O'ahu's urban homesteaders

Prince Jonah Kūhiō's 1920 vision of rehabilitating his dying race through hard work on a piece of the 'āina has withstood decades of legislative neglect and mismanagement. With a new state administration and a young chairman, the Department of Hawaiian Homelands faces legal challenges to its very existence and a changing group of Hawaiians with needs the Prince could not have foreseen.

By Kevin O'Leary
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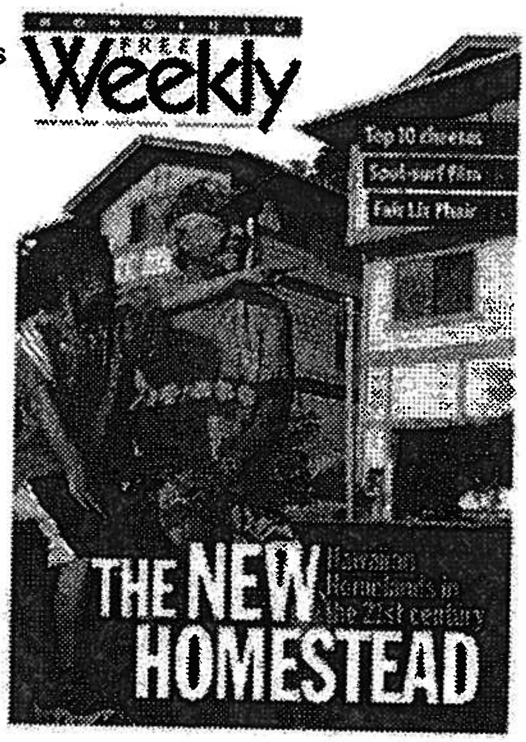

In his living room in Rancho Cucamunga, Calif., Royall Cummings is a man on the edge of the continent, looking west toward his ancestral home. He talks about turning down two plots of land offered to him by the Department of Hawaiian Homelands (DHHL). With 75 percent Hawaiian blood, he meets the department's 50 percent requirement for receiving a 99-year lease of a piece of the islands, at an annual rent of $1.

"I was awarded a residential lot on Maui three years ago. I wasn't financially stable then, so I passed."

As Cummings learned, getting a piece of the homestead pie isn't as simple as $99 for 99 years, and he's not alone. According to Lloyd Yonenaka, information officer with DHHL, 17,774 people were on the waiting list for a residential lot as of December 2003, and a vast majority of them have been offered a property at least once. "You gotta realize, this is a big decision in their lives," he said. "Usually you have to build a house within a year—that takes financing. It takes money."

The amount of money varies with the many options DHHL offers its modern homesteaders—from a new three-bedroom home in the Kapolei 6 project for $170,000 to a bare lot in Lualualei in Wai'anae. The emphasis is on housing—whether that means building on raw land, or moving into an existing home. Bottom line in 2004: DHHL is looking for 50-percent Hawaiians with enough kālā to carry a mortgage.

And for qualified Hawaiians on O'ahu, which has the least DHHL acreage of

Exhibit B

all the islands but the majority of applicants, the issue is more complicated than simply deciding on the size of a mortgage payment.

City people

Living across the island from a job, the time spent on a daily hellish commute can make people feel as if they might as well be in Los Angeles. Burrelle "Butch" Ayau knows how Cummings feels. Retired from Verizon's customer service department, Ayau was first offered a plot in Lualualei. "But I figured that's going backwards. I was living in town—I owned a home in 'Älewa Heights."

When Ayau turned down the DHHL offer, his name went back on the list, while others were offered the Lualualei parcels. Ayau said he knew he was taking a chance, "hoping something else would open up," but his patience paid off in the form of Kaläwahine Homestead.

"I said, Hey, finally there's something in town." Ayau eventually sold his home in 'Älewa and now lives in a 4-year-old, three-bedroom house on a residential lot just mauka of Roosevelt High School.

Kaläwahine was a departure for DHHL. The first urban residential development undertaken by the department in 40 years, the $26 million project transformed 12 acres of steep land adjacent to the long-established Papakölea and Kewalo homestead communities into 55 multilevel duplexes and 33 three-story single-family houses that provided homes for 87 applicants. That is, those who could afford it. A 2001 Honolulu Advertiser article called the development "upper-middle-class" and interviewed people like Hiram deFries, a corporate manager, and stockbroker Mark Hee, who spoke of his pride in his "educated, professional" neighbors. But even four years ago, the purchase prices ($179,900 to $196,000 for a duplex; and $214,900 to $225,900 for a single family home) were at least $150,000 below market, according to a survey at the time, which raised the eyebrows of people who wondered exactly who DHHL was serving.

