

STATE OF HAWAII

DEPARTMENT OF HAWAIIAN HOME LANDS

April 16-17, 2018

TO: Chairman and Members, Hawaiian Homes Commission
FROM: Hokulei Lindsey, Administrative Rules Officer
Office of the Chairman
SUBJECT: Adoption of Proposed Amendments to Title 10, Hawaii
Administrative Rules, Related to the Planning System



RECOMMENDED MOTION/ACTION

That the Hawaiian Homes Commission adopt proposed amendments to Title 10, Hawaii Administrative Rules, related to the planning system, and approve proceeding with promulgation.

DISCUSSION:

Last April, the Department of Hawaiian Home Lands began its process for administrative rulemaking for proposed rules related to the planning system. The chart below contains a summary of the important actions taken by the HHC and the DHHL in that process.

April 18, 2017	Approval to proceed to beneficiary consultation
June-August 2017	Statewide beneficiary consultation
September 19, 2017	For information: presentation of beneficiary consultation report
October 16, 2017	Acceptance of beneficiary consultation report
October 16, 2017	Approval of recommended changes to proposed rules for the planning system and to proceed with rulemaking under ch. 91, HRS
February 28, and March 4 and 7, 2018	Publication of statewide notice for public hearing under ch. 91, HRS
April 7, 2018	Public hearing
April 16-17, 2018	For information: update of proposed administrative rules for the planning system

Staff recommends the proposed planning system rules be adopted without substantive amendment. Most of the comments submitted during the public comment period can be classified as clarification related to understanding intent and implementation of the planning process. 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. Two technical errors were found, which have been corrected:

- **10-4-54 Adoption and amendment procedures.** The subsections were misnumbered resulting in two subsections, "Consistency and conflicts" and "Repository" being numbered as (d). "Repository" has been renumbered as (e) to correct the mistake.
- **10-4-60 Beneficiary consultation.** The "c" in "Consultation" in the title was capitalized in contradiction to formatting practice such that it read "Beneficiary Consultation"; it has been reformatted for compliance to read "Beneficiary consultation."

The proposed rules are attached in Standard and Ramseyer formats.

RECOMMENDATION:

Staff respectfully request approval of the motion as stated above.

DEPARTMENT OF HAWAIIAN HOME LANDS
Amendment and Compilation of Chapter 10-4
Hawaii Administrative Rules

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SUMMARY

1. §10-4-2 is amended.
2. A new subchapter 4, consisting of §§10-4-51 through 10-4-60, is adopted.
3. Chapter 10-4 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 10

DEPARTMENT OF HAWAIIAN HOME LANDS

CHAPTER 4

MANAGEMENT OF HAWAIIAN HOME LANDS

Subchapter 1 Land Management

- \$10-4-1 Lease of lands
- \$10-4-2 Consistency with plans
- \$10-4-3 General lease; extension of term
- \$\$10-4-4 to 20 (Reserved)

Subchapter 2 Licenses

- \$10-4-21 General provisions
- \$10-4-22 Licenses for easements and public purposes
- \$10-4-23 Repealed
- \$10-4-24 Licenses for mercantile establishments
- \$10-4-25 Licenses to the United States
- \$10-4-26 Licenses to churches
- \$\$10-4-27 to 30 (Reserved)

Subchapter 3 Parks

- \$10-4-31 Parks managed by the department
- \$10-4-32 Parks managed by other organizations on
Hawaiian home lands
- \$10-4-33 Park advisory councils, established
- \$10-4-34 Use of parks
- \$10-4-35 Hours of operation
- \$10-4-36 Closure
- \$10-4-37 Permits

§10-4-1

§10-4-38 Permit application
§10-4-39 Permit approval
§10-4-40 Permit denial
§10-4-41 Permit priorities
§10-4-42 Fees
§10-4-43 Penalties
§10-4-44 Commercial and private operations
§§10-4-45 to 50 (Reserved)

Subchapter 4 Planning System

§10-4-51 Purpose
§10-4-52 Definitions
§10-4-53 General framework
§10-4-54 Adoption and amendment procedures
§10-4-55 General plan (tier 1)
§10-4-56 Island and program plans (tier 2)
§10-4-57 Development, regional, and special area
plans (tier 3)
§10-4-58 Implementation
§10-4-59 Evaluation
§10-4-60 Beneficiary consultation

Historical Note: Chapter 4 of Title 10, Hawaii
Administrative Rules, is based substantially upon
Parts III and V, Rules and Regulations, Department of
Hawaiian Home Lands. [Eff 8/11/72; am 11/14/77; R
7/30/81]

SUBCHAPTER 1

LAND MANAGEMENT

§10-4-1 Lease of lands. The department may
lease, license, or otherwise deal with any Hawaiian
home lands as may not be immediately needed for the
purposes of the act as provided by section 204(2) of
the act and chapter 171, HRS, upon such terms and

conditions as it may deem fair and reasonable. [Eff
7/30/81; am and comp 10/26/98; comp]
(Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-2 Consistency with Plans. The department shall be guided by the plans, policies, and strategies developed pursuant to subchapter 4 of this chapter for the development and use of land needed for the purposes of the act. [Eff 7/30/81; am and comp 10/26/98; am and comp] (Auth: HHC Act §222) (Imp: HHC Act, all)

§10-4-3 General lease; extension of term. (a) The department may extend the term of a general lease of Hawaiian home lands for commercial or multipurpose projects to make improvements to the lease property, or obtain financing for the improvement of the leased lands. Such extension requires approval by the department of a written agreement proposed by the general lessee, or the general lessee and developer, as provided in section 228 of the act.

(b) The general lessee, or the general lessee and general developer, shall meet and satisfy all requirements as referenced in Section 228 of the act.

(c) The lease extension shall be based upon the improvement made or to be made, shall be no more than twenty years, and shall be granted only once.

(d) Before the written agreement is approved, the lessee, or the lessee and developer, shall submit to the department the plans and specifications for the proposed development. The department shall review the plans, specifications, and the written agreement and determine:

- (1) Whether the development is of sufficient value and meets the priorities of the commission to justify an extension of the lease;
- (2) The estimated time needed to complete the

improvements and expected date of completion of the improvements; and

- (3) The minimum revised annual rent based on the fair market value of the lands to be developed, as determined by an appraiser for the Department, and percentage rent where gross receipts exceed a specified amount.

(e) The approval of any extension shall be subject to the following:

- (1) The demised premises are used in a manner substantially consistent with the use and purpose for which they were originally leased;
- (2) The rental shall not be less than the rental for the preceding term; and
- (3) Any additional terms and conditions set forth by the commission and deemed prudent and responsible. [Eff 11/29/14; comp] (Auth: HHC Act §222) (Imp: HHC Act §228)

§§10-4-4 to 10-4-20 (Reserved).

SUBCHAPTER 2

LICENSES

§10-4-21 General provisions. (a) Applications for licenses shall be made in writing and shall state the applicant's status, type and location of the land desired, proposed use of the land, the services or facilities to be provided and the term of the license.

(b) The department may negotiate the issuance of a license. The department shall determine such terms and conditions of a license as it deems prudent, reasonable, and proper and in accordance with this

chapter and subject to the commission's approval.

(c) Except as provided in subsection (d), the applicant shall pay all costs incurred by the department for the processing of a license application, including but not limited to, costs of advertisement, survey, and appraisal. The applicant shall remit to the department, together with its application, a nonrefundable deposit in the sum of \$200. The applicant shall pay upon execution, the balance of the cost incurred by the department for processing the application in excess of the deposit.

(d) All processing costs may be reduced or waived when the department initiates action for license awards, or the department determines that the license benefits native Hawaiians or the department.

(e) The license rental rate shall be established by appraisal whenever prudent management so dictates. The department may:

- (1) Require the licensee to hire an independent appraiser, provided the appraiser is mutually agreed upon by the department and the licensee;
- (2) Enter into contracts for appraisal; or
- (3) Make its own appraisal.

