

JOHN WAIHEE  
GOVERNOR  
STATE OF HAWAII



HOALIKU L. DRAKE  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

P O. BOX 1879  
HONOLULU, HAWAII 96805

December 22, 1992

Mr. Timothy W. Glidden  
Counselor to the Secretary and  
Secretary's Designated Officer,  
Hawaiian Homes Commission Act  
U. S. Department of the Interior  
Office of the Secretary  
Washington, D. C. 20240

Dear Mr. Glidden:

*Aloha!*

Thank you for your letter of November 10, 1992, in which you discussed your views as to whether consent is required with respect to Act 92, SLH 1992 and Act 325, SLH 1991. We also appreciate your thoughtfulness in sending a copy of the President's signing statement on Senate Joint Resolution 23.

With the enactment of Public Law No. 102-398, there remain four Hawaii measures that have been submitted to Congress but that have not been acted upon. While we commented on these previously, we did indicate that we would provide you with our current position on the measures.

Act 75, SLH 1986, would authorize the Department of Hawaiian Home Lands to develop a homestead general leasing program as an alternative means by which native Hawaiians may lease Hawaiian home lands for homesteading purposes. Act 75 expressly requires consent of the United States before it can take effect. It also provides for its repeal five years after consent is obtained or December 31, 1995, whichever occurs first. We are aware of concerns expressed by beneficiaries and others, for example, the possibility under a general leasing program that Hawaiian home lands being intended for homesteading could be transferred to non-native Hawaiians. We will not be pursuing consent for this legislation, but have not initiated any action to repeal Act 75.

Act 84, SLH 1986, deals with development by contract and development by project developer agreement. DHHL's view, as previously expressed, is that this legislation does not require consent and can be implemented without consent. A

Mr. Timothy W. Glidden  
U. S. Department of the Interior  
Office of the Secretary  
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question previously raised by the Senate Committee on Energy and Natural Resources, through Senator Daniel K. Akaka, dealt with the term "proportionate value" that appears in paragraph (d) of the new section. The Committee requested my assurance that the term would only include the depreciated value of the permanent improvements when the land is withdrawn from a project development agreement. The Attorney General of Hawaii did explain that the term was not intended to modify "value" to mean its "depreciated value." To address this concern, we have drafted an amendment to section 220.5 of the Hawaiian Homes Commission Act (the new section added by Act 84) to provide that the value of permanent improvements on lands withdrawn shall be determined on the basis of fair market value or depreciated value, whichever is lower. This legislative proposal is being reviewed by other executive agencies and it has not as yet been approved for submission as an administration measure. A copy of Senator Akaka's letter of June 25, 1990, the Attorney General's response of August 29, 1990 and our proposed legislation are enclosed for your information.

Act 283, SLH 1989, authorizes DHHL, with the Governor's approval, to undertake and finance the development of available lands including the financing of such undertakings through the issuance of revenue bonds as authorized by the legislature. As we have previously stated, our position is that Act 283 does not require consent and we have used the authority granted by the act to issue revenue bonds in October 1991 to finance the development of available lands.

Act 349, SLH 1990, adds statements of policy and purpose to the Hawaiian Homes Commission Act and expressly requires the consent of the United States to take effect. While we are aware of your objections to Act 349, we support its effectuation.

We hope this letter brings you up-to-date on our positions regarding the pending legislation.

bcc: Chairman's Office (file)  
Deputy to the Chairman  
OSP  
Phil Shimer  
George Kaeo  
ASO  
ADMIN - Reading File

Warmest aloha,

  
Hoaliku L. Drake, Chairman  
Hawaiian Homes Commission

HLD:HHCL:lar/6257S

Enclosures

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:

1 SECTION 1. Section 220.5, Hawaiian Homes Commission  
2 Act, 1920, as amended, is amended by amending subsection  
3 (d) to read as follows:

4 "(d) Any project developer agreement entered into  
5 pursuant to this section may provide for options for  
6 renewal of the term of the project developer agreement;  
7 provided that the term of any one project developer  
8 agreement shall not exceed sixty-five years; and provided  
9 further that any lands disposed of under a project  
10 developer agreement shall be subject to withdrawal at any  
11 time during the term of the agreement, with reasonable  
12 notice; and provided that the rental shall be reduced in  
13 proportion to the value of the portion withdrawn and the  
14 developer shall be entitled to receive from the department  
15 the proportionate value of the developer's permanent  
16 improvements so taken in the proportion that they bear to  
17 the unexpired term of the agreement, with the value of the  
18 permanent improvements determined on the basis of fair

1 market value or depreciated value, whichever is lower, or  
2 the developer, in the alternative, may remove and relocate  
3 the developer's improvements to the remainder of the lands  
4 occupied by the developer."

5 SECTION 2. New statutory material is underscored.

6 SECTION 3. This Act shall take effect upon its  
7 approval.

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INTRODUCED BY: \_\_\_\_\_

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JUSTIFICATION SHEET

DATE: November 6, 1992

DEPARTMENT: Hawaiian Home Lands

TITLE: A BILL FOR AN ACT RELATING TO THE HAWAIIAN HOMES COMMISSION ACT, 1920, AS AMENDED.

PURPOSE: To require that the value of improvements on lands withdrawn pursuant to developer agreements entered into by the Department of Hawaiian Home Lands be based on fair market value or depreciated value, whichever is less.

MEANS: Amend subsection (d) of section 220.5 of the Hawaiian Homes Commission Act, 1920, as amended (HHCA).

