

STATE OF HAWAI‘I
OFFICE OF HAWAIIAN AFFAIRS
560 N. NIMITZ HIGHWAY, SUITE 200
(VIRTUAL MEETING - VIA ZOOM WEBINAR)

This virtual meeting can be viewed and observed via livestream on OHA’s website at www.oha.org/livestream or listened by phone using the call-in information above. A physical meeting location, open to members of the public who would like to provide oral testimony or view the virtual meeting, will be available at 560 N. Nimitz Hwy., Suite 200, Honolulu, HI 96817.

**Minutes of the Public Land Trust (PLT) Working Group
MEETING SUMMARY
November 20, 2023**

ATTENDANCE:

Chair Carmen Hulu Lindsey, OHA
Chair Dawn Chang, DLNR
Trustee Mililani Trask, OHA
Luis Salaveria, Dept. of Budget and Finance
Ryan Kanaka‘ole, Attorney General’s Office
Sherry Broder

ADMINISTRATIVE SUPPORT:

Colin Kippen, OHA
Amber Kalua, OHA
Everett Ohta, OHA
Kevin Chak, OHA

The video recording of this PLT Working Group meeting can be viewed at:

https://youtu.be/fdM_qb5Q_zI?si=xEt3mBCAdBp_qB-0

I. Call to Order

The Public Land Trust Working Group (PLTWG) meeting was called to order on Monday, November 20, 2023, at 10:01am. This was a virtual meeting that could be viewed and observed via livestream at www.oha.org/livestream. The members present at the time the meeting was called to order were Hulu Lindsey, Mililani Trask, Sherry Broder, Dawn Chang, Luis Salaveria and Ryan Kanaka‘ole.

II. Approval of Meeting Summaries

- 1. October 17, 2023**
- 2. October 31, 2023**

No one signed up to provide testimony on this item. Discussion began at 10:02am. At 10:02am, the motion to approve the meeting summaries for October 17, 2023 and October 31, 2023 was moved by Hulu Lindsey, seconded by Mililani Trask, and unanimously approved by Hulu Lindsey, Mililani Trask, Sherry Broder, Dawn Chang, Luis Salaveria and Ryan Kanaka‘ole.

III. Further discussions and comments regarding the State Land Information Management System (SLIMS), the Public Land Trust Information System (PLTIS), the Department of Land and Natural Resources (DLNR) Reports to the Legislature pursuant to Act 178, Session Laws of Hawai‘i 2006, and the Report to the Office of Hawaiian Affairs on the Accuracy and Completeness of a report by the Department of Land and Natural Resources to the Hawaii State Legislature on Public Land Trust Receipts for Fiscal Year ended June 30, 2016, by N&K CPAs, Inc. (2018).

No one signed up to provide testimony on this item. Discussion began at 10:03am.

IV. Action Item PLT 23-01: Review, discussion, and comments to draft letter to state agencies regarding the reporting made and supporting documentation available to finalize:

- (1) an accurate and complete inventory of ceded lands and Public Land Trust lands, including submerged lands; and**
- (2) an accurate and complete accounting of the income and proceeds from the ceded lands and the Public Land Trust lands, including submerged lands, under their jurisdiction.**

No one signed up to provide testimony on this item. Discussion began at 10:41am. The letter distributed during the meeting is attached to this summary, Attachment 1. At 10:54am, Sherry Broder moved to *adopt this letter to be sent to state agencies that we have before us, the draft is dated 11/20/2023, and we will add to this letter a letterhead for the Public Land Trust Working Group with the list of the members of the group included; we will have the Chair sign the letter on behalf of the working group, and we will use the list that Luis sends us for the list of state departments and agencies, and by agencies we mean those independent entities that have their own lands or could have their own lands as opposed to a department within an agency within a bigger department.* This motion was seconded by Luis Salaveria, and unanimously approved by Hulu Lindsey, Mililani Trask, Sherry Broder, Dawn Chang, Luis Salaveria and Ryan Kanaka‘ole.

Motion 2: At 10:58am, Sherry moves to *add to the letter, the physical location and email address of the PLT Working Group and instruct them to send their responses there.* This motion was seconded by Hulu Lindsey,

and unanimously approved by Hulu Lindsey, Mililani Trask, Sherry Broder, Dawn Chang, Luis Salaveria and Ryan Kanaka'ole.

