

HB 266 HD2



**HB 266, HD2
RELATING TO HAWAIIAN AFFAIRS**

**Senate Committee on Agriculture and Hawaiian Affairs
Senate Committee on Water and Land
Senate Committee on Judiciary and Labor**

March 17, 2008

2:45 p.m.

Capitol Auditorium

Aloha Chairs Tokuda, Hee, and Taniguchi, Vice Chairs English, Kokubun, and Hee, and Members. I am Willam Meheula, Counsel to the Office of Hawaiian Affairs in certain matters relating to the public land trust. I am speaking on behalf of Chair Apoliona and the OHA Board of Trustees. **OHA strongly supports House Bill No. 266, HD2** 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 pursuant to sections 4 and 6 of Article XII of the State Constitution by (1) addressing the additional amount of income and proceeds that OHA is to receive from the public land trust by for the period from November 7, 1978 to July 1, 2008 by providing \$13,189,860 in cash to OHA and conveying certain parcels of property in fee simple to OHA, and (2) establishing a method for determining the amount of income and proceeds that OHA is to receive from the public land trust for the period after July 1, 2008.

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.

Some weeks ago, the media 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 two matters important to the bill. First, the bill establishes \$15.1 million per fiscal year as the minimum yearly amount of income and proceeds that OHA is to receive pursuant to Article XII, sections 4 and 6, of the State Constitution.

Second, the bill contains a provision in Section 13 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.

Regarding the Settlement Agreement that provides the impetus for the bill, it is important to note that the release language addresses OHA's claims to income and proceeds from the public land trust; the language is not intended to release any ownership claims to ceded lands.

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.

OHA has sought to educate and receive feedback from the general community on the proposed settlement and bill through various means. Since the announcement of the settlement on January 18, 2008, OHA has participated in 42 briefings or community meetings throughout the State, reaching over 1,400 persons. Additionally, OHA has held a live internet based meeting and made available information from its website resulting in over 1,500 hits. Moreover, the proposed settlement and bill have been discussed statewide through two network television broadcasts, a radio broadcast, and through the major daily newspapers on each island.

I urge your Committees to respond favorably to this bill, 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

SETTLEMENT AGREEMENT

COPY

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 property¹ 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

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

in value amount")²; 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.³ 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?"⁴ If the answer is "No," OHA has no further rights.⁵

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

² 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.

³ 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.

⁴ 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.

⁵ 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").⁶ 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

⁶ 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.⁷

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.

⁷ 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.

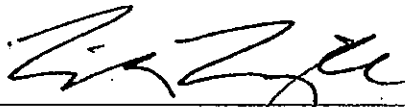
This Agreement neither represents nor is to be construed as an acknowledgement or admission of any negligence, misconduct, liability, or fault of any kind whatsoever by any party.

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

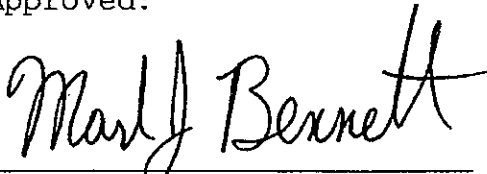
on the part of each party hereto. The Parties also represent and agree: (1) that they may hereafter discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of these releases; and (2) that this Agreement and the releases given in this 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:

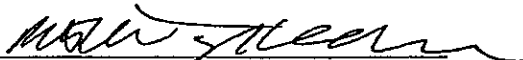


Mark J. Bennett, Attorney General



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

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

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."

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(e) 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."]~~

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

Property Description	Tax Map Key & Kaka'ako Subdivision Lot Number	Address	Approx Parcel Size	Settlement Value (\$)
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	
Kaka'ako Makai			18.451	92,719,415
Kalaeloa Makai	1910310010000	91-319 Olai St.	110.100	
Kalaeloa Makai			110.100	59,607,000
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	
Hilo Banyan Drive			80.397	34,483,725
LAND SETTLEMENT VALUE			208.948	186,810,140



**HB 266, HD2
RELATING TO HAWAIIAN AFFAIRS**

**Senate Committee on Agriculture and Hawaiian Affairs
Senate Committee on Water and Land
Committee on Judiciary and Labor**

March 17, 2008

2:45 p.m.

Room: Capitol Auditorium

Aloha Chair Tokuda, Chair Hee, Chair Taniguchi and members of the Committees. My name is Rowena Akana, and I am an at-large Trustee of the Office of Hawaiian Affairs. I am currently traveling off-island on official OHA business and I regret that I am unable to present this testimony to all of you in person.

I am writing to **STRONGLY OPPOSE HB 266, HD 2** because the bill, if passed into law, will bind our beneficiaries to a settlement agreement that was signed between OHA and the State on January 17, 2008. The agreement contains language that will forever extinguish all rights afforded to Native Hawaiians under section 4 and 6 of Article XII of the State Constitution. Page 3 of the agreement specifies that:

“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 under **section 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.**”

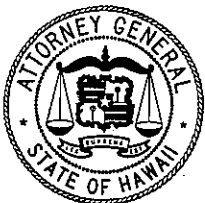
Further, the language above conflicts with the Native Hawaiian Government Reorganization Act of 2007 (S.310), better known as the Akaka bill, that is currently before the U.S. Senate. S.310 allows for the United States and the State of Hawaii to enter into negotiations with the future Native Hawaiian governing entity to addressing such matters as the transfer of lands, natural resources, and other assets, and the protection of existing rights related to such lands or resources and also to address grievances regarding assertions of historical wrongs committed against Native Hawaiians by the United States or by the State of Hawaii.

HB 266, HD2 - RELATING TO HAWAIIAN AFFAIRS
Senate Committee on Agriculture and Hawaiian Affairs
Senate Committee on Water and Land
Committee on Judiciary and Labor
March 17, 2008, 2:45 p.m., Room: Capitol Auditorium
Page 2

OHA's mission is to advocate for the betterment of our beneficiaries. I therefore cannot support a bill that will extinguish the rights of all our beneficiaries to future entitlements including rights to surface and ground water and mineral resources.

For this reason, I strongly oppose HB266, HD2 and ask the committees to please hold this bill until a more favorable agreement can be worked out by the Governor's administration, the Legislature, Native Hawaiian beneficiaries, and OHA.

Mahalo for this opportunity to testify.



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

ON THE FOLLOWING MEASURE:

H.B. NO. 266, H.D. 2, RELATING TO HAWAIIAN AFFAIRS.

BEFORE THE:

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

DATE: Monday, March 17, 2008 **TIME:** 2:45 PM

LOCATION: State Capitol Auditorium

Deliver to: Committee Clerk, Room 218, 1 copy

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

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

We are gratified that this measure passed third reading in the House, and is now before the Senate for its consideration.

As I did when S.B. No. 2733 was before you earlier in the session, I respectfully urge you to report H.B. No. 266, H.D. 2 to the floor for the Senate's approval.

We were pleased that the House afforded us, and the trustees and attorneys for OHA, the opportunity to work with them to craft the bill that is now before you. Even though this is not the precise measure that we attached to our January 17, 2008 Settlement Agreement, I believe this bill can effectuate the agreement we reached.

When we went into the community to give Hawaiians and non-Hawaiians alike, a chance to ask questions and share their concerns about the bill attached to the Settlement Agreement, I was reminded again, how critical, a firm grasp of the history that leads up to this bill is, to understanding its terms and what it seeks to accomplish. With your indulgence, then, I would like to set out, again, some of the testimony I provided earlier in the session when the committees heard S.B. No. 2733.

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.

This bill focuses solely and only on the question about how much of the income and proceeds from the Ceded Lands OHA is to receive under article XII, section 6 of the State Constitution. Looking backwards, it finally and completely settles all disputes over what that amount ought to have been between 1978, when the obligation was imposed, to the present, and requires approximately \$200 million in cash and real property to be transferred to OHA. For the future, it establishes a process and fixes an amount that will allow the State to continue satisfying that same obligation.

Our meetings in the community also left me with an even greater appreciation of what is probably axiomatic when a dispute that has lasted thirty years is finally resolved - there will always be diverging views - from those on one side of the dispute or the other, with one interest or another, that a different settlement, paying more, paying less, paying in a different way, would have been better for one group or the other, or even the State as a whole.

For those who said 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 came to urge that the bill be amended to address the historical grievances of the Hawaiian people against the United States, and its successor to the Ceded Lands -- the State of Hawaii, or that there could be no settlement because the lands being

transferred already belong and have always belonged to the Hawaiian people -- I can say only that this bill does not and cannot address those grievances or claims. 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.

I continue to believe that OHA and the State reached a fair, reasonable and just settlement for all the beneficiaries of the public land trust -- native Hawaiians and all of the people of Hawaii alike, and that the bill we proposed, and the bill that is before you now provides an effective means of making that settlement a reality. I urge you, therefore, to report H.B. No. 266, H.D. 2, to the full Senate for approval.

testimony

From: Oswald Stender [oswalds@oha.org]
Sent: Thursday, March 13, 2008 9:57 AM
To: Arvid Youngquist; testimony
Subject: RE: HB 266, HD2 Joint Committee Hearing on March 17th (Monday) 2008, Room 414 at 2:45 PM

Arvid: Mahalo for your support. Malama pono. Oz

From: Arvid Youngquist [mailto:thirr33@gmail.com]
Sent: Wednesday, March 12, 2008 5:57 PM
To: testimony@capitol.hawaii.gov
Subject: HB 266, HD2 Joint Committee Hearing on March 17th (Monday) 2008, Room 414 at 2:45 PM

**Chairs Sen. Jill N. Tokuda, Sen. Clayton Hee, & Sen. Brian T. Taniguchi
Honorable Vice Chairs, and Members of the Hawaii Senate AHW, WAM, & JDL
Committees
Hearing HB 266 HD2, Relating to Hawaiian Affairs
March 17th, 2008 at 2:45 PM in Conference Room #414**

Dear Senators, I Arvid Tadao Youngquist, speaking on behalf of The Mestizo Association (est. 1982), in strong support of HB 266 HD2.

A testimony in support was provided to the House Joint Committee prior to adoption of HD2 as requested by the AG & OHA.

The Measure Title differs from the SB 2733 and its House OHA Package (which I see is not moving). The Description of the House measure before you and the SB 2733 which has crossed to the House, pending hearing by the Joint Committees at this writing, are very similar and the variance in the effective date has been brought in agreement with each other. As I remember the vast majority of the testimony in person for the HB 266 HD1 at the Capitol Auditorium, even persons and organizations that took exception to the amount of the annual payment to OHA, or the size of the real estate to be conveyed to OHA, nevertheless, supported the HB 266 HD1 and their general objections, I believe are addressed broadly in the HB 266 HD2. The cooperation and collaboration of all key stakeholders and the House Majority Attorneys and the AG, as well the OHA attorneys brought about the inclusion of the OHA's proposed HD2 attached to their spokesman, Trustee Walter Heen. As a matter of observation, the size of the lands to be conveyed added to the existing OHA land trusts, will provide a beginning of a "Nationhood" within a Nation (State), adequate as a start for the 80,000+ Kau Inoa registrants. Small population nations such as Monaco, Tahiti, Lichtenstein, Samoa, Haiti, Vatican City, Nauru, Tuvalu, San Marino, Siera Leone, Gambia, Liberia, Togo, Benin, Bahrain, Quater, New Caledonia, Palau, Malta, Georgia, Srilanka, Bhutan, French Guiana, Belize, Costa Rica, or Nepal, are countries with a proud history, culture, and heritage. Let's move to provide our Kanaka Maoli the real estate & funds to re-establish a Nation for the Native Hawaiians. *The Akaka Bill in 2009 will be the second part of this proactive action started in 1978 at the CON-CON.*

Mahalo,

**Arvid Tadao Youngquist
Founder & Spokesman
The Mestizo Association
P O Box 37542
Honolulu, Hawaii 96837**

"1 of 14,664 voices Statewide"



KO`OLAUPOKO HAWAIIAN CIVIC CLUB

March 17, 2008

Senator Jill Tokuda, Chair/& Members
Committee on Agriculture and Hawaiian Affairs
Senator Clayton Hee, Chair/& Members
Committee on Water and Land
Senator Brian T. Taniguchi, Chair/& Members
Committee on Judiciary and Labor

Re: Testimony in Support of H.B. 266, H.D. 2,
RELATING TO HAWAIIAN AFFAIRS

Aloha mai kakou!

The Ko'olaupoko Hawaiian Civic Club supports passage of House Bill 266, House Draft 2, which would provide for conveyance of lands and cash transfers to the Office of Hawaiian Affairs to satisfy part of the State's obligations to native Hawaiians covering payments due for the past 30 years.

Our civic club has voted to support all legislation that advances settlement and fair resolution of all native Hawaiian claims for the loss of lands and other resources since 1893.

We ask you to join us in addressing this long-overdue settlement with passage of this legislation.

Mahalo for this opportunity to offer our mana`o.

Me kealoha pumehana,

MAHEALANI CYPHER
President

P. O. Box 664
Kaneohe, HI 96744
Ph. (808) 235-8111
www.koolaupokohcc.org
malamapono@aol.com



KO`OLAU FOUNDATION

March 17, 2008

TO: Senator Jill Tokuda, Chair/& Members
Committee on Agriculture and Hawaiian Affairs

Senator Clayton Hee, Chair/& Members
Committee on Water and Land

Senator Brian T. Taniguchi, Chair/& Members
Committee on Judiciary and Labor

FROM: Leialoha "Rocky" Kaluhiwa, President 
Ko`olau Foundation

RE: Testimony in Support of H.B. 266, H.D. 2, RELATING
TO HAWAIIAN AFFAIRS

Aloha Chairs Tokuda, Hee, Taniguchi, and Committee members:

The Ko`olau Foundation supports passage of House Bill 266, House Draft2, which would allow for a settlement of obligations by the State of Hawai'i for use of Hawaiian lands over the past 30 years.

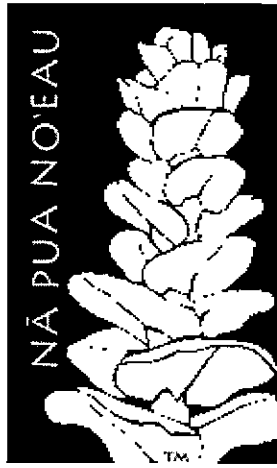
Our organization's goal is the preservation and perpetuation of the culture, history and heritage of our islands' first people, our native Hawaiians. Addressing these obligations is the honorable, pono approach for this Legislature and the State of Hawai'i.

We urge complete resolution of all outstanding claims, and feel this particular measure helps our state move forward toward that goal.

We appreciate your taking the time to review this matter, and ask your kokua to approve this bill.

Mahalo for your kokua.

P. O. Box 4749
Kaneohe, HI 96744
Ph. (808) 286-7955
Email: rockyfromheeia@aol.com



Center for Gifted & Talented
Native Hawaiian Children

HAWAI'I

Head Office
University of Hawai'i at Hilo
200 West Kāwili Street
Hilo, Hawai'i 96720-4091
Phone (808) 974-7678
Fax (808) 974-7681

West HAWAI'I

University of Hawai'i Center,
West Hawai'i
81-964 Haleki'i Street
Kealahou, Hawai'i 96750
Phone (808) 322-4867
Fax (808) 322-4855

MAUI

Maui Community College
310 Ka'ahumanu Avenue
Kahului, Hawai'i 96732-1617
Phone (808) 984-3364
Fax (808) 242-6153

Lāna'i

Lāna'i High & Elem. School
P.O. Box 630630
Lāna'i City, Hawai'i 96763
Phone (808) 565-7910 ext. 288
Fax (808) 565-7904

MOLOKA'I

Moloka'i Education Center
P.O. Box 488
Kaunakakai, Hawai'i 96748-0488
Phone (808) 553-9993
Fax (808) 553-8108

O'AHU

University of Hawai'i at Mānoa
Queen Lili'uokalani Center
for Student Services #214
Honolulu, Hawai'i 96822-2205
Phone (808) 956-9410
Fax (808) 956-9240



UNIVERSITY
OF HAWAII, 'I
HILO Community College
1-1901 Kaunakakai Highway

March 13, 2008

Re: HB266, HD2 RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT.

