Admin Rules $4.90

TITLE 10

ADMINISTRATIVE RULES

DEPARTMENT OF HAWAIIAN HOME LANDS

EFFECTIVE OCTOBER 26, 1998

DEPARTMENT OF HAWAIIAN HOME LANDS

Amendment and Compilation of Chapters 10-1, 10-2, 10-3,10-4, and 10-5; Repeal of Chapter 10-6; and Adoption of Chapter 10-6.1

October 5, 1998

SUMMARY

1. §§10-1-1 to 10-1-7 are amended

2. Chapter 1 is compiled.

3. §§10-2-2 to 10-2-5 are amended.

4. §§10-2-7 to 10-2-9 are amended.

5. §§10-2-11 to 10-2-14 are amended.

6. §§10-2-16 to 10-2-19 are amended.

7. §§10-2-21 is amended.

8. §§10-2-31 to 10-2-32 are amended.

9. §10-2-34 is amended.

10. §§10-2-44 to 10-2-46 are amended.

11. Chapter 2 is compiled.

12. Chapter 3 Subchapter 1 title is amended.

13. §10-3-1 is amended.

14. §10-3-3 is amended.

15. §§10-3-5 to 10-3-10 are amended.

16. §§10-3-24 to 10-3-27 are amended.

17. §10-3-29 is repealed.

18. A new §10-3-30 is added.

19. §10-3-34 is amended.

20. §10-3-36 is amended.

21. §10-3-38 is amended.

22. §§10-3-41 to 10-3-48 are amended.

23. §§10-3-50 to 10-3-52 are amended.

24. §§10-3-61 to 10-3-66 are amended.

25. A new §10-3-67 is added.

26. Chapter 3 Subchapter 6 title is amended.

27. §10-3-71 is amended.

28. §§10-3-73 to 10-3-76 is amended.

29. Chapter 3 is compiled.

30. Chapter 4 title is amended.

31. §§10-4-1 to 10-4-2 are amended.

32. §§10-4-21 to 10-4-22 are amended.

33. §§10-4-24 to 10-4-26 are amended.

34. New §§10-4-31 to 10-4-44 are added.

35. Chapter 4 is compiled.

36. §§10-5-1 to 10-5-5 are amended.

37. §§10-5-7 to 10-5-9 are amended.

38. §10-5-14 is amended.

39. §§10-5-22 to 10-5-25 are amended.

40. §§10-5-32 to 10-5-34 are amended.

41. §§10-5-37 to 10-5-42 are amended.

42. §10-5-54 is amended.

43. Chapter 5 is compiled.

44. Chapter 6 is repealed.

45. Chapter 6.1, Hawaii Administrative Rules, entitled, "Native Hawaiian Development Program", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 10

DEPARTMENT OF HAWAIIAN HOME LANDS

CHAPTER 1

GENERAL PROVISIONS

§10-1-1 Purpose
§10-1-2 Information
§10-1-3 Government records
§10-1-4 Terms
§10-1-5 Definitions
§10-1-6 Numbering
§10-1-7 Severability

Historical Note: Chapter 1 of Title 10, Hawaii Administrative Rules, is based substantially upon Parts I and XIII, Rules and Regulations, Department of Hawaiian Home Lands. [Eff 8/18/72; am 11/14/77; R 7/30/81]

§**10-1-1 Purpose.** These rules are adopted under Chapter 91, HRS, and implement the Hawaiian Homes Commission Act of 1920, as amended. They are adopted in accordance with section 222 of the Hawaiian Homes Commission Act of 1920, as amended, for:

(1) Effective execution of functions vested in the department by the act;

(2) To provide for management of lands and funds entrusted to the department; and

(3) To further rehabilitation of the Hawaiian race as stated in article XII, section 2 of the constitution of the State of Hawaii. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act)

§**10-1-2 Information.** (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; or

(2) Neighbor island district offices as follows:

(A) West Hawaii: P.O. Box 125, Kamuela, Hawaii 96743 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, Wailuku, Maui 96793; or

(E) Molokai: P.O. Box 198, Hoolehua, Hawaii 96729 Puukapele Street, Hoolehua, Molokai 96729.

(b) The department shall disseminate information to the public through available news media in order that provisions of the act may be understood.

(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, 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] (Auth: HHC Act §222) (Imp: HRS §91-2)

§**10-1-3 Government records.** (a) All government records will be available for inspection during working hours unless otherwise provided by law.

(b) Copies of government records will be made available to any person requesting same upon payment of the fee imposed by law.

(c) Requests for copies of government records shall be signed and made on department provided forms unless otherwise provided by law.

(d) Personal data received or recorded by the department shall be held in absolute confidence and no release of information shall be made without written approval of the individual concerned. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §§91-2, Chapter 92F)

§**10-1-4 Terms.** Unless otherwise specifically stated, the meaning of terms used in Title 10 shall have the same meaning as provided by law. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act)

§**10-1-5 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 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, as amended;

“Lessee” has the same meaning as homesteader;

“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;

“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

"Tract" means any tract of Hawaiian home lands leased, as authorized by section 207 of the act. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act)

§**10-1-6 Numbering.** Words importing the singular number may be applied to several persons or things; words importing the plural may include the singular. [Eff 7/30/81 am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HRS §91-2)

§**10-1-7 Severability.** If any section, sentence, clause, or phrase of Title 10 be 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] (Auth: HHC Act §222) (Imp: HRS §91-2)

HAWAII ADMINISTRATIVE RULES

TITLE 10

DEPARTMENT OF HAWAIIAN HOME LANDS

CHAPTER 2

ORGANIZATION AND MANAGEMENT

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§10-2-41 Chairman to sign for commission
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§10-2-43 Chairman responsible for administration
§10-2-44 Administrative manual
§10-2-45 Chairman to present annual report
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Historical Note: Chapter 2 of Title 10, Hawaii Administrative Rules, is based substantially upon Part II, Rules and Regulations, Department of Hawaiian Home Lands. [Eff 8/18/72; am 11/14/77; R 7/30/81]

SUBCHAPTER 1
THE COMMISSION

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

§**10-2-2 Sessions.** The commission may meet and exercise its powers in any part of the State. All meetings of the commission shall be open to the public, except that the commission may meet in executive session as permitted under chapter 92, HRS, from which the public may be excluded by a recorded vote of not less than two-thirds of the total membership of the

commission. Unless otherwise permitted under chapter 92, HRS, no contract, appointment, or decision shall be finally acted upon at any such executive session. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §202; HRS §§ 91-3, 91-4, 91-5)

§**10-2-3 Commission meetings.** The commission shall meet at least once a month. The commission shall meet at least once a year on the islands of Kauai, Hawaii, Molokai, and Maui, and at various homestead communities on each island as practicable. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §202; HRS §92-7)

§**10-2-4 Special meetings.** Special meetings may be called by the chairman or at the request of a majority of all members to which the commission is entitled. The chairman shall notify the members of the commission of the time, place, and purpose of the special meeting. Special meetings are not to take the place of regular commission meetings. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §202; HRS §92-7)

§**10-2-5 Quorum; votes.** A majority of all the members to which the commission is entitled shall constitute a quorum to transact business. Except as otherwise provided by law, the concurrence of a majority of all the members to which the commission is entitled shall be necessary to make any action of the commission valid. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222; HRS §92-15) (Imp: HHC Act §202; HRS §92-15)

§**10-2-6 Schedule of meetings.** A schedule of the meetings to be held in the coming year will be prepared and submitted to the commission at its regular December meeting. [Eff 7/30/81; comp 10/26/98] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §202; HRS §91-2)

§**10-2-7 Agenda.** A copy of the regular agenda, less any confidential information concerning applicants or lessees, shall be posted at every office of the department throughout the State and shall be filed with the lieutenant governor's office at least six calendar days before every meeting of the commission. [Eff 7/30/81; am 11/17/84; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §202; HRS §92-7)

§**10-2-8 Order of business.** The agenda shall state the order of business to be conducted by the commission at its meeting. Persons wishing items of business to be placed on the agenda shall contact the chairman not later than two weeks before the scheduled meeting. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §202; HRS §92-7)

§**10-2-9 Suspension of discussion agenda items.** The commission, for good cause by majority vote, may suspend discussion of any item on the agenda. At its discretion the commission shall continue discussion after all other agenda items have been completed or shall continue the discussion at no later than the next regular scheduled meeting. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §202)

§**10-2-10 Attendance at meetings.** Unless excused, meetings shall be attended by all commissioners, by the chairman, and by such members of the staff as are instructed to attend by the chairman. [Eff 7/30/81; comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §202)

§**10-2-11 Requests for appearance at commission meeting.** (a) Any person shall be afforded an opportunity to present written or oral testimony to the commission at its regular monthly meeting.

(b) In order to ensure an orderly and efficient meeting, any person who wants to appear before the commission to present testimony is requested to notify the chairman at least two weeks before the commission meeting and, if possible, submit a written copy of the testimony to the commission secretary before the meeting. The chairman shall reply in writing at least one week before the meeting.

(c) The chairman shall have the authority to limit or terminate any testimony which the chairman determines to be repetitious or made solely for purposes of delay. The chairman shall also have the authority to impose reasonable conditions to ensure an orderly and efficient meeting, which shall include but not be limited to the removal, from a meeting, of any person or persons whom the chairman determines to be disruptive. This subsection shall not limit the authority granted in sections 10-2-16 through 10-2-20 to the commission or the chairman.

(d) A person may be represented by or with counsel or other duly qualified representative before the commission. The commission may at any time require any person appearing before the commission in a representative capacity to show the person’s authority and qualification to act in such capacity. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §202; HRS §92-3)

§**10-2-12 Time allowed at commission meetings.** Persons who have requested to appear before the commission at its meeting as provided in section 10-2-11 will have fifteen minutes to present such information, data, material and testimony relevant to and as set forth in the request. The chairman may provide additional time if so desired by the requesting person and if time permits. When time permits, the chairman may allow any other person to speak before the commission whether or not such person has requested to appear as provided in section 10-2-11. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §202; HRS §92-3)

§**10-2-13 Minutes.** A running account of all proceedings of each meeting of the commission shall be kept in as complete detail as is reasonably possible. Minutes comprising a summary account of the proceedings and containing as much detail as is necessary to indicate the course of the proceedings and the actions taken by the commission shall be transcribed under the direction of the chairman. The minutes shall be submitted by the chairman for approval at the next regular meeting. Upon approval, the chairman shall sign and enter the date of approval upon the minutes. The chairman shall also note thereon any changes ordered before approval and shall communicate them to the district office managers. All approved minutes shall be available for inspection by any interested person. Except as otherwise provided by law, copies of the approved minutes shall be kept on file at the main office of the department and also distributed to each commissioner and district office. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §202; HRS §92-9)

§**10-2-14 Confidential information.** No information of a personal or private nature regarding

any individual shall be included in the minutes. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §202; HRS Chapter 92F)

§**10-2-15 Absence, disability of chairman.** Whenever the chairman is absent or disabled from performing the duties of the office, the vice-chairman shall assume the duties of the chairman. [Eff 7/30/81; comp 10/26/98] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §202)

§**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 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.