The licensee shall pay the cost of all appraisals, whether hired by the licensee or contracted for by the department. When a member of the department staff does the required appraisal, the applicant shall pay to the department a sum which is reasonably comparable to the current rate for similar appraisals contracted for in the private sector. Where prudent management does not dictate the rental rate be established by appraisal, the department may negotiate the rental rate of a license. If the proposed use benefits other than native Hawaiians, the department may grant the license and the annual rental shall be established by appraisal. If the use benefits the department or native Hawaiians, the department may set a nominal rental rate.

(f) If a survey of the requested licensed area is required by the department, the licensee shall have

the survey performed at the licensee's own cost. If the department is requested to provide the survey, the licensee shall pay all costs incurred by the department for the survey. The department may require an additional deposit in the amount of the estimated cost for such survey as determined by the department. [Eff 7/30/81; am 2/3/83; am 11/17/84; am and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §207(c))

§10-4-22 Licenses for easements and public purposes. Licenses as easements for railroads, telephone lines, electric power and light lines, gas mains and the like, and licenses for improvements for public purposes, including but not limited to schools, post offices, parks, beaches, fire stations, and other public facilities may be granted, in perpetuity or a specified term, subject to revert to the department upon termination or abandonment, on such terms and conditions as may be prudently and reasonably set by the department. [Eff 7/30/81; am 11/17/84; am and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §207(c))

§10-4-23 REPEALED. [R 11/17/84]

§10-4-24 Licenses for mercantile establishments.
(a) The department may issue licenses for mercantile establishments, all of which shall be owned by native Hawaiians or organizations formed and controlled by native Hawaiians as provided in section 207(c)(1)(B) of the act.

(b) Mercantile licenses offered upon department initiative shall be disposed of in the following manner:

(1) The department shall give notice, once in

each of two successive weeks in a newspaper of general circulation in the State, of its intention to license Hawaiian home lands for mercantile purposes setting forth the minimum conditions thereunder and the use for which the land will be licensed. Any native Hawaiian or organizations formed or controlled by native Hawaiians interested in securing the license shall file an application with the department not later than thirty days after the publication of the notice;

- (2) If there is only one applicant for the license, the department, after notice as provided in paragraph (1), may dispose of the license; and
- (3) If there are two or more applicants for the license, the department shall select the applicant who submits the highest offer contained in a sealed bid deposited with the department.

(c) The rental for the license to be issued shall be determined by the department, based on the flat rate per square foot, or appraisal, or on a percentage of the gross sales receipt of the licensee. Upon a request of a native Hawaiian, the department may negotiate the issuance of a mercantile license subject to the approval of the commission under section 10-4-21(b).

(d) Section 10-4-21(d) shall not apply to this section. Mercantile licensees shall pay all processing costs, including but not limited to advertisement, survey, and appraisal. [Eff 7/30/81; am 11/17/84; am and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §207(c))

§10-4-25 Licenses to the United States. (a) The department may grant licenses to the United States for reservations, roads, and other rights-of-way, water

storage and distribution facilities.

(b) Licenses issued or granted to the United States shall not restrict the area required by the department in carrying on its duties nor interfere in any way with the department's operation or maintenance activities.

(c) Licenses issued to the United States shall be at rentals as established by appraisal.

(d) The method of rental payment may include, but not be limited to, compensatory services rendered to the department. [Eff 7/30/81; am 11/17/84; am and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §207(c))

§10-4-26 Licenses to churches. (a) The department may issue licenses to churches within a homestead district provided:

- (1) The aggregate number of churches in the homestead district does not exceed two per cent of the total number of lessees in the district; and
- (2) If land is available, a petition of those who wish to establish a church shall include names of at least twenty per cent of the lessees in the homestead district.

(b) Churches existing on Hawaiian home lands before November 14, 1977 shall be exempt from the requirements of subsection (a)(1).

(c) The annual rental for licenses issued under this section shall be one-half of one cent per square foot, or \$200, whichever is greater.

(d) For the purposes of this section, homestead districts are Hawaiian home lands which have been homesteaded within an ahupua'a or lesser subdivision thereof. [Eff 7/3/81; am 2/3/83; am 11/17/84; am and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §207)

§§10-4-27 to 10-4-30 (Reserved).

SUBCHAPTER 3

PARKS

§10-4-31 Parks managed by the department. The department, from time to time, may establish and manage parks on lands not immediately needed for the purposes of the act. The department, in accordance with the rules established in this chapter, shall make all decisions with respect to the operations of these parks. [Eff and comp 10/26/98; comp]
(Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-32 Parks managed by other organizations on Hawaiian home lands. The department may, from time to time, establish parks on lands not immediately needed for the purposes of the act. The department may license parks for other organizations to manage under such terms and conditions as the commission may deem necessary as provided by sections 204 and 207 of the act and chapter 171, HRS. (a) In cases where parks are licensed to county, state, or federal agencies for management, the applicable rules of the licensee, as limited by the license's terms and conditions, shall be used in the management of these parks; and it shall be the licensee's responsibility and duty to enforce the applicable rules.

(b) In cases where parks are licensed to other organizations, the rules of the licensee, as approved by the commission and as limited by the license's terms and conditions, shall be used in the management of these parks; and it shall be the licensee's responsibility and duty to enforce the applicable rules. [Eff and comp 10/26/98; comp]
(Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-33 Park advisory councils, established.

There shall be established a park advisory council in each area where the department operates a district office. Each council shall meet at least once a year and shall be administratively attached to the district office in which the council is established. Each council shall consist of five members appointed by the chairman and confirmed by the commission; provided that each member shall be a native Hawaiian, at least eighteen years of age and a resident of the area served by the district office in which the council is established. Each member shall be appointed for a term of two years. Members of each park advisory council shall serve without compensation. The purpose of each park advisory council shall be to advise the department on rules, practices and activities on and affecting parks that are in the area where the park advisory council is established and are under the management of the department as provided in section 10-4-32. [Eff and comp 10/26/98; comp]
(Auth: HHCA Act §222) (Imp: HHCA Act §204)

§10-4-34 Use of parks. The following minimum restrictions apply to department parks:

- (1) The use or possession of alcoholic beverages is prohibited;
- (2) Boating vessels or any similar buoyant devices are prohibited where posted;
- (3) The construction of any buildings, facilities, memorials, or other similar structures is strictly prohibited except with written permission from the department;
- (4) Fires may be built only in areas where the fire can be confined to fireplaces or grills. No person shall allow a fire to burn in a manner that surrounding shrubs, grasses, trees, or structures will be damaged. Fires shall not be left unattended. Portable stoves or warming devices may be used in designated camping

- and picnicking areas unless otherwise prohibited;
- (5) All geologic, historic, and archaeological features must be left undisturbed;
 - (6) Unreasonably loud noises or unreasonably loud amplified music is prohibited. The decibel level standards shall comply with chapter 342F, HRS, state rules, and county ordinances;
 - (7) Activities which may cause disturbances are prohibited unless generally allowed within specific areas of the park. A list of examples of prohibited activities, if any, shall be established by the department in consultation with the park advisory council. This list shall be posted within the district office;
 - (8) Driving and parking of vehicles is allowed only on defined roads and in designated parking areas. Vehicles illegally parked or left unattended in closed areas may be impounded or towed to a place of storage, with towing and storage fines charged pursuant to Section 290-11, HRS.
 - (9) Pets and other animals shall be leashed or otherwise under physical restrictive control at all times, and are not permitted where signs prohibiting animals are posted. Persons responsible for any animal on the premises shall also be responsible for the clean up and proper disposal of animal droppings and for restoration for any damage caused by the animal;
 - (10) Except for maintenance authorized by the department, plants are to be left undisturbed. Where permitted by the department, reasonable quantities of plant material such as leaves, flowers, fruits and seeds may be gathered for personal use;
 - (11) Skating, skateboarding, and golfing are prohibited unless otherwise posted;
 - (12) Soliciting or panhandling is prohibited.

