



**STATE OF HAWAII'
OFFICE OF HAWAIIAN AFFAIRS**

MEETING OF THE PUBLIC LAND TRUST (PLT) WORKING GROUP

DATE: Thursday, January 11, 2024

TIME: 4:00pm

PLACE: Virtual Meeting

560 N. Nimitz Hwy, Ste. 200

Honolulu, HI 96817

Viewable at www.oha.org/livestream Or

Listen by phone: (213) 338-8477, Webinar ID: 839 7934 6144

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

AGENDA

- I. Call to Order**
- II. Further discussions and comments regarding the State Land Information Management System (SLIMS), the Public Land Trust Information System (PLTIS), the Department of Land and Natural Resources (DLNR) Reports to the Legislature pursuant to Act 178, Session Laws of Hawai'i 2006, and the Report to the Office of Hawaiian Affairs on the Accuracy and Completeness of a report by the Department of Land and Natural Resources to the Hawaii State Legislature on Public Land Trust Receipts for Fiscal Year ended June 30, 2016, by N&K CPAs, Inc. (2018).**
- III. Discussion regarding next steps after review of responses to PLTWG letter to state agencies regarding the reporting made and supporting documentation available to finalize:
 - (1) an accurate and complete inventory of ceded lands and Public Land Trust lands, including submerged lands; and**
 - (2) an accurate and complete accounting of the income and proceeds from the ceded lands and the Public Land Trust lands, including submerged lands, under their jurisdiction.****
- IV. Discussion regarding request to the counties and federal government for information relating to the inventory and identification of ceded lands and Public Land Trust lands, including submerged lands, under their jurisdiction, and accounting of the income and proceeds derived therefrom.**



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- V. Review and finalize draft legislation to seek appropriations to hire qualified professionals to determine accuracy and completeness of:**
- (1) current state agencies reporting of income and proceeds from the public land trust; and**
 - (2) current inventory of the public land trust as reported in the PLTIS.**
- VI. Discussion: Next PLT Working Group meeting**
- VII. Adjournment**

If you require an auxiliary aid/service or other accommodation due to a disability, please contact Everett Ohta at telephone number (808) 594-1988 or by email everetto@oha.org as soon as possible. Requests made as early as possible have a greater likelihood of being fulfilled. Upon request, this notice is available in alternate/accessible formats.

Meeting materials will be available to the public at least 48 hours prior to the meeting at OHA's main office located at 560 N. Nimitz Hwy., Suite 200, Honolulu, HI 96817. Meeting materials, meeting summaries, and meeting recordings are available at OHA's website at: <https://www.oha.org/PLT-working-group/>

In the event that the livestream or the audiovisual connection is interrupted and cannot be restored, the meeting may continue as an audio-only meeting through the phone and Webinar ID listed at the beginning of this agenda.

Public Testimony must be limited to matters listed on the meeting agenda. Hawai'i Revised Statutes, Chapter 92, Public Agency Meetings and Records, prohibits Working Group members from discussing or taking action on matters not listed on the meeting agenda.

Testimony can be provided to the PLT Working Group either as: (1) **written testimony emailed** at least 24 hours prior to the scheduled meeting, (2) **written testimony mailed** and received at least two business days prior to the scheduled meeting, or (3) live, oral testimony online or at the physical meeting location during the virtual meeting.

- (1) Persons wishing to provide **written testimony** on items listed on the agenda should submit testimony via **email** to pltworkinggroup@oha.org at least **24 hours prior** to the scheduled meeting or via **postal mail** to Office of Hawaiian Affairs, Attn: PLT Working Group Meeting Testimony, 560 N. Nimitz Hwy., Suite 200, Honolulu, HI 96817 **to be received at least two business days prior** to the scheduled meeting. Any testimony received after these deadlines will be late testimony and will be distributed to the Working Group members after the scheduled meeting.
- (2) Persons wishing to provide **oral testimony online** during the virtual meeting must first register at: https://us06web.zoom.us/webinar/register/WN_IrKhKr9DQNSZMMI3eIVKpg

You need to register if you would like to orally testify. Once you have completed your registration, a confirmation email will be sent to you with a link to join the virtual meeting, along with further instructions on how to provide oral testimony during the virtual meeting. The registration page will close once the Public Testimony agenda items have concluded.

