February 10, 2012

The Honorable Rhea S. Suh  
Assistant Secretary for Policy Management and Budget  
U.S. Department of the Interior  
1849 C Street, N.W.  
Mail Stop 3543  
Washington, D.C. 20240

Dear Ms. Suh:

Section 4 of the Hawaii Admission Act provides that the Hawaiian Homes Commission Act (HHCA) shall be adopted as a provision of the Constitution of the State of Hawaii. It further provides that with certain exceptions, the HHCA thereafter shall be amended by the State “only with the consent of the United States” (73 Stat. 5). Section 204 of the Hawaiian Homes Lands Recovery Act (P. L. 104-42) outlines the procedure to be followed by the State of Hawaii and the USDOI for the approval of these amendments.

In accordance with this procedure, we are transmitting one amendment to the HHCA passed by the 2011 Hawaii State Legislature and approved by the Governor. The amendments are accompanied by the following documents:

1. An opinion letter from the State of Hawaii Attorney General regarding whether congressional consent is required pursuant to Section 4 of the Hawaii Admission Act; and

2. Copies of relevant testimony presented before the Hawaii State Legislature during deliberations on the amendments.

It is the opinion of the State of Hawaii Attorney General that this amendment does not require the consent of Congress as it falls within one of the enumerated exceptions provided for under Section 4 of the Hawaii Admissions Act.
We appreciate your review and appropriate action on this amendment. Please contact me, or the DHHL Policy & Program Analyst, Ms. Dre Kalili at (808) 620-9486, should you have any questions or need additional documentation on this amendment.

Me ke aloha,

[Signature]

Albert "Alapaki" Nahale-a, Chairman
Hawaiian Homes Commission
December 13, 2011

Mr. Alapaki Nahale-a  
Chairman  
Hawaiian Homes Commission  
91-5420 Kapolei Parkway  
Kapolei, Hawaii 96707

Dear Chairman Nahale-a:

Re: Congressional Consent to 2011 Amendment to the Hawaiian Homes Commission Act, 1920, as Amended.

This responds to your letter dated July 29, 2011, requesting our review and opinion as to whether Act 114, 2011 Hawai‘i Sessions Laws 293, requires the consent of the United States. Act 114 amends §214(b)(5) of the Hawaiian Homes Commission Act by increasing the ceiling on the department’s ability to borrow moneys and guarantee of loans made to lessees from $50,000,000 to $100,000,000.

Section 4 of the Hawaii Admission Act requires the consent of the United States for any amendment to the HHCA, unless the amendment complies with several enumerated exceptions. It provides:

As a compact with the United States relating to the management and disposition of the Hawaiian home lands, the Hawaiian Homes Commission Act, 1920, as amended, shall be adopted as a provision of the Constitution of said State, as provided in section 7, subsection (b) of this Act, subject to amendment or repeal only with the consent of the United States, and in no other manner: Provided, That (1) sections 202, 213, 219, 220, 222, 224, and 225 and other provisions relating to administration, and paragraph (2) of section 204, section 206 and 212, and other provisions relating to the powers and duties of officers other than those charged with the administration of said Act, may be amended in the constitution, or in the manner required for State legislation, but the Hawaiian home-loan fund, the Hawaiian home-operating fund, and the Hawaiian home-development fund shall not be reduced or impaired by any such amendment, whether made in the constitution or in the manner required for State legislation,
and the encumbrances authorized to be placed on Hawaiian home lands by officers other than those charged with the administration of said Act, shall not be increased, except with the consent of the United States; (2) any amendment to increase the benefits to lessees of Hawaiian home lands may be made in the constitution, or in the manner required for State legislation, but the qualifications of lessees shall not be changed except with the consent of the United States; and (3) that all proceeds and income from the “available lands”, as defined by said Act, shall be used only in carrying out the provisions of said Act. (Emphasis added).

As discussed below, it is our belief that Act 114 does not require the consent of the United States.

First, Act 114 does not reduce or impair the Hawaiian home-loan fund, Hawaiian home-operating fund, and Hawaiian home-development fund, as those funds continue to be restricted in use as set forth, in sections 214 and 209, HHCA.

