

An Introductory Briefing on the Hawaiian Homes Commission Act of 1920



**Self-Governing Statewide Homestead Association and
National Advocate Governed by Enrolled Members**

Robin Puanani Danner, SCHHA Chairman (Kauai)
Sybil Lopez, SCHHA Vice Chairman (Molokai)
Richard Soo, SCHHA Governing Councilmember (Oahu)
Kekoa Enomoto, SCHHA Governing Councilmember (Maui)
Ron Kodani, SCHHA Governing Councilmember (Hawaii Island)



**A 501c3 Statewide Community Development Corporation
Governed by SCHHA Enrolled Members**

Iwalani McBrayer, HCDC Chairman (Oahu)
Mike Hodson, HCDC/HHA Vice Chairman (Hawaii Island)
Liberta Albao, HCDC Commissioner (Kauai)
Kammy Purdy, HCDC Commissioner (Molokai)
Kekoa Enomoto, HCDC Commissioner (Maui)

Robin Puanani Danner, HCDC CEO
Faisha Solomon, HCDC Deputy Director

April 2020

info@hawaiianhomesteads.org

Aloha! This briefing is a project of the SCHHA and its nonprofit HCDC to support the leadership development and capacity of homestead associations as defined in federal regulations, 43 CFR Part 47/48. Mahalo to the many contributors of manao and resources to make this guide possible!

SCHHA Founded in 1987, the Sovereign Council of Hawaiian Homestead Associations (SCHHA) is the oldest and largest national coalition of self-governing homestead associations, comparable to the National Congress of American Indians (NCAI) and the Alaska Federation of Natives (AFN). Its policy advocacy is focused on protecting and advancing the sovereignty and self-determination of native Hawaiians on or eligible for land allotments under the Hawaiian Homes Commission Act of 1920 (HHCA) enacted by Congress. The HHCA set-aside 203,000 acres of trust lands for residential, agriculture, pastoral and mercantile purposes, like various Indian Allotment Acts of the same policy era.

SCHHA is federally registered with the U.S. Department of Interior as a statewide self-governing homestead association under 43 CFR 47/48 definitions, with enrolled native Hawaiians in more than 40 trust land communities.

HCDC The Homestead Community Development Corporation (HCDC), also known as the Homestead Housing Authority, is a statewide nonprofit founded in 2009, governed by SCHHA members, from Kauai, Oahu, Molokai, Maui and Hawaii Island, along with an elder’s council. HCDC is dedicated to the development of affordable housing and job creation on or near Hawaiian Home Lands.

HCDC develops affordable housing, community facilities, economic development, and is comparable to Indian Housing Authorities serving trust lands in other Native areas nationally. In 2019, HCDC expanded its operations to include a loan fund to deliver capital and lending related services on Hawaiian Home Lands statewide.

About the Hawaiian Home Land Trust

Hawaiian Home Lands is a **federal land trust** established by the U.S. Congress under the HHCA. Congress acted within its plenary power under the U.S. constitution wherein it is authorized to address the issues of Native peoples that predate the United States, in this case, native Hawaiians. Enacted in the federal policy era of the late 1800’s and early 1900’s, the HHCA is a land trust Act like those enacted for American Indians & Alaska Natives.

Essentially, the HHCA encompasses 203,000 acres, located on Kauai, Oahu, Molokai, Maui, Lanai and Hawaii Island, for distribution through lease and land license instruments to native Hawaiians of at least one-half or more blood quantum for **homes, ranches, farms, and mercantile** (commerce) purposes. The HHCA also allows for lands to be issued for non-profit purposes, and for any available trust lands ‘not required’ for native Hawaiian housing, ranching, or farming, lands may be issued to the general public under bid.

The major difference in the federal administration of the Hawaiian Home Land Trust to how Indian trust lands are managed, is the immense geographical distance from Washington, DC especially in the travel challenges of the early 1900’s. As such, Congress delegated its administration first to the territorial government of Hawaii, and then in the 1959 Statehood act, Congress transitioned that delegation to the new State with federal oversight.

As a result, and unlike Indian Country, native Hawaiians have a state government as day-to-day administrator – the State of Hawaii formed in 1959, and its Department of Hawaiian Home Lands (DHHL) formed in 1961.

