

STATE OF HAWAII

DEPARTMENT OF HAWAIIAN HOME LANDS

January 23, 2017

TO: Chairman and Members, Hawaiian Homes Commission

FROM: Hokulei Lindsey, Administrative Rules Officer
Office of the Chairman

SUBJECT: Update Amendments to Title 10, Hawaii Administrative Rules

RECOMMENDED MOTION/ACTION

None. For information only.

DISCUSSION:

On December 5 and 6, 2016, the Department of Hawaiian Home Lands conducted public hearings pursuant to Hawaii Revised Statutes section 91-3. The hearings, and the December 9 deadline for written comments, were the public's opportunity to provide support, opposition, or otherwise offer input on the DHHL's proposed changes to Title 10, Hawaii Administrative Rules. This was a public process; the type of notice given, the availability of information, the conduct of the hearings, and the DHHL's consideration of the comments received are prescribed by state law. The hearings were held statewide semi-simultaneously such that hearings in Hilo, Maui, and Oahu were held on December 5 while hearings in Waimea, Molokai, and Kauai were held on December 6. A copy of the published notice is attached as Exhibit A. Staff took notes to maintain a record of oral testimony. In the big picture of DHHL's rulemaking, the public hearings and state controlled processes occur after a rigorous course of development and review adopted by the Hawaiian Homes Commission in July 2015.

In accordance with the process adopted by the HHC, statewide beneficiary consultation was conducted from October 27, 2015 to December 10, 2015 to discuss with and get feedback specifically from beneficiaries about the proposed rule amendments.¹ The

¹ The DHHL's Beneficiary Consultation Report on the Department of Hawaiian Home Lands Proposed Amendments to Title 10, Hawaii Administrative

consultation meetings were well attended and the discussion provided the DHHL with nearly 2,000 comments and suggestions related to the proposal from beneficiaries.² The Department revised the proposal in the months that followed to incorporate input received from beneficiaries. As a result, the proposal approved by the HHC for public hearing³ was more responsive to beneficiary needs and more sensitive to beneficiary concerns than the original, and thus a better proposed administrative rules document.

The December 2016 public hearings yielded very different results from beneficiary consultation. A total of seventy attendees signed in and forty-seven testified. Of those who signed in, fifty-three self-identified as beneficiaries. Seven written comments were received, five by mail and two submitted at the hearings. A majority of the comments related to the proposal centered on two topics: Genetic/'Ohana Testing and the notice and hearing process.

Given the comments, it appears that the process is foreign to beneficiaries, especially when dealing with the DHHL. This part of the rulemaking process is state-made and public, providing anyone interested the same opportunity to be heard. The Department is in compliance with HRS section 91-3 and the Department's relevant administrative rules regarding the notice and public hearings for rulemaking.

Comments regarding Genetic/'Ohana Testing were split between support and opposition. Opposition tended to be raised in relation to testing for ancestry and protection of the information. The proposal does not include testing for ancestry. The proposal is essentially a high-tech paternity test; it is a voluntary process to help establish biological parentage, if there is question or uncertainty. The proposal includes specific language to secure the privacy of the information that would be submitted to the DHHL.

A few other topics in the proposal received more than isolated comments. Subsistence Agriculture and the Transfer of Homestead Leases were generally supported or garnered broad-based

Rules was presented to the HHC in March 2016 (Item No. C-3) and accepted in April 2016 (Item No. C-1).

² See Exhibit E attached to Beneficiary Consultation Report on the Department of Hawaiian Home Lands Proposed Amendments to Title 10, Hawaii Administrative Rules, March 21, 2016.

³ See Approval of Recommendations for Proposed Amendments to Title 10, Hawaii Administrative Rules and to Proceed with Rulemaking under Chapter 91, Hawaii Revised Statutes, May 23, 2016 (Item No. C-1).

commentary. A few commenters viewed the Delegation of Duties to the Chairman as a consolidation of power. The three changes are administrative in nature and build efficiencies: (1) schedule contested case hearings; (2) approve the designation of successors; and (3) sign contracts [~~under \$25,000~~] for specific projects included in the HHC's prior approved budget. The HHC ultimately retains substantive power in each of the three areas. Other topics related to the proposal received sporadic and isolated comment. Staff notes from oral testimonies and summaries of written submissions are attached as Exhibit B.

After review and consideration of all comments respecting the proposal, one in particular stands out to staff. The oral comment, as recorded in staff notes was, "section 10-3-26 regarding when a residence on agricultural or pastoral lot is required. This section is missing the surrender of their residential lease if they want a subsistence lease. For those with more than 3 acres, they have to surrender their lease--this should also apply to those with less than 3 acres. You can have only 1 residence." The specific proposed subsection 10-3-26(d) reads in relevant part, "A lessee possessing a residential lot lease may construct a residence on the lessee's agricultural lot of more than three acres or pastoral lot" provided that the lessee surrenders or transfers the resident lot lease. Functioning in context, a lessee would be required to surrender or transfer a residential lease in order to construct a residence on a subsistence agricultural lot, just as would be required for a larger acreage agricultural lot or pastoral lot. Nonetheless, the point raised is one staff believes should be clarified in the proposal and plans to make a recommendation, as appropriate.

The proposal as approved for public hearing is attached as Exhibit C.

RECOMMENDATION:

None. For information only.

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

NOTICE OF PUBLIC HEARINGS ON PROPOSED AMENDMENTS
TO TITLE 10, HAWAII ADMINISTRATIVE RULES

The Department of Hawaiian Home Lands (DHHL) will hold statewide public hearings for Hawaii Administrative Rule (HAR) amendments. The proposed amendments to Title 10, Hawaii Administrative Rules, Department of Hawaiian Home Lands, cover several topic areas which include the use of DNA testing to help establish familial relationships for the application process and successorship designation, subsistence agriculture lots, the transfer of homestead leases to undeveloped or vacant lots, and undivided interest, fees and charges for the use of department facilities, rule making procedures, and various administrative, technical, and grammatical changes.

The public hearings shall be held on the following dates and locations:

Monday, December 5, 2016, 6:00-7:00 p.m.

Hilo, Hawaii DHHL East Hawaii District Office, 160 Baker Ave., Hilo, HI 96720
Maui DHHL Maui District Office, 655 Kaunualii St., Wailuku, HI 96793
Oahu DHHL Main Office (Hale Pono), 91-5420 Kapolei Pkwy, Kapolei, HI 96707

Tuesday, December 6, 2016, 6:00-7:00 p.m.

Waimea, Hawaii DHHL West Hawaii District Office, 64-756 Mamelahoa Hwy, Kamuela, HI 96743
Molokai DHHL Molokai District Office, 600 Mauna Loa Hwy, Kaunakakai, HI 96748
Kauai King Kaunualii Elementary Cafeteria, 4380 Hanamaulu Rd., Lihue, HI 96766

All interested persons are urged to attend the public hearing to present relevant information and individual opinion for the DHHL to consider. Any person may file written comments or recommendations in support of or in opposition to the proposed rulemaking in person at the public hearing or by mail postmarked by December 9, 2016. Written testimony should be mailed to:

ATTN: Administrative Rules
Department of Hawaiian Home Lands
P.O. Box 1879
Honolulu, HI 96805

The Hawaiian Homes Commission shall take final action on this rulemaking at a future regularly scheduled commission meeting.

The proposed rule amendments are currently available for review through December 9, 2016 between the hours of 8:00 a.m. and 4:00 p.m. at the DHHL Main Office in Kapolei, Oahu and at any DHHL District Office at the addresses listed above and on Kauai at 3060 Elwa St, Rm 203, Lihue, HI 96766. A copy of the proposed rule amendments will be mailed to any person who requests a copy in writing. The request must state the requestor's name and mailing address, and be delivered to the DHHL Main Office, P.O. Box 1879, Honolulu, HI 96805. For more information, email dhhl.rules@hawaiianhomelands.org or call (808) 620-9280. A copy of the proposed rule amendments is also available online at: <http://dhhl.hawaii.gov/dhhlrules/>

To request a sign language interpreter or disabled parking at the public hearing, please contact the DHHL Information and Community Relations Office on Oahu at 808-620-9590 at least seven days in advance of the public hearing.

Jobie M. K. Masagatani, Chairman
Hawaiian Homes Commission
November 1, 2016
(SA931157 11/4/16)

EXHIBIT A

ISLAND	TOPIC	COMMENTS
Kauai	Subsistence Ag	Mahalo for coming to Kauai and giving beneficiaries a chance to voice our concerns. I have reviewed the draft rules and they look good. Keep in mind that the decisions you make on the proposed rules are going to affect the next generation. I have been on the waitlist for 30 years. I haven't been given a chance yet, so please shake a leg so we can get our ag lots. Thirty years is a long time and I know other people before me that have passed away. Please work hard so we can get ag lands to the beneficiaries. On Kaua'i, you have good lands at Wailua, Pu'u 'Ōpae, and Anahola. I think the subsistence ag lots should be at least 1-acre. I really hope it can be a reality for us, who have been here for generations. Mahalo for being here tonight and for providing the opportunity to share mana'o. Please shake a leg to get us something in this lifetime. Thank you very much. I want to add that Erna has been working hard here on Kaua'i. Mahalo!
Kauai	Notification	I am going to submit written testimony, but since we are all here, I want to comment about getting more notice out to the people. I know you hold meetings in places like this because you want to be the middle, accessible by all, but the people in the west stay in the west; the people in the north stay in the north--that's just how it is. It would be good to have at least 2 meetings here. I don't know how you can get more notice out-- maybe radio ads. You should have more advertising in order to get people to meeting. I haven't spent too much time on the draft rules. If I could get a hard copy of the draft rules here in Lihu'e, that would be super useful. I was hoping more people would come to the meeting and talk--and I was going to learn from them. It would be great if you could come into the community, share the draft rules and educate us on what it says <u>before you ask for our comments on the rules.</u>
Kauai	DNA Testing/Subsistence Ag	If it makes things easier, then that's a good thing; I don't want it to be an end all be all; DNA should be the last thing to determine eligibility; ag part - haven't read up on that enough, but super excited about that, been involved with ag issues (seed companies) - hawaiian agriculture should take precedence on our island; should not flip ag to ag because of big money on our lands before actual hawaiian families; should not be corporations; mahalo for coming out and I do appreciate it
Kauai	Subsistence Ag	I don't know the depth of the rules either. I do want to testify that there are other beneficiaries who are on the waitlist that have passed away. If we can get the ag lots out to our beneficiaries then that would be good.
Kauai	DNA Testing	As for DNA testing, if it helps benefit the future generations, so they don't lose the lands that we need to perpetuate our culture with, then I support it.

ISLAND	TOPIC	COMMENTS
Kauai	Transfer of Leases	I'm a little uncertain about selling of lots; I'm uncertain about whether or not the owners get the money --if they can profit from the sale. I'm concerned that they buy a lot, then they still have to take out loan in order to construct the house. I'm not saying I'm opposed, but I need more education on what that means. I know that people are selling their lots; if I could get more educated on the issue, I could contribute in a more meaningful way. I don't understand the rules language and the format is difficult.
Kauai	Outreach & Notification	Mahalo for coming for those that want to be here; it would have been nice to educate people in the areas. We were so excited to move to Anahola in 2012, however where we ended up living was not where we were initially awarded. My husband found the lot we live on now on craigslist. I love being up there. I wish there were a little more land, but for me, it works. And now that we live in the homestead, I'm learning a lot. My husband is not here, but will be returning tomorrow. He asked me to go to this meeting and listen. He will submit written comments. My husband applied in 1974 and when Governor Lingle was in office, he got is award. That is a long time. I know that the Department has new changes that will make it better for everybody. But it's important to get the word out to local Hawaiians since administrative rules are important. There's only a handful of us are here. Thank you to Erna for all the work she does. Mahalo for letting me share.
Molokai	Transfer/sale of unimproved/vacant lots	Allow transferring of adjoining ag or pastoral lots to non family members. Have the boundary connected - add into rules to allow. 52B-7 Puupeeelua. Also include approved transfers of adjoining lots for unrelated persons - must be adjoining, within your lot. Only for ag or pastoral lots.
Molokai	Transfer of interest	Pastoral lot between Puukapele and Farrington - didn't know I needed a plan to get the whole 40 acres. Adjoining - no one got the rest. Want to know how to apply for the remainder. When first got lease in 1976, supposed to have been 40 acres from Puukapele and going south to Farrington. She was asked if she had a plan. Didn't know that having pipi in the gulch was a plan. She saw Gregory Helm and was told that there would have been a cost (\$150?), so she didn't take full 40 acres. Second son wants to come home in two years and wants to see if land can be transferred because no one on the land there. Looking to see if that portion could be used by the family. Son wants to put a house on the 5 acre site. Came in to the office two weeks ago to check on that. She wants to see how rest of the 30 acres could be received. She currently lives on 5 acres.
Molokai	Admin. Hrg. Process	Requesting why notice was not provided in the mail like other meetings. If testimony provided here, does testimony also need to be provided in writing?

ISLAND	TOPIC	COMMENTS
Molokai	Admin. Hrg. Process	Would like a summary of the Rule changes at the beginning so I know what's going on with the Rules. Request was made for an explanation of the rule changes.
Molokai	DNA testing	Can DNA testing can be used to establish paternity for adopted family members?
Molokai	DNA testing	Question about person receiving lot but doesn't have 50% blood quantum. Will DNA testing affect this issue?
Oahu	Admin. Hrg. Process	I'm not happy with the rules process. I need answers, not just to share my concerns. I also have more concerns to bring up. How will these rules help my grandchildren who don't qualify for Hawaiian Homes? I'm here representing my family. How will these rules help provide housing with homeless in the streets & along the beaches? Where are the other Commissioners? Isn't Congressional Consent required for changes? The rules should support the original purpose of the Act which was to provide land for a Hawaiian way of life, not live like Americans. Can we have more than one Commissioner? Are you really conveying what we are talking about? I have 18 grandchildren, 19th is on the way. What is their future? What's going to happen after today? Is our mana'o going to make a difference? Do we have to go by the rules and regs of America? You're here to provide for us - I shouldn't have to qualify for a loan. Our kupuna warned us about this corruption. This is a very, very important issue - all teh COMmissoners should be hearing what we have to say, not just from the minutes of the meeting.

