



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

MEETING OF THE PUBLIC LAND TRUST (PLT) WORKING GROUP

DATE: Wednesday, November 20, 2024

TIME: 3:30pm

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: 823 9038 4600

This remote 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 remote meeting, will be available at 560 N. Nimitz Hwy., Suite 200, Honolulu, HI 96817.

AGENDA

I. Call to Order

II. 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**

III. Discussion: Next PLT Working Group meeting

IV. 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.

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. Meeting recordings will



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be made available at <https://www.oha.org/PLT-working-group/>.

Public Testimony will be called for each agenda item and 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.

* Document(s) associated with this agenda item are anticipated to be included in the working group packet for this meeting. The working group packet will be available for the public to inspect at OHA's main office located at 560 N. Nimitz Hwy., Suite 200, Honolulu, HI 96817, and online at <https://www.oha.org/PLT-working-group/> no later than two business days before this meeting.

Testimony can be provided to the PLT Working Group either as: (1) *written testimony* or (2) live, oral testimony online or at the physical meeting location during the remote meeting.

- (1) Persons wishing to provide *written testimony* on items listed on the agenda should submit testimony via *email* to pltworkinggroup@oha.org or via *postal mail* to Office of Hawaiian Affairs, Attn: PLT Working Group Meeting Testimony, 560 N. Nimitz Hwy., Suite 200, Honolulu, HI 96817. Testimony is requested to be received at least twenty-four hours prior to the scheduled meeting to allow board members with sufficient time to review the testimony before the meeting.
- (2) Persons wishing to provide *oral testimony online* during the remote meeting, please click on the link below:
<https://us06web.zoom.us/j/82390384600>

To provide oral testimony online, you will need:

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

Persons wishing to provide *oral testimony at the physical meeting location* can sign up the day-of the meeting at the physical meeting location.

Once your oral testimony is completed, you may be asked to disconnect from the meeting. If you willfully disrupt the meeting or do not disconnect 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.

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.

DRAFT 111424

PLTWG INTERIM REPORT TO LEGISLATURE

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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 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 were Carmen Hulu Lindsey (OHA Chairperson), Brickwood Galuteria (OHA Trustee), and Sherry Broder (Counsel to the OHA). 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 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 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 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, board packets, summary meetings and 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 the Department of Land and Natural Resources ("DLNR") for every fiscal year statutorily required DLNR Report to the Legislature of Accounting of All Receipts from Lands Described in Section 5(f) of the Admission Act ("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 already made to 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 Senator Brian Schatz, Chairman of the Senate Committee on Indian Affairs, and the Secretary of the Interior Deb Haaland.

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 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. Realistically the amount should be increased to \$1,000,000. The purpose is to evaluate and address the completeness and accuracy of the Public Land Trust Information System (“PLTIS”) and the Act 178 Report, which are respectively the current bases for both the ceded lands inventory and the accounting of receipts therefrom. 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).

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

1. Extent to which the 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). PLTIS is the State of Hawaii’s first centralized, web-based inventory of state and county lands.

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.”

- b) 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.”
- c) 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) describing some of the shortcomings of the encumbrance information.
- d) 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 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.
 - 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.
 - 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 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 conducted of the reporting to DLNR by the state and county agencies for the Act 178 Report.

- e) 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.

2. Other land inventories, information systems and databases.

- a) OHA’s Kipuka Database (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, mokupuni divided into moku, ahupua’a, ili and kuleana. A sense of "place" was a foundational aspect of traditional kanaka maoli (Native Hawaiian) identity.
- b) OHA’s Papakilo Database 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 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 parcels 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>
- c) All state agencies are required to comply with 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.

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.
- h) DLNR Act 178 Reports to the Legislature 2007 to 2023 Regular Sessions Accounting of All Receipts from Lands Described in Section 5 (F) of the Admission Act For Fiscal Year 2007-2024 (yearly).

