September 14, 2016

By email and certified mail

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Re: Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, 40 C.F.R. Part 7, and 7 C.F.R. Part 15

Dear Acting Director Dorka, Assistant Secretary Leonard, and Deputy Chief Neal:

The Moms On a Mission Hui (The MOM Hui) and Pōʻai Wai Ola/West Kauaʻi Watershed Alliance (Pōʻai Wai Ola), collectively, "community groups," by and through their counsel Earthjustice, call upon the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) and the U.S. Department of Agriculture (USDA) Office of the Assistant Secretary for Civil Rights (OASCR) to investigate and ensure the policies, programs, and activities of the Hawaiʻi Department of Agriculture (HDOA) and the Hawaiʻi Agribusiness Development Corporation (ADC) comply with Title VI of the Civil Rights Act of 1964 and EPA and USDA's implementing regulations, 50 C.F.R. Part 7 and 7 C.F.R. Part 15, respectively.

HDOA and ADC are failing to comply with Title VI and implementing regulations because their actions and failures to act have an unjustified disproportionate and adverse effect on Native Hawaiians in West Kauaʻi and on Molokaʻi. Community groups request that OCR and OASCR promptly and thoroughly investigate the allegations set forth in this complaint and

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take all actions necessary to ensure that the agencies comply fully with the law and provide equal protection for the people of Hawai'i.

I. PARTIES

A. Complainants

The MOM Hui is a grassroots group of forward-thinking mothers who advocate for protecting the health, safety, and well-being of all children, present and future. The MOM Hui was created on Moloka'i and has since expanded to Kaua'i, O'ahu, and Maui. The MOM Hui's primary concerns are food and health, with a specific focus on seed production and experimentation, and the correlative increases in pesticide use. The MOM Hui's members and their children are directly affected by heavy pesticide application to seed crops on Moloka'i. The MOM Hui also engages in educational and fundraising activities to promote healthy living and bring awareness to genetically engineered seed companies' impact on communities. The MOM Hui campaigned for the passage of a moratorium on genetically engineered crop production in Maui County and Kaua'i County and is involved in a lawsuit defending the moratorium. *See* Declaration of Ex. 6 Personal Privacy (PP) ¶ 2-8 (attached as Ex. 1); Ex. 6 Personal Privacy (PP) Declaration of Ex. 6 Personal Privacy (PP) ¶ 3-8 (attached as Ex. 2) Ex. 6 Personal Privacy (PP)).

Pō'ai Wai Ola is a community-based organization established by Waimea watershed residents, farmers, and users, including Native Hawaiian cultural practitioners, to address water issues affecting West Kaua'i. Pō'ai Wai Ola members live, work, recreate, and practice their culture near large-scale pesticide spraying operations, and rely on, use, or seek to use the Waimea watershed and surrounding areas for a host of public trust uses including, but not limited to, fishing, agriculture, recreation, research and education, aesthetic enjoyment, spiritual practices, and the exercise of Native Hawaiian cultural rights and values. In a separate proceeding involving ADC and the Kekaha Agricultural Association's diversion of the Waimea River and its headwaters, Pō'ai Wai Ola has petitioned the Hawai'i Commission on Water Resource Management to restore these waters and cease water waste.

B. Recipients

HDOA is an agency of the State of Hawai'i charged with implementing and enforcing federal and state pesticides laws, among other responsibilities. Haw. Rev. Stat. (H.R.S.) § 26-16. HDOA's duties include licensing pesticides, *id.* pt. II, regulating pesticide use, *id.* pt. III, and investigating and resolving pesticide use complaints, Haw. Admin. R. (H.A.R.) § 4-1-37.

ADC is a state agency placed within HDOA, *id.* § 163D-3, charged with "mak[ing] optimal use of agricultural assets for the economic, environmental, and social benefit of the people of Hawaii," *id.* § 163D-1. ADC manages state agricultural lands, including approximately 12,500 acres on the Mānā Plain in West Kaua'i. *Id.* § 163D-4. ADC also operates

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a 40-mile drainage ditch system that runs through these lands and populated areas before draining into the ocean.

II. JURISDICTION

Title VI of the Civil Rights Act of 1964 provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. As explained below, both HDOA and ADC are a "program or activity" covered by Title VI and receive federal assistance from EPA and USDA. This complaint is timely and satisfies all other jurisdictional requirements.

A. HDOA and ADC are Programs or Activities Covered by Title VI.

A "program or activity" includes "all of the operations of . . . a department, agency, special purpose district, or other instrumentality of a State or of a local government . . . any part of which is extended federal financial assistance." 42 U.S.C. § 2000d-4a. If any part of an entity receives federal funds, the whole entity is covered by Title VI. *Ass'n of Mex.-Am. Educ. v. California*, 195 F.3d 465, 474-75 (9th Cir. 1999), *rev'd in part on other grounds*, 231 F.3d 572 (9th Cir. 2000) (en banc).

HDOA is a department, agency, and instrumentality of the State of Hawai'i, H.R.S. § 26-16, and ADC is an agency and instrumentality of the state placed within HDOA, *id.* § 163D-3. Therefore, both HDOA and ADC's operations must comply with Title VI.

B. HDOA and ADC Receive EPA and USDA Assistance.

EPA and USDA regulations define "recipient" to include any instrumentality of a state or state agency to which "Federal financial assistance is extended, directly or through another recipient." 40 C.F.R. § 7.25; 7 C.F.R. § 15.2. As of August 15, 2016, EPA and USDA had awarded HDOA $783,290 in federal funds for the fiscal year 2016, and more than $20.2 million in federal funds since 2008.[1]

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[1] *See* USASpending.gov, https://www.usaspending.gov/transparency/Pages/RecipientProfile.aspx?DUNSNumber=809935257 (last visited Aug. 15, 2016) (showing EPA and USDA awards to HDOA (DUNS No. 809935257) for the years 2008 to the present); USASpending.gov, https://www.usaspending.gov/transparency/Pages/RecipientProfile.aspx?DUNSNumber=809935267&FiscalYear=2009 (last visited Aug. 15, 2016) (showing USDA awards to HDOA (DUNS No. 809935267) for the year 2009).

Tbl. 1. EPA and USDA Funding to HDOA

Year	EPA Funding	USDA Funding	Combined Total
2016	$513,450	$269,840	$783,290
2015	$184,213	$1,071,755	$1,255,968
2014	$375,325	$1,851,810	$2,227,135
2013	$397,925	$799,752	$1,197,677
2012	$258,325	$1,132,440	$1,390,765
2011	$308,125	$3,066,353	$3,374,478
2010	$414,125	$3,308,664	$3,722,789
2009	$349,725	$4,564,558	$4,914,283
2008	$308,125	$1,108,412	$1,416,537
Total	**$2,863,213**	**$16,375,569**	**$20,282,922**

C. The Complaint Is Timely.

EPA and USDA regulations generally require Title VI complaints to be filed within 180 calendar days of the alleged discriminatory act, but OCR and OASCR may waive these time limits. 40 C.F.R. § 7.120(b)(2); 7 C.F.R. § 15.6. In addition, OCR and OASCR have ongoing authority to review recipients' programs and activities for Title VI compliance. 40 C.F.R. § 7.115(a); 7 C.F.R. § 15.5(a). This complaint is timely because the discriminatory acts described herein are ongoing or within OCR and OASCR's investigatory authorities.

D. The Complaint Meets Other Jurisdictional Criteria.

This complaint satisfies all other jurisdictional requirements because it is in writing, describes the alleged discriminatory acts and is filed by an authorized representative with OCR and OASCR. 40 C.F.R. § 7.120; 7 C.F.R. § 15.6.

III. FACTUAL BACKGROUND

For centuries, the Native Hawaiian food system was rooted in the ahupua'a land management system, which organized natural resource use and access around land divisions that generally followed watershed boundaries from mauka (inland) to makai (sea). This system allowed optimal use of resources and ecosystem services over short distances, and many generations to survive and thrive.

Captain Cook's arrival to Hawai'i in 1778 ushered in a new era of agriculture focused on pesticide-intensive plantation crops for export, such as sugar and pineapple. This use depleted the soil, polluted water sources, and contributed to the decline of Hawai'i's food self-sufficiency.

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As the plantation era declined in Hawai'i, seed crops grown for breeding rather than food increased. In 1966, seed firms planted 5 acres of test corn on Moloka'i, and by 1969, they had expanded winter seed corn operations to about 500 acres on Moloka'i, Maui, and Kaua'i. In the 1990s, the industry transitioned to genetically engineered crops, which now comprise the vast majority of seed crops in Hawai'i. Today, there are approximately 23,728 acres of genetically engineered seed crops on the islands of Kaua'i, Moloka'i, Maui, and O'ahu.

