

KANAKA MAOLI TRIBUNAL KŌMIKE
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December 18, 1993 DRAFT

TO: Anahola Five

FROM: Kekuni Blaisdell

SUBJECT: Critique of DHHL Director's Statement on the Anahola Five

We have been asked to prepare this critique with input from those concerned. Please help us revise this paper for accuracy and completeness.

On December 9, 1993, Kaua'i newspapers announced that DHHL Director Hoaliku Drake had issued a statement to the press listing four reasons justifying the arrest and jailing of three of the Anahola Five on December 7.

Director Drake's four reasons and a critique of her statement follow:

1. Petition. A May 1993 petition, signed by 1,467 Native Hawaiians residing in Anahola, asked that trespassers be removed so that Anahola Beach can be returned to native Hawaiian homesteaders and the community.

Critique: a. Nature of the petition. The petition's existence, by whom and how it was initiated, its precise wording and the identity of the petition signers remain problematic. When asked to submit the petition to the court, DHHL attorney Kumu Vasconcellos was unable to do so. Similarly, Director Drake has not made the alleged petition available to the press or the public.

b. Which "Native Hawaiians"? Verification and clarification of the 1,467 petition-signers as "Native Hawaiians" (of Hawaiian ancestry) vs. "native Hawaiians" (half- or more Hawaiian ancestry) vs. "native Hawaiian homesteaders" (eligible beneficiaries assigned DHHL homesteads) have not been provided to the public by the DHHL.

c. Beach vs. non-beach park. On December 10, a DHHL spokesperson informed the Kaua'i Times that the petition "simply asked that the DHHL and HHC permit the beach park to remain open to the homesteaders and the public."

Two of the three jailed on December 7, Michael and Sondra Grace, were residing in their home mauka of the Beach Park, not on the beach. They have always welcomed others, such as homesteaders and the public, to their home. Indeed, rallies, fund-raisers and Ka Ho'okolokolonui Kanaka Maoli--the August 17, 1993, Peoples' International Tribunal session--convened at the home of these two arrestees.

The third victim jailed on December 7, John Butch Kekahu, was arrested at his home mauka of Kūhiō Highway, a mile from the beach.

These three persons jailed have never blocked access of homesteaders and the public to the beach. Thus, the petition could not apply to them. Why, then, were they arrested and jailed?

Some tent-dwellers, mostly non-Kānaka Maoli, currently are on Anahola Beach. They, however, have not been arrested and jailed.

d. Land jurisdiction. Director Drake says the Beach Park "area in question is under county jurisdiction." The County attorney, Kathleen Watanabe, told the Kaua'i Times that she was not certain of the County's jurisdiction of this site. She referred the question to the County's park and recreation department, whose head, Mel Nishihara, was not available when the Times went to press December 15.

In 1989, a federal court ruled that the 1.5 acre Beach Park was to be "managed by DHHL, but maintained and operated by the County" under a 15-year lease. The County in turn was to provide \$227,000 in cash or in-kind services for the Anahola homestead community for the first seven years and work toward obtaining funds for other improvements.

The land mauka of the beach road, where the Graces live and were arrested on December 7, is claimed by DHHL. In 1988, the Graces applied to the DHHL for a license to develop this unoccupied and undeveloped land of 2.5 acres mauka of the beach. At that time, this site was designated by the DHHL for "community development." A "waiting list" does not apply for such lands. Nevertheless, after being put on the DHHL waiting list, the Graces, in 1989, applied to the Kaua'i County for, and were granted, a quitclaim deed for the 2.5 acres based on the Constitution of 1840 which states that the lands are "held in common by the chiefs and the common people." Thereupon, the Graces settled on this land. They built a home at this site, planted a traditional garden, fished the nearby ocean and created a cultural center. It was named 'Ili Noho Kai O Anahola and was open to those who shared traditional Kanaka Maoli values and practices of spirituality, self-responsibility, self-sufficiency, aloha 'āina, inherent sovereignty and right to self-determination under international law and Kanaka Maoli law.

