



## TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

---

**ON THE FOLLOWING MEASURE:**

H.B. NO. 266, H.D. 1, RELATING TO HAWAIIAN AFFAIRS.

**BEFORE THE:**

HOUSE COMMITTEES ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS,  
ON JUDICIARY, and ON FINANCE

**DATE:** Saturday, February 23, 2008 **TIME:** 9:00 AM

**LOCATION:** State Capitol Auditorium

*Deliver to:* , Room 420, 1 copy

**TESTIFIER(S):** Mark J. Bennett, Attorney General

---

Chairs Ito, Waters, and Oshiro, and Members of the Committees:

The Attorney General understands that the Committee on Water, Land, Ocean Resources & Hawaiian Affairs has amended what was originally a short form bill to provide the means by which the State may fulfill its obligation under article XII, section 6 of the Hawaii Constitution to specify, in law, the portion of the income and proceeds from the lands of the public trust referred to in article XII, section 4 of the Hawaii Constitution that should have been, and henceforth is to be transferred to the Office of Hawaiian Affairs ("OHA") to use for the benefit of native Hawaiians under article XII, section 6.

Because the House Draft No. 1 is conceptually similar to the bill OHA and the State, through the Governor, jointly prepared and asked the House (H.B. No. 2701) and the Senate (S.B. No. 2733) to enact, I offer the attached testimony to S.B. No. 2733 that I presented in support of the Senate's version of the bill OHA and the State jointly prepared. It outlines the history of the situation we sat down with OHA to address, what we sought to achieve by the more than four years of negotiations, and the results of our effort - essentially, the conveyance of approximately \$200 million in cash and real property to resolve all issues concerning amounts from the income and proceeds from the ceded lands under article XII, section

6 of the Hawaii Constitution, since that provision of the Constitution was adopted November 7, 1978 through June 30, 2008, and the fixing of a floor of \$15.1 million for OHA's share of that income and proceeds in the future.

I also would respectfully request that the Legislature review the reports it received in conjunction with, and the committee reports that accompanied the passage of, Act 304, Session Laws of Hawaii 1990; Act 35, Session Laws of Hawaii 1993; Act 329, Session Laws of Hawaii 1997; Act 34, Session Laws of Hawaii 2003; and Act 178, Session Laws of Hawaii 2006, and allow us to supplement this testimony in the next few days with information to clarify the information the Legislature has already received pursuant to Act 178, Session Laws of Hawaii 2006, about the sums the departments and agencies currently collect from the use of the land of the public trust referred to in article XII, section 4 of the Hawaii Constitution.

Thank you for this opportunity to testify.





**TESTIMONY OF THE STATE ATTORNEY GENERAL  
TWENTY-FOURTH LEGISLATURE, 2008**

---

**ON THE FOLLOWING MEASURE:**

S.B. NO. 2733, RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT.

**BEFORE THE:**

SENATE COMMITTEES ON AGRICULTURE AND HAWAIIAN AFFAIRS, ON WATER AND LAND, AND ON JUDICIARY AND LABOR.

**DATE:** Saturday, February 9, 2008 **TIME:** 10:00 AM

**LOCATION:** State Capitol, Auditorium  
*Deliver to: Room 218, 1 copy*

**TESTIFIER(S):** Mark J. Bennett, Attorney General

---

Chairs Tokuda, Hee, and Taniguchi and Members of the Committees:

I submit this testimony in strong support of S.B. No. 2733, Relating to the Public Trust Lands Settlement. The Legislature's approval of this bill, which is a necessary step to the effectuation of an important settlement reached between the State of Hawaii and the Office of the Hawaiian Affairs (OHA), is manifestly in the best interest of the State of Hawaii, OHA, and all the people of the State of Hawaii -- Hawaiians and non-Hawaiians alike.

It is impossible to either understand or evaluate this bill, without an understanding of the history that preceded it. Crown lands and government lands of the Kingdom of Hawaii passed first to the Republic of Hawaii, and the United States-Territory of Hawaii, before they passed, through the 1959 Hawaii Admission Act, to the State of Hawaii. However, the transfer of these lands from the United States to the State was not in any sense unconditional. Section 5(f) of the Admission Act requires that these lands, together with the proceeds from the sale or other disposition of such lands, and the income from them for their use, were to be held by the State of Hawaii as a "public trust" "for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians . . . ., for the

development of farm and home ownership on a widespread a basis as possible for the making of the making public improvements, and for the provision of lands for public use." Section 5(f) also provides:

"Such lands, proceeds, and income shall be managed and disposed for one or more of the foregoing purposes in such manner as the constitution and laws of said 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."

From Statehood through 1978, proceeds from these public trust lands, also known as the Ceded Lands, were used primarily to benefit public education in the State of Hawaii. This usage did not violate the Admission Act, as the Admission Act did not mandate that the lands or their income and proceeds be used for any one of the purposes set forth in section 5(f). Thereafter, the Constitutional Convention of 1978, and the amendments to the State Constitution proposed by the Convention and ratified by the electorate in 1978, established the Office of Hawaiian Affairs, in what is now Article XII, sections 5 and 6 of the Constitution, and directed OHA's trustees, as provided by law, to manage the income and proceeds from the Ceded Lands OHA received for native Hawaiians. Although it does not specify an amount, or include a formula or methodology for making that allocation, Article XII makes clear that a portion of the income and proceeds from the Ceded Lands was to be allocated by law to the Office of Hawaiian Affairs, to manage and administer for native Hawaiians.

Beginning almost immediately after 1978, the Legislature on a number of occasions tried to formulate the allocation for OHA. Unfortunately, for a variety of reasons, no formulation enacted by the Legislature satisfactorily fixed how much OHA was to receive, or even how the amount OHA was to receive was to be calculated. Almost since the adoption of what is now Article XII, the State and OHA have been involved in controversy and lawsuits regarding how much of

the income and proceeds from the Ceded Lands are to be allocated by the State to OHA.

Three separate times the matter has gone to the Hawaii Supreme Court. Although the Hawaii Supreme Court has never directed that a particular percentage of the income and proceeds, or a particular method of allocation of the income and proceeds be adopted, it has said that the "State's obligation to native Hawaiians is firmly established in our Constitution" and that "it is incumbent upon the Legislature to enact legislation that gives effect to the right of native Hawaiians to benefit from the Ceded Lands Trust." See e.g., Office of Hawaiian Affairs v. State ("OHA I"), 96 Hawai'i 388, 401, 31 P.3d 901, 914 (2001) (in OHA I, the court also quoted from a speech by then State Senator Neil Abercrombie to the Legislature at the first of these legislative attempts to fix OHA's share of the Ceded Lands income and proceeds in 1980:

"I fear that for those who are interested in seeing [OHA] move forward that they have won a Pyrrhic victory, that this is merely a skirmish in a very large battle....

[A]lthough I would be delighted to say otherwise, I regret to say that I expect that the moment this passes into statute, there will be a suit and that the business of the Office of Hawaiian Affairs is, as a result, going to be tied up in court for God-knows how many years."

Despite attempts by the Legislature to fulfill the State's constitutional obligation, and despite efforts by the Executive Branch to implement the laws the Legislature has enacted, differences, particularly as to whether income from the Ceded Lands underlying many of the State's airports, hospitals and housing projects, have remained unresolved.

The instant bill, thirty years in coming, finally and completely settles all past disputes between the State and OHA over the how much of the income and proceeds from the Ceded Lands OHA is to receive under Article XII, and fixes a process for the future

that, if unchanged by future legislatures, assures that there will never be litigation over the share of the income and proceeds from the Ceded Lands due to OHA again.

First, the legislation and the Settlement Agreement between the State and the Office of Hawaiian Affairs (attached to this testimony without a copy of the bill as an exhibit), requires the payment to OHA of approximately \$13 million in cash, and the transfer of approximately \$187 million (tax assessed value) of real estate owned by the State, in full and complete settlement of all past amounts due or which might be due to OHA from the income and proceeds of the Ceded Lands from 1978-2008. The Settlement Agreement and the legislation make absolutely clear that this is the case. Moreover, there are no other claims that can be brought for income and proceeds from the Ceded Lands other than those that are settled by the Settlement Agreement with the Office of Hawaiian Affairs and by this legislation.

Second, the Settlement Agreement and this bill provide that for the future, beginning July 1, 2008, for every year in which OHA retains the right to receive \$15.1 million in income and proceeds from the Ceded Lands, there can be no claim relating to the income and proceeds from Ceded Lands for that year. This is a workable way of settling this issue for the future. This Legislature cannot bind a future legislature with a requirement to pay money in the future. This Legislature can, however, make it clear that there is no right to sue for any year in the future in which OHA has received at least \$15.1 million, and both this bill and the Settlement Agreement explicitly provide a waiver by OHA of suit for any year in which OHA has that right.

It should be noted moreover, that even were the parties to purport to guarantee future payments in future years to OHA, or pay enough now to bar any future payments, such a settlement could not be binding on a future legislature, which could still decide to allocate future proceeds from the Ceded Lands to OHA, or reduce

future amounts, notwithstanding anything in a bill. The Agreement and the proposed legislation, on the other hand, recognize the reality that this Legislature cannot bind its successors, but nonetheless, sets in place a process which if not changed, forecloses all future disputes over the income and proceeds from the Ceded Lands.

With regard to a dispute that has lasted thirty years, and about which there has been great controversy, it is axiomatic that those on one side of the dispute or the other, with one interest or another, can claim that a different settlement, paying more, paying less, paying in a different way, would have been better for one group or another, or even the State as a whole. Such views are wholly understandable, given the complexity of the dispute, and the length it has lasted. If this were a dispute susceptible of easy resolution, it would have been settled years or decades ago. It is the difficulties that have made the dispute last this long.

Notwithstanding those difficulties, however, and notwithstanding all the diverging views, the fact remains that it is my belief that this a fair and reasonable settlement for all the beneficiaries of the public land trust -- native Hawaiians and all of the people of Hawaii alike.

For those who say there should be no benefits for Hawaiians because providing benefits is un-American or violates the Fourteenth Amendment to the United States Constitution, my response is no court has ever issued such a ruling, and Article XII of the Constitution of the State of Hawaii, which I and every legislator have sworn to uphold, directs that OHA receive a portion of the income and proceeds from the Ceded Lands for native Hawaiians.

For those who discuss historical grievances by the Hawaiian people against the United States, and its successor to the Ceded Lands -- the State of Hawaii -- I can say only that this bill does not and cannot address those grievances. It is my belief that such grievances can only be addressed after the passage of a bill like

the Akaka Bill, and subsequent negotiations and other political processes, not through a bill like this or in the courts.

Irrespective of the validity of the historical grievances of Hawaiians (and as I have said publicly on many occasions, I believe the historical grievances have validity), the existence of those grievances should not interfere with the Legislature fulfilling its responsibilities under Article XII of the State Constitution. Nor should the possibility of a future political resolution of those grievances (and no one can predict whether or not that political resolution will or will not come) deter the Legislature from fulfilling its responsibilities under Article XII.

This bill and the settlement it effects, neither is nor can be all things to all people. What it does do, however, is make a final and complete resolution of all claims to the income and proceeds from the Ceded Lands that OHA has or may have had thus far under Article XII of the Constitution, and put a process in place for the future, so that there will not be lawsuits or disputes over OHA's Article XII share of such income and proceeds hereafter.

Again then, in closing, this bill and the Settlement Agreement represent a fair and just resolution of complex and lengthy controversies. I know the Legislature will exercise its constitutional duty to scrutinize the bill and the Agreement, and respectfully urge that after that is done, the Legislature enact the bill without material changes.





**HB 266, HD1  
RELATING TO HAWAIIAN AFFAIRS**

**House Committee on Water, Land and Ocean Resources and Hawaiian Affairs  
House Committee on Judiciary  
House Committee on Finance**

**February 23, 2008**

**9:00 a.m.**

**State Capitol Auditorium**

---

Aloha Chairs Ito, Waters, and Oshiro, Vice Chairs Karamatsu, Oshiro, and Lee, and Members. I am Trustee Walter Heen, Vice-Chair of the OHA Board of Trustees, speaking on behalf of Chair Apoliona and the OHA Board of Trustees. **OHA strongly supports, with amendments, House Bill No. 266, HD1** Relating to Hawaiian Affairs.

The purpose of this bill is to allow the State to most effectively and responsibly meet its obligations to Native Hawaiians under sections 4 and 6 of Article XII of the State Constitution by providing \$13,189,860 in cash to OHA, conveying certain parcels of property in fee simple to OHA, and establishing a method for determining each fiscal biennium the pro rata portion to OHA referred to in article XII, section 6 of the State Constitution.

The impetus for this bill is a Settlement Agreement (the "Settlement Agreement") dated January 17, 2008 signed by Governor Linda Lingle for the State of Hawai'i and Chairperson S. Haunani Apoliona for OHA (see Attachment). By its terms, the Settlement Agreement is contingent upon (1) enactment of the proposed legislation attached to the Settlement Agreement as its Exhibit "A" in substantially the form proposed in the Settlement Agreement, without material changes, or (2) agreement in writing by the State and OHA to any material changes to the proposed legislation. The Settlement Agreement between OHA and the Governor has been approved by OHA's Board of Trustees.

This bill provides the opportunity for the Legislature to bring closure to an issue that has remained incompletely addressed for three decades and that the Hawai'i Supreme Court has ruled is primarily under the authority and responsibility of the Legislature. The bill would help fulfill the State's solemn obligation to Hawaiians. A Ward Research poll conducted in November 2007 found that with regard to the OHA-State negotiations, 68 percent of respondents believed that the Legislature should approve a settlement that both the State and OHA have agreed to.

The Settlement Agreement and the proposed legislation resulted from several years of arm's length negotiations between OHA and the current State Administration.

In recent weeks the media has repetitively highlighted a proposed deal, a Cayetano administration settlement offer to OHA in 1999. Fact is, Governor Cayetano's proposed

offer was rejected and then countered by OHA. Governor Cayetano provided no timely response to OHA's counter offer; so after waiting nearly two weeks, the majority of OHA Trustees voted to end negotiations. The ultimate flaw of the Cayetano administration offer was that OHA was required to release claims that would bar all future claims by Native Hawaiians to ownership of State controlled ceded lands.

With regard to the period between November 7, 1978 and July 1, 2008, both the Settlement Agreement and the bill before you today include payment to OHA of \$13,189,860, and (2) conveyance to OHA of land and improvements valued in total at \$186,810,140 and located at Kaka'ako Makai, at Kalaeloa Makai (the former Campbell Feed Lot), and at Hilo Banyan Drive.

In connection with the settlement, the bill also amends Chapter 10, Hawaii Revised Statutes to effectuate these changes and amends Chapter 206E, HRS to allow OHA representation on the board of the Hawaii Community Development Authority (HCDA) and to partially exempt OHA's settlement lands from certain elements of HCDA's existing authority, for example HCDA's power to condemn real property.

I would like to mention a matter important to the bill. The bill contains a provision in Section 11 that requires that the conveyances made and funds paid under the bill shall be deemed income and proceeds from the public land trust. This is important to ensure that the payments and transfers are counted towards the State's constitutional obligation under Article XII, section 6, to provide OHA with a pro rata share of the public land trust revenues.

While a detailed historical narrative of the issue of land trust revenues would not be appropriate in this testimony, kindly note the following:

- Following many years of relatively small transfers to OHA, Act 304, Session Laws of Hawaii of 1990, sought to establish how the State would carry out its state constitutional and statutory mandate to dedicate 20 percent of public land trust revenues to OHA's activities.
- Act 35, Session Laws of Hawaii 1993, appropriated \$136.5 million in general obligation bond funds to OHA as a settlement of undisputed claims to that point in time.
- Act 329, Session Laws of Hawaii 1997, established OHA's pro rata share to be \$15.1 million for each of the fiscal years 1997-1998 and 1998-1999.
- In 2001, the Hawaii Supreme Court ruled that Act 304 was invalid due to a conflict between one of its technical provisions and federal law.
- Act 34, Session Laws of Hawaii 2003, required the transfer of several million dollars to OHA to help continue the revenue stream following the court ruling against Act 304.



- Executive Order No. 03-03 set forth Governor Lingle's procedure for continuing the revenue stream.
- Act 178, Session Laws of Hawaii 2006, included an interim provision setting OHA's annual amount of land trust revenues at \$15.1 million and providing a lump sum payment of \$17.5 million for certain amounts that the Legislature determined were underpaid between July 1, 2001 through June 30, 2005.

We respectfully request significant amendments to the bill in the form of a proposed HD 2 that OHA and the Attorney General agree with that do not change the tenor of the bill, most of which are acceptable to OHA. Our proposed HD 2 seeks to recognize the fundamental concerns of legislators that are reflected in the HD1 on such issues as whether the bill is a "settlement" and whether the prospective quarterly payments to OHA can be adjusted, while also containing our proposed amendments ensuring that the bill resolves past due amounts with sufficient finality and establishes future payments in sufficient amounts. The proposed HD 2 has been provided to the Chief Attorney, House of Representatives, and we can make it available to your Committees' staffs as well. One of the proposed amendments has not been approved by the OHA Board of Trustees because the amendment was not available for review on Thursday, February 21, 2008, the day of the Board's most recent meeting.

It is important to note that the release-of-claims provisions in Section 13 of our proposed HD2 apply only to OHA's right to income and proceeds from the public land trust pursuant to Article XII, sections 4 and 6, and not other claims such as overthrow claims relating to ownership of the public lands.

