



HAWAIIAN HOME LANDS

HAWAIIAN HOMES COMMISSION
DEPARTMENT OF HAWAIIAN HOME LANDS

**INFORMATIONAL BRIEFING
ON NON-HOMESTEADING LAND
DISPOSITIONS
SENATE HAWAIIAN AFFAIRS COMMITTEE**

January 17, 2014



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LAND DISPOSITION DATA

Overview of Hawaiian Home Lands

- **HHCA, Total 203,500 acres**
 - **Lands under various homestead leases**
 - **40,000 acres**
 - **Under the Land Management Division's management**
 - **163,500 acres**

Land Management Division

Oversees:

- Lands under General Leases, licenses, revocable permits or rights-of-entry
- Areas requiring special attention, natural hazard areas, cliffs, drainage and open spaces,
- Conservation areas such as forest reserves, water sheds, endangered species habitats, sensitive historic or cultural sites
- Area pending sufficient funding for development

Disposition	# of accounts	Acreage	% to total HHL holding 203,500 Acres	Revenue	% to Total Revenue
Aina Mauna Legacy Program (Conservation – Preservation)	1	50,000	24.57%	\$300,000	2.07%
General Leases	127	2,779	1.37%	\$10,611,000	73.38%
Licenses	417	1,986	0.98%	\$841,060	5.82%
Revocable Permits (Short-term land management tool)	182	38,515	18.93%	\$2,709,000	18.73%
Other unencumbered lands (e.g., South Point 10,000+ acres, Waimanalo Cliffs 1,500+ acres, Waimea, Kauai 12,500+ acres)		70,220	34.5%	\$ none	0.00%
Total		163,500 +/-		\$14,461,060	

General Leasing Program

- Purpose: Principally, to generate revenue for the purposes of the Act
- Of 127 general leases, 96 (76%) :
 - Are Industrial (85), Commercial (6), Resort (3), and Alternative energy (2)
 - Generate \$10.157 million
- Total annual revenue from general leases:
 - **\$10.611 million**

General Leasing

- HHCA Authority Section 204(a)(2)
- The department may in the management of any retained available lands not required for homesteading purposes, **lease the land for revenue generating purposes** to the general public, on the same terms, conditions, restrictions, and uses applicable to the disposition of public lands in the Hawaii Revised Statutes, Chapter 171. (emphasis added)

Native Hawaiian Preference

- Added in 1978 Constitutional Convention :
 - “...provided further that the Department is expressly authorized to **negotiate, prior to negotiation with the general public, the disposition of a lease of Hawaiian home lands to a native Hawaiian, or organizations or an association owned or controlled by native Hawaiians,** for commercial, industrial, or other business purposes, in accordance with procedures set forth in chapter 171, Hawaii Revised Statutes”

Native Hawaiian Preference

- September 24, 1981 - HHC adopted a General Leasing Policy that all lands used for income purposes **shall be made available to qualified native Hawaiians or qualified native Hawaiian organizations before making it available to the general public.**
- October 23, 2001 - HHC **rescinded the native Hawaiian general leasing policy** adopted on September 24, 1981

Recission of Preference

- Preference policy exposes trust to serious risk of lawsuit from those challenging constitutionality of HHCA
- HRS provisions prevented DHHL from leasing to native Hawaiians at a below market rent (not an economic benefit)
- 20 years of application did not increase number of successful native Hawaiian commercial lessees on Hawaiian home lands
 - 7% of general leases native Hawaiian 1981; Same proportion in 2001

Recission of Preference

- National and international tenants maybe discouraged from bidding on leases containing such restrictions (not achieving highest returns for the Trust;
- Other methods that support growth of native Hawaiian businesses, (technical assistance, training, etc.) could achieve outcomes of increasing native Hawaiian businesses on DHHL lands.

