

Amendments to Chapters 10-1, 10-2, 10-3, and 10-5
Hawaii Administrative Rules

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

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

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

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

"(c) Unless otherwise provided by law, all information contained in any document or other papers filed with the commission pursuant to the requirements of law[,] or rule or order of the commission shall be available for inspection; provided that no written complaint or charges filed against an applicant or the holder of a lease or license shall be open to inspection unless and until the commission has ordered that the matter be set for hearing and a notice of hearing has been issued to the person against whom a complaint or charge has been filed."

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

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

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

"§10-1-5 Definitions. As used in this title, unless the context clearly provides otherwise:

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

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

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

"Appraisal" means the process of estimating value[;]_.

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

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

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

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

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

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

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

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

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

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

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

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

"Hearing officer" means a person appointed by the commission or chairman at the request of the commission, authorized and qualified to hold a hearing for the purpose of taking evidence and making recommended decisions in any contested case[;].

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

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

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

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

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

"Munitions constituents" means any materials originating from UXO, discarded military munitions, or other military munitions, including explosive and nonexplosive materials, and emission, degradation, or breakdown elements of such ordinance or munitions (10 U.S.C. 2710(e) (3)).

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

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

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

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

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

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

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

"Priority and preference for award of leases" means the department's lease award process from 1963

to 1977 that awards leases, according to ranking, to applicants in one of three priority groups categorized under the priority ranking system and defined as follows: Priority I includes applicants and their spouses and children who are one hundred per cent Hawaiian; Priority II includes applicants and their spouses and children who are no less than fifty per cent Hawaiian; Priority III includes only applicants who are no less than fifty per cent Hawaiian.

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

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

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

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

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

"Successor" means a person designated by a lessee to succeed to a lease.

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

"Undeveloped lot" means a lot that is raw land.

"Undivided interest" means an award of an undivided interest in an undeveloped parcel of real property held by two or more applicants.

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

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

(1) Have been primed, fuzed, armed, or otherwise prepared for action;

(2) Have been fired, dropped, launched, projected, or place in such a manner as to constitute

a hazard to operations, installations, personnel or material; and

(3) Remain unexploded, whether by malfunction, design, or any other cause. (10 U.S.C 101(e)(5)).

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

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

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

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

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

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

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

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

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

(c) Subject to the provisions of section 10-2-17, the chairman may:

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

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

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

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

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

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

(b) All personnel shall conduct operations pursuant to section 5-7.5, HRS." [Eff 7/30/81; comp 10/26/98; am] (Auth: HHC Act §222; HRS §91-2) (Imp: HRS §26-38)

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

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

- (1) At least eighteen years of age; and
- (2) A native Hawaiian.

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

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

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

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

- (1) Certified marriage certificates;
- (2) Certified death certificates;
- (3) Family history charts and documents such as marriage, divorce, and death records from the State of Hawaii Archives, state courts, public libraries or United States Census records;
- (4) Official baptismal records or other church documents identifying the race of applicant or applicant's ancestors;
- (5) Official records from the files of military services, schools or hospitals;
- (6) Employment records;
- (7) Written statement from a physician knowledgeable of the facts or, in the case of a relative's death, a written statement from the mortuary which handled the burial;
- (8) Newspaper clippings from Obituaries and Vital Statistics sections; and
- (9) Other documents as may be requested by the department." [Eff]

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

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

“§10-3-2.2 Genetic tests. (a) “Genetic test” means the testing of inherited or genetic characteristics (genetic markers) and includes blood testing.

(b) If after submittal and processing of documentation described in section 10-3-2.1, there remains uncertainty regarding the applicant’s biological parentage, applicant may choose to obtain genetic testing from the alleged parent to establish maternity or paternity. The testing utilized must have a power of exclusion greater than ninety-nine point zero per cent (99.0%) and a minimum combined paternity or maternity index of five hundred to one. The department shall accept only notarized and certified genetic test results from parentage testing facilities nationally accredited by the American Association of Blood Banks (AABB). All costs of testing and any related expenses shall be borne by the applicant.

