

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
JUDICIARY**

**Friday, April 16, 2021
10:00 AM
State Capitol, Via Videoconference**

**In consideration of
HOUSE CONCURRENT RESOLUTION 76, SENATE DRAFT 1
REQUESTING THE ESTABLISHMENT OF A WORKING GROUP TO ASSESS THE
STATUS OF ACT 14, SPECIAL SESSION LAWS OF HAWAII 1995, AND THE
HAWAIIAN HOMES COMMISSION ACT OF 1920, AS AMENDED**

House Concurrent Resolution 76, Senate Draft 1 requests that the Department of Land and Natural Resources (Department) convene a working group to assess the status of Act 14, Special Session Laws of Hawaii 1995 (Act 14) and the Hawaiian Homes Commission Act of 1920, as amended. **The Department appreciates the intent of this measure and offers the following comments.**

In 2010, the Hawaiian Homes Commission (Commission) and the Board of Land and Natural Resources (Board) reached a full and final settlement of the lands to be transferred to the Commission pursuant to the Board's action of October 28, 2010, agenda Item D-12, approved as amended (documents may be reviewed at: <https://dlnr.hawaii.gov/ld/2010-full-and-final-dhhl-settlement/>). By this settlement the Department completed the State's 1994 administrative initiative to transfer 16,518 acres of state lands to the Department of Hawaiian Home Lands (DHHL) referenced in SECTION 1 of Act 14, to make the "available lands" whole. The parcels agreed upon for transfer were identified in the Board action.

To date, the Department has conveyed 16,298.975 acres to the Commission, of which the Commission acknowledges 15,742.652 acres are in satisfaction of the requirements of Act 14. A further 1,070.067 acres are pending transfer to the Commission, with the following geographic distribution:

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Oahu:	213.684 acres
Molokai:	42.313 acres
Lanai	25.400 acres
Hawaii Island:	738.320 acres ¹
Kauai:	50.350 acres
Total:	1,070.067 acres

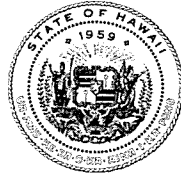
The Department and the Commission have been working methodically to identify and resolve issues causing delays in the transfer of the remaining parcels. Foremost among these issues is that many of the parcels have not been surveyed previously. The Commission is in the process of procuring surveys and subdividing the remaining parcels. These processes must be completed before the parcels can legally be conveyed to the Commission.

The Department is working with the Commission to address all outstanding claims relating to transfer of lands. Accordingly, the Department believes that convening a working group to assess the status of Act 14 at this time would divert staff from actively working to complete the remaining land transfers under Act 14.

Thank you for the opportunity to comment on this measure.

¹ Acreage of pending transfers for Hawaii Island includes 378.87 acres that were set aside to the Commission via Executive Order 4635 dated August 14, 2020 for agricultural purposes. These lands were not included in the 2010 Board action but may be added to the settlement amount by conveyance in the future if the Board and Commission approve.

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII



WILLIAM J. AILA, JR.
CHAIRMAN
HAWAIIAN HOMES COMMISSION

JOSH GREEN
LT. GOVERNOR
STATE OF HAWAII

TYLER I. GOMES
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879
HONOLULU, HAWAII 96805

**TESTIMONY OF WILLIAM J. AILA, JR, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEE ON JUDICIARY
DECISION MAKING ON APRIL 16, 2021 AT 10:00AM VIA VIDEOCONFERENCE**

**HCR 76, SD1, REQUESTING THE ESTABLISHMENT OF A WORKING GROUP TO
ASSESS THE STATUS OF ACT 14, SPECIAL SESSION LAWS OF HAWAII 1995,
AND THE HAWAIIAN HOMES COMMISSION ACT OF 1920, AS AMENDED**

April 16, 2021

Aloha Chair Rhoads, Vice Chair Keohokalole, and members of the Committees:

The Department of Hawaiian Home Lands (DHHL) appreciates the amendments made to this measure by the subject matter committees, particularly the insertion of additional background on the history of Act 14, Special Session Laws of Hawaii 1995. Nevertheless, DHHL submits testimony in opposition to this resolution largely because by letter dated September 6, 2019, DHHL requested and received approval to hire private counsel by contract to advise the Hawaiian Homes Commission on the valuation of compensation through funds and land owed to DHHL as outstanding claims of Act 14 (1995) or other items related to Act 14 (1995) to solely represent the interests of beneficiaries or native Hawaiians defined under section 201 of the Hawaiian Homes Commission Act of 1920, as amended. An investigative committee was subsequently appointed effective October 23, 2019 and the investigative committee convened several meetings eventually selecting private counsel after reviewing responses received to a notice for professional services in accordance with section 103D-304, HRS. Representation by private counsel will limit what information can be discussed by the working group. DHHL's testimony specifically raises this issue at this time given the purview of the Senate Judiciary Committee and requests that this resolution be deferred.