"It wasn't a sweetheart deal for the families," says Kali Watson, DHHL chairman during the first Cayetano administration and a driving force behind Kaläwahine Streamside, as many residents refer to the development. Nevertheless, in

Man with a mission

A quick glance at DHHL Chairman Micah Kane's resume explains why he sometimes comes off as a politically akamai land developer. The Lingle appointee is former chairman of the Hawai'i Republican Party and was government affairs liaison for the Building Industry Association. He networks with private sector heavy hitters like Waikele developer Dick Gushman and has lobbied Washington Republicans for federal recognition of Native Hawaiians. Recognition, Kane believes, will end lawsuits against DHHL on grounds that it is in violation of the 14th and 15th Amendments. The legal challenges, Kane has written, "...have distracted the Department away from accomplishing its mission to defending its mission."

It is a mission Kane takes personally. "My father was raised on First Road in Na-na-kuli [Homestead]." He sees himself as an example of how Hawaiians can use homesteading to move up. "We were assisted with a place to live, I was educated through Kamehameha School, and I had a good family. If you give anybody those three tools you can rehabilitate people. Personally, I don't need the homestead anymore." He feels the same about Kamehameha Schools. "My one daughter goes to 'Iolani, my two other daughters to Le Jardin. I've saved spots up at Kamehameha for three other Hawaiian kids."

Education is almost an obsession with Kane. He points out that while Hawaiians make up 20 percent of the state's population, they comprise more than 70 percent of the prison inmates, and that standard achievement scores are "amongst the lowest in Hawaiian communities." He places a large part of the blame on the public schools.

retrospect he does wish "we could have given more help to the poorer families."

"Seventy-five percent of schools in and around Hawaiian communities are in corrective action. If anyone would benefit from local school boards it would be these rural communities." K.O.

He explained that, "It's sort of a balance thing ...a lot of people couldn't afford [the houses], and when you look at the [Hawaiian Homelands] program it's a rehabilitation program, versus, in this case, aiding people who have had some success already in life."

The start of 'rehab'

The rehabilitation of the Hawaiian people was uppermost in the mind of Territorial delegate Prince Jonah Kalaniana'ole Kühiö, who pushed the Hawaiian Homestead Act of 1920 through Congress. Kühiö, in a letter he circulated to U.S. senators, wrote, "The Hawaiian Race is fast becoming a minority element among the races of the Territory. The mortality rate among the Hawaiians is exceedingly high as compared to the other races and if conditions exist as they do today the Race will become extinct in a very short period of time."

Kühiö's solution, according to Davianna McGregor of the University of Hawai'i ethnic studies department, was to take Hawaiians out of the slums of Chinatown, Iwilei and Kaka'ako and put them back on agricultural land. "This was former crown land," she said, "and as Kühiö wrote in an article in Mid Pacific Magazine at the time, Hawaiians had a vested interest in this land. The Big Five, however, had major ranching and sugar leases with the Territory, much of it on crown land. And the leases were expiring."

An earlier Territorial law actually allowed homesteading on government land by any U.S. citizen, making sugar interests suddenly vulnerable to just the kind of land reform the haole elite feared the most. And there was at least one more wrinkle in the story.

"Once the leases expired and the land opened up to general homesteading, that meant any citizen could apply," said McGregor. "Japanese immigrants had been applying for homesteads in their children's names. The picture that was painted in Congress was that if these lands weren't given to Hawaiians to lease, then Japanese might get the land."

Kühiö and his delegation were practical politicians, not above using Washington's paranoia and white racism to their advantage. The Hawaiian Homes Commission Act of 1920 replaced the earlier homesteading law with one for Hawaiians only.

But the Big Five drove a hard bargain. The companies forced Kühiö to compromise—on the quality of land set aside for DHHL, and on who exactly qualified as a native Hawaiian.

"The planters made sure the land was 'öpala, junk," said Watson. According to a survey done in the 1920s, out of the approximately 200,000 acres set aside under the act, 55,000 acres were bare lava; another 7,800 acres were steep parts of mountains. As far as who could qualify, McGregor explained: "Kühiö and the other Hawaiians wanted the blood quantum to be one-thirty-second—they wanted all Hawaiians to qualify. The Big Five interests wanted it for pure Hawaiians only. Clearly they wanted the number of generations who would be on this land to be limited."

