

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

December 19-20, 2022

To: Chairman and Members, Hawaiian Homes Commission
From: Peter “Kahana” Albinio, Jr., Acting Administrator
Land Management Division *KA*
Subject: FOR INFORMATION ONLY – Geothermal Investigation/Exploration at
Humu’ula, Hawaii Island, Various TMK’s

RECOMMENDED MOTION/ACTION:

None; For Information Only

BACKGROUND

The purpose of this subject agenda item is to initiate dialogue amongst the Hawaiian Homes Commission on renewable energy opportunities that would consist of investigation, exploration and identification efforts of potential geothermal resources within home lands located more specifically in the Humu’ula, Hawaii Island area (Exhibit “A.”)

The information obtained would then be analyzed and used as a guide to determine which sites might have potential and be best suited to further consider geophysical survey program efforts.

Additionally, Act 279, Session Laws of Hawaii 2022 (“Act 279”), authorizes the Department of Hawaiian Home Lands (“DHHL”) to use appropriated funds to pursue strategies to produce renewable energy from DHHL’s geothermal resources see Exhibit “B.”



Exhibit "A"
Item No. F-6



The Senate

STATE CAPITOL
HONOLULU, HAWAII 96813

November 21, 2022

Mr. William Aila, Jr., Chair
Department of Hawaiian Home Lands

Dear Chair Aila,

Act 279, Session Laws of Hawaii 2022 (“Act 279”), authorizes the Department of Hawaiian Home Lands (“DHHL”) to use appropriated funds to pursue strategies to produce renewable energy from DHHL’s geothermal resources. In response to the aforementioned communication, advice was solicited from the Attorney General.

Please see attached letter from Supervising Deputy Attorney General Craig Y. Iha dated November 15, 2022, which states that:

“[Act 279] provides DHHL with broad spending authority to help the department reduce its homestead applicant waitlist...[which] could include developing geothermal resources to provide a future income stream if DHHL so decides.”

I support the development of geothermal energy as a baseload, firm power energy resource to address Hawaii's energy crisis. The expenditure of a two-million-dollar cost for the purpose of conducting a geothermal exploration program of this resource on DHHL lands is critical financial long-term investment option to solving the homestead applicant waitlist.

Sincerely,

Senator Donovan M. Dela Cruz

Attachments

DAVID Y. IGE
GOVERNOR



HOLLY T. SHIKADA
ATTORNEY GENERAL

VALERIE M. KATO
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
Ka 'Oihana O Ka Loio Kuhina
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

November 15, 2022

TO: The Honorable Donovan M. Dela Cruz
Chair, Senate Committee on Ways and Means
Thirty-First State Legislature
State Capitol, Room 208
Honolulu, Hawaii 96813

FROM: Craig Y. Iha *CYI*
Supervising Deputy Attorney General

RE: Use of Funds Appropriated Pursuant to Act 279 of 2022

This is in response to your request for legal advice regarding whether Act 279, Session Laws of Hawaii 2022 (“Act 279”), authorizes the Department of Hawaiian Home Lands (“DHHL”) to use appropriated funds to pursue strategies to produce renewable energy from DHHL's geothermal resources.

Short Answer. Act 279 provides DHHL discretion to use appropriated funds for “[o]ther services as necessary to address the waiting list.” This language provides DHHL with broad spending authority to help the department reduce its homestead applicant waitlist. This could include developing geothermal resources to provide a future income stream if DHHL so decides.

DISCUSSION

Section 6 of Act 279 appropriates \$600 million in State general funds to DHHL. Section 2 of Act 279 provides as follows:

SECTION 2. The department of Hawaiian home lands may expend the funds appropriated pursuant to section 6 of this Act to:

- (1) Develop lots or units;
- (2) Purchase available land or units;
- (3) Provide funding for an applicant on the waiting list or a qualified relative of a lessee as referenced in section 208(5) of the Hawaiian Homes Commission Act of 1920, as amended, who does not own a principal residence to purchase;

- (4) Provide a mortgage or rental subsidy to the applicant on the waiting list for the applicant's principal residence in the State; and
- (5) Other services as necessary to address the waiting list.

In interpreting the Legislature's appropriation to DHHL, we note that:

[w]hen construing a statute, our foremost obligation is to ascertain and give effect to the intention of the legislature, which is obtained primarily from the language contained in the statute itself. Where the language is plain and unambiguous, the court's sole duty is to give effect to its plain and obvious meaning.

State v. Aluli, 78 Hawai'i 317, 320, 893 P.2d 168, 171 (1995) (citations omitted). The Legislature has the authority to enact appropriations and to reasonably direct their use. In furtherance of this power, the Legislature may attach qualifications or restrictions to the appropriated funds. See Opinion of the Justices, 79 N.E.2d 881, 882 (Mass. 1948) (citations omitted) (An appropriation is the setting "apart from the public revenue a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more, for that object, and for no other.")

In this instance, the Legislature intended to provide DHHL with adequate funding for a "multi-pronged approach to eliminating its waitlist." Act 279 § 1. Moreover, section 2, subsection 5 of Act 279 expressly authorizes DHHL to use the appropriated funds for "[o]ther services as necessary to address the waiting list." This language provides DHHL with broad discretion to expend Act 279 moneys toward activities it determines would help reduce its homestead applicant waitlist.

Whether DHHL can use Act 279 funds for geothermal-related matters depends on whether funds derived from geothermal activity on Hawaiian home lands will address DHHL's applicant waitlist. DHHL is uniquely entitled to 100 percent of royalties from geothermal projects on Hawaiian home lands. See Act of March 18, 1959, Pub. L. No. 86-3 ("Admission Act"), § 4, 73 Stat 4; Att. Gen. Op. No. 14-1 at 6-7. DHHL has exclusive authority over the management and disposition of geothermal resources on Hawaiian home lands. See Att. Gen. Op. No. 14-1 at 7-15. As such, DHHL is legally positioned to leverage additional benefits, monetary or otherwise, through its dispositions of geothermal resources.

We are not in a position to evaluate whether Act 279 funds should be spent in pursuit of potential revenue from geothermal resource development, or if so, how geothermal-related projects should be prioritized versus other projects intended to reduce the waitlist. DHHL would need to make those determinations. However, in the event DHHL considers and decides to pursue geothermal projects to generate revenue to reduce the waitlist, such projects would fall under Act 279's appropriation as set forth in section 2(5).

Please call me at 587-2978 if you have any questions regarding this matter.