

DEPARTMENT OF HAWAIIAN HOME LANDS

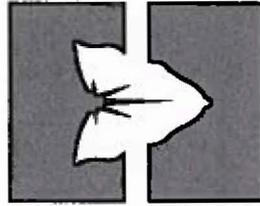


Internal Process for Agricultural and Pastoral Homestead Subdivision Requests

**Procedure Number
05-2013**

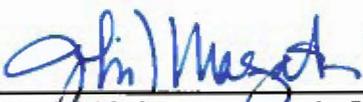
January 2014

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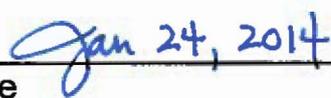


**Internal Process for
Agricultural and Pastoral
Homestead Subdivision Requests**

**Procedure Number
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Jobie M.K. Masagatani, Chairman
Hawaiian Homes Commission



Date

Procedure and Workflow

- Subject:** Processing requests from homesteaders to subdivide and transfer a portion of their agricultural or pastoral homestead lots.
- Purpose:** To provide procedures for the Department of Hawaiian Home Lands to follow in implementing Hawaii Administrative Rule §10-3-26 (f) Subdivision and transfer of a portion of agricultural or pastoral lots.
- Policy:** Agricultural and Pastoral homesteaders who meet the Department's criteria for subdividing their lot as adopted by the Hawaiian Homes Commission on May 20, 2013 may submit a request to subdivide and transfer a portion of a homestead lease.
- Authority:** Hawaii Administrative Rule, Chapter 10, Section 10-3-26 (f) Subdivision and transfer of a portion of agricultural or pastoral lot lease may be permitted upon Hawaiian Homes Commission approval for the remaining term of the lease to any individual who qualifies under the Hawaiian Homes Commission Act, 1920 as amended, subject to the following conditions:
- (1) Upon such transfer, each resultant subdivided lot meets Department criteria for designation as an agricultural or pastoral lease;
 - (2) The Department shall not be obligated 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 obligated to pay for any costs incurred in the processing and obtaining of the County final subdivision;
 - (5) The Department shall not be liable for expenses incurred by the lessee for amenities brought to the lot. The lessee is responsible for the cost of subdivision improvements necessary for compliance with County final subdivision requirements. 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 shall be required by transferees for all transfers involving the subdivided agricultural or pastoral lots. The farm plan shall be submitted to, reviewed and accepted by the Department. [Eff 7/30/81;am9/24/83; am11/17/84;am and comp 10/26/98](Auth:HHCAct §222)(Imp:HHC Act §208)

Glossary of Terms associated with Subdivisions

- 1) **Amenity** - Attractive feature of a property that makes the property more pleasant to live in. In easement law, a restraint on the property owner keeping him/her from doing some thing that he/she could do but for the grant or covenant.
- 2) **Compliance** - Conformity in fulfilling official requirements, a homesteader is in harmony or agreement with the rules and laws governing Hawaiian Home Lands (Lease, Act, HAR, County, State and Federal Law)
- 3) **Criteria** - A standard of judging an established rule, by which facts, principles opinions, and conduct are tried in forming a correct judgment respecting them. The Department's standard for approving subdivision requests are based on facts developed from first hand inspection of the homestead, a determination of good standing and review of lessee's compliance with their lease and plans.
- 4) **Cultivation** - encouraging the growth of crops or livestock.
- 5) **Good Standing** - A homesteader is in good standing if they are in compliance with all of their explicit obligations as set forth in their lease, required by the Hawaiian homes Commission Act, or required by Hawaii Administrative Rules Chapter 10.*
- 6) **Obligation** - Law or duty binding the parties to perform their agreement, homesteaders as lessees are bound under their respective leases to engage in agricultural or pastoral activities. DHHL as lessor retains the right to approve any other agreements relating in any way to the use of agricultural and pastoral lots.
- 7) **Planned Unit Development** - conditional permitted uses provided in zoning ordinances.
- 8) **Resubdivision** - The act of taking an existing subdivision and dividing it even further, for the purposes of County subdivision approval it is the same as a new subdivision.
- 9) **Standard** - General recognition and conformity to an established practice, DHHL rules require that lessees of an Agriculture or Pasture Homestead lease actively cultivate or develop at least two thirds of their homestead at all times.
- 10) **Subdivision** - Division of a homestead lot into two lots to allow the transfer of a portion of the lot to another individual who qualifies under the Act, subject to commission approval for the remaining term of the original lease.

