



**NATIVE HAWAIIAN POLICY CENTER  
AND THE  
OBAMA-BIDEN PRESIDENTIAL TRANSITION**

**Federal Legislative & Executive Priorities in the First 100 Days &  
Stimulus and Economic Recovery Recommendations**

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**Submitted By:**

**Native Hawaiian Policy Center**

1050 Queen Street, Suite 200

Honolulu, Hawaii 96814

808.596.8155

[policy@hawaiiancouncil.org](mailto:policy@hawaiiancouncil.org)

**Council for Native Hawaiian Advancement**

Robin Puanani Danner, CNHA President & CEO

Napali Woode, CNHA Senior Vice President

Michelle Kauhane, CNHA Policy Chair

**Sovereign Council of the Hawaiian Homeland Assembly**

Kamaki Kanahale, SCHHA Chairman

Ivan Lui-Kwan, SCHHA Energy Committee

Kali Watson, SCHHA Economic Development Committee

**Native Hawaiian Economic Alliance**

Austin Nakoa, NHEA Chairman

William Ornellas, NHEA Vice President

Raynard Soon, NHEA Vice President



**About the Native Hawaiian Policy Center**

Administered by the Council for Native Hawaiian Advancement in partnership with the Native Hawaiian Economic Alliance and the Sovereign Councils of the Hawaiian Homelands Assembly, the Native Hawaiian Policy Center unifies nongovernmental organizations and coalitions on solutions for community challenges. By convening community leaders, the Policy Center identifies program solutions and policy priorities important to the cultural, economic, and community development for Native Hawaiians.



**About CNHA**

The Council for Native Hawaiian Advancement, founded in 2001, is one of the largest associations of Native Hawaiian organizations, with a network of 91 organizations statewide and nationally. CNHA’s mission is to enhance the well being of Hawaii through the cultural, economic and community development of Native Hawaiians. Its mission is achieved through policy advocacy, community convening, leadership development, capacity building of community based organizations, and linking resources and solutions to community challenges.



**About SCHHA**

The Sovereign Councils of the Hawaiian Homelands Assembly, formerly the State Council of Hawaiian Homestead Associations was founded more than 20 years ago to unite homestead communities and to advocate for the beneficiaries of the Hawaiian Homes Commission Act of 1921. The SCHHA is the oldest statewide advocacy organization representing the interests of more than 30,000 beneficiaries and families residing in the communities of the Hawaiian Home Land Trust. Its mission is to promote the self determination of native Hawaiians and the well being of homestead communities.



**About NHEA**

The Native Hawaiian Economic Alliance, founded in 2002, works for the economic self determination of Native Hawaiians by promoting the growth of small business ownership. NHEA achieves its mission through business policy advocacy under the Native Hawaiian Policy Center, the coordination of an annual Business Leaders Roundtable, fostering partnerships with business leaders and advocates, and increasing the participation of Native Hawaiian small business in federal government contracting.



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## I. Introduction

The *Council for Native Hawaiian Advancement*, the *Sovereign Councils of the Hawaiian Homeland Assembly* and the *Native Hawaiian Economic Alliance* administer the **Native Hawaiian Policy Center**, to advance public policy important to our communities in the economic, cultural and community development fields. Our respective members and interests work directly in small business, in community organizations and community associations that deliver educational, social services and economic development to Native Hawaiians.

Together, we unite well over 125 autonomous Native Hawaiian community based organizations (CBOs) that are experts in the field. We recommend increased policy interaction with coalition members of the Native Hawaiian Policy Center and other Native community based organizations, to ensure that the energy of community leaders working directly in the field are represented and community based solutions can be executed.

The Office of Hawaiian Affairs (OHA) and Department of Hawaiian Home Lands (DHHL) are state government agencies that control the trust lands and assets of the Native Hawaiian people. OHA is led by a 9-member board of trustees that is elected by the citizens of Hawaii and DHHL is led by a 9-member commission appointed by the Governor. As such, these state government agencies are important to the goals of our communities and must be engaged as state government and public trusts.

This transition memo represents a short list of recommendations that is narrowly framed to provide the Obama-Biden transition team with strong action items that will directly advance the national priorities of economic recovery and job creation in the context and primary focus on trust land communities created under the federal Hawaiian Homes Commission Act (HHCA). Additional transition memos with a broader focus will be provided as needed.

