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**TESTIMONY OF CARMEN “HULU” LINDSEY**  
**CHAIR, BOARD OF TRUSTEES OFFICE OF HAWAIIAN AFFAIRS**

U.S. SENATE COMMITTEE ON INDIAN AFFAIRS – FIELD HEARING ON  
“UPHOLDING THE FEDERAL TRUST RESPONSIBILITY: FUNDING & PROGRAM ACCESS FOR  
INNOVATION IN THE NATIVE HAWAIIAN COMMUNITY”

June 1, 2022

Aloha e Chairman Schatz, Vice Chairman Murkowski, and Members of the U.S. Senate Committee on Indian Affairs (“SCIA” or “Committee”).

Mahalo nui loa (Thank you very much) for inviting me to testify on behalf of the Office of Hawaiian Affairs (“OHA”) and our beneficiaries—the Native Hawaiian community. We are pleased to welcome you to our island home, to engage face to face with our Native Hawaiian people, and while many of you may be joining us by videoconference, we hope that you will feel the aloha spirit we bring and offer to you. Your prioritization of this field hearing, and physical presence in our homeland, reassures the Native Hawaiian people of the Committee’s and Congress’ attention to the federal government’s continuing trust responsibility to our people. This field hearing allows us to convey and illustrate to you, what it means to uphold the federal trust responsibility, through the exercise of self-determination--our rights to chart our own course and maintain our distinct traditions, cultures, language and Native ways, and our rights to economic equity and prosperity and the necessary support to raise the standard of living, health and social well-being of our people in our homeland.

Chairman Schatz, OHA continues to recognize your work on behalf of our families in Hawai‘i. You have been a champion on stopping the trafficking of Hawaiian women and children, including Native perspectives in federal climate action, and addressing disparities for Native Hawaiians in health, education, broadband access, and food security. We are particularly grateful for your continuing efforts to ensure that Native Hawaiians are eligible for and gain access to federal Coronavirus Disease (COVID-19) relief. As Congress continues to implement policy, including unprecedented funding and programming responses, we appreciate your broad, yet integrated, funding of federal programs providing health care, housing, education, food, and social services to Native Hawaiians, including supporting research, resource and innovation and equity centers.

We request the Committee's and Congress' support in honoring the federal trust responsibility via policy, funding and programming implementation in the following ways: (1) funding for a commissioned report of lands ceded to the stewardship of and management by the state government via the 1959 Admissions Act<sup>1</sup>, including the Hawaiian home lands, for the benefit of native Hawaiians pursuant to the Hawaiian Homes Commission Act (1920); (2) ensuring that Native Hawaiians are included in all federal conference, coordination, engagement and consultation policies and practices; (3) persisting in the accelerated defueling and closure of the Red Hill fuel storage tanks; (4) funding environmental assessment and cleanup of sacred lands polluted and contaminated by the United States military; and (5) ensuring funding and programming equity for all Native Americans, including American Indians, Alaska Natives, and Native Hawaiians in broad yet integrated areas that impact our families (e.g., poverty, violence, human trafficking, foster care, prison reform, elder care); our natural environment and resources (e.g., climate change, land, water, seas, streams, oceans, lakes); and our culture (e.g., language, education, health, traditions, practice, repatriation).

### **Background on OHA and its Standing to Represent Native Hawaiians**

Established by our state's Constitution<sup>2</sup>, OHA is a semi-autonomous agency of the State of Hawai'i mandated to better the conditions of Native Hawaiians. Guided by a board of nine publicly elected trustees, all of whom are Native Hawaiian, OHA fulfills its mandate through advocacy, research, community engagement, land management, and the funding of community programs. Hawai'i state law recognizes OHA as the principal public agency in the state responsible for the performance, development, and coordination of programs and activities relating to Native Hawaiians.<sup>3</sup> Furthermore, state law directs OHA to advocate on behalf of Native Hawaiians<sup>4</sup>; to advise and inform federal officials about Native Hawaiian programs; and to coordinate federal activities relating to Native Hawaiians.<sup>5</sup>

#### **(1) Commission and Funding of a Ceded Lands Inventory Report**

The terms of statehood considered the plight of the Hawaiian people, specifically in the Admission Act of 1959. Section 5(f) of the Act refers to the crown and government lands of the Hawaiian Kingdom, which had been designated "ceded" to the Republic of Hawai'i, and then to the United States. The Act conveyed these lands to the new State of Hawai'i with the caveat that revenues were to constitute a trust for five purposes. One of these was the betterment of the conditions of Native Hawaiians. By any measure, those conditions were sorely in need of improvement, but, by 1978, they had not changed for the better, as the state's trust obligation went ignored.

