

**HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
BOARD OF DIRECTORS
SPECIAL MEETING**

June 23, 2022

MINUTES

The Board of Directors (Board) of the Hawaii Housing Finance and Development Corporation (HHFDC) met remotely and in-person for their Special Meeting on Thursday, June 23, 2022, with its HHFDC Board Room, located at 677 Queen Street, Suite 300, Honolulu, Hawaii, designated as their public location.

A roll call was taken, declaring a quorum. Chair Donn Mende called the meeting to order at 10:00 a.m..

Those present were as follows:

Present: Director Donn Mende, Chair (Remote)
Director Gary Mackler, Vice Chair (Remote)
Director Sean Sasaki, Secretary (Remote)
Director Melvin Kahele (Remote)
Director Carol Reimann (Remote)
Director Jay Kimura (Remote)
Director Sabrina Nasir (Remote)
Director Craig Hirai (In-Person) – arrived 10:03 a.m.
Director Mike McCartney (In-Person) – arrived 10:06 a.m.

Executive Director Denise Iseri-Matsubara

Staff: Sandra Ching, Deputy Attorney General
(Remote & Ciara Kahahane, Deputy Attorney General
In-Person) Francis Keeno, Executive Assistant
Christopher Woodard, Chief Planner
Dean Minakami, Development Branch Chief
Randy Chu, Development Section Chief
Lanz Dong, Real Estate & Compliance Specialist
Cheryl Kajitani, Housing Development Specialist
Evahn Beresivsky, Housing Development Specialist
Albert Palmer, Housing Development Specialist
Gordon Pang, Housing Information Officer
Marc Orbito, Information Technology Systems Analyst
Esa Pablo, Secretary to the Board

Guests: Grant F. Allison, Bays Lung Rose Voss
(Remote & Judith Clark, Waiahole Valley resident
In-Person) Elijah Kane, Waiahole Valley lessee
Leilehua Kane, Waiahole Valley affiliation
John Reppun, Waiahole Valley lessee
Bruce (screen name)
Rta (screen name)

Chair Mende asked Directors attending remotely, to state who, if anyone, was present at their remote location. There being none, Chair Mende called upon Executive Assistant Francis Keeno to announce the public testimony instructions, followed by staff's presentation and oral testimony.

Chief Planner Christopher Woodard presented the For Discussion and Possible Action, stating that this is the fourth meeting in which the Board has discussed the matter of the lease rent renegotiations that started in February 2022.

**I.
CALL TO
ORDER/
ROLL CALL**

**II.A.
DISCUSSION
AND/OR
DECISION**

Woodard presented staff's report, providing an overview of the State's historical investment in the Waiahole Valley for infrastructure improvements and ongoing operation and maintenance costs for the Water System, equating to an annual net loss of approximately \$1.1 million.

Woodard suggested that public testimony be taken at this time as well as after the Board comes out of executive session.

Ms. Judith Clark stated that while lease negotiations provide opportunities for changing problematic conditions of the lease agreements for the residents and the State of Hawaii, she shared the following concerns relating to the current terms of the lease that need to be addressed: (1) current terms in the lease does not allow famers to obtain bank loans for repairs or renovations on their property, impeding on their financing ability; (2) a lessee is not able to pass the lease on to non-family members who are willing and able to continue farming the land; (3) proper infrastructure for the Waiahole Poi Factory is needed to address traffic, parking, and safety issues; and (4) increasing the lease rent amounts will not be effective in solving the State's financial problems given the current rent collection issues and low-income families, which could further lead to homelessness, increasing strains on other systems within the State.

Chair Mende stated for the record that Directors Hirai and McCartney were in attendance.

Mr. John Reppun thanked staff for their time and efforts to address the issues of the Waiahole Valley, recognizing Development Branch Chief Dean Minakami and former HHFDC executive director Craig Hirai for listening and starting the strategic planning. Reppun asked that HHFDC focus on how to perpetuate farming in the area and help to make a difference by looking for a model around the state and other bioregions.

Director McCartney asked for Reppun's opinion on what state entity would be best to effectively manage and oversee the Waiahole Valley. Reppun stated that he did not have an answer but hoped that the strategic planning will eventually provide possible options as well as looking at models outside of Hawaii.