## II. Federal Legislative Priorities in the First 100 Days

The legislative priorities important to Native Hawaiians span the sectors of housing, healthcare, energy and other critical areas. There are two legislative priorities, however, that rise above any other as noted below. We recommend the following to the Obama-Biden administration for enactment within the first 100 days:

### **Federal Recognition of Native Hawaiians**

The Native Hawaiian Government Reorganization Act, also known as the “Akaka Bill” is the single most important legislative priority, above all others. This legislation will establish a process by which our federal government is able to engage in government-to-government relations and for Native Hawaiians to collectively take responsibility for our assets and resources to advance the well-being of our communities. This legislation in essence re-affirms the federal trust responsibility to Native Hawaiians as indigenous peoples, and extends the federal policy of self governance and self determination to Native Hawaiians.

- **We recommend** enactment of a bill to be introduced by Hawaii’s Congressional delegation based on the content of the legislation passed by the U.S. House of Representatives in 2002, which received Senate hearings in Hawaii and Washington DC. President-elect Obama has supported federal recognition of Native Hawaiians throughout his time in the U.S. Senate and throughout the presidential campaign. This is our top priority for enactment within the first 100 days of the new administration.



### **Hawaiian Homes Commission Act Amendment (Act 302)**

The Hawaiian Homes Commission Act is federal law, enacted in 1921, which established trust lands for Native Hawaiians similar to the Native Allotment Act of 1906 for American Indians and Alaska Natives. State government is required by the Statehood Act of 1959 to administer these trust lands with federal oversight.

In 2000, the Hawaii State Legislature passed legislation to amend the HHCA to authorize the delegation of responsibility of certain tasks to Native Hawaiian self governing community organizations. This amendment requires the concurrence of the U.S. Congress. This legislation establishes the foundation by which communities on Hawaiian Homes trust lands can create self-sustaining and viable solutions on the ground.

- **We recommend** enactment of the amendment to the Hawaiian Homes Commission Act (Act 302) enacted by the Hawaii State Legislature and signed by the Governor, within the first 100 days of the new administration.

### **III. Federal Executive Priority in the First 30 Days**

There exists a single priority requiring executive action within the first 30 days of the Obama-Biden Administration as a result of action taken in the final weeks of the Bush Administration.

#### **Protecting the Hawaii Ceded Lands Trust**

In 1893, the United States landed troops and aided in the overthrow of the Kingdom of Hawaii, and acknowledged the Provisional Government (later known as the Republic of Hawaii.) In 1898 the federal government enacted the Newlands Resolution annexing Hawaii as a U.S. territory, where the Republic of Hawaii ceded 1.8 million acres of land to the United States without the consent of or compensation to the Native Hawaiian people or their government. In 1959, the federal government ceded to the state of Hawaii, 1.4 million acres of lands over which the Native Hawaiian people never directly relinquished their claims. In 1993, the Congress enacted and President Clinton signed public law 103-150, expressing the historical context and apology for the 1893 illegal overthrow of the Kingdom of Hawaii and directing the pursuit of reconciliation.

In 2008, the Hawaii Supreme court ruled in a case against the state of Hawaii to halt the transfer or sale of any ceded lands until the claims and rights of Native Hawaiians are determined. The state of Hawaii has appealed the ruling to the United States Supreme Court, with the case scheduled to be heard on February 25, 2009. In the final weeks of the Bush Administration, the Department of Interior intervened in support of the state of Hawaii, contrary to the federal government's trust responsibility to native Hawaiians and contrary to the tenets of public law 103-150.

- **We recommend** that the Obama-Biden Administration, through its U.S. Attorney General or U.S. Solicitor, rescind the Brief for the United States compiled by the U.S. Solicitor General and Solicitor of the U.S. Department of Interior under the Bush Administration in support of petitioners in Hawaii, et al., *Petitioners v. Office of Hawaiian Affairs, et al* (No. 07-1372).
- **We recommend** that regardless of the outcome of the U.S. Supreme Court decision the Obama-Biden Administration adopt the findings in the October 23, 2000 report "From



Mauka to Makai: The River of Justice Must Flow Freely Report on the Reconciliation Process between the Federal Government and Native Hawaiians” prepared by the Departments of Justice and Interior, and appoint Assistant Secretary level or higher personnel in both Justice and Interior to implement the report’s recommendations.

#### **IV. Stimulus & Economic Recovery Recommendations**

Native Hawaiians, like American Indians and Alaska Natives, are powerfully important to the economic well-being and identity of our respective homeland states. Hawaii is no different than the other 36 states where Native trust lands exist and recognized Native organizations and tribal governments are crucial partners with state and federal government. For the purposes of this transition memo, Hawaiian trust lands refer to the trust lands established under the Hawaiian Homes Commission Act of 1921.

Given the national economic crisis and shifting priorities to job creation and economic recovery, we provide the following recommendations that are in line with Native Hawaiian CBO solutions grounded in the self determination rights of Native Hawaiians, and advance the economic interests of our state and country.

