


STATE OF HAWAII

DEPARTMENT OF HAWAIIAN HOME LANDS

January 28, 2019

TO: Chairman and Members, Hawaiian Homes Commission

FROM: Hokulei Lindsey, Administrative Rules Officer 
Office of the Chairman

SUBJECT: Approval of Recommendations for Department of Hawaiian
Home Lands Proposed Amendments to Title 10, Hawaii
Administrative Rules for Supplemental Dwelling Units;
and to Proceed with Rulemaking under Hawaii Revised
Statutes Chapter 91

RECOMMENDED MOTION/ACTION

That the Hawaiian Homes Commission approve recommended changes for proposed administrative rules for Supplemental Dwelling Units; and to proceed with rulemaking under Hawaii Revised Statutes Chapter 91.

DISCUSSION:

In accordance with the Administrative Rules Development, Review, and Amendment Process adopted by the Hawaiian Homes Commission in July 2015, the Department of Hawaiian Home Lands conducts Beneficiary Consultation before initiating rulemaking under Ch.91, HRS.

The HHC approved the DHHL's request to proceed with beneficiary consultation regarding proposed administrative rules amendments for DCCRs; and Multi-Family, Rentals, and Kupuna Housing; and Supplemental Dwelling Units at its December 2017 meeting. From April 30, 2018 to July 30, 2018, the DHHL conducted statewide beneficiary consultation meetings to discuss with and get feedback from beneficiaries about the proposed rule amendments. The amended Beneficiary Consultation Report was presented as Item No. C-2, "Acceptance of Amended Beneficiary Consultation Report on Department of Hawaiian Home Lands Proposed Amendments to Title 10, Hawaii Administrative Rules for DCCRs; Multi-Family, Rentals, and Kupuna Housing; and Supplemental Dwelling Units" at the October 2018 regular meeting.

Based upon comments received through the beneficiary consultation process, subsequent evaluation, and feedback from the Commission (see Exhibit A), staff recommends the following changes to the draft rules related to Supplemental Dwelling Units. The draft rules, inclusive of the changes listed below are attached as Exhibit B; proposed changes are underlined in the rule text.

- **§10-3-40.02:** Broaden definition of "supplemental dwelling unit" to include attached or detached units and county terminology to reduce potential ambiguity.
- **§10-3-40.05:** Include all islands in pilot program
- **§10-3-40.05(2) and §10-3-40.07:** Remove references to floor area and lot size

Analysis of Transcribed Meeting Notes

The chart below summarizes the transcribed meeting notes into patterns or themes and provides a staff response. It also identifies specific suggestions from beneficiary comments that resulted in a recommendation to change the draft proposals.

Question	Draft Provision	Comments/Themes	Response
Do you support supplemental dwelling units on HHL? Why?	General	Comments indicated widespread support for SDUs to keep families together whether it be for kupuna to age in place or for adult children to have a home and keep costs down. There was concern about the cost to build including permits and utility connections, water in particular. There was also concern about parking. And questions regarding SDUs on lots in planned communities.	Section 10-3-40.07 of the proposal includes an option to dedicate the SDU for ohana use as well as an option for long term rental to a native Hawaiian. The proposal generally requires lessees comply with the requirements of the respective counties, which typically requires additional parking be provided; 10-3-40.05 and 10-3-40.07. Whether SDUs can be built in planned communities will depend on county regulation regarding lot size as well as the

			DCCRs that govern a particular community.
When should SDUs be allowed? What criteria should DHHL use to make that determination?	10-3-40.05 Lot requirements; 10-3-40.06 Lessee obligations, generally; 10-3-40.10 Existing structures, non-compliance	There was a general mix of comments many suggesting/supporting reliance on county criteria while other comments urged DHHL should develop its own code.	At present, relying on the counties for criteria and building code is the practical and readily available option for quick implementation. <u>Staff recommends</u> removing lot size and floor area references from 10-3-40.05 and 10-3-40.07 and instead refer to county requirements.
The proposal is a pilot project for residential lots on Oahu and Hawaii Island. What do you think about that?	10-3-40.03 Pilot program	Comments supported initiating SDU program with a pilot program and review as proposed. However, attendees consistently suggested their island should be included. Another consistent comment was that agriculture and pastoral lots should be included and the program should not be limited to residential lots.	Although originally included for administrative and workload management, based on beneficiary comments and Commission feedback, <u>staff recommends</u> the proposal include all islands in the pilot project. However, staff recommends the pilot program remain limited to residential lots. Agriculture lots can be subdivided and supplemental dwellings can be build on subsistence agriculture lots under existing section 10-3-26.
Who can live in an SDU on HHL?	10-3-40.07(b) Supplemental dwelling units; 10-3-40.08 Landlord-tenant code compliance;	Comments had strong support for ohana living in the SDU and general support for renting only to "native Hawaiian" as defined by the Act. However, a fair amount of	The HHCA sections 208 and 209 provide lists of relatives who qualify for transfer and a list that qualifies for successorship.

