MEETING OF THE
COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT

DATE: Monday, December 27, 2021
TIME: 10:00 a.m.
PLACE: Virtual Meeting
Viewable at www.oha.org/livestream OR
Listen by phone: (213) 338-8477,
Webinar ID: 871 8872 4510

Due to the threat of COVID-19, Governor Ige issued the Emergency Proclamation Related to COVID-19, dated November 29, 2021 that suspends parts of Hawai‘i Revised Statutes Chapter 92, Public Agency Meetings and Records to, among other things, enable boards to conduct business without any board members or members of the public physically present at the same location.

The OHA Board of Trustees and its Standing Committees will hold virtual meetings until further notice. The virtual meetings can be viewed and observed via livestream on OHA’s website at www.oha.org/livestream or listen by phone: (213) 338-8477, Webinar ID: 871 8872 4510

AGENDA

I. Call to Order

II. Public Testimony on Items Listed on the Agenda* (Please see page 2 on how to submit written testimony or provide oral testimony online. Oral testimony by phone will not be accepted)

III. New Business
   A. Action Item BAE #21-07: Public Land Trust Bill, 2022 Legislature

IV. Executive Session‡
   A. Consultation with Board Counsel Robert G. Klein, Sherry P. Broder, Esq and Interim General Counsel Everett Ohta re: questions and issues pertaining to the Board’s powers, duties, privileges, immunities, and liabilities with respect to the Public Land Trust and associated legislation, pursuant to HRS§92-5(a)(4)

V. Announcements

VI. Adjournment

If you require an auxiliary aid or accommodation due to a disability, please contact Everett Ohta at telephone number (808) 594-1988 or by email at: everetto@oha.org no later than three (3) business days prior to the date of the meeting.

Meeting materials will be available to the public on Wednesday, December 22, 2021 and posted to
OHA’s website at: www.oha.org/bae

In the event that the livestream public broadcast is interrupted and cannot be restored, the meeting may continue as audio-only through the phone and Webinar ID provided at the beginning of this agenda.

†Notice: The 72 Hour rule, pursuant to OHA BOT Operations Manual, Section 49, shall be waived for distribution of new committee materials.
‡ Notice: This portion of the meeting will be closed pursuant to HRS § 92-5.

* Public Testimony on Items Listed on the Agenda must be limited to matters listed on the meeting agenda.

Hawai‘i Revised Statutes, Chapter 92, Public Agency Meetings and Records, prohibits Board members from discussing or taking action on matters not listed on the meeting agenda.

Testimony can be provided to the OHA Board of Trustees either as: (1) written testimony emailed at least 24 hours prior to the scheduled meeting, or (2) live, oral testimony online during the virtual meeting.

(1) Persons wishing to provide written testimony on items listed on the agenda should submit testimony via email to BOTmeetings@oha.org at least 24 hours prior to the scheduled meeting. Any testimony received after this deadline will be late testimony and will be distributed to the Board members after the scheduled meeting. Due to COVID-19, please do not fax, mail, or hand-deliver written testimony

(2) Persons wishing to provide oral testimony online during the virtual meeting must first register at: https://us06web.zoom.us/webinar/register/WN_4PwGpLWqOzijW5eG7Gx6iA

You need to register if you would like to orally testify. Once you have completed your registration, a confirmation email will be sent to you with a link to join the virtual meeting, along with further instructions on how to provide oral testimony during the virtual meeting. The registration page will close during the Public Testimony or Community Concerns agenda item. Oral testimony by telephone/landline will not be accepted at this time.

To provide oral testimony online, you will need:

(1) a computer or mobile device to connect to the virtual meeting;

(2) internet access; and

(3) a microphone to provide oral testimony.

Oral testimony online will be limited to five (5) minutes. Once your oral testimony is completed, you will be asked to disconnect from the meeting. If you do not sign off on your own, support staff will
remove you from the Zoom meeting. You can continue to view the remainder of the meeting on the livestream or by telephone, as provided at the beginning of this agenda.

Please visit OHA’s website for more detailed information on how to submit Public Testimony OR Community Concerns at: https://www.oha.org/how-to-submit-testimony-for-oha-bot-meetings/

Trustee Kaleihikina Akaka, Chair
Committee on Beneficiary Advocacy and Empowerment

Date

12/21/2021
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ACTION ITEM

Committee on Beneficiary Advocacy and Empowerment
December 27, 2021

BAE #21-07

Action Item Issue: Public Land Trust Bill, 2022 Legislature

Prepared by: __________________________________________________________________
Na'unanikina'u Kamali'i
Ka Pou Kihi Kū, Chief Advocate

Reviewed by: __________________________________________________________________
Casey Brown
Ka Pou Nui, Chief Operating Officer

Reviewed by: __________________________________________________________________
Everett Ohta
Ka Paepae Puka Kūikawā, Interim General Counsel

