


STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

October 28, 2013

To: Chairman and Members, Hawaiian Homes Commission

From: Dreana Kalili, Policy and Program Analyst 

Subject: Beneficiary Consultation Report on Rulemaking to
Implement Hawaiian Homes Commission Act, Section 228

RECOMMENDED MOTION/ACTION

That the Hawaiian Homes Commission:

- 1) Approve Beneficiary Consultation Report on Rulemaking to Implement Hawaiian Homes Commission Act, Section 228;
and
- 2) Authorize staff to transmit the draft rule language to the Department of the Attorney General for review and approval to initiate the formal rulemaking process.

DISCUSSION

At its regular meeting of July 22, 2013, the Hawaiian Homes Commission approved draft administrative rules to implement Section 228 of the Hawaiian Homes Commission Act, and authorized staff to conduct beneficiary consultation on these draft rules.

A total of eight beneficiary consultation meetings were held statewide from August 21-29, 2013, and these meetings were designed to inform beneficiaries of the draft rule language (as required by Section 228) and the rulemaking process. Notices of these consultation meetings were mailed to all lessees and applicants and were also published on the department's website. The schedule for these meetings was as follows:

- August 21 - Kapolei, Oahu
- August 26 - Paukukalo, Maui
- August 26 - Waimanalo, Oahu
- August 27 - Hilo, Hawaii
- August 27 - Papakolea, Oahu
- August 28 - Waimea, Hawaii
- August 28 - Kaunakakai, Molokai

- August 29 - Kapaa, Kauai

More than 256 beneficiaries and their family members participated in these meetings. The department recorded 187 comments and questions shared during the meetings and also received written comments (during the 30-day comment period) from ten individuals. These comments, in their entirety, are included in the Beneficiary Consultation Report (Exhibit 'A').

Many of these comments were unrelated to the extension of general leases of Hawaiian home lands and addressed issues beyond the scope of the consultation. Of the comments related to the subject matter, there were three primary themes: the process for granting extensions and the criteria to be met by general lessee; the benefit of general lease extensions to beneficiaries; and broad inquiries and critiques of the general lease program. The department's response is also included in the report. Of all the feedback and input collected, there were no recommendations from beneficiaries to amend the draft rule language.

The statutory language of Section 228 of the Hawaiian Homes Commission Act provides direct and narrow guidance on the implementation of this section. If the statutory language did not require the promulgation of rules, the provisions in this section would be self-implementing. As some beneficiaries pointed out during the meetings and in written comments submitted later, because of this narrow guidance, there is limited flexibility in how the draft rule language may be changed. Since the department received no comments recommending amendments to the draft rules, once the Beneficiary Consultation Report is approved by the commission, the draft rules will be transmitted to the Department of the Attorney General for review and approval. This initiates the formal rulemaking process.



DEPARTMENT OF HAWAIIAN HOME LANDS

BENEFICIARY CONSULTATION REPORT
ON RULEMAKING TO IMPLEMENT HAWAIIAN HOMES
COMMISSION ACT, SECTION 228

OCTOBER 2013

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BENEFICIARY CONSULTATION REPORT ON RULEMAKING TO IMPLEMENT HAWAIIAN HOMES COMMISSION ACT, SECTION 228

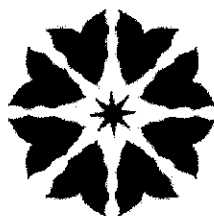
EXECUTIVE SUMMARY

At its regular meeting of July 22, 2013, the Hawaiian Homes Commission approved draft administrative rules to implement Section 228 of the Hawaiian Homes Commission Act, and authorized staff to conduct beneficiary consultation on these draft rules. A total of eight beneficiary consultation meetings were held statewide from August 21-29, 2013, and more than 256 beneficiaries and their family members participated in these meetings. The department recorded 187 comments and questions shared during the meetings and also received written comments (during the 30-day comment period) from ten individuals.

Many of these comments were unrelated to the extension of general leases of Hawaiian home lands and addressed issues beyond the scope of the consultation. Of the comments related to the subject matter, there were three primary themes: the process for granting extensions and the criteria to be met by general lessee; the benefit of general lease extensions to beneficiaries; and broad inquiries and critiques of the general lease program. Of all the feedback and input collected, there were no recommendations from beneficiaries to amend the draft rule language.



DEPARTMENT OF HAWAIIAN HOME LANDS
P. O. BOX 1879
HONOLULU, HI 96805



BENEFICIARY CONSULTATION

Mai ko kākou mana'o, e hālupe no kākou
From our ideas, we flourish

The Department of Hawaiian Home Lands is conducting a series of beneficiary consultation meetings statewide on proposed amendments to its Administrative Rules. This consultation is limited to proposed rules that will implement Section 228 of the Hawaiian Homes Commission Act which authorizes DHHL to extend the term of a general lease (non-homestead use) to a maximum of 85 years for commercial or multipurpose projects. Currently, 1.3% of Hawaiian home lands are under a general lease, and these lands generate about \$10.17 million each year for DHHL.

These meetings are intended to inform DHHL applicants and lessees of these proposed rule changes and to receive input from beneficiaries. In addition, beneficiaries have 30 days after these meetings to provide further comments and feedback. The feedback to DHHL will be compiled and reported to the Hawaiian Homes Commission at a future date in preparation for the formal rulemaking process, which is expected to begin later this year. At this time, beneficiaries along with the general public will have an opportunity to comment during the upcoming public hearings.

The proposed amendments and details about the location of the hearings and how you can submit comments are posted on our website (dhhl.hawaii.gov). If you are interested in learning more about this issue, or you have feedback for us, we encourage you to attend the meeting nearest to you. Please call (808) 620-9591 with any questions.

August 21 - Kapolei

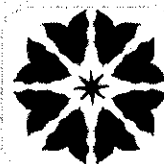
DHHL Hale Pono
91-5420 Kapolei Parkway
6:00-8:00 p.m.

August 26 - Waimanalo

Waimanalo Community Center
41-253 Ilauhole Street
6:00-8:00 p.m.

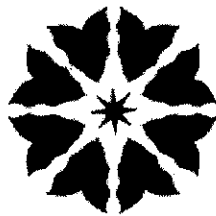
August 27 - Papakolea

Papakolea Community Center
2150 Tantalus Drive
6:00-8:00 p.m.





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August 26 - Maui

Paukukalo Community Center
655 Kaunualii Street
6:00-8:00 p.m.

August 27 - East Hawaii

Waiakea High School Cafeteria
155 W. Kawili Street
5:30-7:30 p.m.

August 28 - West Hawaii

DHHL West Hawaii District Office
64-756 Mamalahoa Highway
5:30-7:30 p.m.

August 28 - Molokai

Kulana OIwi
600 Maunaloa Highway
4:30-6:30 p.m.

August 29 - Kauai

Kapaa Elementary School Cafeteria
4886 Kawaihau Road
6:00-8:00 p.m.



HAWAIIAN HOME LANDS
HAWAIIAN HOMES COMMISSION
DEPARTMENT OF HAWAIIAN HOME LANDS

Beneficiary Consultation: Section 228 Rulemaking

Statewide
August 21 - 29, 2013

Agenda for tonight

- Beneficiary Consultation: Purpose & Goals
- What are general lease extensions?
- Why do we need this rule?
- What are Administrative Rules?
- What is the rulemaking process?
- Next steps

Beneficiary consultation



- Beneficiaries = DHHL applicants + DHHL lessees + native Hawaiians
- Consultation builds stronger relationships between DHHL and beneficiaries
- Consultation provides for educated and informed decisions

Purpose and goals

- To inform beneficiaries about:
 - General lease extensions
 - DHHL's administrative rules and the process to change these rules
 - How to provide comments on the draft rule language

What is a General Lease (GL)?

- General lease is a long term agreement for the use of Hawaiian home lands for non-homesteading purposes
- Rent is determined by a fair market value appraisal conducted by a licensed third party
- GL's are awarded through a public auction process pursuant to HHCA, Section 204

What are we asking from you?

- Attend meetings and be informed on the issue
- Share mana'o in writing by mail, email and/or dropping off a comment sheet to DHHL
- Check our website after September 30 for the consultation report and other updates
- Watch out for public notices in the newspaper and updates on our website for information on the formal rulemaking and public hearings
- We invite you to participate in the public hearings

Ground rules

- Everyone in attendance sign in
- Write out your questions/comments on the provided forms
- When speaking please identify yourself as a "DHHL lessee", "DHHL applicant" or "native Hawaiian"

DHHL's mission

To manage the Hawaiian Home Lands trust effectively and to develop and deliver lands to native Hawaiians.

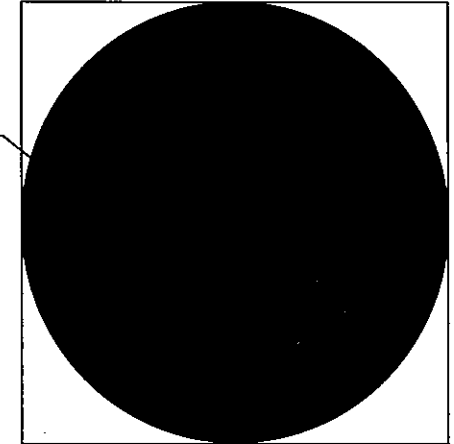
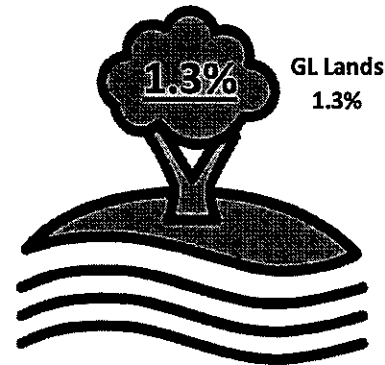
We will partner with others towards developing self-sufficient and healthy communities.

DHHL Today

- Total acreage: **203,500 acres** (statewide)
- Total no. of homestead leases: **9,849**
- Total no. of homestead applicants: **26,546**
- Non-homestead GL dispositions: **126**
—Generates approximately \$10 M annually

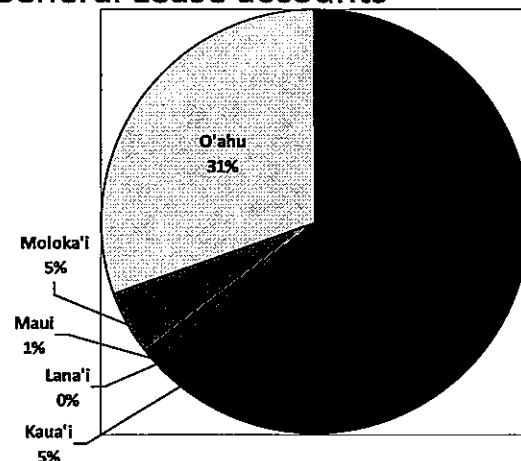
LMD - Land Management Division

- Covers approximately **1.3%** of DHHL's 203,500 acres.



