

DEPARTMENT OF HAWAIIAN HOME LANDS

Amendments to Chapters 10-1, 10-2, 10-3, and 10-5

[MAR 31 2017]

SUMMARY

1. §§10-1-2(a) and (c), 10-1-4, 10-1-5, and 10-1-7 are amended.
2. §§10-2-1, 10-2-16, 10-2-31, and 10-2-33 are amended.
3. §10-3-2 is amended.
4. New §§10-3-2.1 and 10-3-2.2 are added.
5. §10-3-3 is repealed.
6. New §10-3-3.1 is added.
7. §10-3-6(a) is amended.
8. §10-3-8 is amended.
9. §10-3-10(a) is amended.
10. §10-3-24 is amended.
11. §10-3-25(a) is amended.
12. §§10-3-26, 10-3-33, 10-3-34, 10-3-36, and 10-3-38 are amended.
13. §10-3-39(b) and (d) is amended.
14. §§10-3-61 and 10-3-76 are amended.
15. §§10-5-1 to 10-5-10, 10-5-12, 10-5-13, and 10-5-21 to 10-5-23 are amended.

16. New §10-5-23.1 is added.
17. §10-5-25 is amended.
18. New §10-5-26 is added

\$10-1-2 Information. (a) Information about the department, submittals, or requests may be obtained from:

- (1) The main office, P.O. Box 1879, Honolulu, Hawaii 96805, 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: 655 Kaunualii Street, Suite 1, Wailuku, Maui 96793; or
 - (E) Molokai: P.O. Box 2009, Kaunakakai, Hawaii 96748; 600 Maunaloa Highway, Suite D-1, Kaunakakai, Hawaii 96848.

(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. [Eff 7/30/81 am and comp 10/26/98; am MAR 31 2017] (Auth: HHC Act \$222) (Imp: HRS \$91-2)

§10-1-4 Terms. Unless otherwise specifically stated, the meaning of terms used in this title shall have the same meaning as provided by law. [Eff 7/30/81; am and comp 10/26/98; am MAR 31 2017] (Auth: HHC Act §222) (Imp: HHC Act)

S10-1-5 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" means any descendant of the races inhabiting the Hawaiian islands previous to 1778.

"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, 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.

"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; and 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.

"Successor" means a qualified person designated by an applicant or lessee to succeed to the applicant's application rights or the lessee's 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 for which there has not been substantial improvements suitable for the type of award.

"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, fused, armed, or otherwise prepared for action;
- (2) Have been fired, dropped, launched, projected, or placed 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.

"UXO lands" means certain Hawaiian home lands which have been categorized as formerly used defense sites and may contain MEC. [Eff 7/30/81; am and comp 10/26/98; am MAR 31 2017] (Auth: HHC Act §222)
(Imp: HHC Act)

§10-1-7 Severability. If any section, sentence, clause, or phrase of this title is 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 MAR 31 2017]
(Auth: HHC Act §222) (Imp: HRS §91-2)

§10-2-1 Office. The office of the commission is at Kapolei, Hawaii. All communications to the commission shall be addressed to the Hawaiian homes commission, as provided in section 10-1-2(a)(1). [Eff 7/30/81; comp 10/26/98; am MAR 31 2017] (Auth: HHC Act §222) (Imp: HHC Act §202)

§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 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;
 - (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 section 10-2-17, the chairman

may:

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

(d) The chairman or a designee may approve and sign contracts 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 **MAR 31 2017**] (Auth: HHC Act §222; HRS §91-2)
(Imp: HHC Act §202)

§10-2-31 Office. The main office of the department is at Kapolei, Hawaii. All communications to the department shall be addressed as provided in section 10-1-2(a)(1). [Eff 7/30/81; am and comp 10/26/98; am MAR 31 2017] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §202)

\$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 strive for quality customer service that is beneficiary oriented, and in that pursuit may conduct operations pursuant to section 5-7.5, HRS. [Eff 7/30/81; comp 10/26/98; am MAR 31 2017] (Auth: HHC Act S222; HRS S91-2) (Imp: HRS S26-38)

§10-3-2 Qualifications of applicants.