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<sup>1</sup> The Admission Act, An Act to Provide for the Admission of the State of Hawaii into the Union, March 18, 1959, Pub L 86-3, 73 Stat 4.

<sup>2</sup> Haw. Const., art. XII, §5 (1978).

<sup>3</sup> Haw. Rev. Stat. § 10-3(3).

<sup>4</sup> Haw. Rev. Stat. § 10-3(4).

<sup>5</sup> Haw. Rev. Stat. § 10-6(a)(4).

The ceded lands, consisting of crown lands, once property of the Hawaiian monarchy, and of the government lands of the Kingdom of Hawai‘i, totaled 1.8 million acres upon annexation in 1898. Pursuant to the Joint Resolution of Annexation, all of these lands were considered transferred or “ceded” to the United States government “for the benefit of the inhabitants of the Hawaiian Islands.” Underscoring the federal trust responsibility are the findings of the US Congress in the Apology Resolution<sup>6</sup> (emphasis added):

“*Whereas*, the Republic of Hawaii also ceded 1,800,000 acres of crown, government, and public lands of the Kingdom of Hawaii, **without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government.**”

“*Whereas*, **the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands** to the United States, either through their monarchy or through a plebiscite or referendum”

Upon statehood in 1959, the federal government returned to the State of Hawai‘i all ceded lands not set aside for its own use. Section 5(f) of the Admission Act, directed the state to hold the lands in trust, listed the following five purposes:

1. The support of public education;
2. The betterment of the conditions of native Hawaiians as defined in the Hawaiian Homes Commission Act of 1920;
3. The development of farm and home ownership;
4. The making of public improvements; and
5. The provision of lands for public use.

Thus, the Federal Government delegated a portion of its fiduciary duties to the indigenous peoples of Hawai‘i, which courts have found must be “judged by the most exacting fiduciary standards,” to the State of Hawai‘i via the Admissions Act, Section 5(f) of the public trust lands. Yet 63 years after statehood, the State does not have a complete inventory of classified public trust lands. In addition, a complete inventory of ceded lands, including classifications by former Kingdom Government and Crown lands, and by holdings by the federal, state and county governments, is critical for the federal government to uphold its federal trust responsibility to Native Hawaiians. Accordingly, OHA requests the Committee consider the commission and funding of a ceded lands inventory report.

## **(2) Broad Inclusion in Federal Conference, Coordination, Engagement and Consultation Policies and Practices**

Native Hawaiians are owed the same trust responsibility as any other Native American group. To meet this obligation, Congress—oftentimes through the bipartisan work of this Committee and its Members—create policies to promote education, health, housing, and a variety of other federal programs that support Native Hawaiian self-determination including economic equity and prosperity. Similar to American Indians and Alaska Natives, Native Hawaiians have never relinquished our right to self-determination despite the United States’ involvement in the

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<sup>6</sup> Public Law 103-150 (1993)

illegal overthrow of Queen Lili‘uokalani in 1893 and the dismantling of our Hawaiian government. In fact, over 150 Acts of Congress consistently and expressly acknowledged or recognized a special political and trust relationship to Native Hawaiians based on our status as the Indigenous, once-sovereign people of Hawai‘i. Among these laws are the Hawaiian Homes Commission Act, 1920 (42 Stat. 108) (1921), the Native Hawaiian Education Act (20 U.S.C. § 7511) (1988), the Native Hawaiian Health Care Improvement Act (42 U.S.C. § 11701) (1988), and the Hawaiian Homelands Homeownership Act codified in the Native American Housing Assistance and Self Determination Act (NAHASDA), Title VIII (25 U.S.C. § 4221) (2000).

While the federal trust responsibility has many facets, one of the most critical safeguards of effective self-determination is the ability to consult with the federal government. Under President Clinton’s Executive Order 13175, and subsequent memoranda from the Bush, Obama, and now Biden Administrations, the U.S. Government recognizes the right to sovereignty and self-determination of this nation’s Native people. While this is a step in the right direction, the omission of Native Hawaiians from federal conference, coordination, engagement and consultation requirements has stifled and limited Native Hawaiian voices from being able to comment upon and inform federal projects and programs for the past two decades. Despite our exclusion from these executive orders, Congress’s thoughtful inclusion of Native Hawaiians in key legislation like the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. § 3001) and the National Historic Preservation Act (NHPA) (16 U.S.C. § 470 et seq.) have demonstrated that Native Hawaiians can be effectively included in consultation now, with representation through Native Hawaiian organizations. Indeed, OHA receives and reviews approximately 240 requests for federal consultations each year, including Section 106 NHPA and NAGPRA reviews. The federal government takes many more actions affecting the Native Hawaiian community than are covered by these two statutes without ever giving Native Hawaiians an opportunity to consult.