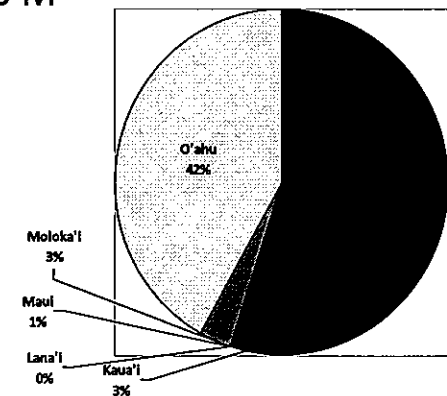
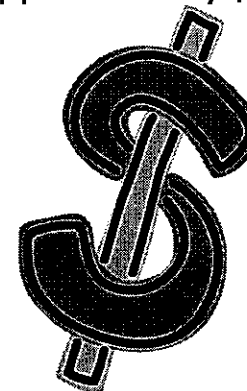
LMD - Land Management Division

- Manages 126 General Lease accounts

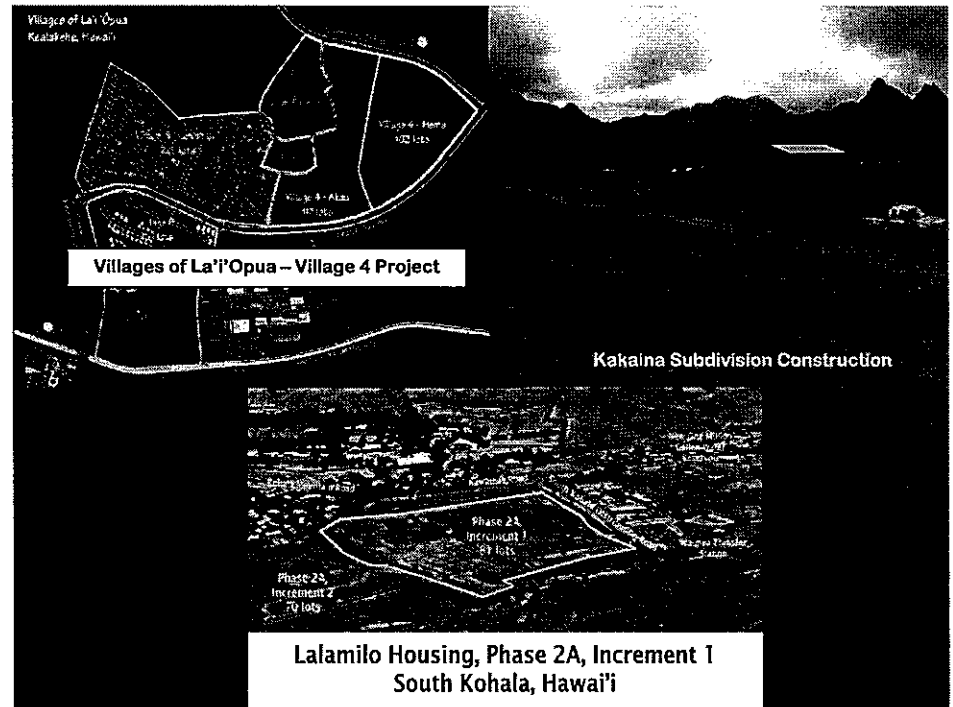
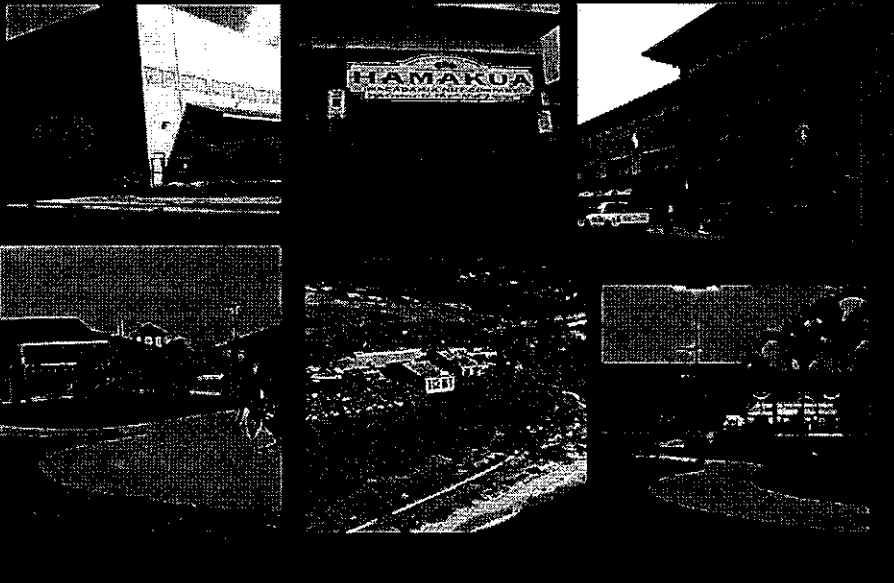


LMD - Land Management Division

- Annual revenue from GL dispositions generate approximately \$10 M



General Lessees



What is this rulemaking about?

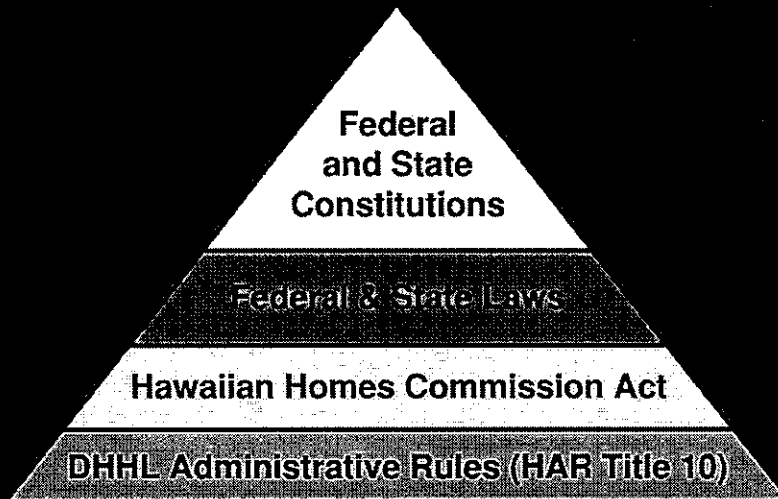
GENERAL LEASE EXTENSIONS

- Current general lease max. term = 65 years
- Under HHCA Section 228 a twenty (20)-year extension of term can only be granted once for commercial/industrial and multipurpose projects
- Law passed in 2010, added to HHCA as Section 228 in 2012, and now we are incorporating it into our Administrative Rule (HAR Title 10)
- Extensions allow general lessees reinvest in the property
- Rules are required to implement HHCA Section 228

What is a rule?

- An "Administrative Rule":
 - Implements, interprets, or prescribes law or policy as it relates to DHHL
 - Describes DHHL's organization, procedures and requirements

Hierarchy of rules



HHCA Section 228

Draft Rule Language

Hawaiian Homes Commission Act, 1920, As Amended, Section 228

Draft rule language under legislative guidance and authority of Hawaiian Homes Commission Act, Section 228

(d) Before the written agreement is approved, the lessee, or the lessee and developer, shall submit to the department the plans and specifications for the proposed development. The department shall review the plans, specifications, and the proposed development. The department shall review the plans, specifications, and the proposed development. The department shall review the plans, specifications, and the proposed development.

The commission shall adopt and publish a policy pursuant to Chapter 91, Hawaii Revised Statutes, which shall be used to evaluate any request for a lease extension, including the terms of the lease, prospective payments, and renegotiation, and shall be used by the commission for any final determination on a lease extension request.

of the lands to be developed, as determined by an appraiser for the department, and percentage rent.

e) The approval of any extension shall be subject to the following:

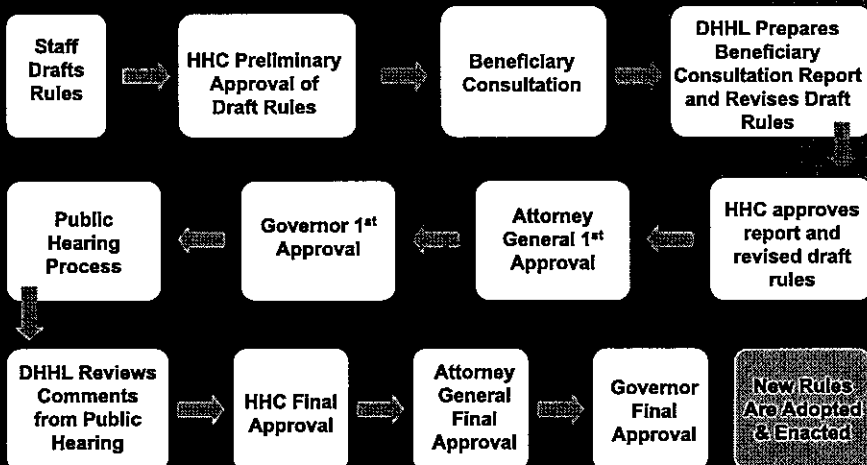
- 1) The demised premises are used in a manner substantially consistent with the use and purpose for which they were originally leased;
- 2) The rental shall not be less than the rental for the preceding term; and
- 3) Any additional terms and conditions set forth by the commission and deemed prudent and reasonable.

1) priorities of the commission to justify an extension of the lease;

2) The estimated time needed to complete the improvements and expected date of completion of the improvements; and

3) The minimum revised annual rent based on the fair market value of the lands to be developed, as determined by an appraiser for the Department, and percentage rent where gross receipts exceed a specified amount.