We are mindful that some have urged OHA to increase its communications with those most affected by the settlement. We are mindful of Senate Concurrent Resolution No. 49 of this Regular Session "Requesting that the Office of Hawaiian Affairs and the Attorney General, as Representative of the Executive Branch, Conduct Statewide Informational Hearings on the Ceded Lands Trust Settlement Agreement." In this light, we are conducting various meetings in the community to educate our beneficiaries and others on the settlement and to respond to questions. We have already conducted or will soon conduct public informational meetings as follows:

- Nine physical meetings (two on Hawai'i island, one on Maui, one on Moloka'i, four on O'ahu, and one on Kaua'i)
- An electronic town meeting to accommodate Hawaiians living outside the state of Hawai'i

These meetings are in addition to briefings of legislators, briefings of community groups and organizations that have invited OHA, meetings planned by our outside contractors, and other outreach activities (for example television, print, and radio).

I urge your Committee to respond favorably to this bill, as amended by our proposed HD 2, which would help achieve the goals of the Settlement Agreement reached by OHA and the Administration.

Mahalo for the opportunity to testify.

Attachment: Settlement Agreement

# ATTACHMENT

# COPY

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") dated January 17, 2008, is made by and on behalf of the following entities: (i) the Office of Hawaiian Affairs (hereinafter referred to as "OHA"), a body corporate existing under the Constitution and laws of the State of Hawai'i, whose principal place of business and mailing address is 711 Kapi'olani Boulevard, Suite 500, Honolulu, Hawai'i 96813, and (ii) the State of Hawai'i (hereinafter referred to as "STATE"), a state of the United States of America. OHA and STATE are referred to collectively herein as the "Parties."

THE PARTIES TO THIS AGREEMENT HEREBY AGREE AS FOLLOWS:

### Proposed Legislation

This Agreement is contingent upon passage of legislation negotiated by the Parties and submitted or to be submitted to the Hawai'i State Legislature (hereinafter referred to as "Proposed Legislation") or upon further agreement by both of the Parties as to any changes to the Proposed Legislation. A true copy of the Proposed Legislation is attached hereto as Exhibit "A." This Agreement shall be null and void ab initio unless either: 1) The Proposed Legislation is enacted in substantially the form attached hereto, without material changes or 2) Any material changes to the Proposed Legislation are agreed to in writing by both Parties. The Proposed Legislation, including with any agreed-to changes, is also referred to as "the Act."

This Agreement and the Proposed Legislation have two primary purposes: (1) to resolve and settle, finally and completely, any and all claims and disputes relating to the portion of income and proceeds from the lands of the public land trust for use by OHA, including under sections 4 and 6 of Article XII of the Constitution and any relevant statute or act, between November 7, 1978 and July 1, 2008; and (2) to fix, prospectively, the minimum amount of income and proceeds from the lands of the public land trust that are to be paid to OHA to use under section 6 of Article XII of the Constitution at \$15,100,000 each fiscal year.

In the event any provision of this Agreement is inconsistent with any provision of the Proposed Legislation, the Proposed Legislation shall control.

Effective Date

This Agreement shall take effect on the date the Act becomes law or on such other date as may be agreed to in writing by the Parties.

Claims Against the STATE

The release, waiver and discharge of claims against the STATE are governed by the Act, and are in addition to the waiver of claims against the STATE by OHA set out below.

Waiver of Claims Against the STATE

OHA releases, waives, and forever discharges claims as follows:

1) For claims which arose between November 7, 1978 up to and including June 30, 2008:

OHA releases, waives, and forever discharges any and all claims of any kind concerning, relating to, or arising out of controversies at law and in equity, known or unknown, now existing or hereafter arising, established, or inchoate, arising out of or in any way related to any right OHA or any other person or entity may have to income, proceeds, or any other tangible right, item, or benefit, from the public land trust lands under sections 4 and 6 of Article XII of the Constitution or any statute or act.

Each and every claim or suit that is predicated in any way upon an act or omission that arises out of or is in any way related to any right OHA or any other person or entity may have to the income, proceeds, or any other tangible right, item, or benefit from the public land trust lands under sections 4 and 6 of Article XII of the Constitution or any statute or act, that occurred between November 7, 1978 up to and including June 30, 2008, is forever barred

and may not be brought by OHA or by any other person or entity.

OHA further agrees that this Agreement shall have the effect of *res judicata* as to all persons, claims, and issues which arise and defenses which have been at issue, or which could have been, or could in the future be, at issue, which arose between November 7, 1978 up to and including and June 30, 2008, whether brought against the STATE or its departments, agencies, officials, and employees, directly or indirectly, by subrogation, derivative or third party action, tender, federal action, or by any other means whatsoever arising out of or in any way related to any right OHA or any other person or entity may have to the income, proceeds, or any other tangible right, item, or benefit from the public land trust lands under sections 4 and 6 of Article XII of the Constitution or any statute or act.

2) For claims on or after July 1, 2008:

For each and every fiscal year following June 30, 2008, during which OHA retained the statutory right to receive an annual payment of income and proceeds from the public land trust lands of at least \$15,100,000, OHA releases, waives, and forever discharges any and all claims of any kind concerning, relating to, or arising out of each and every claim for damages or any other relief against the STATE, or its departments, agencies, officers, or employees, by the office or any other person or entity, with respect to any controversy, claim, cause of action, or right of action arising out of, or relating to any right OHA or any other person or entity may have to income, proceeds, or any other tangible right, item, or benefit from the public land trust lands under sections 4 and 6 of Article XII of the Constitution or any statute or act. Such claims are forever barred, and to the extent any waiver of sovereign immunity for such a suit, claim, cause of action, or right of action still exists, that waiver is withdrawn by the Proposed Legislation.

### Settlement Payment

Without admitting the validity of any claim, and in order to resolve all outstanding issues relating to income and proceeds from the public-land-trust funds that OHA alleges are due OHA between November 7, 1978 and July 1, 2008, the STATE shall deed or pay to OHA, as the case may be, real property and cash. The identification and settlement value of the real property is set forth in Exhibit "B" attached hereto (hereinafter referred to as "Settlement Properties"). That real property is conveyed to OHA by the Act. \$13,189,860 in cash shall be paid to OHA by the STATE, no later than June 30, 2009. The manner of conveyance of the real property and the source of funds for the payment of cash is as set forth in the Act.

### Environmental Due Diligence

For the purpose of this Environmental Due Diligence section of the Agreement, the Kalaeloa Makai property shall be viewed as one separate and discrete property with a settlement value of \$59,607,000, all Hilo Banyan Drive properties shall be viewed as one separate and discrete property with a settlement value of \$34,483,725, and all Kaka'ako Makai properties shall be viewed as one separate and discrete property with a settlement value of \$92,719,415.

OHA shall have until September 1, 2009 to conduct environmental due diligence.

If, with regard to any of the three properties, each of these conditions is satisfied: 1) Environmental contamination on the property is discovered; 2) The environmental contamination reduces the fair market value of the property<sup>1</sup> by more than 25% (i.e., the fair market value of the property taking into account the environmental contamination is more than 25% less than what the fair market value of the property would have been had the environmental contamination not been present) (the total such reduction in the fair market value is the "reduction

---

<sup>1</sup> Fair market value shall be determined taking into account land and any structures on the property.

in value amount")<sup>2</sup>; 3) OHA has the ability to tender unencumbered title to the property back to the STATE; 4) The property is in materially the same condition it was in when conveyed to OHA; and 5) OHA provides the STATE written evidence of 1, 2, 3, and 4, no later than October 1, 2009 ("Environmental Contamination Rights Notice")--then OHA shall have the "Environmental Contamination Rights" with regard to that property, as set forth below.

If the STATE does not accept that OHA has met each of the five conditions listed above with regard to one (or more) of the three properties, it may demand Binding Arbitration within 90 days from receipt of OHA's written "Environmental Contamination Rights Notice." Failure by the STATE to inform OHA of a decision within 90 days shall be deemed a demand for Binding Arbitration. Such Binding Arbitration shall be conducted by Keith Hunter pursuant to the rules of DPR.<sup>3</sup> The arbitration shall decide a single issue: "Has OHA proven by a preponderance of the evidence that it has separately satisfied each of conditions 1-5 above?"<sup>4</sup> If the answer is "No," OHA has no further rights.<sup>5</sup>

If the STATE does accept that OHA has separately satisfied each of conditions 1-5 above, or if the arbitrator determines that OHA has separately satisfied each of conditions 1-5 above by answering the single issue arbitration question "Yes," thus giving rise to "Environmental Contamination Rights" with regard to the property at issue, then the STATE shall have two options:

Option 1--The STATE shall accept a re-conveyance of the property from OHA, which re-conveyance must

---

<sup>2</sup> For example, if the fair market value of a property, assuming there was no environmental contamination present, is \$1000, and the fair market value of the property taking into account the environmental contamination is \$600, the "reduction in value amount" is \$400.

<sup>3</sup> If Keith Hunter is unable or unwilling to serve, the Parties shall either agree in writing on an arbitrator and the rules of arbitration, or submit the matter to a court of competent jurisdiction for the selection of a single arbitrator.

<sup>4</sup> During the Binding Arbitration the Parties may mutually agree, but are not obligated to agree, to allow the arbitrator to also decide the "Option 2 Amount" described below, in the same arbitration.

<sup>5</sup> If there is such an arbitration, or an arbitration concerning "the Option 2 Amount," the fair market value shall be as of either July 1, 2009, or the date of the arbitration, whichever is earlier.



satisfy conditions 3 and 4 above, and shall pay OHA within two years, subject to legislative appropriation (that the Parties agree to support and submit to the 2010 Legislature), 75% of the settlement value of each property as set forth herein: Kaka`ako Makai \$69,539,561 (75% of \$92,719,415); Hilo Banyan Drive \$25,862,794 (75% of \$34,483,725); Kalaeloa Makai \$44,705,250 (75% of \$59,607,000). In the event the Legislature declines to appropriate the money, OHA shall have no further remedy, except to retain or return the property.

Option 2--The STATE shall, within two years, pay OHA, subject to legislative appropriation (that the Parties agree to support and submit to the 2010 Legislature), the amount by which the "reduction in value amount" exceeds 25% of the settlement value of each property as set forth herein: Kaka`ako Makai \$23,179,854 (25% of \$92,719,415); Hilo Banyan Drive \$8,620,931 (25% of \$34,483,725); Kalaeloa Makai \$14,901,750 (25% of \$59,607,000) ("the Option 2 Amount").<sup>6</sup> If the STATE selects Option 2, it shall inform OHA of the amount it believes is the appropriate "Option 2 Amount." In the event the Legislature declines to appropriate the money, OHA shall have no further remedy, except to retain the property.

OHA may accept the "Option 2 Amount" offered by the STATE, negotiate with the STATE for a different "Option 2 Amount," or seek "Binding Arbitration" as to the "Option 2 Amount." If the STATE exercises Option 2, OHA shall have 30 days, or such other time as agreed to in writing by the

---

<sup>6</sup> For example, if the STATE were to elect Option 2 with regard to the Hilo Banyan Drive property, OHA would be entitled to the amount, if any, by which the "Reduction in Value Amount" exceeded \$8,620,931. The Parties understand that it is possible that even if environmental contamination is discovered, it may only affect the value of a part of each property. For example, if environmental contamination were discovered on the Hilo Hawaiian Hotel property (part of the Hilo Banyan Drive property), that might not affect the value of the Reed's Bay Resort Hotel property (another part of the Hilo Banyan Drive property). Thus, even if the fair market value of the affected lot itself were reduced by more than 25%, Condition 2 above might not be met, because the fair market value of the property as a whole must be reduced by 25% or more because of environmental contamination, before Condition 2 above is met.



Parties, in which to accept the "Option 2 Amount" offered by the STATE. If OHA does not timely accept the "Option 2 Amount" offered by the STATE, it will be deemed to have demanded Binding Arbitration as to the "Option 2 Amount." Such Binding Arbitration shall be conducted by Keith Hunter pursuant to the rules of DPR.<sup>7</sup>

The STATE shall make reasonably available to OHA and to OHA's authorized representatives during regular business hours, the STATE's files that contain, with regard to the three properties: (i) copies of soil reports, site plans, engineering reports, archaeological and historical studies, plans and surveys; (ii) zoning entitlement and other land use documents and records, including, without limitation, all current governmental permits, approvals and authorizations; (iii) copies of notices from governmental agencies regarding any violations of laws or ordinances; (iv) copies of all leases and correspondence with any lessees under any of the leases; (v) copies of licenses and concession agreements and all correspondence with any of the parties to such licenses and concession agreements; (vi) copies of any other agreements affecting or relating to any of the properties, and correspondence with any of the parties to such other agreements; (vii) copies of any existing surveys, and aerial photos; and (viii) copies of all plans and other documents relating to any improvements on any of the properties (the material described in clause (i) through clause (viii) above are, collectively, the "Due Diligence Documents").

#### Mediation

If the Parties have any dispute concerning enforcement of this Agreement, the Parties hereby agree to submit the dispute to Keith Hunter for mediation.

#### No Arbitration

The Parties have not agreed to arbitrate any dispute other than as specifically set forth herein.

---

<sup>7</sup> If Keith Hunter is unable or unwilling to serve, the Parties shall either agree on an arbitrator and the rules of arbitration, or submit the matter to a court of competent jurisdiction for the selection of a single arbitrator.

### Title Insurance

OHA may, if it chooses, procure title insurance to any of the properties at its own expense.

### Proration

If the STATE receives rent from the properties conveyed to OHA attributable to periods after July 1, 2008, it shall pay to OHA the amounts attributable to any periods after that date. If the State incurs expenses for the properties like taxes, maintenance fees, assessments, association dues, utility charges, for periods after July 1, 2008, OHA shall pay the STATE the amounts attributable to any periods after that date.

In the event that the amount of any rent or expense is not known July 1, 2008, the Parties agree that such items shall be prorated at that date upon the basis of the best information available, and shall be adjusted when the actual amount(s) of such items are known, with appropriate charges and credits to be made.

### Other Terms

This Agreement and its terms shall survive the transfer of the parcels to OHA.

This Agreement neither represents nor is to be construed as an acknowledgement or admission of any negligence, misconduct, liability, or fault of any kind whatsoever by any party.

The STATE does not admit to or concede the validity of any claim, but has entered into this Agreement in order to resolve and satisfy all controversies and claims described in the Proposed Legislation.

The Parties agree that no statement of fact or opinion has been made by either to the other, or by anyone acting on behalf of either to the other, to induce the execution of this Agreement, other than as expressly set forth in this Agreement and that this Agreement is executed freely

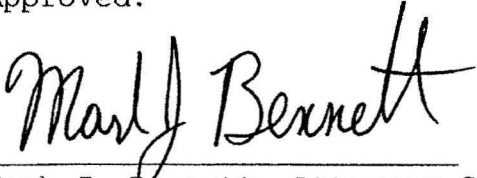
on the part of each party hereto. The Parties also represent and agree: (1) that they may hereafter discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of these releases; and (2) that this Agreement and the releases given in this Agreement shall fully remain in effect, notwithstanding the subsequent discovery or existence of any such additional or different facts.

The terms of this Agreement have been negotiated at arm's length among the Parties represented by experienced counsel. As a result, the rule of "interpretation against the draftsman" shall not apply in any dispute over interpretation of the terms of this Agreement.



Linda Lingle, Governor  
State of Hawai'i

Approved:

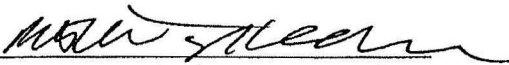


Mark J. Bennett, Attorney General



S. Haunani Apoliona, Chairperson  
Office of Hawaiian Affairs

Approved:



Robert G. Klein, Counsel to the Board of Trustees

\_\_\_B. NO. \_\_\_

---

---

# A BILL FOR AN ACT

RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. In 1978, the Constitution of the State of  
2 Hawaii was amended to include Article XII, sections 4, 5, and 6,  
3 which established the office of Hawaiian affairs and its board  
4 of trustees.

5           Sections 4, 5, and 6 of the State Constitution provide:

6           SECTION 4. The lands granted to the State of  
7 Hawaii by Section 5(b) of the Admission Act and  
8 pursuant to Article XVI, Section 7, of the State  
9 Constitution, excluding therefrom lands defined as  
10 "available lands" by Section 203 of the Hawaiian Homes  
11 Commission Act, 1920, as amended, shall be held by the  
12 State as a public trust for native Hawaiians and the  
13 general public.

14           SECTION 5. There is hereby established an Office  
15 of Hawaiian Affairs. The Office of Hawaiian Affairs  
16 shall hold title to all the real and personal property  
17 now or hereafter set aside or conveyed to it which  
18 shall be held in trust for native Hawaiians and

EXHIBIT "A"

\_\_\_\_.B. NO. \_\_\_\_\_

1       Hawaiians. There shall be a board of trustees for the  
2       Office of Hawaiian Affairs elected by qualified voters  
3       who are Hawaiians, as provided by law. The board  
4       members shall be Hawaiians. There shall be not less  
5       than nine members of the board of trustees; provided  
6       that each of the following Islands have one  
7       representative: Oahu, Kauai, Maui, Molokai and  
8       Hawaii. The board shall select a chairperson from its  
9       members.

10               SECTION 6. The board of trustees of the Office  
11       of Hawaiian Affairs shall exercise power as provided  
12       by law: to manage and administer the proceeds from  
13       the sale or other disposition of the lands, natural  
14       resources, minerals and income derived from whatever  
15       sources for native Hawaiians and Hawaiians, including  
16       all income and proceeds from that pro rata portion of  
17       the trust referred to in section 4 of this article for  
18       native Hawaiians; to formulate policy relating to  
19       affairs of native Hawaiians and Hawaiians; and to  
20       exercise control over real and personal property set  
21       aside by state, federal or private sources and  
22       transferred to the board for native Hawaiians and

\_\_\_\_.B. NO. \_\_\_\_

1       Hawaiians. The board shall have the power to exercise  
2       control over the Office of Hawaiian Affairs through  
3       its executive officer, the administrator of the Office  
4       of Hawaiian Affairs, who shall be appointed by the  
5       board.

