STATE OF HAWAIʻI

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

Due to COVID-19, the OHA Board of Trustees and its standing committees will hold virtual meetings until further notice. The virtual meeting can be viewed and observed via livestream on OHA's website at www.oha.org/livestream or listened by phone: (213) 338-8477, Webinar ID: 839 7221 5051 A physical meeting location open to the general public will be available at 560 N. Nimitz Hwy., Suite 200, Honolulu HI 96817. All members of the public that wish to access the physical meeting location must pass a wellness check and provide proof of full vaccination or a negative COVID-19 test taken within 72 hours of entry.

Minutes of the Office of Hawaiian Affairs
Board of Trustees
MINUTES
July 26, 2022

ATTENDANCE:
Chairperson Carmen Hulu Lindsey
Trustee Leinaʻala Ahu Isa
Trustee Dan Ahuna
Trustee Kaleihikina Akaka
Trustee Keliʻi Akina
Trustee Luana Alapa
Trustee Brendon Kaleiʻāina Lee
Trustee John Waiheʻe

ADMINISTRATION:
Sylvia Hussey, CEO
Casey Brown, COO
Ramona Hinck, CFO
Everett Ohta, Interim General Counsel
Nietzsche Ozawa, Interim Senior Legal Counsel
Robert Klein, Board Counsel
Sherry Broder, External Counsel
Arlene Aguinaldo, IT Suppport
Kevin Chak, IT Support
Tiger Li, IT Support
Kimberly Kealoha Piscotta, Pub. Policy Advocate

BOT STAFF:
Amber Kalua, Trustee Aide
Kanani Iaea, Trustee Aide
Lehua Itokazu, Board Secretary

GUEST:
Kim Miyashiro, KUMABE
Marie Kumabe, KUMABE

Call to Order

Chair Hulu Lindsey Calls the Board of Trustees Meeting to order for Tuesday, July 26, 2022, at 1:32 p.m. Board Secretary, please do a roll call.

MEMBERS			Present	TIME ARRIVED
TRUSTEE	LEINA‘ALA	**AHU ISA**	X	
TRUSTEE	DAN	**AHUNA**	X	
TRUSTEE	KALEI	**AKAKA**		Joins meeting at 1:33pm
TRUSTEE	KELI‘I	**AKINA**	X	
TRUSTEE	LUANA	**ALAPA**	X	
TRUSTEE	BRENDON KALEI‘ĀINA	**LEE**	X	
TRUSTEE	MILILANI	**TRASK**		Excused
TRUSTEE	JOHN	**WAIHE‘E**	X	
CHAIRPERSON	CARMEN HULU	**LINDSEY**	X	
			7	

At the Call to Order, **seven (7)** Trustees are PRESENT, thereby constituting a quorum.

Chair Hulu Lindsey Due to Covid-19, the OHA Board of Trustees and it’s standing committees will hold virtual meetings until further notice. The virtual meeting can be viewed and observed via livestream on OHA’s website at www.oha.org/livestream

Before we begin, I would like to note that items IV.A 1 and 2, and II.B. were received under the 72-hour deadline. Let me go over some quick announcements. Please mute your mics when you are not speaking. We are recording today's meeting for the sole purpose of producing written minutes, which will become the official record of this meeting.

Joining the Trustees today is my staff, my Aides-Kanani Iaea and Amber Kalua, and Board Secretary-Lehua Itokazu. Also with us today is Robert Klein-Board Counsel and Sylvia Hussey-our CEO. I will call on Sylvia to introduce staff participating.

Sylvia Hussey, CEO Thank you Chair and good afternoon, everyone. Today, we have our COO-Casey Brown, our CFO-Ramona Hinck, Interim Sr. Legal Counsel-Nietzsche Ozawa, and supporting from IT, we have Arlene, Tiger, and Kevin.

Chair Hulu Lindsey Thank you. Just a quick note, the new Sunshine Law under Act 264 is that the OHA BOT and Committees may no longer take oral testimony only at the beginning of a board’s agenda or meeting. This means I will call on testifiers for each item on the agenda before any action is taken. In order to allow time for all of our beneficiaries to testify, you will be given five (5) minutes to share your mana‘o. Your name will be called, and your microphone will be unmuted when it is your turn to testify. If you are not audible, you will be muted, and the next testifier will be called.

New Business

A. Committee on Resource Management

1. Action Item RM #22-16: Approve the Awarding of Community Grants – Economic Stability, from Solicitation #22-04, Published March 31, 2022*

Trustee Waihe‘e Your Committee on Resource Management, having met on July 26, 2022, and after full and free discussion, recommends approval of the following two (2) actions to the Board of Trustees:

Action 1

regarding: Action Item RM #22-16:

Approve the following Fiscal Year 2022, Community Grants – Economic Stability disbursements totaling $896,660 from Core Operating Budget (Object Code 56530) for:

Organization/Island	Award Amount
Purple Maia Foundation	$498,660
Hawaii Community Lending	$398,000
Total	$896,660

Trustee Akaka Seconds the motion.

Trustee Waihe‘e Moves

Approve the following Fiscal Year 2022, Community Grants – Economic Stability disbursements totaling $896,660 from Core Operating Budget (Object Code 56530) for:

Organization/Island	Award Amount
Purple Maia Foundation	$498,660
Hawaii Community Lending	$398,000
Total	$896,660

Trustee Akaka Seconds the motion.

	1	2	‘AE (YES)	‘A‘OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI AHU ISA			X			
TRUSTEE DAN AHUNA			X			
TRUSTEE KALEI AKAKA		X	X			
TRUSTEE KELI‘I AKINA			X			
TRUSTEE LUANA ALAPA			X			
TRUSTEE BRENDON LEE			X			
TRUSTEE MILILANI TRASK						X
TRUSTEE JOHN WAIHE‘E	X		X			
CHAIRPERSON HULU LINDSEY			X			

TOTAL VOTE COUNT			**8**			**1**
MOTION: [ ] UNANIMOUS [X] PASSED [ ] DEFERRED [ ] FAILED **Motion passes with Eight (8) YES votes, Zero (0) NO votes and One (1) EXCUSED.**						

2. **Action Item RM #22-17: Approve the Awarding of Community Grants - Health, from Solicitation #22-03, Published March 31, 2022***

Trustee Waiheʻe Madame Chair, Iʻd like to move to approve

Action 2

regarding: Action Item RM #22-17:

Approve the following Fiscal Year 2022, Community Grants – Health disbursements totaling $470,000 from Core Operating Budget (Object Code 56530) for:

Organization/Island	Award Amount
Ma Ka Hana Ka 'Ike Building Program	$220,000
Alu Like, Inc.	$250,000
Total	$470,000

Trustee Akaka Seconds the motion.

Trustee Waiheʻe Moves

Approve the following Fiscal Year 2022, Community Grants – Health disbursements totaling $470,000 from Core Operating Budget (Object Code 56530) for:

Organization/Island	Award Amount
Ma Ka Hana Ka 'Ike Building Program	$220,000
Alu Like, Inc.	$250,000
Total	$470,000

Trustee Akaka Seconds motion

	1	2	ʻAE (YES)	ʻAʻOLE (NO)	KANALUA (ABSTAIN)	EXCUSED

TRUSTEE LEI AHU ISA			**X**			
TRUSTEE DAN AHUNA			**X**			
TRUSTEE KALEI AKAKA		**X**	**X**			
TRUSTEE KELIʻI AKINA			**X**			
TRUSTEE LUANA ALAPA			**X**			
TRUSTEE BRENDON LEE			**X**			
TRUSTEE MILILANI TRASK						**X**
TRUSTEE JOHN WAIHEʻE	**X**		**X**			
CHAIRPERSON HULU LINDSEY			**X**			
TOTAL VOTE COUNT			**8**			**1**
MOTION: [ ] UNANIMOUS [X] PASSED [ ] DEFERRED [ ] FAILED **Motion passes with Eight (8) YES votes, Zero (0) NO votes and One (1) EXCUSED.**						

B. Report of the Permitted Interaction Group to Investigate the Activation of Kakaako Makai Site E, 919 Ala Moana Blvd., *no discussion.* HRS§92-2.5(b)(1)(B).*

Casey Brown, COO Aloha Trustees, I will send by email the PIG 5 report. This is the land and property PIG regarding the activation of Kakaʻako Makai site E. The report contains proprietary information so we ask you to please keep the confidentiality of this material. The password to open the document is in the email.

C. Action Item BOT #22-10: Accept and Implement the Report of the Permitted Interaction Group to Work Together to Investigate the Potential Involvement of Federal Agencies in Enforcement of Legal Claims, Land Inventories, Financial Accountings, and Indigenous Consultations related to the Federal Trust Responsibilities and the Trust set forth in Section 5(f) of the Admission Act*

Sylvia Hussey, CEO I will be calling on Sherry Broder who was a part of the Permitted Interaction Group (PIG). We also have our Public Policy Advocate, Kealoha Piscotta, who also participated on the PIG. As authorized by the Board in the first action item, the PIG with its perscribed purview was formulated. The report that was distributed, was distributed on July 12th and today is the discussion.

Trustee Akina In this PIG, it was recognized that no land inventory was ever produced. My question is in regards to OHA's Kipuka Database, what was the sources of information for the land that was included in the geographical information?

Sherry Broder, External Counsel Zac prepared the online access materials. He used what could be found, in other words, he looked for everything he could that would relate to specific parcels. It is a very lengthy process to do, and he only did the smaller islands.

Sylvia Hussey, CEO In the report, attachment A, includes all of the sources of what OHA's current Public Land Trust inventory, the methodology, and the different sources there. If you look at that attachment, you will see the sources that was used currently.

Trustee Akina What is our feeling of the level of confidence that we have in terms of the comprehensiveness and accuracy of the information?

Sherry Broder, External Counsel I think what was done was very important and very useful, but I do not think we can say it is 100% accurate. What was used was what was available. If you look at page eight of the PIG report, the process steps discuss some of the additional steps that need to be taken. There may be maps in the national archives, the DOI and other Federal agencies. We don't even know yet, what else might be able to be utilized; that is one of the recommendations of the PIG, to pursue further information that would help make the inventory more accurate.

Trustee Akina The report does say that we need more specialized assistance in order to piece together the actual data. I am trying to get a sense of how much work is needed and where we are with that.

Chair Hulu Lindsey We had an employee on staff that did the islands of Kauaʻi and Molokaʻi. The rest of the islands are not completed. As you can imagine, the Big island being the largest, the population and size of Oʻahu as well as Maui, all of that is not done. We do not have inventory of those three islands.

Sylvia Hussey, CEO On page 5 of the report item E, there is details regarding an RFP that we have put out to find the ceded land inventory pieces for Hawaiʻi and Hawaiʻi Island. If you look at pages 5, 6, and 7 of the report, you will see the detailed data, tables and elements that we are asking for. One of the experiences Zac had while doing these detailed layers of study is there are gaps in title. In one source data, the title will appear in one configuration and then the next data source will belong to someone else or it drops off the map in terms of making a connection to the title. Part of the difficulty is mapping the title and the disposition of the various pieces as it goes from point A to point B. We included the RFP details so Trustees could get a sense of how pervasive and wide this work is.

Trustee Lee Is it now the assertion of the PIG that the inventory of Kauaʻi and Molokaʻi are complete and 100% accurate?

Chair Hulu Lindsey No one checked Zacʻs work but that is his assumption, Kauaʻi and Molokaʻi are complete.

Trustee Lee Regarding page 5 letter E, do we have a timeline?

Chair Hulu Lindsey I believe there are more recommendations in the report.

Sylvia Hussey, CEO Letter E is going through the process and that process would be the timeline where a respondant would be able to do this. We have asked to include what we want in the professional services.

Trustee Lee I had a question on letter D, where it talks about international and indigenous, and it talk about the declaration of rights of indigenous peoples. It says that OHA should implement policies around that. The PIG was specifically to engage with federal agencies; U.S. history has shown us that the United States of America almost always ignores international law. I agree with the United Nations Declaration on the Right of Indigenous Peoples (DRIP), but if I am not mistaken, when it was passed by the U.N., the U.S. voted against it. It was said that the U.S. said it doesn't apply to us. When the PIG did its work and was engaging with the Federal Government, was there any sense from the DOI or the Senate Committee on Indian Affairs that there was a change of heart?

Sherry Broder, External Counsel Although the United States did not agree to the declaration of the rights of the indigenous peoples at the time when it was passed at the United Nations along with Canada, Russia, and New Zealand, nonetheless when Obama became President, he made an announcement; it states that it reverses the policy and would agree to the direct. Since Biden's become President, this has been a renewed interest again, in the rights of indigenous peoples and of course, the Secretary of the Interior now is herself an indigenous person, she does have some interest. At the end of the day, if a case goes all the way up to the U.S. Supreme Court challenging something relying upon DRIP, it may or may not be adopted by the Court; your pessimistic view might be one that the court would follow, that doesn't mean the federal agencies under the direction of the President or Department of Interior under the direction of the Secretary of Interior won't be looking at the DRIP.

Trustee Lee Thank you Sherry, I wasn't trying to take a pessimistic view. I was trying to follow along on what the U.S.

had a history of doing. Thank you for that clarification. Based on that, I agree with the Permitted Interaction Group. I think it would be a good idea in the future. A fact that we have a current Administration that is very much in favor of indigenous peoples, it'll be good that OHA has these policies in place so that when we have a Federal Administration that is willing to work with indigenous peoples, we will already have these policies in place. This makes perfect sense.

Kealoha Piscotta, Public Policy Advocate The only thing I would add is the United Nations is one place where global ideal can be elevated as a declaration of intention and belief. The world court has recognized the global community. It becomes a legal and moral standard. It is like the Declaration of the United States, it isn't legally binding but most people want to support it.

Trustee Akina I assume that we're looking at potentially making claims for shares of income and proceeds that are not coming to OHA, whether it be for telescope time or research funds and so forth, what kind of processes are being looked at?

Sylvia Hussey, CEO I will refer Trustee Akina to page 34 recommendation B. 4. Identifying other non-land lease basis for monetizing the proceeds of an income derived from Public Lands Trust, Public Land Trust being more than just land, any of the proceeds and the resources. In this case as you pointed out, monetizing fees for telescope use, commercial commodity value of fishing, and any kind of commercial activity in the ceded land public trust area as well as harvesting, research, etc., the process we would use is the same process we would use in terms of advocacy. Taking a look at policies, the procedures, the regulations, and pull those threads. Put them in context of whether the applicability of the 20% of Public Land Trust should be applied to more than just $1 land lease, that is one recommendation of the PIG. We would use the regular processes we have regarding policy.

Trustee Akina I assume Administration will be recommending where claims should be made?

Sylvia Hussey, CEO Right, after making the exploration and coming to the Board with policy positions.

Trustee Akina Who in Administration will be driving the implementations?

Sylvia Hussey, CEO Primarily our Chief Advocate and Chief Operating Officer. Once we put that into place, we will bring that back to the BAE Committee, that is an overall strategy. As a reminder, when we go into session 2023, it is the session that the biennium bills for 2024-2025 will be a part of that. We will come back to the Board for any policy positions by the end of this year.

Trustee Lee What is the sentiment of any Federal agency that the PIG interacted with, if any? Because this concept of resources and minerals rights and ocean, that's very much a modern concept. That's not something that was really taken into consideration, either in 1893 at the time of the overthrow or in 1959 when these lands were transferred to the State of Hawai'i from the Federal Government. Has the Federal Government acknowledged that part of their ceded land and public land trust turning over to the State of Hawaii, that it includes all of those other things? Or are they asserting that its just land?

Sherry Broder, External Counsel The submerged lands have always been considered to be part of the land. These are the lands under the ocean water. I think with regards to mineral rights and geothermal, the State AG has written an opinion saying that to the extent that this geothermal on DHHL lands has the claims to the revenues.

Trustee Lee I do not mean to interrupt you but I'm aware of the DHHL and the Hawai'i AG, I am specifically asking about the Feds. I just want to know during the PIG's interaction with the Federal Government, where did the Feds stand on this?

Sherry Broder, External Counsel I understand what you are saying now. We did talk to staff at the DOI and the Senate Committee at the Indian Affairs. I don't think they were in a position to give a final opinion on the opinion of their agency or committee on this issue. We did have initial discussions and look for the opinions for the Interior Solicitor who is the

lawyer for the Interior. We didn't get a no. We also didn't pose the question directly. I don't want to mislead you and have you think we accomplished something.

Trustee Lee The fact that the Feds didn't just come out and say no is a win.

Sherry Broder, External Counsel What we did get from them was a real interest in working with us. I think we will get some help from them. I think the time is right to push ahead.

Chair Hulu Lindsey I will add that we did ask directly Senator Schatz for assistance and he did not say no.

Trustee Ahuna Are we making a decision on today's PIG report?

Chair Hulu Lindsey Yes

Trustee Ahuna I just wanted to say thank you, the PIG report was very thorough and extensive. Thank you to all the people who worked on it.

Trustee Akaka I move to Accept and Implement the Report of the Permitted Interaction Group to Work Together to Investigate the Potential Involvement of Federal Agencies in Enforcement of Legal Claims, Land Inventories, Financial Accountings, and Indigenous Consultations Related to the Federal Trust Responsibilities and the Trust Set Forth in Section 5(f) of the Admission Act as attached.

Trustee Waihe'e Seconds the motion.

Trustee Akaka Moves to

Accept and Implement the Report of the Permitted Interaction Group to Work Together to Investigate the Potential Involvement of Federal Agencies in Enforcement of Legal Claims, Land Inventories, Financial Accountings, and Indigenous Consultations Related to the Federal Trust Responsibilities and the Trust Set Forth in Section 5(f) of the Admission Act as attached.