Hawai'i's seed corn cultivation is particularly chemical-intensive because corn requires more agrochemicals than other crops, seed corn requires still more chemical treatment because it is more susceptible to environmental stress and pests, and Hawai'i soils are not well-suited for corn to begin with. Moreover, many varieties of seed corn are now being developed specifically to resist the effects of particular pesticides, which are applied to these varieties during testing and production. Thus, it is no surprise that "there are likely an average of 30 or more spray operations most days of the year on Kaua'i."[2]

Although chemical and pesticide use poses health risks to communities throughout Hawai'i, seed operations are particularly pesticide-intensive, and are largely concentrated in West Kaua'i and Moloka'i, which have proportionately larger Native Hawaiian populations. For example, West Side communities from Kekaha to Hanapepe have among the greatest proportions of Native Hawaiians on the island, and the lion's share of Kaua'i's seed production. Moloka'i—where 2,342 acres of seed crops grow right in the center of the island—has more than three times the statewide percentage of Native Hawaiians and more than four times the statewide percentage of pure Native Hawaiians.

Pesticide companies have thus far successfully fought a county ordinance designed to require more transparency and protective measures for pesticide use. Regardless of this ordinance, HDOA and ADC have affirmative duties to ensure their programs and activities involving pesticides do not have discriminatory effects on people of color, including Native Hawaiians. HDOA and ADC are failing to fulfill these duties.

IV. LEGAL FRAMEWORK

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal funds from discriminating against individuals on the basis of race, color, or national origin. 42 U.S.C. § 2000d. Title VI directs federal agencies granting federal assistance to issue regulations to achieve the statutory objectives. *Id.* § 2000d-1.

Acceptance of EPA or USDA assistance creates an obligation to comply with the agencies' respective Title VI regulations. 40 C.F.R. § 7.80(a)(1); 7 C.F.R. § 15.4(a)(1). EPA and

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[2] Hawai'i Center for Food Safety, Pesticides in Paradise, Hawai'i's Health & Environment at Risk (May 2015) at 30 (CFS Report).

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USDA's Title VI regulations contain a general prohibition against discrimination, 40 C.F.R. § 7.30, 7 C.F.R. § 15.3(a), as well as more specific prohibitions, 40 C.F.R. § 7.35, 7 C.F.R. § 15.3(b). These regulations prohibit programs or activities that have either a discriminatory purpose or a discriminatory effect.

> Under EPA regulations:
>
> (b) *A recipient shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination* because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.
>
> (c) *A recipient shall not choose a site or location of a facility that has the purpose or effect of* excluding individuals from, denying them the benefits of, or *subjecting them to discrimination* under any program or activity to which this part applies on the grounds of race, color, or national origin or sex; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of this subpart.

40 C.F.R. § 7.35 (emphases added).

> USDA's regulations provide:
>
> (2) *A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided* under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program or the class of individuals to be afforded an opportunity to participate in any such program, *may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination* because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.
>
> (3) *In determining the site or location of facilities, an applicant or recipient may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination* under any of its programs or activities to which the regulations in this part apply, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act and the regulations in this part.

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7 C.F.R. § 15.3 (emphases added).

V. DISCRIMINATORY ACTS

HDOA and ADC's discriminatory actions and failures to act include both HDOA and ADC's lack of a Title VI program; HDOA's failure to limit pesticide registration; HDOA's failure to require or implement protective buffer zones between pesticide use and communities; HDOA's failure to adequately enforce federal and state pesticide laws; ADC's leasing or licensing of lands without protecting communities from pesticides; and ADC's refusal to obtain a permit under the Clean Water Act for its drainage ditch system.

A. HDOA and ADC Lack Title VI Programs.

HDOA and ADC are violating Title VI because both agencies lack a Title VI compliance program. Their acceptance of federal assistance created an obligation to implement a Title VI compliance program:

> In accepting this assistance agreement, the recipient acknowledges it has an *affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral.* The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.[3]

On March 23, 2016, Earthjustice submitted public records requests to HDOA and ADC seeking materials documenting any Title VI compliance program they may have.[4] On March 30, 2016, ADC responded to the public records request as follows:

> [ADC] *does not have any Title VI compliance programs*, and therefore has no document responsive to this request.[5]

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[3] EPA General Terms and Conditions Effective March 29, 2016, ¶ 26.c.iii (emphasis added).

[4] Request to Access a Government Record from Paul Achitoff, Earthjustice, to State of Haw. Dep't of Agric., Mar. 23, 2016 (attached as Ex. 3); Request to Access a Government Record from Paul Achitoff, Earthjustice, to State of Haw. Agribus. Dev. Corp., Mar. 23, 2016 (attached as Ex. 4).

[5] Letter from James Nakatani, State of Haw. Agribus. Dev. Corp. to Paul Achitoff, Earthjustice, Mar. 30, 2016 (emphasis added) (attached as Ex. 5).

On April 27, 2016, HDOA responded to the request by acknowledging it "does not have a document specifically described as HDOA Title VI program."[6] Instead, it provided its "Discrimination/Harassment-Free Workplace Policy"[7] and its "Limited English Proficiency Plan,"[8] and mentioned a "standard contract provision requiring all contractors to comply with local, State, and federal laws or with the standard grant provision similarly requiring compliance with all federal laws."[9] These standard documents do not establish a Title VI program.

Because HDOA and ADC lack a Title VI program to ensure that the agencies' actions "do not involve discriminatory treatment and do not have discriminatory effects"[10] on communities of color, including Native Hawaiians, the agencies are violating Title VI and the terms of the agencies' funding.

B. HDOA Has Failed to Limit Registration of Harmful Pesticides.

HDOA is violating Title VI by failing to place protective limits on pesticide registration, and thereby discriminating against Native Hawaiians. Under the Hawai'i Pesticides Law, H.R.S. Chapter 149A, "[a]ny pesticide which is received, used, sold, offered for sale, or distributed within this State shall be licensed by the board [of agriculture]." H.R.S. § 149A-13. HDOA may refuse to license a pesticide if the proposed use would "result in unreasonable adverse effects on the environment." *Id.* § 149A-14(a). To protect health and the environment, HDOA may cancel a pesticide license after determining that continued use of the pesticide would "result in unreasonable adverse effects on the environment." *Id.* § 149A-14(b). While cancellation proceedings are pending, HDOA may suspend a pesticide license "to prevent an imminent hazard." *Id.* § 149A-14(c). Pesticide licenses are otherwise valid for three years. H.A.R. § 4-66-35(b).

HDOA has failed to place *any* limits on pesticide registration, despite discriminatory adverse effects on health and the environment. For example, on January 20, 2016, 10 fieldworkers for Syngenta Seeds, Inc. were exposed to pesticides and taken to Kaua'i Veterans

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[6] Email from Bryan Yee, State of Haw. Dep't of Agric, to Paul Achitoff, Earthjustice, Apr. 27, 2016 (attached as Ex. 6).

[7] State of Haw. Dep't of Human Res. Dev., Policies and Procedures, Discrimination/Harassment-Free Workplace Policy, Policy No. 601.001, eff. Oct. 15, 2013 (attached as Ex. 7).

[8] State of Haw. Dep't of Agric., Department of Agriculture Limited English Proficiency Plan, July 1, 2013 (attached as Ex. 8).

[9] Email from Bryan Yee, State of Haw. Dep't of Agric, to Paul Achitoff, Earthjustice, Apr. 27, 2016.

[10] EPA General Terms and Conditions Effective March 29, 2016, ¶ 26.c.iii.

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Memorial Hospital.[11] The fieldworkers walked onto a field that had been sprayed with the neurotoxic organophosphate pesticide chlorpyrifos.[12] In 2006 and 2008, children and schoolteachers of Waimea Canyon Middle School, near more of Syngenta's agricultural fields, were taken to the hospital suffering symptoms of pesticide exposure.[13] During the 2006 incident, 60 children and at least 2 teachers experienced headache, dizziness, nausea, or vomiting.[14] At least 10 children were treated at an emergency room, several were put on a nebulizer to relieve respiratory distress, and one was given an anti-vomiting medication intravenously. Air samples collected at the school—an investigation not undertaken until years after these events—revealed the presence of chlorpyrifos, metolachlor and bifenthrin.[15] Despite these incidents, HDOA has not limited registration of dangerous pesticides such as chlorpyrifos in any way, and therefore is violating Title VI.

C. HDOA Has Failed to Require Protective Buffer Zones Between Pesticide Use and Communities.

HDOA is violating Title VI by failing to require, implement, and ensure protective buffer zones for pesticides to prevent discriminatory effects on Native Hawaiians. With respect to all pesticides—both general use pesticides (GUPs) and restricted use pesticides (RUPs)—H.R.S. Chapter 149A authorizes HDOA to promulgate rules "[t]o establish limitations and conditions for the application of pesticides by aircraft, power rigs, mist blowers, and other equipment," and "[t]o establish, as necessary, specific standards and guidelines which specify those conditions which constitute unreasonable adverse effects on the environment," among other things. H.R.S. § 149A-33.