March 17, 2008

2:45 pm

State Capitol, Room 414

Dear Joint Senate Committees on Agriculture & Hawaiian Affairs, Water & Land, and
Judiciary & Land Members:

Aloha! I am writing on behalf of the thousands of students, families, and staff of Nā
Pua No'eau/University of Hawaii in support of the Bill **"RELATING TO THE PUBLIC
TRUST LANDS SETTLEMENT."** Upon passage of the bill and receipt of the monies
annually, the Office of Hawaiian Affairs and/or other entity governing the affairs of the
indigenous people of Hawaii would increase the capacity significantly in providing essential
services to its beneficiaries.

In education, Hawaii has failed to provide an education system that responds to the
vision and needs of the Hawaiian people. While it is a human right that every indigenous
student is provided an education that includes the learning of their own language, culture,
history and knowledge system, which is not the case in Hawaii and with our Hawaiian
population. While we have Hawaiian language immersion schools, charter schools and
programs like Na Pua No'eau that provide education that responds to the vision and needs of
Hawaiians, there are tens of thousands of Hawaiian students and families in public education
that do not have access to this basic human right. Further, it is documented that education
processes/systems that are connected culturally to our Hawaiian population will optimize
their potential for higher achievement and aspirations.

Our Center sees this settlement as an opportunity to provide Hawaiian education more
extensively and in many different venues that will begin to bring parity for our Hawaiian
population to have an education that meets their vision and needs.

We believe this is good not only for our Hawaiian population but will impact the rest
of the citizens of Hawaii in a positive way as well.

Sincerely,

David K. Sing, Ph.D.
Director

KEAUKAHA COMMUNITY ASSOCIATION

P.O. Box 5146, Hilo Hawaii 96720

E-mail address: elama@hawaiiantel.net

Phone: 959-5080

March 13, 2008

House of Representative
24th Legislature, 2008
State of Hawaii

Ref: **OBJECTIONS TO H.B.NO. 266 HD2;
RELATING TO HAWAIIAN AFFAIRS;
Public Trust; Conveyance of real property and cash to OHA (§);
Conveys certain parcels of real property and transfer cash to the Office of Hawaiian
Affairs as part of the State's obligation to native Hawaiians under Article XII, sections 4
and 6, of the Hawaii Constitution. (HB266 HD2)**

TO:

Water, Land, Ocean Resources & Hawaiian Affairs Committee;
Chair: Representative Ken Ito
Vice-Chair: Representative Jon Riki Karamatsu
and Honorable members of the committee.

Dear Chair Ito and Honorable Members;

I am Patrick Le'o Kahawaiola'a, a native Hawaiian as defined under the Hawaiian Homes Commission Act, 1920 as amended July 9, 1921 and the current President of the Keaukaha Community Association. Based on the 2000 U.S. Census which indicated that within the boundaries of this Hawaiian Homes lands settlement on lands set aside pursuant to Public No. 34, 42 Stat. 108 and having the status of Hawaiian Homes lands there are 410 families and equates to 1,152 people. We vehemently object to the proposed settlement between the State of Hawaii and OHA for the following reasons:

We object to the Waiver of Claims against the STATE clause;

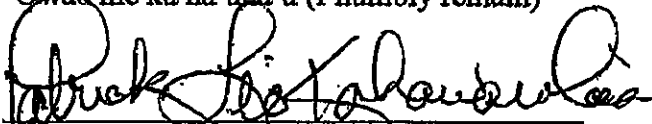
We object to language of res judicata in same clause

We object to the failure of OHA BOT to seek an accurate assessment of lands be transferred.

We object to the failure of OHA BOT from seeking input of beneficiaries of the ceded lands proceeds and income.

I can be reached at (808) 959-5080 if more information is needed.

'Owau me ka ha'aha'a (I humbly remain)



Patrick Le'o Kahawaiola'a

Committee on Water and Land
Senator Clayton Hee ,Chair

The following testimony from Patrick Le'o Kahawaiola'a is to be included with the written testimony for the joint committee hearing on HB266, D2 which is being heard on Monday March 17, 2008 at 2:45 in the Capitol Auditorium.

Thank you

Manawale`a



*Legislative Testimony on HB 266, HD2 Relating to Public Land
Trust Settlement*

*Senate Committees on Agriculture & Hawaiian Affairs, Water & Land,
Judiciary and Labor*

March 17, 2008

2:45 pm

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 (1st vice-president). We strongly support HB 266, HD2.

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.

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.

INPEACE- Institute for Native Pacific Education and Culture

TESTIMONY

HB266 HD2
RELATING TO HAWAIIAN AFFAIRS

Testimony Presented Before

The Senate Committees on Agriculture & Hawaiian Affairs, Water & Land and Judiciary
& Labor have scheduled HB266 HD2 OHA Settlement

Monday, March 17, 2008 at 2:45pm in Room 414.

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.

TESTIMONY

In favor of

Public Trust Settlement

HB266 HD2

RELATING TO HAWAIIAN AFFAIRS

Testimony Presented Before

The Senate Committees on Agriculture & Hawaiian Affairs, Water & Land and Judiciary & Labor have scheduled HB266 HD2 OHA Settlement

Monday, March 17, 2008 at 2:45pm , Room 414.

By: Sherlyn Franklin Goo, Native Hawaiian Educator

Before

Senator Jill Tokuda; Agriculture and Hawaiian Affairs Committee.

Senator Brian Taniguchi; Judiciary Committee.

Senator Clayton Hee; Water and Land Committee.

Aloha kakou. My name is Sherlyn Franklin Goo. I am a Native Hawaiian who has worked on behalf of young children for over thirty-five years. During the past ten years, I have vehemently spoken and written about quality early care and education as the foremost predictor of success in life for every child. Over one-third of our state's population in the age group of 0 - 5 are Native Hawaiian, according to the 2000 Census. These children will be adults within the next 15 or so years. If past statistics on Native Hawaiian children predict to future statistics, a large percentage will end up scoring poorly in standardized achievement tests, will be in poor health, will be incarcerated, will be receiving food stamps and will be dependent upon virtually every social welfare program of our state. Our entire state will feel the impact of this large group of our population.

This settlement is critical to educational intervention of our youngest population of Native Hawaiian children. They are the future of our state. Too long has this settlement been on hold. In the meantime, thousands of our future citizens are not being properly attended to. I work with an agency that provides early childhood

education, but we do not have sufficient funds to serve all the children and families that need our services. Every week there are schools and families that ask for our services. And we are not alone. There are many other Native Hawaiian agencies striving to make a difference in the Native Hawaiian communities throughout our state.

Please pass these bills so that more funding is available to our people.



KAUMAKAPILI CHURCH

766 North King Street
Honolulu, Hawaii 96817
(808) 845-0908

Established 1838

Reverend Richard K. Kamanu, Kahu Mua

March 2008

Re: HB 266,HD2

RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT

March 17, 2008

2:45 pm

State Capitol, Room 414

Dear Joint Senate Committees on Agriculture & Hawaiian Affairs, Water & Land and Judiciary & Labor.

Aloha! I am writing this letter as a concerned citizen of the State of Hawaii and as a native Hawaiian, born and raised in these islands and whose family is rooted in this land from my kupuna who settled in these islands from the island of Borabora. I stand in support of the Bill "**RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT.**" Upon passage of the bill and receipt of the monies annually, the Office of Hawaiian Affairs and/or other entity governing the affairs of the indigenous people of Hawaii would increase the capacity significantly in providing essential and much needed services to its beneficiaries.

As a Hawaiian Christian Minister, serving a predominantly Hawaiian congregation which service the community of the Kalihi-Palama area, we have seen the plight of our native Hawaiian people struggle to make ends meet in their own homeland. Hawaii has failed to provide an affordable housing venue that would benefit a number of our low income, to no income families. Hawaii has failed to provide a educational system that meet the needs of our native Hawaiian people.

As a pastor of a church that service the poor, the oppressed, the down trodden, the disadvantaged of our islands, and namely one in which ministers to both Hawaiian and non-Hawaiian alike, sees this settlement as an opportunity to provide Hawaiian education, social service, self-determination for it's native peoples, will begin to bring equality, self-worth, and pride for our Hawaiian population to their vision and needs.

I believe this is good and appropriate at this time.

Sincerely,

Rev. Richard K. Kamanu,
Kahu Mua



PO BOX 15714 • Honolulu, Hawai'i 96830
Telephone: 306-6765 • Facsimile: 843-3351 • e-mail: mlpang@ksbe.edu

March 10, 2008

Papa Alaka'i

Pelekikena
Melelani Pang
Hope Pelekikena
Hailama Farden
Pu'ukū
'Alohilani Okamura
Kākau 'Ōlelo
Mālia Melemai
Hoa Kūkā
Kupuna Kanoa McGuire
Keikilani Ako
'Iialoha Keahi
Kahu Kihapai

HB266 HD2

RELATING TO HAWAIIAN AFFAIRS

Testimony Presented Before

The Senate Committees on Agriculture & Hawaiian Affairs, Water &
Land and Judiciary & Labor have scheduled HB266 HD2 OHA
Settlement

Monday, March 17, 2008 at 2:45pm, Room 414.

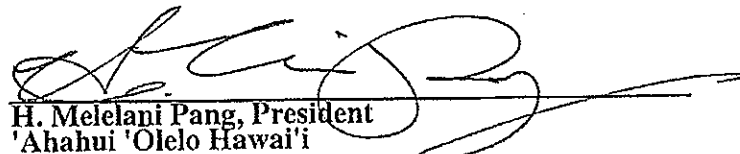
Papa Kauleo

H.K. Bruss Keppeler
Ke'ala Kwan
Paul Nahoa Lucas
Kalena Silva
Oswald Stender
Steve Kwock

E nā kenekoa o Hawai'i,

Aloha Kākou. The 'Ahaui 'Ōlelo Hawai'i, the Association of Hawaiian Language Speakers, Educators and Learners supports HB 266 HD2 as fair and reasonable. The offer of land as part of the settlement is appropriate and wise and we send our mahalo to you all for settling this issue. Ua mau ke ea o ka 'āina i ka pono. The life of the land is perpetuated in righteousness. This bill is pono.

'O wau me ka ha'aha'a,


H. Melelani Pang, President
'Ahaui 'Olelo Hawai'i

HPACH

919 4th Street
Pearl City, Hawaii 96782

March 17, 2008

Senator Jill No. Tokuda, Chair
Senator J. Kalani English, Vice Chair
And Committee Members on Agriculture and Hawaiian Affairs
Senator Clayton Hee, Chair
Senator Russell S. Kokubun, Vice Chair
And Committee Members on Water and Land
Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice Chair
And Committee Members on Judiciary and Labor
The Senate, The Twenty-Fourth Legislature
Regular Session of 2008, State of Hawaii

Subject: HB 266, HD2 Relating To Hawaiian Affairs, "OPPOSE"

ALOHA Kakou,

My name is Richard Pomaikaiokalani Kinney. As Sovereign of the Hawaiian Political Action Council of Hawaii, I "OPPOSE" the intent and passage of HB 266 HD2.

On November 23, 1993 President William Clinton signed the Apology Resolution into law. Public Law 103-150 is the foundation of the recent Hawaii Supreme Court ruling recognizing that the Native Hawaiian people have a claim to the lands of the Public Land Trust.

After the Hawaii Supreme Court ruling and based on the findings in Public Law 103-150, I find the "Settlement Agreement" signed on January 17, 2008 by Governor Lingle, Hawaii State Attorney General Mark J. Bennett, S. Haunani Apoliona, OHA Chairperson and Robert G. Klein, OHA Counsel to the Board of Trustees as a Fraud. A political deception that leads to cause the Native Hawaiian people to give up their claims to their national lands of their Hawaiian nation.

On July 7, 1898 President McKinley signed the Newlands Joint Resolution that annexed the Hawaiian Islands to the United States. The provisions of the Annexation were held by the Attorney General of the United States at that time of the annexation as creating a "special trust" of the Ceded Lands, the federal government holding but a naked title to the lands.

HPACH

919 4th Street
Pearl City, Hawaii 96782

The Page 2
March 17, 2008
HB 266 HD2
AHW/WTL/JDL

provisions of the Joint Resolution were a recognition on the part of Congress that there were significant difference in the patterns of land ownership and utilization in Hawaii from those that prevailed elsewhere in the United States when United States acquired the Hawaiian Islands. That the existing laws of the United States relating to Public Lands would not apply and that Congress shall enact special laws for their management and disposition of the Public Trust Lands of Hawaii.

Under the Organic Act of 1900, the Territory of Hawaii obtained the possession, beneficial use, and control of most of the lands of the Hawaiian Islands. In fact the bulk of the lands that were annexed to the United States were under the control of the Territory of Hawaii from 1900 to 1959.

Under the Admission Act of the State of Hawaii the lands control by the Territory of Hawaii are classified as 5(a) Public Trust Lands. This is where the present day Political Fraud is deeply rooted.

For many years there was no inventory of the Public Trust Lands. However, in September 1981, the DLNR, through its Division of Land Management, completed an inventory of all state-owned public lands for which the department is accountable. The inventory lists approximately 1,271,652 acres. The inventory does not include public lands under the control and use of the University of Hawaii and the Hawaii Housing Authority. Also excluded from the inventory are all lands defined as "available lands" by the Hawaiian Homes Commission Act, except those encumbered by a lease to a state agency. In addition, state highways and roads are excluded.

For many years since the creation of the Office of Hawaiian Affairs Native Hawaiians have be told that the State has no inventory of the Public Land Trust. That it would be too costly for the State to do an inventory of the Public Land Trust. There was even a time when the State wanted OHA to share in the cost of having an inventory of the Public Land Trust. Native Hawaiians were not the only ones that was and are continually being deceived by the Governor's Office on the issue of an inventory of the Public Land Trust, but also all members of

HPACH

919 4th Street
Pearl City, Hawaii 96782

The Page 3
March 17, 2008
HB 266 HD2
AHW/WTL/JDL

the Legislature as well. Which adds deeply to the Political Fraud.

Under the provisions the State Admission Act of 1959 only Ceded Lands and non Ceded Lands returned to Hawaii by the United States on and after statehood are made subject to the Public Land Trust.

Even in the language under sections 4 and 6 of Article XII of the Hawaii Constitution it speaks only of 5(b) Public Trust Lands. Which do not include 5(a) Public Trust Lands that were under the control of the Territory of Hawaii for 59 years. National lands of the Hawaiian nation that Native Hawaiians as we say today, Kanaka Maoli have never relinquished our claims as a people.

The 200 Million Dollar Hawaiian Land Sale Settlement deal from the very beginning of the Settlement being signed on January 17, 2007 should be a "Wake Up Call" to everyone. Not only to the Kanaka Maoli Hawaii but also to every member of the State Legislature. As elected members of the State of Hawaii, all of you are also Trustees of the Public Land Trust. State Trustees to the lands of the Public Land Trust together with the proceeds from the sale or other disposition of any such lands and the income there from that are held by the Governor's Office and members of the Legislature as a Public Trust.

The "Back Rent Revenues" due to the Kanaka Maoli Hawaii should begin in 1959 when Hawaii was admitted into the union as a State. The "Back Rent Revenues" due is owed to the native Hawaiians as defined in sections 4 and 6 of Article XII of the Hawaii Constitution. Not to the Office of Hawaiian Affairs. Above all, not to the Trustees of OHA. All revenues from the Public Land Trust are not the personal property of the OHA Trustees. In Trust, these revenues belongs to the native Hawaiian people.

Native Hawaiians as defined in the Apology Resolution not only have a claim of 100% to the lands of the Public Land Trust they also have the same claims of 100% to the proceeds from the sale or other disposition of any and all such lands and the income of the Public Land Trust. Not 20%, not 50% but 100% of the lands and incomes of the Trust.

This is why I have said many times in the past that the Native Hawaiian

HPACH

919 4th Street
Pearl City, Hawaii 96782

The Page 4
March 17, 2008
HB 266 HD2
AHW/WTL/JDL

people are the wealthiest people under American occupation. The Kanaka Maoli Hawaii are the native indigenous trust beneficiaries of the State of Hawaii.

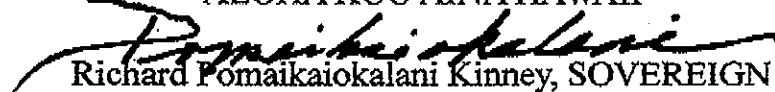
All fraudulent legislative actions against the Kanaka Maoli Hawaii needs to come to a complete ending. Beginning with HB 266 HD2. Both the "Signed Settlement Agreement" and HB 266 HD2 are fraudulent documents. Both documents should be Killed from any further legislative actions today by your committees.

