

November 1, 2019


WAIMEA NUI  
Homestead Beneficiary Association  
PO Box 126  
Kamuela, HI 96743

Secretary David Bernhardt  
Department of Interior  
1849 C Street, N.W.  
Washington DC 20240

Mr. Secretary,

Waimea Nui has formalized our self-governing organization and will be providing to you or governing documents, our governing procedures and our jurisdiction of Hawaiian Homes Commission Act lands within the trust. Our Democratically elected Governing Council is made up of nine (9) Kanaka Maoli, six (6) of which are HHCA Beneficiaries, and three (3) are Successor Beneficiaries.

Under 43 CFR, 48.6, we are filing this letter with attached documents to you and the United States Department of Interior to be kept on file.

  
Michael Hodson  
President  
Waimea Nui

(SAMPLE - Use of This Form Is Not Required)

## Homestead and Beneficiary Associations (HBA) List Registration Document Provided for the Convenience of HBA

<b>**Organization Name</b> (optional – please translate any Hawaiian names to English as best as possible)			‘ĀaĒēĪŌōŪū
<h1 style="margin: 0;">Waimea Nui</h1>			
<b>** Your organization is a</b> (please check the appropriate box): →		<input checked="" type="checkbox"/> Homestead Association	<input type="checkbox"/> HHCA Beneficiary Association
<b>**Mailing Address</b> (P.O. Box, Street, City, State, Zip Code)			
<h2 style="margin: 0;">PO Box 126 Kamuela, HI 96743</h2>			
<b>**Electronic Mail Address to be listed</b>	<b>Telephone Number to be listed</b>	<b>World Wide Web address to be listed</b>	<b>Year Association founded</b>
waimeahomestead@gmail.com	808 640-3453	waimeahomestead.org	1952
<b>**Please summarize the services your organization provides:</b>			
primary purpose of the representation of, and provision of services to the homestead association community in order to restore, preserve, and protect all rights aboriginally held by our people and their descendants; to promote peace, prosperity, happiness, and the general welfare of our members and our posterity; to conserve and perpetuate all worthy traditions and cultural elements of our people long established by custom; to improve our social order, protect our rights as individuals, promote our economic welfare, promote domestic tranquility, promote business enterprises, both cooperative and individual, promote educational opportunities for all Waimea Nui Members, and consolidate our land holdings by lease, purchase, exchange, transfer, gift, or otherwise			
<b>** For Homestead Associations:</b> Please provide a description of the territory or geographic area your organization represents		<b>** For HHCA Beneficiary Associations:</b> Please provide a description of the beneficiaries your organization represents	
<small>Lalamilo (two hundred thirty acres, more or less), Pu' ūkapu (thirteen thousand acres, more or less), Pauahi (five hundred and fifty acres, more or less), Waimanu (two hundred acres, more or less), Keoniki (two hundred thirty acres, more or less), Kamoku-Kapulena - Waikoloa-Wai' ale' ale (four thousand seven hundred acres, more or less), Honokaia (three thousand two hundred acres more or less), Ni' eni' e (seven thousand one hundred acres, more or less), and shall include Humu' ūla - 'Ainahu (forty nine thousand one hundred acres, more or less), Pi' ihonua (seven thousand seventy eight acres, more or less).</small>			
<b>**Please attach to this form a statement of your organization's governing procedures and check the box for completion:</b> → (e.g., a copy of your organization's charter or other governing documents)			<input checked="" type="checkbox"/> Documents attached
<b>**Please check the appropriate box below and sign and date the accompanying statement certifying that your organization is a Homestead Association or HHCA Beneficiary Association, and giving the U.S. Department of the Interior Office of Native Hawaiian Relations permission to list the information above and post it for public access on the Office's website.</b>			
<input checked="" type="checkbox"/> <b>Homestead Association:</b> I/we the undersigned certify that I/we are the governing body for the organization listed above and that our organization is: controlled by HHCA beneficiaries; represents and serves the interests of its homestead community; and has as a stated primary purpose the representation of, and provision of services to, its homestead community.		<input type="checkbox"/> <b>HHCA Beneficiary Association:</b> I/we the undersigned certify that I/we are the governing body for the organization listed above and that our organization is: controlled by beneficiaries who submitted an application to the State of Hawai'i Department of Hawaiian Home Lands for a homestead and are awaiting the assignment of a homestead; represents and serves the interests of those beneficiaries; and has as a stated primary purpose the representation of, and provision of services to, those beneficiaries.	
Signature 	Printed Name and Title Michael Hodson, President	Date <u>Nov 1, 2019</u>	
Signature 	Printed Name and Title Gerry Kauahi, V President	Date <u>Nov 1, 2019</u>	
Signature 	Printed Name and Title Oliver Shimaoka, Council	Date <u>Nov 1, 2019</u>	
Signature 	Printed Name and Title Gerry Kauahi	Date <u>Nov 1, 2019</u>	
<small>(if more signature lines are needed, please continue on the back of this page)</small>			

\*\* Denotes required field. All others are optional.