**In the event that the subdivision will bring the homesteader into "Good Standing," the subdivision application may be considered by the Department. Should the Department recommend pre-approval to the Commission of such an application, the Department shall inform the Commission as part of the pre-approval recommendation that "Good Standing" is achieved upon completion of the subdivision process.*

Process

A homesteader may initiate a request to subdivide their homestead by submitting the following:

- (1) Homestead Lease Transfer Request HHL Form 0052;*
- (2) Agricultural and Pastoral Subdivision Application Form HHL Form 0052a 2013;*
- (3) Farm or Ranch plan;*
- (4) Any other supporting documents to describe the proposed subdivision; and*
- (5) Kumu 'ohana documents to verify the transferee's blood quantum.*

Applications may be submitted on January 31 or June 30 of each calendar year

Department shall place an Agricultural and Pastoral Subdivision table showing homestead areas that are capable of supporting new subdivisions at each of the district offices to provide advance notice of areas that are eligible for subdivision.

If a Homesteader resides in an area that supports subdivision development then the following procedures apply.

<u>Responsible Entity</u>	<u>Action</u>
Homesteader	<ol style="list-style-type: none">1. Meets with District Office Staff and completes HHL form 0052 to subdivide lot2. Attaches the Agricultural and Pastoral Subdivision Application Form HHL Form 0052a 20133. Attaches current farm or ranch plan4. Attaches additional support documents
District Office	<ol style="list-style-type: none">5. Receives and logs application
Homestead Services Division (HSD)	<ol style="list-style-type: none">6. Administrator collects all applications and time stamps for tracking purposes7. Reviews applications for completeness8. Returns incomplete applications via mail and provides letter explaining what was missing and directs homesteader to re-apply at next entry cycle January or June

<u>Responsible Entity</u>	<u>Action</u>
Homestead Services Division (HSD)	9. Administrator acknowledges completed applications via letter and assigns a case number for tracking purposes
Oahu District Office (ODO)	10. Manager makes copies of completed applications and distributes via route slip to appropriate Department offices and divisions for internal review as determined by the Homestead Services Division 11. Staff verifies that subdivided lot meets Department criteria for designation as an agricultural or pastoral subsistence homestead lot

90 Day Review Period Phase One (45 days)

Homestead Services Division (HSD) circulates applications to Department offices and divisions via route slip

Homestead Services Division (HSD) & Oahu District Office (ODO) Concurrent Review	12. Staff reviews lease file, farm or ranch plan per HAR 10-3-24(c) to verify that the homestead is being used for agricultural or pastoral purposes pursuant to HAR 10-3-39 and completes route form 13. Staff verifies that homesteader is in good standing or can come into good standing with lease obligations that may include mortgages, taxes, water bills, other payments, or allowable uses and structures 14. District Office Staff conducts on-site visit and assessment based on application information to verify 2/3s use requirement per HAR 10-3-32 and prepares memo for lessee file 15. Homestead Assistants reviews application and requests more information if necessary to acknowledge that homesteader has sufficient financial capacity to complete subdivision per HAR Section 10-3-26(f) 4&5. Staff prepares memo to file
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<u>Responsible Entity</u>	<u>Action</u>
Homestead Services Division (HSD) & Oahu District Office (ODO) Concurrent Review	<p>16. District Office Staff processes lease transfer request and advises homesteader that an "Agricultural Activities Addendum" (Exhibit D) will be required to insure that future lessees understand that the newly subdivided homestead is located in an agricultural area and the priority use is farming. District Office Staff will prepare addendum as part of new lease documentation</p> <p>17. District Office Staff reviews transferee section of application form HHL 0052 to verify that new homesteader is a family member and meets the following requirements (1) at least one-quarter Hawaiian, husband, wife, children, grandchildren, brothers, or sisters, or (2) native Hawaiian, father and mother, widows or widowers of the children, widows or widowers of the brothers and sisters, or nieces and nephews</p> <p>18. District Office Staff reviews Agricultural and Pastoral Subdivision Application Form HHL 0052a 2013 to verify that homesteader has acknowledged and understands that after the subdivision is approved, the new lessee/transferee must submit a farm or ranch plan within 90 days of receiving the lease. HAR Sections 10-3-26(f)6 and 10-3-24(c)</p> <p>19. District Office Staff reviews Agricultural and Pastoral Subdivision Application Form HHL 0052a 2013 to verify that homesteader has acknowledged that environmental compliance and other entitlement requirements may be required as part of the County subdivision process</p>
Land Development Division (LDD) Concurrent Review	<p>20. Staff reviews application and conducts technical review of existing homestead lot based on as built plans to determine if there is sufficient infrastructure to support additional development. Staff will identify other issues that may affect the homesteader's ability to subdivide their original homestead lot</p>

