



**STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS**

MEETING OF THE PUBLIC LAND TRUST (PLT) WORKING GROUP

DATE: Monday, October 14, 2024

TIME: 8:30am

PLACE: Remote Meeting by Interactive Technology

560 N. Nimitz Hwy, Ste. 200

Honolulu, HI 96817

Viewable at www.oha.org/livestream Or

Listen by phone: (213) 338-8477, Webinar ID: 841 4922 3264

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AGENDA

- I. Call to Order**
- II. Approval of Meeting Summary**
 - 1. August 12, 2024***
- III. Draft Interim Report to Legislature***
 - (1) Review joint PLTWG Draft Interim Report to Legislature**
 - (2) Develop method for submission of Addenda to Interim Report**
 - (3) Recommend support for legislation in 2025 Session to pay for retention of expert consultants to analyze for accuracy and completeness state and county agency reporting to DLNR for the Public Land Trust Information System and DLNR Act 178 Report to the Legislature**
 - (4) Act 304 (Session Laws Hawai'i 1990) and its continued use**
 - (5) Consider other sources of funds or assets to pay OHA its full constitutional pro rata share on a yearly basis and eliminate the requirement for past due payments**
 - (6) Discuss OHA Kipuka Database**
- IV. Discussion: Next PLT Working Group meeting**
- V. Adjournment**

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

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Meeting of the Public Land Trust (PLT) Working Group
MEETING SUMMARY
August 12, 2024

ATTENDANCE:

Sherry Broder
Dawn Chang, DLNR
Brickwood Galuteria, OHA
Ryan Kanaka'ole, DLNR
Carmen Hulu Lindsey, OHA
Luis Salaveria, Dept. of Budget and Finance

ADMINISTRATIVE SUPPORT:

Stacy Ferreira, OHA
Everett Ohta, OHA
Amber Kalua, OHA
Arlene Aguinaldo, OHA

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

https://youtu.be/9WECeMPB1Vo?si=jPDJfoCEsDOGEa_-

I. Call to Order

The Public Land Trust Working Group (PLTWG) meeting was called to order on Monday, August 12, 2024, at 8:04am. This was a virtual meeting that could be viewed and observed via livestream at www.oaha.org/livestream. The members present at the time the meeting was called to order were Sherry Broder, Dawn Chang, Ryan Kanaka‘ole, Luis Salaveria, and Hulu Lindsey. Brickwood Galuteria was excused.

II. Approval of Meeting Summary

1. July 9, 2024*

No one signed up to testify on this item. Motion to approve the meeting summary for July 9, 2024 was moved by Ryan Kanaka‘ole and seconded by Sherry Broder at 8:05am. Item was opened for discussion. Motion was approved by Sherry Broder, Dawn Chang, Ryan Kanaka‘ole, Hulu Lindsey, and Luis Salaveria at 8:05am. Brickwood Galuteria was excused.

III. Draft Report to Legislature*

(1) Report to Legislature

(2) Recommend support for legislation in 2025 Session to pay for retention of expert consultants to analyze current inventories and state agency reporting to DLNR for Act 178 Report for accuracy and completeness.

(3) Discuss Act 304 (Session Laws Hawai‘i 1990) and the extent to which Act 304 is still being relied on, court decisions and history of payments, and last OHA demand for yearly pro rata share based on 2016 N&K Financial Review

No one signed up to testify on this item. Discussion on this item began at 8:06am.

IV. Discussion regarding follow up on first set of state agency responses to PLTWG letter to state agencies in order receive substantive detailed response.*

No one signed up to testify on this item. This item was deferred at 8:59am.

V. Discussion regarding state agency accounting methods in Act 178 reporting*

No one signed up to testify on this item. This item was deferred at 8:59am.

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

No one signed up to testify on this item. This item was deferred at 8:59am.

VII. Discussion: Next PLT Working Group meeting

Next meeting is scheduled for Thursday, August 29, 2024, at 12pm.

VIII. Adjournment

Motion for adjournment was moved by Sherry Broder and seconded by Luis Salaveria at 8:59am. Meeting was adjourned by Sherry Broder, Dawn Chang, Ryan Kanaka'ole, Hulu Lindsey, and Luis Salaveria at 8:59am.

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PLTWG INTERIM REPORT TO LEGISLATURE
CONFIDENTIAL, NOT FOR DISTRIBUTION

A. Statutory authority for Public Land Trust Working Group (“PLTWG)

1. Section 3(a) of Act 226, established the working group to:
 - a) Account for all ceded lands in the public land trust inventory;
 - b) Account for all income and proceeds from the public land trust; and
 - c) Subsequently determine the twenty percent pro rata share of income and proceeds from the public land trust due annually to the office of Hawaiian Affairs for the betterment of the conditions of Native Hawaiians.
2. Section 3(b) of Act 226 provides that the PLTWG shall be comprised of six members, three shall be appointed by the Governor and three of whom shall be appointed by OHA Board of Trustees
 - a) The three members appointed by Governor ~~Josh Green, include were~~ Luis Salaveria (B&F ~~Director~~), Dawn Chang (BLNR Chairperson) and Ryan Kanakaole (1st Deputy ~~Director~~, DLNR);
 - b) The three ~~members appointed by the~~ OHA Board ~~appointees include were~~ ~~Chair~~ Carmen Hulu Lindsey (~~OHA Chairperson~~), ~~Trustee~~ Brickwood Galuteria (~~OHA Trustee~~), and Sherry Broder (Counsel to the OHA). Trustee Mililani Trask served until ~~March 5, 2024~~.
3. Section 3(c) of Act 226 provides that the PLTWG shall submit a report of its findings and recommendations, including any proposed legislation and the amount it determines for the annual amount of the 20% pro rata share of income and proceeds from the public land trust to the Legislature.
4. Section 3(d) of Act 226 provides that OHA shall provide any necessary administrative support, including preparation of the report required by ~~s~~Subsection ~~3~~(c) to the working group.