To provide oral testimony online, you will need:

- (1) a computer or mobile device to connect to the virtual meeting;
- (2) internet access; and
- (3) a microphone to provide oral testimony.



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Oral testimony online or at a physical meeting location will be limited to five (5) minutes.

Oral testimony by telephone/landline **will not** be accepted at this time.

Once your oral testimony is completed, you will be asked to disconnect from the meeting. If you do not sign off on your own, support staff will remove you from the Zoom meeting. You can continue to view the remainder of the meeting on the livestream or by telephone, as provided at the beginning of this agenda.

Meeting of the Public Land Trust Working Group

January 11, 2024

4:00 P.M.

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

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- V. Review and finalize draft legislation to seek appropriations to hire qualified professionals to determine accuracy and completeness of:**
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A BILL FOR AN ACT

RELATING TO THE PUBLIC LAND TRUST WORKING GROUP.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. In Act 226, ~~Session Laws Hawai'i 2022,~~ (Act
2 226), the legislature found the following:

3 [I]t must set right and fulfill its trust
4 responsibilities to native Hawaiians, consistent with
5 governmental action across America to address injustices
6 against Indigenous Peoples. It is incumbent upon the
7 legislature to enact legislation that upholds its trust
8 responsibilities and duty of care to native Hawaiians to:

9 (1) Account for all ceded lands in the public lands
10 trust inventory;

11 (2) Account for all income and proceeds derived from
12 the public land trust; and

13 (3) Transfer the full twenty per cent pro rata share
14 of income and proceeds from the public land trust
15 annually to the office of Hawaiian affairs (OHA) for
16 the betterment of the conditions of native Hawaiians.

17 The genesis and source of the State's public land
18 trust responsibility to native Hawaiians are the historical

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1 events that led to the illegal overthrow of the Kingdom of
2 Hawaii; the transfer of approximately 1,800,000 acres of
3 crown, government, and public lands to the United States
4 under the 1898 Joint Resolution of Annexation without the
5 consent of and without compensation to the native Hawaiian
6 people or their sovereign government; the admission of
7 Hawaii as a state of the Union in 1959, with the explicit
8 trust responsibility and requirement in section 5(f) of the
9 1959 Admission Act that one of the five purposes of the
10 public land trust is that the income and proceeds from the
11 public land trust are to be used "for the betterment of the
12 conditions of native Hawaiians"; and the 1978
13 Constitutional Convention's recognition that native
14 Hawaiians are one of the beneficiaries of the public land
15 trust and the creation of OHA to manage and administer the
16 specific allocation of "all income and proceeds from that
17 pro rata portion of the [public land] trust . . . for
18 native Hawaiians" (Article XII, section 6, of the Hawaii
19 State Constitution). The United States and the courts have
20 consistently affirmed the trust nature of the government
21 and crown lands, including large tracts of ceded lands used
22 for military or other purposes under federal control.

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1 In 1959, as a condition of its admission into the
2 Union, the State of Hawaii agreed to hold certain lands
3 granted to the State by the United States in a public trust
4 for five purposes delineated in section 5(f) of the
5 Admission Act, which provides in relevant part: The lands
6 granted to the State of Hawaii by subsection (b) of this
7 section and public lands retained by the United States
8 under subsections (c) and (d) and later conveyed to the
9 State under subsection (e), together with the proceeds from
10 the sale or other disposition of any such lands and the
11 income therefrom, shall be held by said State as a public
12 trust [(1)] for the support of the public schools and other
13 public educational institutions, [(2)] for the betterment
14 of the conditions of native Hawaiians, as defined in the
15 Hawaiian Homes Commission Act, 1920, as amended, [(3)] for
16 the development of farm and home ownership on as widespread
17 a basis as possible [(4)] for the making of public
18 improvements, and [(5)] for the provision of lands for
19 public use. Such lands, proceeds, and income shall be
20 managed and disposed of for one or more of the foregoing
21 purposes in such manner as the constitution and laws of
22 said State provide, and their use for any other object

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1 shall constitute a breach of trust for which suit may be
2 brought by the United States. (Emphasis added.)