HAR Title 10 - Amendment Development Process



Next steps

- Review the draft rules and presentation information in the **Beneficiary Consultation** section of dhhl.hawaii.gov
- Please submit your comments, in writing to DHHL:
 - By mail: P.O. Box 1879, Honolulu, HI 96805
 - By e-mail: dhhl.lmd@hawaii.gov
 - In person: At any DHHL office
- Comments must be **received** by Sept. 30, 2013

In summary

- Check our website after September 30 for the consultation report and other updates
- Watch out for public notices in the newspaper and updates on our website for information on the formal rulemaking and public hearings
- We invite you to participate in the public hearings



HAWAIIAN HOME LANDS
HAWAIIAN HOMES COMMISSION
DEPARTMENT OF HAWAIIAN HOME LANDS

Mahalo

- Review the draft rules and presentation information in the **Beneficiary Consultation** section of dhhl.hawaii.gov
- Please submit your comments, in writing to DHHL:
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 - In person: At any DHHL office

Hawaiian Homes Commission Act, 1920, As Amended, Section 228

§228. Commercial and multipurpose project leases; extension of term.

(a) Notwithstanding any law to the contrary, the procedures under this section shall apply to commercial and multipurpose projects under section 204 or 220.5, and shall be in addition to any other procedures required by law.

(b) Prior to the disposition of available land through a request for proposals for an initial lease for a commercial or multipurpose project, the department shall consult with beneficiaries of the trust in the master planning of the available lands. The process of beneficiary consultation shall be as established by the department and shall:

- (1) Engage beneficiaries and beneficiary-serving organizations;
- (2) Provide for the timely dissemination of information about the proposed project and the gathering of input; and
- (3) Allow for a reasonable time and reasonable access to relevant information for evaluation and consideration.

(c) Notwithstanding section 220.5(d)(1), the department may extend the term of a lease of Hawaiian home lands for commercial or multipurpose projects and with the approval by the department of a written agreement proposed by the lessee, or the lessee and developer, to:

- (1) Make improvements to the leased property; or
- (2) Obtain financing for the improvement of the leased lands.

The extension of the lease pursuant to this section shall be based upon the improvements made or to be made, shall be no longer than twenty years, and shall be granted only once.

(d) Before the written agreement is approved, the lessee, or the lessee and developer, shall submit to the department the plans and specifications for the proposed development. The department shall review the plans, specifications, and the written agreement and determine:

- (1) Whether the development is of sufficient value and meets the priorities of the commission to justify an extension of the lease;
- (2) The estimated time needed to complete the improvements and expected date of completion of the improvements; and
- (3) The minimum revised annual rent based on the fair market value of the lands to be developed, as determined by an appraiser for the department, and percentage rent where gross receipts exceed a specified amount.

The commission shall adopt and publish a policy pursuant to chapter 91, Hawaii Revised Statutes, which shall be used to evaluate any request for a lease extension, including the terms of the lease, prospective payments, and renegotiation, and shall be used by the commission for any final determination on a lease extension request.

(e) The department shall submit an annual report to the legislature and the United States Department of the Interior, no later than twenty days prior to the convening of each regular session, beginning with the regular session of 2011, of all leases of available lands for commercial and multipurpose projects, including the following:

- (1) The total number of leases;
- (2) Acreage of each lease;
- (3) Terms of each lease;

(4) Whether the lessee is a beneficiary or beneficiary controlled organization; and

(5) Whether the lease was for retained available lands not required for leasing under section 207(a), and was negotiated with a native Hawaiian, or organization or association owned or controlled by native Hawaiians, under section 204(a)(2).

(f) All lease revenues from commercial and multipurpose project leases collected by the department to which this section applies shall be deposited into the Hawaiian home administration account established under section 213(f).

(g) As used in this section, "improvements" means any renovation, rehabilitation, reconstruction, or construction of the property, including minimum requirements for off-site and on-site improvements. [L 2010, c 187, §6; am L 2012, c 175, §4]

Draft rule language under legislative guidance and authority of Hawaiian Homes Commission Act, Section 228:

§10-4-3 General lease; extension of term

- a) The department may extend the term of a general lease of Hawaiian home lands for commercial or multipurpose projects to make improvements to the leased property, or obtain financing for the improvement of the leased lands. Such extension requires approval by the department of a written agreement proposed by the general lessee, or the general lessee and developer, as provided by section 228 of the act.
- b) The general lessee, or the general lessee and general developer, shall meet and satisfy all requirements as referenced in Section 228 of the act.
- c) The lease extension shall be based upon the improvement made or to be made, shall be no more than twenty years, and shall be granted only once.
- d) Before the written agreement is approved, the lessee, or the lessee and developer, shall submit to the department the plans and specifications for the proposed development. The department shall review the plans, specifications, and the written agreement and determine:
 - 1) Whether the development is of sufficient value and meets the priorities of the commission to justify an extension of the lease;
 - 2) The estimated time needed to complete the improvements and expected date of completion of the improvements; and
 - 3) The minimum revised annual rent based on the fair market value of the lands to be developed, as determined by an appraiser for the Department, and percentage rent where gross receipts exceed a specified amount.
- e) The approval of any extension shall be subject to the following:
 - 1) The demised premises are used in a manner substantially consistent with the use and purpose for which they were originally leased;
 - 2) The rental shall not be less than the rental for the preceding term; and
 - 3) Any additional terms and conditions set forth by the commission and deemed prudent and reasonable.

BENEFICIARY CONSULTATION REPORT ON RULEMAKING TO IMPLEMENT
HAWAIIAN HOMES COMMISSION ACT, SECTION 228

COMMENTS AND RESPONSE

Themes and Responses

1. The Process to Grant General Lease Extensions; Consideration; Criteria

A few comments and questions addressed the actual process the department would follow to grant an extension for general leases, including how much of the lease term must be completed before a request for extension may be considered. A specific commenter suggested that 75% of the term should be completed before an extension is considered because the beneficiaries and the department would know by then whether the general lessee is performing.

*Response: The law (HHCA, Section 228) is very prescriptive as far as what a general lessee must do and what the department must consider before an extension is granted. If a general lessee is not performing or compliant, a lease extension cannot be granted. As far as rent rates, the draft rules require the rental for the extension term at a **minimum** to be greater than the rent of the preceding term. In other words, the rents will not go down if an extension is granted, and the department will earn market price. It is also important to remember that the trigger for a general lessee to request a lease extension is an investment to make an improvement to the land. These investments ensure that the lands, and the improvements on the lands, are in good condition when they are returned to the department.*

2. The Benefit of General Lease Extensions to Applicants and Lessees

Some beneficiaries raised very important questions regarding how the trust (and its beneficiaries) benefits from the general lease extensions, as well as how beneficiaries can access the revenues generated by general leases. Two specific comments that will be useful for the department addressed the inclusion and evaluation of community benefits packages as part of the general lease extension process, and an opportunity for homestead community associations to weigh-in on any community concerns relating to the general lessees.

Response: All revenues generated from general leases, or any other disposition of non-homestead lands, are used to support homestead lots, loans for homesteads, rehabilitation programs (scholarships, community grants, leadership training), and department administration and operations. These resources are used to support beneficiaries, both applicants and lessees. Community benefits packages have become an important part of the general lease program. Just as the rent will be reviewed and revised (if necessary) when the lease extension is under consideration, the department can also review community benefits packages as part of its consideration. Community benefits packages may be

included in "additional terms and conditions set forth by the commission and deemed prudent and reasonable" (draft rules, section (e)(3)). Also, homestead community associations and the general public may submit testimony to the commission on concerns regarding a specific general lessee when the commission takes action to grant an extension.

3. The Overall General Lease Program

Most comments and questions received through the consultation are directly related to the current general lease program. Questions addressed the following topics: the efficiency and effectiveness of the program; the revenue currently generated versus the revenues required by the department; whether there is a preference for native Hawaiians in the process to award general leases; the department's authority to award general leases; and whether the federal government is involved in the process to award general leases. There were also questions about specific general leases, like Kalaupapa and Prince Kuhio Plaza, and broad comments critiquing the department's ability to manage its lands.

Response: While the subject matter of this beneficiary consultation is related to and impacts the department's general lease program, the purpose of the consultation is to seek comments on the impacts of the general lease extension, not recommendations or evaluations of the program. Further, the department is authorized to grant extensions for general leases as articulated in Section 228 of the Hawaiian Homes Commission Act, there is no federal oversight of the general lease program, and information about specific general leases are found in the department's annual report.

BENEFICIARY CONSULTATION REPORT ON RULEMAKING TO IMPLEMENT HAWAIIAN HOMES COMMISSION ACT, SECTION 228

MEETING NOTES AND COMMENTS

Meeting #1: August 21, 2013 – Kapolei, Oahu

Attendance*: 46

- Why now for this process?
- Blanket extension or one by one?
- What if the original owner comes forward and wants to take back the land (_____ title)
- Strictly for beneficiaries or general public as well? Why the public?
- 65 years exempt beneficiary and general public? My concern is general public or beneficiary. If beneficiaries get general lease can they get 20 year extension?
- Does the applicant pay for appraisal or DHHL?
- The only reason to ask for extension is to improve the property?
- What if improvements were made at year 60 – will you be eligible for 20 years? Don't have to wait until end of lease? If I can get a lease can I sublease it out? Would sublease generate income and would it go to DHHL?
- Changes between current and new rules – some language removed?
- Does an appraisal determine value?
- What is private owners' length of lease (in the marketplace)?
- Of 126 general leases, how many are near end?
- If I'm a person that has a commercial lease, is this person going to get something they don't really need?
- As a new applicant can I come in and get a [general] lease for 85 years?
- All requests go to DHHL but HHC makes decision. How does it work between DHHL and HHC?
- If a party has a 25 year lease and requests 20 year extension for 10, 15 and 20 years is that approved at the higher rate? Is that only for a commercial lease?
- Can Homestead lessees change from above ground to underground utilities?
- I'm a Nanakuli lessee, why did they change from cesspool to sewer and now I have to pay expensive fees?
- New rules go to Legislature and US Dept of Interior – is that Hawaiian Affairs or who?
- Why would that invalidate Admissions Act?
- This is trying to change the HHCA. You're trying to change without our knowledge.
- What happens at end of a lease? Are there rules in place?
- What is the process – how would you folks determine if you should move forward with rules change?
- Will DHHL continue to get top dollar and are we getting it now?
- How does this work into the whole program of pasture, ag, residence, etc. leases?
- What are you trying to get from the Beneficiary Consultations? What law is that?
- If beneficiaries don't approve, what happens?
- How much influence does the State have over the HHC?
- Can questions we ask here be put in black and white and be presented?
- Can you make bullet points about the changes that are on buff paper and blue paper so they can be more easily understood?