##### **Reaching the Potential of the Federal Trust Relationship**

**Federal Consultation Policy** - Consultation with Native Americans with established reservation trust land communities is one of the most successful policies enacted by the federal government. It requires government officials entrusted with oversight and management of Native lands and assets to consult directly with Native peoples on policy and actions on trust assets to ensure accountability by government to Native communities. Consultation has also proven to be an effective partnership builder that empowers community based solutions to be quickly identified and effectively executed. More than ever, we need to connect our communities to government to tap into the knowledge and solutions that come from the ground up.

- **We recommend** that the Obama-Biden Administration issue an Executive Order requiring consultation with Native Hawaiians and established trust land community serving organizations by government agencies. Executive Order 13175 currently requires consultation by such agencies with Alaska Natives and American Indians.

**Office of Native Hawaiian Relations, Department of Interior** - Congress established the Office of Native Hawaiian Relations to serve as a liaison between federal agencies and Native Hawaiians. Similar to the Office of Insular Affairs and the Bureau of Indian Affairs, the ONHR is an important office to interact with trust land communities and coordinate consultation activities. To date, the office has been staffed by one individual and the scope of the office under the Bush Administration has been expanded to address all DOI-related issues in Hawaii.

- **We recommend** that the ONHR be adequately funded to staff and administer its functions at a minimum of \$1 million in the administration’s budget.
- **We recommend** that the ONHR be directed back to its original intent and focus of Native Hawaiians.

**Honoring the Hawaiian Homes Commission Act** - The federal government established the Hawaiian Home Land trust in 1921 with the enactment of the Hawaiian Homes Commission Act,



setting aside approximately 200,000 acres to place Native Hawaiians on the land. In 1959, through the Hawaii Admissions Act, the federal government required the newly formed state of Hawaii to administer this trust, but did not provide any funding to do so. As a result, state government officials have utilized lands intended for Native Hawaiian home site lots, agricultural and pastoral lots, for commercial development and revenue generation to fund state government administration costs.

- **We recommend** that the federal government honor its trust relationship with Native Hawaiians and the Hawaiian Homes Commission Act by funding the basic administration costs of the state of Hawaii, Department of Hawaiian Home Lands at a minimum of \$15 million per year.
- **We recommend** the establishment and funding at \$1 million per year to engage training and technical assistance programming to support capacity building of trust land communities and their organizations to execute on economic, cultural and community development solutions. Modest investments in training and technical assistance yield benefits by empowering and promoting community based organizations to develop culturally rich and self-sufficient communities.
- **We recommend** the Department of Interior's fulfillment of the Hawaiian Home Land Recovery Act of 1995 by 1) expediting the transfer of federal lands to replace lands taken from the Hawaiian Home Land Trust by the federal government during Hawaii's territorial period; 2) ensuring that the designated Interior official responsible for Hawaiian home lands increases the agency's efforts to advance the interests of the Hawaiian home land beneficiaries and promote homestead opportunities, economic self-sufficiency, and social well-being within our federal system; 3) providing that cost sharing for reclamation projects on Hawaiian home lands shall be the same as cost sharing for projects on Indian lands; and 4) directing the Chairman of the Department of Hawaiian Home Lands, state of Hawaii to work with the Interior Department on unresolved Hawaiian home land claims as authorized under the HHLRA.

### **Affordable Housing & Foreclosure Mitigation**

**FHA 247** - Native Hawaiian trust lands, similar to Indian reservations have limited access to mortgage markets for affordable housing development, and access to products to work out delinquencies caused by the current declining economy. Indeed, the majority of mortgages available on trust lands consist of FHA 247, created specifically for Hawaiian trust lands. In recent years, HUD established a second mortgage product based on an Indian Country product known as HUD 184A mortgages to capitalize home purchase and development in trust land communities.

- **We recommend** an immediate reform be executed by HUD to lift a loan limit cap imposed by the Bush Administration wherein Native Hawaiians are limited to 75% loan to value ratios, and to implement loan limits in line with all other FHA loan products. The current limitation decreases available capital for Hawaiian trust land communities, placing families increasingly at risk by restricting access to their most important family asset.



- **We recommend** that HUD implement parity for the FHA 247 program with other FHA loan products by including the FHA 247 into the national loan loss reserve fund, as is the case for FHA 248, the Indian trust land mortgage product.
- **We recommend** that HUD fund Native Hawaiian CBOs to originate and package HUD 184A loans to further increase the flow of capital into our trust land communities.

