

STATE OF HAWAII

DEPARTMENT OF HAWAIIAN HOME LANDS

January 19-20, 2021

To: Chairman and Members, Hawaiian Homes Commission

From: Peter "Kahana" Albinio, Jr., Acting Administrator
Land Management Division

Jobie Masagatani, Executive Assistant
Office of the Chairman

Subject: Approval of New Revocable Permit Pilot Program

RECOMMENDED MOTION/ACTION:

That the Hawaiian Homes Commission approve LMD's New Revocable Permit Pilot Program as outlined below and amended:

BACKGROUND:

The revocable permit (RP) is a document utilized by the Department to grant permission to an individual or an entity to occupy and utilize Hawaiian home lands on a short-term basis. In the past, revocable permits allowed for permitted use of Hawaiian home lands on a month-to-month basis for up to a 12 month period with permission renewed on an annual basis. This permit could be cancelled by DHHL upon 30 days advance notice in writing to the permit holder.

In the past, RPs were utilized by DHHL as a land management tool to provide for presence on DHHL lands thereby reducing the costs for land management related activities including but not limited to preventing trespassing, dumping, illegal activity, fires, etc.; fencing; posting and maintaining adequate signage; landscaping; etc. RPs have also added to DHHL's revenue stream, although revenue generation is usually a secondary benefit of this primarily land management tool.

In 2014, DHHL stopped issuing RPs as it undertook an evaluation of its RP program, and since that time several discussions have occurred with the Commission as to the best way to proceed with reforming DHHL's RP program.

In November 2020 Commissioners provided substantive feedback to staff on item F-2 "Approval of Revised Application and Review Process for New Revocable Permit Pilot Program". This feedback is incorporated into the New Revocable Permit Pilot Program discussed in the section, below. The following Discussion lays out all elements of the RP Program as envisioned when fully rolled out. However, since this is intended to be a pilot, after Phase 1, an evaluation is anticipated and adjustments to the program elements will likely occur.

DISCUSSION:

New Revocable Permit Pilot Program

AMENDED
ITEM NO. F-1

Part 1: -- Pilot Program Phases:

The purpose for this pilot is to introduce the program on a limited basis to test the new concepts and adjust before rolling out the program on a broader scale. To this end, the New RP Pilot Program will roll out in two phases:

Phase 1: Outreach and Application is intended to focus on reaching out to beneficiaries, beneficiary organizations, and beneficiary businesses to inform these entities of the change in program and invite participation. Phase 1 will be limited to a small group of parcels (1-3, final selection to be determined) and is focused primarily on outreach and the selection process for tenants. For the Phase 1 parcels, rent will be determined utilizing the current methodology, although upon acceptance by the Commission and implementation of the new methodology for determining rents, the rent will be adjusted appropriately.

Phase 2: Parcel Identification and Rent Methodology is intended to include establishing a criteria to evaluate and identify parcels that could be considered for a longer-term land disposition, such as a general lease, and the remaining parcels that can be utilized on a short term basis. Parcels that could be available for a longer-term disposition may be phased into general leasing over time (given staffing constraints). As this phase-in occurs, RPs may be available until the property is put into general leasing.

Phase 2 will also include a review of the methodology to determine upset rent for a parcel under a RP.

Following any adjustments to the Outreach, Application, and Selection processes and the completion of Phase 2, staff will return to the HHC for final approval of the New Revocable Permit Program including the full roll out schedule.

Part 2: -- Types of RP:

To better reflect the land use permitted by the RP, the new program will issue three types of RPs.

- 1) General RP – similar to the typical RP, this RP is utilized when the primary purpose of the permitted use is to provide a presence on the land, thereby reducing the cost to DHHL for land management related activities. Further, RPs that do not fall into either one of the following two categories would fall into this General category.
- 2) Business RP – This RP is utilized by DHHL when the use is expected to benefit the trust primarily through the generation of revenue.
- 3) Community RP – This RP is utilized by DHHL when the use is for a project that primarily benefits a particular geographic community/area or that is intended to provide services that directly benefit a community of beneficiaries, e.g., DHHL applicants on a particular island. Projects on adjacent lands to Kuleana agricultural or pastoral communities are eligible. For community projects that are in their initial stages of due diligence for a longer-term disposition like a license (regional priority projects, for example) the disposition DHHL will issue is a Right of Entry.