Meeting #2: August 26, 2013 – Paukukalo, Maui**Attendance*: 29**

- Is there [public] access to a breakdown of how the 10M is spent?
- Is there a list of commercial properties that have a request in for a 20 year extension?
- What happened at the end of the lease?
- Is there any process for Hawaiian communities to get these properties? Any discussion of how Hawaiian people can get this money to perpetuate economic development? Can some of that capital that goes to DHHL be put into benefiting Hawaiian people?
- There is no beneficiary preference?
- General lease is open market.
- The HHC should consider putting beneficiary preference [back into law]. HHC keeps putting us down – we need to get preference to build on our own land.
- Sakugawa's lease of 2,000 acres – they think that it's their land already.
- As a Hawaiian we should get preference even if just 20 year leases we need to re-visit preference.
- 85-year lease is too long. Some commercial leases on Maui only 50-years.
- You're asking us to approve something that we as Hawaiians are not involved with.
- Haole system does it perfectly – need to help Hawaiians to start businesses – should be able to have a fund to assist native Hawaiians to start businesses.
- HHC must revisit native Hawaiian preference [when issuing general leases].

Meeting #3: August 26, 2013 – Waimanalo, Oahu**Attendance*: 48**

- What is the time/process [for consultation, comments]?
- Are all comments included in the report?
- Same type of rule making presentation, but no follow up. Why?
- Never received a return phone call from the dept. How come?
- Where can they send email comments or requests?
- How can beneficiaries get involved in the GL process?
- What is a general lease?
- Is HHC authorized to extend lease?
- Make it simple, just ask "yes" or "no". The law is already in place with not much room to change language, get information to beneficiaries.
- How many leases expiring that require the extension?
- Is there preference for native Hawaiians [for general leases]?
- How soon will DHHL grant extension?
- How about the annual report? No update for several years?
- Now with general funds – will more staff be funded?
- How will the \$9.6M [in general funds] be spent?
- Understand governor, chairman come and go. Employees never change.

Meeting #4: August 27, 2013 – Hilo, Hawaii**Attendance*: 40**

- Act 207 take the power away from the HHC. HHC can only be advisor to the dept and has no power

** - Attendance represents the number of beneficiaries who signed in at each meeting; the actual attendance is greater than what is reflected on the sign-in sheets.*

- DHHL is on notice, since the law said HHC has no power; if this goes to the HHC for approval, I will take DHHL to court
- Why are we giving HELCO \$1 lease, and we are giving them 20 years more?
- If we allow general public to tie in to our infrastructures/facilities, such as the sewer line within our subdivision, not getting a return to the dept.
- If the justification is to allow general lessees to get construction loans, not getting a return to the dept.
- Is the annual rent appraisal on the land and improvements?
- Not much flexibility in the language.
- Old leases do not have community benefit package, can consider this when granting the 20 years extension?
- When can they ask for extension?
- This is information only, when is the report
- Rent escalates, is there a scale?
- Should add another BC meeting after Sept 30 to make sure what is said is what get reported.
- Only general leases? Not other [dispositions] like licenses?
- Federal leasehold include provision that the lessee can sell improvements made at value to allow for re-investments and not losing it, meaning the lessee has the right to recover improvements made.
- How much is the percentage rent? Can we audit the book?
- [Based on the 2008 DHHL Annual Report] how much and what is beneficiaries getting from these [general leases]?
- Should give land to beneficiaries – not leasing at 34 cents per acres
- On the wait list and still waiting
- Any more general leases?
- Is there a list of who hold a general lease?
- Is there a large delinquency? Collecting?

Meeting #5: August 27, 2013 – Papakolea, Oahu

Attendance*: 27

- Of the 126 general leases, the purpose of the meeting is to generate more income. How much income are you looking to generate?
- Are lessees considered beneficiaries of that income?
- How do you see this benefiting us [existing lessees]?
- Is there native Hawaiian preference? Do we get the first chance?
- Curious about the lessee benefits that are 30% to existing lessees and 70% for new lessees because we have been waiting 10-years for sewer improvements.
- Looking at annual report, how come pennies they [general lessees] are paying for Hawaiian home lands? Some of these are big corporations, they should be paying much more.
- Out of the 10M, 30% comes to Lessees, are we benefiting from any of the big companies that are using our land?
- Is it safe to assume that some of DeBartolo's assets will come to all Hawaiian Homes Associations on Oahu?
- Infrastructure – raw land [that is developed by developers] how does it benefit us as lessees? Everything is falling down. What we're hearing is DHHL is running out of money but you have 10M.

** - Attendance represents the number of beneficiaries who signed in at each meeting; the actual attendance is greater than what is reflected on the sign-in sheets.*

- Maintenance of our homesteads, that's my concern.
- Once these lease extensions are done, do the feds get involved?
- That's what I'm scared about, loosing the land to the feds.
- Is there any plan or motion for KS to pay more for their leases? Alu Like pays big bucks, why not KS?
- We need to start a class action suit against the BWS for our water/sewer problems.
- How much of the 126 general leases is ag land?
- KS did the right thing, they got on HHL but it's a benefit for our keiki. Alu Like should be benefit also. Some of these entities are not of benefit to homesteaders.
- DHHL is doing the right thing, going to the beneficiaries but how do we tap in to the 30% for existing lessees? As beneficiaries we don't know who the guys are [in DHHL] that give the lessees the 30%.
- When it comes to the Public Hearings, who is on the panel. Is this an open hearing? When can we find out when the Public Hearing will be scheduled so we can have the opportunity to testify?
- All this email your comments and check the website. Hawaiian people are emotional and we want to SHOW you how we feel. This meeting is good, we never had this interaction before.
- Looking at timeline, what date if the public hearing? My concern is too much all at once, the Oahu Island Plan and this General Lease Extension all at the same time. Too much to keep community informed, especially during the holiday season.
- Need DHHL to have small office in town, we need to talk to you personally. Not even any bus stop. Your agents are not helping us, we need to talk to you [staff] personally. Everyone wants to talk to Jobie because staff gives us the brush-off.
- Where's the opportunity for the beneficiaries? They are still suffering with many problems.
- Where's the answers to our concerns, they were brought up at the last DHHL meeting but where's the follow-up? We had many concerns but no one was taking notes. Where's the follow-up?
- Every time Governor changes, we get a new Director. So many changes, its BS. We need help, we keep getting pushed back. I was born and raised in Papakolea and I love it but we feel pushed back and need an [DHHL] office in town or reinstate staff to come and hear our concerns like before. This is a government issue, we pay your salaries. Every Chair has to reinvent them self and start all over, they have to play politics. It's a Catch 22.
- The staff should work together to help us, we keep going back and forth between staff. They don't answer our phone calls and take care of our concerns.

Meeting #6: August 28, 2013 – Waimea, Hawaii

Attendance*: 31

- How will it benefit the beneficiaries? Family still waiting; take back property for DHHL to manage; where will general lease extension revenue go? Money went to fix roads that serve the public.
- Who drafted this bill in legislature? DHHL supported the bill
- Doesn't make sense that native Hawaiians have to pay high rent to get a space lease at [Prince Kuhio Plaza]
- The only power - only Congress can change. Did they approve this law?

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- Mission is "Rehabilitation"; responsibility of DHHL to allow native Hawaiians to be economic self-sufficient; need to incorporate portion of all general leases to allow native Hawaiians to use at reduced rate
- Will Congress get to see all comments? Did they approve?
- Never come out to talk to them before it became law, how come?
- Why is Safeway at Prince Kuhio Plaza vacant for so long? DHHL should make it available to native Hawaiians as affordable incubator type use
- DHHL should speak on behalf of native Hawaiians; must include provision in leases to allow native Hawaiians to get some concession in space lease at the mall
- Should not be IF, should be "what they say that's important"
- When come to beneficiary consultations, should look at the audience to ask the group is willing to speak out-- not many will do that. Should have a recorder and facilitator. Impossible tasks to ask them to write comments. DHHL should take care of them and the land.
- Beneficiary consultation should not be taken lightly; not comfortable about this community
- Should come back to the island for approval
- Presenters are talking too fast; no handout
- Where is the money going?
- Nelson case: where are we? Administrative and operation costs?
- Need chart; Want to see what's written down as our comments
- Need a facilitator
- Can we see what other island groups are saying on this issue?
- 65-year lease; bank gives 30-year on loan consideration; why do we have to extend? Why not re-offer to highest bid?
- The lease term is long (the entity may not be there); extension may be w/ another entity
- Still waiting for homestead lease
- General lessees have ability to sublease; does not make sense when native Hawaiians cannot assign
- Still get people waiting, why give revocable permits to others? Need to take care of the waitlist. How are you managing the trust to benefit native Hawaiians?
- Can we get the power point presentation in hard copy; I don't have a computer.
- Kawaihae Harbor: make sure any leases at harbor will not impact homesteaders
- Environmental unsafe uses; please make sure these uses (oil) are not on the HHL.
- Homesteaders with auto repair are required to follow certain rules. Make sure that the general lessees follow the same rule.
- For new general leases, is HHC approval prior to offering? No beneficiary consultation?
- Is there a way to have community review? Process to notify community leaders prior to the offering?
- Biofuel, barrel of contaminants at Big Island Carbon leaked into the ground? Clean up at Kohala Concrete?
- Can I get copy of presentation?
- Disappointed in the HHC agenda with submittal coming under separate cover. Hope this will not be the case.
- HAR amendments several years ago. Where are we on that?
- Thank Dickie Nelson for the case, but \$9.8m is not enough. Should have a plan in place to get sufficient funding. Community could have capital if sufficient funding is achieved.
- Format should be easy to understand. What's presented tonight is not understood by most.
- Clarify: one-time, up to 20 years to existing general leases?