(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) Accept surrenders of homestead leases; and

(4) 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 which are included in the commission's prior approved budget. [Eff 7/30/81; am 11/17/84; am and comp 10/26/98] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §202)

§**10-2-17 Ratification of chairman's actions.** The chairman shall report to the commission for ratification of any actions taken as permitted under section 10-2-16(c). [Eff 7/30/81; am 11/17/84; am and comp 10/26/98] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §202)

§**10-2-18 Responsibility of commissioners.** (a) It is the responsibility of each commissioner to:

(1) Attend all meetings of the commission unless excused;

(2) Undertake all duties assigned by the commission;

(3) Keep generally informed of all matters pertinent to the determination of policy by the commission and effectuation thereof;

(4) Be available to lessees in the representative area at reasonable times;

(5) Be present at hearings affecting the rights of a lessee from the representative area; and

(6) Have a working knowledge of the act.

(b) No commissioner may individually direct administrative orders. Instructions or complaints intended for staff members shall be referred to the

chairman. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §202)

§**10-2-19 Duties of commissioners as trustees.** As trustees, it shall be the duty of commissioners to:

(1) Act exclusively in the interest of beneficiaries under the act;
(2) Hold and protect the trust property for beneficiaries under the act;
(3) Exercise such care and skill as a person of ordinary prudence would exercise in dealing with one's own property in the management of Hawaiian home lands; and
(4) Adhere to the terms of the trust as set forth in the act. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §202)

§**10-2-20 Appointment of commissioner to committee.** The chairman shall appoint to any committee formed to decide rights of a lessee, the commissioner from the area of the affected lessee. [Eff 7/30/81; comp 10/26/98] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §202)

§**10-2-21 Submittals.** All applications, certificates, or other papers or documents required to be filed with the commission shall be filed in the office of the commission within such time limits as prescribed by law, rules, or by order of the commission. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §202)

§§10-2-22 to 10-2-30 (Reserved)

§10-2-31

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

§**10-2-32 Hours.** The office of the department shall be open from 7:45 a.m. to 4:30 p.m., Monday through Friday, unless otherwise provided by the statute or executive order. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222; HRS §§80-1, 91-2) (Imp: HHC Act §202)

§**10-2-33 Personnel.** 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. [Eff 7/30/81; comp 10/26/98] (Auth: HHC Act §222; HRS §91-2) (Imp: HRS §26-38)

§**10-2-34 Absence, disability of chairman.** Whenever the chairman is absent or disabled from performing the duties of office, the deputy to the chairman shall assume the duties of the chairman, unless the chairman designates otherwise. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §202)

§10-2-44

§§10-2-35 to 10-2-40 (Reserved)

SUBCHAPTER 3
THE MANAGEMENT

§**10-2-41 Chairman to sign for commission.** All orders and other actions of the commission shall be authenticated or signed by the chairman. [Eff 7/30/81; comp 10/26/98] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §202; HRS §21-38)

§**10-2-42 Chairman to sign for department.** The chairman shall approve and sign all vouchers and assignment of funds to be received under pineapple or grazing contracts. After approval of the commission, chairman shall sign all licenses, leases, loan contracts, assignments of pineapple and grazing contracts, contracts with other governmental agencies and commission resolutions. [Eff 7/30/81; comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §202)

§**10-2-43 Chairman responsible for administration.** The chairman shall have full charge of and responsibility for the administration and execution of all actions approved by the commission and in effectuating commission policy. [Eff 7/30/81; comp 10/26/98] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §202)

§**10-2-44 Administrative manual.** The chairman shall prepare and distribute to each commissioner and

district office an administrative manual describing department operating procedures. The procedures shall

be open to the public and shall not be in conflict with title 10 or the act. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §202)

§**10-2-45 Chairman to present annual report.** The chairman shall present to the commission, before submission to the governor and legislature, the annual report of the department. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §202)

§**10-2-46 Chairman to develop plans for lands.** The chairman shall develop and present to the commission plans for lands entrusted to the department. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §202)

HAWAII ADMINISTRATIVE RULES

TITLE 10

DEPARTMENT OF HAWAIIAN HOME LANDS

CHAPTER 3

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Historical Note: Chapter 3 of Title 10, Hawaii Administrative Rules, is based substantially upon Parts IV, V, VI, VII, VIII, and XI, Rules and Regulations, Department of Hawaiian Home Lands. [Eff 8/18/72; am 10/25/73; am 4/10/76; am 11/14/77; am 11/18/79; 4/15/79; R 7/30/81]

SUBCHAPTER 1
APPLICATIONS FOR HOMESTEAD LEASES

§**10-3-1 Application forms.** Applications for residential, agricultural, or pastoral lot leases shall be made on forms provided by the department and shall be made under oath. Deliberate falsification of a material fact on an application form shall be grounds for removal of the applicant's name from the waiting list, or cancellation of any lease awarded the applicant, and may subject the applicant to prosecution for perjury. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §207)

§**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; comp 10/26/98] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §207)

§**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 and comp 10/26/98]

(Auth: HHC Act §222) (Imp: HHC Act §207)

§**10-3-4 Residential lot application.** (a) The department shall establish and maintain an island-wide residential lot waiting list for each of the islands of Hawaii, Kauai, Maui, Molokai, and Oahu.

(b) A person may submit only one application for a residential lot lease.

(c) A person may apply for a residential lot lease and an agricultural or pastoral lot lease, but not for both agricultural and pastoral lot leases. [Eff 7/30/81; am 1/20/86; comp 10/26/98] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §207)

§**10-3-5 Agricultural or pastoral lot application.** (a) Applications for an agricultural or pastoral lot lease may be made for any island of the State where lands are designated for those purposes. For application purposes, the department shall establish and maintain an island-wide agricultural lot waiting list for each of the islands of Hawaii, Kauai, Maui, Molokai, and Oahu, and an island-wide pastoral lot waiting list for each of the islands of Hawaii, Kauai, Maui, and Molokai.

(b) A lessee of a residence lot may apply for an agricultural or pastoral lot lease only on the island on which the lessee resides. [Eff 7/30/81; am 8/1/85; am and comp 10/26/98] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §207)

§**10-3-6 Island-wide waiting lists.** (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. 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.

(b) Applicants wishing to transfer their completed application on one island-wide waiting list to another island-wide waiting list may do so. Upon the completion of the transfer, the transfer date will replace the original date of application. No applications will be accepted for any area waiting list. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §207)

§**10-3-7 Priority and preference for award of leases.** (a) Applicants shall be considered for award in the order in which their completed applications were received by the department; provided that awards shall first be made according to ranking in existing priority I, II, and III waiting lists in that order until those waiting lists are exhausted. Thereafter, awards shall be based on numerical designation by date of completed application on the area waiting list, then on the island-wide waiting list, except as otherwise provided in this chapter.

(b) In making awards, the department shall give preference to an applicant who is not a lessee, or whose spouse is not a lessee.

(c) An applicant who is a lessee, or whose spouse is a lessee, shall be placed on a deferred status until each applicant given preference as provided by subsection (b) has been offered a lot; provided that an applicant who is a lessee, or whose spouse is a lessee, shall not be placed on a deferred status and may be offered a lot if the applicant or the applicant's spouse states in writing that the applicant or the applicant's spouse, as the case may be, will transfer an existing lease or surrender an existing lease to the

department before, and as a condition for, the award of a new lease.

(d) An exception to subsection (c) may be made if the lessee of a residential lot or the spouse of a lessee of a residential lot is awarded a new agricultural or pastoral lot which is unimproved and on which a residence cannot be constructed. In this case, the transfer or surrender of the residential lease may be postponed until such time as the new agricultural or pastoral lot is improved and a residence can be constructed on the new lot. [Eff 7/30/81; am 1/20/86; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §207)

§**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. [Eff 7/30/81; am 8/1/85; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §207)

§**10-3-9 Posting lease awards.** The department shall post in district offices in the area where awards are made, the names and application dates of all who receive lease awards within two weeks after awards are made. The notice shall remain posted for a period of two months. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §207)

§**10-3-10 Requirement for current information; placement on deferred status.** (a) An applicant for a homestead lease shall notify the department, in writing, of any change in address within fifteen calendar days of such change. 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 a deferred status.

(b) The department shall contact applicants at least once every two years to request updated information. Whenever an applicant does not respond to any two successive requests from the department for updated information, the department shall place the applicant on a deferred status until such time as updated information is received.

(c) A list of all applicants placed on deferred status and the reasons therefor shall be submitted to the commission, which shall act upon the matter at the meeting next following. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §207)

§§ 10-3-11 to 10-3-20 (Reserved)

SUBCHAPTER 2
LEASES TO NATIVE HAWAIIANS

§**10-3-21 Award of leases.** (a) Whenever homestead lots are available, the department shall award leases to applicants who meet the qualification requirements of section 10-3-2 and are selected in accordance with section 10-3-7.

(b) The department may hold an orientation meeting to inform applicants of the lots to be awarded and the lot selection procedures, before the lot selection meeting. The department shall notify applicants of the date, time, and place of the orientation meeting and of the lot selection meeting.

The department shall place applicants who fail to appear at the lot selection meeting or who fail to select a lot on a deferred status. [Eff 7/30/81; am 1/20/86; comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §207)

§**10-3-22 Award of leases with outstanding indebtedness.** No award of a residential, agricultural, or pastoral lot lease shall be made to an applicant who has not submitted sufficient evidence to the satisfaction of the department that the applicant is financially able to assume any indebtedness outstanding against the premises after the lease is awarded. [Eff 7/30/81; am 1/20/86; comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §207)

§**10-3-23 Awards to previous lessees, when.** No award of a residence lot lease shall be made to an applicant who at the time of application has previously been a lessee of a Hawaiian home lands residence lot; or who at the time of consideration for award had become a lessee of a Hawaiian home lands residence lot through transfer or successorship; provided, that exceptions to this limitation may be made in the following conditions:

(1) Award of a residence lot lease to an applicant who had been a lessee may be made if the department determines that the transfer or surrender of the previous lease was made under compelling circumstances and that denial of award of another residence lot lease would be unreasonably unfair to the applicant.

(2) Transfer of a residence lot lease through successorship may be made to an otherwise qualified designated successor who had been a lessee if at the time of the designation the former lessee had already transferred or

surrendered the lease and if the designation was filed with and approved by the department.

(3) Award of a residence lot lease may be made to a present lessee of a residence lot if the department determines an emergency situation as follows:

(A) Due to circumstances beyond the control of and not caused by the lessee, the lessee's health, safety, and welfare are endangered by continued occupancy of the premises, or the further rehabilitation of the lessee is highly improbable without relocation to another residence lot;

(B) The lessee has agreed to surrender the present lease and has waived all rights to the appraisal value of all improvements on the presently leased residence lot;

(C) The lessee has agreed and is financially able to pay all expenses for the move to the residence lot to be leased;

(D) The lessee is financially able to assume:

(i) The indebtedness outstanding against the residence lot to be leased; or

(ii) The indebtedness that must be incurred to enable the lessee to occupy the residence lot within one year after the lease is awarded; or

(E) The circumstances of the present lessee indicate sufficient need for relocation to justify the department's withholding of the residence lot to be leased from availability to qualified applicants, if any, for leases in that area and the department's awarding of a lease of that residence lot to the relocating lessee.

