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## FREQUENTLY ASKED QUESTIONS

### 1. What are ceded lands?

*The term refers to land that originally belonged to the Kingdom of Hawai'i. Under the ancient Hawaiian system until the Māhele in 1848, private ownership of land did not exist. Land was held in trust by the King for the benefit of the Hawaiian people.*

At the Māhele, land ownership was created. Some land became private property under the Monarch (Crown Lands), some was awarded to the Ali'i, and some was awarded to the commoners. Subsequently, the Crown Lands were further divided into two classes: Crown lands, reserved for the Monarchy as a source of income, and Government Lands, set aside for the support of the Government. The Crown and Government Lands continued to be held in trust.

After the 1893 illegal overthrow of the Kingdom of Hawai'i, the Republic of Hawai'i was created, and the Republic lumped together the Crown and Government Lands. *These lands were taken from the Kingdom of Hawai'i without consent from or compensation to the Hawaiian people.* At annexation in 1898, the Republic "ceded" control of 1.8 million acres of these lands to the U.S. Government. During the period of the Republic, some lands were sold to private entities.

In 1921, the Hawaiian Homes Commission Act set aside 200,000 acres of ceded lands for the rehabilitation of Native Hawaiians.

The U.S. Government and the Territory of Hawai'i controlled the ceded lands, and continued to sell and use various parcels. A large portion of the remaining ceded lands – 1.4 million acres -- were given to the new state of Hawai'i under the Admissions Act in 1959. The federal government retained control of around 400,000 acres of land for military bases, national parks, and other uses.

### 2. What is the Public Land Trust?

*The "Public Land Trust" was created by the Admissions Act and is made up of 1.4 million acres of ceded lands that were given to the new state by the federal government.* These lands are about 40 percent of the total land in Hawai'i and about 95 percent of state-controlled lands. Over the years some of these lands have been sold or exchanged; others are leased out; some have been transferred to the counties or other government entities.

3. **What are the purposes of the “Public Land Trust” and the state’s obligations under the trust?**

The Admission Act required the state to manage and use the trust for five public purposes in section 5(f): betterment of the conditions of native Hawaiians, support of public education, development of farm and homeownership, public improvement, and lands for public use.

*In exchange for becoming a state, the people of Hawai‘i accepted the obligation to use the public land trust for the betterment of conditions of native Hawaiians.*

4. **How has the State of Hawai‘i fulfilled its legal obligations to native Hawaiians under the Admission Act?**

*The state of Hawai‘i has never completely fulfilled its obligation to native Hawaiians.*

From statehood in 1959 until 1978, revenue from the Public Land Trust were used primarily to fulfill only one public land trust purpose: public education.

Part of this failure was because there was no agency and no mechanism to use the Public Land Trust for the betterment of conditions of native Hawaiians.

In 1978 the Constitutional Convention proposed creation of the Office of Hawaiian Affairs (OHA), specifically to receive revenues from the Public Land Trust. The proposed Constitutional Amendment was ratified by the voters of the State of Hawai‘i. The amendment became Chapter 10 of the Hawai‘i Revised Statutes and OHA was formally established.

Since 1980, the Legislature and the Courts have taken action to fulfill the requirements of the Constitutional Amendment and Chapter 10, but with only partial success.

- In 1980, the Legislature passed **Act 273** which directed 20 percent of all funds derived from the Public Land Trust to be given to OHA. *Payment was minimal.*
- In 1990, the Legislature passed **Act 304** identifying specific categories of ceded lands revenues from the Public Land Trust from which 20 percent of revenues should go to OHA. *Payment was still minimal and OHA and the State had difficulty implementing Act 304.*
- In 1993, the Legislature passed **Act 35** providing OHA *with \$130 million as partial back payment to OHA for the years 1980 through 1991 but they could not agreed on whether OHA was entitled to public land trust revenue from disputed sources of these revenues.* OHA has invested and grown the principal of those funds and only spends a portion of the income of those funds for its programs.