The sale of any goods, food, or services are prohibited unless specifically allowed in writing by the department; such permission will require the appropriate health and other public permits;

- (13) All waste must be placed in trash cans. Trash from large events must be bagged, securely tied, and disposed of appropriately. The department may require that trash from large events be removed from the premises by park users;
- (14) Wildlife and their habitats must be left undisturbed except where hunting and fishing are permitted subject to all applicable federal, state and county laws, rules, and regulations;
- (15) Picnicking. A person may picnic in the parks except in designated campgrounds and in those locations where prohibited; the department shall post appropriate signage. The department may also establish reasonable limitations on the length of time any person may use picnicking facilities; and
- (16) All criminal activities prohibited under federal and state laws or county ordinances are also prohibited on Hawaiian home lands. [Eff and comp 10/26/98; comp]
(Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-35 Hours of operation. The department shall establish the hours during which the parks will be open. Hours of operation shall be posted in each district office and may vary depending on the location of the park and the season of the year. Anyone using a park during the hours when the park is closed may be considered a trespasser and may be subject to prosecution. [Eff and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §204).

§10-4-36 Closure. At the discretion of the department, a park may be closed for renovation, for safety or for security purposes. The department shall post notice of closure at the district office in which the park is located and at the specific park. [Eff and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-37 Permits. The department shall post permit requirements in the applicable district office. The department shall attach a copy of permit requirements to approved permits. Park use permits are required for:

- (1) Any group with 26 or more park users;
- (2) Exclusive use of any pavilions; or
- (3) Overnight camping.

The department may require security, traffic control, portable toilets, extra trash receptacles, lifeguards, insurance, security deposits or any other items that the department, in its sole discretion, may deem necessary, given the size and complexity of the event for which the permit is issued. The department shall determine the maximum size for any event and the maximum length of stay for overnight camping, and shall post those limits in the district offices. Anyone required to have a permit shall have the appropriate permit and identification at the park at all times and shall, upon request, show those items to law enforcement officers and other authorized representatives. Anyone without a required permit may be considered a trespasser and may be subject to prosecution. [Eff and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-38 Permit application. An application for a park use permit may be obtained at the appropriate

district office, subject to the following minimum guidelines and any other additional provisions that the department may deem necessary:

- (1) Permit applications may be filed from 8:00 a.m. to 4:00 p.m., Monday through Friday, except holidays;
- (2) Permit applicants must be 18 years or older;
- (3) Permit applications must be in writing on a form provided by the department and contain all information required; and
- (4) Permit applications for events or exclusive use of facilities must be received at least fourteen calendar days before the event and no earlier than one calendar year in advance;
- (5) Camping permit applications must be received at least one working day before the requested date and no earlier than ninety days in advance. [Eff and comp 10/26/98; comp] (Auth: HHC Act §222)
(Imp: HHC Act §204)

§10-4-39 Permit Approval. Park use permits shall be approved or denied by the district office supervisor in whose jurisdiction the park is located. Persons who have been denied a permit may make written requests for reconsideration to the chairperson. Permits shall not be transferred. [Eff and comp 10/26/98; comp] (Auth: HHC Act §222)
(Imp: HHC Act §204)

§10-4-40 Permit Denial. Permits may be denied when:

- (1) The premises or park facilities are closed;
- (2) The person applying for the permit has received a permit during the previous ninety days;
- (3) There are inadequate facilities to meet the

- needs of the applicant for the permit;
- (4) The premises or facilities will be used by persons other than the person applying for the permit; or
 - (5) The person applying for the permit has a prior record of noncompliance with permit conditions or has committed prior violations of this subchapter. [Eff and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-41 Permit priorities. In general, permits shall be issued on a first-come, first-served basis, with preference given to native Hawaiian beneficiaries and organizations. In no case, however, shall a native Hawaiian be discriminated against because of place of residence. [Eff and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-42 Fees. The department, in consultation with the park advisory council, may establish fees for the use of park facilities. Special fees may be charged for events that require unusual departmental assistance. Fees charged by the department shall be made known to the park user before a permit is issued. Additionally, deposits may be required of any permit recipient in order to ensure that rules are met and the area is left in a clean and sanitary condition. A notice listing any required fees or deposits shall be posted in the applicable district office. [Eff and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-43 Penalties. (a) All permittees shall, upon request, show the permit to any law enforcement

officer or authorized representative. Anyone using the park without a required permit may be asked to leave. Any such person who refuses to leave may be considered a trespasser and may be subject to prosecution.

(b) Anyone violating the provisions of this subchapter may be required to repair or pay for any damage to public or private property, may be subject to confiscation of equipment used in the violation, and may be subject to applicable charges under the law. All plants, objects, or artifacts removed illegally from the premises shall be returned to the department. [Eff and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-44 Commercial and private operations. The following activities are prohibited in department parks:

- (1) Engaging in or soliciting business;
- (2) Displaying, posting or distributing notices or advertisements; and
- (3) Filming, photographing, video and audio recording, or any other media production that involves the use of professional casts, models, setting, or crews, by any person other than legitimate newspaper or television news personnel.

Exceptions to the above may be granted in writing by the chairperson subject to any terms, conditions, and fees deemed by the chairperson to be fair and reasonable. [Eff and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §204)

§§10-4-45 to 10-4-50 (Reserved).

SUBCHAPTER 4

PLANNING SYSTEM

§10-4-51 Purpose. The purpose of the planning system is to further the objectives of the act by systematically coordinating the management of Hawaiian home lands and programs in a manner that is comprehensive, consistent, and collaborative.
 [Eff and comp] (Auth: HHC Act §222)
 (Imp: HHC Act, all)

§10-4-52 Definitions. As used in this subchapter, unless context clearly provides otherwise:
 "Beneficiary consultation" means the department's direct outreach to lessees, applicants, and native Hawaiians as defined by the act as part of the department's or commission's decision-making process.
 "Implementing action" means those actions that implement the plans and the overall planning strategy of the department, including but not limited to, budgeting, legislation, rulemaking, adoption of procedures, and land dispositions.
 "Plans" mean the general plan, island plans, program plans, development plans, regional plans, and special area plans. [Eff and comp]
 (Auth: HHC Act §222) (Imp: HHC Act, all)

§10-4-53 General framework. The planning system shall consist of a three-tier hierarchy of plans. Tier 1 is the top tier consisting of the general plan and shall establish overall policy. Tier 2 and Tier 3 are the lower tiers and shall be guided by the general plan. Tier 2 and Tier 3 focus with increasing specificity on programs or geographic areas. The

planning system shall also include implementation mechanisms that link with the plans, as well as evaluation mechanisms to refine the plans and implementing actions. [Eff and comp]
(Auth: HHC Act §222) (Imp: HHC Act, all)

§10-4-54 Adoption and amendment procedures. (a) Adoption. All plans in each of the three tiers shall be adopted by a majority vote of the commission. Any comprehensive update or interim amendment requires a majority vote of the commission to be effective. Beneficiary consultation shall be required as part of any comprehensive update or interim amendment.

(b) Comprehensive update. Comprehensive updates to plans provide an opportunity to refine or refocus based on changes in conditions, new trends, emerging issues, or past performance. Unless otherwise specified, an adopted comprehensive update shall supersede and void the entire previous plan.

(1) Tier 1. The general plan in tier 1 shall be updated at least every twenty years. The department at its discretion may initiate the update sooner than the twenty years;

(2) Tier 2. The plans in tier 2 shall be reviewed every eight years and updated at the discretion of the department if an update is justified.

(3) Tier 3. The plans in tier 3 shall be reviewed every four years and updated at the discretion of the department if an update is justified.