Ensuring Native Hawaiians are informed of all proposed federal actions and allowed to voice their comments and perspectives on them will help to correct this country’s historic wrongs against Native Hawaiians. Moreover, this will also improve the quality of federal undertakings and projects. Federal consultation with entities that serve Native Hawaiians such as OHA, Department of Hawaiian Home Lands, Native Hawaiian Education Council, Papa Ola Lokahi and the Native Hawaiian Health Care Systems, enable Native Hawaiians to access this basic tenet of self-determination—having a meaningful say in our own governance.

Most recently, OHA and the Native Hawaiian community, as a whole, experienced expanded conference, coordination, engagement and consultation opportunities, often in the form of listening sessions, with the U.S. Departments of the Interior (DOI), Treasury (DOT) and Commerce (DOC). Consultation with the National Oceanic and Atmospheric Administration (NOAA) organization, on the marine sanctuary expansion in Papahānaumokuākea Marine National Monument, illustrates a meaningful and productive shared governance and stewardship responsibilities among the four co-trustee organizations of the DOI, via U.S. Fish and Wildlife Services, the DOC via NOAA, the State of Hawaii, via its Department of Land and Natural Resources, and OHA. OHA has been consulted on matters related to the NAGPRA, and applied the tenants of this domestic policy to international repatriations.

OHA looks forward to more intentional and frequent consultation with the Department of Defense (DOD), and all of its branches and installations, as it relates to the significant presence of DOD operations and activities in addressing national security from the Pacific. Notably, the DOD consulted with Native Hawaiians on its consultation policy, Department of Defense Instruction No. 4710.03, dated October 25, 2011, incorporating changes, August 31, 2018 (“Instruction”) and the Advisory Council on Historic Preservation guidelines, Consultation with Native Hawaiians in Section 106 Review Process, A Handbook. The DOD Instruction’s policy and procedures provide for consultation with NHOs when proposing and undertaking that may affect a property or place of traditional religious and/or cultural importance or action that may affect a long term or permanent change in NHO access to a property or place of traditional religious and cultural importance to an NHO, in addition to consultation in compliance with NEPA and NHPA. Under the Instruction, OHA may serve to facilitate effective consultation between NHO and DOD Components, with the understanding that no single NHO is likely to represent the interests of all NHO or the Native Hawaiian people.

### **(3) Persisting in Defueling and Closure of the Red Hill Fuel Storage Tanks**

The health and safety concerns, as a result of leaks of the Red Hill Bulk Fuel Tanks (“RHBFT”), with a capacity of up to 250MM gallons of fuel, only 100 feet over O’ahu’s major aquifer, supplying water to over 400,000 residents of O’ahu, is well documented. OHA affirms its concerns, shared by our beneficiaries and communities, and thanks you, Chairman Schatz, for your swift actions to appropriate funding to defuel and close the tanks.

### **(4) Funding Environmental Assessments and Cleanups of Sacred Lands Polluted and Contaminated by the U.S. Military.**

Aligned to your lead, and Hawai’i’s collective Congressional Delegation’s swift actions to defuel and close the RHBFT, funding environmental assessments and cleanups of sacred lands polluted and contaminated by the U.S. military, evidences the Federal Trust responsibility to Native Hawaiians, and the lands ceded and transferred ultimately to the new State of Hawaii, via the Admissions Act. The implications of lands in use by the U.S. military, in the state of Hawaii, includes approximately 46,500 acres, statewide across Army, Navy and Air Force bases and installations, with the largest being the Army’s Pohakuloa Training Area on Hawai’i Island, of approximately 23,000 acres.<sup>7</sup>

In 2004, the U.S. Navy ended the Kaho’olawe UXO Clearance Project. At its completion approximately 75% of the island was surfaced cleared of unexploded ordnance. Of this area, 10% of the island or 2,647 acres were additionally cleared to the depth of four feet. Twenty-five percent (25%) or 6,692 acres was not cleared and unescorted access to these areas remains unsafe.<sup>8</sup> Almost 20 years later, core programs under the governance of the Kaho’olawe Island Reserve Commission and staff, are broad in its programming in ocean (e.g., sustainability, fish stock, population, habitat,

<sup>7</sup> US Indo-Pacific Command, Hawai’i Military Land Use Master Plan, 2021 Interim Update, Final – April 2021

<sup>8</sup> <https://www.kahoolawe.hawaii.gov/history.shtml>, retrieved May 28, 2022

marine debris, aerial, coastal and underwater surveys), restoration (e.g., native species planting, biosecurity, invasive alien species, rodent and weed control, faunal), and culture (e.g., integrated culture and restoration, archeological importance, cultural protocols, planting, iwi kupuna burials) focal areas.<sup>9</sup>

