

Draft Implementation Plan

Processing
Agricultural and Pastoral
Leasehold Subdivisions

May 21, 2013

DHHL Planning Office

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I. Purpose

This Implementation Plan is a guide that provides an overview of the general requirements, time, process and responsibilities involved in the subdivision of an existing homestead agricultural or pastoral lease. It is intended to provide full disclosure of the critical steps involved in processing the request for the subdivision and transfer of a portion of the lease pursuant to the legal framework that is in effect as of January 1, 2013. It is vital that everyone involved in the subdivision application and approval process understand the plan and identify and resolve discrepancies before they become costly. The plan ensures that best practices will be used and encourages proactive thinking when making a decision to subdivide a homestead lot.

WORD OF CAUTION - THE INFORMATION PRESENTED IN THIS PLAN IS BRIEF AND SUBJECT TO CHANGE; THE READER SHOULD CONSULT THE LATEST LAWS, ORDINANCES AND CODES WITH EACH APPROPRIATE AGENCY FOR DETAILS AND THE LATEST AMENDMENTS OR CHANGES.

II. History

A. Background of Moratorium from 1985-1999 the department awarded 2 to 5 acre (subsistence) agricultural leases believing this size of lot was sufficient to farm. It had also previously approved subdivision and transfer of 5 acre pastoral lots. Subdividing 40 acre leases into 2 to 5 acre parcels and transferring to family members was determined to be in line with the department's policy of awarding 2 to 5 acre farm lots. A lack of clear guidelines resulted in homesteaders interpreting the rules regarding subdivision and transfer of a portion of their lease as authorized under 10-3-26(f). This resulted in homesteaders subdividing their lots as small as possible and selling the subdivided lots to non-family members for a profit. These actions resulted in a reduction of available farm land and led to urban development in agricultural areas. Many homesteaders did not understand the impact of their decisions on other Beneficiaries who also had a right to access water and other infrastructure resources that were paid for by the Trust. The moratorium was adopted to enable a clear policy to be developed to preserve farm lands and allow older homesteaders to subdivide their lot and transfer a portion to their family members and responsibly manage the Hawaiian Home Lands Trust.

B. The Agricultural Task Force was formed by the Hawaiian Homes Commission on July 21, 1998 to study DHHL's Agriculture program in an effort to encourage successful farming on Hawaiian Home Lands. They found that only

5% of homesteaders were actually farming, and 95% of agricultural and pastoral homesteaders who were not farming were subdividing their homesteads effectively minimizing the available land to support farming. The Hawaiian Homes Commission Agricultural Task Force Recommendations were adopted by the Commission in April 2000. It recommended an agricultural land use plan be used that would establish a zoning system to govern land-use patterns and control activities on agricultural homestead land. The system would establish a basis for deciding minimum lot size, accommodate residential use, and accommodate compatible non-agricultural uses in appropriate locations within the agricultural areas while still preserving good farmland. The system would also establish a minimum lot size based on the amount of land needed to sustain some viable level of agricultural activity. If subdividing is to be allowed, a minimum lot size would help to preserve a viable lot size and mitigate urbanization of agricultural lands. The limitation on the size of agricultural homestead award is necessary to provide for subsistence farming. A farm plan would be required and only one residence would be allowed and subdividing would be prohibited. These recommendations have guided DHHL's approach in planning and are consistent with numerous other agricultural program studies covering the past 25 years and will eventually be used to develop DHHL's new Agricultural program plan.

C. Hawaiian Homes Commission (HHC) Actions

- 1) Submittal B-1 was passed by HHC 12/14/1999 Approval of Moratorium on lessee requests to subdivide and transfer a portion of agricultural or pastoral homestead leases until the DHHL Agricultural Task Force issues Recommendations for Commission action.

- 2) Submittal G-1 was passed by HHC 1/15/2013 Removal of Moratorium on Subdivisions and Transfer of Agriculture and Pastoral Leases. DHHL shall develop an implementation plan to implement section 10-3-26. This plan shall include (a) the criteria for reviewing subdivision requests for recommended approval by the HHC; (b) the information required of lessees in the application; (c) the internal process and proposed time frame to review applications received; (d) and other information that may be needed to help clarify the process.

