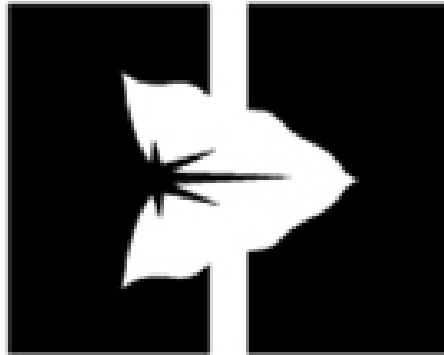


STATEMENT OF MS. MICHELLE KAUHANE
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To the United States Senate Committee on Indian Affairs
Hearing on
Energy Development in Indian Country

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Aloha Chairman Akaka, Vice-Chairman Barasso and Members of the Senate Committee on Indian Affairs.

My name is Michelle Kauhane, and I thank you for the invitation and opportunity to provide testimony on behalf of the State of Hawaii, Department of Hawaiian Home Lands (DHHL). Our state agency is responsible for the administration of the federal land trust established by Congress through the Hawaiian Homes Commission Act of 1920 (HHCA), establishing trust lands for homesteading by the native Hawaiian people similar to trust lands established under the Indian Allotment Act of 1906 for residential, farming and ranching of eligible American Indians.

Hawaiian Trust Lands Under the Hawaiian Homes Commission Act

Since Hawaii's overthrow as an independent nation and the subsequent annexation to the United States, one of the most significant federal policy achievements for native Hawaiians was the enactment of the HHCA. It began as a resolution in the territorial government in Hawaii, and advocated by the territory's congressional representative, Prince Jonah Kuhio Kalaniana'ole. Similar to other land allotment acts of that era for Alaska Natives and American Indians, the HHCA established a land trust of approximately 200,000 acres of land located in every county in the state, to provide land for residential, agricultural and pastoral homesteading. In addition, the HHCA encourages economic development on trust lands through land licenses for commerce and public purpose development.

The Act was incorporated into Public Law 86-3, the Hawaii Statehood Act in 1959, as a condition of statehood, which required the new state government to administer the Hawaiian Home Land trust with federal oversight by the Department of Interior and Congress. DHHL and its administration of the land trust is governed by a 9-member Hawaiian Homes Commission appointed by the Governor of the state of Hawaii. Its Director, a member of the Governor's cabinet, also serves as the Chairman of the Commission. In short, DHHL is a state agency managing a federally created land trust to reconnect native Hawaiians to their ancestral lands in Hawaii.

Self Determination of Native Hawaiians

In Hawaii, we do not refer to our Native peoples as tribal members or Indians, although it is clear that Congress intended the inclusion of Native Hawaiians in the federal policies of self determination. The most common terminology most understood in the islands to represent native Hawaiians eligible for the HHCA land trust, are "beneficiary" or "homesteader". Moreover, the lands in the Hawaiian Home Land trust are referred to as "homesteads" rather than reservations. For the purposes of our testimony, these terms will be used to describe native Hawaiians and land areas under the HHCA, which was enacted by Congress during a policy period of the federal government wherein land trusts and Native allotment programs were commonly established for Native peoples in Indian Country and Alaska. The HHCA was an extension of those policies, as well as the federal policies of self-determination that have been well documents over the last century.

For the beneficiaries of the HHCA, self determination and self governance is expressed through the existence of beneficiary organizations governed by beneficiaries or homesteaders themselves. These organizations, called homestead associations, have existed for decades, and have representative leadership through democratically elected processes for each homestead land area on differing islands within the state. Just as tribes are powerful partners with the federal government, homestead associations are vital to our state's success in implementing the tenets of the HHCA as Congress intended.

Energy Development in Hawaii

Hawaii is the only state in the United States that is 90% dependent on imported fossil fuels for its energy¹. Not only is the state dependent on fossil fuels for transportation, but approximately 75% of Hawaii's electricity is generated utilizing imported fossil fuels. The volatile price of oil, therefore, has a tremendous impact on Hawaii's economy and its rippling effect is felt by every Hawaii resident and business. Families all across the state are paying a disproportionate share of household income on utilities. Businesses are inhibited by soaring energy costs, tamping down on growth and the availability of equity capital to expand.

