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July 29, 1990

Trustees Rod Burgess and A. Frenchy DeSoto
Office of Hawaiian Affairs
1600 Kapiolani Blvd. Suite 1500
Honolulu, HI 96814

Dear Trustees Burgess and DeSoto:

This letter is written to summarize the discussions we had on July 25, 1990, and to transmit to you the draft bill describing the creation of a political subdivision. This draft was prepared in January and it contains a few handwritten changes which resulted from the discussion we had of this bill in Kona in May. It should be viewed as only a draft, but it contains many useful ideas which may ultimately be of help in the negotiations to come on this subject.

The negotiations on this matter should cover the following subjects:

1. The Relationship of the Political Subdivision to the State. It is crucial that the Native Hawaiian self-governing political entity be viewed as something that is the inherent right of the Native Hawaiians, and not something that is created by the state. The state should therefore acknowledge the inherent right of the Native Hawaiians to govern themselves, and agree to establish a political subdivision pursuant to the Constitution of Hawaii in order to facilitate the inherent right. It is also crucial that the state government agree to assist Native Hawaiians in obtaining formal acknowledgment from the federal government of their right to self-government and to their resources now held by the federal government. (I am using "Native Hawaiian" here in the broad sense of including all persons of Hawaiian ancestry.) The political subdivision to be established should therefore be seen as something different from the counties, because it would not be subject to alteration or abolishment by the state.

2. The Powers of the Political Subdivision. A general listing of potential powers is included in paragraph (e) on pages 5-6 of the attached draft. The actual powers that would be exercised should be left vague, to be developed by Native Hawaiians subsequently. What is important now is that the state acknowledge that it will permit the new Native Hawaiian government to exercise these powers and that it will not tax the lands and activities controlled by the Native Hawaiian government or impose land use controls on these areas. This affirmative agreement to refrain from exercising these powers is crucial in light of recent U.S. Supreme Court decisions.

3. The Structure of the Native Hawaiian Government. Again, the details of the governing structure should be left for future deliberations by Native Hawaiians, but a model of a possible structure might be offered. In our previous discussions, we have talked about having (A) an elected administrator or chief executive; (B) an elected Board of Trustees to constitute the main legislative body, elected from single-member districts, possibly containing more trustees than the present board; and (C) island councils elected by Native Hawaiians on each island with the primary mission of making decisions regarding resources and services on their island; the members of these councils might also meet together statewide once a year to provide broad policy guidelines for the Trustees to implement. The present Board of Trustees should serve as an interim government pending later decisions by Native Hawaiians on the details of the structure of their ultimate government.

4. Community Input. It is essential that Native Hawaiians be included in decisionmaking at all points in this process. In the discussions with the state, therefore, the opportunities for such input should be identified for each of the decisions that need to be reached.

I hope these general guidelines will be helpful in your deliberations during the next several weeks. Sherry and I will be back in Honolulu on August 21 and will be available to assist further as appropriate at that time. We can be reached at 617-965-2636 or 617-965-5169 if you need to talk to us before that time.

Best wishes,