Once more HPACH "OPPOSE" the intent and passage of HB 266 HD2. A Political Fraud that only perpetuates the wrongs of the overthrow of the Kingdom of Hawaii. Violating the Civil Rights of the native indigenous Kanaka Maoli Hawaii.

The Apology Resolution, Public Law 103-150 is Law and as the Hawaii Supreme Court ruled in January, it should be obeyed.

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

ALOHA KUU AINA HAWAII


Richard Pomaikaiokalani Kinney, SOVEREIGN

Hawaiian Political Action Council of Hawaii

Email: HIAHAWAII@aol.com

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

March 12, 2008

Committee on Agriculture and Hawaiian Affairs
Senator Jill N. Tokuda, Chair

Committee on Water and Land
Senator Clayton Hee, Chair

Committee on Judiciary and Labor
Senator Brian T. Taniguchi, Chair

Re: HB 266 HD2 – OHA/Lingle Settlement
Hearing Date: March 17, 2008
Time: 2:45 p.m.
Place: Conference Room 414
State Capitol

TESTIMONY IN OPPOSITION

Aloha Senators:

I had previously submitted testimony in support of this measure because it was better than the Senate version and because we were told that the valuation reports and justifications for the figures would be made available to us at the OHA/State briefing in Hilo two days after the last House hearings. In Hilo – no information was made available. OHA refused to distribute the legislation and the settlement at the Hilo “informational” session. We were notified that in fact no valuation or appraisals had been done on any of the 11 parcels subject to the Bill.

I am opposed to HB 266 HD2 for the following reasons:

1. Under Hawaiian law OHA is entitled to 20% of the Ceded Land revenues. There is no relation between the 20% figure and the 15 million dollar figure or the 200 million figure! The figures appear to be arbitrary amounts. In addition, the legislative bill deletes all statutory language relating to the Hawaiians share (20%) of revenues. This theft of revenue from Hawaiians is based on the claim of OHA that the courts overruling of Act 304 also overruled the OHA 20% share of proceeds. This is false – in January, 2008, the Hawaiian Supreme Court ruled in OHA vs. HCDCH that the State cannot dispose of Ceded Lands trust assets without resolving native claims – the

court cited the Apology Bill, the DOI (Department of Interior) Mauka to Makai report and OHA's claims for 20% (see pg. 6 of the Opinion).

2. For several weeks Hawaiians have requested that OHA provide the valuation reports and other documents (Phase 1 & 2 Real Estate reports) on the status of the lands, and valuation figures and formulas used in the settlement. These data have not been provided to the legislature or native beneficiaries – because no valuations or appraisals were ever done.
3. There is evidence that the Kalaeloa land is contaminated and toxic. OHA also confirmed that they were aware of the toxicity problem with the Kalaeloa land but were accepting it anyway because of a deal with Governor Lingle to work with OHA on a solar project on the parcel!! OHA has agreed to accept the land, pay trust assets to conduct an environmental due diligence effort and then return the land or get a 25% credit once the toxicity is proven. Why is OHA taking toxic land? Who will have to clean up the toxicity?
4. The Legislature should take note that the Hawaiian peoples have been excluded from the legislative and legal discussions relating to this measure. Legislative hearings will be over before the “informational sessions” which the Senate forced on OHA are completed. The negotiations took place in secret, the valuations reports and data regarding the figures have been withheld. OHA is soliciting letters of support from its grantees, not its beneficiaries. Finally, the OHA video pushing the settlement features Auntie Gladys Brandt calling for unity and justice. This manipulation is intended to dupe Hawaiians into believing that Auntie Gladys supported this travesty – in reality, she died years before this shameful settlement was conceived by the current OHA trustees (Rowena Akana excluded).
5. Both bills settle revenues from 1978 to 2008 (30 years) for 200 million. The Heely ruling in 1990 set the debt at \$1.2 billion. The state and Lingle cannot “explain” the 200 million figure but the Bills provide this is a “final” settlement of past revenues.
6. Native Hawaiians are suing OHA now in court because OHA has failed to provide benefits to the named beneficiaries. OHA has 400 million in the bank – The Seiji Naya report prepared for OHA on the poverty of Native Hawaiians demonstrates that the lawsuit is valid. Naya just presented his report in Hilo last night!!
7. The last State Audit found OHA had no Master Plan for its work and was not making an effort to address beneficiary needs. Several Admin and fiscal problems were identified. Hawaiians are calling for an audit – Mele Carrol of Maui is working on a Resolution for this session.

8. I have been informed by Trustee Rowena Akana that OHA & Governor Lingle will not be changing the settlement which is binding, regardless of what the Legislature does in the legislative bills. The OHA/Lingle settlement is executed and is binding – the settlement and waiver will be in force. The Bills do not set aside or void the settlement agreement.
 - a. The Settlement dispossesses Hawaiians of our Ceded Lands trust assets. OHA has negotiated a small package of land and revenue for itself and has agreed to relinquish all claims of our peoples to 1.8 million acres of land, the submerged lands, energy resources, biodiversity and surface and subsurface natural resources.
 - b. The settlement is supposed to resolve claims to “the portion of income and proceeds from the lands of the public trust for use by OHA” Settlement Agreement (SA), pg. 1 of 9 from 1978 – 2008. In return for the settlement, OHA waives or gives up, not only claims to the income from 1978 -2008, but.....any other tangible right, item or benefit from the public land trust....” (SA, pg. 2 of 9). OHA is giving up these rights not only for OHA, but for “any other person or entity.”
 - c. OHA’s waiver of claims is res judicata for all Hawaiians, their organizations and nation – this means that we will never be able to sue the state or OHA for our trust lands, revenues or other rights including an accounting and inventory of our trust assets. This language is so broad and sweeping that Hawaiians will lose rights not related to the OHA 20% pro rata debate. Other rights that Hawaiians claim to the public trust include HRS 7-1 rights (access and gathering), rights to worship at heiau on 5(f) lands, genetic resources, etc. These rights will now be ignored by the State.
9. Where are these land and monies going? OHA has created a limited liability corporation (LLC) called Hiilei Aloha. It has already transferred lands (Kauai and Waimea Oahu) into the LLC and approximately \$500,000. Four million dollars are slated for transfer. The LLC documents provide that upon its dissolution, all assets are transferred to “no profit organizations”. This LCC is a vehicle to transfer trust assets out of the Trust. OHA proposed legislation this year to have the Legislature legalize the LLC but the Legislature has killed the measure. Nevertheless, the LLC exists and is the receptacle of our peoples lands and trust funds.
10. Where is the accountability? The last state audit of OHA found that is had no Master Plan for its beneficiaries and had serious administrative and fiscal problems. Nothing has changed. OHA has 400 million dollars in Native Hawaiian trust assets and is currently being sued by Native Hawaiians for failing to provide real benefits to its legal beneficiaries. On March 11, 2008, Seiji Naya went to Hilo to present his report on severe poverty among Native Hawaiians -- a report he prepared for OHA! In reality, Hawaiians live and die

in poverty because OHA has withheld hundreds of millions of dollars from those who need it most – the Hawaiian people.

11. Why the rush? OHA does not need more money, it needs to be audited and made accountable. According to the OHA staff who attended the Hilo briefing – OHA and Lingle wanted to settle now because this was an election year!! Claims of Native Hawaiians relating to the Ceded Lands should be addressed by the Hawaiian nation. These bills represent a settlement (SB) and or agreement (HB) that is final and that Native Hawaiians will be unable to challenge in the future. These bills are a deal – the State OHA is settling with the State governor and seeking approval from the State Legislature. Who endorses these measures – the State HSTA & HGEA, State public unions who did not consult with their members? Also supporting are the State DHHL and George Ariyoshi!!!

It looks like a political deal to me and is certainly a breach of trust.

Sincerely,

Mililani B. Trask

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 AGRICULTURE AND HAWAIIAN AFFAIRS

Senator Jill N. Tokuda, Chair

Senator J. Kalani English, Vice Chair

COMMITTEE ON WATER AND LAND

Senator Clayton Hee, Chair

Senator Russell S. Kokubun, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR

Senator Brian T. Taniguchi, Chair

Senator Clayton Hee, Vice Chair

DATE Monday, March 17, 2008

TIME 2:45 p.m.

PLACE Conference Room 414

RE Support for House Bill 266 HD 2

Good afternoon, Chair Tokuda, Vice Chair English, Chair Hee, Vice Chair Kokobun, Chair Taniguchi, Vice Chair Hee 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 afternoon in support of House Bill 266 HD 2, 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. HB 266 HD 2 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.

TJ MAHONEY & ASSOCIATES

Ka Hale Ho`āla Hou No Nā Wāhine

The Home of Reawakening for Women

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

Senate Committees on Agriculture & Hawaiian Affairs, Water & Land,
Judiciary & Labor

March 17, 2008. 2:45 p.m.
State Capitol Auditorium

HB 266, HD2 Relating to the Public Lands Trust Settlement

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 HB 266, HD2, Relating to the Public Trust Lands Settlement.

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.

testimony

From: Arvid Youngquist [thirr33@gmail.com]
Sent: Wednesday, March 12, 2008 5:57 PM
To: testimony
Subject: HB 266, HD2 Joint Committee Hearing on March 17th (Monday) 2008, Room 414 at 2:45 PM

**Chairs Sen. Jill N. Tokuda, Sen. Clayton Hee, & Sen. Brian T. Taniguchi
Honorable Vice Chairs, and Members of the Hawaii Senate AHW, WAM, & JDL
Committees
Hearing HB 266 HD2, Relating to Hawaiian Affairs
March 17th, 2008 at 2:45 PM in Conference Room #414**

Dear Senators, I Arvid Tadao Youngquist, speaking on behalf of The Mestizo Association (est. 1982), in strong support of HB 266 HD2.

A testimony in support was provided to the House Joint Committee prior to adoption of HD2 as requested by the AG & OHA.

The Measure Title differs from the SB 2733 and its House OHA Package (which I see is not moving). The Description of the House measure before you and the SB 2733 which has crossed to the House, pending hearing by the Joint Committees at this writing, are very similar and the variance in the effective date has been brought in agreement with each other. As I remember the vast majority of the testimony in person for the HB 266 HD1 at the Capitol Auditorium, even persons and organizations that took exception to the amount of the annual payment to OHA, or the size of the real estate to be conveyed to OHA, nevertheless, supported the HB 266 HD1 and their general objections, I believe are addressed broadly in the HB 266 HD2. The cooperation and collaboration of all key stakeholders and the House Majority Attorneys and the AG, as well the OHA attorneys brought about the inclusion of the OHA's proposed HD2 attached to their spokesman, Trustee Walter Heen. As a matter of observation, the size of the lands to be conveyed added to the existing OHA land trusts, will provide a beginning of a "Nationhood" within a Nation (State), adequate as a start for the 80,000+ Kau Inoa registrants. Small population nations such as Monaco, Tahiti, Lichtenstein, Samoa, Haiti, Vatican City, Nauru, Tuvalu, San Marino, Siera Leone, Gambia, Liberia, Togo, Benin, Bahrain, Quater, New Caledonia, Palau, Malta, Georgia, Srilanka, Bhutan, French Guiana, Belize, Costa Rica, or Nepal, are countries with a proud history, culture, and heritage. Let's move to provide our Kanaka Maoli the real estate & funds to re-establish a Nation for the Native Hawaiians. *The Akaka Bill in 2009 will be the second part of this proactive action started in 1978 at the CON-CON.*

Mahalo,

**Arvid Tadao Youngquist
Founder & Spokesman
The Mestizo Association
P O Box 37542
Honolulu, Hawaii 96837**

"1 of 14,664 voices Statewide"

John Dominis Restaurant / Basin Project Inc.

43 Ahui Street
Honolulu, Hawaii
96813

March 15, 2008

Senate Committee Clerk
Room 218
State Capitol

Senate Committee Members

Subject: Hearing on HB266 HD2 OHA / Kaka'ako Makai Parcel(s).

May we offer the following written Testimony.

Having been located within the Kaka'ako Makai land area in question for some thirty-years plus and having participated in two State conducted RFP's over the years for development of this land, we would like to contribute the following.

To achieve any "real" value for the Kaka'ako Makai parcel and realistic development options, OHA should without question, insist that the offering of the Kaka'ako Makai land package of 18.5 acres be expanded to include the University building on the point AND the parcel just opposite of John Dominis, known as the old hyperbaric building. (See attached.)

First, these two suggested parcels would "round out" the developable waterfront land so that a meaningful and comprehensive waterfront development can be achieved. Short of these additional parcels it will negate a full comprehensive waterfront development opportunity. Our suggestion is to obtain the land the HCDA/State itself offered recently in their current RFP. HCDA put much thought and planning into the recent RFP, thus the logic, if it was good for them, it should be good for OHA as well.

Secondly, if a meaningful waterfront development is ever to happen here, total control of Ahui Street must be controlled one-hundred percent by OHA thus allowing them full control of the area when they so decide to go forward with development. The alternative is to have two State jurisdictions in control here with possibilities of conflict for future development. Ahui Street as recently improved is still not recognized by the City & County as an adequate capacity road for development as anticipated in the area. The road as-is cannot be dedicated to the City & County, making it all the more important that future and total control of this road be gotten by OHA.

As this land has now gone through three different Administrations for development, with no success, I do not think it would be prudent to depend on them for participation and agreement in the future. OHA needs full control of the area to achieve a comprehensive development and guaranteed income.

We would also caution OHA as to the question of the proposed future management by HCDA. HCDA, not of their choice, is presently hampered as to this lands future use by a legislative decision creating a public committee for input and its future use. While we agree public input is needed and required,

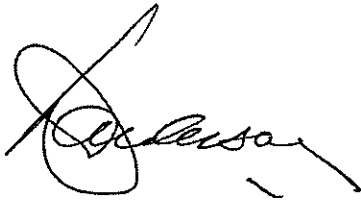
something not provided during this last RFP go-around, OHA has an obligation first to the Native Hawaiians.

An HCDA Board / Public Committee use decision may very well NOT be in the best interest of OHA. Would strongly urge another look here as to maybe not day-to-day management, but veto rights, or even a Master Plan concept that may be first adopted by OHA and then implementation by HCDA?? Some thought needs to be given here?

We have no comment on the balance of the Bill and its other parts.

We thank the committee for allowing us the opportunity to offer our thoughts on the subject.

Sincerely,

A handwritten signature in black ink, appearing to read "John Dominis". The signature is fluid and cursive, with a large initial "J" and "D".

John Dominis/ Basin Project Inc.
D. G. "Andy" Anderson, President

tokuda1 - Jennifer

From: Sen. Jill Tokuda
Sent: Friday, March 14, 2008 10:49 AM
To: tokuda1 - Jennifer; Kamakana Kaimuloa
Subject: FW: Testimony in Opposition to SB 2733 SD2 & HB266 HD2 (Public Trust Lands Settlement)

From: Ivy Johnson [mailto:IJohnson@wcchc.com]
Sent: Thursday, March 13, 2008 1:14 PM
To: All Reps; All Senators; Sen. Jill Tokuda; Sen. Clayton Hee; Sen. Brian Taniguchi; Sen. Roz Baker; Rep. Ken Ito; Rep. Thomas Waters; Rep. Marcus Oshiro
Subject: Testimony in Opposition to SB 2733 SD2 & HB266 HD2 (Public Trust Lands Settlement)

The Senate & House
Twenty-Fourth Legislature
Regular Session of 2008
State of Hawai'i

March 13, 2008

To Senate Committees:
Agriculture and Hawaiian Affairs, Chair Jill N. Tokuda
Water and Land, Chair Clayton Hee
Judiciary and Labor, Chair Brian T. Taniguchi
Ways and Means, Chair Rosalyn Baker

To House Committees:
Water, Land, Ocean, Resources, and Hawaiian Affairs, Chair Ken Ito
Judiciary, Chair Tommy Waters
Finance, Chair Marcus Oshiro

Subject: Testimony in Opposition to SB 2733 SD2 & HB266 HD2 (Public Trust Lands Settlement)

It is not acceptable that an agreement between the Office of Hawaiian Affairs (OHA) and the State Administration, pertaining to the Ceded Lands was crafted in secrecy from the legislature or from the community at-large, particularly Hawaiian beneficiaries. Because the administration and OHA reached the settlement in this manner without discussion or input from the beneficiaries or their representatives, I humbly submit my testimony in opposition to SB 2733 SB2 and HB266 HD2. I further oppose SB 2733 and HB266 HD2, because beneficiary consultation and an audit of the Ceded Lands gross revenues were not appropriately completed.