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. [Eff 7/30/81; am 1/20/86; am **MAR 31 2017**] (Auth: HHC Act §222; HRS §91-2) (Imp. HHC Act §207)

§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 named 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 MAR 31 2017] (Auth: HHC Act §222; HRS §91-2) (Imp: HHC Act §207)

§10-3-2.2 Genetic tests. (a) "Genetic test" or "'ohana test" means the testing of inherited or genetic characteristics (genetic markers) for the purpose of establishing biological parentage.

(b) If after submittal and processing of documentation described in section 10-3-2.1, there remains uncertainty regarding the applicant's biological parentage because, for example, the appropriate space on the applicant's birth certificate is blank or the listed parent is not the biological parent, the applicant may choose to obtain genetic testing to establish maternity or paternity. The following types of relationship testing shall be accepted:

- (1) Parent-child testing. The testing utilized must have a power of exclusion greater than ninety-nine per cent and a minimum combined paternity or maternity index of five hundred to one.
- (2) Maternal or paternal lineage evaluation.
 - (i) Maternal lineage evaluation. If the alleged biological mother is deceased or unavailable, testing of the alleged mother's living sibling may be accepted as long as they share the same biological mother. Testing utilized must demonstrate shared mitochondria; or
 - (ii) Paternal lineage evaluation. If the alleged biological father is deceased or unavailable and the applicant is genetically male, testing of the alleged father's living brother may be accepted as long as they share the same biological father. Testing utilized must demonstrate shared Y chromosome.
- (3) Avuncular testing. If the alleged biological parent is deceased or unavailable and maternal or paternal lineage evaluation is not applicable, testing of the alleged parent's living full sibling may be

accepted. The testing utilized must have likelihood ratio of no less than 50.0.

If the alleged biological parent is deceased, the applicant shall submit the death certificate. If the alleged biological parent is unavailable, the applicant shall submit an affidavit establishing the reason for the alleged biological parent's unavailability, such as the person being incarcerated, homeless, or having no known location or contact information. To add to the accuracy of the analysis, where the applicant has a known, living biological parent, that person shall also participate in the testing. The department shall accept only notarized and certified genetic test results with proper chain of custody directly from a relationship testing facility 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 directly to the department from the testing facility 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 submit an affidavit from the alleged parent or alleged parent's sibling setting forth facts establishing a reasonable possibility of parentage by the alleged parent.

(d) Genetic testing is entirely voluntary and is not required by the department. Undergoing genetic testing does not guarantee acceptance of the application.

(e) The department shall treat genetic test results as information related to medical history, diagnosis, condition, treatment, or evaluation protected under section 92F-14(b)(1), HRS. The department shall not disclose genetic test results to third parties without the prior written consent of those tested.

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

[Eff **MAR 31 2017**] (Auth: HHC Act S222; HRS S91-2)
(Imp: HHC Act S207)

§10-3-3 REPEALED [R MAR 31 2017]

§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 date and time 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 date and time 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 thirty business days after the application is deemed complete, make an acceptance determination or give notice to the applicant of an extended determination date of thirty business days and the reason or reasons therefor. Failure to render a decision within a thirty 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 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 postmark or e-mail time stamp on the written notice of the determination within which to contest the determination.

[Eff MAR 31 2017] (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 MAR 31 2017]

§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 and time stamp described in section 10-3-3.1(a)(2). 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 and time stamp described in section 10-3-3.1(a)(2).

[Eff 7/30/81; am and comp 10/26/98;
am MAR 31 2017] (Auth: HHC Act §222) (Imp: HHC Act §207)

S10-3-8 Transfer of application rights. (a) An applicant may designate an individual relative who is at least eighteen years of age and a native Hawaiian from among the following to succeed to the applicant's application rights upon the death of the applicant:

- (1) Husband or wife;
- (2) Child;
- (3) Grandchild;
- (4) Father or mother;
- (5) Widow or widower of a child;
- (6) Brother or sister;
- (7) Widow or widower of a brother or a sister;
or
- (8) Niece or nephew.