	10-3-40.09 Fair housing act compliance	comments would define ohana to include more relations than is included in the HHCA.	HHCA section 209 provides that with the approval of the department a lessee may rent living space to a native Hawaiian or native Hawaiians. Section 10-3-40.02 defines "ohana occupant" as a qualified relative under HHCA section 209(a).
Size of an SDU has an impact on the value of the structure. Should DHHL limit the size of the SDU based on an appraisal cap to limit liability for the trust and keep units on HHL affordable?	10-3-40.05 Lot requirements; 10-3-40.07(a) Supplemental dwelling units	Comments generally wanted to keep housing on the homelands affordable as possible. While some were willing to support an appraisal cap, others thought the ability to make a return on their investment/improvements if they chose to sell those improvements should not be limited. Suggestions tended toward what can the department do in terms of loans and subsidies to keep costs down.	The question was included as a means of looking ahead to discuss what solutions may be viable options to maintain affordability on the homelands, especially since an SDU will add potentially significant amount to the appraised value.

RECOMMENDATION:

Staff requests approval of the motion as recommended above.



HAWAIIAN HOME LANDS
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Supplemental Dwelling Units on Hawaiian Home Lands

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Programmatic Options

- Subsistence agriculture allows more than one dwelling.
- Option: limited expansion
 - Add agriculture and pastoral only; or
 - Add residential only
- Option: global expansion
 - All lot types may be eligible
- Option: pilot program
 - Open to all or certain lot types on one island for a set period of time

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Proposed Scope

- Pilot Program
 - Oahu and Hawaii Island
 - Residential lots
 - 5 years; evaluation after 3 years
- Beneficiary Consultation
 - Comments suggest expanding to all islands *and* all lot types

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Post Consultation Recommendation

- Staff Recommends:
- Pilot Program as proposed
 - Oahu and Hawaii Island
 - Residential lots
 - 5 years; evaluation after 3 years

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Why a Pilot Program?

- Complexity
 - Department: coordinate with counties; LDD review; Planning review; HSD lease amendments and NHQ; Enforcement
 - Lessees: financing; county permits; upgrades

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Why Oahu and Hawaii?

- MOU with Hawaii County Planning
- MOU in process with City and County of Honolulu
- Demand is greatest on Oahu

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Why Residential Lots?

- Agriculture and Pastoral lots are for farming and ranching uses
- Agriculture and Pastoral lessees in compliance can apply for workers' quarters
- Agriculture and Pastoral lessees can subdivide

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Why 5 Years, Evaluate After?

- Staff believes this is a realistic timeframe for a fair number of lessees to complete the process from SDU application to completed construction.
- Evaluation after 3 years forces the Department to analyze the process and make critical decisions on program improvement and viability.

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Participation Requirements

Lot

- SDU compatible with Island and Area plans
- Not prohibited by DCCR
- No existing supplemental dwelling*
- Meet county requirements

