Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for our Future	)	GN Docket No. 09-51
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337

COMMENTS

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SUMMARY

In 1893 the Hawaiian monarchy was overthrown by force and replaced first by a Provisional Government, and in 1894 by the Republic of Hawaii. In 1921, while Hawaii was a United States Territory, Congress enacted the Hawaiian Homes Commission Act ("HHCA") to rehabilitate native Hawaiian people, particularly in returning them to the land to maintain traditional ties to the land. In 1959 when Hawaii became a state, the Hawaii Admission Act required the incorporation of the HHCA into the Hawaii State Constitution and transferred the trust lands to the state. Mandating the HHCA be included as part of the Hawaii State Constitution created a situation unique to Hawaii for the regulation of public utilities on HHL. The Congress of the United States continues to reserve the right to alter, amend or repeal the provisions of the HHCA. In 1993 the U.S. Congress passed a joint Apology Resolution acknowledging that the native Hawaiian people never directly relinquished to the United States their claims to their inherent sovereignty as a people over their national lands.

A stated purpose of the HHCA was to provide supporting infrastructure, so that homestead lands would always be usable and accessible; and to provide financial support and technical assistance to native Hawaiian beneficiaries so that by pursuing strategies to enhance economic self-sufficiency and promote community-based development, the traditions, culture and quality of life of native Hawaiians would be "forever self-sustaining." Clearly the goal of facilitating a "long-term tenancy" for resettlement of the Hawaiian Homelands (HHL) was contingent upon also fostering economic development for economic self-sufficiency of the native Hawaiians. Almost 100 years after the passage of the HHCA, still striving to achieve

resettlement and perpetuation make broadband communications essential components for attracting new business and creating jobs for potential native Hawaiian residents of HHL.

There are numerous negative implications of geographic isolation that have significantly slowed the resettlement of HHL. With the majority of lots being located on islands other than Oahu (the "neighbor islands"), there was an immediate geographic isolation from the state economic activity primarily located on Oahu. In the first 70 years of the program, only 3,000 families were placed on Hawaiian Home Lands. Continued applications for residence on Oahu from native Hawaiian beneficiaries reflect the desire to be in a geographic location without isolation and conducive to economic livelihood. However, approximately 98% of the HHL that remain to be resettled are rural and are located on the neighbor islands of Hawaii.

Serving the Hawaiian Home Lands presents some very unique challenges. Sandwich Isles' Service Area consists of rural, low density portions of volcanic islands separated by deep ocean. The Hawaiian Islands, unlike islands of the other 49 states, are not part of the continental land mass, but are the result of volcanic deposition from the ocean floor, and are separated from each other by open seas up to two miles deep, subject to swift currents. Construction of inter-island facilities is thus expensive and involves an extensive permitting process. Environmental restrictions designed to protect marine life severely limit the time during which undersea facilities are allowed to be constructed. The thin top soil lays on volcanic rock, coral and sand. Despite its reputation for a usually balmy climate, Hawaii is subject to recurring severe tropical storms which easily destroy aerial telecommunications plant. As a result of these factors, modern, reliable communications infrastructure is exceptionally expensive to construct and operate anywhere in the state.

Like much of rural Hawaii, the HHL historically were plagued with inadequate or non-existent telephone service. The high cost of physical facilities in rural Hawaii is compounded by the low population density of most of the state outside the metropolitan area of Honolulu. Sandwich Isles' study area, therefore, has no population centers, for a variety of reasons outside of its control. The inadequate rural service was especially severe in the Hawaiian Homelands. The reluctance of GTE to invest in facilities to serve the Hawaiian Homelands eventually led the Department of Hawaiian Homelands to issue a license to Waimana Enterprises, Sandwich Isles' parent, to serve the entire homelands.

In May 2005 the Commission's Wireline Competition Bureau granted Sandwich Isles a "Study Area Waiver" for all of the HHL except a small portion, mainly in the Honolulu area, that had been served by GTE in 1997. The Bureau recognized that Sandwich Isles was in the process of constructing a backbone infrastructure to "connect all of the Hawaiian home lands on all six of the major Hawaiian Islands." The Study Area Waiver Order thus found that the public interest would be served by grant of the waiver: "...because of the significant investment to provide service in areas and to customers that did not previously have service....Sandwich Isles' construction schedule involves deploying backbone switching and transport infrastructure." The many residents that supported Sandwich Isles' study area waiver petition quickly recognized the great improvement in affordability and service.

The historical similarities, negative impacts of geographic isolation, and high cost of deploying critical broadband infrastructure for HHL justify eligibility of native Hawaiians for inclusion in federal programs that are intended to improve the socio-economic standing of American Indians and Alaska Natives. The lack of economic opportunity prevalent on HHL today deters native Hawaiian beneficiaries from resettlement. As was recounted, the geographic

isolation of the HHL works against economic development, which is necessary to provide an economic base for continued subsistence of native Hawaiian families.

A new universal service program, i.e. a Tribal Broadband Fund ("TBF"), should be implemented by the FCC (See EXHIBIT 3) to encourage broadband deployment on Tribal lands. The National Broadband Plan clearly summarizes the many benefits, including economic development, that will accrue to communities as a result of broadband services becoming readily available throughout America. The Native American groups, including native Hawaiians, have historically been significantly challenged by the federal government's "exile policies," supposedly aimed at resettling these groups on Tribal lands with the ability to sustain them culturally and economically. In reality, the economics work against a successful resettlement of these governmental set aside lands.

A TBF is needed to overcome the financial obstacles inherent in constructing critical, broadband infrastructure for Tribal lands, including HHL. Given the numerous disadvantages causing Native Americans to lag behind the rest of the country in broadband adoption, a TBF is necessary to ensure continued deployment of needed infrastructure. One of the most pressing problems affecting rural Local Exchange Carrier's is their inability to borrow capital due to current regulatory uncertainty. A TBF, if it meets the 1996 Telecom Act goals for universal service funding programs of "sufficiency" and "predictability," will overcome this general regulatory uncertainty and provide stability and renewed access to capital for broadband providers that serve Tribal lands. Continuous deployment of a robust broadband communications platform will work toward the greater fulfillment of congressional mandates directed toward resettlement of Tribal lands and economically sustaining newly formed communities on those lands.

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COMMENTS OF SANDWICH ISLES COMMUNICATIONS, INC.

AND MESCALERO APACHE TELECOM, INC.

Sandwich Isles Communications, Inc. ("Sandwich Isles" or "SIC") and Mescalero Apache Telecom, Inc. ("MATI") file their Comments in this proceeding pursuant to the Public Notice issued by the Commission on April 21, 2010 (FCC 10-58). In the Notice of Inquiry Discussion at paragraph 13, the Commission invites comments on potential approaches to providing targeted funding on an accelerated basis in order to extend broadband networks in unserved areas. The Commission particularly invites comments identifying unique circumstances in Tribal lands, insular areas, and Native Hawaiian homelands that would necessitate a different approach from that recommended in the National Broadband Plan ("NBP"). Sandwich Isles and MATI believe there are unique circumstances justifying the creation of a separate Tribal Broadband Fund for the dual purposes of 1) ensuring extension of broadband networks to Tribal lands and 2) sustaining the provision of broadband services to tribal groups, i.e. American Indians, Alaska Natives, and Native Hawaiians.