Part 3: Minimum Qualifications:

Entities interested in receiving an RP must meet the following required qualifications before their application is scored:

- (1) In Compliance with State of Hawaii vendor requirements (e.g. Hawaii Compliance Express). If the applicant is an individual requesting a General RP for a remnant parcel and intends to simply maintain the property, two recent years of both State and Federal tax returns may be substituted for compliance with Hawaii Compliance Express.
- (2) Insurance – Tenants must provide proof of its ability to procure and maintain, at its own cost and expense in full force and effect throughout the term of the permit, general liability insurance with a company authorized to do business in the State of Hawaii at the amounts required by the type¹ of RP naming the State of Hawaii, Department of Hawaiian Home Lands (DHHL) as additional insured.
- (3) No EA – The use of land proposed by the tenant can NOT trigger an environmental assessment as determined by DHHL’s Planning Office.

Part 4: Selection Criteria

For General RP:

CRITERIA	POINTS
(1) Proposed Use and Ability to Deliver – “Good Idea/Plan” a. Applicant provides well thought out plan and demonstrated ability to execute.	0-25
(2) “Good Tenant” – a. Applicant has a history as an excellent tenant. If no recent lessor or landlord relationships exist for tenant (within last 2 years) evidence of excellent credit history may be considered along with professional, trade, and commercial references.	0-25
(3) Benefit to DHHL and its beneficiaries a. Proposed monthly rent (20 points automatically credited if minimum DHHL rent is met) b. Brief statement of applicant’s proposed benefits, directly and indirectly to DHHL beneficiaries. Support to organizations that support Native Hawaiians or the public at large may be considered if evidence is provided, that resources are targeted/directed to DHHL beneficiaries in some way. Examples include (but are not limited to): • Active outreach to beneficiaries for job training, internship, or	0-50

¹ A Community RP or General RP issued for a neighboring homestead lessee caretaking an adjacent remnant DHHL parcel may not require the same level of insurance as a Business RP.

<p>employment opportunities.</p> <ul style="list-style-type: none"> • Targeted contributions (monetary or in-kind volunteer services)² to organizations that provide direct services to beneficiaries e.g., donations to food banks, health, homeless services, or any other social service organizations that provide direct services to homestead areas or areas with a high beneficiary population. • Targeted contributions (monetary and/or in-kind volunteer services) to self-help housing organizations with demonstrated history of building homes on Hawaiian home lands. • Applicant is a beneficiary. • Other proposed services. 	
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Documentation for Application:

- Statement of intended use and proposed improvements, if any.
- Proof of funds for improvements, if applicable, through bank statements, credit line availability, loan pre-approval, or other source of financing.
- Resume of principals and team members demonstrating any knowledge and experience in the specific field/area of the proposed use.
- Federal and state tax returns and financial statements (if applicant is a business or non-profit entity) for the prior two calendar years and YTD current year. If applicant is an individual copy of up-to-date credit report should be provided.
- Any proof of history as excellent tenant with no termination or enforcement actions within the last 2 years.
- Excellent history with DHHL (if currently or a prior lessee or license holder) and
- At least 2 and no more than 5 professional/commercial references
- Proof of funds through the most recent bank statements that amounts for the security deposit of two times (2x) the proposed monthly rent is immediately available. If the applicant is selected, a cashier's check must be submitted prior to final execution of the RP.

For Business RP:

Business RPs are intended for DHHL properties that show the greatest potential to earn income for the RP applicant and DHHL. It is intended for more mature businesses with a longer track record. Therefore, the documentation required from the RP applicant is more rigorous than the documentation required for a General or Community RP.

For business entities or individuals that are just starting out, the general RP is the best way to demonstrate track record on DHHL lands.

CRITERIA	POINTS
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² The number of hours expected to be contributed in a year should be noted along with any specialized skills that may be included (e.g. attorney services, accounting services, carpentry, electrical, etc). Monetary donations or in-kind donations of volunteer hours require a letter confirming the donation from the receiving organization for the tenant to remain in compliance if an RP is awarded.