While it would be simplistic to view the State of Hawaii's situation as isolated, our energy dependence on fossil fuels directly impacts national security given Hawaii's strategic location in the Pacific Ocean. We serve as host to four major military installations for the United States Army, Air Force, Marines, and Navy as well as the headquarters for the United States Pacific Command (USPACOM), the combatant command focused on the Asia-Pacific region. Hawaii's energy and food security is therefore a national priority that cannot continue to be ignored.

State government, federal agencies and the energy industry are working together more than ever to bring an energy independent reality to Hawaii and its Pacific location. Hawaii has untapped indigenous, renewable resources that can be utilized, including wind, solar, geothermal, wave energy, biomass, hydroelectricity, and ocean-thermal energy conversion. In 2008, the State of Hawaii signed a Memorandum of Understanding (MOU) with the U.S. Department of Energy to address this situation, and set the goal of 40% generation from renewable energy sources and 30% increase in energy efficiency based on projected energy use levels in 2030. The Hawaii State Legislature has enacted a Renewable Portfolio Standard and an Energy Efficiency Portfolio Standard to reflect these goals, which are commonly referred to as a goal of 70% clean energy in 2030.

While Hawaii has robust renewable resources, the lands upon which these types of projects can be developed are limited given zoning and urbanization constraints. The lands in the Hawaiian Homes land trust host many of the robust renewable resources that can contribute to Hawaii's clean energy future with a clear opportunity to be at the forefront of energy development in the state.

As a federal land trust administered by state government, we must work with the Congress, with the Department of Energy, with the Department of Interior, to advance robust energy development to benefit the Hawaiian Home Land Trust, our state and the nation.

Examples of Energy Projects on Hawaiian Home Lands

The Hawaiian Homes Commission established an adhoc Energy Committee to bring focus to energy development and to encourage maximum participation of DHHL and homesteaders. While we have only begun to understand the opportunities, following are just a few examples of energy related projects that have been completed, underway or in preliminary evaluation:

Kaupuni Residential Subdivision. In January 2011, DHHL hit a major milestone with the award of 19 LEED-Platinum homes at the Kaupuni Village in Wai'anae, O'ahu. Kaupuni was the first LEED-Platinum single-family affordable housing subdivision in the country, achieving a net-zero project for families living in the homes constructed.

¹ Hawaii Clean Energy Initiative Working Group Policy Recommendations for the 2010 Hawaii State Legislative Session, November 20, 2009, p. 1.

With private business constructing the project, DHHL planned the subdivision and qualified families to purchase the homes on residential land awards as defined under the HHCA. The Kaupuni project represents federal, state and local partnerships, as well as public and private industry partnerships to explore and implement a net-zero project approach. This pilot project will be a key informant to additional housing development projects across the state.

Commercial Grade Solar Farms by Energy Developers. There are at least four solar farms being developed on Hawaiian Home Lands by a variety of local and national solar developers. DHHL designates land for development, and developers capitalize the project, work with utility entities to purchase power, and construct and operate the solar farms. An important aspect of solar projects on Hawaiian trust lands, has been the implementation of beneficiary consultation and the inclusion of a benefits agreement that encompasses homestead priorities into projects on the front end.

Commercial Grade Solar Farm by Native Hawaiians. One of these projects is a one-of-a-kind partnership, being co-developed by a non-profit utility cooperative (the Kauai Island Utility Cooperative) and a homestead community development nonprofit representing four different Hawaiian homestead associations (Homestead Community Development Corporation). It represents the first time a solar farm is being pursued with Hawaiian homesteaders as part of the development team.

The project will produce a 12MW solar farm, the single largest in the state of Hawaii, with estimated development costs of \$62 million. The project is eligible under the federal 1603 Energy Tax Credit Incentives, combined with state of Hawaii incentives, to bring a total of \$24 million to the project. The USDA Rural Utility Service is a key source of debt capital, with low interest rates, which combined with the federal and state incentives make the project possible and delivers cost savings to an entire county of rate payers. In addition, the economic impact and benefit to the local homestead community has been a cornerstone strategy that includes but is not limited to cultural and environmental protections, employment and small business opportunities, energy revenue sharing for community based projects in the region and the all-important mentoring of Native Hawaiians on the KIUC development team.