Trustee Waihe'e Seconds the motion

	1	2	'AE (YES)	'A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI AHU ISA			X			
TRUSTEE DAN AHUNA			X			
TRUSTEE KALEI AKAKA	X		X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE LUANA ALAPA			X			
TRUSTEE BRENDON LEE			X			
TRUSTEE MILILANI TRASK						X
TRUSTEE JOHN WAIHE'E		X	X			
CHAIRPERSON HULU LINDSEY			X			
TOTAL VOTE COUNT			8			1

MOTION: [ ] UNANIMOUS [X] PASSED [ ] DEFERRED [ ] FAILED

Motion passes with Eight (8) YES votes, Zero (0) NO votes and One (1) EXCUSED.

Executive Session

Chair Hulu Lindsey I will entertain a motion to move us in executive session.

Trustee Akaka moves to recuse into executive session.

Trustee Ahuna Seconds the motion.

The Board recuses into Executive Session at 2:10 p.m.

Motion to recuse into executive session pursuant to HRS Section§92-5						
	1	**2**	**‘AE (YES)**	**‘A‘OLE (NO)**	**KANALUA (ABSTAIN)**	**EXCUSED**
TRUSTEE LEI AHU ISA			**X**			
TRUSTEE DAN AHUNA		**X**	**X**			
TRUSTEE KALEI AKAKA	**X**		**X**			
TRUSTEE KELI‘I AKINA			**X**			
TRUSTEE LUANA ALAPA			**X**			
TRUSTEE BRENDON LEE			**X**			
TRUSTEE MILILANI TRASK						**X**
TRUSTEE JOHN WAIHE‘E			**X**			
CHAIRPERSON HULU LINDSEY			**X**			
TOTAL VOTE COUNT			**8**			**1**
MOTION: [ ] UNANIMOUS [X] PASSED [ ] DEFERRED [ ] FAILED **Motion passes with a Eight (8) YES votes, , Zero (0) NO votes and One (1) EXCUSED vote.**						

Board returns to open session at 2:39 p.m.

Announcements

Chair Hulu Lindsey Our next O‘ahu community meeting will be in Nānākuli, Thursday, August 4, 2022 at 5:30 pm.

Adjournment

Trustee Akaka Moves to adjourn the meeting.

Trustee Ahuna Seconds the motion.

Adjournment							
TRUSTEE		1	2	ʻAE (YES)	AʻOLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINAʻALA	**AHU ISA**			X			
DAN	**AHUNA**		X	X			
KALEIHIKINA	**AKAKA**	X		X			
KELIʻI	**AKINA**			X			
LUANA	**ALAPA**			X			
BRENDON KALEIʻĀINA	**LEE**			X			
MILILANI	**TRASK**						X
JOHN	**WAIHEʻE**			X			
CHAIR CARMEN HULU	**LINDSEY**			X			
TOTAL VOTE COUNT				8			1

Chairperson Carmen Hulu Lindsey Adjourns the Board of Trustees meeting at 2:42 p.m.

Respectfully submitted,

Lehua Itokazu
Board Secretary

As approved by the Board of Trustees on January 12, 2023.

Carmen Hulu Lindsey
Chairperson, Board of Trustees

Attachments:

1. Excused Memo – Trustee Trask
2. Action Item BOT#22-10

OFFICE OF HAWAIIAN AFFAIRS
Trustee Mililani B. Trask
Interoffice Memorandum

Date: July 26, 2022

To: Trustee Hulu Lindsey, Chair – Board of Trustees

From: Trustee Mililani B. Trask

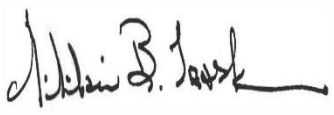
Re: Excuse Absence for the Board of Trustees meeting on Tuesday, July 26, 2022 at 10:00 am.

Aloha Chair Lindsey,

Please excuse me from the Board Trustees meeting on Tuesday, July 26, 2022 at 10:00 am

Also, please extend my excused absence and sincere apologies to the other members of the board.

Mahalo,



Mililani B. Trask
Trustee, Hawai‘i Island

ACTION ITEM

BOARD OF TRUSTEES

July 26, 2022

BOT #22-10

Action Item Issue: Accept and Implement the Report of the Permitted Interaction Group to Work Together to Investigate the Potential Involvement of Federal Agencies in Enforcement of Legal Claims, Land Inventories, Financial Accountings, and Indigenous Consultations Related to the Federal Trust Responsibilities and the Trust Set Forth in Section 5(f) of the Admission Act

Prepared by:

Jul 22, 2022

Sylvia M. Hussey, Ed.D. Date
Ka Pouhana, Chief Executive Officer

Reviewed by:

Jul 22, 2022

Casey K. Brown Date
Ka Pou Nui, Chief Operating Officer

Reviewed by:

Unavailable for Signature

Everett Ohta Date
Ka Paepae Puka Kūikawā, Interim General Counsel

Reviewed by:

Jul 22, 2022

Carmen Hulu Lindsey Date
Ke Kauhuhu o ke Kaupoku
Chair, Board & Permitted Interaction Group

Action Item BOT #22-10: Accept and Implement the Report of the Permitted Interaction Group to Work Together to Investigate the Potential Involvement of Federal Agencies in Enforcement of Legal Claims, Land Inventories, Financial Accountings, and Indigenous Consultations Related to the Federal Trust Responsibilities and the Trust Set Forth in Section 5(f) of the Admission Act

I. Proposed Action

Accept and implement the report of the Permitted Interaction Group to investigate the potential involvement of federal agencies in enforcement of legal claims, land inventories, financial accountings, and indigenous consultations related to the federal trust responsibilities and the trust set forth in Section 5(f) of the Admission Act as attached.

II. Issue

Whether or not the Board of Trustees ("Board", "BOT") will accept and implement the attached report of the Permitted Interaction Group[1] ("PIG") to investigate the potential involvement of federal agencies in enforcement of legal claims, land inventories, financial accountings, and indigenous consultations related to the federal trust responsibilities and the trust set forth in Section 5(f) of the Admission Act, as attached. The PIG was authorized and formed on April 14, 2022, via Action Item BOT #22-05, consistent with Hawai'i Revised Statutes §92-2.5(b)(1).

III. Discussion

A. **Overview**. On April 14, 2022, via Action Item BOT #22-05, the Board of Trustees approved the formation of a PIG to investigate the potential involvement of federal agencies in enforcement of legal claims, land inventories, financial accountings, and indigenous consultations related to the federal trust responsibilities and the trust set forth in Section 5(f) of the Admission Act with the purview, members, term/duration detailed below.

B. **Permitted Interaction Group - Purview.** The purview of the PIG was for the BOT and BOT staff and OHA Administration staff to work together to investigate the potential involvement of federal agencies in enforcement of legal claims, land inventories, financial accountings, and indigenous consultations related to the federal trust responsibilities and the trust set forth in Section 5(f) of the Admission Act; provided that the PIG would report back to the BOT and seek its approval prior to initiating any formal administrative complaint or process. The purview of the PIG did not include state or county legislation or engaging directly with state or county agencies.

C **Permitted Interaction Group - Members.** The membership of the Permitted Interaction Group was: (a) Trustee Carmen Hulu Lindsey; (b) Trustee Mililani Trask; (c) Trustee John Waihee, IV; and (d) Trustee Kalei Akaka. Trustee Carmen Hulu Lindsey served as the Chair of the Permitted Interaction Group and Trustee Mililani Trask served as its Vice Chair. Sylvia Hussey, Ka Pouhana, functioned as the Project Manager and coordinated Administration staff participants (e.g., Chief Advocate, Public Policy Advocate), contractors, and international and indigenous entities, as determined necessary by the PIG.

[1] Consistent with Hawai'i Revised Statutes §92-2.5(b)(1)A.

D. **Term/Duration**. The term of the PIG expires at the completion of the assigned tasks or at the discretion of the Chair of the Board of Trustees, subject to later adjustment, but in no event later than October 31, 2022. The distribution of the PIG report on July 12, 2022 indicated the end of the PIG and its authorized work.

E. Report Distribution. The PIG report was distributed at the July 12, 2022 Board meeting and consistent with past practice, no discussion was held. Full and free discussion and related Board actions are scheduled for the July 26, 2022 Board meeting.

IV. Funding Source

Not applicable, no dedicated funding needed to accept and implement the report of the PIG to investigate the potential involvement of federal agencies in enforcement of legal claims, land inventories, financial accountings, and indigenous consultations related to the federal trust responsibilities and the trust set forth in Section 5(f) of the Admission Act, as attached.

V. Recommended Action

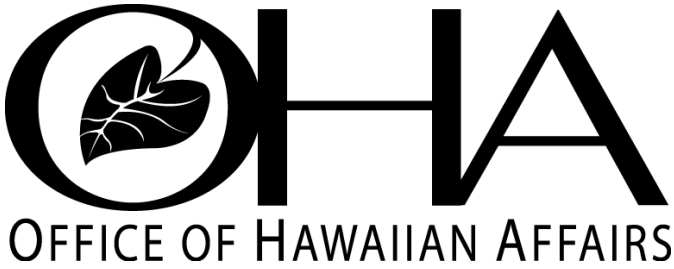
Accept and implement the report of the Permitted Interaction Group to investigate the potential involvement of federal agencies in enforcement of legal claims, land inventories, financial accountings, and indigenous consultations related to the federal trust responsibilities and the trust set forth in Section 5(f) of the Admission Act, as attached.

VI. Reference Document

Action Item BOT #22-05: Approve the Formation of a Permitted Interaction Group (PIG) to Investigate and Engage with Federal Agencies and International and Indigenous Entities on Native Hawaiians' Legal Claims, Land Inventories, and Financial Accounting Related to the Public Land Trust, April 14, 2022

VII. Attachment

Office of Hawaiian Affairs, Report of the Permitted Interaction Group to Investigate the Potential Involvement of Federal Agencies in Enforcement of Legal Claims, Land Inventories, Financial Accountings, and Indigenous Consultations related to the Federal Trust Responsibilities and the Trust set forth in Section 5(f) of the Admission Act, July 2022



Office of Hawaiian Affairs
Report of the Permitted Interaction Group to Investigate the Potential Involvement of Federal Agencies in Enforcement of Legal Claims, Land Inventories, Financial Accountings, and Indigenous Consultations related to the Federal Trust Responsibilities and the Trust set forth in Section 5(f) of the Admission Act

July 2022

TABLE OF CONTENTS

		PAGE
I.	EXECUTIVE SUMMARY	3
II.	PERMITTED INTERACTION GROUP INVESTIGATIVE WORK ACTIVITIES	4
III.	REFERENCES	30
IV.	OBSERVATIONS AND FINDINGS	32
V.	RECOMMENDATIONS	34
VI.	MAHALO AND NEXT STEPS	37
VII.	ATTACHMENT	38

I. EXECUTIVE SUMMARY

A. Overview. On April 14, 2022, via Action Item BOT #22-05, as amended, the Board of Trustees ("BOT" or "Board), approved the formation of a Permitted Interaction Group ("PIG")[1] to investigate the potential involvement of federal agencies in enforcement of legal claims, land inventories, financial accountings, and indigenous consultations related to the federal trust responsibilities and the trust set forth in Section 5(f) of the Admission Act.

B. Permitted Interaction Group - Purview. The purview of the PIG is for the Board of Trustees ("BOT" or "Board"), BOT staff and OHA Administration staff to work together to investigate the potential involvement of federal agencies in enforcement of legal claims, land inventories, financial accountings, and indigenous consultations related to the federal trust responsibilities and the trust set forth in Section 5(f) of the Admission Act; provided that the PIG will report back to the BOT and seek its approval prior to initiating any formal administrative complaint or process. The purview of the PIG does not include state or county legislation or engaging directly with state or county agencies.

C. Permitted Interaction Group – Members. The membership of the Permitted Interaction Group was approved as follows: (a) Trustee Carmen Hulu Lindsey; (b) Trustee Mililani Trask; (c) Trustee John Waihee, IV; and (d) Trustee Kalei Akaka. Trustee Carmen Hulu Lindsey, served as the Chair of the Permitted Interaction Group and Trustee Mililani Trask served as its Vice Chair. Sylvia Hussey, Ka Pouhana, functioned as the Project Manager and coordinated Administration staff participants (e.g., Chief Advocate, Public Policy Advocate), contractors, and international and indigenous entities, as determined necessary by the PIG.

D. Permitted Interaction Group - Term/Duration. The term of the Permitted Interaction Group expired at the completion of the assigned tasks or at the discretion of the Chair of the Board of Trustees, subject to later adjustment, but in no event later than October 31, 2022.

E. PIG Investigation Activities and Related Recommendations. Upon approval and authorization (April 14, 2022), the PIG convened and completed a number of investigative work activities, resulting in recommendations in the areas of policy, ceded lands inventory, federal government engagement, indigenous, international and Administration groupings.

F. Report Distribution. The report distribution is agendized for the July 12, 2022 Board meeting and consistent with past practice, no discussion will be held. Full and free discussion and related Board action(s) are to be agendized for a future Board meeting, yet to be determined.

INTENTIONALLY LEFT BLANK

[1] Consistent with Hawai'i Revised Statutes §92-2.5(b)(1)A.

II. PERMITTED INTERACTION GROUP INVESTIGATIVE WORK ACTIVITIES

A. Acknowledged the Purview of the PIG. The PIG's purview to investigate the potential involvement of federal agencies in enforcement of legal claims, land inventories, financial accountings, and indigenous consultations related to the federal trust responsibilities and the trust set forth in Section 5(f) of the Admission Act, triggered the convening of the first meeting on April 28, 2022.

B. Conducted General Investigative Activities. The PIG asked Administration to bring to the work, resources, including staff and contractors, to formulate and complete investigative work activities. Administration added the Chief Advocate, external counsel and Public Policy Advocate, and made available Research Division resources (for the Ceded Lands Inventory project) to aid PIG investigative work. Base knowledge about the issues (e.g., ceded lands, public trust lands, activities on ceded lands, classification, inventory, federal departments, agencies, public land trust income and proceeds, rulings, litigation, research sources) were gathered and shared with PIG members, often by PIG members themselves or contractors, to establish an overall baseline of understanding.

C. Formulated Essential and Guiding Questions. In its purview, the PIG discussed a number of essential questions that could guide qualitative and quantitative data inquiries, including the following essential questions, with supporting questions to guide recommended next steps:

A. What was "ceded"[2] or transferred to the State of Hawaii from the federal government via the Admissions Act in August 1959?

   a. What federal departments or agencies could be contacted regarding their knowledge of transferred lands in 1959?

   b. What reference reports or agencies are available that may aid in gathering this knowledge (e.g., Government Accounting Office)?

   c. How might Hawaii's Congressional Delegation, the Senate Committee on Indian Affairs (SCIA) or other federal entities assist in our quest for information?

   d. What other native, indigenous entities (e.g., tribes) with expertise in the federal government, law, treaties and rights, might be accessed to assist?

   e. What is the status of OHA's own Ceded Lands Inventory project?

B. At the point of the Admissions, August 1959 what were the federal agencies?

   a. What federal agencies may have been involved at the point of Admissions? Did the federal agencies create an inventory for the new state? If so, what source documents were used? How might a request for information regarding ceded lands be distributed? What source documents might be available (e.g., maps, inventory)?

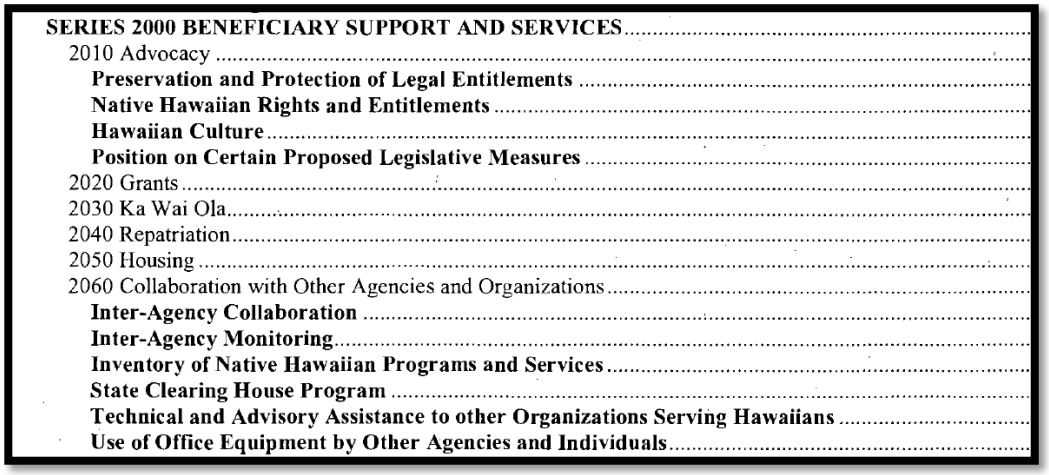
   b. How was information regarding minerals, submerged lands, water rights documented? What was the nature of the accounting for transferred, lands and other assets?

[2] Note the term "ceded" is used throughout the report to reference the classification of the lands in discussion and does not imply an acceptance of the illegal overthrow of the Hawaiian monarchy in 1893, the subsequent United States actions of annexation, territorial government and statehood. The report acknowledges that the lands were ceded without the consent of or compensation to the Native Hawaiian people of Hawaii or other sovereign government (P.L. 103-15019)

c. What are other key dates, prior to the Admissions Act in 1959, that might act as milestones or guide posts to assist in answering the essential questions and/or gathering data?