Sincerely,

Ivy Johnson
89-1215 Pikaiolena St.
808-668-7207

Eight Reasons Why Hawaiians Should Oppose the Ceded Lands Settlement

3/14/2008

1. The Settlement dispossesses Hawaiians of our Ceded Lands trust assets. OHA has negotiated a small package of land and revenue for itself and has agreed to relinquish all claims of our peoples to 1.8 million acres of land, the submerged lands, energy resources, biodiversity and surface and subsurface natural resources.

2. The settlement is supposed to resolve claims to "the portion of income and proceeds from the lands of the public trust for use by OHA" Settlement Agreement (SA), pg. 1 of 9 from 1978 - 2008. In return for the settlement, OHA waives or gives up, not only claims to the income from 1978 -2008, but....any other tangible right, item or benefit from the public land trust...." (SA, pg. 2 of 9). OHA is giving up these rights not only for OHA, but for "any other person or entity."

3. OHA's waiver of claims is res judicata for all Hawaiians, their organizations and nation - this means that we will never be able to sue the state or OHA for our trust lands, revenues or other rights including an accounting and inventory of our trust assets. This language is so broad and sweeping that Hawaiians will lose rights not related to the OHA 20% pro rata debate. Other rights that Hawaiians claim to the public trust include HRS 7-1 rights (access and gathering), rights to worship at heiau on 5(f) lands, genetic resources, etc. These rights will now be ignored by the State.

4. Under Hawaiian law OHA is entitled to 20% of the Ceded Land revenues. There is no relation between the 20% figure and the 15 million dollar figure. The figure appears to be an arbitrary amount. In addition, the legislative bill deletes all statutory language relating to the Hawaiians share (20%) of revenues. This theft of revenue from Hawaiians is based on the claim of OHA that the courts overruling of Act 304 also overruled the OHA 20% share of proceeds. This is false - in January, 2008, the Hawaiian Supreme Court ruled in OHA vs. HCDH that the State cannot dispose of Ceded Lands trust assets without resolving native claims - the court cited the Apology Bill, the DOI (Department of Interior) Mauka to Makai report and OHA's claims for 20% (see pg. 6 of the Opinion).

5. For several weeks Hawaiians have requested that OHA provide the valuation reports and other documents (Phase 1 & 2 Real Estate reports) on the status of the lands, and valuation figures and formulas used in the settlement. These data have not been provided to the legislature or native beneficiaries.

6. There is evidence that the Kalaeloa land is contaminated and toxic. The settlement demonstrates that the parties know of this problem but that OHA has agreed to accept the land, pay trust assets to conduct an environmental due diligence effort and then return the land or get a 25% credit once the toxicity is proven. Why is OHA taking toxic land?

7. Under this measure Hawaiians will not be able to sue OHA for accountability. OHA has waived our right to sue the state and all of its agencies, including themselves. The Legislature should take note that the Hawaiian peoples have been excluded from the legislative and legal discussions relating to this measure. Legislative hearings will be over before the "informational sessions" which the Senate forced on OHA are completed. The negotiations took place in secret, the valuations reports and data regarding the figures have been withheld. OHA is soliciting letters of support from its grantees, not its beneficiaries. Finally, the OHA video pushing the settlement features Aunty Gladys Brandt calling for unity and justice. This manipulation is intended to dupe Hawaiians into believing that Aunty Gladys supported this travesty - in reality, she died years before this shameful settlement was conceived by the current OHA trustees (Rowena Akana excluded).

8. The settlement is fatally flawed:

a. The waiver language and the provisions relating to res judicata should be

deleted from the measure;

b. A reservation clause should be added that states that all claims of Native Hawaiians against the state relating to the Ceded lands trust are reserved and that the scope of the settlement is only for claims relating to revenues owed to OHA from 1978 - 2008;

* Hawaiians do not need to reserve claims against the US as the settlement does not involve the US or federal claims.

* Hawaiians know who owns the Ceded Lands - it belongs to the public and the Native Hawaiians under the Admissions Act.

c. All references to a prospective figure for OHA revenue share (15 million) should also be deleted until OHA and the Governor can justify the figure. We are entitled to 20% of the 5(f) revenues;

d. Any prospective agreement should be subject to reopening and recalculation every 5 years in order to ensure that Hawaiians benefit from the increase in value, revenue and proceeds of the public land trust.

tokuda1 - Jennifer

From: Sen. Jill Tokuda
Sent: Friday, March 14, 2008 10:49 AM
To: tokuda1 - Jennifer; Kamakana Kaimuloa
Subject: FW: Testimony in Opposition to SB 2733 SD2 & HB266 HD2 (Public Trust Lands Settlement)

From: Allyn Momoa [mailto:AMomoa@wcchc.com]
Sent: Thursday, March 13, 2008 11:58 AM
To: All Reps; All Senators; Sen. Jill Tokuda; Sen. Clayton Hee; Sen. Brian Taniguchi; Sen. Roz Baker; Rep. Ken Ito; Rep. Thomas Waters; Rep. Marcus Oshiro
Subject: Testimony in Opposition to SB 2733 SD2 & HB266 HD2 (Public Trust Lands Settlement)

March 13, 2008

To Senate Committees:

Agriculture and Hawaiian Affairs, Chair Jill N. Tokuda Water and Land, Chair Clayton Hee Judiciary and Labor, Chair Brian T. Taniguchi Ways and Means, Chair Rosalyn Baker

To House Committees:

Water, Land, Ocean, Resources, and Hawaiian Affairs, Chair Ken Ito Judiciary, Chair Tommy Waters Finance, Chair Marcus Oshiro

It is not acceptable that an agreement between the Office of Hawaiian Affairs (OHA) and the State Administration, pertaining to the Ceded Lands was crafted in secrecy from the legislature or from the community at-large, particularly Hawaiian beneficiaries. Because the administration and OHA reached the settlement in this manner without discussion or input from the beneficiaries or their representatives, I humbly submit my testimony in opposition to SB 2733 SB2 and HB266 HD2. I further oppose SB 2733 and HB266 HD2, because beneficiary consultation and an audit of the Ceded Lands gross revenues were not appropriately completed.

Eight Reasons Why Hawaiians Should Oppose the Ceded Lands Settlement

1. The Settlement dispossesses Hawaiians of our Ceded Lands trust assets. OHA has negotiated a small package of land and revenue for itself and has agreed to relinquish all claims of our peoples to 1.8 million acres of land, the submerged lands, energy resources, biodiversity and surface and subsurface natural resources.

2. The settlement is supposed to resolve claims to "the portion of income and proceeds from the lands of the public trust for use by OHA" Settlement Agreement (SA), pg. 1 of 9 from 1978 - 2008. In return for the settlement, OHA waives or gives up, not only claims to the income from 1978 -2008, but.....any other tangible right, item or benefit from the public land trust...." (SA, pg. 2 of 9). OHA is giving up these rights not only for OHA, but for "any other person or entity."

3. OHA's waiver of claims is res judicata for all Hawaiians, their organizations and nation - this means that we will never be able to sue the state or OHA for our trust lands, revenues or other rights including an accounting and inventory of our trust assets. This language is so broad and sweeping that Hawaiians will lose rights not related to the OHA 20% pro rata debate. Other rights that Hawaiians claim to the public trust include HRS 7-1 rights (access and gathering), rights to

3/14/2008

worship at heiau on 5(f) lands, genetic resources, etc. These rights will now be ignored by the State.

4. Under Hawaiian law OHA is entitled to 20% of the Ceded Land revenues. There is no relation between the 20% figure and the 15 million dollar figure. The figure appears to be an arbitrary amount. In addition, the legislative bill deletes all statutory language relating to the Hawaiians share (20%) of revenues. This theft of revenue from Hawaiians is based on the claim of OHA that the courts overruling of Act 304 also overruled the OHA 20% share of proceeds. This is false - in January, 2008, the Hawaiian Supreme Court ruled in OHA vs. HCDH that the State cannot dispose of Ceded Lands trust assets without resolving native claims - the court cited the Apology Bill, the DOI (Department of Interior) Mauka to Makai report and OHA's claims for 20% (see pg. 6 of the Opinion).

5. For several weeks Hawaiians have requested that OHA provide the valuation reports and other documents (Phase 1 & 2 Real Estate reports) on the status of the lands, and valuation figures and formulas used in the settlement. These data have not been provided to the legislature or native beneficiaries.

6. There is evidence that the Kalaeloa land is contaminated and toxic. The settlement demonstrates that the parties know of this problem but that OHA has agreed to accept the land, pay trust assets to conduct an environmental due diligence effort and then return the land or get a 25% credit once the toxicity is proven. Why is OHA taking toxic land?

7. Under this measure Hawaiians will not be able to sue OHA for accountability. OHA has waived our right to sue the state and all of its agencies, including themselves. The Legislature should take note that the Hawaiian peoples have been excluded from the legislative and legal discussions relating to this measure. Legislative hearings will be over before the "informational sessions" which the Senate forced on OHA are completed. The negotiations took place in secret, the valuations reports and data regarding the figures have been withheld. OHA is soliciting letters of support from its grantees, not its beneficiaries. Finally, the OHA video pushing the settlement features Auntie Gladys Brandt calling for unity and justice. This manipulation is intended to dupe Hawaiians into believing that Auntie Gladys supported this travesty - in reality, she died years before this shameful settlement was conceived by the current OHA trustees (Rowena Akana excluded).

8. The settlement is fatally flawed:

a. The waiver language and the provisions relating to res judicata should be deleted from the measure;

b. A reservation clause should be added that states that all claims of Native Hawaiians against the state relating to the Ceded lands trust are reserved and that the scope of the settlement is only for claims relating to revenues owed to OHA from 1978 - 2008;

* Hawaiians do not need to reserve claims against the US as the settlement does not involve the US or federal claims.

* Hawaiians know who owns the Ceded Lands - it belongs to the public and the Native Hawaiians under the Admissions Act.

c. All references to a prospective figure for OHA revenue share (15 million) should also be deleted until OHA and the Governor can justify the figure. We are entitled to 20% of the 5(f) revenues;

d. Any prospective agreement should be subject to reopening and recalculation

every 5 years in order to ensure that Hawaiians benefit from the increase in value, revenue and proceeds of the public land trust.

Sincerely,

Allyn K. Momoa
Address: 89-1100 Pohakupalena St
Waianae, HI. 96792
Phone Number: 668-8348

tokuda1 - Jennifer

From: Sen. Jill Tokuda
Sent: Friday, March 14, 2008 10:48 AM
To: tokuda1 - Jennifer; Kamakana Kaimuloa
Subject: FW: Testimony in Opposition to SB 2733 SD2 & HB266 HD2 (Public Trust Lands Settlement)

From: Pono Kealoha Jr. [mailto:alwayz_aloha@msn.com]
Sent: Thursday, March 13, 2008 4:16 PM
To: All Reps; All Senators; Sen. Jill Tokuda; Sen. Clayton Hee; Sen. Brian Taniguchi; Sen. Roz Baker; Rep. Ken Ito; Rep. Thomas Waters; Rep. Marcus Oshiro; Hoku Wilson; hui_pu@yahoogle.com; Mom; ponosize@hotmail.com
Subject: Testimony in Opposition to SB 2733 SD2 & HB266 HD2 (Public Trust Lands Settlement)

Pono Kealoha McNeil
Hawaiian National
3-13-08

To{ipso facto} Senate Committees:
Agriculture and Hawaiian Affairs, Chair Jill N. Tokuda
Water and Land, Chair Clayton Hee
Judiciary and Labor, Chair Brian T. Taniguchi
Ways and Means, Chair Rosalyn Baker
To{ipso facto} House Committees:
Water, Land, Ocean, Resources, and Hawaiian Affairs, Chair Ken Ito
Judiciary, Chair Tommy Waters
Finance, Chair Marcus Oshiro
Subject: Testimony in Opposition to SB 2733 SD2 & HB266 HD2 (Public Trust Lands Settlement)

Eight Reasons Why Hawaiians Should Oppose the Ceded Lands Settlement

1. The Settlement dispossesses Hawaiians of our Ceded Lands trust assets. OHA has negotiated a small package of land and revenue for itself and has agreed to relinquish all claims of our peoples to 1.8 million acres of land, the submerged lands, energy resources, biodiversity and surface and subsurface natural resources.
2. The settlement is supposed to resolve claims to 'the portion of income and proceeds from the lands of the public trust for use by OHA' Settlement Agreement

(SA), pg. 1 of 9 from 1978 - 2008. In return for the settlement, OHA waives or gives up, not only claims to the income from 1978 -2008, but 'any other tangible right, item or benefit from the public land trust.' (SA, pg. 2 of 9). OHA is giving up these rights not only for OHA, but for 'any other person or entity.'

3. OHA's waiver of claims is res judicata for all Hawaiians, their organizations and nation - this means that we will never be able to sue the state or OHA for our trust lands, revenues or other rights including an accounting and inventory of our trust assets. This language is so broad and sweeping that Hawaiians will lose rights not related to the OHA 20% pro rata debate. Other rights that Hawaiians claim to the public trust include HRS 7-1 rights (access and gathering), rights to worship at heiau on 5(f) lands, genetic resources, etc. These rights will now be ignored by the State.

4. Under Hawaiian law OHA is entitled to 20% of the Ceded Land revenues. There is no relation between the 20% figure and the 15 million dollar figure. The figure appears to be an arbitrary amount. In addition, the legislative bill deletes all statutory language relating to the Hawaiians share (20%) of revenues. This theft of revenue from Hawaiians is based on the claim of OHA that the courts overruling of Act 304 also overruled the OHA 20% share of proceeds. This is false - in January, 2008, the Hawaiian Supreme Court ruled in OHA vs. HCDH that the State cannot dispose of Ceded Lands trust assets without resolving native claims - the court cited the Apology Bill, the DOI (Department of Interior) Mauka to Makai report and OHA's claims for 20% (see pg. 6 of the Opinion).

5. For several weeks Hawaiians have requested that OHA provide the valuation reports and other documents (Phase 1 & 2 Real Estate reports) on the status of the lands, and valuation figures and formulas used in the settlement. These data have not been provided to the legislature or native beneficiaries.

6. There is evidence that the Kalaeloa land is contaminated and toxic. The settlement demonstrates that the parties know of this problem but that OHA has agreed to accept the land, pay trust assets to conduct an environmental due diligence effort and then return the land or get a 25% credit once the toxicity is proven. Why is OHA taking toxic land?

7. Under this measure Hawaiians will not be able to sue OHA for accountability. OHA has waived our right to sue the state and all of its agencies, including themselves. The Legislature should take note that the Hawaiian peoples have been excluded from the legislative and legal discussions relating to this measure. Legislative hearings will be over before the 'informational sessions' which the Senate forced on OHA are completed. The negotiations took place in secret, the valuations reports and data regarding the figures have been withheld. OHA is soliciting letters of support from its grantees, not its beneficiaries. Finally, the OHA video pushing the settlement features Auntie Gladys Brandt calling for unity and justice. This manipulation is intended to dupe Hawaiians into believing that Auntie Gladys

supported this travesty - in reality, she died years before this shameful settlement was conceived by the current OHA trustees (Rowena Akana excluded).

8. The settlement is fatally flawed:

a. The waiver language and the provisions relating to res judicata should be deleted from the measure;

b. A reservation clause should be added that states that all claims of Native Hawaiians against the state relating to the Ceded lands trust are reserved and that the scope of the settlement is only for claims relating to revenues owed to OHA from 1978 - 2008;

* Hawaiians do not need to reserve claims against the US as the settlement does not involve the US or federal claims.

* Hawaiians know who owns the Ceded Lands - it belongs to the public and the Native Hawaiians under the Admissions Act.

c. All references to a prospective figure for OHA revenue share (15 million) should also be deleted until OHA and the Governor can justify the figure. We are entitled to 20% of the 5(f) revenues;

d. Any prospective agreement should be subject to reopening and recalculation every 5 years in order to ensure that Hawaiians benefit from the increase in value, revenue and proceeds of the public land trust.

Sincerely DEMAND as a HAWAI'IAN NATIONAL,
A'OLE HEWA , NEVER !

