

PROMISED LAND

INVESTIGATIVE SERIES | A W A W A W A W A W A W

The government pledged to return ancestral Hawaiian land, then never finished the job



CINDY ELLEN RUSSELL / CRJSELL@STARADVERTISER.COM

Native Hawaiians are still waiting for state and federal officials to fulfill the promises of land legislation that was signed into law 25 years ago. "Justice delayed is justice denied," said one former governor.

By Rob Perez, Honolulu Star-Advertiser and Agnel Philip, ProPublica

Twenty-five years ago, the state of Hawaii and the U.S. government promised Native Hawaiians to correct a historic wrong.

Public agencies had occupied thousands of acres intended to return Native people to their ancestral lands, paying little or no compensation for decades as the sites were used for military bases, game preserves, schools and other purposes. In 1995, state and federal legislation pledged

to provide reparations.

Then-U.S. Rep. Neil Abercrombie, D-Hawaii, said it was "a step toward righting a great wrong against the original people of this land." Then-Sen. Daniel Akaka, a Native Hawaiian who steered the bill through the Senate, called the legislation "a vindication for Hawaiians who had lost hope that this long-standing issue would ever be resolved."

But as 2020 draws to a close, Native Hawaiians are still waiting

for all of what was promised.

While the state has added nearly 16,000 acres to the land trust, just a fraction were on Oahu, the island with the greatest housing demand. The state still owes another 1,300 acres to the Department of Hawaiian Home Lands under the terms of its reparations bill, known as Act 14, an investigation by the Honolulu Star-Advertiser and ProPublica has found.

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EDITOR'S NOTE:

This story is co-published with ProPublica, a nonprofit newsroom that investigates abuses of power. The Honolulu Star-Advertiser is a member of the ProPublica Local Reporting Network.

Pictured above is a homestead subdivision in Waimanalo.

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Over the years, the U.S. government has provided about 900 acres as compensation for the unauthorized takings. But none of the land conveyed, almost all of it on Oahu, was suitable for residential use, according to DHHL. And the federal government still owes additional land under the Hawaiian Home Lands Recovery Act.

"Justice delayed is justice denied," said former Gov. John Waihele, the only Native Hawaiian to hold that office and whose administration was instrumental in negotiating the Act 14 bill. "At some point, you can't keep putting things off."

The unmet obligations are among a number of key mistakes by state and federal officials that have exacerbated the decades-long failure of DHHL to fulfill its mission to Native Hawaiians.

As the Star-Advertiser and ProPublica reported in October, DHHL is failing to award homesteads in a timely fashion, as state law requires. The department has developed just 3,300 residential lots statewide since 1995, even as its residential waitlist has ballooned to 23,000. The strategy of building expensive single-family subdivisions has left thousands of low-income and homeless Native Hawaiians behind in a state with one of the most acute affordable housing crises in the nation.

DHHL is now running out of real estate on Oahu, the state's most populous — and popular — island. About half the residential applicants on the statewide waitlist want to live there, yet just 575 acres remain in the land trust that are suitable for housing. That's enough to supply less than a third of the so-called waitlisters with homesteads under the current single-family model, according to an analysis of department data by the Star-Advertiser and ProPublica.

DHHL says it is adjusting to the land shortage by planning hundreds of multifamily units on Oahu over the next five years. And to get the additional lands it is owed, the department is currently pursuing settlements with state and federal officials, who say they intend to fulfill their obligations. DHHL plans to hire a private law firm to represent the interests of the trust since it both reports to the state and is negotiating with the state. Gov. David Ige, who as a former state representative participated in negotiating the 1995 reparations bill, said completing the land transfers is a priority for his administration.

Some members of Hawaii's congressional delegation are calling for federal action. "It's long past time to settle old

debts to the beneficiaries," U.S. Rep. Tuli Gabbard, D-Hawaii, said in a statement.