To register, complete and send this form and additional required information to the U.S. Department of the Interior, Office of Native Hawaiian Relations, 1849 C Street NW, MS 3561, Washington, DC 20240, or PO Box 50165, Honolulu, HI 96850. If you have any questions, please call (808) 541-2693, ext. 723.

# **CONSTITUTION OF WAIMEA NUI**

## **PREAMBLE**

We, the native Hawaiian Beneficiaries of the Hawaiian Homes Commission Act (HHCA) of 1920, residing in Waimea, Island of Hawaii and Native Hawaiians residing in Waimea, Island of Hawaii, hereby formalize the governance of our members and those Trust lands allocated to our community. Per the requirements of the HHCA, the State of Hawaii Admission Act, the Hawaiian Homelands Recovery Act and guidance provided in 43 CFR, part 48.6 of the *Federal Register / Vol. 81, No. 93 / Friday, May 13, 2016 / Rules and Regulations page 29791*, our Governing Document, upon approval will be filed with the Secretary of Interior. Our community, hereafter identified as Waimea Nui; that the Waimea Nui Council shall be the governing body of Waimea Nui; that in 1952, the native Hawaiian Beneficiaries of Waimea established the organization Waimea Hawaiian Homesteaders' Association and its stated primary purpose has been the representation of, and provision of services to the homestead community as defined in Article I, Territory; as Waimea Nui we continue the primary purpose of the representation of, and provision of services to the homestead association community defined in Article I, Territory and in order to restore, preserve, and protect all rights aboriginally held by our people and their descendants; to promote peace, prosperity, happiness, and the general welfare of our members and our posterity; to conserve and perpetuate all worthy traditions and cultural elements of our people long established by custom; to improve our social order, protect our rights as individuals, promote our economic welfare, promote domestic tranquility, promote business enterprises, both cooperative and individual, promote educational opportunities for all Waimea Nui Members, and consolidate our land holdings by lease, purchase, exchange, transfer, gift, or otherwise, do ordain and establish this Constitution in accordance with our inherent sovereignty.

The adoption of this Constitution by our members shall continue in perpetuity, the unique identity of all people that comprise Waimea Nui. This Constitution shall serve to protect our children, grandchildren, and our grandchildren's children and their successive posterity, forever, from any forces that may attempt to threaten or diminish the rights and identities of our people.

## **ARTICLE I – TERRITORY**

Section 1. The territorial jurisdiction of Waimea Nui under this Constitution shall extend to:

- a. All trust lands as described by the Waimea Nui Regional Plan as approved and adopted by the Chairman and the Commissioners of the Hawaiian Homes Commission to include; Lalamilo (two hundred thirty acres, more or less), Pu'ukapu (thirteen thousand acres, more or less), Pauahi (five hundred and fifty acres, more or less), Waimanu (two hundred acres, more or less), Keoniki (two hundred thirty acres, more or less), Kamoku-Kapulena – Waikoloa-Wai'ale'ale (four thousand seven hundred acres, more or less), Honokaia (three thousand two hundred acres more or less), Ni'eni'e (seven thousand one hundred acres, more or less), and shall include Humu'ula – 'Ainahou (forty nine thousand one hundred acres, more or less), Pi'ihonua (seven thousand seventy eight acres, more or less), and shall cover all future additions that are within or without said boundary lines that may be acquired by Waimea Nui or its members, regardless if the eligible lands are under the control of Waimea Nui at the time of the adoption of this Constitution or come under the control and/or possession of Waimea Nui in the future. Waimea Nui shall exercise its authority and jurisdiction outside the territory described above to the fullest extent not specifically prohibited by federal law.
  
- b. All land, excepting land identified in Article I, Section 1 (a) of this Constitution, acquired in any legal transaction as set forth in this Constitution and between the parties entering into such transaction with the Waimea Nui government and/or its duly appointed officers, whether by purchase, gift, distribution, lease, or other encumbrance of future Waimea Nui controlled trust lands, interest in all other lands or other future trust lands, assigned to, placed with, and solely managed by the Waimea Nui Government Leadership, shall exercise its authority and jurisdiction, in trust to Waimea Nui, for the benefit of the members of Waimea Nui.

## **ARTICLE II – MEMBERSHIP**

Section 1. Subject to the certification of membership by the Aha Kupuna, the membership of Waimea Nui shall consist as follows:

- a. Any HHCA Native Hawaiian, defined as a Native Hawaiian individual who meets the definition of "Native Hawaiian" in HHCA sec. 201(a)(7), living within the territorial boundaries of Waimea Nui identified in Article I, or living within

the geographical boundaries of South Kohala and Hamakua Districts identified in the County of Hawaii Charter, State of Hawaii.