We ask the Committee focus and fund assessment and clean-up activities on sacred lands—Pohakuloa and Kaho‘olawe, being two examples. With regard to Pohakuloa, we also request that the lease extension process with the State of Hawaii cease, until the conditions imposed by the Hawai‘i Supreme Court in *Ching v. State*, 145 Hawai‘i 148 (2019) and the Circuit Court’s recommendations be met. It appears wholly inappropriate for DOD to engage in an environmental impact review under its April 2022 Draft Environmental Impact Statement for Army Training Land Retention at Pohakuloa Training Area (PTA), the precursor to a lease extension, when the conditions of the lease regarding the duty to protect and preserve public trust land are in question. An essential component of the State’s duty to protect and preserve trust land is an obligation to reasonably monitor a third party’s use of the property and OHA upholds its duty to investigate the risk of impending damage to the land on behalf of its beneficiaries who have sought to prevent irreparable harm before it occurs by DOD’s misuse of the trust lands under lease.

#### **(5) Broad Funding and Programming Equity for Native Hawaiian Families, Natural Environment and Resources and Culture**

While consultation is critical to self-determination, so is the provision of the resources and governmental programs to provide for the health, housing, education, and economic well-being of Native Hawaiians. Hawaii’s Congressional delegation have ensured that Congress continues to fund essential federal programs annually; however, three of these acts must now complete the final process to be reauthorized, strengthened, and expanded by the Congress.

Over the past several decades, the Native Hawaiian Health Care Improvement Act (“NHHCIA”), the Hawaiian Homelands Homeownership Act (“HHHA”), and the Native Hawaiian Education Act (“NHEA”) have enabled Native Hawaiians to receive culturally appropriate services relating to health, housing, and education. These Acts have delivered services to tens of thousands of Native Hawaiians through diverse programs including revitalizing the Native Hawaiian language, building and maintaining homes and infrastructure, and providing telehealth services during a global pandemic. Further, the Native Hawaiian Revolving Loan Fund (NHRLF)—administered by OHA—and the U.S. Treasury’s Community Development Financial Institutions fund (CDFI Fund’s) Native American CDFI Assistance Program have supported the emergence and growth of thousands of Native Hawaiian businesses. We urge this committee to reauthorize, strengthen, and expand all these programs to further support Native Hawaiian self-determination.

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<sup>9</sup> <https://www.kahoolawe.hawaii.gov/coreprograms.shtml#ocean>, retrieved May 28, 2022

### **Native Hawaiian Health**

Native Hawaiian self-determination in health care means that Native Hawaiians have the power to pursue well-being in the ways that they find to be appropriate. This self-determination may include identifying the health care services most needed in their communities or working to integrate traditional practices and cultural norms in health care spaces. Conversely, Native Hawaiian self-determination in health may include identifying aspects of the health care system, particularly around delivery, that may not fit well with Native Hawaiian concepts of wellness and thus have limited utility. Similar to our Native relatives on the continent, Native Hawaiians face disproportionate threats to our physical and mental health, including poverty,<sup>10</sup> suicide and depression,<sup>11</sup> infant mortality,<sup>12</sup> alcohol abuse,<sup>13</sup> homelessness,<sup>14</sup> and prejudice. Native Hawaiian infants are twice as likely to die (infant mortality rate of 7.9 per 1,000 live births) than their White peers (infant mortality rate of 3.5 per 1,000 live births) in the State of Hawai‘i.<sup>15</sup> Native Hawaiians are also more likely to suffer from coronary heart disease, diabetes, and asthma than non-Native Hawaiians in the State.<sup>16</sup> Nearly 16,000 Native Hawaiians suffer from diabetes and more than 36,000 suffer from asthma.<sup>17</sup>

To address the major health disparities, Congress enacted the Native Hawaiian Health Care Act in 1988, which was later retitled as the Native Hawaiian Health Care Improvement Act (“NHHCIA”) for sums as may be necessary for fiscal years 1993 through 2019 (Pub. L. 111-148, title X, §10221(a), Mar. 23, 2010, 124 Stat. 935). Today, the Native Hawaiian Health Care Improvement Act is under continuing resolution. OHA recommends that the NHHCIA be permanently reauthorized like the Indian Health Care Improvement Act was in 2009, and all Congressionally authorized appropriations remain available until expended. The NHHCIA established the Native Hawaiian Health Care program, which funds the Native Hawaiian Health Care Systems (NHHCSs) administered by POL. Together the five Systems on the islands of Kaua‘i, O‘ahu, Maui, Moloka‘i, and Hawai‘i provide primary health care, behavioral health, and dental services. They also offer health education to manage disease, health related transportation, and other services. NHHCIA also established the Native Hawaiian Health Scholarship Program (NHHSP) for Native Hawaiians pursuing careers in designated health care professions. It supports culturally appropriate training and the placement of scholars in underserved Native Hawaiian communities following the completion of their education. More than 300 scholarships have been awarded through this program and most program alumni work in Hawai‘i.