DHHL faces a number of administrative and logistical hurdles in its efforts to win developable property and accommodate the crushing demand for housing. Some past efforts to make the trust whole have failed, in part because of the poor quality of the land being offered as compensation.

Advocates, lawmakers and former government officials say DHHL needs to reckon with the realities of limited land in a chain of islands. Even DHHL won all Oahu land in the settlements — an unlikely outcome — he trust would still be short of what it needs just to satisfy the current demand. The problem is compounded by a growing waitlist and the department's chronic money woes, shuffles that prompt the agency's lease some of its Oahu lands to commercial interests.

Broken promises

Nowhere is the broken promise more apparent than on Oahu, where DHHL faces the greatest demand.

On paper, the department's 203,000-acre land trust contains 7,800 residential lots statewide since 1995, even as its residential waitlist has ballooned to 23,000. The strategy of building expensive single-family subdivisions has left thousands of low-income and homeless Native Hawaiians behind in a state with one of the most acute affordable housing crises in the nation.

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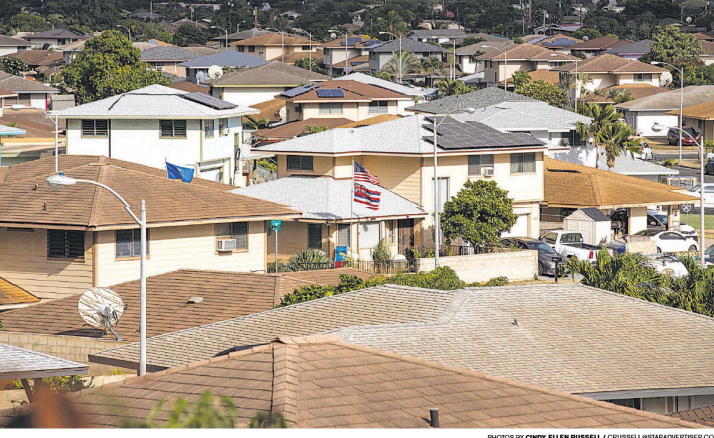
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Recovery Act has done even less.

Under the law, the only lands eligible for transfer to the trust are those considered by the U.S. government to be surplus property, such as a closed military base or research lab.

"The implementation has ended up essentially being useless," said Abernethy, who went on to serve as the state's governor, in a recent interview.

A major land exchange that was announced to great fanfare in 1998 is instructive. Then Interior Secretary Bruce Babbitt traveled to Honolulu to join top Hawaii political leaders at Washington Place, the governor's residence, to tout more than 900 acres pegged for transfer to the trust. The vast majority of that land was on Oahu, and officials applauded the proposed deal as delivering prime land for, among other things, residential homesteads and transitional housing for homeless Hawaiians. But 22 years later, DHHL says the land is not suited for residential use, citing a host of complications.

For example, 506 acres, which were once part of a West Oahu naval air station, would have involved prohibitive development costs and the requirement to involve surrounding landowners on infrastructure issues, according to DHHL. Some of that land is instead being leased to companies for such purposes as solar farms, generating revenue for the trust.

The department has rejected offers for lands elsewhere on Oahu over the years, citing contamination or other factors. Such rejections are part of the reason that the federal government still has outstanding obligations to the state, according to a spokesman for the U.S. Department of the Interior. Moreover, few surplus federal lands have become available in Hawaii since 2000.

DHHL, however, is currently evaluating an offer for an 80-acre lot in Ewa Beach on Oahu's west side. The site of a former tsunami warning center can be used for residential development, which would make the potential deal the first under the federal law to help alleviate the residential land shortage on Oahu.

If all parties reach agreement, transfer could fulfill the U.S. government's commitment. In a nod to the limited utility of the lands obtained under prior settlement deals, the Interior spokesman said the Ewa

hood, the department received no operating funds from the state, according to DHHL data. In 2012, the Hawaii Supreme Court ruled that the state is obligated to sufficiently fund the department, and it has faced much better since then. Still, it has received far less than what it deemed sufficient.

