



United States Department of the Interior OF HAWAIIAN
HOME LANDS

OFFICE OF THE SECRETARY
Washington, D.C. 20240

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February 17, 1995

Mr. Kali K. Watson, Chairman
Hawaiian Homes Commission
Department of Hawaiian Home Lands
P.O. Box 1879
Honolulu, Hawaii 96805

Dear Mr Watson:

Please accept my best wishes as you assume the position of Chairman of the Hawaiian Homes Commission. As the Secretary of the Interior's Designated Officer for the Hawaiian Homes Commission Act, I look forward to working with you.

By letter of November 22, 1994, your predecessor, Mrs. Hoaliku L. Drake, enclosed amendments enacted by the State of Hawaii in 1994 to the Hawaiian Homes Commission Act (HHCA). As Mrs. Drake's letter points out in a letter of January 13, 1994 to Mr. I. Michael Heyman, my predecessor as the Designated Officer, she had enclosed amendments to the HHCA enacted by the State of Hawaii in 1993 together with a discussion of four earlier State enactments for which consent had not yet been secured. Due to the small number of amendments and due to the extensive effort the Department had undertaken to review the land claims advanced by the State of Hawaii, the 1993 amendments were not submitted to Congress this past year. Mrs. Drake subsequently asked the Department of the Interior to begin the process of securing Congressional consent to the state amendments to the HHCA set forth in the November 22, 1994 and January 13, 1994 letters to the extent required under Section 4 of the Hawaii Statehood Act.

As you know, Section 4 of the Hawaii Statehood Act provides that "the consent of the United States" would be required for certain amendments by the State to the HHCA. As part of the administrative responsibility the Department of the Interior undertook in 1983 as "lead Federal agency" for purposes of the HHCA, the Department and the Governor of Hawaii informally agreed in 1987 to a procedure under which the Department would become involved in securing Congressional consent to State amendments to the HHCA.

Congress has enacted two statutes consenting to various amendments to the HHCA by the State of Hawaii: P.L. 99-557 of October 27, 1986, 100 Stat. 3143 and P.L. 100-398 of October 6, 1992, 106 Stat. 1953. We would like to coordinate our efforts in securing Congressional consent for the pending amendments. We have prepared the following

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summary of the State legislation transmitted with the January 13 and the November 22 letters. It has been our practice to submit to Congress all State amendments to the HHCA, including those for which consent is not deemed required, for information purposes. Please review the following discussion and let us know whether it correctly summarizes the status of each State amendment to be submitted to Congress.

1993 Hawaii Acts (Your letter of January 13, 1994)

1. Act No. 145 of May 21, 1993, SLH 1993, amending section 213 of the HHCA. This statute removes the ceiling (set at \$15,000 in prior State law) on expenditures for home repairs and additions to homes for loans made to homestead lessees from the Hawaiian Home General Loan Fund. The Act also provides that five stated funds are to be considered as trust funds in that they are available for use only for the benefit of Native Hawaiians under the HHCA. Finally, the Act clarifies prior law to indicate that the Commission is authorized to accept gifts and bequests. In an opinion of July 28, 1993, the Attorney General of Hawaii took the position that Congressional consent was not required for this legislation. Section 4 of the Hawaii Admission Act requires the consent of the United States for amendments that reduce or impair the Hawaiian home-loan and Hawaiian home-operating fund. Act No. 145 removes the ceiling on loans from these funds, which could be construed as a reduction or impairment. Therefore we suggest seeking consent for this legislation.

2. Act No. 146 of May 21, 1993, SLH 1993, amending section 220.5 of the HHCA. This statute clarifies the manner for determining the value to be placed on permanent improvements on available lands withdrawn from project developer agreements entered into by the Department of Hawaiian Home Lands. It provides that the developer's permanent improvements are to be valued on the basis of fair market value or depreciated value, whichever is less. We concur with the Attorney General's July 28, 1993 opinion that consent is not required for this legislation.

3. Act No. 147 of May 21 1993, SLH 1993, amending section 209 of the HHCA. This statute allows a homestead lessee to designate the lessee's Native Hawaiian father or mother, or both, to succeed to the lessee's homestead interest upon death. It also authorizes the Hawaiian Homes Commission to designate a Native Hawaiian relative of a deceased lessee to succeed to the homestead lease if the lessee dies without designating a successor and does not leave a surviving qualified spouse or child. We concur with the Attorney General's July 28, 1993 opinion that consent is not required for this legislation.

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4. Act No. 339 of June 30, 1993, SLH 1993, amending section 219.1 of the HHCA. As we understand it, this statute establishes the Hawaiian Hurricane Relief Fund. Section 7 authorizes the Department of Hawaiian Home Lands to obtain homeowner's insurance coverage for lessees and to issue revenue bonds. We understand that the State of Hawaii takes the position that consent is not required for this legislation. We note, however, that section 15 of the bill consists of a severability clause which provides that consent requirement, if any, that applies to the Hawaiian Homelands provisions of the act shall not be deemed to effect the validity of the other provisions of the act. As you know, this Department has taken the position that state enactments which include a severability clause should, in the exercise of caution, be submitted to Congress for approval. We recommend following that procedure here.

