

The Hawaiian Home Lands

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The consequences of the Homestead Act of 1862 is one of range management's most familiar stories. Product of an era when the family farm was idealized, the vast majority of homesteads filed on western public domain lands did not last. Some "homesteads" did become the foundation of ranches that have persisted for generations, but they were seldom used or acquired in the way envisioned by the Congressional authors of the Act. Western settlers instead manipulated the Act to fit local needs and conditions, and the economy of ranching. What you may not realize is that Hawai'i has its own version of the Homestead Act, created for native Hawaiians. This Act has also not had the results some of its creators expected.

Testifying on behalf of the Hawaiian Homes Commission Act of 1921, Secretary of the Interior Franklin K. Lane asserted, "the native[s] of the Islands, who are our wards, ... and for whom in a sense we are the trustees, are living in poverty and dying off rapidly" (Vause 1962). In the belief that providing lands to native Hawaiians for ranches, farms, and homes would help in "rehabilitating" a people severely weakened and impoverished by loss of land and resources, suppression of native culture, and western-introduced disease, approximately 203,000 acres of Hawaii's public lands were dedicated to a homesteading program for native Hawaiians via the Hawaiian Homes Commission Act. The source of these lands was the 1.8 million acres of crown and government lands ceded to the United States when Hawai'i was annexed as a territory in 1898.

But there were other motives for the Act's passage. Between 1917 and 1922, agricultural and grazing leases on more than 200,000 acres of public lands were

due to expire. Under territorial laws, these lands would then be opened up to homesteading by the general public. Most was rangeland leased to cattle ranchers in large tracts, though about 26,000 acres of the expiring leases were valuable sugar cane fields. Both rancher and plantation owner lessees did not want to surrender these lands to homesteaders (Vause 1962).

It was by supporting native Hawaiian rehabilitation that planters found they could protect their most valuable leases.

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By amending the territorial Organic Act, the Hawaiian Homes Commission Act (HHCA), passed in 1921, effectively terminated homesteading by the general public in Hawai'i. It established a trust to facilitate homesteading by native Hawaiians. Public lands were designated for homesteading by native Hawaiians for farms, ranches, and residences. However, the territory's best farm land, the leased cane lands, were not opened to homesteading, under the rationale that a portion of the monies raised from leasing cane lands would fund the homesteading program. A Hawaiian Homes Commission was established to oversee the homesteading, provide training to homesteaders, develop infrastructure, and make loans to support settlement.

Implementation

In the 80 years since the passage of the HHCA, approximately 6,500 long-term leases have been granted, of which only 301 are for ranches and 1,057 are for farms. The structure of the program itself, and the compromises made during its creation, has made agricultural use

by homesteaders close to impossible.

A major problem was that the HHCA program lacked sufficient funding. Congress established the Hawaiian Home Loan Fund to receive receipts derived from the continued leasing of available lands not in homestead use, but placed limits on the amount of money that could be deposited into the fund. The Act also allocated the Fund only thirty percent of the money from leases of sugar cane lands and water licenses. This money was for program support and providing loans to homesteaders. These monies proved insufficient to develop land and to place homesteaders on the land to any great extent. Another obvious problem was that the available lands were consistently misallocated. Territorial governors' executive orders and proclamations withdrew and transferred land for federal agency use and non-federal public purposes.

Three other problems stand out. First, although the fund established by Congress is an important element of the trust, its existence created a conflict of interest within the Hawaiian Home Lands program that continues to this day: Although most of the land is supposed to be available for native Hawaiian homesteading, leasing it to paying customers is essentially the only way to fund the program.

Second, the structure of the funds removed any incentive to seek fair market value for the leases. As aforementioned, the amount that could be deposited in the fund was capped, initially at \$1 million. Any revenues beyond that were to be turned over to the territorial government. Although the cap was occasionally raised, there were periods during the Territorial era when the trust received no revenue (GAO 1994).