** - Attendance represents the number of beneficiaries who signed in at each meeting; the actual attendance is greater than what is reflected on the sign-in sheets.*

- Not true that the improvement is better for us. Have 20 more years to rundown.
- Section 228 HHCA not part of the approval; rules not clear.
- Is the \$25M for administrative costs? It's on annual basis; sufficient to hire enough staff?
- Clarify full-time staff vs. contractors; should positions be offered to native Hawaiians first since positions are not civil service?
- Legislature looking at state lease term extensions from 65 to 99 years; did not pass
- 30-days revocable permits; how does it work?
- If there is a viable business, why not give a short term lease, give them the opportunity
- Don't tell us cannot, tell us how can
- Don't come back consulting, come back with result, because what they share at consultation never happen.
- Why do we need approval to add solar or turbine on our improvements? [Approvals] take too long, we will lose the opportunity to be on the grid.
- 25% [successorship], need to drop further

Meeting #7: August 28, 2013 – Kaunakakai, Molokai

Attendance*: 18

- No native Hawaiian preference? This is Hawaiian home lands so should be preference.
- You should get the most money for general leases for all the Hawaiians.
- I am President of Kapaakea Homestead Association and so sad we have a lot of homesteads and I didn't know about this meeting until my friend told me. I checked my mail and they said I didn't get a card so I called the leaders in my community and they didn't get cards. Why not? That's why we only have this small amount of headcounts – so sad. But, we're against it.
- Is there a downside to the extension process?
- This is all about general lease businesses not about lessees.
- It is 85 years on the front end? What is the role of beneficiaries in this extension process?
- Do the administrative rules tell the HHC what they are to do? Do we have a say?
- You are making administrative rules. Do you have to go to the feds?
- You need our manao so you can decide if you can move forward.
- HHC not meeting our needs, I know a lot more about our community. We need for HHC to speak up on our on our behalf. There is so much stuff that DHHL needs to help us with. Molokai is too expensive for the young people.
- Nothing gets done here on Molokai, the big guys come over [from DHHL] and nothing gets done.
- Need some kind of administrative rules that at fair market value you can extend the lease. The concern is we give 20-year extension and we charge them but where is the fair market value clause?
- What about Kalapapa? Does their rent increase?
- What benefit is it for me? At first I thought "not for us" but it's important to get involved.
- The concept is like Bishop Estate, their revenue is for education and certain lands are zoned for commercial. General Lease concept if your business is feasible then you will get a General Lease. Is there a native Hawaiian preference? Would that revenue go directly to Molokai? Does HHC have the power to change the beneficiary preference for general leases? Is farming considered commercial? What if they are a big business and make a profit?

** - Attendance represents the number of beneficiaries who signed in at each meeting; the actual attendance is greater than what is reflected on the sign-in sheets.*

- You're calling this a consultation, are you just taking our written comments? Over here [Molokai] our culture is talk. Next time come with a tape recorder to record our verbal comments.
- Our comments from Molokai, will they get watered down since there are so many Hawaiians on the Big Island?
- I'm trying to think of benefits that would come if there is 50% native Hawaiian preference. The haole can come win with the 50% native Hawaiian and the native Hawaiian can own 51% of the business and then after the 65 or less years, the business reverts to the native Hawaiian. The military is doing this, they have a clause and they employ the Hawaiian and then the business reverts to the Hawaiian at the end and it's working. DHHL should find out how the military are doing this. It's working for our beneficiaries.

Meeting #8: August 29, 2013 – Kapaa, Kauai

Attendance*: 17

- Does the rent stay the same [after extension]?
- Do the rules affect all leases or just general leases?
- Are there any resort leases?
- How many acres compared to the actual usable acreages, taking out conservations etc.?
- There is a need for light industrial, for truck base yard type, in Anahola, has been asking for about a year.
- Will DHHL take it out to the community for comments on any new commercial and industrial offerings?
- How many industrial leases that are half-way through their lease term?
- Can there be language in the extension to protect the value of the leases since how can we predict what the rent will be 20 years out?
- How many leases are to native Hawaiians?
- Do not support, the department is only trying to give non-Hawaiians more time to use our lands.
- Remember the water case at Puu Opae, the court ruling in his favor
- Sovereignty, we owned all the lands, not DHHL.

** - Attendance represents the number of beneficiaries who signed in at each meeting; the actual attendance is greater than what is reflected on the sign-in sheets.*



**Sec. 228 Administrative Rules Comments : Sec. 228 Administrative Rules
Beneficiary Consultation 2013**

onashinda yungi ibrahim to: dhhl.lmd
Please respond to dhhl .lmd

08/21/2013 11:46 PM

To: Sec. 228 Administrative Rules

From:

onashinda yungi ibrahim
onashinda@yahoo.fr

Message:

hello member corresponding department of hawaiian home lands

thank you my studyng education consultation beneficiary.feedback .proposed .commercialy

country congo democratic republic of the
city kinshasa

code 6655713

africa

contact department of hawaiian home lands

Akismet Spam Check: passed

Sent from (ip address): 41.78.197.55 (41.78.197.55)

Date/Time: August 22, 2013 9:48 am

Coming from (referer):

<http://dhhl.hawaii.gov/po/beneficiary-consultation/2013-beneficiary-consultations/administrative-rules-for-general-leases/?subscribe=already>

Using (user agent): Mozilla/5.0 (Windows NT 5.1; rv:24.0) Gecko/20100101 Firefox/24.0



**Sec. 228 Administrative Rules Comments : Sec. 228 Administrative Rules
Beneficiary Consultation 2013**

Elizabeth DeGrood to: dhhl.lmd
Please respond to dhhl.lmd

08/26/2013 10:23 AM

To: Sec. 228 Administrative Rules

From:

Elizabeth DeGrood
eskdegrood@gmail.com

Message:

My question is:

If Dhhl is making money off of the commercial leases why are the beneficiaries still waiting for property?

Akismet Spam Check: passed

Sent from (ip address): 174.239.193.25 (25.sub-174-239-193.myvzw.com)

Date/Time: August 26, 2013 8:25 pm

Coming from (referer):

<http://dhhl.hawaii.gov/po/beneficiary-consultation/2013-beneficiary-consultations/administrative-rules-for-general-leases/>

Using (user agent): Mozilla/5.0 (iPhone; CPU iPhone OS 6_1_3 like Mac OS X)

AppleWebKit/536.26 (KHTML, like Gecko) Version/6.0 Mobile/10B329 Safari/8536.25



Beneficiary Consultation 8/28 - Comment for Consideration
waimeahomestead to: dhhl.lmd, darrell.t.young

08/28/2013 04:35 PM

Aloha,

DHHL and HHC should consider giving a discounted commercial lease rent (reasonable and prudent) to those beneficiaries who are bringing value to the land. Such as, Kanoe 'Ti and the Kawaihae Fish House, previously known as the La'au Fish Market.

--

Mahalo,

Mike Hodson, President

Waimea Hawaiian Homesteaders' Association
PO Box 126 - Kamuela, HI 96743
Phone: (808) 887.0969
this



**Sec. 228 Administrative Rules Comments : Sec. 228 Administrative Rules
Beneficiary Consultation 2013**

Herbert E Kihoi, Jr to: dhhl.lmd
Please respond to dhhl.lmd

08/30/2013 10:41 AM

To: Sec. 228 Administrative Rules

From:

Herbert E Kihoi, Jr
herbert_kihoi@yahoo.com

Message:

DHHL,

There should be no changes to Sec. 228 due to the HHC Act, 1920 which protects the beneficiaries rights. This proposal does not benefit the beneficiaries, all changes should benefit the beneficiaries to the fullest extent of HHC Act 1920 not the general lessee and or the developer.

During the meeting held 8/26/13 at Waimanalo Rec Ctr several of the old timers of HHL Waimanalo remembers the last time Waimanalo leases were expiring and the DHHL sold the leases to non-beneficiaries for a under value sum.

DHHL should abide by the laws set forth by the Hawaiian Homes Commission Act, 1920 which was written and approved by the US Congress which has a 535 membership for the protection of native rights.

According to the HHC Act 1920 S228 (b)(2)there was no dis emination of information about the propose project (b)(3)
no reasonable time and reasonable access to relevent information for evaluation and consideration. The meeting was held on 8/26/13 from 6-8PM and all input must be submitted by 9/1/13. Insufficient time.

Akismet Spam Check: passed

Sent from (ip address): 24.165.32.111 (cpe-24-165-32-111.hawaii.res.rr.com)

Date/Time: August 30, 2013 8:42 pm

Coming from (referer):

<http://dhhl.hawaii.gov/po/beneficiary-consultation/2013-beneficiary-consultations/administrative-rules-for-general-leases/>

Using (user agent): Mozilla/5.0 (compatible; MSIE 9.0; Windows NT 6.0; Trident/5.0; yie9)



Sec 228 consultation response
Diane Kanealii to: dhhl.lmd

09/07/2013 02:33 PM

Name: Roger M. Kanealii, Jr
moikehajr@gmail.com
ph: 808-937-6380

RE: Beneficiary Consultation Section 228 Commercial 20 yr lease extension

The lease extension shall be based upon the improvement made or to be made, shall be no more than twenty years, and shall be granted only once.

August 28, 2013

Kuhio Hale, Waimea , HI

I do NOT support this request for approval for commercial lease extensions for 20 yrs. I believe that there must be stipulations in commercial leases that say they cannot apply for an extension until they have completed 75% of the leased time. DHHL then can re-evaluate the options which include determining what the current value of the business is and get paid by percentage of the businesses revenue and insure that business to be the best financial decision. If they are not doing well then look for other businesses that can provide the highest revenue stream for the trust

This time also allows DHHL to re-evaluate what would be the best land use for that area. 65 and 85 yr leases for commercial purposes are risky in my opinion because those making the deal today will most likely not be around to fulfill the original agreement and purpose of that lease, and the lease is locked in to a fixed price. No one knows what will happen in the future , so don't box yourselves in to a long term leases then extend even before half the time has passed. I believe you need to leave our options open for the longest possible time.

NO extensions should be given until the department can get its rules and regs. in place and become better land managers and negotiate to get the percentage of business vs. the market value of the land to enable the trust to be viable.

Thank you for consulting with the beneficiaries



**Sec. 228 Administrative Rules Comments : Sec. 228 Administrative Rules
Beneficiary Consultation 2013**

Mele U. Spencer to: dhhl.lmd
Please respond to dhhl.lmd

09/21/2013 10:55 AM

To: Sec. 228 Administrative Rules

From:

Mele U. Spencer
muspencer@hawaii.rr.com

Message:

Good presentation.

Since the Act was changed, there is not much to say about the administrative rules. The HAR basically are limited to the Act.

I do have two suggestions:

1. Since many of these general leases were established many decades ago, there was little thought to community benefits for homestead communities. However, in recent times, community benefits packages are included in general leases. I suggest that the department consider this when the general lease extensions are in review.
2. Suggest that the department inform homestead community associations when general lease extensions are being considered. In this way, you will hear first hand of any concerns homestead associations may have or not have relating to the general lessees and also allow them to promote community benefits packages through the department.