V. Discussion regarding request to the counties and federal government for information relating to the inventory and identification of ceded lands and Public Land Trust lands, including submerged lands, under their jurisdiction, and accounting of the income and proceeds derived therefrom.

No one signed up to provide testimony on this item. Discussion started 10:59am; however, this item has been deferred to the next meeting.

**VI. Discussion regarding methods to determine accuracy and completeness of:
(1) current state agencies reporting of income and proceeds from the public land trust; and
(2) current inventory of the public land trust as reported in the PLTIS.**

No one signed up to provide testimony on this item. This item came up for discussion at 10:59am; however, the working group members agreed that this item came up while they were discussing item III, and they had no further comments to discuss.

VII. Discussion: Next PLT Working Group meeting

No one signed up to provide testimony on this item. Discussion began at 11:00am. The next PLTWG meeting is scheduled for Thursday, January 4, 2024, at 10:00am.

VIII. Adjournment

At 11:06am, Luis Salaveria moved to adjourn this meeting, Sherry Broder seconded, and the motion was unanimously approved by Hulu Lindsey, Mililani Trask, Sherry Broder, Dawn Chang, Luis Salaveria and Ryan Kanaka'ole. This meeting was adjourned at 11:06am.

DRAFT PLTWG LETTER TO STATE AGENCIES 101323
See Exhibit A attached for list provided by DLNR of valid agencies and
list agencies reporting to PLTIS
For discussion purposes only 11/20/23

I. Introduction

The Public Land Trust Working Group was established by Act 226 (SLH 2022). Our specific statutory responsibilities are to:

- (1) Account for all ceded lands in the public land trust inventory;
- (2) Account for all income and proceeds from the public land trust; and
- (3) Subsequently determine the twenty per cent pro rata share of income and proceeds from the public land trust due annually to the office of Hawaiian affairs for the betterment of the conditions of Native Hawaiians.

At this time in the process, we are asking all state agencies that hold title to, maintain management control or otherwise use ceded lands, to provide information, data, documents and maps to ensure that they have completely and accurately identified and reported to the Department of Land and Natural Resources (“DLNR”) the following: (1) all ceded land parcels for the purpose of an inventory and (2) all income and proceeds collected or received from the public land trust.

II. Legal Foundation

In 1978, the people of Hawaii ratified constitutional amendments relating to the rights, claims, culture and language of Native Hawaiians proposed by the Constitutional Convention, including but not limited to article XII, sections 4, 5, and 6, of the Hawaii State Constitution, which established the Office of Hawaiian Affairs (“OHA”) and clarified its right to a pro rata share of the income and proceeds of the ceded lands.

Article XII, section 4 provides that the ceded lands “shall be held by the State as a public trust for native Hawaiians and the general public.”

Article XII, Section 6 provides that “[t]he board of trustees of the Office of Hawaiian Affairs shall exercise power as provided by law: to manage and administer the proceeds from the sale or other disposition of the lands, natural resources, minerals and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in section 4 of this article for native Hawaiians.”

Article XVI, section 7, of the Hawai'i State Constitution requires the State to enact legislation to comply with its trust obligations. "Any trust provisions which the Congress shall impose, upon the admission of this State, in respect of the lands patented to the State by the United States or the proceeds and income therefrom, shall be complied with by appropriate legislation " This section also protects the pro rata share due to OHA, among other things. "Such legislation shall not diminish or limit the benefits of native Hawaiians under Section 4 of Article XII."

Act 273, Session Laws of Hawai'i 1980, enacted section 10-13.5, Hawaii Revised Statutes, to implement OHA's constitutionally mandated pro rata share provided "Twenty per cent of all funds derived from the public land trust, described in section 10-3, shall be expended by the office, as defined in section 10-2, for the purposes of this chapter."

III. Accounting

Act 178, Session Laws of Hawai'i 2006, requires all state agencies that use or manage public land trust lands to provide an accounting of all receipts from lands described in section 5(f) of the Admission Act for the prior fiscal year.