Reviewed by: __________________________________________________________________
Sylvia M. Hussey, Ed.D.
Ka Pouhana, Chief Executive Officer

Reviewed by: __________________________________________________________________
Kaleihikina Akaka
Luna Ho‘omalū o ke Kōmike BAE
Chair, Committee on Beneficiary Advocacy and Empowerment

Dec 22, 2021
Dec 23, 2021
Dec 23, 2021
Dec 23, 2021
I. Proposed Action

Approve the submission of the Public Land Trust Bill (PLT) to the 2022 Legislature as OHA-1, that addresses the: 1) Federal Trust responsibilities to Indigenous People; 2) 1959 Admissions Act and the conditions of the new State of Hawai‘i to hold lands in public trust; 3) Purposes of such public land trust, including the betterment of the conditions of native Hawaiians; 4) Roles and responsibilities of the Office of Hawaiian Affairs (OHA); 5) Current interim amount of $15.1MM; 6) Existing amount of approximately $29MM in the carry-forward trust holding account; 7) Projected accumulation (since 2012) of the difference between the interim PLT amount of $15.1MM and the OHA’s 20% pro-rata share of ceded land revenues; and 8) Accountability and reporting processes, at Attachment A.

II. Issue

Should the Board of Trustees (“BOT” or “Board”), approve, or not, the submission of the attached Public Land Trust Bill to the 2022 Legislature as OHA-1, that addresses the: 1) Federal Trust responsibilities to Indigenous People; 2) 1959 Admissions Act and the conditions of the new State of Hawai‘i to hold lands in public trust; 3) Purposes of such land trust, including the betterment of the conditions of native Hawaiians; 4) Roles and responsibilities of the Office of Hawaiian Affairs (OHA); 5) Current interim amount of $15.1MM; 6) Existing amount of approximately $29MM in the carry-forward trust holding account; 7) Projected accumulation (since 2012) of the difference between the interim PLT amount of $15.1MM and the OHA’s 20% pro-rata share of ceded land revenues; and 8) accountability and reporting processes.

III. Discussion

Based on Administration’s further discussion, analyses and considerations, the attached Public Land Trust bill is recommended at this time to:

1. **Highlight the Federal Trust Responsibility to Native Hawaiians via the Implementation of the Admission Act.** Native Hawaiians are owed the same trust responsibility as any other Native American group. To meet this obligation, Congress enacted programs and policies to promote education, health, housing, and a variety of other federal programs that support Native Hawaiian self-determination. Similar to American Indians and Alaska Natives, Native Hawaiians have never relinquished our right to self-determination despite the United States’ involvement in the illegal overthrow of Queen Liliʻuokalani in 1893 and the dismantling of our government.

As a result of the 1959 Admission Act, certain “ceded” lands transferred to the state upon or after statehood [or acquired in exchange for such lands] subject to Public Land Trust (NOT HHCA lands, NOT lands retained by the federal government, NOT lands transferred to the Territory before statehood). The Admission Act Section 5—Public Land Trust Lands must be administered for five (5) purposes: public schools/public education, betterment of the conditions of native Hawaiians, farm and home ownership, making of public improvements, lands for public use. After “statehood”, PLT revenues almost exclusively used for education.1

Act 178, Session Laws of Hawaii 2006, was subsequently enacted with a stated purpose of providing “interim measures to ensure that an adequate amount of income and proceeds is made available to the office of Hawaiian affairs from the pro rata portion of the public land trust, for the betterment of the conditions of native Hawaiians. Act 178 required, “[Until] further action is taken by the legislature for this purpose, the income and proceeds from the pro rata portion of the public land trust under article XII, section 6, of the state constitution for expenditure by the office of Hawaiian affairs for the betterment of the conditions of native Hawaiians for each fiscal beginning with fiscal year 2005-2006 shall be $15,100,000.”

2. **Roles and Responsibilities of the Office of Hawaiian Affairs, In Addressing Native Hawaiian Needs via the Annual 20% Pro-Rata Share Amount.**

Addressing the needs of the aboriginal class of people of Hawai‘i2, is the fundamental purpose of the Office of Hawaiian Affairs (OHA), which have been spotlighted, exacerbated and magnified due to COVID-19 and its variants in all sectors—education, health, housing and socio economic—impacting Native Hawaiian ‘ohana, mo‘omeheu and ‘āina. Data indicates Native Hawaiians’ disproportionate representation in certain health and socio-economic conditions make them more vulnerable to the impacts of COVID-19 and the financial crisis it is causing. For example, Native Hawaiians have a greater prevalence of pre-existing medical conditions, including coronary heart disease, diabetes, and lung disease, that are known to put individuals at greater risk of serious illness resulting from COVID-19.