Further, the increase in guaranteed loans enabled by Act 11 will not impair the Hawaiian home-operating fund or the Hawaiian home-development fund in any way. (The Hawaiian home-operating fund was merged with the Hawaiian home-development fund into one fund known as the Hawaiian home-operating fund. Act 249, 1986 Haw. Sess. Laws 443, 447-448; Congressional consent at Public Law 102-398, October 6, 1992.) In fact, the home-operating fund will benefit from the increase in the interest income to be generated by the increased loans enabled by Act 114, since this interest is required to be paid into the fund.

Secondly, raising the debt ceiling from $50,000,000 to $100,000,000 increases the benefits to lessees. Increasing the State’s liability on monies borrowed by the department, or loans guaranteed by the department, results in the availability of more resources for homesteading programs. More lessees are able to obtain department guaranteed homestead loans, and more cooperative associations are able to secure department guaranteed loans, as permitted under §214, HHCA.

Finally, Act 114 does not involve any “encumbrances authorized to be placed on Hawaiian home lands by officers other than those charged with the administration of said Act”, nor does it change the qualification of a lessee, all of which would require the consent of the United States. See §4 of the Admission Act.

Since the effect of Act 114 falls within all of the enumerated exceptions of section 4 of the Admission Act in that it provides: 1) for an increase in benefits to lessees of Hawaiian home lands, 2) does not impair the Hawaiian home-loan fund, the Hawaiian home-operating fund, or the Hawaiian home-development fund, and 3) does not
encumber Hawaiian home lands or change the qualifications of lessees, it does not require Congressional Consent. This position is consistent with similar previous amendments to § 214(b)(5) increasing the State’s liability ceiling for department loans received or guaranteed.

Sincerely yours,

S. Kalani Bush
Deputy Attorney General

APPROVED:

David M. Louie
Attorney General
July 29, 2011

To:       David Louie, Attorney General
           State of Hawaii

From:    Albert "Alapaki" Nahale-a, Chairman
           Hawaiian Homes Commission

Subject: Request to Review Act 114 (2011)

Section 4 of the Admission Act stipulates that certain amendments to the Hawaiian Homes Commission Act, 1920, require the consent of the United States. Pursuant to a procedure established in 1987 between the Governor of Hawaii and the Secretary of Interior, the Chairman of the Hawaiian Homes Commission must transmit to the Secretary’s designated representative any laws of the State of Hawaii that amend the Hawaiian Homes Commission Act, 1920, as amended, within 180 days of the legislative session in which the new law was adopted. When transmitted to the Secretary’s designated representative, each law must be accompanied by an opinion “from an appropriate legal officer of the State” stating whether the amendment requires the consent of the United States.

We request your review of Act 114 (2011) and an opinion on whether this measure requires the consent of the United States. A copy of this act is enclosed.

Your assistance with this matter is appreciated.

Enc.
A BILL FOR AN ACT

RELATING TO THE HAWAIIAN HOMES COMMISSION ACT, 1920, AS AMENDED.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 214, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (b) to read as follows:

"(b) In addition the department may:

(1) Use moneys in the Hawaiian home operating fund, with the prior approval of the governor, to match federal, state, or county funds available for the same purposes and to that end, enter into [such] an undertaking, agree to [such] conditions, transfer funds therein available for [such] expenditure, and do and perform [such] other acts and things, as may be necessary or required, as a condition to securing matching funds for [such] the department's projects or works;

(2) Loan or guarantee the repayment of or otherwise underwrite any authorized loan or portion thereof to lessees in accordance with section 215;

(3) Loan or guarantee the repayment of or otherwise underwrite any authorized loan or portion thereof to a
cooperative association in accordance with section 215;

(4) Permit and approve loans made to lessees by government agencies or private lending institutions, where the department assures the payment of [such] these loans; provided that upon receipt of notice of default in the payment of [such] the assured loans, the department may, upon failure of the lessee to cure the default within sixty days, cancel the lease and pay the outstanding balance in full or may permit the new lessee to assume the outstanding debt; and provided further that the department shall reserve the following rights: [the]