III. LEGAL FRAMEWORK

A. Hawaiian Homes Commission Act, 1920, as amended (HHCA)

§207. Leases to Hawaiians, licenses. (a) The department is authorized to lease to native Hawaiians the right to the use and occupancy of a tract or tracts of Hawaiian home lands within the following acreage limits per each lessee: (1) not more than forty acres of agriculture lands or lands used for aquaculture purposes; or (2) not more than one hundred acres of irrigated pastoral lands and not more than one thousand acres of other pastoral lands; or (3) not more than one acre of any class of land to be used as a residence lot; provided that in the case of any existing lease of a farm lot in the Kalanianaʻole Settlement on Molokai, a residence lot may exceed one acre but shall not exceed four acres in area, the location of such area to be selected by the department; provided further that a lease granted to any lessee may include two detached farm lots or aquaculture lots, as the case may be, located on the same island and within a reasonable distance of each other, one of which, to be designated by the department, shall be occupied by the lessee as the lessee's home, the gross acreage of both lots not to exceed the maximum acreage of an agricultural, pastoral, or aquacultural lot, as the case may be, as provided in this section.

§208. Conditions of leases. Each lease made under the authority granted the department by section 207 of this Act, and the tract in respect to which the lease is made, shall be deemed subject to the following conditions, whether or not stipulated in the lease: (3) The lessee may be required to occupy and commence to use or cultivate the tract as the lessee's home or farm or occupy and commence to use the tract for aquaculture purposes, as the case may be, within one year after the commencement of the term of the lease.(4) The lessee thereafter, for at least such part of each year as the department shall prescribe by rules, shall occupy and use or cultivate the tract on the lessee's own behalf. 8) The lessee shall perform such other conditions, not in conflict with any provision of this Act, as the department may stipulate in the lease; provided that an original lessee shall be exempt from all taxes for the first seven years after commencement of the term of the lease.

B. Hawaii Administrative Rules (HAR)

§10-3-24 Agricultural and pastoral leases (relevant sections)

(c) Not later than three months following lot selection, the applicant shall submit a plan for the development of the lot. The plan shall include but not be limited to:

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

§10-3-26 Residence permitted on agricultural and pastoral lot (relevant sections)

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

- (1) The lessee has actively cultivated or developed at least two-thirds of the agricultural or pastoral tracts at all times;
- (4) Conformance to all state and county zoning and building requirements;

(f) Subdivision and transfer of a portion of agricultural or pastoral lot lease may be permitted upon **commission approval** for the remaining term of the lease to any individual who qualifies under the act, subject to the following conditions:

- (1) Upon such transfer, each resultant subdivided lot meets department criteria for designation as agricultural or pastoral;
- (2) The department shall not be obliged to finance the construction of a residence on any transferred portion;
- (3) Plans for all residences to be constructed on transferred portions of leases shall be submitted to and approved by the department before construction thereof;
- (4) The department shall not be obliged to pay for any costs incurred in the processing and obtaining of the subdivision;

(5) The department shall not be liable for expenses incurred by the lessee for amenities brought to the lot. The department shall not provide nor be required to provide any amenities except as it may determine in the planned development of its lands; and

(6) A farm plan may be required by transferees for all transfers involving the subdivided agricultural or pastoral lots. Where required, the farm plan shall be submitted to, reviewed and accepted by the department. [Eff 7/30/81; am 9/24/83; am 11/17/84; am and comp 10/26/98] (Auth: HHC Act §222) (Imp: HHC Act §208)

C. Homestead Lease contract requirements

Section 10 of the lease regarding Compliance with laws. The Lessee shall comply with all of the requirements of all municipal, state and federal authorities and observe all municipal ordinances and state and federal statues, pertaining to said premises, now in force or which may hereafter be in force. Lessee will observe any setback lines affecting said premises, and will not erect, place or maintain any building or structure whatsoever except approved fences or walls between any street boundary of said premises and the setback line along such boundary.