(4) Exceptions to this limitation shall be made only after notice of the department's

consideration of such action has been given through the posting of the agenda and after full disclosure of the material facts has been made in a public meeting. [Eff 7/30/81; comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §207)

§**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, the applicant shall submit a plan for the development of the lot. 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 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 experience as part-time farmers or ranchers.

(e) 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] (Auth: HHC Act §222) (Imp: HHC Act §207)

§**10-3-25 Award of additional acreage.** (a) A lessee of an agricultural or pastoral lot may apply for additional acreage of the same class.

(b) A lessee shall be contacted for an award in accordance with section 10-3-24(a).

(c) A lessee shall be eligible for lot selection provided the lessee has actively cultivated and used the agricultural or pastoral lot and is in compliance with all terms and conditions of existing leases.

(d) Following determination that a lessee is eligible for lot selection, the lessee shall be notified as provided in section 10-3-24(b).

(e) Following lot selection, the lessee shall submit a plan as required in section 10-3-24(c) incorporating into the plan, all existing acreage.

(f) Decision for award shall be based upon the provisions of section 10-3-24(d). [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §207)

§**10-3-26 Residence permitted on agricultural and pastoral lot.** (a) Upon award of an agricultural or pastoral lot, the applicant shall reside on the island on which the leasehold is located.

(b) Residences shall be permitted on agricultural or pastoral lots. Only one residence shall be permitted per lessee on Hawaiian home lands. In addition, a workers' quarters may be permitted per lessee 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.

(c) A lessee possessing a residence lot lease may construct a residence on the lessee's agricultural 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 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) 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) Upon cancellation or surrender of the agricultural or pastoral lot, the lessee shall relinquish the entire leasehold interest including the residence.

(f) Subdivision and transfer of a portion of agricultural 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;

(2) The department shall not be obliged to 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 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 transferees for all transfers involving the subdivided agricultural 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] (Auth: HHC Act §222) (Imp: HHC Act §208)

§**10-3-27 Livestock and crops.** (a) Lessees may raise animals intended for consumption on their agricultural leasehold to supply immediate family needs.

(b) Lessees may raise animals on a commercial basis on their agricultural leasehold only after the following conditions are met:

(1) Submission of a plan for commercial production of animals which shall include, but not be limited to, projections for production, methods of production, sanitation control measures, and proximity to surrounding residences;

(2) Approval by the commission;

(3) Conformance to all state and county zoning and health laws and rules; and

(4) The operation is restricted to confined feeding and not for open grazing.

(c) Lessees with pastoral lots may raise crops for fodder to be used only for animals on the lot. A portion of the lot may be utilized to raise vegetables or fruit crops for consumption by the lessee's immediate family. [Eff 7/30/81; am 2/3/83; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §§207, 208)

§**10-3-28 Lease cancellation.** (a) The department may cancel a lease issued to a homesteader for the following reasons:

(1) Violation by the lessee of a condition enumerated in sections 208 or 209 of the act;

(2) Violation of a condition enumerated in a lease document;

(3) Violation of a condition enumerated in this title; or

(4) Intentional falsification of material information by the lessee on application for loan forms submitted to the department.

(b) No lease shall be cancelled without first affording the lessee the right to a hearing as prescribed in chapter 5. [Eff 7/30/81; comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §§210, 216)

§10-3-29 Repealed. [Eff 7/30/98; R]

§**10-3-30 Kuleana homestead leases.** (a) The commission may establish a homestead program for settlement on unimproved available Hawaiian home lands to be known as the kuleana homestead program.

(b) The commission may set aside a tract or tracts of unimproved “available lands” as defined in section 203 of the Act, for award under the kuleana homestead program. All lots awarded under this program shall be known as kuleana homestead lots.

(c) In determining whether a tract should be set aside for award as kuleana homestead lots, the commission shall consider the following:

(1) Physical and environmental characteristics of the land;

(2) Excessive cost to develop the tract for any reason including: the physical characteristics of the land, the distance of the land from existing electrical, water, waste water disposal, communications, and other utility systems;

(3) Department land management plans and programs;

(4) Applicant interest or proposals identifying tracts of land; and

(5) Suitability for use by lessees who wish immediate access to the land for subsistence uses and who are willing to live on the land and accept an unimproved lot.

(d) The commission shall determine which homestead waiting list, or combinations thereof, may be

used to make the awards and what list, or combinations thereof, may be used if the original list used to make the awards is exhausted.

(e) The department, together with interested applicants, shall develop a plan for settlement and development of the designated tract. All settlement plans shall be subject to approval by the commission. The plan shall include, but not be limited to the following:

(1) Location and description of the tract of land;

(2) Approximate size and number of lots to be awarded;

(3) Approximate location of community center and common areas;

(4) Preliminary conceptual proposals for community management and economic development of adjacent department lands, if applicable;

(5) Plan for the identification, protection and preservation of all significant historical, archaeological, and biological sites; and

(6) Settlement timetable to commence after the award of the lots.

(f) The department shall provide the following for the kuleana homestead lots:

(1) Metes and bounds descriptions of lots; and

(2) An unpaved right-of-way to the awarded lots.

(g) A lessee of a kuleana homestead lot shall be subject to all applicable state codes, county ordinances, and departmental rules and policies governing land use, building, health, and safety unless and until the kuleana homestead association’s building, health, and safety codes and permitting process become effective for that particular tract. The kuleana homestead association for that particular tract, in consultation with a licensed architect, registered in the State, may develop, adopt, and enforce its own zoning, building, and permitting process on the condition that standards contained in state health codes and health and safety sections and provisions contained in the Uniform Building Code are met and that a licensed architect, registered in the State, is

willing to certify all building plans as part of the community developed permitting process. No kuleana homestead association developed zoning, building, health and safety codes and permitting processes shall be effective unless and until they are approved by the commission.

(h) All leases awarded by the department pursuant to the kuleana homestead program shall comply with this subchapter and subchapter 3 unless otherwise superseded by the settlement plan approved by the commission for a particular tract. In addition, all lessees shall comply with the following conditions:

(1) Lessee agrees to participate as an active member in the kuleana homestead association for that particular tract and to comply with rules developed and agreements entered into by the kuleana homestead association;

(2) Lessee agrees to accept the lot in its "as is" condition with no expectation of additional improvements beyond those specified in subsection (f); and

(3) Lessee agrees to participate in the maintenance of the right-of-way to the kuleana homestead tract and lots. [Eff and comp 10/26/98] (Auth: HHC Act §§ 207, 219.1, 222) (Imp: HHC Act §§ 207, 219.7)

SUBCHAPTER 3
CONDITIONS IN LEASES

§**10-3-31 Additional conditions, generally.** In addition to the conditions in leases set forth in section 208 of the act, and in the lease document, all lessees shall be subject to the restrictions set forth in this subchapter. [Eff 7/30/81; comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §208)

§**10-3-32 Industrial activities.** No industrial activities shall be allowed on homestead leaseholds. [Eff 7/30/81; comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §208)

§**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. [Eff 7/30/81; am 2/3/83; comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §208)

§**10-3-34 Building requirements.** No building structure or improvement may be constructed on the premises without written approval from the commission. 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. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §208)

§**10-3-35 Contracts covering lease lands.** No lessee may, without written approval from the commission, enter into any contract, joint venture, agreement or other arrangement of any sort with a third person on lands covered by lessee's lease for the cultivation of crops or the raising of livestock. [Eff 7/30/81; comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §208)

§**10-3-36 Transfer of homestead leases.** 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. 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. 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] (Auth: HHC Act §222) (Imp: HHC Act §208)

§10-3-37 REPEALED. [Eff 7/30/81; R 1/20/86]

§**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. 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] (Auth: HHC Act §222) (Imp: HHC Act §208)

§**10-3-39 Occupancy and other requirements.** (a) The time period by which a lessee is required to occupy

a residential lot or to commence to use or to cultivate an agricultural or pastoral lot shall be stipulated in the lease.

(b) Except as otherwise provided in the lease, the department may require a lessee of an agricultural or pastoral lot to have under development, cultivation, or use at least two-thirds of the useable acreage at all times.

(c) Lessees shall be responsible for maintaining their premises secure from fire, theft, and vandalism and shall comply with the requirements of their lease at all times.

(d) A lessee who does not have a house on the lot shall provide the department with a current mailing address and such other information as the department may require. [Eff 7/30/81; am 1/20/86; comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §208)

§10-3-40 (Reserved)

SUBCHAPTER 4
LOANS AND FUNDS

§**10-3-41 Funds and accounts.** There shall be established in the treasury of the State such revolving funds, special, and other funds as set forth in the act. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §§213, 214)

§**10-3-42 Purposes of loans.** The department may make loans from any loan fund to lessees, and where applicable, to any cooperative association all of whose

members are lessees. Such loans may be made for the following purposes:

(1) The repair, maintenance, purchase, or erection of dwellings on Hawaiian home lands, and the undertaking of other permanent improvements thereon;

(2) The purchase of livestock, swine, poultry, fowl, and farm equipment; and

(3) Otherwise assisting in the development of tracts, and farm and ranch operations;

(4) The cost of:

(A) Breaking up, planting, and cultivating land and harvesting crops;

(B) Purchase of seeds, fertilizers, feeds, insecticides, medicines, and chemicals for disease and pest control for animals and crops, and related supplies required for farm and ranch operations;

(C) The erection of fences and other permanent improvements for farm or ranch purposes; and

(D) Marketing farm or ranch products; and

(5) To assist lessees in the operation or erection of theaters, garages, service stations, markets, stores, and other mercantile establishments, all of which shall be owned by lessees of the department or by organizations formed and controlled by lessees. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §214)

§**10-3-43 Authorized actions.** For purposes authorized under the act, the department may:

(1) Use moneys in the operating fund, with the prior approval of the governor, to match federal, state, or county funds available for the same purposes and to that end, to enter into such undertaking, agree to such conditions, transfer funds therein available

for such expenditure, and to do and perform such other acts and things, as may be necessary or required, as a condition to securing matching funds for such projects or works;

(2) Use available funds, except moneys from the Hawaiian home loan fund, to secure, pledge, or otherwise guarantee the repayment of moneys borrowed by the department from government agencies or private lending institutions and to pay the interim interest or advances required for loans;

(3) Contract private agencies to service loans made by the department to lessees or cooperative associations, the fees for such servicing shall be assumed by the lessee or cooperative association, or from a portion of the interest charged by the department on loans to lessees or cooperative associations;

(4) Guarantee the repayment of loans made to homestead lessees of Hawaiian home lands by other governmental agencies or private lending institutions as provided by the act;

(5) Combine available moneys from various revolving funds to make loans to lessees for the purposes enumerated in section 10-3-42; and

(6) Exercise such other powers as authorized by the act. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §214)

§**10-3-44 Loan applications.** (a) Applications for a loan or a loan guarantee shall be made on forms provided by the department. All applications shall be filed with the department. The filing may be made with district offices of the department.

(b) The applicant shall not be required to pay any fees in connection with the filing of an application but shall be charged for the cost incurred

by the department in obtaining credit reports and other financial information deemed necessary by the department.