Moreover, Native Hawaiians are at greater risk for suffering financial hardship, including loss of employment and eviction, from the economic impacts from the coronavirus pandemic. Native Hawaiians have fewer financial resources to weather financial emergencies due to their lower per capita income ($25,590) compared to the overall state population ($35,255); and their lower median household income

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1 Board Meeting PLT Presentation, October 7, 2021
2 [§10-1] Declaration of purpose. (a) The people of the State of Hawai‘i 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. (b) It shall be the duty and responsibility of all state departments and instrumentalities of state government providing services and programs which affect native Hawaiians and Hawaiians to actively work toward the goals of this chapter and to cooperate with and assist wherever possible the office of Hawaiian affairs. [emphasis added]
($75,708) compared to the overall state population ($80,212). Furthermore, 12.3% of all Native Hawaiians live in poverty, compared to 8.8% of the total state population. Finally, like other Hawai‘i residents, many Native Hawaiians rely on the service and tourism industries to financially support their families—23.6% of working Native Hawaiians are employed in service occupations, which have been among the most impacted by the spread of COVID-19 and related business closures. With Native Hawaiians’ disproportionately low homeownership rate and higher reliance on the rental housing market, these financial challenges place the Native Hawaiian community at higher risk of facing eviction actions over the coming months.

The Hawai‘i Admission Act and the Hawai‘i State Constitution established the Public Land Trust for the betterment of the conditions of native Hawaiians and for the general public. The Public Land Trust comprises over one million acres of former government and crown land of the Kingdom of Hawai‘i, seized as part of the Kingdom’s unlawful overthrow. The Hawai‘i State Constitution entrusts OHA with the responsibility to manage and administer Public Land Trust funds set aside for Native Hawaiians, which state law reaffirms as 20 percent of all funds from the Trust. After decades of disagreement as to how to determine this 20 percent, in 2006, OHA and the state agreed to an interim annual amount of $15.1 million, to be transferred to OHA as a reflection of Native Hawaiians’ Public Land Trust share, “until further action is taken by the legislature.”

In addition, OHA was created to manage “…all income and proceeds from that pro rata portion of the public land trust for native Hawaiians.”3

3. Address the Projected Accumulation (since 20124) of the Difference between the Interim PLT and the OHA’s 20% Pro-Rata Share Amount. Act 15, Session Laws of Hawai‘i 2012, was enacted to address past-due amounts, which accumulated during the period between November 7, 1978, up to and including June 30, 2012, of income and proceeds from the public land trust owed to OHA by implementing an agreement between the State and OHA for the State to convey certain lands in Kaka‘ako, O‘ahu, to OHA valued at approximately $200,000,000. Act did not, however, address the State’s constitutional obligations relating to OHA’s twenty percent pro rata share of the income and proceeds from the public land trust generated after June 30, 2012.

Since 2016, OHA has advocated for the interim annual amount of the Public Land Trust to be updated to better reflect Native Hawaiians’ rightful pro rata share. Notably, a 2015-2016 financial review initiated by OHA found that the minimum amount of total gross receipts from sources that the office of Hawaiian affairs has historically claimed was approximately $394,322,163 in the fiscal year 2015-2016. Twenty percent of this amount is approximately $78,900,000.

3 1978 Hawai‘i Constitution, Article XII Sections 5 & 6

4 In 2012, as part of a settlement over longstanding claims for past-due revenue owed from the Public Land Trust, the State of Hawaii conveyed to OHA, approximately 30 acres of largely waterfront properties in Kaka‘ako Makai. The $200 million land value represents Native Hawaiians’ share of revenues from the state’s use of lands in the Public Land Trust.
### Table 1 – Accumulation Table

<table>
<thead>
<tr>
<th>Annual Amount</th>
<th>2013 – 2022 (10 Years)</th>
<th>Extended Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>$78,900,000</td>
<td>10</td>
<td>$789,000,000</td>
<td>Annual and accumulated amount based on 2016-2016 OHA initiated financial review</td>
</tr>
<tr>
<td>Quarterly Amount = $19,725,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>($15,100,000)</td>
<td>10</td>
<td>($151,000,000)</td>
<td>Act 178, Session Laws of Hawaii 2006, interim annual amount and accumulated amount</td>
</tr>
<tr>
<td>Quarterly Amount = $3,775,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$63,800,000</td>
<td>10</td>
<td>$638,000,000</td>
<td>Annual and accumulated difference</td>
</tr>
</tbody>
</table>

4. **Release of the Accumulated Carry-Forward Trust Holding Account.** Act 178 authorized the Governor “to fix the amounts each agency shall transfer to the office of Hawaiian affairs in each quarter by executive order to implement the provisions of this section.”