Mr. Elijah Kane asked that open communication be kept to further sustain the community financially. He suggested that fruit stands be placed in front of the two commercial lots, providing farmers the opportunity to push out their products and circulate.

There being no further testimony, Woodard stated that HHFDC received a letter from the Waiahole-Waikane Community Association, which has been included with the board materials as well as posted on the HHFDC website.

Woodard further stated that he believes the HHFDC has worked on its efforts in being more communicative with Waiahole lessees and landowners and thanked those who provided testimony.

In response to Clark's concerns stated, Woodard noted the following:

1. The way the leases are currently written, they function more like long-term use permits than traditional ground leases and are not financeable.
2. Transfer of assignment of the leases to parties other than children or spouses are possible; however, requires a payment to HHFDC to recover a small portion of the capital cost that HHFDC incurs in making improvements to the Valley over the years, being approximately \$25,000 today.

MAKING
Discussion and
Possible Action on
a Policy and
Strategy for Lease
Rent Renegotiations
for the Waiahole
Valley Agricultural
Park and Residential
Lots Subdivision
Located in Waianae,
Koolaupoko, Oahu,
TMK Nos.:
(1) 4-8 (various)

3. Percentage rent collection issues under the 30 or so Agricultural leases, has been collected from approximately 12 lessees. However, the percentage rent payments represent a very small fraction of the rental income that HHFDC generates from the ground leases.

Woodard stated that starting July 1, 2022, the Planning, Evaluation and Compliance Branch will assume responsibility of the land management in Waiahole Valley, in hopes to improve on the progress made thus far, including rent collections.

Director McCartney expressed his gratitude and support to HHFDC, stating that although discussions of exploring other agencies that may be a better fit to manage the Waiahole Valley are ongoing, he has not seen any other agency that is more capable, caring, and wanting to find a solution. Chair Mende concurred.

Director McCartney moved, seconded by Director Kahele to convene in executive session at 10:38 a.m. pursuant to Section 92-5(a)(3), Hawaii Revised Statutes (HRS), to deliberate the authority of persons designated by the board to conduct negotiations to acquire public property, or during the conduct of such negotiations; and Section 92-5(a)(4), HRS, to consult with the board's attorney on questions or issues regarding the board's powers, duties, privileges, immunities, and liabilities as it relates to this matter.

The motion was carried unanimously.

Chair Mende reconvened the meeting at 12:04 p.m.

Woodard read the amendments to the the public document originally submitted by staff and stated that the amended public document (Attachment A -Exhibits omitted) will later be posted on the HHFDC website after the meeting regarding HHFDC's policy and approach to the renegotiations.

Woodard stated that the upcoming Community Meeting will be held on Monday, June 27, 2022, at 7:00 p.m., in the Waiahole School. He noted that Director McCartney, Executive Director Iseri-Matsubara, himself, and other HHFDC staff would be in attendance.

Chair Mende opened the floor for any additional testimony before a vote by the Board was taken on the amended public document.

There being none, Director McCartney moved, seconded by Director Kahele to approve staff's recommendation.

Director McCartney reiterated on the receipt of the Waiahole Waikane Community Association letter, stating that he looked forward to beginning the renegotiation process and seeing everyone at the upcoming Community Meeting.

There being no further business on the agenda, Director Kahele moved, seconded by Director Reimann, that the meeting be adjourned at 12:13 p.m.

III.
ADJOURNMENT
12:13 p.m.


SEAN SASAKI
Secretary

FOR ACTION¹

I. REQUEST

Approve a Policy and Strategy for Lease Rent Renegotiations for the Waiahole Valley Agricultural Park and Residential Lots Subdivision Located in Waiahole, Koolaupoko, Oahu, TMK Nos.: (1) 4-8 (various)

II. FACTS

Project: Waiahole Valley Agricultural Park and Residential Lots Subdivision
 Location: Waiahole, Koolaupoko, Oahu
 Project Type: Agricultural and Residential Subdivision
 TMK Nos.: (1) 4-8 (various)
 Zoning: AG-2 (General Agricultural District) and P-1 (Restricted Preservation District). Hawaii Revised Statutes (HRS) Chapter 359G development exemptions were obtained through Honolulu City Council Resolution 86-148.
 Trust Land Status: Lands acquired after August 20, 1959 and Section 5(b) lands of the Hawaii Admission Act (*i.e.*, ceded lands)
 Lot Summary:

<u>Type²</u>	<u>No.</u>	<u>Acres</u>	<u>Leased</u>
Residential	65	44.185	84.6%
Agricultural	39	348.625	89.7%
Non-rentable ³	14	194.325	N/A
Market Rate	2	7.973	0.0% ⁴
Commercial ⁵	<u>2</u>	<u>0.711</u>	<u>100.0%</u>
Total ⁶	122	595.819	N/A

Lessor: Hawaii Housing Finance and Development Corporation (HHFDC)
 Property Manager: HHFDC

A. HHFDC owns in fee simple 122 lots totaling approximately 596 acres within the Waiahole Valley Agricultural Park and Residential Lots Subdivision located in Waiahole, Koolaupoko, Oahu.

¹ This document serves to amend staff's submission relating to agenda item II.A titled "Discussion and Possible Action on a Policy and Strategy for Lease Rent Renegotiations for the Waiahole Valley Agricultural Park and Residential Lots Subdivision Located in Waiahole, Koolaupoko, Oahu, TMK Nos.: (1) 4-8 (various)".

² Designation per the Declaration of Restrictive Covenants for Waiahole Valley Agricultural Park and Residential Lots Subdivision and Homestead Road Lands.

³ Includes lots for open spaces, roadways, water system infrastructure, a Waiahole Stream floodway, and the Waianu Stream Bridge.

⁴ Not leased but occupied without HHFDC consent.

⁵ The Waiahole Poi Factory lot and adjacent former farm stand lot fronting Kamehameha Highway.

⁶ HHFDC owns an additional 17 non-rentable lots totaling 291.83 acres located outside the subdivision which are either located within the Waiahole Forest Reserve or act as buffers to the forest reserve. The Department of Hawaiian Home Lands (DHHL) owns 21 lots totaling 18.47 acres located within the subdivision; these lots were transferred to DHHL by an HHFDC predecessor agency in 1998. There are 27 exclusions to the subdivision totaling 34.10 acres, composed of 24 privately owned lots and three lots that comprise the site of Waiahole Elementary School.

1. Most of the lands were purchased in 1977 from Elizabeth Loy McCandless Marks by the Hawaii Housing Authority (the HHA, a predecessor to HHFDC) under threat of condemnation (the Marks Acquisition).
 - a. The public purpose of the Marks Acquisition was to preserve the rural, agricultural character of the valley.
 - b. The remainder of the lands are ceded lands and were acquired in 1993 from the Department of Land and Natural Resources (DLNR) pursuant to Act 330, Session Laws of Hawaii 1993 (Act 330).
2. After the Marks Acquisition, HHA contemplated moderate-scale development of Waiahole Valley to recoup the investment made by the Dwelling Unit Revolving Fund (DURF). Met with community resistance, HHA shifted to a limited development plan and, pursuant to HRS Chapter 359G (similar to the current Chapter 201H), applied for and received exemptions from City and County of Honolulu requirements relating to planning, zoning, construction standards for subdivisions, development, and improvement of land and the construction of units thereon.
 - a. Subdivision improvements included improvements to roads, stream appurtenances, drainage systems, and utilities in addition to the construction of the Waiahole Water System (the WWS) to provide potable water service. Notably, Council Resolution 86-148, which authorized the subdivision's development exemptions under HRS Chapter 359G, requires that the State of Hawaii maintain and operate the WWS.
 - b. All subdivision lots have vehicular access and potable water service (the latter provided by either the WWS or the City and County of Honolulu Board of Water Supply). Nearly all lots have electricity and landline telecommunications service. Many lots also have stream access, auwai access, and/or piped non-potable water service provided by the McCandless System⁷. There is no public sanitary sewer service on Oahu's windward side north of Ahuimanu, and so sewage disposal in Waiahole is via cesspool or septic system.

A project location map is attached as **Exhibit A**, and a subdivision map is attached as **Exhibit B**.