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<sup>10</sup> Anita Hofschneider, *Poverty Persists Among Hawaiians Despite Low Unemployment*, HONOLULU CIVIL BEAT (Sept. 19, 2018), <https://www.civilbeat.org/2018/09/poverty-persists-among-hawaiians-despite-low-unemployment/>.

<sup>11</sup> NATIVE HAWAIIAN MENTAL HEALTH AND SUICIDE, OFFICE OF HAWAIIAN AFFAIRS (Feb. 2018), [http://www.ohadatabook.com/HTH\\_Suicide.pdf](http://www.ohadatabook.com/HTH_Suicide.pdf).

<sup>12</sup> Ashley H. Hirai et al., *Excess Infant Mortality Among Native Hawaiians: Identifying Determinants for Preventive Action*, AM. J. OF PUB. HEALTH (Nov. 2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3828695/pdf/AJPH.2013.301294.pdf>.

<sup>13</sup> NATIVE HAWAIIAN HEALTH STATUS, OFFICE OF HAWAIIAN AFFAIRS 22 (July 2019), <http://www.ohadatabook.com/NHHS.html>.

<sup>14</sup> ISSUE BRIEF: COVID-19 AND NATIVE HAWAIIAN COMMUNITIES, NATIVE HAWAIIANS OVER-REPRESENTED IN COVID-19 AT-RISK POPULATIONS, OFFICE OF HAWAIIAN AFFAIRS 2 (2020).

<sup>15</sup> Hirai, *supra* note 7.

<sup>16</sup> OFFICE OF HAWAIIAN AFFAIRS, *supra* note 9 at 2.

<sup>17</sup> *Id.* at 1–2.

According to POL, the pandemic has highlighted the urgent need for several amendments to the NHHCIA. OHA and POL have advocated for increasing funding to the NHHCIA to expand Native Hawaiian health resources; removing the matching requirements applied to the NHHCSs for parity with other Native health care providers; making the NHHCSs eligible for 100 percent of the Federal Medical Assistance Percentage (FMAP) as well as the Prospective Payment System (PPS) reimbursement rate; expanding Federal Tort Claims Act coverage to POL, the Systems, and their employees in parity with other Native health care providers; allowing federal program funding to be used to collect and analyze health and program data which currently falls under the ten percent administrative cost cap for the program; allowing the Systems to be a specific eligibility group for supplemental federal funding streams; and providing a tax exemption for the NHHSP. Additionally, POL has established partnerships with other organizations to meet its Congressional mandate to coordinate and support Native Hawaiian health resources and services, offering capacity building, technical assistance, and workshops to promote holistic health and well-being through a Native Hawaiian lens. Through POL's coordination and partnerships, Native Hawaiian wellbeing across the lifespan and throughout various domains can be improved. We urge the Committee to support increased funding for, reauthorization of, and technical amendments to the NHHCIA, so that POL and the Systems may be able to achieve Congressional mandates and uplift Native Hawaiian health through as many means as possible.

### **Native Hawaiian Housing**

The HHHHA facilitates Native Hawaiian self-determination by supporting part of DHHL's mission—to develop and deliver land and housing to Native Hawaiians. Congress enacted the HHHHA in 2000. The HHHHA established the Native Hawaiian Housing Block Grant (NHHBG) program and the Section 184A Loan Guarantees for Native Hawaiian Housing. The NHHBG provides much needed funding to DHHL to deliver new construction, rehabilitation, infrastructure, and various support services to beneficiaries living on DHHL lands. The 184A Loan Guarantee program provides eligible beneficiaries with access to construction capital on DHHL lands by fully guaranteeing principal and interest due on loans. The program currently serves owner-occupant single family dwellings on the DHHL lands. Together, these programs help DHHL to carry out the vision of our Prince Jonah Kūhiō Kalaniana'ole, who as the then-Territory of Hawai'i's Congressional Delegate 100 years ago, spearheaded one of the first Acts of Congress implementing the trust responsibility to Native Hawaiians.