Thank you for your consideration of our testimony.

1910115

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII



WILLIAM J. AILA, JR.
CHAIRMAN
HAWAIIAN HOMES COMMISSION


JOSH GREEN
LT. GOVERNOR
STATE OF HAWAII


STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P. O. BOX 1879
HONOLULU, HAWAII 96805

September 6, 2019

To: The Honorable David Y. Ige, Governor
State of Hawaii

Through: Clare E. Connors
Attorney General 

From: William J. Aila, Jr., Chairman 
Hawaiian Homes Commission

Subject: Request for Haw. Rev. Stat. §28-8.3 Waiver to Retain Private Counsel by Contract to Advise the Hawaiian Homes Commission (HHC) on the Valuation of Compensation through Funds and Land Owed to the Department of Hawaiian Home Lands (DHHL) as Outstanding Claims of Act 14 (1995) or Other Items Related to Act 14 (1995) to Solely Represent the Interests of Beneficiaries or Native Hawaiians Defined under Section 201 of the Hawaiian Homes Commission Act (HHCA)

This memorandum is to secure the Attorney General's concurrence and the Governor's waiver pursuant to Haw. Rev. Stat. §28-8.3, for DHHL to hire private counsel by contract to advise the HHC on the valuation of compensation through funds and land owed to DHHL as outstanding claims of Act 14 (1995) or other items related to Act 14 (1995) to solely represent the interests of beneficiaries or native Hawaiians defined under section 201 of the HHCA.

The HHC was briefed by staff in January 2019 on the background of Act 14 (1995) and the status of outstanding claims. A copy of the submittal to the HHC is attached. Outstanding claims totaling over 1,328 acres remain. Resolving these outstanding claims are in the best interest of beneficiaries and independent counsel to solely represent the interest of beneficiaries would be valuable to the HHC.

1910115

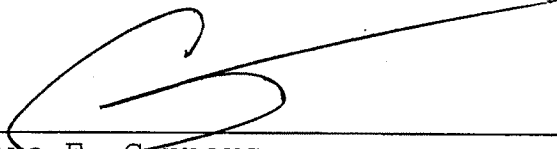
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The Honorable Clare E. Connors
September 6, 2019
Page 2

Since the outstanding claims have recently received greater attention given the use of Hawaiian Home Lands for state highways, time is of the essence. We respectfully request your expeditious review and approval of this waiver.

Attachment


CONCURRENCE:



Clare E. Connors
Attorney General

Date: 10/15/19

APPROVAL OF WAIVER:



David Y. Ige
Governor

Date: OCT 17 2019

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

January 28-29, 2019

To: Chairman and Members, Hawaiian Homes Commission
Thru: M. Kaleo Manuel, Acting Planning Program Manager
From: Andrew H. Choy, Planner *AC*
Subject: Act 14 Land Claim Settlement Update

Recommended Action

For information only.

Discussion

Purpose

During an address at a CNHA Conference, Governor Ige committed to seeking resolution to all outstanding claims related to Act 14. This submittal provides a brief background of Act 14 and highlights the status of outstanding claims.

Background

In 1991, the Task Force on the Department of Hawaiian Home Lands' Land Title and Related Claims ("Task Force") was convened by Governor John Waihe'e, as one of the first action steps in the Governor's Action Plan to Address Controversies under the Hawaiian Home Lands Trust and the Public Land Trust. The Task Force comprised of the heads of the Office of State Planning ("OSP"), the Department of Hawaiian Home Lands ("DHHL"), the Department of Land and Natural Resources ("DLNR"), and the Department of the Attorney General ("AG"). The Task Force's objective was to investigate and resolve DHHL's land use claims against the State. In the years following, the Task Force issued a slew of recommendations for settlement of DHHL's claims, which resulted in settlement packages enacted by the

Legislature in 1992 and 1993¹. Additionally, by a separate administrative initiative, the State initiated the transfer of 16,518 acres of useable lands to DHHL.