I. HISTORICAL BACKGROUND OF NATIVE HAWAIIANS IS SIMILAR TO OTHER NATIVE GROUPS

In 1893 the Hawaiian monarchy was overthrown by force and replaced first by a Provisional Government, and in 1894 by the Republic of Hawaii. (In 1993 the U.S. Congress passed a joint Apology Resolution regarding the overthrow of the government of a sovereign nation. This was an "acknowledgement that the overthrow of the Kingdom of Hawaii occurred with the active participation of agents and citizens of the United States and further acknowledged that the native Hawaiian people never directly relinquished to the United States their claims to their inherent sovereignty as a people over their national lands, either through the Kingdom of Hawaii or through a plebiscite or referendum" (U.S. Public Law 103-150 (107 Stat. 1510)).

In 1921, while Hawaii was a United States Territory, Congress enacted the Hawaiian Homes Commission Act ("HHCA")[1] to rehabilitate native Hawaiian people, particularly in returning them to the land to maintain traditional ties to the land. The Hawaiian politicians who testified in favor of the act specifically referred to the devastation of the Hawaiian population, the loss of the land, and the need for Hawaiians to be able to grow traditional crops such as taro. The HHCA set aside approximately 203,500 acres of undeveloped rural lands for native Hawaiian use. The HHCA, with amendments, is still in effect today.

From 1921 until 1959 these trust lands were administered by the Hawaiian Homes Commission ("HHC") with oversight by the United States Department of Interior. In 1959 when

[1] Hawaiian Homes Commission Act 1920, 48 Stat. 108.

Hawaii became a state, the Hawaii Admission Act required the incorporation of the HHCA into the Hawaii State Constitution and transferred the trust lands to the state.[2]

The Department of Hawaiian Home Lands (DHHL) was created by the Hawaii State Legislature in 1960 for the purposes of administering the Hawaiian Home Lands (HHL) program and managing the Hawaiian Home Lands trust. Although state lands, the HHC, acting through the DHHL, retains exclusive management authority for HHL.[3] The Congress of the United States continues to reserve the right to alter, amend or repeal the provisions of the HHCA.[4] Mandating the HHCA be included as part of the Hawaii State Constitution created a situation unique to Hawaii for the regulation of public utilities on HHL.

II. PURPOSE OF THE HAWAIIAN HOMES COMMISSION ACT

Section 101, "Purpose", of the Hawaiian Homes Commission Act explains the aims of the Hawaiian Homelands program as follows:

(a) The Congress of the United States and the State of Hawaii declare that the policy of this Act is to enable native Hawaiians to return to their lands in order to fully support self-determination for native Hawaiians and the self-determination of native Hawaiians in the administration of this Act, and the preservation of the values, traditions, and culture of native Hawaiians.

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2 Hawaii Statehood Act, 73 Stat. 4 This historical description is taken largely from S. Rep. 108-85, 108th Cong. 1st Sess. (2003) Note that this portion of the Hawaii Constitution may not be amended without consent of the United States, and the United States retains the right to bring suit for breach of the trust imposed. The HHCA is now considered Hawaiian Constitutional law, rather than federal law. As such, state statutes which conflict with the HHCA are preempted. *Kepo`o v. Watson,* 952 P.2d 379, 87 Hawaii 91 (1998). (*"Kepo`o"*) Preemption does not extend to ordinary police powers *State v. Jim*, 907 P.2d 754 (1995).

3 *Ahuna v. Department of Hawaiian Home Lands*, 640 P. 2d 1161, 1168 (1982).

4 State of Hawaii Constitution, Art. XII, Sec.1; HHCA section 223.

(b) The principal purposes of this Act include but are not limited to:

(1) Establishing a permanent land base for the benefit and use of native Hawaiians, upon which they may live, farm, ranch, and otherwise engage in commercial or industrial or any other activities as authorized in this Act;

(2) Placing native Hawaiians on the lands set aside under this Act in a prompt and efficient manner and assuring long-term tenancy to beneficiaries of this Act and their successors;

(3) Preventing alienation of the fee title to the lands set aside under this Act so that these lands will always be held in trust for continued use by native Hawaiians in perpetuity;

(4) Providing adequate amounts of water and supporting infrastructure, so that homestead lands will always be usable and accessible; and

(5) Providing financial support and technical assistance to native Hawaiian beneficiaries of this Act so that by pursuing strategies to enhance economic self-sufficiency and promote community-based development, the traditions, culture and quality of life of native Hawaiians shall be forever self-sustaining.

(c) In recognition of the solemn trust created by this Act, and the historical government to government relationship between the United States and Kingdom of Hawaii, the United States and the State of Hawaii hereby acknowledge the trust established under this Act and affirm their fiduciary duty to faithfully administer the provisions of this Act on behalf of the native Hawaiian beneficiaries of the Act.

(d) Nothing in this Act shall be construed to:

(1) Affect the rights of the descendants of the indigenous citizens of the Kingdom of Hawaii to seek redress of any wrongful activities associated with the overthrow of the Kingdom of Hawaii; or

(2) Alter the obligations of the United States and the State of Hawaii to carry out their public trust responsibilities under section 5 of the Admission Act to native Hawaiians and other descendants of the indigenous citizens of the Kingdom of Hawaii. [L 1990, c 349, §1]

Clearly the goal of facilitating a "long-term tenancy" for resettlement of the HHL was contingent upon also fostering economic development for economic self-sufficiency of the native Hawaiians. Almost 100 years after the passage of the HHCA, still striving to achieve

resettlement and perpetuation make broadband communications essential components for attracting new business and creating jobs for potential native Hawaiian residents of HHL.

III. IMPLICATIONS OF GEOGRAPHIC ISLOLATION

From the beginning problems began with an absence of a definitive description of "available lands" designated by the Act; continuing with apparently illegal land withdrawals or diversions; and complicated by inadequate maintenance of land inventory records. As a result, DHHL does not have a complete or accurate inventory of the 203,500 acres designated under the Act, nor of the 190,000 acres for which DHHL now claims responsibility.

The original lands were hardly conducive to the agriculture practiced by earlier native Hawaiians. Sugar companies had lobbied the government to exclude lands used for sugar production, then the state's economic engine. With no money to develop these lands for agriculture, many lots were used strictly for housing. With the majority of lots being located on islands other than Oahu, there was an immediate geographic isolation from the state economic activity primarily located on Oahu. In the first 70 years of the program, only 3,000 families were placed on Hawaiian Home Lands.

In a survey conducted in 2008, the number of DHHL applicants increased 57% since 1995 with residential applications highest on Oahu, with 9,187 residential applications. The island with the next highest number of applications is Hawaii, with 2,974 residential applications. These applications for residence on Oahu reflect the desire to be in a geographic location without isolation and conducive to economic livelihood.

The same survey indicates there have been more than 5,000 Applicants for DHHL land from 2003 to 2008 when the previous survey was conducted. There were also over 5,000 Applicants that have been on the wait list for over 20 years. In 2008 about 41% of Applicants were over the age of 55, and almost half of those are over 65. Although the total number of DHHL beneficiaries, both Lessees and Applicants, has increased over 7% since the last time this survey was done in 2003, the wait list has grown faster than the ability to provide awards.

Another challenge for the native Hawaiian population is the disparity in income and economic levels in comparison to the general population. Below are statistics from several surveys indicating this economic characteristic.

