

STATE OF HAWAII

DEPARTMENT OF HAWAIIAN HOME LANDS

April 16, 2018

TO: Chairman and Members, Hawaiian Homes Commission
FROM: Hokulei Lindsey, Administrative Rules Officer
Office of the Chairman
SUBJECT: Update of Proposed Administrative Rules for the
Planning System



RECOMMENDED MOTION/ACTION

None. For Information Only.

DISCUSSION:

On April 7, 2018, the Department of Hawaiian Home Lands conducted a public hearing pursuant to section 91-3, Hawaii Revised Statutes. Notice for the hearing was published statewide; on February 28 and March 7, 2018 in the Molokai Dispatch and on March 4 and 7, 2018 in the Honolulu Star-Advertiser, Maui News, Hawaii Tribune-Herald, West Hawaii Today, and Garden Island News. The public notice is attached as Exhibit A. Pursuant to section 10-5-23, Hawaii Administrative Rules, Kaleo Manuel was designated to preside over the public hearing (see Exhibit B). The hearing, and the April 9 deadline for written comments, were the public's opportunity to provide support, opposition, or otherwise offer input on the DHHL's proposed changes to Title 10, Hawaii Administrative Rules, related to the planning system.

The hearing was held at Hale Pono at the DHHL main office in Kapolei, Hawaii. Sixteen people signed the attendance sheet, thirteen self-identified as beneficiaries (see Exhibit C). An informational session was held at 10:30 a.m., immediately before the public hearing. Attendees were provided a copy of the informational presentation, and copies of the proposed rules, a timeline summary of the process to date, and related Hawaiian Homes Commission submittals to date were available for review. Comment sheets were also available for those who wanted to submit written comments. During the public hearing, two attendees stood to provide testimony and staff took notes to

maintain a record of the oral testimony. Five written comments were submitted; four from individuals and one signed by nine of the attendees (see Exhibit D).

Since the hearing, staff has reviewed and provided responses to the comments received during the public comment period (see Exhibit D). Most of the comments submitted can be classified as clarification. One comment requested the specific addition to section 10-4-60 beneficiary consultation of language related to community based governance from section 201.6 of the Hawaiian Homes Commission Act. However, the rules cannot include the community based governance language from section 201.6 of the HHCA because that section is required to be but has not been adopted by the U.S. Congress and, therefore, is not considered part of the Act.

RECOMMENDATION:

None. For information only.

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS
TO TITLE 10, HAWAII ADMINISTRATIVE RULES

The Department of Hawaiian Home Lands (DHHL) will hold a public hearing for Hawaii Administrative Rules (HAR) amendments. The proposed amendments to Title 10, HAR, DHHL, includes amendments that would establish a planning system in new HAR sections 10-4-51 through 10-4-60; the proposed planning system creates a process through which the Hawaiian Homes Commission and DHHL can develop and adopt plans, policies, and strategies for the management of Hawaiian home lands and programs. The proposed amendments also include the amendment of HAR section 10-4-2, which would clarify that the plans, policies, and strategies developed through the proposed planning system guide the Hawaiian Homes Commission and the DHHL in land use planning decision-making, and the compilation of HAR chapter 10-4. An informational briefing will be held immediately before the public hearing.

Date: Saturday, April 7, 2018
Location: DHHL Main Office (Hale Pono), 91-5420 Kapolei Pkwy, Kapolei, HI 96707
Time: Informational briefing: 10:30 a.m. – 11:00 a.m.
Public hearing: 11:00 a.m. – 12:00 p.m.

All interested persons are urged to attend the public hearing to present relevant information and individual opinion for the DHHL to consider. Any person may file written comments or recommendations in support of or in opposition to the proposed rulemaking in person at the public hearing or by mail postmarked by April 9, 2018. Written testimony should be mailed to: ATTN: Administrative Rules, Department of Hawaiian Home Lands, P.O. Box 1879, Honolulu, HI 96805.

The Hawaiian Homes Commission shall take final action on this rulemaking at a future regularly scheduled commission meeting.