B. Prior Working Groups

1. House Concurrent Resolution No. 188 (Session Laws Hawaii 2016) requested the Governor to convene a Public Land Trust Revenues Negotiating Committee. That Committee was to engage in discussions with the purpose of resolving the matter of the income and proceeds from the public land trust that the Office of Hawaiian Affairs shall receive annually under the State Constitution and other state law. Governor David Ige convened one meeting.
2. In 1997, the Legislature enacted Act 329 that required the Department of Land and

Natural Resources to complete a comprehensive inventory database of all lands subject to

section 5(f) of the Admission Act. The department was to coordinate its efforts with a joint committee made up of eight members of the Legislature, the Office of Hawaiian Affairs, and the governor's office. The committee was tasked with studying and making recommendations on "all outstanding and anticipated issues . . . currently or potentially relating to the public land trust[.]" including whether lands should be transferred to OHA in partial or full satisfaction of any past or future obligations under the Hawai'i Constitution. The committee submitted a report in November 1998 and noted that 1. OHA sought to include all Government and Crown Lands and the date of origination for title histories and 2. parameters of and funding for the inventory had not been agreed upon. Act 329 also included funds to convert the DLNR's Land division records into a database which became the State Land information Management Systems ("SLIMS"). ~~SLIMS~~ SLIMS became operational in the fall of 2000.

C. Administration of the PLTWG

1. PLTWG has met regularly since its inception for a total of 14 meetings as of 8/12/24, subject to the Sunshine Law. The dates of the meetings were 9/5/2023, 9/21/2023, 10/17/2023, 10/31/2023, 11/20/2023, 1/4/2024, 1/11/2024, 2/1/2024, 2/21/2024, 3/21/2024, 5/6/2024, 6/4/2024, 7/9/2024, and 8/12/24.
2. Chair Lindsey presided over the meetings, the public was invited to provide comments on agenda items; and summary meeting notes were also posted on the OHA website. OHA staff provided administrative support for the agendas, ~~folders~~ board packets, summary meetings and ~~posts~~ postings of recordings.

D. Summary of PLTWG activities

1. PLTWG made written requests to all state agencies with ceded lands that they hold title to, over which they maintain management control or otherwise use, to provide information, data, documents and maps to ensure that they have completely and accurately identified and reported to Department of Land and Natural Resources ("DLNR") for the ~~every fiscal year~~ ~~statutorily required~~ DLNR Report to the Legislature of Accounting of All Receipts from Lands Described in Section ~~5(F)-5(f)~~ of the Admission Act ~~for Fiscal Year~~ ("Act 178 DLNR Report") the following: (1) all ceded land parcels for the purpose of an inventory and (2) all income and proceeds collected or received from the public land trust. Most responses did not ~~provide any additional information than~~ ~~what is add to the report~~ already made to ~~DLNR~~ DLNR for the Act 178 Report.
- ~~2.~~ PLTWG made written requests for federal assistance in completing the inventory and income and proceeds accounting for OHA's constitutional pro rata share to ~~Chairman~~

2. [Senator Brian Schatz](#), [Chairman of the](#) Senate Committee on Indian Affairs, and the Secretary of the Interior Deb Haaland.

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3. PLTWG unanimously voted to and did submit a bill in the 2024 Legislature, S.B. 3336, A bill for an Act Relating to the Public Land Trust Working Group. The bill had only one hearing. ~~However, DLNR decided to give priority to its request for \$900,000 for technical upgrades to the PLTIS. However, DLNR decided to give priority to its request for \$900,000 appropriation for technical upgrades to the PLTIS. The OHA members did support this DLNR requested appropriation.~~ The PLTWG bill sought to appropriate \$500,000 from the general revenues of the State of Hawaii for the retention of third-party independent professionals with financial, accounting, and land inventory expertise. ~~However, Realistically the amount should be increased to \$1,000,000.~~ The purpose is to evaluate and assess the completeness and accuracy of the Public Land Trust Information System (“PLTIS”) and the Act 178 DLNR Report, ~~which are respectively the current bases for both the ceded lands inventory and the accounting of receipts therefrom. DLNR was clear that the agencies~~ Agencies self-report for both the PLTIS and Act 178, and that there has never been any audit by outside third-party professionals. This appropriation is necessary so that the Public Land Trust Working Group can complete its objectives pursuant to Act 226 (SLH 2022).

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~~4. It is OHA’s opinion that the passage of such legislation is in the public interest and for fairness and justice for its beneficiaries. Audits of the PLTIS and Pro Rata Share reporting are fundamental to ensure that OHA’s constitutional and statutory rights are protected and those of its Native Hawaiian beneficiaries and that the State should do this to fulfill its fiduciary duty.~~

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~~4. OHA believes that the passage of such legislation is in the public interest and for fairness and justice for its beneficiaries. Audits of the PLTIS and Pro Rata Share reporting are fundamental to ensure that OHA’s constitutional and statutory rights are protected and those of its Native Hawaiian beneficiaries and that the State will fulfill its fiduciary duty. However, realistically the amount should be increased to \$1,000,000.~~

E. Topics researched and discussed relating to a complete and accurate inventory

1. Extent to which the ~~Public Land Trust Information System (PLTIS)~~ PLTIS created, organized and maintained by DLNR is a complete and accurate inventory of all ceded lands to which state and county agencies hold title or over which they maintain management control, including their trust status.
 - a) Act 54 (SLH 2011) mandated DLNR to create and maintain a comprehensive information system to inventory and maintain information about the lands of the Public Land Trust as described in Section 5(f) of the Admission Act and Article XII, section 4 of the Hawaii State Constitution. DLNR was tasked with coordinating all efforts to establish such a system, including data collection from all State and County agencies, as well as the development of the System itself. The purpose of the PLTIS is to serve as an inventory of State owned and county

owned lands, the disposition of those lands, and to allow for the further study of the Trust Land status of those lands. PLTIS was developed to satisfy the requirements of Act 54 (SLH, 2011). The PLTIS is the State of Hawaii's first centralized, web-based inventory of state and county lands.

