

STATE OF HAWAII

DEPARTMENT OF HAWAIIAN HOME LANDS

October 23, 2001

TO: Chairman and Members, Hawaiian Homes Commission

FROM: Mike McElroy, Administrator
Land Management Division

SUBJECT: General Leasing Policy

RECOMMENDED MOTION / ACTION

That the Hawaiian Homes Commission rescind the general leasing policy adopted on September 24, 1981, which provides "that all lands used for income purposes under the General Leasing Program shall be made available to qualified native Hawaiians or qualified native Hawaiian organizations before said general lease is made available to the general public."

BACKGROUND

Section 204(2) of the Hawaiian Homes Commission Act was amended by the Constitutional Convention in 1978 to authorize the Department to negotiate with native Hawaiians or organizations owned or controlled by native Hawaiians for disposition of Hawaiian home lands by general lease prior to offering such lease to the general public.

On September 24, 1981, the Hawaiian Homes Commission adopted a policy to offer general leases to native Hawaiians before the public in all cases.

The Department has executed 37 general leases under the preference policy. After excluding leases to governmental and non-profit agencies, a total of 19 general leases were entered into, with 16 of these held by native Hawaiian individuals or controlled entities.

Native Hawaiian leases have had a very high attrition rate. Fully 69% (11 of the 16) were either terminated by DHHL or cancelled by mutual agreement. By comparison, the attrition rate

of leases to non-Hawaiians was less than 35% over the same period.

Subsection 204(2) of the Hawaiian Homes Commission Act requires the Department to comply with Chapter 171, Hawaii Revised Statutes, in general leasing land. Chapter 171 provides that lease rents shall be based on the land's appraised value. (Secs. 171-17(b) and 171-33, HRS) Therefore, the statute prevents the Department from leasing to native Hawaiians at a below-market rent. In short, the preference is not an economic benefit to native Hawaiians.

DISCUSSION

We believe that the intent of Section 204(2), HHCA, is to increase the number of successful native Hawaiian commercial lessees on Hawaiian home lands. Implementation of the preference policy has not achieved this intent. After twenty years, the preference has not greatly increased the proportion of native Hawaiian general lessees, who constituted 7% of general lessees in 1981 and the same proportion today.

The preference policy has had the following negative aspects to the trust:

1. Leases with a higher attrition rate have cost the trust lost rent from non-performing businesses and resultant vacancies.
2. National or international tenants might be discouraged from bidding on leases which contain such restrictions as the native Hawaiian preference.
3. Continued use of the preference exposes the Hawaiian home lands program to potentially damaging litigation.

The preference has attracted the attention of those pursuing the Barrett case, who have expressed the intention of challenging any general lease awarded pursuant to the preference. While the State might prevail in a lawsuit, it would be very costly to the trust if we were prevented from issuing new general leases during the 4-5 years the case might take to resolve.

Greater business assistance efforts beyond the native Hawaiian preference policy could better achieve the goal of increasing the number of native Hawaiian businesses on general

lease lands. To this end, the Department is developing an agreement with Alu Like to sponsor a program to provide services to native Hawaiians seeking to expand an existing small business.

The program would provide services needed by small entrepreneurs, including:

- Business plan preparation
- Assistance in securing financing
- Coordination of training in accounting, personnel and other functions of a growing business

In addition to supporting this program, the Department plans on investigating other administrative or programmatic steps that could enhance the probability of success for native Hawaiian businesses on Hawaiian home lands. A revised business assistance program could include a recommendation to reestablish the native Hawaiian bid preference.

CONCLUSION

The preference, in its present form, has done little to expand business opportunities for native Hawaiians. It would be in the best interest of the trust to employ more targeted efforts to foster native Hawaiian businesses. Teaming up with a recognized business service provider could better achieve our goal of having more native Hawaiians operating businesses on Hawaiian home lands.

RECOMMENDATION

Land Management Division requests approval of the motion as stated.