B. Ground Leases Overview

1. HHFDC is the lessor pursuant to 93 long-term ground leases for residential (57), agricultural (34), and commercial (2) lots located within the Waiahole subdivision.⁸ The leases commenced on June 30, 1998⁹, have fixed monthly base rents through June 29, 2023, and have initial

⁷ The McCandless system serves at least 15 lots located from the top of the north branch of Waiahole Valley Road to Kamehameha Highway and is supplied by untreated water from Waianu Stream. The State abandoned the system when it developed the potable WWS, but it continues to be used and maintained by members of the Waiahole Valley community.

⁸ An additional two long-term ground leases are pending execution: one for a residential lot to be leased to a former DLNR permittee to satisfy HHFDC's obligations under Act 330, and one for an agricultural lot to an individual who signed an interim tenancy agreement in 1983 but never executed a long-term lease.

⁹ There are a handful of exceptions for various, unnotable reasons.

terms expiring on June 29, 2053 (55 years). The agreements include an option to extend the lease term by an additional 20 years subject to a 51% vote of the lessees to be held during the final five years of the initial term.

2. Nearly all the leases contain the following language:

“Lessee understands and unconditionally agrees that Lessee’s equity in this Lease and/or the improvements and crops on the demised premises shall not exceed the “Lessee’s Equity”, which is defined as the fair market value of Lessee’s improvements and crops on the demised premises.

If Lessee shall sell or assign this Lease for a consideration (whether in cash or in kind) in excess of Lessee’s Equity, the excess shall belong to and be paid in cash immediately to Lessor. Lessee and Lessee’s assignee shall be jointly and severally liable for the payment of such excess consideration to Lessor.”

Due to the above terms, financial institutions will not accept HHFDC’s Waiahole leases as security for conventional mortgage loans.¹⁰ Essentially, these leases function as long-term use permits.¹¹

C. Residential Lots Overview

1. Lot Characteristics

The 64 residential lots range in size from 7,500 square feet (s.f.) to 1.44 acres in size, with an average size of approximately one-half acre. The lots tend to be rectangular in shape, have a relatively flat topography, and are generally concentrated in the lower half of the valley.

2. Current Lease Rents

With one exception¹², current annual rent for the leased residential lots is \$600 plus \$0.035/s.f. for any lot area over 7,500 s.f. The current average monthly lease rent is \$119.

3. Residential Use

Lessees must use the premises for the placement of a single-family dwelling and must use such dwelling as lessee’s principal dwelling. See Section 8 of the sample lease attached as **Exhibit C** for additional detail.

¹⁰ There are seven exceptions in which cases the leases were amended in the mid-2000s to provide for the financing and construction of self-help homes. Upon signing of the amendments, the lessees paid cash to acquire financeable leasehold interests, with the payments almost wholly financed by an HHFDC predecessor agency.

¹¹ As an example, a lot with no improvements cannot be sold for any consideration (i.e., the leasehold has no monetary value). By contrast, under a traditional ground lease the same lot would have monetary value based in part on the remaining lease term and rental rate.

¹² The exception is a lease that was not signed until 2014, and therefore the current rent includes payment of back rent from June 30, 1998 through the lease execution date.

D. Agricultural Lots Overview

1. Lot Characteristics

The 39 agricultural lots range in size from 1.56 acres to 57.50 acres in size, with an average size of 8.03 acres. The lots vary considerably in shape, topography, and soil composition, among other characteristics.

2. Current Lease Rents

Current annual base rent for the leased agricultural lots is \$100 per acre, with additional annual base rent of approximately \$500 if there is a residential use on the lot.¹³ Furthermore, on a calendar year basis, lessees pay percentage rent equal to 0.9% of gross agricultural income derived from the lot. See page 4 of the sample lease attached as **Exhibit D** for additional detail.

The current average monthly base rent for the leased agricultural lots is \$110. Percentage rent collected in recent fiscal is summarized in **Table 1**.

Table 1: Recent Historical Percentage Rent Collections

Fiscal Year	Payments Received	Gross Agricultural Income	Total Percentage Rent	Average Percentage Rent Amount
2019	16	\$ 20,924	\$ 3,013	\$ 188
2020	6	15,037	812	135
2021	8	71,431	5,143	643
2022	10	33,033	2,973	297
Average	10	\$ 35,106	\$ 2,985	\$ 299

3. Agricultural Use

Lessees must qualify as a farmer and:

1. Personally use and operate the property for diversified agricultural purposes; and
2. Either:
 1. Devote at least one-third of the lessee’s time and also derive at least one-third of the lessee’s net annual cash income as reported on the lessee’s federal and state tax returns from direct participation in diversified agriculture on the property; or
 2. Use substantially all of the property for diversified agricultural uses as a trade or business (and not as a hobby). The property must remain in continuous cultivation except for the normal fallow period as required by standard agriculture practices.

