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To the United States Senate Committee on Indian Affairs

Oversight Field Hearing on

Strengthening Self-Sufficiency: Overcoming Barriers to Economic Development in Native Communities

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Aloha Chairman Akaka and Members of the Senate Committee on Indian Affairs.

Mahalo for the invitation and opportunity to provide testimony on behalf of the State of Hawaii, Department of Hawaiian Home Lands (DHHL) regarding the barriers to economic development in native communities.

My name is Michelle Kauhane, Deputy Director at the Department of Hawaiian Home Lands, appointed by Governor Neil Abercrombie. Prior to my appointment, I spent 10 years in the Native non-profit sector, as the Executive Director of one of Hawaii's most active financial literacy and foreclosure prevention agencies, Hawaiian Community Assets (HCA). HCA is also the first non-profit mortgage broker in Hawaii, established to promote homeownership on the trust lands of the Native Hawaiian people by providing specialized expertise necessary to navigate financing unique to Hawaiian Home Land communities.

## Hawaiian Homes Commission Act

Since Hawaii's overthrow as an independent nation and the subsequent annexation to the United States, one of the most significant federal policy achievements for native Hawaiians was the enactment by the U.S. Congress of the Hawaiian Homes Commission Act of 1920 (HHCA). The HHCA began as a resolution in the territorial government in Hawaii, and advocated by the territory's congressional representative, Prince Jonah Kuhio Kalanianaole. Similar to other land allotment acts of that era for Alaska Natives and American Indians, the HHCA established a land trust of approximately 200,000 acres of land, to provide for the rehabilitation of native Hawaiians through the provision of land for residential, agricultural and pastoral homesteading. In addition, the HHCA encourages economic development on trust lands through land licenses for commerce and public purpose development.

The Admissions Act of 1959 required the HHCA to be administered by the state of Hawaii with federal oversight by the Department of Interior and the Congress. DHHL became the state agency responsible for the administration of the HHCA since 1961, governed by a 9-member Hawaiian Homes Commission appointed by the Governor of the state of Hawaii. Its Director, a member of the Governor's cabinet, also serves as the Chairman of the Commission.

In short, DHHL is responsible for administration, compliance and meeting the mission of the HHCA. We are a state agency managing a federally created land trust to reconnect native Hawaiians to their ancestral lands in Hawaii.

The most commonly used terms in our communities to describe native Hawaiians eligible for the HHCA land trust, are "lessee", "beneficiary" or "homesteader". For the purpose of my testimony, these terms will be used to describe native Hawaiians defined as eligible to receive land under the HHCA. Equally important to the committee topic, is to share the existence of beneficiary organizations governed by beneficiaries or homesteaders themselves. These organizations, called homestead associations, have existed for decades, and are important partners to state government in reaching the full potential of the HHCA.

Homesteading Progress

After 91 years since the enactment of the HHCA, just over 8,000 land leases have been issued to beneficiaries for homesteading purposes. In the last 10 years, approximately 2,500 leases were issued. An estimated 35,000 lessees and family members reside on homestead lands throughout Hawaii. Approximately 48 percent are located on Oahu, 23 percent on the island of Hawaii, 22 percent in Maui County, and 7 percent on Kauai. Among the lessees, the majority of leases are residential (89 percent), followed by 8 percent agricultural and the remaining 3 percent in pastoral.

According to a 2008 lessee survey conducted by SMS Research, DHHL lessee households consist of 3 to 7 people with a mean of 4.2 household members. The median household income among lessees was $48,731 in 2008, lower than the median household income for the State at $63,746. In addition, the survey estimated 51 percent of DHHL lessee households had incomes below 80 percent of the HUD median.

In addition to the beneficiaries on the land, the waiting list of beneficiaries to receive a land award under the HHCA exceeds 20,000, with waiting times ranging from 5 years to 50 years. It is well understood, that the progress made to implement the primary purpose of returning native Hawaiians to their lands under the HHCA, is and has been inadequate. The primary barriers to improved and increased progress by DHHL can be described as follows:

1. **Location of Trust Lands** – As was common with other Native peoples in the country, the lands allocated to the Hawaiian Home Land trust consist of some of the most difficult to access, with terrains that make development challenging and expensive.