Poverty Level & Percentage of Households below HUD Guidelines for Housing Assistance

Survey/Study	All Hawaii Households	Hawaiian & Part-Hawaiian Households	DHHL Lessee Households
Lessee Survey 2008: Estimated % of Households with Incomes below 80% of HUD Median	NA	NA	51
Housing Policy Study of 2006: Estimated % of Households with Incomes below 80% of HUD Median	45	46	70
US Census: % of Households below Poverty	11	16	13

IV. SERVING HAWAIIAN HOMELANDS PRESENTS UNIQUE CHALLENGES

A. Sandwich Isles' Service Area consists of rural, low density portions of volcanic islands separated by deep ocean.

As recounted more fully in its Petition for Waiver of the Definition of "Study Area,"[5] Congress created the Hawaiian Homelands ("HHL") in 1921 for the benefit of native Hawaiians.[6] The HHL consist of a total of 203,500 acres in 70 non-contiguous areas, 98% of which are rural, distributed over the six major islands of Hawaii. Maps showing these areas are attached as Exhibit 1. Like much of rural Hawaii, the HHL historically were plagued with inadequate or non-existent telephone service. Unable to obtain commitments for improvement from the then incumbent, GTE, the Department of Hawaiian Homelands granted a license in 1995 to Sandwich Isles' parent, Waimana Enterprises, to serve the entire HHL. Following passage of the Telecommunications Act of 1996, the Hawaii PUC designated Sandwich Isles as an Eligible Telecommunications Carrier ("ETC").

On October 29, 2004 the Commission released its order granting the GTE (by then Verizon) Application for Review of the Common Carrier Bureau's 1998 grant to Sandwich Isles of waivers of the incumbent local exchange carrier requirements that allowed it to participate in the NECA pools and receive Universal Service Fund support. The Commission concluded that

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[5] Sandwich Isles Communications, Inc., Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary, and Sections 36.611, and 69.2(hh) of the Commission's Rules, CC Doc. No. 96-45, filed Dec. 27, 2004, pp 5-6.

[6] 48 Stat. 108. With the passage of the Admissions Act of 1959, Congress created a shared trust responsibility for HHL with the State of Hawaii. 73 Stat 4.

Sandwich Isles should have applied for a study area waiver, but stayed the effect of its order provided Sandwich Isles filed such a waiver petition within 60 days.[7]

The petition for waiver was timely filed and in May 2005 the Bureau granted Sandwich Isles a "Study Area Waiver" for all of the HHL except a small portion, mainly in the Honolulu area, that had been served by GTE in 1997.[8] The Bureau recognized that Sandwich Isles was in the process of constructing a backbone infrastructure to "connect all of the Hawaiian home lands (sic) on all six of the major Hawaiian Islands."[9] The Study Area Waiver Order thus found that the public interest would be served by grant of the waiver: "...because of the significant investment to provide service in areas and to customers that did not previously have service....Sandwich Isles' construction schedule involves deploying backbone switching and transport infrastructure."[10]

The Hawaiian Islands, unlike islands of the other 49 states, are not part of the continental land mass, but are the result of volcanic deposition from the ocean floor, and are separated from each other by open seas up to two miles deep, subject to swift currents. Construction of inter-island facilities is thus expensive and involves an extensive permitting process. Environmental restrictions designed to protect marine life severely limit the time during which undersea

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7 *GTE Hawaiian Telephone Company, Inc., Application for Review of a Decision by the Common Carrier Bureau, Petition for Waiver of Section 36.611 of the Commission's Rules and Request for Clarification,* Memorandum Opinion and Order, 19 FCC Rcd. 22268 (2004).

8 *Sandwich Isles Communications, Inc., Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary and Sections 36.611 and 69.2(hh) of the Commission's Rules,* Order 20 FCC Rcd 8999 (WCB 2005), *applic. rev. pending.* ("Study Area Waiver Order").

9 Study Area Waiver Order at para. 19.

10 Id.

facilities are allowed to be constructed. The thin top soil lays on volcanic rock, coral and sand. Despite its reputation for a usually balmy climate, Hawaii is subject to recurring severe tropical storms which easily destroy aerial telecommunications plant. See Exhibit 2. As all locations are not far from the ocean, telecommunications facilities are subject to the corrosive tropical marine environment. As a result of these factors, modern, reliable communications infrastructure is exceptionally expensive to construct and operate anywhere in the state. These challenges were accurately described at greater length in the Petition of Hawaiian Telcom for waiver of the Universal Service Fund rules.[11]

The high cost of physical facilities in rural Hawaii is compounded by the low population density of most of the state outside the metropolitan area of Honolulu. Not only does Sandwich Isles' study area have no population centers, for a variety of reasons outside of its control, only a portion of the projected approximately 20,000 home sites have been completed and occupied. As a result, traffic volumes to and from Sandwich Isles' customers are relatively low for an area spread out over more than 400 miles.

Sandwich Isles is a much younger company than other rural telephone companies serving high-cost areas, so that the slow pace by which the HHL have been developed has left Sandwich Isles to operate under "start-up" conditions much longer than originally expected. Because substantial infrastructure, including physical plant and administrative capability is

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[11] Hawaiian Telcom Inc., Petition for Waiver of Sections 54.309 and 54.3 13(d)(vi) of the Commission's Rules, Dec. 31, 2007 ("HT USF Petition"); Federal Communications Commission, Public Notice, Comment Sought on Hawaiian Telcom, Inc.'s Petition for Waiver of High Cost Universal Service Support Rules, WC Doc. No. 08-4, DA 08-131, Jan. 18, 2008 (Petition attached as Exhibit 3); Comments of Sandwich Isles Communications, Inc., February 19, 2008.

needed to begin service to a small subscriber base, the HHL initial per unit costs are unavoidably high. As subscriber counts increase, the resulting traffic volumes will spread the common infrastructure costs over a wider base, thereby reducing Sandwich Isles' unit cost.

B. The successive owners of the dominant Hawaiian LEC have historically underinvested in facilities to serve the outer islands and rural areas.

Although GTE claimed to trace Hawaiian Telephone Company's operating authority to the Hawaiian Monarchy, neither it nor the successor owners of Hawaiian Telcom, Verizon and now Carlyle have invested in adequate facilities to serve the outer islands and the rural areas of Hawaii. Outer island terrestrial facilities reaching the Hawaiian Home Lands are non-existent. The lack of adequate service finally led the legislature to authorize the state commission to certify additional telephone companies.[12] The PUC determined that telephone service in rural areas was less than adequate and ordered GTE to show cause why it should not authorize alternative providers in rural areas.[13] Subsequently the PUC authorized TelHawaii to replace GTE in one rural exchange and this Commission granted a study area waiver over GTE's objection that recognized the concerns with GTE's service to rural areas.[14]

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12 "We passed Act 80 which lead to the Hawai'i Public Utility Commission opening the way for additional telephone companies to serve our *neglected* rural areas with modern infrastructure capable of delivering advanced services." Letter from Robert N. Herkes, State Representative, 5th District to Marlene H. Dortch, FCC, CC Doc. 96-45, Jun. 29, 2005

13 Hawaii Public Utility Commission Doc. No. 7497, Order No. 13626, Nov. 2, 1994.

14 *Petition for Waivers Filed by TelAlaska, Inc. and TelHawaii, Inc. Concerning Section 36.611, 36.612, 61.41(c)(2) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules,* Memorandum Opinion and Order, DA 97-1508, 12 FCC Rcd 10309 (Com. Car. Bur.1997). TelHawaii eventually abandoned its efforts following continued litigation by GTE and Sandwich Isles bought some of its switching equipment.

