'i Corp. and native Hawaiian entrepreneurs, we seek your kokua in this and move this bill out of committee for consideration by the State Legislature

Mahalo,

Craig "Bo" Kahui <sup>CSX</sup>  
O'oma Homestead Alliance, Partner Member  
La'I'opua CDC, President.  
Na Hale A'ali'i, native owned Housing Corp, Pres.

CC: William Aila, Chair DHHL  
Andrew Choy, DHHL Director, Planning Div.  
O'oma Homestead Alliance Partners  
La'I'opua Community Development Corporation  
Office of Hawaiian Affairs, Bob Lindsey  
Sen. Kai Kahele  
Sen. Kurt Fevella  
Sen Jarrett Keohokalole

DAVID Y. IGE  
GOVERNOR  
STATE OF HAWAII

JOSH GREEN  
LT. GOVERNOR  
STATE OF HAWAII



WILLIAM J. AILA, JR.  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES  
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII**  
**DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879  
HONOLULU, HAWAII 96805

October 7, 2019

VIA EMAIL: [bokahui65@gmail.com](mailto:bokahui65@gmail.com)

Mr. Craig "Bo" Kahui  
O'oma Homestead Alliance, LLC  
74-146 Haleolono Place  
Kailua-Kona, Hawai'i 96740

Re: Email dated October 2, 2019;  
*Request to be on Commission Regular Agenda*

Dear Mr. Kahui:

O'oma Homestead Alliance, LLC's October 2, 2019 email, proposing a renewable energy project in North Kona is impressive. We understand O'oma desires to participate in HELCO's solicitation for renewable energy projects on Hawai'i Island (closing in November 2019) and that it needs a right-of-entry from the Department. After careful review and guidance by the State of Hawaii Attorney General's Office, unfortunately the Department cannot grant O'oma a right-of-entry permit as requested.

The issue is about timing and ultimately compliance with HRS Chapter 171. A right-of-entry would need to be granted as part of the special process for leasing lands under HRS § 171-95.3. The Department would need to engage in a process to give other interested renewable energy producers an opportunity to participate. This process usually takes several months and could not be completed before HELCO's solicitation closes in November 2019. There is just not enough time for the Department to fully comply with the law.

We strongly support the vision of O'oma and La'i 'Ōpua 2020. This decision is not about the merits of O'oma's proposal or the important work it is doing for our beneficiaries. The projects it is planning are compelling. But time is not with us, and the Department could not practically expect to comply with the letter or spirit of the law.

Aloha,

William J. Aila, Jr., Chairman  
Hawaiian Homes Commission

Cc: Peter "Kahana" Albinio, Jr., DHHL-LMD



**October 2, 2019**

Mr. William Aila, Chairman  
Hawaiian Homes Commission  
Department of Hawaiian Home Lands (DHHL)  
Hale Kalaniana'ole  
91-5420 Kapolei Parkway  
Kapolei, Hawaii 96707

Emailed 10/02/2019

Aloha Mr. Aila,

On behalf of Laiopua Community Development Corporation, O'oma Homestead Alliance (OHA), LLC, and Verdant Microgrids, we respectfully request to be placed on the "regular DHHL Commission meeting agenda scheduled for October 21-22, 2019 in Hilo, Hawaii.

Recently on Friday September 27, 2019, I met with DHHL Land Management Division (LMD) Director- Peter Kahana Albinio and DHHL LMD Land Development Agent- Allen Yanos. At that time OHA expressed "timing concerns" related to the HELCO/HECO "request for proposals" (RFP) to energy producers which is due November 5, 2019.

Both Mr. Albinio and Mr. Yanos expressed the "insufficient time" to offer a public solicitation to respond to the HELCO/HECO RFP. More importantly, since January 2018 to the present day almost 20 months ago, I had advocated at DHHL Commission hearings for the development of the PV project to offer the Villages of Laiopua and the community development projects energy opportunities to reduce energy costs to beneficiaries and increase disposable incomes for beneficiaries on the homestead.

