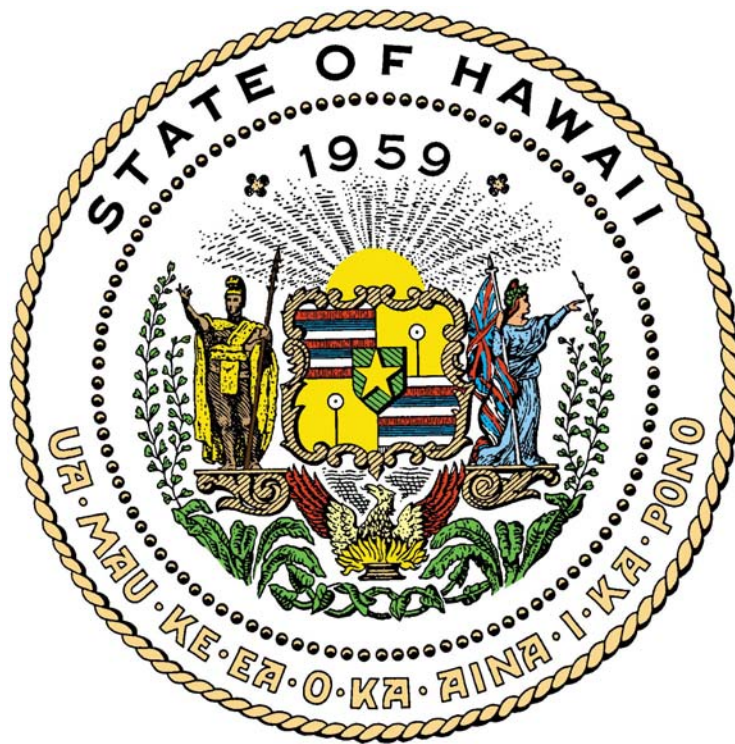


**REPORT TO THE 2008 LEGISLATURE ON
SCR 49 CONCERNING PUBLIC OUTREACH &
COMMUNICATION EFFORTS ON THE
SETTLEMENT AGREEMENT AND
PROPOSED LEGISLATION REGARDING THE
INCOME AND PROCEEDS FROM THE
PUBLIC LAND TRUST**



Prepared by:

**OFFICE OF HAWAIIAN AFFAIRS
and
DEPARTMENT OF THE ATTORNEY GENERAL**

MARCH 26, 2008

**REPORT TO THE 2008 LEGISLATURE ON SCR 49
 CONCERNING PUBLIC OUTREACH AND COMMUNICATION EFFORTS
 ON THE SETTLEMENT AGREEMENT AND PROPOSED LEGISLATION
 REGARDING THE INCOME AND PROCEEDS
 FROM THE PUBLIC LAND TRUST**

TABLE OF CONTENTS:

I.	FOREWORD	2
II.	INTRODUCTION	3
III.	PUBLIC OUTREACH AND COMMUNICATION EFFORTS	4
IV.	FINDINGS	7
V.	RECOMMENDATIONS	8
APPENDICES		
A.	SPECIFIC CONCERNS AND RESPONSES TO THOSE CONCERNS	12
B.	COMMENTS AND QUESTIONS FROM COMMUNITY MEETINGS	18
1.	Hawaiian Nationhood and Sovereign Claims	18
2.	OHA, its Actions, and Accountability to its Beneficiaries	19
3.	Needs of the Hawaiian Community	20
4.	Settlement Negotiation Process	20
5.	Ceded Lands and Revenue Calculations	22
6.	Future Impact of the Settlement Agreement	23
7.	Terms and Conditions of the Settlement Agreement or Legislative Bills	25
C.	ADDITIONAL COMMUNITY OUTREACH EFFORTS	26
1.	Radio Broadcasts	26
2.	Television Broadcasts	26
3.	Internet Sources	27
D.	PUBLIC SURVEY RESULTS	28
1.	November 2007 Ward Research Survey	28
2.	February 2008 Ward Research Survey	31
3.	Honolulu Advertiser Insert Survey Results	35

**REPORT TO THE 2008 LEGISLATURE ON SCR 49
CONCERNING PUBLIC OUTREACH AND COMMUNICATION EFFORTS
ON THE SETTLEMENT AGREEMENT AND PROPOSED LEGISLATION
REGARDING THE INCOME AND PROCEEDS
FROM THE PUBLIC LAND TRUST**

I. FOREWORD

On January 17, 2008, the Governor and the Trustees of the Office of Hawaiian Affairs (OHA) executed a Settlement Agreement (hereafter Settlement Agreement or Settlement) over the balance of past due revenue owed to OHA since 1978 from the income and proceeds from the State's ceded lands and the minimum amount of payments to be made in the future. These negotiations had taken several years, although negotiations by previous administrations and OHA had, in a real sense, taken decades.

OHA and the State had several times recently informed the Legislature that we were negotiating what would hopefully be a resolution of this one discreet issue. We so informed the Legislature in 2003, when we jointly suggested one interim measure which the Legislature passed (Act 34 of 2003), and we did so again in 2006, when having moved closer toward resolution, we jointly suggested a second interim measure which the Legislature passed (Act 178 of 2006).

Calling the Settlement Agreement the parties signed “reasonable, fair, and long overdue,” OHA Chairperson Haunani Apoliona stated “This is an example of how long-standing disputes, decades old and productive to no one, can be resolved through methodical and reality-based negotiations by the Executive Branch and OHA’s Board of Trustees; and now we need the assistance from our third partner, the Legislative branch of government.”

OHA and the Executive Branch achieved mutual agreement to resolve the “disputed issues” regarding the payments to be made to OHA from the income and proceeds from the ceded lands, and joined together to propose legislation that the 2008 Legislature enact to implement the Settlement. The Hawai‘i Supreme Court has stated several times that resolution of this issue is a “political issue” that belongs in the realm of the Legislature. By passing a bill to implement this proposed Settlement Agreement, the Legislature will have fulfilled the Court’s direction and will codify statutory language to settle the disputed issues surrounding payment of ceded land revenues to OHA from 1978 to 2008, and also codify the minimum payment of \$15.1 million annually to OHA.

The Settlement Agreement includes a combination of land and cash totaling approximately \$200 million. The land parcels include commercial and industrial properties on O‘ahu and the island of Hawai‘i totaling approximately 209 acres and \$187 million in value. Additionally, the State will also pay just over \$13 million in cash to OHA. These transfers and payments will immediately increase OHA's asset base by approximately 50%.

SB 2733, HB 2701, and HB 266 (to which OHA and the State agree) are needed to implement the Settlement are now pending before the 2008 Legislature. Language in HB 266 acknowledges this purpose and underlying constitutional impetus: “The legislature finds that the land and funds identified in the settlement agreement reflect a joint recommendation as to the policy the legislature should adopt in fulfilling its constitutional obligations to native Hawaiians in connection with this issue. This Act, therefore, is an expression of legislative policy, not a settlement or contract.”

As set forth below, OHA and the Attorney General participated in many meetings and listened to many voices and heard many views and positions expressed. We respect those views and those who expressed them. However, having listened and considered, we hold steadfastly to the view that the Settlement and proposed legislation is fair, just, and reasonable. It settles one discreet dispute of longstanding duration. While it leaves open for possible future resolution important but different issues, it resolves one issue that needs resolution. If we as a State determine to resolve nothing until we can resolve everything, it is likely we will simply remain where we have been for the last thirty years, without a fair and just resolution of this important issue.

II. INTRODUCTION

This report was prepared jointly by OHA and the Attorney General (AG). It is submitted in response to Senate Concurrent Resolution No. 49 (SCR 49). The report summarizes the public outreach and communication efforts of OHA and the Attorney General to inform the public and the Hawaiian community in particular about the Settlement Agreement (and proposed legislation to implement the agreement) to resolve disagreements about OHA’s past and future share of income and proceeds from the ceded land that have been outstanding since the State Constitution was amended in 1978 to require that OHA receive a share.

SCR 49 requested that OHA and the Attorney General conduct statewide informational meetings to outline the terms and conditions of, and solicit public input and recommendations regarding, the Settlement Agreement and the legislation they proposed to implement the Agreement. OHA and the Attorney General were directed to hold meetings on O’ahu, Kaua’i, Maui, and Hawai’i, and in close proximity to Hawaiian Home Lands communities on Moloka’i, and at Waimānalo, and Nānākuli or Wai’anae. The resolution further requested that OHA and the Attorney General provide a report of findings and recommendations to the Legislature by March 26, 2008. The resolution stated that these meetings and report would be used by the Legislature in determining whether or not to approve the Settlement.

Outreach efforts began on January 18, 2008, immediately after the Settlement Agreement was signed by Governor Linda Lingle and OHA Chairperson Haunani Apoliona, and have been on-going to the present. Even before the passage of SCR 49, OHA and the Attorney General briefed the leaders of the Senate and the

House, and Native Hawaiian stakeholders and organizations. OHA also began discussions with the 'Īlio'ulaokalani Coalition on conducting over twenty community meetings across the state, and received invitations from various Native Hawaiian organizations to present and discuss the Settlement Agreement and proposed legislation with their members. OHA also commissioned several public surveys and conducted one newspaper poll. OHA and the Attorney General also arranged for and used radio, television, internet, and print media announcements and interviews to inform the community about the Settlement, identify resolved and unresolved issues, and solicit attendance at the meetings and other feedback.