¹³ With few exceptions, the agricultural lots have residential uses.

Up to a 7,500 s.f. portion of the lot may be used for residential purposes as lessee's principal dwelling and/or as farm employees' quarters.

See Section 8 of the sample lease attached as **Exhibit D** for additional detail.

E. Commercial Lots Overview

1. Lot Characteristics

The subdivision's two commercial lots are located at the southwest intersection of Waiahole Valley Road and Kamehameha Highway. The Waiahole Poi Factory lot is 18,686 s.f. in size, and the leased but unoccupied former farm stand lot is 12,280 s.f. in size. Both parcels are significantly under-parked for commercial use.

2. Current Lease Rents

While encumbered by the same form of lease that encumbers the agricultural lots, the current base rent for the Waiahole Poi Factory lot is at a higher rate of \$160 per month based on mutual agreement prior to lease signing in 1998. The lessee's annual percentage rent payments for the three, most-recent fiscal years have averaged \$8,052.

The former farm stand lot is also encumbered by the standard form agricultural lease, and as a result the current base rent is \$2.35 per month (*i.e.*, \$100 per acre annually). No percentage rent payments have been received for many years.

F. Lease Rent Renegotiation Terms

Each lease provides that the base rent and agricultural lot percentage rent for the 15-year period commencing on June 30, 2023 and ending on June 29, 2038 (the Reopening Period) are to be renegotiated between lessor and lessee. There is a second 15-year reopening period commencing on June 30, 2038 and ending on June 29, 2053.

The leases provide that HHFDC and lessee shall begin renegotiations regarding the new annual lease rent on June 29, 2022 (*i.e.*, next week).

1. For the residential lot leases, if the parties are unable to agree upon a new lease rent by April 1, 2023, then the rent payable during the Reopening Period shall be determined in accordance with HRS Section 519-2, which is attached as **Exhibit E** and has arbitration as the ultimate dispute resolution mechanism. The related rules promulgated in 2005, Hawaii Administrative Rules Chapter 17-105, are attached as **Exhibit F**.

See page 4 of the sample lease attached as **Exhibit C** for additional detail.

2. For the agricultural lot leases, if the parties are unable to agree upon a new lease rent by April 1, 2023, then the parties shall submit the issue of the fair rental value of the demised premises to mediation in accordance with applicable rules of mediation of the American Arbitration Association (AAA). If the parties are not able to determine the issue of the fair rental value of the demised premises by mediation, then either lessor or lessee may give to the other written notice of a desire to have the issue of the fair

rental value of the demised premises settled by arbitration in accordance with the applicable rules of the AAA.

See page 4 of the sample lease attached as **Exhibit D** for additional detail.

G. Strategic Plan

In 2017, HHFDC embarked on a strategic planning process for Waiahole Valley that is intended to address longstanding issues such as historical net operating losses, substandard housing conditions, low agricultural lot utilization, long-term lot vacancies, water system deficiencies, and the upcoming lease rent renegotiations.

1. A proposed Waiahole Valley Community Strategic Plan prepared by HHFDC's consultant SMS Research & Marketing Services, Inc. (SMS) was presented to the Board for approval at its March 14, 2019 regular meeting. Approval of the plan was deferred to enable staff to further engage the Waiahole Valley community and reach consensus on a plan.
2. An alternative strategic plan was prepared under the auspices of the Waiahole-Waikane Community Association (the WWCA)¹⁴ and presented to the Board at its June 13, 2019 regular meeting.
 - a. The WWCA plan was largely a critique of the SMS/HHFDC plan.
 - b. At the meeting, the Board formed the Waiahole Community Strategic Plan Subcommittee.¹⁵
3. In November 2019, HHFDC contracted with Townscape, Inc. to perform additional strategic planning work. The Covid-19 pandemic made this work particularly challenging due to the restrictions on gathering, and the contract has ended.

