The Honorable Kali Watson  
Chairman, Hawaiian Homes Commission  
Department of Hawaiian Home Lands  
State of Hawaii  
335 Merchant Street, Room 307  
Honolulu, Hawaii 96813

Dear Mr. Watson:

Re: Congressional Consent to 1996 Amendment to the Hawaiian Homes Commission Act, 1920, as Amended.

This responds to your letter of July 15, 1996, requesting our review and opinion as to whether the amendment made to the Hawaiian Homes Commission Act, 1920, as amended ("HHCA"), by Act 232, 1996 Haw. Sess. Laws 531, requires the consent of the United States.

Section 4 of the Hawaii Admission Act1/ requires the consent of the United States for any amendment to the HHCA,  

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1/ Section 4, the Admission Act, (Act of March 18, 1959, Pub. L. 86-3, 73 Stat. 4), reads as follows:

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, sections 206 and 212, and other
unless the amendment falls within one of several enumerated exceptions. One exception to the consent requirement concerns amendments to the HHCA which increase benefits to lessees of Hawaiian home lands. Such amendments do not require the consent of the United States and take effect upon approval of the governor, unless otherwise stated in the amending legislation.

Act 232, 1996 Haw. Sess. Laws 531, amends section 214(b)(5) of the HHCA by increasing the ceiling on the aggregate departmental guarantee of loans made to lessees from

cont'd. 1/ 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-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) that 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.
$21,000,000 to $50,000,000 and, by its terms, took effect upon approval of the governor on June 18, 1996.

We are of the opinion that Act 232 falls within one of the enumerated exceptions in that it provides for an increase of benefits to lessees of Hawaiian home lands and therefore does not require the consent of the United States.

Very truly yours,

George K. K. Kaeo, Jr.
Deputy Attorney General

APPROVED:

Margery S. Bronster
Attorney General

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 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 loans; provided that upon receipt of notice of default in the payment of such 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 right of succession to the lessee's interest and assumption of the contract of loan; the right to require that written notice be given to the department immediately upon default or delinquency of the lessee; and 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 [$21,000,000] $50,000,000; 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 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;
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. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.
TO: The Honorable Dennis A. Arakaki, Chair
House Committee on Hawaiian Affairs and Housing

FROM: Kali Watson, Chairman
Hawaiian Homes Commission

SUBJECT: Testimony On H.B. 3453 Relating To The Hawaiian Homes
Commission Act, 1920, as Amended

February 10, 1996

Mr. Chairman and Members of the House Committee on Hawaiian Affairs and Housing, we appreciate the opportunity to testify on H.B. 3453 relating to the Hawaiian Homes Commission Act, 1920, as amended.

The purpose of this Administration bill is to increase the amount the department is presently authorized to borrow or guarantee on loans from $21,000,000 to $50,000,000 to cover the department's projected guarantee requirements for its housing program.

Financial institutions in the past have been reluctant to make mortgage loans to Hawaiian home lands beneficiaries because of the inalienability of Trust lands as stipulated in the Hawaiian Homes Commission Act of 1920. As part of DHHL's housing strategy, the department has been involved with innovative loan programs in order to help lenders better underwrite mortgages made on Trust lands. Approximately $14.8 million or 15% of the department's mortgage loan portfolio is comprised of guaranteed loans which allows financing through external sources. Such programs include the U.S. Department of Agriculture's Rural Economic and Community Development Program, a three-way loan agreement program between the department, the Office of Hawaiian Affairs and First Hawaiian Bank, and various loan guarantee programs with federal credit unions and financial institutions. These programs provide DHHL the advantage of 1) leveraging the department's limited loan fund resources to allow expansion in other development areas and 2) reducing departmental administrative expenses.
While the DHHL Land Claims Settlement Act (Act 14, Special Session 1995) provides a significant revenue source for the financing of DHHL's capital program requirements, it is clear that loan capitalization through external sources is a necessary and efficient way to satisfy the massive demand for home financing.

This amendment would increase DHHL's access to external sources of loan financing for home construction. Addressing the infrastructure and housing needs of unimproved and awarded lots is a major objective of the department's near-term capital program. The longer term program is focused on planning, designing and developing planned communities that will, at capacity, provide housing for several thousand beneficiary families.

We urge your approval of this bill and would be pleased to respond to any questions the Committee may have.
STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAPITOLANI BOULEVARD, SUITE 500
HONOLULU, HAWAII 96813

TESTIMONY SUPPORTING THE PASSAGE OF HB 3453

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

February 10, 1996

Aloha kakahiaka, Chairman Arakaki and members of the House Committee on Hawaiian Affairs and Housing. My name is Stephen K. Morsae and I am the Housing Officer for the Office of Hawaiian Affairs (OHA). I speak this afternoon in support of the passage of HB 3453, which would increase the amount the Department of Hawaiian Home Lands is presently authorized to guarantee on loans from $21 million to $50 million, to cover the department's projected guarantee requirements for its housing program.

OHA supports the intent of this measure. Under our Hawaiian Homesteader Loan Program which is serviced by First Hawaiian Bank, we are making home improvement and down payment assistance loans to Hawaiian homesteaders that are guaranteed by DHHL. If DHHL should be unable to guarantee loans at some point in the future because it has reached its debt ceiling of $21 million, it would have a serious negative impact on our ability to continue loaning money to Hawaiian homesteaders.

This would be unfortunate as we are now entering a period when many Hawaiian Home Lands housing projects, which have been stalled for years because of the lack of development funds, are now moving into the development phase. Projects like those in Nanakuli, Waimanalo, Waimea, Kawaihao, Waiohuli, Ho'olehua, Kalaanaula, and Anahola, which will come on line within the next two years, will provide hundreds of improved lots ready to build on.

However, without an adequate mortgage financing structure in place, such as the DHHL and OHA loans, homestead lessees will be unable to build.

In view of the above, Mr. Chairman, OHA strongly urges the passage of HB 3453.

Mahalo e. nui loa for the opportunity to testify on this important measure. I will be happy to answer any questions you may have.