On December 1, 1994, the Task Force produced a Memorandum of Understanding ("MOU"), executed by all parties, setting forth its final recommendations to repair the Hawaiian home lands trust and resolve DHHL's claims against the State that arose between August 21, 1959 and July 1, 1988. The MOU, however, did not bind the State to its terms. Consequently, on June 29, 1995, the Legislature passed Act 14, SpsLH 1995 ("Act 14"), to fully effectuate the settlement of DHHL's aforementioned claims against the State.

Act 14's Settlement Items

Section 6 of Act 14 sets forth the State's agreed upon terms to resolve and satisfy the controversies and claims encompassed by the Act. Act 14's settlement items can be grouped into two forms of compensation: funds and land.

Funds

The funding component of the Act 14 settlement provided a total \$606,277,558 in monetary compensation to DHHL. Specifically Act 14 provides for the following:

- Establishment of the Hawaiian home lands trust fund;
- Required the State make twenty annual deposits of \$30,000,000 or their discounted value equivalent if the State opted to make prepayments into the trust fund;
- Payment of \$2,348,558 as an advance toward all rent due to DHHL for the continued use of trust lands under Nanaikapono elementary school between April 4, 1996 and October 27, 2002;
- Payment of \$2,390,000 for the State's uncompensated use of Hawaiian home lands between 1959 and 1995; and
- Payment of \$1,539,000 for moneys owed to DHHL as its thirty percent entitlement for the use of Hanapepe, Kauai, public lands formerly under lease for sugarcane

¹ Act 316, Sess. Laws of Hawaii 1992 and Act 352, Sess. Laws of Hawaii 1993.

cultivation, pursuant to section 1 of article XII of the Hawai'i State Constitution.

By the end of fiscal year ending June 30, 2015, the State satisfied the funding component of Act 14. The land component of Act 14, however, remains unresolved; the status of each outstanding item is provided below.

Land

The land component of the Act 14 settlement is found in Section 6, subsection 2 of the act, and provides as follows:

- Transfer of lands and resolution of claims for the uncompensated use of Hawaiian home lands in Waimanalo, Oahu.
- Transfer of lands and resolution of claims in the Anahola, Kamalomalo'o, and Moloa'a areas of Kauai.
- The initiation of a land exchange to remedy uncompensated use of Hawaiian home lands for state roads claims and highways; and
- First selection of up to 200 acres of land by DHHL upon the return to the State of any ceded lands comprising of all or a portion of Bellows Air Force Station ("Bellows") on Oahu.

Section 17 of Act 14 specifically allows "actions to enforce the provisions of th[e] Act."

Outstanding Act 14 Settlement Items

State Initiated Transfer of 16,518 acres

In October 2010, the Board of Land and Natural Resources (BLNR) staff submittal item D-12 sought to convey 817.072 acres of Government Lands Statewide to DHHL to complete the total transfer of 16,518 acres. The BLNR made amendments to the recommendation motion before unanimously approving the item.

Status: Partially complete. Some parcels in the table in Exhibit A of Item D-12 have been conveyed to DHHL while others are at various stages of transfer. Approximately 696.898 acres are yet to be transferred.

Waimanalo Regional Settlement

This claim involves Hawaiian home lands taken by the Territory of Hawai'i and later sold to private parties, areas of Waimanalo set aside as "beach park" land, and trust lands alienated by the right-of-way for Kalaniana'ole Highway.

Act 14 contemplates a transfer of land to satisfy this claim. A portion of the remedy under this regional settlement includes the first selection of up to 200 acres of land by DHHL upon the return of all or a portion of Bellows to the State. At present, the US military does not intend to return Bellows.

Status: The transfer of land contemplated under this settlement item has not occurred. Approximately 200 acres are outstanding.

Anahola Regional Settlement

DHHL's claims remaining regarding Anahola, Kamalomalo'o, and Moloa'a areas of Kauai involves Hawaiian home lands taken by the Territory of Hawai'i and later sold to private parties, totaling 85.644 acres.

Act 14 contemplates a transfer of land to DHHL from the State to satisfy this claim.