Agriculture to Energy Projects. One of the exciting areas of energy development on Hawaiian Home Lands is in the cross utilization of homestead farming and ranching that connects food production to energy production. On Hawaii Island, homestead leaders are exploring the use of Hawaiian Home Lands to revitalize agriculture and ranching through the connectivity of producers to local markets, post harvest waste to energy development, and building pipelines of next generation farmers and ranchers. The project highlights include a Veteran to Farmer program to engage veterans in the agricultural industry, the development of post-harvest facilities to improve financial returns on farming, and generate methane energy produced by an anaerobic digester that utilizes green waste, creating low cost energy. The project is in very preliminary phases, but has attracted the attention of Department of Defense officials due to its energy generation aspect, as well as food security it can provide to military installations in the Pacific.

Consumer and Business Solar Retrofits. One of the areas of energy development that DHHL has focused on with homestead communities and local Native Hawaiian community development nonprofits is the retrofit of households, public facilities and businesses located on

Hawaiian Home Lands. The imperative is to retrofit existing structures to increase monthly family disposable income, create cost savings for business, and for Hawaiian Home Land areas to be at the forefront of energy transformation in our state. We believe that we must make bold moves to even the playing field with more affluent populations by creating opportunities for homestead areas to leave the electrical grid. Over a 2-year period, our partner, the Council for Native Hawaiian Advancement (CNHA), has installed 200 solar water and photo voltaic systems on households and business facilities, with additional capital leveraged through the U.S. Treasury CDFI program to deploy additional capital in our low to moderate income neighborhoods.

Beyond residential energy efficiency projects, agriculture to energy, and solar farms, potential resources on Hawaiian Home Lands also includes hydro, geothermal, wind and many others. What we know from just the initial energy related projects pursued in the last 3 years on Hawaiian trust lands, is that the potential is real, and achievable. We also know that energy development is economic development, creating real jobs inside our home land areas.

Recommendations to Increase Energy Development on Trust Lands

Hawaiian Home Lands, like Indian reservations and Alaska Native villages, are unique trust land areas that require federal land trust knowledge in any energy development partnership as well as excellent partnerships with federal agencies such as the Department of Energy, the Department of Interior and the Treasury Department at a minimum. We offer the following recommendations and input to the Committee to create a positive environment for energy development on trust lands:

- 1. Implement SUTA to Access Capital and Tax Credits.** Congress codified the term, Substantially Underserved Trust Areas (SUTA) (9 USC 936(f)), in the 2008 Farm Bill (P.L. 110-246). SUTA lands utilize the definition of trust lands that have been used since 1992 as part of the Native American Veteran Home Loan program. SUTA lands are trust lands defined to be any lands that: (1) is held in trust by the United States for Native Americans; (2) is subject to restrictions on alienation imposed by the United States on Indian lands (including native Hawaiian homelands); (3) is owned by a Regional Corporation or a Village Corporation, as such terms are defined in section 3(g) and 3(j) of the Alaska Native Claims Settlement Act, respectively (43 U.S.C. 1602 (g), (j)); or (4) is on any island in the Pacific Ocean if such land is, by cultural tradition, communally-owned land.

The U.S. Department of Agriculture (USDA), through the Rural Utility Service (RUS) is authorized to provide grants and loans at rates as low as 2% to support the construction, acquisition or improvement of infrastructure on SUTA lands. This is a vitally important tool that recognizes that efforts to increase access to capital should include trust lands as a category in addition to low-income and rural communities.

One immediate action that can be taken which would yield significant positive impact not only on trust lands in Hawaii but throughout the nation would be to make SUTA lands automatically eligible for New Market Tax Credits (NMTC) administered by the U.S. Treasury Department. The NMTC program is one of the most successful federal programs in bringing private investment capital to underserved communities. Making SUTA lands automatically eligible for the NMTC program would have no cost to the U.S. government and would advance the incentives and awareness of economic development opportunities by capital markets.