Generally, most of the people who attended the community meetings came for one of three purposes – to speak against the Settlement, to ask questions about the Settlement, or to listen. Some came to speak out in favor of a settlement and the enactment of the pending legislation. Those who spoke against or asked questions about the Settlement seemed to do so from a wide-range of perspectives. Many of their comments did not seem to be directly related to the Settlement or OHA's share of ceded land receipts. Many spoke and asked about sovereignty, the importance of self-determination, federal recognition and the Akaka Bill, who owned the ceded lands and how anyone other than the Hawaiian people could own them, the wisdom of settling outstanding claims separately rather than globally, how OHA provided benefits for the Hawaiian community, and why beneficiaries were “not included at the table” when the Settlement and other decisions material to their interests were made by OHA.

Substantive comments about the Settlement focused on four concerns: 1) the Settlement Agreement's waiver language; 2) possible environmental contamination on the parcels transferred to OHA under the Settlement; 3) how the \$200 million Settlement amount was calculated; and 4) whether the parties used the appropriate valuations for the parcels to be transferred to OHA.

Based upon all of the outreach efforts undertaken, however, and assuming that the results of the public surveys and polls are statistically valid, it appears that a majority of Hawaiians and non-Hawaiians would like to see this Settlement effected, although as is often the case when the Legislature holds hearings on bills it is considering, it is not possible to determine solely from those who attended the community meetings whether the Hawaiian community or the public as a whole favors or opposes the Settlement.

III. PUBLIC OUTREACH AND COMMUNICATION EFFORTS

Between January 18, 2008 and March 20, 2008, OHA and/or the Attorney General convened or participated in forty-five community meetings or briefings on the Settlement Agreement and proposed legislation. Approximately 1,400 persons attended these meetings and briefings. In response to the Legislature's request in SCR 49, community meetings at which OHA and the Attorney General presented information and answered questions were held at Waimānalo, Pearl City, Mā'ili, and McKinley High School on O'ahu, and on Moloka'i, Kaua'i,

Maui, and at Hilo and Kona on Hawai'i Island. Meetings and briefings were also held and given to audiences and organizations including the Legislature, the Native Hawaiian Chamber of Commerce, Kamehameha Schools leadership, various Hawaiian Civic club and Hawaiian Homestead associations, the Native Hawaiian Bar Association, and the University of Hawai'i William S. Richardson School of Law. Several of the meetings and briefings were held in or near Hawaiian Home Land communities in Waimānalo, Wai'anae, Nānākuli, Moloka'i, Kapolei, Papakōlea, Keaukaha, Pana'ewa, and Paukūkalo. A summary of these meetings, dates, and attendance is provided in Table 1 below.

Announcements and advertisements for many of these meetings were published in the State's two major daily newspapers and, and on OHA's and the 'Īlio'ulaokalani Coalition's websites. They were also broadcast on the radio as public service announcements. For specific organizations, such as the Native Hawaiian Chamber of Commerce and others, meeting notices were distributed by the organizations themselves.

At meetings, OHA provided handouts and information on the Settlement and proposed legislation, including a tri-fold fact sheet and a small poster outlining the history of the ceded lands and OHA's entitlement to a portion of the income and proceeds from the Public Land Trust. Included was space to allow for written comments and contact information for OHA and the Attorney General.

Most meetings began with a presentation by OHA staff about the ceded lands, the constitutional and statutory basis for providing OHA with a share of income and proceeds from the ceded lands, the disagreements and litigation in which the State and OHA have been involved over the past thirty years, and the sum and substance of the Settlement Agreement and proposed legislation to implement it. The Attorney General or his assigned deputy attended each of the SCR 49 meetings OHA and the Attorney General were directed to hold. At those meetings, they usually prefaced the question and answer portion of the discussion by providing comments on the Settlement and proposed legislation from the Attorney General's perspective. After these initial presentations and remarks, the floor was open to all in attendance to offer comments or ask questions.

A meeting facilitator guided this process and afforded time to all persons interested in speaking. The facilitator also encouraged those who had questions or comments but did not wish to speak before the audience to use the fact sheet to provide their written feedback. The facilitator also encouraged the audience to follow up with OHA or the Attorney General should they have any additional questions after the meeting, which frequently occurred.

Concerns directed specifically on the Settlement Agreement and the proposed legislation and the responses given are set out in detail in Appendix A. Summaries of other comments and questions are in Appendix B. Information OHA published and broadcast in the media and the Internet is provided in Appendix C, and the results of surveys and polls OHA commissioned and conducted is included in Appendix D.

TABLE 1: COMMUNITY MEETING SUMMARY & ATTENDANCE					
Mtg.	Date	Sponsor	Island	Location	Attend.
1	1/18/08	Stakeholder Mtg. OHA /AG	O'ahu	Capitol Auditorium	100
2	1/18/08	Lōkahi Pacific	Maui	‘Īao Theater	25
3	1/19/08	Association of Hawaiian Civic Clubs	O'ahu	Kana‘ina Building	20
4	1/22/08	OHA	O'ahu	OHA Boardroom	80
5	1/22/08	U.H. DURP Class	O'ahu	U.H. Mānoa	15
6	1/25/08	"Black Robes" - N.H. Judges	O'ahu	OHA Boardroom	12
7	1/25/08	Commission for Music & Arts	O'ahu	State Fdtn. on Cult. & Arts	8
8	1/28/08	Nā Kūpuna o Maui	Maui	Lahaina Civic Center	40
9	1/30/08	O'ahu Conservation Partnership	O'ahu	OHA Library	7
10	1/31/08	House Majority Caucus	O'ahu	State Capitol	40
11	2/6/08	Hui Mālama ‘Āina o Lā‘ie	O'ahu	Queen Lili‘uokalani C.C.	30
12	2/8/08	Native Hawaiian Bar Assn.	O'ahu	Ali‘i Place	25
13	2/8/08	KS Hawaiian Leadership	O'ahu	Kawaiaha‘o Plaza	20
14	2/11/08	‘Īlio‘ulaokalani / OHA	O'ahu	Windward Comm. Coll.	15
15	2/12/08	Kaho‘olawe Island Res. Comm.	Maui	Hale Mahaolu-Waichu	40
16	2/12/08	‘Īlio‘ulaokalani / OHA	O'ahu	Kahuku High School	25
17	2/13/08	‘Īlio‘ulaokalani / OHA / AG	O'ahu	Waimānalo Public Library	100
18	2/14/08	U.H. Law School	O'ahu	U.H. Mānoa	30
19	2/15/08	Ka Lei Maile Ali‘i HCC	O'ahu	Jarrett Int. School	15
20	2/15/08	OHA/AG	O'ahu	Pearl City H.S. Cult. Ctr.	20
21	2/16/08	‘Īlio‘ulaokalani / OHA / AG	O'ahu	Mā‘ili Elem. School	120
22	2/18/08	Īlio‘ulaokalani / OHA / AG	Moloka‘i	Kūlana ‘Ōiwi Center	30
23	2/20/08	OHA/AG	Kaua‘i	Kaumuali‘i Elem. Sch.	75
24	2/22/08	OHA/AG	O'ahu	McKinley H.S.	10
25	2/23/08	OHA/AG	Maui	Maui Comm. Coll.	90
26	2/25/08	Īlio‘ulaokalani / OHA / AG	Hawai‘i	Queen Lili‘uokalani C.C.	80
27	2/26/08	Īlio‘ulaokalani Coalition / OHA	Hawai‘i	Waimea Comm. Ctr.	12
28	2/26/08	Hawaiian Homestead Assc.	Maui	Paukūkalo Comm. Ctr.	30
29	2/27/08	Īlio‘ulaokalani / OHA / AG	Hawai‘i	Kealakehe Elem. Sch.	50
30	3/1/08	Īlio‘ulaokalani / OHA	O'ahu	Waimea Valley	0
31	3/1/08	Īlio‘ulaokalani / OHA	O'ahu	Wahiawa Comm. Ctr.	5
32	3/3/08	Īlio‘ulaokalani / OHA	O'ahu	Leeward Comm. Coll.	2
33	3/4/08	Īlio‘ulaokalani / OHA	O'ahu	U.H. Kamakakuokalani	35
34	3/5/08	HCDA	O'ahu	HCDA Board Room	45
35	3/5/08	Īlio‘ulaokalani / OHA	O'ahu	Kapolei High School	15
36	3/8/08	Īlio‘ulaokalani / OHA	O'ahu	Nānākuli High School	0
37	3/8/08	Īlio‘ulaokalani / OHA	O'ahu	Wai‘anae High School	2
38	3/10/08	Īlio‘ulaokalani / OHA	Kaua‘i	Queen Lili‘uokalani C.C.	15
39	3/11/08	Kaka‘ako CPAC / HCDA	O'ahu	JABSOM	55
40	3/11/08	Īlio‘ulaokalani / OHA	Kaua‘i	Kekaha Comm. Ct.	20
41	3/12/08	Īlio‘ulaokalani / OHA	O'ahu	Papakōlea Comm. Ctr.	30
42	3/17/08	Īlio‘ulaokalani / OHA	O'ahu	Hāna H.S.	4
43	3/18/08	Īlio‘ulaokalani / OHA	Maui	Maui Arts & Culture Ctr.	35
44	3/19/08	Īlio‘ulaokalani / OHA	Lāna‘i	Lāna‘i Comm. Ctr.	20
45	3/20/08	Waialua Community	O'ahu	Waialua Court House	6
Total Attendance:					1,453

IV. FINDINGS

There is clearly both support for and opposition to the Settlement Agreement and proposed legislation in the community. Again, however, although the majority of those who spoke to the issue at the SCR 49 community meetings were critical of the Settlement, if the surveys and polling OHA conducted are statistically valid, a majority of Hawaiians and non-Hawaiians support the Settlement Agreement and the proposed legislation to implement it.