**Foreclosure Mitigation** - The federal government has moved to dedicate millions of dollars to national intermediary organizations such as NeighborWorks to address the tide of foreclosures sweeping the nation. Trust land mortgages are unique and require specific knowledge of the federal trust responsibility, of the added complexity of trust land mortgages, and of the limited financial products available to trust land borrowers.

- **We recommend** that funding issued by HUD to national intermediaries require sub-recipient agreements with locally based Native Hawaiian CBOs and Tribal organizations or issue grant agreements directly to these organizations to ensure that federal foreclosure mitigation funds reach trust land homeowners in the 37 states where federal trust lands exist.

**NAHASDA** – Modest funding for low income homeowners on Hawaiian trust lands has flowed through the Native American Housing Assistance and Self Determination Act (NAHASDA) at approximately \$8.5 million annually since 2000, a sliver of the demand and need. In 1995, the Office of Management and Budget estimated the needs on Hawaiian Homes Trust Lands to be \$40 million per year. Throughout the Bush Administration, HUD has severely underfunded this source of capital for low income housing development and services.

- **We recommend** that NAHASDA funding be established at \$40 million per year in the HUD budget to facilitate low income housing projects on trust lands, which will further stimulate the economy, the workforce and the flow of capital.
- **We recommend** that a minimum of 2% of the NAHASDA funding be dedicated to training and technical assistance to deliver complimentary services to low income families and the local Native controlled CBOs serving these families.
- **We recommend** the reauthorization legislation for NAHASDA be enacted in 2009.

**USDA Self Help Housing** – The U.S. Department of Agriculture for over 30 years has operated one of the nation's most successful affordable housing programs, known as Self Help Housing. Families are afforded the opportunity to be participatory in the construction of their homes through labor contributions, reducing the cost of homeownership. This approach to affordable housing in Hawaii has specific opportunities given the culture of the islands of families helping families.

- **We recommend** the establishment of a Hawaiian Homes Trust Land 502 Loan and 523 Technical Assistance program specifically to enhance and encourage the development of Self Help Housing on trust lands in Hawaii.



- **We recommend** funding of \$10 million for investment in a community based revolving loan fund to immediately deploy capital in 2009, providing affordable housing and economic stimulus to Hawaii's building industry.
- **We recommend** the establishment of a pilot program to develop a permanent self help housing model for Hawaiian trust lands by funding \$750,000 to the USDA for the provision of technical assistance in trust land communities statewide.

### **Infrastructure Investment and Access to Capital and Credit**

**Roads & Infrastructure** - Infrastructure investment in this challenging time is exactly the type of government action that will increase the flow of capital, generate jobs, and build the infrastructure in our Hawaiian trust land communities that have been neglected for more than 80 years. Roads and infrastructure projects will create the pathway for increased affordable housing, agriculture and pastoral homesteading, energy and other projects. 75% of our trust lands are under-utilized because of lack of infrastructure development.

- **We recommend** that \$50 million be dedicated to a Hawaiian Trust Land Roads and Infrastructure Project to build roads, water/sewer systems, and renewable energy projects, to open the homestead development of trust lands.

**CDFI Capital** - In the 1990's, the Treasury Department developed the Community Development Financial Institution (CDFI) program, providing capital to nonprofit community based organizations making micro-enterprise loans in disadvantaged areas for small business start up, and affordable housing loans. Today, there are 1,000 CDFIs nationally, with \$19 billion in loans and an average default rate of 1.9%. CDFIs were created to operate in crisis markets and have nearly two decades of discipline to successfully deploy capital in rural and disadvantaged areas of the country.

- **We recommend** that \$1 billion of the \$700 billion in TARP funds be dedicated specifically to the successful Department of Treasury Community Development Financial Institution (CDFI) program and that 10% of these funds be dedicated to Native CDFIs serving trust land communities.
- **We recommend** that training and technical assistance programs be funded at \$1 million annually to support capacity building of trust land serving CDFIs, to further invest in the ability of community organizations to create self-reliant communities.

**Educational and Community Facility Investment** - Educational reform by addressing the needs of Native Hawaiian children is an area where Native Hawaiian community leaders and cultural practitioners have created an extraordinary movement through the establishment of Hawaiian-focused charter schools, and community association programming. Fourteen of the thirty-one public charter schools authorized in the state of Hawaii are grounded in Hawaiian culture serving over 2,000 students in some of our most rural and economically disadvantaged areas. Community associations have developed some of the most successful youth outreach programming in trust land communities. One of the most formidable barriers to expanding the success to date is in the area of school and community facilities.