D. Reviewed Existing OHA Policies. The PIG members noted the existence of policies in the Executive Policy Manual as of 2012 and subsequently approved policies via action items or other documents.

1. Executive Policy Manual – Series 2000 Beneficiary Support and Services, noting these



SERIES 2000 BENEFICIARY SUPPORT AND SERVICES
2010 Advocacy
Preservation and Protection of Legal Entitlements
Native Hawaiian Rights and Entitlements
Hawaiian Culture
Position on Certain Proposed Legislative Measures
2020 Grants
2030 Ka Wai Ola
2040 Repatriation
2050 Housing
2060 Collaboration with Other Agencies and Organizations
Inter-Agency Collaboration
Inter-Agency Monitoring
Inventory of Native Hawaiian Programs and Services
State Clearing House Program
Technical and Advisory Assistance to other Organizations Serving Hawaiians
Use of Office Equipment by Other Agencies and Individuals

Figure 1. Excerpt from Executive Policy Manual

2. Current non-financial related policies approved post last update of the Executive Policy Manual (2012): Protect Ceded Lands (2013), Water Policy (2015), Policy on Protecting Iwi Kupuna (2015), Committee on Land and Property (2014), Policy Guidelines, Real Estate Workshop (2015), Military Engagement (drafted 2022).

E. Reviewed the Status of the OHA Ceded Lands Inventory Project. The PIG received a briefing on OHA's Ceded Lands Inventory project by the Research Division's Systems Administrator and Director. Work on the islands of Kauai, Molokai, Lanai and part of Maui have been completed based on established methodologies. Third party resources are being sought for the following:

A Project: Ceded Lands Inventory for O'ahu and Hawai'i islands

Description: Conduct research to gather maps, identify lands (government, konohiki, crown, and kuleana), their disposition, verify name, shape, and boundaries identified lands, and produce summaries for each moku and mokupuni. The details for these activities are summarized in the scope of services below.

The CONTRACTOR shall provide and perform the services set forth below in a satisfactory and proper manner as determined by the OHA and in accordance with the terms and conditions of this Contract.

The CONTRACTOR shall provide and perform the services required in a satisfactory and proper manner as determined by the OHA. The services shall include, but may not be limited to, the following:

1. **Provide the following deliverables:**

#	Deliverables	For Each	Derived From:	Includes
1	Land Table	Named Land	Land Award Index, Kingdom Lands Layer	Awards/Parcels/Acreage/GIS Acreage of each Land Award type (14) and C/G/K type (3) plus totals
2	Land Table	Moku	Land Table-Named Land	Awards/Parcels/Acreage/GIS Acreage of each Land Award type (14) and C/G/K type (3) plus totals
3	Land Table	Mokupuni	Land Table-Moku or Named Land	Awards/Parcels/Acreage/GIS Acreage of each Land Award type (14) and C/G/K type (3) plus totals
4	CLIR Moku Table	Named Land	CLIR Narratives	Named Land Title. C/G/K Status. Claimant. Award Helu+RPG. BC Status. Surveyed/Mapped Status. Anomalies as Footnotes.
5 5.1 5.2	Domesday-Mahele	Named Land	Map+Document Sources, Kingdom Lands Layer (Buke Mahele, Iaukea, Act Relating, BC Docs, Land Award Docs)	C/G/K Status with Iaukea+Act Relating. Mapped Status. BC Status. Award+Recipient. Other Names. Shape Notes+Comments Record for Mapped No Buke Lands Record for Inconsistencies+Reason
6	Land Award Index	Land Award+Apana	Map+Document Sources, Land Award Layer	Source+Volume/Page. Correct Helu+Apana, Patent#(If GG). Price(If GG). Claimant. Correct Location-Ili/Ahupuaa/Moku/Mokupuni. Year. Award Type. Mapped Status. NumCode. Sqft./Acreage/GIS Acreage. Comments (If Necc.)
7	Static Maps	Named Land	Land Award Index, Kingdom Lands Layer, Land Award Layer	.PDF Map with C/G/K Status, Acreage, Land Awards, Unmapped Land Awards for 1848, 1855, 1871, 1893, 1898, 1959.

#	Deliverables	For Each	Derived From:	Includes
8	CLIR	Named Land	Map+Document Sources, Land Award Index, Domesday-Mahele, Land Table-Named Land, Kingdom Lands Layer, Land Award Layer	Narrative on Mahele Status. Narrative on Konohiki Award (If Necc.). Narrative on Boundary Commission. Narrative on Mapping Sources/Issues. Explanation of Land Award Anomalies. Summary of Land Awards. Land Table.
9	CLIR	Moku	Map+Document Sources, CLIR Narratives, CLIR Moku Table, Land Table-Moku	Summary of C/G/K Anomalies. Boundary Anomalies. Land Award Anomalies. Maps of Note. CLIR Moku Table.
10	CLIR	Mokupuni	Map+Document Sources, CLIR Narratives, Land Table-Mokupuni	Summary of C/G/K Status, Land Awards. Maps of Note. Land Table.
11	Updated Narrative Structure Document	Portion of CLIR	CLIR Narratives	Text from CLIR
12 12.1	Kingdom Lands Layer	Named Land	Map+Document Sources	Correct Mapped Shape. Land Name. C/G/K Status+Trail of Relinquishment. Reference. NumCode. Surveyed Acreage+GIS. Iaukea Description/Land Use/Acreage. Notes. Updated Mahele Lands Changes for Ahupuaa Layer with any Name/NumCode/Shape Changes + Action Taken/Justification/Sources.
13	Land Award Layer	Land Award-Mapped	Map+Document Sources, Land Award Index	Correct Mapped Shape. Helu+Apana, Patent#(If GG). Claimant. NumCode. Year. Award Type. Associated Documents. GIS Acreage. Source+Map Sources(If Necc.)
14	Land Award Table	Land Award-Unmapped	Document Sources, Land Award Index	NumCode. Location. Claimant. Helu+Apana. Source+Volume/Page.

2. **Process Steps.** Please note that the numbers in parens (#); example (5), (12), (3), etc. Reference the deliverable table. So in the first item below "a. Identify named land, record any alternat spellings in (5) Other Names field" refers to #5 in the above table.

   a. Identify named land, record any alternate spellings in (5) Other Names field
      i. Gather all map documents depicting named land (based on HGS Maps, USGS Topo Maps, RMs, Plat Maps
      ii. Find shape in (12)

   b. Find record in Buke Mahele
      i. Open Named Lands-Geographic.pdf
      ii. Locate named land and page(s)
      iii. View pages in Mahele Book.pdf
         a) Add to (12) Source field
         b) Add any additional comments to (5) Comments field
         c) Add any relevant comments to (12) descript field

   c. Make C/G/K determination (based on Named Lands-Geographic.pdf, Mahele Book.pdf, other docs)
      i. If Crown, verify with Iaukea Biennial Report.pdf, Act Relating to Lands.pdf
         a) Add to appropriate (5) Iaukea Report/Act Relating… field
         b) Enter text from Iaukea Biennial Report.pdf into appropriate (12) Iaukea_Desc/Land_Use/surv_acres field
         c) Link to specific section of Iaukea Biennial Report.pdf in (12) Reference field
      ii. If Gov, verify with Act Relating to Lands.pdf
         a) Add to (5) Act Relating… field
      iii. If Konohiki, determine LCA # (Based on Indices of Awards-1929.pdf, other docs)
         a) Add to (5) Award# field
      iv. Add to (12) land_type field
      v. Add to appropriate (5) C/G/K field

   d. Draft "trail of relinquishment" (based on Named Lands-Geographic.pdf, Mahele Book.pdf, LCA.pdf, RPG.pdf, other docs)
      i. Add to (12) Other_Notes field
      ii. Add as narrative to (8) Mahele Status Section, duplicate in (11)

   e. Investigate Konohiki award if applicable
      i. Read through LCA.pdf, RPG.pdf, other docs

a) Verify or add attributes in (13) and (6) for Konohiki award
b) Add claimant to (5) Recipient field

ii. Check shape in (13) (based on map docs, LCA.pdf, RPG.pdf, Boundary Certificate.pdf, other docs)
a) Correct mapped shape if necessary, add to "lca_shapechange layer"
b) Calculate shape acreage in (13), add to (6) for Konohiki award
1. Enter record in (1) Buke Mahele-Mapped/Konohiki Section
c) If unmapped, add record to (14)
1. Enter record in (1) Buke Mahele-Unmapped/Konohiki Section

iii. Draft narrative for (8) Mahele Status/Konohiki Award Section, duplicate in (11)

f. Check named land shape in (12) (based on HGS Maps, USGS Topo Maps, other map docs, other docs)
i. Enter mapped status in (5) Mapped field
ii. Identify any available Boundary Certificate.pdf, Boundary Commission Notes.pdf docs
a) Enter availability in (5) BC Notes/BC Certificate field
iii. Identify any surveyed area estimates
a) Add to (12) surv_acres field
b) Add to (1) Acreage field for C/G/K
iv. Correct mapped shape in (12) if necessary, document any changes in (12.1)
v. Calculate shape acreage in (12), add to (1) GIS Acreage field for C/G/K
vi. Draft narrative for (8) Boundary Commission/Boundary Mapping Section, duplicate in (11)

g. Identify all land awards within named land (based on (6), (13), Indices of Awards-1929.pdf, other docs)
i. For each land award:
a) Read through land award docs
1. Verify or add attributes/records in (6)
2. Verify or add attributes in (13)
b) Check shape as mapped in (13) (based on RMs, Plat Maps, other map docs, land award docs)
1. Correct mapped shape if necessary, add to "lca_shapechange layer"

2. Calculate shape acreage in (13), add to (6) for that record
3. If unmapped, map in "lca_shapechange layer" and add attributes to (13) or add record to (14) ♣

c) Document as narrative all anomalous land awards for (8) Land Awards Section, duplicate in (11)

ii. Analyze (6) for all land awards in named land by type

a) Enter in (1) Awards/Parcels/Acreage/GIS Acreage fields for each land award Type/Subtype

b) Add summary of land awards as narrative to (8)

iii. Add relevant table from (1) to end of named land section in (8)

h. Identify any mapped lands not recorded in the Buke Mahele

i. Include relevant attributes in (5) MappedNoBuke Tab

ii. Discuss entirety as narrative in (8), duplicate in (11)

i. For each Moku:

i. Summarize as narrative all C/G/K anomalies, Boundary anomalies, Mapping anomalies, Land Award anomalies, maps of note of all mapped/named lands in (9), duplicate in (11)

ii. Aggregate all relevant named land tables from (1) to create (2), add to end of related (9)

iii. Create table of all mapped/named land attributes as (4) (based on narratives from (8),(9)), add to end of related

j. For each Mokupuni:

i. Add summary of C/G/K as narrative to (10)

ii. Add maps of note to (10)

iii. Aggregate all relevant named land tables from (1) or (2) to create (3), add to end of related (10)

iv. Create individual Static Maps (7) of all mapped/named lands (based on (6), (12), (13), (14))

F. Reviewed the Federal Government Organization.

The federal government organizational chart[3] is provided to gain an appreciation of the breadth and depth of the federal government in determining primary sources of information to respond to the essential question(s). The PIG identified initially the library of congress, departments of defense, interior, commerce, transportation, government accounting office, world heritage center as primary data sources.

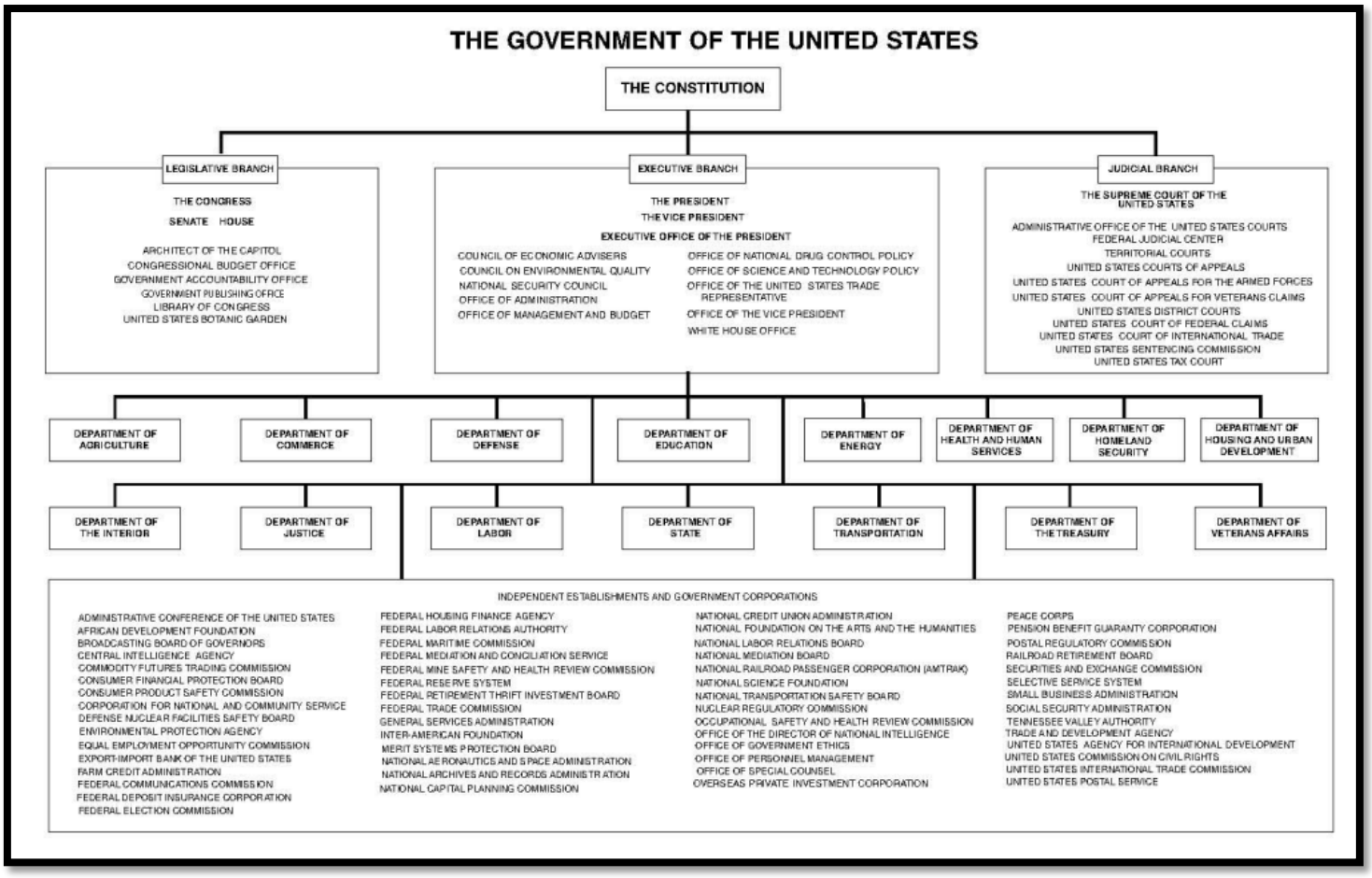


Figure 2. Federal Government Organization Chart

G. Connected with the Senate Committee on Indian Affairs. PIG members connected with Chairman Schatz and the staff members of the Senate Committee on Indian Affairs (SCIA) to explore congressional and committee support for Ceded Lands inventory.

3 HTTPS://WWW.USGOVERNMENTMANUAL.GOV/READLIBRARYITEM.ASHX?SFN=MYZ95STYO4RJRM/NHIRWSW==&SF=VHHNJROEEANGAA/RTK/JOG== retrieved June 22, 2022

H. Connected with the Department of Interior Senior Staff. PIG members connected with senior staff of the Department of Interior to explore congressional and committee support for Ceded Lands inventory.

I. Scanned Legal Cases Related to Ceded Lands. The PIG scanned several legal cases as it related to ceded lands, Leiali'i on Maui, including related Hawaii Supreme Court decisions and the Native Alaska Settlement Claims Act.

1. **Leiali'i on Maui.** Overview, filed case in 1994 for moratorium triggered by transition of Leialii on Maui from sugar lands to middle-income housing; and similarly re: Laiopua on Kona; loss trial due to other matters.

    1. **1994 – OHA Filed Suit.** On November 4, 1994, OHA filed a lawsuit in First Circuit Court, OHA v. Hawai`i Finance and Development Corporation [later renamed OHA v. Housing and Community Development Corporation of Hawai'i (HCDCH)], Civil No. 94-4207-11, to seek a moratorium on the sale of ceded lands by the State of Hawai`i in order to implement its policy to protect the ceded lands corpus until the unrelinquished claims of Native Hawaiians are resolved. The central issue in this case was whether, in light of the admissions in Act 354 (SLH 1993), Act 359 (SLH 1993) and the Apology Resolution, Public Law No. 103–150, 107 Stat. 1510 (1993)), the State would breach fiduciary duties if it sold ceded lands before the Hawaiians' claim to ownership of the ceded lands is resolved. OHA argued that the admissions in the 1993 federal and state legislation recognized the Hawaiians' unrelinquished claim to title to the ceded lands. The 1993 Legislation also acknowledged that ceded lands are important to the welfare of Hawaiians thereby establishing irreparable harm if ceded lands are permitted to be sold before the claim is resolved.

    2. **1995 – Individual Native Hawaiians.** On August 19, 1995, OHA and Pia Thomas Aluli, Jonathan Kamakawiwo'ole Osorio, Charles Ka'ai, and Keoki Maka Kamaka Ki'ili ("Individual Native Hawaiians") jointly filed a First Amended Complaint in the First Circuit Court.