Mele U. Spencer
Pana'ewa Farmlot Lessee

Akismet Spam Check: passed

Sent from (ip address): 66.8.231.197 (cpe-66-8-231-197.hawaii.res.rr.com)

Date/Time: September 21, 2013 8:55 pm

Coming from (referer):

<http://dhhl.hawaii.gov/po/beneficiary-consultation/2013-beneficiary-consultations/administrative-rules-for-general-leases/>

Using (user agent): Mozilla/5.0 (Windows NT 6.1; WOW64; rv:23.0) Gecko/20100101
Firefox/23.0



Beneficiary Consultation
anakura melemai to: dhhl.lmd

09/25/2013 01:32 PM

September 24, 2013

Department of Hawaiian Home Lands

Beneficiary Consultation Meeting

P.O. Box 1879

Honolulu, Kingdom of Hawai'i 96805

REGARDING: August 27, 2013, HHCA Beneficiary Consultation Meeting at Waiakea High School
For me and my partner, there were no visible signs directing us where to go and it wasn't that obvious where the Cafeteria was (on the other side of the buildings we first approached). In future meets it would be of kokua for signs posted; as there were Na Kupuna, disabled or not, Na Makua, and close parking areas filled, even at 6:00pm.

To my surprise and dismay in that meeting, very few of us Hawaiian Home Land applicants and leasees were present as compared to other meetings fully attended. Maybe cause of the subject matter, applicants and leasees didn't see the relevance, to themselves as to: (1) Commercial and multipurpose project leases; extension of term, and: (2) General lease; extension of term, for commercial or multipurpose projects.

At that August 27, 2013, HHCA Beneficiary Consultation Meeting I held Tears within myself painfully hearing, feeling, seeing how the above subject matter, 'making millions upon millions of dollars, DHHL profiting from ALL the many, many, many Commercial Enterprises, on all Islands; continually taking FIRST PRECEDENT over Native Hawaiians **affordable housing**, a basic and very real necessity for all Peoples.

How can Native Hawaiians practice our cultural identity, go through any rehabilitation process if we can't get a foundation to start with, **affordable housing**. Ridiculously, UNAFFORDABLE Offers from DHHL that range anywhere from \$150,000 and up! Hawaiians Wait for decades, dying before they or their successors can benefit (when there is affordable 'Homes for Habitat', e.g., 1 **only** affordable house built in Hawaiian Home Lands District, Keaukaha, Hawai'i (\$20,000—around 2002); several Habitat homes built in Kapolei, Oahu about 2004, 2005?—probably more stats, I don't know). Housing Placement stats show how we Hawaiians are Of "LOW PRIORITY" by Our Trustees, Commissioners of The HHCA.

Then Some of the so-called Contractors, over-priced so-called Professionals built unsafe, unsuitable, high-cost homes with cheap materials that caused major faulty water pipes, disruption of services, repairs extremely expensive, displacement and significant disruption of homestead residents, life-threatening health hazards due to no water, soon after their occupancy [Kaumana Subdivision, Hilo, Hawai'i, August 2013]. Greed overflowing,

'overthrowing' Native Hawaiians needs, rights, again!

1 of 3

It was/is apparent that DHHL's concerns, shown by their policies, Administrative choices, and mandated decisions, are continually '**steering us**' Native Hawaiians more and more into The very System who overthrew us; **Not strictly adhering** to the HHCA's specifications or follow 'the' process to make amendments of criteria set forth. Greater numbers of Native Hawaiians, uneducated to the HHCA and their Benefit rights, lose their rehabilitativeness for self-determination, self-governance thru DHHL's non-adherence to the HHCA.

I, myself, Anakura (Day) Melemai have been on the Hawaiian Home Lands Applicants Wait List since January of 2000 (going on 13 ½ years), had many '**unaffordable**' housing offers sent me by DHHL; with my yearly income of \$8,760 and my simple life style, could possibly get a practical 'grass shack' built but don't even receive offers from HHL for Agriculture lands to build on. Over those 'wait' years have read, heard, seen about DHHL plans to build more 'unaffordable' subdivisions, expand continually, Commercial Leases, on Homestead lands, **instead of needed houses!** Profits from Commercial Leases Native Hawaiians seldom see cause it's used to reinvest, rebuild monies upon! The **stats confirm less Native Hawaiians being placed on their lands since HHCA, July 1920.**

I've written in response to a DHHL Survey, once, I believe, for Applicants responses about getting on the Land. DHHL has lost total credibility with myself and many, many, many 'live' applicants; the dead applicants, DHHL is fortunate can't talk or haunt them ---only silent cries of The Many, Many, Many 'Waiting List' Applicants linger on.. on.. on!

Submitted with Deep Concern and Knowing Na Akua is Whom Trust is upheld; Accountability will be your Kuleana, Responsibility, toward the Rehabilitation, betterment of Native Hawaiians.

Ms. Anakura Day Melemai

P.O. Box 1509

Kea'au, Kingdom of Hawai'i 96749

P.S. My responses, relate back to my own experiences and to the original Hawaiian Homes Commission Act 1920, an important Foundation, workable, **IF** the **intended** Legal Process for Amendments, changes made, are kept in reference to HHCA's 'savings clause,' are adhered. Due to The Overthrow of our Nation, The Kingdom of Hawai'i, our Native Hawaiians, cultural, mental, physical, emotional, spiritual displacement, THEN and NOW. Ensuring Native Hawaiians rights to HHCA's Benefits, is of major kokua in our Rehabilitation; fiduciary duties executed properly towards Native Hawaiians betterment by Pono actions of HHL Commissioners, Trustees.

2 of 3

CC: White House

Mr. Barack Obama

President of The United States of America

Pennsylvania Avenue, Washington, D.C.

Department of The Interior
Ms. Sally Jewell
U.S. Secretary of Interior
1849 C Street, NW
Washington, D.C.

Oiwi: A Native Hawaiian Journal

P.O. Box 6128

Honolulu, Kingdom of Hawai'i 96839-1213

Anakura's file copy 9/24/13

Notice

13 SEP 25 PM 1:01

2013 SEP 27 AM 10:25
To: State Dependent Hawaiian Home Land and
Executive board Hawaiian home Commission.

I, Patrick L. Kahawaiola'a, Harold Uhane Jim, Norman K Macomber. Sr. and Pearl Elena Macomber (collective call "Beneficiaries") of Hawaiian home land trust reply to August 27, 2013, hearing notice of a draft rule-making for adoption, amendment, or repeal or rules by the State agents, Department Hawaiian Home Land ("DHHL") and executive board Hawaiian Home Commission, ("The Commission") and the gathering of input and shall be subject to the approval of the governor with consent of Congress [federal-state compact] guidelines from its authority.

Therefore, an understanding of Beneficiaries property interest Hawaiian home land trust compelling governmental interest for the patent racial preferences which the Act provides and requires.

Perspective requires a brief review of some relevant events from DHHL, and The Commission background papers¹ of the Hawaiian home lands trust of the Hawaiian Commission Act of 1920 (HHCA)² and land use restitutions by other public agencies and non-beneficiaries.

BACKGROUND PAPER
HAWAII HOME LANDS AND LAND USE
RESTRICTINS BY OTHEER PUBLIC AGENCIES

The unique status of the HHCA by provisions other state and county land use laws apply to Hawaiian home lands. The interrelationship between the HHCA and other

2013 OCT -1 AM 8:45
RECEIVED
LAND MANAGEMENT
DIVISION

¹ A revise of the pertinent provisions of the HHCA indicates that the 67th congressional intent was to create a class of lands separate and distinct from other public lands to be utilized for the rehabilitation of native Hawaiians. Provisions of the Act further vest control over the use of such lands in the Hawaiian Home Commission and not in any other government agency.

It is well established that the Hawaiian Homes Commission (amended as State DHHL, Executive Commission) stands in the position of a trustee and owes beneficiaries of the HHCA the following duties: 1) To act exclusively in the interests of beneficiaries under the HHCA; 2) To hold and protect the trust property for the beneficiaries of the HHCA; 3) To exercise such skill and care as a person of ordinary prudence would exercise in dealing with one's own property in the management of Hawaiian home lands' and 4) To adhere to the terms of the trust as set forth in the provisions of the HHCA. 1920 by the 67th Congress of July 9, 1921.

In dealing with eligible native Hawaiian collectively or individually, the State DHHL, - HHCommission must adhere to exacting standards. In administering the trust land assets, the actions of the trustees are measured by the same fiduciary standards applicable to private trusts. The Hawaii Supreme Court has stated that it will strictly scrutinize the actions of the government in administering this trust lands on behalf of the beneficiaries.

² Public - No. 34 - 67th Congress [S. 1881] Title 1, 2 (HHCA) and Title 3 (Amendments to Hawaiian Organic Act), Title 4 (Sec 401,402 - Severability Clause) of Jules 9, 1921 - .Approved, is law of land ("hereinafter "67th Congress")

Hawaii land use statute can be best appreciated through a review of the "origin and development" of these laws.

1. Territorial Land Use Laws -- Pre-Statehood

In 1900, Congress acting under its general and plenary powers enacted the Organic Act establishing Hawaii as an incorporated territory of the United States.³ The Organic Act was the fundamental law of the new territory which could only be amended by Congress. The Organic Act in turn created a territorial legislature and empowered the legislature to enact territorial laws so long as such laws were consistent with the Organic Act and the Constitution and laws of the United States. (Organic Act Sec. 91)

Under the Organic Act, most public lands other than Hawaiian homes lands were administered by a Commissioner of Public Lands. (Organic Act Sec. 73) After the Organic Act established the territory, Hawaii public land laws were amended from time to time by the territorial legislature to alter the power and with the Organic Act.

For example, as early as 1903 the territorial lands and appointed a Board or Commissioners of Agriculture and Forestry to administer these lands. (SLH 1903 C. 44)) By 1945, watershed areas and territorial parks were also administered through this board. Such territorial legislation contained no specific reference to Hawaiian home lands.

In Hawaii, counties and municipal governments did not exist before annexation. *McKenzie v. Wilson*, 31 Haws. 216, 226 (1924). The Organic Act allowed the territorial legislature to create counties within the territory and to provide for municipal governments. (Organic Act Sec 56). Shortly after annexation, the territorial legislature established counties and granted them certain powers including the power to regulate police and sanitary matters within the county by ordinances not in conflict with the laws of the territory. (e.g. SLH 1905, c. 39 Sec. 62) It was well recognized, that the counties possessed no inherent powers but only acquired such powers as were lawfully conferred upon them by the territorial legislature. *McKenzie v. Wilson*, *supra* at 232.