ISLAND	TOPIC	COMMENTS
Oahu	DNA	Was this in the Act? How will this change me as a Hawaiian? Many of us have died waiting for a decision - it's not fair to us. Not doing Hawaiian rules for HHL - doing American Rules. How is it going to affect my children? Because they married my son - you're American now? 100% American. If you are working - what are you guys doing here? Why are you doing this to us? REpresenting all my family. They are a part of me - hanai. Now the word hanai doesn't work in here - the Hawaiian way. So sad that I have to be here talking. Not doing your job from the very beginning? How will that help us? Will it help people have homes? What's going to come out of this? We only have one hour - this is important to us? How can I talk to you if you can't talk back to me? There should be a longer time - right next door to the most Hawaiians in the world. We're going to listen to you, but we can't give you any answers. Hanai is no good? We gotta be adopted? Hanai is more sincere than adoption. How will this be different? We're living on the beaches? All of a sudden you guys come up with this grand idea. We need enough land to grow food, be self-sufficient. Then they make rules saying you can't do this, can't do that. Provide land for us, let us live our lives.
Oahu	Accepting land	I have an issue with DHHL accepting land like Princess Kahanu which was a quarry with pig farmers in the back. The homes are impacted by rain & wind. The soldiers also would throw grenades from the train. Concerned about old quarry on Hakimo Road - rain, winds, did anyone check out that land? Lots of hazards. Uluwehi - where they had the 442nd -
Oahu	Admin. Hrg. Process	Thank you for the opportunity to testify on the rules. I understand this is the process to change rules. Process DHHL is required to go through.
Oahu	DNA Testing	Support the process. Clear that it's not required to get on the list, but the process can help people in addition to existing methods for beneficiaries unable to establish qualifications.
Oahu	Subsistence ag	Mahalo for prior testimony taken into consideration reflected in current draft of rule change to go up to 3 acres for subsistence ag. Formerly testified but now support additional acreage in the rule. Will be helpful.
Oahu	Sale of leases	Don't object to what lessee does with it once they get those leases. Heard it makes it unfair - we have a market for the sale of leases because lessees are afraid that they will lose the opportunity to pass it on. The value of what you have, you should get the value back. Lots of controversy with the sale of leases. I do not object to what a beneficiary does with a lease. I say a'ole.

ISLAND	TOPIC	COMMENTS
Oahu	Genetic Testing	I offer info that is unique related to genetic testing. I'm not a doctor or a geneticist. My brother died in 1995 & recipient of DNA testing. My family helped shape genetic testing industry. There is no data collection on Hawaiian genome. DNA test has to be specific. The test for genetics is very specific, you are hitting the needle in the haystack. Encourage DHHL to do research. Other organizations can give you more info. 50/50 chance with test. Family took test in the 90s with Yale University. Direct DNA analysis will tell you what you inherited. If using testing as a tool, more info needs to be collected. Need more solid evidence. Saw comments that were made, saw proposal 12(b)3 -have to be no less than 50%. Unique journey of our family - I am 75% Hawaiian. My brother was one of the first to be DNA tested. No data collection on Hawaiians and Hawaiian genome. This one is for paternity - test for genetics is very specific - lookikng for a needle in a haystack. REally do your research on what is being offered. Certified vendor - the B___ is not the most accurate. Other firms have better results. 50/50 accuracy. 200 of our family took the testing - Yale university. WHEN you are specifically going - Direct DNA analysis - tells you what you inherited. Needs to be more evidence-based. We are in the baby stage. Need more solid evidence. Can get the generic genetic test. Not enough infomraiton. If we are wise about tth e toos we are given, all for it. We have the gene along - helps protect us against discrimination - health insurance.
Oahu		Appreciate volunteer commissioner. I am speaking as an individual lessee of Waianae Valley Homestead. I attended the Waianae/Nanakuli meeting. We talked about the first three, but not the fourth.
Oahu		Only having one meeting for O'ahu -only one night, in one location. Disappointed. Empty house. Thought we wouldn't be able to hold all the beneficiaires. Nanakuli would have filled the house. Had a lot of people come to the BC in Nanakuli.
Oahu	Successorship	Support successorship to 1/32. Outr BQ is going to go down in time. Transferring.

ISLAND	TOPIC	COMMENTS
Oahu	Subsistence Ag/enforcement /ROEs/funding	Apply the ag rules to the current ag lessees. Ag lots aren't being used for ag. Enforce. Call for a survey - all of ag & pastoral lots, how much acreage is being used for the purpose of ag. Gave out lands in abundance - spread it out among more people. Many want ag and pastoral. Help them using limited funds for infrastructure - take an internal look. HHC should request from the Dept. Ka'ala Farms on an ROE - that should be more long term. Invested. Those who are using , should benefit. Stop looking at our beneficiaires as secondary. Only three HHA's able to qualify - why should we have to meet higher standards? For whom was this Act created? For beneficiaries, not the administrators. Kuleana to make sure that it's funded per the Nelson decision. Seek your beneficiaries support. Thank you for coming to Waianae. Don't wait until March to start the BC.
Oahu	Vacant land - UXO	Shouldn't limit it to UXO - whenever we are offered lands, shouldn't be toxic. When looking at Hawaiian Home Lands, look at excellence not just the minimal standards. Would you want you children, grandchildren living in that house? Tiered lands, was backfilled with big boulders, etc. Filled with soil, settled, foundation was not properly set. Something to pass down to future generations Acceptance of land - they (donors) get a tax break. Waianae Valley is almost 40 years old. If structural issues exist with the lot and home, the kuleana is DHHL's not the lessee. Homes have issues within first 5 years.
Oahu	Delegation of duties to the Chairman	Designation of successorship can be delegated to the Chair, but contested case hearings should be decided by the Commissioners and not delegated to the Chair. Our commissioners still need to be a part of this. Commissioners serve the beneficiaries. They need adequate time to look at it. They should make the decision. Put J agenda items in the appropriate place where the Commisssoners can take action, can make a decision. Their mana'o is for info only. Such a disservice. Who's being served - the governor? Action items - HHC decisionmaking process. Benef's are required to submit their intent in order to get on the agenda. Want to present to the agenda. Designation of successorship can be delegated to the Chair, but contested case hearings should be decided by the Commissioners and not delegated to the Chair.

ISLAND	TOPIC	COMMENTS
Oahu	DNA testing	Paternal verification - I support that. That Hawaiian baby is a beneficiary, not their fault that their parents made a decision not to identify the parent. Or worse, it's an adopted baby. All eligible Hawaiians should be able to apply, qualify & receive Hawaiian Homestead lots, get a lease and build their home - for them & generations to come - always thinking of the future. We know we aren't going to live 99 years.
Oahu	Housing costs	Also mortgages are \$200,000, so thinking long term. Oppose DCC&Rs, Mark Development - how they have treated our beneficiaries. HHL - DHHL needs to act as the landlord. If Hawaiians can qualify financially for home in Kanehili at \$200-\$300k, consider going fee simple so not subject to DHHL requirements.
Oahu	DCCRs	Do not support DCCR
Oahu	Admin. Hrg. Process	I'm concerned that there is only one meeting in one location on O'ahu.
Oahu	Transfer/sale of unimproved/vacant lands	Support transfer & hoping to get blood quantum to 1/32.
Maui	Blood Quantum	I didn't plan on testifying today, but I know we're testifying on the blood quantum and other important initiatives. I'll listen to what others have to say and will testify if needed.
Maui	Succession and Quantum; sale of leases	For me, this meeting is about blood quantum. My grandchildren should be entitled to receive my homestead. I'm concerned about whether native Hawaiian applicants--and my grandchildren--can get a good job and benefit from our economy. People on the list get bypassed if they cannot pay high prices. Vacant lots should be returned. The homesteader received it as a birthright, not through a real estate transaction. It's so disrespectful to bypass applicants that cannot pay. The economy will create the situation that my children/grandchildren will need HHLs, but my children are 25% and my mo'opuna are less than that. How will they be able to take over my homestead lease if they cannot meet the blood quantum requirement? My husband and I put everything into our homestead--thinking that it would be there for our children and grandchildren. How can my grandchildren build upon the assets we created on our homestead? How can they carry on our homestead? This is what I worry about.
Maui	Sale of Leases, Succession and quantum	For the sale of leases, if you are given something for \$1.00 per year, it's a gift, therefore it's not for you to sell. People who have the quantum and have the money are skipping over people on the waitlist. If it's a vacant lot, it should go back to the trust. You are given the land as your birthright..not for you to be a realtor. To step over people on the list is wrong.

ISLAND	TOPIC	COMMENTS
Maui	Successorship, sale of leases	<p>I am the daughter of Robin and Stephen Newhouse. My family was the first to go on the land at Keokea. We started building our home when I was 9 years old. We put up everything ourselves, cleaned our lot, nailed the boards in the floor, so the lot in Keokea is very special to me. I never planned to stay in Hawaii-- I was going away to college. My son is 7 years old, in the Paia Immersion school. I'm 33 years old and my friends are asking me, what do you have for your children? My son can't get the land and all we have is the ag lot. I feel like I have to find a pure Hawaiian so I can have a child that has the blood quantum required to take over the lease. If I'm going to be the beneficiary and my children don't have 25% quantum, do I have to sign the lease over to my brothers/sisters? I'm concerned about my son's future. My Dad invested so much into our homestead lot--it's hard to imagine that his grandchildren won't be able to live there to carry on what he established. It's hard to believe in what the Dept stands for if I can't see a future that this lot will be in our family. I'm concerned about successorship; I'm concerned about net proceeds. We need to leave everything in the homestead to future heirs.</p> <p>It's makes me upset when people sell their lots—because it's between the haves and have nots and I feel like a have-not. I know people who bought lots and have beautiful homes and I'm happy for them, but I wonder if they had returned the lot, maybe the next family in line would have qualified for a loan. Is it fair to applicants who are in line? I know it's hard to keep track of individual families—but my family is here. I want to thank the Dept for everything that has been done.</p>
Maui	Successorship, hunting around homes	<p>I feel the same as my mom (Robin Newhouse) and my sister (Kimberly Newhouse). There's a lot that goes on in the homestead that people don't know about that is being taken care of. I feel a lot about what my sister is saying is, where are our keiki going? You pay all this money to build a house—but it's not really yours because it's on HHLs. So why am I doing it? You could invest \$200K to \$300K to build a house, but since it's on HHLs, you don't own the land. I'm concerned about uncertainty in the future for my daughter on HHLs. Is there anything DHHL can do about hunters coming in to our community, hunting around peoples' homes. They need to stop hunting so close to the homes—it's a major safety concern.</p>

ISLAND	TOPIC	COMMENTS
Maui	Subsistence ag, Wailuanui, lineal descendants	Steven Ho'okano lives in Wailuanui on his family land which adjacent to a large DHHL parcel. He's been talking with Julie Cachola about the possibility of farming the large parcel as an extension of what he's doing on his lot. He's supportive of DHHL providing subsistence ag lots in order to open new lands for ag use. He thinks the rules are broad to accommodate different ag uses. He needs more land to farm in order to make a decent living in a very remote area where there are no jobs. His struggle is that he wants to be sustainable, but he needs more land in order to do that. He's willing to take land under a revocable permit. He wants homestead lands to leave for his family, but he understands DHHL needs to be fair for everyone. He gets frustrated sometimes, but does not want to burn any bridges; he wants to work with DHHL and he hopes DHHL is willing to work with him. He has other areas of concern: he lives the struggle with water on a daily basis; blood quantum will continue to be an issue, as well as the need to address waitlist applicants. He plans to submit written testimony. Steven pointed out that on Lana'i, DHHL awarded homestead lease awards to lineal descendants before the land was opened to the applicant waitlist. With this precedent set, he thinks it should also be applied to the award of homestead lots at Wailuanui because it would allow the traditional Wailuanui families to practice culturally appropriate access and use of Lands in the area. He does not want to destroy his way of life. You cannot take the land with you; the future is for our keiki. Wants to work with DHHL.
Maui	living off the land, blood quantum	I'm Steven's mother. I just want to add to the idea that we love it in there and I'm fortunate that I own land there. We drive that road because it preserves our way of life, living off the land. And we're upholding our land; just like you're doing. Our riches are not on Wall Street; it's in family values. Blood quantum can help to preserve our way of life and family values. Change the law if the quantum is not enough. I see by the harbor that they cleared all those homeless Hawaiians off the beach. I'm concerned about homeless people. We have land—everybody should be on the land. We should solve our food problem, remove greed, live in harmony—live Christian ways, foster equality. I'm concerned about kids who are lost in the bling bling. I'm only making \$15.00/hour but I'm happy with my life.
Maui	Credentials	Blossom Feiteira: I am a native Hawaiian beneficiary; I was an Undivided Interest lessee and I and have transferred my lease to my children who are 25%. I am waiting for a pastoral lot on Maui. I am also President of the Association of Hawaiians for Homestead Lands (AHHL) which represents those on the Waitlist. I generally support all proposed amendments, but I'm recommending a few changes:

ISLAND	TOPIC	COMMENTS
Maui	Definitions	A. Page 4, in the Definitions section, you define “Native Hawaiian,” but there is no reference in the document to “Native Hawaiian.” There are references to “native Hawaiian,” but no definition. It’s probably a typo, but in this context, it has significant implications.
Maui	Delegation of HHC duties to Chair	B. §10-2-16(c3) regarding delegation of Commission duties to the Chairman, I’m opposed to c3 that allows the Chairman to approve general leases, plans, assignments, subleases and mortgages. The HHC should retain those duties, because they may require monetary commitments from the Department.
Maui	Delegation of HHC duties to Chair	C. Part D—I’m opposed to the chairman being able to approve and sign contracts for specific projects which are included in the Commission’s prior approved budget. The HHC should have oversight authority.
Maui	Genetic testing	D. I support genetic testing—those who have worked with applicants know that this has been a problem. Genetic testing will provide another means to qualify native Hawaiian beneficiaries so I support it.
Maui	Successorship	E. §10-3-8, transfer of application rights. When an applicant dies on the wait list, there is a process to bring a successor in, but it doesn’t say how the process is started. The rule needs clarification on how to initiate the submission of a death certificate. Who does the review that states that an applicant died? Does the successor have to do anything?
Maui	Oahu ag lessee not allowed to hold another lease	F. §10-3-24 regarding Agricultural and Pastoral leases, section (e) states that an award of an agricultural lot on Oahu shall be made to applicants who are residing on the island of Oahu at the time of applicant and that an ag lot lessee on Oahu shall not be allowed to hold any other homestead lease. Are you removing a benefit from the law? I am opposed to a rule that affects the rights of beneficiaries. Unless this amendment is taken out to all beneficiaries on Oahu for their input, I oppose it.
Maui	Residency on ag lot; 1 house only	G. §10-3-26 regarding when a residence on an agricultural or pastoral lot is required. This section is missing the surrender of their residential lease if they want a subsistence lease. For those with more than 3 acres, they have to surrender their lease—this should also apply to those with less than 3 acres. You can only have 1 residence.
Maui	Delegation of HHC duties to Chair	H. §10-3-34 Building requirements. I’m opposed to the amendment replacing “Commission” with “Department.” The authority to approve building structures and improvements and to specify exceptions to county building and zoning codes should still rest with the HHC, not the Department.
Maui	Sale of Leases	I. Sale of vacant lots—I reluctantly agree. If it’s a vacant lot, it should not be sold. Undeveloped lots should be returned to DHHL--no jumping ahead on the waitlist. They need to surrender the lot to DHHL or to a successor for free-- no sale.

ISLAND	TOPIC	COMMENTS
Maui	Successorship Blood Quantum	J. I support lowering the blood quantum for successorship—we're just supporting Kuhio's intent (1/32nd). The Dept should go farther than that and extend successorship to the whole family regardless of quantum. I support descendancy, a lease in perpetuity.
Maui	Genetic testing, successorship, sale of vacant lots, ag lots	I agree with everything Blossom said, except for the genetic testing. I agree, but not if it involves blood quantum, it should just document relationships. I agree with ADUs; we should go with the county code and ohana dwelling units should also be allowed on our lots. I believe our homesteads should be in perpetuity. I agree to dropping the quantum for successorship so it goes to perpetuity. Vacant lots could be to relatives only. Realtors stepped in to get people paid, so they wouldn't be necessary since no payment is involved. I support ½ acre ag lots; I support ag development especially since HCS has closed down and knowing that Maui has so much land, people shouldn't have to wait. Sakugawa Ranch's General Lease for 5,000 acs should be for native Hawaiians. Settlement of Undivided Interest lessees should be faster. Ag lots needs water; water should be free to farmers. Lots of land here. Should give it out
Maui	Delegation of HHC duties to Chair; residency on ag lot; beneficiary consultation	I am echoing Blossom's testimony on Section 10 she is against the amendment about approving funding for any amount for any project because it gives too much power to Chairman; need HHC to have oversight transparency and accountability. There's nothing about beneficiary consultation. HHC must maintain oversight and in some special cases, they should have consultation on some items. For instance, Ulupalakua Ranch has a Right of Entry to 128 acres for 20 years at a rate of 21-cents an acre. They could have consultation on contracts. She is against the Chairman having all that power. For Section 10-3-26 regarding residency on ag lots, we have a lot of ag lessees in Keokea that don't live on Maui. By their lease, they are supposed to reside on the same island within 3 years, but there's lessees that have had their leases for 30 years and they still live on the mainland. There's no enforcement of the current rule. She's concerned that the rule requiring residency on her ag lot, coupled with the requirement that you can only have 1 residency would force her to give up her Ag lot, since she already has a house on her residential lot. Or would she be grandfathered in?
Maui	Successorship, blood quantum	I'm the President of Waiohuli Undivided Interest lessees. Regarding blood quantum, I understand that I need 50% to get it, but once you get it, that should be enough. You should be able to hand it down to family; to keep the land in the family. Your 50% is already provided. Shouldn't have to have quantum requirements in the future—I support descendancy. Once you're in, you're in.

ISLAND	TOPIC	COMMENTS
Maui	successorship, subsistence ag, residency requirement, ADUs/ohana units	<p>I'm glad I came, because I'm learning tonight. I agree, get rid of the blood quantum because it allows the gift to stay in the family; the original vision of homesteading was to stay on the land. This is important because it's where you make your mana. Should also state on page 21 that you can use your residential and ag lot for farming--to reside and cultivate the land, they choose whether they want occupy the ag lot. It's their option to live on the land. For a subsistence agricultural lot, you don't have to reside on your farm lot. We lived there because we wanted to protect our crops and because our lease says we have to reside and cultivate our lot. I don't think there should be a house requirement or a residency requirement. We should be able to let animals roam on the land. Ohana dwelling units should be allowed, especially in Keokea since there is no ag water and we are prohibited from farming. Subsistence ag should be subsistence for family members on their own property.</p>
Hilo	UXO/blood quantum/vacant lot definition/DNA/ Subsistence Ag/Transfer of leases	<p>Explosive. Does that mean unexploded in the ground? I don't see anything about liability in the rules. Will DHHL take responsibility for liability. That is a concern for me. DHHL lease award process, I disagree with priorities. When you sign up for 30 years, the priority is by blood quantum 100 % first. Then lesser percent. That is not right. I am confused by the wording of successor and lessee. May be just leave the lease. Need to define what a vertical improvement is, define that more. I don't agree that the Chairman should schedule contested case, it should remain with the HHC. Genetic testing -- I don't understand what proper chain of custody means. I don't think applicant should pay for the testing, DHHL should pay for it because DHHL will own the results -- the chain of custody. Take the applicant on the first time date not the second date after approval. 10-3-3-8 DHHL should pay for the testing. Should have more time than 3 months to submit a plan in UXO area, should be a year at least. Subsistence ag lot, survey the lot first so that it doesn't include natural or cultural resources. I agree with agricultural lot of 3 acres. 10-3-3-26. Transfer of lease. Does the transfer of lease incur or include tax as well? The rule doesn't say whether or not the tax is included in the transfer in the lease. Rule should say county permit should suffice. I disagree with not being able to sell a lot because the beneficiary can use it to buy a fee simple lot for successors with less than 25% quantum. I don't understand the fee of picking trailer, it should stay the same amount. DHHL should help offset the inflation cost.</p>

ISLAND	TOPIC	COMMENTS
Hilo	DNA/Subsistence Ag/hearings process	Genetic testing. DHHL should pay fee. Blood quantum, where will the land go when the blood quantum is less than 25? back to the general public. Lots of concerns over genetic testing. Genetic testing will not benefit the beneficiaries. Building requirements. Subsistence agriculture, we do not want to disenfranchise. Transparency, a lot of people didn't know the meeting was taking place. We need to start focussing on our kupuna, shouldn't be limited to subsistence lots. I suggest we take the time to study the rules more. I oppose the genetic testing rule. Subsistence ag lots is ok. I oppose the undivided interest lease transfer.
Hilo	hearings process/DNA/	The kahea didn't go out. It is really disheartening. The proposed rule regarding the DNA testing, there are already rules in place, where is it going to be stored, how long is it going to be stored, how do we know the DNA test won't be used for other uses other than to determine relationship. DNA testing can be used to detect other diseases, and it goes on your record and it will affect you for the rest of your life. They will know when people will die based on the genetic markers and will know when it will die out. Who owns the blood sample? I want certainty that it will be destroyed and only used for the purpose it is used for. We shouldn't tax our people more. I wish there was more people in this meeting. Expedite putting kanaka maoli on the land.
Hilo	UXO/Hearings process	I saw you had UXO administrative rules. But there was no plan or emergency plan mentioned in the rules. That should be included in the rules. DHHL made really quick decisions to try and displace us. I am concerned that the rule needs Governor approval. The final approval should be by the HHC.
Hilo	hearings process/DNA/ag plan	I never knew about this meeting. It gave me minimal time to study this. Nobody got time to read the approved rules. I am against DNA testing, I cannot share my blood with DHHL because they cannot put people on the aina. I think DNA testing will rob us. I think pastoral plan should be completed in more time, 3 months is too short. Should be longer time period to complete the plan. I am concerned that DNA testing will go to my insurance company and jack up my policy.
Hilo	hearings process/DNA	I wasn't aware of the meeting. I don't think these rules are good enough. We should be creating rules for 100 years from now. It shouldn't be passed. It should be re-looked at again. No to DNA testing. Life is hard I can barely survive. I am educated. But I'm struggling. Our people need more. There is a way, but I don't know what it is.

ISLAND	TOPIC	COMMENTS
Hilo	blood quantum/DNA	Blood quantum is a down fall if I choose to marry a non-Hawaiian. I don't understand the rule of DNA testing. Transparency is not there. Why are we doing this. Why does it needs to be a rule, I am afraid that in the future it will be a standard and not an option. It should just be an option. How will DNA testing get people on the land.
Hilo	awards	Why is this agenda coming from the top down. Give lands to the Hawaiian. The land that hasn't been given away -- gross negligence of mangement.
Hilo	hearings process/lease types	I only heard about the meeting at the last meeting and I didn't know where the meeting was. It is important to keep in mind how the act came into being, it came from the alii. Part of being an alii is to serve the people. We should have homestead leases for commercial and industrial uses. DHHL should do more to get Hawaiians on the land.
Hilo	subsistence ag	I would like to suggest that subsistence ag should be a minimal of one acre. I hope the transparency is increased. We need to talk to our legislatures to get them out.
Hilo	hearings process	I would like to echo concern of reasonable timing for meeting notice. Hawaii administrative rules is a big deal. What is the protocol for being contacted.
Hilo	DNA/Subsistence Ag	DNA can prove your relationship to someone who is your parent. It is a choice to take the test. Subsistence ag lots - we need to look at new ways to put people on the land, this is one way to put them on the land. Subsistence ag lots would be cheaper because it would be less cost cause the infrastructure is simpler, build according to your need. Doesn't have to be too big.
Hilo	DNA	These rules don't control your life. The act controls your life. You need to read the act. The act no can change. Rules can change any time. The act changed once in my life time. DNA rule only came about because somebody sued DHHL that says dHHL can use rules. The DNA proved that the person was his father, not his blood quantum. The rules say you have to give DHHL to consent to use DNA for other things. We don't have a choice who are parents are but we have a choice to be proud of our parents. Kuhio and Wise were not voting members of congress, they had to convince the haoles to pass the act, they had to compromise. You need to know the context of the act, at the time sugar was king and they were going to lose their lease to land. Sugar was scared they were going to lose their land. Kuhio had to compromise.

ISLAND	TOPIC	COMMENTS
Hilo		It's good to see the younger haumana here. I worked with Aunty Abby. She told me I was a stuffed "shit" which meant I was on a high horse full of attitude. I needed to be more haahaa. This meeting is administration. Get down from your high horse. go work. humble yourself. Need to learn the process.
Waimea	Delegation of duties to the Chairman/electronic processes/subsistence ag	Page 7 10-2-16 delegation of duties to the Chairman; this seems like the chairman will be a bottle neck and cause delays. You should change the email time stamp and email correspondence. Applications should be able to go online not just paper based. 10-3-26 you should allow subsistence and make a profit on it, not just be limited to subsistence.
Waimea	DNA	I live in Puukapu. When I'm looking at the DNA testing, you are going to be classified as Polynesian, not Hawaiian. When I submitted palapala it shows where you come from, the DNA testing won't tell you that. I don't think it is a good idea unless the parents and grandparents died so you can DnA test someone else in the family. I am not for it.
Waimea	DNA	DNA testing, it only tells if you are polynesian, not Hawaiian. I don't think there should be DNA testing because it will just say polynesian. If you have one drop Hawaiian you are Hawaiian. I am against this DNA testing.
Waimea	Fees and charges	Use of facilities. Why should beneficiaries be charged for using the facilities? We should not be charged.
Waimea	Priority preference definition/hearings process	Question on priority, 100%, 75%, 50% -- if I have a child who has more than me, then they are a higher priority than me. It would be interesting to know if that rule is still in effect. I only heard about this meeting today. When was the notice published.
Waimea	hearings process/delegation to the chair/DNA/subsistence ag	I only heard about this meeting an hour ago. I think a group should be decision maker. I disagree with delegating authority to the Chairman. It should be at the HHC level. DNA should be used in discretion not as an absolute rule. Subsistence ag rule, the rule should require DHHL to provide assistance to ag lessees to cultivate their property. Need training.
Waimea	UXO/hearings process/DNA	In 1960 I applied for Hawaiian Homes. I have been through many Chairman. Everytime we get new Chairman we get new rules, it's not consistent. UXO meeting notice was in July 16, it's all mixed up. The communication is confusing. I didn't know about these rules, I didn't know about the meeting. Why do you keep making all these rules and regs. No new rules. Send the beneficiaries materials in advance. No ask me for my DNA.