    3. **1997 – Act 329.** In addition, a similar resolution adopted by the Hawaii Legislature in 1997 endorsed the federal Apology Resolution, also acknowledging the illegality of the 1893 overthrow and seizure of the Ceded Lands, and directing that efforts be undertaken to resolve Native Hawaiian claims to these Ceded Lands. See Act 329 (SLH 1997).

    4. **Count 1.** In Count I, OHA requested an injunction on all sales of ceded lands, alleging that trust obligations under Article XII, Section 4 of the State Constitution prohibit the sale of fee title to ceded lands. On the same basis, in Count II, OHA requested that the court "stop the sale of ceded lands" at Leiali`i, Maui to third persons. In Count III, OHA asked the court for a declaratory ruling "that (a) any conveyance to a third party violates the Hawaii State Constitution and the Admission Act, (b) and/or any sale of Ceded Lands does not directly or indirectly release or limit claims of Native Hawaiians to those lands." OHA sought injunctive and declaratory relief prohibiting the State's sale of ceded lands, alleging that all sales are prohibited because of the State's trust obligations toward native Hawaiians as trustee of Public lands Trust of the Hawaii State Constitution. OHA alternatively sought a moratorium on any additional sales of ceded lands until the claims of the Native Hawaiian People are

resolved. OHA' claims for injunctive and declaratory relief in Counts I and II also sought rulings on whether sales of ceded lands constitute a breach of trust.

OHA sued to recover its lawful entitlements pursuant to Act 318 (SLH 1992) for former sugar cane lands. The State sought to pay OHA its pro rata share at the time land was conveyed between two State agencies in 1994. OHA argued that it should be paid its pro rata share at the time land was conveyed to a private developer which would have been a higher rate. More importantly, OHA argued that the claims of the Native Hawaiians, when balanced against the need for the State to construct middle income housing, must result in a continued moratorium on the transfer or sale of any lands from the Public Lands Trust.

5. **Bench Trial.** A bench trial took place from November 20, 2001 to December 4, 2001 before the Honorable Sabrina S. McKenna. On December 5, 2002, Judge McKenna entered the Opinion of the Court. On January 31, 2003, the Court entered a Final Judgment on Counts I, II and III of Plaintiffs' First Amended Complaint filed 07/14/95 in Favor of All Defendants on the grounds of sovereign immunity, waiver and estoppel, and political question doctrine. In addition, Judge McKenna decided that DLNR's transfer of ceded lands at Leiali`i to HFDC did not breach public land trust fiduciary duties and concluded that State's future sale of ceded lands would not breach public land trust fiduciary duties.
6. **Appeal.** OHA appealed the Trial Court Opinion and Final Judgment.
7. **OHA v. HCDCH.** In Office of Hawaiian Affairs v. Housing and Community Development Corporation of Hawai'i ("OHA v. HCDCH"),117 Haw. 174, 177 P.3d 884 (2008), the Hawai'i Supreme Court granted OHA's request for a moratorium on the sale of ceded lands. The Court specifically recognized that Native Hawaiians have "unrelinquished claims to the ceded lands," that "the Apology Resolution acknowledges only that unrelinquished claims exist and plainly contemplates future reconciliation with the United States and the State with regard to those claims," and that the Apology Resolution and the related state legislation "give rise to the State's fiduciary duty to preserve the corpus of the public trust lands, specifically, the ceded lands, until such time as the unrelinquished claims of the native Hawaiians have been resolved."

   In OHA v. HCDCH, the Hawai`i Supreme Court clearly recognized these historic injustices and the imperative of the restoration of lands to Native Hawaiians. The court reaffirmed that "Congress, the Hawaii state legislature, the parties, and the trial court all recognize (1) the cultural importance of the land to native Hawaiians, (2) that the ceded lands were illegally taken from the native Hawaiian monarchy, (3) that future reconciliation between the state and the native Hawaiian.
8. **Supreme Court.** The Hawai`i Supreme Court held that the federal Apology Resolution and state law did change the legal relationships of the parties and issued an injunction against development of the land until the state of Hawaii reconciled with Native Hawaiians. Then-Governor Lingle's administration petitioned the U.S. Supreme Court for a writ of certiorari and the Court accepted review.

   On March 31, 2009, a unanimous Supreme Court of the United States rejected OHA's claims that the 1993 congressional apology changed the state of Hawaii's sovereign authority to transfer public trust lands. Hawaii v. Office of Hawaiian Affairs, 556 U.S. 163, 129 S. Ct.

1436 (2009). The Court, in an opinion by Justice Samuel Alito, ruled unanimously that the state had the power to sell the lands free of encumbrances and reversed the Hawaii Supreme Court's ruling. The Court held that the Apology Resolution did not create any new right, nor did it change the relationship between the State and the Native Hawaiian community. Justice Alito reasoned that the Apology used only conciliatory words, which Congress does not use to create substantive rights. The "whereas" clauses detailing the "illegal overthrow of the Kingdom of Hawaii" did not create change in any the state's title to property that Congress had granted to the state upon its admission to the union in 1959.

The U.S. Supreme Court also held that neither of the two substantive provisions in the Apology Resolution affected the state's ownership of the public lands at issue and that the Hawai`i Supreme Court had committed error by reading the preamble to the Apology Resolution as legally binding.

9. **U.S. Supreme Court.** The U.S. Supreme Court issued its decision to vacate the opinion of the Hawai`i Supreme Court and to remand the case to it for a new opinion. The U.S. Supreme Court explained that it has "no authority to decide questions of Hawaiian [i.e., state] law or to provide redress for past wrongs except as provided for by federal law."

   Achieving a remand instead of an opinion on the merits from the US Supreme Court was viewed an achievement for OHA given that certiorari had been granted.

   OHA was already in position at the Hawai`i State Legislature when the U.S. Supreme Court

   Opinion was issued with bills pending on a partial moratorium and a 2/3rds affirmative vote to sell public lands. On May 5, 2009, SB 1677, CD 1, passed final reading. It requires a two-thirds majority vote of the legislature to adopt a concurrent resolution to sell or give away certain public lands. It also requires notice to be provided to the office of Hawaiian affairs for sales, gifts, and exchanges. On July 13, 2009, Governor Lingle signed Act 176 (SLH 2009) into law.

10. **Individual native Hawaiian Plaintiffs**. On July 15, 2009, OHA, the three Individual native Hawaiian Plaintiffs, and the State jointly filed a Motion to Dismiss Without Prejudice all Claims and To Dismiss the Appeal of All Plaintiff/Appellants Except Jonathan Osorio or in the Alternative for a Limited Remand to the Circuit Court for the Purpose of Effectuating a Dismissal without Prejudice of all Claims of All Plaintiff/Appellants except Jonathan Kamakawiwo`ole Osorio. The State also filed its own Motion to Dismiss or Remand to the Circuit Court for Lack of Justiciability or, In the Alternative, to Affirm.

    On October 17, 2009, the Hawaii Supreme Court issued an opinion on the Osorio claim to continue the case and issued an order granting the joint motion by OHA and the State to Dismiss OHA's claims without prejudice. The Hawaii Supreme Court did find that Osorio had standing, but not as a native Hawaiian, but rather as a Native Hawaiian member of the general public. The State of Hawai`i had argued that he did not because he was not 50% native Hawaiian. Second, the HSC found that the case was no longer ripe because of the passage of Act 176 (Haw. Sess. Laws 2009) and remanded the case to the trial court for entry of an order dismissing Osorio's claims without prejudice. The Hawaii Supreme Court referred approvingly again to some of its reasoning in its 2008 Opinion, in which it had relied on OHA's arguments and expert witnesses: the federal Apology Resolution and its findings

about the importance of land to Hawaiian people and the testimonies of OHA's expert witnesses, Professor David Getches and Pualani Kanaka`ole Kanahele.

11. **Hawaii Supreme Court.** The Hawaii Supreme Court described approvingly the settlement that OHA reached with the State that resulted in the Act 176. The Hawaii Supreme Court pointed out that Act 176 requires legislative approval prior to the alienation of any lands from the public lands trust, including ceded lands, and HHFDC lands, including Leiali`i. The Hawaii Supreme Court found that the new standard was a high one and provided protections: no ceded lands, including Leiali`i, can be sold until the concurrent resolution is passed by a 2/3rds vote of both the Senate and House.

    After the litigation was over, the State decided to transfer some of the villages at Leialii and Laiopua to DHHL. OHA consented and agreed to waive its 20% of the value of the lands transferred.

12. **Policy.** In the past, the BOT had continued to take steps to implement its policy pursued in Hawai`i v. Office of Hawaiian Affairs that it is in the best interests of its beneficiaries to oppose the alienation of ceded lands and any diminution of the ceded lands corpus until the unrelinquished claims of Native Hawaiians are resolved and reconciliation between Native Hawaiians and the Federal and State governments is achieved.

    The BOT did adopt such a policy for its own policy manual. The BOT did also agree to allow sales of fee simple public land trust lands in special situations involving apartments, townhouses, and houses for home ownership, where [1] there is already an agreement in an existing contract with the state agency allowing the homeowner to purchase the fee simple interest for home ownership, [2] there have been prior sales in the same development to the extent that the units have previously been substantially sold, and [3] sales of the fee simple interest were approved prior to the filing of the lawsuit Office of Hawaiian Affairs v. Hawaii Finance and Development Corporation, Civil No. 94-4207-11, First Circuit Court, State of Hawaii, November 4, 1994.

2. **Native Alaska Settlement Claims Act.** In 1969 the U.S. secretary of the interior imposed a moratorium on approval of the State of Alaska's applications for public lands, pending settlement of Native land claims. Meanwhile, the discovery of vast oil reserves on the North Slope of Alaska, and the desire among non-Native commercial enterprises to make use of those reserves created additional pressures for settlement of the Native claims. This moratorium was seen as an appropriate legal procedure to bring the State of Hawaii and United States to the table to negotiate with Native Hawaiians relating to their similar claims.

    Congress designed the Alaska Native Claims Settlement Act of 1971 (P.L. 92-203, 85 Stat. 688) to resolve the land claims of Alaska's Native inhabitants. Alaska Natives, including Indians, Eskimos, and Aleuts, occupied Alaska for centuries before the Treaty of Cession from Russia of 1867 when the United States purchased Alaska. However, neither the Treaty of Cession nor any subsequent act (including the Organic Act of 1884, in which the United States made Alaska a "district" and allowed for the creation of a local government and the enforcement of local laws, and the Alaska Statehood Act of 1958, in which the U.S. made Alaska the forty-ninth state) clarified the nature or extent of Alaska Native land rights. These rights were based on the

Natives' historic or aboriginal use and occupancy of Alaska lands, not on treaties between Alaska Natives and the United States.

The Alaska Native Claims Settlement Act gave Alaska Natives legal title to approximately forty-four million acres of Alaskan land. The Act also established an Alaska Native Fund of $962.5 million to compensate the Natives for the lands and rights taken from them. The Act extinguished "[a]ll aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy." The Act revoked all reservations in the state, except the Annette Island Reserve.

The Alaska Settlement Act authorized the creation of thirteen regional corporations and over 200 smaller village corporations to own and manage the forty-four million acres selected by the Natives. Native lands were owned by the regional and village corporations as "fee simple," which meant there were no restrictions on the ability of the corporations to use or sell the lands as they saw fit. However, because Native lands are not Indian country, Alaska Natives cannot exercise full governmental powers over them. For example, Natives cannot regulate or tax the activities of nonmembers who live, work, travel, or conduct business on Native lands. In 1980 Congress remedied this problem by enacting the Alaska National Interest Lands Conservation Act. This act allowed Alaska Natives and other rural residents to engage in subsistence hunting and fishing on public lands.

J. Assessed the Implications of Ching v. Case. The PIG studied the implications of the Hawaii State Supreme Court ruling in Ching v. Case, relating to the Pōhakuloa Training Area [“PTA”] which as a whole is approximately 134,000 acres and includes land ceded to the United States military by Presidential and Governor's Executive Orders, land purchased by the United States in fee simple from a private owner, and land that is leased from the State

In Ching v. Case, 145 Hawai'i 148, 449 P.3d 1146 (2019), the Hawaii Supreme Court held that the Board of Land and Natural Resources (“BLNR”) had breached its public trust duty because while it was aware of the possibility that the United States, the third-party leasing public trust property at PTA, had breached the lease by storing munitions and explosives on public trust resources, BLNR had failed to take “concrete steps to investigate or ensure the United States' compliance with the lease. Ching established that the State and its subdivisions have a duty to “weigh competing public and private uses ... independent of statutory duties and authorities created by the legislature.” In other words, all state or county agencies, as “subdivisions of the state[,]” implicitly have a constitutional duty to uphold and protect the public trust, regardless if they have an explicit statutory mandate to do so.” The Supreme Court was very clear that “Elementary trust law, after all, confirms the commonsense assumption that a fiduciary actually administering trust property may not allow it to fall into ruin on [the fiduciary's] watch.” The court relied on Pisciotta’s[4] testimony as a cultural monitor for the battle area complex, noting “a range of debris left over from military exercises, including munitions and UXO [unexploded ordinance], stationary targets, junk cars, an old tank, crudely built rock shelters, and other miscellaneous military rubbish” and further testifying “that some of her reports recommended that the debris be cleaned up, but not all of the UXO that she observed was removed.”

Pōhakuloa centered on a lease agreement between the State of Hawai'i Department of Land and Natural Resources (DNLR or the Department) and the United States Military for three expansive

[4] Note: Pisciotta was not an OHA employee at the time.

tracts of land on Hawai'i Island. The parties entered into the lease in 1964 for a period of sixty-five years (expiring in 2029). One of the three tracks of land was 22,900 acres and was "contained within the Pōhakuloa Training Area" which was to be used by the United States for military purposes. The lease allowed the United States "unrestricted control" of the leased tracts of land and established "several duties that the United States is obligated to fulfill during the course of the lease."Most importantly, the United States is required to "'make every reasonable effort to ... remove and deactivate all live or blank ammunition upon completion of a training exercise or prior to entry by the [] public, whichever is sooner."' Additionally, the United States agreed to "'take reasonable action during its use ... to prevent unnecessary damage to or destruction of vegetation, wildlife and forest cover, geological features and related natural resources" and to 'avoid pollution or contamination of all ground and surface waters and remove or bury all trash ... or other waste." DLNR had the right to enter the leased lands to reasonably conduct operations that would not unduly interfere with the military activity.

The Court relied on the Hawaii State Constitution, Article XII, Section 4 which provides as follows:

> The lands granted to the State of Hawaii by Section 5(b) of the Admission Act and pursuant to Article XVI, Section 7, of the State Constitution, excluding therefrom lands defined as "available lands" by Section 203 of the Hawaiian Homes Commission Act, 1920, as amended, shall be held by the State as a public trust for native Hawaiians and the general public

The Court also relied on the Hawaii State Constitution, Article XI, section 1 which provides as follows:

> For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people.

Native Hawaiian beneficiaries were entitled to relief against DLNR under trust provisions in article Xl, section 1 and article XII, section 4 for failure to monitor damage to ceded lands under lease to the United States military. In footnote 49, the Hawai'i Supreme Court relying on its decision in OHA v. HDCH declared:

> The State's duty of care is especially heightened in the context of ceded land held in trust for the benefit of native Hawaiians and the general public under article XII, section 4. This court has approvingly quoted the following in considering the ceded land trust:
>
> > The native Hawaiian people continue to be a unique and distinct people with their own language, social system, ancestral and national lands, customs, practices and institutions. The health and well-being of the native Hawaiian people is intrinsically tied to their deep feelings and attachment to the land. 'Aina [sic], or land, is of crucial importance to the native Hawaiian people--to their culture, their religion, their economic self-sufficiency and their sense of personal and community well-being. 'Aina [sic] is a living and vital part of the native Hawaiian cosmology, and is irreplaceable. The natural elements--land, air, water, ocean--are interconnected and interdependent. To native Hawaiians, land is not a commodity; it is the foundation of their cultural and spiritual identity as Hawaiians. The

> 'aina [sic] is part of their 'ohana, and they care for it as they do for other members of their families. For them, the land and the natural environment is alive, respected, treasured, praised, and even worshiped.

K. Established the Imperative for a Ceded Lands Inventory Report. The terms of statehood considered the plight of the Hawaiian people, specifically in the Admission Act of 1959. Section 5(f) of the Act refers to the crown and government lands of the Hawaiian Kingdom, which had been designated "ceded" to the Republic of Hawai'i, and then to the United States. The Act conveyed these lands to the new State of Hawai'i with the caveat that revenues were to constitute a trust for five purposes. One of these was the betterment of the conditions of Native Hawaiians. By any measure, those conditions were sorely in need of improvement, but, by 1978, they had not changed for the better, as the state's trust obligation went ignored.

The ceded lands, consisting of crown lands, once property of the Hawaiian monarchy, and of the government lands of the Kingdom of Hawai'i, totaled 1.8 million acres upon annexation in 1898. Pursuant to the Joint Resolution of Annexation, all of these lands were considered transferred or "ceded" to the United States government "for the benefit of the inhabitants of the Hawaiian Islands." Underscoring the federal trust responsibility are the findings of the US Congress in the Apology Resolution[5] (emphasis added):

> "*Whereas*, the Republic of Hawaii also ceded 1,800,000 acres of crown, government, and public lands of the Kingdom of Hawaii, **without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government."**
>
> **"*Whereas*, the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands** to the United States, either through their monarchy or through a plebiscite or referendum"

Upon statehood in 1959, the federal government returned to the State of Hawai'i all ceded lands not set aside for its own use. Section 5(f) of the Admission Act, directed the state to hold the lands in trust, listed the following five purposes:

1. The support of public education;
2. The betterment of the conditions of native Hawaiians as defined in the Hawaiian Homes Commission Act of 1920;
3. The development of farm and home ownership;
4. The making of public improvements; and
5. The provision of lands for public use.