Pono Kealoha McNeil

1107 Acacia Rd. # 113

Pearlcity, Hawai'i 96782

The ILLEGALLY OCCUPIED & FORCED RULED SOVEREIGN 'NEUTRAL' NATION and
KINGDOM
of HAWAI'I .

IS THIS WHAT YOU TRUELY WANT TO BE PART OF ?

UN Report Hits US Racism

RIGHTS-US: U.N. Panel Finds Two-Tier Society

By Haider Rizvi

<http://www.ipsnews.net/news.asp?idnews=41556>

UNITED NATIONS, Mar 11 (IPS) - The United States

government is drawing fire from international legal experts for its treatment of American Indians, Blacks, Latinos and other racial minorities.

The U.S. is failing to meet international standards on racial equality, according to the U.N. Committee on the Elimination of Racial Discrimination (CERD) based in Geneva, Switzerland.

Last Friday, after considering the U.S. government's written and oral testimony, the 18- member committee said it has found 'stark racial disparities' in the U.S. institutions, including its criminal justice system.

The CERD is responsible for monitoring global compliance with the 1969 Convention on the

Elimination
of Racial Discrimination, an international treaty that
has been ratified by the United States.

In concluding the CERD report on the U.S. record,
the
panel of experts called for the George W. Bush
administration to take effective actions to end racist
practices against minorities in the areas of criminal
justice, housing, healthcare and education.

This is the second time in less than two years that
the
U.S. government has been found to be falling short
of
its treaty obligations. In March 2006, The CERD
had
harshly criticised the U.S. for violating Native
Americans' land rights.

Taking note of racial discrimination against
indigenous
communities, the Committee said it wants the U.S.
to
provide information about what it has done to

promote
the culture and traditions of American Indian,
Alaska
Native and indigenous Hawaiian peoples. It also
urged
the U.S. to apply the U.N. Declaration on the Rights
of
Indigenous Peoples.

The CERD also voiced strong concerns regarding
environmental racism and the environmental
degradation
of indigenous areas of spiritual and cultural
significance, without regard to whether they are on
'recognised' reservation lands.

The Committee recommended to the U.S. that it
consult
with indigenous representatives, 'chosen in
accordance
with their own procedures -- to ensure that activities
carried out in areas of spiritual and cultural
significance do not have a negative impact on the
enjoyment of their rights under the Convention'.

In its 13-page ruling, the U.N. body also raised

serious questions about the death penalty and in the sentencing of minors to life without parole, which it linked to racial disparities between whites and blacks.

In their testimony, Bush administration officials held that the treaty obligations do not apply to laws or practices that are race-neutral on their face but discriminatory in effect. The Committee outright rejected that claim, noting that the treaty prohibits racial discrimination in all forms, including practices and legislation that may not be discriminatory in purpose, but in effect.

The CERD panel also objected to the indefinite detention of non-citizens at Guantanamo prison and urged the U.S. to guarantee 'enemy combatants' judicial review.

The panel said the U.S. needs to implement training programmes for law enforcement officials, teachers and

social workers in order to raise their awareness about the treaty and the obligations the U.S. is required to uphold as a signatory.

Human rights defenders who watched the CERD proceeding closely said they were pleased with its observations and recommendations.

'The U.N. is telling the U.S. that it needs to deal with an ugly aspect of its criminal justice system,' said Alison Parker of Human Rights Watch, which has been monitoring discriminatory practices in the United States for years.

In a statement, Parker hailed the U.N. panel for rejecting the U.S. government's claim that more black children get life without parole because they commit more crimes and held that the U.N. criticism of the justice system was fair.

'Once again, the Bush administration has been told by a major human rights body that it is not above the law,' said Parker in of the indefinite detention of terrorism suspects at Guantanamo prison.

Other rights activists also held similar views about the outcome of the CERD hearings in Geneva.

'[It has] exposed to the world the extent to which racial discrimination has been normalised and effectively made permissible in many areas of American life,' said Ajamu Baraka of the Human Rights Network, an umbrella group representing more than 250 rights advocacy organisations.

As part of its recommendations, the Committee has asked the U.S. government to consider the establishment

of an independent human rights body that could help eliminate widespread racial disparities.

Lenny Foster, Dine (Navajo) and representative of the Native America Prisoners Rights Coalition, was a member of the indigenous delegation to the CERD. He observed during the examination that the United States was 'in denial'.

'Spiritual wellness and spiritual healing is paramount to the very survival of the indigenous nations,' he said. 'There are efforts to prohibit and impede the spiritual access. Corporations cannot be allowed to prohibit access and to destroy and pollute and desecrate the sacred lands.'

Bill Larsen of the Western Shoshone Defence Project delegation also testified before the Committee,

making
a strong case concerning environmental racism and
the
deadly pollution caused by mining on their ancestral
lands.

In March 2006, the Western Shoshone leaders had
received a favourable response from the Committee
to
its complaint about the U.S. exploitation of their
sacred lands. The U.S. is obligated 'to freeze, desist
and stop further harmful activities on their lands',
but failed to take any action.

Indigenous leaders said they welcomed the
Committee's
decision to ask the U.S. to submit its report on
compliance within one year.

'It is important that all Native Peoples within the
U.S. know that they have rights that are recognized
by
international law even if the United States refuses to
recognise them or act upon them,' said Alberto
Saldamando, one of the indigenous delegates

attending
the Geneva meeting.

'Now it is not just us,' he continued, 'but the international community that has recognised that indigenous peoples within the United States are subject to racism on many levels and has called for effective steps by the U.S. to remedy this situation.'

Connect and share in new ways with Windows Live. [Get it now!](#)

tokuda1 - Jennifer

From: Sen. Jill Tokuda
Sent: Friday, March 14, 2008 10:48 AM
To: tokuda1 - Jennifer; Kamakana Kaimulua
Subject: FW: Testimony in Opposition to SB 2733 SD2 & HB266 HD2

From: Alakupaa [mailto:alakupaa@hawaii.rr.com]
Sent: Thursday, March 13, 2008 4:56 PM
To: All Reps
Subject: Testimony in Opposition to SB 2733 SD2 & HB266 HD2

The Senate & House
Twenty-Fourth Legislature
Regular Session of 2008
State of Hawai'i

March 10, 2008

To Senate Committees:
Agriculture and Hawaiian Affairs, Chair Jill N. Tokuda
Water and Land, Chair Clayton Hee
Judiciary and Labor, Chair Brian T. Taniguchi
Ways and Means, Chair Rosalyn Baker

To House Committees:
Water, Land, Ocean, Resources, and Hawaiian Affairs, Chair Ken Ito
Judiciary, Chair Tommy Waters
Finance, Chair Marcus Oshiro

Subject: Testimony in Opposition to SB 2733 SD2 & HB266 HD2 (Public Trust Lands Settlement)

It is not acceptable that an agreement between the Office of Hawaiian Affairs (OHA) and the State Administration, pertaining to the Ceded Lands was crafted in secrecy from the legislature or from the community at-large, particularly

Hawaiian beneficiaries. Because the administration and OHA reached the settlement in this manner without discussion or input from the beneficiaries or their representatives, I humbly submit my testimony in opposition to SB 2733 SB2 and HB266 HD2. I further oppose SB 2733 and HB266 HD2, because beneficiary consultation and an audit of the Ceded Lands gross revenues were not appropriately completed.

Sincerely,

`Alapaki Kim
89-318 Farrington Hwy
Nānākuli, O`ahu, Hawai`i 96792

Eight Reasons Why Hawaiians Should Oppose the Ceded Lands Settlement

1. The Settlement dispossesses Hawaiians of our Ceded Lands trust assets. OHA has negotiated a small package of land and revenue for itself and has agreed to relinquish all claims of our peoples to 1.8 million acres of land, the submerged lands, energy resources, biodiversity and surface and subsurface natural resources.
2. The settlement is supposed to resolve claims to "the portion of income and proceeds from the lands of the public trust for use by OHA" Settlement Agreement (SA), pg. 1 of 9 from 1978 - 2008. In return for the settlement, OHA waives or gives up, not only claims to the income from 1978 -2008, butŠ..any other tangible right, item or benefit from the public land trustŠ." (SA, pg. 2 of 9). OHA is giving up these rights not only for OHA, but for "any other person or entity."
3. OHA's waiver of claims is res judicata for all Hawaiians, their organizations and nation - this means that we will never be able to sue the state or OHA for our trust lands, revenues or other rights including an accounting and inventory of our trust assets. This language is so broad and sweeping that Hawaiians will lose rights not related to the OHA 20% pro rata debate. Other rights that Hawaiians claim to the public trust include HRS 7-1 rights (access and gathering), rights to worship at heiau on 5(f) lands, genetic resources, etc. These rights will now be ignored by the State.
4. Under Hawaiian law OHA is entitled to 20% of the Ceded Land revenues. There is no relation between the 20% figure and the 15 million dollar figure. The figure appears to be an arbitrary amount. In addition, the legislative bill deletes

all statutory language relating to the Hawaiians share (20%) of revenues. This theft of revenue from Hawaiians is based on the claim of OHA that the courts overruling of Act 304 also overruled the OHA 20% share of proceeds. This is false - in January, 2008, the Hawaiian Supreme Court ruled in OHA vs. HCDH that the State cannot dispose of Ceded Lands trust assets without resolving native claims - the court cited the Apology Bill, the DOI (Department of Interior) Mauka to Makai report and OHA's claims for 20% (see pg. 6 of the Opinion).

5. For several weeks Hawaiians have requested that OHA provide the valuation reports and other documents (Phase 1 & 2 Real Estate reports) on the status of the lands, and valuation figures and formulas used in the settlement. These data have not been provided to the legislature or native beneficiaries.

6. There is evidence that the Kalaeloa land is contaminated and toxic. The settlement demonstrates that the parties know of this problem but that OHA has agreed to accept the land, pay trust assets to conduct an environmental due diligence effort and then return the land or get a 25% credit once the toxicity is proven. Why is OHA taking toxic land?

7. Under this measure Hawaiians will not be able to sue OHA for accountability. OHA has waived our right to sue the state and all of its agencies, including themselves. The Legislature should take note that the Hawaiian peoples have been excluded from the legislative and legal discussions relating to this measure. Legislative hearings will be over before the "informational sessions" which the Senate forced on OHA are completed. The negotiations took place in secret, the valuations reports and data regarding the figures have been withheld. OHA is soliciting letters of support from its grantees, not its beneficiaries. Finally, the OHA video pushing the settlement features Aunty Gladys Brandt calling for unity and justice. This manipulation is intended to dupe Hawaiians into believing that Aunty Gladys supported this travesty - in reality, she died years before this shameful settlement was conceived by the current OHA trustees (Rowena Akana excluded).

8. The settlement is fatally flawed:

a. The waiver language and the provisions relating to res judicata should be deleted from the measure;

b. A reservation clause should be added that states that all claims of Native Hawaiians against the state relating to the Ceded lands trust are reserved and that the scope of the settlement is only for claims relating to revenues owed to OHA from 1978 - 2008;

* Hawaiians do not need to reserve claims against the US as the settlement does not involve the US or federal claims.

* Hawaiians know who owns the Ceded Lands - it belongs to the public and the Native Hawaiians under the Admissions Act.

c. All references to a prospective figure for OHA revenue share (15 million) should also be deleted until OHA and the Governor can justify the figure. We are entitled to 20% of the 5(f) revenues;

d. Any prospective agreement should be subject to reopening and recalculation every 5 years in order to ensure that Hawaiians benefit from the increase in value, revenue and proceeds of the public land trust.

UN Report Hits US Racism

>

> RIGHTS-US: U.N. Panel Finds Two-Tier Society

>

> By Haider Rizvi

> <http://www.ipsnews.net/news.asp?idnews=41556>

>

> UNITED NATIONS, Mar 11 (IPS) - The United States

> government is drawing fire from international legal

> experts for its treatment of American Indians, Blacks,

> Latinos and other racial minorities.

>

> The U.S. is failing to meet international standards on

> racial equality, according to the U.N. Committee on the

> Elimination of Racial Discrimination (CERD) based in

> Geneva, Switzerland.

>

> Last Friday, after considering the U.S. government's

> written and oral testimony, the 18- member committee

> said it has found "stark racial disparities" in the

> U.S. institutions, including its criminal justice

> system.

>

> The CERD is responsible for monitoring global

> compliance with the 1969 Convention on the Elimination

> of Racial Discrimination, an international treaty that

> has been ratified by the United States.

>

> In concluding the CERD report on the U.S. record, the

> panel of experts called for the George W. Bush

> administration to take effective actions to end racist

> practices against minorities in the areas of criminal

> justice, housing, healthcare and education.

- >
- > This is the second time in less than two years that the
- > U.S. government has been found to be falling short of
- > its treaty obligations. In March 2006, The CERD had
- > harshly criticised the U.S. for violating Native
- > Americans' land rights.
- >
- > Taking note of racial discrimination against indigenous
- > communities, the Committee said it wants the U.S. to
- > provide information about what it has done to promote
- > the culture and traditions of American Indian, Alaska
- > Native and indigenous Hawaiian peoples. It also urged
- > the U.S. to apply the U.N. Declaration on the Rights of
- > Indigenous Peoples.
- >
- > The CERD also voiced strong concerns regarding
- > environmental racism and the environmental degradation
- > of indigenous areas of spiritual and cultural
- > significance, without regard to whether they are on
- > "recognised" reservation lands.

(i.e. the removal of all proposed dump sites on the island of O`ahu, with the exception of the Wai`anae Coast, which has the largest concentration of Native Hawaiians. The primary areas in which the City is considering dump sites are the Nānākuli PVC, and the Nānākuli B sites. Both are located very near homes and stores. AK).

- >
- > The Committee recommended to the U.S. that it consult
- > with indigenous representatives, "chosen in accordance
- > with their own procedures -- to ensure that activities
- > carried out in areas of spiritual and cultural
- > significance do not have a negative impact on the
- > enjoyment of their rights under the Convention".
- >
- > In its 13-page ruling, the U.N. body also raised
- > serious questions about the death penalty and in the
- > sentencing of minors to life without parole, which it
- > linked to racial disparities between whites and blacks.
- >
- > In their testimony, Bush administration officials held
- > that the treaty obligations do not apply to laws or
- > practices that are race-neutral on their face but
- > discriminatory in effect. The Committee outright
- > rejected that claim, noting that the treaty prohibits
- > racial discrimination in all forms, including practices
- > and legislation that may not be discriminatory in
- > purpose, but in effect.
- >
- > The CERD panel also objected to the indefinite
- > detention of non-citizens at Guantanamo prison and

- > urged the U.S. to guarantee "enemy combatants" judicial
- > review.
- >
- > The panel said the U.S. needs to implement training
- > programmes for law enforcement officials, teachers and
- > social workers in order to raise their awareness about
- > the treaty and the obligations the U.S. is required to
- > uphold as a signatory.
- >
- > Human rights defenders who watched the CERD proceeding
- > closely said they were pleased with its observations
- > and recommendations.
- >
- > "The U.N. is telling the U.S. that it needs to deal
- > with an ugly aspect of its criminal justice system,"
- > said Alison Parker of Human Rights Watch, which has
- > been monitoring discriminatory practices in the United
- > States for years.
- >
- > In a statement, Parker hailed the U.N. panel for
- > rejecting the U.S. government's claim that more black
- > children get life without parole because they commit
- > more crimes and held that the U.N. criticism of the
- > justice system was fair.
- >
- > "Once again, the Bush administration has been told by a
- > major human rights body that it is not above the law,"
- > said Parker in of the indefinite detention of terrorism
- > suspects at Guantanamo prison.
- >
- > Other rights activists also held similar views about
- > the outcome of the CERD hearings in Geneva.
- >
- > "[It has] exposed to the world the extent to which
- > racial discrimination has been normalised and
- > effectively made permissible in many areas of American
- > life," said Ajamu Baraka of the Human Rights Network,
- > an umbrella group representing more than 250 rights
- > advocacy organisations.
- >
- > As part of its recommendations, the Committee has asked
- > the U.S. government to consider the establishment of an
- > independent human rights body that could help eliminate
- > widespread racial disparities.
- >
- > Lenny Foster, Dine (Navajo) and representative of the
- > Native America Prisoners Rights Coalition, was a member
- > of the indigenous delegation to the CERD. He observed
- > during the examination that the United States was "in
- > denial".