- b) The purpose of Act 54 (SLH 2011) is described in Section 1. "The focus of this measure is the further study or review of the trust status of those lands to which state agencies hold title and the disposition of those lands, to verify the accuracy of or make amendments to their trust statuses as indicated in the department's

existing database of public land trust lands. The purpose of this Act is to facilitate the establishment of a comprehensive information system to inventory and maintain information about the lands of the public land trust described in section ~~5~~(f) of the Admission Act and article XII, section 4 of the Hawaii State Constitution.”

- c) The specific assignment for DLNR ~~is~~ set forth in Section 2 (b) of Act 54 (SLH 2011). “The information system shall consist of a complete and accurate inventory of all lands in the public land trust to which state agencies hold title or over which they maintain management control.”
- d) The PLTIS contains encumbrance information and data, including the lessee and rent amount. Act 54 (SLH 2011) did not mandate that the PLTIS serve as an accounting system for revenue or income. Encumbrance information and data reported in PLTIS by state and county agencies has not been subject to an audit or any type of review by an independent third party. See descriptions below in section (f) that describe some of the shortcomings of the encumbrance information.
- e) Several presentations were made by DLNR Land Division staff on the functionalities, differences, and data sources in the PLTIS. The DLNR website relating to the PLTIS makes a general caveat statement at the end. “The PLTIS is a collection of data from approximately forty (40) State, County, and third-party sources. The accuracy of the data within the PLTIS depends on the accuracy of the reporting agencies' source systems, as well as the accuracy and completeness of the data imported into the PLTIS.” Some of the potential areas for inaccuracy or incompleteness are described below as follows.
 - i. With regard to the reporting of lands in the DLNR inventory or managed by DLNR, DLNR Land Division staff explained that the process by which the ~~state-State abstractor-Abstractor~~ determines the trust status of public land in the DLNR inventory is research intensive and includes a record search to identify the subject property and its original source of title, review of county real property tax records for assessed ownership of the subject property, determine how and when the government’s derivation of title to the subject property was acquired or transferred and a review of disposition records to track chain of ownership, management and control of the subject property. ~~No audit and no independent third party professional review has been made of the reporting by DLNR.~~ No audit and no

independent third party professional review has been made of the reporting to DLNR by the agencies for the Act 178 Report.

- ii. DLNR explained that it relies on self-reporting by the state and county agencies. DLNR does not verify the accuracy of the self-reporting. ~~No audit and no independent third party professional review has been made of the reporting by DLNR.~~ No audit and no independent third party professional review has been made of the reporting to DLNR by the state and county agencies for the Act 178 Report.
- iii. DLNR states on its website describing PLTIS the following. “The consolidation of statewide parcel and encumbrance data into a single database coupled with the ability to visualize this data geographically within the PLTIS, has revealed a number of intra- and inter-agency data discrepancies that would otherwise have gone unnoticed. Although these discrepancies may be more evident when visualizing data within the PLTIS, it is important to note that these discrepancies exist in the reporting agencies' source systems, and must be resolved in those systems first. Any questions regarding the data or the accuracy of the data within the PLTIS should be directed to the reporting agencies.”
- iv. DLNR states on its website describing PLTIS the following. “[M]ultiple agencies may own portions land within a single TMK. Although the PLTIS has the ability to identify the multiple owner agencies, it does not geographically display the exact portions of land within the TMK that each agency owns. Users must consult with the owner agencies directly if they need to know exactly what area is owned by each agency. Likewise, there are situations where an encumbrance may be issued over a portion of a parcel of land. Although the PLTIS will show that the encumbrance covers a parcel, it will not geographically display the exact area over (or under) which the encumbrance was issued. Users must consult with the agency that issued the encumbrance if they want to identify the exact portion of land over which the encumbrance was issued.”
- v. DLNR states on its website describing PLTIS the following. “There are lands that have not been assigned TMKs. Roads, beaches, and submerged lands are good examples. Although the PLTIS is primarily TMK-based, it has been built with functionality to allow reporting agencies to geographically represent parcels that

do not have TMKs. An example of this is the ability to represent land that does not have a TMK such that it is anchored in relation

(seaward of, adjacent to, etc.) to a parcel with a TMK. DLNR uses this feature to represent beaches that are "seaward of" existing parcels. Another feature is the ability to associate land using GPS coordinates. DLNR uses GPS coordinates to identify the various off shore mooring points. While the functionality exists within the PLTIS to represent lands that do not have TMKs, it is the responsibility of the various reporting agencies to choose a methodology that would best represent their land geographically and leverage it when submitting their data."

- vi. DLNR states on its website describing PLTIS the following:
"Although TMKs exist and are useful to the counties' operational needs, they may not be useful to other agencies. An example of this is the Airports Division of the Department of Transportation (DOTA). DOTA tracks all leases, including the various ticket counters by an internal location identifier consisting of airport, land, building, level, and space components, not by the TMK. Due to the large number of leases in the various airports, it was determined that the best course of action would be to map all leases to the largest parcel of each airport."
- vii. DLNR states on its website describing PLTIS the following:
"A parcel being tied geographically to another parcel using the "relation to" functionality (aka rel-to parcel) will have its information accessible by clicking on the anchor parcel. However, because the ownership information of the rel-to parcel will differ from the anchor parcel, the PLTIS renders parcel ownership and Trust Land Status based on the anchor parcel only."
- viii. DLNR states on its website describing PLTIS the following:
"DLNR requested that each agency that can hold title to land submit their parcel inventory based on DLNR's pre-defined parcel template specifications. DLNR also requested that each agency that issues encumbrances over State or County owned lands (regardless of the agency that holds title the land) submit their encumbrance inventory based on DLNR's pre-defined encumbrance template specifications. These templates included all data elements that were desirable for inclusion to the PLTIS. However, many agencies did not track all of the desirable information as it may not have been relevant for their operational

purposes, and many agencies had to start from scratch as they did not have an electronic inventory of parcels and/or encumbrances. Therefore, DLNR established three priority levels for the data elements within each of the templates to help agencies focus on the most important fields to be included in the PLTIS.”