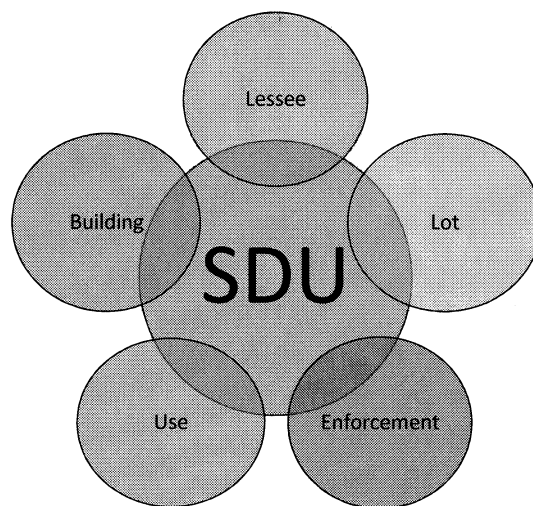
Lessee

- Good standing
- Reside in main house or SDU

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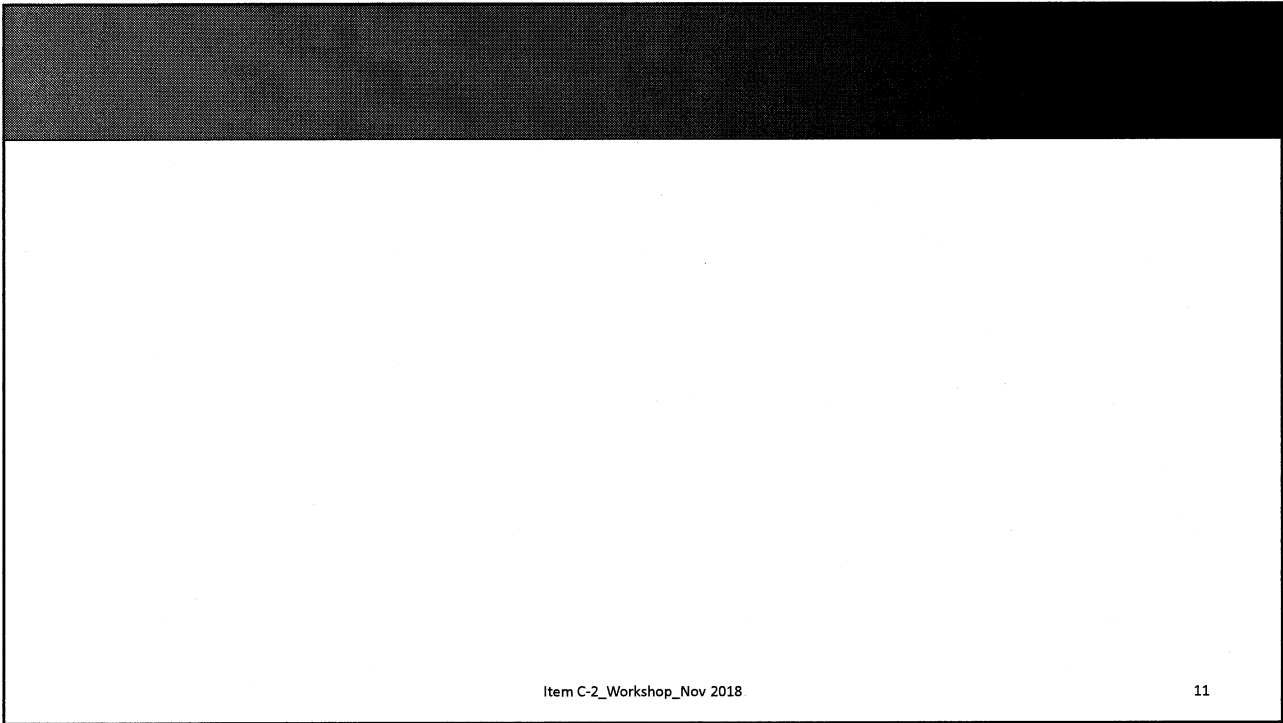
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Program Components



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TITLE 10

DEPARTMENT OF HAWAIIAN HOME LANDS

CHAPTER 3

NATIVE HAWAIIAN REHABILITATION PROGRAM

SUBCHAPTER 3.1

SUPPLEMENTAL DWELLING UNIT

§10-3-40.01 Purpose. The purpose of this subchapter is to provide residential lessees who qualify with the option to build a supplementary dwelling unit that could help ease certain housing issues facing native Hawaiian families like need, overcrowding, and financial strain. [Eff and comp] (Auth: HHC Act §222) (Imp: HHC Act §208)

§10-3-40.02 Definitions. As used in this subchapter, unless context clearly provides otherwise, "Dwelling unit renter" means the native Hawaiian who rents, from the lessee, either the primary dwelling unit or SDU individually, or with the native Hawaiian's immediate family, maintaining a common household to the exclusion of others.

"Good-standing" means the status of a lessee who is in compliance with all obligations contained in the residential homestead lease, the act, and this title.

"Ohana occupant" means the qualified relative under section 209(a) of the act who resides in either the primary dwelling or the ohana SDU individually or with the ohana occupant's immediate family.

"Supplemental dwelling unit (SDU)" means a dwelling unit that is supplementary to the primary dwelling, is attached or detached, is smaller in size, has a separate entry, and includes its own kitchen, bedroom, and bathroom facilities. SDU includes "ohana dwelling unit" in Hawaii county and "additional dwelling unit" in the city and county of Honolulu, Maui county, and Kauai county. [Eff and comp] (Auth: HHC Act §222) (Imp: HHC Act §208)

§10-3-40.03 Pilot program. Upon promulgation of this subchapter, the SDU program shall commence as a five-year pilot program ~~on the islands of Oahu and Hawaii.~~ The program shall be evaluated after three years. If deemed successful, the department may continue the program and expand to other islands, or the program shall terminate at the end of the five-year pilot period. Any SDU completed under the pilot program shall remain subject to this subchapter and any lease amendments made in furtherance of the program, even though the SDU program is discontinued ~~or not expanded to other islands or both.~~ [Eff and comp] (Auth: HHC Act §222) (Imp: HHC Act §208)

§10-3-40.04 SDU application and review. (a) The lessee shall complete the application and return it to the department. Within 30 days, the department shall review the application for completeness and notify the lessee whether the application is complete or incomplete. If an application is deemed incomplete, it will be returned to the lessee with further instruction about how to revise. If the

lessee fails to revise the application in accordance with the instructions provided and return the application to the department within 30 days, the application shall be cancelled.