The proposed rule amendments are currently available for review through April 9, 2018 between the hours of 8:00 a.m. and 4:00 p.m. at the DHHL Main Office in Kapolei, Oahu (address listed above) and at any DHHL District Office: East Hawaii: 160 Baker Ave., Hilo, HI 96720; West Hawaii: 64-756 Mamalahoa Hwy, Kamuela, HI 96743; Mauai: 655 Kaunualii St., Wailuku, HI 96793; Molokai: 600 Mauna Loa Hwy, Kaunakakai, HI 96748; Kauai: 3060 Eiwa St, Rm 203, Lihue, HI 96766. A copy of the proposed rule amendments will be mailed to any person who requests a copy in writing. The request must state the requestor's name and mailing address, and be delivered to the DHHL Main Office, P.O. Box 1879, Honolulu, HI 96805. For more information, email dhhl.rules@hawaiianhomelands.org or call (808) 620-9280. A copy of the proposed rule amendments is also available online: <http://dhhl.hawaii.gov/hhc/hawaii-administrative-rules/>.

To request a sign language interpreter or disabled parking at the public hearing, please contact the DHHL Information and Community Relations Office on Oahu at 808-620-9590 at least seven days in advance of the public hearing.

Jobie M. K. Masagatani, Chairman
Hawaiian Homes Commission
February 16, 2018

EXHIBIT A

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII



JOBIE M. K. MASAGATANI
CHAIRMAN
HAWAIIAN HOMES COMMISSION

DOUGLAS S. CHIN
LT. GOVERNOR
STATE OF HAWAII

WILLIAM J. AILA, JR.
DEPUTY TO THE CHAIRMAN

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P. O. BOX 1879
HONOLULU, HAWAII 96805

April 5, 2018

Pursuant to section 10-5-23, Hawaii Administrative Rules (HAR), I designate Kaleo Manuel as the presiding officer in my absence over the public hearing for proposed amendments to Title 10, HAR, held pursuant to Chapter 91, Hawaii Revised Statutes on Saturday, April 7, 2018 at Hale Pono, 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707 from 11:00 a.m. to 12:00 p.m. or adjournment, whichever is later.

Jobie M. K. Masagatani
Chairman, Hawaiian Homes Commission

EXHIBIT B

NAME	ADDRESS	EMAIL OR PHONE	BENEFICIARY	TESTIFY
KALANI KAMAHAO	[REDACTED]	[REDACTED]		
Ruth Kapa	[REDACTED]	[REDACTED]		
Gisela Busa	1300 Lunalilo		X	
Kiia Purdy-Avelino	[REDACTED]	[REDACTED]		✓
Tammy Purdy	[REDACTED]	[REDACTED]		✓
Randy Akau	[REDACTED]	[REDACTED]		✓
KAMAKUA, JODI	KAPAKA HAWESTRAD	[REDACTED]		✓
Doreen Gaspar	KAPAKA & HAWESTRAD			✓
KARNA LAUIE I	[REDACTED]	[REDACTED]		✓

Travel, HI

DEPARTMENT OF HAWAIIAN HOME LANDS PUBLIC HEARING FOR PROPOSED AMENDMENTS TITLE 10, HAWAII ADMINISTRATIVE RULES

LOCATION Hale Paho

DATE 4/9/18

NAME	ADDRESS	EMAIL OR PHONE	BENEFICIARY	TESTIMY
Mehelle Kaneone	██████████ Kauai Honolulu	██████████	X	X
Jewelani McBrye	Kaunoe	██████████	X	
Liberta Albao	Kauai	██████████	X	
Cecyle Halaniak	██████████ ██████████ Mala'ohau	██████████	✓	
Hone Schaedel	██████████ ██████████ Mala'ohau	██████████	✓	
Sybil K. Kopa	Kalamaila Mauka HA	██████████	✓	✓
Rachelina Loureiro	██████████	██████████		