With respect to RUPs, HDOA may promulgate rules "establish[ing] fees, procedures, conditions, and standards to certify persons for the use of restricted use pesticides under section 4 of FIFRA." *Id.* § 149A-33. RUPs are classified as such if it they are "determined to be a health hazard," "can be reasonably anticipated to result in contamination of groundwater or significant reductions in nontarget organisms, or fatality to members of endangered species," have certain levels of toxicity, or are categorized as RUPs under federal law. H.A.R. § 4-66-32(b).

Although pesticide applications on Kaua'i and Moloka'i occur dangerously close to schools, residential areas, and surface waters, HDOA does not require protective buffer zones in

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[11] Pesticide Use by Large Agribusiness on Kaua'i, Findings and Recommendations of The Joint Fact Finding Study Group (May 25, 2016) at 87 (JFF Report).

[12] *Id.*

[13] *Id.* at 80-81.

[14] *See* Declaration of Ex. 5 Deliberative Process (DP) ¶ 6, *Syngenta Seeds v. Cnty. of Kaua'i*, No. 1:14-cv-00014 (BMK) (D. Haw. Feb. 17, 2014) (attached as Ex. 9).

[15] JFF Report at 81.

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its regulation of pesticides. In fact, HDOA has actively opposed proposed state legislation to require protective buffer zones. Some pesticide users in Hawai'i claim to use buffer zones for RUPs, but these zones are voluntary, unenforceable, and in any event inadequate to protect public health and safety. For example, the voluntary "Kaua'i Good Neighbor Program" establishes a mere 100-foot buffer zone between areas treated with RUPs and schools, medical facilities, and residential properties.[16] Yet, among the nation's top 25 largest agricultural production counties, buffer zones between RUP application and schools are at least 200 feet, and some are 5,280 feet (1 mile).[17] Fresno County, California, requires a buffer zone of 660 (1/8 mile) for all pesticides when school is in session.[18] In these counties, buffer zones for bees range from 100 feet to 4.5 miles (23,760 feet).[19] By failing to require, implement, and enforce *any* buffer zones whatsoever between pesticide application and Native Hawaiian communities, HDOA is violating Title VI.

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[16] Kaua'i Agricultural Good Neighbor Program: Voluntary Standards and Guidelines for RUP Use Reporting and Buffer Zones (Nov. 12, 2013).

[17] JFF Report at 232-34.

[18] *Id.* at 232.

[19] *Id.* at 232-34.

Fig. 1. Proximity of Schools to RUPs on Kaua'i (Source: CFS Report)

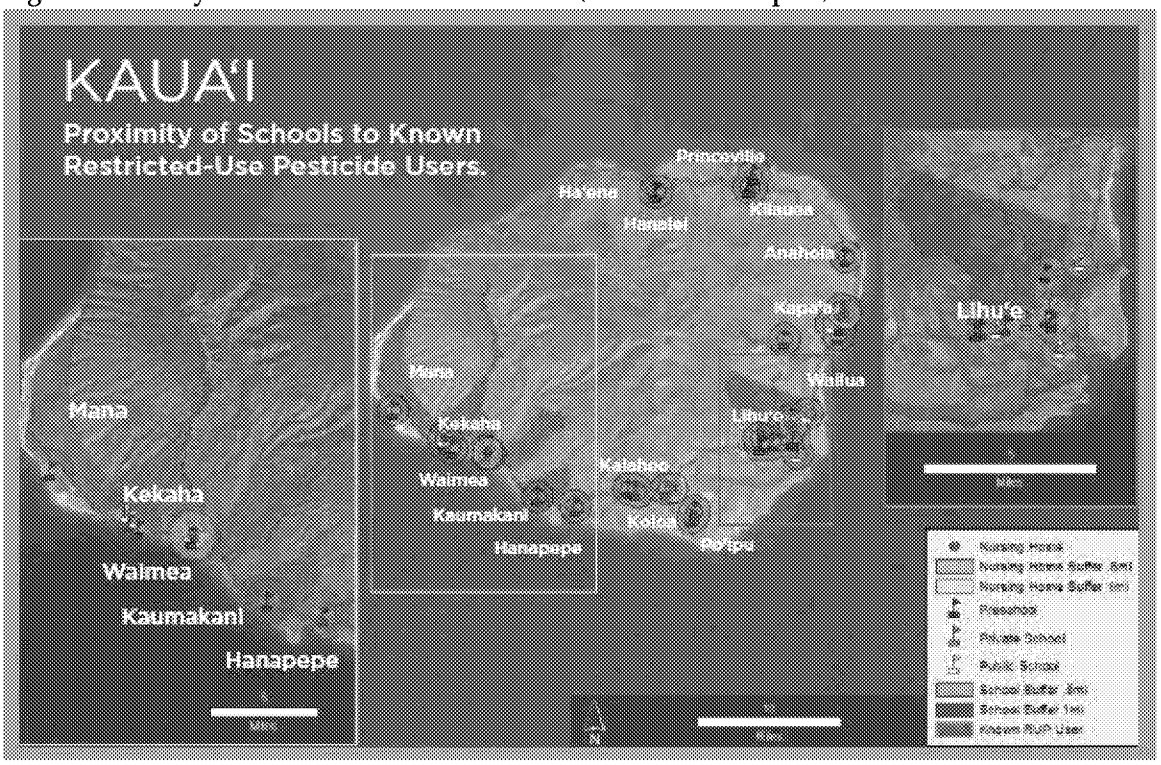
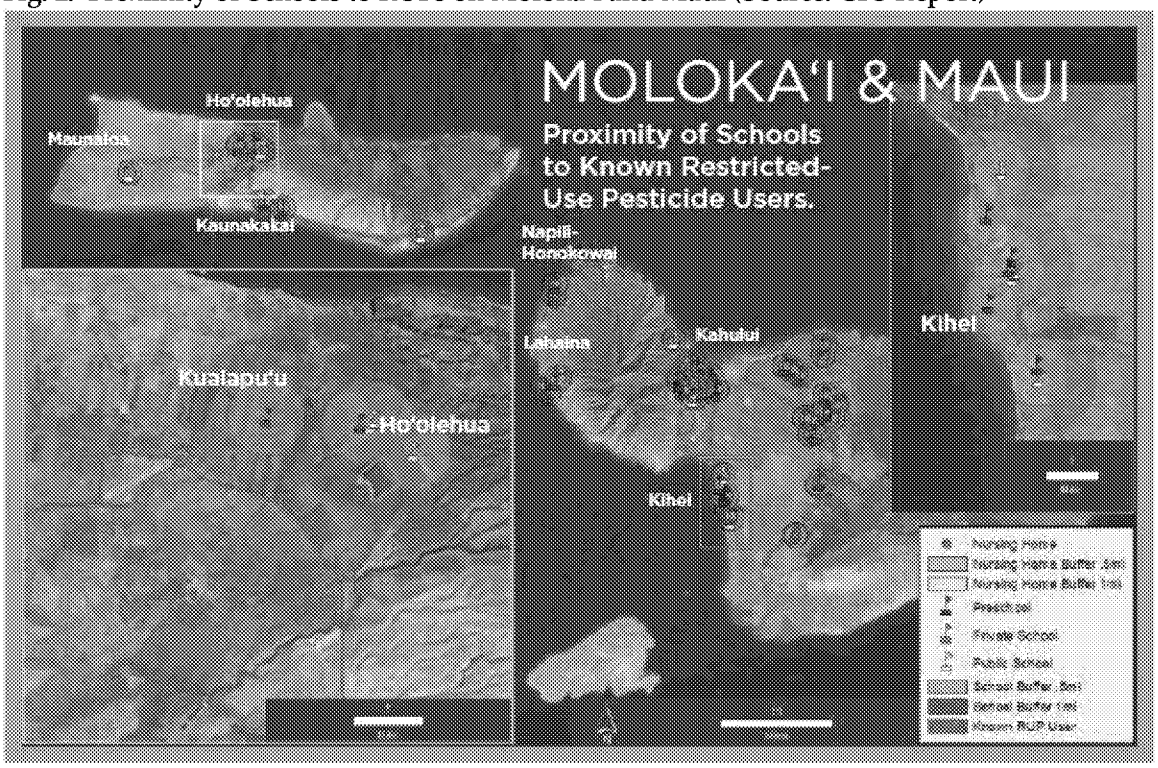


Fig. 2. Proximity of Schools to RUPs on Moloka'i and Maui (Source: CFS Report)



D. HDOA Is Failing To Enforce Federal and State Pesticides Laws.

HDOA is violating Title VI by failing to enforce the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which disproportionately harms Native Hawaiians. FIFRA regulates pesticide distribution and use to prevent unreasonable adverse effects on the environment. 7 U.S.C. § 136a. Under 7 U.S.C. § 136w-1, the EPA Administrator may delegate primary enforcement responsibility for pesticide use violations. HDOA has primary authority to enforce FIFRA and the Hawai'i Pesticides Law, H.R.S. Chapter 149A. Accordingly, HDOA must implement adequate procedures to enforce these laws. 7 U.S.C. §§ 136w-1, -2.

