

# FULFILLING THE STATE'S PUBLIC LAND TRUST OBLIGATION TO NATIVE HAWAIIANS

During the current legislative session, the Office of Hawaiian Affairs (OHA) is submitting a bill to fulfill the State's obligation to convey OHA's pro rata (proportionate) share of "Public Land Trust" (PLT) revenues.

The controversy surrounding the PLT begins with the illegal overthrow in 1893. At the time, Hawai'i's monarchy retained approximately one million acres of "Crown Lands" and an estimated 800,000 acres of "Government Lands." In 1898, Hawai'i was annexed to the United States without agreement by, or compensation to, Native Hawaiians, and the former Crown and Government Lands of Hawai'i were then "ceded" to the United States. These so-called "ceded lands" were considered a "trust" for Hawai'i's people. During the first half of the 20th century, 200,000 acres were set aside for the Hawaiian Home Lands program, and another 350,000 acres were appropriated by the U.S. for military use and national parks. By 1959, about 1.4 million acres re-

mained. Through the Admission Act, these lands were transferred to the new State of Hawai'i as a "Public Land Trust" with the directive that revenue from the land was to be used for five public purposes, one of which is *"the betterment of the conditions of Native Hawaiians."* OHA was established at the 1978 Constitutional Convention, and in 1980 the Legislature established OHA's share of PLT revenues as 20%. In 2006, OHA agreed to an annual payment of \$15.1 million as a "temporary" allocation until PLT revenues were properly accounted for, at which time the allocation would be revisited. In 2012, the issue of 32 years of underpaid PLT revenues was partially resolved when 30-acres of land at Kaka'ako Makai valued at \$200 million was transferred from the state to OHA. Today, annual PLT revenues are about \$394.3 million, which means OHA's share should be \$78.9 million per year. However, the state still allocates just \$15.1 million per year to OHA - an extreme underpayment of what is owed to Hawai'i's Indigenous people. Moreover, the state has accrued an additional obligation of \$638 million to OHA for another decade of underpaid PLT revenues (2012-2022).

The federal government has a trust responsibility to Native Hawaiians, this includes ensuring the State of Hawai'i lives up to its obligations.

The State of Hawai'i has a constitutional obligation and duty to the Indigenous people of Hawai'i and a legal obligation to convey a pro rata share of income and proceeds from Public Land Trust revenue to the constitutionally created OHA.

The State of Hawai'i has historically underfunded OHA with Public Land Trust revenues as OHA works to better the lives of Native Hawaiians.



*"Our duty as trustees under the Hawai'i State Constitution is to **"better the conditions of Native Hawaiians."***

*The Office of Hawaiian Affairs is united, has reorganized and streamlined its operations so that more funds will flow to our Native Hawaiian community, and we are ready to receive the long overdue trust funds due Native Hawaiians from the ceded lands the State of Hawai'i manages as a trustee."*

- CARMEN "HULU" LINDSEY, OHA BOARD CHAIR

# WHAT YOU NEED TO KNOW ABOUT THE PUBLIC LAND TRUST



## WHAT IS THE PUBLIC LAND TRUST?

The Public Land Trust (PLT) comprises some 1.4 million acres of land conveyed to the State of Hawai'i from the federal government in 1959 when Hawai'i transitioned from being a U.S. "Territory" to a U.S. "State." These lands were formerly known as "ceded lands" and are what remain of the "Crown" and "Government" lands of the Hawaiian Kingdom that were seized from Queen Lili'uokalani in the aftermath of the illegal overthrow in 1893.

## WHAT IS OHA'S CONNECTION TO THE PLT?

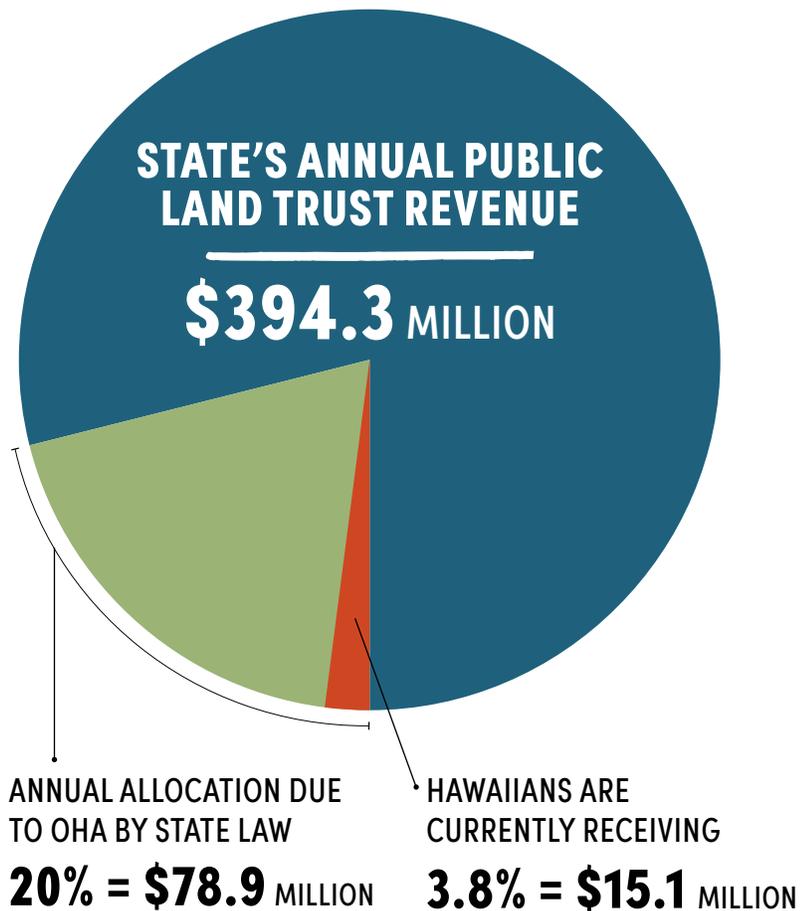
OHA was established as an outcome of the 1978 Hawai'i State Constitutional Convention specifically to "manage all income and proceeds from that pro rata portion of the public land trust for Native Hawaiians" (Article XII). Respected kūpuna such as Auntie Frenchy DeSoto, former governor John Waihe'e and Uncle Walter Ritte participated in the 1978 Con Con and were instrumental in helping to create OHA as a state agency tasked with the kuleana of bettering the conditions of the lāhui.

