

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

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

Meeting of the Public Land Trust (PLT) Working Group
MEETING SUMMARY
July 9, 2024

ATTENDANCE:

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

ADMINISTRATIVE SUPPORT:

Kehau Pu‘u, OHA
Everett Ohta, OHA
Amber Kalua, OHA
Kelcie Wade, OHA

The video recording of this PLT Working Group meeting can be viewed at:
<https://youtu.be/UCaVoO9oITw?si=SbamdzRqzOqgt3U8>

I. Call to Order

The Public Land Trust Working Group (PLTWG) meeting was called to order on Tuesday, July 9, 2024, at 2:00pm. This was a virtual meeting that could be viewed and observed via livestream at www.oha.org/livestream. The members present at the time the meeting was called to order were Sherry Broder, Dawn Chang, Ryan Kanaka'ole, and Hulu Lindsey. Luis Salaveria joined the meeting at 2:12pm. Brickwood Galuteria was excused.

II. Approval of Meeting Summary

1. June 4, 2024*

No one signed up to testify on this item. Motion to approve the meeting summary for June 4, 2024 was moved Sherry Broder and seconded by Dawn Chang at 2:01pm. Item was opened for discussion. Motion was approved by Sherry Broder, Dawn Chang, Ryan Kanaka'ole, and Hulu Lindsey at 2:01pm.

III. Issues and status of various inventories:

- (1) Updates on procurement and timeline for technical upgrades of the PLTIS and process for OHA input on specifications.**
- (2) Review of status of OHA Kipuka Database.**
- (3) Letters to Senator Schatz and to DOI Secretary to inquire about assistance in funding for inventory and location of federal agency information on the lands of the Hawaiian Kingdom, historical transfers and current status of inventories they have or plan to develop***

No one signed up to testify on this item. Discussion on this item began at 2:02pm. The letters to Senator Schatz and the DOI Secretary were discussed at 3:14pm.

IV. Draft Report to Legislature

- (1) 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.**
- (2) Review 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 of pro rata share of Airport Revenues to OHA and last OHA demand for yearly pro rata share based on 2016 N&K Financial Review***
- (3) Draft outline of Report to Legislature and timeline**

No one signed up to testify on this item. Discussion on this item began at 2:13pm. Attachment 1 was shared with the PLTWG during the meeting.

V. Discussion regarding steps to 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. Discussion on this item began at 3:15pm.

VI. Discussion regarding templates to standardize state agency accounting methods to bring consistency in Act 178 agency reporting

No one signed up to testify on this item. This item was deferred at 3:17pm.

VII. 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 3:17pm.

VIII. Discussion: Next PLT Working Group meeting

Next meeting is scheduled for Monday, August 12, 2024, at 8am.

IX. Adjournment

Meeting was adjourned by Sherry Broder, Dawn Chang, Ryan Kanaka'ole, Hulu Lindsey, and Luis Salaveria at 3:18pm.

OUTLINE – DRAFT 070824
PLTWG REPORT TO LEGISLATURE
CONFIDENTIAL, NOT FOR DISTRIBUTION

- I. Executive Summary**
 - A. Introduction**
 - B. Summary of OHA’s Positions on its Pro Rata Share and Inventories of the Public Land Trust and Ceded Lands.**
 - C. Legal Foundation – Constitutional Basis of Office of Hawaiian Affairs and Its Pro Rata Share of the Income and Proceeds from the Public Land Trust**
 - D. Legal Foundation – Accurate and Complete Accounting of the Income and Proceeds from the Public Land Trust**
 - E. Legal Foundation – Complete and Accurate Inventory of the Public Land Trust**
 - F. Legal Foundation – Public Land Trust Status of Submerged lands**
- II. Work performed**
- III. List of State inventories and Information Systems on Ceded Lands and Public Land Trust**
 - A. Current**

1. Public Land Trust Information System (PLTIS) DLNR

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

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

There was an appropriation to accomplish a technical upgrade to the PLTIS in the FY 2025 budget and DLNR staff are currently working on the specifications for the contract. DLNR has made available DLNR staff to be able to have input where feasible into the specifications.

2. Kipuka Database (OHA)

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 (land), 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. Earlier Inventory related databases

1. State Land Information Management System (SLIMS) – DLNR

In September 1981, DNLR's initial inventory SLIMS contained only 1,271,652 acres. A Legislative study of the public land trust lands revealed that entities other than DNLR, such as the University of Hawaii, held title by wrongful sale or transfer of public trust lands. Additionally, the does not include all lands held by all state entities.

2. 1961 State Land Inventory, Hawai`i Department of Accounting

IV. List of Reports on PLT Income and Proceeds

A. Most recent

1. 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
2. DLNR Report to the Thirty-Second State Legislature 2024 Regular Session ACCOUNTING OF ALL RECEIPTS FROM LANDS DESCRIBED IN SECTION S(f) OF THE ADMISSION ACT FOR FISCAL YEAR 2023, DLNR

B. Earlier Reports

1. 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)
2. Office of Hawaiian Affairs, A Report on Ceded Lands, for Fiscal Year 2003 and 2004, Deloitte & Touche LLP, February 26, 2005.
3. Office of Hawaiian Affairs, A Report on Ceded Lands, for Fiscal Year 1998 to 2002, Deloitte & Touche LLP, October 24, 2003.
4. Office of Hawaiian Affairs, A Report on Ceded Lands, for the Period Year 1981 through 1991, Deloitte & Touche LLP, December 15, 1992.
5. Office of Hawaiian Affairs, A Report on Ceded Lands, for the Period Year 1981 through 1989. Deloitte & Touche LLP, January 24, 1992.
6. A Report on the Ceded Land Revenues for 1981 through 1989, Ernst & Young LLP, February 1991.
7. 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.
8. DLNR Reports to the Legislature 2007 to 2023 Regular Session
ACCOUNTING OF ALL RECEIPTS FROM LANDS DESCRIBED IN
SECTION S(f) OF THE ADMISSION ACT FOR FISCAL YEAR 2007-
2023 (yearly)

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

A. OHA's Pro Rata Share calculated on gross

B. Act 304 (1990 Sess. L. Haw.)

1. 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.
2. 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.
3. State continues to use Sovereign and Proprietary definitions and other things in Act 304

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

1. 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."
2. 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).

3. 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).
4. Precedent of State equivalent payments of airport revenues (see OHA table)

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

A. Kaka'ako Makai

1. 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.
2. 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.

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

1. 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
2. Leases for \$1.00 per year or less than full market value

C. Some agencies do not report PLT income and proceeds

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

- E. The legislature changed the law so that there is no more interest assessed on OHA's past due amounts.**

- F. Permitted environmental pollution and other destruction of sacred ancestral lands and lands with cultural and spiritual significance**

- G. Lands transferred out of the PLT from the 5(f) lands to 5(a) right before statehood**
 - 1. The Hawaii Admission Act specified that the State of Hawaii would not include Palmyra Island, the Midway Islands, Kingman Reef, and Johnston Atoll, which includes Johnston (or Kalama) Island and Sand Island