Earlier Acts Submitted to Congress (Your letter of January 13, 1994)

As your January 13 letter points out, the State enacted four statutes amending the HHCA prior to 1993 that have not yet been acted upon. These acts are as follows:

1. Act 75, SLH 1986. This Act authorizes the DHHL to develop a homestead general leasing program in addition to the existing homestead leasing program. In your letter of December 22, 1992 to Mr. Timothy Glidden, the then-Designated Officer for the Hawaiian Homes Commission Act, you indicated that the State would not be pursuing consent for this legislation which, in any event, expires by its own terms on December 31, 1995. Our view is that if this Act remains on the books, it should be transmitted to Congress to secure the requisite consent because it is the type of amendment for which consent is currently required.

2. Act 84, SLH 1986. This Act provided for the development of home lands by contract or developer agreement. In your December 22, 1992 letter to Mr. Glidden, you indicated that the State's view was that this legislation did not require consent. You also pointed out that the Senate Committee on Energy and Natural Resources, through Senator Akaka, had earlier expressed misgivings regarding this legislation in a letter of June 25, 1990 to which the State had responded in a letter of August 29, 1990. The Committee and Senator Akaka were concerned that the Act could result in the loss of Commission control of the leased lands. Your January 14, 1994 letter suggests that these concerns with Act 84 were met by the enactment of Act 146, SLH 1993, discussed above, which the State considers also exempt from the consent requirement. With this background, we remain unclear about, and seek your views on, whether Act 84 needs to be submitted to Congress for consent or whether your

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view is that consent to Act 84 has been mooted by the enactment of Act 146. If your view is that Act 146 moots Act 84, please explain to us how it does so.

3. **Act 283, SLH 1989.** This Act relates to the issuance of revenue bonds. In your December 22, 1992 letter to Mr. Glidden, you indicate your position that this Act does not require consent. In addition, you advise that the State has already used the authority granted by this Act by issuing revenue bonds in 1991 to finance the development of available lands.

Act 283 was one of many submitted to the 102d Congress for consent. The Department took the position that Act 283 was subject to the consent requirement. The Act was eliminated from the consent legislation by the Senate Energy Committee and thus was not included in the final consent legislation, which became P.L. 102-398. The Senate Energy Committee discussed Act 283 in its report (S. Rep. 102-235) on the bill which became P.L. 102-398. The Report states:

Act 283 of 1989 restates that the HHCA authorizes the Department of Hawaiian Home Lands to enter into contracts to develop available lands for homestead, commercial and multipurpose projects, but it further states that the Act does not provide sufficient power for the Department to undertake and finance such development. Act 283 would expand the authority of the Department of Hawaiian Home Lands by empowering it to carry out the development of home lands by assembling such lands into residential developments and providing for the construction of public facilities to service improvements on the lands; to undertake development of available lands as a developer "or in association with a developer agreement"; and to issue revenue bonds, as authorized by the Hawaii legislature, for these purposes. The Committee is not recommending consent to Act 283 at this time because of continuing concerns regarding the policy of the State to lease available lands to non-beneficiaries, a policy which this Act would potentially expand. In addition, there are more specific concerns regarding the potential for developers to gain long-term interests in the Home Lands through the "developer agreements" authorized under this Act. It is the intent of the Committee to examine this Act, and the underlying policy of

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granting leases to non-beneficiaries, in hearings in early 1992, before making any further recommendations regarding Congressional consent to this Act.

Under the circumstances, we believe that Act 283 should be submitted to Congress for ratification.

4. **Act 349, SLH 1990.** This Act, which adds a purpose clause to the HHCA, was eliminated from the 1992 legislation by Senator Inouye. It had been strongly opposed by the prior Administration because of its Federal trust implications. We continue to oppose the enactment of this provision and do not intend to resubmit it.

1994 Hawaii Acts (Your letter of November 22, 1994)

1. **Act 37 of April 28, 1994, SLH 1994,** amending section 209 of the HHCA. This statute allows homestead lessees to designate as a successor to the lease a grandchild who is at least 25 percent Native Hawaiian. Under the current law, as adopted by Hawaii in 1982, a lessee may designate his or her spouse or children as a successor under the lease if they are 25 percent Native Hawaiian; and the bill would thus allow a similar designation with respect to grandchildren. The Department concurs with the States's position that Congressional consent is required for this legislation in that it amends the 50 percent blood quantum requirement included in the HHCA.

2. **Act 109 of June 8, 1994, SLH 1994,** amending section 209 of the HHCA. This statute modifies the appraisal process the Hawaiian Homes Commission is to utilize in determining the value of improvements, growing crops, and aquacultural stock upon the cancellation or termination of a homestead lease, upon the death of a homestead lessee who does not leave a qualified successor or upon the abandonment of a lease by a homestead lessee. The Department concurs with the State's position that consent is not required for this legislation.

3. **Act 152 of June 9, 1994, SLH 1994,** relating to the Panaewa Residential Lots. This statute authorizes any amounts recovered from any party involved with the construction or development of the homes in Panaewa residential lots, units 3 and 4, to be placed in an account to be used to repair homes in these units or to settle with the homeowners. The authorization to use the funds in this manner is limited to the period July 1, 1994 to July 1, 1995. Although we agree with the State that consent is not required for this legislation, please advise us of its status in

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light of any settlement efforts currently underway with the Panaewa homeowners.

Congratulations again on your appointment as Chairman of the Hawaiian Homes Commission. I plan to be in Hawaii within the next few months and perhaps we can use that occasion to meet.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. Cohen', written over a horizontal line.

Edward B. Cohen
Counselor to the Secretary and
Secretary's Designated Officer Under
the Hawaiian Homes Commission Act