>
> "Spiritual wellness and spiritual healing is paramount
> to the very survival of the indigenous nations," he
> said. "There are efforts to prohibit and impede the
> spiritual access. Corporations cannot be allowed to
> prohibit access and to destroy and pollute and
> desecrate the sacred lands."
>
> Bill Larsen of the Western Shoshone Defence Project
> delegation also testified before the Committee, making
> a strong case concerning environmental racism and the
> deadly pollution caused by mining on their ancestral
> lands.
>
> In March 2006, the Western Shoshone leaders had
> received a favourable response from the Committee to
> its complaint about the U.S. exploitation of their
> sacred lands. The U.S. is obligated "to freeze, desist
> and stop further harmful activities on their lands",
> but failed to take any action.
>
> Indigenous leaders said they welcomed the Committee's
> decision to ask the U.S. to submit its report on
> compliance within one year.
>
> "It is important that all Native Peoples within the
> U.S. know that they have rights that are recognized by
> international law even if the United States refuses to
> recognise them or act upon them," said Alberto
> Saldamando, one of the indigenous delegates attending
> the Geneva meeting.
>
> "Now it is not just us," he continued, "but the
> international community that has recognised that
> indigenous peoples within the United States are subject
> to racism on many levels and has called for effective
> steps by the U.S. to remedy this situation."
>

tokuda1 - Jennifer

From: Sen. Jill Tokuda
Sent: Wednesday, March 12, 2008 2:18 PM
To: tokuda1 - Jennifer; Darlene Tsukazaki; Kamakana Kaimuloa
Subject: FW: opposition to ceded lands settlement

Testimony

From: Erin O'Donnell [mailto:nellieod@yahoo.com]
Sent: Wednesday, March 12, 2008 1:19 PM
To: Sen. Jill Tokuda; Sen. Clayton Hee; Sen. Brian Taniguchi; Sen. Roz Baker; Rep. Ken Ito; Rep. Thomas Waters; Rep. Marcus Oshiro
Cc: Rep. Lyla B. Berg; Rep. Barbara Marumoto; Rep. Scott Nishimoto; Rep. Scott Saiki; Rep. Calvin Say; Sen. Les Ihara, Jr.; Sen. Sam Slom; Sen. Brian Taniguchi
Subject: opposition to ceded lands settlement

Eight Reasons Why I, as a Hawaiian, Oppose the Ceded Lands Settlement

1. The Settlement dispossesses Hawaiians of our Ceded Lands trust assets. OHA has negotiated a small package of land and revenue for itself and has agreed to relinquish all claims of our peoples to 1.8 million acres of land, the submerged lands, energy resources, biodiversity and surface and subsurface natural resources.
2. The settlement is supposed to resolve claims to "the portion of income and proceeds from the lands of the public trust for use by OHA" Settlement Agreement (SA), pg. 1 of 9 from 1978 – 2008. In return for the settlement, OHA waives or gives up, not only claims to the income from 1978 -2008, but.....any other tangible right, item or benefit from the public land trust...." (SA, pg. 2 of 9). OHA is giving up these rights not only for OHA, but for "any other person or entity."
3. OHA's waiver of claims is res judicata for all Hawaiians, their organizations and nation – this means that we will never be able to sue the state or OHA for our trust lands, revenues or other rights including an accounting and inventory of our trust assets. This language is so broad and sweeping that Hawaiians will lose rights not related to the OHA 20% pro rata debate. Other rights that Hawaiians claim to the public trust include HRS 7-1 rights (access and gathering), rights to worship at heiau on 5(f) lands, genetic resources, etc. These rights will now be ignored by the State.
4. Under Hawaiian law OHA is entitled to 20% of the Ceded Land revenues. There is no relation between the 20% figure and the 15 million dollar figure. The figure appears to be an arbitrary amount. In addition, the legislative bill deletes all statutory language relating to the Hawaiians share (20%) of revenues. This theft of revenue from Hawaiians is based on the claim of OHA that the courts

3/12/2008

overruling of Act 304 also overruled the OHA 20% share of proceeds. This is false – in January, 2008, the Hawaiian Supreme Court ruled in OHA vs. HCDH that the State cannot dispose of Ceded Lands trust assets without resolving native claims – the court cited the Apology Bill, the DOI (Department of Interior) Mauka to Makai report and OHA's claims for 20% (see pg. 6 of the Opinion).

5. For several weeks Hawaiians have requested that OHA provide the valuation reports and other documents (Phase 1 & 2 Real Estate reports) on the status of the lands, and valuation figures and formulas used in the settlement. These data have not been provided to the legislature or native beneficiaries.

6. There is evidence that the Kalaeloa land is contaminated and toxic. The settlement demonstrates that the parties know of this problem but that OHA has agreed to accept the land, pay trust assets to conduct an environmental due diligence effort and then return the land or get a 25% credit once the toxicity is proven. Why is OHA taking toxic land?

7. Under this measure Hawaiians will not be able to sue OHA for accountability. OHA has waived our right to sue the state and all of its agencies, including themselves. The Legislature should take note that the Hawaiian peoples have been excluded from the legislative and legal discussions relating to this measure. Legislative hearings will be over before the "informational sessions" which the Senate forced on OHA are completed. The negotiations took place in secret, the valuations reports and data regarding the figures have been withheld. OHA is soliciting letters of support from its grantees, not its beneficiaries. Finally, the OHA video pushing the settlement features Auntie Gladys Brandt calling for unity and justice. This manipulation is intended to dupe Hawaiians into believing that Auntie Gladys supported this travesty – in reality, she died years before this shameful settlement was conceived by the current OHA trustees (Rowena Akana excluded).

8. The settlement is fatally flawed:

a. The waiver language and the provisions relating to res judicata should be deleted from the measure;

b. A reservation clause should be added that states that all claims of Native Hawaiians against the state relating to the Ceded lands trust are reserved and that the scope of the settlement is only for claims relating to revenues owed to OHA from 1978 – 2008;

* Hawaiians do not need to reserve claims against the US as the settlement does not involve the US or federal claims.

* Hawaiians know who owns the Ceded Lands – it belongs to the public and the Native Hawaiians under the Admissions Act.

c. All references to a prospective figure for OHA revenue share (15 million) should also be deleted until OHA and the Governor can justify the figure. We are entitled to 20% of the 5(f) revenues;

d. Any prospective agreement should be subject to reopening and recalculation every 5 years in order to ensure that Hawaiians benefit from the increase in value, revenue and proceeds of the public land trust.

The Senate & House
Twenty-Fourth Legislature
Regular Session of 2008
State of Hawai'i

March 12, 2008

To Senate Committees:

Agriculture and Hawaiian Affairs, Chair Jill N. Tokuda

Water and Land, Chair Clayton Hee

Judiciary and Labor, Chair Brian T. Taniguchi

Ways and Means, Chair Rosalyn Baker

To House Committees:

Water, Land, Ocean, Resources, and Hawaiian Affairs, Chair Ken Ito

Judiciary, Chair Tommy Waters

Finance, Chair Marcus Oshiro

Subject: Testimony in Opposition to SB 2733 SD2 & HB266 HD2 (Public Trust Lands Settlement)

It is not acceptable that an agreement between the Office of Hawaiian Affairs (OHA) and the State Administration, pertaining to the Ceded Lands was crafted in secrecy from the legislature or from the community at-large, particularly Hawaiian beneficiaries. Because the administration and OHA reached the settlement in this manner without discussion or input from the beneficiaries or their representatives, I humbly submit my testimony in opposition to SB 2733 SB2 and HB266 HD2. I further oppose SB 2733 and HB266 HD2, because beneficiary consultation and an audit of the Ceded Lands gross revenues were not appropriately completed.

Sincerely,

Erin O'Donnell

3/12/2008

1232A 17th Ave
Honolulu, HI 96816
282.3984

Do You Yahoo!?

Tired of spam? Yahoo! Mail has the best spam protection around

<http://mail.yahoo.com>

LATE

Legislative Testimony

Submitted by: Stephen K. Morse

HB 266, HD2 RELATING TO PUBLIC LANDS TRUST SETTLEMENTY

Senate Committees on Agriculture & Hawaiian Affairs, Water & Land, Judiciary & Labor

March 17, 2008

2:45 pm

State Capitol Auditorium

Aloha. My name is Stephen K. Morse. I strongly support HB 266, HD2 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, HD2

March 17, 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 *eha* (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.

March 13, 2008

Committee on Agriculture and Hawaiian Affairs
Senator Jill N. Tokuda, Chair

Committee on Water and Land
Senator Clayton Hee, Chair

Committee on Judiciary and Labor
Senator Brian T. Taniguchi, Chair

Re: HB 266 HD2 – OHA/Lingle Settlement
Hearing Date: March 17, 2008
Time: 2:45 p.m.
Place: ~~Conference Room 414~~
State Capitol

TESTIMONY IN OPPOSITION to HB 266 HD 2

Aloha Senators:

We the undersigned Hawaiian teachers from the Big Island oppose HB 266 HD2 (SB 2733). The Hawaiian community in Hilo overwhelmingly rejected this measure at the OHA community meeting held at QLCC on February 25, 2008. OHA and the Governor negotiated this agreement behind closed doors and approved it in an Executive Session without beneficiary input or agreement. We support open and transparent government.

We thank Senator Russell Kokubun for sponsoring the Senate Resolution that required OHA to hold statewide informational sessions, however we want Senator Kokubun and the Senate to know that at the OHA Hilo "informational" meeting, no information was provided to us. OHA did not give us the settlement or either of the Bills. Instead we were told that if we wanted to see the settlement and the two Bills, we should go find it on the internet!!

Denker K. Kelekolio
Name: Denker K. Kelekolio
Address: 99 Krauss Ave.
Hilo, HI 96720

Hauoli Pakele
Name: Hauoli Pakele
Address: 1426 Kalamalama Ave
Hilo, HI 96720

Heann Weller
Name: Heann Weller
Address: 96 Hoaha Rd. 96720

March 13, 2008

Committee on Agriculture and Hawaiian Affairs
Senator Jill N. Tokuda, Chair

Committee on Water and Land
Senator Clayton Hee, Chair

Committee on Judiciary and Labor
Senator Brian T. Taniguchi, Chair

Re: HB 266 HD2 -- OHA/Lingle Settlement
Hearing Date: March 17, 2008
Time: 2:45 p.m.
Place: ~~Conference Room 414~~
State Capitol

TESTIMONY IN OPPOSITION to HB 266 HD 2

Aloha Senators:

We the undersigned Hawaiian teachers from the Big Island oppose HB 266 HD2 (SB 2733). The Hawaiian community in Hilo overwhelmingly rejected this measure at the OHA community meeting held at QLCC on February 25, 2008. OHA and the Governor negotiated this agreement behind closed doors and approved it in an Executive Session without beneficiary input or agreement. We support open and transparent government.

We thank Senator Russell Kokubun for sponsoring the Senate Resolution that required OHA to hold statewide informational sessions, however we want Senator Kokubun and the Senate to know that at the OHA Hilo "informational" meeting, no information was provided to us. OHA did not give us the settlement or either of the Bills. Instead we were told that if we wanted to see the settlement and the two Bills, we should go find it on the internet!!

Michelle M.N. Nahaka
Michelle M.N. Nahaka
46 Ohuolu Street
Name: *Hilo, HI 96720*
Address:

Kaaka Swain
Name: *Kaaka Swain*
Address: *410 Desha Ave.*
Hilo, HI 96720

Josephine
Name: *Josephine*
Address: *916 Volcano Rd*
96785

March 13, 2008

Committee on Agriculture and Hawaiian Affairs
Senator Jill N. Tokuda, Chair

Committee on Water and Land
Senator Clayton Hee, Chair

Committee on Judiciary and Labor
Senator Brian T. Taniguchi, Chair


Re: HB 266 HD2 – OHA/Lingle Settlement
Hearing Date: March 17, 2008
Time: 2:45 p.m.
Place: Conference Room 414
State Capitol

TESTIMONY IN OPPOSITION to HB 266 HD 2

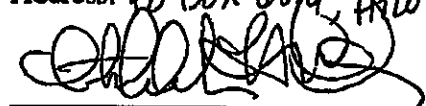
Aloha Senators:

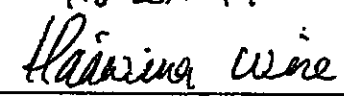
We the undersigned Hawaiian teachers from the Big Island oppose HB 266 HD2 (SB 2733). The Hawaiian community in Hilo overwhelmingly rejected this measure at the OHA community meeting held at QLCC on February 25, 2008. OHA and the Governor negotiated this agreement behind closed doors and approved it in an Executive Session without beneficiary input or agreement. We support open and transparent government.

We thank Senator Russell Kokubun for sponsoring the Senate Resolution that required OHA to hold statewide informational sessions, however we want Senator Kokubun and the Senate to know that at the OHA Hilo "informational" meeting, no information was provided to us. OHA did not give us the settlement or either of the Bills. Instead we were told that if we wanted to see the settlement and the two Bills, we should go find it on the internet!!


2304 Kalahele Ave
Hilo, HI 96720
Iliahi Anthony

Name: POHAKEALOHA H. WELSER
Address: PO BOX 6049, HILO 96720


Name: Hauwina Wise
Address: P.O. Box 492224 Keau, HI 96749


Name:
Address:

March 13, 2008

Committee on Agriculture and Hawaiian Affairs
 Senator Jill N. Tokuda, Chair

Committee on Water and Land
 Senator Clayton Hee, Chair

Committee on Judiciary and Labor
 Senator Brian T. Taniguchi, Chair

Re: HB 266 HD2 – OHA/Lingle Settlement
 Hearing Date: March 17, 2008
 Time: 2:45 p.m.
 Place: Conference Room 414
 State Capitol

TESTIMONY IN OPPOSITION to HB 266 HD 2

Aloha Senators:

We the undersigned Hawaiian teachers from the Big Island oppose HB 266 HD2 (SB 2733). The Hawaiian community in Hilo overwhelmingly rejected this measure at the OHA community meeting held at QLCC on February 25, 2008. OHA and the Governor negotiated this agreement behind closed doors and approved it in an Executive Session without beneficiary input or agreement. We support open and transparent government.

We thank Senator Russell Kokubun for sponsoring the Senate Resolution that required OHA to hold statewide informational sessions, however we want Senator Kokubun and the Senate to know that at the OHA Hilo "informational" meeting, no information was provided to us. OHA did not give us the settlement or either of the Bills. Instead we were told that if we wanted to see the settlement and the two Bills, we should go find it on the internet!!

Shadd K. Warfield

Name:

Address: 103 Kanehene Ave Hilo, HI 96720

→ Laurie Mendonca (Pua)

Name: Laurie Mendonca

Address: PO Box 434 Papakou HI 96781

Mylinda

Name: Malani Alameda

Address: 129 Ewaliko Ave.
 Hilo HI 96720

March 13, 2008

Committee on Agriculture and Hawaiian Affairs
Senator Jill N. Tokuda, Chair

Committee on Water and Land
Senator Clayton Hee, Chair

Committee on Judiciary and Labor
Senator Brian T. Taniguchi, Chair

Re: HB 266 HD2 – OHA/Lingle Settlement
Hearing Date: March 17, 2008
Time: 2:45 p.m.
Place: Conference Room 414
State Capitol

TESTIMONY IN OPPOSITION to HB 266 HD 2

Aloha Senators:

We the undersigned Hawaiian teachers from the Big Island oppose HB 266 HD2 (SB 2733). The Hawaiian community in Hilo overwhelmingly rejected this measure at the OHA community meeting held at QLCC on February 25, 2008. OHA and the Governor negotiated this agreement behind closed doors and approved it in an Executive Session without beneficiary input or agreement. We support open and transparent government.

We thank Senator Russell Kokubun for sponsoring the Senate Resolution that required OHA to hold statewide informational sessions, however we want Senator Kokubun and the Senate to know that at the OHA Hilo "informational" meeting, no information was provided to us. OHA did not give us the settlement or either of the Bills. Instead we were told that if we wanted to see the settlement and the two Bills, we should go find it on the internet!!