Implementation of SUTA as eligible criteria in existing and key federal programs will have a positive impact across the nation, since 35 states in the country have Tribes and/or congressionally established trust lands.

- 2. Technical Assistance to Increase Native Energy Capacity & Collaboration.** Technical assistance and capacity building are vital tools to the development of energy resources in trust land areas, and the economic self determination of all Native peoples. Active participation by Homestead Associations, Indian Tribes and Tribal Corporations leads to project development efficiencies, best practices in operations and maintenance, and economic multipliers to invest in education, healthcare, job creation, etc in trust land communities.

It is a positive cycle that serves trust land areas, surrounding communities, state economies and national priorities. We recommend strengthened and regional Technical Assistance funding awards to Tribes and Native Hawaiian Organizations to focus on energy development on trust lands in their respective states.

We further recommend the coordination of federal agencies in bringing Native Hawaiian, Alaska Native and American Indian leaders together for consultation and training sessions, which provide outstanding opportunities to be exposed to best practices in other areas of the country, and solutions developed by others to address unique trust land challenges. One of the missed opportunities that can be avoided is the power of knowledge sharing among Native leaders that is made possible through opportunities to collaborate and learn together. This is particularly true for Native Hawaiians that are often separated from their counterparts in Indian Country.

- 3. Energy Transmission & Infrastructure Capital.** Lack of infrastructure or upgrades to aging infrastructure and energy grids to develop trust land areas continues to be a primary challenge in transforming our energy dependency from fossil fuel based to renewable and clean energy. We recommend federal investments in smart grid technologies dedicated to trust land areas, as well as targeted investments in upgrading and expanding transmission improvements, including roads.

We further recommend the coordination of federal agencies such as the Department of Interior, Energy, Transportation, HUD and USDA, to identify existing federal programs that support energy infrastructure development that are under-utilized by trust land communities. Again, the addition of the SUTA definition to the income and rural criteria used in most federal programs would ensure that trust land projects are included as priorities.

- 4. Streamlined and Transparent Land Use Policies.** Successful energy development requires low cost capital, excellent partners and clear land use policies that honors the trust status and original intent of the HHCA. We recommend engagement by federal agencies, such as the Department of Interior, to share its best practices and pitfalls with DHHL learned over decades of Indian trust land management, including its Tribal Consultation methodologies and public comment processes through the federal register. Further, that the DoI, Office of Native Hawaiian Relations collaborate with the Bureau of Indian Affairs to publish energy project profiles of projects under development on Hawaiian home lands and Indian reservations as well as land use policies and procedures that work well, and that could be improved.

Just as we are anxious to learn from American Indian and Alaska Native projects located around the country, we welcome the opportunity to share the innovations being developed on Hawaiian Home Lands in Hawaii to advance energy independence, economic development and the generation of clean and renewable energies.

Conclusion

Chairman Akaka, Vice-Chairman Barrasso, Members of the Indian Affairs Committee, I thank you for the opportunity to participate this afternoon. The aboriginal, indigenous peoples of Hawaii are no different than those of other states in the country – adept, scientific, and practitioners of lifeways that utilize natural resources in a responsible, balanced, and common-sense manner, practices that have sustained our collective peoples for thousands of years.

Tribal and Hawaiian Home Lands hold some of our nation’s most precious energy resources, and remain some of the most under-served areas. With specific attention to the development of federal energy policy dedicated to trust land areas, the potential of Native lands in playing a significant role in our nation’s energy future becomes possible. Access to capital, implementation of the SUTA definition in federal program eligibility, dedicated technical assistance resources and infrastructure investments, along with streamlined land use policies are areas that this committee can champion to create a new reality in energy development.

We would welcome members of the Committee to visit our home lands along with constituents from Indian Country to engage in a dialogue of possibilities and opportunities.

Thank you for the invitation to present testimony and to share the work of Native Hawaiians in energy development on the trust lands of the HHCA.

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