The inadequate rural service was especially severe in the Hawaiian Homelands. At best, GTE would offer to provide multi-party service in some areas unless the subscriber or DHHL paid the cost of converting to single party service.[15] The reluctance of GTE to invest in facilities to serve the Hawaiian Homelands eventually led DHHL to issue a license to Waimana Enterprises, Sandwich Isles' parent, to serve the entire homelands. The many residents that supported Sandwich Isles' study area waiver petition quickly recognized the great improvement in affordability and service.[16] The Chairman of the Hawaiian Homes Commission commented on Sandwich Isles' study area waiver petition that: "Prior to issuing SIC the license, there were many beneficiaries living on HHL that did not have phone service due to the high cost either they or DHHL would have to pay to install the infrastructure. Today these beneficiaries enjoy the same service that is available in urban areas."[17]

V. A TRIBAL BROADBAND FUND IS THE NEEDED "SAFETY NET" FOR CONTINUED INVESTMENT AND SUSTAINED BROADBAND SERVICE

The historical similarities and the negative impacts of geographic isolation justify eligibility of native Hawaiians for inclusion in federal programs that are intended to improve the socio-economic standing of American Indians and Alaska Natives. Very little has been accomplished over the past 100 years to bring native Hawaiians closer to a sustained existence on set aside lands, where cultural traditions can remain an integral part of everyday life. The challenges associated with resettling the HHL are significant. DHHL has a heavy obligation

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[15] Affidavit of Michael Crozier, Sandwich Isles Reply to Late-Filed Comments and Opposition, AAD 97-42, Oct. 2, 1997.

[16] *See generally,* comments of HHL residents cited in Reply Comments of Sandwich Isles Communications, Inc., Feb. 22. 2005. pp. 2-4.

[17] Letter from Micah A. Kane, Chairman, Hawaiian Homes Commission to Marlene H. Dortch, FCC, Dec. 23, 2004.

before it to bring infrastructure and utilities to unserved HHL areas. Likewise, the challenge to Sandwich Isles is formidable. This is due in no small part to the lack of economic opportunity prevalent on HHL today that deter native Hawaiian beneficiaries. As was recounted, the geographic isolation of the HHL works against economic development. Native Hawaiians cannot freely choose to resettle these remote areas. Even though large waiting lists give evidence of that desire, the HHL are without job opportunities sufficient to provide an economic base for continued subsistence of native Hawaiian families.

A new universal service program, i.e. a Tribal Broadband Fund ("TBF"), should be implemented by the FCC to encourage broadband deployment on Tribal lands. The National Broadband Plan clearly summarizes the many benefits that will accrue to communities as a result of broadband services becoming readily available in America. The Native American groups, including native Hawaiians, have historically been significantly challenged by the federal government's "exile policies," supposedly aimed at resettling these groups on Tribal lands with the ability to sustain themselves culturally and economically. In reality, the economics work against a successful resettlement of these governmental set aside lands. To counter the effects of geographic isolation, the FCC should facilitate creation of a robust broadband communications platform on Tribal lands, including HHL, to serve these native groups. With broadband services readily available in these areas, the native groups can embark on a mission to develop their own businesses and attract other new businesses to further economic development on Tribal lands, including HHL, so a base for economic stability and growth can be attained. Without an economic base, native peoples will be unable to successfully resettle the lands duly given them via Congressional Acts and sustain their cultures and traditions.

The challenge set before Native American groups of simply embarking on such a mission of resettlement in geographically isolated areas is daunting, under any circumstance. However, the challenge before native Hawaiians is extreme. A relatively small group of native Hawaiians remain to serve as a nucleus for resettlement. And to deploy reliable and secure underground broadband infrastructure in these remote areas of Hawaii that are targets for resettlement represents tremendous construction and cost challenges. It is clearly evident from Sandwich Isles experience that costs of constructing communications infrastructure in Hawaii are among the highest anywhere in the world. Admittedly, the HHL are remote, considering their location on the islands of Hawaii. The bigger reality, however, is that the entire state of Hawaii is but a "smudge" in the middle of the Pacific Ocean, at least 2,600 miles from the nearest continental land mass. Mobilizing construction equipment, shipping and warehousing materials, provisioning a qualified work force for the complex construction effort, and penetrating various types of near impossible terrain create extreme cost barriers to underground broadband infrastructure construction. These factors explain to a large extent why the previous incumbent Local Exchange Carriers serving Hawaii failed to invest in critical communications infrastructure, and why the current incumbent is losing market share and embroiled in a bankruptcy court proceeding to this day.

A TBF is needed to overcome the financial obstacles inherent in constructing critical, backbone broadband infrastructure for HHL. A provision of the Telecom Act of 1996, Section 254 (b)(3), established the goal of making available to all Americans at affordable rates advanced communications services. Given the numerous disadvantages causing native

Americans to lag behind the rest of the country in broadband adoption, a TBF is necessary to ensure continued deployment of needed infrastructure. One of the most pressing problems affecting rural Local Exchange Carrier's is their inability to borrow capital due to current regulatory uncertainty. A TBF, if it meets the 1996 Telecom Act goals for universal service funding programs of "sufficiency" and "predictability," will overcome this general regulatory uncertainty and provide stability and renewed access to capital for broadband providers that serve Tribal lands.

A properly designed TBF, i.e. "safety net fund," can overcome the continued regulatory uncertainty destined for our industry over the next several years as universal service and inter-carrier compensation reform are accomplished. Regardless of the ways in which these existing programs are modified and regardless of the number of years used to transition to new broadband support programs, a properly devised TBF will ensure the ongoing viability of eligible carriers devoted to serving Tribal lands and tribal groups, including native Hawaiians. Continuous deployment of a robust broadband communications platform will work toward the greater fulfillment of congressional mandates directed toward resettlement of Tribal lands and economically sustaining newly formed communities on those lands. Exhibit 3 attached presents a conceptual outline for a TBF that could effectively provide a financial "safety net" that would allow eligible broadband service providers on Tribal lands to remain viable.

VI. CONCLUSION

In the above comments Sandwich Isles has shown why native Hawaiians should be considered a "tribal group," similar to American Indians and Alaska Natives, as the FCC

considers the unique needs of tribal groups and appropriate broadband regulatory policy that will address those needs. Furthermore, Sandwich Isles and MATI believe eligible broadband service providers should receive Tribal Broadband Funds ("TBF") through a new FCC universal service program. Such support for the continued deployment of broadband infrastructure on Tribal lands will facilitate the accomplishment of broader congressional objectives previously espoused to ensure the successful resettlement of these Tribal lands. To this end the FCC should adopt rules to establish and implement a Tribal Broadband Fund ("TBF") to facilitate the continued deployment of broadband infrastructure and services on Tribal lands. Over time broadband services will help native American groups progress and better assimilate by making possible better educational curriculum, improved health care, and economic development opportunities on Tribal lands. While advancing in these ways, native Americans will also be empowered to enjoy preserving and sharing their cultures and traditions for generations to come.

Respectfully submitted,

SANDWICH ISLES COMMUNICATIONS, INC.

