

STATE OF HAWAII

DEPARTMENT OF HAWAIIAN HOME LANDS

October 28 - 29, 2013

To: Chairman and Members, Hawaiian Homes Commission

Through: Linda Chinn, Administrator
Land Management Division 

From: Kahana Albinio, Property Development Manager
Income Property Branch 

Subject: Status Update - Revocable Permit Conversion

RECOMMENDED MOTION/ACTION

None; for information only.

DISCUSSION

Since the scrutiny of the Department's Revocable Permit program, the Land Management Division, in collaboration with the Department's Deputy, has been in constant and active communication with the Commission, revocable permit holders, media and the public on the progress of its ongoing Revocable Permit Conversion process.

As was presented by the Deputy and the Land Management Division at the regular Hawaiian Homes Commission meetings in May and June of 2013, a total of 182 active Revocable Permits were allowed to expire as of June 30, 2013. At its regular monthly meeting of July 22, 2013, held on Kaua'i, the Hawaiian Homes Commission authorized by unanimous (7-0) vote the issuance of Right of Entry (ROE) dispositions as an interim process to address the transition period while a new revocable permit program is being developed.

We are pleased to inform you that as of October 21, 2013, **148 of the 181** prior revocable permit holders as of June 30, 2013, or **82%** have been issued Right of Entry Permit dispositions.

Nine (9) revocable permits were either cancelled prior or PERMITTED requested not to renew the use. The remaining 24 prior revocable permit holders, or 13% remain non-complaint, and were issued "30 day notice" of non-compliance on October 21, 2013 during which time they will be allowed to cure and remedy all outstanding violations. The deadline for these non-compliant individuals and/or entities to achieve compliance is set for November 29, 2013

The following table (See Exhibit "A") lists the non-compliant former RP holders that failed to be converted to Right of Entry Permits due to one or more default(s) of its respective RP disposition.

Examples of non-compliance include, but are not limited to the following:

- Delinquent rent and/or utility payments
- Cleared and expanded boundary without approval by the department.
- Multiple unpermitted and unauthorized buildings on the premises
- Residential use of the revocable permit (3 dwellings)
- Other businesses located on the premises inconsistent with the purposes as stated in paragraph 2 of the revocable permit document.
- Unauthorized storage
- Insufficient insurance coverage.

Many of those in non-compliance have been so for some time with the Department. With the initial notice given in late May 2013, we believe that they have been given more than sufficient time to take corrective actions in curing their respective defaults.

Failure to cure and/or remedy said default(s) by November 29, 2013 will result in the Department's final recommendation to this Commission to terminate those non-compliant dispositions.

We anticipate the revised RP program requirements will complete legal review and will be submitted to the Commission by the end of this calendar year.

BACKGROUND

- **On May 20, 2013**, the Department provided the Commission with an overview of the increased scrutiny of the Department caused by media articles that ran from Sunday, May 5, 2013 through Saturday, May 10, 2013. These series of investigative articles and editorial commentary focused on an outsider's perspective of the Department's use of its Revocable Permit Program as a land management tool.

Understanding that the Department's Revocable Permit program is a complex and complicated matter, the Department's Deputy and Land Management Division Administrator worked over a period of six weeks meeting face to face with the investigative reporter, as well as responding to questions posed by the reporter via email, to clarify as best as possible the State's overall land disposition program and the Department's use of Revocable Permits as a land management program. During this time, the Department also attempted to convey the differences in the disposition between homestead leases and non-homestead revenue producing leases, licenses, revocable permits, and

right of entry permits.

However, as the articles ran, based on the tone and tenor of the articles and the editorials, the Star Advertiser was of the view and opinion that the program is plagued by "malpractice" and "mismanagement" over the years and that the month-to-month RP program should be used instead to address the department's agricultural and pastoral waitlists.

Criticism in the Star Advertiser prompted the need to review the program.

To address claims being made and reported by the paper of our beneficiaries, the department immediately instituted an initial 60-90 day moratorium on issuing new RPs in order to review all existing revocable permits to determine whether they be continued, modified or terminated.

- **On May 22, 2013**, notification and warning letters were sent to all 182 revocable permit holders reminding them of the need to be in compliance with the permit requirements spelled out in their individual agreements with the Department.

Following the individual notifications, the Department conducted several public workshops and presented "for action" items to the Commission in May, June and July 2013 regarding its investigation and status of the RP program.

Governor Neil Abercrombie also created an Assessment Committee made up of the Attorney General, and the Directors of the Department of Land and Natural Resources and the Department of Budget and Fiscal to assist the Department of Hawaiian Home Lands (DHHL) in its review. On June 4, 2013, an initial meeting was held with the Assessment Committee.

- **On June 14, 2013**, the Department updated the Hawaiian Homes Commission regarding the outcome of this initial meeting with the Assessment Committee.

- **On June 27, 2013**, the Land Management Division thoroughly briefed the Assessment Committee on its use of the PR Program and provided initial recommendation on the interim action and potential program reform.