Like other Native communities, housing has become even more vital during this pandemic. Prior to the pandemic, Native Hawaiians faced one of the most expensive housing markets in the country. In fact, Native Hawaiians made up nearly half of the homeless population on the island of O'ahu,<sup>18</sup> whose population accounts for approximately two thirds of all State residents. To address housing needs, DHHL has used NHHBG funds for emergency rental assistance for eligible Native Hawaiians; rental subsidies for lower income elderly; rehabilitation of homes primarily for elderly or disabled residents; homeownership opportunities for lower income working families; and homeownership and rental counseling to address barriers experienced by Native Hawaiians.

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<sup>18</sup> OFFICE OF HAWAIIAN AFFAIRS, *supra* note 9 at 2.



The OHA celebrates with the beneficiaries of the Hawaiian Homes Commission Act (HHCA), the impacts of the historic State of Hawaii’s legislature’s HB2511 which appropriates \$600 million to build out infrastructure to create homestead communities and provide mortgage and rental assistance, dig into shovel-ready projects, lot options, all focused on returning native Hawaiians to the land<sup>19</sup>. We stand ready to collaborate with HHCA beneficiaries and Department of Hawaiian Homelands leadership to fulfill the intents of such historic state legislation.

### **Native Hawaiian Well-Being – Economic**

Economic well-being and opportunity are central to the ability of any community to exercise self-determination. Unfortunately, the pandemic devastated Hawai’i’s job market. Unemployment in the State skyrocketed, and recovery efforts muted by slow federal funding and programming implementation. The U.S. Bureau of Labor Statistics reported that as of December 2020, Hawai’i had the highest unemployment rate in the United States at 9.3 percent,<sup>20</sup>; however, with loosening COVID-19 restrictions (e.g., stay-at-home orders, business re-opening, social distancing, masking) and vaccination policies, the unemployment rate in Hawaii dropped to 4.2<sup>21</sup> percent in April of 2022. In the current report, the state’s Department of Business and Economic Development & Tourism (“DBEDT”) predicts that Hawai’i’s economic growth rate, as measured by real domestic product will increase 3.2 percent in 2022 over the previous year. The economic expansion path will continue with a 2.5 percent increase in 2-23, 2.3 percent in 2024, and 2.0 percent in 2025.<sup>22</sup> Hawai’i’s recovery has resumed now that the Delta and Omicron waves passed and once the Asian COVID-19 wave also passes, the long-awaited return of international visitors will begin later this spring. Hawai’i’s delayed recovery from the pandemic means that we expect moderately strong growth, despite clearly deteriorating conditions in the U.S. and global economies. The worsening global economic environment poses substantial downside risks to Hawai’i’s forecast.<sup>23</sup>

Fortunately, several economic development and access to capital programs are already in place to serve Native Hawaiian communities. Department of Treasury (DOTr), Native American Community Development Financial Institutions (“CDFI”) and Minority Depository Institutions (“MDI”) and the Native Hawaiian Revolving Loan Fund (“NHRLF”), are widely recognized as being effective. Continued support for these and similar programs are critical to minimizing the negative economic impacts of this pandemic and the recovery in culturally appropriate ways.

We further acknowledge and appreciate Executive Orders 14031<sup>24</sup> and 13985<sup>25</sup> and the DOT’s implementation efforts to promote equitable outcomes. OHA also recognizes DOT’s Emergency Rental Assistance, Homeowner Assistance Fund, Capital Projects Fund and Small

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<sup>19</sup> <http://hawaii.gov/2022/05/05/chair-aila-statement-on-passage-of-hb-2511/dhhl>, retrieved May 28, 2022.

<sup>20</sup> *Unemployment Rates for States*, U.S. BUREAU OF LABOR STATISTICS (Jan. 26, 2021), <https://www.bls.gov/web/laus/laumstrk.htm>.

<sup>21</sup> U.S. BUREAU OF LABOR STATISTICS, <https://www.bls.gov/eag/eag.hi.htm>, retrieved May 22, 2022

<sup>22</sup> <https://dbedt.hawaii.gov/blog/22-07/#:~:text=Forecasting%20Results.and%202.0%20percent%20in%202025>, retrieved May 22, 2022

<sup>23</sup> <https://uhero.hawaii.edu/uhero-forecast-for-the-state-of-hawaii-foreign-visitors-will-provide-lift-but-risks-have-multiplied/>, retrieved May 22, 2022

<sup>24</sup> Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians and Pacific Islanders

<sup>25</sup> Advancing Racial Equity and Support for Underserved Communities Through the Federal Government

Business Credit Initiative, Emergency Capital Investment Program, Rapid Response Program, and Native American CDFI Assistance Program. In addition, NHOs are eligible to receive additional funds as sub-recipients to the state and/or counties, and we recommend the Committee consider OHA's state agency status as an accountable mechanism for federal funds to quickly flow to Native Hawaiian communities.

