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GOVERNOR OF HAWAII

DEPT. OF HAWAIIAN
HOME LANDS

SEP 14 8 35 AM '99



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September 10, 1999

The Honorable Raynard C. Soon
Chairman, Hawaiian Homes Commission
Department of Hawaiian Home Lands
State of Hawaii
1099 Alakea Street, Suite 2000
Honolulu, Hawaii 96813

Dear Mr. Soon:

Re: Congressional Consent to 1995 and 1999 Amendments to the Hawaiian Homes Commission Act, 1920, as Amended.

We are responding to your letter of July 22, 1999 requesting our review and opinion as to whether the amendments made to the Hawaiian Homes Commission Act, 1920, as amended ("HHCA"), by Act 17, 1999 Haw. Sess. Laws ___, and Act 14, 1995 Haw. Spec. Sess. Laws 696, require the consent of the United States.

Section 4 of the Hawaii Admission Act¹ requires the consent of the United States for any

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 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 provisions relating to the powers and duties of

(continued...)

amendment to the HHCA, 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. See proviso (2) of Section 4. 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. On the other hand, proviso (2) of Section 4, as to changing the qualifications of lessees, provides "the qualifications of lessees shall not be changed except with the consent of the United States." Another exception is set forth in proviso (1) of Section 4 and expressly provides that "[section] . . . 213 . . . may be amended in the constitution, or in the manner required for State legislation."

Act 14, 1995 Haw. Spec. Sess. Laws 696, 701, at section 7, amended the HHCA by adding a new section designated as the "Hawaiian home lands trust fund" into which the State agreed to make twenty annual deposits of \$30 million dollars each or their discounted value equivalent. The infusion of more moneys into the Hawaiian home lands program surely must be seen as increasing benefits to lessees of Hawaiian home lands. We are of the opinion that Act 14, 1995 Haw. Spec. Sess. Laws 696, provides for an increase of benefits to lessees of Hawaiian home lands, is within one of the enumerated exceptions, and therefore does not require the consent of the United States.

¹(...continued)

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-loan fund, 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 management and disposition of the Hawaiian home lands, 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.

Act 17, 1999 Haw. Sess. Laws __, amends section 208 of the HHCA in several respects. The primary change is to allow the inter vivos transfer of a homestead lease to a qualified relative who is at least one-quarter Hawaiian. The specific change is made in condition (5) of section 208 and authorizes the lessee, with the approval of the department, to transfer his or her interest in the homestead lease "to the following qualified relatives of the lessee who are at least one-quarter Hawaiian: husband, wife, child, or grandchild." The remaining changes are merely housecleaning and nonsubstantive in nature. For example, the word "lessee's" was substituted for the word "person's" wherever it appeared in section 208.

As previously noted, proviso (2) of section 4, as to changing the qualifications of lessees, provides "but the qualifications of lessees shall not be changed except with the consent of the United States." Under the Hawaiian Homes Commission Act of 1920, as amended, the original homestead lessee was required to be a native Hawaiian, that is, a person who was at least one-half Hawaiian. However, in 1982, the HHCA was amended to permit the spouse or child of a homestead lessee, who was at least one-quarter Hawaiian, to succeed to the homestead.² Thereafter, a grandchild with at least one-quarter Hawaiian was permitted to succeed to the homestead.³ The amendment to the HHCA made by Act 17, 1999 Haw. Sess. Laws __, permits a homesteader to transfer his or her leasehold interest to his or her spouse, child, or grandchild who is at least one-quarter Hawaiian. Since the law already allows the homesteader's spouse, child, or grandchild who is at least one-quarter Hawaiian to be a successor lessee, this legislation does not change the qualification of the lessee. Rather, it permits the transfer to be made effective while the lessee is still alive, that is, an inter vivos (living) transfer, and no longer restricts such transfers to take place upon the death of the homesteader, that is, a testamentary (after death) transfer.

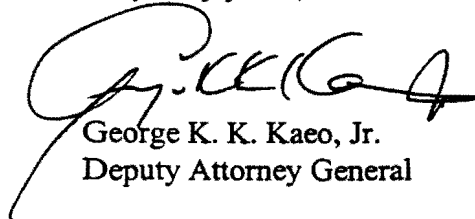
² (Act 272, 1982 Haw. Sess. Laws 703; Congress consents October 27, 1986 by Public Law 99-557.)

³ (Act 37, 1994 Haw. Sess. Laws 127; Congress consents June 27, 1997 by Public Law 105-21.)

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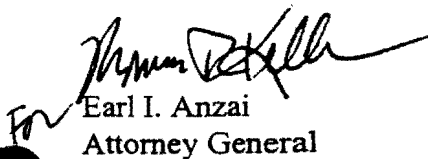
Therefore, we are of the opinion that Act 17, 1999 Haw. Sess. Laws __, also does not require the consent of the United States.

Very truly yours,



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

APPROVED:



Earl I. Anzai
Attorney General

GKKK:dt

HOUSE OF REPRESENTATIVES
EIGHTEENTH LEGISLATURE
SPECIAL SESSION OF 1995
STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO HAWAIIAN HOME LANDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Findings. The legislature finds that when the
2 United States Congress passed the Hawaiian Homes Commission Act
3 of 1920 (HHCA) and set aside 203,500 acres, more or less, of
4 public lands as Hawaiian home lands for the rehabilitation of
5 native Hawaiians, the United States reaffirmed the trust
6 responsibility it had assumed toward the Hawaiian people.

7 The legislature also finds that under the Admission Act, the
8 State of Hawaii assumed the trust responsibility to carry out the
9 mandates of the HHCA.

10 The legislature further finds that thousands of acres of
11 Hawaiian home lands were allegedly used, disposed of, or
12 withdrawn from the trust by territorial or state executive
13 actions in contravention of the HHCA. In recognition of these
14 allegations and toward their resolution, the legislature enacted
15 Act 395, Session Laws of Hawaii 1988, which, among other actions,
16 provided a limited waiver of sovereign immunity for breaches of
17 the Hawaiian home lands trust from July 1, 1988 forward. Act 395
18 also required the governor to present a proposal to the
19 legislature prior to the convening of the 1991 Regular Session to
20 resolve controversies which arose between August 21, 1959 and

1 July 1, 1988. The governor's Action Plan to Address
2 Controversies under the Hawaiian Home Lands Trust and the Public
3 Land Trust (governor's Action Plan) was accepted by the
4 legislature pursuant to its adoption of S.C.R. No. 185, H.D. 1,
5 in 1991.

6 The governor's Action Plan, among other actions, proposed
7 convening a task force of representatives from the department of
8 Hawaiian home lands, the department of land and natural
9 resources, the office of state planning, and the department of
10 the attorney general to accelerate the review process concerning
11 department of Hawaiian home lands' land title and compensation
12 claims. The actions of the task force were to include verifying
13 title claims, determining if improper uses were still in
14 existence and whether these uses should be canceled or continued
15 if authorized by the Hawaiian homes commission, conducting
16 appraisals and determining appropriate compensation for past and
17 continued use of Hawaiian home lands, and pursuing all avenues
18 for return of lands and compensation from the federal government
19 for wrongful actions during the territorial period.

20 In 1992, the legislature approved the resolution of the
21 first set of claims covering gubernatorial executive orders and
22 proclamations which set aside 29,633 acres of lands for public
23 uses such as forest reserves, schools, and parks. Act 316,

1 Session Laws of Hawaii 1992, provided \$12,000,000 to pay verified
2 claims and provide other means to resolve public use
3 controversies.

4 In 1993, the legislature approved further means to resolve
5 verified claims. Act 352, Session Laws of Hawaii 1993, extended
6 the period within which to pay compensation, continued the
7 authorization to the State to pursue claims against the United
8 States for the federal government's wrongful actions, and
9 authorized land exchanges to resolve alienations of Hawaiian home
10 lands.

11 By these previous acts, the State has resolved all disputed
12 set asides of Hawaiian home lands that remain in the control of
13 the State; paid compensation for uncompensated use of Hawaiian
14 home lands from August 21, 1959 through October 28, 1992; paid
15 fair market rent as set by the Hawaiian homes commission for
16 continuing uses from October 28, 1992 through June 30, 1995; paid
17 fair market rent for the use of lands under Nanaikapono
18 elementary school through April 4, 1996; and initiated land
19 exchanges for Hawaiian home lands held by the federal government
20 under lease for nominal rents of \$1 for sixty-five years at
21 Pohakuloa and Kekaha. The legislature also recognizes that in
22 1994, by a separate administrative initiative, the State
23 initiated the transfer of 16,518 acres of additional useable

1 lands to the department of Hawaiian home lands to be used and
2 administered in accordance with the HHCA.

3 In 1994, the task force continued to verify and value
4 certain of the claims which remained unresolved, including claims
5 for lands in Lualualei and Waimanalo on Oahu, Anahola, Moloaa,
6 Kamalomalo, and Waimea on Kauai, Puukapu, Keaukaha, Panaewa, and
7 Kawaihae on Hawaii, Kula on Maui, and Kalaupapa on Molokai; and
8 compensation for periods of public use of trust land not already
9 paid. The Hawaiian homes commission's claims to approximately
10 39,000 acres of such land are disputed due to different
11 interpretations of the HHCA as it describes the lands to be made
12 available for use under the provisions of HHCA. Due to the
13 difficulty of determining the intent of Congress in 1921, it is
14 untenable to administratively prove or disprove the validity of
15 these claims.

16 The legislature finds that, due to the difficulty, time,
17 uncertainty, disruption of public purposes, impact on the public
18 land trust and private landowners, and expense of judicial
19 resolution of remaining disputed claims, another approach, which
20 results in the repair of the Hawaiian home lands trust and the
21 final resolution of claims against the State, is necessary and in
22 the best interests of the State and the beneficiaries of the
23 trust.

1 The legislature recognizes and appreciates the hard work and
2 valuable contributions of the task force in reviewing and
3 presenting to the legislature certain recommendations as set
4 forth in the Memorandum of Understanding dated December 1, 1994
5 (MOU). The legislature notes and expressly finds that the MOU
6 does not bind the legislature and that it is the right and duty
7 of the legislature to exercise its independent judgment and
8 oversight in developing such implementing and related legislation
9 which is in the overall public interest.