## HOW WAS IT DECIDED THAT OHA SHOULD RECEIVE 20% OF PLT REVENUES?

In 1980, Act 273 enacted section 10-13-5 of the Hawai'i Revised Statutes establishing OHA's pro rata share of PLT revenues at 20% to be expended by OHA. The "betterment of the conditions of Native Hawaiians" is one of the five expressed purposes of PLT revenues in the 1959 Admission Act. So, 20% reflects one-fifth of PLT revenues.

## WHY IS OHA ONLY RECEIVING \$15.1 MILLION ANNUALLY? HOW WAS THAT DECIDED?

In 2006, in the absence of an accurate accounting of PLT revenues, the legislature enacted Act 178 which set the "interim revenue" amount to be conveyed to OHA at \$15.1 million per year. It also established a requirement for state agencies to provide an accounting of annual PLT inventory and receipts and revenues generated by the PLT lands they administer.



## WHAT IS OHA'S ROLE ONCE THE PLT FUNDS ARE RECEIVED? WHO WILL GET THE MONEY?

OHA was established in 1978 to serve as the manager of the PLT revenues designated for the betterment of the conditions of Native Hawaiians. The state constitution sets apart the PLT obligations to Native Hawaiians and charges the OHA Board of Trustees to administer those funds for Native Hawaiians. Since 2006, OHA has responsibly managed its annual allotment of \$15.1 million in PLT funds by disbursing it in the community through its various Beneficiary and Community Investments to other Native Hawaiian-serving organizations.

## WHAT DOES THE PLT BILL ASK FOR?

- OHA has submitted the PLT bill (HB1474 / SB2122) to ask the State of Hawai'i to fulfill its constitutional obligation to Native Hawaiians by:
- Establishing \$78.9 million as OHA's annual share of the income and proceeds of the PLT for Native Hawaiians, beginning in fiscal year 2022-2023;
  - Transferring to OHA the sum of \$638 million for income and proceeds due from the use of the PLT lands between July 1, 2012, and June 30, 2022, that were misallocated, underreported or underpaid to OHA and;
  - Requiring the continued annual accounting of all receipts from lands described in section 5(f) of the Admission Act, per the requirements of 2006's Act 178.

## HOW WILL OHA USE THE MONEY?

OHA deploys funding to its beneficiaries in a number of ways, all of which align to its new 15-year Mana i Maui Ola Strategic Plan. The additional PLT money received will be allocated by the Board of Trustees to fund programs related to OHA's four strategic directions (Education, Health, Housing and Economic Stability). The money is allocated via Beneficiary and Community Investments (the "umbrella" term for all OHA's funding programs) and includes grants and sponsorships to organizations; contracts to provide beneficiary services; and loans and financial assistance to individuals.

## IS THERE A PRECEDENT FOR A BACK PAYMENT?

The 1959 Admission Act directs the state to utilize PLT revenues for the "betterment of the conditions of Native Hawaiians" along with four other public purposes. The allocation of a 20% share (one-fifth) of PLT revenue to OHA was codified into law in 1980. The state established the "interim" allocation of \$15.1 million in 2006, and then in 2012 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. In doing so, the state acknowledged that it owes Native Hawaiians PLT revenues. The Federal Government's 1993 "Apology Resolution" also sets a precedent.

## IS OHA OPEN TO FUTURE LAND CONVEYANCES (LIKE IN 2012) TO ADDRESS THE ISSUE OF BACK PAYMENT?

Yes

## HOW DID OHA ARRIVE AT ITS \$78.9 MILLION PER YEAR NUMBER AS DETAILED IN THE 2022 BILL?

In a 2018 financial review, PLT revenues were determined to be approximately \$394.3 million per year, which means OHA's 20% share of those revenues should be \$78.9 million per year.