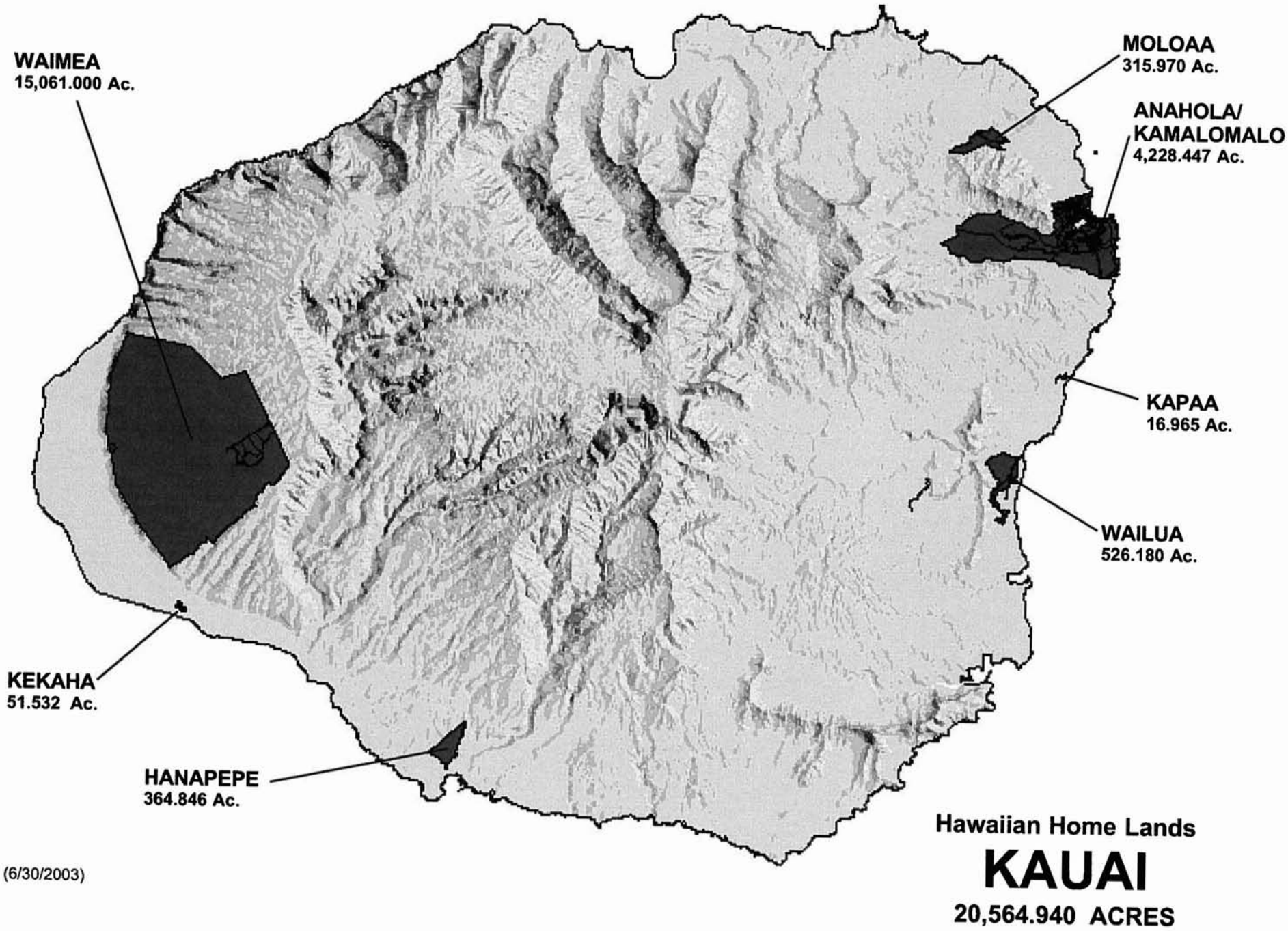
By /s/ Alan W. Pedersen
VP – Regulatory Affairs

MESCALERO APACHE TEL, INC.