<u>Responsible Entity</u>	<u>Action</u>
Land Development Division (LDD) Concurrent Review	<p>21. Staff prepares written comments and recommendations based on the review. Recommendations that need to be added to approval letter are identified so that the homesteader and the County are notified of any issues or concerns</p> <p>22. Staff identifies any other issues</p> <p>23. Staff provides comments via memo back to Homestead Services Division</p>
Planning Office (PO) Concurrent Review	<p>24. Staff reviews application to determine if there is sufficient water resources to support subdivision request. Staff determines if the homestead is served by a DHHL water system. Staff makes inquiry to District office or other DHHL water manager to verify water is available. If request is in an area that is served by the County it will be subject to County water review during County subdivision approval process. Make note on route slip that it is subject to County water review. Homesteaders subdividing their property must pay for the water credit cost and other costs associated with water development pursuant to HAR Section 10-3-26(f)4&5. The homesteader must insure that adequate water is available for fire protection and that sufficient irrigation water is available</p> <p>25. Staff conducts preliminary review of application to determine if subdivision meets DHHL Land Use designation. Staff reviews application proposal and current land use plans to verify that the proposed application will meet DHHL land use requirements or if a change in land use will be required</p> <p>26. Based on the review, staff provides recommendations to be added to approval letter so that the homesteader and the County are notified of any issues or concerns</p>

<u>Responsible Entity</u>	<u>Action</u>
Planning Office (PO) Concurrent Review	27. Staff reviews for compliance with Chapter 343 Hawaii Revised Statutes. Single lot simple subdivisions, cutting one lot out of an already subdivided property resulting in the creation of two (2) lots, does not require an Environmental Assessment and can be exempted under Exemption Class #6 (2) involving minor subdivisions. Subdivisions that propose multiple lots are complex subdivisions and will require an Environmental Assessment in addition to obtaining County subdivision approval. Staff provides recommendations via memo or route slip to Homestead Services Division 28. Staff identifies any other issues 29. Staff provides comments via route slip or memo back to Homestead Services Division

90 Day Review Period Phase Two (45 days)

Homestead Services Division (HSD) receives completed comments from Department offices and divisions via route slip

Homestead Services Division (HSD)	30. After determining that the applications have completed the internal Department reviews and the applications have met the Department Criteria the Administrator shall provide the list of homestead subdivision application requests to the Chairman for approval to submit to the Hawaiian Homes Commission for preliminary subdivision approval 31. Staff prepares submittal to the Hawaiian Homes Commission for approval to proceed with the subdivision application. Submittal list will identify sub-divider (lessee) and case number
Hawaiian Homes Commission (HHC) & Homesteader	32. Hawaiian Homes Commission (HHC) approves or disapproves subdivision application. If approved, homesteader can start the design process and retain the necessary consultants to prepare the subdivision application for review by the respective County

Responsible Entity

Action

Homestead Services Division (HSD)
Oahu District Office (ODO)

33. If approval is granted by Hawaiian Homes Commission, then District Office Staff and/or Homestead Assistants prepares letter to proceed

34. District Office Staff and Homestead Assistants prepares letters to each homesteader, based on Hawaiian Homes Commission's action, to notify homesteader of preliminary subdivision approval and to proceed with the subdivision application to the respective County