10 In so doing, the legislature finds that the recommendations
11 set forth in the MOU do not bring closure to all matters charged
12 to the task force for review and to all related issues. The
13 legislature by this Act hereby takes these measures to bring the
14 desired closure, to fully effectuate in part the intent of S.C.R.
15 No. 185, H.D. 1, 1991 and the governor's Action Plan, and to
16 fully effectuate the legislature's intent of final disposition of
17 the matters addressed by this Act. The legislature also finds
18 that the disputes surrounding the Hawaiian home lands trust have
19 caused uncertainty in the State with regard to the limited waiver
20 of sovereign immunity contained in Act 395, Session Laws of
21 Hawaii 1988. With respect to all controversies arising between
22 August 21, 1959 and July 1, 1988, excluding individual claims
23 provided for pursuant to chapter 674, Hawaii Revised Statutes,

1 the State hereby affirms that the limited waiver of sovereign
2 immunity permitted by Act 395, Session Laws of Hawaii 1988, is
3 now withdrawn and, to the extent the waiver was not previously
4 withdrawn, it is now fully withdrawn. All claims arising between
5 August 21, 1959 and July 1, 1988, or under any other law enacted
6 in furtherance of the purposes or objectives of Act 395, Session
7 Laws of Hawaii 1988, except those permitted by chapter 674,
8 Hawaii Revised Statutes, are hereby forever barred.

9 The legislature also finds that the court-appointed
10 independent representative of the beneficiaries of the Hawaiian
11 home lands trust, who is deemed the sole representative of the
12 beneficiary class, has participated in the non-judicial
13 proceedings of the task force as required by Act 352, Session
14 Laws of Hawaii 1993, and as contemplated by Ka'ai'ai v. Drake,
15 First Circuit Civil No. 92-3642.

16 In passing this Act, it is the intent of the legislature in
17 part to (a) resolve all controversies for the period between
18 August 21, 1959 and July 1, 1988, allowed by Act 395, Session
19 Laws of Hawaii 1988, except those permitted by chapter 674,
20 Hawaii Revised Statutes, (b) resolve all controversies relating
21 to the validity of patents issued after 1920 and prior to July 1,
22 1988 and affecting any lands covered by or allegedly covered by
23 the HHCA and to all rights arising from or relating to such

1 patents as issued, and (c) make certain other related amendments
2 to chapters 673 and 674, Hawaii Revised Statutes. Additionally,
3 it is the intent of the legislature that if the State is alleged
4 to be liable, for claims of breaches of the Hawaiian home lands
5 trust prior to statehood, this Act shall dispose of and resolve
6 those claims against the State as well.

7 The legislature also finds that in order to properly utilize
8 Hawaiian home lands, there is a need for a substantial,
9 predictable funding mechanism for the department to appropriately
10 plan for the development of these lands. Therefore, the
11 establishment of a Hawaiian home lands trust fund to provide a
12 steady availability of capital to fund Hawaiian home lands
13 programs is appropriate.

14 Finally, the legislature acknowledges that generations of
15 beneficiaries and potential beneficiaries have been patient and
16 charitable in their prolonged wait for truth, justice and fair
17 play. The legislature acknowledges the frustration, anxiety and
18 spiritual loss of a class of native people whose culture welcomed
19 strangers and generously shared finite resources. The
20 legislature acknowledges that this Act represents an opportunity
21 to effectuate the purposes of the HHCA.

22 SECTION 2. Purpose. The primary purposes of this Act are
23 to:

- 1 (1) Resolve all controversies relating to the Hawaiian home
2 lands trust which arose between August 21, 1959 and
3 July 1, 1988;
- 4 (2) Prohibit any and all future claims against the State
5 resulting out of any controversy relating to the
6 Hawaiian home lands trust which arose between
7 August 21, 1959 and July 1, 1988;
- 8 (3) Resolve all controversies after 1920 and prior to July
9 1, 1988 relating to the validity of patents issued and
10 affecting any lands covered by or allegedly covered by
11 HHCA and to all rights arising from or relating to such
12 patents as issued;
- 13 (4) Appropriate such funds and provide additional means as
14 may be necessary to accomplish the intent and purpose
15 of this Act;
- 16 (5) Establish a trust fund to provide a substantial,
17 secure, and predictable funding source for the
18 department of Hawaiian home lands to use to effectuate
19 the purposes of the HHCA;
- 20 (6) Further the public interest by ensuring that claims
21 which have arisen or may arise in the future with
22 respect to the administration of the Hawaiian home
23 lands trust and are brought pursuant to chapters 673

1 and 674, Hawaii Revised Statutes, are resolved in a
2 fair, complete, and timely manner.

3 This Act is not intended to replace or affect the claims of
4 beneficiaries with regard to reparations from the federal
5 government. It is however, intended to preclude forever any
6 derivative or other claims of any description which the federal
7 government may attempt to tender to the State.

8 SECTION 3. Definitions.

9 "Beneficiary" means any person eligible to receive benefits
10 of homesteading and related programs of the Hawaiian home lands
11 trust.

12 "Commission" means the Hawaiian homes commission.

13 "Department" means the department of Hawaiian home lands.

14 "Fair market value" means the definition of that term or, if
15 that term is not defined, the definition of the term "market
16 value", in the then-current edition of the Uniform Standards of
17 Professional Appraisal Practice issued by The Appraisal
18 Foundation or, if that publication is not in publication, then
19 another publication of standard professional appraisal practice
20 recognized by the department of commerce and consumer affairs.

21 "Governmental agency" or "State" means the State of Hawaii,
22 municipal or county governments, or any department, bureau,
23 division, agency or political subdivision thereof, or any board,
24 commission, or administrative agency thereof.

1 "Hawaiian home lands" has the same meaning as defined in
2 section 201(a) (5) of the HHCA.

3 "HHCA" means the Hawaiian Homes Commission Act of 1920, as
4 amended.

5 "Independent representative" means the independent
6 representative appointed in accordance with Act 352, Session Laws
7 of Hawaii 1993.

8 "Patent" means any land patent grant, royal patent grant,
9 patent upon award of the land commission, deed, grant, or other
10 similar instrument in regular form duly executed on behalf of the
11 State or its predecessors from and after January 1, 1846.

12 "Task force" means that task force created pursuant to the
13 Governor's Action Plan to Address Controversies under the
14 Hawaiian Home Lands Trust and the Public Land Trust as
15 acknowledged by the legislature in its adoption of S.C.R. No.
16 185, H.D. 1, in 19 91.

17 "Trust" means the Hawaiian home lands trust.

18 "Trust fund" means the Hawaiian home lands trust fund
19 created by this Act and any additions thereto or increment
20 thereon.

21 SECTION 4. The passage of this Act is in full satisfaction
22 and resolution of all controversies at law and in equity, known
23 or unknown, now existing or hereafter arising, established or

1 inchoate, arising out of or in any way connected with the
2 management, administration, supervision of the trust, or
3 disposition by the State or any governmental agency of any lands
4 or interests in land which are or were or are alleged to have
5 been Hawaiian home lands, or to have been covered by the HHCA
6 arising between August 21, 1959 and July 1, 1988.

7 The passage of this Act shall have the effect of res
8 judicata as to all parties, claims, and issues which arise and
9 defenses which have been at issue, or which could have been, or
10 could in the future be, at issue, which arose between August 21,
11 1959 and July 1, 1988, whether brought against the State or its
12 officials, directly or indirectly, by subrogation, derivative or
13 third party action, tender, federal action, or by any other means
14 whatsoever.

15 The passage of this Act shall not replace or affect the
16 claims of beneficiaries against the federal government arising
17 under the HHCA, provided that such claims are barred as against
18 the State to the extent the State is alleged to be derivatively
19 liable on such claims, or if the federal government tenders such
20 claims to the State.

21 Nothing in this section shall replace or affect the claims
22 of beneficiaries with regard to (a) reparations from the federal
23 government, (b) claims arising subsequent to July 1, 1988 and

1 brought pursuant to sections 2, 3, and 4 of Act 395, Session Laws
2 of Hawaii 1988, except as otherwise provided in section 13 of
3 this Act or (c) Hawaiian home lands trust individual claims
4 brought pursuant to chapter 674, Hawaii Revised Statutes, except
5 as otherwise provided in sections 14, 15 and 16 of this Act.

6 SECTION 5. All patents issued and affecting any lands
7 covered by, or alleged to be covered by, the HHCA, from the
8 inception of that Act to July 1, 1988, whether issued by the
9 territory or the State of Hawaii, are hereby confirmed as issued,
10 and no action on such patents may be maintained.

11 SECTION 6. The State, while not admitting the validity of
12 any claims, hereby resolves and satisfies all controversies and
13 claims encompassed by this Act by:

14 (1) The establishment of the Hawaiian home lands trust fund
15 and the requirement that the State make twenty annual
16 deposits of \$30,000,000, or their discounted value
17 equivalent, into the trust fund; provided that in lieu
18 of sums deposited hereunder, the State may, with the
19 approval of the Commission, substitute from time to
20 time land or other consideration having the fair market
21 value of such deposit, as mutually agreed by the State
22 and Commission; provided that the State may, at any
23 time, prepay sums due hereunder, without penalty, and
24 that the total amount to be deposited into the trust

1 fund shall be adjusted by such prepayment based on a
2 discount rate per year equal to the then-average weekly
3 investment rate on five year Treasury Bills; and
4 provided further that the payment of funds into the
5 trust fund shall include any interest, as determined by
6 section 478-2, Hawaii Revised Statutes, on the unpaid
7 balance of any funds due but not appropriated by the
8 end of each respective fiscal year;

9 (2) The transfer of lands and resolution of claims in the
10 Waimanalo, Anahola, Kamalomalo, and Moloaa areas; the
11 compensation for all remaining confirmed uncompensated
12 public uses of Hawaiian home lands; the initiation of a
13 land exchange to remedy uncompensated use of Hawaiian
14 home lands for state roads claims and highways; and the
15 provision of the first selection of up to two hundred
16 acres of land, to be conveyed to the department to
17 fulfill the provisions of claims resolution, upon the
18 return to the State of any ceded lands, comprising all,
19 or a portion of Bellows Air Force Station (TMK:
20 4-1-15.) Disputes with respect to the transfer of
21 lands and resolution of claims in the Waimanalo,

1 Anahola, Kamalomalo and Moloaa areas, as identified by
2 the task force and approved by the Commission at its
3 meeting on November 4, 1994, are resolved by the
4 exchanges more particularly described in the
5 Commission's action;

6 (3) The payment of \$2,348,558, appropriated herein, for the
7 purpose of paying in advance all rent due for
8 department of Hawaiian home lands license agreement
9 no. 308 for the continued State use of trust lands
10 under Nanaikapono elementary school between April 4,
11 1996 and October 27, 2002;

12 (4) The payment of \$2,390,000, appropriated herein for the
13 purpose of paying compensation for the State's
14 uncompensated use of Hawaiian home lands between 1959
15 and 1995; and

16 (5) The payment of \$1,539,000, appropriated herein, for the
17 purpose of payment of moneys owed the department of
18 Hawaiian home lands as its thirty per cent entitlement
19 for the use of Hanapepe, Kauai, public lands formerly
20 under lease of sugarcane cultivation on November 7,
21 1978, pursuant to section 1 of article XII of the
22 Constitution of the State of Hawaii.

1 The fair market value of land or other consideration under
2 subsection (1) of this section shall be established by the
3 department of land and natural resources with the approval of the
4 Commission.