It should be stated, that while native Hawaiians on our trust lands do not identify with the term “tribe”, we have since the founding of the HHCA, organized ourselves into self-governing organizations called “homestead associations” that are now, since 2016, federally defined in 43 CRF, very comparable to tribal organizations in the other 49 states. Meaning, homestead associations are the vehicles to exercise self determination of HHCA

beneficiaries collectively, as is intended under the HHCA and general federal policy as it relates to the indigenous peoples of the 50 states.

Homestead associations and their leaders have persisted in organizing as self-governing advocacy organizations for the entire implementation of the HHCA, all components. In recent decades, homestead associations have begun to implement projects and programs to advance the intent of the HHCA, and have become powerful innovators in producing community facilities, affordable housing and rehabilitation programming, all in compliance with the purpose and intent of the HHCA.

With a full embrace by partners in the self-determination tenets of the HHCA, in the capacity of homestead associations, an explosion of success will occur in meeting the purposes of the HHCA enacted 100 years ago.

What’s In the HHCA – Enacted by Congress in 1920 for native Hawaiians of at least 50% Blood Quantum

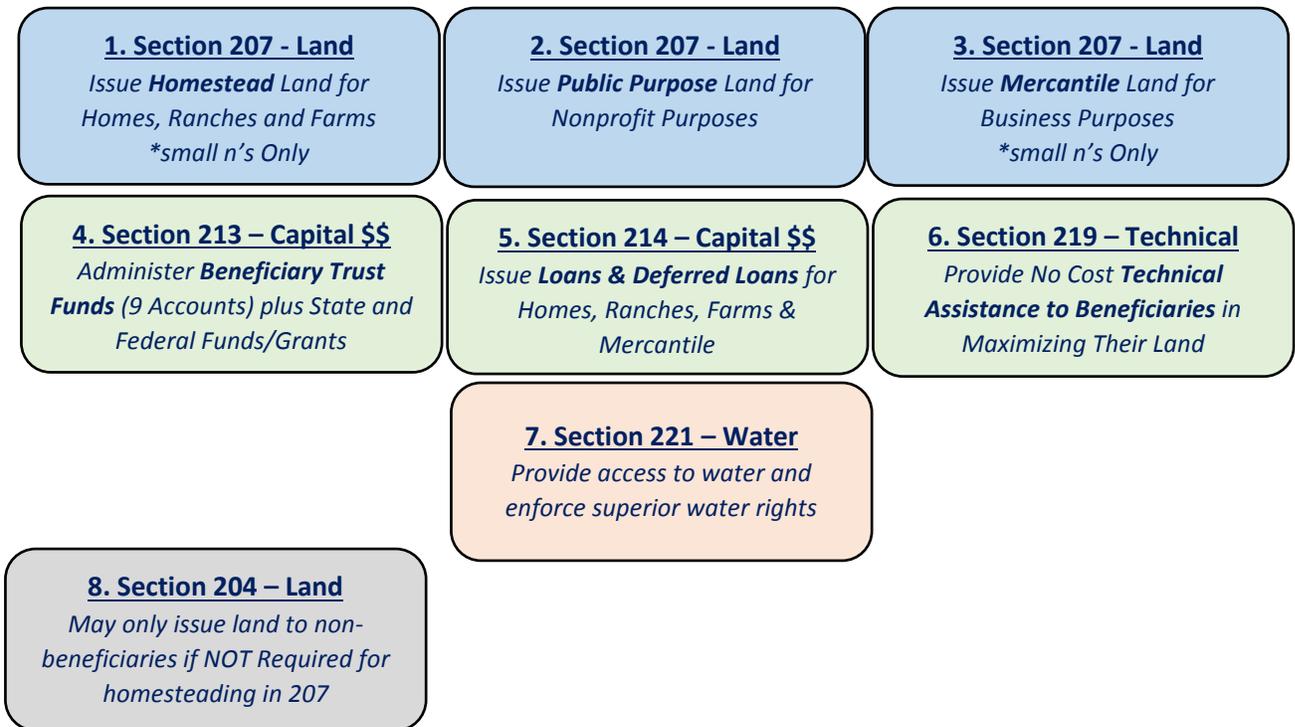
The Hawaiian Homes Commission Act (HHCA) is a brilliant law, NOT implemented well by the State but can be! Its core function is to deliver **land**, **resources** and **water** to native Hawaiians to live, farm, ranch, to worship and provide nonprofit services, and to do business on lands that belong to them and are held in trust for them.

