

August 12, 2015

Submission to the
Department of Interior
Comments on Draft Rules for the
Hawaiian Homes Commission Act

Re: 1090-AA98

Aloha Secretary Jewell,

The SCHHA, formerly known as the Statewide Council of Hawaiian Homestead Associations, was founded in 1987 by individual homestead associations to unify beneficiary voices and to unify our work together to protect and perpetuate the Hawaiian Homes Commission Act of 1921. We are the largest and oldest advocacy organization representing the interests of native Hawaiians on our trust lands and on the waiting list for a trust land award.

As you know, hundreds of native Hawaiian beneficiaries of the HHCA, and their elected leaders at their homestead associations across our homelands, adopted a SCHHA Policy Priority in 2011 to call on President Obama to promulgate federal rules over the State of Hawaii and its agency, the Department of Hawaiian Home Lands. We forwarded this priority to the national advocacy organization, the Council for Native Hawaiian Advancement (CNHA), to support our call for the federal government to increase and improve its duty to native Hawaiians under the HHCA, under the Hawaiian Home Land Recovery Act of 1995, and under the Hawaii Admissions Act of 1959.

Secretary Jewell, in May 2013, we were honored to have the opportunity to discuss this issue with President Obama directly, and carry the work and passion of native Hawaiian leaders to the White House. Our people recognized that the abuses of our trust lands and our monetary resources put upon our people on the land and on the waitlist by the State of Hawaii over the last 55 years, is directly related to the lack of proper and adequate federal oversight of our land trust. After 90 plus years, we realized that after the enactment of the HHCA in 1921, its chief architect and champion, Prince Jonah Kuhio Kalaniana'ole, died in 1922, leaving a void in making sure that standard regulations were developed, as is a very routine practice on federal laws.

The lack of federal regulations, and indeed, the lack of adequate federal oversight promised to native Hawaiians under the HHCA, under the 1959 Admissions Act and the 1995 HHLRA, has been increasingly detrimental to native Hawaiians. Tens of thousands of acres of our trust lands have been issued to the General Public, in violation of section 204 of the HHCA, hundreds of millions of dollars of our trust funds have been spent by the State without transparency or accountability and the State has turned the waiting list for land awards, into a death list, where native Hawaiians are left to die without a chance of receiving the lands Prince Kuhio intended for them.

The SCHHA, and each and every homestead association in our membership, is strongly supportive of the promulgation of federal rules for the HHCA, and enforcement of such rules.

**Sovereign Councils
of the**



**Hawaiian Homelands
Assembly**

Our homestead leaders have been calling for these federal rules since 2011, received the commitment of President Obama in 2013 to consider them, and in 2014 received a written commitment from your agency that rules would be drafted. We mahalo you for your leadership - our people have waited 90 years for this President. Thank you Secretary Jewell.

On the specific issues of rule 47 and rule 48, we offer the following 2 areas (Consultation and Defining Homestead Associations) to strengthen the draft rules for your consideration:

- 1. Consultation** - Strengthen the language to mandate consultation by the federal government in step with federal consultation policies with other indigenous peoples in both rules 47 and 48. It is important that consultation practices across federal agencies, especially the Department of Interior, finally become a priority for the 95 year old trust responsibility to HHCA beneficiaries. Currently, your agency consults with anyone and everyone, but should hone in on the voices of native Hawaiians on the land and on the wait list through their representative organizations, called homestead associations.

It should be made clear that beneficiaries on the land, and those on the waitlist have credible and strong homestead associations which have open membership to beneficiaries and elect representative leaders. Moreover, we want it to be clear, that consultation by the federal government is NOT delegated to the State of Hawaii under these rules. While the State should be required under these rules to conduct consultation, these rules should articulate the mandate of federal consultation with our people, directly and not through the State.

For example, had federal consultation been on par with other indigenous peoples been in place, over 3,000 beneficiary borrowers under the FHA 247 program and tens of thousands of beneficiaries on the waitlist that will need access to these resources, would not be living under the discriminatory practices of the State of Hawaii that arbitrarily limits the rights of beneficiaries under this federal loan guarantee program. In short, in our view, it is a fair housing violation that consultation would have revealed back in 2006 when DHHL executed a new agreement to take away our rights to access the equity in homes we own.

A more specific example to rule 47, with strong consultation language, beneficiaries would be aware of the many land exchanges executed by DHHL over the last 30 years, most notably the 50 acres of our trust lands exchanged to advance the City and County of Honolulu rail system. Consultation is a powerful check and balance on your State administrator that actions are being taken in the best interest of our people, and not State government and its subdivisions at the county level. In addition, as knowledgeable leaders, our beneficiaries would have provided outstanding comments about whether the 50 acres of their trust lands should have been dedicated to the County, and if so, to include economic development opportunities for beneficiaries of the HHCA at that particular rail station site.

- 2. Homestead Associations** – Add a definition of the term “homestead association” in the current draft of both rules, in step with the intent of the HHCA. It should be clear in the definition section of these rules, that the term ‘beneficiary controlled organizations’ stated in numerous places in the HHCA, at a minimum, means homestead associations that are not private nonprofits, but rather membership organizations open to eligible beneficiaries of the HHCA on the land or on the waitlist that elect their leadership.