(c) A holder of a homestead lease may apply to the department for the approval of a loan to be made by other government agencies or private lending institutions. Upon receipt of an application, the department shall review the application, and determine whether or not to guarantee the loan based on loan standards set forth in section 10-3-46. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §§213, 214)

§**10-3-45 Application processing.** Applications approved by the department shall be submitted to the commission within sixty working days of receipt by the department together with a summary of the applicant's financial situation including gross and net monthly income, outstanding indebtedness, and the number of dependents. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §§213, 214)

§**10-3-46 Loan standards.** Loans may be made to applicants who are residential lessees, based on the following criteria:

(1) Income ratio: the relation that gross monthly income bears to monthly payment of principal and interest;

(2) Family size: each person supported from the income of the lessee and co-applicant shall be counted as a family member for the purpose of computing and qualifying for a loan and term. The lessee shall submit to the department a notarized statement to this effect.

(3) Applications for loans for any family receiving public assistance from the

department of human services will be considered for approval if:

(A) The monthly payment for the loan is within the amount that is available for housing--shelter allowance minus anticipated utilities--in accordance with current department of human services standards; and

(B) The applicant is able to assume the financial obligation imposed by a loan;

(4) Credit standing: the applicant shall have satisfactory credit standing in the community as determined by the department. The department may waive this requirement if upon consideration of all the circumstances surrounding the applicant's financial condition, it finds that the applicant will be able to repay the loan in accordance with the loan contract; and

(5) If the loan applicant is found by the department to have sufficient resources or credit to secure financing from non-departmental sources to undertake the purpose for which the loan is sought, no departmental loan shall be made. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §§213, 214)

§**10-3-47 Loan conditions.** (a) Generally, in determining the term of loans, the department shall consider the following:

(1) The applicant's financial capacity; and

(2) Age and condition of dwelling or building, based on the estimated expected remaining life span. The term of a loan shall be determined by the department, but in no event be longer than the term as may be authorized by the act.

(b) Loans shall be made in an amount to be determined by the commission, but in no event be more than the amount authorized by the act.

(c) Loans shall bear interest at the rate authorized by the act and rules.

(d) Loan interest rates shall be determined based on the availability and source of funds as well as the current interest rate for such loans in the private sector; provided that the department, on a case-by-case basis, may establish such rates as it shall determine best effectuate the purposes of the individual borrower, and to offer loans of comparable interest rates to all borrowers.

(e) Interest on loans made by the department shall commence to accrue on the disbursed amount on the twentieth day of the month or on the day of actual disbursement following the twentieth day of the month in which the first disbursement of funds is made.

(f) Repayment of loans made by the department shall commence on the nineteenth day of the month following the month in which the first disbursement of funds is made.

(g) The borrower may be required to pay a monthly service fee when loan payments are made payable to, or collected by a private lending institution.

(h) The payment of any installment due may be postponed in whole or in part by the department for reasons as it deems good and sufficient and until such later date as it deems advisable. Postponed payments shall continue to bear interest on the unpaid principal at the rate established for the loan.

(i) Whenever a borrower is delinquent with loan repayments, the department may demand that the borrower assign wages in part or all moneys due or to become due to such borrower by reason of any agreement or contract to which the borrower is a party, to the department to assure repayment of the loan.

(j) Whenever a borrower is more than one hundred twenty days delinquent on loan repayments, the department may start garnishment proceedings in accordance with the applicable statute, or start cancellation proceedings as authorized under the act. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §§213, 214, 215, 216)

§**10-3-48 Farm loans.** (a) Farm loans shall be governed by sections 213, 214 and 215 of the act.

(b) The maximum loan for an individual agricultural lot lessee shall be determined by the commission, but in no event be more than the amount authorized by the act. For an agricultural cooperative association, the maximum amount shall be determined by the commission on the basis of proposed operations of the cooperative and the available security. Farm loans shall bear interest at the rates authorized by the act or these rules.

(c) Cost estimates from the supplier or material house for labor and for building requirements, materials, machinery, equipment, seed, etc., must be submitted to the department within thirty days after application for a farm loan is made for items or services to be purchased with the proceeds of the loans. An annual or monthly projected income for return of investment shall also be submitted along with the cost estimates.

(d) A feasibility study of repayment schedules to projected income from operations shall be submitted to applications for review and recommendation for loan approval. The department may establish repayment schedules that vary based on projected income from operations, the type of loan, and the amount of the loan.

(e) Each farm loan shall be subject to whatever concurrently executed security agreement is in current use by the department pursuant to HRS, chapter 490. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §§213, 214)

§**10-3-49 Borrowed funds.** The department may borrow funds for the purpose of making loans to lessees of residence lots for purchasing, repairing, maintaining, erecting or improving homes on Hawaiian home lands. Such loans shall bear interest at the same rate of interest as that paid by the department to the lender, plus one-half of one percent per year. The

term of such loans shall not exceed thirty years. [Eff 7/30/81; comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §§213, 214)

§**10-3-50 Additional funds.** The department may make loans at such terms and conditions from any additional funds as the legislature may hereafter provide. In the event such additional funds are made available to the department without any specific terms, conditions, restrictions, such funds shall be subject to the conditions and restrictions imposed by sections 214 and 215 of the act. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §§213, 214)

§**10-3-51 Operation of funds.** The department may invest and reinvest any of its funds, not otherwise immediately needed for the purposes of the funds, in such bonds and securities as authorized by state law for the investment of sinking fund moneys. Any interest or other earnings arising out of such investment shall be credited to and deposited in such funds as may be authorized by the act. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §§213, 225)

§**10-3-52 Hawaiian home receipts fund.** (a) At the end of each quarter, all moneys in the Hawaiian home receipts fund shall be transferred as authorized by the act. At the commission meeting immediately before or at the end of each quarter, the department or commission on its own motion may recommend for commission approval a plan for transfer of all moneys in the Hawaiian home receipts fund for that respective quarter. The plan for transfer shall take into consideration the department's budget projections as

well as priorities established by the commission for the moneys.

(b) If the commission fails to approve a plan for transfer, all moneys in the Hawaiian home receipts fund shall be transferred at the end of that respective quarter as follows:

(1) Nine per cent to the operating fund; and

(2) Ninety-one per cent to the general loan fund.

[Eff 7/30/81; am 11/17/84; am and comp 10/26/98]

(Auth: HHC Act §222) (Imp: HHC Act §213)

§§10-3-53 to 10-3-60 (Reserved)

SUBCHAPTER 5
SUCCESSORS TO LESSEES

§**10-3-61 Designation of successor.** 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 department shall determine whether a designated successor is qualified to be a lessee of Hawaiian home lands. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §209)

§**10-3-62 Reversion to the department.** Where a lessee dies having failed to designate a qualified successor, the department may select a successor under the procedure provided in section 209 of the act. If no selection can be made, the lease shall be cancelled. As provided in section 209 of the act and in this subchapter, the department shall make any authorized payments to the appropriate recipient. The land subject to the lease shall resume its status as unleased Hawaiian home lands, and the department shall be authorized to lease the land to a native Hawaiian as provided in the act. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §209)

§**10-3-63 Notice to successors.** Upon the death of a lessee leaving no designated successor, the department shall publish a public notice at least once in each of four successive weeks in a newspaper of general circulation in the State. The notice shall state briefly that all persons claiming to be relatives of the lessee qualified to succeed to the lease shall present themselves at the department with proof of their qualifications, within four months from the first day of publication of the notice or be forever barred from succeeding to the lease. Those persons failing to present themselves within four months from the first day of publication of the notice shall be forever barred from succeeding to the lease in question. [Eff

7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §209)

§**10-3-64 Appraisals.** (a) As provided in the act and in this section, the department shall appraise the value of all improvements of the tract or tracts and growing crops and stock including aquacultural improvements or stock, if any, if:

(1) A lessee surrenders his lease;

(2) A lessee dies leaving no person or persons qualified to be successor lessee or lessees;

(3) The department is unable to designate a successor; or

(4) The department cancels a lease.

(b) An appraisal made pursuant to this section shall be made by one of the following methods:

(1) By a disinterested appraiser hired and paid by the department;

(2) By a disinterested appraiser mutually agreed to by the department and the lessee or the deceased lessee's legal representative; provided that the cost of the appraisal shall be borne equally by the two parties; or,

(3) By not more than three disinterested appraisers of which the first shall be hired and paid by the department. If the lessee or the deceased lessee's legal representative does not agree with the appraised value, the lessee or the deceased lessee's legal representative shall hire and pay for the services of a second appraiser. The second appraiser’s report shall be submitted to the department not later than ninety days from the date of the first appraisal report. The first appraisal shall be used if the second appraiser is not hired within thirty days from the date the department transmits the first appraisal report to the lessee or the deceased lessee's legal representative. The

first appraisal shall also be used if the second appraiser does not submit an appraisal report to the department within ninety days from the date of the first appraisal report. If the values of the first and second appraisals are different and the two parties do not agree to a compromise value between the first and second appraisals, a third appraisal shall be made. An appraiser who shall be appointed by the first two appraisers not later than ninety days from the date of the second appraisal report shall make the third appraisal. The third appraiser shall determine the final value. The cost of the third appraisal shall be borne equally by the two parties.

(c) The lessee or the deceased lessee's legal representative shall indicate, on a form provided by the department, which of the three appraisal methods described in subsection (b) shall be followed. The selection of appraisal method shall be made not later than thirty days from the date the form is provided to the lessee or the deceased lessee’s legal representative by the department. If no selection of appraisal method is made in thirty days, the department shall hire and pay for the services of a disinterested appraiser whose appraisal shall be used. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §209)

§**10-3-65 Payments.** (a) The department shall pay to the appropriate recipient as specified in section 209 of the act or to the previous lessee, as the case may be, the appraisal value less:

(1) Any indebtedness to the department;

(2) Taxes;

(3) Any other indebtedness the payment of which has been assured by the department;

(4) Any costs incurred by the department for the upkeep and cleaning of the leased premises; and

(5) Any costs incurred by the department for the removal of any crops or improvements.

(b) Payments provided in subsection (a) shall be made out of the loan funds and shall be considered an advance therefrom, reimbursable out of payments by the transferee or new lessee to the tract involved.

(c) The department may make the payment only after a new lessee is found and upon commencement of the new lease. [Eff 7/30/81; am 2/3/83; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §209)

§**10-3-66 Cancellation and surrender.** (a) Upon receipt of written notification of a lessee's intent to surrender the lessee’s leasehold interest, the department shall process the same. The department may forego acceptance of a surrender until a new lessee is found and it is determined by the department that sufficient funds are available to meet the payments required. At all times until acceptance of surrender the lessee shall remain responsible for the demised leasehold together with any improvements thereon, and shall remain liable for all taxes, assessments and charges of whatever kind and nature, on said tract and improvements thereon, and shall keep insured any structures thereon.