- b. A Native Hawaiian individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii, living within the geographical boundaries of South Kohala and Hamakua Districts identified in the County of Hawaii Charter, State of Hawaii, and is approved by the Aha Kupuna as being a member of the Waimea Nui community.
- c. Any Native Hawaiian identified in Article II, Section 1, (a and b) that previously lived in the Waimea Nui Region that has moved out from the region can be a member, but will not have voting privileges until such time he/she has moved back and is living within the geographical boundaries of South Kohala and Hamakua Districts identified in the County of Hawaii Charter, State of Hawaii, and is approved by the Aha Kupuna as being a member of the Waimea Nui Community.
- d. Any HHCA Native Hawaiian individual who is holding a lease of land from the HHCA within Waimea Nui region, but not residing in the region can be a member, but will not have voting privileges until such time he/she has moved back and is living within the geographical boundaries of South Kohala and Hamakua Districts identified in the County of Hawaii Charter, State of Hawaii, and is approved by the Aha Kupuna as being a member of the Waimea Nui Community.
- e. No individual is eligible for membership if at the time they make application for membership in Waimea Nui they are currently enrolled with another regional native Hawaiian government unless an application for relinquishment is made with their currently enrolled regional native Hawaiian government contingent upon enrollment with Waimea Nui.
- f. Any Native Hawaiian denied for membership in Waimea Nui shall be entitled to appeal to the Enrollment Committee of the Waimea Nui Council and submit at such appeal clear and convincing evidence they meet the definition of a HHCA Native Hawaiian Waimea Nui member or Native Hawaiian Waimea Nui member living within the geographical boundaries of South Kohala and Hamakua Districts identified in the County of Hawaii Charter, State of Hawaii. After hearing the appeal, membership shall be granted if the Waimea Nui Council, by a two-thirds vote, approves the application of said person for

enrollment into the membership of Waimea Nui. The decision of the Waimea Nui Council shall constitute a final determination.

- Section 2. The Waimea Nui Council shall have the power to enact and promulgate resolutions and ordinances governing future enrollment of members and reinstatement of membership in Waimea Nui.
- Section 3. The Waimea Nui Council shall establish a supporting roster for persons adopted by Waimea Nui who do not meet the requirement for membership in Waimea Nui. Individuals on the roster shall not have the right to vote, hold office, or otherwise exercise the rights or receive benefits of the members of Waimea Nui.
- Section 4. Nothing contained in this article shall be construed to deprive any Waimea Nui member of any vested right.
- Section 5. A Waimea Nui member may relinquish enrollment as a member of Waimea Nui by submitting a signed and acknowledged statement clearly requesting that their name be removed from the membership records of Waimea Nui.
- Section 6. Enrollment by any person as a member of Waimea Nui shall not deprive that person of any rights, duties, privileges, immunities, and responsibilities that they shall hold as citizens of the United States of America and the State of Hawaii.
- Section 7. A roll of members of Waimea Nui shall be current and shall be kept by the Enrollment Committee. Once every year in the month of January, the Enrollment Committee shall conduct a review of the members of Waimea Nui and the roll of members shall be amended according to the findings of the review conducted. Subject to the right of privacy of the individual members the results of all census findings may be furnished to the Native Hawaiian Health Division of Waimea Nui.

### **ARTICLE III – BILL OF RIGHTS**

- Section 1. In order to protect the people of Waimea Nui, the Waimea Nui Council, duly appointed officers, or any of its agencies shall not:
- a. make or enforce any law prohibiting the free exercise of religion, native Hawaiian culture, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for redress of grievances;
  - b. violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but

upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

- c. subject any person for the same offense to be twice put in jeopardy;
- d. compel any person in any criminal case to be a witness against himself;
- e. take any private property for a public use without just compensation;
- f. deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the offense, to be confronted with the witness against the person, to have compulsory process for obtaining witnesses in the person's favor, and at the person's own expense, have the assistance of counsel for the person's defense;
- g. require excessive bail, impose excessive fines, inflict cruel and unusual punishments;
- h. deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
- i. pass any bill of attainder or ex post facto law;
- j. deny to any person accused of an offense punishable by imprisonment of over thirty (30) days, the right, upon request, to a trial by jury of no fewer than six persons;
- k. deny to any person of Waimea Nui any hunting, fishing, trapping, gathering, or any water rights as may be accorded to all members of Waimea Nui;
- l. deny to any person their rights as a human being;
- m. deny the right of the people to keep and bear arms, shall not be infringed.