6       In Trustees of the Office of Hawaiian Affairs v. Yamasaki,  
7       69 Haw. 154, 737 P.2d 446 (1987), the Hawai`i Supreme Court  
8       concluded that the issue of what constitutes the portion of the  
9       income and proceeds derived from the public land trust for the  
10      office of Hawaiian affairs pursuant to Article XII, section 6 of  
11      the Hawai`i Constitution, is a political question for the  
12      legislature to determine.

13      In response to the Yamasaki decision, the legislature  
14      enacted Act 304, Session Laws of Hawai`i 1990, to clarify the  
15      extent and scope of the State's obligation to provide a portion  
16      of the funds derived from the public land trust to the office of  
17      Hawaiian affairs.

18      On September 12, 2001, the Hawai`i Supreme Court ruled in  
19      Office of Hawaiian Affairs v. State of Hawai`i, 96 Haw. 388, 31  
20      P.3d 901 (2001), that Act 304 was effectively repealed by its  
21      own terms, so that once again, it was necessary for the  
22      legislature to specify what portion of which funds, from which

\_\_\_\_.B. NO. \_\_\_\_\_

1 lands the office of Hawaiian affairs was to receive under the  
2 State Constitution.

3 In its decision, the Supreme Court affirmed Yamasaki,  
4 observing:

5 [T]he State's obligation to native Hawaiians is firmly  
6 established in our constitution. How the State satisfies  
7 that constitutional obligation requires policy decisions  
8 that are primarily within the authority and expertise of  
9 the legislative branch. As such, it is incumbent upon the  
10 legislature to enact legislation that gives effect to the  
11 right of native Hawaiians to benefit from the ceded lands  
12 trust. See Haw. Const. art. XVI, §7. . . .

13 . . . we trust that the legislature will re-examine the  
14 State's constitutional obligation to native Hawaiians and  
15 the purpose of HRS § 10-13.5 and enact legislation that  
16 most effectively and responsibly meets those obligations.

17 Office of Hawaiian Affairs v. State of Hawai'i, 96 Haw. at 401,  
18 31 P.3d at 914 (citations omitted)

19 This Act has two primary purposes: (1) to finally and  
20 completely resolve any and all claims and disputes relating to  
21 the portion of income and proceeds from the lands of the public  
22 land trust for use by the office of Hawaiian affairs, including

\_\_\_\_.B. NO. \_\_\_\_\_

1 under sections 4 and 6 of Article XII of the Constitution and  
2 any relevant statute or act, between November 7, 1978 and July  
3 1, 2008; and (2) to fix, prospectively, the minimum amount of  
4 income and proceeds from the lands of the public land trust that  
5 are to be paid to the office of Hawaiian affairs to use under  
6 section 6 of Article XII of the Constitution at \$15,100,000 each  
7 fiscal year.

8 SECTION 2. Chapter 10, Hawaii Revised Statutes, is amended  
9 by adding a new section to part I to be appropriately designated  
10 and to read as follows:

11 "§10-\_\_\_ Payment and use of income and proceeds from public  
12 land trust lands. (a) Beginning July 1, 2008, \$15,100,000 of  
13 the income and proceeds collected for the use of public land  
14 trust lands during any fiscal year shall be paid to the office  
15 in equal quarterly increments of \$3,775,000, to use to  
16 implement the provisions of Article XII, sections 4 and 6 of the  
17 State Constitution regarding the income and proceeds of the  
18 public land trust. The governor is expressly authorized to  
19 identify the income and proceeds from the public land trust  
20 lands from which the \$15,100,000 is to be paid, and to fix, in  
21 the governor's discretion, the portion of each such receipt that  
22 each state agency receiving the income and proceeds shall



\_\_\_\_.B. NO. \_\_\_\_\_

1 contribute toward the \$15,100,000 payment, after giving due  
2 consideration to whether federal or state law prohibits any  
3 portion of the income and proceeds collected from being used by  
4 the office, or whether payment to the office of any portion of  
5 the income and proceeds collected will cause the agency to  
6 renege on any pre-existing pledge, rate covenant, or other pre-  
7 existing obligation to holders of revenue bonds or other  
8 indebtedness of the State or its agencies, provided further that  
9 in no event shall the payment to the office for any fiscal year  
10 be less than \$15,100,000. The governor shall issue executive  
11 orders as necessary, to implement this provision. Each  
12 quarterly payment shall be made to the office no later than  
13 thirty days after the close of each fiscal quarter.

14 (b) As long as the office retains the statutory right to  
15 receive an annual payment of income and proceeds from the public  
16 land trust lands of at least \$15,100,000, no suit for damages or  
17 any other relief may be brought against the State, or its  
18 departments, agencies, officers, or employees, by the office or  
19 any other person or entity, with respect to any controversy,  
20 claim, cause of action, or right of action arising out of, or  
21 relating to any right the office or any other person or entity  
22 may have to income, proceeds, or any other tangible right, item,

\_\_\_ .B. NO. \_\_\_

1 or benefit from the public land trust lands under sections 4 and  
2 6 of Article XII of the Constitution or any statute or act, and  
3 to the extent any waiver of sovereign immunity for such a suit,  
4 claim, cause of action, or right of action still exists, that  
5 waiver is withdrawn.

6 (c) For each and every fiscal year following June 30,  
7 2008, during which the office retained the statutory right to  
8 receive an annual payment of income and proceeds from the public  
9 land trust lands of at least \$15,100,000, each and every claim  
10 for damages or any other relief against the State, or its  
11 departments, agencies, officers, or employees, by the office or  
12 any other person or entity, with respect to any controversy,  
13 claim, cause of action, or right of action arising out of, or  
14 relating to any right the office or any other person or entity  
15 may have to income, proceeds, or any other tangible right, item,  
16 or benefit from the public land trust lands under sections 4 and  
17 6 of Article XII of the Constitution or any statute or act is  
18 forever barred, and to the extent any waiver of sovereign  
19 immunity for such a suit, claim, cause of action, or right of  
20 action still exists, that waiver is withdrawn."

\_\_\_\_.B. NO. \_\_\_\_\_

1 SECTION 3. Section 10-2, Hawaii Revised Statutes, is  
2 amended by adding a new definition to be appropriately inserted  
3 and to read as follows:

4 ""Public land trust lands" means those lands:

- 5 (1) Which were ceded to the United States by the Republic  
6 of Hawaii under the joint resolution of annexation,  
7 approved July 7, 1898 (30 Stat. 750), or acquired in  
8 exchange for lands so ceded, and which were conveyed  
9 to the State of Hawaii by section 5(b) of the  
10 Admission Act (excluding lands defined as "available  
11 lands" by section 203 of the Hawaiian Homes Commission  
12 Act, 1920, as amended);
- 13 (2) Retained by the United States under sections 5(c) and  
14 5(d) of the Admission Act, and later conveyed to the  
15 State under section 5(e) of the Admission Act; and
- 16 (3) Which were ceded to and retained by the United States  
17 under sections 5(c) and 5(d) of the Admission Act and  
18 later conveyed to the State pursuant to Pub. L. 88-233  
19 (77 Stat. 472)."

20 SECTION 4. Section 10-3, Hawaii Revised Statutes, is  
21 amended to read as follows:

.B. NO.           

1           "**§10-3 Purpose of the office.** The purposes of the office  
2 of Hawaiian affairs include:

3           (1) The betterment of conditions of native Hawaiians[.—A  
4           ~~pro rata portion of all funds derived from the public~~  
5           ~~land trust shall be funded in an amount to be~~  
6           ~~determined by the legislature for this purpose, and~~  
7           ~~shall be held and used solely as a public trust for~~  
8           ~~the betterment of the conditions of native Hawaiians.~~  
9           ~~For the purpose of this chapter, the public land trust~~  
10           ~~shall be all proceeds and income from the sale, lease,~~  
11           ~~or other disposition of lands ceded to the United~~  
12           ~~States by the Republic of Hawaii under the joint~~  
13           ~~resolution of annexation, approved July 7, 1898 (30~~  
14           ~~Stat. 750), or acquired in exchange for lands so~~  
15           ~~ceded, and conveyed to the State of Hawaii by virtue~~  
16           ~~of section 5(b) of the Act of March 18, 1959 (73 Stat.~~  
17           ~~4, the Admissions Act), (excluding therefrom lands and~~  
18           ~~all proceeds and income from the sale, lease, or~~  
19           ~~disposition of lands defined as "available lands" by~~  
20           ~~section 203 of the Hawaiian Homes Commission Act,~~  
21           ~~1920, as amended), and all proceeds and income from~~  
22           ~~the sale, lease, or other disposition of lands~~

\_\_\_\_.B. NO. \_\_\_\_\_

1           ~~retained by the United States under sections 5(c) and~~  
2           ~~5(d) of the Act of March 18, 1959, later conveyed to~~  
3           ~~the State under section 5(e)];~~

4           (2) The betterment of conditions of Hawaiians;

5           (3) Serving as the principal public agency in this State  
6           responsible for the performance, development, and  
7           coordination of programs and activities relating to  
8           native Hawaiians and Hawaiians; except that the  
9           Hawaiian Homes Commission Act, 1920, as amended, shall  
10          be administered by the Hawaiian homes commission;

11          (4) Assessing the policies and practices of other agencies  
12          impacting on native Hawaiians and Hawaiians, and  
13          conducting advocacy efforts for native Hawaiians and  
14          Hawaiians;

15          (5) Applying for, receiving, and disbursing, grants and  
16          donations from all sources for native Hawaiian and  
17          Hawaiian programs and service; and

18          (6) Serving as a receptacle for reparations."

19          SECTION 5. Section 206E-3, Hawaii Revised Statutes, is  
20          amended by amending subsection (b) to read as follows:

21                 "(b) The authority shall consist of [~~thirteen~~] fourteen  
22          voting members. The director of finance, the director of

\_\_\_\_.B. NO. \_\_\_\_\_

1 business, economic development, and tourism, the comptroller,  
2 and the director of transportation, or their respective  
3 designated representatives shall serve as ex officio, voting  
4 members. One member of the authority shall be appointed by the  
5 chairperson of the office of Hawaiian affairs. One member shall  
6 be appointed by the governor from a list of not less than three  
7 prospective appointees submitted by the president of the senate,  
8 and one member shall be appointed by the governor from a list of  
9 not less than three prospective appointees submitted by the  
10 speaker of the house of representatives. Seven members shall be  
11 appointed by the governor for staggered terms pursuant to  
12 section 26-34; provided that four members shall be appointed at  
13 large and, initially, three members, hereinafter referred to as  
14 county members, shall be selected from a list of ten prospective  
15 appointees recommended by the local governing body of the county  
16 in which the initial designated district is situated; and  
17 provided further that when vacancies occur in any of the three  
18 positions for which the members were selected from a list of  
19 county recommendations, the governor shall fill such vacancies  
20 on the basis of one from a list of four recommendations, two  
21 from a list of seven recommendations, or three from a list of  
22 ten recommendations. The list of recommendations shall be made

\_\_\_\_.B. NO. \_\_\_\_\_

1 by the local governing body of the county. If an additional  
2 district is designated by the legislature, the total membership  
3 of the authority shall be increased as prescribed above by the  
4 appointment of three additional members, except as provided for  
5 in section 206E-191. Notwithstanding section 92-15, a majority  
6 of all members shall constitute a quorum to do business, and the  
7 concurrence of a majority of all members shall be necessary to  
8 make any action of the authority valid; except that, on any  
9 matter relating solely to a specific community development  
10 district, the members representing districts other than that  
11 specific community development district shall neither vote, nor  
12 shall they be counted to constitute a quorum, and concurrence  
13 shall be required of a majority of that portion of the authority  
14 made up of all ex officio voting members, members at large, and  
15 county and district members representing the district for which  
16 action is being proposed in order for such action to be valid.  
17 All members shall continue in office until their respective  
18 successors have been appointed and qualified. Except as herein  
19 provided, no member appointed under this subsection shall be an  
20 officer or employee of the State or its political subdivisions."

\_\_\_\_.B. NO. \_\_\_\_\_

1 SECTION 6. Section 206E-8, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "~~{}~~§206E-8~~{}~~ Use of public lands; acquisition of state  
4 lands. (a) Any provision of chapter 171 to the contrary  
5 notwithstanding, the governor may set aside public lands located  
6 within community development districts to the authority for its  
7 use.

8 (b) If state lands under the control and management of  
9 other public agencies are required by the authority for its  
10 purposes, the agency having the control and management of those  
11 required lands shall, upon request by the authority and with the  
12 approval of the governor, convey, or lease such lands to the  
13 authority upon such terms and conditions as may be agreed to by  
14 the parties.

15 (c) Notwithstanding the foregoing, no public lands shall  
16 be set aside, conveyed, or leased to the authority as above  
17 provided if such setting aside, conveyance, or lease would  
18 impair any covenant between the State or any county or any  
19 department or board thereof and the holders of bonds issued by  
20 the State or such county, department, or board.

21 (d) The provisions of this section shall not apply to the  
22 land conveyed in fee simple to the office of Hawaiian affairs by



\_\_\_\_.B. NO. \_\_\_\_\_

1 Act , Session Laws of Hawaii 2008, except that the authority  
2 may acquire by condemnation pursuant to chapter 101 easements,  
3 rights-of-way, rights of entry, or other rights of access in  
4 favor of lands adjoining the property conveyed that is under the  
5 control and management of public agencies where the office of  
6 Hawaiian affairs is paid just compensation for the same."

7 SECTION 7. Section 206E-10, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "~~§~~**206E-10** **Condemnation of real property.** The  
10 authority upon making a finding that it is necessary to acquire  
11 any real property for its immediate or future use for the  
12 purposes of this chapter, may acquire the property by  
13 condemnation pursuant to chapter 101, including property already  
14 devoted to a public use. Such property shall not thereafter be  
15 taken for any other public use without the consent of the  
16 authority. No award of compensation shall be increased by  
17 reason of any increase in the value of real property caused by  
18 the designation of a community development district or plan  
19 adopted pursuant to a designation, or the actual or proposed  
20 acquisition, use or disposition of any other real property by  
21 the authority. The provisions of this section shall not apply  
22 to the land conveyed in fee simple to the office of Hawaiian

\_\_\_\_.B. NO. \_\_\_\_\_

1 affairs by Act , Session Laws of Hawaii 2008 , except that the  
2 authority may acquire by condemnation pursuant to chapter 101  
3 easements, rights-of-way, rights of entry, or other rights of  
4 access in favor of lands adjoining the property conveyed that is  
5 under the control and management of public agencies where the  
6 office of Hawaiian affairs is paid just compensation for the  
7 same."

8 SECTION 8. Section 206E-34, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "[~~§~~**206E-34 Cultural public market.** ~~§~~] (a) There shall  
11 be established within the Hawaii community development authority  
12 a state cultural public market.

13 (b) The cultural public market shall be located on state  
14 land within the Kakaako Makai area and developed pursuant to  
15 sections 206E-31, 206E-32, and 206E-33. A public parking lot  
16 shall be included.

17 (c) The Hawaii community development authority shall:

18 (1) Designate and develop the state-owned land for the  
19 cultural public market;

20 (2) Accept, for consideration, input regarding the  
21 establishment of the cultural public market from the  
22 following departments and agencies:

\_\_\_\_.B. NO. \_\_\_\_\_

- 1 (A) The department of agriculture;
- 2 (B) The department of business, economic development,  
3 and tourism;
- 4 (C) The department of land and natural resources;
- 5 (D) The department of labor and industrial relations;  
6 and
- 7 (E) The Hawaii tourism authority;
- 8 (3) Consider and determine the propriety of using public-  
9 private partnerships in the development and operation  
10 of the cultural public market;
- 11 (4) Develop, distribute, and accept requests for proposals  
12 from private entities for plans to develop and operate  
13 the cultural public market; and
- 14 (5) Ensure that the Hawaiian culture is the featured  
15 culture in the cultural public market.
- 16 (d) Requests for proposals for the cultural public market  
17 shall contemplate but not be limited to the inclusion of the  
18 following types of facilities and services:
- 19 (1) Retail outlets for ethnically diverse products;
- 20 (2) Venues for businesses with ethnic themes, including  
21 restaurants and other service-related businesses;

\_\_\_ .B. NO. \_\_\_

1 (3) Theaters, stages, and arenas designed to showcase  
2 cultural performing artists as well as community  
3 performing arts;

4 (4) Exhibition space or museums that showcase artwork  
5 created by international and local artists; and

6 (5) Museums or other educational facilities focusing on  
7 the history and cultures of the various ethnic groups  
8 within Hawaii, including Hawaiian history.

9 (e) The provisions of this section shall not apply to the  
10 land conveyed in fee simple to the office of Hawaiian affairs by  
11 Act \_\_\_\_\_, Session Laws of Hawaii 2008."

