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June 22, 2012

BY Email: hwburgess@hawaii.rr.com; and U.S. Mail

H. William Burgess, Esq.
2299-C Round Top Drive
Honolulu, Hawaii 96822

Dear Mr. Burgess:

Re: Act 15, Session Laws of Hawaii 2012, Relating to the Public Trust Lands

This letter responds to your June 18, 2012 letter to the Governor, and the Trustees and Chief Executive Officer of the Office of Hawaiian Affairs (“OHA”) demanding that Act 15, Session Laws of Hawaii 2012, not be implemented until they seek and secure instructions from the Hawaii Supreme Court as to whether the State’s conveyance of lands at Kaka’ako pursuant to Act 15 violates the equal protection clause and breaches the State’s fiduciary duties as trustee of the § 5(f) ceded lands trust.

The State disagrees that instructions from the Hawaii Supreme Court are a prerequisite to Act 15’s implementation. In Office of Hawaiian Affairs, State of Hawaii, 96 Haw. 388, 401, 31 P.3d 901, 914 (2001), the court said: “it is incumbent on the legislature to enact legislation that gives effect to the right of native Hawaiians to benefit from the ceded lands trust.” One of the stated purposes of Act 15 is to “effectively and responsibly fulfill the constitutional obligation to native Hawaiians under article XII, sections 4 and 6 of the State Constitution, between November 7, 1978 up to and including June 30, 2012,” by determining what portion of the income and proceeds of the public land trust during the period November 7, 1978 and June 30, 2012 OHA should have received during that period, and conveying the fee simple interest to nine parcels of land at Kaka’ako to OHA, to fulfill that obligation.

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Accordingly, we will continue preparing the deeds and other instruments necessary to document the conveyances to OHA that Act 15 makes.

Very truly yours,

A handwritten signature in cursive script that reads "Russell A. Suzuki".

Russell A. Suzuki

Acting Attorney General

c: The Honorable Neil Abercrombie
The Honorable Colette Y. Machado
Robert G. Klein, Esq.
William Meheula, Esq.