Over the past five years, for instance, DHHL has requested about \$50 million for land acquisitions, according to the department, an average of \$10 million annually. It got just about \$7 million in total.

The department is using the money to acquire a one-acre parcel in urban Honolulu where it plans to restore two vacant apartment buildings as rentals for beneficiaries.

Cedric Duarte, a DHHL spokesman, said the department continues to look for possible land acquisitions but funding is a challenge.

As a result, the department leases some trust lands to generate revenue, a practice that DHHL considers essential for financial stability.

On Oahu, more than a quarter of the trust's 7,800 acres are in the hands of nonbeneficiaries, producing nearly \$12 million in annual revenue — roughly 17% of the department's budget. The tenants pay to use the land for a wide range of purposes, from operating churches and other nonprofit organizations to running commercial enterprises.

The most lucrative lease, accounting for nearly \$5 million annually, is for a West Oahu regional mall. Ka Makana AHI, sitting on roughly 70 acres transferred to DHHL under Act 14, the property was developed by DeBarbato Development and opened several years ago. The company is led by former San Francisco 49ers owner Edward J. DeBarbato Jr. Beneficiaries have long criticized the practice.

Robin Danner, chair of the Sovereign Council of Hawaiian Homestead

Beach proposal could provide housing for hundreds of Hawaiian families and "has the potential to be one of the most important acquisitions by the trust in the last 25 years."

Leasing lands to generate revenue

Other efforts to fix the problem have faltered. DHHL has looked to the private market to purchase additional property, but besides lacking land, the department has lacked money.

In 29 of the 61 years since state-



Darrell Maileua, 58-year-old district manager for a Hawaii laundry company applied for a residential homestead in 2009 and is more than 7,000 from the top of the waitlist.

Associations, the largest beneficiary group in the state, said Prince Jonah Kūhiō Kalanianaʻōle, considered the father of the homesteading program when it was created a century ago, envisioned having Hawaiians running successful businesses on their land. "Did he intend for the 48ers to get my land to build a mall? No."

Ka Makana AHI said the 48ers have no ownership stake in the mall and noted the project — one of the region's largest employers — is supporting beneficiaries and the community, such as through a \$500,000 donation to build a park in an adjacent homestead development. "We are committed to upholding the mission and vision" of the Hawaiian people, said Stephanie England, Ka Makana AHI general manager.

Still, with 11,000 beneficiaries on Oahu's residential waitlist and 28,000 on statewide lists for residential, farming and ranching homesteads, advocates say DHHL should be using all lands to directly help Native Hawaiians. "You need every inch of those lands for homesteading purposes," said Kekoa Enomoto, a Maui homesteader and chair of Pa'upena Community Development Corp., a nonprofit that assists beneficiaries to build homes and self-sufficient communities.

The department, however, says it needs the money, and last week announced plans to expand its commercial leasing program.

Officials said they intend to seek legislation that would authorize DHHL to lease trust lands for the development of a resort-casino. The proposal must first be approved by the Hawaiian Homes Commission, which oversees DHHL, before going to Ige, who would then consider whether to include it as part of his package of measures submitted to the Legislature for the upcoming session, which starts in January.

"Given the impact of COVID-19 on our state's economy, the department is proposing a bold measure that has proven successful for indigenous groups in generating critically needed revenue to improve the lives of their people," said Tyler Iokapa Gomes, a senior official at DHHL, in a statement. "We are at a pivotal moment in the history of the Hawaiian Homes Commission Act and resources to develop infrastructure and acquire lands will be needed to fulfill the vision of Prince Kūhiō."

State Rep. Sylvia Luke, who heads

the House Finance Committee, raised concerns about placing a resort-casino on buildable trust land on Oahu, overlooking what is available for homesteads. "The priority should be to use developable land to reduce the waitlist," she said in an interview.