There are 2 significant sections that authorize the **distribution of land**. The first is an original section, Section 207, wherein trust lands may be distributed without bid, to native Hawaiians only, for homesteading (homes, farms and ranches) and for mercantile purposes. Under this section, trust lands may also be distributed without bid for easements, for federal government use, and for public purpose use (nonprofits, churches, schools, clinics and other public purposes, including projects of homestead associations). The second is an amended section, Section 204, wherein lands NOT REQUIRED for native Hawaiian homesteading may be bid to the general public.

The HHCA calls on the State of Hawaii to perform 3 Major Tasks:

- 1) *Issue Land;*
- 2) *Issue Resources and Technical Assistance and*
- 3) *Provide Water.*

The HHCA lays out 7 significant sections to achieve these 3 tasks as follows with an 8th for “available lands”:



Four Major Federal Laws & Two Federal Regulations

The Federal Government, its Department of Interior and Office of Native Hawaiian Relations, the State of Hawaii Executive Branch and its DHHL, the Hawaiian Homes Commission, and the State of Hawaii Legislative Branch, cannot fulfill the trust responsibility to native Hawaiians without knowledge in four (4) basic federal laws and two (2) initial federal regulations.

- **1920 Hawaiian Homes Commission Act**
 - *Issue Land, Resources & Water*
- **1959 Hawaii Admissions Act**
 - *Compact for State to Administer*
- **1995 Hawaiian Home Land Recovery Act**
 - *Mandates DoI as Federal Agency to Protect Beneficiaries*
- **2001 NAHASDA – Adds HHCA**
 - *Federal Affordable Housing Funds*
- **2016 Two Initial Federal Regulations – 43 CFR**
 - *Regulations over State Govt on land exchanges/amendments*
 - *Defines Homestead Associations as Self Governing*



Essentially, the HHCA was enacted by Congress like other federal land trusts for American Indians and Alaska Natives – to provide lands for residential, farming, ranching and mercantile purposes. In 1959, unlike other Native groups, the Congress delegated day-to-day administration of the land trust to State government, with federal oversight.

In 1995, Senator Akaka introduced the Hawaiian Home Land Recovery Act, requiring the return or compensation of lands improperly taken from the trust since statehood. In this federal law, Senator Akaka included language that removed any ambiguity as to which federal agency was explicitly charged with protecting the interests of native Hawaiians, naming the Department of Interior.

In 2001, Senator Inouye achieved the inclusion of native Hawaiians and Hawaiian Home Lands into the Native American Housing Assistance Self Determination Act (NAHASDA), which originated by tribes and tribal housing authorities in 1996.

In 2013, SCHHA advocated that President Obama direct the Secretary of the Department of Interior to promulgate the first two federal rules governing the actions of the State of Hawaii and DHHL. The State of Hawaii opposed these regulations, however, the Obama Administration adopted them in 2016.

What's In the 2016 Initial Federal Regulations – 43 CFR Part 47/48

The promulgation of federal regulations when a major federal law is enacted is a common process. Our primary champion in 1920 for the HHCA, a Congressional delegate from the then, territory of Hawaii was Prince Jonah Kuhio Kalanianaʻole. Once enacted, and amended in 1921, and signed into the law, the following year, Prince Kuhio died in 1922, leaving the HHCA without a champion to compete the next step of establishing federal

regulations to ensure the consistent implementation of the HHCA. The absence of federal regulations has resulted in wide policy swings and interpretation of the HHCA, each and every time a new Hawaii Governor comes into office, and even more so, each time the Governor appoints a Director to his/her cabinet to run the state agency, DHHL.

In 2013, SCHHA and its leaders identified the lack of federal regulations, and began advocacy to advancing the first 2 regulations, which were approved and adopted by the federal government in 2016 in 43 CFR Part 47/48. Major accomplishments of the first 2 rules are as follows:

Land Sales/Land Exchanges/Transfers. The rules define and establish specific processes that DHHL as a State agency must follow when any acre of trust land is sold or exchanged, which requires the review, oversight and action of the federal government via its Department of Interior. For example, these rules now govern any land exchange, including any land exchange the State of Hawaii may want for the Mauna Kea Access road owned by native Hawaiians of the land trust, or the land exchange the State of Hawaii may want to make for 50 acres of trust lands for the City and County of Honolulu rail project.