12 SECTION 9. Sections 10-13.3 and 10-13.5, Hawaii Revised  
13 Statutes, are repealed.

14 [~~"§10-13.3 Interim revenue. Notwithstanding the~~  
15 ~~definition of revenue contained in this chapter and the~~  
16 ~~provisions of section 10-13.5, and notwithstanding any claimed~~  
17 ~~invalidity of Act 304, Session Laws of Hawaii 1990, the income~~  
18 ~~and proceeds from the pro-rata portion of the public land trust~~  
19 ~~under article XII, section 6 of the state constitution for~~  
20 ~~expenditure by the office of Hawaiian affairs for the betterment~~  
21 ~~of the conditions of native Hawaiians for each of fiscal year~~  
22 ~~1997-1998 and fiscal year 1998-1999 shall be \$15,100,000."]~~

\_\_\_\_.B. NO. \_\_\_\_\_

1       ~~["§10-13.5 Use of public land trust proceeds. Twenty per~~  
2       ~~cent of all funds derived from the public land trust, described~~  
3       ~~in section 10-3, shall be expended by the office, as defined in~~  
4       ~~section 10-2, for the purposes of this chapter."]~~

5       SECTION 10. Section 3 of Act 178, Session Laws of Hawaii  
6       2006, is repealed.

7       ~~["SECTION 3. Notwithstanding the provisions of chapter 10,~~  
8       ~~Hawaii Revised Statutes, or the requirements of Executive Order~~  
9       ~~No. 03-03, beginning in fiscal year 2005-2006, the departments~~  
10       ~~of agriculture, accounting and general services, business,~~  
11       ~~economic development, and tourism, education, land and natural~~  
12       ~~resources, and transportation (for its harbors division), and~~  
13       ~~any other department or agency that collects receipts from the~~  
14       ~~lands within the public land trust, shall determine and transfer~~  
15       ~~to the office of Hawaiian affairs that portion of their receipts~~  
16       ~~from the use of lands within the public land trust collected~~  
17       ~~during each fiscal quarter, necessary to ensure that a total of~~  
18       ~~\$3,775,000 of revenues generated by the public land trust is~~  
19       ~~transferred to the office of Hawaiian affairs, within thirty~~  
20       ~~days of the close of each fiscal quarter; provided that for~~  
21       ~~fiscal year 2005-2006, the departments shall have until thirty~~  
22       ~~days after the close of the fiscal year to transfer a total of~~

\_\_\_\_.B. NO. \_\_\_\_\_

1 ~~\$15,1000,000 from their receipts from the use of lands within~~  
2 ~~the public land trust collected during fiscal year 2005-2006, to~~  
3 ~~the office of Hawaiian affairs whether by the procedures set out~~  
4 ~~in Executive Order No. 03-03 or this Act.~~

5 ~~The governor is expressly authorized to fix the amounts~~  
6 ~~each agency shall transfer to the office of Hawaiian affairs in~~  
7 ~~each quarter by executive order to implement the provisions of~~  
8 ~~this section." ]~~

9 SECTION 11. (a) Notwithstanding any other law to the  
10 contrary, the fee simple interest to the following parcels of  
11 land with the existing improvements thereon (but not including  
12 submerged land, accreted land, or any land makai of the  
13 shoreline), is hereby conveyed to the office of Hawaiian affairs  
14 as of July 1, 2008:

15 Kaka`ako Makai: (Lots 2, 3, 4, 5, and 9 as identified  
16 on the final Kakaako Park Subdivision Map dated October 15,  
17 2007 and approved by the City & County of Honolulu  
18 Department of Planning and Permitting on November 9, 2007)

19 Kalaeloa Makai: (TMK: (1)-9-1-31:1)

20 Hilo Banyan Drive: Bayview Banyan Corp. (TMK: (3)-2-  
21 1-5:21); Country Club Condo Hotel (TMK: (3)-2-1-5:20);  
22 Hilo Hawaiian Hotel (TMK: (3)-2-1-3:5); Naniloa Hotel &

\_\_\_\_.B. NO. \_\_\_\_\_

1 Golf Course (TMK: (3)-2-1-1:12; TMK: (3)-2-1-5:13, 14,  
2 16, 17, 27, 32, 39, 41, 42, 46); Reed's Bay Resort Hotel  
3 (TMK: (3)-2-1-5:22); Uncle Billy's Hilo Bay Hotel Inc.  
4 (TMK: (3)-2-1-5:9, 12, 33, 34, 35, 45, 47).

5 (b) As directed by the attorney general, the appropriate  
6 boards, agencies, officers, and employees of the State shall (1)  
7 execute instruments of conveyance as may be necessary and proper  
8 to the office of Hawaiian affairs, as grantee, to convey the  
9 interest and title of the State and its boards and commissions  
10 to these lands and improvements in fee simple, and (2) record  
11 the instruments in the land court or bureau of conveyances, as  
12 appropriate. As these are conveyances in which the State and  
13 its agencies are the only parties, the tax imposed by section  
14 247-1, Hawaii Revised Statutes, shall not apply to them.

15 The conveyances made by this section shall not and do not  
16 include any of the State's rights to minerals, or surface or  
17 ground water.

18 The property conveyed shall be and remain subject to all  
19 encumbrances (whether or not of record), rights of native  
20 tenants, leases, contracts, agreements, permits, easements,  
21 profits, licenses, rights-of-way or other instruments applicable  
22 to any land conveyed by this section effective or on-going on

\_\_\_\_.B. NO. \_\_\_\_\_

1 the effective date of this Act, which shall remain in full force  
2 and effect. Such may be set forth in the deeds conveying the  
3 property to the office or set forth in a license or similar  
4 agreement, a memorandum of which may be recorded concurrently  
5 with the deeds conveying the property to the office. Effective  
6 July 1, 2008, every reference to the present title-holder or the  
7 head of the department or agency in each such instrument, if the  
8 title-holder is a department or an agency, shall be construed as  
9 a reference to the office of Hawaiian affairs or its board of  
10 trustees.

11 After the conveyances are made and while the office of  
12 Hawaiian Affairs owns the property, the office shall cooperate  
13 with the State to designate and grant such access rights and  
14 easements to the State as may be reasonably necessary for the  
15 benefit and use of adjoining properties owned by the State. The  
16 office shall not be required to approve any access rights or  
17 grant any access easements to the State that would materially  
18 diminish the value of the servient property or that would  
19 materially interfere with the use of the servient property by  
20 the office or any lessee, tenant, licensee, concessionaire, or  
21 other occupant of the property. Each of the instruments  
22 creating such access rights or granting such easements shall



\_\_\_ .B. NO. \_\_\_

1 provide that the office, or any successor owner of the servient  
2 property, shall have the right to reasonably relocate any such  
3 access areas or easements so granted. The cost of initially  
4 identifying such access areas or designating and granting any  
5 such easements shall be paid by the State. The cost of  
6 relocating any such access areas or easements shall be paid by  
7 the office or any such successor owner, as the case may be.  
8 Each of the instruments creating such access rights or granting  
9 such easements also shall provide that the State shall be  
10 responsible for a reasonable share of the cost of maintaining  
11 any such access areas and easement areas, as the case may be,  
12 and that the State shall indemnify the office, its tenants,  
13 licensees, concessionaires, successors, and assigns, from any  
14 liability arising from the use of such access areas or easement  
15 areas by the State or its invitees.

16 Except as set forth in this Act, beginning on July 1, 2008,  
17 the State shall not impose new leases, contracts, agreements,  
18 permits, or other instruments upon any land conveyed by this  
19 section.

20 SECTION 12. The passage of this Act is in full  
21 satisfaction and resolution of all controversies at law and in  
22 equity, known or unknown, now existing or hereafter arising,

\_\_\_\_.B. NO. \_\_\_\_\_

1 established or inchoate, arising out of or in any way related to  
2 any right the office of Hawaiian affairs or any other person or  
3 entity may have to income, proceeds, or any other tangible  
4 right, item, or benefit, from the public land trust lands under  
5 sections 4 and 6 of Article XII of the Constitution or any  
6 statute or act, which arose between November 7, 1978 and July 1,  
7 2008; thus, upon the passage of this Act, each and every claim  
8 or suit that is predicated in any way upon an act or omission  
9 that arises out of or is in any way related to any right the  
10 office of Hawaiian affairs or any other person or entity may  
11 have to the income, proceeds, or any other tangible right, item,  
12 or benefit from the public land trust lands under sections 4 and  
13 6 of Article XII of the Constitution or any statute or act, that  
14 occurred between November 7, 1978 and July 1, 2008, is forever  
15 barred and may not be brought by the office of Hawaiian affairs  
16 or by any other person or entity.

17 The passage of this Act shall have the effect of *res*  
18 *judicata* as to all persons, claims, and issues which arise and  
19 defenses which have been at issue, or which could have been, or  
20 could in the future be, at issue, which arose between November  
21 7, 1978 and July 1, 2008, whether brought against the State or  
22 its departments, agencies, officials, and employees, directly or

\_\_\_\_.B. NO. \_\_\_\_\_

1 indirectly, by subrogation, derivative or third party action,  
2 tender, federal action, or by any other means whatsoever arising  
3 out of or in any way related to any right the office of Hawaiian  
4 affairs or any other person or entity may have to the income,  
5 proceeds, or any other tangible right, item, or benefit from the  
6 public land trust lands under sections 4 and 6 of Article XII of  
7 the Constitution or any statute or act.

8 SECTION 13. The State, while not admitting the validity of  
9 any claim, hereby resolves and satisfies all controversies and  
10 claims described in section 12 of this Act by:

11 (1) The payment of \$13,189,860, for which general  
12 obligation bond funds are authorized and appropriated  
13 in section 14 of this Act; and

14 (2) The conveyance of the land and improvements made in  
15 section 11 of this Act.

16 SECTION 14. There is authorized and appropriated a sum not  
17 to exceed \$13,189,860 out of the general obligation bond funds  
18 of the State of Hawaii or so much thereof as may be necessary  
19 for the fiscal year ending June 30, 2009, for the purpose of  
20 making the payment described in section 13 of this Act. Any  
21 funds remaining unexpended or unencumbered as of June 30, 2009,  
22 shall lapse as of such date. The sum appropriated shall be

\_\_\_\_.B. NO. \_\_\_\_\_

1 expended by the department of budget and finance by making the  
2 required payment to the office of Hawaiian affairs no later than  
3 June 30, 2009.

4 SECTION 15. The real property conveyances made under this  
5 Act, and the funds paid under this Act regardless of the means  
6 of financing, shall be deemed income and proceeds from the  
7 public land trust, as if they had been paid out of the income  
8 and proceeds from the public land trust pursuant to Article XII,  
9 section 4 and Article XII, section 6 of the State Constitution.

10 SECTION 16. Notwithstanding any other law to the contrary,  
11 the State, and the state officials who may have participated in  
12 the preparation of the provisions or the enactment of this Act,  
13 including the office of Hawaiian affairs, each of the members of  
14 its board of trustees, and its staff, shall not be subject to  
15 suit because of their participation, except if an action is  
16 brought to enforce the provisions of this Act, in which case the  
17 action shall be brought only against the State and any official  
18 necessary to the enforcement of the Act's provisions.

19 SECTION 17. If any provision of chapter 673, Hawaii  
20 Revised Statutes, is inconsistent with any provision of this  
21 Act, then the provisions of this Act shall prevail.

\_\_\_\_.B. NO. \_\_\_\_\_

1           SECTION 18. (a) The provisions of this Act are not  
2 severable to the extent that if any one or more of sections 9,  
3 10, 12, or 14 of this Act, or the provisions of subsections (b)  
4 or (c) of the new section added to chapter 10, Hawaii Revised  
5 Statutes, by section 2 of this Act, or subsection (a) of section  
6 11 of this Act, or the application of any one or more of said  
7 sections or subsections is held invalid or unenforceable, this  
8 Act in its entirety shall be invalid, and (1) sections 10-2, 10-  
9 3, 10-13.3, 10-13.5, 206E-3, 206E-8, 206E-10, and 206E-34,  
10 Hawaii Revised Statutes, and section 3 of Act 178, Session Laws  
11 of Hawaii 2006, shall be reenacted in the form in which they  
12 read on the day before the effective date of this Act, (2) all  
13 interests in the lands and improvements conveyed by the  
14 provisions of section 11 of this Act, shall be conveyed back to  
15 their respective grantors by the office of Hawaiian affairs, but  
16 in such case (A) the State shall (i) indemnify the office of  
17 Hawaiian affairs with regard to any environmental claims  
18 asserted by any third party against the office of Hawaiian  
19 affairs arising solely from time periods when the State held the  
20 fee title to the lands, and (ii) indemnify the office of  
21 Hawaiian affairs with regard to those portions of any  
22 environmental claims asserted by any third party against the

\_\_\_\_.B. NO. \_\_\_\_\_

1 office of Hawaiian affairs arising solely from time periods when  
2 the State held the fee title to the lands, and (B) the office of  
3 Hawaiian affairs shall (i) indemnify the State with regard to  
4 any environmental claims asserted by any third party against the  
5 State, arising solely from time periods when the office of  
6 Hawaiian affairs held the fee title to the lands, and (ii)  
7 indemnify the State with regard to those portions of any  
8 environmental claims asserted by any third party against the  
9 State solely from time periods when the office of Hawaiian  
10 affairs held the fee title to the lands; provided further that  
11 at the option of the office of Hawaiian affairs, if in lieu of  
12 conveying back the lands and improvements conveyed by the  
13 provisions of section 11 of this Act to the State, the office of  
14 Hawaiian affairs opts not to reconvey the lands, then the office  
15 shall pay the director of finance \$186,810,140, of which the  
16 director shall deposit \$94,090,725 into the special land and  
17 development fund of the department of land and natural resources  
18 for all of the property conveyed to the office other than at  
19 Kaka`ako Makai, and pay \$92,719,415 to the Hawaii community  
20 development authority for the property at Kaka`ako Makai; and  
21 (3) the \$13,189,860 payment paid back to the director of finance

\_\_\_\_.B. NO. \_\_\_\_\_

1 by the office of Hawaiian affairs and deposited into the Bond  
2 Fund as defined in section 37-62, Hawaii Revised Statutes.

3 (b) There is no waiver of sovereign immunity to bring any  
4 suit, claim, cause of action, or right of action to invalidate  
5 sections 9, 10, 12, or 14 of this Act, or the provisions of  
6 subsections (b) or (c) of the new section added to chapter 10,  
7 Hawaii Revised Statutes, by section 2 of this Act, or subsection  
8 (a) of section 11 of this Act, or the application of any one or  
9 more of said sections or subsections, and to the extent any  
10 waiver of sovereign immunity for such a suit, claim, cause of  
11 action, or right of action still exists, that waiver is  
12 withdrawn.

13 SECTION 19. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 20. This Act shall take effect on July 1, 2008.

16 INTRODUCED BY: \_\_\_\_\_

17

**EXHIBIT B - SETTLEMENT PROPERTIES**

<b>Property Description</b>	<b>Tax Map Key &amp; Kaka'ako Subdivision Lot Number</b>	<b>Address</b>	<b>Approx. Parcel Size</b>	<b>Settlement Value (\$)</b>
Kaka'ako Makai	2	1011 Ala Moana Blvd.	4.915	
Kaka'ako Makai	3	Ahui St.	5.066	
Kaka'ako Makai	4	45 Ahui St.	0.083	
Kaka'ako Makai	5	53 Ahui St.	0.856	
Kaka'ako Makai	9	160 Ahui St.	7.531	
<b>Kaka'ako Makai</b>			<b>18.451</b>	<b>92,719,415</b>
Kalaeloa Makai	1910310010000	91-319 Olai St.	110.100	
<b>Kalaeloa Makai</b>			<b>110.100</b>	<b>59,607,000</b>
Bayview Banyan Corp.	3210050210000	161 Banyan Dr.	1.091	
Country Club Condo Hotel	3210050200000	121 Banyan Dr.	1.166	
Hilo Hawaiian Hotel	3210030050000	Banyan Dr.	5.000	
Naniloa Hotel & Golf Course	3210010120000	1713 Kamehameha Ave.	63.248	
Naniloa Hotel & Golf Course	3210050130000	Banyan Dr.	0.720	
Naniloa Hotel & Golf Course	3210050140000	Banyan Dr.	0.232	
Naniloa Hotel & Golf Course	3210050160000	Banyan Dr.	2.950	
Naniloa Hotel & Golf Course	3210050170000	Banyan Dr.	0.750	
Naniloa Hotel & Golf Course	3210050270000	Banyan Dr.	0.121	
Naniloa Hotel & Golf Course	3210050320000	Banyan Dr.	0.749	
Naniloa Hotel & Golf Course	3210050390000	Banyan Dr.	0.012	
Naniloa Hotel & Golf Course	3210050410000	Banyan Dr.	0.015	
Naniloa Hotel & Golf Course	3210050420000	Banyan Dr.	0.025	
Naniloa Hotel & Golf Course	3210050460000	Banyan Dr.	1.054	
Reed's Bay Resort Hotel	3210050220000	175 Banyan Dr.	1.190	
Uncle Billy's Hilo Bay Hotel Inc.	3210050090000	Banyan Dr.	0.118	
Uncle Billy's Hilo Bay Hotel Inc.	3210050120000	Banyan Dr.	0.115	
Uncle Billy's Hilo Bay Hotel Inc.	3210050330000	Banyan Dr.	0.586	
Uncle Billy's Hilo Bay Hotel Inc.	3210050340000	87 Banyan Dr.	0.531	
Uncle Billy's Hilo Bay Hotel Inc.	3210050350000	Banyan Dr.	0.495	
Uncle Billy's Hilo Bay Hotel Inc.	3210050450000	Banyan Dr.	0.215	
Uncle Billy's Hilo Bay Hotel Inc.	3210050470000	Banyan Dr.	0.013	
<b>Hilo Banyan Drive</b>			<b>80.397</b>	<b>34,483,725</b>
<b>LAND SETTLEMENT VALUE</b>			<b>208.948</b>	<b>186,810,140</b>





Hawai'i Office  
212 Merchant St.  
Suite 320  
Honolulu, HI  
96813  
1-808-524-8560  
1-808-524-8565  
www.tpl.org

**THE TRUST FOR PUBLIC LAND'S TESTIMONY IN SUPPORT OF  
HB 266 Relating to Hawaiian Affairs  
House Committee on Water, Land, Ocean Resources and Hawaiian Affairs  
House Committee on Judiciary  
House Committee on Finance  
Saturday, February 23, 2008, 9:00 a.m.  
State Capitol Auditorium, 415 South Beretania  
[@capitol.hawaii.gov](mailto:@capitol.hawaii.gov)**

Dear Chairpersons Ito, Waters, Oshiro and Committee Members:

The Trust for Public Land (TPL) supports HB 266 Relating to Hawaiian Affairs.