## **ARTICLE IV – GOVERNING BODY**

- Section 1. The Waimea Nui Council shall be the head of the Government and made up of elected members that shall be elected by popular vote for staggered terms of four (4) years as specified by this Constitution and the duly enacted election

ordinances. The Council shall consist of nine (9) members, five (5) which shall be HHCA Native Hawaiian, identified in Article II, Section 1 (a), and four (4) which shall be elected by popular vote of all members identified in Article II, Section 1 (a and b).

Section 2. The Waimea Nui Council shall elect from the members of the Council a President, Vice-President, Secretary, and Treasurer and these officers shall be known as the Executive Officers of Waimea Nui.

Section 3. The Executive Officers shall be elected to their offices by a majority vote of the Waimea Nui Council. Said election shall be made at the Waimea Nui Council meeting held after each year an election occurs. The Executive Officers shall be entitled to serve successive terms on the Executive Council subject to the requirements of Article IV, section 4 therein.

Section 4. No member of Waimea Nui shall serve on the Waimea Nui Council for more than four consecutive terms.

Section 5. The Waimea Nui Council government officers shall be required to reside within the geographical boundaries described in Article II, Section 1 (a and b)

Section 6. The headquarters of Waimea Nui shall be located at the "PIKO", or center, of Pu'ukapu community lands. Any person elected to the Waimea Nui Council who resides outside of the geographical boundaries described in Article II, Section 1 (a and b) shall have ninety (90) days from the date of his or her election to establish a residence as required herein. Failure to establish residence by the elected council shall constitute forfeiture of office and the member with the next highest votes will automatically succeed to the council office upon satisfaction of the above residency requirement.

Section 7. The council shall always have five (5) beneficiaries on the council. If a vacancy occurs that decreases the council beneficiaries below five (5), then the appointed replacement shall be a beneficiary.

## **ARTICLE V – AHA KUPUNA**

Section 1. There shall be a seven (7) member council made up of elders and cultural individuals known as the "Aha Kupuna". The Aha Kupuna shall be established with Waimea Nui members that are "Above Reproach" and shall serve four (4) year terms subject to the requirements of Article IV, section 5 therein. Aha Kupuna members can vacate their appointment voluntarily.



- Section 2. The first seven (7) members of the Aha Kupuna shall be selected by the Board of Directors of Waimea Hawaiian Homesteaders' Association of which no less than four (4) shall be an HHCA Native Hawaiian. Any additions to the "Aha Kupuna" hereafter shall be selected and appointed by the Waimea Nui Council. Members of the Aha Kupuna shall elect a Chairman to speak on behalf of the council from amongst its members.
- Section 3. The Aha Kupuna shall certify governing documents to include, but are not limited to: certification of membership enrollment, voter registry, election results and other documents that need certification. The Waimea Nui Council shall assign a secretary of records to the Aha Kupuna.
- Section 4. The Aha Kupuna shall select from the Waimea Nui Membership three (3) Election Committee members, one of which shall be the Director of the committee.
- Section 5. The Aha Kupuna shall meet once a month to review government documents that may need certification and to hear member disputes and determine its disposition. The Aha Kupuna will have hearings as necessary to address member's complaints of the Waimea Nui Council, or subordinate organizations, and its members. All complaints seeking a determination of the Aha Kupuna shall submit in writing their complaint and file it with the Secretary of the Waimea Nui Council.
- Section 6. The Aha Kupuna shall be the final authority regarding dispute resolution within Waimea Nui except for Article II Section 1, d. All members of Waimea Nui agree as a condition of membership that he/she shall bring his/her dispute to the Aha Kupuna for resolution. It is further agreed that the decision of the Aha Kupuna shall be final and binding on all members.

## **ARTICLE VI – POWERS AND DUTIES OF WAIMEA NUI COUNCIL**

- Section 1. The Waimea Nui Council shall exercise the following powers, subject to all express restrictions upon such powers contained in this Constitution or any future Articles of Amendment.
- a. To negotiate and contract with the federal, state, and county governments on behalf of Waimea Nui and to advise and consult with the representatives of the United States of America, State of Hawaii, County of Hawaii, on all activities of the federal, state, and county government that may affect Waimea Nui.
  - b. To establish any department or division of Waimea Nui as necessary.
  - c. To employ counsel for the protection and advancement of the rights of Waimea Nui and its members.