Section 5 of Act 178 requires that:

Not later than January 1 of each year, the department of land and natural resources, with the cooperation of the department of budget and finance and any other state department or agency that uses or manages public lands, shall provide an accounting of all receipts from lands described in section 5(f) of the Admission Act for the prior fiscal year. With respect to each receipt, the department of land and natural resources shall identify:

- (1) The total gross amount;
- (2) The amount transferred to the office of Hawaiian affairs;
- (3) The amount retained by the State;
- (4) The account or fund in which the amount specified in paragraph (3) was transferred or deposited;
- (5) The parcel of land subject to section 5(f) of the Admission Act that generated the receipt, whether by tax map key number, department of land and natural resources inventory number, or other recognizable description; and
- (6) The state department or agency that received the total gross amount identified in paragraph (1).

The accounting shall also indicate whether any parcel of land described in section 5(f) of the Admission Act was sold or exchanged in the prior fiscal year and, if so, the amount of consideration that the State received for the respective parcels.

Please describe any and all reviews or audits to determine if the income and proceeds or receipts reported to DLNR contain any inaccuracies.

If there are any omissions from the income and proceeds reported to DLNR for inclusion in its Accountings of All Receipts from Lands Described in Section 5 (f) of the Admission Act for Fiscal Year 2021 and Fiscal Year 2022, please provide all information required by Act 178, including but not limited to the source and amount of each omitted amount.

If the Report to the Office of Hawaiian Affairs on the Accuracy and Completeness of a report by the Department of Land and Natural Resources to the Hawaii State Legislature on Public Land Trust Receipts for Fiscal Year ended June 30, 2016, by N&K CPAs, Inc. (2018) identified any gaps in reporting for this agency, please describe the steps taken to include the income and proceeds or receipts reported as a gap.

IV. Inventory

Act 54, Session Laws Hawaii 2011, Section 2 (b) describes the goals of the PLTIS. “The purpose of this Act is to facilitate the establishment of a comprehensive information system to inventory and maintain information about the lands of the public land trust described in section 5(f) of the Admission Act and article XII, section 4 of the Hawaii State Constitution. “

Act 54, Section 1 is clear that the PLTIS is to be a “complete and accurate inventory of all lands.” “The information system shall consist of a complete and accurate inventory of all lands in the public land trust to which state agencies hold title or over which they maintain management control.” Section 2 (b).

Act 54, Section 2 (g) requires “All state and county agencies shall assist the department in facilitating the establishment of the public land trust information system and shall comply with any and all requests the department of land and natural resources may make for any information and services pertinent to the completion of the information system.”

Act 54, Section 2 (c) requires the DLNR to consult with the state and county agencies to develop this comprehensive and complete and accurate inventory.

At minimum, the department of land and natural resources shall determine whether the following information relating to each parcel of land in the operating inventory would be useful:

- (1) The parcel's location by metes and bounds, tax map key number, or both;
- (2) The parcel's size rounded to the nearest acre;
- (3) The date the parcel was acquired;
- (4) If conveyed out of the public land trust, the date the parcel was conveyed;

(5) Whether the parcel was acquired by the State pursuant to section 5(b) or 5(e) of the Admission Act or Public Law 88-233, or in exchange for a parcel of land acquired by the State pursuant to those laws;

(6) Whether the parcel is a subdivided portion of a larger parcel acquired by the State pursuant to section 5(b) or 5(e) of the Admission Act or Public Law 88-233, or in exchange for a parcel of land acquired by the State pursuant to those laws;

(7) Whether, the parcel or any portion of the parcel is ceded land, and the extent to which the parcel consists of ceded land;

(8) The name of the state or county agency holding title to the parcel;

(9) Whether the parcel has been set aside and the name of the state or county agency to which the parcel has been set aside;

(10) The parcel's current state land use, state land classifications pursuant to section 172-10, Hawaii Revised Statutes, and county zoning designations;

(11) A description of all natural resources, including minerals and water, found on or appurtenant to the parcel ;

(12) A description of every easement, covenant, regulatory condition, or other benefit or servitude to which the parcel is entitled or subject; and

(13) A description of all leases, uses, or other disposition to which the parcel has been put.

Please describe the information from the list of 13 above that were included in this agency information and data provided to DLNR to create and maintain the PLTIS.

Please describe any and all steps that are taken by this agency to verify your data and to determine if there are any inaccuracies in the PLTIS.

Please identify any current inaccuracies discovered in this agency information provided or otherwise available to the DLNR or now present in the PLTIS and include: (A) A description of how the inaccuracy will be corrected; and (B) Copies of all documents related to the correction of those inaccuracies.