TPL conserves land for people to enjoy as parks, gardens and other natural places, ensuring livable communities for generations to come. Nationwide, TPL has five program initiatives: (1) providing parks for people, (2) protecting working lands (farms, ranches, and forests), (3) conserving natural lands (wilderness, wildlife habitat), (4) safeguarding heritage lands (cultural and historical resources), and (5) preserving land to ensure clean drinking water and the natural beauty of our coasts and waterways. In Hawai'i, TPL has worked with public and private partners to conserve over 36,000 acres of land in the State, with a focus on coastal lands and lands important to Hawaiian communities.

Over the past several years, TPL has worked with the Office of Hawaiian Affairs (OHA) to acquire and conserve 1,875 acres at Waimea Valley on O'ahu, 24,856 acres at Wao Kele o Puna on Hawai'i Island, and 73 acres at Mū'olea Point on Maui. Throughout our dealings with OHA, the Board of Trustees and Land Management Hale Director Jonathan Scheuer and his staff have been very professional and supportive as conservation partners. OHA is well aware of the responsibilities (and liabilities) that come with ownership and management of land. OHA has prepared a strategic plan for its land acquisition priorities, and has hired additional land hale staff. OHA continually balances the need to continue the living Hawaiian culture, while at the same time, create a sound economic foundation for a future nation.

An agreement that would fulfill a part of the State's obligations to the Hawaiian people under Article XII, sections 4 and 6 of our Constitution is a start, would put to rest some 30+ years of ongoing negotiations, court battles and community disenchantment over the Admission Act's Section 5(f) purpose of "bettering the conditions of native Hawaiians" and would allow OHA and the State to focus on other extremely pressing issues of education, economy, environment, and cultural preservation.

TPL further supports HB 266 with the understanding that:

- 1) It does not settle claims stemming from the illegal overthrow of the Hawaiian Kingdom;
- 2) It sets a permanent but minimum amount of funding for OHA per year; and
- 3) OHA and the State after 4 years of negotiations have agreed that the settlement is fair, just and reasonable for both parties.

Though this agreement will not quell all fears and mistrust, it is a good start towards reconciliation. We believe OHA is transitioning to a place of new confidence, experience and vigor and is fully up to the challenge. Therefore, TPL supports HB 266.

Mahalo for this opportunity to testify.

A handwritten signature in black ink that reads "Lea Hong". The signature is written in a cursive, flowing style.

Lea Hong  
Hawaiian Islands Program Director

**INPEACE- Institute for Native Pacific Education and Culture****TESTIMONY****HB266****RELATING TO HAWAIIAN AFFAIRS****Testimony Presented Before****The House Committee's on Water, Land, Ocean Resources and Hawaiian Affairs,****February 23, 2008 @ 9:00am in the State Capitol Auditorium****by****Kanoë Nāone, Chief Executive Officer**

**INPEACE SUPPORTS** the overall intent of this bill and urges you to pass this measure. At **INPEACE** we serve more than 2,400 parents, children and community members annually with our free programs across the state. Our programs include early childhood education and workforce development. We operate in every community in the Wai'anae district, South Kona, Keaukaha, Pana'ewa, Hilo, and Kilohana on Moloka'i year round and on 6 islands in 30 schools during the summer. We are committed to improving the quality of life for Native Hawaiians through community partnerships that provide educational opportunities and promote self-sufficiency. We strongly believe in the mission of OHA and their efforts to restore Native Hawaiians to the condition our people were in prior to the coming of disease, stripping of land, and banning of our language, religion and cultural practices. This settlement is a step in the right direction and will benefit not only Native Hawaiians but all the people of Hawai'i. Without the settlement it will be extremely difficult for OHA to support education, better conditions of Native Hawaiians, develop farm and home ownership, making public improvements or providing lands for public use all of which are its directives as a state agency. This is an opportunity to right the wrongs of the past, please pass this bill.

008

**Legislative Testimony**

Submitted by: Stephen K. Morse

**HB 266 RELATING TO PUBLIC LANDS TRUST SETTLEMENTY**

House Committees on Water, Land, and Hawaiian Affairs, Judiciary, and Finance

February 23, 20089:00 amState Capitol Auditorium

Aloha. My name is Stephen K. Morse. I strongly support HB 266, because as a 61-year old Native Hawaiian, I believe this bill will help better the conditions of all Hawaiians now and the generations to come.

As I remember, negotiations on the ceded land settlement began shortly after OHA was created over 25 years ago, so this settlement is long overdue.

I believe the settlement is a fair one for both OHA and the State. The cash and income generated from lands included in the settlement will give OHA the opportunity to expand its programs and services to our Hawaiian communities. There will be more scholarships and educational opportunities for our keiki and opio and many more opportunities for Hawaiians to lift ourselves up by the bootstraps and become more socially and economically self-sufficient.

For the State, the settlement will provide the opportunity to honor a long-standing obligation to Native Hawaiians; to correct the wrongs of the past; to make things *pono* (right). In the long-term, it will also benefit because the more opportunities OHA makes available for Hawaiians to become educated and socially and economically self-sufficient, the less of a financial burden we will be on government programs.

There are Hawaiians and non-Hawaiians who criticize the content of the settlement. Some Hawaiians say it's not enough. Non-Hawaiians say it's too much.

Legislative Testimony on HB 266

February 23, 2008

Pg. 2

In terms of the cash and land included in the settlement, I say as a Hawaiian, let us accept this, because who knows what tomorrow will bring.

For this Hawaiian, however, this settlement has deeper meaning and significance. It will bring closure to the *aha* (the hurt) between Hawaiians and the State. Let the healing begin, and let us set forth together to preserve and perpetuate everything that is wondrous and special about Hawaii for our children and grandchildren.

This Hawaiian strongly urges your support of this bill. Mahalo nui loa for the opportunity to present this testimony.

009

Legislative Testimony on HB 266 Relating to Public Land Trust Settlement  
House Committees on Water, Land and Hawaiian Affairs, Judiciary, and Finance  
February 23, 2008 9:00 am State Capitol Auditorium

Aloha.

My Name is Patti Silva. I am the board secretary for Manawale`a Riding Center and also one of it's North American Riding for the Handicapped Association (NARHA) certified riding instructors. With me here today is Ben Char, Jr (President of Manawale`a Riding Center and owner of Da Ranch) and Wayne Silva (1<sup>st</sup> vice-president). **We strongly support HB 266.**

Manawale`a Riding Center is a 501(c)(3) charitable organization that was formed in 2000 by a group of horse-loving Hawaiians who had a desire to provide special needs children and youth with a therapeutic outdoor educational experience based on horsemanship. Our primary mission is to create a safe and nurturing environment where children with special needs, indigent, or those from specialty groups will experience the unconditional love and bonding horses can provide. Our major goal is the establishment of a first class horsemanship center where children can learn and acquire basic skills, self-confidence, self-discipline, enhanced physical fitness, and coordination through safe horsemanship practices. To do so, however, we need to upgrade our basic facilities at the Riding Center. Through grants received from OHA for the planning, design and construction of an ADA bathroom facility our goal of upgrading our facility is becoming a reality.

Manawale`a's primary base of operations is located at "Da Ranch," a privately owned and operated horse ranch located on a parcel of Hawaiian Home Lands in Waimanalo. The therapeutic riding program, however, is not limited to residents of Waimanalo. The program services are available to residents, schools, and programs that work with disabled and special needs children throughout the island of Oahu and other parts of the State of Hawaii. For example, last year Manawale`a worked with specialty groups such as the Hawaii Department of Education's Visually Impaired Student Program - Manawale`a hosted twenty (20) students in this program from the islands of Hawaii, Maui, Molokai and Kauai.

80% of the children in our program come from economically disadvantaged families whose incomes are at or below 80% of the median income for families on the island of Oahu (according to U.S. Census 2000 data, median income for a family of four on the island of Oahu is \$51,000).

Manawale`a's target population has primarily been economically disadvantaged and special needs children and youth. We have served over 2,000 children in the past two years, 80% of them Native Hawaiian.

Legislative Testimony on HB 266 From Manawale'a, Inc.  
February 23, 2008  
Pg. 2

The continued support of OHA is critical to the continued success and growth of our therapeutic riding center for children and adults with disabilities.

Thank you for your kind attention.

*Aleka Koku Duthen*

*My name is Aleka Duthen a concerned  
Native Hawaiian. I support HB 916 HD1  
with amendments, (red font amendments)*

*Re: HB 916 HD1 Related to Hawaiian Organics*

*Aleka Koku, Chairman Ken Ito and committee  
members*

010



**HB266InPersonOHA**

---

**From:** Ken Conklin [ken\_conklin@yahoo.com]  
**Sent:** Wednesday, February 20, 2008 5:56 PM  
**To:** HB266InPersonOHA  
**Subject:** Testimony for HB 266, HD1 (Saturday morning hearing, ceded lands)

HB266InPersonOHA@Capitol.hawaii.gov

Testimony for HB 266, HD1

DATE: Saturday, February 23, 2008  
 TIME: 9:00 a.m.  
 PLACE: Auditorium

COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS Rep. Ken Ito, Chair

COMMITTEE ON JUDICIARY  
 Rep. Tommy Waters, Chair

COMMITTEE ON FINANCE  
 Rep. Marcus R. Oshiro, Chair

TESTIMONY IN OPPOSITION to HB 266, HD1  
 (HSCR676-08)

Aloha kakou,

One small step for OHA, one giant leap toward racial apartheid in Hawaii. This bill threatens to slice off another piece of Hawaii, slowly killing our state through the death of 1,000 cuts.

That's the big picture regarding the ceded lands agreement between Governor Lingle and OHA which this bill seeks to enact into law:

Let me move from the general to the specific.  
 First I'll explain that big picture. Then I'll discuss the ownership of ceded lands and allocation of revenues from them. Finally I'll address a particular element of this bill; namely, the disaster awaiting the hotels along Banyan Drive in Hilo.

#### THE BIG PICTURE

I recently published a book you all should read.  
 It's not in bookstores but is available in the library or from the publisher through <http://tinyurl.com/2a9fqa> .  
 The title says it all: "Hawaiian Apartheid -- Racial Separatism and Ethnic Nationalism in the Aloha State."

Since 1978 the government of Hawaii has been facilitating the development of an Evil Empire of racially separate governmental and private institutions exclusively for ethnic Hawaiians.

The Office of Hawaiian Affairs (OHA) was founded on three pillars of racial separatism: Only ethnic Hawaiians could vote for OHA trustees; only ethnic Hawaiians could run for OHA trustee; and only ethnic Hawaiians could receive benefits from OHA. The first pillar was knocked down by the U.S. Supreme Court in Rice v. Cayetano; the second pillar was knocked down by the U.S.

District Court in Honolulu and the 9th Circuit Court of Appeals in Arakaki v. State of Hawaii; but the third pillar remains standing despite substantively correct lawsuits dismissed on technicalities.

In response to those lawsuits, the Akaka bill has been continuously re-introduced in Congress for nearly eight years, with zealous support from our Governor, Attorney General, and nearly every member of our Legislature. The Akaka bill seeks to authorize creation of a racially exclusionary government for all persons worldwide who have a drop of Hawaiian

native blood -- that is the sole requirement for membership. The bill would authorize transfer of land, money, and jurisdictional authority to the phony Akaka tribe.

The whole concept of a racially exclusionary government is evil. And unlike any of the real Indian tribes which include a small number of people in a restricted and usually remote area of land, this one would legally segregate 20% of the entire population of a State, and perhaps 50% of the State's lands; thus deserving the label "apartheid." Hawaii's Evil Empire of racially exclusionary institutions has grown so powerful that hardly any public officials will dare to stand up against it. The multiracial, multicultural society of Hawaii has hardly any voice in government because the wealthy, powerful institutions of the Evil Empire have silenced their voice through the expenditure of untold millions of dollars in lobbying, advertising, school curriculum, etc. Who hasn't seen expensive, racist Kau Inoa commercials beamed into their living rooms at least 500 times, or newspaper ads "explaining" the Akaka bill?

In case the Akaka bill does not get enacted, OHA created "Plan B" to expand the evil Empire almost as effectively anyway. The idea is to get our compliant Governor and Legislature, plus the Counties and private groups, to transfer land, money, and jurisdictional authority directly to OHA -- a plan already being implemented. On O'ahu the County of Honolulu used tax dollars plus money from several environmental groups to purchase the entire Waimea Valley. OHA made only a small contribution, but was given the deed to the entire valley. In Waiokele O Puna on Hawaii Island, OHA again contributed only a small portion of the purchase price but ended up with the deed to the entire parcel of 40 square miles.

OHA keeps asking for money to build its new headquarters, which would become the national capitol of the new Akaka tribal nation (until 'Iolani Palace which taxpayers renovated is handed over). Now comes the State of Hawaii ready to give away \$200 Million of public land and money to OHA through this bill.

If the Akaka bill passes (which our Governor, Attorney general, and Legislature are working hard to accomplish), then the leadership of the new Akaka tribe will negotiate with the State of Hawaii for enormous amounts of land, money, and jurisdictional authority -- and who will stand up to protect the rights of the general public? Why should the State of Hawaii give away anything at this time, in the face of future negotiations where more will be demanded? Would a business owner give away part of something even before he enters negotiations for all of it?

The time is now to begin protecting all Hawaii's people against wealthy, powerful, greedy race-based institutions seeking to grab as much as they can at the expense of everyone else.

Hawaii is experiencing the death of 1,000 cuts.

Waimea Valley and Waiokele O Puna were two of those cuts. this bill would take another cut out of the State of Hawaii, continuing the erosion of our tax base. To stop death by 1,000 cuts there must come a time when the next scheduled cut is prevented.

#### CEDED LANDS AND REVENUES

It is historically, legally, and morally wrong to allocate government land, or revenues from land, for exclusive use by a racial group. Neither Kingdom law, nor the Organic Act for annexation, nor the Statehood Admissions Act, contemplated or required the creation of OHA. The decision to set aside 20% of ceded land revenue for OHA in 1978 was an arbitrary and capricious enactment of an ordinary law which the Legislature can AND SHOULD repeal at any time.

The public lands of Hawaii, including the ceded lands, belong to all the people of Hawaii without racial distinction. During the Kingdom, following the Mahele, the government lands were held by the government on behalf of all the people, just as now. The Crown lands also became government property by act of the Kingdom Legislature, gladly signed by the King, to issue government bonds to pay a mortgage lien on the Crown Lands the King had incurred to pay the King's personal (gambling) debts. Thereafter income from the Crown Lands was set aside to maintain the office of head of government in his official capacity but not as his private property. Thus, when the monarchy ended, the Crown lands and government lands were indistinguishable, all held by government to benefit all the people without regard to race -- both then and now.

The Statehood Act of 1959 does not require setting aside any ceded land income specifically for any racial group. It identified 5 purposes for the use of ceded land

revenues, and said that part or all of the revenue could be used for any one or more of those 5 purposes. When 100% of ceded land revenues was sent to the public schools from 1959 to 1979, 26% of ceded land revenues were thereby used for the betterment of Native Hawaiians, without need for racial separatist designation, simply because 26% of the children were of that racial group. Wasn't that a wonderful idea? Why not do that again?

On January 20 in the Honolulu Star-Bulletin, Jon Van Dyke wrote:  
"the revenue generated from these lands to be used for five named purposes ..." No Jon, not really. There was no requirement to spend one dime on any particular one of those purposes.

Van Dyke laments "During the next two decades, however, the state failed to allocate any of the revenue specifically for this purpose [betterment of native Hawaiians], devoting almost all of it to public education. To address this failure ..."

No Jon, not really. As I explained above, Native Hawaiians received 26% of the ceded land revenues without any need for racist set-asides. Furthermore, it was not a failure to send the money to the public schools, who now get zero money from the ceded lands because 20% of gross revenue sent to OHA exceeds 100% of net income after allowing for capital improvements and operating expenses for which we all pay.

TELL OHA TO SPEND ITS HOARDED CASH INSTEAD OF GIVING THEM MORE

OHA already has about \$450 Million. Most of that money has been sucked out of Hawaii's economy and sent to New York for stock market investments. OHA occasionally makes small grants to its "beneficiaries" but very little money reaches the maka'ainana (little people). It's time to stop feeding the beast. Repeal the law sending 20% of ceded land revenues to OHA. You can repeal that law tomorrow by a simple majority vote.

In the past OHA has sued the State of Hawaii (can a hand sue its arm?) for past-due "rent" "owed" for the 20% share of revenue. Does anybody think that won't happen again? This "settlement" guarantees \$15.1 Million annual payments toward the 20% share going forward, but OHA will again claim more is owed and will file more lawsuits. Stop this craziness. Repeal the 20% law.

UPCOMING EXPIRATION OF LEASES ALONG BANYAN DRIVE IN HILO

One specific objection to this bill concerns the giveaway of lands along Banyan Drive in Hilo which are currently leased to the companies which built extremely valuable privately owned hotels. A few years from now those land leases will expire. OHA will then become the owner of the hotels, without paying one penny to the builders and current owners.

OHA could choose to knock down the hotels to honor the fact that the lands are "sacred" to Native Hawaiians. Does anyone doubt there are mo'olelo (stories) about the gods or the chiefs frolicking on the beach there, or having heiau or taro patches there? OHA could choose to continue hotel operations reaping tremendous income from the hotels it will own. OHA could choose to convert the hotels into condominiums which OHA could then sell leasehold for another cycle of years until it confiscates them.