More important on April 18, 2018, O'oma Homestead Alliance, and its partners received a DHHL "right of entry" (ROE), to respond the HELCO/HECO RFP at last year's HELCO/HECO RFP solicitation, see attached. At that time, Hawaii Island was left out of the DHHL- HELCO/HECO bid process. However, with only several week to reply, DHHL LMD did issue a RFP to include Hawaii Island to respond to HELCO/ HECO RFP. As you may recall, Ooma LLC had only a few weeks to reply to DHHL RFP and subsequent to the Department's approval, only a few weeks to respond to the HELCO/HECO RFP.

As you are aware, OHA did not make the HELCO/HECO "short list" in the HELCO/ HECO RFP Phase 1 and therefore the Department's ROE was revoked. We assert that technically OHA had a sound project, however, OHA's price per kilowatt-hour exceeded the record low bids from the mainland and foreign competition and therefore OHA was denied a HELCO/HECO power purchase agreement (PPA).

Today, OHA and its alliance partners bring a renewed and Hawaii-market competitive PV proposal to the Department and HELCO/HECO. Also, we welcome other energy producers to apply to

DHHL to deliver renewable energy to offset energy costs to the Villages of Laiopua Homestead community and its community development partners and associations.

Lastly, since 2009 and more recently OHA sought beneficiary consultation to ensure beneficiaries understood the project and long-term benefits to beneficiaries, see Beneficiary Consultation Summary report. OHA attended the 2019 DHHL Regional Plan Update meetings, the 2019 Villages of Laiopua Association (VOLA) Annual meeting, and VOLA Board meeting Sept. 17, 2019 and received VOLA Board approval. OHA expressed the value of the PV project as a means to an end to deliver energy self-sufficiency and energy independence. In short, OHA have strong community support and done quite a lot of work.

In closing O'oma Homestead Alliance (OHA) seek your assistance to include the OHA PV project onto the next DHHL Commission agenda schedule on Monday Oct 21-22, 2019 in Hilo, Hawaii. More importantly, we seek the assistance of your LMD Director Mr. Albinio to prepare a informational briefing to the DHHL Commission for action item to issue O'oma Homestead Alliance a "Right of Entry" to include the ROE conversion to a lease conditioned of a HELCO/HECO PPA agreement.

Ooma Homestead Alliance and its partners expresses the urgency of this issue and respectfully seek your immediate attention in this matter.