<p>(1) Proposed Use and Ability to Deliver –“Good Idea/Plan”</p> <p>a. Applicant provides well thought out plan and demonstrated ability to execute.</p>	<p>0-20</p>
<p>(2) “Good Tenant” –</p> <p>a. Applicant has a history as an excellent tenant. If no recent lessor or landlord relationships exist for tenant (within last 2 years) evidence of excellent credit history may be considered along with professional, trade, and commercial references.</p>	<p>0-25</p>
<p>(3) Benefit to DHHL and its beneficiaries</p> <p>a. Proposed monthly rent (20 points automatically credited if minimum DHHL rent is met as a base rent.) Applicant can propose additional rent options including higher base rent, base plus a percentage rent, etc. to strengthen application.</p> <p>b. Brief statement of applicant’s proposed benefits, directly and indirectly to DHHL beneficiaries. Support to organizations that support Native Hawaiians or the public at large may be considered if evidence is provided, that resources are targeted/directed to DHHL beneficiaries in some way.</p> <p>Examples include (but are not limited to):</p> <ul style="list-style-type: none"> • Active outreach to beneficiaries for job training, internship, or employment opportunities. • Targeted contributions (monetary or in-kind volunteer services)³ to organizations that provide direct services to beneficiaries e.g., donations to food banks, health, homeless services, or any other social service organizations that provide direct services to homestead areas or areas with a high beneficiary population. • Targeted contributions (monetary and/or in-kind volunteer services) to self-help housing organizations with demonstrated history of building homes on Hawaiian home lands. • Applicant is a beneficiary. • Other proposed services. 	<p>0-55</p>

Documentation for Application:

- Statement of intended use and proposed improvements, if any.

³ The number of hours expected to be contributed in a year should be noted along with any specialized skills that may be included (e.g. attorney services, accounting services, carpentry, electrical, etc). Monetary donations or in-kind donations of volunteer hours require a letter confirming the donation from the receiving organization for the tenant to remain in compliance if an RP is awarded.

- Proof of funds for improvements, if applicable, and ability to pay rent on an ongoing basis through bank statements, credit line availability, loan pre-approval, or other source of financing.
- Proof of funds through the most recent bank statements that amounts for the security deposit of two times (2x) the proposed monthly rent is immediately available. If the applicant is selected, a cashier’s check must be submitted prior to final execution of the RP.
- Business plan with 3-year proforma.
- Resume of principals and team members demonstrating knowledge and experience in the specific field/area of the proposed business use, including all professional certifications held.
- State and federal tax returns and financial statements for the prior three calendar years and YTD current year.
- Proof of history as excellent commercial tenant proof of history as excellent tenant with no termination or enforcement actions within the last 3 years minimum.
- Proof of holding all permits and licenses required for the proposed business use for the last three years minimum.
- At least 2 and no more than 5 professional/commercial references, including bank and banker).
- Excellent history with DHHL (if currently or a prior lessee or license holder); and
- Proof of written understanding and acknowledgement that proposed use is exempt from preparing an Environmental Assessment under HRS Chapter 343, per DHHL’s June 30, 2015 exemption list as approved by the Environmental Council, which shall demonstrate knowledge and/or personal experience in dealing with federal, state, and county regulations and agencies governing such use.

For Community RP:

CRITERIA	POINTS
(1) Proposed Use and Ability to Deliver a. “Good Idea/Plan”-- Applicant provides well thought out plan and demonstrated ability to execute.	0-25
(2) “Good Tenant” – a. Applicant has a history as an excellent tenant. If no recent lessor or landlord relationships exist for tenant (within last 2 years) evidence of excellent credit history may be considered along with professional, trade, and commercial references.	0-25
(3) Adequate Outreach and Consultation with Targeted Community	Meets/Does Not Meet

Projects must receive approval by the Hawaiian Homes Commission to receive a Community RP. Community RPs may be issued on a rolling basis as community projects are considered.

To be eligible to receive a community RP applicant must meet the minimum qualifications and score at least a combined score of 40 points (80% of total) for criteria 1 & 2 under the General RP program. The applicant is expected to maintain the premises for the term of the permit even

if the community project does not move forward in any substantive way during the term and pay the minimum rent (if it is not gratis).

Applicant must also demonstrate that adequate outreach and consultation with the targeted community was conducted. A report identifying what activities were conducted and attendees that were reached (through sign in sheets; mail out lists; meeting minutes; etc). should be submitted for staff review and Commission consideration as part of the approval process.