ISLAND	TOPIC	COMMENTS
Waimea	DNA/delegation to the chair/hearings process	No genetic testing. As far as the chairman having power, she takes direction from the HHC, the HHC takes direction from beneficiaries. Do not delegate authority to the chairman. I did not get the information prior to the meeting. I did not get a copy. We should all get a copy.
Waimea	DNA	DNA not going to show nothing. I am opposed to DNA testing. I am opposed to delegating more authority to the chair. Our alii did this to rehabilitate Hawaiians through the aina.
Waimea	Enforcement/transfer of leases	DHHL is putting up obstacles in our way instead of helping us. Rule enforcement by DHHL is arbitrary and not consistent. Lessees should not be able to sell their land to others. Stop being obstacles. I have to fight to build a home on my farm land. I will fight until I get my home on my lease lot.
Waimea		There are many inconsistencies in 10-3.
Waimea	hearings process/DNA/awards	Everyone did not have time to read the rules and testify. Same like Hilo, no one got ample notice for the meeting. We need more time to study the rules. DNA cannot pinpoint the quantum. We are faced with obstacles and blocks. We have to build up an accelerated land awards list. Subsistence is a good thing, but how are you going to award to 30,000 on the list?

	A	B
1		SUMMARY OF COMMENTS
2	Written 1	Not a beneficiary but grew up on grandmother's homestead; attended the Hilo meeting; stands by oral testimony but having read proposal believes changes represent an effort to better serve beneficiary needs
3	Written 2	Request extension of 12/9 postmark date for at least 90 days for additional meetings hosted by Homestead Associations or interested beneficiaries.
4		People at the public hearings lacked information and understanding of the material. Consultation covered only what staff wanted to address.
5		Amendments not presented in relation to the language of existing sections; additional research is required for clear understanding.
6		1. Delete "email time stamp" in 10-3-3.1 because only certified mail proves receipt and DHHL holds proof of mailing.
7		2. 10-3-7 should be deleted because it diminishes applicant rights to acquire a lease.
8		3. Definition of "undeveloped lot" is unclear and leave too much discretion to staff to determine a "substantial improvement."
9		4. 10-3-2.2(c) insert "with a copy of documentation sent to the requestor/applicant" after "department" in first sentence.
10		5. 10-3-24, 10-3-26, and 10-3-39 are divisive, limit the rights of beneficiaries, should be reviewed by beneficiaries, and agreed upon before a rule is proposed. All ag or pastoral lessees should have the same requirements and rights.
11		10-2-16 the commission should not delegate any more functions to the chairman
12		6. Section 10-3-36 diminishes rights of beneficiaries.
13		7. Section 10-3-61 designation of a successor should be amended to read "(a) as provided in sections <u>208 and</u> 209 of the act..."
14		Staff and commission need to review and abide by sections 10-5-22 and 10-5-25. Your interim rule July 2015 on Transfer of Vacant, Undeveloped or Undivided Interest Lots failed to follow admin rules
15		Sections 10-5-22 and 10-5-25 should be amended to include "policies."
16	Written 3	Why is DNA proof needed now when birth certificates is all that was required until now? What are the instances of need for this measure? Why can't it be done by each individual choice since it is not mandatory?
17		I'm not a beneficiary so it makes sense for me to look in the newspaper but why was no letter sent to beneficiaries? Why was a letter only sent to the associations to forward to beneficiaries? This was done in the very last week so close to the deadline that there was not time to read or study the proposal. Many kupuna are computer illiterate so finding the rules online is not possible. The commissioner read the public notice at the meeting then said they were only there to listen, not answer questions. Was the oral testimony recorded? Do any of the testimonies, oral or written, count?
18		Why do you put more obstacles in our way? How will DNA help if its only there to deny those already awarded? I heard many lose their houses only for those houses to sit empty. How about you folks make rules to expedite the waiting list? There is a Kanaka housing crisis.

	A	B
1		SUMMARY OF COMMENTS
19	Written 4	Regarding genetic testing: I do not support, too many questions like what will happen to the genetic material, does it belong to DHHL, what will the department do the information once obtained, will it be shared with other agencies? Cannot support until these questions are addressed.
20		Regarding lease transfer: I do not agree with recipients selling vacant lots. If a beneficiary receives land that they do not wish to build on, they should not be able to sell it to others on the list. Only if improvements are made should the lot be made available for sale, and then, only to the next person on the list not someone who is far below.
21		Regarding subsistence lots: I support this
22		ITEM 11 - DOCUMENTATION The basis for establishing one's native Hawaiian ancestry is a fundamental part of the Hawaiian Homes Commission Act. Historically, it has been controversial as well. Native Hawaiian designation by DHHL is recognized by other Hawaiian organizations for benefits, such as Kamehameha Schools, Office of Hawaiian Affairs, and federal education, health, labor, culture, and housing programs. I support having a new section added to make explicit, in the rules, those documents required or accepted to establish one's native Hawaiian ancestry.
23		ITEM 12 - GENETIC TESTING Generally, I support the principle of expanding the methods available to assist native Hawaiians to document their eligibility for HHCA benefits. It appears that DHHL has conducted the research necessary to establish the appropriate genetic standards and benchmarks. I like that care is taken to ensure the integrity of test results from the testing facility to DHHL. I support this proposal.
24		ITEM 13 - APPLICATION PROCESSING By breaking up this process into three phases, it is much easier to follow and understand. I support this proposal.
25		ITEM 18 - AGRICULTURAL AND PASTORAL LEASES I support the inclusion of a new section referencing approved island plans. These plans are developed based on a comprehensive review of land suitability, environmental, infrastructure, cost, and community inputs. They provide an overall "big picture" long-range perspective for the orderly, goals-driven use of our lands and other resources statewide. The island plans are an appropriate basis for making decisions on the use, allocation, and priority of trust assets.

	A	B
1		SUMMARY OF COMMENTS
26	Written 5	<p>ITEM 20 - RESIDENCES ON AGRICULTURAL AND PASTORAL LOTS</p> <p>Generally, I support the principle of providing more opportunities and options for homesteaders to develop and use their homestead awards in a responsible manner. The proposal, applicable to lots under three acres, allows options for residency on the lot, broadens development and housing options, allows additional dwelling units, and authorizes the subdivision of lots larger than one acre in size.</p> <p>The desire for rural lifestyle living offering small-scale grow your own food opportunities has been supported for many years by beneficiaries in DHHL surveys, community meetings, island plan processes, and the Agricultural Task Force.</p> <p>Having an alternative to County codes to meet health and safety concerns has received strong support. This is likely to be controversial with the Counties and may increase the workload and costs to DHHL and beneficiaries, but it is worthwhile going through the process and acquiring real-time experience.</p> <p>This will allow homesteaders with subsistence lots in rural areas with low density development to pursue off-grid living. For example, electricity by generator, water from catchment, septic tanks, and minimum standard roads.</p> <p>I assume that Section (g) referring to the subdivision of lots will also require conformance to current approved island plans which have gone through an extensive vetting process .</p> <p>I support eliminating the farm plan and 2/3 cultivation requirement as they do not apply to subsistence rural lifestyle lots.</p> <p>Lastly, the acknowledgement and creation of subsistence lots opens the door to a more extensive homestead farm and ranch program. As outlined by the Agricultural Task Force, the intent is to provide appropriate levels of technical assistance and support for different levels of farming and ranching. The overall program could include (1) subsistence lots to grow your own food, (2) supplemental lots to learn the business of farming and ranching, to make investments and take risks to grow your business, and (3) commercial size lots in the form of general leases which are suitable to commercial level farming and ranching (can be mortgaged, is transferable, has no</p>
27		<p>ITEM 23 - TRANSFER OF HOMESTEAD LEASES</p> <p>In general, I support the principle of Native Hawaiians receiving a return on their investments on Hawaiian home lands. Consequently, I support prohibiting the sale of vacant or undivided lots and undivided interest leases.</p>
28		<p>ITEM 28 - FEES AND CHARGES</p> <p>In general, I support the principle that DHHL should not subsidize use of its assets such as facilities, parks, and resource management areas. DHHL has many other priorities to serve and, to the maximum extent possible, should not allocate its limited funds to these purposes.</p>
29	Written 6	Must invest to sell lot; transfer to family allowed
30		Also include approved transfers for joining lots to nonfamily with no money exchange for simultaneous transfer or add acreage specifically for undivided interest, vacant lots, and unimproved lots. For ag or pastoral lots only.

	A	B
1		SUMMARY OF COMMENTS
31	Written 7	10-2-16 delegation to the chairman. Seems like chair has a lot of power and can act as a bottleneck. That is instead of just presideing over processes approced by some consensus (by HHC or committees) there's a lot of power the chair can dictate. More power means DHHL varies in focus with replacement of a single person. Primary concern should be codifying standards that a chair is tasked to uphold.
32		10-3-3.1 change e-mail time stamp to "timestamp on electronic correspondence" because there are many forms of electronic communication that can be used--text, chat, shared files. Also works with verbiage in 10-3-10.
33		10-3-26 "reside on the island...or move to that island within three years" and "actively cultivate...for subsistence agriculture purposes." Beneficiary should be able to work the land to also make a profit.
34		10-3-76 water rates established by the HHC. Clarify what is meant by "department systems" and extent to which homesteaders can obtain water by other means than paid subscription.
35		10-5-5 filing of documents. If the departments spells out the paper process, it should also describe an electornic process rather than "punting progress" toward something that may be developed.

DEPARTMENT OF HAWAIIAN HOME LANDS
Amendments to Chapters 10-1, 10-2, 10-3, and 10-5
Hawaii Administrative Rules
_____, 2016

1. Section 10-1-2, Hawaii Administrative Rules, is amended by amending subsection (a) to read as follows:

"(a) Information about the department, submittals, or requests may be obtained from:

- (1) The main office, P.O. Box 1879, Honolulu, Hawaii 96805, [~~twelfth and twentieth floors, 1099 Alakea Street Honolulu, Hawaii;~~] 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707; or
- (2) Neighbor island district offices as follows:
 - (A) West Hawaii: P.O. Box 125, Kamuela, Hawaii 96743; 64-756 Mamalahoa Highway, Kamuela, Hawaii 96743;
 - (B) East Hawaii: 160 Baker Avenue, Hilo, Hawaii 96720;
 - (C) Kauai: 3060 Eiwa Street, Room 203, Lihue, Kauai 96766;
 - (D) Maui: [~~Puuone Plaza, Room C-206, 1063 East Main Street,~~] 655 Kaunualii Street, Suite 1, Wailuku, Maui 96793; or
 - (E) Molokai: P.O. Box [198, Hooilehua, Hawaii 96729 Puukapele Street, Hooilehua, Molokai 96729.] 2009, Kaunakakai, Hawaii 96748; 600 Maunaloa Highway, Suite D-1, Kaunakakai, Hawaii 96848."

[Eff 7/30/81 am and comp 10/26/98;
am] (Auth: HHC Act §222)
(Imp: HRS §91-2)

2. Section 10-1-2, Hawaii Administrative Rules, is amended by amending subsection (c) to read as follows:

"(c) Unless otherwise provided by law, all information contained in any document or other papers filed with the commission pursuant to the requirements of law[+] or rule or order of the commission shall be available for inspection; provided that no written complaint or charges filed against an applicant or the holder of a lease or license shall be open to inspection unless and until the commission has ordered that the matter be set for hearing and a notice of hearing has been issued to the person against whom a complaint or charge has been filed." [Eff 7/30/81 am and comp 10/26/98; am] (Auth: HHC Act S222) (Imp: HRS S91-2)

3. Section 10-1-4, Hawaii Administrative Rules, is amended to read as follows:

"S10-1-4 Terms. Unless otherwise specifically stated, the meaning of terms used in [~~Title-10~~] this title shall have the same meaning as provided by law." [Eff 7/30/81; am and comp 10/26/98; am] (Auth: HHC Act S222) (Imp: HHC Act)

4. Section 10-1-5, Hawaii Administrative Rules, is amended to read as follows:

"S10-1-5 Definitions. As used in this title, unless the context clearly provides otherwise:

"Act" means the Hawaiian Homes Commission Act of 1920, as amended[+].

"Advisory council" means the park advisory council established in section 10-4-34 for the purpose of advising the department on rules, practices, and activities on or affecting parks on Hawaiian home lands[+].

"Agency" means an agency of the federal, state, or county government[+].

"Appraisal" means the process of estimating value[+].

"Authorized representative" means any person permitted by the commission to act on its behalf including the chairman and the chairman's designee[+].

"Available lands" means public lands designated as available lands under section 203 of the act[+].

"Camper" means any person who remains or intends to remain at a park on Hawaiian home lands in order to use the park for overnight accommodations[+].

"Camping" means the use and occupation of any park on Hawaiian home lands on which at least one person remains or intends to remain overnight[+].

"Chairman" means the chairman of the commission[+].

"Commission" means the Hawaiian homes commission[+].

"Complainant" means the person or agency upon whose complaint a proceeding is instituted[+].

"Contested case" means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for hearing before the commission, and shall include but not be limited to proceedings involving the denial or cancellation of homestead leases issued by the department, and loan or tax delinquencies[+].

"Deferred status" means the status of an applicant in which the applicant will not be considered for an award, but will retain one's position on the waiting list[+].

"Department" means the department of Hawaiian home lands[+].

"Government records" has the same meaning as defined in chapter 92F, HRS[+].

"Hawaiian" means any descendant of the races inhabiting the Hawaiian islands previous to 1778.

"Hawaiian home lands" means all lands given the status of Hawaiian home lands under section 204 of the act[+].