5 Payments made under this Act shall not diminish funds that
6 the department is entitled to under article XII, section 1, of
7 the Constitution of the State of Hawaii.

8 SECTION 7. The HHCA is amended by adding a new section to
9 be appropriately designated and to read as follows:

10 "\$ _____ Hawaiian home lands trust fund. There is
11 established in the treasury of the State a trust fund to be known
12 as the Hawaiian home lands trust fund, into which shall be
13 deposited all appropriations by the State legislature specified
14 to be deposited therein. Moneys of the Hawaiian home lands trust
15 fund shall be expended by the department as provided by law upon
16 approval by the commission and shall be used for capital
17 improvements and other purposes undertaken in furtherance of the
18 Act. The department shall have fiduciary responsibility toward
19 the trust fund, and shall provide annual reports therefor to the
20 legislature and to the beneficiaries of the trust. Any interest
21 or other earnings arising out of investments from the trust fund
22 shall be credited to and deposited into the trust fund."

1 SECTION 8. (a) Notwithstanding the provisions of section
2 201E-207.5, Hawaii Revised Statutes, there is authorized and
3 appropriated from moneys on deposit in the homes revolving fund
4 created by section 201E-207, Hawaii Revised Statutes, \$30,000,000
5 for fiscal year 1995-96 for deposit into the Hawaiian home lands
6 trust fund. The foregoing authorization and appropriation
7 constitutes a legislative reallocation of the moneys in the homes
8 revolving fund and such transfer shall not constitute or be
9 deemed to constitute a loan from the homes revolving fund.

10 (b) There is authorized and appropriated \$30,000,000 in
11 general obligation bond funds of the State of Hawaii for fiscal
12 year 1996-97 for deposit into the Hawaiian home lands trust fund.

13 SECTION 9. There is appropriated out of the general
14 revenues of the State of Hawaii the sum of \$2,348,558, or so much
15 thereof as may be necessary for fiscal year 1995-96, for the
16 purpose of paying in advance all rent due for department of
17 Hawaiian home lands license agreement no. 308, for the continued
18 State use of Hawaiian home lands under Nanaikapono elementary
19 school, for the period of April 4, 1996, through October 27,
20 2002. The sum appropriated shall be expended by the department
21 of education.

22 SECTION 10. There is appropriated out of the general
23 revenues of the State of Hawaii the sum of \$2,390,000, or so much

1 thereof as may be necessary for fiscal year 1995-96, for the
2 purpose of paying compensation for the State's uncompensated use
3 of Hawaiian home lands for the period of August 21, 1959 through
4 June 30, 1995. The sum appropriated shall be expended by the
5 department of budget and finance upon certification from the
6 office of state planning that a wrongful use has been verified.
7 Compensation may be paid as claims are verified and the amounts
8 of compensation owed are determined.

9 SECTION 11. There is appropriated out of the general
10 revenues of the State of Hawaii the sum of \$1,539,000, or so much
11 thereof as may be necessary for fiscal year 1995-1996, for the
12 purpose of payment of moneys owed the department of Hawaiian home
13 lands as its thirty per cent entitlement for the use of Hanapepe,
14 Kauai, public lands formerly under lease for sugarcane
15 cultivation on November 7, 1978, pursuant to section 1 of
16 article XII of the Constitution of the State of Hawaii. The sum
17 appropriated shall be expended by the department of budget and
18 finance.

19 SECTION 12. To the extent still available, the limited
20 waiver of sovereign immunity is hereby withdrawn with respect to
21 any claim, cause of action or right of action against the State
22 arising out of an act or omission committed or omitted between
23 August 21, 1959 and July 1, 1988, excluding individual claims

1 under chapter 674, Hawaii Revised Statutes, as first permitted by
2 Act 395, Session Laws of Hawaii 1988, or under any other law
3 enacted in furtherance of the purposes of that Act. Any claim,
4 cause of action or right of action permitted by Act 395, Session
5 Laws of Hawaii 1988, is forever barred except with regard to:

6 (1) A cause of action accruing after June 30, 1988 as may
7 be permitted by chapter 673, Hawaii Revised Statutes;

8 or

9 (2) An individual claim as may be permitted by chapter 674,
10 Hawaii Revised Statutes.

11 SECTION 13. Section 673-10, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[[]\$673-10 []] Limitation on actions; native Hawaiians.

14 Every claim arising under this chapter shall forever be barred
15 unless the action is commenced within two years after the cause
16 of action first accrues; provided that this statute of
17 limitations shall be tolled until July 1, 1990; provided that the
18 filing of the claim in an administrative proceeding pursuant to
19 this [[]chapter[]] shall toll any applicable statute of
20 limitations, and any such statute of limitations shall remain
21 tolled until ninety days after the date the decision is rendered
22 in the administrative proceeding; provided further that any cause
23 of action that first accrues after July 1, 1995 shall forever be

1 barred unless the action is commenced within two years after the
2 cause of action first accrues."

3 SECTION 14. Section 674-2, Hawaii Revised Statutes, is
4 amended by amending the definition of "actual damages" to read:

5 "Actual damages" means direct, monetary out-of-pocket loss,
6 excluding noneconomic damages as defined in section 663-8.5 and
7 consequential damages, sustained by the claimant individually
8 rather than the beneficiary class generally, arising out of or
9 resulting from a breach of trust, which occurred between August
10 21, 1959, and June 30, 1988, and was caused by an act or omission
11 by an employee of the State with respect to an individual
12 beneficiary in the management and disposition of trust
13 resources."

14 SECTION 15. Section 674-19, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "~~§674-19~~ Limitation on actions. Every claim cognizable
17 under this part shall forever be barred unless the action is
18 commenced by September 30, [1999.] 1998."

19 SECTION 16. Chapter 674, Hawaii Revised Statutes, is
20 amended by adding a new section to be appropriately designated
21 and to read as follows:

22 "~~§674-~~ Preclusion of title-related claims. Nothing in
23 this chapter shall be construed to affect title, or conveyance of
24 title, or place a cloud upon title, to any lands in the State,

1 including but not limited to lands which were, are, or may have
2 been Hawaiian home lands."

3 SECTION 17. Notwithstanding any other law to the contrary,
4 the State and its officials, the members of the board, the
5 members of the Commission and the independent representative
6 shall not be subject to suit by any party on any decision
7 relating to the resolution of these claims, except for actions to
8 enforce the provisions of this Act.

9 SECTION 18. If any portions of chapters 673 and 674, Hawaii
10 Revised Statutes, are inconsistent with any of the provisions of
11 this Act, then the provisions of this Act shall prevail. The
12 Memorandum of Understanding is not binding on the legislature and
13 the State and does not have the force and effect of law. To the
14 extent that the Memorandum of Understanding is inconsistent with
15 the provisions of this Act, then the provisions of this Act shall
16 prevail.

17 SECTION 19. The 16,518 acres of land conveyed by the State
18 to the department of Hawaiian home lands for the purpose of
19 replenishing the trust corpus shall be treated by the department
20 of Hawaiian home lands in the same manner as those lands
21 originally established in the trust and subject to all the
22 conditions thereon.

1 SECTION 20. Notwithstanding section 1-23, Hawaii Revised
2 Statutes, if any provision of this Act or the application thereof
3 to any person or circumstance is held invalid in whole or in
4 part, this Act shall be invalid and no other provision shall have
5 the force or effect of law, except that nothing in this section
6 shall operate to (a) invalidate the withdrawal of the limited
7 waiver of sovereign immunity as provided by section 12 of this
8 Act, (b) the confirmation of patents as provided by section 5 of
9 this Act, and (c) the undertakings set forth in sections 9, 10
10 and 11 of this Act.

11 SECTION 21. Statutory material to be repealed is bracketed.
12 New statutory material is underscored.

13 SECTION 22. This Act shall take effect upon its approval;
14 except that sections 8, 9, 10 and 11 shall take effect on July 1,
15 1995.

16

17

APPROVED BY THE
GOVERNOR ON

JUN 29 1995



OFFICE OF STATE PLANNING

Office of the Governor

MAILING ADDRESS: P.O. BOX 3540, HONOLULU, HAWAII 96811-3540
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BENJAMIN J. CAYETANO, Governor
FAX: Director's Office 587-2848
Planning Division 587-2824

HOUSE COMMITTEE ON HAWAIIAN AFFAIRS AND HOUSING

THE HONORABLE DENNIS A. ARAKAKAI, CHAIR
THE HONORABLE MICHAEL P. KAHIKINA, VICE CHAIR

H. B. NO. 1828 RELATING TO HAWAIIAN HOME LANDS

Testimony by Gregory G.Y. Pai, Ph.D.
Director

February 4, 1995

Chair Arakaki and Members of the Committee:

House Bill 1828 provides the means to resolve and settle all remaining claims presented to the Task Force on DHHL Land Title and Related Claims at the direction of the Hawaii State Legislature. This bill is the final phase of a process begun in 1988 by the Legislature which enacted Chapter 673, HRS, giving native Hawaiians the right to sue the State for breaches of trust from 1988 forward but deferring a right to sue on retroactive claims from 1959 to 1988 pending the receipt of a plan to resolve past controversies in a non-judicial manner.

In 1991 the Governor presented a plan which was approved by the Legislature. In 1992 the Legislature approved the first claims compensation bill which appropriated funds for wrongful use of Hawaiian Home Lands by Governor's Executive Orders and Proclamations. The beneficiaries of the Hawaiian Home Lands Trust sued to prevent a release of claims on the grounds that the payment might be too low and that an independent representative for the beneficiaries was needed to ensure that all settlements were fair to the beneficiaries.

In 1993 the Legislature passed a bill that directed the Circuit Court of the First Circuit to appoint, and the Circuit Court appointed an Independent Representative. Research and appraisals continued on the remaining claims. In 1994 the Legislature passed a bill reaffirming the settlement process. This measure was vetoed based on objections to the portions of the bill relating to authorization of mandatory arbitration and judicial action. However, the Independent Representative was authorized to continue his work through June 30, 1995 to provide continued protection for the beneficiaries.

The bill before you is based on a signed Memorandum of Understanding by all the members of the Task Force including the Independent Representative. If you approve the bill the following actions will be implemented:

1. Settlement of all disputes in Waimanalo and Anahoha, Kamalomalo, and Moloaa by transfer of lands and mutual withdrawal of claims. In partial remedy of the Waimanalo claims, upon return to the State of any ceded lands at Bellows, DHHL shall have first selection of up to 200 acres;

2. Compensation for all remaining confirmed wrongful public uses of Hawaiian Home Lands, including payment of rent for land under Nanaikapono Elementary School;

3. Land exchanges to end the improper use of lands under state roads and highways;

4. Settlement of all remaining claims filed with the Task Force through establishment of a settlement trust fund and the annual appropriation of \$30,000,000 until a total of \$600,000,000 is paid into the settlement trust fund over a period not to exceed 20 years;

5. Continued pursuit of Hawaiian Home Lands trust claims against the federal government, and

6. Payment of the thirty per cent entitlement for sale of sugar lease lands at Hanapepe.

The Chairman of Hawaiian Homes Commission will explain why the Commission has accepted the State's settlement offer. There are equally strong reasons for the State to settle rather than litigate these remaining claims. They are as follows:

- The Hawaiian community supports the five settlements included in H.B. 1828 as a move away from the injustices of the past into a more positive results oriented future.