For example, in its nearly three decades in operation under OHA's administration, NHRLF closed approximately 2,700 loans valued at more than \$63 million of lending to Native Hawaiian businesses and individuals. In its 2021 Report to Congress, NHRLF reported that borrowers: improved their overall economic wellbeing during the loan period; experienced improved preconditions to financial stability, after receiving a NHRLF loan; and increased their income due to education and business loans. The value of NHRLF borrowers' financial and non-financial assets increased over time, with smaller gains resulting from home improvement loans. As a result of increased asset value, the average net worth of OHA borrowers grew over the loan period; and Native Hawaiian-owned businesses with NHRLF loans, improved their financial performance from before the loan was received to 2019. Like many other businesses, the devastating impact of the COVID-19 pandemic on Hawai'i's economy derailed the positive outcomes NHRLF borrowers experienced over the loan period in the areas of economic wellbeing, preconditions to financial stability, and income. Accordingly, OHA asks the Committee to support programmatic fixes to NHRLF, including ending the demonstration status of the program, removing restrictions on outdated unallowable loan activities, and reducing the Native Hawaiian ownership percentage requirement from 100 to 50---all to create a broader pipeline of programming and funding for Native Hawaiian economic development.

OHA specifically acknowledges and thanks you, Chairman Schatz, for your FY22 \$100MM in Native Hawaiian and Native Hawaiian-serving appropriations and congressionally directed funding for broad programming in multiple sectors (e.g., education, food and agriculture-based research, indigenous innovation and equity, culture and arts and resource center for domestic violence).

### **Native Hawaiian Education**

The successes of the Native Hawaiian education movement are understood throughout the community. According to conversations with NHEC, in 2017 and 2018 alone, the 38 NHEP grantees served 95,458 individuals, including 74,311 students, 18,429 parents, and 2,718 teachers. They surpassed their target number for participants by approximately 65 percent. Additionally, all 38 grantees targeted serving Native Hawaiian communities and formed almost 700 strategic partnerships with schools, government agencies, or cultural organizations to expand the number served and to increase the overall impact of their programs.

Despite the great work of NHEP grantees in recent years and the Committee's efforts to secure \$85,000,000 of American Rescue Plan Act (ARPA) funding for Native Hawaiian education, the program implementation of grant funds fell short in equitable allocation for relief to our community programs. According to the Education Council's profile analysis study of NHEP grantees from 2010 through 2018, over 47% of awardees funded were Native Hawaiian community-based organizations. The 2021 ARPA funds for NHEP shows a reduction in awards

to Native Hawaiian community-based organizations down to 40% and an increase of awards to State programs from 25.2% to 37.1%.<sup>26</sup> Programs for early childhood education in Hawaiian language instruction had to compete for relief funds with programs for post-secondary education. Education is a living system. We know that each part of the system from early childhood education to post-secondary education is important to our communities.

The effects of the pandemic still threaten the survival of some grantees and widen existing disparities between Native Hawaiian students and their non-Hawaiian counterparts. Even before the pandemic, data collected in 2015 demonstrated that fewer Native Hawaiian students attained proficiency in math and reading than their non-Hawaiian counterparts.<sup>27</sup> Compounding matters during the pandemic, Hawai‘i is considered the state “most prone to academic risks during the coronavirus outbreak” and faces the “widest gap in the amount of teacher interaction with lesser-educated households compared with more-educated ones.”<sup>28</sup>

Non-profit education programs, particularly language immersion programs, have faced unique hardships amid the pandemic. With the arrival of new COVID-19 strains in Hawai‘i, Native Hawaiian students face a precarious situation. To further aggravate this risk, nearly ten percent of Native Hawaiian households do not have a computer in their homes, while nearly 20 percent do not have Internet access.<sup>29</sup> During the pandemic, many families have been unable to afford the cost of new equipment and broadband service because formerly working adult parents are now unemployed. We thank you, Chairman Schatz, for the recognition of need and funding to strengthen high-speed internet access in Native Hawaiian communities and across Hawai‘i, including infrastructure funding.

OHA again appreciates Chairman Schatz’s leadership in finding ways to assist Native Hawaiian educators through these difficult times. Unfortunately, despite these efforts, our programs and keiki (children) are still at risk. We urge the Committee to ensure that Native Hawaiian programs and service providers be included in all future federal relief efforts, that the Native Hawaiian Education Act be reauthorized, and that program implementation is in alignment with accountable and equitable consultation with stakeholders, including the Native Hawaiian Education Council.