Please describe any and all principles or guidelines utilized by this agency in its reporting. For instance, if a parcel is part ceded lands and part non-ceded lands, how does the agency determine whether it will be included as ceded lands.

Please confirm that all conservation district lands or preservation zoned lands which this agency holds title or over which it maintains management control were included in the reporting.

Please confirm that all Public Law 88-233 transferred since August 21, 1959 from the federal government to the state and to this agency was reported to DLNR and is included in the PLTIS.

V. Submerged lands

Submerged lands are included in the Public Land Trust. The Hawai`i State Constitution, Article XV, Section 1, describes the boundaries of the state of Hawaii and provides a basis for an identification of submerged lands that should be included in the ceded lands inventory.

[t]he State of Hawaii shall consist of all the islands, together with their appurtenant reefs and territorial and archipelagic waters, included in the Territory of Hawaii on the date of enactment of the Admission Act, except the atoll known as Palmyra Island, together with its appurtenant reefs and territorial waters; but this State shall not be deemed to include the Midway Islands, Johnston Island, Sand Island (offshore from Johnston Island) or Kingman Reef, together with their appurtenant reefs and territorial waters.” See also Admission Act, sections 2 and 5(a).

Please identify and describe any submerged lands within the jurisdiction or use of this agency and provide the information and data required by Act 54.

VI. Conclusion

This communication is without waiver of any and all rights, remedies, claims, or defenses of our any party. Nothing herein or responses hereto shall be construed to constitute an admission or waiver for any purposes.

Please respond to the PLTWG within 45 days.

Thank you for your prompt attention to this matter.

Exhibit A

Agencies Information provided by DLNR

1. List of agencies

Agribusiness Development Corporation
 City and County of Honolulu
 City and County of Honolulu - Board of Water Supply
 City and County of Honolulu - Honolulu Authority for Rapid Transportation
 County of Hawaii
 County of Kauai
 County of Maui
 Department of Accounting and General Services
 Department of Accounting and General Services - Automotive Management Division
 Department of Accounting and General Services – Leasing
 Department of Accounting and General Services – Other
 Department of Accounting and General Services – Planning
 Department of Accounting and General Services - Stadium Authority
 Department of Agriculture
 Department of Agriculture - Agricultural Resource Management
 Department of Agriculture – Other
 Department of Budget and Finance
 Department of Business, Economic Development and Tourism
 Department of Business, Economic Development and Tourism - Foreign Trade Zone
 Department of Business, Economic Development and Tourism - Hawaii Community Development Authority
 Department of Business, Economic Development and Tourism - Hawaii Film Office
 Department of Business, Economic Development and Tourism - Hawaii Housing Finance and Development Corporation
 Department of Business, Economic Development and Tourism - Hawaii Tourism Authority
 Department of Business, Economic Development and Tourism - High Technology Development Corporation
 Department of Business, Economic Development and Tourism - Natural Energy Laboratory of Hawaii Authority
 Department of Business, Economic Development and Tourism – Other
 Department of Commerce and Consumer Affairs
 Department of Defense
 Department of Education
 Department of Hawaiian Homelands
 Department of Health
 Department of Human Resources
 Department of Human Services
 Department of Human Services - Vocational Rehabilitation Division
 Department of Human Services - Hawaii Public Housing Authority
 Department of Human Services – Other
 Department of Industrial Relations
 Department of Land and Natural Resources

Department of Land and Natural Resources - Division of Boating and Ocean Recreation
 Department of Land and Natural Resources - Division of Conservation and Resources Enforcement
 Department of Land and Natural Resources - Division of Forestry and Wildlife
 Department of Land and Natural Resources - Land Division
 Department of Land and Natural Resources – Other
 Department of Land and Natural Resources - State Parks
 Department of Public Safety
 Department of Taxation
 Department of the Attorney General
 Department of Transportation
 Department of Transportation – Administration
 Department of Transportation – Airports
 Department of Transportation – Harbors
 Department of Transportation – Highways
 Hawaii Health Systems Corporation
 Judiciary
 Legislature
 Office of Hawaiian Affairs
 Office of Information Management Technology
 Office of the Governor
 Office of the Lieutenant Governor
 OTHER
 University of Hawaii