- ix. DLNR states on its website describing PLTIS the following. “As mentioned above, many agencies did not have an electronic inventory of parcels and/or encumbrances and therefore started from scratch by researching and manually entering data into an Excel spreadsheet.”
- x. DLNR states on its website describing PLTIS the following. “There are many cases where two agencies have reported that they are the fee owner of a parcel. There are a few legitimate scenarios in which multiple agencies may indeed hold title to separate portions of a single parcel. However, in most cases, this is a discrepancy between agencies. Agencies should work to resolve these discrepancies going forward.”
- xi. DLNR states on its website describing PLTIS the following. “Encumbrances reported by agencies are those that are issued by the agency. This would include encumbrances issued to other agencies or to private entities. Subleases by State or County agencies are included in the PLTIS, but subleases by private entities are not.”
- xii. DLNR states on its website describing PLTIS the following. “Executive Orders (EOs) are also reported as encumbrances within the PLTIS. Although the land under which the original EO may be added to, withdrawn from or amended over the years, these individual transactions are not provided to the PLTIS. Instead, DLNR's Land Division references the original EO number and a current snapshot of the EO (i.e. current acreage, etc.) after any additions, withdrawals and amendments. Users are advised to contact the Land Division or the Managing Agency of such EO for further detail if necessary.”
- xiii. DLNR states on its website describing PLTIS the following. “Various State agencies, pursuant to respective provisions in the

statutes, are empowered to own fee title of real property. However, ownership records obtained from the county tax offices may not indicate the specific State agency that holds title to the property, and in most cases simply lists `State of Hawaii` as the fee owner.”

xiv. DLNR states on its website describing PLTIS the following.
“There are many cases where two agencies have reported that they are the fee owner of a parcel. There are a few legitimate scenarios in which multiple agencies may indeed hold title to separate portions of a single parcel. However, in most cases, this is a discrepancy between agencies. Agencies should work to resolve these discrepancies going forward.”

xv. Some other issues identified, including but not limited to: parcels which have been described as under the 50% rule for mixed PLT and non PLT lands and it is not know exactly how many parcels are in this category, submerged lands which may be described by the adjacent land parcels and may not have a boundary or TMK assigned, descriptions of land transferred after 1959 as automatically not being PLT parcels, and other things. No audit and no independent third-party professional review has been of the reporting to DLNR by the state and county agencies for the Act 178 Report, by other state and county agencies.”

f) DLNR is currently in the process of implementing technical computer upgrades to the PLTIS system. DLNR received legislative appropriation of \$900,000 to upgrade the system. The PLTWG supported DLNR’s request for this funding. DLNR invited OHA representatives to meet with Land Division IT staff to discuss these technical upgrades to PLTIS to improve its functionality and accuracy.

g) OHA’s position is that the PLTIS is not a complete and accurate inventory of ceded lands and public trust lands and recommends the Legislature fund either sufficient funds to hire an independent third party to review, assess and audit the PLTIS to determine its completeness and accuracy or a new public lands trust inventory system.

~~g) While DLNR believes that the PLTIS complies with Act 54, OHA’s position is that the PLTIS is not a complete and accurate inventory of ceded lands and public trust lands and would recommend the Legislature fund either a new public lands trust inventory system or hire an independent third party to review, assess and~~

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~~audit the PLTIS to determine its completeness and accuracy.~~

2. Other land inventories, information systems and databases.

- a) ~~The OHA's~~ Kipuka Database (~~OHA~~[Kipuka](#)) is currently being developed and is partially completed. It is a geographical information system (GIS) that utilizes the latest mapping technologies to provide a window into native Hawaiian land, culture and

history. Kipuka links historic data sets to geographic locations reinforcing the concept of information embedded in the ‘aina, encoded in the wahi inoa (place name). The foundation of Kipuka is the traditional land system, moku-puni divided into moku, ahupua‘a, ili and kuleana. A sense of "place" was a foundational aspect of traditional kanaka maoli (Native Hawaiian) identity.

- b) [The OHA's Papakilo Database \(OHA\)](#) is the ongoing development of a cutting edge and comprehensive "Database of Databases" consisting of varied collections of data pertaining to historically and culturally significant places, events, and documents in Hawai'i's history. This online repository of data will greatly increase OHA's ability to preserve and perpetuate cultural and historical information and practices, thus providing an invaluable resource to educate other regulatory agencies, OHA's Native Hawaiian beneficiaries, and the general public. Currently, the Papakilo Database contains approx. 1.2 million records representing 70 collections from 18 partnering organizations.
- c) [See also.](#) *1961 Inventory of Public Lands, Hawai'i Department of Land and Natural Resources. *1961 State land inventory : island of Kauai by Hawaii. Department of Accounting and General Services. Survey Division. Hawaii. Department of Land and Natural Resources *1961 State land inventory : island of Maui by Hawaii. Department of Accounting and General Services. Survey Division.; Hawaii. Department of Land and Natural Resources. *1961 State land inventory: island of Hawaii by Department of Accounting and General Services. Survey Division.; Hawaii. Department of Land and Natural Resources. See also, [Memorandum] C-1: State completes first land inventory since 1948. Hawaii. Department of Land and Natural Resources. Planning Office. Available at UH Mānoa Hamilton Library-Hawaiian & Pacific.
- d) In 1981, DLNR completed an initial inventory, listing approximately 1,271,652 acres. DLNR explained that this inventory was not complete and also did not include lands under the jurisdiction of other state agencies. The Legislature then enacted Act 121 (SLH 1982) which provided "Section 1. The purpose of this Act is to provide funds (1) to complete the inventory of, (2) to study the numerous legal and fiscal issues relating to the use of and, (3) to study the use and distribution of revenues from ceded lands." In 1982, the Legislative Auditor was directed to complete the inventory of trust lands and to study the legal issues relating to trust land revenues. The Legislative Auditor's 1986 final report, while not providing a complete inventory, detailed the numerous problems, such as survey and title search expenses, involved in compiling an accurate and

comprehensive inventory.