HDOA is failing to enforce pesticide use violations under FIFRA and the Hawai'i Pesticides Law. HDOA has had a backlog of investigation files that has been increasing every year, with very few complaints resulting in enforcement actions, referred to the EPA, or addressed in any meaningful way.

EPA has repeatedly warned HDOA that its enforcement efforts are inadequate. EPA's 2012 performance review of HDOA recommended that HDOA hire an additional case development officer to assist with case file review.[20] EPA's 2013 review expressed significant concern regarding HDOA's backlog and decrease in enforcement activity, and recommended HDOA find ways to address them.[21] EPA's 2014 review noted that HDOA "continue[d] to have significant concerns with the backlog of inspection files to be processed, and the resulting lack of enforcement actions issued, as well as the lack of inspections forwarded to EPA for review/enforcement."[22] EPA's 2015 review revealed that there were approximately 700 inspection files in need of review, some dating back to 2008.[23] Some cases eventually referred to EPA that would have qualified for enforcement action were closed because the statute of limitations had expired.[24] EPA further noted the declining quality of the few inspections and reports HDOA had managed to produce and recommended improvement in that area, as well.[25] EPA also observed a significant increase in the number of pesticide-related complaints HDOA had received from individuals and groups throughout Hawai'i, focusing primarily on the

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[20] U.S. Environmental Protection Agency, Hawaii Department of Agriculture FY2012 End-of-Year Review, Pesticide Performance Partnership Grant at 7 (attached as Ex. 10).

[21] U.S. Environmental Protection Agency, Hawaii Department of Agriculture FY2013 Draft End-of-Year Review, Pesticide Performance Partnership Grant at 3 (attached as Ex. 11).

[22] U.S. Environmental Protection Agency, Hawaii Department of Agriculture FY2014 End-of-Year Review, Pesticide Performance Partnership Grant at 9 (attached as Ex. 12).

[23] U.S. Environmental Protection Agency, Hawaii Department of Agriculture FY2015 Final End-of-Year Review, Pesticide Performance Partnership Grant at 7 (attached as Ex. 13).

[24] *Id.*

[25] *Id.* at 4.

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misuse of pesticides by large agrochemical companies.[26] By failing to adequately enforce federal and state pesticides laws, HDOA is violating Title VI.

E. ADC Is Leasing or Licensing State Lands Without Protecting Communities From Pesticides.

ADC is violating Title VI by leasing or licensing state lands in a manner that fails to protect nearby communities, including Native Hawaiians, from heavy pesticide use. The Hawai'i legislature created ADC in 1994 in the wake of the decline of the sugar and pineapple industries, for the purpose of "creat[ing] a vehicle and process to make optimal use of agricultural assets for the economic, environmental, and social benefit of the people of Hawaii." H.R.S. § 163D-1. To further that goal, ADC has the power to "sell, assign, exchange, transfer, convey, lease, or otherwise dispose of" real property, *id.* § 163D-4(7), and adopt rules to carry out its powers and duties, *id.* § 163D-4(4).

ADC has failed to adopt or implement *any* limits on its leasing and licensing program to protect health and the environment from heavy pesticide use. Instead, ADC leases or licenses the majority (64%)[27] of the thousands of acres it manages in West Kaua'i to pesticide-intensive seed companies, without any meaningful restrictions. By failing to adopt or implement measures to limit leasing or licensing to pesticide-intensive operations or prevent resulting harm to nearby communities, ADC is violating Title VI.

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[26] *Id.* at 3.

[27] JFF Report at 165.

Fig. 3. ADC Kekaha Map License Agreements (Source: JFF Report)

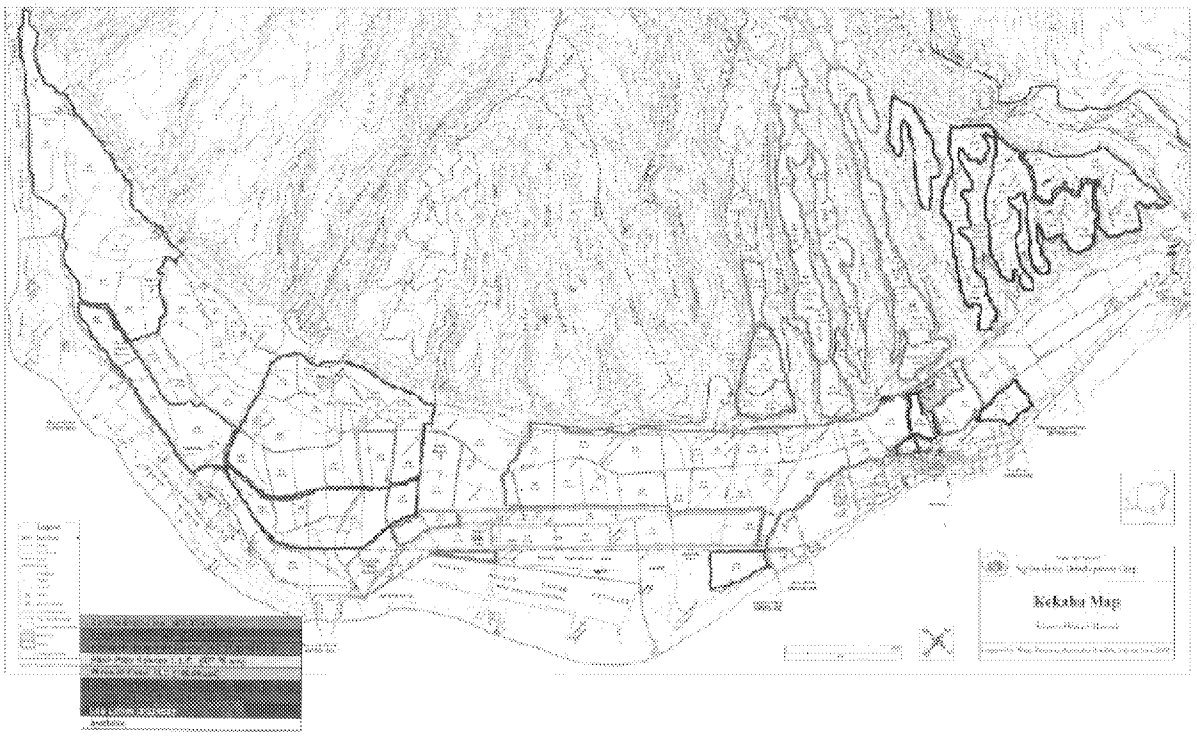
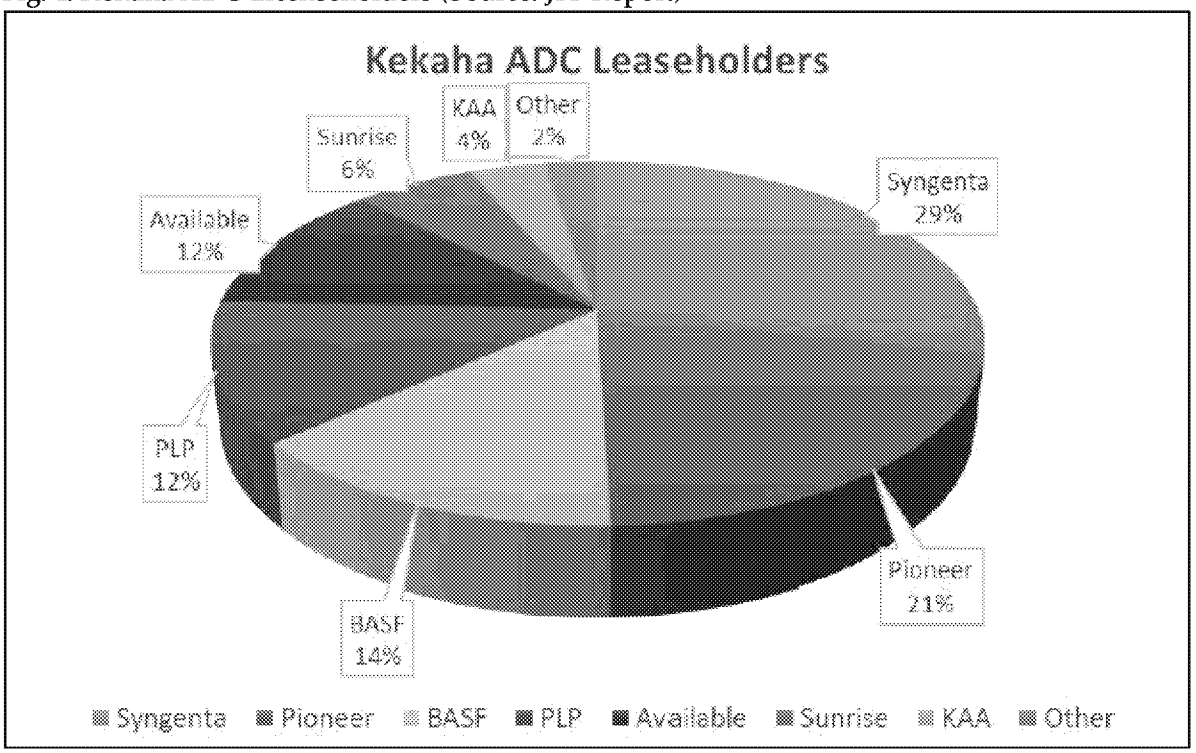


Fig. 4. Kekaha ADC Licenseholders (Source: JFF Report)



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F. ADC is Refusing to Comply With the Clean Water Act.