"Hearing officer" means a person appointed by the commission or chairman at the request of the

commission, authorized and qualified to hold a hearing for the purpose of taking evidence and making recommended decisions in any contested case[+].

"Homesteader" means the holder or successor thereto of a lease which may be of the following classes issued under section 207 of the act:

- (1) Residential or residence lot lease;
- (2) Pastoral or pastoral lot lease; and
- (3) Agricultural or agricultural lot lease[+].

"HRS" means the Hawaii [revised statutes,] Revised Statutes, as amended[+].

"Lessee" has the same meaning as homesteader[+].

"Munitions and explosives of concern (MEC)" means specific categories of military munitions that may pose unique explosives safety risks such as UXO; "discarded military munitions" as defined in 10 U.S.C. 2710(e)(2); or munitions constituents present in high enough concentrations to pose an explosive hazard.

"Munitions constituents" means any materials originating from UXO, discarded military munitions, or other military munitions, including explosive and nonexplosive materials, and emission, degradation, or breakdown elements of such ordinance or munitions.

"Native Hawaiian" means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian islands previous to 1778[+].

"Party" means each person or agency named or admitted as such, or properly seeking and entitled as a matter of right to be admitted as such in a proceeding.

"Person" includes any individual, partnership, corporation, association, or public or private organization of any character other than an agency[+].

"Petitioner" means any interested person who in an individual or representative capacity requests:

- (1) A hearing as authorized by statute, law, or these rules;
- (2) A declaratory ruling;
- (3) Applicability of a departmental rule or order; or
- (4) Adoption, amendment, or repeal of any departmental rule[+].

"Picnic" means use of a park on Hawaiian home lands that does not include overnight accommodation[+].

"Presiding officer" means the person conducting a hearing and may be the chairman or a duly appointed representative[+].

"Priority and preference for award of leases" means the department's lease award process from 1963 to 1977 that awards leases, according to ranking, to applicants in one of three priority groups categorized under the priority ranking system and defined as follows: Priority I includes applicants and their spouses and children who are one hundred per cent Hawaiian; Priority II includes applicants and their spouses and children who are no less than fifty per cent Hawaiian; and Priority III includes only applicants who are no less than fifty per cent Hawaiian.

"Public lands" has the same meaning as defined in chapter 171, HRS[+].

"Respondent" means the party in a contested case against whom an order to show cause has been issued by the commission on its own initiative or a notice of hearing has been issued on the basis of a complaint filed with the commission[+].

"Rule" means a statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure or practice requirements of the department[+].

"Rulemaking procedure" means any formal action to adopt, amend, or repeal any rule of the department[;].

"State" means the State of Hawaii[+and].

"Successor" means a qualified person designated by an applicant or lessee to succeed to the applicant's application rights or the lessee's lease.

"Tract" means any tract of Hawaiian home lands leased, as authorized by section 207 of the act.

"Undeveloped lot" means a lot that is raw land for which there has not been substantial improvements suitable for the type of award.

"Vacant lot" means a lot that the department has prepared for development either fully or partially but lacks vertical improvement appropriate for the type of award.

"Unexploded ordnance (UXO)" means military munitions that:

- (1) Have been primed, fused, armed, or otherwise prepared for action;
- (2) Have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installations, personnel or material; and
- (3) Remain unexploded, whether by malfunction, design, or any other cause.

"UXO lands" means certain Hawaiian home lands which have been categorized as formerly used defense sites and may contain MEC." [Eff 7/30/81; am and comp 10/26/98; am] (Auth: HHC Act §222)
(Imp: HHC Act)

5. Section 10-1-7, Hawaii Administrative Rules, is amended to read as follows:

"§10-1-7 Severability. If any section, sentence, clause, or phrase of [Title 10 be] this title is for any reason held by a court of competent jurisdiction to be invalid, the decision shall not affect the validity of the remaining portion of this title." [Eff 7/30/81; am 2/3/83; am and comp 10/26/98; am] (Auth: HHC Act §222)
(Imp: HRS §91-2)

6. Section 10-2-1, Hawaii Administrative Rules, is amended to read as follows:

"§10-2-1 Office. The office of the commission is at [Honolulu,] Kapolei, Hawaii. All communications to the commission shall be addressed to the Hawaiian homes commission, as provided in section 10-1-2(a)(1)." [Eff 7/30/81; comp 10/26/98; am] (Auth: HHC Act §222) (Imp: HHC Act §202)

7. Section 10-2-16, Hawaii Administrative Rules, is amended to read as follows:

"§10-2-16 Delegation of duties to chairman. (a) It is the desire of the commission that functions and duties, administrative in nature, be delegated to the chairman and duties requiring the exercise of ~~[judgement]~~ judgment or discretion continue to reside with the commission.

(b) The commission shall be deemed to have delegated to the chairman duties, powers, and authority as may be lawful or proper for the performance of functions vested in the commission, including the following:

- (1) To appoint special committees and prescribe their powers and duties;
- (2) To preside over all meetings of the commission;
- (3) To approve and sign all vouchers, and to approve the assignment of funds to be received;
- (4) To approve leaves of absence;
- (5) To approve plans for construction of homes and improvements;
- (6) To screen matters referred to the chairman by staff and to select those of sufficient importance to place on the agenda for consideration by the commission; ~~[and]~~
- (7) To sign commission resolutions, licenses, leases, and contracts approved by the commission~~[-]~~;
- (8) To schedule contested case hearings; and
- (9) To approve the designation of successors.
- (c) Subject to ~~[the provisions of]~~ section 10-2-

17, the chairman may:

- (1) Grant loans from any loan fund;
- ~~[(2) Approve the designation of successors;~~
- ~~+(3)]~~ (2) Accept surrenders of homestead leases; and
- ~~[(4)]~~ (3) Approve, in regards to general leases, plans, assignments, subleases, and mortgages.

(d) The chairman or a designee may approve and sign contracts [~~under \$25,000~~] for specific projects which are included in the commission's prior approved budget." [Eff 7/30/81; am 11/17/84; am and comp 10/26/98; am] (Auth: HHC Act §222; HRS §91-2). (Imp: HHC Act §202)

8. Section 10-2-31, Hawaii Administrative Rules, is amended to read as follows:

"§10-2-31 Office. The main office of the department is at [~~Honolulu~~] Kapolei, Hawaii. All communications to the department shall be addressed as provided in section 10-1-2(a)(1)." [Eff 7/30/81; am and comp 10/26/98; am] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §202)

9. Section 10-2-33, Hawaii Administrative Rules, is amended to read as follows:

"§10-2-33 Personnel. (a) All personnel on the department's staff are under the direction of and are responsible to the chairman. The chairman, subject to law and civil service rules, shall select and discharge personnel for the department's staff. The commission shall be informed of all changes in staff personnel.

(b) All personnel shall strive for quality customer service that is beneficiary oriented, and in that pursuit may conduct operations pursuant to section 5-7.5, HRS." [Eff 7/30/81; comp 10/26/98; am] (Auth: HHC Act §222; HRS §91-2) (Imp: HRS §26-38)

10. Section 10-3-2, Hawaii Administrative Rules, is amended to read as follows:

"§10-3-2 Qualifications of applicants. [~~(a)~~] Applicants for residential, agricultural, or pastoral lot leases shall provide the department with documented proof that the applicant is:

(1) At least eighteen years of age; and

(2) A native Hawaiian.

~~[(b) In addition to the qualifications required in subsection (a), a person applying for an agricultural or pastoral lease may be required to comply with section 10-3-24 before a lease award for an agricultural or pastoral lot can be made.]~~" [Eff 7/30/81; am 1/20/86; am] (Auth: HHC Act §222; HRS §91-2) (Imp. HHC Act §207)

11. Chapter 10-3, Hawaii Administrative Rules, is amended by adding a new section 10-3-2.1 to read as follows:

"§10-3-2.1 Documentation. (a) Applicants shall provide the department with birth certificates or certifications issued by the department of health, or responsible government agency if the record is an out-of-state or foreign birth record. Out-of-state and foreign birth records shall be accompanied by a notarized affidavit from at least one named parent attesting to knowledge of the facts contained in the birth record and the veracity and accuracy of the contents of the record, as required by the department.

(b) If qualifications cannot be determined by birth records, the department may consider the following secondary documents:

- (1) Certified marriage certificates;
- (2) Certified death certificates;
- (3) Family history charts and documents such as marriage, divorce, and death records from the State of Hawaii Archives, state courts, public libraries or United States Census records;
- (4) Official baptismal records or other church documents identifying the race of applicant or applicant's ancestors;
- (5) Official records from the files of military services, schools, or hospitals;
- (6) Employment records;
- (7) Written statement from a physician knowledgeable of the facts or, in the case of a relative's death, a written

statement from the mortuary which handled the burial;

- (8) Newspaper clippings from Obituaries and Vital Statistics sections; and
- (9) Other documents as may be requested by the department." [Eff] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §207)

12. Chapter 10-3, Hawaii Administrative Rules, is amended by adding a new section 10-3-2.2 to read as follows:

"§10-3-2.2 Genetic tests. (a) "Genetic test" or "'ohana test" means the testing of inherited or genetic characteristics (genetic markers) for the purpose of establishing biological parentage.

(b) If after submittal and processing of documentation described in section 10-3-2.1, there remains uncertainty regarding the applicant's biological parentage because, for example, the appropriate space on the applicant's birth certificate is blank or the listed parent is not the biological parent, the applicant may choose to obtain genetic testing to establish maternity or paternity. The following types of relationship testing shall be accepted:

- (1) Parent-child testing. The testing utilized must have a power of exclusion greater than ninety-nine per cent and a minimum combined paternity or maternity index of five hundred to one.
- (2) Maternal or paternal lineage evaluation.
 - (i) Maternal lineage evaluation. If the alleged biological mother is deceased or unavailable, testing of the alleged mother's living sibling may be accepted as long as they share the same biological mother. Testing utilized must demonstrate shared mitochondria; or

(ii) Paternal lineage evaluation. If the alleged biological father is deceased or unavailable and the applicant is genetically male, testing of the alleged father's living brother may be accepted as long as they share the same biological father. Testing utilized must demonstrate shared Y chromosome.

(3) Avuncular testing. If the alleged biological parent is deceased or unavailable and maternal or paternal lineage evaluation is not applicable, testing of the alleged parent's living full sibling may be accepted. The testing utilized must have a likelihood ratio of no less than 50.0.

If the alleged biological parent is deceased, the applicant shall submit the death certificate. If the alleged biological parent is unavailable, the applicant shall submit an affidavit establishing the reason for the alleged biological parent's unavailability, such as the person being incarcerated, homeless, or having no known location or contact information. To add to the accuracy of the analysis, where the applicant has a known, living biological parent, that person shall also participate in the testing. The department shall accept only notarized and certified genetic test results with proper chain of custody directly from a relationship testing facility nationally accredited by the American Association of Blood Banks (AABB). All costs of testing and any related expenses shall be borne by the applicant.

(c) Documentation submitted directly to the department from the testing facility shall include the original laboratory-certified and notarized genetic test results and chain of custody documents reflecting an acceptable and reliable chain of custody. Applicant shall submit an affidavit from the alleged parent or alleged parent's sibling setting forth facts establishing a reasonable possibility of parentage by the alleged parent.

(d) Genetic testing is entirely voluntary and is not required by the department. Undergoing genetic testing does not guarantee acceptance of the application.

(e) The department shall treat genetic test results as information related to medical history, diagnosis, condition, treatment, or evaluation protected under section 92F-14(b)(1), HRS. The department shall not disclose genetic test results to third parties without the prior written consent of those tested.

(f) A determination regarding parentage by the department is not intended to have evidentiary effect for purposes other than those of the department."

[Eff] (Auth: HHC Act §222; HRS §91-2)
(Imp: HHC Act §207)

13. Section 10-3-3, Hawaii Administrative Rules, is repealed.

~~["§10-3-3 Application processing. (a) Applications shall be dated and signed by the applicant and by an authorized department representative. The department shall acknowledge in writing receipt of all properly completed applications. An incomplete application shall be returned to the applicant with instructions necessary to complete the application properly. Completed applications shall be time stamped, and if accepted, assigned a numerical designation, and filed in the order of receipt. Additions, corrections, or deletions may be made only with the approval of the applicant and the chairman or the chairman's designee. A copy of the application shall be given to the applicant. Except as otherwise provided in this chapter, a numerical designation shall not be reassigned to any other person.~~

~~(b) Within thirty days after the submission and filing of the completed application and all such other documents as the department shall require of the applicants, and any investigation the department shall require of the applicants, and any investigation the~~

~~department may conduct, the chairman or chairman's designee shall make a determination as to whether the applicant qualifies as an applicant. The determination shall be based upon the application form, birth, marriage, and death certificates, such other documents as the department may require the applicant to produce, and any investigation the department may conduct. An applicant who disagrees with any action taken by the department shall have thirty days from receipt of written notice of such action within which to petition the department for appearance before the next regular meeting of the commission concerning the action taken on the application."~~ [Eff 7/30/81; am 10/26/98;
R] (Auth: HHC Act §222) (Imp: HHC Act §207)]

14. Chapter 10-3, Hawaii Administrative Rules, is amended by adding a new section 10-3-3.1 to read as follows:

- "§10-3-3.1 Application processing. (a)
Applications are processed in multiple stages, each with a different purpose and effect, as follows:
- (1) Receipt. Applications shall be date and time stamped upon receipt by the department. This first date and time stamp shall be used only to certify receipt by the department. An applicant may submit an application by any method acceptable as provided by the instructions on the application form.
 - (2) Completion. An application is complete when the application form has been filled in, signed by the applicant and notarized as required, and, following initial review by the department, it appears as though sufficient documentation has been provided to substantiate that the applicant meets or does not meet the Hawaiian home lands program qualifications. A complete application shall be date and time stamped a second time. This second date and time

stamp shall be used to determine order on the waiting list should the application ultimately be accepted. An incomplete application shall be returned to the applicant with instructions necessary to complete the application properly.