Note that a community RP is appropriate for a use that is intended to be short term (or a trial basis) and minimal improvements to the land. Examples include farmer's markets, tented areas for community movie nights, community garden, etc.

Documentation for Application:

- Statement of intended use and proposed improvements, if any.
- Proof of funds for improvements, if applicable, through bank statements, credit line availability, loan pre-approval, or other source of financing.
- Resume of principals and team members demonstrating any knowledge and experience in the specific field/area of the proposed use.
- Federal and state tax returns and financial statements (if applicant is a business or non-profit entity) for the prior two calendar years and YTD current year. If applicant is an individual copy of up-to-date credit report should be provided. This requirement may be waived if rent is intended to be gratis.
- Any proof of history as excellent tenant with no termination or enforcement actions within the last 2 years.
- Excellent history with DHHL (if currently or a prior lessee or license holder)
- At least 2 and no more than 5 professional/commercial references
- Community outreach and consultation report

Part 5: Term

All RPs may be renewed annually for up to five years from the initial start of the RP if the tenant is in compliance with all of the terms and conditions of the RP. After five years, if the property is still available for a short-term use, applicants must resubmit an application for an RP and go through the competitive process to receive a new RP (General/Business) or a staff review and recommendation (Community RP).

Part 6: Selection Process – General and Business RPs

A Committee of no less than three (3) and no more than five (5) individuals shall review and score the applications. Committees may include non-staff individuals with sufficient expertise to assist in the review. The Selection Committee for Business RPs should include at least 1 individual familiar with business, banking, commercial real estate, business/real estate law, finance, or development.

If more than one entity applies for a parcel, the applicants will be ranked in order of their score and the ranking shall be shared with the Commission as part of the submittal seeking approval. If more than one entity applies for a parcel and if the highest total score is the same for two or more applicants, the names of the applicants with the highest total scores will be placed in a container and selected at random by a staff member not participating on the Selection Committee with at least one witness present.

Applicants not awarded may contest and seek a reconsideration by the Commission with deadlines mirroring the State's procurement process. Only one reconsideration is allowed per selection process by the Commission to consider all protests to the award.

If a parcel receives a single application, the total score must be at least 80 to be considered for award.

Part 7: Outreach

LMD and OCH staff will engage with ICRO staff on a suitable outreach plan to inform interested beneficiaries, beneficiary organizations, beneficiary-owned businesses, and Native Hawaiian organizations and Native Hawaiian owned businesses of this Pilot Program and DHHL's intention to move to a new method of distribution of its RPs.

It is anticipated that outside services will need to be procured to assist in the implementation of this Pilot Program given the limited staff resources available in LMD. Once a more defined roll out schedule is determined, existing RP holders will also need to be notified that renewal of their RP may not be possible and continued use will require an application and selection.

Part 8: Compliance

The Department to conduct an annual physical inspection of premises to ensure compliance with all terms and conditions of the Revocable Permit. Department shall investigate any all reports of improprieties of the permit holder. All information to be provided to the Commission at the annual island Commission meeting for continuance of the Revocable Permit.

The Permit Holder shall provide an annual notarized statement indicating full compliance to the terms and conditions of the Revocable Permit.

AUTHORITY

Authority to Issue Revocable Permits

- Hawaiian Homes Commission Act, 1920, as amended, Section 204(2)
- Hawaii Revised Statutes, Chapter 171, Section 171-55, Permits, as amended
- Hawaii Administrative Rules, Title 10, Department of Hawaiian Home Lands, Chapter 4, Management of Hawaiian Home Lands, Subchapter 1, Land Management, Section 10-4-1 Lease of Lands.

RECOMMENDATION

Land Management Division and the Office of the Chairman respectfully recommends approval of the motion as stated for the following reasons:

- The use of a Pilot Program in a phased approach allows for adjustments to be made and a step-by-step approach as DHHL moves toward full implementation of a new Revocable Permit program that provides for greater transparency and fairness to the DHHL's beneficiaries and the general public.

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- Improve efforts to ensure the safe, appropriate, and approved use of Hawaiian home lands.
- Strengthen DHHL's ability to fulfilling its mission in servicing native Hawaiian beneficiaries; and
- Enhances DHHL's ability to maintain and manage its lands and potentially increase the revenues generated for the trust.