- **We recommend** an initial federal investment of \$20 million to match local funding to embark on a construction program to develop Hawaiian focused public charter school and community association facilities on trust lands.
- **We recommend** the establishment of a permanent Educational and Community Facility Loan Guarantee Program to support the under-served needs and continued investment on trust lands in the education and community programming areas.

**Alternative Energy Development** - Hawaii has incredible potential to develop renewable energy in multiple areas including wind, solar, geothermal and ocean systems. However, today 95% of our energy needs are dependent on imported oil. As a strategic location in the Pacific, homeland security is enhanced with energy security. Native community stakeholder participation in energy development is critical to any success of developing these sources, given the aboriginal relationship of Native communities to their land and natural resources.

- **We recommend** federal investments of \$50 million a year for 10 years for projects, including asset acquisition to fully develop the potential of renewable energy to grow energy independence in the Pacific, including wind, solar, and other renewable energy projects.
- **We recommend** that 10% of these investments be dedicated to Hawaiian trust land energy projects that enhance Native community participation and ownership.

### **Economic Development, Small Business & Job Creation**

**SBA 8(a)** - Small business and job creation are of paramount importance nationally. A particular area of opportunity for small business growth is in federal government contracting, creating locally owned small business and job creation. Congress recognized the opportunity for community-based enterprise (owned by Indian Tribes, Alaska Native Corporations and Native Hawaiian Organization nonprofits) to promote entrepreneurship and to address the high levels of poverty and unemployment through business growth and economic development by establishing the Native 8(a) section of the Small Business Development Act.

- **We recommend** strengthening of the SBA Native 8(a) program by investing in small business development centers in the Pacific to prepare and assist in the growth of federal government contracting by locally owned companies.
- **We recommend** the appropriation of at least \$2 million in new funds to the SBA to improve accountability, efficiency and transparency by re-engineering the operations of the Office of Native American Affairs to effectuate adequate oversight and growth of the overall 8(a) program.
- **We recommend** an amendment to the SBA 8(a) program to include Native Hawaiian Organization nonprofit owners and tribally owned firms to be designated as disadvantaged for the purposes of the 8(a) program based on the criteria of the organization versus individual board member financial status.
- **We recommend** that parity be provided to enable NHO nonprofit owned 8(a)s to participate beyond the Department of Defense and to participate in all federal agencies.



- **We recommend** the development of subcontracting incentive programs for Department of Defense prime contractors in the Pacific to encourage subcontracting to locally owned 8(a) firms to further workforce development, technical expertise and other support to grow the Pacific small business community. Annual funding of \$10 million is recommended given the increased activity of federal and homeland security in the Pacific region.

**Small Business Tax Policy on Trust Lands** - Tax credits to small businesses for job creation inside trust lands is a powerful opportunity to bring capital investment and employment opportunities to trust land areas historically ignored by the capital markets. Further, policies that establish businesses owned by our community will maximize the economic growth and anti-poverty solutions required in our trust land communities.

- **We recommend** an amendment to Title 26, USCA Sec 45A of TARP to provide a taxable employer with a business tax credit for employing individuals who work and live on or near Hawaiian trust lands (currently \$20,000 per employee on Tribal lands).
- **We recommend** an amendment to the Indian Financing Act to provide guaranteed loans for establishing, expanding or purchasing small business on Hawaiian trust lands.

**Eco - Tourism, Culture and Language Development** - The identity of Hawaii and its top industry of tourism are dependent on the natural environment and strength of Native Hawaiian culture, language and traditions. Investments in eco-tourism, environmental restoration projects, culture and language are vital to Hawaii's economic health, and particularly important during the current national recession.

- **We recommend** reauthorization legislation for the Native Hawaiian Education Act and the Native Hawaiian Healthcare Improvement Act in 2009.
- **We recommend** an increase to the funding of the Native Hawaiian Education Act dedicated to Native Hawaiian language preservation and perpetuation. Language is a cornerstone to the state's identity and visitor industry.
- **We recommend** an emphasis within the Department of Health & Human Services, Administration for Native Americans on investing program resources on Native Hawaiian and Pacific Islander cultural projects, including cultural tourism and environmental restoration projects.

## V. Summary

These recommendations represent the most pressing legislative and executive priorities in the first 100 and 30 days respectively, and action items that support the economic recovery and job creation in Hawaii, as they relate to the indigenous status of Native Hawaiians and the trust lands established under the Hawaiian Homes Commission Act that are part and parcel to the existing federal trust relationship.

The Native Hawaiian Policy Center and its partners are actively engaged in community based solutions in education, healthcare, housing, economic development, cultural perpetuation and public policy formation. We appreciate the opportunity to provide this transition memo to the Obama-Biden transition team.