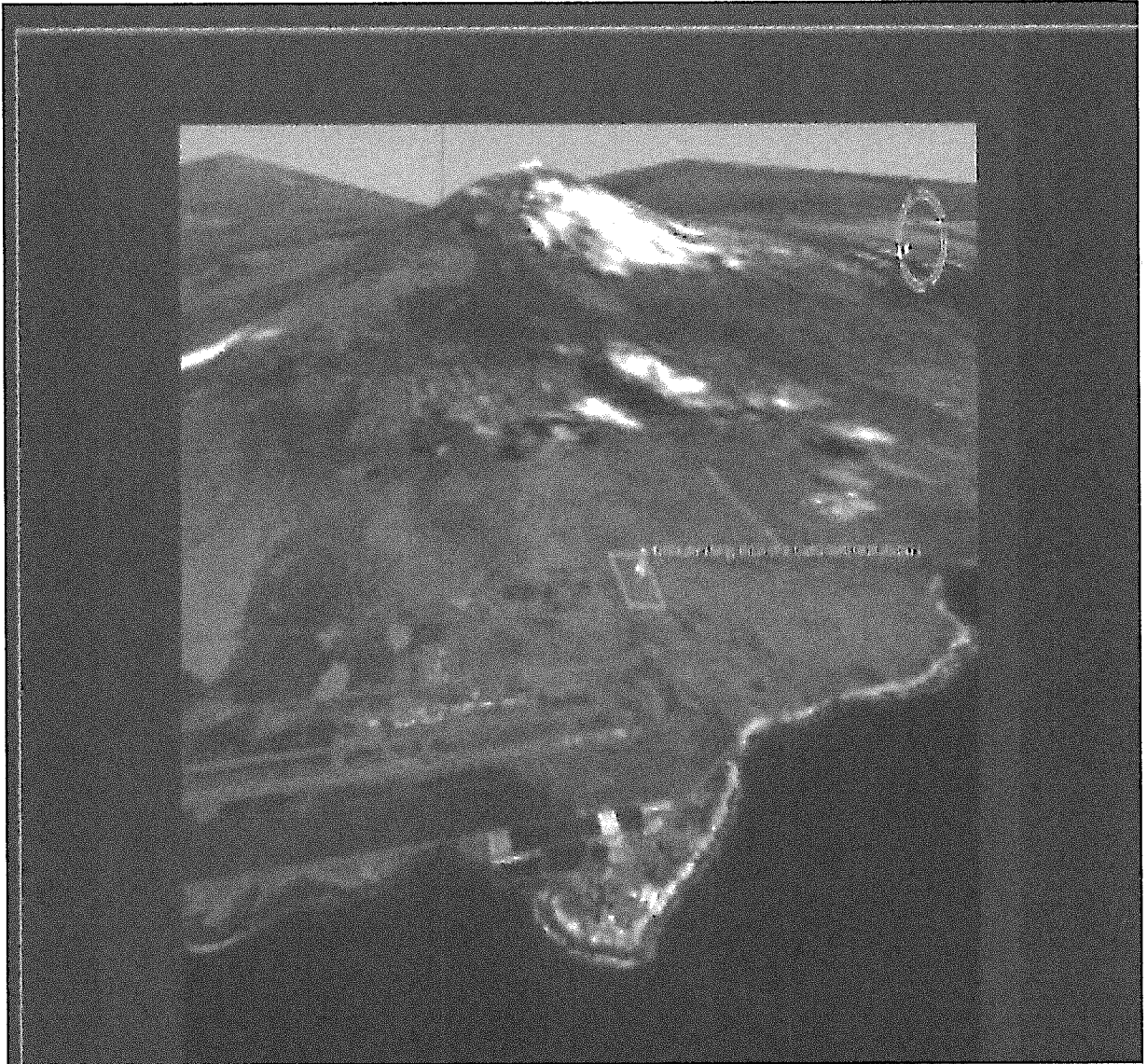
Mahalo Nui  
Craig "Bo" Kahui<sup>2x</sup>  
OHA, Partner member  
VOLA- HAC Chair

- Project:** A. DHHL Commission Cover Leter  
B. William Aila Response memo  
C. 2019 Ooma Homestead Alliance Project profile

- Exhibits:**  
Ex 1 Verdant Microgrid Agreement  
Ex 2 Beneficiary Community Benefit program  
Ex 2a Beneficiary Consultation Summary Report  
Ex 3 PV Project Site Plan  
Ex 4 PV Racking/ Ballast Installation System

- Attach:**  
DHHL Ooma ROE- April 18, 2018  
DHHL/ HELCO/HECO Energy Partnership Charter

- CC:** WH- DHHL Commissioner: David Ka'apu Sen. Shimabukuro, Hawaiian Affairs Chair  
Robert Bobcock, Verdant Microgrids, LLC Sen. Kanuha, West Hawaii District  
O'oma Homestead Alliance, LLC Rep Nicole Lowen, House Energy Chair  
Willl Rolston, Energy Island Lt. Gov. Josh Green



**Renewable Energy Initiative**  
**O'oma Homestead Alliance, LLC**  
DHHL Land Management Division  
October 2019

# **O‘oma Homestead Alliance LLC**

## **Proposal for Photovoltaic Project and Power Purchase Agreement**

### **Introduction**

O‘oma Homestead Alliance LLC (OHA) and its partners are pleased to have the opportunity to respond to Hawaiian Electric Company's RFP for renewable energy generation on the Big Island of Hawaii.