Thus, the Federal Government delegated a portion of its fiduciary duties to the indigenous peoples of Hawai'i, which courts have found must be "judged by the most exacting fiduciary standards," to the State of Hawai'i via the Admissions Act, Section 5(f) of the public trust lands. Yet 63 years after statehood, the State does not have a complete inventory of classified public trust lands. In addition, a complete inventory of ceded lands, including classifications by former Kingdom Government and

[5] Public Law 103-150 (1993)

Crown lands, and by holdings by the federal, state and county governments, is critical for the federal government to uphold its federal trust responsibility to Native Hawaiians.

L. Clarified the Difference Between Ceded Lands, Public Lands and Public Land Trust.

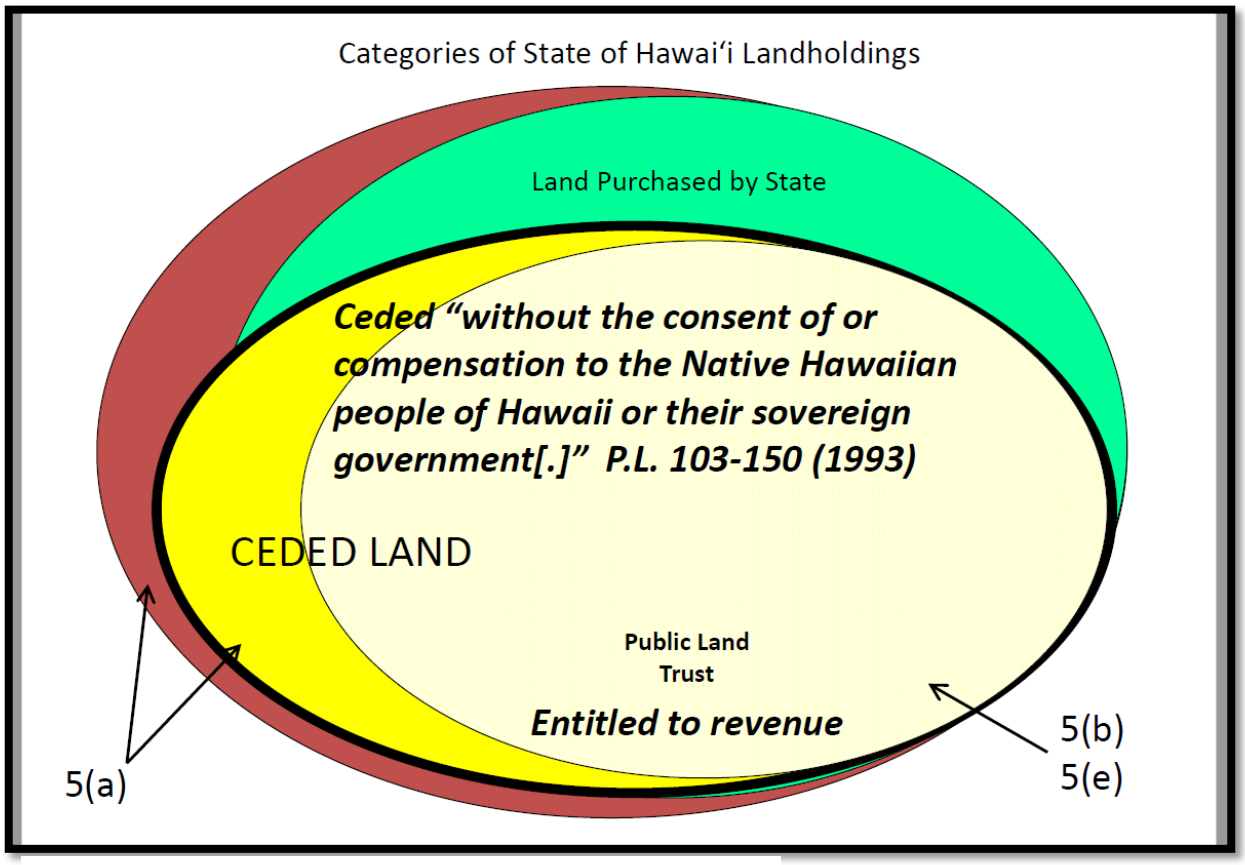


Figure 3. Categories of State Land Holdings

5(a) – title and control held by Territory, transferred to State (e.g., Sand Island)
5(b) – title held by U.S. but under control of Territory, transferred from U.S. to State
5(e) – title and control held by U.S., transferred from U.S. to State if land no longer needed by U.S.

M. Considered Broad Federal Conference, Coordination, Engagement and Consultation Policies and Practices. Native Hawaiians are owed the same trust responsibility as any other Native American group. To meet this obligation, Congress—oftentimes through the bipartisan work of this Committee and its Members—create policies to promote education, health, housing, and a variety of other federal programs that support Native Hawaiian self-determination including economic equity and prosperity. Similar to American Indians and Alaska Natives, Native Hawaiians have never relinquished our right to self-determination despite the United States' involvement in the illegal overthrow of Queen Lili'uokalani in 1893 and the dismantling of our Hawaiian government. In fact, over 150 Acts of Congress consistently and expressly acknowledged or recognized a special political and trust relationship to Native Hawaiians based on our status as the Indigenous, once-sovereign

people of Hawai‘i. Among these laws are the Hawaiian Homes Commission Act, 1920 (42 Stat. 108) (1921), the Native Hawaiian Education Act (20 U.S.C. § 7511) (1988), the Native Hawaiian Health Care Improvement Act (42 U.S.C. § 11701) (1988), and the Hawaiian Homelands Homeownership Act codified in the Native American Housing Assistance and Self Determination Act (NAHASDA), Title VIII (25 U.S.C. § 4221) (2000).

While the federal trust responsibility has many facets, one of the most critical safeguards of effective self-determination is the ability to consult with the federal government. Under President Clinton's Executive Order 13175, and subsequent memoranda from the Bush, Obama, and now Biden Administrations, the U.S. Government recognizes the right to sovereignty and self-determination of this nation's Native people. While this is a step in the right direction, the omission of Native Hawaiians from federal conference, coordination, engagement and consultation requirements has stifled and limited Native Hawaiian voices from being able to comment upon and inform federal projects and programs for the past two decades. Despite our exclusion from these executive orders, Congress's thoughtful inclusion of Native Hawaiians in key legislation like the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. § 3001) and the National Historic Preservation Act (NHPA) (16 U.S.C. § 470 et seq.) have demonstrated that Native Hawaiians can be effectively included in consultation now, with representation through Native Hawaiian organizations. Indeed, OHA receives and reviews approximately 240 requests for federal consultations each year, including Section 106 NHPA and NAGPRA reviews. The federal government takes many more actions affecting the Native Hawaiian community than are covered by these two statutes without ever giving Native Hawaiians an opportunity to consult.

Ensuring Native Hawaiians are informed of all proposed federal actions and allowed to voice their comments and perspectives on them will help to correct this country's historic wrongs against Native Hawaiians. Moreover, this will also improve the quality of federal undertakings and projects. Federal consultation with entities that serve Native Hawaiians such as OHA, Department of Hawaiian Home Lands, Native Hawaiian Education Council, Papa Ola Lokahi ("POL") and the Native Hawaiian Health Care Systems, enable Native Hawaiians to access this basic tenet of self-determination—having a meaningful say in our own governance.

Most recently, OHA and the Native Hawaiian community, as a whole, experienced expanded conference, coordination, engagement and consultation opportunities, often in the form of listening sessions, with the U.S. Departments of the Interior (DOI), Treasury (DOT) and Commerce (DOC). Consultation with the National Oceanic and Atmospheric Administration (NOAA) organization, on the marine sanctuary expansion in Papahānaumokuākea Marine National Monument, illustrates a meaningful and productive shared governance and stewardship responsibilities among the four co-trustee organizations of the DOI, via U.S. Fish and Wildlife Services, the DOC via NOAA, the State of Hawaii, via its Department of Land and Natural Resources, and OHA. OHA has been consulted on matters related to the NAGPRA, and applied the tenants of this domestic policy to international repatriations.

More intentional and frequent consultation with the Department of Defense (DOD), and all of its branches and installations, as it relates to the significant presence of DOD operations and activities in addressing national security from the Pacific is essential. Notably, the DOD consulted with

Native Hawaiians on its consultation policy, Department of Defense Instruction No. 4710.03, dated October 25, 2011, incorporating changes, August 31, 2018 ("Instruction") and the Advisory Council on Historic Preservation guidelines, Consultation with Native Hawaiians in Section 106 Review Process, A Handbook. The DOD Instruction's policy and procedures provide for consultation with NHOs when proposing and undertaking that may affect a property or place of traditional religious and/or cultural importance or action that may affect a long term or permanent change in NHO access to a property or place of traditional religious and cultural importance to an NHO, in addition to consultation in compliance with NEPA and NHPA. Under the Instruction, OHA may serve to facilitate effective consultation between NHO and DOD Components, with the understanding that no single NHO is likely to represent the interests of all NHO or the Native Hawaiian people.

N. Supported the Defueling and Closure of the Red Hill Fuel Storage Tanks. The health and safety concerns, as a result of leaks of the Red Hill Bulk Fuel Tanks, with a capacity of up to 250MM gallons of fuel, only 100 feet over O'ahu's major aquifer, supplying water to over 400,000 residents of O'ahu, is well documented; the nexus being the U.S. Military's responsibilities for cleanup.

O. Highlighted the Need to Fund Environmental Assessments and Cleanups of Sacred Lands Polluted and Contaminated by the U.S. Military. There is a need to fund environmental assessments and cleanups of sacred lands polluted and contaminated by the U.S. military, evidences the Federal Trust responsibility to Native Hawaiians, and the lands ceded and transferred ultimately to the new State of Hawaii, via the Admissions Act. The implications of lands in use by the U.S. military, in the state of Hawaii, includes approximately 46,500 acres, statewide across Army, Navy and Air Force bases and installations, with the largest being the Army's Pohakuloa Training Area on Hawai'i Island, of approximately 23,000 acres.[6]

In 2004, the U.S. Navy ended the Kaho'olawe UXO Clearance Project. At its completion approximately 75% of the island was surfaced cleared of unexploded ordnance. Of this area, 10% of the island or 2,647 acres were additionally cleared to the depth of four feet. Twenty-five percent (25%) or 6,692 acres was not cleared and unescorted access to these areas remains unsafe.[7] Almost 20 years later, core programs under the governance of the Kaho'olawe Island Reserve Commission and staff, are broad in its programming in ocean (e.g., sustainability, fish stock, population, habitat, marine debris, aerial, coastal and underwater surveys), restoration (e.g., native species planting, biosecurity, invasive alien species, rodent and weed control, faunal), and culture (e.g., integrated culture and restoration, archeological importance, cultural protocols, planting, iwi kupuna burials) focal areas.[8]

Funding assessment and clean-up activities on sacred lands—Pohakuloa and Kaho'olawe, being two examples—is an imperative. With regard to Pohakuloa, we recommend that the lease extension process with the State of Hawaii cease, until the conditions imposed by the Hawai`i Supreme Court in *Ching v. State*, 145 Hawai'i 148 (2019) and the Circuit Court's recommendations be met. It appears wholly inappropriate for DOD to engage in an environmental impact review under its April 2022 Draft Environmental Impact Statement for Army Training Land Retention at Pohakuloa Training Area

[6] US Indo-Pacific Command, Hawai'i Military Land Use Master Plan, 2021 Interim Update, Final – April 2021
[7] https://www.kahoolawe.hawaii.gov/history.shtml, retrieved May 28, 2022
[8] https://www.kahoolawe.hawaii.gov/coreprograms.shtml#ocean, retrieved May 28, 2022

(PTA), the precursor to a lease extension, when the conditions of the lease regarding the duty to protect and preserve public trust land are in question. An essential component of the State's duty to protect and preserve trust land is an obligation to reasonably monitor a third party's use of the property and OHA upholds its duty to investigate the risk of impending damage to the land on behalf of its beneficiaries who have sought to prevent irreparable harm before it occurs by DOD's misuse of the trust lands under lease.

P. Analyzed the Leandra Wai Act. On March 18, 2022, Hawaii Congressman Kaialiʻi Kahele announced federal legislation to restore Mākua Valley to remediate and restore Mākua Military Reservation ("MMR") and return the land from the military back to the State of Hawaiʻi. The MMR training site, which was used as a live-fire range until an Earthjustice lawsuit stopped the practice in 2004, encompasses dozens of cultural sites that are sacred to native Hawaiians. While no live rounds have been fired there since 2004, the military continues to hold over 780 acres as a training ground. The legislation is called the Leandra Wai Act, named after the late cultural practitioner and head of Mālama Mākua, an organization that has fought for years to end military use of Mākua Valley.

The bill does the following:

1. Direct the Department of Defense to provide a cost estimate and cleanup schedule for the land remediation and restoration of MMR, in coordination with the State of Hawaiʻi.
2. Direct the Secretary of the Army to enter into a Memorandum of Understanding with the State of Hawaiʻi on establishing a Mākua Valley Conveyance, Remediation, and Environmental Restoration Trust Fund, and to consult with Native Hawaiian Organizations on the timing, planning, methodology, and implementation for the removal of unexploded ordnance and other contaminants at MMR.
3. Authorize land conveyance transfer of 782-acres within Mākua back to the state under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) but exempt it from a provision that requires remedial actions to be completed before transfer to ensure timeliness of title transfer.
4. Following the title transfer, the Department of Defense must abide by CERCLA and remain liable for unexploded ordinances and other contaminants that it introduced.
5. It would direct the Army Secretary to enter into a Memorandum of Understanding with the State of Hawaii to establish a Mākua Valley Conveyance Remediation and Environmental Restoration Trust Fund. The Army Secretary would be required to consult with Native Hawaiian organizations while creating a plan to remove unexploded ordnance and other contaminants.

Here is a link to the full text of the bill for consideration for any changes and/or introduction in the Senate.

https://kahele.house.gov/sites/evo-subsites/kahele.house.gov/files/evo-media-document/Leandra%20Wai%20Act.pdf

The MMR consists of 4,856 acres in a combination of fee simple, ceded, and leased lands. The military began using parts of the valley for live-fire training in the 1920s. The use of Makua Valley by the United States Army was first granted in May 1943 by the Territory of Hawaii through Revocable Permit No. 200. On August 17, 1964, President Lyndon B. Johnson signed Executive Order No. 11666 (Executive Order), which set aside for the use of the United States most of the area that comprises the Military Reservation.

With respect to the portion of the Military Reservation not set aside by the Executive Order, a lease agreement for 760 acres was entered into on August 17, 1964, between the Assistant Secretary of the Army and the Department of Land and Natural Resources of the State of Hawaii, whereby the United States government obtained control and use of the remaining 760 acres for a period of 65 years, a lease that ends in 2029.

Malama Makua, represented by David Henkin, Earthjustice, filed a federal lawsuit in 1998 claiming that the Army had violated the National Environmental Policy Act by never doing any environmental review. And that resulted in a settlement agreement, the first settlement agreement, in 1999, in which the Army agreed that it would not do any training at Mākua until it had completed some form of environmental review.

In July of 2001 Malama Makua secured from the District Court a preliminary injunction. It may be that this was the first time that a federal court had ever ordered the military not to train in an area because of violation of environmental laws.

Q. Reviewed the Existing Need for Broad Funding and Programming Equity for Native Hawaiian Families, Natural Environment and Resources and Culture. While consultation is critical to self-determination, so is the provision of the resources and governmental programs to provide for the health, housing, education, and economic well-being of Native Hawaiians. Hawaii's Congressional delegation have ensured that Congress continues to fund essential federal programs annually; however, three of these acts must now complete the final process to be reauthorized, strengthened, and expanded by the Congress.

Over the past several decades, the Native Hawaiian Health Care Improvement Act ("NHHCIA"), the Hawaiian Homelands Homeownership Act ("HHHA"), and the Native Hawaiian Education Act ("NHEA") have enabled Native Hawaiians to receive culturally appropriate services relating to health, housing, and education. These Acts have delivered services to tens of thousands of Native Hawaiians through diverse programs including revitalizing the Native Hawaiian language, building and maintaining homes and infrastructure, and providing telehealth services during a global pandemic. Further, the Native Hawaiian Revolving Loan Fund ("NHRLF")—administered by OHA—and the U.S. Treasury's Community Development Financial Institutions fund ("CDFI Fund's") Native American CDFI Assistance Program have supported the emergence and growth of thousands of Native Hawaiian businesses.