Luke previously told the Star-Advertiser and ProPublica that the Legislature has appropriated record amounts for DHHL in recent years, approving close to what the governor sought for the agency. For his part, Ige has substantially pared DHHL's annual requests, as he did with other departments, citing his duty to balance what the agencies sought with the state's available resources.

Given how the coronavirus pandemic has battered the state's tourist-driven economy and its state revenues, additional funding for DHHL seems unlikely. Asked whether he intends to include money to purchase land in his coming budget requests to the Legislature, Ige said he would have to work with the department to identify priorities. But he said he would support acquisition money if it meant accelerating the slow pace of homestead awards.

"The state should follow the law"

State policymakers are now scrambling for solutions. State Sen. Mike Shimabukuro, chair of the Senate committee on Hawaiian affairs, believes the pending settlement with the state represents the most practical way for Hawaii to help DHHL address the land shortage. "If there's going to be any kind of solution, land is more likely than cash," she said, and "if they can find some on Oahu, that's really the way to go."

State House Speaker Scott Sakai agreed, saying "the state should follow the law and prioritize the lands where the needs are greatest." He mentioned Oahu specifically and raised the possibility of lawmakers passing a bill that would give the Legislature the power to oversee negotiations.

State Sen. Gilbert Keith-Agarun, vice chair of the Senate's Water and Land Committee, said lawmakers may need to pursue legislation outside of the settlement process to help alleviate the Oahu land shortage. One option could be to transfer or exchange lands held by other state entities to DHHL. "I don't think

we should foreclose any of these things," he said. "The benefit to the entitlement is that the more people we move off the waitlist and put into housing also helps alleviate our general shortage of housing."

Ige was open to the idea but said any potential sites would have to be evaluated in consultation with the state agency holding the land.

"If there are lands that are suitable, we certainly would be looking at it and seeing whether it makes sense that those should be included to finish our commitment."

Still even under the most optimistic settlement scenario, DHHL will be short of the lands it needs to accommodate the growing waitlist. That has prompted advocates, legislators and others to urge the department to make more efficient use of its limited holdings. One potential solution: develop high-rise condos. "We have to go vertical," said Kama Hopkins, who served on the Hawaiian Homes Commission from 2011 to 2014. "There's no choice."

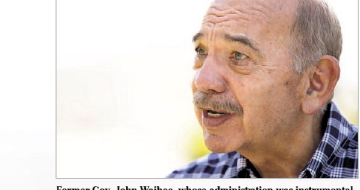
Historically, the department has been reluctant to pursue the idea, in part because the beneficiary community is divided over the concept. Some question whether providing condos in a high-rise unit would fulfill the department's constitutional obligation to provide homesteading lots to beneficiaries. "If you ask a Native Hawaiian on the waiting list what they want from DHHL, they will tell you they want their land," said Duarte, the department spokesman.

Meanwhile, thousands continue to wait.

Waikiki resident Darrell Maileua, a 58-year-old district manager for a Hawaii laundry company, applied for a homestead on Oahu in 2008. Today, he is more than 7,000 deep on the island's residential waitlist and has yet to get an offer.

He dreams of getting a house for his family of five and wants his granddaughter, who is not yet 2, to be able to run around outside in their yard. But he's growing impatient with the department and the long waits for a homestead. "They're just coming up with excuses," he said of DHHL. "They've been doing that for 50 years."

Bob Perez is an investigative reporter at the Honolulu Star-Advertiser. He has worked at newspapers in Florida, California, Hawaii and Guam, where he's from.



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HELP US INVESTIGATE | The Honolulu Star-Advertiser and ProPublica are spending the year investigating the homesteading program for Native Hawaiians. We'd like to hear from you if you or someone you know:

- >> Have bought into a newer subdivision under the program
- >> Worked up construction projects within the trust subdivisions

IF YOU HAVE SOMETHING TO SHARE WITH US, HERE'S HOW TO DO IT:

- >> Email Rob Perez at rperez@staradvertiser.com
- >> Text or call him at 808-479-2109