The majority of persons who attended the SCR 49 meetings came to the meetings did not speak.

The majority of persons who spoke at the SCR 49 community meetings viewed the meetings as opportunities to air general grievances and disappointments about OHA and the State or to advance particular positions about Hawaiian claims or sovereignty generally. Many asked questions, and most who spoke, spoke in opposition to the Settlement Agreement and the proposed legislation to implement it.

Many who opposed the Settlement or asked questions about the Settlement spoke from or about broader perspectives and concerns than what OHA's share of income and proceeds from the ceded lands ought to be. They spoke or asked about the overthrow of the Kingdom of Hawai'i; making claims against the United States; why anyone other than Hawaiians owns the ceded lands; why Hawaiians do not own all of the lands in Hawai'i; sovereignty; self-determination; federal recognition and the Akaka Bill; the recent Supreme Court decision in OHA v. HCDCH; the wisdom of settling claims separately rather than globally and/or now rather than later; improving the processes OHA uses and expanding the people OHA includes in making decisions that affect beneficiary interests; how trust moneys are spent; and changing the priorities by which OHA and the State address Hawaiian claims and concerns.

Those who spoke directly about the Settlement Agreement and the pending legislation raised concerns about

- The necessity for and the wording of the waiver included in the Settlement Agreement and pending legislation;
- Whether the Settlement dispossesses Hawaiians of ceded land assets, and rights to gather and engage in other traditional and customary practices protected by the State Constitution;
- What OHA and the State, respectively, give up by way of the Settlement, and whether their respective gains and losses are "equal;"

- The sufficiency of the \$15.1 million future payments that OHA receives under the Settlement, particularly if the ceded lands and its resources were put to new and more profitable uses by technological discoveries and bioprospecting;
- How the properties transferred to OHA under the Settlement were selected and chosen; whether sufficient consideration was given to environmental contamination; the threat of tsunami; and securing culturally important property (particularly because the parties relied on tax assessed values to determine the number of parcels selected and more property could have been transferred because heiau, fish ponds, and other culturally significant property would have no or low tax assessed values).

Support for the Settlement Agreement and proposed legislation was primarily centered on the necessity to resolve a 30-year dispute, achieving State conformance with a constitutional mandate, the desire to have OHA move forward, and providing the stability of future funding for OHA and related programs for beneficiaries.

Given the ideological and substantive divide between those who oppose and those who support the Settlement Agreement and proposed legislation, it is unreasonable to believe or have an expectation that the Settlement could somehow be amended to address all or many of the concerns raised by those opposed. Indeed, the negotiations focused only on one issue – income and proceeds from the Public Land Trust from 1978 forward. OHA and the Attorney General did not and could not have negotiated on many issues of concern to the Hawaiian community, including historical grievances and issues relating to the ownership of the ceded lands. And, in fact, many if not most of the grievances could not be resolved at all at a solely state level, even if there were the will to resolve them. OHA firmly believes that resolution of this one discrete issue, which provides OHA a very substantial addition to its asset base, will not in any way diminish the likelihood of ultimate resolution of historical issues in ways favorable to Hawaiians.

V. RECOMMENDATIONS

The criticism the Settlement received and other criticisms were wide-ranging. We have listened to the criticisms and comments, and have studied and considered them. We have considered whether, in light of all of the criticisms, comments, and perspectives we received (summarized and quoted in the body of this Report and its appendices), we should change our basic view of the proposed Settlement Agreement.

We have, however, not changed our basic view. We continue to firmly, strongly, and wholly believe that the Settlement we reached is fair and just, and that the Legislature should enact any one of the three bills presently pending before it to implement it. This Settlement immediately increases OHA's asset base by almost

50%. Two hundred million dollars equals approximately 50% of the total amount OHA has received since 1978 from the income and proceeds from the ceded lands. Given the amounts received to date, the amounts to be paid, and the nature of the disputed issues, the basics terms of the Settlement are, we continue to believe, fair and just.

Moreover, we believe that it is simply not realistic to think that the conditions for resolution of this one issue will be *more* favorable in the future. Nor is it realistic to believe that economic conditions will make resolution easier, rather than harder, in both the near and middle term. The long term is unknowable, but every year that passes without OHA's asset base increasing as a result of a resolution of this issue, simply increases the economic harm to OHA from the passage of time without resolution.

At the same time, the meetings provided us with a concrete sense of the community, and we make the following recommendations in response to what we saw and heard.

- A. We recommend that the waiver and release language of the Settlement Agreement be revised.

The concerns the community expressed about the wording of the waiver included in the Settlement Agreement and pending legislation being – among other things – unduly broad, are understandable. Although we believe the documents are clear that the only issue under consideration and resolved was that of OHA's entitlement to income and proceeds from the ceded lands, we have heard and listened to the community. We have set out revisions to the waiver language which we believe makes our original intent clearer and they appear below. We note that there are several places in the Settlement Agreement where this language would be substituted. If one of the bills where this language is still contained were to move forward (H.B. 266 has removed the waiver language entirely), we propose that it be inserted in the appropriate places in those bills.

1. Original Waiver Language

OHA releases, waives, and forever discharges any and all claims of any kind concerning, relating to, or arising out of controversies at law and in equity, known or unknown, now existing or hereafter arising, established, or inchoate, arising out of or in any way related to any right OHA or any other person or entity may have to income, proceeds, or any other tangible right, item, or benefit, from the public land trust lands under sections 4 and 6 of Article XII of the Constitution or any statute or act.

2. Proposed Amendments – Redlined

OHA releases, waives, and forever discharges any and all claims of any kind concerning, relating to, or arising out of controversies at law and in equity, known or unknown, now existing or hereafter arising, established, or inchoate, arising out of or in any way related to any right OHA or any other person or entity may have to income; and proceeds, or any other tangible right, item, or benefit, of any kind or nature whatsoever, or the equivalents of such income and proceeds of any kind or nature whatsoever, from the lands held by the State as a public land trust lands under sections 4 and 6 of Article XII of the Constitution or any statute or act.

3. Proposed Amendments – Clean

OHA releases, waives, and forever discharges any and all claims of any kind concerning, relating to, or arising out of controversies at law and in equity, known or unknown, now existing or hereafter arising, established, or inchoate, arising out of or in any way related to any right OHA or any other person or entity may have to income and proceeds of any kind or nature whatsoever, or the equivalents of such income and proceeds of any kind or nature whatsoever, from the lands held by the State as a public trust under sections 4 and 6 of Article XII of the Constitution or any statute or act.

It is intended that the proposed amendments would be applied throughout the Settlement Agreement (and, if applicable, throughout a bill) wherever the original waiver language occurs.

- B. We also believe the proposed legislation and accompanying committee reports should include information about how much OHA has received in the past to make clear that the Settlement has a concrete basis and is fair.
- C. To further reassure the Hawaiian community and the general public that the Settlement is fair, we believe HB 266, HD 2 should be the vehicle bill for implementing the Settlement because it expressly makes \$15.1 million the floor for OHA's future share of income and proceeds from the ceded lands, and includes a process for assessing the sufficiency of OHA's share on a biennial basis.
- D. We believe the Legislature should make clear that it is acting for the sole purpose of implementing the provisions of the State Constitution that OHA receive a share of the income and proceeds from the ceded lands, and for no other reason.
- E. We do not believe that the material economic terms of the Settlement should be changed, nor do we believe approval of the Settlement should be delayed.