Section 20 of the lease regarding Agricultural Lot. a) The lessee shall devote the agricultural lot to agricultural use, and shall thereafter for at least such part of the year as Lessor shall by regulation prescribe, so occupy and use said lands on Lessee's own behalf. b) The Lessee shall at all times during the period of this lease, practice good husbandry with respect to utilizing the land within the scope of activity permitted hereunder and shall, at Lessee's own cost and expense, correct all failures and make good all defects of which notice shall be given in writing within a reasonable time of the giving thereof. For the purpose of this subsection, the term "practice of good husbandry" shall, without being restricted thereto, include the prevention or elimination of waste, employment of soil conservation practices, crop rotation, fertilization with organic and inorganic fertilizers, the erection of suitable wind breaks either by plantings or otherwise, and the adoption and employment, should the Lessor deem advisable and so require, of a conservation farm or ranch plan for such premises prepared by the United States Soil Conservation Service. c) The primary purpose of the Act being the successful rehabilitation of native Hawaiians under the guidance and tutelage of the lessor, it is deemed necessary and in furtherance of said Act and the purpose thereof that the Lessor retain, and it does thereby so retain, the right to approve in

advance any proposed agreement between the Lessee and another relating in any way to the use of the agricultural lot.

Section 21 of the lease regarding Pastoral Lot a) The Lessee shall fence and thereafter commence to use the pastoral lot for the pasturing of cattle and other domestic farm animals within one year of the date of this lease, and shall thereafter, for at least such part of the year as the Lessor shall by regulation prescribe, so occupy and use said lands on Lessee's own behalf. The term "pasturing of cattle and other domestic animals" shall include the erection of buildings and other improvements germane to the operation of a stock farm. No other use or uses will be permitted except as Lessor, by rule shall provide. b) The Lessee shall at all times during the period of this lease, practice good husbandry with respect to utilizing the land within the scope of activity permitted hereunder and shall, at Lessee's own cost and expense, correct all failures and make good all defects of which notice shall be given in writing within a reasonable time of the giving thereof. For the purpose of this subsection the term "practice of good husbandry" shall, without being restricted thereto, include the prevention or elimination of waste, overgrazing to the detriment of the whole or any portion of the demised premises, suffering the premises or any portion thereof to become unduly eroded without reasonable efforts being taken to correct the same, and suffering any material increase in noxious weed coverage on said premises or on any portion thereof and the adoption and employment, should the Lessor deem advisable and so require, of a conservation ranch plan for such premises prepared by United States Soil Conservation Service. c) The primary purpose of the Act being the successful rehabilitation of native Hawaiians under the guidance and tutelage of the Lessor, it is deemed necessary and in furtherance of said Act and the purpose thereof that the Lessor retain, and it does hereby so retain, the right to approve in advance any proposed agreement between the Lessee and another relating in any way to the use of said pastoral lot.

Section 29 of the lease regarding Acceptance of terms, covenants and conditions. The execution of this lease by the Lessee constitutes an acceptance by Lessee of all of the general and special terms, covenants and conditions herein above set forth and a binding agreement by Lessee that Lessee shall fully and faithfully observe and perform each and every one of such terms, covenants and conditions.

D. State Regulations Environmental Quality Commission Exemption

On October 18, 1982 the State Environmental Quality Commission approved a comprehensive list of exemptions for the Department of Hawaiian Home Lands.

Pursuant to EIS Regulation 1:33 certain classes of action are exempt from the requirements regarding the preparation of an environmental assessment.

Exemption Class #6 (2) involving minor subdivisions, these are single lot subdivisions where one lot is subdivided into two lots. Generally, these minor lot subdivisions involve subdividing a one acre lot from a larger multi-acre homestead lot.

E. Compliance with County Subdivision Ordinances

Each County has their own set of Ordinances and homestead lessees are required to comply with the ordinances. Generally, a small lot or minor subdivision, where one lot is subdivided into two will not require an extensive review. Larger complex multiple lot subdivisions will be subject to greater scrutiny and may trigger the investment of additional infrastructure requirements which the homesteader must pay for, these may include fire protection, hydrants, road improvements, water and/or waste water improvements.