On July 15, 1991, the state DHHL and Attorney General (AG) initiated the arrest and jailing of "the Anahola 14," which included the Graces, and demolition of their homes, for "trespassing." The Graces declared sovereign immunity and undivided interest in their ancestral Kanaka Maoli lands. They cited these lands as stolen by the 1893 U.S.-supported, illegal, haole Provisional Government which became the 1894 illegal Republic of Hawai'i, which illegally transferred ("ceded") 1.8 million acres

of stolen Kanaka Maoli lands to the U.S. under the 1898 illegal Annexation Resolution, and from which the U.S. Congress illegally created the imposed Hawaiian Homes Trust Lands in 1921. Upon this historical basis, the Graces charged the state with trespassing and genocide under international law, the U.S. Constitution and Kanaka Maoli law. In August 1991, the Graces rebuilt a structure at the 'Ili which they called Hālau Ho'oponopono (a place to resolve differences).

Since then, the state has prosecuted the Graces for: (1) "trespassing" and "criminal contempt," with the next court hearing scheduled for January 10, 1994. (2) "Civil contempt," with 45 days imprisonment, for not recognizing the jurisdiction of the court and for not completing a community service sentence. Further, the state has issued a permanent injunction for the Graces' ejection from the 'Ili site.

In May 1993, the Graces sued the governor, AG and Director of DHHL in the federal Ninth Circuit Court of Appeals "for arbitrary and conflicting application of the law in the destruction" of their home, in violation of the 14th Amendment of the U.S. Constitution, U.S.C. 1091(a) on the crime of genocide, and Article 73 of the U.N. Charter. On May 27, 1993, the court called upon the state to settle with the Graces. However, the state has refused to settle, insisting "this is not a sovereignty issue."

On December 7, at 6:45 a.m., the two Graces were brutally arrested by 30(!) state and county enforcement officers, on behalf of DHHL and AG, for civil contempt, and they were compelled to begin a 45-day jail sentence.

2. Trespassers not all native Hawaiians. Director Drake says that trespasser Sondra Field Grace is "not native Hawaiian" and that three others of the Anahola Five, Henry and Rowena Kekahu Smith and John Butch Kekahu, have been "renting Hawaiian Home Lands to non-Hawaiians, thereby denying fellow native Hawaiians access to and use of the lands."

Critique. a. 'Ili mauka of Beach Park. Since 1983, Sondra Field Grace has been married to Michael Kamakau Grace who is of more than half-Kanaka Maoli ancestry and is an "eligible Hawaiian Home Lands beneficiary." The Hawaiian Homes Commission Act does not exclude spouses who are not "native Hawaiian," that is, who are less than half Hawaiian ancestry. Why does Director Drake?

The Graces have never denied any persons access to and use of their lands nor the Beach Park makai of the road. Why does Director Drake make this false charge?

b. Lot 45 mauka of highway. Henry Smith, recognized HHL beneficiary and Anahola homestead awardee, in 1988 applied for a commercial lease to Lot 45, 2.3 acres of additional Anahola, HHL-

claimed land along, and mauka of, Kūhiō Highway, one mile from the beach. This land had supported a gasoline filling station in the past, but had long been vacant. When Smith's application was denied by DHHL, he, like the Graces, acquired a quitclaim deed to this property from Kaua'i County in 1991 and began using this land on the basis of his undivided interest in ancestral Kanaka Maoli land.

Currently occupying this land are the following persons, all of whom are his 'ohana and Kānaka Maoli: (1) Lee Arthur Contrades, nephew of Smith, and his wife Dorothy Mowae, live in a house and operate a huli huli chicken fast-food stand nearby. (2) Lynwood Contrades, nephew of Smith, operates a chili fast-food stand on the property. (3) Kuini Smith Contrades, sister of Smith, operates a lei stand on the site. (4) Smith operates a shave ice stand on this lot. (5) Harry Mowae, Dorothy Mowae's brother, his wife and two sons, live in a tent on Lot 45. None of these persons is non-Kanaka Maoli.

On December 3, a warrant was served for the arrest of Smith for trespassing and contempt, as for the Graces and Kekahu. However, at present, Smith has not been apprehended.

Smith has never denied persons access to his lands nor to the Beach Park one mile makai of his lands. Why does Director Drake make this false charge?

c. Lot 41 mauka of highway. In 1987, John Butch Kekahu, who lived with his mother at her Anahola HHL homestead, applied for a commercial lease to Lot 41, which supports an old house, mauka of Kūhiō Highway and adjacent to Lot 45. Kekahu learned that from 1946 to 1967, the lot had been under general lease to a non-Kanaka Maoli Japanese family which had rented the home to Kanaka Maoli families. From 1967 to 1987, the lot had not been occupied nor managed by DHHL.