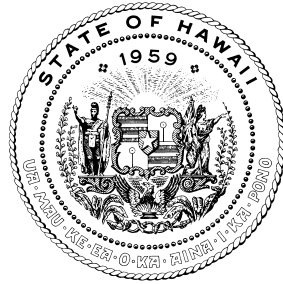
H. PLTWG unanimous recommendation

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

DRAFT 111424

REPORT TO THE THIRTY-THIRD LEGISLATURE
STATE OF HAWAI'I
2025 REGULAR SESSION

RELATING TO THE PUBLIC LAND TRUST WORKING GROUP



Prepared by

THE STATE OF HAWAI'I
PUBLIC LAND TRUST WORKING GROUP

In response to Act 226, Session Laws of Hawai'i 2022

Honolulu, Hawai'i
December 2024

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PLTWG INTERIM REPORT TO LEGISLATURE RELATING TO
THE PUBLIC LAND TRUST WORKING GROUP
CONFIDENTIAL, NOT FOR DISTRIBUTION
INTERIM REPORT

This interim report is made pursuant to Act 226, Session Laws of Hawai'i 2022 (Act 226), and provides a detailed account of the Public Land Trust Working Group (PLTWG) activities from September 5, 2023 through August 12, 2024. This interim report highlights key activities of the PLTWG during the reporting period, challenges, and recommendations for achieving comprehensive accountability in managing the Public Land Trust.

A. ~~Statutory authority~~ Authority and Composition for Public Land Trust Working Group (~~"PLTWG") of the 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 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 were Carmen Hulu Lindsey (OHA Chairperson), Brickwood Galuteria (OHA Trustee), and Sherry Broder (Counsel to the OHA). 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 Subsection 3(c) to the working group.

B. Prior Working Groups

- ~~House Concurrent Resolution No. 188~~ (~~Session Laws of Hawai'i 2016~~) requested the Governor to convene a Public Land Trust Revenues Negotiating

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Committee. That

1. 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 (DLNR) to complete a comprehensive inventory database of all lands subject to

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section 5(f) of the Admission Act. ~~The department~~DLNR was to coordinate its efforts with a joint committee made up of eight members of the Legislature, ~~the Office of Hawaiian~~

~~Affairs~~OHA, and the ~~governor's~~Governor's officeOffice. 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:

1. ~~1.~~ OHA sought to include all Government and Crown Lands and the date of origination for title histories; ~~and~~
2. ~~and 2. parameters~~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 became operational in the fall of 2000.

C. ~~Administration of the PLTWG~~PLTWG Meetings

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. OHA 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, board packets, summary meetings and postings of recordings.

D. Summary of PLTWG activities

1. ~~PLTWG~~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 the ~~Department of Land and Natural Resources~~ ("DLNR")DLNR for every fiscal year statutorily required DLNR Report to the Legislature of Accounting of All Receipts from Lands Described in Section 5(f) of the Admission Act (~~"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 already made to DLNR for the Act 178 Report.

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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 Senator Brian Schatz, Chairman of the Senate Committee on Indian Affairs, and U.S. the Secretary of the Interior Deb Haaland.

3. PLTWG unanimously voted to and did submit a bill in the 2024 Legislature, SB 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 appropriation for technical upgrades to the PLTIS. The OHA members did support this DLNR requested appropriation. The PLTWG bill SB 3336 sought to appropriate \$500,000 from the general revenues of the State of Hawai'i for the retention of third-party independent professionals with financial, accounting, and land inventory expertise. Realistically the amount should be increased to \$1,000,000.~~ The purpose of the third-party professionals would be to evaluate and address the completeness and accuracy of the Public Land Trust Information System ("PLTIS") and the Act 178 Report, which are respectively the current bases for both the ceded lands inventory and the accounting of receipts therefrom. 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).

E. Topics researched-Researched and discussed-Discussed relating-Relating to Accounting of Ceded Lands in a complete and accurate inventory the Public Land Trust Inventory

1. ~~Extent to which the 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) Session Laws of Hawai'i (Act 54), 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~~

a) 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

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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.

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The purpose of Act 54 (SLH 2011) is described in Section 1 of the Act: "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."

b) The specific assignment for DLNR is set forth in Section 2-(b) of Act 54 (SLH 2011)-54: "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."

e) 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) describing some of the shortcomings of the encumbrance information.~~

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d)c) 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.