- H. B. No. 1828 is an opportunity to partially fulfill the State's responsibility under the Hawaiian Homes Commission Act of 1920 as required by the Admissions Act;

- H.B. No. 1828 avoids the risk of future litigation resulting from uncertainty of real property titles involving the State, by private land title holders and their respective title insurance companies and lenders.

- The State is not required to disprove the claims which would be a long and costly process that would divide our communities.

- \$30,000,000 a year provides a steady, predictable funding stream for DHHL which will achieve significant affordable housing goals, thus reducing pressure on other affordable housing programs.

- The \$600,000,000 settlement is less than the total present value of the claims. The way the settlement is structured over twenty years results in a current discounted value of \$300,000,000 in today's dollars. It may never be cheaper to resolve these claims. A delay will result in an increase in the current market value of lands being claimed, additional compensation for loss of use, and additional interest on the debt.

- This settlement was reached under the process established and ratified by the Governor and the Legislature.

Thank you for the opportunity to comment on this bill.

BENJAMIN J. CAYETANO

GOVERNOR
STATE OF HAWAII



KALI WATSON

CHAIRMAN
HAWAIIAN HOMES COMMISSION

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P. O. BOX 1879
HONOLULU, HAWAII 96805

February 4, 1995

MEMORANDUM

TO: The Honorable Dennis A. Arakaki, Chair
House Committee on Hawaiian Affairs and Housing

FROM: Kali Watson, Chairman *John Akelliyamaguchi*
Hawaiian Homes Commission *for K.W.*

SUBJECT: Testimony on House Bill No. 1828, Relating to
Hawaiian Home Lands

Chair Arakaki and Members of the House Committee on Hawaiian Affairs and Housing, I appreciate the opportunity to testify on this significant and historic legislative proposal.

H.B. No. 1828, recommended for approval by the Task Force on DHHL Land Title and Related Claims and Governor Benjamin Cayetano's administration, provides the means to resolve remaining land and compensation claims reviewed by the Task Force since 1991 as required by the Hawaii State Legislature.

Section 4 provides for the settlement of all disputes in Waimanalo, Anahola, and Moloaa by transfer of lands and mutual withdrawal of claims. Land transfers were authorized by the Land Board and Hawaiian Homes Commission in late 1994. In partial remedy of the Waimanalo claims, upon return to the State of any ceded lands by the Bellows Air Force Station, the Hawaiian Homes Commission shall have the first selection of up to 200 acres.

Sections 4 and 5 establish a non-lapsing settlement trust fund to satisfy remaining land claims filed with the Task Force. H.B. No. 1828 authorizes appropriations be made of \$30 million annually over a twenty year period, with interest to accrue on the balance of any funds due and not appropriated as determined by Section 478-2, Hawaii Revised Statutes. Section 8 authorizes \$30 million in general obligation bonds in each year of Fiscal Years 1995-1997 to be paid into the settlement trust fund.

The Honorable Dennis A. Arakaki
Testimony on H.B. No. 1828
Page 2

Section 6 appropriates \$2,348,558 for Fiscal Year 1995-96 to the Department of Education for continued use of Hawaiian home lands used for Nanaikapono Elementary School through October 27, 2002.

Section 7 appropriates \$2,390,000 for Fiscal Year 1995-96 to the Department of Budget and Finance for remaining confirmed uncompensated public uses of Hawaiian home lands.

Section 9 appropriates \$150,000 in Fiscal Year 1995-96 to the Department of the Attorney General to pursue Hawaiian home lands trust claims against the federal government.

Section 10 appropriates \$1,539,000 in Fiscal Year 1995-96 to the Department of Budget and Finance as payment owed pursuant to Section 1, Article XII, of the State Constitution, for use of former sugarcane lands at Hanapepe, Kauai.

The department strongly urges you to approve H.B. No. 1828 in its recommended form, with no amendments. All of the parties to the Memorandum of Understanding -- the Attorney General, Department of Land and Natural Resources, Office of State Planning, Independent Representative, and Department of Hawaiian Home Lands with approval by the Hawaiian Homes Commission -- are in agreement on the settlement terms.

The various compensation and land title claims have been discussed for over ten years. The Task Force process involved numerous studies, appraisals, and correspondence over four years with rigorous investigation and consideration. Now is the time to act, bring closure to these controversies, repair the Hawaiian home lands trust and make it whole. This is the right thing to do!

Approval of H.B. No. 1828 will provide the means for Hawaiian home lands to move ahead on settling native Hawaiians on the land. Our beneficiaries have waited long enough. They deserve to receive their entitlement, to raise their families in their own homes on the home lands, with a stake in the future well-being of their community. Having a home and 'aina is a goal for all people. However, it has special meaning to the native people of these islands, their ancestral home. I firmly believe that this will provide the foundation for their growth and will reduce many of the social problems facing native Hawaiians today.

The Honorable Dennis A. Arakaki
Testimony on H.B. No. 1828
Page 3

Approval of H.B. No. 1828 will avoid lengthy, costly, and disruptive litigation. The impacts on our community -- to public services, private homeowners and businesses, title insurance and lending institutions -- with interests at stake on these land claim areas can be severe. The Hawaiian Homes Commission has a fiduciary duty to pursue the claims. Passage of the settlement proposal is an attractive alternative to lawsuits that can only divide our community and cause havoc in the financial and insurance markets.

I urge you to consider these factors. H.B. No. 1828 provides a fair and equitable settlement to bring closure to these controversies. It provides a means to settle native Hawaiians on the home lands and fulfill the State's commitment to carry out the mission of the Hawaiian Homes Commission Act. It restores pono among our people and in our island society. I strongly recommend your favorable action on H.B. No. 1828.

Thank you for the opportunity to testify.

3615L



STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAP'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAII 96813-5249
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**Testimony Presented to the House Committee on
Hawaiian Affairs and Housing
4 February 1995**

**SUPPORTING H.B. 1828: RELATING TO HAWAIIAN HOME LANDS
Presented By
Trustee Kina'u Boyd Kamali'i**

ALOHA, CHAIRMAN ARAKAKI AND MEMBERS OF THE COMMITTEE ON HAWAIIAN AFFAIRS AND HOUSING. I AM KINA'U BOYD KAMALI'I, TRUSTEE OF THE OFFICE OF HAWAIIAN AFFAIRS (OHA) AND CHAIR OF OUR COMMITTEE ON LAND AND SOVEREIGNTY.

THANK YOU FOR THIS OPPORTUNITY TO TESTIFY IN SUPPORT OF HOUSE BILL 1828 RELATING TO HAWAIIAN HOME LANDS. THIS BILL ADDRESSES AND SETTLES PREVIOUSLY UNRESOLVED VIOLATIONS AND CONTROVERSIES RELATED TO THE HAWAIIAN HOMES TRUST. THE EXACT NATURE AND EXTENT OF THESE CONTROVERSIES ARE CLEARLY IDENTIFIED IN THIS MEASURE, AND DO NOT REQUIRE REPEATING.

WHAT DOES BEAR REPEATING IS SUPPORT FOR THE APPROACH,

FUNDING MECHANISMS, AND MANAGEMENT OF MONIES SET IN PLACE BY THIS BILL. THOSE MAJOR FEATURES INCLUDE THE CREATION OF AN HAWAIIAN HOME LANDS SETTLEMENT FUND, THE ADVANCE PAYMENT AND DEPOSIT OF RENT FOR USE OF NANAIKAPONO SCHOOL THROUGH THE YEAR 2002, A SET ASIDE OF MONIES TO PAY ADDITIONAL VERIFICATIONS OF UNCOMPENSATED USES BY THE STATE, AND A CASH SETTLEMENT OF \$600 MILLION TO BE PAID AT THE RATE OF \$30 MILLION A YEAR FOR TWENTY YEARS. THESE MONIES ARE TO BE USED FOR CAPITAL IMPROVEMENTS AND WILL BE EXPENDED WITH THE APPROVAL OF THE HAWAIIAN HOMES COMMISSION.

THERE ARE A NUMBER OF OTHER BILLS BEFORE THIS LEGISLATURE WHICH ARE SEEKING TO MODIFY OR FUNDAMENTALLY ALTER THESE TERMS. WE ASK THAT YOU REJECT THOSE ATTEMPTS.

THE EARLIER TRANSFERS OF LAND TO THE HOMES TRUST WERE APPROPRIATE SETTLEMENTS OF LAND-BASED CLAIMS WITH LAND. ILLEGAL SET-ASIDES AND DISPUTES OVER THE ACT'S IDENTIFICATION OF LANDS WITHIN THE CEDED LANDS TRUST WERE APPROPRIATELY ADDRESSED WITH THESE TRANSFERS. THE CASH SETTLEMENT EMBODIED WITHIN THIS BILL ARE FOR LANDS ALIENATED FROM BOTH THE HOMES AND CEDED LANDS TRUST.

TO CONSIDER COMPENSATING THOSE CLAIMS WITH LAND IS, IN EFFECT, TO ASK HAWAIIANS TO BEAR THE HEAVIEST BURDEN. THIS INAPPROPRIATE USE OF CEDED LAND AS A SUBSTITUTE FOR MONEY

WOULD ERODE THE OHA REVENUE TRUST, AND ASK NATIVE HAWAIIANS TO PAY TWICE FOR THEIR OWN SETTLEMENT. DAMAGING ONE TRUST TO REPAIR ANOTHER VIOLATES COMMON SENSE AND THE LAW.

WE ARE ALSO AWARE OF OTHER EFFORTS TO SIPHON-OFF THESE SETTLEMENT FUNDS AND TO CREATE AN IMPROPER PUBLIC AND PRIVATE HAWAIIAN TRUSTS BOARD TO EXPEND THESE MONIES FOR HAWAIIAN SOCIAL NEEDS.

RESIST THOSE MANIPULATIONS OF INTENT AND PURPOSE. WITH AN ASSURED AND DEDICATED CIP FUND, HAWAIIAN HOMES CAN BEGIN FULFILLING THEIR PRIMARY MISSION OF RETURNING AND PLACING NATIVE HAWAIIANS ON THE LAND. THEY MUST NOT BE DISTRACTED OR UNDERMINED IN THAT MISSION.