During this briefing, LMD has identified the following challenges in the RP Program:

1. Dramatic increase in requests for land
2. Insufficient resources to keep up with inspection and enforcement
3. Short term use has become longer term. Permittees develop a

- sense of ownership and entitlement to the property
4. Unpermitted subleasing occurring along with other violations
 5. External forces exert influence on management of the program
 6. Program currently suffers from perception of mismanagement; lax enforcement; inconsistent application of the rules

• At the July 22, 2013 regular monthly meeting held on Kauai, the commission and the public were informed that all land dispositions under the Department's revocable permit program expired as of June 30, 2013.

By a unanimous (7-0) vote, the Commission authorized the issuance of Right of Entry (ROE) dispositions as an interim process to address the transition period while a new revocable permit program is being developed.

The Interim Process allowed the Department to:

1. Issue notification letters to ALL RPs that the agreements had expired on June 30, 2013 with no renewal approval.
2. Offer a Right-of-Entry (ROE) permit for those RPs in full compliance subject to the following conditions:
 - a. The term of the ROE permit shall be month to month, up to twelve (12) months, effective on July 1, 2013;
 - b. The monthly fee shall remain the same as with the existing RP document as shown on Exhibit "A". All fees listed as gratis shall be adjusted to \$20.00 per month;
 - c. The premises shall be used in the same manner as allowed under the original RP document, and other such terms and conditions agreed upon under the original RP document;
 - d. Permittees shall comply with the insurance requirements as provided in the ROE permit, and naming the Department of Hawaiian Home Lands (DHHL) as additional insured;
 - e. Permittees shall comply with all rules, regulations, ordinances and/or laws of the State of Hawaii and any other municipal and/or Federal Government authority applicable to the use of the premises;
 - f. Permittees shall comply with all standard provisions of the Right-of-Entry permits; and
 - g. The Right-of-Entry permit document shall be subject to

final review and approval by the deputy Attorney General.

3. Offer a 30-day period to the RPs NOT in compliance to allow for corrective actions, with follow up inspection to ensure compliance prior to the issuance of the ROE permit.
4. Authorize termination action against those that fail to correct cited violations after the 30-days compliance period.
5. Authorize DHHL to request assistance from the Department of the Attorney General's office and DHHL Enforcement Team for any legal action necessary for termination and eviction process.

To qualify for issuance of the ROE, permittees must be in compliance with terms and conditions as outlined in the prior disposition under the RP program.

This "For Information" briefing is the final step before implementation of the new Revocable Permit program.

ATTACHMENT A

List of Non-Compliant Former Revocable Permit Holders
As of October 21, 2013

RP NO.	ANNUAL RENT	PERMITTEE	DEFAULT(S)
RP0023 ka	3,384.00	LEMN, WILLIAM	Rent delinquency
RP0160 ka	552.00	CONTRADES, WOODROW	Rent delinquency
RP0173 oa	3,528.00	SILVA, A. & CHAR, B.	Unauthorized boundary expansion; no insurance certificate; non compliance with use provisions of permit; illegal structures
RP0176 ka	-	KEAHI, JOSEPH	No insurance certificate
RP0181 ka	-	KAUANUI, PATRICK	No insurance certificate
RP0182 ka	-	HUDDY, JOSHUA	No insurance certificate
RP0210 ka	3,816.00	ROSE KAUAI	No insurance certificate
RP0249 ma	-	KUKULU KUMUHANA	Non compliance with use provisions of permit
RP0256 ka	2,136.00	SANCHEZ, WILLIAM	No insurance certificate
RP0282 ka	6,960.00	HANCHETT, STUART	Illegal structure
RP0301 oa	6,000.00	HAWAII EXPLOSIVES	Subleasing
RP0309 oa	583,800.00	THE PASHA GROUP	Encroachment; non compliance with state regulations and use provisions of permit
RP0321 ma	996.00	HIRAGA NELSON & LESLIE	Unauthorized boundary expansion; unpermitted structures; non compliance with use provisions of permit
RP0328 ka	240.00	AVIGUETERO HENRY	No insurance certificate
RP0340 oa	49,560.00	VIP SANITATION INC.	Encroachment; non compliance with use provisions of permit
RP0404 ha	7,920.00	MAUHILI JERRYL	Rent delinquency; subleasing
RP0411 oa	2,000.00	SAVE OAHU RACE TRACKS	Rent delinquency; unauthorized site grading; no insurance certificate; non compliance with use provisions of permit
RP0414 oa	19,800.00	THOMAS TRANSPORT SERVICE	Per DCCA Business Registration not current
RP0420 mo	-	AQUINO, CONRAD	Non compliance with use provisions of permit; no insurance certificate
RP0425 oa	12,000.00	AMERICAN DRILLING CO.	Per DCCA Business Registration not current
RP0439 ka	2.00/ton	POHAKU O KAUAI MATERIALS, LLC	No insurance certificate
RP0449 mo	300.00	MIGUEL, KENNETH & DONNA	Rent delinquency
RP0461 ka	1,280.00	KAUI RALPH	No insurance certificate
RP0480 oa	45,396.00	HAWAII EXTREME PAINTBALL, LLC	No building permit