In 1988, Kekahu connected a water line to Lot 41. When sued by the DHHL, the court sided with Kekahu on two occasions. In 1991, Kekahu, like the Graces and Smith, acquired a Kaua'i County quitclaim deed to Lot 41. On Lot 41, Kekahu operated a road-side shop selling T-shirts, green coconut juice and lei.

From 1991 to November 1993, he permitted a non-Kanaka Maoli carpenter, Bob McNamara, and his family to live in the old house on the lot, while McNamara was helping with construction of homes for Kānaka Maoli, such as the Graces' home at the 'Ili.

In 1991, DHHL charged Kekahu with "trespassing." December 7, 1993, at 7:30 a.m., Kekahu, a kidney dialysis patient, was arrested by 20(!) enforcement officers and jailed for "trespassing" and "contempt," like the Graces and Smith, as one of the Anahola Five, on behalf of DHHL and AG.

On December 9, because he was unable to get proper medical dialysis treatment in jail as had been promised to him, Kekahu yielded to the DHHL "under duress," and agreed to vacate Lot 41. He was thereupon released from jail.

Kekahu has never denied any persons access to his land nor to the Beach Park one mile makai of his land. Why does Director Drake make this false charge?

d. DHHLands to non-native Hawaiians. More than 60% of DHHLands remain assigned to non-Kānaka Maoli, such as Parker Ranch, sugar plantations, commercial corporations, U.S. Military, state Department of Transportation and state Department of Land and Natural Resources. Has the DHHL considered suing or jailing itself for permitting non-Hawaiians on its claimed lands?

3. Trespassers' illegal activities. Since 1987, the trespassers have engaged in illegal activities, have been given repeated warnings and ample time to vacate.

Critique: a. State's illegal activities. As stated above, the Graces, Smith and Kekahu have declared sovereign immunity and their undivided interest in stolen Kanaka Maoli lands. They have asserted their right to self-determination under international law and Kanaka Maoli law, and have charged the state with trespassing on their lands and genocide.

b. Recent additional legal support for the Anahola Five against the state. The Anahola Five have also appealed to the governor to stop these arrests, jailings and prosecution, especially in view of: (1) the May 1993 federal court ruling for the state to settle with the Graces; (2) the 1993 state legislature's acknowledgement of the illegalities of the 1893 U.S. armed invasion and 1898 U.S.-forced annexation and theft of Kanaka Maoli lands; and (3) the November 1993 U.S. Congress's passage, and President Clinton's signing, of the Apology Resolution, acknowledging and apologizing for the U.S.'s violations against the Kanaka Maoli people and nation in 1893 and 1898.

c. Repeated warnings and ample time. The 5th District Court in Līhu'e ordered the arrest of the Anahola Five for December 3, 1993, pending appeal to the state Supreme Court.

On December 3, when mass demonstrations were protesting the expected arrests, the Kaua'i County police informed the Anahola Five that their arrests were deferred for 24 hours. When inquiry concerning the arrests was made December 4, the police and jail officials provided ambiguous and conflicting responses. Then abruptly without warning on December 7 at 6:45 a.m., 30 enforcement officers brutally arrested the two Graces, and at 7:30 a.m., 20 enforcement officers arrested and jailed Kekahu just as he completed kidney peritoneal dialysis at his home. Meanwhile, Smith

them by the DHHL? None of the Anahola Five has opposed, blocked or prevented others from occupying the lands that they have occupied and developed. The 'Ili, Lot 45 and Lot 41 were all vacant, unused, undeveloped and unmanaged by the DHHL when they were occupied, developed and productively used by the Anahola Five. The Anahola Five have never blocked any persons from use of the Beach Park. The DHHL and AG have not moved against the tent-dwellers on the Beach Park.

The DHHL and AG have persistently and viciously moved against the Anahola Five? Why?

Our analysis is because the Anahola Five have:

(1) Embarrassed the DHHL by demonstrating self-reliance, self-sufficiency, self-responsibility, economic and political independence, refusal to become dependent wards of the DHHL, and more effective use of Kanaka Maoli lands than the DHHL.