PERHAPS A BETTER PERSPECTIVE IS GAINED WHEN WE REALIZE THAT \$600 MILLION DOLLARS WOULD BUY ONLY 4,000 HOMES VALUED AT \$150,000. AND ALSO REALIZE THAT THERE ARE MORE THAN 20,000 HAWAIIANS ON THE WAITING LIST.

THE PASSAGE OF THIS BILL IN ITS PRESENT FORM IS A SIGNIFICANT BEGINNING. COMBINED WITH THE TRANSFERS OF MORE ACCESSIBLE AND USEABLE LANDS, CREATIVITY, AND DETERMINATION, WE ARE CONFIDENT THAT THE HAWAIIAN HOMES LANDS DEPARTMENT AND COMMISSION WILL GO BEYOND THE RESTRICTED CONFINES OF OPEN MARKET PRICING AND CONSTRUCTION.

THAT OPPORTUNITY IS ONLY POSSIBLE WITH THE PASSAGE OF
THIS BILL AS WRITTEN.

AGAIN, WE STRONGLY URGE YOUR FAVORABLE ACTION ON
THIS MEASURE.

MAHALO A NUI LOA.

STATE COUNCIL OF HAWAIIAN HOMESTEAD ASSOCIATIONS

Kamaki A. Kanahale, III
Chairman
Josiah "Black" Hoohuli
Vice Chairman
Audrey Loo
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S. Kelii Kahele
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Directors
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Kahu

Testimony of
Kamaki Kanahale, Chairman
State Council of Hawaiian Homestead Associations
before the
Committee on Hawaiian Affairs & Housing

Feb. 4, 1995

Aloha Chairman Arakaki & Members of the
Committee,

My name is Kamaki Kanahale, I am Chairman of the State Council of Hawaiian Homestead Associations (SCHHA). The SCHHA membership consist of 23 Homestead Association Boards representing approximately 30,000 native Hawaiians living on the land.

On January 14, 1995, the SCHHA membership voted 18 to 1 in support of the MEMORANDUM OF UNDERSTANDING, presented by the Governor's Task Force.

It would be presumptuous of me, Mr. Chairman, to think that the M.O.U. in this legislature is a given. It would also be presumptuous of me to presume that there would be no amendments or stalls or reconsiderations or back and forth arguments both pro and con on this Bill. It is, however, a process the beneficiaries, living on and off the land, can no longer afford.

In a meeting to be held by the Executive Board of the SCHHA, on March 4, 1995, I will be recommending that the SCHHA and Hui Kako'o, the two groups representing the beneficiaries, enjoin into a planning schedule to begin legal court actions against the State of Hawaii in contravention of the Hawaiian Homes Commission Act.

This recommendation will then be brought before the quarterly meeting of SCHHA membership on March 18, 1995 for vote. My recommendation will be to initiate strategy plans that will include legal counsels representing individual associations and bring suit as independent associations ranging from questionable land titles to illegal usage and disposition of trust lands from the territorial period to present.

I do think that the actions taken by many on our behalf have been exemplary, however, time is of the essence for too many on the waiting list. It now becomes our trust obligations as beneficiaries to take action no matter what the outcome may be for Hawaiians and non Hawaiians alike.

H.B. 1828 must be passed without amendments or a breach between the state and the beneficiaries would have occurred. We ask for your commitment toward the best opportunity ever, for the State of Hawaii, by this Bill.

Mahalo Nui Loa.

TO: HOUSE COMMITTEE ON HAWAIIAN AFFAIRS
Representative Dennis Arakaki, Chair
Representative Mike Kahikina, Vice Chair

FROM: Kawika Gapero, O'ahu Representative
Hui Ka Ko'o 'Āina Ho'opulapula
(Representing 16,000 Hawaiian Homestead Waitlist Applicants)

DATE: February 2, 1995

RE: HOUSE BILL 1828 - TESTIMONY SUPPORTING

Aloha!... My name is Kawika Gapero, O'ahu representative for Hui Kako'o Āina Ho'opulapula, a Hawaiian organization, which was formed by the Department of Hawaiian Home Lands as a "Task Force" to help Native Hawaiians understand the qualification process, the financial obligations in order to become a homesteader, and to generally help Hawaiian homes beneficiaries in any way possible. The Task Force has since then received its 501(c)(3), non-profit status, and has become its own separate entity, to assure "wait list" applicant participation. We have Island Representatives throughout the state that coordinate community meetings, to distribute and collect information concerning the needs of Hawaiian Home lands beneficiaries.

I am here today, not only as a representative of the "Hui," but also as an individual beneficiary on the infamous Waiting List, which is also known to many Hawaiians as the "Death List." For too many of us, friends, relatives, and our cherished *kupuna* have passed on not knowing the future of our people. The Hui supports House Bill 1828, which will ensure a better life for our people by allowing Hawaiians to once again hold their heads high -- not to be ridiculed to be "Hawaiian" and once again grasp the reality of being indigenous to these lands. Throughout the years, many individuals and organizations have been helpful and supportive of Hawaiian causes, especially the injustices done to our people. We will never again have the opportunity, such as this time for healing and the fulfillment of the "TRUST."

So, it is with great expectations and respect, that we know our elected legislators will make the right decision -- and that is to pass this bill out of committee.

Aloha!

Kawika Gapero
3045 Ala Napua'a Place #904
Honolulu, HI 96818

January 4, 1995

Dennis Arakaki, Chair
Hawaiian Affairs Committee
and Committee members

Mr. Chair and Committee members my name is Ben Kama and I'm representing Hui Kako'o an organization which was formed to represent the 14,000+ Native Hawaiians on the DHHL's waiting list. We ask for your support of House Bill No. 1828 relating to the Governor's Task Force on Hawaiian Home Land claims package for the violation of the Hawaiian Homes Commission Act.

Why are we asking for your help?

1. Because you (legislators) told the Kanaka Maoli in 1988 through Act 395 that we cannot sue the State for the violations of the HHCA between 1959 and 1988, that the State Administration and the legislature will correct the wrongs. We HOPE for PONO, however, will we be disappointed again.
2. Because it is more than the violation of the HHCA, it is the violation of the Kanaka Maoli for the 100s and thousands of them who have been waiting on the Department of Hawaiian Home Lands waiting list.
3. Because, in 1959, upon admission to the Union, the State and its people entered into a compact with the United States and assumed the management of the Hawaiian Home Lands Trust (Admission Act). The State adopted the Hawaiian Homes Commission Act of 1920 (HHCA) as part of its Constitution. In addition, the State recognized its trust responsibilities and affirmed in the Constitution that:

The State and its people do further agree and declare that the spirit of the Hawaiian Homes Commission Act looking to the continuance of the Hawaiian homes projects for the further rehabilitation of the Hawaiian race shall be faithfully carried out.

What does this mean? It means that we are responsible to see that the HHCA is carried out. Yes, it means the Hawaiian Homes Commission, the DHHL, the Governor, the legislature, the courts, and, yes, you and me.

4. Because, the State, the HHC, DHHL, and the people have failed to carry out its agreement to faithfully carry out or implement the HHCA. The most recent of these failures was written in the Advertiser December 28, 1993. It reports the State Auditors findings that DHHL and HHC have failed to meet their responsibilities.

What does these failures mean to Hui Kako'o members on the HHCA waiting list? That the Hawaiians are still off the HHCA lands. Why do we see it this way? The numbers tell the story. What are the numbers? 74, 3,727, 5,968, 14,000, etc.

In closing, we, again, ask for your support for HB 1828.

TESTIMONY OF WILLIAM MEHEULA

to

COMMITTEE ON HAWAIIAN AFFAIRS AND HOUSING
and
COMMITTEE ON EDUCATION

Saturday, February 4, 1995

STATEMENT ON HB 1828 RELATING TO HAWAIIAN HOME LANDS

Thank you for this opportunity to provide testimony relating to funding the \$600 million Memorandum of Understanding. I am a member of the Hawaiian Sovereignty Elections Council. I am also lead counsel in Ka'ai'ai v. Drake, a case that created the Independent Representative position to represent beneficiaries in the task force negotiations.

Under the terms of a settlement agreement in Ka'ai'ai v. Drake, only the Independent Representative can settle beneficiary claims brought before the task force. DRHL cannot settle these claims. The Independent Representative, after consultation with beneficiaries, has determined that the Memorandum of Understanding is fair and acceptable. If the Legislature reduces the compensation package set forth in the MOU, the Independent Representative will not sign a settlement agreement and the State of Hawaii will still be liable for these claims.

The heads of the Office of Attorney General, the Office of State Planning and the Department of Land and Natural Resources executed the MOU after years of evaluating these claims. There is no valid reason to question their judgment that the MOU is in the best interest of the State of Hawaii. Moreover, the 1991 Legislature approved the task force process and delegated the

HB 1828; Meheula testimony
Page 2

authority to these three department heads to represent the State in task force negotiations.

Finally, in the event the Legislature does not fund the MOU, pursuant to Chapter 673, beneficiaries will institute a class action to sue the State of Hawaii for its breaches of the Hawaiian home lands trust. Appraisers approved by the former department heads have calculated that the claims addressed by the MOU are valued at \$900 million. The MOU, on the other hand, will pay DHHL \$600 million over 20 years with a discounted value of about \$300 million. In addition, beneficiaries have a claim for failure to fund infrastructure which is valued at over \$1 billion. This claim was not addressed by the task force. Thus, any litigation is likely to result in a judgment well in excess of the current settlement amount.

For these reasons, the current settlement is fair and reasonable.



NATIVE
HAWAIIAN
LEGAL
CORPORATION

1164 BISHOP STREET • SUITE 1205 • HONOLULU, HAWAII 96813 • TELEPHONE (808) 521-2302 • FAX (808) 537-4268

BEFORE THE HOUSE COMMITTEE ON
HAWAIIAN AFFAIRS AND HOUSING

Testimony of ALAN T. MURAKAMI

RE: H.B. 1828

February 4, 1995

I represent the Aged Hawaiians, an unincorporated group of native Hawaiians who have waited for a pastoral homestead awards in Waimea, island of Hawai'i since 1952. In addition, I represent several individuals on waiting lists for homestead awards who have been unable to secure homesteads because of the lack of basic infrastructure to support homesteading.

I testify in support of HB 1828. This bill is the product of 8 years of discussion, negotiation, frustration and compromise that began when you enacted HRS Chapter 673. The major issue then was whether the Legislature was going to allow beneficiaries to sue for damages to the trust for breaches that occurred between 1959-88. Warren Price prominently warned your predecessors and some of you then in office that to do so would "bankrupt the state". In response, you enacted a plan to allow then-Governor Waihee the opportunity to administratively resolve the controversies related to those trust breaches by 1991.