- d. To approve any purchase, sale, distribution, lease, or other encumbrance of future Waimea Nui controlled trust lands, interest in other lands or other future trust lands held by the United States of America and/or the State of Hawaii for and under the control of Waimea Nui, excepting lands identified in Article I, section a, and held in trust through the Hawaiian Homes Commission Act of 1920.
- e. To establish a Budget & Finance Committee to manage the financial affairs of Waimea Nui.
- f. To make leases of future Waimea Nui trust lands under its control to members of Waimea Nui, excepting lands identified in Article I, section a, and held in trust through the Hawaiian Homes Commission Act of 1920 as amended, and to regulate the leases of land in conformity with Article XI of this Constitution.
- g. To create an independent Waimea Nui Community Development organization to manage all economic affairs and enterprises of Waimea Nui, which affairs shall be subject to the approval of the Waimea Nui Council.
- h. To appropriate for public and governmental purposes of Waimea Nui available funds within the exclusive control of Waimea Nui, and any other available public or private funds, grants, or any other funding source.
- i. To levy assessments upon persons or businesses under the jurisdiction of Waimea Nui as specified by ordinance or resolution.
- j. To purchase lands to be placed in the Federal Trust for public purposes and to regulate the inheritance of real and personal property within the territory of Waimea Nui, excepting lands identified in Article I, section a, and held in trust through the Hawaiian Homes Commission Act of 1920.
- k. To safeguard the peace and promote peace, safety, morals, and general welfare of Waimea Nui members by regulating the conduct of trade, and the use and disposition of property under the jurisdiction of Waimea Nui through ordinance and government law enforcement, excepting lands identified in Article I, section a, and held in trust through the Hawaiian Homes Commission Act of 1920.
- l. To regulate the manner of candidate qualification, nominations of candidates for Waimea Nui offices, and of holding election as specified by duly adopted election ordinances.
- m. To promulgate Rules, Regulations and Ordinances regulating the procedure of the Waimea Nui Council itself and of other agencies, branches and officials of Waimea Nui.
- n. To encourage and foster the arts, crafts, heritage, traditions, and culture of Waimea Nui members.
- o. To charter subordinate organizations for economic purposes and to regulate the activities of such organizations.

- p. To protect and preserve the property, wildlife, and natural resources of Waimea Nui members.
- q. To establish a comprehensive health and wellness center for the health needs of our members.
- r. To establish a council of water and protect the water rights of Waimea Nui.
- s. To establish a historic preservation and burial council for Waimea Nui.
- t. To delegate to subordinate boards, branches, or officials, or to cooperative associations which are open to all members of Waimea Nui, any of the foregoing powers, reserving the right of the Waimea Nui Council to review any actions taken by virtue of such delegated powers.
- u. To establish annual, quarterly, monthly, and/or special meetings of the Waimea Nui Council to address governmental affairs and matters of concern for the welfare and benefit of Waimea Nui.
- v. To establish an Enrollment Committee to manage all enrollment requirements of membership in Waimea Nui.
- w. To provide logistic and clerical support to the Aha Kupuna in the fulfillment and performance of their duties as stated in Article V to include, but not limited to, assigning a secretary of records to the Aha Kupuna.

Section 2. Future Powers. The Waimea Nui Council may exercise such powers as may in the future be delegated to the Waimea Nui Council by the members of Waimea Nui by amendments to this Constitution.

Section 3. Reserved Powers. Any rights and powers heretofore vested in Waimea Nui by their inherent aboriginal sovereignty, but not expressly referred to in the Constitution, shall not be abridged by this Article, but may be exercised by the members of Waimea Nui through the adoption of appropriate Constitutional amendments.

## **ARTICLE VII – ELECTIONS**

Section 1. Except for the first election called on the second Saturday in the month of August 2019; all other Waimea Nui elections shall be held in accordance with Article VII provided in this Constitution and pursuant to duly adopted election ordinances of the Waimea Nui Council. Candidates shall be listed by the highest votes received and the top five (5) Beneficiaries of the Hawaiian Homes Commission Act shall be removed from the list and deemed duly elected. From the balance of the top highest votes received, the top four (4) candidates shall be deemed elected. In Subsequent elections, no less than five (5) beneficiaries of the Hawaiian Homes Commission Act shall be on the Council.