## HOW DID OHA CALCULATE THE \$638 MILLION NUMBER FOR BACK PAYMENTS FROM 2012 TO 2022?

\$78.9 million per year less the \$15.1 million per year that OHA has received equals \$63.8 million per year. So OHA has been underpaid by \$63.8 million per year for 10 years (2012-2022). \$63.8 million times 10 years equals \$638 million.



*"To our Kanaka Maoli: these are your funds. We want to lift our people out of poverty, out of poor circumstances, so that they become business owners, homeowners, job holders, students with high level degrees. We encourage all Native Hawaiians to come testify and tell the State of Hawai'i that its failure to uphold its constitutional and statutory obligation to all Native Hawaiians is not pono. It's not just about money, it's about what is pono."*

- NA'UNANIKINA'U KAMALI'I,  
OHA CHIEF ADVOCATE

# DO YOUR PART TO SUPPORT THE PLT BILL

SIGN UP FOR ACTION ALERTS AT

[www.oha.org/legislation](http://www.oha.org/legislation)

Be notified when the PLT bill legislative hearings are scheduled and make your voice heard by submitting supportive testimony within the deadlines.

Also, you can help by sharing information on Native Hawaiians' constitutional right to 20% of the annual PLT revenues with your 'ohana, friends and social networks.



# A HISTORY OF THEFT

## THE ONGOING STRIPPING OF NATIVE HAWAIIANS' RIGHTS TO THEIR LANDS AND ITS RESOURCES

1893

**Overthrow of the Hawaiian Kingdom.** At the time, the constitutional monarchy retained approximately 1 million acres of "Crown Lands" and another estimated 800,000 acres of "Government Lands." Together, the Crown and Government lands seized in the overthrow are known as "ceded lands."

1898

**Hawai'i is annexed to the United States** and the approximately 1.8 million acres of "ceded lands" are considered as a "trust," the revenues from which to be used for the benefit of the people of Hawai'i.

1959

The "ceded lands" are transferred to the new "State of Hawai'i" as a "Public Land Trust" (PLT). Section 5(f) of the Admission Act confirms these lands have "trust status" and revenue from the land is to be used for five public purposes, including *"the betterment of the conditions of Native Hawaiians."*

1978

The Office of Hawaiian Affairs (OHA) is established during the Hawai'i State Constitutional Convention for the purpose of addressing historical injustices committed against the Hawaiian people and the challenges arising from those circumstances.

1895-1898

The so-called "Republic of Hawai'i" assumes control of Hawai'i and attempts to dissolve the "ceded lands." During this period, some 46,594 acres of former Crown and Government land is sold.

1921

200,000 acres of "ceded lands" are set aside for the Hawaiian Home Lands program. During the first half of the 20th century about 350,000 additional acres of "ceded lands" are taken by the federal government for military use and national parks.

1959-1978

The State of Hawai'i utilizes these lands for public schools and universities, harbors, parks, and for other public purposes. **It also leases a portion of these lands to the federal government for military purposes.**

1980

The Hawai'i State Legislature via Act 273 establishes OHA's pro rata (proportional) share of PLT revenues at 20% to be used "for the betterment of the conditions of Native Hawaiians and to serve as receptacle for reparations to the Native Hawaiian People."

1980-2005

Although codified into law in 1980 (HRS Chapter 10 13.5) and despite years of litigation and attempting to receive full payment, the State of Hawai'i withholds the 20% of PLT revenues owed to OHA.

2008

OHA and then-governor Linda Lingle agree that the debt to OHA for unpaid PLT revenues is valued at \$200 million to be paid through a transfer of state lands to OHA, however, the Hawai'i State Legislature refuses to approve the proposed back payment.

2012

The now 32-year-old PLT debt to OHA is partially resolved when 30 acres at Kaka'ako Makai valued at \$200 million is transferred from the state to OHA during the Abercrombie administration. Full value of the land is limited by a 2006 law prohibiting housing development at Kaka'ako Makai.

2021

OHA reorganizes and streamlines its operations and systems to ensure that more money can be utilized to fund community programs in alignment with OHA's Mana i Maui Ola Strategic Plan to better the conditions of Native Hawaiians.

2006

The Hawai'i State Legislature (via Act 178), agrees to a temporary allotment of \$15.1 million to OHA from PLT revenues pending an accurate accounting of all PLT revenues. Act 178 also requires state agencies using or managing public lands to provide a full accounting of revenues. The issue of unpaid PLT revenues owed to OHA since 1980 remains unresolved.

2012

For the first time ever, state agencies report PLT revenues. \$150.9 million in revenue is reported for the previous fiscal year. An independent financial review later determined that agencies under-reported PLT revenues by more than \$220 million, and that the actual revenue exceeded \$370 million.

2018

OHA completes a second financial review which finds that PLT revenues continue to be under-reported by state agencies. OHA identifies \$394.3 million in PLT revenues from the state (this finding is the basis for this year's bill).

2022

Annual PLT revenues are now estimated to be \$394.3 million. Per Act 273 (1980), OHA's 20% annual share should be \$78.8 million, however, OHA still receives just \$15.1 million (about 3.8%). Based on this, the state has accrued an additional debt to OHA of \$638 million for underpaid PLT revenues since 2012.