To the extent possible, applicants shall designate a successor at the time that the application is filed at the department; provided that the designation shall be filed in writing at the department and the department shall acknowledge the designation in order for the designation to be deemed filed. An applicant may change the designation of successor at any time; provided that the applicant shall file the change of designation in writing at the department and the department shall acknowledge the change of designation in order for the change of designation to be deemed filed. The department shall determine whether a designated successor is qualified to be an applicant for a Hawaiian home lands lease. A designated successor shall be required to provide proof to the department that the individual is at least eighteen years of age, a native Hawaiian, and a relative as identified in this subsection.

(b) If an applicant dies without designating a successor as provided in subsection (a), the commission may designate a successor applicant from only the following relatives of the applicant who are at least eighteen years of age, native Hawaiian, and who made a request to succeed to the application rights as provided in subsection (d):

- (1) Husband or wife; or
- (2) If no husband or wife requests, then a child; or

- (3) If no husband, wife, or child requests, then a grandchild; or
- (4) If no husband, wife, child, or grandchild requests, then from among the following relatives of the applicant who are native Hawaiian and at least eighteen years of age: father and mother, widows or widowers of the children, brothers and sisters, widows or widowers of brothers and sisters, or nieces and nephews.

Any individual who requests to succeed to the decedent's application rights shall provide proof to the department that the individual is at least eighteen years of age, a native Hawaiian, and a relative as identified in this subsection.

(c) Once every calendar year, the department shall publish a notice setting forth a list of the names of all applicants whom the department has reason to believe have died without designating a successor and whose names do not appear in a list previously published by the department. The notice shall also state briefly that individuals requesting to succeed to the application shall submit a request within the deadline established in subsection (d). The notice shall be published in a newspaper of general circulation in the State, once in each of two successive weeks.

(d) Requests for succession to application rights shall be made to the department in writing not later than one hundred eighty days after the date of the last publication of the applicant's name; otherwise, the application will be canceled and the applicant's name shall be removed from the respective waiting list or lists, as the case may be. The commission, for good cause, may extend the time beyond one hundred eighty days in which requests for succession to an application may be made.

(e) The department shall determine whether an individual is qualified to succeed to the applicant's application not later than three hundred sixty five days following the one hundred eighty days after the date of the last publication of the applicant's name.

The department shall submit a recommendation to the commission regarding the designation of a successor. If an individual who has requested to succeed to an application disagrees with the commission's designation of a successor, the individual may request a contested case hearing as provided in section 10-5-31. The department, for good cause, may extend the time beyond three hundred sixty five days in which it is to determine whether an individual is qualified to succeed to an application.

(f) An alleged qualified relative of an applicant may obtain genetic testing under section 10-3-2.2 to aid in establishing qualification as a successor to application rights. [Eff 7/30/81; am 8/1/85; am and comp 10/26/98; am MAR 31 2017]
(Auth: HHC Act §222) (Imp: HHC Act §207)

§10-3-10 Requirement for current information; placement on deferred status. (a) An applicant for a homestead lease shall notify the department, in writing or electronically, of any change in address within 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 post office, the department shall attempt to reach the applicant at that new address. Whenever the department initiates action to award leases, all applicants whose addresses are not current and who cannot be contacted by mail shall be placed on deferred status.

[Eff 7/30/81; am and comp 10/26/98;
am MAR 31 2017] (Auth: HHC Act §222) (Imp: HHC Act §207)

\$10-3-24 Agricultural and pastoral leases. (a) When agricultural or pastoral lots become available for award, the applicant shall be contacted in accordance with section 10-3-7.

(b) The department shall notify applicants of the date, time, and place of lot selection. The department shall defer applicants who fail to appear or select.

(c) Except for agricultural awards of not more than three acres 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 three 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.

(e) For agricultural awards of not more than three, lot size shall be determined in accordance with the current island plan as approved by the commission and lot quality factors such as topography, natural resource availability, and soil quality.