(c) Interim amendments. Between comprehensive updates, tier 1 and tier 2 plans may be amended upon beneficiary consultation appropriate to the plan as set forth in section 10-4-60, and a majority vote by the commission. Initiation of the amendment shall be as follows:

(1) The chairman may propose, in writing, interim amendments to any of the plans by first notifying the commission and then

initiating beneficiary consultation appropriate to the plan as set forth in section 10-4-60; or

- (2) A beneficiary may submit an application form requesting the chairman to initiate an interim amendment. The application form shall include information prescribed by the department. Upon receipt of a completed application form, the department shall have ninety days to respond to the application. Should the department initiate an amendment, the department shall prepare a report of its recommendation and initiate beneficiary consultation appropriate to the plan as set forth in section 10-4-60.
- (d) Consistency and conflicts.
 - (1) Where conflicts exist among plans, the higher tier shall prevail over the lower tier.
 - (2) Implementation actions set forth in section 10-4-58 shall be consistent with applicable plans. A commission member, beneficiary, or interested member of the public, may request the commission review a proposed or past action by the department for consistency. The request must detail the disputed action and describe why the petitioner believes disputed action is inconsistent with a particular plan. The commission may direct the chairman to prepare a response to the request.
 - (3) Upon declaration of an emergency by the governor or mayor, the department may proceed with an action that is inconsistent with a plan, provided that the chairman has notified the commission. The chairman shall propose an amendment to the relevant plan or plans at the earliest practicable time to restore consistency.
- (e) Repository. The department shall make available to the public through its website all current adopted plans as may be amended. [Eff and

comp] (Auth: HHC Act §222) (Imp:
HHC Act, all)

§10-4-55 General plan (tier 1). Based on the act, the general plan shall establish statewide policies that guide land management and programs. At a minimum, the general plan shall:

- (1) Establish a uniform system of land use designations that all island plans shall use;
- (2) Establish the relationship between land use designations and the applicable types of land dispositions;
- (3) Establish criteria to identify suitable lands for homesteading;
- (4) Establish criteria to determine available lands not required for homesteading within the planning period;
- (5) Establish criteria to identify lands for revenue generation;
- (6) Establish criteria to identify lands for community use and policies to govern how the community could manage such lands for community building;
- (7) Establish level of service standards for infrastructure and community facilities, or specify a program plan or methodology to develop such standards; and
- (8) Specify indicators to measure progress and evaluate effectiveness in meeting policy goals. [Eff and comp]
(Auth: HHC Act §222) (Imp: HHC Act, all)

§10-4-56 Island and program plans (tier 2). (a) Island plans. Island plans shall be prepared for islands where there are over one hundred acres of Hawaiian home lands. If the landholdings are less

than one hundred acres, the department may initiate a tier 3 plan. At a minimum, island plans shall:

- (1) Apply the criteria from the general plan to identify suitable homestead lands, including areas for new development, infill, and redevelopment;
- (2) Apply criteria to determine available lands not required for homesteading, including areas for revenue generation, community use, and other non-homesteading uses designated in the general plan;
- (3) Prioritize the development or redevelopment of designated homestead lands based on defined criteria;
- (4) Identify infrastructure requirements; and
- (5) Analyze state and county plans to identify potential impact on department land use and infrastructure.

(b) Program plans. Program plans are statewide plans that inform or carry out general plan policies and priorities for specific functional areas, such as but not limited to affordable housing, native Hawaiian development, energy, disaster preparedness, community resiliency, agriculture, and water resources. Program plans may be specified in the general plan or initiated by the chairman. To initiate a program plan, the chairman shall propose the subject matter of the plan to the commission, and upon a majority vote in favor, proceed with the preparation of the plan.

[Eff and comp] (Auth: HHC Act §222)
 (Imp: HHC Act, all)

§10-4-57 Development, regional, and special area plans (tier 3). (a) Development plans. Development plans provide more detail for specific projects identified in island plans for purposes of establishing feasibility, budget, and schedule. To assess feasibility, the development plan shall consider a diversity of housing types and prices appropriate for the target wait list, estimate

development costs, and estimate the costs to be respectively borne by the department and the prospective lessees or licensees as the case may be. The budget presented in the adopted development plan shall be the basis for CIP budget requests. The chairman may select the projects identified in the island plan that require a development plan, and proceed with the preparation of the development plan upon notice to the commission.

(b) Regional plans. Regional plans build a sense of community and capacity, stimulate partnerships for development and improvements, facilitate beneficiary participation in issues and areas of concern, and identify priority projects within existing and planned homestead areas. The plan may focus on a particular homestead community or several homestead communities in the region. At a minimum, the regional plan shall document current conditions and trends, analyze state and county plans to identify potential impact on homestead areas, and identify a prioritized list of projects important to the community and the department. The chairman may prepare a regional plan with the support of a majority vote of the commission.

(c) Special area plans. Where an island plan designates special districts, the chairman may prepare a special area plan with the support of a majority vote of the commission. [Eff and comp] (Auth: HHC Act §222) (Imp: HHC Act, all)

§10-4-58 Implementation. (a) Budgets, legislation, rules, procedures, land dispositions and other implementing actions shall be guided by the plans. The chairman shall develop a rational overall strategy to prioritize and allocate resources and present this strategy to the commission in the first year of the chairman's term, which the chairman may amend and present to the commission as needed from time to time. The overall strategy should: link

budgets to policies, programs, and plans; establish homestead and revenue-generation development priorities; identify disposition strategies for unencumbered lands; and identify high priority regional plan projects that are likely to be implemented within the timeframe covered by the strategy.

(b) Fiscal implementation. The department shall maintain a multi-year capital improvement program to be updated annually and approved by a majority vote of the commission. The funded projects shall be consistent with the plans and overall strategy. The budget shall identify existing and potential funding sources that would be considered. The operational budget shall be reasonably consistent with the plans and overall strategy.

(c) Legal implementation. Legal implementation mechanisms include, without limitation, legislative amendments to the act; adoption, amendment, or repeal of administrative rules; and adoption of internal procedures. The chairman may pursue any of these mechanisms guided by the plans and overall strategy, with final approval by a majority vote of the commission.

(d) Land dispositions. The land dispositions issued by the department and approved by a majority vote of the commission shall be guided by the general plan, island plans, overall strategy, and any other applicable plan or policy adopted by the commission, and aligned with the land uses identified in the island lands. [Eff and comp] (Auth: HHC Act §222) (Imp: HHC Act, all)

§10-4-59 Evaluation. The purpose of an evaluation system is to improve the planning system and implementation effectiveness. The chairman shall present an evaluation report to the commission, which may be combined with the report required under section 222 of the act. The general plan shall specify evaluation indicators, and the department shall

collect and analyze pertinent data in the evaluation report. The chairman may include other measures of performance and effectiveness. The evaluation report shall include recommendations for improvements as applicable. The chairman shall bring to the attention of the commission development plans that are completed or outdated, and a majority vote of the commission shall void or update such plans. [Eff and comp] (Auth: HHC Act §222) (Imp: HHC Act, all)

§10-4-60 Beneficiary consultation. (a)

Meaningful and timely consultation with beneficiaries promotes trust, partnership, and civic engagement. The type of consultation shall be appropriate to the potential impact of the decision or action.

(b) Types of consultation. The type of consultation is determined by the type of plan or implementing action:

- (1) Comprehensive. Comprehensive consultation is statewide. Notice shall be provided to all existing homesteaders, all waiting lists applicants, and other native Hawaiians who have registered with the department. The notice shall describe the proposed action and the date, time, and place of a public meeting to be held on each island. Comprehensive consultation shall apply to the preparation and amendment of Tier 1 plans, preparation and amendment of program plans, and promulgation of administrative rules.
- (2) Place-based. Place-based consultation is geographically specific. Notice shall be provided to existing homesteaders, waiting lists applicants, and other native Hawaiians who have registered with the department and who are associated with a geographic area impacted by the proposed action. The chairman shall determine the appropriate

scope of the notice. The notice shall describe the proposed action and the date, time, and place of a public meeting to be held within the geographic area. Place-based consultation shall apply to the preparation and amendment of island plans, preparation and amendment of tier 3 plans, and proposed projects that require an environmental assessment or environmental impact statement.