35. Letters are sent to Chairman for signature and then sent to homesteaders as the official notice to proceed with their subdivision with the respective County. The letter will include any special requirements based on the Department's review and it will include the next steps directing homesteader to hire consultants and contact their respective County to prepare their subdivision application. A copy of the letter shall be sent to the respective County to notify the County that the homesteader and their designated consultant are authorized to proceed with the County Subdivision Application process

Homesteader works with County to get Subdivision approval

Homesteader

36. Submits application to County with preliminary map prepared by a Hawaii licensed professional engineer or land surveyor and supplemental information is put in to an application and submitted to the respective County

County

37. County reviews subdivision (180+ days), a subdivision approval is required where land is divided in to two or more parcels. County conducts subdivision preliminary review of application. The County receives the initial submittal items and distributes them to various County agencies for review

<u>Responsible Entity</u>	<u>Action</u>
County	38. Comments are accumulated and a preliminary subdivision approval is issued consisting of a stamped plat map, with any revisions to be made by lessee and a letter listing the conditions to be met to obtain final subdivision approval 39. County provides homesteader with preliminary letter listing items and conditions required for final approval
Homesteader & County	40. Works together to address issues and conditions identified in preliminary approval letter
<i>* If subdivision improvements are required then an agreement may be required to insure that the improvements are constructed and a bond may be required to provide acceptable surety covering 100% of the construction cost.</i>	
Homesteader	41. Submits copies of subdivision prepared by the Hawaii licensed land surveyor for final review by the County, after all conditions of preliminary letter are met
County	42. County approves final subdivision after receiving acceptable final maps and upon completion of all other conditions of the preliminary approval letter. County grants final subdivision via final letter to homesteader

Final Hawaiian Homes Commission Approval and Lease Transfer

Homesteader	43. Delivers final subdivision approval letter to the department along with final recorded subdivision maps and any other relevant information from the County
Homestead Services Division (HSD)	44. Administrator prepares submittal to the Hawaiian Homes Commission for final approval
Hawaiian Homes Commission (HHC)	45. Approves submittal

<u>Responsible Entity</u>	<u>Action</u>
Homestead Services Division (HSD) & Oahu District Office (ODO)	<p>46. Based on HHC approval staff prepares a new lease with the "Agricultural Activities Addendum" to complete the transfer of a portion of the original homestead lot that has been created in the subdivision process</p> <p>47. Staff informs new homesteader regarding "Agricultural Activities Addendum" in the new lease and their requirement to file a new farm or ranch plan pursuant to HAR 10-3-26 (f)6</p> <p>48. Administrator completes administrative requirements to set up new lease and existing amended lease and mails documents to homesteaders for final execution of transfer</p>

**Homestead Services Division will prepare the necessary documents to transfer a portion of the original homesteader's lease. The lease will be subject to the same conditions and terms of the original lease and the new lessee is required to farm /or ranch and must file their farm or ranch plan covering the newly subdivided property within 90 days of receiving their lease.*

END OF PROCEDURE

- Exhibit A -

ESTIMATED SCHEDULE FOR SUBDIVISION PROCESS

Action	DHHL	County	Commission
Submit application <i>Actions 1-4</i>			
DHHL Checks Criteria <i>Actions 5-30</i>	45 days		
HHC pre approval <i>Actions 31-35</i>			45 days
Submit to County <i>Action 36</i>		60 days	
County Pre Approval conditions <i>Action 41</i>		90 days +	
County Final Approval Conditions <i>Action 42</i>		90 days+	
Final letter approved <i>Action 43</i>		45 days	
Final letter to DHHL <i>Action 44</i>	30 days		
HHC approval <i>Action 45</i>			45 days
Prepare lease docs <i>Action 46-48</i>	30 days		