(b) All applications require written approval from the commission before construction may commence. Such approval shall be considered only after a completed application has been submitted to the department, including a plan as to design, material, probable value of the SDU structure and related improvements, and any other information required by the department. The SDU structure and related improvements shall be permitted by and meet all building codes or other ordinances and regulations of the respective counties, except as otherwise provided by the commission. The department may take up to 60 days to render a decision on a completed application and notify the lessee of placement on the commission agenda or of the reasons for denying the application.

(c) The department shall not be required to finance construction of the SDU nor shall the department be liable for any cost or expense incurred in the processing and obtaining of the necessary county permits and approvals.

(d) The lessee shall complete construction of the SDU within one year after receiving notice that commission approval has been granted. [Eff and comp] (Auth: HHC Act §222) (Imp: HHC Act §208)

§10-3-40.05 Lot requirements. A residential lot may qualify for the SDU program if it meets the following requirements:

- (1) Constructing an SDU on the lot is compatible with the island plan and the area plan;
- ~~(2) The lot is at least 3,500 SF;~~
- (32) The lot is not landlocked;
- ~~(43)~~ The lot does not have more than one dwelling

unit, attached or detached, already existing on the property;

- (54) Private covenants, conditions, and restrictions do not prohibit SDUs; and
- (65) Respective county requirements for an additional dwelling unit. The department may, with the approval of the chairman, authorize a waiver of certain county regulatory requirements based upon specific area conditions, unique site characteristics, or other constraints related to the lot. [Eff and comp] (Auth: HHC Act \$222) (Imp: HHC Act \$208)

§10-3-40.06 Lessee obligations, generally. (a)

To participate in the SDU program, the lessee shall be in good-standing at all times.

(b) The lessee shall reside in either the primary dwelling or in the SDU. If the lessee moves into the SDU, the lessee shall provide the department with an updated mailing address in accordance with section 10-3-10(a).

(c) Failure of the lessee to maintain good-standing shall be cause for lease cancellation pursuant to section 10-3-28. [Eff and comp] (Auth: HHC Act \$222) (Imp: HHC Act \$208)

§10-3-40.07 Supplemental dwelling units. (a)

Any SDU shall fall within the following ~~floor~~respective county's area maximums: ~~400 square feet (for lots with an area of 3,500 to 4,999 square feet) and 800 square feet (for lots with an area of 5,000 square feet or more).~~

(b) A lessee may apply to the department for one of the following programs at the time of application:

- (1) Ohana SDU is specifically for non-

rental, ohana use purposes. The ohana occupant shall establish the required biological relationship to the lessee to the satisfaction of the department before taking occupancy. The department may allow the ohana occupant to contribute toward household expenses such as utilities and mortgage payments, if applicable, but rent shall not be charged.

- (2) Rental SDU is specifically for rental purposes, to supplement income for the lessee and potentially help to provide housing for native Hawaiians. The dwelling unit renter shall be qualified under the act by the department but is not required to establish a qualified relationship to the lessee. The department shall prioritize applications from lessees with a verifiable potential tenant currently on a waitlist.
 - (A) The minimum rental period agreement on the unit shall be six months;
 - (B) The lessee shall provide a standard lease agreement to the tenant; and
 - (C) Each agreement shall carry a rider written by the department and signed by the lessee and dwelling unit renter that provides the general obligations of the department, waiver of liability, and guarantees made by the lessee.

(c) The lessee shall submit a request to the department if the lessee wants to change the program use of the unit. The department shall provide a response to the lessee within 30 days of receipt of the request. [Eff and comp] (Auth: HHC Act §222) (Imp: HHC Act §208)

§10-3-40.08 Landlord-tenant code compliance.

The residential landlord and tenant code, HRS ch. 521, is applicable only so far as it does not conflict with the act, this title, and the lease itself. [Eff and

comp] (Auth: HHC Act §222) (Imp:
HHC Act §208)

§10-3-40.09 Fair housing act compliance. Lessee must remain in compliance with the section 804 of the fair housing act, 42 U.S.C. §3604 insofar as it does not conflict with the act, this title, and the lease. [Eff and comp] (Auth: HHC Act §222) (Imp: HHC Act §208)

§10-3-40.10 Existing structures, non-compliance. If one or more structures that have not been approved by the department or are unpermitted, or both, exist on the lot, the lessee may be allowed to come into compliance through the SDU process. However, if the existing structure or structures are unsafe for human habitation, the lessee may be required to bring the structure into compliance with county building codes, including demolition of the structure at the lessee's expense. [Eff and comp] (Auth: HHC Act §222) (Imp: HHC Act §208)