Native Hawaiian Health. Native Hawaiian self-determination in health care means that Native Hawaiians have the power to pursue well-being in the ways that they find to be appropriate. This self-determination may include identifying the health care services most needed in their communities or

working to integrate traditional practices and cultural norms in health care spaces. Conversely, Native Hawaiian self-determination in health may include identifying aspects of the health care system, particularly around delivery, that may not fit well with Native Hawaiian concepts of wellness and thus have limited utility. Similar to our Native relatives on the continent, Native Hawaiians face disproportionate threats to our physical and mental health, including poverty,[9] suicide and depression,[10] infant mortality,[11] alcohol abuse,[12] homelessness,[13] and prejudice. Native Hawaiian infants are twice as likely to die (infant mortality rate of 7.9 per 1,000 live births) than their White peers (infant mortality rate of 3.5 per 1,000 live births) in the State of Hawai'i.[14] Native Hawaiians are also more likely to suffer from coronary heart disease, diabetes, and asthma than non-Native Hawaiians in the State.[15] Nearly 16,000 Native Hawaiians suffer from diabetes and more than 36,000 suffer from asthma.[16]

To address the major health disparities, Congress enacted the Native Hawaiian Health Care Act in 1988, which was later retitled as the Native Hawaiian Health Care Improvement Act ("NHHCIA") for sums as may be necessary for fiscal years 1993 through 2019 (Pub. L. 111-148, title X, §10221(a), Mar. 23, 2010, 124 Stat. 935). Today, the Native Hawaiian Health Care Improvement Act is under continuing resolution. OHA recommends that the NHHCIA be permanently reauthorized like the Indian Health Care Improvement Act was in 2009, and all Congressionally authorized appropriations remain available until expended. The NHHCIA established the Native Hawaiian Health Care program, which funds the Native Hawaiian Health Care Systems (NHHCSs) administered by POL. Together the five Systems on the islands of Kaua'i, O'ahu, Maui, Moloka'i, and Hawai'i provide primary health care, behavioral health, and dental services. They also offer health education to manage disease, health related transportation, and other services. NHHCIA also established the Native Hawaiian Health Scholarship Program (NHHSP) for Native Hawaiians pursuing careers in designated health care professions. It supports culturally appropriate training and the placement of scholars in underserved Native Hawaiian communities following the completion of their education. More than 300 scholarships have been awarded through this program and most program alumni work in Hawai'i.

According to POL, the pandemic has highlighted the urgent need for several amendments to the NHHCIA. OHA and POL have advocated for increasing funding to the NHHCIA to expand Native Hawaiian health resources; removing the matching requirements applied to the NHHCSs for parity with other Native health care providers; making the NHHCSs eligible for 100 percent of the Federal Medical Assistance Percentage (FMAP) as well as the Prospective Payment System (PPS)

[9] Anita Hofschneider, *Poverty Persists Among Hawaiians Despite Low Unemployment*, HONOLULU CIVIL BEAT (Sept. 19, 2018), https://www.civilbeat.org/2018/09/poverty-persists-among-hawaiians-despite-low-unemployment/.
[10] NATIVE HAWAIIAN MENTAL HEALTH AND SUICIDE, OFFICE OF HAWAIIAN AFFAIRS (Feb. 2018), http://www.ohadatabook.com/HTH_Suicide.pdf.
[11] Ashley H. Hirai et al., *Excess Infant Mortality Among Native Hawaiians: Identifying Determinants for Preventive Action*, AM. J. OF PUB. HEALTH (Nov. 2013), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3828695/pdf/AJPH.2013.301294.pdf.
[12] NATIVE HAWAIIAN HEALTH STATUS, OFFICE OF HAWAIIAN AFFAIRS 22 (July 2019), http://www.ohadatabook.com/NHHS.html.
[13] ISSUE BRIEF: COVID-19 AND NATIVE HAWAIIAN COMMUNITIES, NATIVE HAWAIIANS OVER-REPRESENTED IN COVID-19 AT-RISK POPULATIONS, OFFICE OF HAWAIIAN AFFAIRS 2 (2020).
[14] Hirai, *supra* note 7.
[15] OFFICE OF HAWAIIAN AFFAIRS, *supra* note 9 at 2.
[16] *Id.* at 1–2.

reimbursement rate; expanding Federal Tort Claims Act coverage to POL, the Systems, and their employees in parity with other Native health care providers; allowing federal program funding to be used to collect and analyze health and program data which currently falls under the ten percent administrative cost cap for the program; allowing the Systems to be a specific eligibility group for supplemental federal funding streams; and providing a tax exemption for the NHHSP. Additionally, POL has established partnerships with other organizations to meet its Congressional mandate to coordinate and support Native Hawaiian health resources and services, offering capacity building, technical assistance, and workshops to promote holistic health and well-being through a Native Hawaiian lens. Through POL's coordination and partnerships, Native Hawaiian wellbeing across the lifespan and throughout various domains can be improved. We urge the Committee to support increased funding for, reauthorization of, and technical amendments to the NHHCIA, so that POL and the Systems may be able to achieve Congressional mandates and uplift Native Hawaiian health through as many means as possible.

Native Hawaiian Housing. The HHHA facilitates Native Hawaiian self-determination by supporting part of DHHL's mission—to develop and deliver land and housing to Native Hawaiians. Congress enacted the HHHA in 2000. The HHHA established the Native Hawaiian Housing Block Grant (NHHBG) program and the Section 184A Loan Guarantees for Native Hawaiian Housing. The NHHBG provides much needed funding to DHHL to deliver new construction, rehabilitation, infrastructure, and various support services to beneficiaries living on DHHL lands. The 184A Loan Guarantee program provides eligible beneficiaries with access to construction capital on DHHL lands by fully guaranteeing principal and interest due on loans. The program currently serves owner-occupant single family dwellings on the DHHL lands. Together, these programs help DHHL to carry out the vision of our Prince Jonah Kūhiō Kalaniana‘ole, who as the then-Territory of Hawai‘i's Congressional Delegate 100 years ago, spearheaded one of the first Acts of Congress implementing the trust responsibility to Native Hawaiians.

Like other Native communities, housing has become even more vital during this pandemic. Prior to the pandemic, Native Hawaiians faced one of the most expensive housing markets in the country. In fact, Native Hawaiians made up nearly half of the homeless population on the island of O‘ahu,[17] whose population accounts for approximately two thirds of all State residents. To address housing needs, DHHL has used NHHBG funds for emergency rental assistance for eligible Native Hawaiians; rental subsidies for lower income elderly; rehabilitation of homes primarily for elderly or disabled residents; homeownership opportunities for lower income working families; and homeownership and rental counseling to address barriers experienced by Native Hawaiians.

The OHA celebrates with the beneficiaries of the Hawaiian Homes Commission Act (HHCA), the impacts of the historic State of Hawaii 's legislature's HB2511 which appropriates $600 million to build out infrastructure to create homestead communities and provide mortgage and rental assistance, dig into shovel-ready projects, lot options, all focused on returning native Hawaiians to the land[18]. We stand ready to collaborate with HHCA beneficiaries and Department of Hawaiian Homelands leadership to fulfill the intents of such historic state legislation.

[17] OFFICE OF HAWAIIAN AFFAIRS, *supra* note 9 at 2.
[18] http:// hawaii.gov/2022/05/05/chair-aila-statement-on-passage-of-hb-2511/dhhl, retrieved May 28, 2022.

Native Hawaiian Well-Being – Economic. Economic well-being and opportunity are central to the ability of any community to exercise self-determination. Unfortunately, the pandemic devastated Hawai'i's job market. Unemployment in the State skyrocketed, and recovery efforts muted by slow federal funding and programming implementation. The U.S. Bureau of Labor Statistics reported that as of December 2020, Hawai'i had the highest unemployment rate in the United States at 9.3 percent,[19]; however, with loosening COVID-19 restrictions (e.g., stay-at-home orders, business re-opening, social distancing, masking) and vaccination policies, the unemployment rate in Hawaii dropped to 4.2[20] percent in April of 2022. In the current report, the state's Department of Business and Economic Development & Tourism ("DBEDT") predicts that Hawai'i's economic growth rate, as measured by real domestic product will increase 3.2 percent in 2022 over the previous year. The economic expansion path will continue with a 2.5 percent increase in 2-23, 2.3 percent in 2024, and 2.0 percent in 2025.[21] Hawai'i's recovery has resumed now that the Delta and Omicron waves passed and once the Asian COVID-19 wave also passes, the long-awaited return of international visitors will begin later this spring. Hawai'i's delayed recovery from the pandemic means that we expect moderately strong growth, despite clearly deteriorating conditions in the U.S. and global economies. The worsening global economic environment poses substantial downside risks to Hawaii's forecast.[22]

Fortunately, several economic development and access to capital programs are already in place to serve Native Hawaiian communities. Department of Treasury (DOTr), Native American Community Development Financial Institutions ("CDFI") and Minority Depository Institutions ("MDI") and the Native Hawaiian Revolving Loan Fund ("NHRLF"), are widely recognized as being effective. Continued support for these and similar programs are critical to minimizing the negative economic impacts of this pandemic and the recovery in culturally appropriate ways.

Executive Orders 14031[23] and 13985[24] and the DOT's implementation efforts to promote equitable outcomes. OHA also recognizes DOT's Emergency Rental Assistance, Homeowner Assistance Fund, Capital Projects Fund and Small Business Credit Initiative, Emergency Capital Investment Program, Rapid Response Program, and Native American CDFI Assistance Program. In addition, NHOs are eligible to receive additional funds as sub-recipients to the state and/or counties, and we recommend the Committee consider OHA's state agency status as an accountable mechanism for federal funds to quickly flow to Native Hawaiian communities.

For example, in its nearly three decades in operation under OHA's administration, NHRLF closed approximately 2,700 loans valued at more than $63 million of lending to Native Hawaiian businesses and individuals. In its 2021 Report to Congress, NHRLF reported that borrowers: improved their overall economic wellbeing during the loan period; experienced improved preconditions to financial stability, after receiving a NHRLF loan; and increased their income due to education and business loans. The value of NHRLF borrowers' financial and non-financial assets

[19] *Unemployment Rates for States*, U.S. BUREAU OF LABOR STATISTICS (Jan. 26, 2021), https://www.bls.gov/web/laus/laumstrk.htm.
[20] U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/eag/eag.hi.htm, retrieved May 22, 2022
[21] https://dbedt.hawaii.gov/blog/22-07/#:~:text=Forecasting%20Results,and%202.0%20percent%20in%202025, retrieved May 22, 2022
[22] https://uhero.hawaii.edu/uhero-forecast-for-the-state-of-hawaii-foreign-visitors-will-provide-lift-but-risks-have-multiplied/, retrieved May 22, 2022
[23] Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians and Pacific Islanders
[24] Advancing Racial Equity and Support for Underserved Communities Through the Federal Government

increased over time, with smaller gains resulting from home improvement loans. As a result of increased asset value, the average net worth of OHA borrowers grew over the loan period; and Native Hawaiian-owned businesses with NHRLF loans, improved their financial performance from before the loan was received to 2019. Like many other businesses, the devasting impact of the COVID-19 pandemic on Hawai'i's economy derailed the positive outcomes NHRLF borrowers experienced over the loan period in the areas of economic wellbeing, preconditions to financial stability, and income. Accordingly, OHA asks the Committee to support programmatic fixes to NHRLF, including ending the demonstration status of the program, removing restrictions on outdated unallowable loan activities, and reducing the Native Hawaiian ownership percentage requirement from 100 to 50---all to create a broader pipeline of programming and funding for Native Hawaiian economic development.

Native Hawaiian Education. The successes of the Native Hawaiian education movement are understood throughout the community. According to conversations with NHEC, in 2017 and 2018 alone, the 38 NHEP grantees served 95,458 individuals, including 74,311 students, 18,429 parents, and 2,718 teachers. They surpassed their target number for participants by approximately 65 percent. Additionally, all 38 grantees targeted serving Native Hawaiian communities and formed almost 700 strategic partnerships with schools, government agencies, or cultural organizations to expand the number served and to increase the overall impact of their programs.

Despite the great work of NHEP grantees in recent years and the SCIA's efforts to secure $85,000,000 of American Rescue Plan Act (ARPA) funding for Native Hawaiian education, the program implementation of grant funds fell short in equitable allocation for relief to our community programs. According to the Education Council's profile analysis study of NHEP grantees from 2010 through 2018, over 47% of awardees funded were Native Hawaiian community-based organizations. The 2021 ARPA funds for NHEP shows a reduction in awards to Native Hawaiian community-based organizations down to 40% and an increase of awards to State programs from 25.2% to 37.1%.[25] Programs for early childhood education in Hawaiian language instruction had to compete for relief funds with programs for post-secondary education. Education is a living system. We know that each part of the system from early childhood education to post-secondary education is important to our communities.

The effects of the pandemic still threaten the survival of some grantees and widen existing disparities between Native Hawaiian students and their non-Hawaiian counterparts. Even before the pandemic, data collected in 2015 demonstrated that fewer Native Hawaiian students attained proficiency in math and reading than their non-Hawaiian counterparts.[26] Compounding matters during the pandemic, Hawai'i is considered the state "most prone to academic risks during the coronavirus outbreak" and faces the "widest gap in the amount of teacher interaction with lesser-educated households compared

[25] Toms Barker, L., Sanchez, R., & McLelland, C. (2021, March). *NATIVE HAWAIIAN EDUCATION COUNCIL EVALUATION OF THE NATIVE HAWAIIAN EDUCATION PROGRAM: Portfolio Analysis of the 2010–2018 Grants*. IMPAQ International, Inc. http://www.nhec.org/wp-content/uploads/2021/05/NHEP-Portfolio-Analysis-AY2010-2018-Submitted-3-18-2021.pdf

[26] A NATIVE HAWAIIAN FOCUS ON THE HAWAI'I PUBLIC SCHOOL SYSTEM, SY2015, OFFICE OF HAWAIIAN AFFAIRS 9 (2017).

with more-educated ones."[27]

Non-profit education programs, particularly language immersion programs, have faced unique hardships amid the pandemic. With the arrival of new COVID-19 strains in Hawai'i, Native Hawaiian students face a precarious situation. To further aggravate this risk, nearly ten percent of Native Hawaiian households do not have a computer in their homes, while nearly 20 percent do not have Internet access.[28] During the pandemic, many families have been unable to afford the cost of new equipment and broadband service because formerly working adult parents are now unemployed.

R. Reviewed Federal Legislation. Additional federal legislation and its implications were reviewed.

1. The Hawaiian Organic Act, Pub. L. 56–339, 31 Stat. 141, enacted April 30, 1900, was an organic act enacted by the United States Congress to establish the Territory of Hawaii and to provide a Constitution and government for the territory.
2. House Joint Resolution 259, 55th Congress, 2nd session, known as the "Newlands Resolution," passed Congress and was signed into law by President McKinley on July 7, 1898 — the Hawaiian islands were officially annexed by the United States. Sanford Dole became the first Governor of the Territory of Hawaii. Nov 24, 2021
3. Executive Order 10436[29] – Reserving Kahoolawe Island, Territory of Hawaii, for the Use of the United States for Naval Purposes and Placing it Under the Jurisdiction of the Secretary of the Navy.
4. Admissions Act 1959 - President Eisenhower signed the bill into law on March 18, 1959. In June of 1959 the citizens of Hawaii voted on a referendum to accept the statehood bill and on August 21, 1959, President Eisenhower signed the official proclamation admitting Hawaii as the 50th state.

S. Considered Non-Land Lease Based Income and Proceeds Sources. The PIG identified a variety of additional non-land lease-based income and proceeds sources, occurring on ceded and public land trust lands for consideration, such as monetizing: telescope time, research dollars, technology patents, foreign investments, commodities (e.g., fishing).

T. Analyzed the Federal Trust Responsibilities for the Indigenous Peoples and Nexus with Native Hawaiians. Today, we are living in unprecedented times with President Biden issuing numerous Executive Orders and Memos directing all government agencies to actively seek and integrate real and lasting Equity and Justice for Underserved Communities which include Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders. See e.g. Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, Presidential Actions, Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, January 20, 2021

[27] Alex Harwin & Yukiko Furuya, *Coronavirus Learning Loss Risk Index Reveal Big Equity Problems*, EDUCATIONWEEK (Sept. 1, 2020), https://www.edweek.org/policy-politics/coronavirus-learning-loss-risk-index-reveals-big-equity-problems/2020/09.
[28] OFFICE OF HAWAIIAN AFFAIRS, *supra* note 9 at 3.

[29] HTTPS://WWW.PRESIDENCY.UCSB.EDU/DOCUMENTS/EXECUTIVE-ORDER-10436-RESERVING-KAHOOLAWE-ISLAND-TERRITORY-HAWAII-FOR-THE-USE-THE-UNITED, retrieved June 23, 2022

https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/ (Pres. Biden's first day in office as President).

Both the Senate and House adopted the Apology Resolution on Nov. 32, 1993, and President Clinton signed it the same day. Thus, the US admitted that the overthrow of the Kingdom of Hawaii was illegal and occurred "with the active participation of agents and citizens of the United States" in violation of "international law." The US also admitted that the Republic of Hawaii ceded 1,800,000 acres of crown, government, and public lands of the kingdom of Hawaii, without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government. The Congress "(4) expresses its commitment to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii, in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people; and (5) urges the President of the United States to also acknowledge the ramifications of the overthrow of the Kingdom of Hawaii and to support reconciliation efforts between the United States and the Native Hawaiian people." U.S. Public Law 103-150 (107 Stat. 1510)

For 63 years, Native Hawaiians have carried the burden of proving how and why our rights from the illegal overthrow and under the Admissions Act should be honored and fulfilled. The Courts have repeatedly affirmed the Trust Obligations to beneficiaries (Native Hawaiians) and yet we are still carrying the burden of proving the conditions of the Compact between the Federal Government, State and Native Hawaiians. The Federal Government has committed itself and has a duty to advance reconciliation with Native Hawaiians. Native Hawaiian claims for meaningful redress for historical in justice and continuing wrongs remain substantially unresolved.