The misnomer over the last 55 years by the State DHHL, is that it represent our interests, that the self-determination goals and sustainability goals articulated in the HHCA is for the State, instead of the beneficiaries – an entirely false notion. Through our representative homestead associations located in practically every region where our trust lands exist, lies our voices and representation, and indeed the ability to implement the self-determination and sustainability promised to us under the HHCA. Homestead associations, many of which are more than 30 years old, are very capable, are democratically elected and self-governing organizations with a high level of capacity.

With clarity on the definition of homestead associations, the State DHHL can finally begin its paradigm shift that we are not mere nonprofit organizations like any other. As such, a new relationship is made possible, wherein the State DHHL engages with homestead associations to implement the HHCA to serve the beneficiaries for which it was enacted.

And finally, with a strong definition of homestead associations, it will be clear and more efficient to implement consultation by the State and the Federal governments. We would like to see anywhere in the language of Rule 47 and Rule 48, the words beneficiaries AND homestead associations be added. For example and with specificity, the language in Rule 48 that states that data from the State DHHL Director must be submitted to the federal government, we propose the words “any comments or data from beneficiaries AND homestead associations must be submitted” be added.

Secretary Jewell, these are the two comments we have on rule 47 and rule 48. We would also like to take this opportunity to comment on other federal regulation topics that homestead association beneficiary leaders and members have presented to the SCHHA to pursue in the years ahead:

- 1. Breach of Trust – HHCA Section 223 & Hawaii Admissions Act Section 5(f).** Beneficiary leaders request regulations to establish the process by which beneficiaries can engage the sections of the HHHCA and the Admissions Act to investigate breach of trust actions by the State of Hawaii including its agency, DHHL.
- 2. Trust Lands to the General Public – HHCA Section 204.** Beneficiary leaders have requested regulations be put in place that mandate compliance of this section of the HHCA law - that the general public MAY NOT lease our trust lands if the lands are REQUIRED for homes, ranches or farms for Hawaiians. At a minimum, regulations should put into place describing the process for beneficiaries to access 204 lands prior to the General Public, and justification criteria before lands can be disposed of under 204.

3. **Issuance of Farm & Ranch Homestead Awards – HHCA Section 207.** Kauai beneficiary leaders in particular, have requested regulations be put in place to require annual farm and ranch homestead awards to protect Hawaiians from dying on the waitlist.
4. **Issuance of Mercantile Land Licenses to Hawaiians – HHCA Section 207.** Beneficiary leaders request regulations to mandate the implementation of mercantile lands to beneficiaries as described in this section.
5. **Community Pastures – HHCA Section 211.** Beneficiary High School Students have requested regulations to implement access to establishing a community pasture as allowed under this section.
6. **Audits of Beneficiary Trust Funds – HHCA Section 213.** Beneficiary leaders, in particular, from Hawaii Island, have requested regulations to establish the process to implement federal audits of trust fund accounts managed by the State DHHL, in particular, the \$600M Act 14 Fund. In addition, regulations are requested to require transparency and accountability by the State DHHL to distribute financial data and brief beneficiary homestead associations on the content annually.
7. **Loans for Farms, Ranches and Mercantile – HHCA Section 214.** Beneficiary leaders, in particular, from Maui, have requested regulations to require the State DHHL to establish a loan program for beneficiary farmers, ranchers and mercantile licensees as well as to homestead associations as intended under this section. In addition, to regulate a prohibition of using beneficiary interest revenues of \$4M a year to pay for State DHHL staffing costs.
8. **Evictions and Lease Cancellations – HHCA Section 216 & 217.** Beneficiary leaders, in particular, from Oahu, have requested regulations to specify that beneficiaries may not be evicted for loan delinquency without the benefit of state and federal mitigation requirements afforded to other citizens in the United States. The regulations requested are to provide mandatory steps to be taken by the State DHHL prior to recommending evictions and lease cancellations to the Hawaiian Homes Commission.
9. **Water Rights – HHCA Section 221.** Beneficiary leaders have requested regulations to implement with strength this section of the Law, and through regulations, for all to know what the State DHHL must do to protect our interests and implement the all-important water right of Hawaiians articulated in this section.

These are regulatory topics that the SCHHA, our member associations and our advocacy partners locally and nationally will be focused on in the years ahead. These are not new rights, or new issues. They are long standing sections of the HHCA law that will benefit from the federal regulatory process to get implemented to serve the beneficiaries intended by Congress.

We view regulations for the HHCA, and active oversight by the federal government of the actions of state government to be absolutely paramount to achieve the success the HHCA was created for. It is an amazing law, with amazing vision, that for too long has been without the needed clarity and functional processes that many federal laws benefit from through proper regulations.

Secretary Jewell, mahalo to you and to President Obama for hearing the voices of our people. We support the promulgation of Rule 47 and Rule 48.

Malama pono,



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SCHHA Policy Chairman

cc: Kamaki Kanahale, SCHHA Executive Council Chairman
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