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

(d) Genetic testing is entirely voluntary on the part of the applicant and the applicant’s alleged biological parent or parents, and is not required by the department. Undergoing genetic testing does not guarantee acceptance of the application.

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

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

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

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

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

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

"§10-3-3.1 Application processing. (a) Applications are processed in multiple stages, each with a different purpose and effect, as follows:

- (1) Receipt. Applications shall be date and time stamped upon receipt by the department. This first stamp shall be used only to certify receipt by the department. An applicant may submit an application by any method acceptable as provided by the instructions on the application form.
- (2) Completion. An application is complete when the application form has been filled in, signed by the applicant and notarized as required, and, following initial review by the department, it appears as though sufficient documentation has been provided to substantiate that the applicant meets or does not meet the Hawaiian home lands program qualifications. A complete application shall be date and time stamped a second time. This second stamp shall be used to determine order on the waiting list should the application ultimately be accepted. An incomplete application shall be returned to the applicant with instructions necessary to complete the application properly.
- (3) Acceptance. Upon completion, the department shall review and investigate an application to verify documentation and determine whether the applicant is qualified. The determination shall be based upon the application form and birth certificates, as well as any secondary documents, and additional documentation as may be submitted to the department for verification and qualification. If the department

determines, based upon the application form and documentation provided, that the applicant is qualified, the application shall be accepted and signed by an authorized department representative. An accepted application shall be assigned a numerical designation and filed in order of completion, as determined by the second date and time stamp. The department shall notify the applicant in writing of the acceptance and provide the applicant with a copy of the accepted application. If the department determines that there is reasonable uncertainty regarding an application, the department shall request additional documentation in writing. The department shall, within 90 business days after the application is deemed complete, make an acceptance determination or give notice to the applicant of an extended determination date of 30 business days and the reason or reasons therefore. Failure to render a decision within a 90 day period, as may be extended, shall not result in automatic determination or acceptance by the department.

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

(c) An applicant who disagrees with the determination by the department shall have thirty business days from the post mark or email time stamp on the written notice of such determination within which to contest the determination."

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

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

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

§10-3-6 Island-wide waiting lists. (a) The department shall maintain area waiting lists until the lists are exhausted. Applicants on a waiting list for any area will be placed on the respective island-wide residential lot, agricultural lot, or pastoral lot waiting list according to the date of completed application. Applicants on a waiting list for an area will be considered first for award of any lots in the area. Applicants on the island-wide waiting list shall be considered for award according to the date of completed application.

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

"(a) An applicant for a homestead lease shall notify the department, in writing or electronically, of any change in address within [fifteen] thirty calendar days of such change. If the applicant fails to notify the department and the department receives mail returned undeliverable as addressed with an official change of address label from the United States postal service, the department may attempt to contact the applicant at that new address."

17. Section 10-3-24, Hawaii Administrative Rules, is amended by amending subsections (c) and (d) to read as follows:

"(c) [Not later than three months following lot selection,] Except for agricultural awards of one point zero (1.0) acres or less and UXO lands, the applicant shall submit a plan for the development of the lot no later than three months following lot selection. The plan shall include but not be limited to:

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

(d) Decision for award of agricultural lots of more than one point zero (1.0) acres and pastoral lots shall be based upon:

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

- (E) Completion of study at classes conducted by the University of Hawaii extension service; or
- (F) Persons who have had at least two years of experience as part-time farmers or ranchers."

18. Section 10-3-25, Hawaii Administrative Rules, is amended to read as follows:

"§10-3-25 Award of additional acreage. (a) A lessee of an agricultural or pastoral lot may [apply for] make a written request for additional acreage of the same class.

(b) A lessee of an agricultural or pastoral lot who requests additional acreage shall be informed by the department of available lands in the area. If a suitable adjacent lot is available, the lessee may, with commission approval of at least two-thirds, have priority to select the adjacent lot. The commission shall consider the likelihood of success of the lessee's proposed plan for the additional acreage and extenuating circumstances, if any.