Enclosed is the proposal from OHA to construct a solar farm and battery energy storage system on DHHL property in Kalaoa, North Kona, along Highway 19 near the Kona International Airport, identified as Tax Map Key No.(3) 7-3-010-007 comprising 100 acres currently zoned industrial commercial, (See Exhibit 3- Site Plan)

OHA is a partnership of a native Hawaiian majority owned and operated Limited Liability Corporation established for the purpose of becoming an energy producer that would serve the native Hawaiian beneficiaries and the Department.

OHA has brought together experts in their related fields to include energy production, electrical contractors, electrical engineers, civil engineers and contractors. More importantly, OHA is driven by a majority Hawaiian beneficiary partnership with the mission to provide vocational and job training opportunities for beneficiaries in West Hawaii and the Villages of La‘i‘Opua Homestead Association, geographically located 7 miles south of the proposed energy project.

OHA’s vision is to create a large-scale renewable energy project to support the local Hawaiian grid as well as a community based renewable energy (“CBRE”) project to benefit the homestead – all produced by native Hawaiians employing the values of the Hawaiian culture to malama aina, and to respect the land and be Pono with the activities of the proposed renewable solar PV farm.

Additionally, OHA intends to explore and develop a future industrial and training facility to service the local PV industry in some way to help meet and maintain Hawaii's increasing demand for clean energy. This future facility will benefit from and complement the utility-connected PV farm and provide additional training and green jobs to the community. Furthermore, the facility will support the local renewable energy sector, which contributes to the addition of more affordable solar energy to the islands. The combination of generation at the location, plus the industrial infrastructure will offer long-term cost savings for both island ratepayers and HECO. The CBRE array will directly benefit native Hawaiians enabling more disposable income for families and benefits to the entire community.

OHA has the collective experience to meet and/or exceed the qualifications by DHHL and HELCO. Craig “Bo” Kahui a native Hawaiian beneficiary and, as former Executive Director of Laiopua 2020, has managed to construct several facilities in Kona to include a 1500 sq. ft. technological-Multi media Center, a 10,000 sq. ft. medical center with PV infrastructure in place for energy conservation needs, and a 6,000 sq. ft. community center serving the community to provide workforce and vocational training opportunities. More importantly, Mr. Kahui’s development experience has led to the development of the Holualoa Water source project to provide critical water allocations for the Villages of Laiopua community facilities development, commercial center, Homestead Housing and economic development. Mr. Kahui’s valuable experience in the development field demonstrates his capability to bring this PV project to fruition.

OHA Partner Reginal Lindo, a native Hawaiian, has extensive experience in the development and installation of large scale and residential PV systems. Mr. Lindo's experience and resume is noted in the Appendix, and combined with the other team members, OHA has the expertise and experience to engineer and develop an industrial PV system unmatched in West Hawaii. We have provided a list of Mr. Lindo’s directly-relevant experience and therefore, the combination of PV installations and experience by Mr. Lindo, in our opinion, exceeds the qualification requirements for the prior DHHL RFP.

O’oma Homestead Alliance, LLC is a newly formed special purpose corporation formed to respond to HELCO RFPs and has secured financial, development and operational backing from Verdant Microgrid, LLC. Verdant’s principal, Robert Babcock (see Exhibit 1), boasts decades of experience developing, building and financing renewable energy projects. We note that Verdant’s management has closed over \$3 Billion dollars in construction financing and permanent debt financing for solar, wind, geothermal and other energy transactions. OHA partners sought Verdant Microgrids to offer the necessary financing to fund the total capital costs for OHA, LLC's proposed PV project at Kalaoa.