ADC is violating Title VI by discharging pollutants without the requisite National Pollutant Discharge Elimination System (NPDES) permit, to the detriment of Native Hawaiians in West Kaua'i. The federal Clean Water Act prohibits the discharge of pollutants into jurisdictional waters in the absence of an NPDES permit. 33 U.S.C. §§ 1311(a), 1362, 1342.

ADC operates a drainage ditch system on the Mānā Plain, located on the West Side of Kaua'i. The drainage ditch system includes 40 miles of canals, 2 pumping stations, and 7 drainage ditch outfalls. In addition to genetically engineered seed crop fields, the Pacific Missile Range Facility, Sunrise Capital Shrimp Farm, Kekaha Landfill, former Kekaha Sugar Mill, Waimea Wastewater Treatment Plant, and Kaua'i Raceway Park occupy Mānā Plain lands drained by the ditch system.

For decades, that State of Hawai'i Department of Health (HDOH) regulated ADC's discharges from the drainage ditch system under an NPDES permit, until August 3, 2015, when ADC withdrew its NPDES permit renewal application.[28] Now, millions of gallons of drainage waters containing toxic pollutants flow through the system and populated areas, and into the nearshore ocean waters, without any regulation or monitoring. HDOH's and HDOA's testing has shown the presence of harmful pesticides including atrazine, chlorpyrifos, glyphosate, and metolachlor in the drainage ditches, in addition to many other pollutants.

These unregulated and unmonitored discharges are of particular concern since Native Hawaiians gather limu and fish in these areas. The open ditches are not fenced off or marked with warning signs to prevent children from playing in them. The outfalls funnel polluted waters into areas popular for fishing surfing, swimming, and boating. ADC's unpermitted drainage ditch system in the heart of Kekaha and the surrounding recreational areas has a discriminatory effect on Native Hawaiians and therefore violates Title VI.

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[28] Email from James Nakatani, State of Haw. Agribus. Dev. Corp. to Alec Wong, State of Haw. Dep't of Health, Aug. 3, 2015 (attached as Ex. 14).

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Fig. 5. Mānā Plain Drainage Ditch System and Pump Stations
(Source: Final Environmental Assessment Mānā Plain Wetland Restoration Project)

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VI. DISCRIMINATORY ADVERSE IMPACTS

Pesticide use generally, and specifically use of RUPs, adversely affects Native Hawaiian communities on Kaua'i and Moloka'i.

A. Pesticide Use on Kaua'i and Moloka'i

Kaua'i and Moloka'i are subjected to heavy pesticide use. On Kaua'i, active ingredient applications of RUPs and GUPs combined exceed 80,000 pounds annually,[29] and on most days, there are at least 30 pesticide spray operations.[30]

Adverse health effects from pesticide exposure are well-documented. Proximity to agricultural fields and maternal exposure to pesticides during pregnancy have been associated with central nervous system anomalies, oral cleft, and limb defects.[31] Pesticides have been strongly linked with asthma diagnosis in children under the age of five years of age,[32] and also linked with leukemia and an increased risk of brain tumors.[33] Men exposed to pesticides from fruits and vegetables have been found to have lower sperm counts than those who consume an organic diet.[34] Exposure to organophosphates such as chlorpyrifos during pregnancy is associated with decreases in IQ, increases in pervasive developmental disorders, attention deficit disorders, preterm birth, decreases in birth weight, and intrauterine retardation.[35]

On Kaua'i and Moloka'i, pesticide drift and windblown dust present problems for community members located near agricultural fields. A 2003 USGS survey observed that pesticides become attached to wind-blown dust.[36] Extremely fine dust can penetrate the lungs and cause bronchitis.[37] In West Kaua'i, physicians encounter "almost daily reports of respiratory symptoms in patients that have no history of these respiratory illnesses," nose bleeds in children, recurring dermatitis, "metallic taste" in patients' mouths, and high levels of infertility and gout.[38] *See also* Ex. 6 Personal Privacy (PP) Residents of Moloka'i have experienced the same symptoms. *See* Ex. 6 Personal Privacy (PP)

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[29] CFS Report at 32.
[30] *Id.* at 30.
[31] JFF Report at 243.
[32] *Id.* at 243.
[33] *Id.* at 244.
[34] *Id.* at 246.
[35] *Id.* at 242-43.
[36] CFS Report at 39.
[37] *Id.*
[38] *Id.*

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B. RUP Use on Kaua'i and Moloka'i

Large agrochemical and other companies apply RUPs heavily on Kaua'i and Moloka'i, to the great detriment of nearby communities and their members. On Kaua'i from 2010 to 2012, RUP applications involved 22 RUPs containing 18 active ingredients and amounted to about 20,801 pounds of active ingredients annually.[39] The Joint Fact Finding Study Group estimated that from December 2013 to July 2015, Kaua'i's five major agricultural pesticide users—BASF Plant Science, Dow AgroScience, DuPont Pioneer, Syngenta, and Kaua'i Coffee Co., LLC[40]—applied 23 RUPs containing 15,072 pounds of 15 active ingredients.[41] RUP use data for these five companies is available through the "Kaua'i Agricultural Good Neighbor Program."[42]

Moloka'i is also subjected to high pesticide use. From 2013 to 2015, Monsanto applied around 10,050 pounds of 24 RUPs containing 17 active ingredients on Moloka'i and Maui.[43] Although Monsanto reports only aggregate numbers for its RUP use on both islands, pesticide-intensive seed crop acreage on Moloka'i (2,342 acres) is more than triple that on Maui (754 acres), which is much larger and has a much lower proportion of Native Hawaiians.[44] Dow Chemical, the only other agrochemical company with operations on Moloka'i, does not report its pesticide use for the island.[45] Although pesticide users apply many types of RUPs on Kaua'i and Moloka'i, some of the most heavily used and toxic RUPs include chlorpyrifos, atrazine, metolachlor, bifenthrin, and paraquat dichloride, discussed below.

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[39] *Id.* at 32.

[40] According to Kaua'i Coffee Co., LLC's voluntary reporting through the Good Neighbor Program, the only RUP the company applies is paraquat dichloride.

[41] JFF Report at 23.

[42] Kaua'i Agricultural Good Neighbor Program, Aggregate usage of Restricted Use Pesticides as reported through the Kaua'i Good Neighbor Program, https://data.hawaii.gov/Health/Kaua-i-Agricultural-Good-Neighbor-Program-RUP-Use-/9pud-c8q5 (last visited Aug. 16, 2016) (Kaua'i GNP).

This data does not account for all RUP use or *any* GUP use on Kaua'i.

[43] Monsanto Hawaii, 2013 Annual Report Maui County Memorandum of Understanding at 17-18 (2013 Monsanto Report); Monsanto Hawaii, 2014 Annual Report Maui County Memorandum of Understanding at 26 (2014 Monsanto Report); Monsanto Hawai'i, 2015 Annual Report Maui County Memorandum of Understanding at 25 (2015 Monsanto Report).

Monsanto's reported pesticide use was converted to pounds by multiplying the gallons used by the pounds of active ingredient per gallon, according to EPA's pesticide labels.

[44] State of Haw. Dep't of Agric., Statewide Agricultural Land Use Baseline 2015 at 47 (2015 Ag. Baseline).

[45] CFS Report at 19.

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1. Chlorpyrifos

Chlorpyrifos is an organophosphate pesticide commonly used on corn fields that can over stimulate the nervous system, causing nausea, dizziness, confusion, respiratory paralysis, and death.[46] It is also a developmental neurotoxicant, exposure to which can cause structural abnormalities and persistent neurobehavioral deficits.[47] Studies have shown that juveniles are more susceptible to organophosphate toxicity than adults.[48] For children ages three to five, chlorpyrifos exposure may be associated with birth defects, autism, developmental delay, and attention deficit disorders.[49] Early life exposure to organophosphates including chlorpyrifos has been associated with higher levels of respiratory symptoms and exercise-induced coughing, consistent with possible asthma.[50] Children exposed to high levels of chlorpyrifos are more likely to suffer from attention deficit hyperactivity disorder and pervasive developmental disorder problems at three years of age.[51] A California study showed a 60% increase in autism in the children of mothers who lived slightly less than one mile from areas sprayed with organophosphates and chlorpyrifos.[52] EPA is currently considering revoking all chlorpyrifos tolerances because of its health risks.[53]

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[46] U.S. Environmental Protection Agency, Related Topics: Ingredients Used in Pesticide Products, Chlorpyrifos, https://www.epa.gov/ingredients-used-pesticide-products/chlorpyrifos (last visited Aug. 16, 2016).