(A) The right of succession to the lessee's interest and assumption of the contract of loan; [the]

(B) The right to require that written notice be given to the department immediately upon default or delinquency of the lessee; and [any]

(C) Any other rights enumerated at the time of assurance necessary to protect the monetary and other interests of the department;
(5) Secure, pledge, or otherwise guarantee the repayment
of moneys borrowed by the department from government
agencies or private lending institutions and pay the
interim interest or advances required for loans;
provided that the State's liability, contingent or
otherwise, either on moneys borrowed by the department
or on departmental guarantees of loans made to lessees
under this paragraph and paragraphs (2), (3), and (4)
of this subsection, shall at no time exceed
[$50,000,000] $100,000,000; the department's
guarantee of repayment shall be adequate security for
a loan under any state law prescribing the nature,
amount, or form of security or requiring security upon
which loans may be made;

(6) Use available loan fund moneys or other funds
specifically available for [such] guarantee purposes
as cash guarantees when required by lending agencies;

(7) Exercise the functions and reserved rights of a lender
of money or mortgagee of residential property in all
direct loans made by government agencies or by private
lending institutions to lessees the repayment of which
is assured by the department. The functions and
reserved rights shall include but not be limited to,
the purchasing, repurchasing, servicing, selling,
foreclosing, buying upon foreclosure, guaranteeing the
repayment, or otherwise underwriting, of any loan, the
protecting of security interest, and after
foreclosures, the repairing, renovating, or
modernization and sale of property covered by the loan
and mortgage;

(8) Pledge receivables of loan accounts outstanding as
collateral to secure loans made by government agencies
or private lending institutions to the department, the
proceeds of which shall be used by the department to
make new loans to lessees or to finance the
development of available lands for purposes permitted
by this Act; provided that any loan agreement entered
into under this paragraph by the department shall
include a provision that the money borrowed by the
department is not secured directly or indirectly by
the full faith and credit or the general credit of the
State or by any revenues or taxes of the State other
than the receivables specifically pledged to repay the
loan; provided further that in making loans or
developing available lands out of money borrowed under this paragraph, the department may establish, revise, charge, and collect fees, premiums, and charges as necessary, reasonable, or convenient, to assure repayment of the funds borrowed, and the fees, premiums, and charges shall be deposited into the Hawaiian home trust fund; and provided further that no moneys of the Hawaiian home loan fund may be pledged as security under this paragraph; and

(9) Notwithstanding any other provisions of this Act to the contrary, transfer into the Hawaiian home trust fund any available and unpledged moneys from any loan funds, the Hawaiian loan guarantee fund, or any fund or account succeeding thereto, except the Hawaiian home loan fund, for use as cash guarantees or reserves when required by a federal agency authorized to insure or guarantee loans to lessees."

SECTION 2. The provisions of the amendments made by this Act to the Hawaiian Homes Commission Act, 1920, as amended, are declared to be severable, and if any section, sentence, clause, or phrase, or the application thereof to any person or circumstances is held ineffective because there is a requirement
of having the consent of the United States to take effect, then
that portion only shall take effect upon the granting of consent
by the United States and effectiveness of the remainder of these
amendments or the application thereof shall not be affected.

SECTION 3. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011.

APPROVED this 14 day of JUN , 2011

GOVERNOR OF THE STATE OF HAWAII
June 14, 2011

The Honorable Shan Tsutsui, President and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 14, 2011, the following bill was signed into law:

SB1290 SD1 HD2 CD1
RELATING TO THE HAWAIIAN HOMES COMMISSION ACT, 1920, AS AMENDED
Act 114 (11)

Sincerely,

NEIL ABERCROMBIE
Governor, State of Hawaii
A BILL FOR AN ACT

RELATING TO THE HAWAIIAN HOMES COMMISSION ACT, 1920, AS AMENDED.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 214, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (b) to read as follows:

"(b) In addition the department may:

(1) Use moneys in the Hawaiian home operating fund, with the prior approval of the governor, to match federal, state, or county funds available for the same purposes and to that end, enter into such undertaking, agree to such conditions, transfer funds therein available for such expenditure, and do and perform such other acts and things, as may be necessary or required, as a condition to securing matching funds for such the department's projects or works;

(2) Loan or guarantee the repayment of or otherwise underwrite any authorized loan or portion thereof to lessees in accordance with section 215;

(3) Loan or guarantee the repayment of or otherwise underwrite any authorized loan or portion thereof to a
cooperative association in accordance with section 215;

(4) Permit and approve loans made to lessees by government agencies or private lending institutions, where the department assures the payment of these loans; provided that upon receipt of notice of default in the payment of the assured loans, the department may, upon failure of the lessee to cure the default within sixty days, cancel the lease and pay the outstanding balance in full or may permit the new lessee to assume the outstanding debt; and provided further that the department shall reserve the following rights: [the]

(A) The right of succession to the lessee's interest and assumption of the contract of loan; [the]

(B) The right to require that written notice be given to the department immediately upon default or delinquency of the lessee; and [any]

(C) Any other rights enumerated at the time of assurance necessary to protect the monetary and other interests of the department;
(5) Secure, pledge, or otherwise guarantee the repayment of moneys borrowed by the department from government agencies or private lending institutions and pay the interim interest or advances required for loans; provided that the State's liability, contingent or otherwise, either on moneys borrowed by the department or on departmental guarantees of loans made to lessees under this paragraph and paragraphs (2), (3), and (4) of this subsection, shall at no time exceed [§50,000,000;] $100,000,000; the department's guarantee of repayment shall be adequate security for a loan under any state law prescribing the nature, amount, or form of security or requiring security upon which loans may be made;

(6) Use available loan fund moneys or other funds specifically available for [such] guarantee purposes as cash guarantees when required by lending agencies;

(7) Exercise the functions and reserved rights of a lender of money or mortgagee of residential property in all direct loans made by government agencies or by private lending institutions to lessees the repayment of which is assured by the department. The functions and
reserved rights shall include but not be limited to,
the purchasing, repurchasing, servicing, selling,
foreclosing, buying upon foreclosure, guaranteeing the
repayment, or otherwise underwriting, of any loan, the
protecting of security interest, and after
foreclosures, the repairing, renovating, or
modernization and sale of property covered by the loan
and mortgage;

(8) Pledge receivables of loan accounts outstanding as
collateral to secure loans made by government agencies
or private lending institutions to the department, the
proceeds of which shall be used by the department to
make new loans to lessees or to finance the
development of available lands for purposes permitted
by this Act; provided that any loan agreement entered
into under this paragraph by the department shall
include a provision that the money borrowed by the
department is not secured directly or indirectly by
the full faith and credit or the general credit of the
State or by any revenues or taxes of the State other
than the receivables specifically pledged to repay the
loan; provided further that in making loans or
developing available lands out of money borrowed under this paragraph, the department may establish, revise, charge, and collect fees, premiums, and charges as necessary, reasonable, or convenient, to assure repayment of the funds borrowed, and the fees, premiums, and charges shall be deposited into the Hawaiian home trust fund; and provided further that no moneys of the Hawaiian home loan fund may be pledged as security under this paragraph; and

(9) Notwithstanding any other provisions of this Act to the contrary, transfer into the Hawaiian home trust fund any available and unpledged moneys from any loan funds, the Hawaiian loan guarantee fund, or any fund or account succeeding thereto, except the Hawaiian home loan fund, for use as cash guarantees or reserves when required by a federal agency authorized to insure or guarantee loans to lessees."

SECTION 2. The provisions of the amendments made by this Act to the Hawaiian Homes Commission Act, 1920, as amended, are declared to be severable, and if any section, sentence, clause, or phrase, or the application thereof to any person or circumstances is held ineffective because there is a requirement
of having the consent of the United States to take effect, then
that portion only shall take effect upon the granting of consent
by the United States and effectiveness of the remainder of these
amendments or the application thereof shall not be affected.

SECTION 3. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011.