Through Executive Order 06-06, Governor Linda Lingle established a process whereby agencies that collect receipts for the use of public land trust land must “determine if: (1) any federal or state law precludes any portion of the receipt from being used to better the conditions of native Hawaiians; or (2) the transfer of any portion of the receipt will cause the department or agency to renege on any pre-existing pledge, rate covenant, or other pre-existing obligation to holders of revenue bonds or other indebtedness of the State, department, or agency,” and if use of a receipt is not so limited, to “determine OHA’s share of the receipt by calculating the ceded/non-ceded fraction for the parcel that generated the receipt by area (square feet or acres), multiplying the receipt by the ceded/non-ceded fraction, and multiplying that result by 20% or any alternative percentage the Governor specifies.” The resulting amount is then to be transferred to OHA quarterly. “If the total amount of receipts transferred to OHA exceeds the $3,775,000,” the Director of Finance or designee shall “notify OHA and request that OHA deposit the overpayment by journal voucher into the carry-forward trust holding account the Director establishes for that purpose[.]”

Refer to Attachments B and C for Executive Order 06-06 and the Carry-Forward Trust Holding Account Schedule as of Q1 ending 9/30/2021, FY22, for details and the accumulated amount of approximately $29MM, respectively.

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5 Act 178, SLH 2006, section 2
5. **Codify Reporting and Accountability Procedures re: the 20% Pro-Rata Share of the Public Land Trust to the OHA.** Historically, unreconciled understandings and definitions of PLT revenue basis (e.g., inclusion, exclusion) have impacted transparent and numerically accurate computations of PLT proceeds attributable. Therefore, an annual accounting led by the Department of Land and Natural Resources, with the cooperation of the Department of Budget and Finance and any other department or agency that collects receipts from lands within the public land trust responsibility should be codified. Such annual accounting would identify: the total gross amount of the receipt generated from the use of the public land trust, regardless of whether the receipt is subject to the office of Hawaiian affairs’ pro rata share pursuant to section 10-13.5; amount of the receipt transferred to the office of Hawaiian affairs; amount of the receipt retained by the State; account or fund in which the amount specified was transferred or deposited; parcel of land subject to section 5(f) of the Admission Act that generated the receipt, whether by tax map key number, department of land and natural resources inventory number, or other recognizable description; department or agency that received that total gross amount identified; reason or reasons why the department or agency did not transfer the full twenty percent.

**IV. Reference Action Item**

Action Item BAE #21-06: 2022 OHA Legislative Package, approved by the Beneficiary Advocacy & Empowerment Committee on December 8, 2021; and ratified by the Board on December 9, 2021 stated:

*Action 1: OHA-1 Public Land Trust*

Approve the drafting and submission of a Public Land Trust focused bill to the 2022 Legislature, that addresses the: 1) Current interim amount of $15.1MM; 2) Existing amount of approximately $29MM in the carry-forward trust holding account (as of Q1, 9/30/2021); 3) Projected accumulation (since 2012) of the difference between the interim PLT amount of $15.1MM and the OHA’s 20% pro-rata share of ceded land revenues; 4) Titling of the measure for strategic and clarifying reasons; and 5) Labeling of the measure as OHA-1 for tracking purposes.

**IV. Recommended Action**

Approve the submission of the Public Land Trust Bill (PLT) to the 2022 Legislature as OHA-1, that addresses the: 1) Federal Trust responsibilities to Indigenous People; 2) 1959 Admissions Act and the conditions of the new State of Hawai‘i to hold lands in public trust; 3) Purposes of such public land trust, including the betterment of the conditions of native Hawaiians; 4) Roles and responsibilities of the Office of Hawaiian Affairs (OHA); 5) Current interim amount of $15.1MM; 6) Existing amount of approximately $29MM in the carry-forward trust holding account; 7) Projected accumulation (since 2012) of the difference between the interim PLT amount of $15.1MM and the OHA’s 20% pro-rata share of ceded land revenues; and 8) Accountability and reporting processes, at Attachment A.
V. Alternative Actions
   A. Not approve the Public Land Trust Bill to the 2022 Legislature as OHA-1 at Attachment A; or
   B. Modify the Public Land Trust Bill to the 2022 Legislature as OHA-1 at Attachment A.

VI. Funding
   No funding is required to submit the Public Land Trust Bill to the 2022 Legislature as OHA-1 at Attachment A.

VII. Timeframe
   Immediate action is recommended upon Board approval to meet the December 30, 2021 legislative submission deadline.

VIII. Attachments
   A - Public Land Trust Bill, 2022 Legislature
   B – Executive Order 06-06
   C - Carry-Forward Trust Holding Account Schedule as of Q1 (9/30/2021), FY2022
A BILL FOR AN ACT

RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS’ PRO RATA SHARE OF THE PUBLIC LAND TRUST.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAI'I:

SECTION 1. The Legislature finds that it must set right and fulfill its trust responsibilities to the Indigenous People of Hawai‘i, consistent with governmental action across America to address injustices against Indigenous Peoples. It is incumbent upon the Legislature to enact legislation that upholds its trust responsibilities and duty of care to native Hawaiians to (1) account for all ceded lands in the public lands trust inventory, (2) account for all income and proceeds derived from the public land trust and (3) transfer the full twenty-percent pro rata share of income and proceeds from the public land trust annually to the Office of Hawaiian Affairs (“OHA”) for the betterment of the conditions of native Hawaiians.