Finally, as a local partnership, OHA is not a large corporation focused solely on profits, rather a community-centered business aimed at providing local employment for Hawaiians, long-term affordable and clean energy, and giving-back to the community. OHA is passionate to reduce our use of fossil fuel and make a difference in our carbon footprint now and the foreseeable future.

When successful, this project would become the first native Hawaiian majority sponsored energy producer on Hawaii Island, and the State of Hawaii on Homestead Lands.

# Verdant MicroGrid, LLC

## Solar Microgrid Co-Development Term Sheet

### A. Project Introduction:

The O'oma Homestead Alliance LLC ("OHA") intends to respond to the HECO distributed generation RFP issued on August 22, 2019 and wishes for Verdant Microgrid, LLC to develop, arrange, finance, construct, own and operate a ground mount solar energy and battery storage facility (the "Project") at a site secured from the Hawai'i Department of Hawaiian Home Lands (the "Site") in order to respond to the RFP.

OHA has responded to a similar HECO RFP in 2018 and was not awarded a contract at the Site. Based on Verdant's review of the prior costing, it appeared that the all-in cost of energy for the facility was too high due to overestimating the cost of installation of a solar array compared to current market comparables, and to the overburdening of the prior project with large operations costs.

### B. General Project:

Project Proposer:	Verdant Microgrid, LLC
Project Site:	100 acres adjacent to the HECO substation across from Makako Bay Drive, at the Queen Kaahumanu Highway.
OHA Participants:	Laloetua Community Development Corp. - Project Sponsor Lindo Electric - Electrical Contractor EM Rivera - Civil Contractor Wally Oki - Electrical Engineer Verdant Microgrid - Project Developer
RFP Response Date:	November 5, 2019
Project Summary:	10 MW (AC) Solar 10 x 4 Hours BESS
Electrical Interconnection Location:	At Site, connected to HECO Substation
Delivery:	Projected to be online by 12/31/2020
Contract Term:	15-20 years

### C. Project Development Cooperation:

Verdant Microgrid, LLC, proposes to develop, own and operate the microgrid consisting of ground-mounted solar power generators coupled with energy storage at the Project Location. OHA has already completed significant work on the site through the prior submittal to HECO.

## Verdant MicroGrid, LLC

Verdant intends to build on that prior work and refine the cost structures, improve designs, streamline procurement and lower the overall cost of energy submitted to HEECO.

The Parties desire that Verdant shall develop the microgrid at the Project Location. In return, OHA will make available to, and cooperate with Verdant the following:

- All relevant prior information and work on the site regarding:
  - Lease terms and site plans from the DHHH
  - Permitting and use from the County of Hawaii
- Pyranometer data from 2017 to present
- Any topographic geologic information on the Site
- Design engineering for the solar layout
- “Community Benefit” information vital to the success of any proposal
- Any interconnection information from HEECO including, but not limited to:
  - Capacity at the Site
  - Upgrade costs, if any
  - Interconnection costs
  - Load flow studies
  - Any prior interconnection application