IV. HOMESTEADER EDUCATION REGARDING SUBDIVISION PROCESS

Legal Authority: Hawaii Administrative Rule, Chapter 10, Section 10-3-26 (f)

Applicability: Request for subdivision and transfer of a portion of a homestead lease requires that HHL Form 0052 and HHL Form 00_____ be submitted to DHHL which shall include a current farm or ranch plan. These documents shall be used to evaluate the subdivision request made by homestead farmers and ranchers who are actively farming or ranching and wish to subdivide their homestead.

Application Procedures: A homestead subdivision may be permitted on Hawaiian Home Lands provided that the application meets the following conditions:

A. Preliminary Approval

- 1) Complete application provided to DHHL, include all necessary forms
- 2) Each subdivided lot must meet department criteria for designation as an agricultural or pastoral subsistence lot
- 3) Department shall not be obligated to pay for any costs associated with the processing and obtaining the subdivision or finance the construction of

a residence on the subdivided lot (design, survey, engineering, environmental review and other design and development costs will be paid by lessee)

4) Plans for residences on subdivided lot shall be submitted and approved by department before construction.

5) The department shall not be liable for expenses incurred by lessee for amenities brought to the lot that may be required under the subdivision approval process (additional roads, water and wastewater, utilities or fire protection required by the subdivision approval will be paid by lessee)

6) A farm or ranch plan for the existing and subdivided lot shall be submitted to the department for review and acceptance

B. Review Process

1) Applications must be submitted by January 31 or June 30 of the respective calendar year.

2) Within 30 days of determining the application is complete the Homestead Services Administrator shall provide the list of approved applications to the Commission for interim approval to enable further review by the respective County.

3) Commission interim approval will start the design process and the necessary consultants may be retained to develop the subdivision application for review by the county.

4) Subdivision requests to subdivide one acre parcels or less may participate in a bulk processing program where several small lot subdivisions which have minimal impact on the county's review process can be processed by a DHHL coordinator. Homesteaders may collectively hire consultants to conduct the work required to expedite the subdivision process.

C. Final Approval

1) Upon receipt of the County's Subdivision Approval and after all conditions have been met the Lessee shall deliver the approval letter to the department.

2) The Homestead Services Administrator shall prepare a submittal to the Commission for final approval.

V. DHHL CRITERIA TO REQUEST A SUBDIVISION

A. Farm and Ranch homesteaders who are currently utilizing their homesteads for agricultural or pastoral purposes are eligible to apply for a subdivision and transfer of a portion of their lease. If the homestead property is not being utilized then an application will be denied. An onsite inspection will be conducted by DHHL staff.

B. Homesteaders must be in good standing according to their lease requirements. Generally, this means there are no outstanding issues in terms of taxes water bills, illegal structures or other items covered in the lease. The definition of "Good Standing" is important to communicate to all homesteaders. Each Homesteader has a contractual agreement with the Department and it is generally understood that they must be in compliance with the terms and conditions of their lease. Agreeing to a clear definition as part of the criteria will avoid future conflicts.

C. The measurement of use is based on two thirds use of the homestead agriculture or pasture land as expressed in the homesteader's agricultural or pastoral plan. Generally, the lessee must be actively cultivating or have developed at least two-thirds of the agricultural or pastoral tracts at all times. Only homesteaders who are actively farming and in compliance with their lease and farm or pasture plan will be allowed to subdivide their lot. (HHCA Section 208(8) and HAR Section 10-3-24 & 26) An onsite inspection will be conducted by DHHL staff to verify plan consistency.

D. Verification of financial capacity to complete subdivision, and completion of homestead lease transfer request form. It is important that the homesteader understand the full financial impact of processing a subdivision request there are a number of fees for engineering, design, survey, environmental review and legal document preparation that may be required by the county. In addition the final approval by the county may be dependent on additional infrastructure development.

E. Site location, the new subdivided lot will enable a residence to be built and the homesteader should be advised to locate the house near a collector street

fronting the lot and it should include a buffer zone to avoid nuisances such as dust and odors from surrounding agricultural activities.

F. Available water resource, water in some areas may also be a criteria to determine if a subdivision should be approved, if there is insufficient water DHHL should not approve the subdivision request so that the county does not have to stop the subdivision due to a lack of water resource later in the process. DHHL must also manage the availability of water credits which are reserved for future applicants so that multi year investments in water development are not re-directed to existing lessees who have already received their water credit allocation.