Background. In 1991, rather than produce a resolution of those controversies, Governor Waihee proposed an action *plan* to resolve them. He proposed to create: (1) the Individual Claims Review Panel before which individuals would be allowed to make claims for damages caused by trust breaches; and (2) an administrative task force made up of representatives from the Office of State Planning, Attorney General, Transportation, Land and Natural Resources, and Hawaiian Home Lands to agree on a package to resolve breaches of trust that caused damage to trust resources. You partially approved this action plan, rather than allow claimants an unlimited right to go to court to obtain judgments on trust breaches.¹ The beneficiaries sued to enjoin the execution of any releases for claims that were being resolved by the task force because there was no independent voice on the task force. The 1993 legislature then enacted legislation that authorized the participation of former judge Edward King to act as an independent voice for the beneficiaries.

¹ The only additional terms were that: (1) beneficiaries be given more input; (2) the DHHL plan and request funding for the necessary water infrastructure to support homesteading; and (3) urge the state administration to pledge general obligation bonds to allow those 2,500 native Hawaiians who were awarded "raw land" homesteads lots prior to 1991 to actually settle upon them. See, S.C.R. 185, SD 1, HD 1 [1991].

Often-Heard Objections. After interim reports to the legislature, and long negotiations, the governor's task force has produced HB 1828. Various legislators have now raised 3 interrelated concerns about:

- (1) the valuation method utilized to arrive at a figure of \$600 million;
- (2) the effect of the transfer of 16,000 acres from the state to the DHHL last November on the proposed settlement amount; and
- (3) the need to offset prior payments to the DHHL against the \$600 million.

Justification. The \$600 million is a compromise that falls short of the estimated \$900 million the DHHL claims in lost lands. The negotiators recognized there were strengths and weaknesses to either side of the issues presented. Furthermore, because the payments are over time, the present value of the settlement amount is actually closer to \$300 million. While there may be questions about the \$900 million figure, the compromise seeks to terminate the additional costs that will likely be incurred fighting about it so funds can go more quickly to a very needy program. The \$30 million per year can be fit within the 1995-97 CIP budget. There is no direct relationship to the current budget shortfalls in general funding. Justice should override whatever limited funding concerns remain after 8 years of arguing over how the state has hurt Hawaiian beneficiary interests in the past 45 years.

Some have questioned whether the transfer of 16,000 acres to the trust to make it whole squares with the 39,000 acres now in controversy. First, the purpose of the 16,000 acres is to repair the trust in terms of acreage, not value. Accordingly, the 16,000 acres merely represents the difference between the 203,000 acres mentioned in the HHCA and the 187,000 acres the DHHL was then including in its land inventory. The 39,000 acres was determined in light of disputes over whether certain lands should have been included in the trust under varying legal interpretations of the act, treating the 203,000 acres as an estimate of acreage only. Furthermore, the \$600 million includes lease rent DHHL should have been receiving all these years, not just land value.

Others have also questioned whether the value of the 16,000 acres, pror appropriations, should be applied against the total \$600 million settlement amount. The DHHL staff informs us that given the best information available, negotiators did discount the settlement amount by a value representing the best available valuation of that acreage. Furthermore, the state has had an independent duty to adequately fund all aspects of the DHHL budget under Article XII, §§ 1 and 3. *No offset for this reason is justified or fair.*

Finally, some have expressed frustration with the seeming "unfairness" of DHHL's practices. The example they often cite is Nanaikapono School, where the Department of Education is paying high rent for a school that educates a heavy concentration of Hawaiian children. They ask, Why should DHHL charge for a service that is benefitting the very group of people it was established to help? This may seem to be an innocent statement for legislators striving for an apparent policy of fairness. However, we must remember that Hawai'i became a state based on a promise to the U.S. government that the state would faithfully administer the spirit of the HHCA as a trust *solely for the benefit of native Hawaiians*. This trust duty requires the state to enforce this trust exclusively for the benefit of this group of people. Our Supreme Court has said so. This duty precludes the state from using trust lands for the benefit of other members of the general public unless fair market compensation is paid for the use of those lands, *much like the state would treat any private landowner.*

State Council of Hawaiian Homestead

Associations

P. O. Box 2132 • Waianae, Hawaii 96792

February 3, 1995

TO: The Honorable Dennis K. Arakaki, Chairman
House Committee on Hawaiian Affairs and
Housing.

FM: Rev. Clarence Kamai, Chairman
SCHHA Legislative Committee. *CK*

SUBJ: H. B. No. 1828 relating to Hawaiian Home Lands.

Dear Chairman and Committee Members of the House
Committee on Hawaiian Affairs and Housing, aloha!

The Legislative Committee of the State Council of
Hawaiian Homestead Associations wholeheartedly support
H.B. NO. 1828.

This action by the State of Hawaii is long over-due.

The injustice delivered upon the Native Hawaiians
for so long created the conditions and situations that
these people have and are undergoing.

This H.B. No. 1828 is a blessing for all the people
of the State of Hawaii.

This Bill will alleviate the housing situation in
our State of Hawaii by placing the Native Hawaiian people
on the land. It will greatly enhance the economical
condition of our State to move forward.

The SCHHA appreciates the privilege and opportunity
of testifying in favor this House Bill No. 1828.

TO:
COMMITTEE ON HAWAIIAN AFFAIRS AND HOUSING
REPRESENTATIVE DENNIS A. ARAKAKI-CHAIR
REPRESENTATIVE MICHAEL P. KAHIKINA-VICE-CHAIR

FROM:
ILIMA WOOD, PRESIDENT
WAIHOULI HAWAIIAN HOMESTEADERS INC.
P.O. BOX 331028
KAHULUI, HI 96732

RE:
HEARING ON SATURDAY FEBRUARY 4, 1995
8:30 A.M. - 12:00 P.M.
CONFERENCE ROOM 1111, LEIOPAPA A. KAMEHAMEHA BUILDING

ALOHA,

WE THE WAIHOULI HAWAIIAN HOMESTEADERS INC. HAVE BEEN AWARDED OUR LEASES FROM THE DEPT. OF HAWAIIAN HOMELANDS, UNDER THEIR ACCELERATED PROGRAM. SINCE 1986 AFTER SIGNING OUR LEASES WE HAVE STILL NOT BEEN ABLE TO PHYSICALLY RESIDE ON OUR LAND DUE TO LACK OF WATER, INFRASTRUCTURE AND ABOVE ALL "FUNDING".

WE ARE IN SUPPORT OF HB#1828 RELATING TO HAWAIIAN HOMELANDS. WE KNOW THAT THIS \$600 MILLION DOLLARS IS RIGHTFULLY OURS.

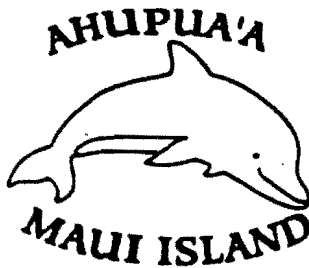
CONSIDER THE FACT THAT WE WHO RESIDE IN RENTAL UNITS ARE SUBJECT TO PAY OUR LANDLORDS. IN THE EVENT THAT PAYMENT IS NOT RENDERED WE ARE GIVEN A DELINQUENT NOTICE, FOLLOWED USUALLY WITH A LETTER OF TERMINATION, AND EVENTUALLY EVICTION.

THE STATE OF HAWAII HAS SERIOUSLY BEEN LACKING IN FULFILLING THEIR RESPONSIBILITIES WITH REGARDS TO OUR HAWAIIAN HOME TRUST LANDS.

'E NAKOA NE'I - RALLY FOR THE RIGHT - PA'A MA KAPONO



ILIMA WOOD



P.O. Box 2805 • Wailuku, Hawaii 96793

February 3, 1995

TO: The Honorable Dennis A. Arakaki, Chair
House Committee on Hawaiian Affairs and Housing

FROM: Rev. Clarence K. Kamai, President
Ahupua'a Maui Island

SUBJECT: Testimony on H.B. 1828 Relating to
Hawaiian Home Lands.

Aloha Chairman and Members of the House Committee on Hawaiian Affairs and Housing, we appreciate the opportunity to testify on H.B. No. 1828.

Glory to God! This H.B. No. 1828 is a "MASTER PIECE."

Twelve pages and thirteen sections and I could only find to comment on page four, line twenty....."the best interest of the State and the Beneficiaries of the trust."

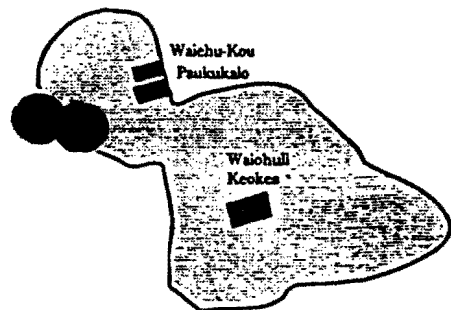
Truly, this is THE PURPOSE of this H.B. No. 1828.

The MAKER of this bill deserves credit. The construction of this document, in my opinion was done in love and honor.

The only other comment I can make is found on page seven, line 18....."comprising all." If it is possible, I would have desired that ALL of Bellows Air Force Base (TMK: 4-1-15) be turned over to DHHL. This would enhance the Department of Hawaiian Home Lands land base and ELIMINATE possible division among others.

We support this H.B. No. 1828 and thank you for this opportunity to testify.

GOD HELP AND BLESS US ALL



NANAKULI
HAWAIIAN
HOMESTEAD
COMMUNITY
ASSOCIATION,
INC.

TESTIMONY OF

May Leialoha Wright
Board, Nanakuli Hawaiian Homestead Community
Association
a member of
State Council of Hawaiian Homestead Associations

Feb. 4, 1995

Aloha Chairman Arakaki and members of the Committee,

My name is May Leialoha Wright, representing the Board of the Nanakuli Hawaiian Homestead Community Association. We are in support of H.B. 1828, without amendments, with its promises and commitments of reparations to the Hawaiian Home Lands as it so stipulates.

We the beneficiaries are prepared to take what ever actions necessary to see that all commitments made by the State of Hawaii are adhered to the letter.

Please support us in our plight for equality and justice.

Mahalo for your time and patience.

2/4/95

**TO: Committee on Hawaiian Affairs and Housing
Representative Dennis Arakaki, Chair**

**FROM: Hawaiian Political Action Committee
Dawn Farm-Ramsey, President**

RE: Testimony in Support of H.B. 1828

Aloha. My name is Dawn Farm-Ramsey and I am testifying on behalf of the Hawaiian Political Action Committee in support of House Bill 1828.

The monies awarded by the Court for the purposes of settling the claims against the State sends a clear message that the Hawaiian Homes Commission has had, from its inception, a clear mandate of managing, in the best and most fiduciarily responsible way possible, those lands left to "rehabilitate" the native Hawaiian people.

It also acknowledges the insensitive and cavalier way in which Hawaiian interests have historically been treated, especially in the early decades of the Territory.

Mahalo for the opportunity to testify today.

TESTIMONY OF

**KALEHUA ELI
Nanakuli Homestead Resident**

Feb. 4, 1995

Aloha Chairman Arakaki and members of the Committee,

My name is Kalehua Eli, I am a lessee residing in Nanakuli and am a member of the SCHHA.