(b) Upon the cancellation or surrender of a homestead lease, if the department determines that any structure on the premises is in such disrepair that demolition of the structure is required, the lessee shall be allowed to sell the structure within ninety days from the date of the cancellation or acceptance of surrender; provided that any proceeds be first used to satisfy any indebtedness to the department, taxes, or any other indebtedness the payment of which has been assured by the department, or any costs incurred by the department for upkeep and cleaning of the leased

premises. If the lessee does not sell or remove the structure, the department shall demolish the structure and the cost thereof shall be assessed the lessee. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §209)

§**10-3-67 Cancellation of lease when tract is abandoned.** If a lessee has abandoned the tract by failing to use or occupy the premises or cannot be located after at least two attempts to contact the lessee by certified mail, the department shall publish a public notice at least once in each of four successive weeks in a newspaper of general circulation in the State. The notice shall direct the lessee to present himself or herself at the department within one hundred twenty days from the first day of publication of the notice. The notice shall also state that the lease will be canceled in accordance with sections 210 and 216 of the act and that the department shall appraise the value of the improvements and growing crops and stock, if any, if the lessee fails to respond by the date set by the public notice. In addition, the department shall post a public notice on the abandoned tract. After cancellation of the lease and completion of the appraisal, the department shall make the payment in accordance with section 10-3-65 if there are any net proceeds and if the previous lessee is located. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §209)

§§10-3-68 to 10-3-70 (Reserved).

SUBCHAPTER 6
COMMUNITY PASTURES, FEES, AND CHARGES

§**10-3-71 Location of community pastures.** The department when practicable and as authorized by the act may maintain community pastures in such locations as it may determine. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §211)

§10-3-72 Records. A record of all stock in the community pastures shall be kept by the department. [Eff 7/30/81; comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §211)

§10-3-73 Responsibilities. (a) The lessee shall be responsible for:

(1) Permanently branding all animals with a registered brand of the lessee;
(2) Worming, and testing all animals and confirming district origin;
(3) Removing sick, diseased, or severely injured animals; and
(4) Arranging for removal of animals at least forty-eight hours in advance of the move with the district manager.

(b) The department shall be responsible for:

(1) Managing and supervising the operation;
(2) Providing and maintaining adequate fence, locked gates, water, salt and forage;
(3) Providing adequate facilities for working cattle;
(4) Notifying lessee of any disease, injury, theft, sickness or loss of weight with regard to any animal; and
(5) Identifying newborn calves with ear marks pending branding (Molokai only). [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §211)

§10-3-74 Liability for loss. The department shall not be held liable for any death, loss, injury, theft, sickness, or loss of weight to any animal. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §211)

§**10-3-75 Community pasture terms and conditions.** (a) The approximate number of heads to be carried in the community pastures shall be set by the chairman from time to time according to the carrying capacity of the pastures.

(b) Until further action by the department, four head of cattle of any age per lessee shall be considered the maximum number of cattle in any community pasture.

(c) In the case of extreme shortage of feed or the imminent lack of stock feed, all persons utilizing the pasture shall be required to remove the market stock to the amount designated by the chairman, within ten days after notice.

(d) Holders of agricultural leases shall have first priority of running stock in community pastures. Other lessees may use residual quotas as determined by the department.

(e) Each lessee shall have one, and only one, brand which shall be registered with the department of agriculture. Lessee shall supply the department with a facsimile of the brand and shall brand cattle belonging to the lessee. All animals on community pastures shall be owned by lessees and shall be branded with the lessee's brand before entering the community pasture.

(f) Only one type of ear mark or tag shall be used by lessee; this ear mark or tag shall be registered with the department.

(g) At no time shall any of the lessees or their representatives be allowed to enter community pastures for purposes of removing or inspecting stock without first obtaining written permission from the authorized agent of the department. This written permission shall be presented to the pasture keeper, who shall then

accompany the permit holder. Only such authority as is contained in the permit may be exercised by the holder thereof.

(h) One general drive shall be conducted in July on Molokai for the purpose of branding, castrating, counting and testing. Branding shall be allowed in the pasture only during this period. All stock owners shall assist in drives and properly identify stock belonging to them, either in person or by duly authorized representatives. All owners of livestock shall be notified one week in advance of each drive. Owners failing to attend shall be bound by the count of the department. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §211)

§**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.

(i) 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. [Eff 7/30/81; am 2/3/83; am 11/17/84; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §211)

HAWAII ADMINISTRATIVE RULES

TITLE 10

DEPARTMENT OF HAWAIIAN HOME LANDS

CHAPTER 4

MANAGEMENT OF HAWAIIAN HOME LANDS

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Historical Note: Chapter 4 of Title 10, Hawaii Administrative Rules, is based substantially upon Parts III and V, Rules and Regulations, Department of Hawaiian Home Lands. [Eff 8/11/72; am 11/14/77; R 7/30/81]

SUBCHAPTER 1
LAND MANAGEMENT

§**10-4-1 Lease of lands.** The department may lease, license, or otherwise deal with any Hawaiian home lands as may not be immediately needed for the purposes of the act as provided by section 204(2) of the act and chapter 171, HRS, upon such terms and conditions as it may deem fair and reasonable. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

§**10-4-2 General Plan.** The department shall develop and maintain a general plan providing for the development and use of land needed for the purposes of the act. The general plan shall be based upon sociological, financial and economic considerations, among others. A public hearing shall be held before a general plan is adopted or amended. [Eff 7/30/81; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act, all)

§§10-4-3 to 10-4-20 (Reserved).

SUBCHAPTER 2
LICENSES

§**10-4-21 General provisions.** (a) Applications for licenses shall be made in writing and shall state the applicant's status, type and location of the land desired, proposed use of the land, the services or facilities to be provided and the term of the license.

(b) The department may negotiate the issuance of a license. The department shall determine such terms and conditions of a license as it deems prudent, reasonable, and proper and in accordance with this chapter and subject to the commission’s approval.

(c) Except as provided in subsection (d), the applicant shall pay all costs incurred by the department for the processing of a license application, including but not limited to, costs of advertisement, survey, and appraisal. The applicant shall remit to the department, together with its application, a non-refundable deposit in the sum of $200. The applicant shall pay upon execution, the balance of the cost incurred by the department for processing the application in excess of the deposit.

(d) All processing costs may be reduced or waived when the department initiates action for license awards, or the department determines that the license benefits native Hawaiians or the department.

(e) The license rental rate shall be established by appraisal whenever prudent management so dictates. The department may:

(1) Require the licensee to hire an independent appraiser, provided the appraiser is mutually agreed upon by the department and the licensee;

(2) Enter into contracts for appraisal; or

(3) Make its own appraisal.

The licensee shall pay the cost of all appraisals, whether hired by the licensee or contracted for by the department. When a member of the department staff does the required appraisal, the applicant shall pay to the department a sum which is reasonably comparable to the current rate for similar appraisals contracted for in the private sector. Where prudent management does not dictate the rental rate be established by appraisal, the department may negotiate the rental rate of a

license. If the proposed use benefits other than native Hawaiians, the department may grant the license and the annual rental shall be established by appraisal. If the use benefits the department or native Hawaiians, the department may set a nominal rental rate.

(f) If a survey of the requested licensed area is required by the department, the licensee shall have the survey performed at the licensee's own cost. If the department is requested to provide the survey, the licensee shall pay all costs incurred by the department for the survey. The department may require an additional deposit in the amount of the estimated cost for such survey as determined by the department. [Eff 7/30/81; am 2/3/83; am 11/17/84; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §207(c))

§**10-4-22 Licenses for easements and public purposes.** Licenses as easements for railroads, telephone lines, electric power and light lines, gas mains and the like, and licenses for improvements for public purposes, including but not limited to schools, post offices, parks, beaches, fire stations, and other public facilities may be granted, in perpetuity or a specified term, subject to reverter to the department upon termination or abandonment, on such terms and conditions as may be prudently and reasonably set by the department. [Eff 7/30/81; am 11/17/84; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §207(c))

§**10-4-23** REPEALED. [R 11/17/84]

§**10-4-24 Licenses for mercantile establishments.** (a) The department may issue licenses for mercantile establishments, all of which shall be owned by native

Hawaiians or organizations formed and controlled by native Hawaiians as provided in section 207(c)(1)(B) of the act.

(b) Mercantile licenses offered upon department initiative shall be disposed of in the following manner:

(1) The department shall give notice, once in each of two successive weeks in a newspaper of general circulation in the State, of its intention to license Hawaiian home lands for mercantile purposes setting forth the minimum conditions thereunder and the use for which the land will be licensed. Any native Hawaiian or organizations formed or controlled by native Hawaiians interested in securing the license shall file an application with the department not later than thirty days after the publication of the notice;

(2) If there is only one applicant for the license, the department, after notice as provided in paragraph (1), may dispose of the license; and

(3) If there are two or more applicants for the license, the department shall select the applicant who submits the highest offer contained in a sealed bid deposited with the department.

(c) The rental for the license to be issued shall be determined by the department, based on the flat rate per square foot, or appraisal, or on a percentage of the gross sales receipt of the licensee. Upon a request of a native Hawaiian, the department may negotiate the issuance of a mercantile license subject to the approval of the commission under section 10-4-21(b).

(d) Section 10-4-21(d) shall not apply to this section. Mercantile licensees shall pay all processing costs, including but not limited to advertisement, survey, and appraisal. [Eff 7/30/81; am 11/17/84; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §207(c))

§10-4-25

§**10-4-25 Licenses to the United States.** (a) The department may grant licenses to the United States for reservations, roads, and other rights-of-way, water storage and distribution facilities.

(b) Licenses issued or granted to the United States shall not restrict the area required by the department in carrying on its duties nor interfere in any way with the department's operation or maintenance activities.

(c) Licenses issued to the United States shall be at rentals as established by appraisal.

(d) The method of rental payment may include, but not be limited to, compensatory services rendered to the department. [Eff 7/30/81; am 11/17/84; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §207(c))

§**10-4-26 Licenses to churches.** (a) The department may issue licenses to churches within a homestead district provided:

(1) The aggregate number of churches in the homestead district does not exceed two per cent of the total number of lessees in the district; and

(2) If land is available, a petition of those who wish to establish a church shall include names of at least twenty per cent of the lessees in the homestead district.

(b) Churches existing on Hawaiian home lands before November 14, 1977 shall be exempt from the requirements of subsection (a)(1).

(c) The annual rental for licenses issued under this section shall be one-half of one cent per square foot, or $200, whichever is greater.

(d) For the purposes of this section, homestead districts are Hawaiian home lands which have been homesteaded within an ahupua'a or lesser subdivision thereof. [Eff 7/3/81; am 2/3/83; am 11/17/84; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §207)

§§10-4-27 to 10-4-30 (Reserved).

SUBCHAPTER 3
PARKS

§**10-4-31 Parks managed by the department.** The department, from time to time, may establish and manage parks on lands not immediately needed for the purposes of the act. The department, in accordance with the rules established in this chapter, shall make all decisions with respect to the operations of these parks. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

§**10-4-32 Parks managed by other organizations on Hawaiian home lands.** The department may, from time to time, establish parks on lands not immediately needed for the purposes of the act. The department may license parks for other organizations to manage under such terms and conditions as the commission may deem necessary as provided by sections 204 and 207 of the act and chapter 171, HRS. (a) In cases where parks are licensed to county, state, or federal agencies for management, the applicable rules of the licensee, as limited by the license's terms and conditions, shall be used in the management of these parks; and it shall be the licensee's responsibility and duty to enforce the applicable rules.