(2) Embarrassed and defied the AG, the governor and state courts by declaring sovereign immunity and the right to self-determination under international law, the U.S. Constitution and Kanaka Maoli law. The AG, the governor and state judges do not know and do not want to know about these legal principles. For them to acknowledge these laws is to acknowledge their own illegitimacy. This, they are afraid to do, and they are determined not to do. For it would mean legitimate return of the stolen Kanaka Maoli lands to Kānaka Maoli. This, in turn, would mean elimination of the state and the Democratic Party machine that controls the state and which now depend on these stolen Kanaka Maoli lands for revenues that amount to about \$1 billion per year.

Thus, it is intentional ignorance, prejudice and fear of the truth and justice that motivates the illegal legal establishment to treat the Anahola Five as political prisoners.

Copies of this draft are being circulated to the Anahola Five and others directly concerned for accuracy and appropriate revisions before wider distribution.

cc: Those concerned

PRESS RELEASE AND ACTION ALERT

TO: All communication Media

FROM: Kanaka Maoli Tribunal Kōmike
Pro-Hawaiian Sovereignty Working Group
Ka Pākaukau
Contact: Kekuni Blaisdell
Phone: 595-6691

SUBJECT: Protest Jailing of Anahola Three by DHHL-AG
at Queen Lili'uokalani Statue, Wednesday, December 8, 12 noon

Kānaka Maoli and Kāko'o (supporters) on O'ahu will gather Wednesday, December 8, 12 noon, at the Queen Lili'uokalani Statue in Honolulu as part of a coordinated island-wide protest against:

1 — The sneaky and brutal arrest and jailing, Tuesday, December 7, 6:45 a.m. of Michael Kamakau Grace and Sondra Field Grace, while they were peacefully at their home and cultural center with kāko'o at 'Ili Noho Kai O Anahola, Kaua'i; and the 7:30 a.m. inhumane arrest and imprisonment of kidney-dialysis patient John Butch Kekahu while he was at his home in Anahola. These abusive acts were carried out by about 30 members of the Kaua'i Sheriff's Office, Kaua'i County police, Kaua'i Correctional Center officers, and State officials from O'ahu, who blocked the entrance to the 'Ili of other supporters, some with cameras, and who forcibly removed Kāko'o who had formed a Protective circle around the Graces. Michael Grace, known to have high blood pressure and heart failure, was shackled and carried to the police vehicle.

2 — The state Department of Hawaiian Home Lands and Attorney General's Office for:

a. Repeatedly initiating aggressive acts, such as the above, against Anahola Kānaka Maoli since July 6, 1991, when the Graces were initially jailed and their home and cultural center at 'Ili Noho Kai O Anahola were demolished by the state. The state has charged the Anahola Kanaka Maoli with "trespassing" on Hawaiian Home Lands. The Anahola Kānaka Maoli have declared sovereign immunity on their own ancestral lands, and have charged the state with trespassing.

b. Violating elements of international law which provide special rights for indigenous peoples in their homelands (UNWGIP), for decolonization of colonized non-self-governing peoples (UNCA 73, USPL 100-606 1988). The Anahola Kānaka Maoli have repeatedly cited these elements of international law as "the supreme law of the land," as specified in the U.S. Constitution, but the state has chosen to ignore and to violate these elements.

c. Persistent abuse of Anahola Kanaka Maoli in the face of: (1) May 27, 1993, decision by the U.S. Ninth Circuit Court of Appeals for the state to settle

with the Graces. (2) 1993 state legislation which recognizes the inherent sovereignty and right to self-determination of Kānaka Maoli and acknowledges the 1893 U.S. illegal armed invasion of the Kanaka Maoli nation and the 1898 U.S. illegal armed annexation of the Kanaka Maoli nation. (3) 1993 U.S. Congress (Akaka) Apology Resolution signed by U.S. President Clinton in which the U.S. officially apologizes to the Kanaka Maoli people for the 1893 U.S. illegal actions against the Kanaka Maoli nation and calls for reconciliation. August 1993 Ka Ho'okolokolonui Kanaka Maoli people and nation and which calls for the U.S. to return all stolen Kanaka Maoli lands to the Kanaka Maoli without delay, and for U.S. negotiations with Kanaka Maoli.