(f) In recognition of the shortage of available lands on the island of Oahu in relation to available lands in the State, an award of an agricultural lot on Oahu shall be made to applicants who are residing on the island of Oahu at time of application; provided further that a lessee of an agricultural lot on Oahu shall not be allowed to hold any other homestead lease. [Eff 7/30/81; am 2/3/83; am 8/1/85; am and comp 10/26/98; am **MAR 31 2017**] (Auth: HHC Act §222) (Imp: HHC Act §207)

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

[Eff 7/30/81; am and comp 10/26/98;
am **MAR 31 2017**] (Auth: HHC Act §222) (Imp: HHC Act §207)

§10-3-26 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 three years.

(b) A lessee of an agricultural lot of not more than three acres shall within three years:

(1) Reside and cultivate subsistence agriculture on the lot. Additional dwelling units shall be subject to department approval and infrastructure capacity. Residential and additional dwelling units shall be subject to the following:

(A) The residence or any additional dwelling units shall be built to county code; or

(B) The residence or any additional dwelling units may be exempted from county codes by the department provided that:

(i) The plans for any non-conforming portion or portions are submitted to the department for approval;

(ii) Any non-conforming portion or portions are certified as meeting industry standards for health and safety by a subject matter appropriate State of Hawaii licensed structural engineer or architect; and

(iii) The units are in compliance with applicable laws and regulations including but not limited to environmental compliance, water, clean water, wastewater, and catchment,

provided further that the department shall not be held liable for any risk, loss, damage, or injury of any kind associated with undisclosed, unpermitted, or dwelling units exempted

from conformance with county codes under this section.

- (C) Non-conforming and unpermitted dwellings and improvements that have not been exempted as provided above shall not be appraised for valuation by the department and shall not be included in the calculation of net proceeds pursuant to section 209 of the Act; or

- (2) Actively cultivate food crops or raise small livestock or both for subsistence agriculture purposes.

(c) Subject to subsection (d), one residence shall be permitted on agricultural lots of more than three acres or on pastoral lots. In addition, a workers' quarters may be permitted per lessee on agricultural lots of more than three acres and pastoral lots 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.
- (d) A lessee possessing a residential lot lease may construct a residence on the lessee's agricultural lot 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.

(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.

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

(g) Subdivision and transfer of a portion of an agricultural lot lease of more than one acre 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 and available infrastructure capacity;
- (2) The lessee or transferee shall 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 lessee or transferee shall 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 of transferees for all transfers involving the subdivided agricultural lots of more than three acres 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] (Auth: HHC
Act S222) (Imp: HHC Act S208)

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§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 **MAR 31 2017**] (Auth: HHC Act §222) (Imp: HHC Act §208)

§10-3-34 Building requirements. No building structure or improvement may be constructed on the premises without written approval from the 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 department. [Eff 7/30/81; am and comp 10/26/98; am **MAR 31 2017**] (Auth: HHC Act §222) (Imp: HHC Act §208)

§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 at least eighteen years old and qualified under the act provided that leases for vacant or undeveloped lots and undivided interests, or any interest therein, shall not be sold but may be transferred for no consideration or by succession.

(b) Lease transfers to qualified relatives of a lessee or to beneficiaries on a waitlist shall have priority for processing over transfers to beneficiaries not on a waitlist.

(c) 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.

(d) 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 MAR 31 2017]
(Auth: HHC Act §222) (Imp: HHC Act §208)

§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 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 MAR 31 2017] (Auth: HHC Act §222) (Imp: HHC Act §208)

\$10-3-39 Occupancy and other requirements. ***

(b) Except as otherwise provided in the lease, the department may require a lessee of an agricultural lot of more than three acres or pastoral lot to have under development, cultivation, or use at least two-thirds of the useable acreage at all times.

(d) A lessee 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). [Eff 7/30/81; am 1/20/86; comp 10/26/98; am **MAR 31 2017**] (Auth: HHC Act \$222) (Imp: HHC Act \$208)

§10-3-61 Designation of successor. (a) As provided in section 209 of the act and in this section, the lessee shall designate the relative or relatives to whom the lessee directs the interest in the tract to vest upon the lessee's death from among the following relatives:

- (1) Husband, wife, children, or grandchildren who are at least one-quarter Hawaiian; or
- (2) Father, mother, widows or widowers of the children, brothers and sisters, widows or widowers of the brothers and sisters, or nieces and nephews who are native Hawaiian.