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- 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 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.

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.

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 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.iii.~~ 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 conducted of the reporting to DLNR by the state and county agencies for the Act 178 Report.

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e)d) 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.

2. Other land inventories, information systems and databases.

- a) OHA's Kipuka Database (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) OHA's Papakilo Database 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, [Session Laws of Hawai'i \(1997, SLH 1997\)](#)~~ was passed which called for "the resolution of all

e) ~~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.

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f) Historical Land Inventories on reserve at the University of Hawai‘i Hamilton Library.

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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.

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~~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. See~~

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~~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.~~

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

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F. Topics Researched and Discussed Relating to Accounting Income and Proceeds from the Public Land Trust

~~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 audit by independent professionals contracted by OHA ~~N&K~~ of the reporting by state agencies to DLNR is required for the Act 178 Report Report to the Legislature of~~

~~a) 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 financial data in the Act 178 Report rests with the reporting agencies. DLNR does not v-verify ing the accuracy of individual transactions and confirming the trust land status for individual parcs parcel from which the financial data is reported 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)b) All state agencies are required to comply with 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.~~

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'

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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.
- h) DLNR Act 178 Reports to the Legislature 2007 to 2023 Regular Sessions Accounting of All Receipts from Lands Described in Section 5 (F) of the Admission Act For Fiscal Year 2007-2024 (yearly).

H. ~~PLTWG unanimous recommendation~~ PLTWG Recommendation

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

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**Draft PLTWG OHA Additional and Separate Supplement for
PLTWG Interim Report to Legislature**

CONFIDENTIAL, NOT FOR CIRCULATION

The Public Land Trust Working Group (“PLTWG”) Office of Hawaiian Affairs (“OHA”) OHA submit this Additional and Separate Supplement to the PLTWG Interim Report to Legislature to provide and include OHA’s position on these important issues relating to an accurate and complete inventory, an accurate and complete accounting to the income and proceeds from the PLT and “subsequently determine the twenty per cent pro rata share of income and proceeds from the public land trust due annually to the office of Hawaiian affairs for the betterment of the conditions of Native Hawaiians.” See Act 226, Sec. 3 (a) (Session Laws Hawai`i (“SLH”) 2022).

I. Background

Native Hawaiians are the indigenous, aboriginal people of the archipelago that is today the State of Hawai`i. Hawai`i state law recognizes Native Hawaiians as the aboriginal peoples of Hawai`i and specifically affirms that “the people of the State of Hawaii and the United States of America as set forth and approved in the Admission Act, established a public trust which includes among other responsibilities, betterment of conditions for native Hawaiians. The people of the State of Hawai`i reaffirmed their solemn trust obligation and responsibility to native Hawaiians and furthermore declared in the State Constitution that there be an office of Hawaiian affairs to address the needs of the aboriginal class of people of Hawai`i.” Haw. Rev. Stat. §10-1.

This tragic history of the Native Hawaiian People and the loss of their sovereignty and their lands is set forth in the Apology Resolution, Joint Resolution to Acknowledge the 100th Anniversary of the January 17, 1893 Overthrow of the Kingdom of Hawai`i, Pub. L. No. 103 - 150 (1993) (“Apology Resolution”). “Whereas the Republic of Hawai`i also ceded 1,800,000 acres of crown, government and public lands of the Kingdom of Hawai`i without the consent of or compensation to the native Hawaiian people of Hawai`i 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” (paras. 25, 29.) The Apology Resolution specifically states that the overthrow of the Kingdom of Hawai`i was “illegal.” (paras 5 and 12, Acknowledgement para 1).

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.”

The Hawai`i Supreme Court found that many state statutes were in accord with the Apology Resolution. "The above interpretation is also supported by related state legislation enacted at around or subsequent to the adoption of the Apology Resolution -- specifically, Acts 354, 359, 329, and 340." Act 354 (SLH 1993), Act 359 (SLH 1993), Act 329 (SLH 1997), Act 340 (SLH 1992) (Kahoolawe). The Hawai`i legislature has specifically acknowledged that “the indigenous people of Hawai`i were denied ... their lands,” and has anticipated further action by the legislature to reach the “lasting reconciliation so desired by all people of Hawai`i.” Act 329, § 1 at 956.