APPENDICES

APPENDIX A SPECIFIC CONCERNS AND RESPONSES TO THOSE CONCERNS

Specific concerns regarding the Settlement Agreement and proposed legislation articulated at the various community meetings that were held included:

1. Concern: *The Settlement dispossesses Hawaiians of our Ceded Lands trust assets. OHA has negotiated a small package of land and revenue for itself and has agreed to relinquish all claims of our peoples to 1.8 million acres of land, the submerged lands, energy resources, biodiversity and surface and subsurface natural resources.*

Response:

- The proposed settlement does not dispossess Hawaiians of ceded lands. Instead, it brings under OHA's control, ceded land revenue that previously has never been paid, and increases OHA's asset base by almost 50%.
 - The proposed settlement does not address in any way Hawaiians' claims to sovereignty and ownership of all ceded lands – those issues were beyond the scope of the settlement negotiations, the Settlement Agreement, and the legislation OHA and the State proposed to implement the settlement. The Settlement Agreement, including the waiver, applies only to the period from November 7, 1978 forward with regard to OHA's rights to income and proceeds from the ceded lands, however phrased or by whoever brought. As noted, resolution of larger issues likely cannot even be accomplished at a state level.
 - When OHA is waiving its rights to sue for income and proceeds from ceded lands, it is simply reiterating language from existing laws and Hawai'i Supreme Court (HSC) rulings. In three cases (OHA v. Yamasaki (1987), OHA I (2001), and OHA II (2006)), the court said OHA cannot successfully sue for the unpaid income and proceeds under these existing laws. Moreover, the Native Hawaiians' Right to Sue Law says that neither OHA nor anyone else may bring a suit "in which the matters in controversy involve the proportionate share of ceded land or special fund revenues allocated to [OHA] by the legislature."
 - Finally, no claims are being released relative to submerged lands, energy resources, biodiversity, and surface and subsurface natural resources, except for OHA's rights to income and proceeds from those resources which were in the Public Land Trust from November 7, 1978 to July 1, 2008, or going forward, to the extent that the minimum amount specified in the Settlement Agreement -- \$15.1 million – is transferred to OHA.
2. Concern: *The settlement is supposed to resolve claims to "the portion of income and proceeds from the lands of the public trust for use by OHA" Settlement Agreement (SA), pg. 1 of 9 from 1978 – 2008. In return for the settlement, OHA waives or gives up, not only claims to the income from 1978 -2008, but.....any other tangible right,*

item or benefit from the public land trust....” (SA, pg. 2 of 9). OHA is giving up these rights not only for OHA, but for “any other person or entity.”

Response:

- If one reads the waiver in the proposed Settlement Agreement in its entirety (available online at www.oha.org/pastdue), one can see that the most important phrase in this waiver is the reference to Sections 4 and 6 of Article XII of the Hawai‘i State Constitution. Only OHA has a right to income and proceeds from the Public Land Trust under Article XII. The waiver of a claim by any other person or entity is only the waiver of a claim they might possibly make on OHA’s behalf or for OHA’s rights. It does not waive the claims of any person or entity to ownership of the ceded lands or any other type of claim.
 - With that said, OHA and the Attorney General recognize that Legislators and some of OHA’s beneficiaries have been confused by the waiver language. This feedback has been some of the most specific and constructive information received in OHA’s briefings on this issue. Because of this, OHA and the Attorney General have agreed to different waiver language for the settlement agreement, set forth verbatim in the body of this Report. This hopefully makes the nature of the waiver even clearer.
3. Concern: *OHA’s waiver of claims is res judicata for all Hawaiians, their organizations and nation – this means that we will never be able to sue the state or OHA for our trust lands, revenues or other rights including an accounting and inventory of our trust assets. This language is so broad and sweeping that Hawaiians will lose rights not related to the OHA 20% pro rata debate. Other rights that Hawaiians claim to the public trust include HRS 7-1 rights (access and gathering), rights to worship at heiau on 5(f) lands, genetic resources, etc. These rights will now be ignored by the State.*

Response:

- HB 266 HD 2 does not bar suits against OHA.
- Rather than harming efforts to account for trust assets, HB 266 HD 2 continues the reporting on income and proceeds from lands in the Public Land Trust that was begun with Act 178 of the 2006 Legislature.
- Again, if one reads the waiver in the Settlement Agreement in its entirety, the most important phrase in this waiver is the reference to Sections 4 and 6 of Article XII of the Hawai‘i State Constitution.
- Thus, for instance, the traditional and customary rights of Hawaiians protected by tradition, other laws, and under Article XII, Section 7 of the Hawai‘i State Constitution, are not waived.

- OHA has for decades advocated for the traditional and customary rights of Hawaiians and other rights, whether on public or private lands. OHA has fought and won battles over water (such as in Waiāhole,) and land (such as the summit of Mauna Kea) and OHA will continue to fight those battles.
4. Concern: *Under Hawaiian law OHA is entitled to 20% of the Ceded Land revenues. There is no relation between the 20% figure and the 15 million dollar figure. The figure appears to be an arbitrary amount. In addition, the legislative bill deletes all statutory language relating to the Hawaiians share (20%) of revenues. This theft of revenue from Hawaiians is based on the claim of OHA that the courts overruling of Act 304 also overruled the OHA 20% share of proceeds, this is false – in January, 2008, the Hawaiian Supreme Court ruled in OHA vs. HCDH that the State cannot dispose of Ceded Lands trust assets without resolving native claims – the court cited the Apology Bill, the DOI (Department of Interior) Mauka to Makai report and OHA’s claims for 20% (see pg. 6 of the Opinion).*

Response:

- Under current state law, OHA does not have the right to 20% of ceded land revenues that it had during certain past periods; and even then when it had that right, it had a right to 20% of “funds” from the ceded lands (HRS §10-13.5). The problem is that “funds” has never been defined completely, which has resulted in three decades of laws, lawsuits, and controversy. To try and clarify what “funds” means, OHA sued four times over thirty years on this issue, and the Hawai‘i Supreme Court said every time that it cannot define what “funds” means.
- “The 15 million dollar figure” is actually \$15.1 million.
- Act 304, Session Laws of Hawai‘i 1990 was a partial improvement on the issue – it replaced the word “funds” with “revenue” and defined “revenue.” The relationship between 20% of revenue and \$15.1 Million is that when Act 304 was in place (it was overturned in 2001 by the OHA I ruling), \$15.1 Million annually is the most OHA has ever been paid from income and proceeds from the ceded lands in the Public Land Trust. This it is not an arbitrary amount; it is the historically highest amount that OHA has received.
- In addition – if Act 304 was in place, and the HSC decision (OHA I) which ruled that the State can not pay OHA from airport revenue was also in place, and no airport revenue could be used to pay OHA, \$15.1 million would be more than 20% of “revenue” as defined by Act 304.
- OHA never had a 20% share of “proceeds,” see above.
- OHA has not ever claimed that “the overruling of Act 304 overruled the OHA 20% share of proceeds (sic)”. All OHA has noted is that the Supreme Court has three times said that the 20% of funds rule cannot be judicially enforced.

- The Hawai‘i Supreme Court did reference past and existing laws and cases in its recent ruling, correctly known as the OHA vs. HCDCH. However, its reference to the 20% of funds language does not mean that the court changed its opinion that the court cannot successfully interpret it.

5. Concern: *For several weeks Hawaiians have requested that OHA provide the valuation reports and other documents (Phase 1 & 2 Real Estate reports) on the status of the lands, and valuation figures and formulas used in the settlement. These data have not been provided to the legislature or native beneficiaries.*

Response:

- This is not true. OHA has not received any formal written requests for any reports related to the properties that would be conveyed to OHA in the proposed Settlement.
- OHA has no “valuation reports” for these properties. If what is meant are appraisals, OHA successfully negotiated with the State to acquire these properties through the proposed Settlement at, generally, tax-assessed value. OHA believes that tax assessed value is nearly always below market value for government owned properties, but OHA also believes that the tax assessed values for these particular properties are, at the least, fair market value.
- Tax assessed values for all properties are publicly available, through the counties which have property taxing power.
- The state agencies currently controlling these properties (DLNR for Kalaeloa Makai and Hilo Banyan Drive, HCDA for Kaka‘ako Makai) possesses Phase I environmental assessments for some of the settlement properties. OHA has reviewed but does not control these documents. OHA's review has not caused OHA to in any way change its view as to the value or desirability of the properties.

6. Concern: *There is evidence that the Kalaeloa land is contaminated and toxic. The settlement demonstrates that the parties know of this problem but that OHA has agreed to accept the land, pay trust assets to conduct an environmental due diligence effort and then return the land or get a 25% credit once the toxicity is proven. Why is OHA taking toxic land?*

Response:

- OHA is not sure what “evidence” is being referred to, or what is meant by the land being “toxic.”
- The Kalaeloa Makai parcel is 110 acres of land zoned for heavy industry that was formerly used as a cattle feed lot. OHA understands that a Phase I environmental assessment completed by DLNR and reviewed by OHA staff showed some

potential contamination on some parts of the property, as is common for former industrial and agricultural lands, and that a Phase II assessment is underway. Based on a review of currently available documents, OHA does not believe that there are any contamination issues which would prevent the land from being used for its zoned, allowable use.

- Conducting due diligence is an essential practice for a landowner that is also a trust. OHA believes that paying for one's own due diligence (such as environmental studies) is preferable than solely relying on another party's research. OHA does not believe it should be criticized for wanting to do its own due diligence and being prudent in its acquisitions.
- OHA wants lands in this Settlement Agreement that can produce outstanding income to be used for its programs. Often lands that can produce strong income are areas that would be redeveloped from former uses that contaminated them. OHA believes that the issue is not finding land that is pristine (which should perhaps not be developed in any case), but to find land that has value and can be redeveloped despite any potential contamination.