These scenarios are not at all far-fetched. One need only look at the town of Kailua, O'ahu, where Kane'ohe Ranch's lease on the land under the Kailuan condominium came to an end on December 31, 2007. The landowner refused to sell the land to the condominium owners, preferring instead to let the leases end. The condo owners now have lost their entire investment and have nowhere to call home.

The State of Hawaii as owner of the Banyan Drive land would treat the hotel owners fairly when their leases expire. But OHA is ruthless and the hotel owners had better prepare for financial disaster if this bill passes.

Please vote NO on this bill. No amount of amendments can fix what's wrong. Voting yes "with reservations" is still voting yes, and your reservations will be ignored. It's time to stand up against the Evil Empire and vote NO.

---

Never miss a thing. Make Yahoo your home page.  
<http://www.yahoo.com/r/hs>

# HPACH

919 4th Street  
Pearl City, Hawaii 96782

012

February 23, 2008

Representative Ken Ito, Chair  
Representative Jon R. Karamatsu, Vice Chair  
And Committee Members On Water, Land And Ocean  
Resources And Hawaiian Affairs  
Representative Tommy Waters, Chair  
Representative Blake K. Oshiro, Vice Chair  
And Committee Members on Judiciary  
Representative Marcus R. Oshiro, Chair  
Representative Marilyn B. Lee, Vice Chair  
And Committee Members On Finance  
House of Representatives, The Twenty-Fourth Legislature  
Regular Session of 2008, State of Hawaii

Subject: HB 266 HD 1, Relating To Hawaiian Affairs,  
"SUPPORT WITH AMENDMENTS"

ALOHA Kakou,

My name is Richard Pomaikaiokalani Kinney. As Sovereign of the Hawaiian Political Action Council of Hawaii, I "SUPPORT WITH AMENDMENTS" the passage of HB 266 HD 1.

Mahalo nui to the writers of this Bill for the removal of the use of terms such as "settlement and "claims" based on the recent Hawaii Supreme Court ruling based on the findings of the Apology Resolution, Public Law 103-150. This is a move in the right direction for "Justice For Hawaiians."

I recommend the following amendments to HB 266 HD 1,

Section 4 of article XII of the Hawaii Constitution definition of the Public Land Trust is incomplete. HB 266 HD 1 should define and include all lands that were ceded to the United States by the Republic Of Hawaii under the Joint Resolution of Annexation of July 7, 1898. Reflecting also the recent Hawaii Supreme Court ruling based on the Apology Resolution, Public Law 103-150. Section 5 of article XII of the Hawaii Constitution does not reflect the present change to the elections of the OHA Trustees. No longer are the

# HPACH

919 4th Street  
Pearl City, Hawaii 96782

Page 3  
Feb. 23, 2008  
HB 266 HD 1  
WLH/JUD/FIN

Due payment should begin with at least 2 Billion Dollars!

2 Billion Dollars that rightfully belongs to the native Hawaiian beneficiaries of the State of Hawaii. Take care of the native Hawaiians and all of Hawaii will be a better place for all of us to live and call home.

I live in the Waianae Coast for the past three years. The Waianae Coast is the largest native Hawaiian community in the world. Not only on this island, in this State or in the United States, but in the world. I view the Waianae Coast as the last "homeland stand" for our Kanaka Maoli people. We the Kanaka Maoli can not afford to have the Waianae Coast become the Second Waikiki.


I "Strongly OPPOSE" the use of Ceded Lands as a political method of paying native Hawaiians what rightfully belongs to them in law. Do not use "Hawaiian Lands" to pay off the debt of the State of Hawaii. Especially for the past 30 years of commingling of the Public Land Trust and its revenues by the Executive Branch, past and present!. Simply comply with the present law! As the Hawaii Supreme Court recently said, Public Law 103-150 is law and should be obeyed! Obey the law and avoid any future law suits.

The present language of HB 266 HD 1 surely invites future law suits against the State for its violation of it's trust obligation to the native Hawaiian people of Hawaii and the United States.

Once more HPACH "SUPPORT WITH AMENDMENTS" the passage of HB 266 HD 1. Which simply means no amendments, I withdraw my support for this Bill.

Mahalo nui for the opportunity to present testimony on this important Bill.

ALOHA KUU AINA HAWAII

  
Richard Pomaiakaikalani Kinney, SOVEREIGN  
Hawaiian Political Action Council of Hawaii  
Email: [HIAHAWAII@aol.com](mailto:HIAHAWAII@aol.com)



**HB266InPersonOHA**

---

**From:** garry p smith [garrypsmith@juno.com]  
**Sent:** Thursday, February 21, 2008 5:13 AM  
**To:** HB266InPersonOHA  
**Subject:** Testimony for HB 266, HD1 (Saturday morning hearing, ceded lands)

HB266InPersonOHA@Capitol.hawaii.gov

Testimony for HB 266, HD1

DATE: Saturday, February 23, 2008  
 TIME: 9:00 a.m.  
 PLACE: Auditorium

COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS Rep. Ken Ito, Chair

COMMITTEE ON JUDICIARY  
 Rep. Tommy Waters, Chair

COMMITTEE ON FINANCE  
 Rep. Marcus R. Oshiro, Chair

TESTIMONY IN OPPOSITION to HB 266, HD1  
 (HSCR676-08)

Aloha Chair and members,

I strongly urge you to vote against this bill pending further negotiations between the State and OHA.

This settlement is not a final settlement as one would expect. According to both parties this settles one single issue but leaves open ended other issues involving ceded lands and what ever liability OHA believes the state has, these could turn into lawsuits close to \$1 Billion. It does not make sense to settle any perceived claims one at a time, it will cost infinitely more. It only makes sense to settle all claims from OHA and any future native Hawaiian government once and for all a GLOBAL settlement. To do otherwise is improper use of state funds.

Furthermore any settlement must be made in cash not with state lands. The lands in this proposed settlement are far more valuable than the assessed value given them. They are surely worth 2-3 times or more than assessed value. A fair appraisal has not been conducted.

Without a GLOBAL settlement these issues will appear every year and have to be settled piece meal.

As stewards of the states limited funds you must oppose this settlement and send OHA and the state back to the negotiating table to make a GLOBAL settlement.

Thank you for your time and consideration.

Garry P. Smith  
 91-321 pupu place  
 ewa beach, hi 96706  
 392-5559

Feb. 21, 2008

014

**HB266InPersonOHA**

---

**From:** Pam Smith [pamsmith@hawaii.rr.com]  
**Sent:** Thursday, February 21, 2008 8:09 AM  
**To:** HB266InPersonOHA  
**Subject:** Testimony for HB 266, HD1

DATE: Saturday, February 23, 2008  
TIME: 9:00 a.m.  
PLACE: Auditorium

COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS Rep. Ken Ito, Chair

COMMITTEE ON JUDICIARY  
Rep. Tommy Waters, Chair

COMMITTEE ON FINANCE  
Rep. Marcus R. Oshiro, Chair

TESTIMONY IN OPPOSITION to HB 266, HD1  
(HSCR676-08)

Please kill HB266.

There is nothing to settle. Hawaiians get the use of the land and taxpayer dollars just like every other citizen in Hawaii.

Why, then, are they entitled to a super share? They get 20% plus the same benefits as other citizens. It is time to put a stop to this.

It is unfair of the state to give public land and my tax dollars to a race-based organization.

Aloha kakou,

*Pam Smith  
808-398-5556 cell  
Ewa Beach HI 96706*

2/21/2008



**Mililani B. Trask, Convener**  
**Na Koa Ikaika o Ka Lahui Hawaii**  
**400 Hualani Street, Suite 194**  
**Hilo, HI 96720**

To: House Committee on Water, Land & Hawaiian Affairs  
       Ken Ito, Chair  
       Committee of Judiciary  
       Tommy Waters, Chair  
       Committee on Finance  
       Marcus Oshiro, Chair

Re: HB 266, HD1 – OHA Settlement  
       Testimony in Support with Amendments

Hearing Date: February 23, 2008

Time: 9:00 a.m.

Place: Auditorium, State Capitol

Aloha Members of the House:

Thank you for moving on this measure. I and many other Hawaiian beneficiaries of the Ceded Land Trust are very opposed to SB 2733. H.B. 266 is reasonable and addresses the OHA/Lingle Bill as a legislative policy recommendation and not a settlement that waives Hawaiian rights to the trust.

I am proposing amendments to this Bill to ensure that there is some accountability from OHA regarding the assets H.B. 266 proposes be transferred to OHA. OHA is not accountable to the legislature or to its beneficiaries. For the past several months the OHA newsletter has printed serious allegations relating to OHA's violation of the Sunshine Law, misappropriation of fiscal resources and nepotism. There has also been several staff resignations during this time. The last Legislative Audit of OHA demonstrated it had no plan for the Hawaiian people.

The legislature needs to authorize a fiscal audit and an administrative audit to investigate for itself the extent of fiscal mismanagement occurring at OHA.

I am recommending that the lands and revenues referred to in HB 266 be placed in receivership or escrow until the audits have been completed and the legislature has satisfied itself that OHA is functioning responsibly. In the alternative, the Legislature could hold this measure for 1 year and provide for 2 audits and reconsider the measure in 2009.

I am also recommending that language be added to the measure to make it clear that OHA and its beneficiaries are entitled to a pro-rata share of revenues and proceeds derived from Hawaii's natural resources. We are currently working with the State

Temporary Advisory Commission on Bioprospecting to address a bioprospecting regime for the state. In addition, Hawaiian cultural survival depends on access to and use of natural resources. In the future OHA may wish to take resources rather than revenues for our peoples. Article XII of the State Constitution, Section 6, makes reference to natural resources by deleting this language you are also deleting our peoples right to these resources and revenues. Language should also be added that makes it clear that the pro-rata portion OHA receives should “not be less than 20%”.

I am extremely concerned that OHA is illegally transferring trust land and monies into their newly created LLC (Hiilei Aloha) and its many subsidiaries. OHA has already transferred lands on Kauai and Oahu into this mechanism and has also transferred several hundred thousand dollars as well. The corporate documents for this LLC provide that upon its dissolution the LLC may distribute its assets to any non-profit “qualifying organizations”. This mechanism was created to remove trust assets from the trust. OHA currently has a Bill in the legislature to legalize its LLC.

The legislature needs to protect Hawaiian trust assets and ensure they are managed pursuant to fiduciary principles

A handwritten signature in black ink, appearing to read "Mililani B. Trask". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mililani B. Trask

**HB266InPersonOHA**

---

**From:** EArakaki [arakakie003@hawaii.rr.com]  
**Sent:** Thursday, February 21, 2008 4:18 PM  
**To:** HB266InPersonOHA  
**Subject:** FW: Testimony for HB 266, HD1 (Saturday morning hearing, cededlands)

-----  
 From: Earl Arakaki

HB266InPersonOHA@Capitol.hawaii.gov

Testimony for HB 266, HD1

DATE: Saturday, February 23, 2008

TIME: 9:00 a.m.

PLACE: Auditorium

COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS Rep. Ken Ito, Chair

COMMITTEE ON JUDICIARY

Rep. Tommy Waters, Chair

COMMITTEE ON FINANCE

Rep. Marcus R. Oshiro, Chair

TESTIMONY IN OPPOSITION to HB 266, HD1  
 (HSCR676-08)

Aloha Honorable Chairmen;

I am opposed to HB266, HD1.

Public Taxpayer monies, whether in the form of real estate, ceded lands revenue, or directly from taxpayers pockets should be used by the state for the benefit of all Hawaii's people and not American/Hawaii citizens selected merely because of one drop blood of a certain ancestry.

Please do not approve HB-266, HD1

/s/Earl Arakaki  
 91-030 Amio Street  
 Ewa Beach, HI, 96706

017

February 21, 2008

To: House Committee on Water, Land & Hawaiian Affairs  
Ken Ito, Chair  
Committee of Judiciary  
Tommy Waters, Chair  
Committee on Finance  
Marcus Oshiro, Chair

Re: HB 266, HD1 – OHA Settlement  
Testimony in Support with Amendments

Hearing Date: February 23, 2008  
Time: 9:00 a.m.  
Place: Auditorium, State Capitol

Aloha House Representatives:

I am here as a Hawaiian who served for 12 years as an OHA Trustee and who participated as a member of the Ceded Land negotiating team for OHA. I support H.B. 266, HD 1. I strongly oppose the OHA/Lingle settlement and have testified against SB 2733. As you can see by my enclosed statement about the overview of Ceded Lands and previous OHA settlement I participated in, this land settlement is too little.

For the past several years OHA has refused to provide an accounting for funds spent for its Akaka Bill fiasco.

Our Hawaii assets need to be protected and managed responsibly. The lands and revenues referred to in HB 266 should be placed in receivership or escrow until our Hawaiian sovereign nation is recreated.



Moanikeala Akaka  
Aloha Aina Education Center  
20 Kou Lane  
Hilo, HI 96720  
(808) 935-7981

OVERVIEW OF STATE SUPREME COURT CEDED LAND RULING  
I WAS THERE!

The State Supreme Court is to be commended for its' recent ruling barring ceded land sales by the State of Hawaii. This court held that "the Apology Resolution and related state legislation (for the theft of our Hawaiian nation) give rise to the state's fiduciary responsibility to preserve and protect the public land trust, specifically for ceded lands -- until such time as the unrelinquished claims of Native Hawaiians have been resolved."!!

I remember very well in the early 90's when I was the OHA Trustee representing Hawai'i Island, that the State Housing and Community Development Corporation of Hawaii (HCDCA) told OHA that they had plans to build two sub-divisions on ceded lands in Kailua-Kona and on Maui. In the HCDCA proposal, OHA would receive on behalf of the Hawaiian people, 20% of the value for the sale of these lands from the state, I feared that our precious ceded land corpus, the remnants of our Hawaiian nation lands were again being diminished, this time by the state for these two sub-divisions which would have made them private property, even before we Kanaka Ma'oli had reached a land settlement with the State. Sure enough, eighteen years later, still - no settlement!

At an OHA meeting, in the early 90's, officials from HCDCA came before trustees and passed around a 5 million dollar check to entice us OHA Trustees into accepting this proposal to sell our ceded trust lands. I knew it would be a bad precedent, though it was tempting to some trustees. I had to speak against this sale of our ceded lands and I thank the gods that my fellow board members ended up agreeing, despite our attorney at that table, Earl Anzai who encouraged us to accept the 5 million dollar offer by the state. Anzai also taunted us trustees, saying we may never see that offer again. OHA in '94 sought an injunction for those Maui and Kailua-Kona parcels and the alienation of any other ceded lands from the Public Land Trust. The State ended up giving those parcels to Hawaiian Home Lands. Earl Anzai was later Governor Ben Cayetano's Attorney General when Cayetano reneged on OHA's share of the revenue stream income payment from the ceded lands OHA had been receiving. When Linda Lingle became governor, she was pono in reinstating OHA's share of the ceded land revenue.

Today's State Supreme Court ruling validates the wisdom of the previous OHA trustees to reject the 5 million dollar offer for our 'aina. We must remember - 'aina was not a commodity for our Hawaiian nation.

Today, another group of OHA Trustees and the Lingle administration are proposing a 200 million dollar package composed of land and 13 million dollars in cash.

This settlement is from the unresolved issues of the initial settlement of 1990 - Act 304, which I helped to negotiate for five years as OHA Trustee. Those unresolved issues were left over from the Waihe'e administration for the years of 1978 - 1990, since OHA came into being. If you recall, Judge Healy later, in 1996 ruled that those unresolved issues amounted to 1.2 Billion dollars more

owed to OHA from ceded land revenues already collected by the State. Judge Healy's ruling was reversed on 9/12/2001. (I find this an interesting coincidence that Chief Justice Moon announced the reversal of Judge Healy's opinion on 9/12/01 while the world was in shock over the 9/11 tragedy. It seems hard to believe that this date of the announcement of the reversal of Judge Healy's ruling was a coincidence.)

Regardless, the question remains how this 200 million dollar figure was arrived at. In the late 80's, when we were negotiating for Act 304, there was an agreed upon formula between OHA and the State as to how OHA's 20% share of the revenues from ceded lands were derived. We used that formula for the Waihe'e administration and that is probably how Judge Healy arrived at the 1.2 Billion dollar figure, he said was owed to OHA. That may have been then and this is now. Now, however, 18 years later, it baffles me that the value figure owed us Hawaiians, went from 1.2 Billion dollars in '96 to 200 million dollars in 2008.

The chair of OHA, Haunani Apoliona, on Dec. 18, '07 at the State of OHA presentation, where the theme was "One has seen the right thing to do and has done it" stated that we as Hawaiians "should not grumble." I hope that statement was not the prelude and foreboding to this 200 million dollar package now in the legislature. I wonder - was Haunani afraid there was something to grumble about? The value of the unresolved issues from 1978 to 2008, should increase from 1.2 Billion dollars of Judge Healy's ruling instead of being diminished by 80% of the 200 million dollars proposed by the current OHA Trustees and the Lingle administration, today, twelve years after Judge Healy's ruling. The state can pay us off in installments or better yet, with more of our own ceded lands, although I don't feel we should have to exchange for our own ceded lands. We deserve much more than the three parcels proposed by OHA and the Lingle administration. There should also be hearings state wide so that our people can address this proposal that would short-change our Hawaiian people and nation. These should not be called ceded lands, they should be called "seized" lands.

It is interesting that Attorney General Mark Bennett continues to insist that the state has a right to sell our seized (ceded) lands. Thank goodness for the Supreme Court's wisdom on this issue.

Indeed! The life of the land is perpetuated in righteousness.

Ua mau ke 'ea o ka aina i ka pono!