A lessee may designate a successor or successors at the time of execution of the lease; provided that the lessee shall file the designation in writing at the department and the department shall acknowledge the designation in order for the designation to be deemed filed. A lessee may change the designation of successor or successors at any time; provided that the lessee shall file the change of designation in writing at the department and the department shall acknowledge the change of designation in order for the change of designation to be deemed filed.

The lessee or designated successor shall provide documentation to establish eligibility of the designated successor and the department shall determine whether a designated successor is qualified to be a lessee of Hawaiian home lands.

(b) An alleged qualified relative of a lessee may obtain genetic testing under section 10-3-2.2 to aid in establishing qualification as a successor to the lease. [Eff 7/30/81; am and comp 10/26/98; am MAR 31 2017] (Auth: HHC Act §222) (Imp: HHC Act §209)

\$10-3-76 Fees and charges. (a) The department shall assess fees for scaling services commensurate with local industry standard except that lessees may pay a reduced fee.

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

- (1) Fees and charges for use of meeting rooms or halls, and park facilities shall be based on:
 - (A) Actual operating costs including utilities, maintenance and repair, custodial services, and security; and
 - (B) Current capital costs, provided that recognized homestead community associations may use meeting rooms or halls, and park facilities to conduct association business for a rental fee of \$50 per twenty-four hours or fraction thereof, and a discounted fee schedule may be set for lessees. The department shall have priority use of department meeting rooms or halls even over prior existing reservations with at least fourteen calendar days notice.
- (2) As applied to resource management areas, a resource management plan shall be developed in consultation with beneficiaries to:
 - (A) Identify resource management area issues, concerns, and opportunities;
 - (B) Identify management actions to address resource management area issues, concerns and opportunities;
 - (C) Identify capital or operational costs or both to implement management actions;
 - (D) Calculate needed fees or service charges, or both, based on estimated capital or operational costs, or both, of identified management actions.

The department shall monitor the area to determine whether the management actions have been successful under the management plan. Future management prescriptions including re-evaluation of a fee schedule shall be based on evaluations of whether management actions have been successful.

(c) Patrons who have outstanding accounts, have provided false information when applying to use department facilities, or have previously misused the department's property, grounds, or facilities may be denied use of department facilities and resource management areas.

(d) 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.

(e) Fees and charges shall be revised when necessary and approved by the commission during the odd year of the fiscal biennium. [Eff 7/30/81; am 2/3/83; am 11/17/84; am and comp 10/26/98; am MAR 31 2017] (Auth: HHC Act §222) (Imp: HHC Act §211)

§10-5-1 Scope of rules. This chapter governs practice and procedure before the commission and department pursuant to the act and 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 MAR 31 2017] (Auth: HRS §91-2) (Imp: HRS §91-2)

§10-5-2 Commission procedures. The commission, on its own motion or 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. It may subpoena witnesses and require the production of evidence. Unless specifically prescribed in these rules or by chapter 91, HRS, the commission shall follow procedures that, in its opinion, will best serve the purposes of the proceedings. [Eff 7/30/81; am and comp 10/26/98; am MAR 31 2017] (Auth: HRS §91-2) (Imp: HRS §91-2)

§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. The commission or the hearing officer before whom the matter is presented may suspend or waive the particular rule or rules to prevent the hardship identified and described in the submitted request.
 [Eff 7/30/81; comp 10/26/98; am MAR 31 2017]
 (Auth: HRS §91-2) (Imp: HRS §91-2)

§10-5-4 Appearances before the commission. (a) Any individual or agency 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 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 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 knowingly accept assistance from any person who would be precluded by this section from appearing before the commission or hearing officer in that proceeding or matter. [Eff 7/30/81; am and comp 10/26/98; am MAR 31 2017] (Auth: HRS §91-2) (Imp: HRS §91-2)

\$10-5-5 Filing of documents. (a) Documents or papers required or permitted to be filed with the commission in any proceeding or matter shall be filed at the office of the commission in Kapolei, Hawaii. Documents or papers may be sent by mail addressed to the Hawaiian homes commission as described in section 10-1-2(a)(1), or hand carried to the commission office within the time limit for filing. The date of receipt by the commission secretary shall be the date of filing.