Two glaring examples of continuing wrongs are Pohakuloa and Mauna Kea. In both cases, the Pohakuloa and Mauna Kea 65-year leases are coming to an end (2029 and 2033 respectively). Mauna Kea and Pohakuloa are crown and government lands and some lands are under the Department of Hawaiian Homelands. Both DLNR leases require that the Observatories and the Military must clean up and attempt to restore the lands to their original state, so that all the beneficiaries can use and fully enjoy these lands. In the cases of Mauna Kea and Pohakuloa the current lease rents are $1 per year. This violates the provisions of HRS Chapter 171, which generally requires an appraisal and lease rent to be set at fair market value. The $1 per year allows the State to avoid transferring the 20% to OHA and also denies the general public their 80%. Not only Native Hawaiians, but all the people of Hawai'i are subsidizing the Department of Defense and Astronomy.

T. Identified the United Nations Declaration on the Rights of Indigenous People ("UNDRIP"). Adopted by the United Nations General Assembly on September 13, 2007, the UNDRIP is valuable as a foundational policy document.

III. REFERENCE DOCUMENTS

The PIG assembled, collected, reviewed and made available to the PIG members, documents listed below that helped to inform and guide investigative activities and recommendations.

A. **1993** – The Scope of Federal Responsibility for Native Hawaiians under the Hawai'ian Homes Commission Act, M-36978, Thomas L. Sansonetti, Solicitor, January 19, 1993

B. **1993** – Statement of Solicitor Withdrawing M-36978, John D. Leshy, Solicitor, November 15, 1993

C. **2000** – From Mauka to Makai: The River of Justice Must Flow Freely, Report on the Reconciliation Process Between the Federal Government and Native Hawaiians, Prepared by The Department of the Interior and the Department of Justice, October 23, 2000

D. **2007** – United Nations Declaration on the Rights of Indigenous People, September 13, 2007

E. **2013** – BAE 13-02 Protected Ceded Lands, Executive Policy Manual

F. **2014** – Financial Review of FY12 Report on Public Trust Land Receipts Reporting (KMH LLP, for the fiscal year ended June 30, 2012)

G. **2016** – Food and Agriculture Organization of the United Nations, Free Prior and Informed Consent, An Indigenous Peoples' Right and a Good Practice for Local Communities

H. **2018** – Financial Review of FY16 Report on Public Trust Land Receipts Reporting (N&K CPA's, Inc. for the fiscal year ended June 30, 2016)

I. **2018 –** Broken Promises: Continuing Federal Funding Shortfall for Native Americans, U.S. Commission on Civil Rights

J. **2019** – Ching v. Case, No. SCAP-18-0000432 449 P.3d 1146 (Haw.2019): Holding that the State had a trust duty to monitor the federal government's noncompliance with its lease of public lands but did not have a trust duty to initiate an enforcement action

K. **2021 –** Ceded Land and PLT Presentation – State Auditor

L. **2021 –** Ceded Land Inventory Report – Auditor Presentation

M. **2021** – Report – Report to the Thirty-First Legislature, 2022 Regular Session, Accounting of All Receipts from Lands Described in Section 5(f) of the Admission Act for fiscal year 2021

N. **2021 –** 2022 OHA Public Land Trust Bill

O. **2021** - Executive Order 13985[30] - Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, January 20, 2021

P. **2021 –** Executive Order 14008 – Tackling the Climate Crisis at Home and Abroad, January 27, 2021

Q. **2021** - Executive Order 14031[31] - Executive Order on Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders, May 28, 2021

[30] Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
[31] Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians and Pacific Islanders

R. **2022 –** HB1474/SB2122 – Relating to Increasing the Office of Hawaiian Affairs' Pro Rata Share of the Public Land Trust (OHA Package Bills)

S. **2022 –** HB 2021 – Relating to Increasing the Payment Amount for the Office of Hawaiian Affairs' prorate share (Introduced by Senator Jarrett Keohokalole)

T. **2022 –** Act 255, HB2024 – Relating to Mauna Kea

U. **2022 -** Action Item BOT #22-05**:** Approve the Formation of a Permitted Interaction Group (PIG) to Investigate and Engage with Federal Agencies and International and Indigenous Entities on Native Hawaiians' Legal Claims, Land Inventories, and Financial Accounting Related to the Public Land Trust, April 14, 2022

V. **2022 –** 117th Congress – Leandra Wai Act – Direct the Secretary of Defense to Convey the Mākua Military Reservation to the State of Hawaii and establish a trust fund for such conveyance and for other purposes

W. **2022 –** Sampling list of repositories, manuscripts, maps and documents, Kumu Pono Associates, LLC, April 16, 2022

X. **2022 -** Testimony of Carmen "Hulu" Lindsey, Chair, Board of Trustees Office of Hawaiian Affairs, U.S. Senate Committee on Indian Affairs – Field Hearing on "Upholding the Federal Trust Responsibility: Funding & Program Access for Innovation in the Native Hawaiian Community", June 1, 2022

Y. **2022 -** June 1, 2022, SCIA Field Hearing – Additional Testimony & Question Response, June 15, 2022

INTENTIONALLY LEFT BLANK

IV. OBSERVATIONS AND FINDINGS

The following observations and findings are detailed in support of the final recommendations made in Section V. Recommendation:

A. General. Based on the PIG's investigative work activities described in Section II, the following general observations were formulated:

1. There is no, one, readily identified, centralized federal government entity or agency that knows or would know what was transferred to the State of Hawaii at the time of the Admissions Act, August 1959.
2. Reference reports are difficult to find, sparse, and requires more specialized, assistance to research, locate, interpret and piece together (e.g., cultural, university, legal) informative ceded lands inventory data.
3. Individuals with knowledge regarding ceded lands in its depth and expanse are difficult to identify and learn from.

B. Ceded Lands Inventory. There is an imperative to create a ceded lands inventory as a fiduciary trust responsibility.

C. Policies. There is a need to update existing, expand and create new policies.

D. Key Milestone Dates. The following six milestones represent key dates by which the political governance of Hawaii is recognized and meaningful for tracking of ceded lands:

1. 1893 - January 17th – Overthrow of the Hawaiian monarchy, Queen Liliuokalani;
2. 1898 - July 7th – Hawaiian Islands annexed to the United States;
3. 1900 - April 30th – The Hawaiian Organic Act, established the Territory of Hawaii
4. 1953 - February 20th – Executive Order 10436 – Reserving Kahoolawe Island, Territory of Hawaii, for the Use of the United States for Naval Purposes and Placing it Under the Jurisdiction of the Secretary of the Navy;
5. 1959 - August 21st – Admission of Hawaii as the 50th state; and
6. 2022 – July 12th – Permitted Interaction Group Recommendation Report

E. Indigenous, International Implications[32]. There are indigenous and international policy resources that can strengthen future policy work, including the concept of free and prior informed consent. The term "Indigenous Peoples" in plural was internationally agreed by Indigenous Peoples to encompass diverse collectives that also fit the characteristics outlined in the working definition (above). It can include tribes, first peoples/nations, aboriginals, ethnic groups, adivasi, janajati, or occupational and geographical terms like hunter gatherers, nomads, peasants, and hill people.

All Peoples have the right to self-determination. It is a fundamental principle in international law, embodied in the Charter of the United Nations and the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The standard, Free, Prior and Informed Consent (FPIC), as well as Indigenous Peoples' rights to lands, territories and

[32] https://www.fao.org/3/i6190e/i6190e.pdf (2016), page 12, retrieved July 11, 2022

natural resources are embedded within the universal right to self-determination. The normative framework for FPIC consists of a series of international legal instruments including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the International Labour Organization Convention 169 (ILO 169), and the Convention on Biological Diversity (CBD), among many others, as well as national laws.

F. Administration. There are activities that Administration can do to effect the recommendations of the PIG.

INTENTIONALLY LEFT BLANK

V. RECOMMENDATIONS

Based on the PIG's investigative work activities, the following recommendations are made, organized by policy, ceded lands inventory, federal government engagement, indigenous, international implications and Administration groupings.

A. Policy

1. Update existing Board of Trustees policy re: Protecting the Ceded Lands Corpus, including addressing the prohibition of the sale of ceded lands on an exception basis.
2. Update existing Iwi Kupuna and Repatriation policies because of the nexus to activities in Hawai'i, including on ceded lands and the policy implications of the federal Native American Graves Protection and Repatriation Act.
3. Identify and create new Board of Trustees policies related to ceded lands, (e.g., maritime boundary considerations, land leasing, oceans, submerged lands, minerals, commodities, ceded lands transfer to Department of Hawaiian Homelands trust inventory, consultation).
4. Develop, adopt and implement military engagement and military clean up policies for natural and cultural resources impacted by defense, military and other related activities.

B. Ceded Lands Inventory

1. Establish the following six milestone dates for tracking of ceded lands:
    a. 1893 - January 17th – Overthrow of the Hawaiian monarchy, Queen Liliuokalani;
    b. 1898 - July 7th – Hawaiian Islands annexed to the United States;
    c. 1900 - April 30th – The Hawaiian Organic Act, established the Territory of Hawaii
    d. 1953 - February 20th – Executive Order 10436 – Reserving Kahoolawe Island, Territory of Hawaii, for the Use of the United States for Naval Purposes and Placing it Under the Jurisdiction of the Secretary of the Navy;
    e. 1959 - August 21st – Admission of Hawaii as the 50th state; and
    f. 2022 – July 12th – Permitted Interaction Group Recommendation Report
2. Identify essential information and data elements (e.g., classification, location, transfer, ownership, condemnation, disposition) for the ceded land inventory to track across the six milestone dates.
3. Assess and secure needed resources to accelerate OHA's own Ceded Lands Inventory project.
4. Identify other non-land lease basis for monetizing the proceeds and income derived from the Public Lands Trust (e.g., fees from telescope usage, commercial commodity value of fish and other seafood harvests, research conducted on activities occurring on ceded lands, unrelated [to the primary use source] business income).
5. Incorporate the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) into policy and advocacy strategies, including self-determinative processes regarding free, prior, and informed consent.

C. Federal Government Engagement

1. Identify the composition of the "Federal Government" at each of the six milestone dates (e.g., departments, agencies, offices).
2. Pursue the commission and funding of a Ceded Lands Inventory Report.
3. Advocate for broad inclusion in federal conference, coordination, engagement and consultation policies and practices, including self-determinative processes for free, prior and informed consent.
4. Persist in defueling and closure of the Red Hill fuel storage tanks.
5. Pursue funding of environmental assessments and cleanups of sacred lands polluted and contaminated by the U.S. Military.
6. Advocate for broad funding and programming equity for Native Hawaiian families, natural environment and resources and culture.
7. Track and monitor the status of lease extensions by the state Board of Land and Natural Resources as it relates to military leases.
8. Oppose the extension of leases to the military and other department of defense agencies.
9. Continue to work with the Congressional Delegation, Senate Committee on Indian Affairs, Department of Interior, including the Office of Native Hawaiian Relations to further this work.

D. International, Indigenous

1. Implement self-determinative processes, aligned with the normative framework for free, prior and informed consent and including international legal instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the International Labour Organization Convention 169 (ILO 169), and the convention on Biological Diversity (CBD), among many others.
2. Examine policy(ies) regarding oceans, deep sea mining and international waters.
3. Research additional issues related to indigenous peoples and activities in the 200-mile exclusive economic zone.

E. Administration

1. Pursue design and resourcing of communication vehicle(s) for tracking the progress of OHA's fiduciary responsibilities re: Ceded Lands and Public Land Trust.
2. Prepare and publish clarification materials (e.g., terms, definitions, statutory sources, responsibilities, obligations) distinguishing "Ceded Lands" and "Public Land Trust".
3. Assess and secure needed resources to accelerate OHA's own Ceded Lands Inventory project to dovetail into any federal government effort(s).
4. Plan and resource efforts to design, construct, curate, maintain and enable access and use of ceded lands inventory and related items, including, but not limited to:

a. Functionality provisions such as: inventory of materials; availability of various source information (e.g., photos, maps, interviews, journals); translations; cross reference data types; access processes; archived materials; title searches; translator;

b. Technical provision such as: data architecture, archival, maintenance

5. Update and refresh the report 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 (last updated as of June 30, 2016).

6. Engage in activities to prepare OHA for active engagement in the working group established via Act 226 (2022), SB2021 SD1 HD2 CD1, to determine the pro rata share of income and proceeds from the public land trust due annually to the office of Hawaiian Affairs.

INTENTIONALLY LEFT BLANK

VI. MAHALO AND NEXT STEPS

Consistent with Hawai'i Revised Statutes §92-2.5(b)(1), on April 14, 2022, via Action Item BOT #22-05, as amended, the Board of Trustees approved the formation of a Permitted Interaction Group to investigate the potential involvement of federal agencies in enforcement of legal claims, land inventories, financial accountings, and indigenous consultations related to the federal trust responsibilities and the trust set forth in Section 5(f) of the Admission Act.

The PIG members appreciate and thank their Aides and staff, and Administration resources, including Sherry Broder, External Counsel; Na'unanikina'u Kamali'i, former Chief Advocate; Zack Smith, Systems Administrator; Lisa Watkins-Victorino, Research Director; and Kealoha Pisciotta, Public Policy Advocate.

The report distribution is agendized for the July 12, 2022 Board meeting and consistent with past practice, no discussion will be held. Full and free discussion and related Board action(s) are to be agendized for a future Board meeting, yet to be determined.

VII. ATTACHMENT

Office of Hawaiian Affairs Ceded Lands Inventory Report Project, 2021 Presentation for the Office of the Auditor, August 16, 2021

ATTACHMENT

Office of Hawaiian Affairs Ceded Lands Inventory Report Project

OFFICE OF HAWAIIAN AFFAIRS

2021 Presentation for the Office of the Auditor

August 16, 2021

ATTACHMENT

Why do we need a land inventory?

No land inventory has ever been produced

Unresolved claim to Ceded Lands

Separate nature of Crown & Government Land

Public Land Trust funding of OHA

ATTACHMENT

Why do we need a land inventory?

No land inventory has ever been produced

- 1862-Act relating to the Commission of Boundaries
  - Created Boundary Commission intended to legally settle the boundaries of the Ahupuaa and Ili that had been awarded by name only without survey
- 1882-A Brief History of Land Titles in the Hawaiian Kingdom
  - "It is to be wished that complete register might be published of all the original titles to land in the Kingdom, similar to the "Domesday Book" compiled for William the Conqueror."
- 2000-Mauka to Makai: The River of Justice Must Flow Freely
  - "A survey of the metes and bounds of each land parcel in Hawai'i has never been conducted by the Kingdom of Hawai'i, the Provisional Government, the Republic of Hawai'i, the United States Government, the State of Hawai'i or the Office of Hawaiian Affairs."

ATTACHMENT

Why do we need a land inventory?

Unresolved claim to Ceded Lands

- 1993- PL 103-150 (Apology Resolution)
  - "Whereas the Republic of Hawaii also ceded 1,800,000 acres of crown, government and public lands of the Kingdom of Hawaii, without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government;"
  - "Whereas the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum;"
- 2008- Opinion of the court by Moon, C.J.
  - Injunction against selling "any ceded lands from the public lands trust until the claims of the native Hawaiians to the ceded lands has been resolved."
- 2009- Act 176
  - Establishes a more comprehensive process for the sale of "all lands…under the control of state departments and agencies classed as government or crown lands previous to August 15, 1895"

ATTACHMENT

Why do we need a land inventory?

Separate nature of Crown & Government Land

- 1847-Resolution of the Privy Council meeting of 12/18/1847
  - "His Majesty, our Most Gracious Lord and King, shall in accordance with the Constitution and Laws of the Land, retain all his private lands, as his own individual property, subject only to the rights of the Tenants, to have and to hold to Him, His heirs and successors forever"
- 1848-Buke Mahele
  - Kamehameha III "set apart for the use of the Government the larger part of his royal domain, reserving to himself what he deemed a reasonable amount of land as his own estate."
- 1865-Act to Relieve the Royal Domain from Encumbrances
  - King's lands declared as Crown lands "shall be henceforth inalienable, and shall descend to the heirs and successors of the Hawaiian Crown forever."
- 1882-In the Matter of the Estate of Charles Kanaina
  - Crown lands were not the personal property of the ruler, but the property of the institution of the Monarchy and that these lands could not be sold or alienated.

ATTACHMENT

Why do we need a land inventory?

Public Land Trust funding of OHA

- 1978 Constitutional Amendments
  - Created OHA, clarified State trust requirements of Admissions Act
- 1980 Act 273
  - Set aside 20% of PLT funds to be expended by OHA
  - Required DLNR to retroactively identify Trust Land Status for each parcel
- 1990 Act 304
  - Clarified extent and scope of the 20% portion
- 2006 Act 178
  - Interim PLT annual payment of $15,100,000

ATTACHMENT

What actually is a land inventory?

Present -> Past

20XX -> Admissions Act

- Accounting of every TMK Parcel including property description, TMK number, land area, trust land status, crown or government status
- Look up a TMK number, find out if ceded or not! Analyze at will!

Past -> Present

1848 -> Admissions Act

- Accounting of all Crown and Government lands
- Removal of all lands awarded from with Crown and Government land
- Remainder of Crown and Government land at x time = ceded land!

ATTACHMENT

What actually is a land inventory?

Present -> Past

20XX -> Admissions Act

- Tasks Necessary for Each Parcel of Land
  - Coordination of Research Tasks
    - Senior staff analyzes parcel with available resources such as tax assessor maps
    - Tasks assigned to staff based on the complexity of the title search
  - Abstract of Titles
    - Parcel is collaboratively researched and pertinent information is gathered at the various public agencies
  - Collection of Historical Data
    - Historical maps and documents pertaining to government lands are gathered and scanned
  - Preparation of Chain of Title Report
    - A thorough review of all documents is conducted. Senior staff makes determinations of the status of the parcel
    - Chain of title report is prepared summarizing the parcel's land transaction history

ATTACHMENT

What actually is a land inventory?