3 In 1978, the people of Hawaii affirmed the State's
4 trust obligation to native Hawaiians by ratifying
5 constitutional amendments from the Constitutional
6 Convention, including article XII, sections 4, 5, and 6, of
7 the Hawaii State Constitution, which established OHA and
8 charged it with managing income and proceeds from the
9 public land trust for the benefit of native Hawaiians.
10 Article XVI, section 7, of the Hawaii State Constitution
11 required the State to enact legislation to comply with its
12 trust obligations.

13 Thus, in 1979, legislation, codified as chapter 10,
14 Hawaii Revised Statutes, set forth the purposes of OHA and
15 described the duties of its trustees.

16 In September 1981, an initial land inventory by the
17 department of land and natural resources listed
18 approximately 1,271,652 acres, falling woefully short of
19 its duty to provide a complete inventory of the public land
20 trust lands. Additionally, the state land information
21 management system does not include all lands held by all
22 state entities. Act 273, Session Laws of Hawaii 1980,

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1 enacted section 10-13.5, Hawaii Revised Statutes, to
2 implement OHA's pro rata share and required that OHA
3 receive "[t]wenty per cent of all funds derived from the
4 public land trust[.]" This legislative directive addressing
5 the constitutional mandate has led to a series of lawsuits
6 and legislative enactments concerning OHA's constitutional
7 pro rata share of the public land trust. The State and OHA
8 have labored to resolve the political question of the
9 statutory pro rata share of income and proceeds derived
10 from the public land trust, and payment to OHA.

11 Act 178, Session Laws of Hawaii 2006, affirmed the
12 State's trust obligation to native Hawaiians by requiring
13 that the department of land and natural resources provide
14 an annual accounting of revenue-generating public trust
15 lands and the amounts derived from those lands to the
16 legislature. The measure also set a fixed amount of
17 \$15,100,000 from the pro rata share of the public land
18 trust income and proceeds due to OHA for the betterment of
19 the conditions of native Hawaiians until further action is
20 taken by the legislature for this purpose.

21 Act 15, Session Laws of Hawaii 2012, (Act 15) was
22 enacted to address past-due amounts, which accumulated

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1 during the period between November 7, 1978, up to and
2 including June 30, 2012, of income and proceeds from the
3 public land trust owed to OHA by implementing an agreement
4 between the State and OHA for the State to convey certain
5 lands in Kakaako, Oahu, to OHA valued at approximately
6 \$200,000,000. Act 15 did not, however, address the State's
7 constitutional obligations relating to OHA's twenty per
8 cent pro rata share of the income and proceeds from the
9 public land trust generated after June 30, 2012. Notably, a
10 2015-2016 financial review initiated by OHA found that the
11 minimum amount of total gross receipts from sources that
12 OHA has historically claimed was approximately \$394,322,163
13 in the fiscal year 2015-2016. Twenty per cent of this gross
14 amount is approximately \$78,900,000.

15 The legislature finds that to uphold its
16 constitutional trust obligation and duty to native
17 Hawaiians, it must enact another legislative measure in
18 light of the information, data, and facts provided to the
19 legislature by state agencies since the enactment of Act
20 178, Session Laws of Hawaii 2006, more than a decade ago.

21 SECTION 2. Act 54, ~~—(Session Laws of Hawai'i 2011,)~~ (Act
22 54) mandates the establishment of a comprehensive information

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1 system to inventory and maintain information about the lands of
2 the public land trust as described in section 5(f) of the
3 ~~admission~~ Admission act Act and article ~~xii~~ XII, section 4 of the
4 ~~Hawai`i~~ state constitution. The department of land and natural
5 resources worked with a consultant to develop a public land
6 trust information system (PLTIS) to satisfy the requirements of
7 Act 54. the PLTIS will be a GIS-based system and aims for a
8 complete inventory of all state-owned and county-owned lands, as
9 well as a complete inventory of encumbrances issued by state and
10 county agencies over these lands. I~~i~~n order to meet these goals,
11 each state and county agency must submit comprehensive lists of
12 their land and encumbrance inventories.