2. **Infrastructure Funding to Develop Trust Lands** – Since the enactment of the HHCA and Hawaii Admissions Act which required the state of Hawaii to administer the land trust, the federal government has not appropriated funding to DHHL to administer the trust, nor made any significant investment to infrastructure that would render the lands inventory adequate for homesteading use. Only within the last decade, in 2000, with the enactment of the Native Hawaiian Housing Block Grant, an amendment to the federal Native American Housing Assistance and Self Determination Act (NAHASDA), DHHL began receiving a modest allocation for the development of low to moderate income housing. Due to land conditions described in item 1 above, much of these funds have been directed toward subdivision development to build roads, utilities and residential lots.

3. **Operating Funding to Administer Trust Lands** – The administration of the Hawaiian Home Land trust requires an operating budget and staffing resources to implement the purposes of the HHCA. Since administration began by the state of Hawaii in 1959, a fraction of the annual operating costs of DHHL have been appropriated by state government. This reality, together with the modest annual federal support under NAHASDA only beginning in 2000 described in item 2 above, DHHL is operated almost entirely through revenues generated by trust lands leased or licensed for non-homesteading purposes. As a result, the ability to further the homesteading program for native Hawaiians through the provision of land is hindered.

In summary, the homesteading program to issue lands to native Hawaiians for residential, agricultural or pastoral homesteads, which is the cornerstone of the HHCA and which would create economic opportunities for the beneficiaries of the Hawaiian Home Land trust, has been challenged by the location of trust lands, lack of infrastructure investment by the federal government, and a lack of operational funding to support the administration of the trust.

Overcoming Barriers to Economic Development in Homesteads

The Hawaiian Home Land trust is one of the best hopes to advance the economic self-sufficiency of native Hawaiians. Moreover, the economic development potential for native Hawaiians if realized, can and will advance the economic prosperity of the entire state. When a dollar is invested in infrastructure on Hawaiian home lands, a Hawaii business is building a road, or installing utility lines. When a dollar is spent in the administration of the trust, a vital job necessary to administer the trust is created, and becomes a part of the spending power of the people of Hawaii. The significance of the hearing topic of "Overcoming Barriers to Economic Development in Native Communities" could not be more relevant and beneficial as the nation maintains its attention on a national economic recovery.

My testimony will focus on four topical areas to overcoming barriers to economic development on homesteads, as follows:

1. **Reauthorization of NAHASDA –** In 2000, the congress enacted Title VIII of NAHASDA, creating for the first time, a modest allocation of federal funding to support the development of affordable housing for low and moderate income beneficiaries. We recommend the committee work to update and reauthorize the Native Hawaiian Housing Block Grant, as has been done for Indian Country.

2. **Infrastructure Investments –** Approximately seventy-five percent of the open lands of the Hawaiian Homes land trust remain undeveloped. One of the largest barriers to issuing land to the 20,000+ individuals on the wait list is investment in infrastructure for roads, utilities, water/waste water facilities, broadband and renewable energy sources.

   As the congress moves infrastructure investments for the country through various federal agencies and programs, we recommend that the trust lands of all Native peoples, including native Hawaiians through the inclusion of the Substantially Underserved Trust Areas (SUTA) definition of trust lands as enacted in the 2008 Farm Bill (P.L.110). Access to capital for infrastructure development on the unique trust lands of America's indigenous peoples need only be included in the capital strategies of the congress that have built and will continue to build the country.

3. **Access to Consumer Capital –** One of the most common sources of consumer capital for business start ups, enterprise investments and fueling economic development in any community, is home equity financing. There is a significant disparity between the loan products available to homesteaders in comparison to loans available in the fee simple marketplace in Hawaii. Likewise, there are similar disparities in product availability on trust lands in Hawaii in comparison to trust lands on the continent.