Third, Hawaiian homesteaders had access to what were specifically under-

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stood at the time to be remote and essentially uninhabitable lands. Moreover, the Act barred homesteaders from patenting their land. Title to the Home Lands was to remain with the United States government, and native Hawaiians paid \$1 per year for a 99 year lease. This limited the homesteaders' ability to obtain commercial loans and left them dependent on the Home Lands trust for financial support.

Current Management and Restitutions

The Hawaiian homesteading program has followed a tumultuous path. Statehood in 1959 created an opportunity to make improvements in the program, but little was accomplished in the way of facilitating land allocations to native Hawaiians.

Beginning in the late 1970s, longstanding complaints about the Home Lands trust led to a series of governmental and judicial investigations, out of which came a stinging indictment of Hawaiian Home Lands trust management and a consensus regarding the problems plaguing the Home Lands program. Two key issues are clear:

First, suitable land is often not allocated or made available. In 1979, only 25,000 acres or approximately one eighth of the available land was being homesteaded by beneficiaries. About 3,000 leases had been awarded but more than double that amount of beneficiaries remained on waiting lists for homesteads. Fifteen years later there were nearly 13,000 applicants on waiting lists. Over 3,000 of those applicants had been on the list for at least 10 years, with nearly 600 of them joining the list prior to 1970. While many of those applicants may have deferred homestead offerings, the large number on the waiting list indicates that applicants were not being offered homesteads that fit their needs or financial abilities. The Hawaiian Home Lands trust simply was not fulfilling its purpose.

Second, trust resources have been diverted to other uses. Home lands were being used illegitimately. Thirty-one executive orders or proclamations allowed 16,863 acres or almost nine percent of the home lands to be diverted to uses such as airports, schools, parks, game reserves, and other public facilities (DHHL 1977). Federal agencies including the Navy, Army and Federal Aviation Administration controlled vast acreages, paying only a fraction of market value in rent. Furthermore, over 20,000 acres of home lands, approximately ten percent of the total, were unaccounted for (Hawai'i Advisory Committee 1980).

In 1992 the state legislature paid the trust \$12 million for the uncompensated state use of some trust lands.

Prodded by pressure from organized, astute, and active beneficiaries, the state and federal governments have made recent attempts to provide compensation for this history.

Repair of state breaches began in 1984 with the cancellation of 27 gubernatorial orders and proclamations that had transferred land out of the Hawaiian Home Lands trust for state and county uses. This action returned approximately 28,000 acres to the trust. In 1988 the state legislature enacted the Native Hawaiian Trusts Judicial Relief Act that initiated a protracted process for further restitution.

In 1992 the state legislature paid the trust \$12 million for the uncompensated state use of some trust lands. By 1993 a process for replacing misallocated lands and resolving disputed set asides of Hawaiian home lands had been identified, and the state had begun paying fair market rent for the lands which it would continue to hold. All of the outstanding controversies were resolved by the passage of Hawai'i State Act 14 in 1995: \$600 million was to be paid to the Department of Hawaiian Home Lands in \$30 million annual installments for 20 years. With all state breaches supposedly resolved, any further claims against the state for the 1959 to 1988 period

were prohibited.

In 1991 the legislature established an Individual Claims Review Panel to evaluate claims from individual beneficiaries, and to recommend corrective action to the legislature. Concerned that the Claims Review Panel was aiming too broadly, in June 1999 the Governor vetoed a bill extending its life. As of January 1999, of the 4,327 claims originally filed, 47 percent had completed review and 53 percent remained in limbo before a panel that was to go out of business before it could act on them. No claimants had received monetary compensation through this process.