Name: DiKake Wilson-Kealoha
Address: 1591 Elama Rd. Hilo, HI 96720



Name: Carol R. Joane
Address: 17-505 N. Kūlanani Rd. Hilo, HI 96720



Name: Sybil Evans
Address: 124 King Ave Hilo, HI, 96720

March 13, 2008

Committee on Agriculture and Hawaiian Affairs
Senator Jill N. Tokuda, Chair

Committee on Water and Land
Senator Clayton Hee, Chair

Committee on Judiciary and Labor
Senator Brian T. Taniguchi, Chair

Re: HB 266 HD2 – OHA/Lingle Settlement
Hearing Date: March 17, 2008
Time: 2:45 p.m.
Place: Conference Room 414
State Capitol

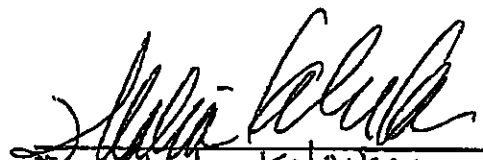
TESTIMONY IN OPPOSITION to HB 266 HD 2

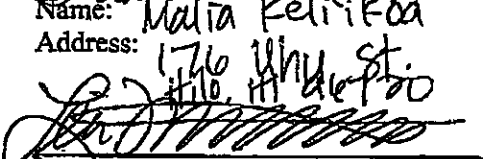
Aloha Senators:

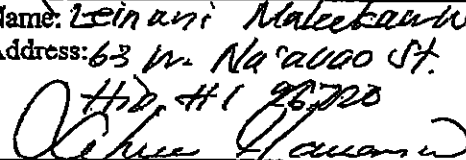
We the undersigned Hawaiian teachers from the Big Island oppose HB 266 HD2 (SB 2733). The Hawaiian community in Hilo overwhelmingly rejected this measure at the OHA community meeting held at QLCC on February 25, 2008. OHA and the Governor negotiated this agreement behind closed doors and approved it in an Executive Session without beneficiary input or agreement. We support open and transparent government.

We thank Senator Russell Kokubun for sponsoring the Senate Resolution that required OHA to hold statewide informational sessions, however we want Senator Kokubun and the Senate to know that at the OHA Hilo "informational" meeting, no information was provided to us. OHA did not give us the settlement or either of the Bills. Instead we were told that if we wanted to see the settlement and the two Bills, we should go find it on the internet!!

Damien Trask
Damien Trask
P.O. Box 454
Kurtistown, HI
96760


Name: Malia Keli'ioa
Address: 176 W. Hilo St.
Hilo, HI 96720


Name: Leinani Maleckau Whittaker
Address: 63 W. Na'auao St.
Hilo, HI 96720


Name: Lehua Hawaiian
Address: P.O. Box 7693
Hilo, Hawaii 96720

The Senate & House
Twenty-Fourth Legislature
Regular Session of 2008
State of Hawai'i

March 12, 2008

To: Brian T. Taniguchi
Judiciary and Labor

Subject: Testimony in Opposition to SB 2733 SD2 & HB266 HD2 (Public Trust Lands Settlement)

It is not acceptable that an agreement between the Office of Hawaiian Affairs (OHA) and the State Administration, pertaining to the Ceded Lands was crafted in secrecy from the legislature or from the community at-large, particularly Hawaiian beneficiaries. Because the administration and OHA reached the settlement in this manner without discussion or input from the beneficiaries or their representatives, I humbly submit my testimony in opposition to SB 2733 SB2 and HB266 HD2. I further oppose SB 2733 and HB266 HD2, because beneficiary consultation and an audit of the Ceded Lands gross revenues were not appropriately completed.

Sincerely,



Leona Souza
45-106 Maui Place
Kaneohe, HI 96744
(808) 234-7749

March 13, 2008

Statement by Richard Pezzulo

Re: HB266 HD2 - RELATING TO HAWAIIAN AFFAIRS– **IN SUPPORT**

DATE: Monday, March 17, 2008

TIME: 2:45 P.M.

PLACE: Conference Room 414
State Capitol
415 South Beretania Street

HB266 RELATING TO HAWAIIAN AFFAIRS.

HD2 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 Hawaii Constitution.

Submitted to:

Joint Senate Committees on Agriculture & Hawaiian Affairs, Water and Land, and Judiciary and Labor.

Testimony:

I am a non-Hawaiian and my family and I **strongly support** Bill HB266 HD2, which 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 Hawaii Constitution.

This settlement covers a 30 year period and is extremely overdue. There is no reason for the settlement to have taken this long and I urge you to resolve this long standing issue through immediate passage of HB266 HD2, which provides fair compensation in the form of land and cash.

By adopting HB266 HD2, the 2008 State Legislature will demonstrate fairness, justice, and a continued commitment to the native people of Hawaii.

Thank you for your time.

Sincerely,

Richard Pezzulo
94-462 Haiwale Loop
Mililani, Hawaii 96789

March 13, 2008

Committee on Agriculture and Hawaiian Affairs
Senator Jill N. Tokuda, Chair

Committee on Water and Land
Senator Clayton Hee, Chair

Committee on Judiciary and Labor
Senator Brian T. Taniguchi, Chair

Re: HB 266 HD2 – OHA/Lingle Settlement
Hearing Date: March 17, 2008
Time: 2:45 p.m.
Place: Conference Room 414
State Capitol

TESTIMONY IN OPPOSITION

Aloha Senators:

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 strongly oppose the OHA/Lingle settlement and have testified against SB 2733. I am also opposing this Bill.

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

Our Hawaiian assets need to be protected and managed responsibly. The lands and revenues referred to in HB 266 HD 2 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

tokuda1 - Jennifer

From: Sen. Jill Tokuda
Sent: Thursday, March 13, 2008 8:57 AM
To: tokuda1 - Jennifer; Kamakana Kaimuloa; Darlene Tsukazaki
Subject: FW: Testimony in Opposition to SB 2733 SD2 & HB266 HD2

Testimony

-----Original Message-----

From: Kainani Kahaunaele [mailto:kainani_k@leoki.uhh.hawaii.edu]
Sent: Wednesday, March 12, 2008 11:01 PM
To: All Reps; All Senators; Sen. Jill Tokuda; Sen. Clayton Hee; Sen. Brian Taniguchi; Sen. Roz Baker; Rep. Ken Ito; Rep. Thomas Waters; Rep. Marcus Oshiro
Subject: Testimony in Opposition to SB 2733 SD2 & HB266 HD2

The Senate & House
Twenty-Fourth Legislature
Regular Session of 2008
State of Hawai'i

March 12, 2008

To Senate Committees:
Agriculture and Hawaiian Affairs, Chair Jill N. Tokuda Water and Land, Chair Clayton Hee
Judiciary and Labor, Chair Brian T. Taniguchi Ways and Means, Chair Rosalyn Baker

To House Committees:
Water, Land, Ocean, Resources, and Hawaiian Affairs, Chair Ken Ito Judiciary, Chair Tommy
Waters Finance, Chair Marcus Oshiro

Subject: Testimony in Opposition to SB 2733 SD2 & HB266 HD2 (Public Trust Lands Settlement)

It is not acceptable that an agreement between the Office of Hawaiian Affairs (OHA) and the State Administration, pertaining to the Ceded Lands was crafted in secrecy from the legislature or from the community at-large, particularly Hawaiian beneficiaries. Because the administration and OHA reached the settlement in this manner without discussion or input from the beneficiaries or their representatives, I humbly submit my testimony in opposition to SB 2733 SB2 and HB266 HD2. I further oppose SB 2733 and HB266 HD2, because beneficiary consultation and an audit of the Ceded Lands gross revenues were not appropriately completed.

Sincerely,
Kainani Kahaunaele
622 Wainaku Ave.
Hilo HI 96720
808-989-6119

tokuda1 - Jennifer

From: Sen. Jill Tokuda
Sent: Thursday, March 13, 2008 9:58 AM
To: tokuda1 - Jennifer; Kamakana Kaimuloa
Subject: FW: Ceded Land Settlement

Testimony

From: Rozalyn K. Teixeira [mailto:kaleitex@yahoo.com]
Sent: Wednesday, March 12, 2008 6:56 PM
To: All Reps; All Senators; Sen. Jill Tokuda; Sen. Clayton Hee; Sen. Brian Taniguchi; Sen. Roz Baker; Rep. Ken Ito; Rep. Thomas Waters; Rep. Marcus Oshiro
Subject: Ceded Land Settlement

The Senate & House
Twenty-Fourth Legislature
Regular Session of 2008
State of Hawai'i

March 12, 2008

To Senate Committees:
Agriculture and Hawaiian Affairs, Chair Jill N. Tokuda
Water and Land, Chair Clayton Hee
Judiciary and Labor, Chair Brian T. Taniguchi
Ways and Means, Chair Rosalyn Baker

To House Committees:
Water, Land, Ocean, Resources, and Hawaiian Affairs, Chair Ken Ito
Judiciary, Chair Tommy Waters
Finance, Chair Marcus Oshiro

Subject: Testimony in Opposition to SB 2733 SD2 & HB266 HD2 (Public Trust Lands Settlement)

It is not acceptable that an agreement between the Office of Hawaiian Affairs (OHA) and the State Administration, pertaining to the Ceded Lands was crafted in secrecy from the legislature or from the community at-large, particularly Hawaiian beneficiaries. Because the administration and OHA reached the settlement in this manner without discussion or input from the beneficiaries or their representatives, I humbly submit my testimony in opposition to SB 2733 SB2 and HB266 HD2. I further oppose SB 2733 and HB266 HD2, because beneficiary consultation and an audit of the Ceded Lands gross revenues were not appropriately completed.

Sincerely,

3/13/2008

Rozalyn K. Teixeira
86-105 Puhawai Rd
Wai'anae, HI 96792
808 697-8855

*O wau ika no,
Halei'aukai*

Never miss a thing. Make Yahoo your homepage.

testimony

From: Steve Tayama [kipikoa1@hotmail.com]
Sent: Wednesday, March 12, 2008 8:37 PM
To: testimony
Subject: Hearing on HB 266 HD2

To: Committee on Agriculture and Hawaiian Affairs.
March 17th Hearing on HB 266 HD2. Time 2:45 RM 414

Aloha Committee members, I am writing in opposition to HB 266 HD2. The Hawaii State Supreme Court has recently said that U.S. Public Law 103-150 (aka Apology Bill) is "Law" and that all land title in Hawaii is "clouded" including the 1.8 million acres of "ceded" lands taken "without the consent of, or compensation to the native Hawaiian people or their lawful government". So how can there be any kind of deals be made with these lands? 103-150 also admits many other high crimes that have gone unresolved for more than a century. Before any selling, trading, leasing, transferring or settlements can be made concerning Hawaiian lands, the ongoing and unresolved crimes must be adjudicated in a Free, Fair, and Open process involving the Hawaiian People. This process cannot only involve the State or its agencies be it Hawaiian or not. The State of Hawaii was built on the crimes 103-150 discribe and admit. Until these issues can be justly resolved there must NOT be any more deals or settlements made. Mahalo, Steve Tayama, 41-1300 Waimanalo, HI 96795 Ph. 259 0095

Shed those extra pounds with MSN and The Biggest Loser!
<http://biggestloser.msn.com/>

testimony

From: Ken Conklin [ken_conklin@yahoo.com]
Sent: Wednesday, March 12, 2008 8:49 PM
To: testimony
Subject: HB 266, HD2 testimony for hearing Monday, March 17

testimony@capitol.hawaii.gov

Aloha PAR people,

Below the line is testimony I'd like to submit for the following hearing to the members of all three committees WTL/AHW/JDL

Re HB 266, HD2
(HSCR874-08)

RELATING TO HAWAIIAN AFFAIRS.

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 Hawaii Constitution. (HB266 HD2)

DATE: Monday, March 17, 2008
TIME: 2:45 P.M.
PLACE: Conference Room 414

Thank you for helping Hawaii's people express our views to our Legislators.

Ken Conklin

Kenneth R. Conklin, Ph.D.
46-255 Kahuhipa St. Apt. 1205
Kane'ohe, HI 96744
tel/fax (808) 247-7942
e-mail Ken_Conklin@yahoo.com

=====

TO: THE SENATE
COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS Senator Jill N. Tokuda, Chair
COMMITTEE ON WATER AND LAND Senator Clayton Hee, Chair
COMMITTEE ON JUDICIARY AND LABOR Senator Brian T. Taniguchi, Chair

Date: March 12, 2008

Re: HB 266, HD2
RELATING TO HAWAIIAN AFFAIRS.

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 Hawaii Constitution. (HB266 HD2)

From: Kenneth R. Conklin, Ph.D.
46-255 Kahuhipa St. Apt. 1205
Kane'ohe, HI 96744
tel/fax (808) 247-7942
e-mail Ken_Conklin@yahoo.com

Aloha Chairs Tokuda, Hee, and Taniguchi; members of the committees, and members of the public,

I previously testified in opposition to an earlier version of this bill and refer you to that testimony.

But now let me emphasize one point, since you have obviously ignored what I said before about the "big picture."

PLEASE IMPROVE THIS BILL BY USING IT AS AN OPPORTUNITY TO SEVER THE CONNECTION BETWEEN CEDED LAND REVENUES AND OHA. REPEAL THE LAW THAT SETS ASIDE 20% OF CEDED LAND REVENUE FOR OHA.

OHA should be funded in the same way as any other agency of the state government -- by annual legislative appropriations from the general fund.

If you are determined to send \$15.1 Million to an illegal racially exclusionary government agency, then just send them the money without referring to ceded land revenues. Otherwise you will be plagued by future lawsuits over ceded land revenues, and by claims that ethnic Hawaiians are owed some portion of the ceded lands.

There is nothing in the annexation documents, the Organic Act, or the Statehood Admissions Act, that requires you to allocate a single penny of ceded land revenue for a racial group. The decision to set aside 20% of ceded land revenue for OHA in 1978 was an arbitrary and capricious enactment of an ordinary law. It is NOT part of our Constitution -- the Legislature can AND SHOULD repeal the 20% law at any time.

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 explicitly 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, the result was that 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?

Think carefully about this: Do you believe that sending 20% of ceded land revenues to OHA is more advantageous for ethnic Hawaiians than sending 26% of ceded land revenues to ethnic Hawaiian children by way of sending 100% of ceded land revenues to the public schools where 26% of the children are ethnic Hawaiian? How can that be? Only if you think a race-based institution is superior to a race-neutral one. Only if you think OHA and its Kau Inoa commercials, bloated bureaucracy, and newspaper inserts are more important than Hawaiian children. Only if you realize that 20% of ceded land revenue (based on gross revenue rather than net income) is greater than 26% (indeed, it is greater than 100% of net income after expenses).

It must also be noted that the section 5(f) language identifying "betterment of native Hawaiians" as one purpose for spending ceded land revenues explicitly defined "native Hawaiians" as that term was used in the Hawaiian Homes Commission Act of 1920, which required 50% native blood quantum. Therefore neither OHA, nor the anticipated Akaka tribe, is a proper receptacle for ceded land revenue, since OHA beneficiaries and Akaka tribe members are defined as needing only to have a single drop of the magic blood.

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.

If you insist on passing this bill, at least insist that it be a permanent settlement of all ceded lands issues by severing any connection between OHA and the ceded lands. Repeal HRS 10-13.5 (1980) and all amendments thereafter.

testimony

From: Jeannine Johnson [jeannine@hawaii.rr.com]
Sent: Wednesday, March 12, 2008 6:10 PM
To: testimony
Subject: Testimony in Strong Support of HB266, HD2 (OHA)

COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS

Senator Jill N. Tokuda, Chair
Senator J. Kalani English, Vice Chair

COMMITTEE ON WATER AND LAND

Senator Clayton Hee, Chair
Senator Russell S. Kokubun, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR

Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice Chair

Re: **HB 266, HD2** - RELATING TO HAWAIIAN AFFAIRS
Hearing: Monday, March 17, 2008, at 2:45 pm in Conference Room 414

Aloha kākou,

I strongly support HB266, HD2 which conveys certain parcels of real property and transfers cash to the Office of Hawaiian Affairs (OHA) as part of the State's obligations to native Hawaiians under Article XII, sections 4 and 6, of the Hawaii Constitution.

At an informational meeting I attended by OHA, Trustee Haunani Apoliona, Administrator Clyde Nāmu'o and Land Management Division Director, Jonathan Likeke Schuerer, fully explained the State's outstanding obligations to Hawaiians, the history surrounding the claims and disputes, as well as the settlement.

As a Hawaiian, I'm pleased that OHA and the State have finally resolved this 30 year old dispute. Your support of this bill is respectfully requested.