I am here to speak in support of H.B. 1828 to establish the Hawaiian Home Lands Trust Fund.

I support the recommendations of the Task Force's Memorandum of Understanding and ask the legislature to accept the M.O.U. without amendments.

Your support of my position on H. B. 1828 would be very much appreciated.

MAHALO NUI LOA

TESTIMONY OF

**Herbert Hew Len
Ahupuaa O Oahu
State Council of Hawaiian Homestead Associations**

Feb. 4, 1995

Aloha Chairman Arakaki and members of the Committee,

My name is Herbert Hew Len, representing the Ahupuaa of Oahu consisting of Nanakuli, Waianae, Waimanalo, Kewalo, and Papakolea Homesteads which are members of the SCHHA.

I am here to speak in support of H.B. 1828 without amendments. The state has a moral and trust responsibility toward the Hawaiian people under the Hawaiian Admissions Act and to carry out the mandate of the HHCA. The present Governor, Ben Cayetano supports the Task Force M.O.U.

Your support of our position on H.B. 1828 would be very much appreciated.

Mahalo Nui Loa.

TESTIMONY OF

MIDGE ELI
Nanakuli Homestead Resident

Feb. 4, 1995

Aloha Chairman Arakaki and members of the Committee,

My name is Midge Eli, I am a lessee residing in Nanakuli and am a member of the SCHHA.

I am here to speak in support of H.B. 1828 to establish the Hawaiian Home Lands Trust Fund. I believe that the work of the Task Force could prevent or avoid future conflicts in costly litigation .

I support the recommendations of the Task Force's Memorandum of Understanding and ask the legislature to accept the M.O.U. without amendments.

Your support of my position on H. B. 1828 would be very much appreciated.

MAHALO NUI LOA

THE PAHE'EHE'E RIDGE ASSOCIATION
Charles M. Ka'ai'ai, President
3515 A Kaimuki Avenue
Honolulu, Hawai'i 96816
Phone 732-4829

February 2, 1995

TO: The House of Representatives
Committee On Hawaiian Affairs and Housing
Eighteenth Legislature

RE: HB 1828 - Appropriating funds to remedy land claims against
the State of Hawaii for improper uses and exchanges of
Hawaiian Homelands.

I am pleased to offer this testimony in support of HB 1828 making an appropriation to settle disputes for the wrongful taking and improper uses of Hawaiian homelands by the State of Hawaii.

In August of 1994 I first began hearing that a settlement of past abuses of the Hawaiian homeland trust was near at hand. By November, details of the settlement proposal became available. The primary benefit for native Hawaiian beneficiaries was the settlement sum of 600 million dollars. I was elated. This represented a fair dollar amount for the settlement of the breaches of trust since August, 1959. It was a far cry from the Task Force proposal of August, 1992.

In 1988, the Legislature enacted "The Native Hawaiian Trusts Judicial Act," Chapter 673, the "Right to Sue." This was largely due to the efforts of a grassroots organization known as "Civil Rights for Native Hawaiians," who, for at least five years, since the release of the "1983 Federal State Land Trust Task Force Report," tried to establish the right to sue over breaches of the Hawaiian Land Trusts for native Hawaiians. In the 1988 legislature, the battle was for the passage of what was called the "peoples'" bill. When the bill was in the Senate Judiciary Committee, it was significantly changed to what was termed the "governor's" bill.

The "governor's" bill established a number of conditions that would render native Hawaiians the right to sue but not the right to win. If suit was brought successfully against the State of Hawaii, plaintiffs would only receive awards for "out of pocket" expenses. If there was a settlement of land or money the settlement would go to the State of Hawaii. Additionally, suit could only be brought for controversies occurring from July 1, 1988 onward. For the period from August, 1959 to July 1, 1988, the legislature charged the governor with the responsibility to present to the 1991 legislature a plan to resolve controversies.

If the governor did not make a proposal that was acceptable to the legislature, then all claimants would have until June 30, 1993 to file for judicial relief for controversies arising out of the period of statehood to July 1, 1988. In January, 1991 the governor proposed the "Action Plan to Address Controversies Under the Hawaiian Homes Land Trust and the Public Land Trust." The legislature found that the "Action Plan" met with the conditions and intention of Chapter 673. The "Action Plan" created the "Task Force on DHHL Land Title and Related Claims." The "Task Force" was to come up with a plan to resolve controversies. The "Action Plan" was to come up with a plan. The Task Force was comprised of DHHL, DLNR, OSP, and the State Attorney General. Beneficiaries were effectively barred from involvement with the Task Force.

In February, 1992, the "Task Force" submitted an interim report of their work and findings and indicated that they had investigated proclamations and executive orders involving 51 parcels, 29,633 acres, and that the settlement compensation for the illegal State use would be between 7 and 12 million dollars. This was without appraisal of the parcels. The "Task Force" hired John Child and Company to do the appraisal and gave the appraiser improper instructions and faulty assumptions to appraise the lands, i.e., instructing the appraiser to value the land as if it was vacant and without improvements to determine the highest and best use of the land.

In July of 1992, the legislature appropriated 27.9 million dollars to resolve and continue to investigate controversies relating to the Hawaiian Home Lands Trusts. 12 million dollars was to be used for settlement for illegal use of 51 parcels, 29,633 acres under executive orders and proclamations. In August of 1992, the Task Force recommended that settlement involving 24 of the 51 parcels being investigated be made. DHHL was to receive \$5,506,388 in settlement for the 24 parcels. As a condition of the settlement, DHHL was to sign an Agreement and Release in September, 1992 that released the state from all claims arising out of the illegal use of the 24 parcels and bars anyone from further claims against the state. The Agreement also preserved claims against the federal government.

In October, 1992, a temporary restraining order was filed to prevent the signing of the Agreement and Release on behalf of the beneficiaries of the Hawaiian Homes Commission Act. The basis of the complaint was that the native Hawaiian beneficiaries were not being properly represented by the Task Force. As a result of the ensuing case the legislature, in 1993, appropriated funds for the establishment of the Independent Representative for the Beneficiaries. Judge Edward King was selected after much deliberation by the attorneys and plaintiffs in the suit.

The proposal represents a legal settlement of controversies surrounding abuses and illegal set asides of Hawaiian Home Lands. It is a settlement that every step of the way had involvement of the legislature and the state government. If the settlement is approved then I suggest that the state fund the Independent Representative of the native Hawaiian beneficiary and use the representative in seeking redress from the federal government. If the proposal is subjected to political machinations and is changed significantly, then the solution will not be a settlement and native Hawaiians will have the right to recover consequential damages compensation through the courts. The wrong political solution could lead to expensive, protracted litigation.

I was awarded land at Pahe'ehe'e Ridge in March of 1986 when Georgiana Padeken was chair of DHHL. The Pahe'ehe'e Ridge Association operates under the fourth DHHL Chair since we were awarded. Pahe'ehe'e Ridge was the first Hawaiian Homestead to receive an appropriation for infrastructural improvements from the state legislature (SB 1104-89). Pahe'ehe'e Ridge was the first Hawaiian Homestead to receive a federal appropriation for infrastructural improvements (HUD Application - October 15, 1989 - Pahe'ehe'e Road Improvements Project). In nine years, I have yet to take possession of my award. Every step of the way I heard, from DHHL and the state, over and over, not enough money, not enough money. I would be very pleased if that excuse for non-performance by DHHL was removed by this 30 million dollar-a-year settlement. If not, I would be very pleased to be a party in the suit to recover damages for past abuses and illegal takings of Hawaiian Home Lands.



pacific-asian, inc.

Valerie L. Mendes
President

Edsel M. Yamada
Vice-President
& General Counsel

February 3, 1995

Dear Chair Arakaki and Committee Members:

Thank you for this opportunity to testify. My name is Valerie Kawailani Lota Mendes. I am a native Hawaiian businesswoman and am over 50% Hawaiian blood quantum - both of my parents were part-Hawaiian and my children are nearly 50% Hawaiian. I am here to testify in support of **H.B. 1828 relating to Hawaiian Home Lands**. This measure is intended to settle claims for past wrong doings by the State with regards to the Hawaiian Homes Lands Trust as negotiated by the Task Force on Department of Hawaiian Home Lands Title and Related Claims.

The preamble to the bill adequately describes the process initiated and continually supported by legislature. I believe the passage of this bill would be the culmination of an extraordinary effort put forth by leaders of this State. It is this extraordinary effort that has convinced me that the settlement must be accepted as complete and fair to all of us.

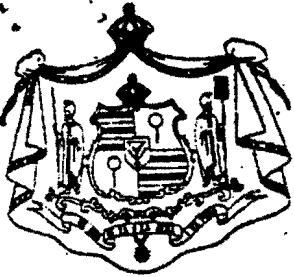
The legislature should honor the settlement and look for a means to finance it. This is not a time to re-examine the data from which the Task Force arrived at its agreement. The amount settled is a compromise. Hawaiians are entitled to this settlement and have suffered long enough.

It is important for all of us to understand that this is a settlement for past wrongs. This is not an appropriation to DHHL. It is a repayment for past use and abuse of Hawaiian Home Lands. Furthermore, this does not relieve the federal government of its responsibility in the fulfillment of the Hawaiian Homes Commission Act, nor does it lessen the State's obligations as mandated by the State Constitution (Article XII, Section 1) to make sufficient sums available by which the general welfare and conditions of native Hawaiians are thereby improved.

Thank you for you time and consideration on this important matter.

Sincerely,

Valerie L. Mendes
President



ASSOCIATION OF HAWAIIAN CIVIC CLUBS

P.O. Box 1135 Honolulu, Hawaii 96807

Testimony for Hearing of House Committee on Hawaiian Affairs and Housing scheduled for 8:30 a.m., February 4, 1995, in Room 1111, Leiopapa a Kamehameha Building, Honolulu, Hawai'i (35 copies).

TESTIMONY OF H.K. BRUSS KEPPELER,
PRESIDENT OF THE ASSOCIATION OF HAWAIIAN CIVIC CLUBS

ON HOUSE BILL NO. 1828

RELATING TO HAWAIIAN HOME LANDS

Aloha kākou;

The Association of Hawaiian Civic Clubs is a confederation of 45 Hawaiian Civic Clubs located throughout Hawai'i nei and in the states of Alaska, California, Colorado, Nevada and Utah. The first of these clubs was founded in December, 1918, at the urging of Prince Jonah Kūhiō Kalaniana'ole, then Delegate to Congress, as an advocacy organization for the civic concerns of the Hawaiian People. After 75 years, the Association and its member clubs continue in the effort.

We have come full circle, in a sense.

