


STATE OF HAWAII

DEPARTMENT OF HAWAIIAN HOME LANDS

July 19-20, 2021

TO: Chairman and Members, Hawaiian Homes Commission

FROM: Hokulei Lindsey, Administrative Rules Officer  
Jobie Masagatani, Executive Assistant   
Staff to the HHC Investigative Committee on Native Hawaiian Qualification Process

SUBJECT: For Information Only -- NHQ Status Update: Applications Classified as Yes and No for Qualification Under the Hawaiian Homes Commission Act

RECOMMENDED MOTION/ACTION

None. For information only.

DISCUSSION:

At its October 2020 regular meeting, the Hawaiian Homes Commission adopted the recommendation of the HHC Investigative Committee on the Native Hawaiian Qualification Process to recall to the HHC, pursuant to Hawaii Administrative Rules § 10-2-16(a), the authority to accept the Native Hawaiian Quantum (NHQ) determination for an individual as a function requiring the exercise of judgment or discretion. The recommendation included a process to implement the Commission's review and acceptance of NHQ determinations, as follows:

- Three categories to be used to review NHQ for acceptance:
  1. Qualified through the kumu 'ohana process and accepted by consent of the HHC;
  2. Unqualified based upon uncertain and/or exhausted documentation to be reviewed and acted upon by the HHC with detailed analysis and recommendation from the Department; and
  3. Unqualified because impacted by subsequent information to be addressed by the HHC through a contested case brought by the Department.
- For category 2 applications, establishment of a Department process whereby a committee comprised of staff with expertise in the NHQ methodology will review the findings of the staff case worker to ensure:

1. The case file is complete, and the documentation is uncertain and/or exhausted; and
2. A clear NHQ determination cannot be made (whether qualified or not qualified); and
3. There is sufficient evidence to conclude that a reasonable informed assumption can be made regarding missing or uncertain documentation that could result in the individual meeting the blood quantum requirement.

Once the staff committee determines that the file is complete and the findings are supported, the case would be presented to the Commission. This would be the process for applications and lease transfers requiring a 50% minimum blood quantum and for successors to leases and certain lease transfers, which require a 25% minimum.

- For applications that do not meet the NHQ minimum the Commission delegates to the Chairman the authority to certify a finding by staff of “no NHQ minimum.”

### Focus on the Waiting List

Following the HHC action, staff’s attention was directed to addressing long-standing unresolved matters related to DHHL’s waiting list, including addressing applications categorized as “N” and applications categorized as “P”. Two workshops related to these matters were presented to the HHC: D-7 Concerns Impacting Applications Branch (February 2021) and D-6 Presentation on Non-Qualified Applications (April 2021).

For the purposes of the waitlist, there are three generalized categories: “Y” or “yes” meaning the application meets qualification under the Hawaiian Homes Commission Act; “N” or “no” meaning the application does not meet qualification under the HHCA; and “P” or “pending” meaning additional information is needed before a final determination can be made.

### “Y” or “yes” applications: HHC submittals for acceptance beginning August 2021

The Applications Branch completed its semi-annual audit of the waitlist in June 2021. The audit re-ranks the waitlist based on awards, successorships, transfers, cancellations, and new applications. This list of “Y” applications includes all qualified applications that are qualified through DHHL’s kumu ‘ohana process up to the June 2021 audit date that are currently on DHHL’s waiting list. Staff plans to bring this list to the HHC for acceptance at the regular meeting in August 2021. Following the August meeting, a monthly submittal of “Y” applications will be brought to the Commission for NHQ acceptance. This is consistent with the first category of applications outlined in the new process previously discussed.

The proposed August 2021 HHC action will bring clarity to the qualification process for both staff and the individuals currently on the waiting list with a “Y” application. If future information (e.g. a vital record such as a birth, death, or marriage certificate) casts doubt on an application’s qualification, the appropriate venue to address this matter after August 2021 is a contested case for all applications accepted as qualified, i.e. “Y” applications. The action makes clear those individuals eligible for the third category in the new process previously discussed.

“N” or “no” applications: example cases for review

At one time in DHHL’s history, applications were added to the waitlist even though the individual had not fully demonstrated (through documentation) that they met the required blood quantum and were therefore qualified as beneficiaries. While this is no longer the practice, the waiting list includes several applications that are not qualified or labeled “N” as a result of this prior practice. A fuller discussion of these “N” applications was included in the April 2021 workshop with the HHC. However, before the Commission took any action regarding these applications, Commissioners requested a more in-depth review and discussion of these “N” application files. In response, the Applications Branch staff have prepared several of these files for HHC review in executive session. At this time, these application files are intended for discussion only.

RECOMMENDATION:

None. For information only.