Moanaikeala Akaka  
OHA Trustee 1984 -1996



House of Representatives  
 The Twenty-Fourth Legislature, Regular Session of 2008  
 Committee on Water, Land, Ocean Resources and Hawaiian Affairs  
 Committee on Judiciary  
 Committee on Finance

Hearing scheduled for  
 Saturday, February 23, 2008 at 9:00 a.m.  
 On HB 266, HD1 relating to Hawaiian Affairs

Testimony by H. William Burgess on his own behalf and on behalf of Aloha for All<sup>1</sup>

Aloha and good morning Chairs Ken Ito, Tommy Waters and Marcus Oshiro, vice chairs and members of these important House committees.

I am an attorney who practiced law in Hawaii for 35 years until I retired in 1994. For the last ten years my wife and I and our friends and supporters have been advocating and litigating for the basic principle that Aloha is for everyone --- that every citizen of Hawaii, whatever his or her ancestry, is entitled to the equal protection of the laws. A major part of our efforts has been to preserve and support the Ceded Lands Trust for the benefit of **all** the people of Hawaii, not just for a favored few.

I speak against HB 266, HD1. It deals with the 1.2 million acres of the ceded lands separate from the 200,000 acres set aside under the Hawaiian Homes Commission Act. It would violate this portion of the Ceded Lands Trust and breach the fiduciary duty the State of Hawaii, as Trustee, owes to all its citizens.

Decades of advertising by OHA seem to have created the impression in many peoples' minds that the ceded lands are held only or especially for native Hawaiians. That is incorrect. The ceded lands trust is for the benefit of all the people of Hawaii. The U.S. Supreme Court has confirmed that. So has the Ninth Circuit. So has the Hawaii Supreme Court.

In footnote 9 to the Ninth Circuit Court's decision filed August 7, 2007, less than 7 months ago, the Court noted that "the lands ceded in the Admission Act are to benefit 'all the people of Hawaii,' not simply Native Hawaiians." *Day v. Apoliona*, 496 F.3d 1027, 1034 (9<sup>th</sup> Cir. 2007) (emphasis in original), citing Justice Breyer's concurring opinion with whom Justice Souter joined in *Rice v. Cayetano*, 528 U.S. 495, 525 (2000), "But the Admission Act itself makes clear that the 1.2 million acres is to benefit *all* the

---

<sup>1</sup> Aloha for All, is a multi-ethnic group of men and women, all residents, taxpayers and property owners in Hawaii who believe that Aloha is for everyone and every citizen is entitled to the equal protection of the laws without regard to her or his ancestry.



people of Hawaii.” (The 1.2 million acres consists of the 1.4 million acres returned to Hawaii upon statehood under Admission Act §5(b), less the about 200,000 acres Congress had set aside in 1921 as “available lands” under the Hawaiian Homes Commission Act. See also, Admission Act §5(g). It is this same about 1.2 million acres which is the corpus of the Ceded Lands Trust which is the source of the moneys claimed by OHA and lands proposed to be transferred to OHA by HB 266, HD1.)

“The federal government has always recognized the people of Hawaii as the equitable owners of all public lands; and while Hawaii was a territory, the federal government held such lands in ‘special trust’ for the benefit of the people of Hawaii.” *State v. Zimring*, 58 Hawaii 106, 124, 566 P.2d 725 (1977).

“Excepting lands set aside for federal purposes, the equitable ownership of the subject parcel and other public land in Hawaii has always been in its people. Upon admission, trusteeship to such lands was transferred to the State, and the subject land has remained in the public trust since that time.” *Id* at 125.

**The State’s obligation to native Hawaiians has already been more than satisfied.**

The State has already distributed hundreds of millions of dollars of ceded lands revenues to OHA exclusively for the native Hawaiian beneficiaries, but has made *no* distributions of revenues exclusively for non-native Hawaiian beneficiaries. That violates the Trustee-State’s fiduciary duty of impartiality<sup>2</sup> and the duty not to comply with illegal trust terms.<sup>3</sup>

Since “native Hawaiians” (defined as descendants of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778) make up less than 5% of the population of Hawaii, to comply with its duty of impartiality, the State should distribute at least 19 dollars exclusively for non-native Hawaiian beneficiaries for every dollar going to the native Hawaiian beneficiaries. Any transfer for native Hawaiians for back distributions should therefore first include several \$ Billion to make up for the past shortchanging the non-Hawaiian beneficiaries.

If the State is not prepared to make that distribution promptly, it should require

---

2 The Restatement of the Law, Trusts 3d §183 entitled “Duty to Deal Impartially With Beneficiaries”: When there are two or more beneficiaries of a trust, the trustee is under a duty to deal impartially with them.

3 The Restatement of Trusts 2d §166 (1959) entitled “Illegality” provides the trustee is under a duty not to comply with a term of the trust which is illegal and cites as an example of illegality a provision which would be contrary to public policy. In *Rice v. Cayetano*, 528 U.S. 495, 516 & 517, (2000) the Supreme Court held that the definitions of “Hawaiian” and “native Hawaiian,” as used in the Office of Hawaiian Affairs laws are racial classifications.



OHA to refund the over \$400M ceded lands revenues it still holds.

**The past distributions to OHA have been at the expense of the other beneficiaries.**

In the said footnote 9, the decision of the Ninth Circuit Court notes, "this case is not based on any implicit assumption that Native Hawaiians and Hawaiians are the only intended beneficiaries of the § 5(f) trust.... Neither our prior case law nor our discussion today suggests that as a matter of federal law § 5(f) funds must be used for the benefit of Native Hawaiians or Hawaiians, at the expense of other beneficiaries."

Since the past distributions to OHA from the Ceded Lands Trust have been based on 20% of gross revenues before expenses, the share of the other beneficiaries have thus been left with the burden of all those expenses.

**The fiduciary duty of the State and its officials.**

When it comes to Hawaii's public lands and revenues from them, the State and its officials have a fiduciary responsibility to all the citizens of Hawaii. Article XI, Sec. 1 of the Hawaii Constitution requires the State to conserve and protect "all natural resources, including land, water, air, minerals and energy sources" and, "All public natural resources are held in trust by the State for the benefit of the people."

Also, Article XII, Sec. 4 provides that the lands granted to the State of Hawaii by Sec. 5(f) of the Admission Act ... shall be held as a public trust for native Hawaiians and the general public."

The Hawaii Supreme Court in *Pele Defense Fund v. Paty*, 73 H. 578, 837 P.2d 1247 (1992) said this section imposes a fiduciary duty on Hawaii's officials to hold ceded lands in accordance with the provisions of Section 5(f) of the Admission Act and citizens must have a means to mandate compliance.

**The Pro Rata Portion owned by every citizen. From Share and Share Alike to Favoritism based on Ancestry.**

The attached spreadsheet shows the pro rata portion of the Ceded Lands Trust equitably owned by each citizen of Hawaii. It illustrates the systematic favoritism over the years from 1920, when each Hawaii resident, whatever his or her ancestry, was the equitable owner of about 5 acres of the ceded lands; to today, when the amounts held by OHA supposedly for each native Hawaiian (of not less than one-half the blood) is 12 acres and less than one acre is left for each for the rest of us. Twelve acres for a selected few; and less than one acre for everyone else; is not impartiality and it is not Equal Protection of the laws.

OHA takes from all of us. It takes from Hawaiians with less than 50% Hawaiian ancestry and it takes from us who happen to have no Hawaiian ancestry. And it hoards even the over \$400 Million it holds for “native Hawaiians.”

Instead of loyalty to all the people of Hawaii, the State plunders the rest of us to pay money to OHA. The State owes nothing to OHA. It should demand refund of the over \$400 Million OHA holds. That could help improve our crumbling public schools, or fix our roads or our traffic congestion.

Under **§708-874 Misapplication of entrusted property.** (1) A person commits the offense of misapplication of entrusted property if he misapplies or disposes of property that has been entrusted to him as a fiduciary or that is **property of the government** or a financial institution. (Emphasis added.)

Please reject HB 266, SD1. Mahalo,

Honolulu, Hawaii February 22, 2008.

---

H. William Burgess

Tel.: (808) 947-3234

Fax: (808) 947-5822

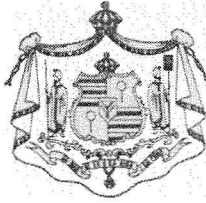
Email: [hwburgess@hawaii.rr.com](mailto:hwburgess@hawaii.rr.com)

Attachment: Excel Spreadsheet, Calculation of pro rata equitable ownership of ceded lands (based on acreage).

**Calculation of pro rata equitable ownership of ceded lands  
(based on acreage)**

Year	Total area ceded lands	Total population		Pro rata equitably owned acres		
		Native Haw'n 50% or more	Rest of HI citizens	Native Haw'n 50% or more	Rest of HI citizens	
1920 (before HHCA)	1.4M acres	41,750	214,162	5.471	5.471	
1922 (after HHCA)	ceded lands	Native Haw'n 50% or more	Rest of HI citizens	Native Haw'n 50% or more	Rest of HI citizens	Cross check
	1.2M acres	41,750	214,162	4.689	4.689	255,912.00
	0.2M acres	41,750		4.790	-	
	Pro rata acres equitably owned by each beneficiary:			9.480	4.689	
1980 (after OHA 20%)	ceded lands	Native Haw'n 50% or more	Rest of HI citizens	Native Haw'n 50% or more	Rest of HI citizens	
	0.96M acres	40,000	924,691	0.995	0.995	
	0.2M acres	40,000		5.000	-	
	0.24M acres	40,000		6.000	-	
	Total pro rata acres owned by each beneficiary:			11.995	0.995	
2008 (aftr "Settlement")	ceded lands	Native Haw'n 50% or more	Rest of HI citizens	Native Haw'n 50% or more	Rest of HI citizens	
	0.96M acres	40,000	924,691	0.995	0.995	
	0.2M acres	40,000		5.000	-	
	0.24M acres	40,000		6.000	-	
	0.002 acres	40,000		0.005	-	
	Total pro rata acres owned by each beneficiary:			12.000	0.995	

Based on value, the "settlement" amounts to approximately \$5,000 for each native Hawaiian and nothing for any other beneficiaries, even those of less than 50% Hawaiian ancestry.



Association of Hawaiian Civic Clubs  
 P. O. Box 1135  
 Honolulu, Hawai`i 96807

TESTIMONY OF LEIMOMI KHAN, PRESIDENT  
 IN SUPPORT OF

**HB 266, HD 1 – RELATING TO HAWAIIAN AFFAIRS**

**HOUSE COMMITTEES ON WATER, LAND, OCEAN RESOURCES &  
 HAWAIIAN AFFAIRS; JUDICIARY; AND FINANCE**

February 23, 2008

Aloha Chairs Ito, Waters and Oshiro; Vice-Chairs Karamatsu, Oshiro and Lee;  
 and Members of the House Committees.

The Association is a growing national confederation of fifty-three Hawaiian Civic Clubs located throughout the State of Hawai`i and in the States of Alaska, California, Colorado, Illinois, Nevada, Utah, Virginia and Washington State. It initiates and works to support actions that enhance the civic, economic, educational, health and social welfare of our communities, and in particular, the culture and welfare of the Native Hawaiian community.

Thank you for this opportunity to testify in strong support of House Bill 266, House Draft 1, which acknowledges that "Although the Governor and the Office of Hawaiian Affairs have described the results of their joint efforts to resolve ceded lands revenue issues as a "settlement agreement", the use of terms such as "settlement" and "claims" in the context of income and proceeds to be managed and administered by OHA mischaracterizes the situation as adversarial, because, as observed by the Hawai`i Supreme Court, the constitutional obligations to native Hawaiians belong to the State as a whole and are not the proper subject of litigation between state agencies. As a result, the legislature treats the results of these discussions as a joint policy recommendation to the legislature and not as a legal settlement to be approved by the legislature." The Association supports this clarifying language as it more accurately depicts the fiduciary role of the State of Hawai`i and its Executive and Legislative branches with respect to the ceded lands trust.

The Association also supports provisions that establish an accounting method for each fiscal biennium wherein DLNR and other departments within the executive branch will prepare detailed accounting reports with respect to ceded lands revenue upon which OHA's pro rata portion will be calculated. It further supports the provision wherein OHA appoints a voting member of the Hawai`i Community Development Authority.

House Bill 266, House Draft 1 conveys certain parcels of real property and transfers cash to the Office of Hawaiian Affairs as part of the State's obligations to native Hawaiians under Article XII, sections 4 and 6, of the Hawai`i Constitution.

The value of the conveyed parcels and cash is \$200 million, consisting of 18.5 acres of lands along Ka`ka`ako's waterfront valued at \$92 million; 110 acres of waterfront land in Kalaeloa valued at \$59 million; 80.4 acres along Banyan Drive in Hilo values at \$34 million; and \$13 million in cash. In future years, OHA's annual revenues would be fixed at \$15.1 million annually.

On October 19, 2007, the Association at its annual convention passed Resolution No. 07-01, "Strongly Urging the Office of Hawaiian Affairs and the Hawai`i State Executive Branch to Negotiate a Settlement Regarding the Income and Proceeds from the Public Land Trust and for the Legislature to Approve that Settlement". A copy of that Resolution is appended for your further reference. At a duly held regular meeting subsequent to passage of this Resolution, the Association's Board of Directors voted to support the settlement engendered in Senate Bill 2733.

In passing Resolution 07-01 and voting to support this settlement, Association Delegates and Board members considered Hawai`i's annexation history and recent attempts to resolve Native Hawaiians' entitlement to beneficial use of the "ceded" lands, including provisions of the 1959 Admission Act; the establishment of OHA by Delegates to the 1978 Constitutional Convention; the 1980 legislature's determination that OHA would be entitled to 20% of funds derived from the public land trust; Act 304, which sought to clear up revenue questions by differentiating between proprietary and sovereign income; the 1999 negotiations and offer of settlement by Governor Cayetano; and the several intervening lawsuits in which the Hawai`i Supreme Court laid ultimate responsibility for resolution with the legislative branch.

The Association is aware that any attempted resolution on behalf of the Native Hawaiian people is a very sensitive issue, but we believe that the elected trustees of the Office of Hawaiian Affairs have taken their fiduciary responsibilities very seriously; that this settlement was arrived at only after many years' deliberation and due diligence.

The value of the negotiated settlement is \$200 million, consisting of 18.5 acres of lands along Ka`ka`ako's waterfront valued at \$92 million; 110 acres of waterfront land in Kalaeloa valued at \$59 million; 80.4 acres along Banyan Drive in Hilo values at \$34 million; and \$13 million in cash. In future years, OHA's annual revenues would be fixed at \$15.1 million annually.

The language of House Bill 266, House Draft 1, makes it explicit that this is not a global settlement of Kanaka Maoli land or reparations claims associated with the U.S. government's illegal overthrow of the Hawaiian Kingdom. It is our understanding that this is a major difference between the current settlement and the settlement offer made by the Cayetano administration -- the latter sought to extinguish all "ceded" lands claims associated with the overthrow.

Inasmuch as OHA retains its right to lobby the legislature for additional funds to reflect changed circumstances, the Association believes that all things considered, and in the interest of resolving 20-plus years of litigation for what is OHA's entitlement, and not a global settlement of all Kanaka Maoli land and reparations claims, the Association of Hawaiian Civic Clubs strongly supports House Bill 266, HD 1. Thank you for this opportunity to testify in support of this bill.

**TJ MAHONEY & ASSOCIATES**

**Ka Hale Ho`āla Hou No Nā Wāhine**

*The Home of Reawakening for Women*

*524 Kaaabi St. Honolulu, HI 96817 Ph. 748-4300 Fax 748-4345 www.reawakeningforwomen.org*

---

COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS

Rep. Ken Ito, Chair Rep. Jon Riki Karamatsu, Vice Chair

COMMITTEE ON JUDICIARY

Rep. Tommy Waters, Chair

Rep. Blake K. Oshiro, Vice Chair

COMMITTEE ON FINANCE

Rep. Marcus R. Oshiro, Chair

Rep. Marilyn B. Lee, Vice Chair

DATE: Saturday, February 23, 2008

TIME: 9:00 a.m.

PLACE: Auditorium State Capitol

**HB 266 HD1 Relating to Hawaiian Affairs**

Good morning, Chair Ito, Vice Chair Karamatsu, Chair Waters, Vice Chair Oshiro, Chair Oshiro, Vice Chair Lee and members of the Committees. My name is Lorraine Robinson. I am the Executive Director of TJ Mahoney & Associates, Ka Hale Ho`āla Hou No Nā Wāhine, a program for women transitioning from prison to the community. I've served in this capacity for over 12 years and prior to that as a social worker at the Women's Community Correctional Center.

I am here this morning in support of House Bill 266 HD1, Relating to Hawaiian Affairs

Unfortunately, Hawaiians are vastly over-represented in the criminal justice system. Approximately 60% of the residents in our program have Hawaiian ancestry. The support and funding we have received from the Office of Hawaiian Affairs has enabled us to address this social disparity in significant and meaningful ways.

OHA serves a critical role in our community in its support of programs and services that address the multiple and varying needs of Hawaiians throughout our state. HB2701 will allow OHA to continue to do this important work as we move forward into Hawaii's future. Please support this crucial legislation so that Hawaiians are able to continue to benefit from the services, programs, assistance and advocacy of the Office of Hawaiian Affairs. Thank you for the opportunity to testify on this bill.