- Section 2.** In the order selected by Section 1 of this article the odd numbered elected officials shall serve four (4) years in their first term, while the even numbered elected officials shall serve a two year first term. Elections shall occur every two (2) years. Upon the next election of each position, each of the members of the Council elected will have four (4) year terms. Re-election of any Council member from the first election will not count towards the four (4) consecutive terms limitation in Article IV, Section 4. All other terms shall be for four (4) years thereafter while term limits shall be adhered to in Article IV, Section 5 of this Constitution.
- Section 3.** All recognized members of Waimea Nui eighteen (18) years of age and over shall be eligible to register and vote in any Waimea Nui election. In order to vote in any election members must be registered to vote. The process of member's right to vote and manner of registration to vote shall be included in the election ordinance to be duly adopted by the Waimea Nui Council.
- Section 4.** Any member elected to the Waimea Nui Council shall be not less than thirty (30) years of age; if a convicted felon, shall have been pardoned and all civil rights restored prior to an election; any elected member must be an enrolled member of Waimea Nui. Any person that has been convicted in any court of any jurisdiction of a crime involving the theft of Waimea Nui funds or property shall not be eligible for election to the Waimea Nui Council or any government office irrespective of any pardon or restoration of civil rights for said offense involving Waimea Nui funds or property.
- Section 5.** The Election Committee shall be selected by majority agreement of the Aha Kupuna for each election event that occurs. Once that election event is complete, the Election Committee will relinquish responsibility for that event. Subsequent elections will follow the same process of selection, agreement, and relinquishment. The election ordinance shall include, but not be limited to, provisions for an Election Committee consisting of three (3) members of Waimea Nui, an officer in charge acting as Director, and at least two (2) representatives. It shall be the duty of the Election Committee to supervise all elections, verify petitions by members, and perform such other duties in compliance with the ordinances adopted by the Waimea Nui Council and this Constitution. No Waimea Nui Council member, candidate for office, or member of their immediate family shall serve on the Election Committee in any capacity. Proceedings, results, and records of all election events shall be managed, maintained, and held by the Aha Kupuna.
- Section 6.** In order to appear on an election ballot, candidates for the Council must file a petition signed by twenty-five (25) enrolled Waimea Nui members who are eligible to vote.

## **ARTICLE VIII – VACANCIES AND REMOVAL/RECALL FROM OFFICE**

- Section 1. If a Waimea Nui Council member or Officer shall die, resign, be removed or recalled from office, fail to attend three (3) consecutive board meetings without just cause, or shall have a final finding of guilt by either a state court or a federal court of a felony or misdemeanor involving dishonesty, moral turpitude, or of accepting a bribe, the Waimea Nui Council shall have the power to declare the position vacant by two-thirds vote of the remaining Waimea Nui Council and shall appoint by majority vote of the remaining Waimea Nui Council the replacement who shall fill the vacancy. Any appointee shall serve the balance of the unexpired term.
- Section 2. Any elected or appointed person is subject to recall from office upon petition of at least thirty (30) percent of the eligible voters registered in the last election. The Waimea Nui Council shall receive and determine within forty-five (45) days of submission the validity of all recall petitions. If the Council fails to issue a written determination on the validity of a recall petition within forty-five (45) days of its submission, the recall petition shall be deemed automatically valid and recall balloting shall be conducted. A person shall be recalled if he or she fails to receive a majority of ballots to retain him or her in office on any recall vote, provided further that not less than thirty (30) percent of the eligible voters in the last election shall vote in any recall vote. The Waimea Nui Council as part of their duties shall prepare a recall ordinance.
- Section 3. The Waimea Nui Council shall consist of no less than five (5) HHCA Native Hawaiian identified in Article II, Section 1 (a).

## **ARTICLE IX - INITIATIVE AND REFERENDUM**

- Section 1. The exercise of enumerated powers vested in the Waimea Nui Council shall be subject to a referendum of the members upon written petition signed by not less than forty-five (45) percent of the total number of voters eligible to vote in the last election, provided further that not less than thirty (30) percent of the eligible voters in the last election shall vote in any referendum balloting. Majority vote shall prevail on any referendum issue. Any referendum petition must be filed with the President of the Waimea Nui Council or the acting President as the case may be.

Section 2. Any matter of concern to Waimea Nui not previously considered or acted upon by the Waimea Nui Council may be presented for ballot vote upon written petition by the members of Waimea Nui. Said petition must be signed by not less than forty-five (45) percent of the total number of voters eligible to vote in the last election, provided further that not less than thirty (30) percent of the eligible voters in the last election shall vote in any such initiative balloting. Majority vote shall prevail on any initiative issue. The petition must be filed with the President of the Waimea Nui Council or the acting President as the case may be.

## **ARTICLE X – MEETINGS**

- Section 1. The Annual Members Meeting of Waimea Nui shall be held on the fourth Thursday of each January as noticed at least ten (10) days in advance by the Waimea Nui Council. Quarterly members' meetings shall be held on the fourth Thursday of the months of April, July, and October each year. Upon the presentation of a petition to the President of the Waimea Nui Council signed by at least ten (10) percent of the members, a special members' meeting shall be held.
- Section 2. The Aha Kupuna meetings shall be held monthly on the first Tuesday. Special meetings of the Aha Kupuna may be held at the discretion of the Chairman of the Aha Kupuna.
- Section 3. The Waimea Nui Council meetings shall be held monthly on the second Tuesday. Special meetings of the Waimea Nui Council may be held at the discretion of the President of the Waimea Nui Council.
- Section 4. Waimea Nui Members and Council Members may participate in meetings or conduct meetings through the use of any means of communications by which all persons participating in the meeting can simultaneously hear each other during the meeting. Participation by such means shall constitute attendance at a meeting.
- Section 5. Five (5) members of the Waimea Nui Council shall constitute a quorum to transact business at any time of which three (3) shall be HHCA Native Hawaiian. Each member of the Waimea Nui Council shall sign their name in their own handwriting signifying their presence at each meeting or shall verbally request the Secretary of the meeting to record their attendance if they are participating by means of telecommunications. The President shall be counted as a member when determining a quorum to transact business at any time.