By /s/ Godfrey Enjady
General Manager

July 12, 2010

EXHIBIT 1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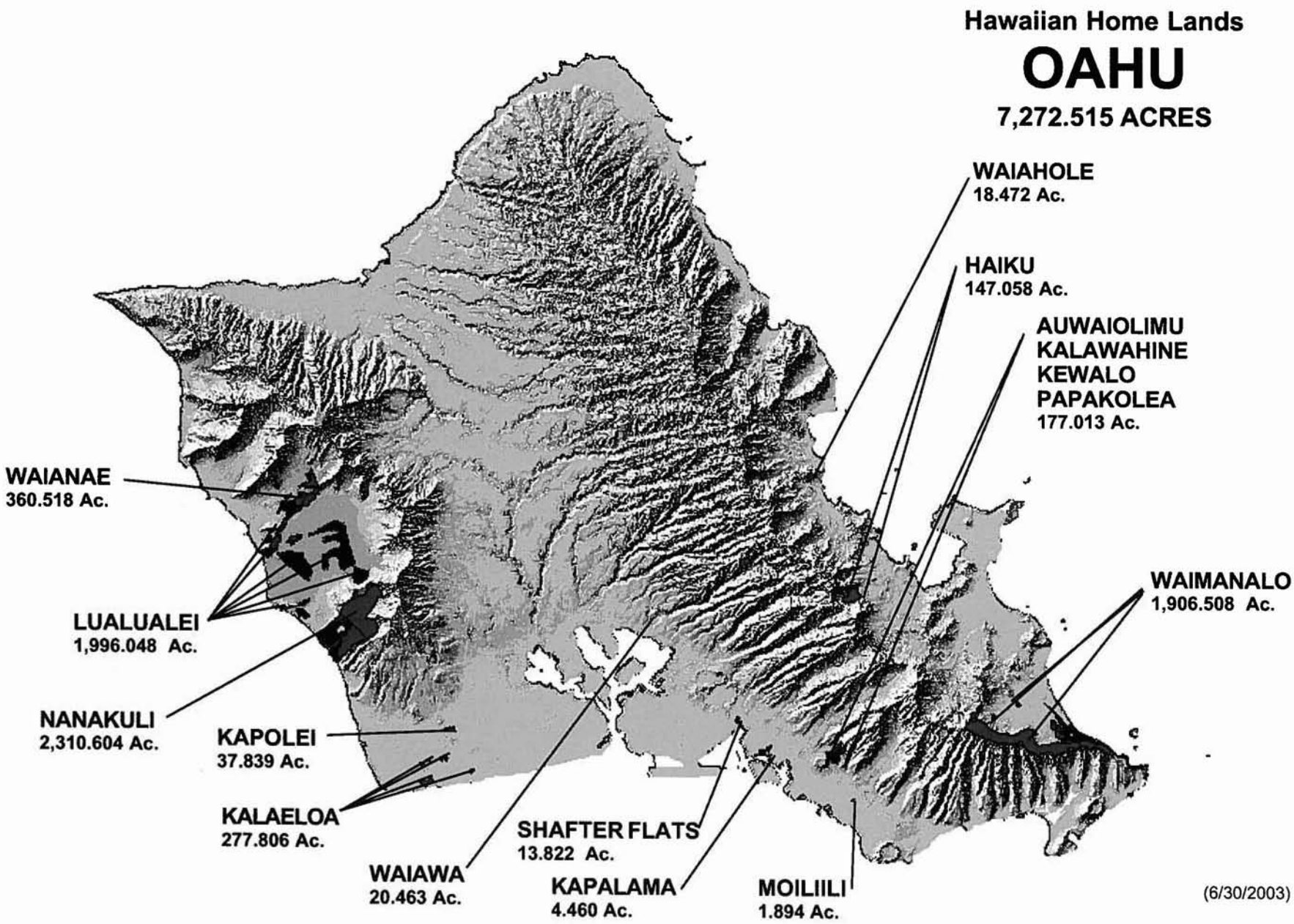
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HAIKU
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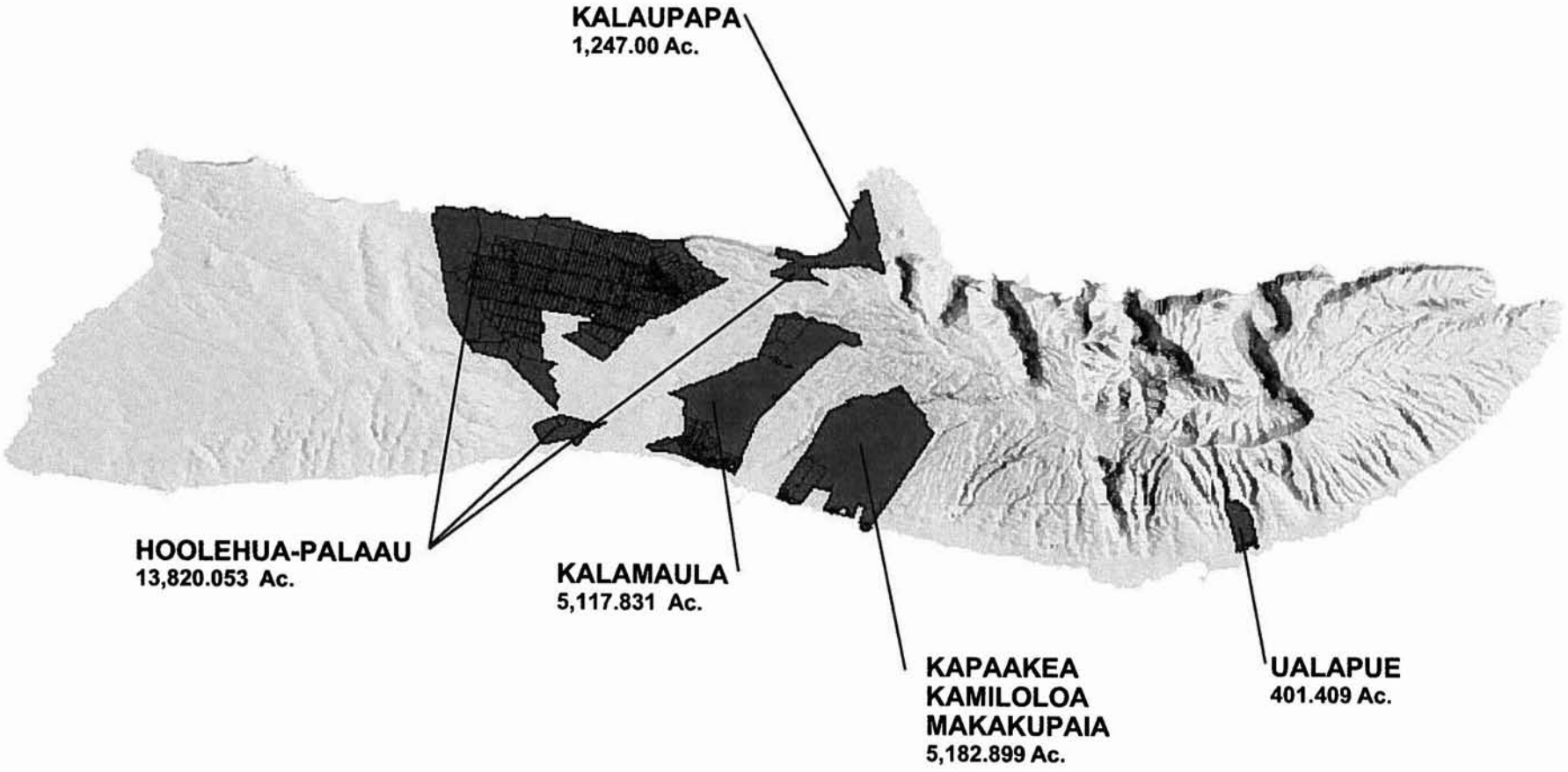
AUWAIOLIMU
KALAWAHINE
KEWALO
PAPAKOLEA
177.013 Ac.
WAIANAE
360.518 Ac.
WAIMANALO
1,906.508 Ac.
LUALUALEI
1,996.048 Ac.
NANAKULI
2,310.604 Ac.
KAPOLEI
37.839 Ac.
KALAELOA
277.806 Ac.
SHAFTER FLATS
13.822 Ac.
WAIAWA
20.463 Ac.
KAPALAMA
4.460 Ac.
MOILIILI
1.894 Ac.
(6/30/2003)

Hawaiian Home Lands

MOLOKAI

25,769.192 ACRES

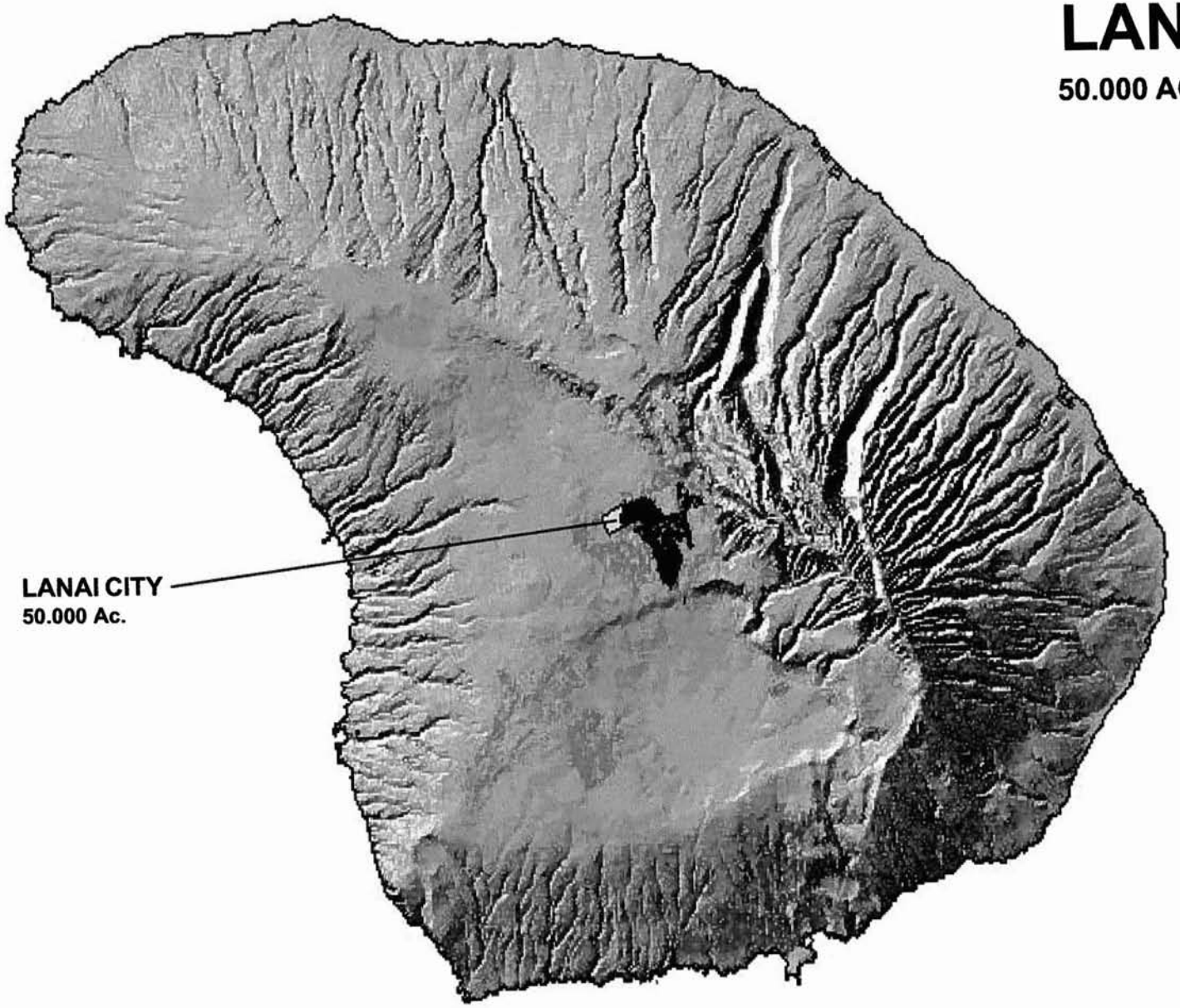


(6/30/2003)