- (3) Acceptance. Upon completion, the department shall review and investigate an application to verify documentation and determine whether the applicant is qualified. The determination shall be based upon the application form and birth certificates, as well as any secondary documents, and additional documentation as may be submitted to the department for verification and qualification. If the department determines, based upon the application form and documentation provided, that the applicant is qualified, the application shall be accepted and signed by an authorized department representative. An accepted application shall be assigned a numerical designation and filed in order of completion, as determined by the second date and time stamp. The department shall notify the applicant in writing of the acceptance and provide the applicant with a copy of the accepted application. If the department determines that there is reasonable uncertainty regarding an application, the department shall request additional documentation in writing. The department shall, within thirty business days after the application is deemed complete, make an acceptance determination or give notice to the applicant of an extended determination date of thirty business days and the reason or reasons therefor. Failure to render a decision within a thirty day period, as may be extended, shall not result in automatic determination or acceptance by the department.

(b) The department shall maintain written communication with the applicant regarding the status of the application and any time extensions.

(c) An applicant who disagrees with the determination by the department shall have thirty business days from the postmark or e-mail time stamp on the written notice of the determination within which to contest the determination."

[Eff] (Auth: HHC Act §222) (Imp: HHC Act §207)

Historical note: §10-3-3.1 is based substantially upon §10-3-3. [Eff 7/30/81; am 10/26/98;
R]

15. Section 10-3-6, Hawaii Administrative Rules, is amended by amending subsection (a) to read as follows:

"(a) The department shall maintain area waiting lists until the lists are exhausted. Applicants on a waiting list for any area will be placed on the respective island-wide residential lot, agricultural lot, or pastoral lot waiting list according to the date ~~[of application.]~~ and time stamp described in section 10-3-3.1(a)(2). Applicants on a waiting list for an area will be considered first for award of any lots in the area. Applicants on the island-wide waiting list shall be considered for award according to the date ~~[of application.]~~ and time stamp described in section 10-3-3.1(a)(2)." [Eff 7/30/81; am and comp 10/26/98; am] (Auth: HHC Act §222)
(Imp: HHC Act §207)

16. Section 10-3-8, Hawaii Administrative Rules, is amended to read as follows:

"§10-3-8 Transfer of application rights. (a) An applicant may designate an individual relative who is at least eighteen years of age and a native Hawaiian from among the following to succeed to the applicant's application rights upon the death of the applicant:

- (1) Husband or wife;
- (2) Child;
- (3) Grandchild;
- (4) Father or mother;
- (5) Widow or widower of a child;
- (6) Brother or sister;
- (7) Widow or widower of a brother or a sister;
or
- (8) Niece or nephew.

To the extent possible, applicants shall designate a successor at the time that the application is filed at the department; provided that the designation shall be filed in writing at the department and the department shall acknowledge the designation in order for the designation to be deemed filed. An applicant may change the designation of successor at any time; provided that the applicant shall file the change of designation in writing at the department and the department shall acknowledge the change of designation in order for the change of designation to be deemed filed. The department shall determine whether a designated successor is qualified to be an applicant for a Hawaiian home lands lease. A designated successor shall be required to provide proof to the department that the individual is at least eighteen years of age, a native Hawaiian, and a relative as identified in this subsection.

(b) If an applicant dies without designating a successor as provided in subsection (a), the commission may designate a successor applicant from only the following relatives of the applicant who are at least eighteen years of age, native Hawaiian, and who made a request to succeed to the application rights as provided in subsection (d):

- (1) Husband or wife; or
- (2) If no husband or wife requests, then a child; or
- (3) If no husband, wife, or child requests, then a grandchild; or
- (4) If no husband, wife, child, or grandchild requests, then from among the following relatives of the applicant who are native

Hawaiian and at least eighteen years of age: father and mother, widows or widowers of the children, brothers and sisters, widows or widowers of brothers and sisters, or nieces and nephews.

Any individual who requests to succeed to the decedent's application rights shall provide proof to the department that the individual is at least eighteen years of age, a native Hawaiian, and a relative as identified in this subsection.

(c) Once every calendar year, the department shall publish a notice setting forth a list of the names of all applicants whom the department has reason to believe have died without designating a successor and whose names do not appear in a list previously published by the department. The notice shall also state briefly that individuals requesting to succeed to the application shall submit a request within the deadline established in subsection (d). The notice shall be published in a newspaper of general circulation in the State, once in each of two successive weeks.

(d) Requests for succession to application rights shall be made to the department in writing not later than one hundred eighty days after the date of the last publication of the applicant's name; otherwise, the application will be canceled and the applicant's name shall be removed from the respective waiting list or lists, as the case may be. The commission, for good cause, may extend the time beyond one hundred eighty days in which requests for succession to an application may be made.

(e) The department shall determine whether an individual is qualified to succeed to the applicant's application not later than three hundred sixty five days following the one hundred eighty days after the date of the last publication of the applicant's name. The department shall submit a recommendation to the commission regarding the designation of a successor. If an individual who has requested to succeed to an application disagrees with the commission's designation of a successor, the individual may request

a contested case hearing as provided in section 10-5-31. The department, for good cause, may extend the time beyond three hundred sixty five days in which it is to determine whether an individual is qualified to succeed to an application.

(f) An alleged qualified relative of an applicant may obtain genetic testing under section 10-3-2.2 to aid in establishing qualification as a successor to application rights." [Eff 7/30/81; am 8/1/85; am and comp 10/26/98; am]
(Auth: HHC Act §222) (Imp: HHC Act §207)

17. Section 10-3-10, Hawaii Administrative Rules, is amended by amending subsection (a) to read as follows:

"(a) An applicant for a homestead lease shall notify the department, in writing~~[7]~~ or electronically, of any change in address within ~~[fifteen]~~ thirty calendar days of such change. If the applicant fails to notify the department and the department receives mail returned undeliverable as addressed with an official change of address label from the United States post office, the department shall attempt to reach the applicant at that new address. Whenever the department initiates action to award leases, all applicants whose addresses are not current and who cannot be contacted by mail shall be placed on deferred status." [Eff 7/30/81; am and comp 10/26/98; am] (Auth: HHC Act §222) (Imp: HHC Act §207)

18. Section 10-3-24, Hawaii Administrative Rules, is amended to read as follows:

"§10-3-24 Agricultural and pastoral leases. (a) When agricultural or pastoral lots become available for award, the applicant shall be contacted in accordance with section 10-3-7.

(b) The department shall notify applicants of the date, time, and place of lot selection. The

department shall defer applicants who fail to appear or select.

(c) ~~[Not later than three months following lot selection,]~~ Except for agricultural awards of not more than three acres and UXO lands, the applicant shall submit a plan for the development of the lot[-] no later than three months following lot selection. The plan shall include but not be limited to:

- (1) Crops to be grown or livestock to be raised;
- (2) Estimated expenses;
- (3) Estimated gross income;
- (4) Method of financing;
- (5) Market plan;
- (6) Timetable for operation;
- (7) Purpose of farm - subsistence, supplemental, commercial, or otherwise; and
- (8) Other assistance needed in terms of:
 - (A) Labor, number of individuals, tasks to be performed; and
 - (B) Technical assistance.

(d) Decision for award of agricultural lots of more than three acres and pastoral lots shall be based upon:

- (1) Review and acceptance of the plan's feasibility; and
- (2) Evaluation of the general knowledge and experience of the applicant or the experienced individual who will assist in the development of the lot. That general knowledge or experience or combination thereof may include but not be limited to the following:
 - (A) Member of the Hawaii young farmer association or a future farmer of America graduate with two years of training with farming projects;
 - (B) Satisfactory vocational agriculture course in high school;
 - (C) Satisfactory completion of an agricultural curriculum at a university or community college leading to a

- bachelor of science or an associate degree in agriculture;
- (D) One year full-time work experience on a farm or ranch;
 - (E) Completion of study at classes conducted by the University of Hawaii extension service; or
 - (F) Persons who have had at least two years of experience as part-time farmers or ranchers.

(e) For agricultural awards of not more than three acres, lot size shall be determined in accordance with the current island plan as approved by the commission and lot quality factors such as topography, natural resource availability, and soil quality.

[(e)] (f) In recognition of the shortage of available lands on the island of Oahu in relation to available lands in the State, an award of an agricultural lot on Oahu shall be made to applicants who are residing on the island of Oahu at time of application; provided further that a lessee of an agricultural lot on Oahu shall not be allowed to hold any other homestead lease." [Eff 7/30/81; am 2/3/83; am 8/1/85; am and comp 10/26/98; am]
(Auth: HHC Act §222) (Imp: HHC Act §207)

19. Section 10-3-25, Hawaii Administrative Rules, is amended by amending subsection (a) to read as follows:

"(a) A lessee of an agricultural or pastoral lot may ~~apply~~ make a written request for additional acreage of the same class." [Eff 7/30/81; am and comp 10/26/98; am] (Auth: HHC Act §222)
(Imp: HHC Act §207)

20. Chapter 10-3-26, Hawaii Administrative Rules, is amended and new subsection (b) is added to read as follows:

"§10-3-26 [Residence permitted on agricultural and pastoral lot.] Residence on agricultural and on pastoral lots, when. (a) Upon award of an agricultural or pastoral lot, the applicant shall reside on the island on which the leasehold is located[-] or move to that island within three years.

(b) A lessee of an agricultural lot of not more than three acres shall within three years:

(1) Reside and cultivate subsistence agriculture on the lot. Additional dwelling units shall be subject to department approval and infrastructure capacity. Residential and additional dwelling units shall be subject to the following:

(A) The residence or any additional dwelling units shall be built to county code; or

(B) The residence or any additional dwelling units may be exempted from county codes by the department provided that:

(i) The plans for any non-conforming portion or portions are submitted to the department for approval;

(ii) Any non-conforming portion or portions are certified as meeting industry standards for health and safety by a subject matter appropriate State of Hawaii licensed structural engineer or architect; and

(iii) The units are in compliance with applicable laws and regulations including but not limited to environmental compliance, water, clean water, wastewater, and catchment,

provided further that the department shall not be held liable for any risk, loss, damage, or injury of any kind associated with undisclosed, unpermitted, or dwelling units exempted

from conformance with county codes under this section.

(C) Non-conforming and unpermitted dwellings and improvements that have not been exempted as provided above shall not be appraised for valuation by the department and shall not be included in the calculation of net proceeds pursuant to section 209 of the Act; or

(2) Actively cultivate food crops or raise small livestock or both for subsistence agriculture purposes.

~~[(b)]~~ (c) [Residences] Subject to subsection (d), one residence shall be permitted on agricultural lots of more than three acres or on pastoral lots. [Only one residence shall be permitted per lessee on Hawaiian home lands.] In addition, a workers' quarters may be permitted per lessee on agricultural lots of more than three acres and pastoral lots subject to the following conditions:

- (1) The lessee has actively cultivated or developed at least two-thirds of the agricultural or pastoral tracts at all times;
- (2) The lessee shall submit a plan justifying the construction of a workers' quarters including but not limited to production processes and projections, number of workers and labor requirements, jobs to be performed, site and plot plan, house construction plans, and benefits accrued by the addition of a workers' quarters;
- (3) Approval by the commission;
- (4) Conformance to all state and county zoning and building requirements;
- (5) Adequate infrastructure, i.e., water, power, etc., shall be available to service the workers' quarters;
- (6) The lessee shall finance the construction of the workers' quarters and the department

- shall not loan or guarantee funds for construction of workers' quarters;
- (7) Removal of workers' quarters and related access and utility improvements at the expense of the lessee upon cancellation or surrender of agricultural or pastoral leases;
 - (8) Upon transfer of agricultural or pastoral leases with workers' quarters, the transferee must justify the continued use of the workers' quarters, otherwise, removal of the workers' quarters and related access and utility improvements will be required at the expense of the transferor;
 - (9) Not more than one workers' quarters shall be allowed per lessee, notwithstanding the size of the lot or lots, or the number of leases; and
 - (10) Workers' quarters shall not be allowed for subsistence farming operations.

~~[(e)]~~ (d) A lessee possessing a residential lot lease may construct a residence on the lessee's agricultural lot of more than three acres or pastoral lot provided that the lessee complies with the following conditions:

- (1) The lessee makes prior arrangements to surrender or transfer the resident lot lease upon the completion of construction of the residence on the lessee's agricultural or pastoral lot. Should it be feasible, the lessee may relocate the present house;
- (2) The lessee is financially able to assume the cost of relocation or construction of the new residence plus any related expenses necessary to maintain the agricultural or pastoral lot. The department may assist the ~~[Lessee]~~ lessee under sections 10-3-41 to 10-3-52; and
- (3) In the event the lessee surrenders the residence lot lease, the net proceeds thereof shall be first credited to any loan granted by the department for the

construction of a home on the agricultural or pastoral lot; and all other conditions imposed by this section and section 10-3-34.

~~[(d)]~~ (e) The department shall not be liable for expenses incurred by the lessee for amenities brought to the lot. The department shall not provide nor be required to provide any amenities, except as it may determine in the planned development of its lands.

~~[(e)]~~ (f) Upon cancellation or surrender of the agricultural or pastoral lot, the lessee shall relinquish the entire leasehold interest including the residence.

