

# NEWS RELEASE



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## **OHA BILL FOR 2009 LEGISLATURE TO PREVENT SALE OF CEDED LANDS**

HONOLULU – The Office of Hawaiian Affairs announced today it has drafted a bill for introduction to the 2009 session of the state Legislature that will enact public policy for a moratorium on the sale and exchange of ceded lands.

The decision by OHA Trustees to move forward with this legislation emerged following the state administration's appeal to the U.S. Supreme Court of the unanimous ruling by the Hawai'i Supreme Court that prevents ceded lands from being sold or transferred until the "unrelinquished claims" of Native Hawaiians to those lands are settled.

"We continue to believe that the Justices of the Hawai'i Supreme Court ruled correctly and this bill is the legislative vehicle to implement the decision of the state's highest court," said OHA Trustee Haunani Apoliona, Chairperson of the OHA Board of Trustees. "This legislation is a means of maintaining the status quo and ensuring that the Public Lands Trust is preserved in order to ensure a fair and just settlement leading to reconciliation with the Native Hawaiian people."

Under the bill, the state would be prohibited from the fee simple sale of lands in the Public Land Trust that were:

- Ceded to the United States by the Republic of Hawai'i in 1898.
- Acquired in exchange for lands so ceded, and granted to the State of Hawai'i by the Admission Act of 1959.
- Retained by the United States under the Admission Act of 1959 and later conveyed to the State in 1964.

The prohibition would also apply to the exchange of these lands for private lands.

While the bill prevents the sale of the lands, it would allow for transfer of lands between state agencies and allow for the state to lease the lands, for a true public purpose.

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 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.

In January, 2008, The Hawai‘i Supreme Court, in a unanimous decision, reversed the lower court decision, and held that in light of the Apology Resolution and similar State legislation, the State possessed a 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.

The state administration appealed to the U.S. Supreme Court and in October, the court said it would hear the case. The state filed its opening brief last month and OHA’s brief is due Jan. 21. Oral arguments before the court in Washington, D.C., is scheduled for Feb. 25.

“This case, now on appeal before the U.S. Supreme Court, is of grave concern,” Apoliona

said. “This appeal could very well provide the Justices of the U.S. Supreme Court an opportunity to undermine all Native Hawaiian programs and assets as well as the legal basis for Native Hawaiian federal recognition. A far-reaching decision by the U.S. Supreme Court could affect OHA’s ability to carry out its mission of bettering the conditions of Native Hawaiians.”

Apoliona said that OHA has requested and continues to request that the state administration withdraw its appeal to the U.S. Supreme Court. “While we understand the State’s need to assert its own interests, it is imperative that the State concurrently fulfill its Trust duties and obligations to Native Hawaiians regarding our Trust lands and rights as native indigenous people. We look to the Legislature to assist in this regard.”

“Preservation of the land trust will enable Native Hawaiians to continue down the path toward self-determination in order to reach a fair and just outcome with respect to the unrelinquished claims to these lands of the Native Hawaiian people,” she said.

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