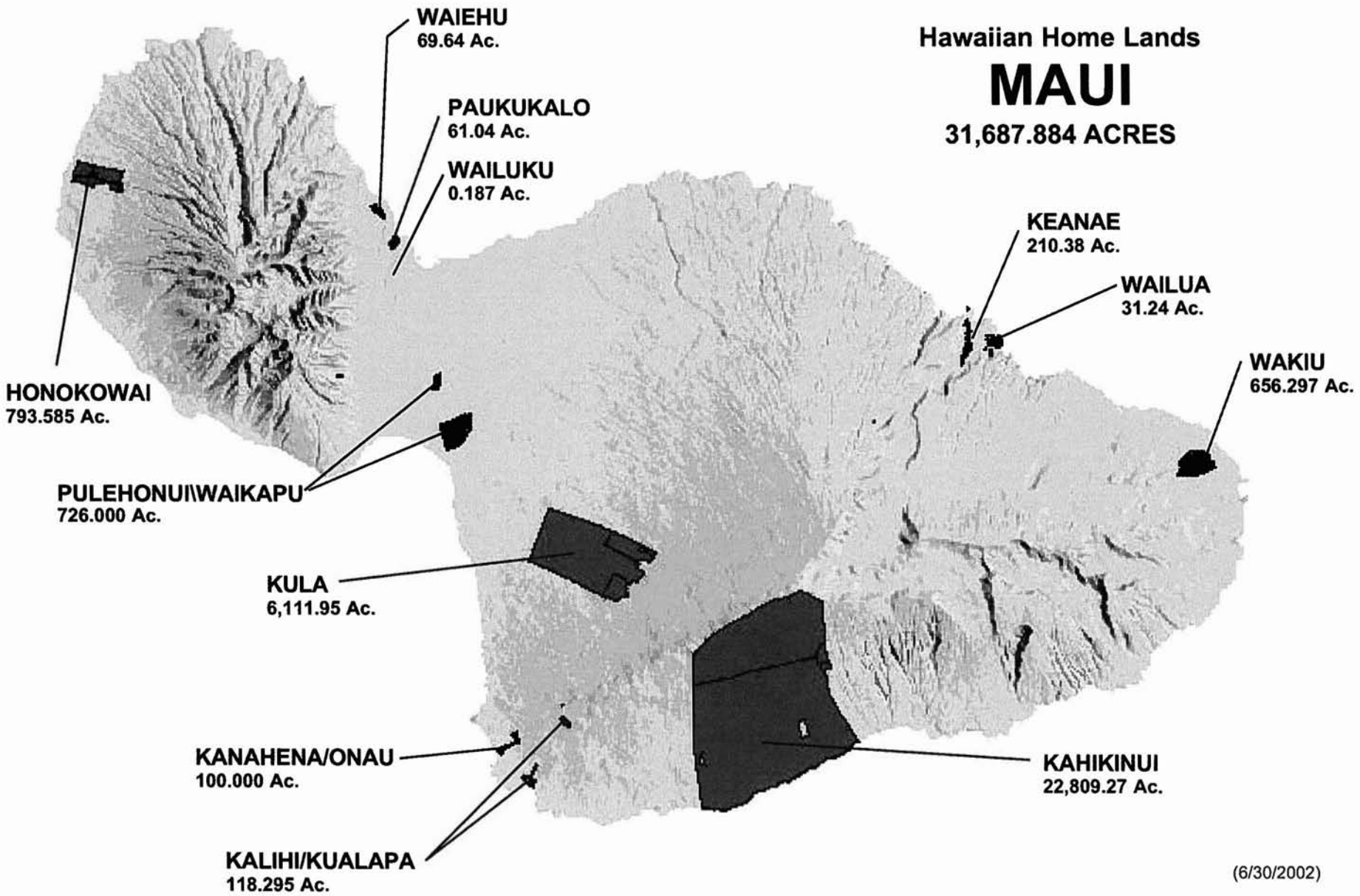
Hawaiian Home Lands

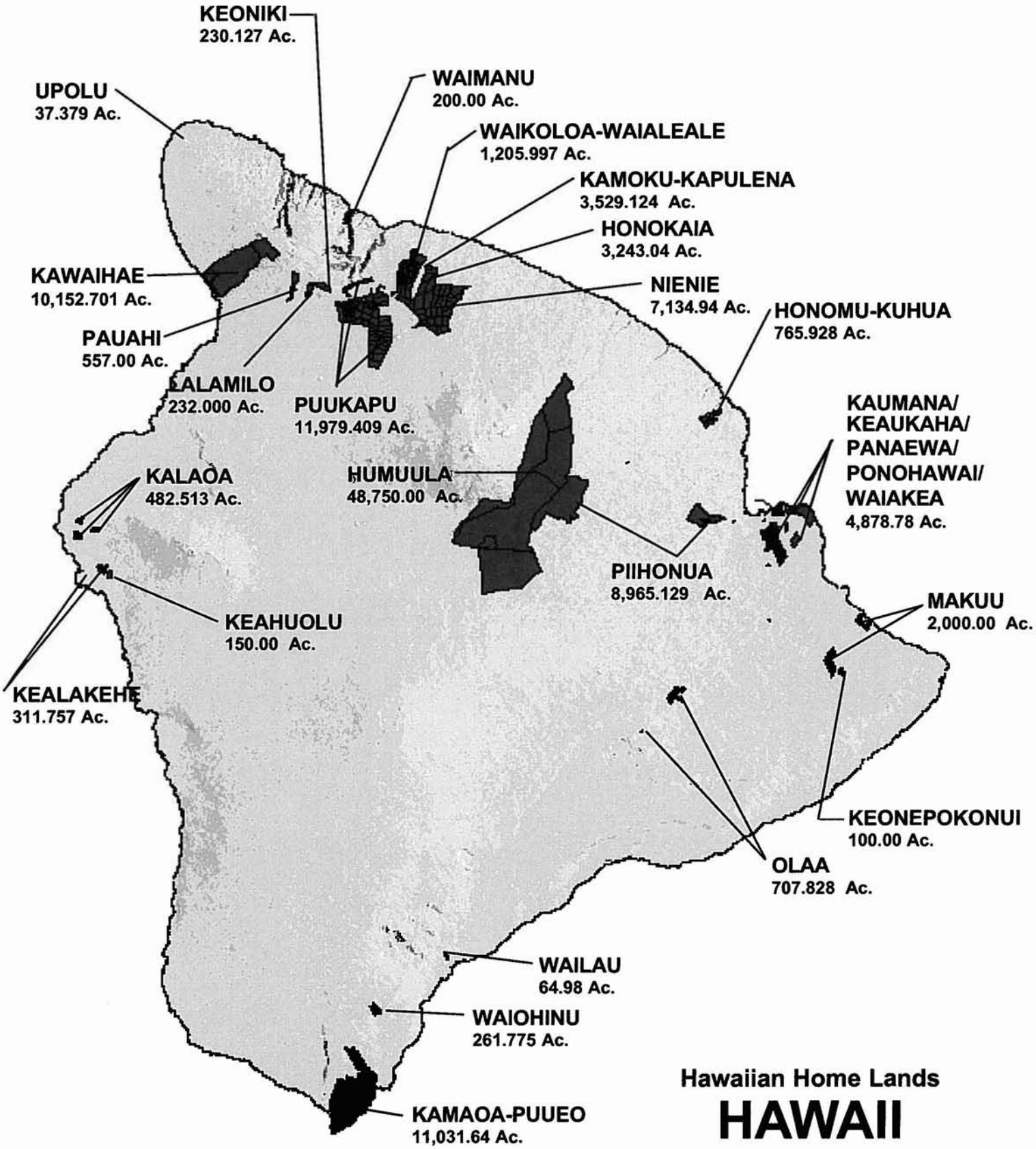
LANAI

50.000 ACRES



(6/30/2002)