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 Hawai`i 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.

As a condition of statehood, the Hawai`i Admission Act required the Hawai`i to adopt the Hawaiian Homes Commission Act and imposed a public trust on the lands ceded to the State. Hawai`i assumed the Federally delegated responsibility of administering 203,500 acres of land that had been set aside under Federal law for the benefit of the native people of Hawai`i. See Haw. Const. Art. XVI, Sec. 7; Hawai`i Admission Act, Pub. L. No. 83-3, Sec. 4, 73 Stat. 4, 5 (1959) (“Hawai`i Admission Act”). In addition, the State agreed to the imposition of a public trust upon all of the lands ceded to the State upon admission. See Hawai`i Admission Act, Sec. 5(f); Haw. Const., Art. XII, Sec. 4. One of the five purposes for which the public trust is to be carried out is for the “betterment of the conditions of native Hawaiians[.]” Hawai`i Admission Act, Sec. 5(f).

In 1978, the citizens of the State of Hawai`i amended the State constitution adopted several constitutional amendments to fulfill the special relationship with Native Hawaiians in their homeland. OHA was created by the 1978 Hawai`i Constitutional Convention and a vote of Hawai`i’s people to bring some justice and fairness from the State to the Native Hawaiian People. The State constitution was amended to provide for and protect the interests of Native Hawaiians in the ceded lands. Article XII, sections 4, 5, and 6 were adopted to effectuate the Admission Act’s purpose of using a portion of the ceded lands’ receipts to better the conditions of native Hawaiians. It is clear from the State Constitution, as well as state and federal case law, that OHA and its Native Hawaiian beneficiaries have an interest in a portion of the income and proceeds from the ceded lands. However, the determination of OHA’s entitlement to its constitutionally protect pro rata share was unfulfilled and the subject of legal disputes.

Act 304 (SLH 1990) was a settlement of the amount of pro rata share due to OHA and it defined the trust res and trust revenues. OHA would receive 20 percent of “revenue” as newly defined and amended in Hawai`i Revised Statutes (HRS) § 10-2, which was amended to include a definition of “revenue” as proceeds, fees, charges, rents, or other income derived from a proprietary disposition, use, or activity, “that is situated upon and results from the actual use of lands comprising the public lands trust[.]”

Act 304 allocated revenue into two categories--sovereign and proprietary revenue. OHA would not receive revenue--such as taxes, fines, and federal grants or subsidies--generated from the exercise of State sovereign powers. Proprietary revenue, such as rents, leases, and licenses, would be subject to OHA's pro rata share. Act 304 included all section 5(b), 5(e) and P.L. 88-233 lands regardless of departmental jurisdiction. The State has continued to use these definitions and other provisions in Act 304 that are to its benefit and advantage but at the same time denying to OHA its full entitlement under the language and terms of Act 304 and its interpretation by Judge Daniel Heeley (see infra).

The Airports sit, at least partially, on ceded lands and the State had paid \$28.2 million in airport revenues paid to OHA. In 1994, OHA filed a lawsuit alleging that the State had failed to pay OHA its pro rata share of unspecified revenues that the State had collected since June 16, 1980 from the ceded lands. OHA sought an accounting of its pro rata share of revenues received by the State based on: (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. The trial court concluded that OHA was entitled to revenues from each enumerated source. This ruling has never been overruled. However, in response, Congress enacted the “Forgiveness Act,” which “forgave” the \$28.2 million already paid but prohibited the payment of airport revenues to OHA -- “whether characterized as operating expenses, rent or otherwise, and whether related to [past, present or future] claims” -- in satisfaction of the State's obligations. Department of Transportation and Related Agencies Appropriations Act, 1998, Pub. L. 105-66, § 340, 111 Stat. 1425 (1998) [“the Forgiveness Act”]. .