The genesis and source of the State’s public land trust responsibility to native Hawaiians are the historical events that led to the illegal overthrow of the Kingdom of Hawai‘i; the transfer of approximately 1.8 million acres of crown, government, and public lands to the United States under the 1898 Joint
Resolution of Annexation without the consent of and without compensation to the Native Hawaiian people or their sovereign government; the admission of Hawai`i as a state of the Union in 1959, with the explicit trust responsibility and requirement in the Section 5(f) of the 1959 Admissions that one of the five purposes of the public land trust is that the income and proceeds from the public land trust are supposed to be used “for the betterment of the conditions of native Hawaiians”; and the 1978 Constitutional Convention’s recognition that native Hawaiians are one of the beneficiaries of the public land trust and the creation of OHA to manage and administer the specific allocation of “all income and proceeds from that pro rata portion of the [public land] trust for native Hawaiians (Article XII (6), Hawai`i State Constitution). The United States and the Courts have consistently affirmed the trust nature of the government and crown lands, including large tracts of ceded lands used for military or other purposes under federal control.

In 1959, as a condition of its admission into the Union, the State of Hawai`i agreed to hold certain lands granted to the State by the United States in a public trust, the public lands trust, for five purposes delineated in section 5(f) of the Admission Act, which provides in relevant part:

OHA-1 OHA’s Pro Rata Share of The Public Land Trust

A - 2
The lands granted to the State of Hawaii by subsection (b) of this section and public lands retained by the United States under subsections (c) and (d) and later conveyed to the State under subsection (e), together with the proceeds from the sale or other disposition of any such lands and the income therefrom, shall be held by said State as a public trust [(1)] for the support of the public schools and [(2)] other educational institutions, [(3)] for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended,[(4)] for the development of farm and home ownership on as widespread a basis as possible for the making of public improvements, and [(5)] for the provision of lands for public use.

Such lands, proceeds, and income shall be managed and disposed of for one or more of the foregoing purposes in such manner as the constitution and laws of this State may provide, and their use for any other object shall constitute a breach of trust for which suit may be brought by the United States.” (Emphasis added.)

In 1978, the people of Hawai‘i affirmed the State’s trust obligation to native Hawaiians by ratifying constitutional amendments from the Constitutional Convention, including Article XII, sections 4, 5, and 6, which established OHA and charged it with managing income and proceeds from the public land trust for
the benefit of native Hawaiians. Article XVI, section 7 of the Hawai`i constitution required the State to enact legislation to comply with its trust obligations. Thus, in 1979, legislation, codified at Hawaii Revised Statutes ("HRS") chapter 10, set forth the purposes of OHA and described its duties of the trustees.

In September 1981, an initial land inventory by the Department of Land and Natural Resources ("DLNR") listed approximately 1,271,652 acres, falling woefully short of its duty to provide a complete inventory of the public land trust lands. Additionally, the State Land Information Management System ("SLIMS") does not include all lands held by all state entities.

Act 273, Session Laws of Hawaii 1980, enacted HRS Section 10-13.5 to implement the OHA’s pro rata share and required that OHA receive “[t]wenty per cent of all funds derived from the public land trust.” This legislative directive addressing the constitutional mandate has led to a series of lawsuits and legislative enactments concerning OHA’s constitutional pro rata share of the public land trust. The State and OHA have labored to resolve the political question of the statutory pro-rata share of income and proceeds derived from the public lands trust, and payment to OHA.
Act 178, Session Laws of Hawai‘i 2006, affirmed the State’s trust obligation under Article XII, Section 6, of the state constitution to native Hawaiians by requiring that DNLR provide an annual accounting of revenue-generating public trust lands and the amounts derived from those lands to the legislature. The interim measure also set a fixed amount of $15,100,000 from the pro rata share of the public land trust income and proceeds due to OHA for the betterment of the conditions of native Hawaiians until further action is taken by the legislature for this purpose.

Act 15, Session Laws of Hawai‘i 2012, was enacted to address past-due amounts, which accumulated during the period between November 7, 1978, up to and including June 30, 2012, of income and proceeds from the public land trust owed to OHA by implementing an agreement between the State and OHA for the State to convey certain lands in Kaka‘ako, O‘ahu, to OHA valued at approximately $200,000,000. Act 15 did not, however, address the State’s constitutional obligations relating to OHA’s twenty percent pro rata share of the income and proceeds from the public land trust generated after June 30, 2012. Notably, a 2015-16 financial review initiated by OHA found that the minimum amount of total gross receipts from sources that the office of Hawaiian affairs has historically claimed was approximately $394,322,163 in the fiscal
year 2015-2016. Twenty per cent of this amount is approximately $78,900,000.