Blood not so simple

The compromise of 50-percent blood quantum was either a major coup or a terrible defeat for Kūhiō, depending on whom you talk to. Former DHHL chairperson Billie Beamer, long an advocate of changing the blood quantum requirement to any part Hawaiian, said in public testimony in 1986 that "... since 1900 the pure Hawaiian population has decreased 73 percent, while the part-Hawaiian population has increased 1,623 percent."

Although Beamer and others have criticized the blood quantum requirement as dividing families and pitting Hawaiians against each other, many people interviewed for this article echoed the opinion of McGregor: "I would like to see everyone on the waiting list served first, before any changes are made in the law."

It is precisely the blood-quantum requirement that has left DHHL vulnerable to legal attack, most recently in the Arakaki suit, which lumped DHHL and the Office of Hawaiian Affairs (OHA) together in an effort to have all government programs benefiting only Hawaiians declared unconstitutional. The case was thrown out of Federal District Court in February, but the attorney for the plaintiffs (some of whom are part Hawaiian), H. William Burgess, said he plans to appeal to the 9th U.S. Circuit Court in San Francisco. "OHA and DHHL are the two motherships of racial discrimination in the state," said Burgess. "That's why we decided to sink those ships, so there will be a restoration of equality in the Aloha State."

Attorney Sherry Broder, who defended OHA in the case, thinks the ships are safe for now. "More than 150 federal statutes have been passed to address Hawaiian entitlements. DHHL is a very important piece of legislation—its existence makes a strong case for Hawaiians being treated as Native Americans." As for the blood-quantum issue, Broder sees a trend that may point to a future standard. "Every federal law passed since 1972 regarding Hawaiians has considered a person with any Hawaiian blood to qualify," she said. "The change in the succession law [to inherit homestead land] to 25 percent [blood quantum] in DHHL is, I think, an indication of where this is ultimately going federally."

Burgess, who has worked on the issue for the past five years, is serious about seeing DHHL dismantled. "Should we prevail, the current homesteaders would be allowed to acquire the fee-simple interest for either no, or a discounted price. Each lessee would then be converted from a homesteader to homeowner—they would have all the joys and responsibilities of ownership, just like real people. What we are doing is in no way anti-Hawaiian. It's very much better for Hawaiians to be rid of what their leaders are saying: that you're a victim of these terrible injustices that happened 100 years ago and that you need me to be your guardian. I think that's just B.S."

Ken Conklin is a local writer and researcher who ran in the OHA election four years ago, after the Rice vs. Cayetano decision made it possible for non-Hawaiians to do so. He cites historical precedent in his criticism of the DHHL.

"There was no assertion of indigenous rights in the Hawaiian Kingdom," said Conklin. "All subjects—including the 15 to 20 percent of the electorate who were haole—had equal rights." As for Kühiö's original vision, Conklin feels it has been perverted. "The most egregious abuse of the program has to be Kaläwahine....We're justifying the program as a way of rehabilitating these poor people, as a way of putting Hawaiians back on the land and then we're building upscale communities, at discounted prices...that have nothing to do with a bucolic, rural situation."

Won't you be my neighbor

To get to Kaläwahine, you have to drive past Solomon Perry's house in Kewalo Homestead (established after its neighbor Papakölea, in the late 1940s). Perry originally lived in Kalihi Valley Homes. Half Hawaiian, half Portuguese, he applied with DHHL.

"They kept saying I didn't qualify—my job never pay enough," Perry said. He moved to Kewalo in 1968, after his wife inherited her father's roughly 6,000-square-foot lot. "Before we could move in we had to pay $700 in land tax that the old man owed on the place. Kinda hard back then." (In the 1980s, O'ahu homesteaders' land taxes were reduced to a token amount.) In 1977, Perry took advantage of a $50,000 DHHL low-interest loan and built his current modest single-wall three bedroom home.

Perry loves living in Kewalo, and is resigned to Kaläwahine, which looms across the stream from his backyard. "That's their kuleana up there, this is mine down here. They have their own neighborhood watch, like that, but they don't come down here."

Although several of Perry's Kewalo neighbors signed petitions protesting the traffic and overcrowding such a dense development would bring to the community, he refrained. He even lost part of his lot, when the new road came through (the DHHL compensated him monetarily). "You can protest till you blue in the face—they never listen."

When it comes to DHHL's waiting list, Perry said, "The bucks is the key to where you end up on the list. You're talking about the Hawaiians with the greenbacks."