(b) In cases where parks are licensed to other organizations, the rules of the licensee, as approved by the commission and as limited by the license's terms and conditions, shall be used in the management of these parks; and it shall be the licensee's responsibility and duty to enforce the applicable rules. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

§**10-4-33 Park advisory councils, established.** There shall be established a park advisory council in each area where the department operates a district office. Each council shall meet at least once a year and shall be administratively attached to the district office in which the council is established. Each council shall consist of five members appointed by the chairman and confirmed by the commission; provided that each member shall be a native Hawaiian, at least eighteen years of age and a resident of the area served by the district office in which the council is established. Each member shall be appointed for a term of two years. Members of each park advisory council shall serve without compensation. The purpose of each park advisory council shall be to advise the department on rules, practices and activities on and affecting parks that are in the area where the park advisory council is established and are under the management of the department as provided in section 10-4-32. [Eff and comp 10/26/98] (Auth: HHCA Act §222) (Imp: HHCA Act §204)

§**10-4-34 Use of parks.** The following minimum restrictions apply to department parks:

(1) The use or possession of alcoholic beverages is prohibited;

(2) Boating vessels or any similar buoyant devices are prohibited where posted;

(3) The construction of any buildings, facilities, memorials, or other similar structures is strictly prohibited except with written permission from the department;

(4) Fires may be built only in areas where the fire can be confined to fireplaces or grills. No person shall allow a fire to burn in a manner that surrounding shrubs, grasses, trees, or structures will be damaged. Fires shall not be left unattended. Portable stoves or warming devices may be used in designated camping and picnicking areas unless otherwise prohibited;

(5) All geologic, historic, and archaeological features must be left undisturbed;
(6) Unreasonably loud noises or unreasonably loud amplified music is prohibited. The decibel level standards shall comply with chapter 342F, HRS, state rules, and county ordinances;
(7) Activities which may cause disturbances are prohibited unless generally allowed within specific areas of the park. A list of examples of prohibited activities, if any, shall be established by the department in consultation with the park advisory council. This list shall be posted within the district office;
(8) Driving and parking of vehicles is allowed only on defined roads and in designated parking areas. Vehicles illegally parked or left unattended in closed areas may be impounded or towed to a place of storage, with towing and storage fines charged pursuant to Section 290-11, HRS.
(9) Pets and other animals shall be leashed or otherwise under physical restrictive control at all times, and are not permitted where signs prohibiting animals are posted. Persons responsible for any animal on the premises shall also be responsible for the clean up and proper disposal of animal droppings and for restoration for any damage caused by the animal;
(10) Except for maintenance authorized by the department, plants are to be left undisturbed. Where permitted by the department, reasonable quantities of plant material such as leaves, flowers, fruits and seeds may be gathered for personal use;
(11) Skating, skateboarding, and golfing are prohibited unless otherwise posted;
(l2) Soliciting or panhandling is prohibited. The sale of any goods, food, or services are prohibited unless specifically allowed in

writing by the department; such permission will require the appropriate health and other public permits;

(13) All waste must be placed in trash cans. Trash from large events must be bagged, securely tied, and disposed of appropriately. The department may require that trash from large events be removed from the premises by park users;

(14) Wildlife and their habitats must be left undisturbed except where hunting and fishing are permitted subject to all applicable federal, state and county laws, rules, and regulations;

(15) Picnicking. A person may picnic in the parks except in designated campgrounds and in those locations where prohibited; the department shall post appropriate signage. The department may also establish reasonable limitations on the length of time any person may use picnicking facilities; and

(16) All criminal activities prohibited under federal and state laws or county ordinances are also prohibited on Hawaiian home lands. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

§**10-4-35 Hours of operation.** The department shall establish the hours during which the parks will be open. Hours of operation shall be posted in each district office and may vary depending on the location of the park and the season of the year. Anyone using a park during the hours when the park is closed may be considered a trespasser and may be subject to prosecution. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

§**10-4-36 Closure.** At the discretion of the department, a park may be closed for renovation, for safety or for security purposes. The department shall post notice of closure at the district office in which the park is located and at the specific park. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

§**10-4-37 Permits.** The department shall post permit requirements in the applicable district office. The department shall attach a copy of permit requirements to approved permits. Park use permits are required for:

(1) Any group with 26 or more park users;
(2) Exclusive use of any pavilions; or
(3) Overnight camping.

The department may require security, traffic control, portable toilets, extra trash receptacles, lifeguards, insurance, security deposits or any other items that the department, in its sole discretion, may deem necessary, given the size and complexity of the event for which the permit is issued. The department shall determine the maximum size for any event and the maximum length of stay for overnight camping, and shall post those limits in the district offices. Anyone required to have a permit shall have the appropriate permit and identification at the park at all times and shall, upon request, show those items to law enforcement officers and other authorized representatives. Anyone without a required permit may be considered a trespasser and may be subject to prosecution. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

§**10-4-38 Permit application.** An application for a park use permit may be obtained at the appropriate district office, subject to the following minimum

guidelines and any other additional provisions that the department may deem necessary:

(1) Permit applications may be filed from 8:00 a.m. to 4:00 p.m., Monday through Friday, except holidays;
(2) Permit applicants must be 18 years or older;
(3) Permit applications must be in writing on a form provided by the department and contain all information required; and
(4) Permit applications for events or exclusive use of facilities must be received at least fourteen calendar days before the event and no earlier than one calendar year in advance;
(5) Camping permit applications must be received at least one working day before the requested date and no earlier than ninety days in advance. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

§**10-4-39 Permit Approval.** Park use permits shall be approved or denied by the district office supervisor in whose jurisdiction the park is located. Persons who have been denied a permit may make written requests for reconsideration to the chairperson. Permits shall not be transferred. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

§**10-4-40 Permit Denial.** Permits may be denied when:

(1) The premises or park facilities are closed;
(2) The person applying for the permit has received a permit during the previous ninety days;
(3) There are inadequate facilities to meet the needs of the applicant for the permit;
(4) The premises or facilities will be used by persons other than the person applying for the permit; or

(5) The person applying for the permit has a prior record of noncompliance with permit conditions or has committed prior violations of this subchapter. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

§**10-4-41 Permit priorities.** In general, permits shall be issued on a first-come, first-served basis, with preference given to native Hawaiian beneficiaries and organizations. In no case, however, shall a native Hawaiian be discriminated against because of place of residence. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

§**10-4-42 Fees.** The department, in consultation with the park advisory council, may establish fees for the use of park facilities. Special fees may be charged for events that require unusual departmental assistance. Fees charged by the department shall be made known to the park user before a permit is issued. Additionally, deposits may be required of any permit recipient in order to ensure that rules are met and the area is left in a clean and sanitary condition. A notice listing any required fees or deposits shall be posted in the applicable district office. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

§**10-4-43 Penalties.** (a) All permittees shall, upon request, show the permit to any law enforcement officer or authorized representative. Anyone using the park without a required permit may be asked to leave. Any such person who refuses to leave may be considered a trespasser and may be subject to prosecution.

(b) Anyone violating the provisions of this subchapter may be required to repair or pay for any damage to public or private property, may be subject to confiscation of equipment used in the violation, and may be subject to applicable charges under the law. All plants, objects, or artifacts removed illegally from the premises shall be returned to the department. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

§**10-4-44 Commercial and private operations.** The following activities are prohibited in department parks:

(1) Engaging in or soliciting business;

(2) Displaying, posting or distributing notices or advertisements; and

(3) Filming, photographing, video and audio recording, or any other media production that involves the use of professional casts, models, setting, or crews, by any person other than legitimate newspaper or television news personnel.

Exceptions to the above may be granted in writing by the chairperson subject to any terms, conditions, and fees deemed by the chairperson to be fair and reasonable. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §204)

HAWAII ADMINISTRATIVE RULES

TITLE 10

DEPARTMENT OF HAWAIIAN HOME LANDS

CHAPTER 5

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Historical Note: Chapter 5 of Title 10, Hawaii Administrative Rules, is based substantially upon Part 10, Rules and Regulations, Department of Hawaiian Home Lands. [Eff 11/14/77; R 7/30/81]

SUBCHAPTER 1
RULES OF GENERAL APPLICABILITY

§**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. 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] (Auth: HRS §91-2) (Imp: HRS §91-2)

§**10-5-2 Commission procedures**. The commission may on its own motion or upon the petition of any interested person or agency, 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 may subpoena witnesses and require the production of evidence. Procedures to be followed by the commission shall, unless specifically prescribed in these rules or by the Hawaii administrative procedures act, be such as in the opinion of the commission will best serve the purposes of such proceedings. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-2)

§**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 commission or the hearing officer before whom the matter is presented, upon such request may suspend or waive such a rule to prevent hardship in any particular instance. [Eff 7/30/81; comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-2)

§**10-5-4 Appearances before the commission.** (a) Any individual or agency or designated representative thereof may appear 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 proceeding or matter. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-2)

§**10-5-5 Filing of documents.** (a) Any document or other papers required to be filed with the commission in any proceeding or matter shall be filed with the department. Such document or paper may be sent by mail or hand carried to the department office within the time limit for such filing. The date on which the papers are actually received shall be deemed to be the date of filing.

(b) Any document or other papers filed with the commission shall be plainly legible.

(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 document 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 otherwise specifically provided by a particular rule or order of the commission, an original and nine copies of all papers shall be filed.

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

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

§**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.

(b) Upon written request, additional time will 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] (Auth: HRS §91-2) (Imp: HRS §91-2)

§10-5-8

§**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 commission or hearing officer on its own motion, or on motion of any party, may strike or dismiss the document, or require its amendment. If amended, the document shall be effective as of the day of the original filing. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-2)

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

§**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] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-12)

§**10-5-11 Commission counsel.** The attorney general or a designated representative shall serve as counsel for the commission, or the department. [Eff 7/30/81; comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §28-4)

§**10-5-12 Substitution of parties.** Upon 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] (Auth: HRS §91-2) (Imp: HRS §91-2)

§**10-5-13 Consolidations.** The commission, upon its own initiation or upon motion, 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] (Auth: HRS §91-2) (Imp: HRS §91-2)

§**10-5-14 Ex parte communications.** In any proceeding to be determined by the commission after the notice and hearing and upon a record:

(1) No person, either in private life or public life, shall communicate privately on the merits of the case to any member of the commission or its staff or to the hearing officer designated to hear and decide the matter unless specifically provided by law;

(2) No member of the commission's staff or any other governmental agency who participates in the hearing as a witness or counsel shall communicate privately on the merits of the case to a member of the commission or to the hearing officer designated to hear and decide the matter, unless specifically provided by law; and

(3) It shall be improper for any person interested in a case to seek to sway the

judgment of the commission by attempting to influence or bring pressure to bear upon any member of the commission or its staff, or for such person or any member of the commission's staff directly or indirectly to give statements to the press, radio, or television, via paid advertisements or otherwise, designed to influence the commission's judgment in the case. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-2)

§§10-5-15 to 10-5-20 (Reserved).

SUBCHAPTER 2
RULEMAKING PROCEDURES

§**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.

(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. No other public hearing, oral arguments, or other form of proceeding shall be held as a result of any such 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] (Auth: HRS §91-2) (Imp: HRS §91-6)

§**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. 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 mailed to any interested person who requests a copy, 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) 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) Two copies to each registered and recognized homestead association; and

(4) Five copies to the main office identified in §10-1-2(a)(1). [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-1) (Imp: HRS §91-2)

§**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 hearing shall be conducted in such a way as to afford to 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.