General Leases for Revenue

- **COMPETITIVE, HIGHEST BID:** §171-59, HRS
- **COMPETITIVE, BEST PROPOSAL:** §220.5, HHCA; §171-60, HRS
- **DIRECT NEGOTIATION – PUBLIC UTILITIES AND RENEWABLE ENERGY PRODUCERS:** § 171-95, §171-95.3, HRS
- **DIRECT NEGOTIATION – ELEEMOSYNARY ORGANIZATIONS:** §171-43.1, HRS

Licensing Program

- Purpose: To grant licenses as authorized under the Hawaiian Homes Commission Act, 1920, as amended
- 417 licenses, as of 6/30/2013
- Total annual revenue from licenses:
 - **\$841,060**

Licensing Program

- Section 207(c)(1), states in part that “The department is authorized to grant licenses as easements for all railroads, telephone, lines, electric power and light lines, gas mains, and the like. The department is also authorized to grant licenses for lots within a district in which lands are leased...for

Licensing Program

- (A) churches, hospitals, public schools, post offices, and other improvements for public purposes;
- and (B) theaters, garages, service stations, markets, stores, and other mercantile establishments (all of which shall be owned by native Hawaiians or organizations owned and controlled by native Hawaiians)."

“Mercantile Licenses”

- To define, need to look at specific examples listed in the statute. Should be similar.
- Black’s Law: “mercantile” means “of or relating to merchants or trading”.
- “Merchant” means “one whose business is buying and selling goods for profit.”

Licensing Program

Section 207(c)(2), also states in part:

- “The department is also authorized to grant licenses to the United States for reservations, roads, and other rights-of-way, water storage and distribution facilities, and practice target ranges.”

DHHL Administrative Rules

Benefit License: of direct benefit to beneficiaries or the department

- Term can be perpetual or shorter, subject to reverter upon termination or abandonment
- May allow the monthly fees to be nominal
- Issue for easements, homestead associations, non-profit organizations
- May waive processing/documentation fees
- May 31, 1985: HHC authorized the Chairman to issue licenses, in accordance with DHHL Administrative Rules for easements exclusively servicing HHL or homestead beneficiaries.

DHHL Administrative Rules

Non-Benefit License: intended to benefit other than native Hawaiians

- Issue to government agencies, churches, and for-profit telecommunication entities
- Fees established by appraisal; or negotiate by conducting appraisal in-house
- Assess \$200 processing fee
- Licensee to pay for all costs, including, but not limited to advertising, survey, and appraisal cost

Non – Homestead Lands

**Purpose 1:
Generate Revenue for
HHL purposes**



**Purpose 2:
Support Homestead
Communities**



\$250,000 CED Kulia Grant Recipients

	Nanakuli Hawaiian Homes Assn (NVC)	Kapolei Community Dev Corp	Laiopua 2020	Waimanalo Hawaiian Homes Assn	Makuu Farmers Assn	Waiohuli Hawaiian Homestead Assn	Papakolea Community Dev Corp	Homestead Community Dev Corp (Kumu Camp)
Disposition	General Lease 281	General Lease 290 & 288	General Lease 289 & 286	General Lease 292	License 649	License 695	Right of Entry for Due Diligence	Letter of Conditions issued; RP Pending
Terms	65 years	65 years (one for ED, one for Center)	65 years (one for ED, one for Center)	65 years	55 years	50 years	3 years	
HHC Approved	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Other Special Conditions	Subject to standard terms & conditions	Subject to standard terms & conditions	Subject to standard terms & conditions	Subject to standard terms & conditions	Subject to standard terms & conditions	Subject to standard terms & conditions	Shall not conduct any ground disturbance activities	Prior approval needed beyond grubbing; no permanent structures

Revocable Permit Program

- Purpose:
 - To ensure appropriate maintenance of the land at minimal cost to DHHL until sufficient resources are available to pursue longer term options (homesteading; general leasing; etc);
 - To generate revenue for the purposes of the Act;
 - To provide **Short Term Use** of Hawaiian home lands (month-to-month) up to one year, can be renewed annually

Revocable Permit Program

- 182 RPs, as of 6/30/2013
- Total annual revenue from RPs:
 - **\$2.709 Millions**
- Used by other agencies: DLNR, DOT, DOA
- Authorization: §171-55, HRS
- Allows for direct negotiations



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LAND DISPOSITION EXPERIENCE

Revocable Permit Program

- News coverage in May
- A 60-90 day moratorium immediately put into place on issuance of new RPs to review existing program to determine whether it should be continued, modified or terminated.
- Governor creates an Assessment Committee to assist
- All 182 RPs allowed to expire on June 30, 2013.
- Interim process approved by HHC in July 2013 to transition from existing RP situation using Right of Entry until a new program is approved and implemented.