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

(c) The signature of the person signing a filed document or paper 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) A party filing a document or paper shall file the original and nine copies, unless otherwise specifically directed by a particular rule or order of the commission. 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 MAR 31 2017] (Auth: HRS §91-2) (Imp: HRS §91-2)

§10-5-6 Docket. The commission shall assign a number to each proceeding and maintain a docket of all proceedings. [Eff 7/30/81; comp 10/26/98; am MAR 31 2017] (Auth: HRS §91-2) (Imp: HRS §91-2)

\$10-5-7 Time computation. (a) Computation of time shall be as established by section 1-29, HRS.

(b) On written request clearly showing good cause, additional time may be granted to take actions or to file documents required or allowed by these rules. [Eff 7/30/81; am and comp 10/26/98; am. MAR 31 2017] (Auth: HRS §91-2) (Imp: HRS §§1-29, 91-2)

§10-5-8 Amendments, dismissal of documents. The commission or hearing officer, on its own motion or on motion of any party, may strike dismiss, or require 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 date of the original filing. [Eff 7/30/81; am and comp 10/26/98; am MAR 31 2017] (Auth: HRS §91-2) (Imp: HRS §91-2)

§10-5-9 Document retention. Documents filed with or presented to the commission may be retained in the files of the commission. The commission may permit replacement of original documents with properly authenticated copies. [Eff 7/30/81; am and comp 10/26/98; am MAR 31 2017] (Auth: HRS §91-2) (Imp: HRS §91-2)

§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 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 MAR 31 2017] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-12)

§10-5-12 Substitution of parties. 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 MAR 31 2017] (Auth: HRS §91-2) (Imp: HRS §91-2)

§10-5-13 Consolidations. The commission, on its own motion or 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 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 MAR 31 2017] (Auth: HRS §91-2) (Imp: HRS §91-2)

§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. 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 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 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 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 MAR 31 2017] (Auth: HRS §91-2) (Imp: HRS §91-6)

§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;
- (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 e-mailed 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.

(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. Proposed rule adoption, amendment, or repeal shall also be posted on the Internet as provided in section 91-2.6, HRS.

(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) Two copies to each registered and recognized homestead association; and
- (3) Five copies to the main office identified in section 10-1-2. [Eff 7/30/81; am and comp 10/26/98; am MAR 31 2017] (Auth: HRS §91-1) (Imp: HRS §91-2)

§10-5-23 Hearing conduct. (a) The chairman or the chairman's designee shall preside over the public hearing. The hearing shall be conducted 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) 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 the order prescribed by the presiding officer. 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 additional relevant testimony.

(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.

(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 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.

(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 **MAR 31 2017**] (Auth: HRS §91-2) (Imp: HRS §91-3)

§10-5-23.1 Time and place. Each hearing shall be held at the time and place set in the notice of hearing, but, at that time and place may be continued by the presiding officer 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 **MAR 31 2017**] (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; am **MAR 31 2017**]

§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 thirty days notice of hearing, and states in writing its reason for the finding, it may proceed without prior notice or hearing on 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 MAR 31 2017] (Auth: HRS §91-2) (Imp: HRS §91-3)

§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 **MAR 31 2017**] (Auth: HRS §91-2) (Imp: HRS §91-3)

DEPARTMENT OF HAWAIIAN HOME LANDS


Amendments to chapters 10-1, 10-2, 10-3, and 10-5, Hawaii Administrative Rules, on the Summary page dated [MAR 31 2017], were adopted on [MAR 31 2017], following public hearings held on December 5, 2016 and December 6, 2017, after public notice was given in the Honolulu Star-Advertiser, the Hawaii Tribune-Herald, West Hawaii Today, the Maui News, and the Garden Island News on November 4, 2016.

These amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.


JOBIE M. K. MASAGATANI
Chairman
Hawaiian Homes Commission

APPROVED AS TO FORM:


Deputy Attorney General


DAVID Y. IGE
Governor
State of Hawaii

Date: 3/20/2017

Filed

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LEUTENANT GOVERNOR'S
OFFICE