The federal government has also attempted to make amends. The 1995 Hawaiian Home Lands Recovery Act resolves all claims involving federal misuse of Home Lands trust resources via a negotiated settlement with the Department of Hawaiian Home Lands for \$80 million—not in cash, but in land, surplus federal land. The agreement is essentially a land exchange, with the federal government continuing to retain the land and conveying land of equal value, 950 acres, to the department in its place. The Department of Hawaiian Home Lands was also authorized to make claims for other illegitimate uses of lands, such as lands leased to the territorial government and private individuals without revenue returning to the program. The Secretary of Interior rejected all such claims.

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The Future of Homesteading

What then is the future of Hawaiian homesteading? While some past wrongs have been reconciled, home lands continue to be used primarily for non-homesteading purposes. Thirty eight percent of trust lands are managed to produce revenues for the trust, and 42 percent are unencumbered lands that are presently lying fallow or are included in forest reserves. Only 20% are used for home-



Fig. 1. *Fewer than five percent of DHHL leases are granted for what appears to be "traditional" homesteading. This 300 acre pastoral homestead was let in 1952 to Ekela and Alfred Andrade. They continue to occupy their lease as the century closes.*

steading, though these homesteads are an important part of Hawaiian history and culture (Figure 1), just as those created on the mainland by the 1862 Homestead Act are an important part of ranching history and culture.

The Home Lands trust began with 75 years of very un-trust-like treatment of trust lands, funds, and beneficiaries. Despite this sorry history, the Department of Hawaiian Home Lands

has moved unquestionably in recent years towards recognizing its primary obligations to native Hawaiians. But the future of the trust is not assured. The Department continues to be under enormous pressure to behave as a state agency bureaucracy and only marginally as a trust.

Homesteading remains the core of the Department of Hawaiian Home Lands' mission. The trust makes land available to

native Hawaiians primarily for residential use. As needs have evolved increasingly toward suburban housing, the Department of Hawaiian Home Lands has worked with developers to plan and construct "master communities" (Figure 2). The department is responsible for developing infrastructure—water, roads, and utilities—to make home sites habitable. It has also become a guarantor of housing loans or, in many cases, the lender of last resort, for beneficiaries who have been awarded a home site and need additional resources for construction and financing. And, for beneficiaries who lack resources to purchase the department's contractor built homes, the department has begun to work, on a small number of its sites, with Habitat for Humanity.

The Department of Hawaiian Home Land's priority is to place beneficiaries on homesteads, and their potential for doing that has been markedly increased by the lands received in the state and federal settlements. No longer confined to the often undevelopable lands granted 80 years ago, the Department of Hawaiian Home Lands' plans for housing developments and construction have been ambitious. Yet, despite the settlements, they are still constrained by a



Fig. 2. *The Princess Kahanu Estates is typical of the new master planned communities being built by the Department of Hawaiian Home Lands.*

Table 1. Homestead Applications and Awards, 1988-1998 (Annual Report, DHHL, 1988-98).

	1998	1996	1994	1992	1990	1988
<i>Homestead applications pending, cumulative total</i>	29,702	28,641	26,023	23,536	20,001	17,643
<i>Homestead leases awarded, cumulative total</i>	6,547	6,350	6,059	5,889	5,778	5,803
<i>Leases Awarded in Previous Two Years, Total</i>	197	291	170	111	-25	

lack of funding. One past estimate determined that \$1.2 billion would be needed to provide infrastructure on available lands, and an additional \$1.2 billion would be needed to construct 16,000 homes to serve those on the waiting list at the time.

The trust has now and always has had far more qualified homestead applicants than it could serve, given the funds available to support the program (Table 1). In the course of a decade, 744 leases were granted to homesteaders, but more than 12,000 applications for leases were filed.

Whether or not housing goals can be achieved with the new lands and incoming monies remains to be seen. Nevertheless, the future of the program, as has been its past, seems to be housing provision, an important contemporary need of native Hawaiians given the state's speculative real estate market,

and not so much in rehabilitating native Hawaiians through ranching and farming, as envisioned by some of the original supporters of the Hawaiian Home Lands Act.

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