In accordance with the foregoing protests and their historical, moral and legal bases, we join in solidarity with the Anahola Kānaka Maoli and their kāko'o island-wide in civil resistance for:

1 — Gov. John Waihe'e to call on the Department of Hawaiian Home Lands and the Attorney General's Office for a moratorium on further arrests, evictions and convictions of Kānaka Maoli exercising their inherent sovereignty and right to self-determination on their national land base at Anahola and elsewhere in Ka Pae'āina (Hawai'i),

or

2 — Economic boycott of Ka Pae'āina as a visitor's travel destination.

Let the world know of the establishment's continuing crimes against our Kanaka Maoli people: the theft and abuse of our lands and natural resources; political subjugation; economic exploitation, economic dependence and obstruction of our efforts at economic self-sufficiency, as examples of genocide; coercive assimilation and commercialization of our culture, as evidence of ethnocide; the denial of due process under U.S. and international law, and thus, the exhaustion of legal and peaceful means for rectifying the wrongs against our Kanaka Maoli people.

For further information, contact:

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Judge sentences 11 in Anahola case

Strikes land-title question

By Jan TenBruggencate
Advertiser Kauai Bureau

LIHUE, Kauai — Judge Clifford Nakea yesterday sentenced 11 people for trespassing on Hawaiian Homes land near Anahola Beach Park, after telling the group that his court was the wrong place to bring their demand for redress for wrongs against the Hawaiian people.

"This is a criminal court, not the proper forum" to question land title, Nakea said.

Defendants Michael Grace and his wife, Sondra Field Grace, argued that part-Hawaiian Michael Grace had a legal right to the coastal land, due in part to the illegal nature of the overthrow of the Hawaiian monarchy.

The Graces lived for several years on the Anahola Beach Park, and later moved to property just mauka of the park. A few others stayed with them.

"An injustice has been committed against the people of Hawaii... That injustice is festering," said defendant George Koani.

Attorney Ken Carlson, on behalf of five defendants, said they believed in the Graces' claim, and remained on the property out of solidarity. They did not believe they were committing a crime.

"There was no knowing trespass... Every person who was one of their guests knew these people (the Graces), knew they had lived there for years," Carlson said.

But deputy attorney general Collette Dhakhwa said the case was very simple. She said the state's evidence showed the Department of Hawaiian Home Lands owns the land, that all the people who stayed there had received written and verbal notices to leave, and that they refused

to leave.

The first notice was on June 27. On July 15, they were once again given the opportunity to go, and did not. They were arrested by a team of officers from the state sheriff's office, and structures the Graces and others had built on the land were destroyed.



Nakea

Michael Grace had filed a quitclaim deed on the property, conveying his interest in the property to himself and his wife. But Judge Nakea said a quitclaim only allows you to grant what you own, and the evidence showed Michael Grace had no ownership interest in the land.

"The quitclaim deed is a smoke screen," Nakea said.

The Graces were arrested twice on the property. Nakea found them guilty and sentenced each to perform 35 hours of community service. Both said they intend to appeal the convictions.

Nakea found guilty and sentenced to 10 hours of community service Punani Manaku Kawaihalau, Elroy Cummings, Phillip Chang Hyatt, Henry K. Kamanu, George Koani, Lei Sexton, Kealoha Marge Taufatofua and Heu'ionalani Wyeth.

Three of those charged in the case did not appear in court. They were Eric M. Kane, Rita K. Kanui and Ray Aukai Manaku. Warrants for contempt of court have been issued for the three.

The charge against Tanya A. Felix was dropped after an arresting officer was unable to identify her in the audience.

Anahola evictees won't quit

By Lester Chang
Kauai correspondent

^{SB}
7/16/91

ANAHOLA, Kauai — People who had been living at Anahola Beach Park for as long as five years have vowed to continue to fight in court for their right to live there.

Eight men and six women peacefully surrendered to more than two dozen state and county law enforcement officers shortly before 8 a.m. yesterday.

They were taken by vans to the Kauai Community Correctional Center in Wailua to be charged with trespassing.

Kauai Mayor JoAnn Yukimura said she was pleased with the evictions, adding that "the people have long awaited the return of the beach to the community."