Hawaiian Home Lands
MAUI
31,687.884 ACRES
WAIEHU
69.64 Ac.
PAUKUKALO
61.04 Ac.
WAILUKU
0.187 Ac.
KEANAE
210.38 Ac.
WAILUA
31.24 Ac.
WAKIU
656.297 Ac.
HONOKOWAI
793.585 Ac.
PULEHONUI\WAIKAPU
726.000 Ac.
KULA
6,111.95 Ac.
KANAHENA/ONAU
100.000 Ac.
KAHIKINUI
22,809.27 Ac.
KALIHI/KUALAPA
118.295 Ac.
(6/30/2002)



Hawaiian Home Lands

HAWAII

116,963.047 ACRES

(6/30/2002)

EXHIBIT 2

HonoluluAdvertiser.com

Aftermath of Hurricane Iniki, Kauai, HI, September 1992

EXHIBIT 3

TRIBAL BROADBAND FUND ("TBF")

CONCEPT OUTLINE

TBF PLAN CONCEPT – A "SAFETY NET FUND"

1. The FCC will establish and oversee a new universal service support program to be known as the Tribal Broadband Fund ("TBF").[1] The TBF will provide support exclusively to the providers of broadband services for American Indians, Alaska Natives, and Native Hawaiians located on Tribal Lands[2] or on the Hawaiian Homelands. The TBF will be established pursuant to Sections 214 and 254 of the Communications Act and the implementing rules will be a subpart of Part 54 of the FCC rules.
2. The TBF will provide Eligible Telecommunications Carriers ("ETCs") with "net gap" support sufficient to cover any shortfall between the projected "unseparated" (no interstate/intrastate allocations) revenue requirement for tribal communications and information services and the projected revenues to be received for such services, subject to an annual true-up.
3. The TBF payments for all eligible TBF ETCs will be funded by the Universal Service Fund (USF) Contribution Mechanism.[3]
4. To administer the TBF program, a five-member Steering Committee will be appointed by the FCC. American Indians, Alaska Natives, and Native Hawaiians will each provide a

[1] Subject to FCC determination that it has sufficient existing authority, or, if necessary, Congressional action granting such authority.

[2] "Tribal lands" include American Indian Reservations and Trust Lands, Tribal Jurisdiction Statistical Areas, Tribal Designated Statistical Areas, Alaska Native Village Statistical Areas, as well as the communities situated on such lands.

[3] A new and expanded contribution base, including broadband providers/services, should be adopted by the FCC as a necessary step toward sustaining all current and future USF programs.

member. Two "at large" members will also be selected by the FCC. Annual appointments will continue using this same process, but staggered based on three year terms. The steering committee will secure an administrator (Native American Communications Association) that will manage the day-to-day program operations at a reasonable cost (approximately 1% of the fund).

5. USAC will payout TBF amounts due to eligible TBF ETCs from monthly USF collections. USAC, with the concurrence of the TBF Steering Committee will, on a quarterly basis, prepare a projection of the TBF fund requirement that will be used in the development of each quarter's USF contribution percentage.
6. Each eligible TBF ETC will prepare an annual study[4] supporting its final "net gap" settlement for the study year (prior year). The administrator of the TBF will review the study for the purpose of establishing its accuracy as a basis for true-up of TBF payments.
    a. The TBF Steering Committee will determine for each eligible TBF ETC a true-up adjustment for the prior year and provide this information to USAC for payout/payback not later than the 3rd quarter of the subsequent year. Payback may be netted by USAC against current TBF payouts.
    b. The annual study will also be used by the administrator to provide USAC with a true-up adjustment of the current year payments for each TBF ETC.

[4] The annual study should be adapted, as much as is reasonably possible, from other annual filings the TBF ETC currently provides for the RUS (Form 479) and USAC (other USF program data submissions).

c. Projected TBF requirements may be updated at any time by the TBF ETC for any "open" quarters with submission of required documentation to the TBF administrator.

7. The TBF requirement for each TBF ETC is the overall communications and information services revenue shortfall, if one exists, to provide communications and information services to American Indians, Alaska Natives, and Native Hawaiians.

   a. A shortfall results if the TBF ETC unseparated revenue requirement exceeds all revenues collected from communications and information services at end-user rates not less than national benchmark rates. The FCC will provide a schedule of national benchmark rates for communications and information services, which will be used by the TBF administrator to impute revenue amounts where the eligible TBF ETC end-user rates are determined by the administrator to be less than national benchmark rates.

   b. Revenues will be all revenues collected from communications and information services, including but not be limited to end user revenues, other USF support amounts, and revenues received from FCC or state public utility commission approved individual tariffs or revenue pooling arrangements.

   c. The unseparated revenue requirement will be calculated using a rate base determined in accordance with FCC rules. The unseparated revenue requirement will include a net income amount necessary for the eligible TBF ETC to achieve

its "Times Interest Earned Ratio" (TIER)[5], which is required of the carrier by the Rural Utilities Service (default TIER of 1.25 in the event no RUS prescribed TIER).

d. If in the TBF ETC service area non-tribal customers exceed 50% of total customers, the calculated TBF shortfall, if it exists, will be adjusted downward to an amount reflecting the pro-rata share of tribal operations within the service area (may use an average ratio for the tribal investment, revenue, and number of customers within the service area).

8. All existing communications and information infrastructure will be eligible for TBF, commencing with the start date of the TBF program as approved by the FCC. Expansion of broadband facilities to provide new or higher speed broadband tribal connections, which are approved by the RUS for construction, will be deemed authorized service expansion eligible for TBF, if otherwise qualified. Non-RUS approved infrastructure investment and associated operating costs will be subject to approval by the administrator and Steering Committee, and ultimately the FCC, if contested. Disapprovals of construction plans by the administrator will be timely made and subject to a clearly defined appeals process. Final appeals authority will reside with the FCC, requiring action within a specified time period.

[5] The ratio is calculated as follows: (Total Fixed Charges + Net Income) / Total Fixed Charges (See RUS Form 479).

9. All recipients of TBF will be required to certify that funds received were used for the purpose intended. The annual study submitted to the administrator will include such certification statement attesting to the accuracy of the annual study data and affirmatively stating that the ETC can provide broadband speeds meeting FCC requirements (currently at least 4Mbps down and 1Mbps up to all tribal customers in the service area). Construction budgets and specific Tribal land project completions and associated broadband services upgrades will also be provided to the administrator annually to establish appropriate follow through by the service provider, demonstrating continued receipt of TBF is justified. A detailed annual certification process will be developed by the administrator for approval by the FCC.