Gradually, the territorial legislature expanded the authority of the various counties to control land use, by 1929, the legislature had established planning commissions to formulate rules and plans to regulate the future growth and development of major towns and cities. (e.g. SLH 1928, c. 168). In 1939, the legislature provided for a master plan of the City of Honolulu and provided that public improvement projects must conform to a county master plan. (SLH 1939) A few years later, this law was amended to provide that public improvement projects "including any territorial project" would conform to the plan. (SLH 1943, c. 148, Sec.2.)

In 1957, State and county land use controls were completely restructured. Forest and water reserve zones on government and private lands were established in each of the counties of the territory and were administered by the counties of the territory and was administered by the Board of Commissioner of Agriculture and Forestry, (SLH 1957, c. 234 59). Any lands not contained within reserve boundaries were subjected to broad

³ Organic Act, an Act to Provide a Government for the Territory of Hawaii (Act of April 30, 1900 c. 339, 31 Stat. 141).

count zoning power which were to be implemented by the Board of supervisors of the particular county through a long range comprehensive general planed. (SLH 1957, c. 234, 59). Again none of the legislation described expressly included or exclude Hawaiian home lands.

II. Hawaiian Home Lands - Pre-Statehood

Laws relating to Hawaiian home land developed in a very different fashion. In 1921, Congress amended the Organic Act of the Territory of Hawaii by passing HHCA, 1920⁴ The territorial legislature was specifically precluded from amended the HHCA without consent of Congress. (HHCA Sec 205(b), Sec. 223) Under the Act, title to lands leased remained in the United States. (HHCA Sec. 207(b))

The HHCA placed public lands designated as "available lands" under the control of the Governor and the Commissioner of Public Lands would not extend to lands having the status of Hawaiian Home lands except as provided in the Act. (HHCA Sec. 206)

As originally enacted, the HHCA allowed the Hawaii Home Commission to lease its lands to native Hawaiian only for agricultural or pastoral purposes.⁵

Section 212 of HHCA provided that the Commission could return any lands not needed for leasing to beneficiaries, to the control of the Commissioner of Public Lands. Such lands were to resume and maintain the status of public lands as provided by the Organic Act and the territorial laws in effect at the time except that the Commission of Public Lands could dispose of the lands by general lease only. The Commission could require the Commissioner of Public Lands to terminate any lease and return the lands to The Commission provided that it gave notice that the lands were required for lasing pursuant to Sec. 207 of the Act and provided further that the Secretary of Interior approved the request for the return.

In 1928, Sec. 204(2) of the Act was amended to also authorize the Hawaiian Home Commission to return any available lands not immediately needed for purposes of the Act to the Commissioner of Public Lands (Act of March 27, 1928, c. 142, Sec. 1, 45, 246,) The amendment provided that such lands could be leased by the Commissioner Public Lands as provided by Sec. 73(b) of the Organic Act. The Commission could require the Commissioner Public Land to withdraw such lands from general lease by giving neither less than one nor more than five years notice of withdrawal.⁶

The difference between the tow sections could be significant; Section. 204(2) "do not expressly provide that available lands returned to the Commissioner of Public Lands

⁴ Act of July 9, 1921, c. 42 142 Stat. 108

⁵ The HHCA was later amended to allow leases to beneficiaries for residences. (Act of May 16, 1934, 42 Stat. 1222, c. 290, 52.)

⁶ Originally, the amendment to Sec. 204 (2) provided for a withdrawal of such lands form general leaving by giving five ears notice of withdrawal. This provision was later amended to provide for a withdrawal notice period of not less than one nor more than five years. (Act of July 10, 1937, 50 Stat.503.)

would lose their status as available lands. Under Section 212 lands returned were to résumé and maintain the status of public lands as provided by the Organic Act. Also Section 212 unlike Section 204(2), expressly provided that lands returned to the Commissioner were subject to the laws of the territory as well as provisions of the Organic Act.⁷

Arguably, lands returned to the Commissioner of Public Lands under Sect. 204(2) retained their status as available lands and “were not subject territorial laws other than Section 73(b) of the Organic Act. Another interpretation is that the Congress intended that lands returned under Section 204(2) also would assume the same status as lands returned to the Commission of Public Lands under Sec. 212. If this interpretation is correct, all available returned to the Commissioner Public Lands temporarily lost statue as available lands. Such lands while under control of the Commissioner appear to be subject to all territorial laws so long as such laws did not violate the Organic Act or the terms of the HHCA by provisions (Title 2, Title 1, 2, 3 and Tile 4 – Sec. 401, Sec. 402 of July 9, 1921 an 67th Congress).

By contrast, it appeared that Hawaiian Home Lands trust not returned to the control of the Commission of Public Lands retained the status of available lands whether the lands were leased to beneficiaries or managed by HH-Commission. No law expressly subjected such lands to any control or regulation either by the territory or the various counties before statehood.

III. Statehood

When Hawaii became a State, the new state entered into a compact, With the United States concerning the management and disposition of Hawaii home lands.⁸ In the compact, Hawaii agreed to adopt the HHCA, as part of its constitution.

The Hawaii Admission Act provides that the HHCA could be amen or repealed only with consent of United States but for certain exceptions. Certain provisions repainting to administration and certain provisions relating to the power and duties of officers other than those charged with the administration of the Act could be amended by the state by constitutional amendment or in the manner required for state class legislation However, the Admission Act specifically provided that encumbrances authorized to be placed on Hawaiian Home lands by officers other that those charged with the administration of the Act would not be increased without consent of the United States. The Admission Act also provided that amendments to increase the benefits to lessees of

⁷ The two provisions also appear to conflict as to how lands may be withdrawn from general leasing if need by the Hawaiian Home Commission. See discussion Doi, Legal Aspects of the Hawaiian Homes Program, Legislative Reference Bureau Re[ort No. 1A (1964)

⁸ See Section 4 of the Admission, An act to provide for the admission of the State of the State of Hawaii into the Union. (Act of March 18, 1959, Pub. L. 86-3, Stat. 4.)

Hawaiian Home lands might be made by constitutional amendment or the manner required for state legislation.⁹

The terms of the Hawaii Admission Act, appear to allow no state law to further encumber Hawaiian Home lands unless the entrance was authorized by the HHCA at statehood or unless Congress approved an amendment to the provisions of the HHCA. The United States has approved no post-statehood amendments and thus any resent authority of any other state or county agencies to place land use restrictions on Hawaiian home lands must be found in the HHCA itself.

IV. The Hawaiian Homes Commission Act Post-Statehood

The language of the HHCA provisions been altered after statehood by both the state class legislature and the state Reviser of States without the consent of Congress of United States, Section 202 and Section 204 was amended to provide that lands [with patent] not required for purposes of the Act could be returned to the Board of Land and Natural Resources, the successor to the Commissioner of Public Land. Such lands were to be lease pursuant to Chapter to Chapter 171, H.R.S., the entire chapter of state laws relating to the management and disposition of public lands, instead of Section 73(d) of the Organic Act (SLH 1963, c. 207) ¹⁰ Section 212 originally provided that Hawaiian home lands [with patent returned would resume [to take or occupy again] and maintain the statue of public lands in accordance with the Hawaiian Organic Act and the Revised Laws of Hawaii 1915. In 1968, the Reviser of Statutes deleted the reference to Organic Act and territorial laws and substituted "Hawaii Revised Statutes; Through these changes, Hawaiian home lands returned to the Department of Land and Natural Resources were subjected to land use retained even though many of the restrictions were created or altered after statehood.

In 1965, the state legislature enacted an amendment to the HHCA which provided that in the management of any retained available lands not required for leasing under Section 207(a) [for beneficiaries on wait lets and Section 211 community pastures] of the Act], the DHHL could dispose of such lands itself [and did] rather than returning the lands to the Department of Land and Natural Resources for management. (SLH 1965, c. 271, Sec. 1.)

The purpose of the bill was explained in a Committee Report issued by the Senate Committee on the Judiciary:

⁹ For a more detailed discussion of the amendment and congressional consent requirements, see the Background Paper on Amendments to the HHCA.

¹⁰ Section 73(b) of the Organic Act was incorporated verbatim in the Revised Law of Hawaii of 1955 as Sec. 99-51, and was only 1 of 73 sections pertaining to the management and disposition of public lands contained in the chapter at that timer. See RLH 1955, Chapter 99, By incorporating the entire Chapter 171, H.R.S., on management and disposition of public lands in lieu of Sec 99-51, the legislature appears to have substantially extended the scope of the state statues which control the method by which Hawaiian Home lands are disposed of by the Board of Land and Natural Resources.

The purpose of this bill is to provide additional flexibility to the department of Hawaiian home lands in the area of land management. At present, lands not leased to homesteaders are returned to the department of lands and natural resources for general supervision

and leasing. The proponents of this bill believe that the bill will result in the pinpointing of responsibility for Hawaiian home lands in this department most responsible for the efficient use of such lands, and that such changes will eventually result in greater income to the department for the use of its lands and consequent lessening of the department's dependence on income from the general fund.

Standing Committee Report No. 707 on H.B. 557, 1965 House Journal, Legislature. State of Hawaii, p. 7126

However, the Judiciary Comities amended the bill to require the Department to follow the same procedure as does the Department of Lands and Natural Resources in leasing and licensing land but did not explain why it did so. the amended bill which was enacted into law as an amendment of Sec. 204(2) of the HHCA provide that DHHL could dispose of such lands to the public on the disposition of public restrictions and uses applicable to the disposition of public lands as provided in Chapter 171 provided that the DHHL could not dispose of such lands in fee simple.

For the first time the DHHL and The Commission was allowed to lease trust lands directly to non-beneficiaries to generate income for the program. At the same time, the board commission was allowed to dispose of such lands only according to the provisions of the state law relating to the management and disposition of public lands, Chapter 171, H.R.S.

In 1978, the constitutional convention of 1978 further amended Sec 204(2) of the Act by providing that prior to negotiations with the general public, the DHHL is authorized to negotiate the disposition of Hawaiian home lands by lease to beneficiaries for commercial, industrial, or other business purposes through negotiation procedures establishes for other public lands administered by the DLNR pursuant to Sec.171-59, 171-16© and 171-17(b), HRS. (Constitutional Convention of 1978 and election of November 7, 1978.)