H. Recent Events

1. On October 5, 2020, staff attended a virtual community meeting hosted by the WWCA and gave a presentation regarding lease rent renegotiations, among other topics.
2. In March 2021, the WWCA sent a letter to Townscape, Inc. indicating that it was being advised by the Honolulu law firm of Deeley King Pang & Van Etten regarding the lease rent renegotiation process. See **Exhibit G**.
3. On April 29, 2021, HHFDC held a virtual community meeting regarding lease rent renegotiations. The purpose was to present to the lessees a general overview of the process and HHFDC's best estimate on a timeline. Known attendance for the meeting was 34 persons in addition to eight HHFDC staff members.

¹⁴ Incorporated in 2006, the WWCA is a Hawaii nonprofit corporation whose stated purpose is "care and representation of tenants (sic), farmers & landowners on this association and its areas; our Waiahole, Waikane community". The current organization descends from a community organization formed in the 1970s. According to the current WWCA President, just over half of HHFDC's lessees are members in good standing.

¹⁵ Due to changes in the Board's composition, the subcommittee was disbanded and reconstituted with new members at the Board's June 10, 2021 regular meeting. The subcommittee was dissolved at the Board's January 13, 2022 regular meeting.

4. On December 29, 2021, the Department of the Attorney General entered into an Agreement for Special Deputy Attorney General Services (the SDAG Contract) with the Honolulu law firm now known as Lung Rose Voss & Wagnild (Lung Rose) to provide advice and legal services relating to the Waiahole lease rent renegotiations.
 5. Under the SDAG Contract, Lung Rose engaged Medusky & Co., Inc. to value (using a measured approach supported by market data) selected, representative properties for the purpose of establishing annual lease rents.
- I. The Board held preliminary discussions on the subject matter at its regular meetings on February 10, 2022, May 12, 2022, and June 9, 2022. Staff conducted outreach to the Waiahole Valley lessees to inform them of the June 9, 2022 meeting and the June 23, 2022 special meeting, encouraging attendance at the meetings and the submittal of testimony.

III. DISCUSSION

A. The State's Historical Investment and Net Operating Losses

The acquisition of, and subsequent infrastructure improvements to, Waiahole Valley were undertaken at considerable costs to the State. Furthermore, administration of the ground leases, management of the lands, and the operation and maintenance of the WWS have long been a collective cash drain on DURF.

1. DURF is primarily used to fund the development of new affordable housing units by providing interim and permanent loans to developers, and also financing regional infrastructure projects in conjunction with the counties, private landowners, and developers.
2. The ongoing required capital investment and net operating losses related to HHFDC's Waiahole Valley lands have diverted monies that would have otherwise been used for new affordable housing projects throughout the state.
3. Marks Acquisition and Subdivision Development Costs

The State's historical investment in Waiahole Valley (including the Marks Acquisition, the subsequent infrastructure improvements, and later capital expenditures) totals approximately \$17.33 million in nominal terms. Not included in this total is \$1.20 million of WWS construction-in-progress funded by DURF.

- a. Due to a funding shortfall, the WWS was not constructed according to its original design and, as a result, suffers related, inherent deficiencies. The system also suffered significant damage during the March 2021 floods.
- b. Currently, HHFDC is making improvements to the WWS to extend its useful life until approximately 2032. Concurrently, plans are progressing on an upgrade to the WWS to Honolulu Board of Water Supply (BWS) standards to allow for possible dedication.
 - i. The upgrade to BWS standards is anticipated to cost up to \$20 million and will need to be funded by DURF, as the

Legislature has not been inclined to provide Capital Improvement Project funds for the WWS.

- ii. While an entity such as BWS can amortize and recoup capital expenditures through water-service charges due to its large scale, HHFDC is unable to feasibly do the same as the WWS has only approximately 120 service connections.

4. Net Operating Losses

HHFDC's land and infrastructure management activities in Waiahole Valley generate an annual operating loss of approximately \$1.1 million on a pro forma basis. Note that the pro forma assumes that HHFDC will adopt the proposed Chapter 15-319, Hawaii Administrative Rules, "Water Service to Consumers," which in part raises water-service charges. See **Exhibit H**.

B. Waiahole Valley Rent Renegotiation Policy

It is recommended that HHFDC adopt the following policy to guide the Waiahole Valley rent negotiations over the next year.