(c) 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 order as 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) 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 members of the commission, but cross-examination by private persons shall not be permitted unless expressly permitted by the presiding officer.

(e) 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, 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) 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] (Auth: HRS §91-2) (Imp: HRS §91-3)

§**10-5-24 Commission action.** The chairman or presiding officer shall announce the date when its decision shall be made. The commission shall fully consider all relevant comments and material of record before taking final action in a rulemaking proceeding. Upon adoption, amendment, or repeal of a rule, the commission, if requested to do so by an interested person, shall issue a concise statement of the principal reasons for and against its determination. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-3)

§**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 days notice of hearing, and states in writing its reason for such finding, it may proceed without prior notice or hearing upon such 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] (Auth: HRS §91-2) (Imp: HRS §91-3)

§§10-5-26 to 10-5-30 (Reserved).

§10-5-31

SUBCHAPTER 3

§**10-5-31 Contested case hearing requests.** (a) Any person or agency including the commission and the department may request a contested case hearing and shall have the right and full opportunity to assert a claim provided that the claim is based on a law or rule over which the commission has jurisdiction.

(b) Such complaint shall be in writing, signed by the complainant and shall contain a short and simple statement of the facts constituting the alleged violation and the name and address of the alleged violator.

(c) Upon receipt of the complaint, the department shall initiate an investigation of the matters contained in the complaint. The complaint shall be presented within a reasonable time to the commission, together with investigator's report and staff recommendation and on the basis thereof the commission shall determine whether proceedings shall be initiated and the matter set for hearing.

(d) It is the policy of the commission not to initiate proceedings where the matters complained of involve a private controversy redressable in the courts and where the public interest is not involved, or where it is clear on the face of the complaint that there has been no violation of the law or any rule of the commission.

(e) If the commission orders the matter to be set for hearing, a notice of hearing pursuant to HRS section 91-9.5 shall be served upon the respondent. The respondent shall specifically admit or deny or explain the charges filed against him or her and set forth any other matters constituting an avoidance or affirmative defense. [Eff 7/30/81; comp 10/26/98] (Auth: HRS §91-2)(Imp: HRS §§91-9, 91-9.5)

§10-5-32

§**10-5-32 Decision to hold hearing, scheduling.** (a) The commission shall hold a contested case hearing whenever it finds that:

(1) Such a hearing is required by Chapter 91, HRS;

(2) There is a reason to believe that a law or rule of the commission has been violated;

(3) Such a hearing would be in the best interest of one or more of the beneficiaries of the act; and

(4) A proceeding by the commission would be in the interest of the department.

(b) Whenever the commission determines that a contested case hearing should be held, the matter shall be set for a hearing and a notice of hearing shall be served upon all parties as required by HRS section 91-9.5. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §§91-9, 91-9.5, 91-10)

§**10-5-33 Hearing officer.** (a) No hearing officer shall be assigned to serve in any proceeding who:

(1) Has any pecuniary interest in any matter or business involved in the proceeding;

(2) Is related within the third degree by blood or marriage to any party to the proceeding;

(3) Has participated in the investigation proceeding, the institution of the proceeding or in a determination that it should be instituted or in the preparation of the notice of hearing or order to show cause or in the development of the evidence to be introduced therein; and

(4) A hearing officer assigned by the commission or the chairman to hold a hearing and to make a recommended decision shall withdraw from a proceeding at any time the hearing officer is deemed disqualified; or the hearing officer may be withdrawn by the commission or chairman for good cause found after timely

affidavits alleging personal bias or other disqualifications have been filed and the matter has been heard by the commission or chairman.

(b) The hearing officer shall conduct the proceeding in a fair and impartial manner and, except to the extent required for the disposition of ex parte matters as authorized by law, no hearing officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate.

(c) A hearing officer designated by the commission or chairman to hold a hearing and to make a recommended decision in a proceeding shall have the following powers:

(1) To hold hearings;
(2) To administer oaths and affirmations;
(3) To examine witnesses;
(4) To issue subpoenas;
(5) To rule upon offers of proof and to receive relevant evidence;
(6) To regulate the course and conduct of the hearing;
(7) To hold conferences before or during the hearing, for the settlement or simplification of issues;
(8) To rule on motions and to dispose of procedural request or similar matters;
(9) Within the hearing officer's discretion, or upon the direction of the commission, to certify any question to the commission for its consideration and disposition;
(10) To make a recommended decision to the commission in writing to be acted upon by the commission; and
(11) To dispose of any other matter that normally and properly arises in the course of the proceedings.

(d) In the case of the absence of the hearing officer or in the hearing officer's inability to act, the powers and duties to be performed under this section in connection with the proceeding may, without

abatement of the proceeding, be assigned to another hearing officer duly designated by the commission or chairman, unless otherwise ordered. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §§91-9, 91-9.5, 91-10)

§**10-5-34 Settlements.** (a) In order to encourage and to provide opportunities for settlement of disputes, there may be held at any time before or during contested case hearings, such informal conferences among the parties for the purpose of submission and consideration of facts, arguments, proposal of adjustment or offers of settlement, as the nature of the proceeding, time and public interest may permit.

(b) Any party may submit offers of settlement or proposals of adjustment to any other party or request conferences for such purposes at any time.

(c) Rejected offers or proposals shall be privileged and shall not be admissible in evidence against any counsel or person claiming that privilege.

(d) Whenever a complaint has been satisfied or a settlement has been reached by all parties, a signed and verified statement to that effect, stating when and how the complaint has been satisfied or the settlement has been reached shall be filed with the commission and served upon all parties of record. Such statement may be by letter. Satisfied complaints may be dismissed at the discretion of the commission with due regard to the interests of the public. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-9)

§**10-5-35 Service of papers.** (a) The commission shall cause to be served all orders, notices, and other papers issued by the commission, together with any other papers required by law to be served by the commission. Every other paper shall be served by the filing party.

§10-5-36

(b) All papers served by either the commission or any party shall be served upon all counsel of record at the time of such filing and upon all parties not represented by counsel or upon their designated agents, in fact or by law. Any counsel entering an appearance subsequent to the initiation of the proceeding shall so notify all other counsel then of record and all parties not represented by counsel.

(c) The final order, and any other paper required to be served by the commission upon a party, shall be served upon such party or upon the representative authorized to receive service of such papers, and a copy shall be furnished to all agents designated in fact or by law.

(d) Service upon parties shall be regarded as complete by mail when deposited in the United States mail properly stamped and addressed. [Eff 7/30/81; comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-9)

§**10-5-36 Deposition.** (a) Upon the application of a party to a proceeding, and for good and exceptional cause shown, the commission or hearing officer may, at any time after the filing of the complaint or order to show cause, order the taking of testimony by oral deposition or by deposition upon written interrogatories.

(b) Any party desiring to take the deposition of a witness shall make application in writing to the commission or hearing officer setting out the reasons why such deposition should be taken, the character of the deposition, the time when; the place where; and the name and post office address of the person before whom such deposition should be taken, the name and post office address of each witness, and the subject matter concerning which the witness is expected to testify. If good and exceptional cause is shown, an order containing such instructions will be made and served upon the parties.

(c) Upon application granted, such deposition may be taken before a person having power to administer oaths other than the person designated in the notice, provided reasonable written notice of such change is given to all parties. Each witness so testifying shall be duly sworn and the adverse party shall have the right to cross-examine such witness and the answers thereto shall be reduced to writing, and in the presence of the officer taking the deposition read to the witness and subscribed by the witness and certified in the usual form by said officer. Thereafter the officer shall forward said deposition with two copies thereof, in an envelope under seal, endorsed with the title of the case and addressed to the office of the commission.

(d) A deposition ordered and taken in accord with the provisions of this section may be used in a proceeding if the commission or the hearing officer designated to preside at the hearing finds that the evidence is otherwise admissible and that:

(1) The witness is dead; or

(2) The witness is outside the State of Hawaii, unless it appears that the absence of the witness is procured by the party, offering the deposition; or

(3) The witness is unable to attend or testify because of age, sickness, infirmity or imprisonment; or

(4) The party offering the deposition has endeavored and has been unable to procure the attendance of the witness by subpoena; or

(5) In any event, upon application and notice that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony orally before the commission or hearing officer, to allow the deposition to be used.

(e) If any part of the deposition is put in evidence by the offering party, any other party may require the production of the remainder of any other portions of the deposition. [Eff 7/30/81; comp

10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-2)

§**10-5-37 Subpoenas.** Subpoenas requiring the attendance of a witness, or the production of documentary evidence from any place within the State, at any designated place of hearing, may be issued by the chairman, any member of the commission, or hearing officer designated to preside at the hearing. Application therefor may be made either to the commission or hearing officer.

(b) Application for subpoenas for the production of documentary evidence shall be made in writing to the commission or hearing officer designated to preside at the hearing. The application must be reasonable in scope and must specify as precisely as possible the documents desired, and must show their general relevancy. The application shall be verified by oath or affirmation. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-10)(Imp: HRS §91-2)

§**10-5-38 Witnesses, fees.** Witnesses summoned shall be paid the same fees and mileage as are paid witnesses in courts of the State and the fees and mileage shall be paid by the party at whose instance the witnesses appear. Fees for depositions shall be paid by the party at whose instance the depositions are taken. [Eff 7/30/81; am and comp 10/26/98](Auth: HRS §91-2) (Imp: HRS §92-16)

§**10-5-39 Hearings.** (a) All contested cases shall be heard either before the commission or a hearing officer duly designated by the commission or chairman.

(b) All contested case hearings shall be held on the island where the affected lessee or applicant resides.

(c) The record of the hearing shall be compiled in conformance with section 91-9, HRS. The commission shall make provision for stenographic recording of the testimony, but it shall not be necessary to transcribe the recording unless requested for the purposes of rehearing or court review. Any person shall be entitled to a copy of the record of a hearing provided that the cost of the preparation of the record is paid for.

(d) Each party or the party's representative shall have the following rights:

(1) To examine all documents; documents which a party does not have an opportunity to see shall not be made part of the hearing record and shall not be used in making a decision in the case;

(2) To bring witnesses to testify for the party;

(3) To establish all relevant facts and circumstances through verbal testimony or documents;

(4) To advance any arguments without undue interference;

(5) To question or refute any testimony or evidence presented by another party including the opportunity to cross-examine witnesses called by another party; and

(6) To be notified either before or during the hearing if the commission or hearing officer plans to consider facts not in evidence. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-9)

§**10-5-40 Contested case hearing procedures.** (a) The following procedures shall be followed in conducting a contested case hearing before the commission or its duly appointed hearing officer:

(1) The chairman or hearing officer shall convene the hearing and shall read the complaint and shall inquire whether there are any amendments to be made;

(2) The complainant or petitioner and the respondent shall have the opportunity to challenge for bias any member of the commission or hearing officer; and

(3) Before presentation of the case, the parties shall have the opportunity to make opening statements. The usual order of making such statements shall be as follows:

(A) Opening statement by the complainant or petitioner; and

(B) Opening statement by the respondent, unless the respondent reserves the opportunity to make an opening statement until after the witnesses for the petitioner have been presented; or

(4) Opening statements may be waived by a party.