13 SECTION 23. The Public Land Trust Working Group (PLTWG)
14 was created ~~in~~ under Act 226 and was assigned specific statutory
15 responsibilities as follows:

- 16 (1) Account for all ceded lands in the public land trust
17 inventory;
- 18 (2) Account for all income and proceeds from the public
19 land trust; and
- 20 (3) Subsequently determine the twenty per cent pro rata
21 share of income and proceeds from the public land trust due

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1 annually to the office of Hawaiian affairs for the
2 betterment of the conditions of Native Hawaiians.

3 In December 2023, the PLTWG requested in writing to all
4 state agencies ~~with ceded lands that they~~ hold title to, ~~over~~
5 ~~which they~~ maintain management control or otherwise use ceded
6 lands, to provide information, data, documents and maps to
7 ensure that they have completely and accurately identified and
8 reported to the ~~Department of Land and Natural Resources~~
9 ~~("DLNR")~~ department of land and natural resources the following:

- 10 (1) all ceded land parcels for the purpose of an inventory and
11 (2) all income and proceeds collected or received from the
12 public land trust.

13 The PLTWG found that the last financial review by an
14 outside independent CPA firm of the pro rata share was the 2015-
15 2016 financial review initiated by the office of Hawaiian
16 affairs. At that time, ~~OHA~~ the financial review found that the
17 minimum amount of total gross receipts from historically claimed
18 public land trust revenue sources ~~that OHA has historically~~
19 ~~claimed~~ was approximately \$394,322,163 in the fiscal year 2015-
20 2016. Twenty per cent of this gross amount is approximately
21 \$78,900,000. The PLTWG found that there has been no new

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1 financial review since the 2015-2016. The 2016 financial review
2 cost \$145,404.

3 The PLTWG found that current annual reporting by ~~state~~
4 ~~State~~ agencies to ~~DLNR the department of land and natural~~
5 ~~resources~~ is self-~~reporting~~reported and not audited or reviewed
6 ~~for accuracy~~. DLNR ~~does not audit nor review for accuracy~~. This
7 annual reporting is for the purpose of the preparation of the
8 ~~DLNR Annual Report~~~~annual Accounting~~ accounting of all receipts
9 from ~~Lands lands~~ ~~Described described~~ in ~~Section section~~ 5(F) of
10 ~~The the~~ Admission Act, pursuant to Act 178, Session Laws of
11 ~~Hawaii 2006 (Act 178 Report)~~. ~~This annual accounting is~~
12 ~~submitted by Fiscal Year~~.

13 The PLTWG found that work began on the process to procure a
14 consultant for the PLTIS after the enactment of Act 54 and that
15 the development of the PLTIS began in 2012 and the PLTIS was
16 launched in October 2018. Act 54 appropriated up to \$360,000
17 from a land conservation fund for the work by an outside
18 independent consultant. The final amount for creation of the
19 PLTIS and training was \$340,382.

20 The implementation of the PLTIS informed all ~~State State~~
21 and ~~County county~~ agencies that hold title to land that they
22 must submit their entire land inventory, regardless of the

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1 public land trust status, whether or not there are any
2 encumbrances on the land, and whether or not revenue is being
3 generated on the land. The goal here was to have all ~~State~~State-
4 owned and ~~County~~county-owned land represented in the PLTIS. All
5 ~~State~~State and ~~County~~county agencies must submit encumbrances
6 that they have issued over ~~State~~State-owned and ~~County~~county-
7 owned land, regardless if they hold title to that land or not.
8 This includes all encumbrances including, but not limited to,
9 leases, permits, right-of-entries, and easements. All
10 encumbrances must be submitted, regardless if they generate
11 revenue or not. The goal here was to have all encumbrances
12 issued over State-owned and County-owned land represented in the
13 PLTIS.