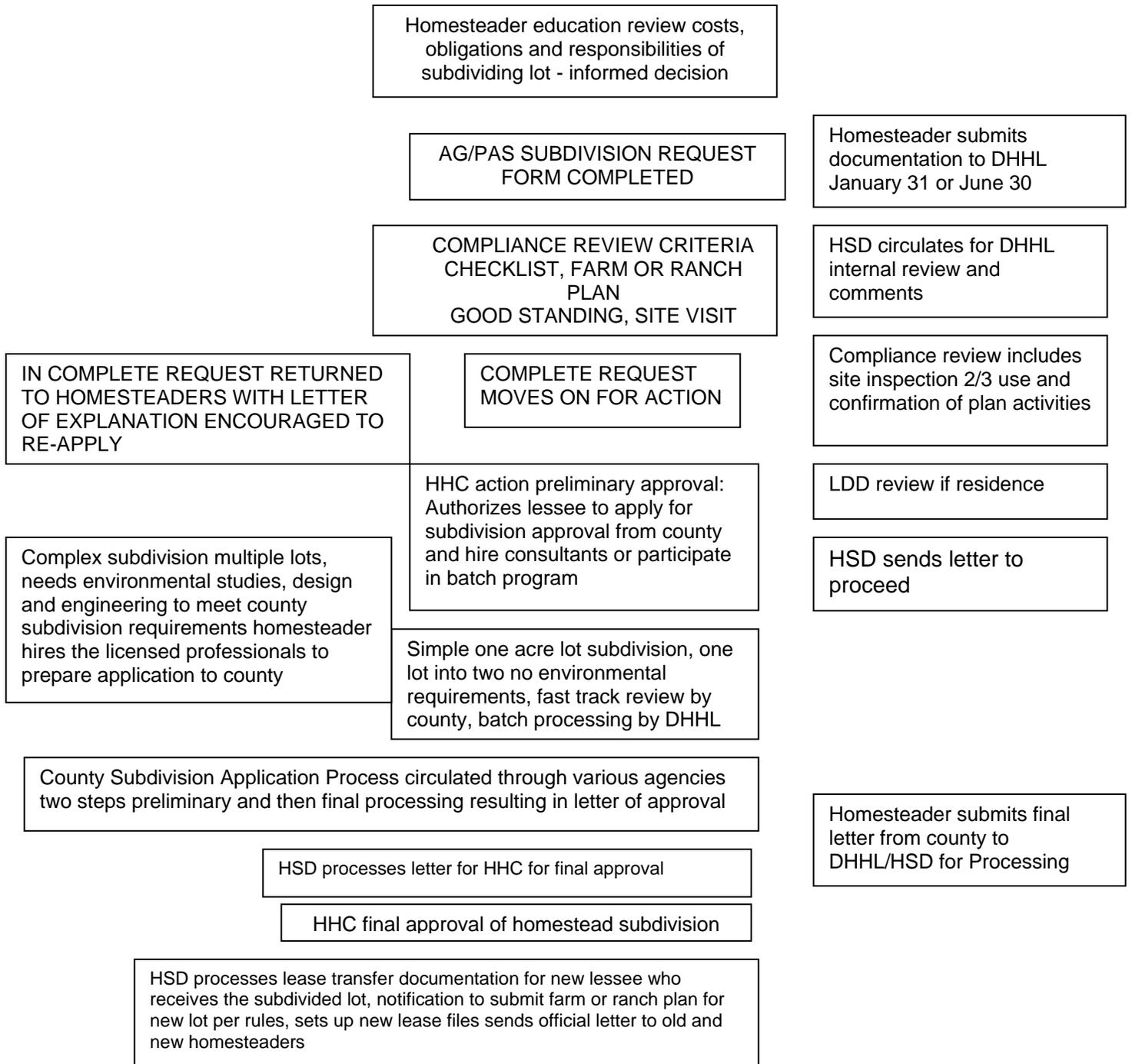
VI. SIMPLE VS. COMPLEX SUBDIVISIONS

A. One acre single lot simple subdivisions do not require an environmental review as discussed above. These subdivisions involve cutting out a one acre lot out of an already subdivided property. The level of cost is significantly lower than a complex subdivision. The newly created lot under DHHL rules will be subject to the same terms and conditions as contained in the original lease. A farm or ranch plan will be required.