7. Concern: *Under this measure Hawaiians will not be able to sue OHA for accountability. OHA has waived our right to sue the state and all of its agencies, including themselves. The Legislature should take note that the Hawaiian peoples have been excluded from the legislative and legal discussions relating to this measure. Legislative hearings will be over before the "informational sessions" which the Senate forced on OHA are completed. The negotiations took place in secret, the valuations reports and data regarding the figures have been withheld. OHA is soliciting letters of support from its grantees, not its beneficiaries. Finally, the OHA video pushing the settlement features Auntie Gladys Brandt calling for unity and justice. This manipulation is intended to dupe Hawaiians into believing that Auntie Gladys supported this travesty – in reality, she died years before this shameful settlement was conceived by the current OHA trustees.*

Response:

- The proposed HB 266 HD2 does not protect OHA or the State from suit regarding the way this Settlement was negotiated or agreed to (although the parties do not believe any such suit would be legally viable).
- Hawaiians have repeatedly testified about this measure (both for and against), and OHA has had 45 meetings on this issue, across the islands. To claim that "Hawaiian peoples have been excluded from the legislative and legal discussions relating to this measure" is inaccurate.
- While OHA is holding briefings responsive to a Senate Concurrent Resolution, OHA had already scheduled meetings before that measure was passed.

- The response above shows that no OHA “valuation reports” exist, no formal written requests for information has been made, and so nothing has been withheld.
 - OHA believes that the fact that negotiations took place in confidence is something required of a prudent fiduciary – OHA believes that to do otherwise could be a breach of duty.
 - OHA is indeed soliciting comment on the Settlement Agreement – for and against – from beneficiaries, grantees, and the general public. To say that “OHA is soliciting letters of support from its grantees, not its beneficiaries” is untrue.
 - The 2008 OHA ceded lands broadcast and video were clear that the pre-taped segments came from the 1999 OHA documentary on ceded lands that included the appearance of the late Gladys Brandt.
8. Concern: *The Settlement is fatally flawed: i. The waiver language and the provisions relating to res judicata should be deleted from the measure; ii. A reservation clause should be added that states that all claims of Native Hawaiians against the state relating to the Ceded lands trust are reserved and that the scope of the settlement is only for claims relating to revenues owed to OHA from 1978 – 2008; (Hawaiians do not need to reserve claims against the US as the settlement does not involve the US or federal claims and Hawaiians know who owns the Ceded Lands – it belongs to the public and the Native Hawaiians under the Admissions Act.); iii. All references to a prospective figure for OHA revenue share (\$15 million) should also be deleted until OHA and the Governor can justify the figure. We are entitled to 20% of the 5(f) revenues; iv. Any prospective agreement should be subject to reopening and recalculation every 5 years in order to ensure that Hawaiians benefit from the increase in value, revenue and proceeds of the public land trust.*

Response:

- Again, OHA and the State have agreed to a different wording of the waiver language.
- Many Hawaiians believe that ceded lands do not belong to the general public, but the Admission Act, which is a Congressional enactment, transfers the land, in trust, to the State, to be used for one or more of five purposes.
- Deletion of references to \$15.1 million could mean that OHA would lose any guaranteed flow of funds.
- OHA (and just OHA) is only entitled, under current law relating to past periods, to 20% of funds, which is not fully defined. Current law relating to future periods provides OHA with \$15.1 million per year, unless and until changed.
- The House Bill provides for a biennial review of income and proceeds from the public land Trust, which is better than a review less frequently.

APPENDIX B COMMENTS AND QUESTIONS FROM COMMUNITY MEETINGS

For the purposes of making findings and recommendations about community meetings and the concerns raised there about the Settlement Agreement and proposed legislation, concerns, comments and questions were grouped under the headings specified below. This listing is representative but does not note when or how often each comment or question was repeated. As we have noted above, the vast majority of the orally expressed comments were criticisms, either of the settlement, OHA, the State, the United States, and others.

1. Hawaiian Nationhood and Sovereignty Claims

- *“You said the federal government owns the land and controls them. The corporate state of Hawai‘i has had not title or ownership of the lands. True ownership remains with the Kingdom.”*
- *“If and when the kingdom comes about and OHA is dissolved will the payments continue and be deposited in a kingdom bank account?”*
- *“Sovereignty is happening now. To continue to receives scraps - 20 percent; why are we seeking approval from an illegal entity. That’s no where near where we need to go. All this information should be open to everyone. The answer is very easy. Being a state underneath a bigger government is not working for us – anyone who belongs to this ‘āina. Our history tells us what happened what needs to be pono. We’re fighting among ourselves. If we have kānakas, I want to be able to tell you that you know your language know us. Do what is pono and as a piko belongs to this ‘āina. If you don’t know what it is, then perhaps you’re not where you need to be. Don’t sell us out for anything else than what is right.”*
- *“What about ceded lands inventory? Legislative impacts. Is OHA prepared to cede its inventory to the (Hawaiian) Nation?”*
- *“OHA you are not a sovereign nation, you are a state agency. You don’t sue the state of Hawai‘i. This settlement releases claim by the state of Hawai‘i to help Hawaiians.”*
- *“Is there anything being done to reinstate a Native Hawaiian government? How about an election eventually conducted by OHA backed by the people of Hawai‘i to start the process going?”*
- *“We’re not OHA’s enemy. We shouldn’t be fighting against ourselves. We begged for our country. We did not shed blood. We had a lawfully recognized government. All our brothers and sisters - each has a motherland; a country. We have so many bright, smart, young kānaka. We can’t continue to be divided. We want our great-grandchildren to have an ‘āina to call home. We must have our motherland 100 years from now.”*

- *“We still have the State and the OHA using the term ceded lands. It should be clarified – no better than crown lands and public trust lands. When you use “ceded” you give up the authority to the foreign authority to decide the decision making. There’s no such thing as ceded lands.”*
- *“The State constitution says that OHA cannot own land. Does the State grant OHA the authority to own sovereign land?”*

2. OHA, its Actions, and Accountability to its Beneficiaries

- *“As OHA, you should try to restore sovereignty for native Hawaiians. If increased revenue for Hawaiians is critical, why don’t we ask the military for damage payments? It’s the federal people who cause this problem.”*
- *“I do not support the Senate bill. What really concerns me the most is the fiscal/auditing and accountability. That needs to be addressed – the State and OHA cannot be the one doing the auditing. An independent auditor should be hired to ensure we (beneficiaries) get our fair/just amount that’s due. We don’t want any confusion. I prefer the House bill.”*
- *“I just want to see our people healthy and happy. So the bottom line is we can’t be such choosers, we need to come together as a community. If we can read between the lines what OHA is saying. We’ll do whatever we can to fight. Let’s fight smart. That’s why I commend you guys (OHA) for trying to do the best you can and trying to it right. I support this. Anything to help our kids be healthier and happy – to learn our culture and our way of life.”*
- *“Back in 1982-1986, I was a former trustee and chaired the resource committee dealing w/ lands. One of the issues – bite the hand that feeds us? We decided to sue the State. If we displease the State, we will not get paid. I’m very happy to see where the State is willing to be challenged. I want to congratulate OHA. This is the highest position we have had so far. Make clear that we are not settling the issues of sovereignty and nation hood. I agree OHA is not the right entity. Some native Hawaiians had this idea that this is a global settlement. I’m very glad that you said this is a settlement for just this particular time frame. Legislature always changes... I am satisfied w/ the settlement. Ideally, I’d like to see us get the management of these (all the ceded) lands.”*
- *“I’m glad I came. I wanted to understand what this is all about. I trust those (trustees) were doing the right thing. I just didn’t bother about it. Every time I hear criticism about OHA I tell people that that’s all we have. Thank you.”*
- *“What is OHA doing to service Hawaiians? OHA has to get out into the community and provide direct services like feeding the homeless.”*

3. Needs of the Hawaiian Community

- *“We have people (Hawaiians) with highest numbers in prison population, welfare, and uneducated. Here we are in 2008, I don’t feel any better than I did 30 years ago as a homesteader. Where are these funds going to go?”*
- *“If settlement passes – is it an extra \$15.1 million? I work for Nā Pua No‘eau who does receive funding. We serve many Native Hawaiians as possible. People would support the settlement. If increases funding for education, then I support this.”*
- *“We have an immersion school that can not even afford teachers and textbooks, does OHA even care about that?”*
- *“From a conceptual perception. I feel like we lost out. Just seems that Waikīkī and Kona would be better properties to have. I’m okay with Hilo, but Kona would have generated lots of money. First in my mind, I don’t think that we support the intent of the bill, but we do support bringing closure or resolving issues between the federal and state governments. I have so many t-shirts I held for the trustees and my family threw our support behind OHA during the elections. In reviewing this bill, I should have asked questions a lot sooner, maybe the bill would have been a lot better in its creation. Most of what you folks talk about and what we live are two separate worlds. I’m looking for tangible things that we can wrap ourselves around. Our needs as a community are so great. I really think that it’s time for OHA to move with something that resolves this settlement. Ask for input from the community to provide resolutions. Overall, the intent (of the bill) is good. I would like to see more accountability on OHA’s part and by the trustees to become excited again on this process. OHA and the trustees have lost their connection to the very people who have supported you. I hope the settlement is an indication for us to move forward – an opportunity for us to have a new beginning. Remember, we want to be involved.”*
- *“\$200 million revenues. Make sure the Legislature puts it in writing that those monies are for native Hawaiians only; it is for our inherent Hawaiians. We are the people who have been injured. The injured party is kanaka maoli; not for all people who live on Hawai‘i. We need to put the money to use for our people.”*