V. State Land Use – Post-Statehood

Hawaii land use laws also continued to evolve after statehood. In 1961, the legislature created the State classify public and privets lands into four major ands use districts: urban, rural, agricultural, and conservation.

Within conservation districts, forest reserves and water conservation zones were administered by a new Board of Land and Natural Resources which replaced the Commissioner of Public Lands. [Sec.183-41, HRS] The counties were empowered to zone all land use districts other than conservation. [Sec 46-4, HRS] Again, Hawaiian Home lands were not specifically included or excluded from the new land use restrictions.

By 1963, Chapter 171, HRS, had been amended to allow the Board of Land an Natural Resources to lease public lands for commercial, industrial, business, hotel and

resort uses under limited circumstances, [Sec. 171-41; Sec 171-42; Sec. 171-45, HRS., et, seq.]

These statutory amendments allowed the Board of Land and Natural Resources much more flexibility in leasing public lands for a variety of purposes.¹¹ But with the new flexibility came restrictions. Most of the new amendments to Chapter 171, HRS, required the general leases authorized to be consistent with county zoning requirements. (e.g. Sec. 171-41 HRS) By authorizing the DHHL, HH-Commission to lease it own lands under the same terms, conditions, restrictions and used which applied to public lands under Chapter 171, the legislature may have subjected available Hawaiian Home lands to county zoning requirements for the fires time.

As outlined above, the 1965 amendment to Sec 204(2) of the HHCA provides the only express link which allows other state or county agencies to restrict the use of lands designated as "available lands" under the HHCA. The full implications of this link have yet to be finally resolved.

These are references to the specific purposes for beneficiaries of the trust lands¹² property interest which establish by 67th Congress provisions of the HHCA, 1920, enacted July 9, 1921.¹³

VII. The Issues

The beneficiaries seeking by provide for the timely information about the proposed Sections 10-4-3, general lease, upon Hawaiian home land trust within the DHHL and The Commission had due process right capable of being to redressed general lease activities for the beneficiaries property interest through the procedures¹⁴ actually used and the probable (likely to occur or be) value of additional procedures, and the governmental interest [effective upon approval of governor with consent of Congress] involved, including the burden the additional procedural safeguards prior to the adoption of any rule authorized by law.

Let address DHHL, The Commission language under Scetion.10-4-3 General lease, extension of terms, adoption the DHHL due process right capable of being redressed general lease activities by an interested person, issue a concise statement safety, or morals of the principal reasons for and against its determination;

¹¹ By contrast, Section 73(d) of the Organic Act appeared to contemplate general leases of public lands for agricultural purposes only.

¹² A total of nearly 200, 000 acres of the public lands of the Territory have been placed under the jurisdiction of the HH-Commission provisions [an act of the 67th Congress July 9, 1921] for the purposes of the Act 1920 by creating it for governmental interest for the patent racial preferences which the act provides and requires.

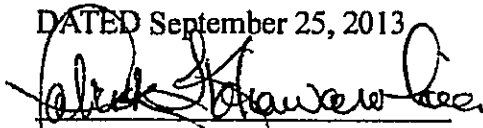
¹³ Henceforth, the severability clause should be applied with care, so as not to create doubt where none should exist.

¹⁴ Section Procedure for adoption, amendment or repeal rule authorized by HHCA Section 228 and 204 or 220.

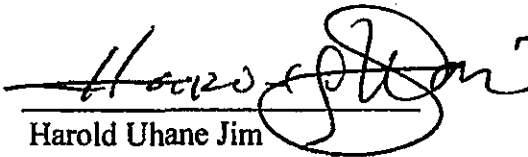
, The 1965 amendment to Sec 204(2) of the HHCA be in addition to any other procedures required by law (Section 228 of the Act) provides the only express link which allows other state or county agencies to restrict the use of lands designated as "available lands" relating to the management and disposition of the HHL trust provisions of the Act, 1920, enacted by 67th Congress of July 9, 1921,

We the beneficiaries submitted a petition to the DHHC and The Commission seeking a contested case hearing we hoped to 1) present evidence of their desire and capability to engage in trust lands in commercial lease under Section 204 (a) joining or being joined Section 207 (a) of the Act, at Hilo Panaewa, 2) challenge the potential issuance of subsistence Section 10-4-3 be cause such general lease would be inconsistent with HHCA Sections Section 204(a) a joining or being joined in Section 207 (a) and we request pending The Commission adopted of the administrative Section 10-4-3. We request was ping The Commission adopted Section 10-4-3 General lease, extension of term and the DHHL shall consult with beneficiaries of the trust lands.

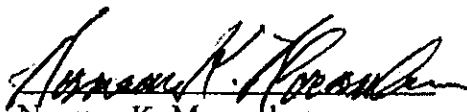
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ACT 228-85 Year Commercial/Industrial Leases

Josephine Tanimoto to: Peter.K.Albinio.Jr

09/28/2013 07:02 AM

Aloha

I am writing with regard to the latest Beneficiary Consultant public hearing held in Waimea at Kūhiō Hale.

I have given great thought to this issue as I think this issue will one day affect the Kawaihae Section 207 lessees. Many a times I have sat in the audience and the beneficiaries have received after-the-fact reports that sometimes affect their quality of life, their natural resources, their environmental concerns, etc. It is time that the beneficiaries have a say as to whether one of Section 204, ACT 228 lessees should receive an extension for 85 years.

The fact that these long term leases will make some locations unavailable, or unusable by future generations need to include a financial increase to the lease payment; as well as an infrastructure upkeep issue. Land use should not be considered -free as in the example of the Kamehameha Preschool in Waimea. That particular school has a contract for \$1., for 65 years; better than the homestead lessees benefit of \$1. per year. Beneficiaries who do not get the opportunity to attain the Kam School benefit; lose financial land use benefits as well.

Some Section 207 lessees are at the same crossroads of transferring or succession issues are a problem. Trying to keep the 99 year leases within the family structure seem to be more difficult than Section 204 leases. However, the long-term leases present an equal benefit whether it be a blood quantum requirement and in this case-not. The homesteaders know best what effects and concerns certain businesses present to their families. The interim evaluation of those long-terms businesses need to include the voices of the homesteaders.

Mahalo for including these comments in the public process.

Sincerely
Ms. Jojo Tanimoto
Homesteader



Beneficiary Consultation Related to General Leases

Glenn Teves to: dhhl.lmd

09/29/2013 09:36 PM

Aloha,

As a homesteader, I have a difficult time supporting extended general leases. The main reason is amendments to the Act have weakened the Act and resulted in compromises. There needs to be a critical review of all aspects of the Act without doing parceling or spot changes to that are not well thought out. Knee-jerk changes usually create more problems than opportunities.

I understand the importance of long-term leases in attracting investments due to infrastructure costs, but DHHL must look at possible impacts on homesteading. On Molokai, there are two large parcels of lease land utilized for agriculture; one is a general lease and the other is a Revocable Permit (RP). These two lots utilize more agricultural water than all the agricultural homesteads combined. This will become a major issue when water is in short supply.

On Molokai, water rights come with Hawaiian Home Lands, and this needs to be corrected. Hawaiian Homesteaders should have higher rights than those on Hawaiian Homes lease lands. Allowing general lessees to sublease land is wrong and takes away revenues from DHHL. This shouldn't be allowed on both GLs and RPs. At Mahana on Molokai, lessees are subleasing lands to Monsanto, and reaping \$40,000 for every field grown. To date, over 7 fields have been planted totaling over \$280,000. DHHL has been lucky to receive 5% of this lease. This is illegal but lessees have done a good job of disguising this sublease. The true test of a sublease is whether there's a transfer of ownership of the product. Although the lessee partially prepares the fields, Monsanto owns the seeds, plants them, brings its crew there to weed their fields, sprays them, and harvests them, while the lessee hauls the seed to Monsanto. If this system is acceptable to DHHL or sets precedence, soon these same kind of activity will occur all over Hawaiian Home Lands, further frustrating the rehabilitation scheme of 'cultivating their land on their own behalf'. Large corporate farms are looking at ways to get back on Hawaiian Home Lands to reap our water rights, and are already presently illegally farming Hawaiian Home Lands in Mahana.

DHHL has a giant problem of not enforcing provisions of the ACT. Because of this, some homesteaders are banking on the edge of anarchy or no law, with rampant drugs, gambling, and other illegal activities. I don't believe they have adequately monitored leases and enforcing them and shouldn't be in the business if they cannot do a decent job of leasing land. They cannot just lease land without doing due diligence, especially if the lessee is lying about the arrangement. Out of sight, out of mind is not acceptable. Penalties should be imposed on those who don't comply with leases on top of lease revocation.

To lease out land without looking at all possible opportunities for homesteaders falls short of DHHL's mandate of putting Hawaiians on the land and creating communities. Putting them on the land is not enough; they have to create communities! I don't believe that DHHL is doing a good job of leasing land. Part of the problem is their inability to hire permanent, qualified staff. Any land leased out should be for best and highest use for top dollar. It needs to look at the

KS-Bishop Estate model. It should also include opportunities for homesteaders to collaborate with general lessees. Examples include having Otani Produce purchasing homesteaders products to the extent allowable by law, or Walmart allowing homesteaders to sell produce on their grounds and even in their stores. DHHL has the leverage to do this.

There are many steps that have to be followed before DHHL can even consider amending the general lease laws. One is hiring qualified staff, going through a strategic planning process with lessees who have expertise in this area to assist in the effort. I don't have the confidence that DHHL can successfully manage its lease lands. Being part of the State has many limitations, and DHHL should have the autonomy to operate independently from state.

I'm more than willing to discuss this issue. What looks straightforward can become very complicated if all angles are not investigated. I realize that DHHL has to generate funds, but it cannot be business as usual because that's not acceptable.

Sincerely,

Glenn Ioane Teves
Hoolehua Homesteader

BENEFICIARY CONSULTATION REPORT ON RULEMAKING TO IMPLEMENT HAWAIIAN HOMES COMMISSION ACT, SECTION 228

CONCLUSION

The statutory language of Section 228 of the Hawaiian Homes Commission Act provides direct and narrow guidance on the implementation of this section. If the statutory language did not require the promulgation of rules, the provisions in this section would be self-implementing. As some beneficiaries pointed out during the meetings and in written comments submitted later, because of this narrow guidance, there is limited flexibility in how the draft rule language may be changed. Since the department received no comments addressing amendments to the draft rules, the department will submit this report to the Hawaiian Homes Commission for approval, and will request authorization to begin the formal rulemaking process.