***Note ACTUAL times may vary depending on the uniqueness of each subdivision application**

- Exhibit B -

Subdivision Application Review Check list

I. After receipt of application conduct due diligence review based on HHC criteria

- (1) ___ Area has available water resources, Homesteader will pay for water credits and other development cost pursuant to HAR 10-3-26(f)4&5. (Action 24)
- (2) ___ Subdivision meets DHHL Land Use requirements. (Action 25)
- (3) ___ Homesteader is actively cultivating or has developed at least two-thirds use of the agricultural or pastoral tract at all times pursuant to HAR 10-3-39. (Action 14)
- (4) ___ Homesteader must be in good standing and in compliance with the terms and conditions of their Homestead lease. (Action 13)
- (5) ___ Homesteader acknowledges they have financial capacity to complete subdivision. (Action 15)
- (6) ___ Homesteader acknowledges addendum to the new lease will be required to insure that future lessees understand that the homestead is located in an agricultural area and agricultural activities have priority - avoidance of nuisance. (Action 16)
- (7) ___ Identification of family member, pursuant to HHCA Section 209. (Action 17)
- (8) ___ Homesteader acknowledges that new lessee must submit a farm or ranch plan - HAR Sections 10-3-26(f)6 and 10-3-24(c). (Action 18)
- (9) ___ Homesteader acknowledges environmental assessment may be required. (Action 19)

II. Suggested Farm/Ranch Plan review/verification:

- (1) ___ Name of person farming or ranching, experience and part or full time;
- (2) ___ Purpose - Subsistence, Supplemental or Commercial;
- (3) ___ Identify crops or livestock to be grown or raised;
- (4) ___ Plot plan of homestead to identify farming/ranching areas;
- (5) ___ Estimated expenses and gross income projected over three years;
- (6) ___ Method of financing; current loan status
- (7) ___ Market plan what will be done with the agriculture products produced;
- (8) ___ Timetable for operations, projected labor and technical assistance.

III. Map

- ___ Drawing of farm or ranch showing what the homesteader plans to do conceptually.

- Exhibit C -

SUBDIVISION APPLICATION WORKFLOW

Homesteader Submits Application to DHHL on January 31 or June 30

Actions 1 - 4

Homesteader has reviewed costs, obligations and responsibilities of subdividing lot
Fills out and submits HHL form 0052, 0052a, Farm/Ranch Plan, Additional Documents



DHHL Review

Actions 5 - 30

Application circulates for internal DHHL division/office review and comments. Meets criteria adopted by HHC - Good Standing, Farm/Ranch Plan, 2/3 use, On-Site Visit, Environmental Compliance



Hawaiian Homes Commission Pre Approval

Actions 31 - 35

Homesteader is approved to submit formal subdivision application to the respective County



Homesteader Submits Application to County for Subdivision Process

Actions 36-41

Homesteader works with respective County for subdivision approval.



County Issues Final Subdivision Approval Letter

Action 42

Homesteader subdivision approved by County



Homesteader Submits Final Subdivision Approval Letter to DHHL for HHC Approval

Actions 43 - 44

Homesteader subdivision approved by County and HHC



DHHL Prepares Lease Documents

Actions 45-48

Amendment to original lease to transfer portion of lease, new lease prepared with same terms and conditions as original lease



Subdivision Complete

End of process, homesteader has successfully subdivided and transferred a portion of their homestead agricultural / pastoral lot

- Exhibit D -

SAMPLE ADDENDUM FORM

**Agricultural and Pastoral Homestead Subdivision
Agricultural Activities Addendum**

To be used when subdividing and transferring a portion of an existing lease

In signing the Lease and this Lease Addendum, Lessee agrees to release and discharge the Lessor, the Hawaiian Homes Commission, or any agency, from any and all liability that may arise from, or may be caused by the following activity.

The subdivided homestead is located in an agricultural/pastoral area near or adjacent to land that is used for and /or in connection with agricultural activities which may involve burning, open boring, percolating, evaporating, milling, trucking, plowing, hauling, fertilizing, grading, the spraying of herbicide and pesticide treatment, crop dusting, water diversion and irrigation, and all other activities incidental to the planning, cultivating, harvesting, and processing of crops or livestock (collectively the "Agricultural Effects") which may cause Lessee and any other occupants of Lessee's lot to experience various noises, odors, nuisance, disturbances and other hazards arising from or caused by such activities. Lessee acknowledges that the Hawaii Right to Farm Act (H.R.S. Chapter 165) and Hawaii law limit the circumstances under which farming operations may be deemed to be a nuisance.

Lot No. _____ Lease No. _____

Date: _____

New Lessee
Printed Name: _____

Signature: _____