Transitional Rights of Entry

In October 2013:

- DHHL issued ROE permits to 148 of the 181 former RP holders, or 82%
- 9 former RPs, 5%, were either cancelled by DHHL for various reasons, or the permittee chose not to renew their agreement
- The remaining 24 former RP holders, or 13%, found to be non-compliant given until November 29, 2013 to remedy all outstanding violations

RP Non-Compliance

- Delinquent rent and/or utility payments
- Cleared and expanded boundary without approval by the department.
- Multiple unpermitted and unauthorized buildings on the premises
- Residential use of the revocable permit
- Other businesses located on the premises
- Unauthorized storage
- Insufficient insurance coverage

RP Current Status

- DHHL updated HHC in December & January
- A majority of the 24 non-compliant entities have worked to bring their operations into compliance
- Entities have offered to work with DHHL to either come up with a settlement plan or to surrender property back to DHHL

Save Our Race Tracks, LLC.

- Revocable Permit 411, issued August 2007
- 38 acres in Kalaeloa
- “For construction, operation and management of various types of race tracks for various types of wheeled vehicles. Education and training in safety and legal forms of vehicular racing may also take place on the property.”
- Rent: \$2,000 per month plus utilities

SORT RP Special Conditions

- C. Use of the Premises shall comply with all governmental laws...including **but not limited to, obtaining permits for grubbing and clearing the site...**
- F. ...PERMITTEE may only import material such as but not limited to, dirt, rock, gravel, compost, sand, etc., in reasonable quantities...**Prior to importing or stockpiling such materials...PERMITTEE shall provide PERMITTOR** with certification or other evidence showing that the material to be imported is free of contamination.

Save Our Race Tracks, LLC.

- January 14, 2008 letter from Chair Micah Kane to DPP Director Henry Eng:
- “SORT has informed us that the CITY has questioned the necessity of a grading permit which SORT has been trying to obtain so that it can proceed with removing vegetation and grading a dirt race track on the site. If, within the next twenty (20) days, the CITY does not inform us otherwise, we will assume that the CITY is supportive of SORT’s efforts and has waived grading permit requirements.”

Save Our Race Tracks, LLC.

- February 8, 2008 – DHHL met with SORT on need for compliance with City rules
- February 26, 2008 – DHHL receives complaint about transport of soil; DHHL informs SORT
- March 4, 2008 – DHHL sends SORT letter on conditions to be met to continue operations
Stop all importing and stockpiling until conditions met:

SORT Conditions to be Met

- Per letter dated March 4, 2008:
- All importing and stockpiling until conditions met:
 - Soils report filed with DHHL showing no contamination
 - Provide DHHL with a grading plan showing location and quantities of dirt needed for racetracks
 - Obtain stockpiling and grading permits from the City and County of Honolulu.
- April 15, 2008 – DHHL sends letter to SORT reiterating conditions

Save Our Race Tracks, LLC.

2009



Save Our Race Tracks, LLC.

- Only remaining non-compliant former RP
- Non-compliance includes:
 - Rent delinquency;
 - unauthorized site grading;
 - no insurance certificate; and
 - non compliance with use provisions of permit.

Current Status

- November 22, 2013 – DHHL receives letter SORT attorney; disputes noncompliance with former RP terms and conditions.
- November 2013 – DHHL receives copy of demand letter from City to SORT for \$121,000 in fines for non-compliance
- November 29, 2013 – SORT received delivery of 30-foot high mound of dirt; City informed DHHL of inspection of SORT parcel regarding additional non-compliance with mass grading permit
- As of December 1, 2013 – SORT is more than \$20,000 delinquent in rent to DHHL and more than \$5,000 delinquent in utilities

Current Status

- December 27, 2013 – DHHL sends SORT attorney reply; response and action plan due January 6
- December 28, 2013 – DHHL received two separate complaints regarding the hauling of rock and dirt by three trucks to SORT parcel; no mass grade permit filed with DHHL
- As of January 17, DHHL has not received a response from the SORT attorney

Achieving Compliance

- DHHL seeks SORT compliance with all terms and conditions:
 - Pay delinquent rent and utilities
 - Obtain mass grade and stockpiling permits as required by permittee's agreement
 - Cure City violations and fines
 - Strictly adhere to terms and conditions regarding restricted use of parcel
 - Remediate hydrocarbon and/or other contamination from import and use of lands

Mahalo