- (3) Ad hoc. Ad hoc consultation consists of the formation of an advisory body to provide input to the department for the preparation and amendment of any plan or implementing action. The chairman may select the advisory body, subject to consultation and ratification by the commission, for the preparation or amendment of any plans. Such ad hoc consultation for the preparation and amendment of plans shall supplement and not replace comprehensive or targeted consultation. The chairman may select an ad hoc body for an implementing action and provide a report to the commission.

(c) Consultation methods. The department shall use its best effort to employ diverse and creative notification and participation methods that reach the intended audience in the most effective yet efficient manner. [Eff and comp] (Auth: HHC Act §222) (Imp: HHC Act, all)

Amendments and compilation of chapter 10-4, Hawaii Administrative Rules, on the Summary page dated [], were adopted on [], following a public hearing held on April 7, 2018, after public notice was given in the Honolulu Star Advertiser, Hawaii Tribune-Herald, West Hawaii Today, the Maui News, and the Garden Island News on March 4 and March 7, 2018, and in the Molokai Dispatch on February 28, 2018 and March 7, 2018.

These rules 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:

Filed

DEPARTMENT OF HAWAIIAN HOME LANDS

Amendment and Compilation of Chapter 10-4
Hawaii Administrative Rules

[]

1. Chapter 10-4, Hawaii Administrative Rules, entitled "Management of Hawaiian Home Lands", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 10

DEPARTMENT OF HAWAIIAN HOME LANDS

CHAPTER 4

MANAGEMENT OF HAWAIIAN HOME LANDS

Subchapter 1 Land Management

\$10-4-1 Lease of lands
\$10-4-2 Consistency with plans
\$10-4-3 General lease; extension of term
\$\$10-4-4 to 20 (Reserved)

Subchapter 2 Licenses

\$10-4-21 General provisions
\$10-4-22 Licenses for easements and public purposes
\$10-4-23 Repealed
\$10-4-24 Licenses for mercantile establishments
\$10-4-25 Licenses to the United States

\$10-4-26 Licenses to churches
\$\$10-4-27 to 30 (Reserved)

Subchapter 3 Parks

\$10-4-31 Parks managed by the department
\$10-4-32 Parks managed by other organizations on
Hawaiian home lands
\$10-4-33 Park advisory councils, established
\$10-4-34 Use of parks
\$10-4-35 Hours of operation
\$10-4-36 Closure
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\$10-4-38 Permit application
\$10-4-39 Permit approval
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\$10-4-41 Permit priorities
\$10-4-42 Fees
\$10-4-43 Penalties
\$10-4-44 Commercial and private operations
\$\$10-4-45 to 50 (Reserved)

Subchapter 4 Planning System

\$10-4-51 Purpose
\$10-4-52 Definitions
\$10-4-53 General framework
\$10-4-54 Adoption and amendment procedures
\$10-4-55 General plan (tier 1)
\$10-4-56 Island and program plans (tier 2)
\$10-4-57 Development, regional, and special area
plans (tier 3)
\$10-4-58 Implementation
\$10-4-59 Evaluation
\$10-4-60 Beneficiary consultation

Historical Note: Chapter 4 of Title 10, Hawaii
Administrative Rules, is based substantially upon
Parts III and V, Rules and Regulations, Department of
Hawaiian Home Lands. [Eff 8/11/72; am 11/14/77; R
7/30/81]

SUBCHAPTER 1

LAND MANAGEMENT

§10-4-1 Lease of lands. The department may lease, license, or otherwise deal with any Hawaiian home lands as may not be immediately needed for the purposes of the act as provided by section 204(2) of the act and chapter 171, HRS, upon such terms and conditions as it may deem fair and reasonable. [Eff 7/30/81; am and comp 10/26/98; comp]
(Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-2 ~~[General Plan.]~~ Consistency with Plans.
The department shall ~~[develop and maintain a general plan providing]~~ be guided by the plans, policies, and strategies developed pursuant to subchapter 4 of this chapter for the development and use of land needed for the purposes of the act. ~~[The general plan shall be based upon sociological, financial and economic considerations, among others. A public hearing shall be held before a general plan is adopted or amended.]~~
[Eff 7/30/81; am and comp 10/26/98; am and comp] (Auth: HHC Act §222) (Imp: HHC Act, all)

§10-4-3 General lease; extension of term. (a)
The department may extend the term of a general lease of Hawaiian home lands for commercial or multipurpose projects to make improvements to the lease property, or obtain financing for the improvement of the leased lands. Such extension requires approval by the department of a written agreement proposed by the general lessee, or the general lessee and developer, as provided in section 228 of the act.

(b) The general lessee, or the general lessee and general developer, shall meet and satisfy all requirements as referenced in Section 228 of the act.

(c) The lease extension shall be based upon the improvement made or to be made, shall be no more than twenty years, and shall be granted only once.

(d) Before the written agreement is approved, the lessee, or the lessee and developer, shall submit to the department the plans and specifications for the proposed development. The department shall review the plans, specifications, and the written agreement and determine:

- (1) Whether the development is of sufficient value and meets the priorities of the commission to justify an extension of the lease;
- (2) The estimated time needed to complete the improvements and expected date of completion of the improvements; and
- (3) The minimum revised annual rent based on the fair market value of the lands to be developed, as determined by an appraiser for the Department, and percentage rent where gross receipts exceed a specified amount.

(e) The approval of any extension shall be subject to the following:

- (1) The demised premises are used in a manner substantially consistent with the use and purpose for which they were originally leased;
- (2) The rental shall not be less than the rental for the preceding term; and
- (3) Any additional terms and conditions set forth by the commission and deemed prudent and responsible. [Eff 11/29/14; comp] (Auth: HHC Act §222) (Imp: HHC Act §228)

SUBCHAPTER 2

LICENSES

§10-4-21 General provisions. (a) Applications for licenses shall be made in writing and shall state the applicant's status, type and location of the land desired, proposed use of the land, the services or facilities to be provided and the term of the license.

(b) The department may negotiate the issuance of a license. The department shall determine such terms and conditions of a license as it deems prudent, reasonable, and proper and in accordance with this chapter and subject to the commission's approval.

(c) Except as provided in subsection (d), the applicant shall pay all costs incurred by the department for the processing of a license application, including but not limited to, costs of advertisement, survey, and appraisal. The applicant shall remit to the department, together with its application, a nonrefundable deposit in the sum of \$200. The applicant shall pay upon execution, the balance of the cost incurred by the department for processing the application in excess of the deposit.

(d) All processing costs may be reduced or waived when the department initiates action for license awards, or the department determines that the license benefits native Hawaiians or the department.

(e) The license rental rate shall be established by appraisal whenever prudent management so dictates. The department may:

- (1) Require the licensee to hire an independent appraiser, provided the appraiser is mutually agreed upon by the department and the licensee;
- (2) Enter into contracts for appraisal; or
- (3) Make its own appraisal.

The licensee shall pay the cost of all appraisals, whether hired by the licensee or contracted for by the

department. When a member of the department staff does the required appraisal, the applicant shall pay to the department a sum which is reasonably comparable to the current rate for similar appraisals contracted for in the private sector. Where prudent management does not dictate the rental rate be established by appraisal, the department may negotiate the rental rate of a license. If the proposed use benefits other than native Hawaiians, the department may grant the license and the annual rental shall be established by appraisal. If the use benefits the department or native Hawaiians, the department may set a nominal rental rate.