4. Settlement Negotiation Process

- *“We’ve been in court litigating, back and forth, why are we there?”*
- *“If those are stolen lands and taken away from us, and it is owed to us, why are we having to pay for something that has to be litigated over and over again?”*
- *“Was this settlement a process of community consultation?”*

- *“People need to be a part of the process. This generation has worked hard. It’s not that we don’t support the improvement of economics. Having an input on what lands are important to us before the parcels were selected.”*
- *“I understand negotiations have to be confidential, and perhaps outreach to the Native Hawaiian community would not have been a breach of that confidentiality. If we would have been included – what the parcels of land would have been of interest to the Native Hawaiian community – we would be feeling like a part of OHA’s decision-making. I’m feeling – and I’m sensing from others here – the disappointment that effort never happened. We didn’t need to know the nitty gritty... it’s the lack of communication between OHA and the community.”*
- *“How come this was a secret deal? How come the community wasn’t a part of this process?”*
- *“Is this a State thing? Can it go to the federal to be resolved? Where are the benefits going?”*
- *“I don’t believe there was any wisdom involved with this. The State was never going to pay us what is rightfully ours. This is disgusting. You’re ripping my kids off. You’re not living the American dream. It’s very obvious you guys cannot take care of what’s important to us. You’re not protecting us. There’s no honor in the way you deal.”*
- *“Why is OHA the party to receive a settlement under those conditions stated? It only looks on the outside like a barrier, a scheme.”*
- *“I’d like to say, “Shame”. I was very interested in hearing the presentation. It hurts me, that’s why I came forward. Hearing the talk tonight, and I’m very, very thankful to what everyone has said, and I want to make this clear. This is the only way you’re going to get it, because if you fight each other, you’re not going to get nothing. Ho‘o‘ike. So please let’s work together.”*
- *“I want to thank you for the presentation. Lots of information and differing interpretations. It takes a lot of time and money for negotiations. Need to adjust the poster’s illustration – represents genocide – government flowing with water; dry-up kanaka maoli.”*
- *“Open your eyes, open your ears. I stand in strong opposition to this bill. We totally reject this bill. I reject the process in which this was brought about. I do agree the revenue issue between OHA and the State needs to be resolved. They snuck out of one door – we felt rejected and out of the process. That’s what was wrong with this bill. They way it was decided. Create a new bill or amend this one. We offered our help and they did not want it.”*
- *“How come OHA didn’t seek our mana‘o first? Why was this done in secret?”*

- *“Can Hawaiians living on the continent or those serving in the military send written testimony for tomorrow’s hearing in the House?”*
- *“Is there someplace I can go to learn more about this? What can I do to show my support for this settlement?”*
- *“A lot of diversity of thought. I think some of the weaknesses in the bill is causing the confusion. Not having the community involved was not good. Should include value not just monetary value – cultural value. I’m not fully comfortable with the bill.”*
- *“Does this settle all the claims to ceded lands?”*
- *“Was the Cayetano offer better than this one?”*
- *“Will Hawaiian Homelands as a result of this settlement gain more land for Hawaiians who have been on the list for decades?”*
- *“What percentage of the total ceded lands revenue actually goes to OHA for use and betterment on conditions (for native Hawaiians)?”*
- *“I would like to express my support for the settlements to public lands.”*

5. Ceded Lands and Revenue Calculations

- *“I’d like to ask about the Heely decision which you didn’t elaborate on. There was an estimated price of \$519 million to \$1.2 billion. OHA got a payment of \$136.5 million plus \$200 million which comes to \$336.5 million. I think I just don’t like the fact we’re being shortchanged.”*
- *“In your negotiations, did you talk about the submerged lands – right now, people are aquifering into our waters and making profits of it. Does OHA get a percentage of it?”*
- *“The 20 percent is coming from where? What is the percentage of land for the island, like O’ahu?”*
- *“Is there a way to get info on how revenue was generated from this land? Submerged lands – what is the lease rent; revenues; what goes to OHA?”*
- *“For clarification, the lands are separate from the \$15.1 million. Revenues generated from the parcels of land would be under OHA control?”*
- *“Is there a possibility to sue and receive income from the airport?”*
- *“Who defined ceded?”*

- *“My wife and I support this settlement. In terms of what Trustee Heen said, you get what you can. Hawaiians were supposed to get 1/5 of the “pie”. Is anyone else saying, “Where’s my 20 percent by the other four?”*
- *“Namely I’m looking at what has transpired here. I’ve watched them. The 20 percent we were disturbed. Stryker brigade, military training. What Hawaiians gotta do – step up. Hit them for everything else. This was brought up to us to put the fire to our ‘ōkole. Who in the world would wait 30 years to get paid? We have to stick up. We need to attack the 20 percent. I think this agreement has some problems with it. It is not pono. Doesn’t make my na‘au feel good. This is the biggest thing.”*
- *“I’ve been working hard in my community. I’m concerned that there isn’t a real defined process by which the legislature will do its accounting and it’s evaluation of how they will come up with future income figures. These calculations come via taxes. Conceivably, OHA could receive ten times as much. I need to know if we can accept larger amounts. Give us all the money we deserve.”*
- *“How did you choose these parcels?”*
- *“Definition of Lands – ceded lands, public lands. Add another term, “stolen lands” – you give us room to discuss and acknowledgement.”*
- *“How did you come up w/ the \$200 million figure?”*
- *“How did you come up w/ the \$15.1 million figure?”*
- *“Why did you pick those land parcels?”*
- *“How come the parcels of land are not on Kaua‘i?”*

6. Future Impact of the Settlement Agreement

- *“I appreciate the information. I understand the settlement is a final settlement and it cannot be changed from the input from the community?”*
- *“Will you have to do environmental clean-up on these parcels of land?”*
- *“Does the present bill foreclose any possibility for OHA beneficiaries from getting future revenue.”*
- *“In the settlement, what does the State gain and what does the State lose?”*
- *“If the public sentiment is against the legislation what happens?”*
- *“How does the settlement bring Hawaiian closer to the land base? To a non-Hawaiian it seems to be too easy. It doesn’t seem fair.”*

- *“Is this a global settlement?”*
- *“Seems like a lot of money gets spent by OHA; perceived millions of dollars on advertising, overhead, marketing expenses that do not seem to reach the Native Hawaiian community. Will this increase go directly to the beneficiaries?”*
- *“The settlement does not identify how much of the \$15 million will be apportioned to the beneficiaries?”*
- *“I’m glad this is happening for me and my family. What is the income of the assets? Do you have a grasp of it?”*
- *“What about the properties that are vacant right now. Will we be paying taxes on it?”*
- *“This settlement stipulates at \$15 million minimum per year. I’m sure no one in the legislature is going to give us more money. What would lead the legislature to up this amount?”*
- *“Can you help me understand what does “culturally sensitive development” mean? What would be development on these three parcels?”*
- *“What does OHA give up in the proposed settlement? The right to sue? Does that mean in the future when my mo‘opuna is big that prevent us from suing?”*
- *“So the 20 percent is null and voided with this settlement?”*
- *“I want to thank OHA for taking the criticism some deserved; some undeserved. Need to include submerged ceded lands. That’s what was part of the Kingdom’s inventory. What remedy does the OHA to increase the revenue should additional ceded lands be identified?”*
- *“This sounds like another overthrow.”*
- *“How come no lands from Moloka‘i considered?”*
- *“Once the land is transferred over to OHA who is going to monitor it?”*
- *“What form of transfer would these lands be conveyed? Since executive orders are at ‘no cost’, then why would OHA have to take land at cost? Who would be the name on the deed/title? How does OHA define ceded land? Without inventory, can OHA go back and file a claim? Kaka‘ako under jurisdiction of HCDA – how can we develop as much as we can? Is there a development plan? With \$15.1 million, what will happen? Not get too top heavy – have budget hearings like counties. How can community have greater input? Ensure that programs are working. What about waters?”*

- *“OHA is giving up their right to sue. Does that mean the beneficiaries are also giving up their right to sue?”*