B. Based on DHHL staff discussions with county officials single lot subdivisions may be batch processed for county fast track review. According to the county criteria these types of subdivisions do not trigger higher levels of review in terms of infrastructure impacts. The county also recommended that DHHL designate the zoning for simple subdivisions to expedite the approval process, this option will require future decisions by DHHL.

C. Subdivisions greater than one acre or that have multiple lots are considered complex subdivisions and will require an environmental review in addition to obtaining county subdivision approval. Complex subdivisions will significantly increase the cost to the homesteader and extend the time for preliminary and final subdivision review by the county and other approving agencies.

VII. DHHL SUBDIVISION APPLICATION PROCESS



A. Batch processing application intake January 31 and June 30 annually.

B. Homesteaders approved for single lot one acre subdivisions will be treated as a group for processing purposes with the goal of cost savings. Recommended by the County to expedite the review and approval process. One acre simple lot subdivisions are exempt from environmental review.

C. Batch processing coordinator assembles applications and hires professional services to design subdivision, prepare maps and other information to process application for subdivision with the county.

D. Individual processing can be undertaken by the homesteader for complex subdivisions, homesteader hires the necessary environmental and engineering consultants and or contractors to build the necessary improvements that may be required by county in their approval process. Complex subdivisions are not exempt from environmental review process.

VIII. PRELIMINARY AND FINAL SUBDIVISION APPROVALS

A. Normally a subdivision approval is required where land is divided in to two or more parcels. Subdivision requests may be made after getting Hawaiian Homes Commission approval. A preliminary map is 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.

B. The county receives the initial submittal items and distributes them to various agencies for review. Comments are accumulated and a preliminary subdivision approval is issued consisting of a stamped plat, with any revisions to be made and a letter listing the conditions to be met to obtain final subdivision approval. Generally, this may take 45 days to complete.

C. After preliminary subdivision approval is granted, the sub divider submits copies prepared by the Hawaii licensed land surveyor for Final Review by the county. 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.

D. After receiving acceptable final maps, and upon completion of all other conditions of the preliminary approval letter, final subdivision approval can be granted.

IX. TRANSFER OF A PORTION OF HOMESTEAD LEASE

A. After the homesteader receives the final approval letter from the county it must be submitted to the department for approval by the Hawaiian Homes Commission.

B. 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.

X. DHHL PROGRAM TIME LINE FOR IMPLEMENTATION

A. Based on discussions with DHHL staff it is recommended that sufficient time be allowed to enable staff to develop forms and procedures to process the subdivision requests. The estimated time for DHHL staff to prepare is six months.

B. Based on discussions with DHHL staff there is a need for additional staffing and the department will need to address these concerns to insure appropriate service is provided to homesteaders requesting a subdivision.

C. Professional services may require budgeting so that a batch processing consultant can be retained for the batch program.

D. Educational materials will also be required for homesteaders since it has been many years since anyone has processed a subdivision request. A Budget to cover the educational cost will need to be considered to insure that the beneficiaries are fully informed when they make the decision to subdivide their lot.

XI. Estimated schedule for subdivision processing

Action	DHHL	County	Commission
Submit application			
DHHL Check Criteria	30 days		
HHC pre approval			60 days
Submit to County		60 days	
County Pre Approval conditions		90 days +	
County final Approval Conditions		90 days+	
Final letter approval		45 days	
Final letter to DHHL	30 days		
HHC approval			60 days
Prepare lease docs	60 days		
<i>Note times may vary</i>			

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 her from doing some thing that she could do but for the grant or covenant.

2) **Compliance** - Conformity in fulfilling official requirements, a person 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. DHHL'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 person is in good standing if they are in compliance with all of their explicit obligations as set forth in their lease, as authorized by the Hawaiian Homes Commission Act and the Hawaii Revised Statues.

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.

Appendix

Sample Request for Homestead Subdivision form

Homestead Least Transfer Form two pages

Farm Plan sample four pages

Subdivision Application county sample top sheet

Application for Irrigation Water form if applicable