The legislature finds that to uphold its constitutional trust obligation and duty to the Indigenous People of Hawai‘i, it must enact another legislative measure in light of the information, data, and facts provided to the legislature by state agencies since the enactment of Act 178, Session Laws of Hawai‘i 2006, more than a decade ago.

The purpose of this Act is to:

(1) Establish $78,900,000 as the Office of Hawaiian Affairs' annual share of the income and proceeds of the public land trust beginning in fiscal year 2022-2023;

(2) Transfer to the Office of Hawaiian Affairs the sum of $638,000,000 for income and proceeds due from the use of the public land trust lands between July 1, 2012, and June 30, 2022, that was misallocated, underreported or underpaid to OHA; and

(3) Require the continued annual accounting of all receipts from lands described in section 5(f) of the Admission Act.

SECTION 2. [ANNUAL PAYMENTS DUE.] Notwithstanding the provisions of Act 178 (Session Laws of Hawai‘i 2006), except for Section 5 of Act 178, which this Act restates, without substantive
change, and until further action is taken by the legislature for this purpose, the income and proceeds from the pro rata portion of the public land trust under article XII, section 6 of the state constitution for expenditure by the Office of Hawaiian Affairs for the betterment of the conditions of native Hawaiians for each fiscal year beginning with fiscal year 2022-2023 shall be $78,900,000, or present real value.

SECTION 3. [QUARTERLY PAYMENTS DUE.] Notwithstanding the provisions of Act 178 (Session Laws of Hawai‘i 2006), except for Section 5 of Act 178, which this Act restates, without substantive change, beginning in fiscal year 2022-2023, departments, agencies or entities that collect receipts from public land trust lands, including but not limited to the University of Hawai‘i, shall determine and transfer to OHA that portion of their receipts from the use, sale, lease, or other disposition of lands within the public land trust collected during each fiscal quarter, necessary to ensure that a total of $19,725,000 of receipts generated by the public land trust is transferred to OHA within thirty days of the close of each fiscal quarter; provided that for fiscal year 2022-2023, the departments shall have until thirty days after the close of the fiscal year to transfer a total of $19,725,000 from their receipts from the use, sale, or exchange of lands within the public
land trust collected during fiscal year 2022-2023, to OHA by the procedures set forth in this Act.

The governor is expressly authorized to fix the amounts each agency shall transfer to OHA in each quarter by executive order to implement the provisions of this section.

SECTION 4. [QUARTERLY PAYMENT’S HOLDING ACCOUNT.] No later than twelve days after the close of each fiscal quarter, the director of finance or the director's designee shall determine the total amount of receipts transferred by any department or agency that collects receipts from the lands within the public land trust to OHA during the immediately prior fiscal quarter.

If the total amount of receipts transferred to OHA is less than $19,725,000 in the immediately prior fiscal quarter, the director of finance or the director's designee shall:

(1) Make up the difference between $19,725,000 and the amount of receipts transferred in the immediately prior fiscal quarter by transferring up to the entire amount on deposit in the carry-forward trust holding account established by the director of finance, pursuant to Executive Order 06-06 or this Act; or

(2) Make up the difference between $19,725,000 and the amount of receipts transferred in the immediately prior fiscal quarter by establishing the additional amount of receipts that
each agency must transfer to OHA pursuant to section 3 of this Act.

If the total amount of receipts transferred to OHA is more than $19,725,000 in the immediately prior fiscal quarter, the director of finance shall notify OHA and request that OHA transfer the amount in excess of $19,725,000 into the carry-forward trust holding account established by the director of finance, pursuant to Executive Order 06-06 or this Act. This subsection shall not apply to a transfer of receipts at the close of fiscal year 2022-2023.

SECTION 5. [OBLIGATION RE PAST-DUE MONIES TO OHA.] There is appropriated out of the general revenues of the State of Hawai‘i in the sum of $638,000,000 for fiscal year 2021-2022, which includes trust funds transferred into the carry-forward trust holding account, totaling approximately $29,060,008 at the end of Q1 fiscal year 2022, established by the director of finance, pursuant to executive order 06-06, to pay to OHA amounts received from the use of lands in the public land trust that the legislature has determined were misallocated, underreported or underpaid income and proceeds of the public land trust between July 1, 2012 through June 30, 2022.
The sum appropriated shall be expended by the department of budget and finance.

The director of finance shall transfer the funds in the carry-forward trust holding account established by the director of finance to OHA.