- e) Act 329 (SLH 1997) was passed which called for “the resolution of all outstanding issues between the executive and legislative branches and the office of Hawaiian affairs outside of the litigation process and which involves representatives of each.” “It is in the public interest that, during the period in which the state and the office of Hawaiian affairs are utilizing in good faith an established mechanism for the non-litigation resolution of outstanding issues and as a part of that mechanism: (A) An inventory of the public trust lands describing those lands with sufficient specificity be undertaken and completed; and (B) The office of Hawaiian affairs be assured an adequate level of funding with which to accomplish its goals. The Legislature appropriated funds to convert DLNR’s Land Division records into a database to assist in managing all public lands. The result was the State Land Information Management System (SLIMS), which became operational in 2000. SLIMS integrated information about state lands, including the inventory, into one system that identified property and tracked information such as lease renewal dates and lease receipts. SLIMS did not include all trust lands and that the trust status of some lands was not clearly delineated, SLIMS is an automated information system which integrates the accounts receivable, State land inventory, property management, Geographic Information System (GIS) and other related functions of the Land Division.
- f) Historical Land Inventories on reserve at the University of Hawai`i Hamilton Library.
- g) Office of State Planning: Public Land Inventory (1990). It contains public lands inventory of all federal public lands set aside to the United States by acts of Congress, executive orders, and proclamations, sec 5(c) lands, concentrating on ceded lands.
- h) The U.S. Department of the Interior, through its Office of Native Hawaiian Relations (ONHR) and Bureau of Land Management (BLM) Cadastral Survey Program, with the cooperation and assistance of the State of Hawai`i Department of Hawaiian Home Lands, is conducting a boundary survey of Hawaiian home lands, including the exterior boundaries and boundaries of inholdings.
- Trust Land Boundary Surveys:
- *Put up a virtual fence to help prevent Hawaiian home lands being used by federal, state, and local governments and private entities without permission.
 - *Generate a genealogical record of the land that will allow everyone to see how Trust lands came into or left the Trust.

*Generate a powerful database tool to help with good Trust land management decisions and to allow the U.S. Bureau of Land Management to defend the boundaries of the Trust.

See <https://www.doi.gov/hawaiian/land-survey>

F. Topics researched and discussed relating to a complete and accurate accounting of OHA’s Constitutional and Statutory Pro Rata Share of the Public Land Trust

1. Extent to which state agencies are reporting their income and proceeds to DLNR for its Act 178 DLNR Report to the Legislature of Accounting of All Receipts from Lands Described in Section 5(F) of the Admission Act for Fiscal Years.

a) A financial by independent professionals N&K of the reporting by state agencies to DLNR is required for the DLNR Act 178 Report to the Legislature of Accounting of All Receipts from Lands Described in Section 5(F) of the Admission Act for Fiscal Year 2016 uncovered numerous discrepancies in the agency reporting.

b) DLNR has stated in its yearly Act 178 reports and most recently stated in last report, “Responsibility for the accuracy of the data rests with the agencies. Verifying the accuracy of individual transactions and confirming the trust land status for individual pares are beyond the scope of the tasks prescribed in Act 178, SLH 2006.” See 2023 Report, Methodology, p.4.
<https://files.hawaii.gov/dlnr/reports-to-the-legislature/2024/LD24-Ceded-Lands-Receipt-Rpt-FY23.pdf>

~~e) Specific potential inaccuracies and incompleteness in the reporting of encumbrance information and data in the PLTIS are described in Sections E (e) viii, ix, xi, xii above.~~

~~c) All state agencies are required to comply by Act 178 with the Act 178 reporting requirements, including the University of Hawaii. All public land trust receipts must be accounted for, including those receipts that a department or agency~~

~~believes may not be subject to the Office of Hawaiian affairs' pro rata share.~~
d) It is OHA’s position that to meet its fiduciary constitutional, statutory and trust duties and obligations to OHA and its Native Hawaiians beneficiaries, the state should transfer Native Hawaiians’ full 20% pro-rata share of the gross revenues generated by PLT lands to OHA (\$78.9 million annually as of 2016 calculation based on the N&K Audit) and pay OHA its full amount of past due plus interest.

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e) It is OHA's position that, to meet its fiduciary constitutional, statutory and trust duties and obligations to OHA and its Native Hawaiians beneficiaries, the state should pay OHA's share of airport revenues with an equivalent payment from the General Funds or lands as it has in the past. OHA introduced a chart that provides data to show the many times that the state has paid OHA, see Airport Revenue Payment Chart, prepared by OHA. (see chart attached). All payments should be made on a yearly basis, particularly since the State no longer allows interest to be earned on past-due amounts owed to OHA. When the past due payment of \$136 million was made to OHA in 1993, interest was still being assessed on the past due owed. The practice of assessing past due amounts, not including interest in the payments, and then paying in a lump sum is not a best practice and unfair to OHA and its Native Hawaiian beneficiaries.

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~~e) The state should transfer Native Hawaiians' full 20% pro-rata share of the gross revenues generated by PLT lands to OHA (\$78.9 million annually as of 2016 calculation based on the N&K Audit);~~

~~f) The state should pay OHA's share of airport revenues with an equivalent payment from the General Funds or lands as it has in the past. OHA introduced a chart that~~

provides data to show the many times that the state has paid OHA, see [Airport Revenue Payment Chart](#), prepared by OHA. All payments should be made on a yearly basis, particularly since the State no longer allows interest to be earned on past due amounts owed to OHA. When the past due payment of \$136 million was made to OHA in 1993, interest was still being assessed on the past due owed. The practice of assessing past due amounts and then paying in a lump sum is not a best practice and unfair to OHA.