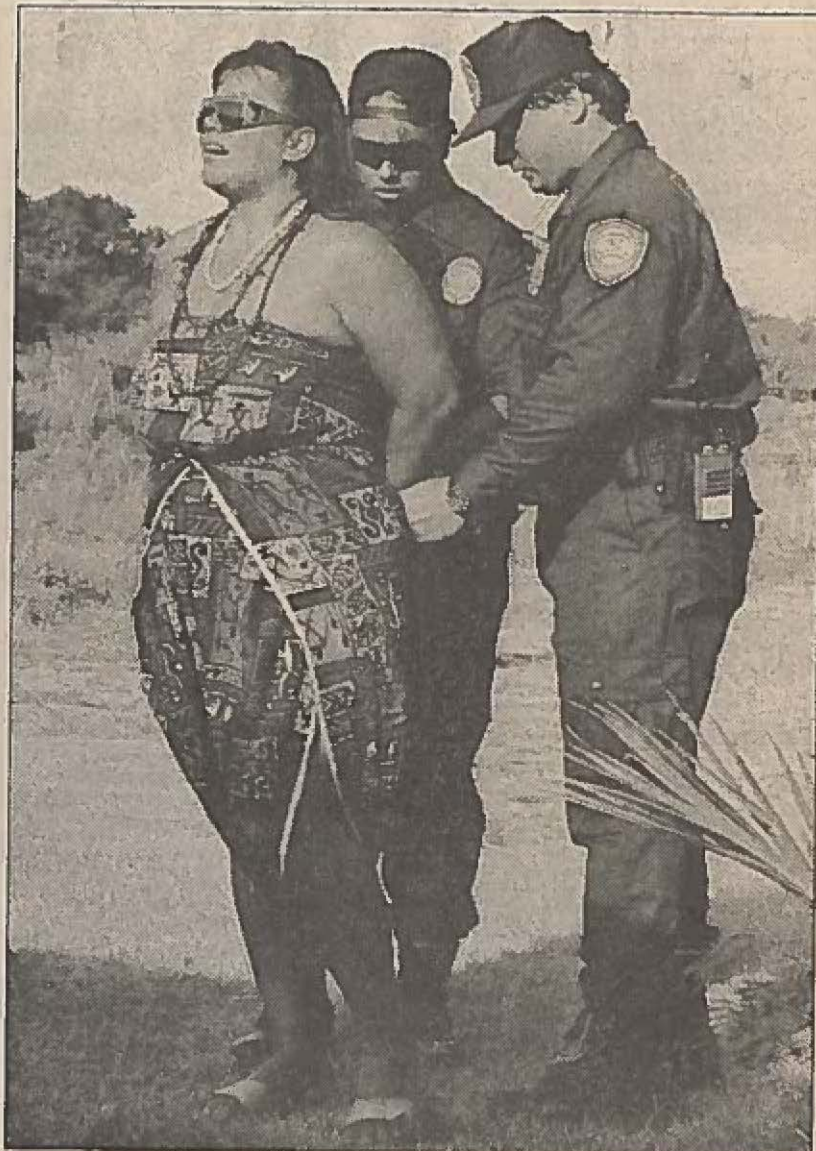
Before police arrived, some of the beach dwellers cried and held hands as they sang Hawaiian songs. Later, a conch shell was blown, apparently to warn families of the arrival of authorities, who used heavy equipment to knock down three shacks.

The state Department of Hawaiian Home Lands issued eviction notices on June 27, saying the beach dwellers had until last Thursday to leave.

The department, which owns the 1.5-acre beach park and adjoining nine acres, wants to license Kauai County to manage the park. Some of the beach dwellers had hoped to obtain a license themselves to manage the land.

They said they were frustrated by the slowness of the Hawaiian Home Lands Department in putting them on leased residential lands. About 14 other families had moved elsewhere earlier.

One couple — Michael and Sondra Grace — tried to get a court order to block the eviction but a judge ruled against them last



Lester Chang, Star-Bulletin

Two officers with the state attorney general's office yesterday arrest Margie Taufatofua for refusing to leave her home at Anahola Beach Park.

week.

Michael Grace claimed the land belongs to him and filed a quitclaim on the 11 acres.

But in Honolulu, U.S. District Judge David Ezra ruled the state could evict the squatters. He said the Graces have not pursued all other options to get use of the land, including filing for a permit with the Hawaiian Home Lands Department.

Yukimura's administrative assistant, Gwen Hamabata, said the

evictions open up the only shoreline park lands in the Anahola area, while state Deputy Attorney General Kumu Vasconcellos said that many people in Anahola had complained about not being able to use the beach.

Some of those evicted said they should be compensated because their homes were knocked down. Vasconcellos said they could file lawsuits to recover damages.

The Associated Press contributed to this report.