2. List of agencies that have reported parcels and/or encumbrances in PLTIS.

City and County of Honolulu
 City and County of Honolulu - Board of Water Supply
 City and County of Honolulu - Honolulu Authority for Rapid Transportation
 County of Hawaii
 County of Kauai
 County of Maui
 Department of Accounting and General Services - Automotive Management Division
 Department of Accounting and General Services – Leasing
 Department of Accounting and General Services – Planning
 Department of Accounting and General Services - Stadium Authority
 Department of Agriculture
 Department of Agriculture - Agricultural Resource Management
 Department of Business, Economic Development and Tourism
 Department of Business, Economic Development and Tourism - Foreign Trade Zone
 Department of Business, Economic Development and Tourism - Hawaii Community Development Authority
 Department of Business, Economic Development and Tourism - Hawaii Film Office

Department of Business, Economic Development and Tourism - Hawaii Housing Finance and Development Corporation
 Department of Business, Economic Development and Tourism - Hawaii Tourism Authority
 Department of Business, Economic Development and Tourism - High Technology Development Corporation
 Department of Business, Economic Development and Tourism - Natural Energy Laboratory of Hawaii Authority
 Department of Defense
 Department of Education
 Department of Hawaiian Homelands
 Department of Health
 Department of Human Services - Vocational Rehabilitation Division
 Department of Human Services - Hawaii Public Housing Authority
 Department of Land and Natural Resources
 Department of Land and Natural Resources - Division of Boating and Ocean Recreation
 Department of Land and Natural Resources - Division of Forestry and Wildlife
 Department of Land and Natural Resources - Land Division
 Department of Land and Natural Resources - State Parks
 Department of Transportation – Airports
 Department of Transportation – Harbors
 Department of Transportation – Highways
 Office of Hawaiian Affairs
 University of Hawaii

3. Contact was made and interviews were conducted with over 40 stakeholder state and county agencies as part of the initial data gathering effort. Stakeholder agencies included in the survey included:

1. Department of Accounting and General Services (DAGS)
2. Department of Agriculture (DOA)
3. Agribusiness Development Corporation
4. Department of the Attorney General (AG)
5. Department of Budget and Finance (B&F)
6. Department of Business, Economic Development, and Tourism (DBEDT)
 - 6.1. Aloha Tower Development Corporation (ATDC)
 - 6.2. Hawaii Community Development Authority (HCDA)
 - 6.3. Hawaii Film Office
 - 6.4. Hawaii Housing Finance and Development Corporation (HHFDC)
 - 6.5. High Technology Development Corporation (HTDC)
 - 6.6. Natural Energy Laboratory of Hawaii Authority (NELHA)
 - 6.7. Foreign Trade Zone (FTZ)
7. Department of Commerce and Consumer Affairs (DCCA)
8. Department of Defense (DOD)

9. Department of Education (DOE)
10. Department of Hawaiian Home Lands (DHHL)
11. Department of Health (DOH)
12. Department of Human Resources Development (DHRD)
13. Department of Human Services (DHS)
14. Department of Labor and Industrial Relations (DLIR)
15. Department of Land and Natural Resources (DLNR)
 - 15.1. Land Division (LD)
 - 15.2. Division of Boating and Ocean Recreation (DOBOR)
 - 15.3. Division of Forestry and Wildlife (DOFAW)
 - 15.4. Division of State Parks
16. Department of Public Safety (PSD)
17. Department of Taxation (DOTAX)
18. Department of Transportation (DOT)
 - 18.1. Airports Division
 - 18.2. Harbors Division
 - 18.3. Highways Division
19. Hawaii Health Systems Corporation (HHSC)
20. Judiciary (JUD)
21. Office of Hawaii Affairs (OHA)
22. University of Hawaii (UH)
23. City and County of Honolulu (C&C)
 - 23.1. Board of Water Supply (BWS)
 - 23.2. Honolulu Authority for Rapid Transportation (HART)
24. County of Maui
25. County of Hawaii
26. County of Kauai

A total of six stakeholder agencies reported that they do not own, nor have any management of, any lands within the state. Those six are:

1. Department of the Attorney General
2. Department of Budget and Finance
3. Department of Commerce and Consumer Affairs
4. Department of Human Resources Development
5. Department of Labor and Industrial Relations
6. Department of Taxation