7. Terms and Conditions of the Settlement Agreement or Legislative Bills

- *“Regarding the three land parcels: Will they be owned by OHA? One says it will be under HCDA?”*
- *“Of the three places that you have, are there any others? Sand Island is that a ceded land too?”*
- *“It is troublesome because it does away with “the 20% of funds” provision, no matter what OHA says, it is a Global Settlement, it negatively affects Hawaiian rights to sue under HRS 673, and if a Con-Con does away with OHA (and there will be a Con-Con), then OHA has waived all rights.”*
- *“I have requested the valuation reports for these parcels and I haven’t received the documents for the evaluation. I see OHA is taking the Kalaeloa lands and with OHA money is going to do an environmental due diligence. When I was a trustee we would not look at any parcels without reports for a clean bill of health. I want to see these valuation reports we have the right to know on the 11 parcels. I would like to know what is the disclosure that requires that he put in; in this settlement – OHA conducted an environmental due diligence. You only do that when there’s evidence of toxicity? The AG says this is just a settlement of a very narrow revenue stream. We have a right to 1.8 million acres of land of the public land trust. We are not about to accept this waiver. What you said this evening is false. It’s our right to sue, not OHA’s right to sue. Why wasn’t this settlement distributed for our people to see? You’re trying to take this waiver language and stick it in the House bill. Can we please have the valuation reports? You’re selling out our people. Where are our Trustees?”*
- *“I think the land value is overstated. It should be appraised value, not market.”*
- *“I hope the Senate will cross over and see the light. We do support part of the House bill as we know it, and encourage the amendments. We have to do our due diligence.”*
- *“Senate Bill 2733, who drafted it? This bill is riddled with contradictions and inconsistencies that it cannot form one piece of sane thought. You’re definition of native Hawaiian and Hawaiian is unclear. The second paragraph, “public trust for native Hawaiians and the “general public”. Throughout the rest of the bill, the general public is not included. It states, native Hawaiians and Hawaiians. Is this a clever way to slip ‘the general public’ as Hawaiians? Exactly what is the difference between native Hawaiian and Hawaiians? It is not consistent it does not garner much thought... change to kanaka maoli.”*

APPENDIX C ADDITIONAL COMMUNITY OUTREACH EFFORTS

1. Radio Broadcast

On February 13, 2008, an episode of OHA's radio show, Nā 'Ōiwi 'Ōlino on KINE radio (AM 940) focused on the Settlement Agreement and proposed legislation. During the two-hour broadcast, hosts interviewed Justice Robert Klein, OHA Board Counsel, and Jonathan Likeke Scheuer, OHA Director of Land Management. Questions were posed on the history of the Ceded Lands, OHA's claims to income and proceeds and substance of the Settlement Agreement and the proposed legislation. This show was later edited to a one-hour program and rebroadcast on KINE (FM 105.1) radio on March 2, 2008.

2. Television Broadcasts

i. Governor and OHA Press Conference

On January 18, 2008, Governor Lingle and OHA Chairperson, Haunani Apoliona convened a press conference to announce the Settlement Agreement and proposed legislation. This press conference followed earlier briefings with the Senate and House leadership and with Native Hawaiian stakeholders. During the press conference, the Governor and Chairperson Apoliona discussed the substance of the Agreement, its meaning for beneficiaries and other residents of the State, and the process being undertaken to seek its passage in the Legislature. The press conference was covered by all major network television stations and the major daily newspapers.

ii. KITV Presentation on Ceded Lands

On January 22, 2008, KITV featured a one-hour television program on the Ceded Lands history and claims, and on the Settlement Agreement and proposed legislation. The first half of the program featured noted scholars from the University of Hawai'i at Mānoa who discussed the ownership and history of the ceded lands, and the second half of the program featured Chairperson Apoliona and OHA legal counsel and Land staff discussing the substance and provisions Settlement Agreement and proposed legislation.

The program reached a statewide audience and was also broadcast through KITV's website and OHA's website. The program was also rebroadcast on February 9, 2008.

3. Internet Sources

i. Electronic Meeting – Hālāwai Punaewele

On January 22, 2008, OHA and Attorney General hosted an interactive internet program through OHA's website (www.oha.org/pastdue/halawai.php) on the Settlement Agreement and proposed legislation. The purpose of the on-line meeting was to complement the meetings being conducted around the State by providing an easily accessible forum for state and national parties to better understand the issues.

During the meeting, a brief overview of the Ceded Lands history, OHA's legal challenges, and the basis for the Settlement were provided. On-line viewers were then invited to submit their questions and comments. During the show, there were approximately 34 persons who participated.

ii. Honolulu Advertiser Hot-Seat

On February 12, 2008, the Honolulu Advertiser interactive internet program, the Hot Seat, featured OHA Administrator Clyde Nāmu'o and Attorney General Mark Bennett. During the program, the Advertiser facilitated an on-line question and answer session regarding the Settlement Agreement and proposed legislation.

In the one-hour program, sixty-one comments or questions were noted. Many of the questions and comments centered on the legal basis for the Settlement Agreement, the legal standing of the Ceded Lands, and OHA plans and actions regarding programs and services for its beneficiaries.

iii. OHA Website – www.oha.org/pastdue

In addition to the various print, radio, television, and internet sources, OHA created a specific webpage on its website-(www.oha.org/pastdue) to post copies of the Settlement Agreement, legislative bills, and other information regarding this issue. Additionally, links were provided to the KITV video program and electronic meeting.

APPENDIX D PUBLIC SURVEY RESULTS

OHA retained Ward Research which convened focus groups in October 2007 to measure the extent of support or opposition to the settlement OHA and the State were closing to wrapping up, and to identify issues for further exploration through polling. When presented with a hypothetical news story of a settlement on income and proceeds from the Public Land Trust due to OHA, the groups responded with differing levels of knowledge about OHA, the Public Land Trust, and Hawaiian issues in general. However, the groups also suggested strong support for a settlement and passage of legislation to resolve the issue of what is owed to OHA under Article XII of the State Constitution. These focus group findings were later used by Ward Research to develop two polls aimed at understanding the community's support for the Settlement Agreement and proposed legislation.

Provided below are the results of two public surveys conducted by Ward Research for OHA. One survey was conducted in November 2007, prior to the announcement of the Settlement Agreement, and the second was conducted in February 2008, after the Settlement Agreement and proposed legislation were announced.

OHA's purpose in conducting both surveys was to gauge the public's understanding of the issue of proceeds and income due to OHA from the public land trust, as well as their reaction to the Settlement Agreement and proposed legislation.

1. November 2007 Ward Research Survey

During the period from November 6-13, 2007, Ward Research conducted a telephone survey among 500 Hawai'i residents. The overall objective of the survey was to gauge reactions to a settlement between the State and the OHA regarding the payment of ceded land revenues. The results of this survey are provided below with a maximum margin of error of +/-4.4% at the 95% confidence level.

Hawai'i residents generally felt that "Native Hawaiians have not been treated fairly and we must do what is right." Seven in ten agreed (70% rating "strongly agree" or "somewhat agree") with this statement. Additionally, seven in ten *disagreed* (68% rating "somewhat disagree" or "strongly disagree") that "those of us in Hawai'i today are not responsible for what happened to Native Hawaiians, so we don't have to do anything."

The topic of ceded lands was introduced to the respondents as follows: "Congress admitted Hawai'i as the 50th state when it passed the Admission Act. The Act gave the State control over 1.2 million acres of land, called public land trust or ceded lands, that once belonged to the Kingdom of Hawai'i before the overthrow in 1893." Respondents were read a series of statements and asked whether "yes, you're aware," "no, you're not aware," or "you think you heard something about it, but you're not sure" of the statements.

- A majority of respondents (59%) reportedly were aware that “Congress officially apologized for the U.S. participation in the illegal overthrow of the Kingdom of Hawai‘i, and acknowledged that the land was taken from the Kingdom without consent or compensation to Hawaiians.” More than one half (55%) also knew that OHA was established by the State Constitution to serve the needs of the Hawaiians, using revenues from the public land trust.
- Very few respondents (35%) knew of the Admission Act provision that part of the revenue generated by the public land trust may be used to better the condition of Native Hawaiians. Even fewer (27%) were aware that the State Legislature passed a law setting aside 20% of all revenues generated by the public land trust for OHA.
- While one out of three respondents (33%) reportedly were aware that the “Hawai‘i Supreme Court has repeatedly affirmed the State’s obligation to provide 20% of revenues from the public land trust to Native Hawaiians,” only two out of ten (23%) knew that "full" payments were never made to OHA because the Legislature has not resolved disagreements about the State’s obligation.

When respondents were told that OHA and the State have been negotiating for years on a fair amount for payment, 45% said that the State should pay what is legally owed to OHA, while 38% said that the State should pay whatever it can and 8% favored not paying anything at all. Two-thirds of respondents (68%) did feel, however, that once a settlement is reached, the Legislature should approve it. Respondents were told that this settlement could cost between \$100 million and \$500 million and would include a mix of cash and commercial and industrial properties. A majority of respondents (83% rating “strongly agree” or “somewhat agree”) also supported the idea that OHA be held accountable for the money and that the public should be informed of what they do with the money.

The findings below are based on sub-sample analysis.

- Among non-Hawaiian respondents, awareness of issues relating to the public land trust, or ceded lands, increased with age.
- Hawaiians were generally more likely than non-Hawaiians to answer “yes, I am aware” to the statements relating to public land trust or ceded lands. The biggest difference: significantly larger proportions of Hawaiians than non-Hawaiians were aware that “Congress officially apologized for the U.S. participation in the illegal overthrow of the Kingdom of Hawai‘i and acknowledged that the land was taken from the Kingdom without consent or compensation to Hawaiians.”

