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OHA Responds to State's Appeal of Ceded Lands Decision

The Office of Hawaiian Affairs expressed disappointment at the decision by the State of Hawai'i to file an appeal to the U.S. Supreme Court over the Jan. 31 landmark ruling by the Hawai'i Supreme Court that prevents the sale and transfer of ceded lands until "unrelinquished claims" of Native Hawaiians have been resolved.

Board of Trustees Chairperson Haunani Apoliona said, "We at OHA still believe that the Hawai'i Supreme Court ruled correctly that the state should keep the ceded land trust intact until Native Hawaiian claims to these lands are settled. We trust the U.S. Supreme Court will not second guess the justices of the Hawai'i State Supreme Court."

The Hawai'i Supreme Court relied primarily on the Apology Resolution, which was passed by both houses of Congress and then signed into law by then-President Bill Clinton in 1993, the year that marked the 100th anniversary of the overthrow of the Hawaiian Kingdom.

The resolution apologized to Native Hawaiians for the United States' military participation in the illegal overthrow.

The unanimous opinion, written by Chief Justice Ronald Moon, said in part, "We believe ... that the Apology Resolution – which is at the heart of the plaintiffs' claim – and the related state legislation, give rise to the State's fiduciary duty to preserve the corpus of the public land trust, specifically, the ceded lands, until such time as the unrelinquished claims of the native Hawaiians have been resolved."

In 1994, OHA and four individual plaintiffs – Pia Thomas Aluli, Jonathan Kamakawiwo'ole Osorio, Charles Ka'ai'ai and Keoki Kamaka Ki'ili – sued to prevent the State of Hawai'i from selling ceded lands.

At that time, the State was ready to sell about 500 acres in Lāhaina in a project called Leiali'i and another 1,000 acres in Kona in a project referred to as La'i'ōpua.

The lawsuit alleged that in light of the Apology Resolution, the State as trustee of the ceded land trust should not sell ceded lands pending resolution of Native Hawaiian claims to ceded lands.

In 2002, Circuit Judge Sabrina McKenna entered judgment in favor of the State and held that the State was authorized under the Admission Act to sell ceded lands.

The Hawai'i Supreme Court reversed the lower court decision, and held that the Apology Resolution and similar State legislation required the State to not sell ceded lands pending resolution of Native Hawaiians claim to those lands through the political process.

The State Supreme Court ordered that the case be remanded to the Circuit Court with instructions to issue an order granting the plaintiffs' request for an injunction against the defendants from selling or otherwise transferring to third parties the Leiali'i parcel and any other ceded lands from the public land trust until the claims of the Native Hawaiians to the ceded lands have been resolved.

"The opinion of the Hawai'i Supreme Court was well-researched and thoughtfully written," OHA attorney Jon Van Dyke said. "We are confident that if the U.S. Supreme Court chooses to take up this matter that it will rule in our favor."