SECTION 6. Any funds transferred pursuant to this Act shall be deemed income and proceeds from the public land trust, just as if the funds had been paid out of the income and proceeds from the public land trust pursuant to article XII, section 6, of the state constitution.

SECTION 7. This Act shall take effect on July 1, 2022.

INTRODUCED BY:______________________________

By Request
EXECUTIVE ORDER NO. 06 - 06

WHEREAS, Section 3 of Act 178, 2006 Session Laws of Hawaii, requires each agency of the State that "collects receipts from the lands within the public land trust" to determine and transfer a portion of those receipts as necessary to ensure that a total of $3,775,000 is transferred to the Office of Hawaiian Affairs ("OHA") thirty days after the close of each fiscal quarter;

WHEREAS, Section 3 of Act 178 expressly authorizes the Governor to fix the exact amount each agency is to transfer to OHA on a quarterly basis, without regard for the provisions of chapter 10, Hawaii Revised Statutes, or the requirements of Executive Order No. 03-03;

WHEREAS, pending the Legislature's policy determinations regarding how best to give long-term "effect to the right of native Hawaiians to benefit from the ceded lands trust," OHA v. State, 96 Haw. 388, 401 (2001), it continues to be appropriate to rely upon the rationale and the procedures set out in Executive Order No. 03-03, for determining which receipts from the use of public land trust lands are to be transferred to the OHA on a quarterly basis, to satisfy the requirements of Section 3 of Act 178;

WHEREAS, because receipts for the use of lands are received in different amounts at varying intervals and frequency over the
course of a fiscal quarter or a fiscal year, the procedures set out in Executive Order No. 03-03 for segregating and transferring receipts for the use of public land trust lands to OHA need to be modified if the requirements of Section 3 of Act 178 are to be satisfied; and

WHEREAS, for purposes of this executive order, "public land trust land" is land assigned "Trust Land Status," or "5(b)," "5(e)" or "Pub. L. 88-233" status on the Department of Land and Natural Resources' State Land Inventory Listing, or described in the agency's records as land acquired by the State through Section 5(b) or 5(e) of the Admission Act or Pub. L. 88-233, or in exchange for such a parcel;

NOW, THEREFORE, I, Linda Lingle, Governor of Hawaii, pursuant to the authority conferred upon me by Section 3 of Act 178, 2006 Session Laws of Hawaii, direct that the following accounts be established, and the following determinations and procedures made and implemented, so that the requirements of Section 3 of Act 178 may be satisfied at the close of each fiscal quarter.

1. All departments and agencies that collect receipts for the use of ceded or public land trust land shall:
   a. Establish trust holding accounts to accumulate OHA's portion of each receipt that would otherwise be deposited into the general fund or a special fund, and to accumulate the
remainder of each receipt that would otherwise be deposited into the general fund for the rest of the fiscal year ("GFRTHA");

b. Determine if:

(1) Any federal or state law precludes any portion of the receipt from being used to better the conditions of native Hawaiians; or

(2) The transfer of any portion of the receipt will cause the department or agency to renege on any pre-existing pledge, rate covenant, or other pre-existing obligation to holders of revenue bonds or other indebtedness of the State, department, or agency;

c. If use of a receipt is not limited by the provisions of paragraph 1.b.(1) or 1.b.(2) above,

(1) Determine OHA's share of the receipt by calculating the ceded/non-ceded fraction for the parcel that generated the receipt by area (square feet or acres), multiplying the receipt by the ceded/non-ceded fraction, and multiplying that result by 20% or any alternative percentage the Governor specifies,

(2) Deposit the resulting amount into the appropriate trust holding account established pursuant to paragraph 1.a above to accumulate OHA's portion, and

(3) Deposit the remaining portion of the receipt into the GFRTHA if it would otherwise be deposited into the
general fund; otherwise, deposit the remaining portion of the receipt into the appropriate special fund, using separate Treasury Deposit Receipt slips (State Accounting Form B-13) for each trust holding account into which receipts are deposited.

d. If use of a receipt is limited by paragraph 1.b.(1) or 1.b.(2) above, report the receipt as a gross receipt on the electronic spreadsheet developed by the Department of Land and Natural Resources' to effect the reporting requirements of Act 178, and deposit the entire amount to the credit of the general fund or special fund as appropriate.

e. Within ten calendar days of the close of each fiscal quarter,

(1) Complete, and email and deliver a copy of the "Transmittal Re: Quarterly Transfer of Public Land Trust Receipts to OHA," attached here as Attachment "A," to the Department of Budget and Finance, Attn: Administrator, Budget, Program Planning and Management Division, to inform the same of the receipts collected, deposited in each of its trust holding accounts, and transferred to OHA; and

(2) Unless the Governor directs otherwise, transfer all receipts deposited in its general and special fund trust holding accounts, other than its GFRTHAs, to OHA.
by journal voucher using the accounting information and processes described in paragraph 4 below, and transmit a copy of each journal voucher used to transfer the receipts, to OHA, and to the Department of Budget and Finance with the Transmittal prepared pursuant to paragraph 1.e.(1) above.