(f) If a survey of the requested licensed area is required by the department, the licensee shall have the survey performed at the licensee's own cost. If the department is requested to provide the survey, the licensee shall pay all costs incurred by the department for the survey. The department may require an additional deposit in the amount of the estimated cost for such survey as determined by the department. [Eff 7/30/81; am 2/3/83; am 11/17/84; am and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §207(c))

§10-4-22 Licenses for easements and public purposes. Licenses as easements for railroads, telephone lines, electric power and light lines, gas mains and the like, and licenses for improvements for public purposes, including but not limited to schools, post offices, parks, beaches, fire stations, and other public facilities may be granted, in perpetuity or a specified term, subject to reverter to the department upon termination or abandonment, on such terms and conditions as may be prudently and reasonably set by the department. [Eff 7/30/81; am 11/17/84; am and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §207(c))

§10-4-23 REPEALED. [R 11/17/84]

§10-4-24 Licenses for mercantile establishments.

(a) The department may issue licenses for mercantile establishments, all of which shall be owned by native Hawaiians or organizations formed and controlled by native Hawaiians as provided in section 207(c)(1)(B) of the act.

(b) Mercantile licenses offered upon department initiative shall be disposed of in the following manner:

- (1) The department shall give notice, once in each of two successive weeks in a newspaper of general circulation in the State, of its intention to license Hawaiian home lands for mercantile purposes setting forth the minimum conditions thereunder and the use for which the land will be licensed. Any native Hawaiian or organizations formed or controlled by native Hawaiians interested in securing the license shall file an application with the department not later than thirty days after the publication of the notice;
- (2) If there is only one applicant for the license, the department, after notice as provided in paragraph (1), may dispose of the license; and
- (3) If there are two or more applicants for the license, the department shall select the applicant who submits the highest offer contained in a sealed bid deposited with the department.

(c) The rental for the license to be issued shall be determined by the department, based on the flat rate per square foot, or appraisal, or on a percentage of the gross sales receipt of the licensee. Upon a request of a native Hawaiian, the department may negotiate the issuance of a mercantile license

subject to the approval of the commission under section 10-4-21(b).

(d) Section 10-4-21(d) shall not apply to this section. Mercantile licensees shall pay all processing costs, including but not limited to advertisement, survey, and appraisal. [Eff 7/30/81; am 11/17/84; am and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §207(c))

§10-4-25 Licenses to the United States. (a) The department may grant licenses to the United States for reservations, roads, and other rights-of-way, water storage and distribution facilities.

(b) Licenses issued or granted to the United States shall not restrict the area required by the department in carrying on its duties nor interfere in any way with the department's operation or maintenance activities.

(c) Licenses issued to the United States shall be at rentals as established by appraisal.

(d) The method of rental payment may include, but not be limited to, compensatory services rendered to the department. [Eff 7/30/81; am 11/17/84; am and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §207(c))

§10-4-26 Licenses to churches. (a) The department may issue licenses to churches within a homestead district provided:

- (1) The aggregate number of churches in the homestead district does not exceed two per cent of the total number of lessees in the district; and
- (2) If land is available, a petition of those who wish to establish a church shall include names of at least twenty per cent of the lessees in the homestead district.

(b) Churches existing on Hawaiian home lands before November 14, 1977 shall be exempt from the requirements of subsection (a)(1).

(c) The annual rental for licenses issued under this section shall be one-half of one cent per square foot, or \$200, whichever is greater.

(d) For the purposes of this section, homestead districts are Hawaiian home lands which have been homesteaded within an ahupua'a or lesser subdivision thereof. [Eff 7/3/81; am 2/3/83; am 11/17/84; am and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §207)

§§10-4-27 to 10-4-30 (Reserved).

SUBCHAPTER 3

PARKS

§10-4-31 Parks managed by the department. The department, from time to time, may establish and manage parks on lands not immediately needed for the purposes of the act. The department, in accordance with the rules established in this chapter, shall make all decisions with respect to the operations of these parks. [Eff and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-32 Parks managed by other organizations on Hawaiian home lands. The department may, from time to time, establish parks on lands not immediately needed for the purposes of the act. The department may license parks for other organizations to manage under such terms and conditions as the commission may deem

necessary as provided by sections 204 and 207 of the act and chapter 171, HRS. (a) In cases where parks are licensed to county, state, or federal agencies for management, the applicable rules of the licensee, as limited by the license's terms and conditions, shall be used in the management of these parks; and it shall be the licensee's responsibility and duty to enforce the applicable rules.

(b) In cases where parks are licensed to other organizations, the rules of the licensee, as approved by the commission and as limited by the license's terms and conditions, shall be used in the management of these parks; and it shall be the licensee's responsibility and duty to enforce the applicable rules. [Eff and comp 10/26/98; comp]
(Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-33 Park advisory councils, established.

There shall be established a park advisory council in each area where the department operates a district office. Each council shall meet at least once a year and shall be administratively attached to the district office in which the council is established. Each council shall consist of five members appointed by the chairman and confirmed by the commission; provided that each member shall be a native Hawaiian, at least eighteen years of age and a resident of the area served by the district office in which the council is established. Each member shall be appointed for a term of two years. Members of each park advisory council shall serve without compensation. The purpose of each park advisory council shall be to advise the department on rules, practices and activities on and affecting parks that are in the area where the park advisory council is established and are under the management of the department as provided in section 10-4-32. [Eff and comp 10/26/98; comp]
(Auth: HHCA Act §222) (Imp: HHCA Act §204)

§10-4-34 Use of parks. The following minimum restrictions apply to department parks:

- (1) The use or possession of alcoholic beverages is prohibited;
- (2) Boating vessels or any similar buoyant devices are prohibited where posted;
- (3) The construction of any buildings, facilities, memorials, or other similar structures is strictly prohibited except with written permission from the department;
- (4) Fires may be built only in areas where the fire can be confined to fireplaces or grills. No person shall allow a fire to burn in a manner that surrounding shrubs, grasses, trees, or structures will be damaged. Fires shall not be left unattended. Portable stoves or warming devices may be used in designated camping and picnicking areas unless otherwise prohibited;
- (5) All geologic, historic, and archaeological features must be left undisturbed;
- (6) Unreasonably loud noises or unreasonably loud amplified music is prohibited. The decibel level standards shall comply with chapter 342F, HRS, state rules, and county ordinances;
- (7) Activities which may cause disturbances are prohibited unless generally allowed within specific areas of the park. A list of examples of prohibited activities, if any, shall be established by the department in consultation with the park advisory council. This list shall be posted within the district office;
- (8) Driving and parking of vehicles is allowed only on defined roads and in designated parking areas. Vehicles illegally parked or left unattended in closed areas may be impounded or towed to a place of storage, with towing and storage fines charged pursuant to Section 290-11, HRS.

- (9) Pets and other animals shall be leashed or otherwise under physical restrictive control at all times, and are not permitted where signs prohibiting animals are posted. Persons responsible for any animal on the premises shall also be responsible for the clean up and proper disposal of animal droppings and for restoration for any damage caused by the animal;
- (10) Except for maintenance authorized by the department, plants are to be left undisturbed. Where permitted by the department, reasonable quantities of plant material such as leaves, flowers, fruits and seeds may be gathered for personal use;
- (11) Skating, skateboarding, and golfing are prohibited unless otherwise posted;
- (12) Soliciting or panhandling is prohibited. The sale of any goods, food, or services are prohibited unless specifically allowed in writing by the department; such permission will require the appropriate health and other public permits;
- (13) All waste must be placed in trash cans. Trash from large events must be bagged, securely tied, and disposed of appropriately. The department may require that trash from large events be removed from the premises by park users;
- (14) Wildlife and their habitats must be left undisturbed except where hunting and fishing are permitted subject to all applicable federal, state and county laws, rules, and regulations;
- (15) Picnicking. A person may picnic in the parks except in designated campgrounds and in those locations where prohibited; the department shall post appropriate signage. The department may also establish reasonable limitations on the length of time any person may use picnicking facilities; and
- (16) All criminal activities prohibited under

federal and state laws or county ordinances are also prohibited on Hawaiian home lands. [Eff and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-35 Hours of operation. The department shall establish the hours during which the parks will be open. Hours of operation shall be posted in each district office and may vary depending on the location of the park and the season of the year. Anyone using a park during the hours when the park is closed may be considered a trespasser and may be subject to prosecution. [Eff and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-36 Closure. At the discretion of the department, a park may be closed for renovation, for safety or for security purposes. The department shall post notice of closure at the district office in which the park is located and at the specific park. [Eff and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-37 Permits. The department shall post permit requirements in the applicable district office. The department shall attach a copy of permit requirements to approved permits. Park use permits are required for:

- (1) Any group with 26 or more park users;
- (2) Exclusive use of any pavilions; or
- (3) Overnight camping.