F. Reports on PLT Income and Proceeds

1. Most recent

- a) Financial Review of FY16 Report on Public Trust Land Receipts Reporting (N&K CPA's, Inc. for the fiscal year ended June 30, 2016) (published 2018), prepared for OHA
- b) DLNR Report to the Thirty-Second State Legislature 2024 Regular Session Accounting of All Receipts From Lands Described In Section 5 (f) Of The Admission Act For Fiscal Year 2023, DLNR

2. Earlier Reports

- a) A 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 Trust Land Receipts for the Fiscal Year Ended June 30, 2012 (KMH LLP, October 2014)
- b) Office of Hawaiian Affairs, A Report on Ceded Lands, for Fiscal Year 2003 and 2004, Deloitte & Touche LLP, February 26, 2005.
- c) Office of Hawaiian Affairs, A Report on Ceded Lands, for Fiscal Year 1998 to 2002, Deloitte & Touche LLP, October 24, 2003.
- d) Office of Hawaiian Affairs, A Report on Ceded Lands, for the Period Year 1981 through 1991, Deloitte & Touche LLP, December 15, 1992.
- e) Office of Hawaiian Affairs, A Report on Ceded Lands, for the Period Year 1981 through 1989. Deloitte & Touche LLP, January 24, 1992.
- f) A Report on the Ceded Land Revenues for 1981 through 1989, Ernst & Young LLP, February 1991.

- g) Final Report on the Public Land Trust, A Report to the Legislature of the State of Hawai'i, Office of the Legislature Auditor, December 1986.

DLNR Reports to the Legislature 2007 to 2023 Regular Session Accounting of All Receipts from Lands Described In Section 5 (F) Of The Admission Act For Fiscal Year 2007-2024 (yearly)

G. OHA's Pro Rata Share Established Legal Principles and Rules

1. OHA's Pro Rata Share has always been calculated on gross income and proceeds

2. Act 304 (1990 Sess. L. Haw.) was negotiated by the State and OHA and has continued to be used informally and could be reenacted without sec. 16, severability clause and with provisions for payments of the airport revenues from general funds, general obligation bonds or land, as has been done historically

- a) In 1964, Judge Heeley, First Circuit Court ruled that OHA was entitled to revenues from each enumerated source, including 1) Waikiki Duty Free receipts (in connection with the lease of ceded lands at the Honolulu International Airport); (2) Hilo Hospital patient services receipts; (3) receipts from the Hawai'i Housing Authority and the Housing Finance and Development Corporation for projects situated on ceded lands; and (4) interest earned on withheld revenues.
- b) After the Forgiveness Act (Department of Transportation and Related Agencies Appropriations Act, Pub. L. No. 105-66, § 340, 111 Stat. 1425, 1448 (1998)) became law, the Hawai'i Supreme Court found that the plain language of "Act 304 obligates the State to pay to OHA the airport revenues sought in this case." Office of Hawaiian Affairs v. State, 96 Hawai'i 388, 396, 31 P.3d 901, 909.
- c) State continues to use Sovereign and Proprietary definitions and other things it finds useful that were negotiated between the State and OHA in Act 304 (SLH 1990) and it is patently unfair and an abuse for the State to use those definitions while not paying OHA the airport revenues and other things agreed upon in Act 304.

3. State payments of past due for OHA's pro rata share

- a) See, Act 304, § 11 at 952 (appropriating out of general revenues the sum of \$7,200,000 "to provide funds pursuant to sections 10-2 and 10-13.5"); 1992 Sess. L. Haw. Act 300, § 5(164) at 831 (appropriating out of the general fund \$5,000,000 "to partially satisfy and pay to [OHA], the amount [owed, pursuant

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to Act 304,] for the period from June 16, 1980 through June 30, 1991”); 1993 Sess. L. Haw. Act 35, § (appropriating general obligation bond funds for payment to OHA in a sum not to exceed \$136,500,000 for revenues owed pursuant to Act 304); 1997 Sess. L. Haw. Act 329, § 2 at 958 (enacting HRS § 10–13.3, which states that “[n]otwithstanding the definition of revenue contained in this chapter and the provisions of section 10–13.5 ... the income and proceeds from the pro rata portion of the public land trust ... for each of fiscal year 1997–98 and fiscal year 1998–1999 shall be \$15,100,000.”

b) The legislature transferred 30-acres of land at Kaka‘ako Makai to OHA in lieu of cash as a back payment for unpaid PLT revenues from 1980-2012 (2012 Sess. L. Haw Act 15).

c) In 2022, OHA’s interim annual pro rata was increased from \$15.1 million to \$21.5 million and the Legislature allocated a one-time payment of \$64 million to OHA, for the “past due” amounts (2022 Sess. L. Haw Act 226). This \$64 million did not compensate OHA for its past due, rather it was merely the difference between \$15.1 million and \$21.5 million for those ten years. \$638 million should have been paid by the State for the amount past due for its decade of underpayment from 2012 to 2022. The amount is higher today as OHA continues to be underpaid.

d) Precedent of State equivalent payments of airport revenues (see OHA table)

H. Other OHA’s claims of unfair treatment constituting a breach of the fiduciary constitutional, statutory and trust duties and obligations to OHA and its Native Hawaiians beneficiaries, including but not limited to the following.

1. The transfer of Kaka‘ako Makai resulted in a payment more than 50% below what was in fact agreed upon for the past due amount, which did not even include interest.

a) OHA has been prohibited from developing its lands Kaka‘ako Makai on Honolulu Harbor and realizing their economic and housing potentials. Although just across the street, mainland developers have built more than twelve high rise residential towers, and more are planned. Nonetheless, OHA has been prohibited from doing the same.

b) At the time, OHA was owed \$200 million. The state’s appraiser valued the land at approximately \$198 million, assuming a 400-foot height limit for select parcels (which is double the current building height limit of 200 feet). Years later, it was determined that the value of the land was actually only \$91 million.

and that the state had neglected basic maintenance on these harbor lands transferred to OHA.