   Specifically, while the rest of the nation is allowed to refinance existing FHA mortgages to reduce interest rates and access equity up to 85 percent of loan to value, the FHA 247 loan product for Hawaiian Home Lands limits refinancing transactions and equity financing to 75 percent loan to value. Further, the product prohibits business purposes, educational tuition and other meaningful financing purposes that advance economic security and economic opportunities for native Hawaiians. The rest of the nation, including the counterpart FHA 248 program for Indian lands, does not have these prohibitions, creating a significant disparity in accessing consumer capital.

   On the only other federally backed consumer mortgage product available on Hawaiian trust lands, the HUD 184a program, the authorizing language inadvertently was silent on the eligibility to refinance at all. Unlike its Indian Country counterpart, the HUD 184 program, refinancing is a standard and normal transaction that enables Indian borrowers to refinance and capture interest rate savings as the market re-prices. Perhaps more important, is the eligibility of Indian borrowers to utilize the HUD 184 program on homes located on or off their trust lands. This is a powerful tool in anti-poverty strategies of asset-building through homeownership and equity assets.

   The result of the deficiencies in the FHA 247 and HUD 184a products creates an even greater economic divide by closing off the lifeline of capital that is a requirement of any healthy community. We recommend that the committee work with the Administration to assess and implement actions necessary to bring parity to the FHA 247 and HUD 184a program available to native Hawaiians and their trust land assets.

4. **Improved Administration of the Trust –** Given the history of the last 91 years since enactment of the HHCA of which the state of Hawaii has administered since 1959, and the federal oversight of the Hawaiian Homes land trust, there is an incredible opportunity to tap into the experiences and best practices of the federal government and Indian nations. We recognize that federal trust land management practices have taken a journey that includes missed opportunities and pitfalls, but also includes evolved policies that have resulted in substantial improvements.

   An example of a substantial improvement DHHL has embraced is the adoption of our policy of Beneficiary Consultation, recommended by beneficiary advocacy organizations and based on the federal Tribal Consultation process in place under Presidential Executive Order. By examining the historical context of Tribal Consultation, its implementation approach, and the purpose of this policy in every federal agency, DHHL drew similarities to our status as a state government agency, and our need to consult with beneficiaries of the Hawaiian Home Land trust, and the organizations most comparable to Tribes in the federal consultation policy, homestead associations organized by and governed by native Hawaiian beneficiaries of the trust.

Though the policy of Beneficiary Consultation is relatively new to DHHL and to our homestead communities, we are finding it to be a best practice that will yield positive results, including the advancement of the self determination policy inherent in the HHCA. Simply said, consultation strengthens our connection to the people our agency was created to serve through the provision of land, and also engages the incredible ingenuity and knowledge of the people themselves, to implement solutions that matter most.

There are other examples of improved administration by DHHL where we have sought information and examined the trust land management strategies of the federal government, and Indian organizations on the continent. These include facilitating the flow of Community Development Financial Institution (CDFI) services by partnering with Native community organizations, and involving homestead associations in economic strategy development.

We recommend the committee encourage more active engagement and interaction by the Department of Interior, the federal agency with oversight responsibility of the HHCA and the state of Hawaii, with DHHL and the homestead communities. Sharing experiences is one of the most powerful sources of good policy-making. As DHHL defines its role more clearly in the administration of the HHCA and implements stronger relationships with the beneficiary organizations that represent the beneficiaries of the land trust, every stakeholder can benefit from greater engagement with the federal government and the counterpart Indian organizations on the continent and Alaska.

We further recommend the enactment of the Native Hawaiian Government Reorganization Act by the congress, which would extend the federal policy of self government to the Native Hawaiian people, regardless of eligibility under the HHCA. As the state of Hawaii has done in recent months, through the passage of a state recognition bill, we know that the well-being of our state is tied directly to the well-being of Hawaiian communities in every area, including economic, education, and health, which can only be achieved through the strength of Hawaiian ways of life and culture.

Thank you for the opportunity to present testimony and to identify areas we can work together to overcome barriers to economic development.

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State of Hawaii, Department of Hawaiian Home Lands.