2. No later than 12 calendar days after the close of each fiscal quarter, the Director of Finance or the Director’s designee, shall

   a. Compute the total amount of receipts from the use of ceded lands or lands in the public land trust deposited into the trust holding accounts during the immediately prior fiscal quarter, the total amount of receipts transferred to OHA for the immediately prior fiscal quarter, the total amount on deposit in the GFRTHA of all agencies, and the difference, if any, between the total amount of receipts transferred to OHA and $3,775,000;

   b. If the total amount of receipts transferred to OHA exceeds the $3,775,000, notify OHA and request that OHA deposit the overpayment by journal voucher into the carry-forward trust holding account the Director establishes for that purpose, using the accounting information and processes described in paragraph 4 below;
c. If the total amount of receipts transferred to OHA is less than $3,775,000, and unless the Governor fixes different amounts for some or all agencies, make up

(1) The shortfall by transferring up to the entire amount on deposit in the carry-forward trust holding account to OHA, by journal voucher using the accounting information and processes described in paragraph 4 below; and

(2) Any remaining difference by establishing the additional amount of receipts each agency must transfer to OHA from its GFRTHA and special funds, to satisfy the requirements of Section 3 of Act 178 for the immediately prior fiscal quarter, and notify each agency by email what amounts of receipts specified by the Governor or established by the Director, if any, it must transfer to OHA, from its trust holding accounts, its GFRTHA, or its special funds, to satisfy the requirements of Section 3 of Act 178.

3. No later than 15 calendar days after the close of each fiscal quarter, each department or agency shall,

(a) If notified by the Director of Finance that additional receipts must be transferred to OHA from its special funds, reverse earlier deposits of receipts into its special funds in
the amounts specified by the Director, and deposit the same into the appropriate special fund trust holding account, and

(b) Transfer all amounts specified for transfer from its GFRTHAs and its trust holding accounts, to OHA, by journal voucher using the accounting information and processes described in paragraph 4 below.


a. Use Account No. T-YY-901-Z1; transaction codes 805 for OHA and 804 for the department or agency;

b. Include the following note under the “Explanation” section of the journal voucher: “to record transfer of funds derived from the public land trust to OHA, pursuant to Executive Order 06-06, and Act 178, 2006 Session Laws of Hawaii.”

5. Immediately after all transfers to OHA for the fourth fiscal quarter are made, each department or agency shall deposit any balance remaining in any trust holding account to the credit of the general fund or the special fund into which the receipt would have been deposited if it had not been deposited into the trust holding account. The Director of Finance or the Director’s designee shall transfer any balance remaining in the carry-forward trust holding account to each department or agency that transferred additional receipts to OHA in the prior fiscal year pursuant to paragraphs 2.c.(3), in amounts proportionate to
each department’s or agency’s total contributions to avoid any shortfall in the prior fiscal year.

Each department or agency shall also maintain a separate file for each fiscal year, of all Treasury Deposit Receipts (State Accounting Form B-13) and all journal vouchers it used to deposit receipts for the use of public land trust land to the separate trust holding accounts established under paragraph 1, and to transfer OHA’s portion of the same to OHA.

DONE at the State Capitol, Honolulu,
State of Hawaii, this 2006
day of September, 2006.

[Signature]
LINDA LINGLE
Governor of Hawaii

APPROVED AS TO FORM:

[Signature]
Mark J. Bennett
Attorney General
TRANSMITTAL TO MAKE QUARTERLY TRANSFER OF PUBLIC LAND TRUST RECEIPTS TO OHA

Date: ____________________
(By Email and Messenger)

TO: Mr. Neal Miyahira
Administrator, Budget, Program Planning and Management Division
Department of Budget and Finance

FROM: ____________________________________________
Department/Agency Name _____________________________________

SUBJECT: Ceded Land/Public Land Trust Receipts for Quarterly Transfer to Office of Hawaiian Fiscal Year ____ fiscal quarter's
80%GFTHA/20% Holding Account Name/No. Ceded/Public Land Trust Total Holding Account Deposits Transferred to OHA Total Receipts

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If there are questions, please call or email _____________________________ at Ext. _________; Email ____________________________.

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| Note | |

1) Each year OHA receives a set amount of $15,100,000, such that not to exceed four quarterly payments of $3,775,000 from the Public Land Trust (PLT) Revenues from the State of Hawaii.

2) This table shows the amount received by OHA from the other state agencies for fiscal years 2010 to 2021 Q3. In the event that OHA receives a sum exceeding $3,775,000 per quarter or $15,100,000 per year, the excess is subsequently returned to the State.