(b) Witnesses shall testify in the following order:

(1) Witnesses for complainant or petitioner;

(2) Witnesses for the respondent;

(3) Witnesses for the complainant or petitioner in rebuttal;

(4) Witnesses for the respondent in rebuttal; and

(5) Additional witnesses as the commission or the hearing officer may deem necessary.

(c) Witnesses shall be examined in the following order:

(1) Direct examination by the party calling the witness;

(2) Cross-examination by the other party;

(3) Redirect examination by the party calling the witness;

(4) Re-cross examination by the other party; and

(5) Examination by the commission or hearing officer.

(d) After the evidence has been presented, the commission or hearing officer shall give the parties opportunity to summarize. The usual order of final argument shall be as follows:

(1) Final argument by the complainant or petitioner;

(2) Final argument by the respondent;

(3) Rebuttal argument by the complainant or petitioner.

(e) Rebuttal argument shall be limited to countering whatever may have been said by the other party during final argument.

(f) A reasonable time limit may be imposed by the commission or hearing officer for the final argument.

(g) Final arguments may be waived by a party.

(h) At the close of the presentation of evidence before the hearing officer in all contested cases, or within a reasonable time thereafter, the hearing officer may permit the filing of proposed findings and conclusions together with the reasons therefor. The proposal shall be in writing and shall be furnished to all parties; ten copies including the signed original, shall be filed with the commission.

(i) Oral argument may be allowed at the discretion of a hearing officer.

(j) Within a reasonable time, after final arguments have been completed and all requested memoranda submitted, the commission or hearing officer shall bring the matter to a close.

(k) At any time before the filing of a recommended decision, the hearing officer, for good cause shown, may reopen the case for the reception of further evidence. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2)(Imp: HRS §91-9)

§**10-5-41 Recommended decision of hearing officer.** (a) Except when the individual shall become unavailable to the commission, the recommended decision shall be made by the hearing officer who presided at the hearing. All findings, conclusions and orders recommended by the hearing officer shall be based upon the whole record and supported by the reliable, probative and substantial evidence, including facts of which he may take official notice.

(b) The hearing officer shall as soon as practical and not later than thirty days after the close of the reception of evidence make and file a

recommended decision which shall become a part of the record and include separate findings of fact and conclusions of law as well as reasons or basis therefor upon all the material, issues of fact, law or discretion presented on the record. If any party to the proceeding has been permitted to file proposed findings of fact, the hearing officer shall incorporate in the recommended decision a ruling upon each proposed finding so presented.

(c) A copy of the hearing officer's recommended decision shall be served upon each party or the counsel of record.

(d) Any party may within fifteen days after receipt of a copy of the hearing officer's recommended decision file with the commission exceptions thereto and shall specify the portions of the record and authorities relied on to sustain each point. Nine copies of the exceptions and request for review shall be filed with the commission and shall thereupon become part of the record. In addition, a copy of such exceptions and request for review shall forthwith be served upon the hearing officer and upon each of the parties and counsel who were served with a copy of the hearing officer's recommended decision. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-2)

§**10-5-42 Commission decision.** (a) Upon filing of exceptions by a party adversely affected by the recommended decision, the commission shall grant such party an opportunity to present argument and the commission shall personally consider the whole record or such portions thereof as may be cited by such party.

(b) If no exceptions or requests for review are filed within the time specified, the recommended decision of the hearing officer shall become final upon approval of the commission, unless the commission on its own motion orders further proceedings to be held.

(c) Where the hearing is held before the commission or where exceptions to the recommended

decision and a request for review have been filed with the commission, the commission will consider the whole record, including, where applicable, the recommended decision of the hearing officer and exceptions thereto, and will resolve all questions of fact by what it deems to be the greater weight of evidence thereon and make a final decision stating the reasons or basis therefor and enter an appropriate order.

(d) The commission may entertain a written petition to reconsider or re-hear its final order, decision or ruling. The petition shall be determined with reasonable expedition so that the aggrieved party may have timely opportunity to appeal. Denial of such petition shall be in writing with the reasons stated therefor.

(e) Petition to reconsider or re-hear any final order, decision or ruling of the commission shall be filed not later than ten days after a person is served with a certified copy of the final decision and order of the commission. [Eff 7/30/81; am and comp 10/26/98](Auth: HRS §91-2) (Imp: HRS §91-14)

§**10-5-43 Court appeal.** Any appeal to court for judicial review of a final decision of the commission must be made within thirty days after a person is served with a certified copy of the final decision and order of the commission. [Eff 7/30/81; comp 10/26/98] (Auth: HRS §91-2) (Imp: HRS §91-14)

§§10-5-44 to 10-5-50 (Reserved).

SUBCHAPTER 4
PETITION FOR DECLARATORY RULING

§10-5-54

§**10-5-51 Form and content.** On petition of an interested person, the commission may issue a declaratory order as to the applicability of any statutory authority involved, and include a complete statement of the facts and the reasons or grounds prompting the petition, together with full disclosure of petitioner's interest. [Eff 7/30/81; comp 10/26/98] (Auth: HRS §91-8) (Imp: HRS §§91-7, 91-8)

§**10-5-52 Additional data, supporting authority.** Upon receipt of the petition, the commission may require the petitioner to file additional data or a memorandum of legal authorities in support of the position taken by the petitioner. [Eff 7/30/81; comp 10/26/98] (Auth: HRS §91-8) (Imp: HRS §91-8)

§**10-5-53 Dismissal.** Without notice or hearing, the commission may dismiss a petition for declaratory ruling which fails in material respect to comply with the requirements of this chapter. [Eff 7/30/81; comp 10/26/98] (Auth: HRS §91-8) (Imp: HRS §91-8)

§**10-5-54 Hearing request.** (a) Although in the usual course of disposition of a petition for a declaratory ruling no formal hearing will be granted to the petitioner or to a party in interest, the commission may order such proceeding set down for hearing. Any petitioner or party in interest who desires a hearing on a petition for declaratory ruling, shall set forth in detail:

(1) The reasons why the matters alleged in the petition, together with supporting affidavits or other written evidence and briefs or memoranda of legal authorities, will not

permit the fair and expeditious disposition of the petition; and

(2) To the extent that such request for hearing is dependent upon factual assertion, affidavits establishing such fact shall accompany such request.

(b) In the event a hearing is ordered by the commission, HRS, section 91-9, and sections 10-5-31 through 10-5-43 of this chapter shall govern the proceedings. [Eff 7/30/81; am and comp 10/26/98] (Auth: HRS §91-8) (Imp: HRS §91-8)

§**10-5-55 Declaratory motion on commission's own motion.** Notwithstanding the other provisions of this chapter, the commission may, on its own motion or upon request but without notice of hearing, issue a declaratory order to terminate a controversy or to remove uncertainty. [Eff 7/30/81; comp 10/26/98] (Auth: HRS §91-8) (Imp: HRS §91-8)

HAWAII ADMINISTRATIVE RULES

TITLE 10

DEPARTMENT OF HAWAIIAN HOME LANDS

CHAPTER 6.1

NATIVE HAWAIIAN DEVELOPMENT PROGRAM

§10-6.1-1 Purpose
§10-6.1-2 Native Hawaiian development program structure
§10-6.1-3 Native Hawaiian development program plan content
§10-6.1-4 Procedures for obtaining assistance
§10-6.1-5 Eligibility
§10-6.1-6 Funding
§10-6.1-7 Reporting

§**10-6.1-1 Purpose.** The purpose of the Native Hawaiian development program is to improve the general welfare and condition of native Hawaiians through educational, economic, political, social, cultural and other programs. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §222)

§**10-6.1-2 Native Hawaiian development program structure.** (a) The native Hawaiian development program shall have a hierarchical structure of goals, objectives, and action plans. The primary goal of the native Hawaiian development program shall be to increase the self-sufficiency and self-determination of native Hawaiian individuals and native Hawaiian communities. Additional related goals may also be established by the commission. Objectives shall be established delineating a comprehensive strategy for reaching the goals. The department shall develop

action plans to achieve the objectives. Each action plan may have several implementing mechanisms such as grants, scholarships, loans, technical assistance, and partnerships.

(b) The goals, objectives, and action plans offered during a given fiscal year shall be detailed in a native Hawaiian development program plan. The native Hawaiian development program plan shall cover two fiscal years and shall be approved by the commission before the beginning of each fiscal biennium. The department shall seek community input and participation in its development of the native Hawaiian development program plan. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §222)

§**10-6.1-3 Native Hawaiian development program plan content.** (a) The native Hawaiian development program plan shall specify the goals, objectives, action plans, and implementing mechanisms applicable during the fiscal biennium covered by the plan.

(b) The department may utilize the following resources to establish the goals, objectives, action plans, and implementing mechanisms contained within the native Hawaiian development program plan:

(1) An assessment of the needs of the native Hawaiian community based on a review of social and economic data on native Hawaiians and assessments provided by native Hawaiian community groups;

(2) A written questionnaire survey of Hawaiian agencies, organizations, and community groups to obtain their opinion of the needs of the native Hawaiian community and their recommendations for objectives, programs, and the type of assistance to meet such needs;

(3) An assessment of the feasibility and practicality of offering a given program or type of assistance; and

(4) An assessment of the progress made toward previously established goals, objectives, and programs.

(c) The native Hawaiian development program plan shall specify for each action plan:

(1) A statement of the objectives;

(2) A general description of the implementing mechanisms; and

(3) Where applicable, eligibility requirements, application procedures, and selection criteria. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §222)

§**10-6.1-4 Procedures for obtaining assistance.** The department shall provide standard forms for requesting financial assistance. The standard forms shall be designed for the specific type of assistance being requested. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §222)

§10-6.1-5 Eligibility. (a) Each type of assistance offered may have unique eligibility requirements that shall be specified in the native Hawaiian development program plan. Common to all types of assistance shall be the minimum requirement that the beneficiaries of the assistance must be native Hawaiian.

(b) Additional basic eligibility requirements for specific types of assistance are:

(1) Grants shall only be awarded to public agencies and non-profit organizations recognized as tax-exempt by the U.S. Internal Revenue Service. Organizations who are recognized by the State as non-profit but whose operations do not require recognition from the U.S. Internal Revenue Service may also be eligible to receive a grant; and

(2) Technical assistance and partnerships shall be available to any type of organization or public agency provided that the purpose of the assistance is to benefit native Hawaiians. [Eff and comp 10/26/98] (Auth: HHC Act §222)(Imp: HHC Act §222)

§**10-6.1-6 Funding.** The native Hawaiian development program shall be funded by the native Hawaiian rehabilitation fund, and federal, state, county, and private sources. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §222)

§**10-6.1-7 Reporting.** (a) The department shall submit a report on the native Hawaiian development program to the commission. The report shall cover the activities of the previous fiscal year, and include:

(1) A description of the plans of action implemented;
(2) A summary of specific projects, organizations, and individuals assisted;
(3) An assessment of the native Hawaiian development program;
(4) Recommendations for improvement or modification to the goals, objectives, action plans, implementing mechanisms, or operational procedures; and
(5) A summary of the assistance provided by type of assistance.

(b) The report shall be submitted no later than December 31 of each year. [Eff and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §222)