SURVEY RESULTS, NOVEMBER 2007

	% saying “Yes, I am aware”	
	Hawaiians	Non-Hawaiians
The Admission Act requires that the revenue generated by the public land trust be used for five public purposes, including the betterment of the conditions of Native Hawaiians.	42%	33%
The Hawai‘i State Constitution established OHA in 1978 to serve the needs of the Hawaiians using revenues from the public land trust.	69%	51%
The State Legislature passed a law in 1980 setting aside 20% of all revenues generated by the public land trust for OHA (one-fifth, since there are five purposes).	34%	26%
In 1993, Congress officially apologized for the U.S. participation in the illegal overthrow of the Kingdom of Hawai‘i and acknowledged that the land was taken from the Kingdom without consent or compensation to Hawaiians.	80%	55%
The Hawai‘i Supreme Court has repeatedly affirmed the State’s obligation to provide 20% of revenues from the public land trust to Native Hawaiians.	42%	31%
Because the Legislature has not resolved disagreements about the State’s obligation, full payments were never made to OHA.	30%	22%
Base	97	399

Shading denotes differences significant at the $p \leq 0.05$ level.

- Only 39% of non-Hawaiians felt that the State should pay whatever is legally owed to OHA (compared to 66% of Hawaiians); 41% instead felt that the State should pay whatever it can (compared to 26% of Hawaiians), and 9% said the State should not pay anything at all (compared to 3% of Hawaiians).
- Two-thirds of non-Hawaiian respondents (66%) answered “yes,” when asked, “Do you believe the Legislature should approve a settlement that both the State and OHA agree to?” Four-fifths of the Hawaiian respondents (81%) similarly answered “yes.”
- While 66% of non-Hawaiians agreed (66% rating “strongly agree” or “somewhat agree”) that “Native Hawaiians have not been treated fairly and we must do what is right, 29% felt otherwise.
- Approximately two out of three non-Hawaiians *disagreed* (65%) that “those of us in Hawai‘i today are not responsible for what happened to Native Hawaiians, so we don’t have to do anything.” One out of three agreed (32%) with the statement, however.
- Comparable proportions of Hawaiians and non-Hawaiians agreed that “if the State gives OHA the money, we should hold OHA accountable and know what they do with the money.”

Levels of Agreement	Hawaiians		Non-Hawaiians	
	Strongly/ Somewhat Agree	Strongly/ Somewhat Disagree	Strongly/ Somewhat Agree	Strongly/ Somewhat Disagree
Native Hawaiians have not been treated fairly and we must do what is right.	89%	9%	66%	29%
Those of us in Hawai'i today are not responsible for what happened to Native Hawaiians, so we don't have to do anything.	12%	84%	32%	65%
If the State gives OHA the money, we should hold OHA accountable and know what they do with the money.	85%	12%	83%	12%
Base	97		403	

Shading denotes differences significant at the $p \leq 0.05$ level.

2. February 2008 Ward Research Survey

During the period from February 15-26, 2008, on behalf of OHA, Ward Research conducted a poll of 500 individuals (of which 100 self-identified as being Native Hawaiian) to gauge their opinion on the Settlement Agreement and proposed legislation. The results are summarized below and contain a margin of error of +/- 4.4% for Total and +/- 9.8 for Native Hawaiian results. The preface to the questions, the questions asked, and the results of each question are provided below:

Q1. Congress admitted Hawai'i as the 50th State when it passed the Admission Act. The Act gave the State control over 1.2 million acres of land, called the public land trust, lands that once belonged to the Kingdom of Hawai'i before the overthrow in 1893 and were later "ceded" to the United States. I'll read a list of statements. For each, please tell me "yes, you are aware", "no, you are not aware", or "you think you heard something about it, but you are not sure". The first is:

(A) The Admission Act requires that the revenue generated by the public land trust be used for five public purposes, including the betterment of the conditions of Native Hawaiians?

	<u>Total</u>	<u>Hawaiian</u>
Yes, you are aware.....	40%	42%
No, you are not aware.....	48	41
Heard something, but not sure.....	12	17

(B) The Hawai'i State Constitution established the Office of Hawaiian Affairs in 1978 to serve the needs of the Hawaiians using revenues from the public land trust?

	<u>Total</u>	<u>Hawaiian</u>
Yes, you are aware.....	60%	75%
No, you are not aware.....	31	16
Heard something, but not sure	9	9
Don't know	1	0

- (C) The State Legislature passed a law in 1980 setting aside 20% of all funds generated by the public land trust for OHA?

	<u>Total</u>	<u>Hawaiian</u>
Yes, you are aware.....	37%	57%
No, you are not aware.....	54	36
Heard something, but not sure	10	7

- D) In 1993, Congress officially apologized for the U.S. participation in the illegal overthrow of the Kingdom of Hawai'i, and acknowledged that the land was taken from the Kingdom without consent or compensation to Hawaiians?

	<u>Total</u>	<u>Hawaiian</u>
Yes, you are aware.....	67%	73%
No, you are not aware.....	24	19
Heard something, but not sure	9	8

- (E) Because the Legislature has not resolved disagreements about what funds should be included in the 20-percent share for OHA, full payments were never made to OHA. The unresolved issues have been called DISPUTED CEDED LAND REVENUES.

	<u>Total</u>	<u>Hawaiian</u>
Yes, you are aware.....	43%	60%
No, you are not aware.....	49	35
Heard something, but not sure	8	6
Don't know	1	0

- Q2. After years of negotiations, OHA and the State reached agreement to resolve the disputed ceded land revenues. These revenues come from retail sales and fees generated by businesses using ceded land. The proposed settlement calls for the state to pay OHA \$13 million in cash, plus \$187 million in state-owned land, for a total of \$200 million. This one-time-payment settles the dispute. Respondents were asked which most closely describes their thoughts about the agreement on disputed revenues from the public land trust:

	<u>Total</u>	<u>Hawaiian</u>
The state can't afford to pay more than \$13 million, so giving OHA land that can generate some revenues is a good settlement.	28%	27%
The cash-and-land value of \$200 million is too little for what is owed OHA to cover the years since it was established in 1978.....	34%	62%
The proposed settlement is too much.....	22	4
Don't know	16	8

Q3. The Legislature passed a law setting aside 20% of all funds generated by the public land trust since 1978 for OHA. But after 30 years of disagreement, the proposed settlement reaches a compromise amount of \$15 million dollars. That is roughly 20% of the revenues generated by the public land trust today. The proposal calls for the Legislature to eliminate the 20% calculation every year and instead provide OHA \$15 million dollars a year. If the State fails to pay this annual amount, OHA can sue. OHA can also ask the State for larger payments in the future if the revenues from the public land trust increase. Respondents were asked which most closely describes their thoughts:

	<u>Total</u>	<u>Hawaiian</u>
The \$15 million payment to OHA is fair and reasonable.	38%	36%
The \$15 million payment to OHA is too much.....	24	5
The \$15 million payment to OHA is too little.	22	51
Don't know	16	8

Q4. In the following statements, respondents were asked whether they strongly agree, somewhat agree, somewhat disagree, or strongly disagree.

(A) Native Hawaiians have not been treated fairly and we must do what is right.

	<u>Total</u>	<u>Hawaiian</u>
Strongly agree	40%	67%
Somewhat agree	31	30
Somewhat disagree	13	1
Strongly disagree	11	1
Don't know	5	1

(B) Those of us in Hawai'i today are not responsible for what happened to Native Hawaiians, so we don't have to do anything.

	<u>Total</u>	<u>Hawaiian</u>
Strongly agree	8%	3%
Somewhat agree	16	9
Somewhat disagree	33	18
Strongly disagree	39	70
Don't know	4	1

Q5. The proposed settlement was reached after 4 years of negotiations between OHA and the State Attorney General after thirty years of lawsuits and legislation that did not completely solve the issue. OHA and the State are conducting a series of public informational sessions on the proposed settlement. Please respond to the following:

(A) Have you attended or do you plan to attend a public informational session?

	<u>Total</u>	<u>Hawaiian</u>
Yes	16%	37%
No.....	82	56
Don't know	3	7

(B) Do you believe OHA is the best representative to negotiate on behalf of Native Hawaiians?

	<u>Total</u>	<u>Hawaiian</u>
Yes	52%	65%
No.....	27	30
Don't know	21	5

(C) Do you believe the State Attorney General is the best representative to negotiate on behalf of the State?

	<u>Total</u>	<u>Hawaiian</u>
Yes	51%	48%
No.....	28	36
Don't know	22	17

(D) Do you believe the Legislature should approve this proposed settlement?

	<u>Total</u>	<u>Hawaiian</u>
Yes	55%	72%
No.....	26	20
Don't know	19	9

3. Honolulu Advertiser Insert Survey Results

On March 17, 2008, OHA distributed a mail-back survey as an insert in the Honolulu Advertiser. The readership of the Honolulu Advertiser is estimated at 150,000 and is distributed throughout the State. The mail-back survey provided readers with a general overview of the issue regarding past due amounts to OHA from the Public Land Trust and asked the readers for their thoughts and comments as to whether or not they agree or not with the Settlement Agreement and proposed legislation.

As of March 24, 2008, the mail-back responses to the Honolulu Advertiser Insert Poll revealed the following numbers in support of the Settlement Agreement and proposed legislation:

‘Ae (Yes).....	280 = 56%
A‘ole (No).....	198 = 40%
Blank:.....	22 = 4%