The department may require security, traffic control, portable toilets, extra trash receptacles, lifeguards, insurance, security deposits or any other items that the department, in its sole discretion, may

deem necessary, given the size and complexity of the event for which the permit is issued. The department shall determine the maximum size for any event and the maximum length of stay for overnight camping, and shall post those limits in the district offices. Anyone required to have a permit shall have the appropriate permit and identification at the park at all times and shall, upon request, show those items to law enforcement officers and other authorized representatives. Anyone without a required permit may be considered a trespasser and may be subject to prosecution. [Eff and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-38 Permit application. An application for a park use permit may be obtained at the appropriate district office, subject to the following minimum guidelines and any other additional provisions that the department may deem necessary:

- (1) Permit applications may be filed from 8:00 a.m. to 4:00 p.m., Monday through Friday, except holidays;
- (2) Permit applicants must be 18 years or older;
- (3) Permit applications must be in writing on a form provided by the department and contain all information required; and
- (4) Permit applications for events or exclusive use of facilities must be received at least fourteen calendar days before the event and no earlier than one calendar year in advance;
- (5) Camping permit applications must be received at least one working day before the requested date and no earlier than ninety days in advance. [Eff and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-39 Permit Approval. Park use permits shall be approved or denied by the district office supervisor in whose jurisdiction the park is located. Persons who have been denied a permit may make written requests for reconsideration to the chairperson. Permits shall not be transferred. [Eff and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-40 Permit Denial. Permits may be denied when:

- (1) The premises or park facilities are closed;
- (2) The person applying for the permit has received a permit during the previous ninety days;
- (3) There are inadequate facilities to meet the needs of the applicant for the permit;
- (4) The premises or facilities will be used by persons other than the person applying for the permit; or
- (5) The person applying for the permit has a prior record of noncompliance with permit conditions or has committed prior violations of this subchapter. [Eff and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-41 Permit priorities. In general, permits shall be issued on a first-come, first-served basis, with preference given to native Hawaiian beneficiaries and organizations. In no case, however, shall a native Hawaiian be discriminated against because of place of residence. [Eff and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-42 Fees. The department, in consultation with the park advisory council, may establish fees for the use of park facilities. Special fees may be charged for events that require unusual departmental assistance. Fees charged by the department shall be made known to the park user before a permit is issued. Additionally, deposits may be required of any permit recipient in order to ensure that rules are met and the area is left in a clean and sanitary condition. A notice listing any required fees or deposits shall be posted in the applicable district office. [Eff and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-43 Penalties. (a) All permittees shall, upon request, show the permit to any law enforcement officer or authorized representative. Anyone using the park without a required permit may be asked to leave. Any such person who refuses to leave may be considered a trespasser and may be subject to prosecution.

(b) Anyone violating the provisions of this subchapter may be required to repair or pay for any damage to public or private property, may be subject to confiscation of equipment used in the violation, and may be subject to applicable charges under the law. All plants, objects, or artifacts removed illegally from the premises shall be returned to the department. [Eff and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §204)

§10-4-44 Commercial and private operations. The following activities are prohibited in department parks:

- (1) Engaging in or soliciting business;
- (2) Displaying, posting or distributing notices or advertisements; and

- (3) Filming, photographing, video and audio recording, or any other media production that involves the use of professional casts, models, setting, or crews, by any person other than legitimate newspaper or television news personnel.

Exceptions to the above may be granted in writing by the chairperson subject to any terms, conditions, and fees deemed by the chairperson to be fair and reasonable. [Eff and comp 10/26/98; comp] (Auth: HHC Act §222) (Imp: HHC Act §204)

§§10-4-45 to 10-4-50 (Reserved).

SUBCHAPTER 4

PLANNING SYSTEM

§10-4-51 Purpose. The purpose of the planning system is to further the objectives of the act by systematically coordinating the management of Hawaiian home lands and programs in a manner that is comprehensive, consistent, and collaborative.
[Eff and comp] (Auth: HHC Act §222)
(Imp: HHC Act, all)

§10-4-52 Definitions. As used in this subchapter, unless context clearly provides otherwise: "Beneficiary consultation" means the department's direct outreach to lessees, applicants, and native Hawaiians as defined by the act as part of the department's or commission's decision-making process.

"Implementing action" means those actions that implement the plans and the overall planning strategy of the department, including but not limited to, budgeting, legislation, rulemaking, adoption of procedures, and land dispositions.

"Plans" mean the general plan, island plans, program plans, development plans, regional plans, and special area plans. [Eff and comp]
(Auth: HHC Act §222) (Imp: HHC Act, all)

§10-4-53 General framework. The planning system shall consist of a three-tier hierarchy of plans. Tier 1 is the top tier consisting of the general plan and shall establish overall policy. Tier 2 and Tier 3 are the lower tiers and shall be guided by the general plan. Tier 2 and Tier 3 focus with increasing specificity on programs or geographic areas. The planning system shall also include implementation mechanisms that link with the plans, as well as evaluation mechanisms to refine the plans and implementing actions. [Eff and comp]
(Auth: HHC Act §222) (Imp: HHC Act, all)

§10-4-54 Adoption and amendment procedures. (a) Adoption. All plans in each of the three tiers shall be adopted by a majority vote of the commission. Any comprehensive update or interim amendment requires a majority vote of the commission to be effective. Beneficiary consultation shall be required as part of any comprehensive update or interim amendment.

(b) Comprehensive update. Comprehensive updates to plans provide an opportunity to refine or refocus based on changes in conditions, new trends, emerging issues, or past performance. Unless otherwise specified, an adopted comprehensive update shall supersede and void the entire previous plan.

(1) Tier 1. The general plan in tier 1 shall be updated at least every twenty years. The

department at its discretion may initiate the update sooner than the twenty years;

- (2) Tier 2. The plans in tier 2 shall be reviewed every eight years and updated at the discretion of the department if an update is justified.
- (3) Tier 3. The plans in tier 3 shall be reviewed every four years and updated at the discretion of the department if an update is justified.

(c) Interim amendments. Between comprehensive updates, tier 1 and tier 2 plans may be amended upon beneficiary consultation appropriate to the plan as set forth in section 10-4-60, and a majority vote by the commission. Initiation of the amendment shall be as follows:

- (1) The chairman may propose, in writing, interim amendments to any of the plans by first notifying the commission and then initiating beneficiary consultation appropriate to the plan as set forth in section 10-4-60; or
- (2) A beneficiary may submit an application form requesting the chairman to initiate an interim amendment. The application form shall include information prescribed by the department. Upon receipt of a completed application form, the department shall have ninety days to respond to the application. Should the department initiate an amendment, the department shall prepare a report of its recommendation and initiate beneficiary consultation appropriate to the plan as set forth in section 10-4-60.

(d) Consistency and conflicts.

- (1) Where conflicts exist among plans, the higher tier shall prevail over the lower tier.
- (2) Implementation actions set forth in section 10-4-58 shall be consistent with applicable plans. A commission member, beneficiary, or interested member of the public, may request

the commission review a proposed or past action by the department for consistency. The request must detail the disputed action and describe why the petitioner believes disputed action is inconsistent with a particular plan. The commission may direct the chairman to prepare a response to the request.