2. Leases on PLT lands where no charges are collected by the State or less than fair market value is charged

- a) No charges collected by the state for telescope time, technology patents, foreign investments, commodities, laying of submarine cables for internet and telephone access, fishing in ocean waters, research dollars, subleases by lessors of state lands.
- b) Leases for \$1.00 per year or less than full market value.
- c) Electrical and transmission utility lines across ceded lands either in the air or underground.
- d) Transmission lines for telephone, gas, cable, water, sewer, storm drain, traffic lights and street lights.

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3. Some agencies do not report PLT income and proceeds.

- 1) University of Hawai'i
- 2) Counties

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3) Some state agencies moved building sites or activities from PLT to non-PLT lands to avoid paying a pro rata share to OHA

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4) The legislature changed the law so that there is no more interest assessed on OHA's past due amounts as was awarded by Judge Heeley.

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5) Permitted environmental pollution and other destruction of sacred ancestral lands and lands with cultural and spiritual significance.

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6) (Lands transferred out of the PLT from the 5(f) lands to 5(a) right before statehood, such as Palmyra Island, the Midway Islands, Kingman Reef, and Johnston Atoll, which includes Johnston (or Kalama) Island and Sand Island) (this issue was not discussed at the PLTWG meetings.)

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I. Summary of OHA's Consistent Positions on its Pro Rata Share and Inventories of the Public Land Trust and Ceded Lands to meet the State's fiduciary constitutional, statutory and trust duties and obligations to OHA and its Native Hawaiians beneficiaries.

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1. The state must transfer Native Hawaiians' full 20% pro-rata share of the **gross** revenues generated by PLT lands to OHA (\$78.9 million annually as of 2016), in compliance with §HRS 10-13.5, which was codified in 1980, as part of the state's fiduciary constitutional, statutory and trust duties and obligations to OHA and its Native Hawaiians beneficiaries.
2. The state must accurately and publicly account for all income and proceeds generated by and derived from the PLT annually by all its managing departments to ensure that Native Hawaiians receive their legal, rightful share of these monies and the amount of the pro rata share should be reviewed and updated every eight years by an independent accounting firm as part of the state's fiduciary constitutional, statutory and trust duties and obligations to OHA and its Native Hawaiians beneficiaries.
3. The state must transfer \$638 million in under-paid PLT revenues for the past 10 years (2012-2022) to OHA, as part of its fiduciary constitutional, statutory and trust duties and obligations to OHA and its Native Hawaiians beneficiaries, as well as the amount for the past two years of past due.
4. The state must accurately and publicly account for all "ceded" (the former crown and government lands of the Hawaiian Kingdom) lands in the PLT inventory as part of its fiduciary constitutional, statutory and trust duties and obligations to OHA and its Native Hawaiians beneficiaries.

h)

G. OHA's Pro Rata Share Established Legal Principles and Rules

- 1. OHA's Pro Rata Share has always been calculated on gross income and proceeds**
- 2. Act 304 (1990 Sess. L. Haw.) was negotiated by the State and OHA and has continued to be used informally and could be reenacted without sec. 16, severability clause and with provisions for payments of the airport revenues from general funds, general obligation bonds or land, as has been done historically**

a) In 1964, Judge Heeley, First Circuit Court ruled that OHA was entitled to revenues from each enumerated source, including 1) Waikiki Duty Free receipts (in connection with the lease of ceded lands at the Honolulu International Airport); (2) Hilo Hospital patient services receipts; (3) receipts from the Hawai'i Housing Authority and the Housing Finance and Development Corporation for projects situated on ceded lands; and (4) interest earned on withheld revenues.

b) After the Forgiveness Act (Department of Transportation and Related

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Agencies Appropriations Act, Pub. L. No. 105-66, § 340, 111 Stat. 1425, 1448 (1998)) became law, the Hawai'i Supreme Court found that the plain language of "Act 304 obligates the State to pay to OHA the airport revenues sought in this case." *Office of Hawaiian Affairs v. State*, 96 Hawai'i 388, 396, 31 P.3d 901, 909.

- e) — ~~State continues to use Sovereign and Proprietary definitions and other things it finds useful that were negotiated between the State and OHA in Act 304 (SLH 1990)~~

3. ~~State payments of past due for OHA's pro rata share~~

- a) — ~~See 1990 Sess. L. Haw. Act 304, § 11 at 952 (appropriating out of general revenues the sum of \$7,200,000 "to provide funds pursuant to sections 10-2 and 10-13.5"); 1992 Sess. L. Haw. Act 300, § 5(164) at 831 (appropriating out of the general fund \$5,000,000 "to partially satisfy and pay to [OHA], the amount [owed, pursuant to Act 304,] for the period from June 16, 1980~~

through June 30, 1991”); 1993 Sess. L. Haw. Act 35, § (appropriating general obligation bond funds for payment to OHA in a sum not to exceed \$136,500,000 for revenues owed pursuant to Act 304); 1997 Sess. L. Haw. Act 329, § 2 at 958 (enacting HRS § 10-13.3, which states that “[n]otwithstanding the definition of revenue contained in this chapter and the provisions of section 10-13.5 ... the income and proceeds from the pro-rata portion of the public land trust ... for each of fiscal year 1997-98 and fiscal year 1998-1999 shall be \$15,100,000.”

- b) — The legislature transferred 30 acres of land at Kaka‘ako Makai to OHA in lieu of cash as a back payment for unpaid PLT revenues from 1980-2012 (2012 Sess. L. Haw. Act 15).
- e) — In 2022, OHA’s interim annual pro-rata was increased from \$15.1 million to \$21.5 million and the Legislature allocated a one-time payment of \$64 million to OHA, for the “past due” amounts (2022 Sess. L. Haw. Act 226).
- d) — Precedent of State equivalent payments of airport revenues (see OHA table)

H. Other OHA’s claims of unfair treatment constituting a breach of fiduciary duty, including but not limited to the following.