~~[(f)]~~ (g) Subdivision and transfer of a portion of an agricultural lot lease of more than one acre or pastoral lot lease may be permitted upon commission approval for the remaining term of the lease to any individual who qualifies under the act, subject to the following conditions:

- (1) Upon such transfer, each resultant subdivided lot meets department criteria for designation as agricultural or pastoral and available infrastructure capacity;
- (2) ~~[The department shall not be obliged to]~~ The lessee or transferee shall finance the construction of a residence on any transferred portion;
- (3) Plans for all residences to be constructed on transferred portions of leases shall be submitted to and approved by the department before construction thereof;
- (4) ~~[The department shall not be obliged to]~~ The lessee or transferee shall pay for any costs incurred in the processing and obtaining of the subdivision;
- (5) The department shall not be liable for expenses incurred by the lessee for amenities brought to the lot. The department shall not provide nor be required to provide any amenities except as it may determine in the planned development of its lands; and

- (6) A farm plan may be required ~~[by]~~ of transferees for all transfers involving the subdivided agricultural lots of more than three acres or pastoral lots. Where required, the farm plan shall be submitted to, reviewed and accepted by the department." [Eff 7/30/81; am 9/24/83; am 11/17/84; am and comp 10/26/98; am]

21. Section 10-3-33, Hawaii Administrative Rules, is amended to read as follows:

"§10-3-33 Commercial activities. Except as may be otherwise provided, no homestead leasehold or portion thereof shall be used for commercial activities of such a nature as to constitute a nuisance~~[-]~~ or threat to health, safety, and environment." [Eff 7/30/81; am 2/3/83; comp 10/26/98; am] (Auth: HHC Act §222) (Imp: HHC Act §208)

22. Section 10-3-34, Hawaii Administrative Rules, is amended to read as follows:

"§10-3-34 Building requirements. No building structure or improvement may be constructed on the premises without written approval from the ~~[commission.]~~ department. Such an approval shall be considered only after submission of a plan as to design, materials, and probable value and use of the structure to be built on the leasehold. Building structures or improvements shall meet building and zoning codes and other ordinances and regulations of the respective counties except as otherwise provided by the ~~[commission.]~~ department." [Eff 7/30/81; am and comp 10/26/98; am] (Auth: HHC Act §222) (Imp: HHC Act §208)

23. Section 10-3-36, Hawaii Administrative Rules, is amended to read as follows:

"§10-3-36 Transfer of homestead leases. (a) A lessee, with the written approval of the commission, may transfer the leasehold to any individual who is [~~a native Hawaiian and is~~] at least eighteen years old[~~-~~] and

(1) A native Hawaiian; or

(2) At least one-quarter Hawaiian and a spouse, civil union partner, child, grandchild, brother or sister of the lessee,

provided that leases for vacant or undeveloped lots and undivided interests, or any interest therein, shall not be sold but may be transferred for no consideration or by succession.

(b) Lease transfers to qualified relatives of a lessee or to beneficiaries on a waitlist shall have priority for processing over transfers to beneficiaries not on a waitlist.

(c) The transferee shall immediately occupy the residence lot or use or cultivate the agricultural, pastoral, or kuleana lot. Failure to occupy or use the lot within sixty days from date of transfer shall constitute grounds for cancellation of the lease.

(d) A transferee may own an interest in non-Hawaiian home lands real property, regardless of degree of ownership." [Eff 7/30/81; am 2/3/83; am 9/24/83; am and comp 10/26/98; am]
(Auth: HHC Act §222) (Imp: HHC Act §208)

24. Section 10-3-38, Hawaii Administrative Rules, is amended to read as follows:

"§10-3-38 Subdivision and transfer of a portion of residential lot leasehold. A lessee of a residential lot, with the approval of the commission, may subdivide and transfer a portion of the lot for the remaining term of the lease to any individual who is a native Hawaiian and is at least eighteen years old; provided that after the transfer, each lot conforms to county zoning standards. The department shall not be required to finance the construction of the house on the transferred portion. Plans for construction of the house shall be subject to the

approval of the ~~[chairman.]~~ department. The department shall not be required to pay for any costs incurred in the processing and obtaining of the subdivision." [Eff 7/30/81; am 1/20/86; am and comp 10/26/98; am] (Auth: HHC Act \$222)
(Imp: HHC Act \$208)

25. Section 10-3-39, Hawaii Administrative Rules, is amended by amending subsection (b) to read as follows:

"(b) Except as otherwise provided in the lease, the department may require a lessee of an agricultural lot of more than three acres or pastoral lot to have under development, cultivation, or use at least two-thirds of the useable acreage at all times." [Eff 7/30/81; am 1/20/86; comp 10/26/98; am] (Auth: HHC Act \$222) (Imp: HHC Act \$208)

26. Section 10-3-39, Hawaii Administrative Rules, is amended by amending subsection (d) to read as follows:

"(d) A lessee shall provide the department with a current mailing address and such other information as the department may require. The department shall be notified of a change of address in accordance with section 10-3-10(a)." [Eff 7/30/81; am 1/20/86; comp 10/26/98; am] (Auth: HHC Act \$222)
(Imp: HHC Act \$208)

27. Section 10-3-61, Hawaii Administrative Rules, is amended to read as follows:

"§10-3-61 Designation of successor. (a) As provided in section 209 of the act and in this section, the lessee shall designate the relative or relatives to whom the lessee directs the interest in the tract to vest upon the lessee's death from among the following relatives:

- (1) Husband, wife, children, or grandchildren who are at least one-quarter Hawaiian; or
- (2) Father, mother, widows or widowers of the children, brothers and sisters, widows or widowers of the brothers and sisters, or nieces and nephews who are native Hawaiian.

A lessee may designate a successor or successors at the time of execution of the lease; provided that the lessee shall file the designation in writing at the department and the department shall acknowledge the designation in order for the designation to be deemed filed. A lessee may change the designation of successor or successors at any time; provided that the lessee shall file the change of designation in writing at the department and the department shall acknowledge the change of designation in order for the change of designation to be deemed filed.

The lessee or designated successor shall provide documentation to establish eligibility of the designated successor and the department shall determine whether a designated successor is qualified to be a lessee of Hawaiian home lands.

(b) An alleged qualified relative of a lessee may obtain genetic testing under section 10-3-2.2 to aid in establishing qualification as a successor to the lease." [Eff 7/30/81; am and comp 10/26/98; am
] (Auth: HHC Act §222) (Imp: HHC Act §209)

28. Section 10-3-76, Hawaii Administrative Rules, is amended to read as follows:

~~"§10-3-76 Fees and charges. [(a) All charges shall be paid before withdrawal of stock, or proper guarantee of such payments shall be made.~~

~~[(b) Pasture fee charges for animals that die shall be paid up to the date the animals died.~~

~~[(c) Pasture fees shall be:~~

~~(1) \$5 per month per head, billed quarterly; and~~

~~(2) \$6 for dehorning, etc., per calf.~~

~~(d) The fees shall be subject to increase when, in the determination of the department, the increase is necessary to cover the cost of operating and maintaining the community pasture. The department shall establish for any pasture such fees as shall be necessary to operate and maintain the pasture.~~

~~(e) Cattle purchases from outside districts shall be blood tested and all cattle shall be treated in accordance with good animal husbandry practices before entering the pasture. Proof that cattle have been blood tested and treated shall be required.~~

~~(f) The department shall assess the following fees for scaling services:~~

~~(1) Lessees:~~

- ~~(A) \$2 pick-up towed trailers; and~~
- ~~(B) \$0.25 per head truck loads.~~

~~(2) Non-lessees:~~

- ~~(A) \$4 pick-up towed trailers; and~~
- ~~(B) \$0.50 per head truck loads.~~

~~(g) For trucking, the department shall assess a fee of \$6 per head for hauling cattle from community pasture to home or slaughterhouse. Hauling made by the department shall be made only by the department driver. Hauling services by the department shall be made only when a satisfactory hauling truck is available. At the time of hauling, the lessee shall be present to identify and designate in writing the cattle to be removed.~~

~~(h) Except as the commission may otherwise provide, the rental fee for the use of a meeting room or hall shall be \$50 per day or fraction thereof. As used in this section, a day shall mean a twenty-four hour period beginning at noon one day and ending at noon the next succeeding day.]~~

(a) The department shall assess fees for scaling services commensurate with local industry standard except that lessees may pay a reduced fee.

(b) To recover costs, the department may establish rental fees and service charges for the use of meeting rooms or halls, park facilities, and resource management areas subject to approval by the commission.

- (1) Fees and charges for use of meeting rooms or halls, and park facilities shall be based on:
- (A) Actual operating costs including utilities, maintenance and repair, custodial services, and security; and
 - (B) Current capital costs,
provided that recognized homestead community associations may use meeting rooms or halls, and park facilities to conduct association business for a rental fee of \$50 per twenty-four hours or fraction thereof, and a discounted fee schedule may be set for lessees. The department shall have priority use of department meeting rooms or halls even over prior existing reservations with at least fourteen calendar days notice.
- (2) As applied to resource management areas, a resource management plan shall be developed in consultation with beneficiaries to:
- (A) Identify resource management area issues, concerns, and opportunities;
 - (B) Identify management actions to address resource management area issues, concerns and opportunities;
 - (C) Identify capital or operational costs or both to implement management actions;
 - (D) Calculate needed fees or service charges, or both, based on estimated capital or operational costs, or both, of identified management actions.
- The department shall monitor the area to determine whether the management actions have been successful under the management plan. Future management prescriptions including re-evaluation of a fee schedule shall be based on evaluations of whether management actions have been successful.
- (c) Patrons who have outstanding accounts, have provided false information when applying to use department facilities, or have previously misused the

department's property, grounds, or facilities may be denied use of department facilities and resource management areas.

~~[(i)]~~ (d) Water from department systems shall be sold at rates established by the commission. The department shall establish the frequency of billing and may determine a minimum monthly charge.

(e) Fees and charges shall be revised when necessary and approved by the commission during the odd year of the fiscal biennium. [Eff 7/30/81; am 2/3/83; am 11/17/84; am and comp 10/26/98; am] (Auth: HHC Act §222) (Imp: HHC Act §211)

29. Section 10-5-1, Hawaii Administrative Rules, is amended to read as follows:

"§10-5-1 Scope of rules. This chapter governs practice and procedure before the commission and department pursuant to the act and ~~[the Hawaii administrative procedure act.]~~ chapter 91, HRS. These rules shall be construed to effect a just and speedy determination of every proceeding." [Eff 7/30/81; am and comp 10/26/98; am] (Auth: HRS §91-2) (Imp: HRS §91-2)

30. Section 10-5-2, Hawaii Administrative Rules, is amended to read as follows:

"§10-5-2 Commission procedures. The commission ~~[may],~~ on its own motion or ~~[upon the]~~ on petition of any interested person or agency, may hold proceedings as it deems necessary for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties, or the formulation of its rules. ~~[For such purposes, it]~~ It may subpoena witnesses and require the production of evidence. ~~[Procedures to be followed by the commission shall, unless]~~ Unless specifically prescribed in these rules or by ~~[the Hawaii administrative procedures act, be such as in the opinion of]~~ chapter 91, HRS, the commission shall follow procedures that, in its opinion, will best

serve the purposes of ~~[such]~~ the proceedings." [Eff
7/30/81; am and comp 10/26/98; am]
(Auth: HRS §91-2) (Imp: HRS §91-2)

31. Section 10-5-3, Hawaii Administrative Rules,
is amended to read as follows:

"§10-5-3 Suspension, waiver of rules. Any
person or agency may submit a signed request that any
rule contained in this chapter not be applied ~~[and
the]~~. The commission or the hearing officer before
whom the matter is presented~~[, upon such request]~~ may
suspend or waive ~~[such a]~~ the particular rule or rules
to prevent the hardship ~~[in any particular instance.]~~
identified and described in the submitted request."
[Eff 7/30/81; comp 10/26/98; am]
(Auth: HRS §91-2) (Imp: HRS §91-2)

32. Section 10-5-4, Hawaii Administrative Rules,
is amended to read as follows:

"§10-5-4 Appearances before the commission. (a)
Any individual or agency ~~[or designated representative
thereof]~~ may appear, in person or by designated
representative, before the commission or hearing
officer in any proceeding, unless otherwise provided
in subsection (c).

(b) When a person acting as a representative
appears in person or signs a paper before the
commission or hearing officer, the appearance or
signature shall constitute a representation to the
commission or hearing officer that, under the
provisions of these rules or applicable law, the
individual is authorized and qualified to act as a
representative.

(c) No person who has been associated with the
commission or department as a member, officer,
employee, or counsel shall represent ~~[in any manner,]~~
any party in connection with any proceeding or matter
which was handled or passed upon by that person while
associated in any capacity with the commission.

(d) No person who has been associated with the commission or department as a member, officer, employee, or counsel shall represent ~~[in any manner,]~~ any party in connection with any proceeding or matter which was pending before the commission or hearing officer at the time of the association with the commission unless the person shall first have obtained the commission's written consent upon a verified showing that the person did not give personal consideration to the proceeding or matter as to which consent is sought or gained particular knowledge of the facts thereof during the association with the commission.

(e) No person appearing before the commission or hearing officer in any proceeding or matter shall ~~[in relation thereto]~~ knowingly accept assistance from any person who would be precluded by this section from appearing before the commission or hearing officer in ~~[such]~~ that proceeding or matter." [Eff 7/30/81; am and comp 10/26/98; am] (Auth: HRS §91-2) (Imp: HRS §91-2)

33. Section 10-5-5, Hawaii Administrative Rules, is amended to read as follows:

"§10-5-5 Filing of documents. (a) [Any document or other papers] Documents or papers required or permitted to be filed with the commission in any proceeding or matter shall be filed [with the department.] at the office of the commission in Kapolei, Hawaii. [Such document or paper] Documents or papers may be sent by mail addressed to the Hawaiian homes commission as described in section 10-1-2(a)(1), or hand carried to the [department] commission office within the time limit for [such] filing. The date [on which the papers are actually received] of receipt by the commission secretary shall be [deemed to be] the date of filing.