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

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

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

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

[(f)](g) Decision for award shall be based upon the provisions of section 10-3-24(d).

(h) The department shall amend the lease of a lessee who is awarded additional acreage to include the additional acreage." [Eff 7/30/81; am and comp

10/26/98; am
(Imp: HHC Act §207)

] (Auth: HHC Act §222)

19. Chapter 10-3-26, Hawaii Administrative Rules, is amended to read as follows:

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

(b) A lessee of an agricultural lot of one point zero (1.0) acres or less shall reside on the lot.

[(b)](c) Residences shall be permitted on agricultural lots of more than one point zero (1.0) acres or on pastoral lots. Only one residence shall be permitted per lessee on Hawaiian home lands. In addition, a workers' quarters may be permitted per lessee subject to the following conditions:

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

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

[(c)](d) A lessee possessing a residential lot lease may construct a residence on the lessee's agricultural lot of more than one point zero (1.0) acres or pastoral lot provided that the lessee complies with the following conditions:

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

or pastoral lot; and all other conditions imposed by this section and section 10-3-34.

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

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

~~[(f)]~~ (g) Subdivision and transfer of a portion of an agricultural lot of more than one point zero (1.0) acres or pastoral lot lease may be permitted upon commission approval for the remaining term of the lease to any individual who qualifies under the act, subject to the following conditions:

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

department." [Eff 7/30/81; am 9/24/83; am
11/17/84; am and comp 10/26/98;
am]

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

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

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

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

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

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

(1) A native Hawaiian; or

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

Provided that leases for vacant or undeveloped lots and undivided interests may only be transferred by gift or succession.

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

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

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

"§10-3-38 Subdivision and transfer of a portion of residential lot leasehold. A lessee of a residential lot, with the approval of the commission, may subdivide and transfer a portion of the lot for the remaining term of the lease to any individual who is a native Hawaiian and is at least eighteen years old; provided that after the transfer, each lot conforms to county zoning standards. The department shall not be required to finance the construction of the house on the transferred portion. Plans for construction of the house shall be subject to the approval of the [chairman] department. The department shall not be required to pay for any costs incurred in the processing and obtaining of the subdivision."
[Eff 7/30/81; am 1/20/86; am and comp 10/26/98; am] (Auth: HHC Act §222) (Imp: HHC Act §208)

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

"(a) The time period by which a lessee is required to occupy a residential lot, or to commence to use, to occupy, or to cultivate an agricultural or pastoral lot shall be stipulated in the lease."

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

"(d) A lessee who does not have a house on the lot shall provide the department with a current mailing address and such other information as the department may require. The department shall be notified of a change of address in accordance with section 10-3-10(a)."

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

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

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

(c) Pasture fees shall be:

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

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

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

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

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

(1) Lessees:

(A) \$2--pick-up towed trailers; and

- (B) \$0.25--per head truck loads.
- (2) Non-lessees:
 - (A) \$4--pick-up towed trailers; and
 - (B) \$0.50--per head truck loads.

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

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

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

[(i)](b) Water from department systems shall be sold at rates established by the commission. The department shall establish the frequency of billing and may determine a minimum monthly charge." [Eff 7/30/81; am 2/3/83; am 11/17/84; am and comp 10/26/98; am] (Auth: HHC Act §222) (Imp: HHC Act §211)

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

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

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

"§10-5-2 Commission procedures. The commission, [may] on its own motion or [upon the] on petition of any interested person or agency, may hold proceedings as it deems necessary for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties, or the formulation of its rules. [For such purposes, it] It may subpoena witnesses and require the production of evidence. [Procedures to be followed by the commission shall, unless] Unless specifically prescribed in these rules or by [the Hawaii administrative procedures act, be such as in the opinion of] chapter 91, HRS, the commission shall follow procedures that, in its opinion, will best serve the purposes of [such] the proceedings." [Eff 7/30/81; am and comp 10/26/98; am] (Auth: HRS §91-2) (Imp: HRS §91-2)

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

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

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

"§10-5-4 Appearances before the commission. (a)

Any individual or agency [or designated representative thereof] may appear, in person or by designated representative, before the commission or hearing officer in any proceeding, unless otherwise provided in subsection (c).