A few hundred yards up the road, in Kaläwahine, Franklin Maka'awa'awa, is shooting pool in his neighbor's garage. "A lot of people [on the list] wanted to get in here, but weren't financially qualified. Most of us owned a house already, but we waited for Kaläwahine because it's convenient," he said. Born in Kewalo Homestead, Maka'awa'awa calls himself a "fortunate guy" to have been able to return to the old neighborhood, this time in a new single-family home. His neighbor George Kamau, who had turned down award offers in Nänäkuli and Wai'anae, stressed the quality of the construction. "These are the best homes ever built for Hawaiians—all steel frames."

Both men are impressed with their immediate neighbors. Maka'awa'awa says, "Everybody works, everybody takes care of their place." Indeed, as Ayau explained, "We have boards that tell you what you can and can't do—like having junk cars in the yard, like chain link fences." As for relations with the Kewalo community, Ayau is diplomatic. "For my sake, I get along good with our neighbors—they're real nice people. I don't want to get into comparing one neighborhood with the other."

Off the record, however, both groups of homesteaders are mildly critical of the other, and the divisions seem to fall along class lines. Some Kalāwahine residents complain that the Kewalo people tend to neglect their properties, don't work and party excessively, while some people in Kewalo call the Kalāwahine folk "hoity-toity Hawaiians who buy a new SUV every two years."

Ainsley Halemanu, a musician and lifelong Kewalo resident, has a different take on the culture clash. "Only 50 some years ago we Kewalo people were the outsiders, coming in [to Papakōlea]. Now we have to look at it with aloha, because we were in their position at one time."

They sell homestead land, don't they?

There is one thing that makes the house where Maka'awa'awa is playing pool stand out from the other Kalāwahine homes—a Century 21 sign staked in front.

"Yeah, his wife died recently," Maka'awa'awa said. "His kids all live in Alaska, and they don't want to come back." The house and land lease sold for $225,900 in 2000. Asking price in 2004: $375,000. It is one of at least four sales Century 21 has handled in Kalāwahine. Lehua Lee, who lives next door to Ayau, said one of the duplexes on their street is "...on its third owner."

Under DHHL rules, the selling of leases is legal as long as the buyer is 50 percent Hawaiian. The policy outrages Charles Maxwell, Sr., a community activist from Maui. "On Maui, in Waiahuli Homestead, Hawaiians are selling their leases to other Hawaiians for $100,000, sometimes $125,000 or more. They sell to somebody who is way down on the list—then the seller is allowed to go right back on the list themselves. The effect is that people are buying their way to the front of the line—and that is totally unfair and abrogates the intent behind Hawaiian Homes."

"DHHL does not have a rule about selling a lease," explained Yonenaka. "We regard it as a transfer. Our concern is that the person acquiring the lease qualifies as to blood quantum. The monetary part, the sales part, it doesn't exist as far as we are concerned."

DHHL Chairman Kane sees the issue as complex. "Obviously if there are abuses we need to look into ways to curb that. Especially if the lessee were involved in one of the self-help projects and received DHHL assistance in building his home and then turned around and sold it on the open market—that would be wrong. But I worry about putting more regulations on an already highly regulated lease. I mean, normally when you buy a house no one can tell you what you can or can't do with it. We need to proceed very cautiously on this issue."

Meanwhile the sales continue. Maka'awa'awa tells the story of a Kewalo lot he was interested in a few years back. "His wife was haole, they had no kids—so when he died he would lose the place anyway. So I inquired—I figured I would offer maybe $60,000. But the guy said no way...he sold it for like $150,000. The new owner tore down the house and put up one big new house with a swimming pool! The only swimming pool in Papakōlea. Not a real good fit with the neighborhood."

While some homesteaders live in new homes in Kaläwahine and Kapolei, others struggle in substandard dwellings far from the city. In Nänäkuli, James Tabali inherited his grandmother's 35,000-square-foot lot and lives with his extended family in a single-wall house built in the 1950s. The house has no hot water or functioning kitchen. The family showers in a makeshift stall under a banyan tree.

Kali Watson, who now heads the nonprofit Hawaiian Community Development Board (HCDB), said that at least 400 homes on DHHL lots need to be replaced. His organization provides financial-planning seminars and construction-project management for qualified low-income homesteaders; an arrangement with DHHL gives families a down payment assistance grant of $15,000.

HCDB Program Manager Patti Barbee assists needy homestead families with the application process. "James had a big debt problem. I told him, the bank will never loan you the money. He said, 'What I gotta do to get a house?'&Mac226; I said James, you gotta make more money. So he worked months and months of overtime, paid off the debt, and improved his credit rating." Tabali now has a commitment from the lenders, and is waiting for the contractor to pay him a visit. He smiles broadly, gazing at his home. "The old place kept us out of the rain all these years—lotta memories. But we're ready for a new house."