(b) [Any document or other papers] Documents or papers filed with the commission shall be plainly legible[-] and shall be signed by the party or a designated representative.

(c) ~~[All documents or other papers must be signed by the party or a designated representative filing the same.]~~ The signature of the person signing ~~[the]~~ a filed document or paper shall represent that, to the best of the individual's knowledge, information, and belief, every statement contained in the instrument is true and that no statements are misleading, and that the document is not interposed for delay.

(d) ~~[Unless]~~ A party filing a document or paper shall file the original and nine copies, unless otherwise specifically [provided] directed by a particular rule or order of the commission[~~, an original and nine copies of all papers shall be filed~~]. A party may file an additional copy to be time stamped by the commission, and mailed back to the filing party via a self-addressed stamped envelope.

(e) The initial document filed by any person in any proceeding shall state on the first page the name, mailing address, and telephone number of the person or persons who may be served with any documents filed in the proceeding.

(f) The commission may develop and authorize the use of internet-based or other electronic filing procedures for the filing of documents." [Eff

7/30/81; am and comp 10/26/98; am

(Auth: HRS §91-2) (Imp: HRS §91-2)

34. Section 10-5-6, Hawaii Administrative Rules, is amended to read as follows:

"§10-5-6 Docket. The ~~[department]~~ commission shall assign a number to each proceeding and maintain a docket of all proceedings." [Eff 7/30/81; comp 10/26/98; am] (Auth: HRS §91-2) (Imp: HRS §91-2)

35. Section 10-5-7, Hawaii Administrative Rules, is amended and new subsection (a) is added to read as follows:

"§10-5-7 Time computation. (a) ~~[In computing any period of time prescribed or allowed by these rules, order of the commission, or any applicable law, the day of the act, event, or default, after which the designated period of time is to run, shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal State holiday in the State in which event the period runs until the next day which is neither a Saturday, Sunday, or holiday. Intermediate Saturdays, Sundays, and holidays shall not be included in a computation when the period of time prescribed or allowed is ten days or less. A half holiday shall be considered as other days and not as a holiday.]~~ Computation of time shall be as established by section 1-29, HRS.

(b) ~~[Upon]~~ On written request ~~[r]~~ clearly showing good cause, additional time [will] may be granted to take actions or to file documents [or other papers] required or allowed by these rules [where good cause is clearly shown]." [Eff 7/30/81; am and comp 10/26/98; am] (Auth: HRS §91-2) (Imp: HRS §§1-29, 91-2)

36. Section 10-5-8, Hawaii Administrative Rules, is amended to read as follows:

"§10-5-8 Amendments, dismissal of documents. ~~[If any document or other paper filed in a proceeding are not in substantial conformity with these rules as to the contents thereof, or are otherwise insufficient, the]~~ The commission or hearing officer, on its own motion ~~[r]~~ or on motion of any party, may strike, ~~[or]~~ dismiss, or require ~~[the document, or require its amendment.]~~ amendments of any filed document that is not in substantial compliance with these rules or is otherwise insufficient. If amended, the document shall be effective as of the ~~[day]~~ date of the original filing." [Eff 7/30/81; am and comp 10/26/98; am] (Auth: HRS §91-2) (Imp: HRS §91-2)

37. Section 10-5-9, Hawaii Administrative Rules, is amended to read as follows:

"§10-5-9 Document retention. ~~[All documents]~~ Documents filed with or presented to the commission may be retained in the files of the commission. ~~[However, the]~~ The commission may permit ~~[withdrawal]~~ replacement of original documents ~~[upon submission of]~~ with properly authenticated copies ~~[to replace such documents]."~~ [Eff 7/30/81; am and comp 10/26/98; am] (Auth: HRS §91-2) (Imp: HRS §91-2)

38. Section 10-5-10, Hawaii Administrative Rules, is amended to read as follows:

"§10-5-10 Commission decisions. All final orders, opinions, or rulings entered by the commission in a proceeding and rules adopted by the commission as a result of a contested case hearing shall be released for general publication. Copies of ~~[such]~~ published materials shall be available for public inspection in the department office or may be obtained upon a signed request and payment of fees imposed by law." [Eff 7/30/81; comp 10/26/98; am] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-12)

39. Section 10-5-12, Hawaii Administrative Rules, is amended to read as follows:

"§10-5-12 Substitution of parties. ~~[Upon]~~ On motion and for good cause shown, the commission may order substitution of parties, except that, in the case of death of a party, substitution may be ordered without the filing of a motion." [Eff 7/30/81; comp 10/26/98; am] (Auth: HRS §91-2) (Imp: HRS §91-2)

40. Section 10-5-13, Hawaii Administrative Rules, is amended to read as follows:

"§10-5-13 Consolidations. The commission, ~~[upon its own initiation]~~ on its own motion or ~~[upon~~

~~motion,~~] on motion of any party, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings which involve substantially the same parties, or issues which involve the same parties or issues which are the same or closely related if it finds that ~~[such]~~ consolidation or contemporaneous hearing will be conducive to the proper dispatch of its business, promote justice and will not unduly delay the proceedings." [Eff 7/30/81; comp 10/26/98; am] (Auth: HRS §91-2) (Imp: HRS §91-2)

41. Section 10-5-21, Hawaii Administrative Rules, is amended to read as follows:

"§10-5-21 Rule change petitions, procedures.

(a) Any person or agency may petition the commission for the adoption, amendment, or repeal of any rule. The petition shall set forth the text of any proposed rule or amendment desired or specify the rule, the repeal of which is desired and state concisely the nature of petitioner's interest in the subject matter and the reasons for seeking the change. ~~[No petition which does not conform to the requirements will be considered by the commission.]~~ A petition that is not in substantial compliance with these rules or is otherwise insufficient shall not be considered by the commission.

(b) Petitions for rulemaking shall become matters of public record upon filing. The commission shall ~~[, within thirty days following the filing of the petition,~~] either deny the petition in writing or initiate public rulemaking procedures ~~[,]~~ as soon as practicable. No other public hearing, oral arguments, or other form of proceeding shall be held as a result of ~~[any such]~~ the petition. Where the commission determines that the petition discloses sufficient reasons in support of the relief requested to justify the institution of public rulemaking proceeding, the procedures to be followed shall be as set forth in this chapter. Where the commission determines that the petition does not disclose sufficient reasons to

justify the institution of public rulemaking procedures, or where the petition for rulemaking fails in material respect to comply with the requirements of these rules, the commission shall deny the petition and the petitioner will be so notified, together with the grounds for ~~such~~ denial. The provisions of this section shall not operate to prevent the commission, on its own motion, from acting on any matter disclosed in any petition." [Eff 7/30/81; comp 10/26/98; am] (Auth: HRS §91-2) (Imp: HRS §91-6)

42. Section 10-5-22, Hawaii Administrative Rules, is amended to read as follows:

"§10-5-22 Proposed rulemaking notice. (a) When, pursuant to a petition or upon its own motion, the commission proposes to adopt, amend, or repeal a rule, the commission shall publish a notice of proposed rulemaking at least once in a newspaper of general circulation in the State~~[-]~~ and in each county affected by the rule. Notice shall also be made available on the website of the department. All rulemaking notices shall be issued at least thirty days before the date set for public hearing.

(b) The proposed rulemaking notice shall include:

- (1) A statement of the topic of the proposed rule adoption, amendment, or repeal or a general description of the subjects involved; ~~and~~
- (2) A statement that a copy of the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed will be e-mailed or mailed to any interested person who requests a copy~~[-]~~ and pays in advance for the copy and the postage, together with a description of where and how the requests may be made;
- (3) A statement of when, where, and during what times the proposed rule to be adopted, the proposed rule amendment, or the rule

proposed to be repealed may be viewed in person; and

- (4) The date, time, and place where the public hearing will be held and where interested persons may be heard on the proposed rule adoption, amendment, or repeal. ~~[The notice shall be mailed to all persons or agencies who have made timely written requests for advance notice of the commission's rulemaking proceedings, and given at least once statewide.]~~

(c) The notice shall be mailed to all persons or agencies who have made timely written requests for advance notice of the commission's rulemaking proceedings. Proposed rule adoption, amendment, or repeal shall also be posted on the Internet as provided in section 91-2.6, HRS.

~~[(e)]~~ (d) Copies of the proposed adoption, amendment, or repeal of a rule shall be sent at least thirty days before the date set for public hearing as follows:

- (1) Five copies to each district office;
- ~~[(2)]~~ ~~Fifteen copies to the state library, main branch, for distribution to selected libraries as suggested by the department;~~
- ~~[(3)]~~ (2) Two copies to each registered and recognized homestead association; and
- ~~[(4)]~~ (3) Five copies to the main office identified in ~~[\$10-1-2(a)(1).]~~ section 10-1-2. [Eff 7/30/81; am and comp 10/26/98; am] (Auth: HRS §91-1) (Imp: HRS §91-2)

43. Section 10-5-23, Hawaii Administrative Rules, is amended to read as follows:

"§10-5-23 Hearing conduct. (a) [The public hearing shall be presided over by the chairman or, in the absence of the chairman, by another member designated by the commission.] The chairman or the chairman's designee shall preside over the public

hearing. The hearing shall be conducted ~~[in such a way as to afford to]~~ to allow interested persons a reasonable opportunity to be heard on matters relevant to the issues involved and to obtain a clear and orderly record. The presiding officer shall have authority to administer oaths or affirmations and to take all other actions necessary for the orderly conduct of the hearing.

~~[(b) Each such hearing shall be held at the time and place set in the notice of hearing, but may at such time and place be continued by the chairman from day to day or adjourned to a later date or to a different place without notice other than the announcement thereof at the hearing.]~~

~~-(e)]~~ (b) At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. Evidence shall then be received with respect to the matters specified in the notice of hearing in ~~[such]~~ the order ~~[as]~~ prescribed by the presiding officer ~~[shall prescribe]~~. Persons testifying shall be limited to fifteen minutes. Whenever time permits, the presiding officer may allow additional time upon request. After all persons who have requested to appear before the commission hearing have testified, any person whose request for additional time has been granted may present ~~[such]~~ additional relevant testimony.

~~[(d)]~~ (c) Submission of evidence shall include the following:

- (1) Before giving testimony, every witness shall state his or her name, address, and any representative capacities in which the witness serves and shall give other information respecting appearance as the presiding officer may request. The presiding officer shall confine the evidence presented to the questions before the hearing and may receive evidence whether or not the evidence would be admissible in a court of law; and

- (2) Every witness shall be subject to questioning by the presiding officer or members of the commission~~[r]~~ present, but cross-examination by private persons shall not be permitted unless expressly permitted by the presiding officer.

~~[(e)]~~ (d) All interested persons or agencies shall be afforded an opportunity to submit data, views or arguments which, in the opinion of the presiding officer, are relevant to the matters specified in the notice of the hearing. In addition, or alternatively, persons or agencies may ~~[also]~~ file with the commission signed, written protests, comments, or recommendations in support of or in opposition to the proposed rulemaking. The period for filing written protest, comments, or recommendations may be extended beyond the hearing date by the presiding officer for good cause.

~~[(f)]~~ (e) Unless otherwise specifically ordered by the commission or the presiding officer, testimony given at the public hearing shall not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered in evidence at the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received in evidence and made a part of the record. Unless the presiding officer finds that the furnishing of copies is impracticable, ten copies of the exhibits shall be submitted." [Eff 7/30/81; am and comp 10/26/98; am] (Auth: HRS §91-2) (Imp: HRS §91-3)

44. Chapter 10-5, Hawaii Administrative Rules, is amended by adding a new section 10-5-23.1 to read as follows:

"§10-5-23.1 Time and place. Each hearing shall be held at the time and place set in the notice of hearing, but, at that time and place may be continued by the presiding officer from day to day or adjourned to a later date or to a different place without notice other than the announcement at the hearing."

[Eff] (Auth: HRS §91-2) (Imp: HRS §91-3)

Historical note: §10-3-23.1 is based substantially upon §10-3-23(b). [Eff 7/30/81; am and comp 10/26/98; am]

45. Section 10-5-25, Hawaii Administrative Rules, is amended to read as follows:

"§10-5-25 Emergency rulemaking. Subject to chapter 91, HRS, and, notwithstanding the foregoing rules, if the commission finds that an imminent peril to public health, safety, or morals requires issuance, amendment, or repeal of a rule upon less than ~~[twenty]~~ thirty days notice of hearing, and states in writing its reason for ~~[such]~~ the finding, it may proceed without prior notice or hearing ~~[upon such]~~ on abbreviated notice and hearing as it finds practicable to adopt an emergency rule which will be effective for a period not longer than one hundred twenty days without renewal." [Eff 7/30/81; am and comp 10/26/98; am] (Auth: HRS §91-2) (Imp: HRS §91-3)

46. Chapter 10-5, Hawaii Administrative Rules, is amended by adding a new section 10-5-26 to read as follows:

"§10-5-26 Governor's approval. The adoption, amendment, or repeal of any rule by the commission is subject to the approval of the governor." [Eff] (Auth: HRS §91-2) (Imp: HRS §91-3)

47. Material, except source notes, to be repealed is bracketed. New material is underscored.

48. Additions to update source notes to reflect these amendments are underscored.


49. These amendments to chapters 10-1, 10-2, 10-3, and 10-5, Hawaii Administrative Rules, shall take

effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on [], and filed with the Office of the Lieutenant Governor.

JOBIE M. K. MASAGATANI, Chairman
Hawaiian Homes Commission

APPROVED AS TO FORM:



Deputy Attorney General