- In 1996, *Circuit Court Judge Daniel Heely ruled OHA was entitled to a 20-percent share of disputed revenues from the Public Land Trust*, clarifying the categories of ceded land revenues to be provided to OHA.
- In 1997, the Legislature passed **Act 329**, freezing OHA's ceded land payments at \$15.1 million until 1999.
- In 2001, the *Hawa'ii Supreme Court reaffirmed the state's obligation to native Hawaiians under the Admission Act*. The Court also ruled that Judge Heely was partially correct but Act 304 was invalid because it conflicted with federal law. Governor Cayetano immediately ceased all payments to OHA.
- In 2003, partial payment was made under **Executive Order 03-03** when Governor Lingle reinstated undisputed amounts of \$9 million annually.
- In 2006, the *Hawai'i Supreme Court reaffirmed the Legislature has a constitutional obligation to pay OHA*. It also noted it was the Legislature's obligation to enact a law to fulfill this obligation.
- In 2006, under **Act 178**, that amount was increased to \$15.1 million annually with a one-time payment of \$17.5 million as catch-up from 2001, all for undisputed amounts.

**5. Where are most of the ceded lands in the Public Land Trust located?**

The lands are on the major islands of Hawai'i, Maui, Moloka'i, O'ahu, and Kaua'i. They include portions of, on O'ahu: the Honolulu International Airport, Sand Island, Honolulu Harbor, Kapi'olani Park, Ala Moana Beach Park; on Hawai'i: General Lyman Field (Hilo International Airport), the Hilo Municipal Golf Course; on Maui, Kahului Harbor, the Wai'ehu Golf Course; on Kaua'i, the Wailua Golf Course; on Moloka'i, the Moloka'i Airport.

**6. What agencies control and/or use the ceded lands in the Public Land Trust today?**

The State and County governments and their agencies are major users. They include: the Department of Land and Natural Resources, the University of Hawai'i, the Department of Education, and Department of Transportation.

**7. Does the settlement extinguish all claims by native Hawaiians to all the ceded lands?**

No, the agreement signed on January 17, 2008 only concerns the amount of income and proceeds from the public land trust that OHA is entitled to receive. Since OHA was not established until 1978 when voters approved the constitutional amendment, OHA can only negotiate for public land trust revenues from 1978. While the public land trust is made up of ceded lands, there are ceded lands held by the federal government and the county governments. Claims stemming from the illegal overthrow of the Kingdom of Hawai'i will need to be negotiated with a future native Hawaiian governing entity.

**8. Why was the settlement described as a “permanent resolution” if the overthrow claims remain unresolved?**

The “permanent resolution” refers to the pro rata portion of the income and proceeds from the public land trust that OHA is entitled to under the Hawai‘i Constitution for the years 1978 to 2008. Unfortunately, the past legislation did not clarify how OHA’s pro rata portion from the public land trust would be calculated. This ambiguity led to lawsuits, with the Hawai‘i Supreme Court deciding the issue needed to be resolved at the Legislature, not the courts. However, Hawaii Supreme Court reiterated the legal obligation of the State of Hawai‘i to provide revenues from ceded lands for the betterment of Hawaiians. The January 17, 2008 settlement also sets a permanent amount of at least \$15.1 million per year as OHA’s share of public land trust revenues from now into the future.

By accepting the \$15.1 million per year OHA also gives up the right to sue the State for claims of the public land trust as long as the Legislature continues to provide that amount. If the Legislature fails to fulfill its obligation, OHA is allowed to sue for payment of OHA’s pro rata portion of income and proceeds from the public land trust for the years \$15.1 million is not paid.

**9. Why is land included in the settlement agreement?**

OHA decided to take a large portion of the \$200 million payment in land because the state was prepared to transfer these lands at tax assessed values and because the characteristics of these properties are consistent with OHA’s Real Estate Vision, Mission, and Strategy.

**10. Doesn’t this mean the land is to be used only by native Hawaiians?**

No. As with OHA’s current land holdings including Waimea and Wao Kele O Puna, the general public will benefit from and be able to use these lands. In addition, as with OHA’s other land holdings, input from Hawaiians and other stakeholders will be sought as OHA develops plans for the future use of these land parcels. The revenues derived from the lands will be managed by OHA to support programs and services for Hawaiians.

**11. Is this a better deal for Hawaiians or the State of Hawaii? How does it compare to past settlement offers or terms?**

OHA and the State administration believe the settlement is fair, just, and reasonable for both parties. The agreement is a negotiated settlement, reached after four-and-a-half years of meetings and mediation. Both sides agreed the State had a legal obligation described in the Hawai‘i Constitution, the Admissions Act, and various laws adopted by the State Legislature. This settlement cannot be fairly compared to previous discussions which were conducted over a 30-year period under different interpretations of state and federal laws.