1. To the extent possible, HHFDC will treat all lessees equally. To the extent that it is neither practicable nor advantageous to HHFDC to treat all lessees equally, they will be treated equitably.¹⁶
2. The overall goal of the negotiations is to significantly reduce or eliminate HHFDC's ongoing losses on its Waiahole Valley operations, while also meeting HHFDC's community objectives and social goals.
3. In accordance with the leases, HHFDC will only negotiate the new base rent and new percentage rent (agricultural and commercial lots only). No other lease terms will be open to negotiation.
4. HHFDC will only negotiate directly with lessees or their duly appointed representatives. Lessee representatives must be appointed in writing. If a lessee is a tenant by the entirety, a joint tenant, or a tenant in common, then all individual parties must sign the written appointment of representative.

C. Base rents for HHFDC's Waiahole Valley ground leases would have to increase by a factor of nine (9) to cover its operating costs.¹⁷ This would mean an average monthly rent of \$1,073 for residential lots and \$992 for agricultural lots.

1. While such rents are supported by market data and likely achievable through arbitration (albeit with significant arbitration-panel, legal, and expert-witness costs), the State's public purpose of the Marks Acquisition, which was "to preserve the rural, agricultural nature of the valley" needs to be taken into consideration.
2. If the Board adopts the policy recommended in Section III.B, then staff suggests that HHFDC's measurable objective for the rent renegotiations

¹⁶ According to Merriam-Webster, *equality* is defined as "the quality or state of being equal," while *equity* is defined as "fairness or justice in the way people are treated."

¹⁷ No consideration is given to recovery of HHFDC's ongoing capital investments and the related costs of capital.

might not be to cover 100% of its Waiahole Valley operating costs. Rather, to align with community objectives and social goals and in furtherance of the public purpose of the Marks Acquisition, staff recommends that the Board authorize the Executive Director or her designee to negotiate fair and reasonable lease rents that may be lower than the levels necessary to cover HHFDC's full operating costs for Waiahole Valley.

- D. A summary of upcoming events relating to the Waiahole Valley lease rent renegotiations is presented in **Table 2**.

Table 2: Upcoming Lease Rent Renegotiation Events

<u>Event</u>	<u>Date</u>
Community Meeting	June 27, 2022
Lease Rent Negotiations Commence	June 30, 2022
Written Lease Rent Offers Delivered to Lessees	Week of July 3, 2022
New Lease Rents Take Effect	June 30, 2023

IV. RECOMMENDATION

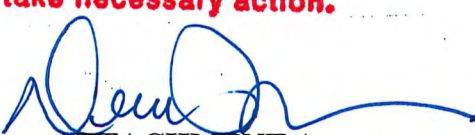
Staff's recommendation is that the Board:

- A. Approve the following actions relating to upcoming lease rent renegotiations for the Waiahole Valley Agricultural Park and Residential Lots Subdivision located in Waiahole, Koolaupoko, Oahu, TMK Nos.: (1) 4-8 (various):
1. The adoption of the rent renegotiation policy described herein; and
 2. The adoption of the rent renegotiation strategy discussed when the Board convened in executive session at its special meeting on June 23, 2022; and
- B. Authorize the Executive Director or her designee to undertake all tasks necessary to effectuate the purposes of this For Action, including but not limited to the negotiation of Waiahole Valley lease rents and the legal documentation thereof, and any actions relating thereto; provided that final agreement and documentation of lease rents for the two commercial lots will be subject to Board approval.

- Attachments: Exhibit A – Project Location Map
 Exhibit B – Subdivision Map
 Exhibit C – Sample Residential Lot Lease
 Exhibit D – Sample Agricultural Lot Lease
 Exhibit E – Hawaii Revised Statutes Section 519-2
 Exhibit F – Hawaii Administrative Rules Chapter 17-105
 Exhibit G – WWCA Letter to Townscape, Inc. dated March 11, 2021
 Exhibit H – Pro Forma Net Operating Loss

Prepared by: Chris Woodard, Chief Planner 

Approved by The Board of Directors at its meeting
on JUNE 23, 2022
PLANNING, EVALUATION & COMPLIANCE BRANCH
Please take necessary action.


ATTACHMENT A
EXECUTIVE DIRECTOR