Section 6. All Waimea Nui Council Meetings and members' meetings shall be conducted pursuant to this Constitution and resolutions approved by the Waimea Nui Council.

Section 7. The meeting of the Waimea Nui Council shall be public to Waimea Nui members. The meetings shall adhere to an agenda set in advance. In appropriate instances, the Waimea Nui Council may by motion and majority vote conduct special meetings outside of public hearing. Members and Special Meetings and General Member meetings shall be held at Waimea Nui's headquarters or at such other specified location to be designated.

## **ARTICLE XI – LAND**

Section 1. No right of condemnation of lands held in trust and controlled by Waimea Nui is granted to any other governmental agency without the express approval of the Waimea Nui Council. The right of the individual members to hold his or her lease land, under the Hawaiian Homes Commission Act of 1920, shall not be abrogated by anything contained in this Constitution, but the lessee of lands may, with the approval of the Hawaiian Homes Commission of the State of Hawaii, voluntarily convey his or her lease interest to Waimea Nui either in exchange for money payment or in exchange for a lease covering the same land, as hereinafter provided.

Section 2. All lands identified in Article I shall remain subject to the Hawaiian Homes Commission Act, 1920 as amended.

Section 3. All lands which may hereafter be acquired in trust by Waimea Nui or by the United States of America or the State of Hawaii in trust for Waimea Nui, shall be held as Waimea Nui lands, and no part of such lands shall be mortgaged, exchanged, or sold, except as authorized by Waimea Nui.

Section 4. Waimea Nui controlled trust lands as are not required for school or other administrative use may be leased to Waimea Nui members, or may be leased or otherwise used by Waimea Nui as hereinafter provided for.

Section 5. Waimea Nui controlled trust lands may be used and/or leased and subleased by the Waimea Nui Council. Preference in granting leases or subleases shall be given, first, to the Waimea Nui Council cooperative associations, and secondly, to individual members of Waimea Nui. No lease of Waimea Nui controlled trust lands to a nonmember shall be made by the Waimea Nui Council unless it shall appear that no cooperative associations and/or members of Waimea Nui are able and willing to use the land and to pay a reasonable fee for such use.

- Section 6. No member of Waimea Nui may use or occupy Waimea Nui controlled trust lands except under an approved lease entered into by the Waimea Nui Council.
- Section 7. Unleased Waimea Nui controlled trust lands shall be managed by the Waimea Nui Council for the benefit of the members of Waimea Nui. Management of unleased Waimea Nui controlled trust lands will be in conformity with the rules and regulations of Waimea Nui.
- Section 8. Waimea Nui funds may be used to acquire land for Waimea Nui to be held in trust for the benefit of its members.

## **ARTICLE XII – IMMUNITY**

- Section 1. Waimea Nui shall be immune from suit in any civil actions. The Waimea Nui Council, Aha Kupuna, Waimea Nui officers, and employees shall be immune from suit for any civil liabilities arising from the performance of their official duties.
- Section 2. In any action otherwise authorized by the Constitution by or against Waimea Nui or its officers or employees arising from the performance of their official duties, the following rules and procedures shall apply:
- a. Neither Waimea Nui nor its officers or employees when involved in a civil action arising from the performance of their official duties shall be liable for the payment of the costs or expenses of the opposing party.
  - b. Neither Waimea Nui nor its officers or employees when involved in a civil action arising from the performance of their official duties shall be required to post a security for any purpose.
- Section 3. The Aha Kupuna shall be the final authority regarding civil suits within Waimea Nui. All members of Waimea Nui agree as a condition of membership that he/she shall bring his/her civil suit to the Aha Kupuna for resolution. It is further agreed that the decision of the Aha Kupuna shall be final and binding on all members.
- Section 4. The following limitations on the bringing of civil actions will apply:
- a. Any action against Waimea Nui or its officers or employees arising from the performance of their official duties must be commenced within one (1) year of the date the cause of action occurred.
  - b. Any action against Waimea Nui, or its officer's derivative, of a lease of Waimea Nui lands must be commenced within six (6) years of the date the cause of action occurred.
  - c. Any action against Waimea Nui or its officers alleging intentional torts shall be commenced within one (1) year of the date the cause of action occurred.



- d. Any other action against Waimea Nui or officers must be commenced within two (2) years of the date the cause of action occurred, provided, however, that any cause of action based on fraud or mistake shall not be deemed to have occurred until the aggrieved party has discovered the facts constituting the fraud or mistake.