Status: The transfer of land contemplated under this settlement item has not occurred. Approximately 85.644 acres are outstanding.

Roads and Highways Settlement

Use of Hawaiian Home Lands as State Highways
This claim involves the uncompensated use of Hawaiian home lands as state highways on various islands. Act 14 calls for the initiation of a land exchange to remedy this claim.

Status: To date, no lands have been conveyed to DHHL to satisfy the State's commitment to compensate the trust for its use of Hawaiian home lands as state highways on various islands totaling a claimed amount of 346.203 acres.

Conclusion

The table below summarizes the total amount of acreage that is owed to DHHL, should DHHL and Governor Ige move towards settling all outstanding claims related to Act 14.

Outstanding Claim	Approximate Acreage
State Initiated Transfer of 16,518 acres	696.898
Waimanalo Regional Settlement	200.000
Anahola Regional Settlement	85.644
Roads and Highways Settlement	346.203
Total	1,328.745

Recommended Action

None. For information only.

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

October 21-22, 2019

To: Members, Hawaiian Homes Commission

From: William J. Aila, Jr., Chairman

Subject: Appointment of investigative committee pursuant to HRS section 92-2.5 and HAR section 10-2-16(b)(1), to review the selection criteria, potential candidates, and other issues related to the retention of private counsel for matters related to Act 14 (1995).

RECOMMENDED ACTION:

For information Only. No action required.

DISCUSSION

An investigative committee of the Hawaiian Homes Commission is appointed effective October 23, 2019. The purpose of this committee is to review the selection criteria, potential candidates and other issues related to the request for HRS section 28-8.3 waiver to retain private counsel by contract to advise the Hawaiian Homes Commission (HHC) on the valuation of compensation through funds and land owed to the Department of Hawaiian Home Lands as outstanding claims of Act 14 (1995) or other items related to Act 14 (1995) to solely represent the interests of beneficiaries or native Hawaiians defined under section 201 of the Hawaiian Homes Commission Act. Attached as Exhibit A is the formal request submitted to Governor Ige through Attorney General Clare Connors.

The members of the Committee include David Kaapu, Pauline Namuo, Dennis Neves, and the Chair. The Committee's work is expected to be completed within 3 months. Any findings and recommendations will be placed on the agenda for the HHC meeting as the items are completed.

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Washington DC 20020
info@hawaiianhomesteads.org



Robin Puanani Danner, Chairwoman, Kauai
Sybil Lopez, Vice Chairwoman, Molokai
Kekoa Enomoto, Councilwoman, Maui/Lanai
Richard Soo, Councilman, Oahu
Ron Kodani, Councilman, Hawaii Island
Faisha Solomon, Administrator

LATE

Date: April 15, 2021

To: Honorable Chair & Members of the Committees (JDC)

Fr: Robin Puanani Danner, SCHHA Chair
Sybil Lopez, SCHHA Vice Chair

Re: Support HCR76 with Corrective Amendments – Working Group on Status of Act 14 Enacted in 1995

The above referenced resolution creates a working group with relevant seats established for State Government Executive Branch agencies, State Government Legislative Leadership appointed members, the U.S. Department of Interior (DoI), and federally defined Homestead Associations registered with the U.S. Department of Interior under 43 Code of Federal Regulations.

The function of the working group is to review Act 14, a State Law enacted over 25 years ago, to address issues regarding our land trust established by Congress under the Hawaiian Homes Commission Act of 1920 (HHCA), and for the working group to report any outstanding issues, along with recommendations to the full legislature before the 2022 opening session. Seats for State government officials, federal officials and homestead associations including the SCHHA that are registered with the U.S. Department of Interior are provided.

We appreciate the work of Senator Maile Shimabukuro, Chair of Senate Committee on Hawaiian Affairs in communicating her support of our requested amendments as follows:

To reinstate the SCHHA as a formal member of the working group, and delete the amendment authorizing the State agency of DHHL to appoint any random native Hawaiian beneficiary to serve on the working group.

Senator Shimabukuro made excellent amendments of further elaborating on the federal definition of a Homestead Association codified under 43 CFR Part 47 & 48, but inadvertently deleted the constituent organizations of the SCHHA, AHHL and a Hawaii Island homestead association that are actually registered with the federal Department of Interior under the federal code referenced in the resolution. She was attempting to honor the State agency of DLNR that testified for a smaller working group. We request to also honor the smaller working group, to amend the resolution with the blessing of Senator Shimabukuro and Senator Inouye, to return SCHHA to the working group, and deleting any need for DHHL to appoint an HHCA beneficiary.