**HB266InPersonOHA**

---

**From:** Arvid Youngquist [thirr33@gmail.com]  
**Sent:** Friday, February 22, 2008 5:46 PM  
**To:** HB266InPersonOHA  
**Subject:** Relating to Hawaiian Affairs (HB 266, HD1 (HSCR676-08))

**Chair, Rep. Ken Ito**  
**Chair, Rep. Tommy Waters**  
**Chair, Rep. Marcus R. Oshiro**  
**The Right Honorable Members:**

- **Committee on Water, Land, Ocean Resources & Hawaiian Affairs**
- **Committee on Judiciary**
- **Committee on Finance**

**Hearing Jointly Held on Feb. 23, 2008 at 9 AM in the Hawaii State Capitol Auditorium**

**Testimony in Support of HB 266, HD1 Relating to Hawaiian Affairs**

**Good morning and thank you for holding this Joint Hearing on HB 266, HD 1, sponsored by Rep. Ken Ito, District 48 (Heeia, Haiku, Haiku Valley, Kapunahala, & Kaneohe).**

**This legislation has a relatively long history ut due to this expedited procedure, hopefully, a speedy approval and adoption. The 1 year+ deliberations since 1/19/07, is appropriate since this involves an obligation to native Hawaiians under Article XII, sections 4 and 6, of the Hawaii Constitution. In its 19 page landmark bill, there are relevant passages that are being repealed from ACT 178 and those added to Chapter 10, HRS. For discussion on these details it is hoped that the kupuna and the legal experts from the Kanaka Maoli community step forward to take their rightful stakeholder positions.**

**This year with competing interests of setting aside funding for a possible acquisition of the Turtle Bay Hilton Resorts as proposed during the Opening Day address by the Governor, a priority determination by the Legislature has to be decided by you in answer to a long standing discussion of the Article XII provisions of the 1978 revision of the Hawaii Constitution. To achieve this momentous ACT within the budgetary constraints you face will be a challenge. The Kanaka Maoli community has been waiting for a favorable outcome well before 1978, this despite a false start during an earlier Administration towards a settlement decision by the Legislature. This hearing must go down as an example of Native Hawaiians finding Native Hawaiian solutions to a long standing dilemma. An eternally competing interests of Justice, Fairness, and Jurisdiction. The presence of some 5+ Kanaka Maoli House members on the Joint Committee, I hope will assist in this decision making process and deliberations.**

**Arvid Tadao Youngquist  
P O Box 37542  
Honolulu, Hawaii 96837**

# Leon Siu

(Post Office Box 23055) (USPZ Exempt 96823)  
Makiki, O'ahu, Hawai'i nei  
Phone: (808) 488-4669

022

23 February 2008

## HOUSE COMMITTEES:

FINANCE

JUDICIARY

WATER, LAND, OCEAN RESOURCES AND HAWAIIAN AFFAIRS.

HEARING: SATURDAY, FEBRUARY 23, 2008, 9:00 A.M.

REGARDING: Testimony in OPPOSITION to HB 266, HD 1: Relating to Hawaiian Affairs.

Aloha Chairs Marcus Oshiro , Tommy Waters, Ken Ito and Members of the Committees:

Aloha ia mai oukou a e maluhia hoi I ke Akua e ko kakou Makua. Leon Siu kou inoa, na ohana Kawaauhau a me Kaulahao, mai Milolii, Kona, Moku o Keawe.

I thank you for allowing me to testify today. In addition to being kanaka maoli, I am a Hawaiian Kingdom National living in the country of my birth, *Ko Hawaii Pae Aina*, The Hawaiian Islands.

I come today to testify in OPPOSITION to HB 266, HD 1 that seeks to address certain land claims stemming from the illegal takeover of the lands and political jurisdiction of the Hawaiian Kingdom.

The initial offense of the theft has compounded for 115 years, as the "spoils" of the theft (the crown and government lands), were passed down to ensuing puppet governments; both as prize and obfuscation; a smokescreen to justify the fact that this was ill-gotten (stolen) property.

In recent years, as the truth of the illegalities came to light, the "ceded lands" have become much more of a hot potato. The illegal Republic of Hawaii had "fenced" the lands to the United States, who passed it on to the "State of Hawaii." Thus, the State of Hawaii came to be "left holding the bag" filled with stolen goods.

Which brings us to the predicament you lawmakers are facing today: *What to do with the crown and government lands stolen from the Hawaiian Kingdom?*

This inconvenient truth was ignored for a hundred years, until 1993 when the Congress and the President of the United States issued Public Law 103-150, apologizing for the theft of Hawaii! Hawaiians immediately assumed: *Now that the thief has confessed to this crime, then surely he will give back what he stole.* But the United States and the State of Hawaii apparently felt no compunction to take the Apology Law seriously. Then just last month, the Hawaii Supreme Court finally took the position that USPL 103-150



indeed has the force of law, halting the State from selling “ceded lands.” This ruling not only confirms the fact that the State of Hawaii does not have clear title to the lands in Hawaii, more importantly, it cast a pall on the very legitimacy of the State of Hawaii.

Everyone knows that to make things right — to bring about reconciliation — restitution must be made to the injured party. But the restitution solution that the State of Hawaii and the Office of Hawaiian Affairs is proposing is a con; a shell game where the con man maintains complete control of the game through fancy sleight of hand.

The proposed changes to the law and transfer of certain land and money assets keeps the status quo of State control of the “ceded lands” (through the state agency, OHA), while pretending to have made compensation for the stolen lands. The State’s solution for stealing a Kingdom is to generously give it to itself!

Of course, the con man with the shell game has a lot more finesse and is much more entertaining. This State/OHA “settlement” is so amateurishly clumsy that the general public, and even Hawaii’s courts can see right through it! Hopefully, you legislators can see through it too.

In pondering whether you should approve this measure, ask yourselves: *How would this land/cash scheme be any different than the “ceded-lands-for-sale” scheme that the State Supreme Court shot down just last month?*

The U.S. became the prime recipient of the spoils from the unlawful usurpation of the government and the assets of the Hawaiian Kingdom (a sovereign nation). The only moral and righteous action to make this right is for the U.S. and the State of Hawaii to address the offense squarely; willingly vacate their claims to the Hawaiian Islands; and participate in the peaceful, orderly changeover back to the Hawaiian Kingdom.

To this end I ask you to reject HB 266, HD 1, this shell game the Governor and OHA are playing with our lands, our lives, and the lives of our children. Start today to put Hawaii on the path of restoration and healing from this 115-year-long offense. To do anything less, will only prolong this glaring injustice and prolong the suffering of the people of this land and all the people of Hawaii.

Mahalo nui loa,

A handwritten signature in cursive script, appearing to read "Leon Siu".

Leon Siu



## Sanity of Proposed Settlement Agreement?

I speak against this or any proposals by the Office of Hawaiian Affairs or the State of Hawaii and its agents.

The Natives are restless is an under statement. One thing certain, the Natives are confused! Some say insanity is doing the same over and over and expecting different results. Since 1893, the Kanaka Maoli living in oppression has sought justice over and over expecting change. Then in 1978, finally an avenue to right the wrong was upon them in a political form for issues and concerns of first people to these islands. So they believed but justice remains a void in their life

For me, the question is not the terms and conditions of this or any Proposed Settlement Agreement. The question is who or what is the Office of Hawaiian Affairs (OHA)?

In the first paragraph of the Settlement Agreement states:

“this Settlement Agreement (Agreement) dated January 17, 2008, is made by and on behalf of the following entities: (i) the Office of Hawaiian Affairs (hereafter referred to as “OHA”, **a body corporate existing under the Constitution and laws of the State of Hawai’i**, whose principal place of business and mailing address is 711 Kapi’olani Boulevard, Suite 500, Honolulu, Hawai’i 96813, and the State of Hawai’i (hereafter referred to as “STATE”, a state of the United States of America. OHA and State are referred to collectively herein as the “Parties.”

If OHA is a body corporate of the State of Hawaii, is the State of Hawaii a body corporate of the United States of America? A Corporation is an artificial person or legal entity created by or under the authority of the laws of a state. The Kanaka Maoli is not an artificial person for they existed long before any corporate body was created. They are living souls by God Almighty. No one is an artificial person unless by consent or choice. How can an artificial person or legal entity have authority or speak for living souls when they themselves have no life?

Ironically, on this 115 anniversary of the overthrow of the Hawaii Constitutional Monarchy this Agreement is offered between the Parties of which do not represent or have authority to settle inherent rights and claims of the Kanaka Maoli.

In 1978 OHA was created by the very state they are “Partners” to. This Agreement is nothing less than a conflict of interest. Originally, OHA Trustees were elected only by electors of Hawaiian Blood without any proportions. In the 2000 Rice vs. Cayetano, the United States Supreme Court ruled that denying non Hawaiians to vote in OHA elections was against the Constitution of the United States of America, thus non Hawaiian citizens of the State of Hawaii could not only vote but they could run for Trustees of the Office of Hawaiian Affairs.

## **Who and What Is OHA?**

So who and what is the Office of Hawaiian Affairs? The Rice vs. Cayetano ruling drastically altered just who the Office of Hawaiian Affairs represents and just what is their authority for they certainly do not represent the living souls of the Kanaka Maoli. In Article 12, Section 5 of the Constitution of the State of Hawaii, Establishment Of Board of Trustees states: **“There is hereby established an Office of Hawaiian Affairs. The Office of Hawaiian Affairs shall hold title to all the real and personal property now and hereafter set aside or conveyed to it which shall be held in trust for native Hawaiians and Hawaiians.** Who are these native Hawaiians and who are Hawaiians? Obviously, there must be two types of Hawaiians that exclude Kanaka Maoli but for what purpose? This certainly adds to the confusion, again why?? The Rice vs Cayetano decision is genocide of the inherent rights of the Kanaka Maoli. The intent of the trust has been breached.

## **Engineered Consent or Propaganda:**

In the four color brochure of OHA’s latest propaganda tool there are seven questions concerning the proposed Settlement. Question 2, “Who controls and owns these lands states.” The claims of Native Hawaiians to ownership of the lands have never been resolved.” The recent Hawaii Supreme Court, OHA vs. State of Hawaii contradicts OHA’s own statement. It has been resolved by agents that created OHA.

In question 4, ‘OHA does not (because it cannot and would not) release any claims to the OWNERSHIP of ceded lands. This is NOT a global settlement.’” Again, the recent Hawaii Supreme Court ruling OHA v State of Hawaii ruled against the State of Hawaii in favor of the Office of Hawaiian Affairs (OHA) is a conflict of interest for both are of the body corporate existing under the Constitution. It leaves the OWNERSHIP of ceded lands only to those who make such a claim, the kanaka maoli, not the native Hawaiians and Hawaiians who are corporate entities under the body corporate for only the kanaka maoli is not of the body corporate for it is a living soul. The Hawaii Supreme Court ruled in favor of the plaintiff Kanaka Maoli in the suit, not OHA.

OHA is an entity of the State of Hawaii. The State of Hawaii is an entity of the Territory of Hawaii. That Territory was an entity of the Republic of Hawaii. That Republic was an entity of the Provisional Interim Government. The Provisional Interim Government was a private organization known as the Committee of Safety that was reinforced by deployed fully armed marines of the United States of America.

As an entity of the State of Hawaii, OHA can only serve its creator. OHA’s existence validates the legality of theft. All of these entities have over a period of 115 years been accomplishes to stolen property. They are no better than the thief who stole the kingdom, in fact they are worst for their day to day function reinforces Fraud. They are products of the common denominator, fraud. No matter how you divide it the product remains fraudulent. But engineered consent makes them legal.

## **Apartheid or Genocide?**

Lastly, in OHA's crusade they have created an additional four color brochure in the form of an illustrated poster titled, "ITS TIME TO SETTLE OHA'S PRO RATE ENTITLEMENTS TO THE PUBLIC LAND TRUST REVENUES", that depicts a flow of life, similarly to OHA's monthly publications Ka Wai Ola. The illustration shows two paths of life with its beginning, The Kingdom of Hawaii as its source.

On the "left" side of poster this source of life is dammed creating a dry barren path with a flicker of life at the very end labeled Hawaiians, existing in a tidal pool. On the "right" side of the poster the source of life is flowing with vegetation in abundance. This source of life was shut-off to the living nation of the Kanaka Maoli and its Nationals and diverted to a body corporate of fictional entities to include Provisional Government, Republic of Hawaii, Territory of Hawaii, the United States of America, and the State of Hawaii then dividing into lower subdivisions.

I say this poster is a perfect illustration of apartheid. Some may even call it genocide. Apartheid separates or remove land base from native people while genocide removes native people from the land. Only thing in Hawaii this process is subtle.

## **The Final Picture:**

Those that oppose Kanaka Maoli claims profess Hawaiians having special privileges that U. S. citizens are not entitled to. While some in higher elected offices say the Hawaiians have always had a special relationship with the United States of America, declaring 150 or more legislative acts in behalf of "special relationship" for the native Hawaiians. These numerous legislations are no different than the Act that created the Office of Hawaiian Affairs nor the present Settlement Agreement before hand. They represent pieces of a massive puzzle each projecting an image that presently pacifies most native Hawaiians and Hawaiians whosoever they may be. Should the Settlement Agreement and the Akaka Imitative become law these pieces of the puzzle will finally disclose a very devastating picture of Hawaii's future. A future without the aboriginal people, the Kanaka Maoli, is no different than 10 % Kona Coffee or monkeypod bowls of the Philippine Islands, assimilated but never again genuine Hawaiian.

The independence or sovereignty of the Kanaka Maoli must avoid everything short of a treaty and OHA is just another detour.

E ala e!

Pilipo

John Pilipo Souza, a Living Soul  
Hawaiian National  
HA 096153656  
Ko Hawaii Pae Aina

024

Registration No. \_\_\_\_\_

**This person has signed up to testify.  
No written comments were submitted.**

C

First & Last Name: KALE GUMAPAC

Organization:  
(if applicable) KANAKA COUNCIL MOKU  
O KEAWE

Contact:  
(phone or email) MOKU\_KEAWE@yahoo.com

Registration No. \_\_\_\_\_

025



**This person has signed up to testify.  
No written comments were submitted.**

First & Last Name:

PANAKONAU'E  
KAHAU

Organization:  
(if applicable)

HAWAIIAN KINGDOM  
GOVERNMENT

Contact:  
(phone or email)

iolaniavenue@aol.com

Registration No. \_\_\_\_\_

**This person has signed up to testify.  
No written comments were submitted.**

C

First & Last Name: Ikaika Hussey

Organization:  
(if applicable) \_\_\_\_\_

Contact:  
(phone or email) 221-2843

**TESTIMONY  
STRONGLY SUPPORT HB 266 HD1  
RELATING TO HAWAIIAN AFFAIRS**

S

Joint Committees  
WATER, LAND AND OCEAN RESOURCES AND HAWAIIAN AFFAIRS,  
Judiciary and Finance  
**Hearing February 23, 2008  
State Capitol Auditorium**

BY APOLEI KAHAI BARGAMENTO

Aloha kakahiaka, Chairman Ken Ito and members of the House Committee. My name is Apolei Kaha`i Bargamento. Twenty years ago I accepted a position with the Office of Hawaiian Affairs when I was impressed during the interview that my people needed help to get ahead.

To further my knowledge, I also joined the Hawaiian Civic Club, who I found to have a sincere concern for the welfare of our people. I gained experience in both organizations to be pro-active in supporting the struggle to improve the life of our Hawaiian people.

For 20 years I have personally watched OHA struggle to gain benefits to make lives better for the people of Hawai`i. I say "People of Hawai`i" because we are diverse. Every blood which has set foot on the shores of Hawai`i has mixed and produced siblings with the host natives of Hawai`i. When you help one, you help all of the other races too.

I was there when the Board of Trustees were not paid for their efforts in their pursuit to better the life of our people. The only expense paid was travel to their meetings. I was there when travel expense was not provided if the meeting was held on their island. The Trustee had to find her own way to her meeting, particularly if it was on the other side of the island. One Trustee, in particular, having no ka`a, hitched a ride from her resident in Hilo to attend the meeting in Kona. That is what I call "dedication—to pursue their mission – which mission was then, and still is today, to better the lives of the Hawaiian people.

It has been a struggle and a long journey these past 20 years.

**In 1978** with Constitutional amendments and the establishment of OHA, the State of Hawai`i moved forward in that regard; and the State Legislature followed by enacting statutes to implement OHA and provide a pro-rata share of ceded land revenues.

**Early 1990's** to the present, there were two steps forward and one step back.



Between 1978 and 2008, OHA and the Executive Branch attempted negotiations - four times! In 1993, settlement of the undisputed revenue issues acknowledged that the unresolved issues or disputes would be left for resolution at a future time – this was a written agreement signed by OHA and the Waihe'e administration. That was implemented through enactment of statute by the legislature in Act 35.

**1998 and 1999** negotiations between OHA and the Executive branch was to resolve the disputed, unresolved issues – attempts which never produced a signed settlement agreement between OHA and the Executive branch.

**1999** never resulted in a signed agreement between OHA and the Executive branch because the Cayetano administration was demanding that OHA agree to a release of claims provision that would have adversely affected Native Hawaiians' overthrow claims to ownership of the ceded lands. The Board of Trustees by a majority vote rejected Cayetano's unacceptable proposition.

**2008 - This is our 4<sup>th</sup> try to resolve these disputed issues and join with the Executive branch to request that the 2008 State Legislature bring forward our negotiated settlement to resolve the disputed revenue issues from 1978 to the present.**

With enactment of 2008 legislation to implement our settlement, the State Legislature will have fulfilled the court's direction and will have participated in not only codifying statute to settle the undisputed but also the disputed issues surrounding payment of ceded land revenues to OHA from 1978 to 2008 and will codify the minimum payment of \$15.1 million annually to OHA.

On behalf of my ohana and future generations, we ask the Legislature to enact our legislation to implement the settlement. This has been a long, long struggle and we ask the Legislature to bring it to a closure.

Mahalo for this opportunity to present this testimony.



Apolei Bargamento  
98-1465 B Kaahumanu Street  
Aiea, Hi 96701

028

Registration No. \_\_\_\_\_

S

**This person has signed up to testify.  
No written comments were submitted.**

First & Last Name: Dr. Solomon D.K. Nalua'E

Organization:  
(if applicable) 'Ohana Nalua'E

Contact:  
(phone or email) 235-4958