Present -> Past

20XX -> Admissions Act

- Relies on flawed TMK parcel fabric
- Does not account for separate nature of lands pre-Statehood
  - Including Crown vs. Government or land returned to Territory [5(a]
- Impediments include break in title, clouded title, TLS sources
  - "Unresponsive record retrieval from DLNR's Land Division"
  - "Mapping backlog at DAGS' Survey Division"
  - "Counties' non-assignment of TMK numbers to all ceded land parcels"
  - "Time needed to research and inventory previously unidentified parcels"
  - $ cost far in excess of what legislature or OHA is willing to set aside
    - From 2001 Report to the Governor and the Legislature of the State of Hawaii: Establishment of a Public Land Trust Information System, Phase One

What actually is a land inventory?

Past -> Present

1848 -> Admissions Act

- Massive undertaking that requires enormous effort to lay groundwork for inventory to begin
  - Digitizing source material
  - Transcribing source material
  - Handwritten source material
  - Unreliable surveying methods
  - Indexing map sources
  - Inconsistencies between source materials
  - Confounding land award disbursement methods
  - Lack of baseline Mahele land boundaries

ATTACHMENT

What has the State done?

- 1979 DLNR Audit
  - "revealed a number of deficiencies in DLNR's land management practices …[that]… stem from the absence of a comprehensive land inventory and land classification system."
  - Led to a computerized listing of state-owned public lands (DLNR managed) with PLT status = ceded or non-ceded
- 1980 Act 273
  - Required DLNR to retroactively identify Trust Land Status (TLS) for each parcel in inventory
  - TLS determined through title research, land transfer records, survey documents
- 1981 State Land Inventory (SLI)
  - Created by staff of Land Division, DAGS Survey and OHA Staff
  - Majority Rule
  - Codes included for 5(a), 5(b), 5(c), 5(d), 5(e), acquired after 8/59, PL 88-233, Federal Surplus
  - SLI initially maintained manually, eventually computerized

ATTACHMENT

What has the State done?

- 1982 Act 121
  - Required Auditor to "complete the inventory of...ceded lands"
  - Set aside $100,000 to carry out all purposes of the act
- 1983 PLT Progress Report
  - Informed legislature the "work assigned by Act 121 is enormous"
- 1986 PLT Final Report
  - Reviewed the quality of inventories completed by the DLNR, UH, HHA, DOE, each county, DOT-Airports, and DOT-Harbors and "discuss[ing] the problems associated with their efforts."
- 1990 Act 304
  - Defined PLT to include only 5(b), 5(e), PL 88-233 lands
  - Deferred to existing DLNR land database for determination

ATTACHMENT

What has the State done?

- 1997 Act 329
  - Again required DLNR to complete inventory of all 5(f) lands in the State
  - Set aside $500,000 for each of two fiscal years, subject to match by OHA
  - Required final report by end of 1998 (not found)
- 2000 SLIMS (State Land Inventory Mgmt. System) Completion
  - $2,000,000 appropriated by 1997 legislature to plan, design, and implement the computerization of the Land Division State land management
  - SLI used as basis for implementation of SLIMS
- DLNR first to admit the inventory contains inaccuracies
  - Lack of field surveys and title searches
  - Relied on secondary sources of information
  - Relied on survey maps from DAGS prepared for different purposes
  - Relied on land transfer documents
  - Survey maps/land transfer documents of questionable accuracy (not based on field surveys)

ATTACHMENT

What has the State done?

- 2000 Act 125
  - Again required DLNR to complete inventory of all 5(f) lands in the State
  - Public Land Trust Information System (PLTIS) to be coordinated by the Auditor
  - Clearly defined lands making up the PLT and terms of “Ceded Lands” and “PLT”
  - Set aside $250,000 to complete inventory by end of 2002 (subject to OHA match)
  - Auditors progress report submitted in 2001 as “Phase 1” of PLTIS
- 2001 Act 165
  - Extended funds availability and set aside additional $100,000
- 2011 Act 54
  - Required DLNR to compile PLT revenue reporting
  - Defined Ceded lands and PLT separately
  - Required DLNR to estimate costs of PLTIS
  - Set aside $360,000 to complete PLTIS by end of 2013
  - 2013 progress report included requirements and specs for PLTIS

What has the State done?

- 2017 PLTIS
  - Access provided to users on the State network

Does this cover the "why" of an inventory?

Unresolved claim to Ceded Lands NO

Separate nature of Crown & Government Land NO

Public Land Trust funding of OHA YES?

What actually is a land inventory?

- Present -> Past (State approach-PLT)
  - Accounting of every TMK Parcel including property description, TMK number, land area, trust land status, crown or government status
  - Look up a TMK number, find out if ceded or not! Analyze at will!

- Past -> Present (OHA approach-ceded land)
  - Accounting of all Crown and Government lands
  - Removal of all lands awarded from with Crown and Government land
  - Remainder of Crown and Government land at x time = ceded land!

ATTACHMENT

Components of a land inventory

1. Master List of Original Land Titles (1845-1959)
   - "Domesday Book"
2. GIS Database of all Mappable Lands & Transfers
3. Detailed Land Inventory Report (Updatable)
4. Interactive Map Application

ATTACHMENT

Master List of Original Land Titles (1845-1959)
Step 1: Mahele as baseline

We start with scans of the Buke Mahele

- Transcription & translation of the Buke Mahele
- Create index of the Buke Mahele
  - Island/Kalana/Land Name
  - Determine if Crown, Government, or Konohiki
    - Compare with enumeration of lands
    - Compare with Government Survey Maps
    - Compare with other indices and land award documents
  - Identify if already mapped or not (see component 2)
  - Add Boundary Certificate number (if relevant)
  - Note any spelling variations
  - Determine any attribute or shape inconsistencies
  - Identify any mapped lands not recorded in the Buke Mahele

ATTACHMENT

Master List of Original Land Titles (1845-1959)
Step 2: Land Awards

Where did this come from?

- Index of Grants Issued (1887) Part I: Grants Issued by Hawaiian Govt.
- Index of Grants Issued (1887) Part II: Royal Patents to Board of Education
- Index of Grants Issued (1887) Part III: Conveyances by Kamehamehas
- Index of Grants Issued (1887) Part IV: Conveyances by Hawaiian Govt.
- Registered Maps/Liber Documents
- Index of Grants and Patents (1916) Part II: Numerical Index of Land Sales 1-6526
- Index of Grants and Patents (1916) Part IV: Land Patents-Public Works Dept.
- Land Book-Department of Public Instruction
- LCA Document Scans
- Grant Document Scans
- Grant Survey Books-10 volumes
- Government Deeds and Exchanges-2 volumes
- Land Patent Grants Vol. I (1906)
- Annotated Index to the Mahele Award Books
- Indices of Awards Made by BOCQLT (1929)

ATTACHMENT

Master List of Original Land Titles (1845-1959)
Step 2: Land Awards

What does this look like?

- Land Award Information
  - Award Type/Helu/Apana/Patent #/Claimant
- Source Information
  - Record Source/Book #/Page #
- Location Information
  - Location/Ili/Ahupuaa/Moku/Mokupuni
- Parcel Information
  - Sqft./Acreage/Price/Date/Year
- Mapping Information
  - Map Sources From Indices
- Database Information
  - Mapped?/GIS Acreage/Numcode
- Other Information
  - Comments/Patent Signatures/Land Classification/Interior Minister

ATTACHMENT

Master List of Original Land Titles (1845-1959)
Step 2: Land Awards

What are we doing?

- Verifying
  - Claimant/Helu/Apana/RPG #
- Standardizing Location
  - Locking Moku, Setting Ahupuaa or Ili Kupono
- Calculating Size From Survey
  - Sqft->Acres, Rods/Roods/Perches->Acres, Acres
- Adding Date
  - Year of Award
- Adding GIS Information
  - Mapped?/GIS Acreage/Numcode
- New Records For Multiple Apana
  - Copy/Insert Record, Update Apana, Acreage, and Price if necessary
- Other Information
  - Adding explanatory comments, price, date, location, or ili if possible

ATTACHMENT

Master List of Original Land Titles (1845-1959)
Step 2: Land Awards

What do we have?

- 26,407 Unique Records
  - 279 BOE Grants
  - 257 Conveyances
  - 14,797 Government Grants
  - 10,527 Land Commission Awards
  - 570 Land Commission Awards-Konohiki
- Hawaii – 9,226
- Kauai – 3,857
- Maui – 4,109
- Molokai – 1,597
- Oahu – 7,405

Niihau - 10

Lanai – 143

- Mapped or not?
  - 953 Unmapped
  - 10,397 Mapped
- Numcode – 5,651
- Survey Acreage – 23,809
- GIS Acreage – 5,029
- Year of Award – 17,637

ATTACHMENT

Master List of Original Land Titles (1845-1959)
Step 3: Culmination

Complete Land Award Index

- Used for analysis and future research
  - Place based award tables
  - Awards by claimant name
  - Mapped vs. Unmapped awards
  - Parcel size comparisons
  - Award type analysis
  - Time based land award distribution
  - Static maps

ATTACHMENT

GIS Database of all Lands & Transfers
Step 1: Mahele as baseline

- Map Ahupuaa and Moku Layers
- Named land-Determine if mapped or not
  - Create shape for named land if not mapped
  - Adjust mapped shape if necessary
  - Add Ahupuaa shape to Mahele land layer
- Investigate trail of relinquishment
- Calculate GIS acreage
- Add attributes to shape
  - Buke Mahele source
  - Land classification (Crown/Govt/Konohiki)
  - Survey acreage

ATTACHMENT

GIS Database of all Lands & Transfers
Step 2: Land Awards

- Map Land Awards prior to 1895
  - 15,000+ shapes for individual land awards
- Map Land Awards prior to 1959
  - 12,000+ shapes for individual land awards
- Map Federal Landholdings
  - 136 shapes representing 177,000+ acres
- Table of Unmapped Land Awards
  - 3,000+ unmapped parcels

ATTACHMENT

GIS Database of all Lands & Transfers
Step 2: Land Awards

- Mapped land award processing
  - Verify shape of award, adjust shape if necessary
    (borders or internal kuleanas)
  - Verify attributes and correct if necessary
    Claimant/Helu/Apana/RPG/Year/Documents/Etc.
  - Solidify location and numcode
  - Calculate GIS Acreage
  - Attach relevant documents
  - Create record for unmapped awards in server table

ATTACHMENT

GIS Database of all Lands & Transfers
Step 3: Culmination

- Complete Mahele Lands Layer
  - Used to Identify/Quantify Crown & Government land
    - Acreage and # of lands analysis
    - Baseline for the ceded lands
  - Used to Visualize Crown & Government land (component 4)
- Complete Land Awards Layer
  - Used to Identify/Quantify Ceded land at any year
    - Acreage, Award Type, Temporal analysis
  - Used to Visualize Ceded land (component 4)
    - Public research of land tenure/usage and genealogy
    - Static maps

ATTACHMENT

Detailed Land Inventory Report (Updatable)

- CLIR - Current Structure
  - Part 1 Project Introduction
    - Written, editing
  - Part 2 Ceded Lands Inventory History (Legislative)
    - Written, editing
  - Part 3 History/Sources/Methods
    - Written, editing
  - Part 4 Federal Lands
    - Unwritten
  - Part 5 Named Lands Summaries & Tables
    - In Progress
  - Part 6 Static Maps
    - In Progress

ATTACHMENT

Detailed Land Inventory Report (Updatable)
Step 1: Mahele as baseline

- CLIR – What are we doing?
  - For Each Named Land:
    - Mahele Status
      - Narrative on Buke Mahele trail of relinquishment
      - Buke Mahele source(s)
      - Identifies Crown, Government, or Konohiki status
      - Explanation of status anomalies or inconsistencies
      - Explanation of spelling anomalies or inconsistencies
      - Explanation of location anomalies or inconsistencies
      - Explanation of mapping anomalies or inconsistencies
      - Method and instrument of private land award (if relevant)

ATTACHMENT

Detailed Land Inventory Report (Updatable)
Step 1: Mahele as baseline

- CLIR – What are we doing?
  - For Each Named Land:
    - Boundary Commission (if related)
      - Identify related Boundary Certificate(s)
      - Discussion of Boundary Certificate, survey, anomalies
      - Survey estimates of named land
    - Boundary Mapping
      - Relevant map sources identified and discussed
      - Mapping notes, including changes over time
      - Mapped area estimate, comparison to survey estimates

ATTACHMENT

Detailed Land Inventory Report (Updatable)
Step 2: Land Awards

- CLIR – What are we doing?
  - For Each Named Land:
    - Konohiki Award (if relevant)
      - Instrument of award
      - Government commutation
      - Discussion of inconsistencies, errors, unique issues
      - Map sources, survey information, mapping notes
    - Land Awards
      - Unusual or unmapped individual land awards
      - Discussion of mapping/documentation/indexing abnormalities
      - Total mapped/unmapped awards

ATTACHMENT

Detailed Land Inventory Report (Updatable)
Step 2: Land Awards

- CLIR – What are we doing?
  - For Each Named Land:
    - Land Award Table
      - Distribution of land awards by type
      - Distribution of land awards by sub-type and mapped/unmapped
      - Total # of awards and parcels
      - Survey and GIS acreage of each sub-type plus totals
    - Static Maps
      - Depict land ownership changes over time
      - Classification of land in 1848
      - Snapshot of land awards for 1855/1871/1893/1898/1959

ATTACHMENT

Detailed Land Inventory Report (Updatable)
Step 3: Culmination

- CLIR – Final Version
  - Part 1 Project Introduction
  - Part 2 Ceded Lands Inventory History (Legislative)
  - Part 3 History/Sources/Methods
  - Part 4 Federal Lands
  - Part 5 Named Lands Summaries & Tables (reference)
  - Part 6 Static Maps
  - Appendices
    - Mahele land index
    - Land award index

ATTACHMENT

Interactive Map Application
Step 1: Mahele as baseline

- Kipuka
  - Kingdom Lands Layer
    - Kauai: 7 Crown, 24 Government, 27 Konohiki
    - Lanai: 2 Crown, 6 Government, 5 Konohiki
    - Molokai: 4 Crown, 36 Government, 46 Konohiki
    - Maui: 272 Named Lands
    - Oahu: 420 Named Lands
    - Hawaii: ~569 Named Lands
  - Associated CLIR sections for each land

Interactive Map Application
Step 2: Land Awards

- Kipuka
  - Land Awards Layer
    - Kauai: 3,514 Land Awards
    - Lanai: 137 Land Awards
    - Molokai: 1,322 Land Awards
    - Maui: 4,771 Land Awards
    - Oahu: 3,744 Land Awards
    - Hawaii: 3,635 Land Awards
  - Unmapped Land Awards Table

Interactive Map Application
Step 3: Culmination

- New Ceded Lands Specific Web Map
  - Kingdom Lands with CLIR Report Sections
  - Easier Navigation, Clearer Purpose
  - Context with Moku, Mokupuni
  - Time Slider to Visualize Change

ATTACHMENT

Office of Hawaiian Affairs Ceded Lands Inventory Report Project

OFFICE OF HAWAIIAN AFFAIRS

2021 Presentation for the Office of the Auditor

August 16, 2021

ATTACHMENT

Terms and Acronyms

BOCQLT-	Board of Commissioners to Quiet Land Titles (also Land Commission)
BOE Grants-	Board of Education Land Award
CLIR-	Ceded Lands Inventory Report
DAGS-	Department of Accounting and General Services
DLNR-	Department of Land and Natural Resources
DOE-	Department of Education
DOT-	Department of Transportation
GIS-	Geographic Information System
HHA-	Hawaii Health Authority
LCA-	Land Commission Award
OHA-	Office of Hawaiian Affairs
PLT-	Public Land Trust
PLTIS-	Public Land Trust Information System
RPG-	Royal Patent Grant (on LCA)
SLI-	State Land Inventory
SLIMS-	State Land Inventory Management System
TLS-	Trust Land Status
TMK-	Tax Map Key
UH-	University of Hawaii

ATTACHMENT

Terms and Acronyms

5(f) Lands-	Lands as classified by section 5(f) of the Admissions Act including lands defined by sections 5(a), 5(b), 5(c), 5(d), and 5(e)
Ahupuaa-	A large section of land awarded by name in the Buke Mahele
Apana-	A discrete parcel of a multi-parcel land award
Boundary Certificate-	Legal survey boundaries of a land as awarded by the Boundary Commission
Boundary Commission-	Governmental commission to address legal boundaries of disputed lands
Buke Mahele-	The book documenting the division of lands between the king, government & alii
Helu-	Claim number assigned to a land award
Ili (Kupono)-	Section of land smaller than an Ahupuaa sometimes awarded in the Buke Mahele
Kalana-	District level section of land as identified in the Buke Mahele, see also Moku
Konohiki-	Recipient of land as recorded in the Buke Mahele or claimant of Konohiki award
Kuleanas-	Small cultivation or habitation lots awarded by the Land Commission
Moku-	District level section of land containing multiple Ahupuaa
Mokupuni-	Island
Numcode-	Discrete code used to uniquely identify land divisions
Pae Aina-	The entirety of the Hawaiian islands
Perches-	Historic survey measurement representing 1/160th of an acre
P.L. 88-233-	The law that extended section 5(e) of the Admissions Act past five years
Rods/Roods-	Historic survey measurement representing 1/4th of an acre