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

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

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

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

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

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

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

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

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

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

(f) The commission may develop and authorize the use of Internet-based or other electronic filing

procedures for the filing of documents." [Eff
7/30/81; am and comp 10/26/98; am]
(Auth: HRS §91-2) (Imp: HRS §91-2)

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

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

(a) Computation of time shall be as established by
section 1-29, HRS.

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

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

"§10-5-8 Amendments, dismissal of documents.
[If any document or other paper filed in a proceeding
are not in substantial conformity with these rules as
to the contents thereof, or are otherwise
insufficient, the] The commission or hearing officer,
on its own motion[,] or on motion of any party, may
strike, [or] dismiss, or require [the document, or
require its] amendments of any filed document that is

not in substantial compliance with these rules or is otherwise insufficient. If amended, the document shall be effective as of the [day]date of the original filing." [Eff 7/30/81; am and comp 10/26/98; am] (Auth: HRS §91-2) (Imp: HRS §91-2)

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

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

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

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

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

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

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

"§10-5-13 Consolidations. The commission, [upon its own initiation]on its own motion or [up]on motion of any party, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings which involve substantially the same parties, or issues which involve the same parties or issues which are the same or closely related if it finds that [such] consolidation or contemporaneous hearing will be conducive to the proper dispatch of its business, promote justice and will not unduly delay the proceedings." [Eff 7/30/81; comp 10/26/98; am] (Auth: HRS §91-2) (Imp: HRS §91-2)

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

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

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

(b) Petitions for rulemaking shall become matters of public record upon filing. The commission shall[, within thirty days following the filing of the petition,] either deny the petition in writing or initiate public rulemaking procedures as soon as practicable. No other public hearing, oral arguments, or other form of proceeding shall be held as a result of [any such]the petition. Where the commission determines that the petition discloses sufficient

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

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

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

(b) The proposed rulemaking notice shall include:

- (1) A statement of the topic of the proposed rule adoption, amendment, or repeal or a general description of the subjects involved; and
- (2) A statement that a copy of the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed will be emailed or mailed to any interested person who requests a copy[,] and pays in advance for the copy and the postage, together with

a description of where and how the requests may be made;

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

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

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

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

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

§10-5-23 Hearing conduct. (a) [The public hearing shall be presided over by the chairman or, in the absence of the chairman, by another member designated by the commission.] The chairman or the chairman's designee shall preside over the public hearing. The hearing shall be conducted [in such a way as to afford to] to allow interested persons a reasonable opportunity to be heard on matters relevant to the issues involved and to obtain a clear and orderly record. The presiding officer shall have authority to administer oaths or affirmations and to take all other actions necessary for the orderly conduct of the hearing.

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

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

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

- (1) Before giving testimony, every witness shall state his or her name, address, and any representative capacities in which the witness serves and shall give other information respecting appearance as the presiding officer may request. The

presiding officer shall confine the evidence presented to the questions before the hearing and may receive evidence whether or not the evidence would be admissible in a court of law; and

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

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

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

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

"§10-5-23.1 Time and place. Each hearing shall be held at the time and place set in the notice of hearing, but may at that time and place be continued by the chairman from day to day or adjourned to a later date or to a different place without notice other than the announcement at the hearing." [Eff] (Auth: HRS §91-2) (Imp: HRS §91-3)

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

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

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

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

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

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

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

46. These amendments to chapters 10-1, 10-2, 10-3, and 10-5, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

Chairman
Hawaiian Homes Commission

APPROVED AS TO FORM:

Deputy Attorney General