For the committee's benefit, we offer this historical record that in 2013, President Obama, a son of Hawaii, directed his U.S. Department of Interior to spend close to 3 years promulgating federal regulations to provide explicit language for the State of Hawaii, to give absolute clarity and guidance on executing more successfully, the obligations of State government in administering the HHCA. 43 CFR Part 47 & 48 were adopted by the federal government in May of 2016.

Following are relevant excerpts of these federal regulations as they relate directly to the excellent HCR 76 introduced by Representative Tarnas and Chair of Water Land.

29784 Federal Register Vol. 81 No.93 - May 13, 2016: *The HHCA, Admissions Act, and the HHLRA define three parties involved in reviewing land exchanges involving Hawaiian Home Lands and proposed amendments to the HHCA. These parties are the State of Hawaii (represented by DHHL & HHC), the Beneficiary community, and the Federal Government (represented by Secretary of Interior).*

Founded in 1987, the Sovereign Council of Hawaiian Homestead Associations (SCHHA) is the oldest and largest governing homestead association registered with the Department of Interior, exercising sovereignty on the trust lands established under the Hawaiian Homes Commission Act of 1920.

29786 Federal Register Vol. 18 No. 93 - May 13, 2016: *For proper care of the Trust to take place, all three parties, the State, the Secretary, and the beneficiary community must work together to fulfill their respective duties assigned by Congress.*

29788 Federal Register Vol. 18 No. 93 - May 13, 2016: *Homestead Association means a beneficiary-controlled organization that represents and serves the interests of its homestead community; has as a stated primary purpose the representation of, and provision of services to, its homestead community; and filed with the Secretary a statement, signed by the governing body, of governing procedures and a description of the territory it represents.*

Note: This definition is for Homestead Associations (i.e., the SCHHA and a regional association, parties to the working group described in the original HCR 76)

29788 Federal Register Vol. 18 No. 93 - May 13, 2016: *HHCA Beneficiary Association means an organization controlled by beneficiaries who submitted applications to the DHHL for homesteads and are awaiting the assignment of a homestead lease; represents and serves the interests of those beneficiaries; has as a stated primary purpose the representation of, and the provision of services to, those beneficiaries; and filed with the Secretary a statement, signed by the governing body, of governing procedures and a description of the beneficiaries it represents.*

Note: This definition is for Waitlist Associations (i.e., the Association of Hawaiians for Homestead Lands, a party to the working group described in the original HCR 76)

We know that HHCA beneficiaries, through our federally registered Homestead Associations are accountable to a coalition of many HHCA beneficiaries. And that a representative of at least one of the federally defined homestead associations should be at the table whenever our land trust is discussed by state or federal agencies. SCHHA is the only registered homestead association with a statewide reach and representation of interests on the entire 203,000 acres of trust lands. Homestead Associations registered with the federal government are a key solution to successful administration by the State.

Chair, we appreciate this common-sense approach put forward by Water Land Committee Chair & Representative Tarnas to obtaining vital information about Act 14 at the direction of the legislative body of our State Government, and for all relevant parties to the HHCA, to work together. Mahalo too, to Senator Shimabukuro for recognizing the inadvertent exclusion of homestead associations described in the resolution.

We stand in full support with these corrective amendments. Mahalo.

About SCHHA. The *Sovereign Council of Hawaiian Homestead Associations* (SCHHA), founded in 1987, is the oldest and largest HHCA Beneficiary Organization, representing the interests of nearly 10,000 native Hawaiian lessees and 28,000 families on the waitlist. SCHHA is governed by a council elected to 4-year terms serving homestead areas in the Moku-puni of Kauai, Oahu, Molokai, Maui/Lanai and Hawaii Island. SCHHA leaders are experts on the HHCA, federal and state land trust management, finance, affordable housing, economic development and job creation.

Founded in 1987, the Sovereign Council of Hawaiian Homestead Associations (SCHHA) is the oldest and largest governing homestead association registered with the Department of Interior, exercising sovereignty on the trust lands established under the Hawaiian Homes Commission Act of 1920