On July 29, 1997, on the floor of the U.S. Senate, Senator Inouye made it clear that the Forgiveness Act should have **NO** impact on the State's obligation to pay OHA's its constitutionally mandated pro rata share of the airport revenues and that the State continues to be obligated to pay. He stated:

[C]ontrary to the prohibition against diverted airport revenues from airport purposes under Section 47107 of title 49, United States Code, certain payments from airport revenues may have been made for the betterment of Native Hawaiians, or Alaskan natives based upon the claims related to lands ceded to the United States. . . . There shall be no further payment of airport revenues for claims related to ceded lands, whether characterized as operating expenses, rent, or otherwise, and whether related to claims for periods of time prior to or after the date of the enactment of this Act.

However, the federal law is very specific that the State continues to be obligated to pay native Hawaiians. The following savings clause in the Forgiveness Act requires the State to pay the past due amounts from a different funding source:

Moreover, the Forgiveness Act itself is in accord with Senator Inouye's statement.

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 defined 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. See Forgiveness Act, § 340(d), 111 Stat. at 1448.

The Hawai'i Supreme Court found that, although the Forgiveness Act specified that it did not affect or interfere with the State's obligations to pay, nonetheless the State was not obligated to pay amounts "equivalent to" the airport revenue due to OHA from other sources, such as the general fund. The Court decided that because this federal law did not allow for pro rata share of the airport revenues to go to OHA, the entire statute clarifying the payment of OHA's pro rata share was struck down. *Office of Hawaiian Affairs v. State*, 96 Hawai'i 388, 31 P.3d 901 (2001) ("OHA v. State").

The federal airport "Forgiveness Act" is an important inextricably intertwined part of the sad history of denying OHA its fair and just pro rata share because (1) as a direct result, Act 304 (SLH 1990) setting forth the pro rata share scheme was struck down, (2) OHA never again received a pro rata share, just a set amount, albeit negotiated based on some semblance of the pro rata share, and (3) the judgments of Trial Judge Daniel Heely of the categories of public hospitals and public housing were never included again in any calculation of the pro rata share. Judge Heely also ruled that OHA was entitled to interest on the outstanding pro rata share that was not paid. The State Legislature immediately changed the law to no longer allow the assessment of interest on past due amounts.

As Congress noted in the Forgiveness Act, the State had, in the past, paid OHA directly from the airport revenue fund and Congress forgave those payments and did not require their return. In *OHA v. State*, the Court found that the plain language of "Act 304 obligates the State to pay OHA the airport revenues sought in this case." *Id.* at 396.

Indeed, there are many instances of the State paying OHA its pro rata share attributable from airport revenues from other sources in satisfaction of the State's obligation to pay OHA "revenue derived from the public land trust, such as general obligation funds, general funds and land. For instance, when enacting Act 304, the legislature contemplated making a substantial payment to OHA from the state's general obligation bond fund for the purpose of satisfying the state's retroactive obligation to OHA. The legislature ultimately paid OHA approximately 130 million dollars from this fund. See Act 35 (SLH 1993). Airport Revenue Payment Chart, Attachment A, lists the many times the State has paid OHA some of its constitutionally mandated pro rata share of airport income and proceeds due and owing from other sources.

II. The “most exacting fiduciary standard” is to be applied to the State’s obligations to provide a full and complete inventory of the public land trust and the calculation of the payment to OHA of its constitutionally mandated pro rata share.

Act 226 (SLH 2022), Sec. 3 (a), established the working group and set forth the requirements of accounting for **all** ceded lands in the Public Land Trust and accounting for **all** income and proceeds from the public land trust. (emphasis added).

The Hawai`i Supreme Court has been crystal clear that the State is to be judged “by the most exacting fiduciary standards” in managing the public lands trust. See *Ahuna v. Dep’t. of Hawaiian Home Lands*, 64 Haw. 327, 640 P.2d 1161 (1982); *Pele Def. Fund v. Paty*, 73 Haw. 578, 605, 837 P.2d 1247, 1264 (1992) (We find that the actions of state officials, acting in their official capacities, should not be invulnerable to constitutional scrutiny. Article XII, § 4 imposes a fiduciary duty on Hawai‘i’s officials to hold ceded lands in accordance with the § 5(f) trust provisions, and the citizens of the state must have a means to mandate compliance.”); *Office of Hawaiian Affairs v. Hous. & Cmty. Dev. Corp. of Hawai‘i*, 117 Haw, 174, 195, 177 P.3d 884, 905 (2008), rev’d and remanded on other grounds, 556 U.S. 163, 129 S.Ct. 1436, 173 L.Ed.2d 333 (2009).