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Name	Written	Comment	Staff Response
Michelle Kauhane	Y	<p>Kapolei, HI. Here as an individual beneficiary - given on behalf of myself.</p> <p>10-4-54 regarding declaration of emergency by governor or mayor. Problematic that state or county can overrule without action by HHC. I understand the intent is for natural disaster but would like record to reflect that "declared" emergencies should not impact HHCA. Understand the need, but don't want it to impact use by beneficiaries.</p> <p>General Plan: beneficiary consultation important to take place as process for "available lands" and general leasing is established esp regarding the criteria to determine lands not needed for homesteading.</p> <p>10-4-58 regarding land dispositions; note every land disposition priority is to a small "n" native Hawaiian and, regardless of any plan, the primary purpose under the Act is for native Hawaiian, first. That primary purpose should supercede any land use or disposition.</p> <p>10-4-60 regarding beneficiary consultation; there is not one way but multiple strategies to do consultation that can be used with weight being given to beneficiaries of the region and/or to allow for beneficiaries to provide testimony in different forums.</p>	<p>Oral Testimony</p> <p><u>10-4-54</u>: the intent of this section is to allow response, which may be inconsistent with the plans, to situations like natural disasters that pose imminent peril to the health, safety, or welfare of homestead communities or Hawaiian home lands. The point that Hawaiian home lands should not be used for the general public to the detriment of beneficiaries of the Hawaiian Homes Commission Act is appreciated. Staff notes these rules implement the HHCA, only. Therefore, action inconsistent with the HHCA is beyond the scope and not authorized by these rules.</p> <p><u>10-4-55 general plan</u>: Each plan will go through the planning process described in the proposed subchapter 4. That planning process includes beneficiary consultation under section 10-4-60. The criteria required by 10-4-55(3)-(6) would be determined through beneficiary consultation as part of the planning process.</p> <p><u>10-4-58(d) land dispositions</u>: so noted.</p> <p><u>10-4-60 beneficiary consultation</u>: this section was drafted to allow flexibility in determining how consultation should be conducted in light of the topic as well as the island and communities directly impacted. This was something discussed at length in consultation for these rules with no clear answer about how to balance input and concerns from the specific impacted community and area with that of the broader beneficiary group. Staff believes the current language allows flexibility in approach and methodology while safeguarding the integrity of the substance intended to be derived from the process. The department's practice in recent years has been to strive to make as much information available as possible.</p>

DLB:HXD

Sybil Lopez	Y	<p>Kaunakakai, HI. Pres Kalamula Mauka In 10-4-60 requesting to add a number 4 for "community based governance" as in section 201.6 of HHCA. Quoting HHCA 201.6: "It is the policy of the state.... Criteria....." I will submit written testimony with the support of homestead association.</p>	<p>10-4-60 beneficiary consultation: staff appreciates the value of community leadership, organizing, and empowerment. However, section 201.6 of the HHCA is required to but has not been adopted by the U.S. Congress and therefore is not part of the HHCA. Administrative rules can only implement what is authorized by the HHCA.</p>
Comment Sheets			
Sybil Lopez		Request for final administrative rules to be mailed	Yes.
Homelani Schaedel		<p>10-4-54(c)(2): what will the application form look like and what is meant by "information prescribed by the dept.?" What kind of information. 10-4-55(1)-(8): How will criteria be established and when/how will beneficiaries be involved in the process?</p>	<p>10-4-54(c)(2) interim amendments: the application has not yet been developed. However, at minimum, the department likely would require a description and explanation of the desired amendment itself as well as why it was being requested, including some concrete information that would demonstrate the sincerity of the request. 10-4-55(1)-(8) general plan: see explanation above.</p>
Kilia Purdy-Avelino		<p>10-4-54(d)(3): understand the intent is for the needs to service public in emergency however, concerned that any "emergency" declared by Governor without HHC approval could be negligent and have a negative effect and misuse of our HHLands. 10-4-58: land disposition--that primary purpose of "n" (beneficiaries) supercedes all</p>	<p>10-4-54(d)(3) declaration of an emergency: see explanation above. 10-4-58(d) land dispositions: so noted.</p>
Michelle Kauhane		<p>10-4-58 re: land dispositions Every land disposition must give priority to native Hawaiian beneficiary, the primary purpose and intent of the act.</p>	<p>10-4-58(d)(3) land dispositions: so noted.</p>

Hale Pono
91-5420 Kapolei Pkwy
Kapolei, HI 96707

April 7, 2018

Planning System Proposed Rules
Public Hearing Testimony

Gayla Heliniak Sybill Lopez Stephanie Lauifi Kilia Purdy-Avelino M. Kammy Purdy Doreen Gaspar Liberta Albao Iwalani McBraye Michelle Kauhane		Request to add to 10-4-60 Beneficiary Consultation, (4) "community based governance as relates to HHCA 201.6 community based governance on Hawaii home lands" (such as homestead associations)	<u>10-5-60 beneficiary consultation</u> : see explanation above.
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EXHIBIT D