- (3) Upon declaration of an emergency by the governor or mayor, the department may proceed with an action that is inconsistent with a plan, provided that the chairman has notified the commission. The chairman shall propose an amendment to the relevant plan or plans at the earliest practicable time to restore consistency.

(e) Repository. The department shall make available to the public through its website all current adopted plans as may be amended. [Eff and comp] (Auth: HHC Act §222) (Imp: HHC Act, all)

§10-4-55 General plan (tier 1). Based on the act, the general plan shall establish statewide polices that guide land management and programs. At a minimum, the general plan shall:

- (1) Establish a uniform system of land use designations that all island plans shall use;
- (2) Establish the relationship between land use designations and the applicable types of land dispositions;
- (3) Establish criteria to identify suitable lands for homesteading;
- (4) Establish criteria to determine available lands not required for homesteading within the planning period;
- (5) Establish criteria to identify lands for revenue generation;
- (6) Establish criteria to identify lands for

- community use and policies to govern how the community could manage such lands for community building;
- (7) Establish level of service standards for infrastructure and community facilities, or specify a program plan or methodology to develop such standards; and
 - (8) Specify indicators to measure progress and evaluate effectiveness in meeting policy goals. [Eff and comp]
(Auth: HHC Act §222) (Imp: HHC Act, all)

§10-4-56 Island and program plans (tier 2). (a)

Island plans. Island plans shall be prepared for islands where there are over one hundred acres of Hawaiian home lands. If the landholdings are less than one hundred acres, the department may initiate a tier 3 plan. At a minimum, island plans shall:

- (1) Apply the criteria from the general plan to identify suitable homestead lands, including areas for new development, infill, and redevelopment;
- (2) Apply criteria to determine available lands not required for homesteading, including areas for revenue generation, community use, and other non-homesteading uses designated in the general plan;
- (3) Prioritize the development or redevelopment of designated homestead lands based on defined criteria;
- (4) Identify infrastructure requirements; and
- (5) Analyze state and county plans to identify potential impact on department land use and infrastructure.

(b) Program plans. Program plans are statewide plans that inform or carry out general plan policies and priorities for specific functional areas, such as but not limited to affordable housing, native Hawaiian development, energy, disaster preparedness, community resiliency, agriculture, and water resources. Program

plans may be specified in the general plan or initiated by the chairman. To initiate a program plan, the chairman shall propose the subject matter of the plan to the commission, and upon a majority vote in favor, proceed with the preparation of the plan.
[Eff and comp] (Auth: HHC Act §222)
(Imp: HHC Act, all)

§10-4-57 Development, regional, and special area plans (tier 3).

(a) Development plans. Development plans provide more detail for specific projects identified in island plans for purposes of establishing feasibility, budget, and schedule. To assess feasibility, the development plan shall consider a diversity of housing types and prices appropriate for the target wait list, estimate development costs, and estimate the costs to be respectively borne by the department and the prospective lessees or licensees as the case may be. The budget presented in the adopted development plan shall be the basis for CIP budget requests. The chairman may select the projects identified in the island plan that require a development plan, and proceed with the preparation of the development plan upon notice to the commission.

(b) Regional plans. Regional plans build a sense of community and capacity, stimulate partnerships for development and improvements, facilitate beneficiary participation in issues and areas of concern, and identify priority projects within existing and planned homestead areas. The plan may focus on a particular homestead community or several homestead communities in the region. At a minimum, the regional plan shall document current conditions and trends, analyze state and county plans to identify potential impact on homestead areas, and identify a prioritized list of projects important to the community and the department. The chairman may prepare a regional plan with the support of a majority vote of the commission.

(c) Special area plans. Where an island plan designates special districts, the chairman may prepare a special area plan with the support of a majority vote of the commission. [Eff and comp] (Auth: HHC Act \$222) (Imp: HHC Act, all)

§10-4-58 Implementation. (a) Budgets, legislation, rules, procedures, land dispositions and other implementing actions shall be guided by the plans. The chairman shall develop a rational overall strategy to prioritize and allocate resources and present this strategy to the commission in the first year of the chairman's term, which the chairman may amend and present to the commission as needed from time to time. The overall strategy should: link budgets to policies, programs, and plans; establish homestead and revenue-generation development priorities; identify disposition strategies for unencumbered lands; and identify high priority regional plan projects that are likely to be implemented within the timeframe covered by the strategy.

(b) Fiscal implementation. The department shall maintain a multi-year capital improvement program to be updated annually and approved by a majority vote of the commission. The funded projects shall be consistent with the plans and overall strategy. The budget shall identify existing and potential funding sources that would be considered. The operational budget shall be reasonably consistent with the plans and overall strategy.

(c) Legal implementation. Legal implementation mechanisms include, without limitation, legislative amendments to the act; adoption, amendment, or repeal of administrative rules; and adoption of internal procedures. The chairman may pursue any of these mechanisms guided by the plans and overall strategy, with final approval by a majority vote of the commission.

(d) Land dispositions. The land dispositions issued by the department and approved by a majority vote of the commission shall be guided by the general plan, island plans, overall strategy, and any other applicable plan or policy adopted by the commission, and aligned with the land uses identified in the island lands. [Eff and comp] (Auth: HHC Act §222) (Imp: HHC Act, all)

§10-4-59 Evaluation. The purpose of an evaluation system is to improve the planning system and implementation effectiveness. The chairman shall present an evaluation report to the commission, which may be combined with the report required under section 222 of the act. The general plan shall specify evaluation indicators, and the department shall collect and analyze pertinent data in the evaluation report. The chairman may include other measures of performance and effectiveness. The evaluation report shall include recommendations for improvements as applicable. The chairman shall bring to the attention of the commission development plans that are completed or outdated, and a majority vote of the commission shall void or update such plans. [Eff and comp] (Auth: HHC Act §222) (Imp: HHC Act, all)

§10-4-60 Beneficiary consultation. (a) Meaningful and timely consultation with beneficiaries promotes trust, partnership, and civic engagement. The type of consultation shall be appropriate to the potential impact of the decision or action.

(b) Types of consultation. The type of consultation is determined by the type of plan or implementing action:

- (1) Comprehensive. Comprehensive consultation is statewide. Notice shall be provided to all existing homesteaders, all waiting lists

applicants, and other native Hawaiians who have registered with the department. The notice shall describe the proposed action and the date, time, and place of a public meeting to be held on each island. Comprehensive consultation shall apply to the preparation and amendment of Tier 1 plans, preparation and amendment of program plans, and promulgation of administrative rules.

- (2) Place-based. Place-based consultation is geographically specific. Notice shall be provided to existing homesteaders, waiting lists applicants, and other native Hawaiians who have registered with the department and who are associated with a geographic area impacted by the proposed action. The chairman shall determine the appropriate scope of the notice. The notice shall describe the proposed action and the date, time, and place of a public meeting to be held within the geographic area. Place-based consultation shall apply to the preparation and amendment of island plans, preparation and amendment of tier 3 plans, and proposed projects that require an environmental assessment or environmental impact statement.
- (3) Ad hoc. Ad hoc consultation consists of the formation of an advisory body to provide input to the department for the preparation and amendment of any plan or implementing action. The chairman may select the advisory body, subject to consultation and ratification by the commission, for the preparation or amendment of any plans. Such ad hoc consultation for the preparation and amendment of plans shall supplement and not replace comprehensive or targeted consultation. The chairman may select an ad hoc body for an implementing action and provide a report to the commission.

(c) Consultation methods. The department shall use its best effort to employ diverse and creative notification and participation methods that reach the intended audience in the most effective yet efficient manner. [Eff and comp] (Auth: HHC Act §222) (Imp: HHC Act, all)

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes and other notes to reflect these amendments and compilation is not underscored.

4. These amendments to and compilation of chapter 10-4, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

JOBIE M. K. MASAGATANI, Chairman
Hawaiian Homes Commission

APPROVED AS TO FORM:

Deputy Attorney General