III. OHA and its Native Hawaiian beneficiaries are entitled to accurate accountings of all ceded lands in the Public Land Trust and all income and proceeds from the Public Land Trust.

To meet “its most exacting fiduciary duty,” and as a matter of justice and fairness, OHA’s position is that the PLTIS is not a complete and accurate inventory of all ceded lands and public trust lands, including but not limited to submerged lands, undeveloped lands, conservation lands, minerals, and all resources, and that a new ceded lands trust inventory should be undertaken by the State.

LIST FROM DLNR PLTIS WEBSITE AND ALL OTHER DEFICIENCIES NOTED IN LAST DRAFT

In the meantime, the current inventory in the form of the PLTIS is based solely on self-reporting by the state and county agencies and should be audited and reviewed by an independent third-party professional to determine its completeness and accuracy. It is OHA’s opinion that the passage of such legislation is in the public interest and for fairness and justice for its Native Hawaiian beneficiaries.

The current Act 178 Report is based solely on self-reporting by the state agencies. An audit is needed to resolve underreporting and discrepancies in the current system

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. The State should fund these audits to fulfill “its most exacting fiduciary duty.”

IV. OHA's Position on its Constitutional Mandated Pro Rata Share and Established Legal Principles and Rules

1. OHA's Pro Rata Share has always been calculated on gross income and proceeds.
2. Act 304 was negotiated and agreed upon by the State and OHA. The State has continued to use sections of advantage to it, such as the definitions of sovereign and propriety revenue. Consideration should be given to enacting Act 304, with provisions for payments of the airport revenues from general funds, general obligation bonds or land, as has been done historically.
3. 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 as well as its share of income and proceeds from every state agency and from every parcel in the public land trust. If there are any problems with payments from an agency, then the payment should be made with an equivalent payment from the General Funds, General Obligation Funds or lands as it has in the past.
4. 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 make all payments due 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 not including an interest calculation, is not a best practice and patently unfair to OHA and its Native Hawaiian beneficiaries. Moreover, it diminishes OHA's ability to provide services to its beneficiaries.

For instance, 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 (Act 226, SLH 2022). 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.

V. 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 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, it was determined that 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 only \$91 million and that the State had neglected basic maintenance on these harbor lands transferred to OHA. In addition, OHA has had to expend substantial sums to manage and to be able to partially use it.
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) Transmission lines across ceded lands for telephone, electricity, gas, cable, water, sewer, storm drain, traffic lights and street lights.
3. Some agencies and entities do not report PLT income and proceeds, or do not report in full, including but not limited to:
- a) University of Hawai`i
 - b) Counties
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. Issue affecting all Hawai`i residents. (Lands transferred out of the PLT from the 5(f) lands

to 5(a) by Congress right before statehood, such as Palmyra Island, the Midway Islands, Kingman Reef, and Johnston Atoll, which includes Johnston (or Kalama) Island, all of which should be included as part of the archipelago of Hawai`i, and Sand Island) (this issue was not discussed at the PLTWG meetings.)

VI. Summary and Conclusion: 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.

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 the Hawai`i State Constitution, Article XII, Sec. 4 and §HRS 10-13.5, which was codified in 1980, and 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 prepare an inventory that accurately and completely accounts 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.
5. The State must enhance transparency in managing PLT lands. This includes improving how revenue from these lands is tracked and reported and ensuring that the State’s use of the lands aligns with the purposes outlined in the State Constitution.
6. The State must ensure that PLT assets are managed in a way that respects the cultural and historical significance of these lands for Native Hawaiians – including consideration of traditional rights and customs in decisions about land use and development.