14 As with the reporting to ~~DLNR~~the department of land and
15 ~~natural resources~~ on ~~PLT~~public land trust revenues, the PLTIS
16 is also based on self-reporting by ~~S~~state agencies and the
17 counties. There are some disclaimers about the information. ~~DLNR~~
18 ~~The department of land and natural resources~~ has encouraged all
19 ~~S~~state departments and counties to regularly update data in the
20 system. Updates are also based on self-reporting. Independent
21 third-party professionals are needed to evaluate this practice.

22

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1 The PLTWG has been informed that ~~State-State~~ agencies use a
2 "rule of thumb" to determine whether a parcel is ceded or not
3 when it is both. When the parcel is more than 50% ceded land, it
4 is categorized as ceded. The PLTWG is not able to determine
5 whether this disadvantages the calculation of ~~OHA's~~ the office
6 of Hawaiian affairs' pro rata share ~~or not~~. Independent third
7 party professionals are needed to evaluate this practice.

8 The PLTWG found that there are many parcels without ~~TMKs~~
9 tax map key numbers in the PLTIS and therefore may not be
10 included in the system. This is particularly the case for the
11 submerged lands which are generally considered public land trust
12 ~~PLT~~ lands. Independent third party professionals are needed to
13 evaluate how to include such parcels so that the PLTIS contains
14 the complete and accurate inventory.

15 The PLTWG found that the lands under federal jurisdiction
16 are not included in the PLTIS and that the counties do not
17 report any of the revenue from the ~~PLT~~ public land trust to ~~the~~
18 ~~DLNR~~ the department of land and natural resources for ~~its~~ its
19 annual Act 178 Report. ~~yearly Annual Report to the Legislature,~~
20 ~~Accounting Of all Receipts from Lands Described in Section 5(F)~~
21 ~~of the Admission Act.~~

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1 To the knowledge of the PLTWG, there has been no third
2 party independent audit, review or evaluation of the
3 completeness and accuracy of the PLTIS or the current reporting
4 by agencies ~~to DLNR~~ for the purpose of the ~~preparation of the~~
5 ~~DLNR Annual Report to the Legislature, Accounting Of all~~
6 ~~Receipts from Lands Described in Section 5(F) of the Admission~~
7 ~~Act~~ preparing the annual Act 178 Report nor has there been any
8 analysis or comparison of the data in the PLTIS with the data in
9 the ~~DLNR Annual Report~~ Act 178 Report.

10 The PLTWG has determined after exhaustive research that it
11 needs the services of a third party independent consultant(s)
12 with the necessary financial, accounting, land inventory
13 expertise to complete ~~its assignment in Act 226~~ its objectives
14 under Act 226.

15 Based on the amounts expended for the office of Hawaiian
16 affairs' 2016 ~~Financial financial Review review~~ and the creation
17 and launch of the PLTIS which was \$495,786, the PLTWG has
18 estimated that approximately \$500,000 is needed for the
19 retention of third party independent professionals.

20 SECTION ~~34~~. There is appropriated out of the general
21 revenues of the State of Hawai'i the sum of \$500,000 or so much

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1 thereof as may be necessary for fiscal year 2024-2025 and the
2 same sum or so much thereof as may be necessary for fiscal year
3 2025-2026 to carry out the purposes of this Act, including the
4 hiring of necessary staff, purchasing of equipment, and
5 professional services which are unique and thus shall be exempt
6 from the procurement process of Hawai`i Revised Statutes,
7 Chapter 103D.

8 The sums appropriated shall be managed and expended by the
9 office of Hawaiian affairs for the purposes of this Act.

10 SECTION 4. This Act shall take effect upon its approval.

11

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INTRODUCED BY: _____

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Report Title: Public Land Trust Working Group; Office of Hawaiian Affairs; Public Land Trust; Appropriation

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Description: Appropriates moneys to the Office of Hawaiian affairs to facilitate hiring of necessary staff, purchasing of equipment, and professional services on behalf of the public land trust working group.

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The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.