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<sup>26</sup> Toms Barker, L., Sanchez, R., & McLelland, C. (2021, March). *NATIVE HAWAIIAN EDUCATION COUNCIL EVALUATION OF THE NATIVE HAWAIIAN EDUCATION PROGRAM: Portfolio Analysis of the 2010–2018 Grants*. IMPAQ International, Inc. <http://www.nhec.org/wp-content/uploads/2021/05/NHEP-Portfolio-Analysis-AY2010-2018-Submitted-3-18-2021.pdf>

<sup>27</sup> A NATIVE HAWAIIAN FOCUS ON THE HAWAI‘I PUBLIC SCHOOL SYSTEM, SY2015, OFFICE OF HAWAIIAN AFFAIRS 9 (2017).

<sup>28</sup> Alex Harwin & Yukiko Furuya, *Coronavirus Learning Loss Risk Index Reveal Big Equity Problems*, EDUCATIONWEEK (Sept. 1, 2020), <https://www.edweek.org/policy-politics/coronavirus-learning-loss-risk-index-reveals-big-equity-problems/2020/09>.

<sup>29</sup> OFFICE OF HAWAIIAN AFFAIRS, *supra* note 9 at 3.

## **OHA's Ability to Implement Federal Policy for Native Hawaiians and Hawai'i**

In 2020, OHA enacted a new 15-year strategic plan for 2020 through 2035 entitled *Mana I Maui Ola* (Strength to Wellbeing). Our strategic plan is built upon three foundations that have the power to affect the wellbeing of Native Hawaiians: (1) 'Ohana (family), (2) Mo'omeheu (culture), and (3) 'Āina (land and water). OHA is building off these foundations to bring OHA's vision statement to life: *Ho'oulu Lāhui Aloha* (To Raise a Beloved Lāhui). To raise a *Lāhui Aloha*, Native Hawaiians need to operate under principles of self-determination, and its related accountabilities, in each of our strategic directions of educational pathways, health outcomes, quality housing and economic stability. OHA believes that what is good for the conditions of Native Hawaiians is good for Hawai'i as a whole---our beloved island home and state.

As a State Agency, OHA is able to be a conduit for effective programming and funding for the Committee and Congress. Over the past 40 years of existence, OHA employed multiple mechanisms such as direct service staffing via payroll, contracts, memorandums of understanding and agreements, direct appropriations, loans, and grants to and with NHOs and communities, to effect its work on behalf of our Native Hawaiian beneficiary community. Financially, for the past 18 years, including four years of the NHRLF, independently conducted financial and single audits, have been issued with "clean" or "unqualified" opinions. OHA is currently administering an emergency grant awarded by the Administration for Children and Families, Administration for Native Americans (ANA), funded by the American Rescue Plan Act re: Native American language preservation and maintenance. OHA chose, with ANA's approval, to sub-grant and award to NHO's, enabling organizations to focus on the programming implementation and delivery, with OHA focusing on grant administration activities.

## **Conclusion**

Through more than 150 Acts, Congress established its trust responsibility to Native Hawaiians based on our status as the Indigenous, once-sovereign people of Hawai'i. As a result of those Acts, this Committee's presence in our island home at this time, provides us with the certainty that the federal government fully understands its trust responsibility to all Native Americans, including Native Hawaiians. As Chairman Schatz previously stated, the trust responsibility "should be the guiding light" of this Committee's work. While the federal trust responsibility may be implemented differently with Native Hawaiians in Hawai'i, because of our unique history with the United States, that trust responsibility, should be exercised in a manner that ensures the survival and welfare of our people, and is equitable with respect to other Native Peoples.

As a Native Hawaiian leader elected to ensure the well-being of the Native Hawaiian community, I urge this Committee and the Congress to continue expanded opportunities to all Native peoples, including Native Hawaiians. OHA asks you to continue to empower all Native Americans, including Native Hawaiians, with the same opportunity and accountability, to choose our own path—understanding that each tribe, band, nation, pueblo, village, or community is best served through their unique, self-determined means. This necessarily includes extending access to federal programs implementing the trust responsibility to Native Hawaiians where appropriate,

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and consistent with Native Hawaiians' unique history and evolving political relationship with the United States.

OHA continues to celebrate our involvement with the Alaska Federation of Natives, the National Congress of American Indians, and the National Indian Education Association, and we pledge to support and work with our Native cousins across the continent and in Alaska because all of us—American Indians, Alaska Natives, and Native Hawaiians—are strongest when we stand and work together.

OHA stands ready to assist the Committee and Congress in accomplishing this most important work, both now and in the future.

A hui hou. Until we meet again.

A handwritten signature in cursive script that reads "Carmen Hulu Lindsey".

Carmen Hulu Lindsey, Chair  
Board of Trustees

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