Prince Kūhiō, it is said, established the first Hawaiian Civic Club in large part to act as a political force behind his dream to establish a homestead program to rehabilitate his failing Hawaiian people. Let me take you back in time

In January of 1918, the Honolulu Ad Club began a campaign seeking to demolish the tenement buildings in Honolulu where many Hawaiians lived. In November of that year, Prince Kūhiō, Rudolph Duncan, Jesse Uluihi, John C. Lane and Noa Aluli decided that Hawaiians needed their own organization to work on the tenements issue and add support for the rehabilitation plan. About forty Hawaiians gathered in December, 1918, and formed the Hawaiian Civic Club. The purpose of the Hawaiian Civic Club was to create an open forum for Hawaiians to discuss and take action on matters of importance affecting the welfare of the Hawaiian People and to perpetuate the language, history, traditions music, dances and other cultural traditions of Hawai'i . . . work the Hawaiian Civic Club movement is still doing today.

In the formation of this organization, Kūhiō knew that a groundswell of political opinion could be created to convince the Congress and other political leaders that something must be done to improve the lot of the Hawaiian People.

The ensuing years brought discussion, argument, rancor, negotiation and, finally, compromise and, on April 15, 1920, Prince Kūhiō addressed the U. S. House of Representatives in an impassioned plea for passage of the measure which would become the Hawaiian Homes Commission Act.

In his speech, Prince Kūhiō traced the high points of the early civilization of the Islands from a time before the 1778 visit of Captain James Cook (who, he said, "wrote them down as friendly islands, and spoke of the people as highly civilized, classed them as the most industrious, and labeled them as few would object to being labeled, as being stalwart, manly, upright, straightforward, fearless, candid and open-minded"). On Hawaiian navigation, for instance, Prince Kūhiō said:

"We speak of the splendid navigation of the men like Columbus, and we speak of the splendid navigation of the men of today, but the Hawaiian starting out with his double canoe, sailed the length and breadth of the broad Pacific, over tempestuous seas, with only the sun and stars as guides"

Discussing their ancient medicinal practices, Prince Kūhiō credited Hawaiians with ". . . knowing every bone, muscle and nerve of the body and its structure, and the treatment given for certain ailments then, is still recognized by the medical profession of today."

Of arts and science and engineering and industry, he said:

"It was a time of industrial enterprise and peaceful and prosperous growth; arts and crafts developed to a very high standard. Their feather helmets and capes and the method of their manufacture are still a wonder to the scientific world. Great engineering enterprises were undertaken, irrigation systems and fish ponds were constructed, the land boundaries established during this period are recognized by the engineers and surveyors of today."

He shared this about King Kamehameha I:

"Though Kamehameha I may have appeared to be a heathen to the outside world, during his long and vigorous reign there was manifest in everything that he did, a superior intelligence and deep reverence for a power greater than his. With such an influence governing his life, he ruled his people, even those whom he had conquered, with justice.

* * *

He recognized the benefits of trading with the outside world, and the immense sandalwood traffic with China which later developed was inaugurated by him.

Seeing the ill effects from the impact alcohol had upon his people, he proclaimed the first prohibitory law against the liquor traffic ever promulgated by any government. The earnest reformers of America, who may have taken to themselves the credit of having accomplished an almost unbelievable phenomenon, may be astonished to learn that this great monarch, the unifier of his people and far-sighted statesman, sometimes called the Napoleon of the Pacific because of his military genius and leadership, had that law enforced a century before.

Education during his time was advanced, even though their language had not been reduced to writing. The high priests took the young and in song and story related to them the history of their ancestors and the principles of medicine and science."

Kūhiō then discussed the advent of Western education.

"The first education was undertaken by the missionaries soon after their arrival in 1820. There was a passion exhibited for education. The chiefs themselves put the innovation to a test. 'If learning is bad, we will keep the people from it,' they said and added 'If it is good, we will share it with all.' The desire for learning was so widespread that at the end of five years the number of pupils were 20,000, and at the end of 10 years the number increased to 53,000, out of an estimated population of 130,000."

Next, Kuhio discussed the establishment of Punahou School (his alma mater) by Chief and Chiefess Boki and Liliha and the Kamehameha Schools by Princess Pauahi and then noted that "in addition to these educational institutions, charitable institutions were established by the chiefs, who were ever ready to assist in the uplift of their people. Lunaliilo Home for the aged Hawaiians was established by King Lunaliilo, leaving his entire estate for that purpose; The Queen's Hospital, where Hawaiians received treatment free of charges, by Kamehameha IV and his consort, Queen Emma; and the Kapi'olani Maternity Home, also where Hawaiians received treatment gratis, by King Kalākaua and Queen Kapi'olani; and the Estate of Queen Lili'uokalani was left to establish an orphanage"

Prince Kūhiō described the proposed legislation as seeking "to place the Hawaiians back on the soil, so that the valuable and sturdy traits of that race, peculiarly adapted to the islands, shall be preserved to posterity."

To convince his colleagues in the Congress, Kūhiō concluded his remarks by saying:

"The Hawaiian race is passing. And if conditions continue to exist as they do today, this splendid race of people, my people, will pass from the face of this Earth . . . It is a subject in comparison with which all others sink

into insignificance, for our first and great duty is that of self preservation. Our acts are in vain unless you can stay the wasting hand that is destroying my people. I feel a heavy and special responsibility resting upon me in this matter, but it is one in which you all must share; nor shall we be acquitted by man, or maker, for a neglect of duty, if we fail to act speedily and effectually in the cause of my people."

On July 9, 1921, the bill, having passed both houses of Congress, was signed into law.

Almost from the beginning, this dream of Prince Kūhiō for his people was to be thwarted. The Hawaiian Civic Club itself held hearings throughout the Territory during the 1930s in an attempt to move the Hawaiian Homes program along.

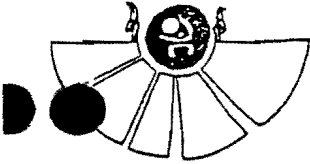
And, as you know, from the beginning all of the lands promised to be transferred into this trust were not forthcoming, conveyances of land out of the program in violation of the trust further depleted the corpus and for a long time greater emphasis seemed to be placed on how (and which) non-Hawaiians got Hawaiian Homes program land under lease than on how to get the native Hawaiian beneficiaries of the program on the land.

Some said that this would not have happened to the program but for the fact that Prince Kūhiō died within six months of its enactment.

With all this history and tradition behind us, is it any surprise that the Association of Hawaiian Civic Clubs earnestly and passionately supports the passage of HB No. 1828?

For now, after nearly 75 years of broken promises, you can continue a process which you, in fact, began not so long ago . . . a process necessary to making the tragic Hawaiian Homes program whole at last . . . by passing House Bill No. 1828.

Mahalo



"People of Action Working Together"

Hawaiian Home Lands Action Network*

BEFORE THE HOUSE COMMITTEE ON HAWAIIAN AFFAIRS

Testimony of Mary Minchew, Vice Chair
Hawaiian Home Lands Action Network

RE: H.B. 1828

February 4, 1995

Mahalo Representative Arakaki and Committee Members for this opportunity to address you today. My name is Mary Minchew and I represent the Hawaiian Home Lands Action Network (HHLAN). Formed in 1992, our primary interest is promoting, preserving and protecting the rights of native Hawaiians to the lands to which they are entitled under the Hawaiian Homes Commission Act (HHCA) and Section 5 (f) of the Hawaii Admission Act.

I appear before you today to speak in support of House Bill 1828.

When foreign influence reached the Hawaiian islands in 1778, native Hawaiians witnessed a decrease in their population, deterioration of their culture and spiritual lifestyle, as well as theft of their land and political structure. Over 150 years these foreign influences slowly deteriorated the native Hawaiian culture and people. In 1921, acknowledging the deterioration of the Hawaiian culture and people, Congress passed the Hawaiian Homes Commission Act (HHCA). This act set aside approximately 200,000 acres of land in a TRUST for homesteading for native Hawaiians. By returning Hawaiians back to the land, it was hoped that homesteading would help alleviate their misfortunes that were plaguing them.

Today, the HHCA has not yet achieved its purpose for reasons that are partially related to political and economic changes under the control of the Federal Government and State of Hawaii. Although the United States recognized its responsibility to the Trust lands, the federal and state government used, abused, and mismanaged this Trust as a function of the political and economic scene that unfolded in Hawaii. Because of the failure of the governments' responsibility to the Trust, land title claims and uncompensated use of the trust lands remain unresolved. And because these are unresolved issues, the HHCA has not yet achieved its purpose that was set out to do by the United States.

Since the late 1970's, native Hawaiian beneficiaries continue to protect their Trust Lands from abuse and mismanagement by the federal and state government. In 1987, recognizing their struggle, the legislators adopted the Native Hawaiian Trust Claims

Judicial Relief Act. This Act allowed native Hawaiians to sue the State of Hawaii for breaches of trust of the Hawaiian homes land trust. In addition, the Act also mandated the governor to develop a plan of action addressing the breaches of trust. In 1991, Governor Waihee presented "An Action Plan to Address Controversies Under the Hawaiian Home Lands Trust and the Public Land". This plan paved the way for various state agencies to research and complete their fact-finding concerning the breaches of trust. In 1992, the first part of the claims by the Department of Hawaiian Home Lands (DHHL) came to a settlement and approved by the 1992 legislature. We are now here today to resolve and finalize the latter portion of the land claims brought forward by the DHHL. HHLAN urges this committee to pass House Bill 1828 out of your committee.

It should be noted that it was our legislators that provided native Hawaiians with a healing process to address their plight in saving and protecting their last remaining lands. For this reason, the native Hawaiian community is **DEMANDING** that you stand behind your word to help resolve this long overdue controversy that caused native Hawaiians so much pain and suffering.

E HO'OLŌKAHI KĀKOU I HO'OKAHI 'OHANA E KĀKO'O
I KA HO'OPONOPONO 'ANA O KA 'ĀINA HO'OPULAPULA!

*Let us unite as one family to support
the adoption of the Hawaiian Home Lands Claims Settlement!*

MAHALO FOR THIS OPPORTUNITY TO TESTIFY.

Ka Lahui Hawai'i
"The Sovereign Nation"

COMMITTEES ON HAWAIIAN AFFAIRS AND HOUSING

February 4, 1995

HB 1828 RELATING TO HAWAIIAN HOME LANDS

Chairman Dennis Arakaki and
Members of the Committee:

E aho ai me kealoha. Aloha Kakou.

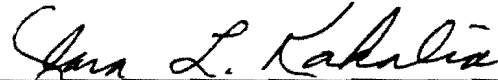
I kou inoa o' Clara L. Kakalia, Chair, Ka Lahui Hawaii, Lobbying Komike.

Ka Lahui Hawaii supports this Bill.

We request that funds be ade to continue the remaining land claims
against the State of Hawaii.

Also, to add a new section which established the "Hawaiian Home Lands
Settlement Trust Fund".

M ahalo a Nui Loa.



(Mrs.) Clara L. Kakalia
Chair, Ka Lahui Hawaii