### D. Proposed System Design and Preliminary Cost Structure:

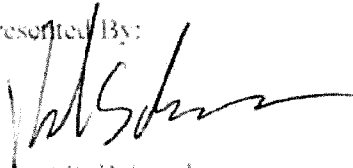
- 12,000 kW (DC) array with 1.2:1 DC/AC ratio
  - Array expected to produce 20,000,000 kWh in year 1 with a .5% decline in output each year
- A 10,000 kW 40,000 kWh BESS compliant with the HEECO RFP.
  - The 40,000 kWh system is designed to store 100% of the output of the solar array for 4 hours per the requirements of the RFP (Section 1.2.13 of the RFP)
- Potential Contingency Storage adder.
  - The RFP allows for additional storage in 3MW, 6MW, 9MW or 12MW increments for 1 hour each.
- The project must price power as a fixed “capacity” charge and a variable “per kWh” charge. Verdant predicts that the value for solar must be in the \$.15-\$.18 range.
  - Prior RFPs have garnered bids for solar + storage in the \$.10-\$.12/kWh range, but those projects did not have the requirement to have 100% of the Facilities Allowed Capacity as a 4-hour storage component. We will need to examine this requirement in more detail, but this change should increase the total average all-in costs of power and capacity.
- Verdant estimates that, in order to be successful, we will have to install the solar arrays for no more than \$1.35 per W (and less would be better) and the BESS for no more than \$500 per kWh of capacity.
- Review of the prior bid of the OHA team revealed significant operating costs, including ongoing personnel costs for the facility beginning at \$360,000 per year and increasing at 5%. Costs such as this will not be possible to win a transaction. Verdant requests that OHA quickly identify all of the ongoing costs required by any facility (lease revenue, residual, licensing, parasitic power, etc.) and detail them at OHA's soonest opportunity so that the pros and cons of such costs can be openly debated.

# Verdant MicroGrid, LLC

## F. Economic Analysis and Other Considerations:

- The Site is well-situated on flat ground directly adjacent to a HEECO substation. As such, it is an attractive location. Unfortunately, one of the HEECO-sponsored sites for the co-location of a stand-alone energy storage location is just up the road, on the same circuit, at the Keahole Generating Station. This may limit the attractiveness of storage at this location. Since solar must be bid with storage, it is possible that this will present a significant barrier to winning an award and require even lower pricing than normal for capacity.
- The OHA group should represent a positive proposal group due to the benefit to Native Hawaiians. However, cost will be a primary factor to the proposal evaluation.
- In return for our role in the development of this project, Verdant will provide the development funding, primary efforts to submit the RFP (with support from OHA and its members) and the financing and ownership of an awarded facility. Verdant's direct compensation will be paid by the Project and project investors, not by OHA.
- Verdant Microgrids, LLC shall comply with the conditions of the native Hawaiian "Beneficiary Community Benefit" program as described in Exhibit A attached.  
La'opua Community Development Corporation agrees to pay DHHH Application fees and Verdant agrees to pay HEECO application fees

Presented By:



Robert S. Babcock  
Managing Member  
Verdant Microgrid, LLC

Please signify your agreement, by your signature below, that Verdant Microgrid shall engage in the development of the OHA response to HEECO's RFP and the development of the resulting project, should the response be accepted by HEECO.



BY:

The O'oma Homestead Alliance and La'Opua CDC





**LATE**

BEFORE THE SENATE COMMITTEE ON HAWAIIAN AFFAIRS

JANUARY 28, 2020

Senate Bill 2113

Relating to the Hawaiian Home Lands

Aloha Chair Shimabukuro, Vice Chair Kahele, and Members of the Committee,

Ka Lāhui Hawai‘i Political Action Committee (KPAC) SUPPORTS THE INTENT of Senate Bill 2113 which requires the department of Hawaiian home lands to negotiate with native Hawaiians before offering Hawaiian home lands for lease to the public by auction and requires reporting on the disposition of lands including commercial leases.

Kanaka Maoli especially those of 50% blood quantum or more, have historically remained on the bottom of every socio-economic statistic. Allowing Kanaka Maoli to bid on a commercial lease on Hawaiian Home Lands would provide a stepping stone for Kanaka Maoli business to flourish and would be a just use of stolen Hawaiian Crown and Government lands of the Hawaiian Kingdom.

HOWEVER, moving forward should be done with caution because of unintended legal consequences that this type of commercial lease preference might bring, especially if it will only be incorporated in State statutes and no changes are made to the Hawaiian Home Commission Act.

KPAC supports greater transparency in government and therefore, supports reporty on the disposition of lands including commercial leases by the Department of Hawaiian Home Lands to the State Legislature.

Respectfully submitted,

M. Healani Sonoda-Pale  
Chair, KPAC