JUSTIFICATION: Section 220.5 of the HHCA permits DHHL to enter into developer agreements to develop Hawaiian home lands for homestead, commercial, and multi-purpose projects, or a portion of such projects.

Subsection (d) of section 220.5 allows for options to renew the term of the project developer agreement; sets the maximum term of a developer agreement at 65 years; and requires that lands under a project developer agreement be subject to withdrawal by DHHL at any time during the term of the agreement with reasonable advance notice given. This subsection also provides for the reduction of rental in proportion to the value of the portion withdrawn as well as paying the developer the proportionate value of any permanent improvements on the withdrawn land or allowing the developer to remove and relocate the developer's improvements. The subsection is silent as to how permanent improvements on the lands withdrawn are to be valued.

The proposed amendment to subsection (d) provides that the value of permanent improvements on withdrawn lands be based on fair market value or depreciated value, whichever is less.

GENERAL FUND: None required.

OTHER FUNDS: None required.

PPBS PROGRAM DESIGNATION: HHL 602, Planning, Development, Management and General Support for Hawaiian Homestead Lands.

OTHER AGENCIES AFFECTED: None.

JOHN WAIHEE  
GOVERNOR



AUG 30

10 43 AM '90

WARREN PRICE, III  
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FIRST DEPUTY ATTORNEY GENERAL

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August 29, 1990

The Honorable Daniel K. Akaka  
United States Senator  
109 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Akaka:

This responds to your letter of June 25, 1990, to Mrs. Hoaliku Drake, Chairman of the Hawaiian Homes Commission, Department of Hawaiian Home Lands, requesting certain assurances from her. We understand from your letter that the Senate Committee on Energy and Natural Resources wants assurance that the phrase "proportionate value" contained in section 220.5(d), of the Hawaiian Homes Commission Act, enacted by Act 84, Session Laws of Hawaii of 1986, would only include the "depreciated value" of the permanent improvements at the time the underlying land is withdrawn from a project developer agreement.

Section 220.5(d) provides as follows:

(d) Any project developer agreement entered into pursuant to this section may provide for options for renewal of the term of the project developer agreement; provided that the term of any one project developer agreement shall not exceed sixty-five years; and provided further that any lands disposed of under a project developer agreement shall be subject to withdrawal at any time during the term of the agreement, with reasonable notice; and provided that the rental shall be reduced in proportion to the value of the portion withdrawn and the developer shall be entitled to receive from the department the proportionate value of the developer's permanent improvements so taken in the proportion that they bear to the unexpired term of the agreement, or the developer, in the alternative, may remove and relocate the developer's improvements to the remainder of the lands occupied by the developer.

Senator Daniel K. Akaka  
August 29, 1990  
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As we understand your inquiry, it seeks a determination as to whether the valuation of the developer's permanent improvements built on lands withdrawn from a project developer agreement are limited to the depreciated value of the improvements.

Based on our review of section 220.5, its legislative history, and related statutory provisions, we are of the opinion that the term "value" refers to the appraised fair market value of the land, the improvements, or both land and improvements, as of the date of withdrawal. We think the word "proportionate" in the phrase "proportionate value" was to make clear the value of the improvements must be apportioned among the parties based on their respective interests in the unexpired term of the agreement and was not intended to modify "value" to mean its "depreciated value."

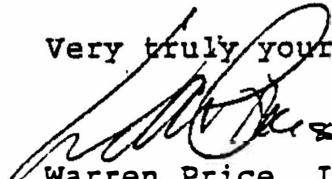
Further, we think that if the legislature intended to limit valuation of the improvements to its depreciated value, it would have said so.

Finally, though we have concluded that valuation of improvements under section 220.5(d) is not limited to its "depreciated value," an appraiser may conclude under the particular circumstances of an appraisal assignment that the depreciated value is its fair market value.

As requested, transmitted herewith is the legislative history material relating to Act 84.

If we may be of further assistance, please do not hesitate to let us know.

Very truly yours,



Warren Price, III  
Attorney General

WP/GKKK:tlc  
Enclosures (8)  
cc: Hon. Hoaliku Drake (w/o enclosures)

1758K

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United States Senate  
WASHINGTON, DC 20510-1103

June 25, 1990

Mrs. Ecalika Drake  
Chairperson, Dept. of  
Hawaiian Home Lands  
355 Merchant Street  
Honolulu, HI 96813

Dear Ecalika:

On June 21, 1990, the Senate Committee on Energy and Natural Resources reported S.J.Res. 154 to the Senate floor. During the markup of the resolution, the committee deleted Act 75 from the resolution. Act 85, which was omitted due to a clerical error, was added to the resolution.

During the course of the mark-up, I and other members of the committee requested clarification of the term "proportional value" which appears in subsection (d) of Act 84. Subsection (d) provides in sort:

" . . . and provided that the rental shall be reduced in proportion to the value of the portion withdrawn and the developer shall be entitled to receive from the department the proportionate value of the developer's permanent improvements so taken in the proportion that they bear to the unexpired term of the agreement, . . . ."

The committee is anxious to receive assurances that "proportional value" would only include the depreciated value of the permanent improvements at the time that the underlying land is withdrawn from a project development agreement.

The committee would like to schedule this resolution for consideration by the full Senate as soon as such assurances are received. I also ask that any legislative history on this point be transmitted along with your letter.

Thank you for your assistance. If I can be of any help, please do not hesitate to contact me.

Aloha pumehana,  
*Danny*  
DANIEL K. AKAKA  
U.S. Senator