[47] Philippe Grandjean & Philip J. Landrigan, Neurobehavioural effects of developmental toxicity, The Lancet, Feb. 14, 2014, http://www.thelancet.com/journals/laneur/article/PIIS1474-4422%2813%2970278-3/fulltext (last visited Aug. 16, 2016).

[48] Jie Zhang et al., Neonatal chlorpyrifos exposure induces loss of dopaminergic neurons in young adult rats, Toxicology 336, July 26, 2015, http://www.sciencedirect.com/science/article/pii/S0300483X15300196 (last visited Aug. 16, 2016).

[49] JFF Report at 60.

[50] Rachel Raanan et al., Early-life Exposure to Organophosphate Pesticides and Pediatric Respiratory Symptoms in the CHAMACOS Cohort, Environmental Health Perspectives 123:2, Feb. 2015, http://ehp.niehs.nih.gov/1408235/#tab1 (last visited Aug. 19, 2016).

[51] Virginia A. Rauh et al., Impact of Prenatal Chlorpyrifos Exposure on Neurodevelopment in the First 3 Years of Life Among Inner-City Children, Pediatrics 118:6, Dec. 2006.

[52] Janie F. Shelton et al., Neurodevelopmental Disorders and Prenatal Residential Proximity to Agricultural Pesticides: The CHARGE Study, Environmental Health Perspectives 122:10, Oct. 2014, http://ehp.niehs.nih.gov/1307044/ (last visited Aug. 16, 2016)

[53] U.S. Environmental Protection Agency, Related Topics: Ingredients Used in Pesticide Products, Revised Human Health Risk Assessment on Chlorpyrifos, https://www.epa.gov/ingredients-used-pesticide-products/revised-human-health-risk-assessment-chlorpyrifos#risk assessment (last visited Aug. 16, 2016).

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From December 2013 to June 2016, agrochemical companies applied more than 3,700 pounds of chlorpyrifos on Kaua'i,[54] and from 2013 to 2015, Monsanto applied more than 1,900 pounds of the same on Moloka'i and Maui.[55] In West Kaua'i, chlorpyrifos has been detected in the air near Waimea Canyon Middle School and near Kekaha and Waimea and in drainage ditches.[56] In addition, testing studies found chlorpyrifos at 90 ng/m^3 using a drift catcher 1,500 feet from the nearest agrochemical company field.[57] The Joint Fact Finding Study Group found that the rate of chlorpyrifos application on Kaua'i is 2.93 times the rate on the continental United States.[58] Reported chlorpyrifos application rates on Kaua'i are 2.5 lb. of active ingredient per acre per season for Cobalt Advanced and 3 lb. of active ingredient per acre per season for Lorsban Advanced.[59]

2. Atrazine

Atrazine is a "highly potent" endocrine disruptor that is mobile and persists in the environment after its use.[60] It causes adverse reproductive effects even at concentrations as low as 0.1 ppb.[61] Atrazine can cause reproductive difficulties and cardiovascular problems in humans. 40 C.F.R. Pt. 141, Subpt. O, App. A; H.A.R. § 11-20 App. A. According to the U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry (ATSDR), atrazine exposure in animals during pregnancy causes reduced fetus survival.[62] Maternal exposure to surface water atrazine is associated with fetal gastroschisis.[63] Atrazine has been shown to decrease egg production and cause gonad abnormalities in fish.[64] ATSDR warns that "[i]n areas of high atrazine use, individuals should avoid swimming in or drinking from contaminated water sources and may desire to have personal well water tested for the presence of atrazine," and that "[c]hildren should avoid playing in soils near uncontrolled hazardous

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[54] Kaua'i GNP.

[55] 2013 Monsanto Report at 17; 2014 Report at 25; 2015 Monsanto Report at 26.

[56] JFF Report at 193-94.

[57] *Id.* at 40.

[58] *Id.* at 29.

[59] *Id.* at 175, 177.

[60] *Id.* at 192.

[61] *Id.*

[62] Agency for Toxic Substances & Disease Registry, Public Health Statement for Atrazine, CAS#: 1912-24-9, Sept. 2003, *available at*, http://www.atsdr.cdc.gov/phs/phs.asp?id=336&tid=59 (Atrazine Public Health Statement).

[63] Sarah A. Waller et al., Agricultural-related chemical exposures, season of conception, and risk of gastroschisis in Washington State, American Journal of Obstetrics and Gynecology 203:183, Aug. 2010.

[64] Donald E. Tillitt et al. Atrazine reduces reproduction in fathead minnow (Pimephales promelas), Aquatic Toxicology 99:2, Aug. 2010.

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waste sites where atrazine may have been discarded."[65] In 2004, the European Union banned products containing atrazine, concluding that the levels of atrazine would "have an unacceptable effect on groundwater."[66]

From December 2013 to June 2016, agrochemical companies applied more than 2,500 pounds of atrazine on Kaua'i,[67] and from 2013 to 2015, Monsanto applied more than 1,440 pounds of the same on Moloka'i and Maui.[68] For 2014 to 2015, 99.8% of the state's atrazine sales occurred in Kaua'i and Maui counties.[69] In West Kaua'i, atrazine was detected in the drinking water at Waimea Canyon Middle School, and in irrigation water and surface water in amounts that exceed aquatic life benchmarks.[70] A recent EPA assessment of atrazine acknowledged that "atrazine is expected to leach to ground water and move to surface water through runoff and spray drift."[71]

3. Metolachlor

Studies have associated metolachlor with reduced cell growth,[72] and it has been classified by the EPA as a class C carcinogen.[73] From December 2013 to June 2016, agrochemical companies applied more than 7,400 pounds of metolachlor on Kaua'i,[74] and from 2013 to 2015, Monsanto more than 2,100 pounds of the same on Moloka'i and Maui.[75] For 2014 to 2015, 83.1%

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[65] Atrazine Public Health Statement at 2.

[66] 2004/248/EC: Commission Decision of 10 March 2004 concerning the non-inclusion of atrazine in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing this active substance, *available at* http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32004D0248.

[67] Kaua'i GNP.

[68] 2013 Monsanto Report at 17; 2014 Monsanto Report at 25; 2015 Monsanto Report at 26.

[69] State of Hawai'i Department of Agriculture, Summary of Restricted Use Pesticides Sold in 2014 (2014 RUP Sales); State of Hawai'i Department of Agriculture, Summary of Restricted Use Pesticides Sold in 2015 (2015 RUP Sales).

[70] JFF Report at 193.

[71] U.S. Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, Refined Ecological Risk Assessment for Atrazine, Apr. 12, 2016.

[72] S. Echeverrigaray et al., Isolation and characterization of Metolachlor-resistant mutants of Saccharomyces cerevisiae, World Journal of Microbiology and Biotechnology 15:6, Dec. 1999; Dana M. Lowry et al., Mechanism of metolachlor action due to alterations in cell cycle progression, Cell Biology and Toxicology 29:4, Aug. 2013.

[73] U.S. National Library of Medicine, Toxnet Toxicology Data Network, Metolachlor, https://toxnet.nlm.nih.gov/cgi-bin/sis/search/a?dbs+hsdb:@term+@DOCNO+6706 (last visited Aug. 17, 2016).

[74] Kaua'i GNP.

[75] Monsanto 2013 Report at 17; Monsanto 2014 Report at 25; Monsanto 2015 Report at 26.

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of the state's metolachlor sales occurred in Kaua'i and Maui counties.[76] In West Kaua'i, metolachlor was detected in the air near Waimea Canyon Middle School,[77] and has been found in surface water near Kīkīa'ola Boat Harbor at rates that exceed EPA's aquatic life benchmarks.[78]

4. Bifenthrin

EPA has classified bifenthrin as a class C carcinogen.[79] From July 2014 to March 2016, BASF Plant Science applied 0.887 pounds of bifenthrin on Kaua'i.[80] The Joint Fact Finding Study Group found that the rate per acre of bifenthrin application on Kaua'i is 5.36 times the rate in the continental United States.[81] The same study found that, based on EPA analysis, bifenthrin has a high potential for volatilization (vaporization), which increases the chance of pesticide drift in the air.[82] Bifenthrin has been detected in the air near Waimea Canyon Middle School.[83]

5. Paraquat Dichloride

From January 2014 to June 2016, major pesticide users applied more than 2,500 pounds of paraquat dichloride on Kaua'i,[84] and from 2013 to 2015, Monsanto applied more than 310 pounds of the same on Moloka'i and Maui.[85] The European Union has banned paraquat dichloride since 2007.[86] According to EPA, paraquat dichloride is highly toxic to humans, and is

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[76] 2014 RUP Sales; 2015 RUP Sales.