Like Kamehameha Schools

DHHL has never lacked critics. In 1991, Susan Faludi wrote a now-famous article for the Wall Street Journal chronicling the agency's long waiting list, and claiming that 60 percent of its lands were leased to non-natives. Parker Ranch and former Maui mayor Elmer Cravalho, for example, leased thousands of acres for decades at cut-rate prices. The department's practice of leasing land to non-Hawaiians is legal, and, under chairman Kane's tenure, a priority.

DHHL owns commercially zoned land all over the state—such as light industrial lots in Mäpunapuna, the University Bowl-o-Drome site on Isenberg Street and 10-plus acres outside Hilo that are coming under the bulldozer blade to make way for a Home Depot.

Home Depot has a 65-year lease. The first 10 years of the arrangement will net the DHHL $400,000 per year, with rent climbing until it maxes out at $531,587 at year 25, when it will be renegotiated. "We lease our commercial property to Hawaiians, non-Hawaiians, we're not partial," said Kane. "Our recent lease at Honoköhau (on the Kona side of the Big Island) with Menehune Development will bring in about $1 million a year. We recently finalized a deal with Verizon...worth about $500,000 a year." Nine more properties have been approved to go into income generation in the coming months.

Kane's push toward developing DHHL's commercial property is part of the larger vision he has for his department and the land it manages. "Our goal is self-sufficiency. The $30 million we receive annually from the state [as part of a 1995 $600 million settlement designed to give DHHL a reliable funding source] disappears in 2013. Right now we're essentially a land trust. We generate only $7 million a year. That is not enough to meet our future responsibilities. We need to do what Kamehameha Schools did in 1971 when it shifted from a land trust to a revenue-generating trust." Of course, Kamehameha Schools' lease-to-fee conversion process, a major factor in the trust's transformation, is not an avenue open to DHHL, and Kane recognizes the potential legal issues raised by a state agency moving toward self-sufficiency and autonomy. "We need to make the shift—and we have the political will to do it."

Kane approaches the backlog of people awaiting awards with the same practical, market-economy mindset he brings to other problems in his department. More than two-thirds of DHHL's land is on the Big Island and more than half of its unawarded clients are on O'ahu. So Kane has begun looking to private landowners to balance the equation.

"We have land owners with property they would like to develop," Kane explained, "but they don't have the zoning to do so." Since DHHL is exempt from land-zoning laws, the department has something a developer might need. "We put out a request for a proposal," elaborated the department's Yonenaka, "asking, say, developers if there is a project they would like to do." A developer puts up the land, builds housing in a price range specified by DHHL, and the department sells the lots and houses to qualified Hawaiians on the list. "The land owner develops land he otherwise could not have [because of zoning restrictions], makes a profit, and the land goes into the department's inventory in perpetuity."

Since the 1990s, DHHL, as the result of settlements with the state and federal governments, has added roughly 16,000 acres of land to its holdings, much of it prime agricultural, residential and commercial acreage. "This is good land—in places like Kā'anapali, Kapolei, Kona, Waiāhole," said Watson, who pursued land acquisition when it was discovered during his tenure that DHHL's inventory had been raided by government entities during the territorial period. "We've got some happy Hawaiians out there now, on decent land they can really use," Watson said.

Use, but not own. Use, as long as they can pay. In the Kapolei Village Six subdivision there are 111 completed three- and four-bedroom houses, priced under market between $120,000 and $170,000. Jerome Kupuka'a, a heavy-equipment operator, surveys a lawn he has just planted on his corner lot. His mortgage is $1,300 a month on his four-bedroom house. Born and raised in 'Ewa Beach, he's excited by life on his cul-de-sac. "On big holidays we close down the street and have a party for all the kids. We're strong, this block."

And, while the 21st-century incarnation of the DHHL may seem a far cry from Prince Kūhiō's back-to-the-land plan to save his people from extinction, a closer look at what the realist politician actually said puts another light on things. In 1920, Kūhiō returned from Washington to pitch his homesteading plan to his constituents—many of whom were upset at what they considered to be a sellout to sugar interests. He told them to wake up and smell the American way: "Too many Hawaiians have said, in effect, 'Give us all the money you can, feed us on poi and fish, and we'll be happy.' I want to tell you that you never will succeed unless you get out and hustle."

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