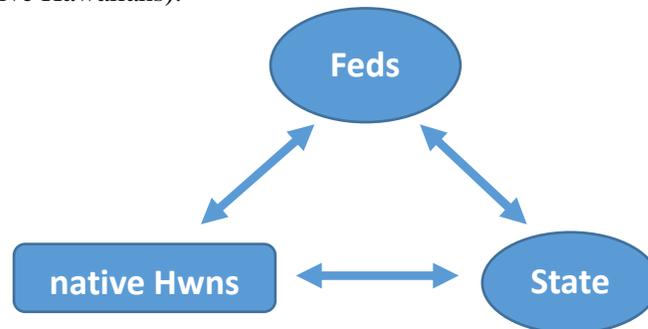
HHCA Amendments. The rules define and establish specific processes that DHHL as a State agency must follow when the State of Hawaii amends the HHCA. Under the 1959 Hawaii Admissions Act, the State of Hawaii is authorized to make “administrative amendments” that do not inhibit the rights of native Hawaiians. This rule requires all HHCA amendments by the State of Hawaii, are reviewed by the federal government, Department of Interior, for assessment on whether the amendment is administrative in nature, or if it requires further Congressional review and approval.

Defines Homestead Associations & Beneficiary Organizations. The rule establishes a specific definition of Homestead Associations, as follows:

“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.”

Homestead Associations are the self-governing organizations on our trust lands, where more than 45 exist representing and serving trust land communities on 6 islands. Typically, homestead associations have enrolled members that elect leadership, quite like tribal governments in other areas of the country.

The Parties of the HHCA. The rule restates the three parties defined by the HHCA, the 1959 Admissions Act and the Hawaiian Home Land Recovery Act of 1995 which are the **State of Hawaii** represented by the DHHL and its Commission, the **Federal Government** represented by the DoI, and the **HHCA Beneficiaries** (native Hawaiians).



The promulgation of the first 2 federal regulations over the State of Hawaii DHHL was an important step forward that happened by the engagement of native Hawaiians unified under the SCHHA to advance them. Indeed, there are a dozen federal regulations that still must be done, and together as members of the SCHHA, we will continue

our advocacy to identify them, and to pursue federal action to establish them. SCHHA urges every native Hawaiian eligible for the HHCA to engage, by enrolling in their respective homestead association or waitlist association, or by enrolling as a member of the SCHHA. Our self-governance, our self-determination must be exercised, to advance solutions that result in the full intent of the HHCA.

No One Is Coming To Save Us. It truly is, up to HHCA Beneficiaries, up to native Hawaiians, to engage to ensure state administration and federal government oversight is done in the best interest of native Hawaiians.

Homestead Self-Determination & Self-Governance

SCHHA recommends that individual HHCA beneficiaries, native Hawaiians of one-half blood quantum or more, and family members of any blood quantum, engage in the work of implementing the tenets of the HHCA. We must not wait for State Government DHHL, nor the federal government. We must engage in our self-governing organizations, to advance good policy, to set expectations of ourselves, and especially of State and Federal governments. Enroll in a homestead association, know where trust lands are located, and become an expert on the HHCA.

Homestead Association Enrollment. Today, there are more than 45 homestead associations across trust lands on all 6 islands where trust lands exist. Most are land-based designated, meaning they are organized based on an existing homestead community, area or neighborhood.

For example, the Anahola Hawaiian Homestead Association (AHHA) on Kauai, represents and serves the interests of native Hawaiians on the land in the Anahola trust land region. Another, on Maui, the Paukukalo Hawaiian Homestead Association (PHHA) represents and serves the interests of native Hawaiians on the land in that region. Kanehili Homestead Association on Oahu represents the interests of homesteaders in the Kanehili homestead community. And, a statewide association for native Hawaiians on the waitlist exists as well, called the Association of Hawaiians for Homestead Lands (AHHL).

Finally, the SCHHA is registered with the federal Department of Interior, as a statewide homestead association with enrolled members on the land in any homestead area, or on the waitlist for trust lands on any island. Find a relevant homestead association. Enroll. Attend. Lead.