1. Kaka‘ako Makai

- a) — OHA has been prohibited from developing its lands Kaka‘ako Makai on Honolulu Harbor and realizing their economic and housing potentials. Although just across the street, mainland developers have built more than twelve high rise residential towers, and more are planned. Nonetheless, OHA has been prohibited from doing the same.
- b) — At the time, OHA was owed \$200 million. The state’s appraiser valued the land at approximately \$198 million, assuming a 400-foot height limit for select parcels (which is double the current building height limit of 200 feet). Years later, it was determined that the value of the land was actually only \$91 million and that the state had neglected basic maintenance on these harbor lands transferred to OHA.

2. Leases on PLT lands where no charges are assessed or less than fair market value is charged

a) ~~Some examples include telescope time, technology patents, foreign investments, commodities, laying of submarine cables for internet and telephone access, fishing in ocean waters, research dollars~~

b) ~~Leases for \$1.00 per year or less than full market value~~

~~3. — Some agencies do not report PLT income and proceeds~~

~~4. — Some state agencies moved building sites or activities from PLT to non-PLT lands to avoid paying a pro rata share to OHA~~

~~5. — The legislature changed the law so that there is no more interest assessed on OHA's past due amounts as was awarded by Judge Heeley.~~

~~6. — Permitted environmental pollution and other destruction of sacred ancestral lands and lands with cultural and spiritual significance~~

~~7. — (Lands transferred out of the PLT from the 5(f) lands to 5(a) right before statehood, such as Palmyra Island, the Midway Islands, Kingman Reef, and Johnston Atoll, which includes Johnston (or Kalama) Island and Sand Island)**~~

~~F. — Summary of OHA's Consistent Positions on its Pro Rata Share and Inventories of the Public Land Trust and Ceded Lands since 2016 and earlier.~~

~~1. The state must transfer Native Hawaiians' full 20% pro rata share of the gross revenues generated by PLT lands to OHA (\$78.9 million annually as of 2016), in compliance with §HRS 10-13.5, which was codified in 1980, the state's constitutional, statutory and trust fiduciary duties to Native Hawaiians.~~

~~2. The state must accurately and publicly account for all income and proceeds generated by and derived from the PLT annually by all its managing departments to ensure that Native Hawaiians receive their legal, rightful share of these monies and the amount of the pro rata share should be reviewed and updated every eight years by an independent accounting firm.~~

~~3. The state must transfer \$638 million in under paid PLT revenues for the past 10 years (2012-2022) to OHA, as part of its legal and trust obligation to Native Hawaiians.~~

~~4. The state must accurately and publicly account for all "ceded" (the former crown and government lands of the Hawaiian Kingdom) lands in the PLT inventory.~~

J. Recommendations

1. Appropriation of funds for hiring professional services to accomplish goals of Section 3(a) of Act 226

2. OHA has described its consistent positions above for decades on the requirement of a complete and accurate inventory and full payment of its pro rata share of the PLT income and proceeds on a yearly basis, as well as all amounts for past due and continues to advocate for a complete and accurate inventory and full payment of its pro rata share and urges the State to do so as part of its fiduciary constitutional, statutory and trust duties and obligations to OHA and its Native Hawaiians beneficiaries.

3. .

~~5.— Final Comments. PLTWG unanimously voted to and did submit a bill in the 2024 Legislature, S.B. 3336, A Bill for an Act Relating to the Public Land Trust Working~~

~~6.— Group. This bill should be submitted again. It seemed like there was PLTWG consensus to submit the bill again. OHA believes that realistically the amount for an appropriation should be increased to \$1,000,000.~~

~~7.—~~

~~8. ** Not specifically discussed at the PLTWG meetings yet.~~

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Discussion of historical payments of airport revenues to OHA

Fiscal Year	Governor	Authority	Total Amount Transferred to OHA	Airport Revenue included in calculation of OHA's share	Source of Airport Revenue to OHA
1991-3Q of 1996	Waihe'e	Act 304, SLH 1990	Approx. \$12.5 million/year	1. Landing fees 2. Ground & terminal rental 3. Concessions	Airport Special Fund
1992	Waihe'e	Act 300 §5(193), SLH 1992	\$5 million	Partial satisfaction of 1980-91 amounts owed under Act 304	General fund
1993	Waihe'e	Act 35, SLH 1993	\$135 million/past due settlement	Same as under Act 304, SLH 1990	GO bonds
1997-1998 1998-1999	Cayetano	Act 329, SLH 1997 [suspended Act 304, SLH 1990]	\$15.1million / year,	Amount equivalent to receipts under Act 304, SLH 1990	General Fund
2000-2002	Cayetano	N/A	Suspended	None	N/A
2003	Lingle	Act 34, SLH 2003	\$9,552,973 for back payments for FY 2002-2003	None	General & special funds
2003-2005	Lingle	Executive Order 03-03	Approx. \$9 million per year	None. ¹	Agency direct transfers to OHA
2006-present	Lingle	Act 178, SLH 2006; Executive Order 06-06	\$15.1 million per year	1. Landing fees 2. Terminal and ground rent 3. Concessions	N/A ²
2012	Abercrombie	Act 15, SLH 2012	Land valued at \$200M	Concession revenues	Land

***1994, OHA filed lawsuit over disagreement with pro rata share payments from Duty Free, public housing, patient revenues and interest due. In 1996, Judge Heeley agreed with OHA. 2001 Hawai'i Supreme Court ruled that Federal Forgiveness Airport Revenue Act invalidated Act 304, which however provided “(d) *CLARIFICATION*-Nothing in this Act shall be construed to affect any existing Federal statutes, enactments, or trust obligations created thereunder, or any statute of the several States that define the obligations of such States to Native Americans, Native Hawaiians or Alaska natives in connection with ceded lands, except to make clear that *airport* revenues may not be used to satisfy such obligations.”

¹ However, Act 178 included \$17.5 million to make up for shortfall in payments from 2003-2006 Airport revenue. Presumably includes landing fees, rental, and concessions for all airports.

² Although amounts of airport revenues were used to calculate the \$15.1 million paid, HDOT Airports transfers no revenue.