[77] JFF Report at 193-94.

[78] *Id.* at 194.

[79] U.S. National Library of Medicine, Toxnet Toxicology Data Network, Bifenthrin, https://toxnet.nlm.nih.gov/cgi-bin/sis/search/a?dbs+hsdb:@term+@DOCNO+6568 (last visited Aug. 17, 2016).

[80] Kauai GNP.

[81] JFF Report at 29.

[82] *Id.* at 39.

[83] *Id.* at 193.

[84] Kaua'i GNP.

[85] 2014 Monsanto Report at 17; 2014 Monsanto Report at 25; 2015 Monsanto Report at 26.

[86] European Union, The Court of First Instance Annuls the Directive Authorising Paraquat as an Active Plant Protection Substance, July 11, 2007.

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corrosive to the skin and eyes.[87] A 2011 National Institute of Health study demonstrated an association between paraquat dichloride use and Parkinson's disease in farm workers.[88]

VII. DISPROPORTIONALITY

HDOA and ADC's discriminatory actions and inactions with respect to pesticides and the resulting adverse impacts disproportionally harm Native Hawaiians in West Kaua'i and on Moloka'i. The majority of the state's pesticide-intensive production occurs in these particular regions, which are also home to large populations of Native Hawaiians. Kaua'i bears the burden of more than half of the state's seed production (56% or 13,299 of 23,728 acres), and the great majority (78.1%) of this production is found on the West Side in the Kekaha-Waimea (5,455 acres) and Kaumakani-Hanapepe (4,932 acres) regions.[89] The Native Hawaiian populations in the Kekaha-Waimea (37.2%) and Kaumakani-Hanapepe (28.8%) regions are proportionally the second and third largest on the island and significantly exceed the island-wide (23.9%) and statewide (21.3%) percentages.[90] In the Kekaha-Waimea region, the percentage of pure Native Hawaiians (12.4%) exceeds the island-wide percentage (7.4%) and more than doubles the statewide percentage (5.9%).[91] By contrast, the white alone populations in the Kaumakani-Hanapepe (14.8%) and Kekaha-Waimea (19.8%) regions are proportionally the first and third smallest on the island and are significantly less than the island-wide (33.1%) and statewide (24.7%) percentages.[92] The seed fields in West Kaua'i surround the Hawaiian Home Lands of Kekaha and border the Hawaiian Home Lands of Hanapepe as well as the largest tract of Hawaiian Home Lands on the island, Waimea.[93]

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[87] U.S. Environmental Protection Agency, Paraquat Dichloride, https://www.epa.gov/ingredients-used-pesticide-products/paraquat-dichloride (last visited Aug. 16, 2016).

[88] Caroline Tanner et al., Rotenon, Paraquat, and Parkinson's Disease, Environmental Health Perspectives 119:6, June 2011, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3114824/ (last visited Aug. 16, 2016).

[89] 2015 Ag. Baseline at 47, 49.

[90] State of Haw. Dep't of Business, Econ. Dev. & Tourism, Native Hawaiian Population by County, Island and Census Tract in the State of Hawai'i: 2010 (Feb. 2012) at 9, 15 (2010 Native Hawaiian Census).

[91] *Id.*

[92] State of Haw. Dep't of Business, Econ. Dev. & Tourism, Population by Major Race Categories Alone or in Combination by County and Census Tract, State of Hawai'i: 2010 (2010 Hawai'i Race Census).

[93] 2010-2014 American Community Survey 2014, Hawaiian Home Land Areas (2014 DHHL ACS).

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Seed crops occupy 2,342 acres on Moloka'i, right in the center of the island near several populated areas, public schools, and preschools.[94] The seed fields border the island's most populated tract of Hawaiian Home Lands, Ho'olehua-Pālā'au (pop. 1,327), and the Hawaiian Home Lands tract Kalama'ula.[95] The majority of Moloka'i residents are Native Hawaiian.[96] Moloka'i has the second highest percentage of Native Hawaiians among all of the islands in the state.[97] Moloka'i's proportion of Native Hawaiians (61.6%) is nearly triple the statewide percentage (21.3%), and the proportion of pure Native Hawaiians (24.7%) is more than quadruple the statewide percentage (5.9%).[98] West Moloka'i ranks fourth and East Moloka'i ranks seventh out of all census tracts in the state for percentages of Native Hawaiians (67.8% and 58.1%), and West Moloka'i ranks ninth for the percentage of pure Native Hawaiians (26.6%).[99] By contrast, the white alone population on Moloka'i (16.2%) is significantly less than the statewide percentage (24.7%).[100]

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[94] 2015 Ag. Baseline at 47, 67.
[95] 2014 DHHL ACS.
[96] 2010 Native Hawaiian Census at 16.
[97] *Id.* at 6.
[98] *Id.*
[99] *Id.* at 7-8.
[100] 2010 Hawai'i Race Census.

Fig. 6. Hawaiian Populations, Hawaiian Home Lands, Seed Production, and Schools on Kaua'i