Know Where Trust Lands Are Located. One of the most important functions that every HHCA beneficiary can take, is to become knowledgeable about the trust lands where you live, or where you are on the waitlist for an award. Trust lands are being issued for the core purposes of the HHCA every year, and lands are also being issued to non-beneficiaries for secondary purposes, which leave native Hawaiians on the waitlist. HHCA beneficiaries simply must increase our collective knowledge of our trust lands, understand who holds them, and under what section of the HHCA the lands were awarded.

Know the HHCA. Ensuring that the Hawaiian Home Land trust is being implemented as Prince Jonah Kuhio intended, as the U.S. Congress intended, requires HHCA Beneficiaries to know the HHCA. Its not acceptable to rely on the State DHHL or the Federal Government, we have a role that requires that we know what is in the HHCA, what it is suppose to provide for native Hawaiians, and to identify best practices to implement the HHCA. To receive a copy of the U.S. Department of Interior Reference Guide, email the SCHHA at info@hawaiianhomesteads.org.

Mahalo! The SCHHA appreciates your interest in the Hawaiian Homes Commission Act of 1920! Remember, enroll in a self-governing homestead association in your region, or enroll in the SCHHA as a statewide homestead association for both those on the land and those on the waitlist, know where trust lands are, and know the HHCA! Kanaka Forward!

Trust Land Dispositions Allowed Under the Hawaiian Homes Commission Act

Type of Land Use & Disposition	HHCA Section	May Be Held By
HHCA SECTION 207		
1. Homesteading for native Hawaiians	207(a)	Small n
Provide 99 year leases to native Hawaiians with a residential homestead and an agricultural/aqua-cultural or pastoral homestead		
2. Easements for Utilities, Railroads, etc	207(c)(1)	n/a
Provide necessary easements for utilities and transportation – to support homesteading and other land use. HRS 171 procurement does not apply.		
3. Public Purpose (schools, hospitals, churches, postal, etc)	207(c)(1)(A)	Small n
Provide land licenses for functions of public use (used to issue land to nonprofits) – to support homesteading with the public purpose components of a healthy community. HRS 171 procurement does not apply. SCHHA Best Practice is to issue only to beneficiary orgs.		Large N
		No N
4. Mercantile Purpose by native Hawaiians	207(c)(1)(B)	Small n
Provide land licenses for mercantile purposes such as theatres, garages, service stations, markets, stores and other establishments, all of which <u>shall</u> be owned by native Hawaiians or native Hawaiian controlled orgs – obviously to enable beneficiaries to own and operate businesses that are common in a healthy community. HRS 171 procurement does not apply.		
5. Federal Government Use	207(c)(2)	n/a
Provide the federal government land licenses for reservations, water storage, roads, distribution facilities, practice ranges, etc. HRS 171 procurement does not apply.		
SECTION 204		
6. Commercial, Industrial or Other Business Purpose by General Public	204(2)	Small n
Provide lands <u>not required</u> for homesteading by native Hawaiians, to the public for commercial, industrial, or other business purposes, under HRS 171 (procurement) unless exempt from HRS 171 (nonprofit or energy firm, etc). Section also authorizes DHHL to give a preference to native Hawaiians or native Hawaiian controlled orgs (homestead associations).		Large N
		No N

The core land disposition sections of the HHCA are found in Section 207 and Section 204. Section 207 clearly lays out the heart of the HHCA, to issue non-bid land dispositions directly to native Hawaiians for homesteading and mercantile purposes. Whereas Section 204 clearly was intended to only be used to dispose of lands to non-native Hawaiians with lands available and NOT required for homesteading by native Hawaiians in Section 207. The State of Hawaii has freely distributed trust lands under Section 204 to non-Beneficiaries, which the SCHHA strongly opposes and believes is a violation of the spirit of the HHCA. Federal regulations are needed to govern Section 204 land dispositions.

*Note: **A.** SCHHA Policy Priority on any land use under #6 to the General Public, should not occur as long as there is a waitlist for homesteading. Same issue Sonny Kaniho championed in 1974.

B. SCHHA Policy Priority on any land use under #2,#3,#4 & #6, should Require a Homestead Benefit Agreements with a Homestead Association.

C. SCHHA Policy Priority on land use under #3, should be issued to beneficiary-controlled orgs (homestead associations).