APPROVED this 14 day of JUN, 2011

[Signature]

GOVERNOR OF THE STATE OF HAWAII
Honorable Shan S. Tsutsui  
President of the Senate  
Twenty-Sixth State Legislature  
Regular Session of 2011  
State of Hawaii  

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Sixth State Legislature  
Regular Session of 2011  
State of Hawaii  

Sirs:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 1290, S.D. 1, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO THE HAWAIIAN HOMES COMMISSION ACT, 1920, AS AMENDED,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to amend from $50,000,000 to an unspecified amount the limit on the amount the Department of Hawaiian Home Lands is currently authorized to borrow or guarantee on loans ("borrow or guarantee limit") in order to cover the Department's repayment guarantee requirements for its housing program.

Your Committee on Conference notes that, as initially introduced, this measure would raise the borrow or guarantee limit from $50,000,000 to $100,000,000, and enhance the Department's ability to deliver homesteads and home ownership opportunities to
beneficiaries. Current loan guarantees are approximately $30,000,000, with an additional $16,800,000 in loans to be closed over the next six months, bringing the total very close to the current $50,000,000 ceiling.

Your Committee on Conference has amended this measure accordingly, by:

(1) Inserting a borrow or guarantee limit of $100,000,000; and

(2) Changing the effective date to July 1, 2011.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 1290, S.D. 1, H.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 1290, S.D. 1, H.D. 2, C.D. 1.

Respectfully submitted on behalf of the managers:

ON THE PART OF THE HOUSE

FAYE HANOHANO, Co-Chair
MARCUS R. OSHIRO, Co-Chair

ON THE PART OF THE SENATE

BRICKWOOD GALUTERIA, Chair
MICHIELLE KIDANI, Co-Chair
GILBERT KAHELE, Co-Chair
Bill / Concurrent Resolution No.: SB 1290, SD 1, HD 2

Date/Time: 4-29-11 11:00 a.m.

☐ The recommendation of the House and Senate managers is to pass with amendments (CD).

☐ The Committee is reconsidering its previous decision.

☐ The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure

☐ The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.

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TOTAL 3 | 1 | TOTAL 3 2

A = Aye WR = Aye with Reservations N = Nay E = Excused

Senate Recommendation is: ☐ Adopted ☐ Not Adopted

House Recommendation is: ☑ Adopted ☐ Not Adopted

Senate Lead Chair's or Designee's Signature: [Signature]

House Lead Chair's or Designee's Signature: [Signature]

Distribution: Original Yellow Pink Goldenrod

File with Conference Committee Report House Clerk's Office Senate Clerk's Office Drafting Agency
Aloha Chair Oshiro, Vice-Chair Lee and Members of the Committee:

The Department of Hawaiian Home Lands (DHHL) strongly supports SB 1290 SD 1 HD 1, as our ability to deliver homesteads and home ownership opportunities to beneficiaries is directly tied to our ability to guarantee mortgage loans.

As DHHL lands are inalienable, we are required to guarantee mortgage loans made for homes on Hawaiian Home Lands when lenders do not have a loan assurance program. The DHHL’s current loan guarantees are approximately $30 million of the current $50 million ceiling, and we have approximately $16.8 million in loans to be closed over the next six months.

As part of its housing strategy, the DHHL has partnered with local lenders on loan programs with complementing mortgage insurance to minimize the Department’s guarantee obligations. However, there still exist loan programs that serve specific income level families, such as Habitat for Humanity, U.S. Department of Agriculture (USDA) Rural Development and county programs here in Hawaii. The exponential
growth of both house construction and mortgage amounts of these programs will still require this ceiling adjustment. The increase in this ceiling will allow the Department to increase construction of affordable units and home ownership, thereby creating jobs, and infuse millions of dollars in Hawaii's local economy. This benefits the entire state.

We ask that your committee consider amending this measure, specifically Page 3, lines 7-8 to read “shall at no time exceed $100,000,000”

We appreciate your consideration and respectfully urge to you adopt this measure and raise this ceiling from $50 million to $100 million so we may continue to work to fulfill our mission. Thank you for the opportunity to testify.