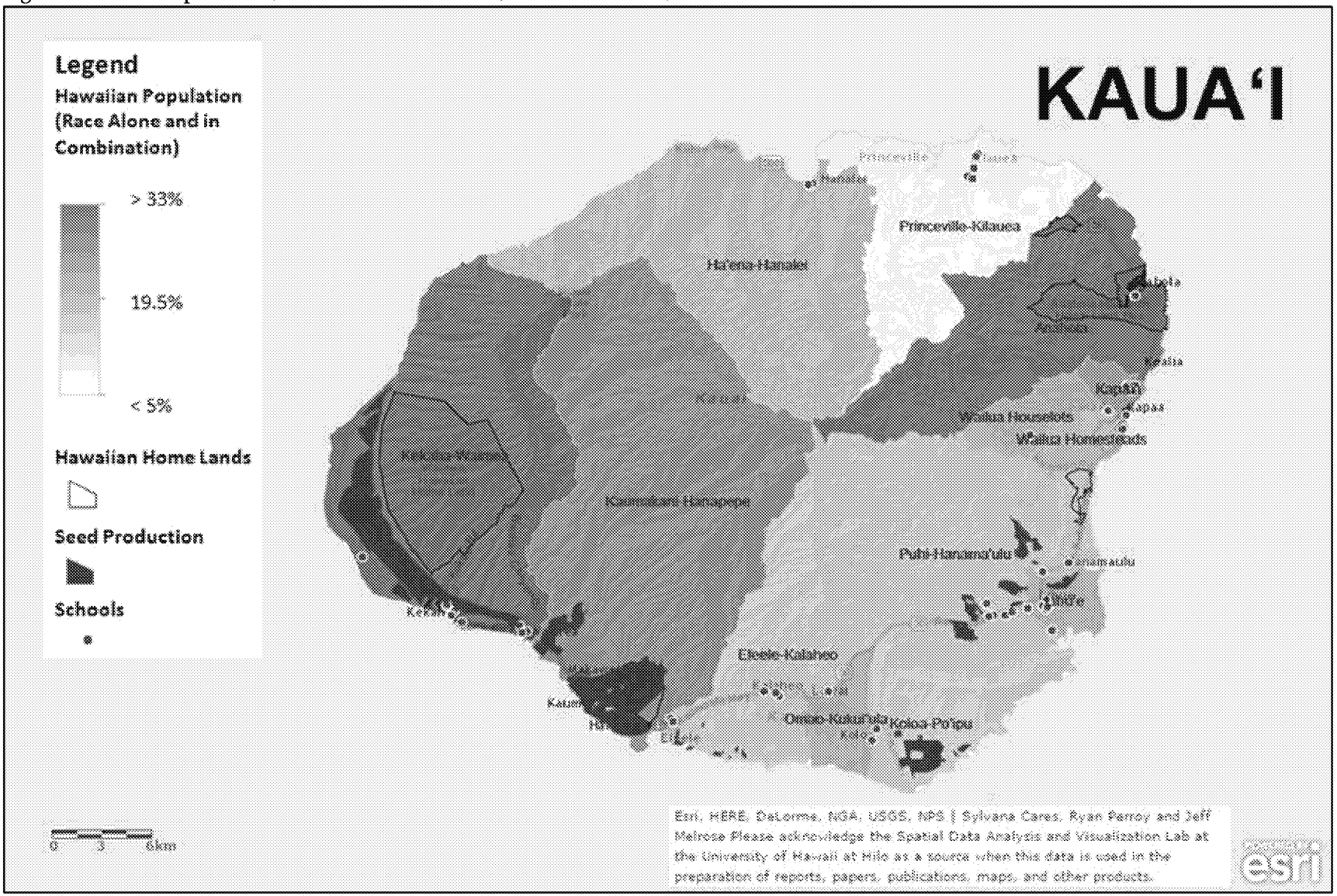
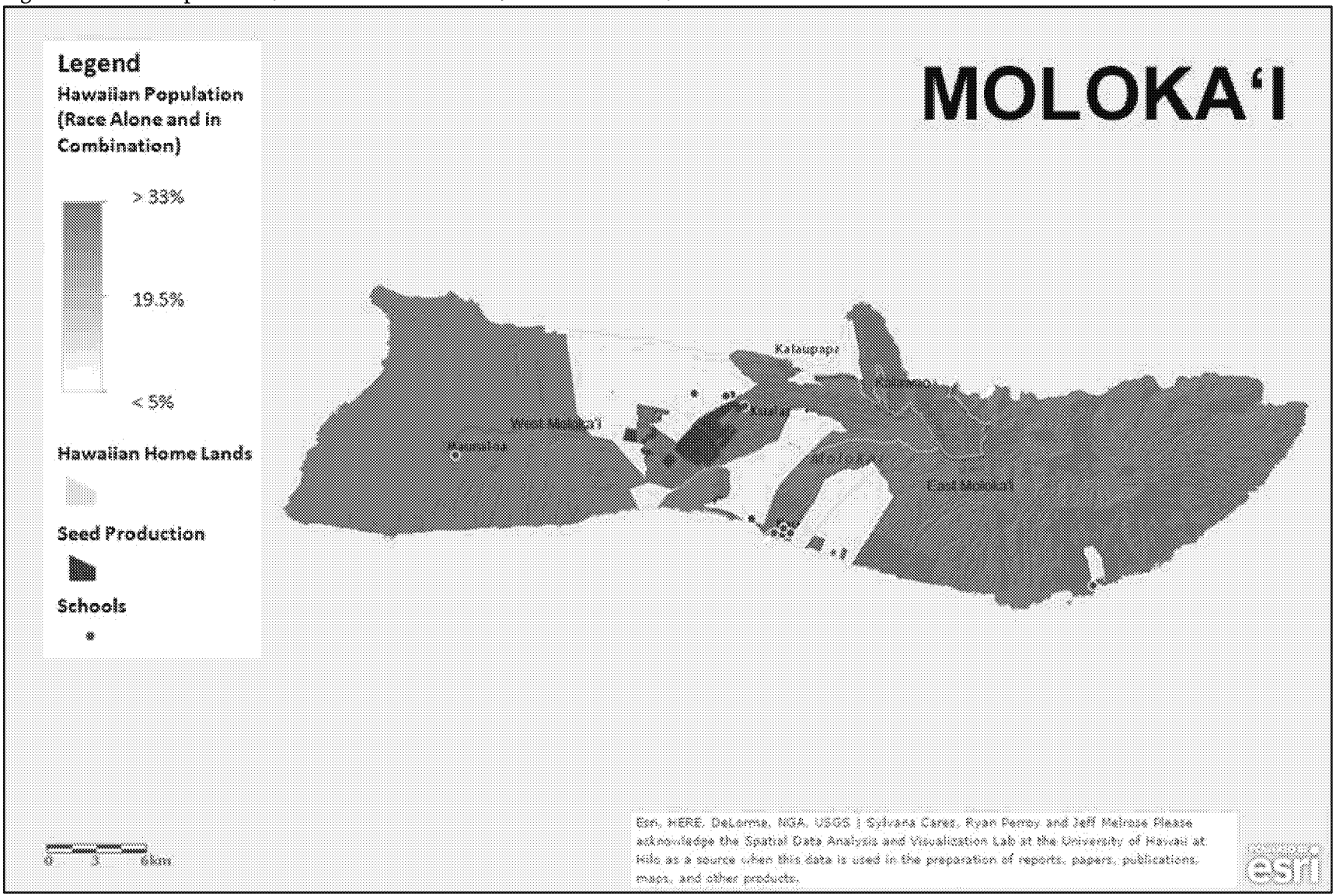


Fig. 7. Hawaiian Populations, Hawaiian Home Lands, Seed Production, and Schools on Moloka'i



Tbl. 2. Native Hawaiian and White Populations for State, Kaua'i, and Moloka'i, Census Data 2010

State, Island, 2010 census tract	Total population	Native Hawaiian alone	Native Hawaiian alone or in combination	% of Native Hawaiian alone	% of Native Hawaiian alone or in combination	White alone	White in combination	% of White alone	% of White in combination
State	**1,360,301**	**80,337**	**289,970**	**5.9**	**21.3**	**336,599**	**564,323**	**24.7**	**41.5**
Kaua'i	**66,921**	**4,951**	**15,978**	**7.4**	**23.9**	**22,155**	**34,152**	**33.1**	**51.03**
Princeville-Kīlauea	6,484	210	629	3.2	9.7	4,366	5,063	67.3	78.1
Hā'ena-Hanalei	1,344	150	288	11.2	21.4	847	1,034	63.02	76.9
Wailua Houselots	5,047	324	1,154	6.4	22.9	2,387	3,348	47.3	66.3
Wailua Homesteads	3,845	252	816	6.6	21.2	1,496	2,220	38.9	57.7
Kapa'a	8,385	585	2,176	7.0	26.0	2,386	4,145	28.5	49.4
Puhi-Hanamā'ulu	8,740	466	1,700	5.3	19.5	1,513	2,842	17.3	32.5
Līhu'e	5,943	331	1,311	5.6	22.1	1,331	2,389	22.4	40.2
Kōloa-Po'ipū	2,544	151	466	5.9	18.3	937	1,321	36.8	51.9
'Ōma'o-Kukui'ula	3,139	205	723	6.5	23.0	1,195	1,813	38.1	57.8
'Ele'ele-Kalāheo	8,403	317	1,611	3.8	19.2	2,927	4,584	34.8	54.6
Kaumakani-Hanapēpē	3,771	357	1,085	9.5	28.8	557	1,215	14.8	32.2
Kekaha-Waimea	5,561	690	2,069	12.4	37.2	1,101	2,246	19.8	40.4
Anahola	3,715	913	1,950	24.6	52.5	1,112	1,932	29.9	52.0
Moloka'i	**7,345**	**1,811**	**4,527**	**24.7**	**61.6**	**1,192**	**2,924**	**16.2**	**39.8**
East Moloka'i	4,503	1,042	2,616	23.1	58.1	784	1,861	17.4	41.3
West Moloka'i	2,752	732	1,865	26.6	67.8	384	1,030	14	37.4
Kalawao	90	37	46	41.1	51.1	24	33	26.7	36.7

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VIII. LESS DISCRIMINATORY ALTERNATIVES

Rather than implementing its programs and activities in a way that disproportionately adversely affects Native Hawaiians, HDOA and ADC have broad powers to instead take the following actions:

- HDOA and ADC could adopt and implement Title VI compliance programs to ensure that the agencies' policies, programs, and activities do not involve discriminatory treatment or have discriminatory effects on the basis of race, color, or national origin;
- HDOA could revoke or suspend pesticide licenses that have unreasonable adverse effects on health and the environment;
- HDOA could implement and enforce mandatory, adequately protective buffer zones between pesticide application and populated or heavily used areas like schools, medical facilities, and commercial areas;
- HDOA could adopt and implement EPA's recommendations to improve enforcement of federal and state pesticides laws;
- ADC could develop and implement criteria for evaluating applications for land licenses or leases to protect nearby communities from heavy pesticide use; and
- ADC could apply for, obtain, and comply with the terms of a valid NPDES permit.

Without implementing these measures, HDOA and ADC's activities and program will continue to disproportionately harm Native Hawaiians in West Kaua'i and on Moloka'i.

IX. RELIEF

Despite HDOA and ADC's obligations and powers under Title VI and state law, the agencies are doing remarkably little to correct this grave injustice. Accordingly, community groups request that EPA and USDA:

- Conduct a thorough Title VI compliance review of HDOA, particularly with respect to its implementation and enforcement of FIFRA and the Hawai'i Pesticides Law;
- Conduct a thorough Title VI compliance review of ADC with respect to its land management program and operation of the Mānā Plain drainage ditch system;
- Require HDOA and ADC to develop detailed inter- and intra-agency Title VI implementation plans that, at minimum, address less discriminatory alternatives and incorporate input from affected populations; and
- Oversee and ensure implementation of such plans on an annual basis.

These actions are necessary to bring HDOA and ADC into full compliance with Title VI.

We welcome the opportunity to meet with you to discuss the concerns and recommendations in this letter.

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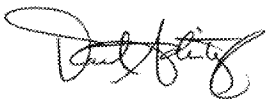
Sincerely,



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