### **ARTICLE XIII – SAVINGS –SEVERABILITY**

In the event that any Article or any part of this Constitution be held invalid, the remainder of the Constitution shall be in full force and effect. It is the intention that each portion of this Constitution be severable from any invalid portion of the Constitution.

### **ARTICLE XIV – CONSTITUTION AMENDMENT OR REVISIONS**

Section 1. Amendments or revisions of this Constitution may be initiated only in the following manner:

- a. By ordinance of the Waimea Nui Council passed by affirmative vote of two-thirds (2/3) of the entire board. The Constitution will be amended if a majority vote of the qualified voters of Waimea Nui, voting at an election called for the purpose by the Waimea Nui Council, approve said amendment, provided that at least thirty (30) percent of those entitled to vote in the last election shall vote in such election.
- b. By petition presented to the Waimea Nui Council, signed by at least thirty (30) percent of the total ballots cast of voters eligible to vote in the last election, setting forth the proposed amendments or revisions. Upon filing of such petition with the Waimea Nui Council, the President shall receive and determine the validity of the petition as directed by ordinances adopted by Waimea Nui. Clerical staff shall be provided to the President by the Waimea Nui Council to assist in keeping and maintaining the records of all proceedings. The Constitution will be amended if a majority vote of the qualified voters of Waimea Nui, voting at an election, called for the purpose, by the Waimea Nui Council, approve said amendment, provided that at least thirty (30) percent of those entitled to vote in the last election shall vote in such election.

Section 2. The Director of the Election Committee of Waimea Nui shall initiate an election by Waimea Nui members within ninety (90) days of confirmation of validity of the Waimea Nui Council decision or petition and follow the ordinance established for elections. Said amendment shall become effective if voted on and approved as provided in Article XIV Section 1 herein.

Section 3. The Constitution shall be reviewed every two (2) years for the first ten (10) years and then every five (5) years thereafter by the Waimea Nui Council. The board shall circulate not less than forty-five (45) days before any election, a brief digest of the proposed amendments to members within the region. All amendments shall be furnished to the Secretary of the Department of Interior of the United States of America, as additions and or deletions of the Constitution on file under 43 CFR, part 48.6.

## **ARTICLE XV – INDEMNIFICATION**

The language, in whole or in part, contained within this Constitution of Waimea Nui, or future amendments thereof, shall not be construed and/or interpreted to indemnify or hold harmless any future remedy and/or reconciliation to restore, in whole or part, the inherent sovereignty and independence of the Native Hawaiian people, whether at home or abroad, as the case may be, in accordance with United States Public Law 103-150.

## **ARTICLE XVI – ADOPTION OF CONSTITUTION**

This Constitution of Waimea Nui, when adopted by qualified voters of native Hawaiian Beneficiaries of the Hawaiian Homes Commission Act of 1920 residing in Waimea, Island of Hawaii and Native Hawaiians residing in Waimea, Island of Hawaii, shall be submitted to the Secretary of the Department of Interior of the United States of America, signed by the elected body and a statement as outlined in 43 CFR, part 48.6.

## Waimea Nui Constitution Ratification Tally Sheet

Number of Ballots Printed: 300

Total Used: 207

Total Unused: 93

YES	NO
<b>TOTAL=</b> <u>205</u>	<b>TOTAL=</b> <u>1</u>

### CERTIFICATE OF RESULTS OF ELECTION

Pursuant to the authorization of the Secretary of the Department of Interior of the United States of America, under 43 CFR, part 48.6, enacted July 12, 2016, the foregoing Constitution of Waimea Nui was presented to native Hawaiian Beneficiaries of the Hawaiian Homes Commission Act of 1920 residing in Waimea, Island of Hawaii and Native Hawaiians residing in Waimea, Island of Hawaii who registered to vote in the ratification vote of Waimea Nui on May 11, 2019 duly adopted by a vote of 205 for, and 1 against, and 1 cast ballots found spoiled or mutilated in an election in which at least thirty (30) percent of the 231 members entitled to vote, cast their ballots.

Date: 5/11/19

  
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Director of the Election Committee

Lielaha A. Lilly  
\_\_\_\_\_

Election Committee member

Laila Cindy Kawa  
\_\_\_\_\_

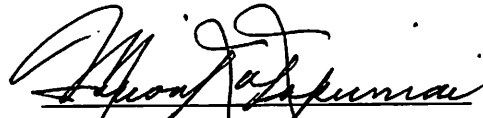
Election Committee Member

Woodrow A. Young  
\_\_\_\_\_

Aha Kupuna Member

Anthony Allen  
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Aha Kupuna Member

  
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Aha Kupuna Chairman

Benjamin K. Bell  
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Aha Kupuna Member

Alison Bell  
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Aha Kupuna Member

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Aha Kupuna Member

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Aha Kupuna Member