Mahalo,

Jeannine

Jeannine Johnson
5648 Pia Street
Honolulu, Hawai'i 96821
Ph: 373-2874 / 523-5030 (w)
Email: jeannine@hawaii.rr.com
"PUPUKAHI I HOLOMUA"
(Unite in Order to Progress)

3/12/2008

tokuda1 - Jennifer

From: Sen. Jill Tokuda
Sent: Friday, March 14, 2008 10:30 AM
To: tokuda1 - Jennifer; Kamakana Kaimuloa
Subject: FW: Hearing on HB 266 HD2

Importance: High

-----Original Message-----

From: Steve Tayama [mailto:kipikoal@hotmail.com]
Sent: Thursday, March 13, 2008 10:18 AM
To: Sen. Jill Tokuda; Sen. Clayton Hee; sentanigawa@capitol.hawaii.gov
Subject: FW: Hearing on HB 266 HD2
Importance: High

> From: kipikoal@hotmail.com
> To: testimony@capitol.hawaii.gov
> Subject: Hearing on HB 266 HD2
> Date: Wed, 12 Mar 2008 20:37:23 -1000
>
>
> To: Committee on Agriculture and Hawaiian Affairs.
> March 17th Hearing on HB 266 HD2. Time 2:45 RM 414
>
> Aloha Committee members, I am writing in opposition to HB 266 HD2. The Hawaii State Supreme Court has recently said that U.S. Public Law 103-150 (aka Apology Bill) is "Law" and that all land title in Hawaii is "clouded" including the 1.8 million acres of "ceded" lands taken "without the consent of, or compensation to the native Hawaiian people or their lawful government". So how can there be any kind of deals be made with these lands? 103-150 also admits many other high crimes that have gone unresolved for more than a century. Before any selling, trading, leasing, transferring or settlements can be made concerning Hawaiian lands, the ongoing and unresolved crimes must be adjudicated in a Free, Fair, and Open process involving the Hawaiian People. This process cannot only involve the State or its agencies be it Hawaiian or not. The State of Hawaii was built on the crimes 103-150 discribe and admit. Until these issues can be justly resolved there must NOT be any more deals or settlements made. Mahalo, Steve Tayama, 41-1300 Waimanalo, HI 96795 Ph. 259 0095.
>
>
>
> Shed those extra pounds with MSN and The Biggest Loser!
> <http://biggestloser.msn.com/>

Climb to the top of the charts! Play the word scramble challenge with star power.
http://club.live.com/star_shuffle.aspx?icid=starshuffle_wlmailtextlink_jan

testimony

From: pikake pelekai [keakua1@hawaiiantel.net]
Sent: Sunday, March 16, 2008 12:44 PM
To: testimony
Subject: Testimony in opposition to HB 266 HD 2
Importance: High

Testimony of
Annie AuHoon
2136 Kapahu Street
Honolulu, Hi 96813
Ph: 699-0836

March 17, 2008
2:45 p.m.
State Capitol, Auditorium

Senate Committee on Agriculture and Hawaiian Affairs
Senate Committee on Judiciary and Labor
Senate Committee on Water and Land

TESTIMONY IN OPPOSITION

HB 266; HD 2 – OHA/Lingle Agreement on Ceded Lands Revenues

Honorable Senators,

I do not support the agreement before you for the following reasons

- :
- Lack of a Ceded Lands Inventory and Revenue Report,
 - Lack of participation in the agreement by the Hawaiian Homes Commission the beneficiaries of the Hawaiian Home Land Trust,
 - Unacceptable list of waivers which were approved by Governor Lingle and C

I urge you to defeat this bill.

Mahalo!

testimony

From: pikake pelekai [keakua1@hawaiiantel.net]
Sent: Sunday, March 16, 2008 12:10 PM
To: testimony
Subject: HB 266 HD 2

Testimony of
Agnes Cope
89-237 Kauwahi Avenue
Waianae, HI 96792
Ph: 668-1636

March 17, 2008
State Capitol, Auditorium
2:45 p.m.

Senate Committee on Agriculture and Hawaiian Affairs
Senate Committee on Judiciary and Labor
Senate Committee on Water and Land

TESTIMONY IN OPPOSITION

HB 266 HD 2 – OHA/Lingle Agreement on Ceded Lands Revenues

Honorable Senators,

My testimony will be short and brief.

I do not support the agreement before you.

Listen to the people, they will show you the way.

The agreement is not good for the people.

The palapala was born in the darkness and will not bring light to Hawaii.

Mahalo nui loa.

testimony

From: Kevin Chang [Kevin.Chang@tpl.org]
Sent: Sunday, March 16, 2008 12:39 PM
To: testimony
Cc: Lea Hong
Subject: HB 266 Testimony AHW/WTL/JDL 3-17-08 2:45 pm Auditorium

Aloha!

Attached you will find TPL's testimony on HB 266 for tomorrow's hearing of AHW/WTL/JDL at 2:45 pm in the Capitol Auditorium.

Mahalo

Kevin

Kevin Chang
Hawaiian Islands Program Field Representative
Trust for Public Land
212 Merchant Street, Suite 320
Honolulu, HI 96813
808-524-8564 (direct)
808-232-3034 (mobile)
(808)-524-8565 (fax)

The Trust for Public Land - Celebrating 35 years of conserving land for people--2 million acres and counting.
www.tpl.org

testimony

From: leahkpereira@aim.com
Sent: Sunday, March 16, 2008 5:41 PM
To: testimony
Subject: Fwd: SB2733 & HB266 Opposition to Ceded Land Settlement

-----Original Message-----

From: leahkpereira@aim.com
To: Testimony@capitol.hawaii.gov
Sent: Sun, 16 Mar 2008 5:31 pm
Subject: SB2733 & HB266 Opposition to Ceded Land Settlement

To Senate Committees:

Agriculture and Hawaiian Affairs, Chair Jill ann Tokuda
Water, Land, Chair Clayton Hee
Judiciary and Labor, Chair Brian T. Taniguchi
Ways and Means, Chair Rosalyn Baker

To House Committees:

Water, Land, Ocean, Resources and Hawaiian Affairs, Chair Ken Ito
Judiciary, Chair Tommy Waters
Finance, Chair Marcus Oshiro

Subject: Testimony in Opposition to SB 2733 SD2 & HB266 HD2 (Public Trust Lands Settlement)

I am in opposition of this Land trust agreement between OHA and The State Administration for 3 reasons.

- 1) Consultation was not given to the beneficiaries or representatives.
- 2) An Audit must be done before any decisions can be made.
- 3) Two State entities cannot make a decision for our Native Hawaiian People

Me Ke Aloha Pumehana,

Leah K. Pereira
P.O.Box 31
Waimea, Kauai, Hi.
96796-0031

3/16/2008

testimony

From: Kalena Hewlen [hewlenh001@hawaii.rr.com]
Sent: Sunday, March 16, 2008 5:39 PM
To: testimony
Subject: March 16 Kalenas testimony

March 17, 2008

To: Joint Senate Committee
Capitol Auditorium @ 2:40PM

From: Herbert Kalena Hew Len, President, Waianae Kai Hawaiian
Homestead Association.

Subj: HB 266 HD2

Aloha, my name is Herbert Kalena Hew Len, KAHU for Sovereign Council of the Hawaiian Homelands Assemble, also President, and Waianae Kai Hawaiian Homestead Association. I am definitely OPPOSED to HB 266 HD2. I am a Beneficiary of the Hawaiian Homelands Trust as stated in both Federal Law and State Constitution.

-
We HAVE NOT been afforded the opportunity, and yet we are definitely a “Third party participant, not Included”, missing from this settlement. At the end of the day, when all is said and done, THE GREATEST LOSERS OF THIS SETTLEMENT IS US, MY CHILDREN AND MY GRAND CHILDREN

It is very important that these committee here today understand the failing of this bill to us the beneficiaries of the Hawaiian homes commission act of 1920 as amended should this bill pass

Mahalo

-
-
-

testimony

From: Kalena Hewlen [hewlenh001@hawaii.rr.com]

Sent: Sunday, March 16, 2008 5:39 PM

To: testimony

March 17, 2008

To; Joint Senate Committee

Aloha Members of this Joint committee,

My Name is Uilani Hew Len, member of the board, and chairman of the KUPUNA Council of the Waianae Kai Hawaiian homestead Association, also the treasurer of the Mokupuni O Oahu. The Island branch of the SCHHA.

I am here today; to OPPOSE HB 266 HD2 I am a beneficiary of the Hawaiian Homelands Trust as Stated in both Federal Law and Our State Constitution.

It is very important for me to oppose this bill because it shall officially wave all claims that I will have when it comes to the rights of me and my children and grand children.

Rights that shall be known either now or in the future, that shall also be illuminated, which will allow my children and grand children for matters that may occur in their time. The present position that I take today, as a Kupuna, shall be for the benefit of generation to come.

Shame on The Office of Hawaiian Affairs for failing to meet their fiduciary obligations to we the Beneficiaries of the Hawaiian Homelands Trust.

-

-
Mahalo

FRED E. TROTTER

Fred E. Trotter, Inc.
1188 Bishop Street
Suite 3406
Honolulu, Hawaii 096813
Phone: 808-545-4960
Email: trotterv001@hawaii.rr.com

March 16, 2008

Honorable Chairpersons
Senators Jill Tokuda, Clayton Hee and Brian Taniguchi
Senate Committees on Agriculture & Hawaiian Affairs;
Water and Land; and Judiciary and Labor

RE: H.B. No. 266, H.D.2 RELATING TO HAWAIIAN AFFAIRS

Dear Honorable Chairpersons and Committee Members:

Thank you for the opportunity to offer testimony in support of House Bill 266, H.D. 2 Relating to Hawaiian Affairs.

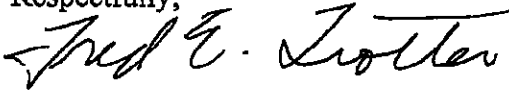
I support the legislative intent of this bill which seeks to fulfill our constitutional obligation to native Hawaiians in settlement of all issues relative to lands held in the public trust and the income to be received by the Office of Hawaiian Affairs.

I offer these comments:

1. Regarding certain lands in Kakaako I suggest that there be an adequate due-diligence period in examining the various encumbrances to the property before entering into a binding contract to prevent burdening OHA with unjust and excessive underground or hazardous waste problems unknown to OHA. Complete disclosure by the State of Hawaii is critical.

2. Regarding certain lands in Kalaeloa, I suggest that an environmental assessment of all surface and underground areas be thoroughly examined before any conveyance is made to OHA. Again this will prevent the State from assigning their interest to OHA encumbered by known environmental contamination and risks. Without this clearance, OHA will be hampered from obtaining the highest and best uses of this property that was formerly a feedlot and slaughterhouse.

Respectfully,



FRED E. TROTTER

Valerie L. Trotter

*President, Lombard Loop Orchards
& Fruit*

2802 Oahu Avenue

Honolulu, Hawaii 96822

Phone 808-988-0025

Fax 808-988-0026

trotterv001@hawaii.rr.com

March 16, 2008

TESTIMONY IN SUPPORT OF H.B. 266, H.D.2

Senate Committees on Agriculture & Hawaiian Affairs; Water & Land;
Judiciary and Labor

Honorable Chairs Tokuda, Hee and Taniguchi and Committee Members:

Thank you for your consideration of the proposed legislative policy attempting to satisfy the constitutional obligations to native Hawaiians. We understand that this is only an expression however we applaud your efforts to examine the merits of this proposal before deciding on a final settlement that will be binding and forever etched in stone.

I am unable to comment on the real value of the proposed parcels under consideration however, I believe that the legislature must do all that it can to assure that the properties being considered are conveyed free and clear of known environmental encumbrances. Unresolved issues of an environmental nature will unreasonably burden OHA with costly cleanup and may restrict the highest and best use of these lands for income purposes. Please be careful to insure that OHA will receive these properties free and clear of known liabilities. Also, with regard to lands in Kakaako, OHA should not be unreasonably burdened with the uncertainty of still-to-be-determined development.

Regarding (SECTION 12) page 25, line 20-22 stating: "Office of Hawaiian affairs SHALL COOPERATE with other state agencies to designate and grant such access rights and easements as may be reasonably necessary for the benefit and use of adjoining properties owned by the State." It is my opinion that the State of Hawaii cannot act in an oppressive manner to control the use and development of these properties for the betterment and income opportunities to the Office of Hawaiian Affairs. There should be some limits to the degree that OHA must acknowledge State rights over its own.


Testimony on H.B.266 H.D 2
By Valerie Trotter
Page 2

To protect the fee interests of OHA in the lands to be conveyed under this proposal, I propose that two (2) members of the authority be appointed by the chairperson of the Office of Hawaiian Affairs.

I strongly support the passage of HB266 HD2 with the proposed amendments being suggested herewith.

Thank you for your continuing service to our State.

Very respectfully,


Valerie L. Trotter

tokuda1 - Jennifer

From: Sen. Jill Tokuda .
Sent: Friday, March 14, 2008 4:37 PM
To: tokuda1 - Jennifer; Kamakana Kaimuloa
Subject: FW: Opposing Ceded Land Settlement

From: mirjam loetscher [mailto:hheartspirit@yahoo.com]
Sent: Friday, March 14, 2008 3:08 PM
To: All Reps; All Senators; Sen. Jill Tokuda; Sen. Clayton Hee; Sen. Brian Taniguchi; Sen. Roz Baker; Rep. Ken Ito; Rep. Thomas Waters; Rep. Marcus Oshiro
Subject: Opposing Ceded Land Settlement

In regards to the Ceded Land Settlement:

Aloha kakou

As a non-Hawaiian I strongly believe it is the right and obligation of all the Hawaiian people to make decisions about their land and not to be left up to a handful of persons, who, through their actions, seem to give the impression that their main interest is their own and so neglect their duty as trustees.

Sincerely,

Mirjam Berman
P.O. Box 253
Makawao, HI 96768

(808) 575-5334

Be a better friend, newshound, and know-it-all with Yahoo! Mobile. [Try it now.](#)

tokuda1 - Jennifer

From: Sen. Jill Tokuda
Sent: Friday, March 14, 2008 5:34 PM
To: tokuda1 - Jennifer; Kamakana Kaimuloa
Subject: FW: Testimony in Opposition to SB2733 SD2 & HB266 HD2 (Public Trust Lands Settlement)

From: Pi [mailto:pi@upi.cc]
Sent: Friday, March 14, 2008 5:05 PM
To: All Reps; All Senators; Sen. Jill Tokuda; Sen. Clayton Hee; Sen. Brian Taniguchi; Sen. Roz Baker; Rep. Ken Ito; Rep. Thomas Waters; Rep. Marcus Oshiro
Cc: Sen. J. Kalani English; Sen. Lorraine R. Inouye
Subject: Testimony in Opposition to SB2733 SD2 & HB266 HD2 (Public Trust Lands Settlement)

The Senate & House
Twenty-Fourth Legislature
Regular Session of 2008
State of Hawai'i

March 14, 2008

To Senate Committees:
Agriculture and Hawaiian Affairs, Chair Jill N. Tokuda
Water and Land, Chair Clayton Hee
Judiciary and Labor, Chair Brian T. Taniguchi
Ways and Means, Chair Rosalyn Baker

To House Committees:
Water, Land, Ocean, Resources, and Hawaiian Affairs, Chair Ken Ito
Judiciary, Chair Tommy Waters
Finance, Chair Marcus Oshiro

Subject: Testimony in Opposition to SB2733 SD2 & HB266 HD2 (Public Trust Lands Settlement)

Hopefully this message reaches you before your meeting on this issue should it take place as soon as this coming Monday, March 17, 2008. There is a large number of people who are sending in similar letters as this one. Perhaps you will even see forwarded copies of this very message from people who share this opinion.

It is not acceptable that an agreement between the Office of Hawaiian Affairs (OHA) and the State Administration, pertaining to the Ceded Lands was crafted in secrecy from the legislature or from the community at-large, particularly Hawaiian beneficiaries. Because the administration and OHA reached the settlement in this manner without discussion or input from the beneficiaries or their representatives, I humbly submit my testimony in opposition to SB2733 SB2 and HB266 HD2. I oppose SB2733 SB2 and HB266 HD2, because beneficiary consultation and a complete audit of the Ceded Lands and their gross revenues were not appropriately completed.

Furthermore, my opposition to SB2733 SB2 and HB266 HD2 is directly related to the waiver "for claims on or after July 1, 2008" on page 3 of 9 number 2 of the signed Settlement Agreement that states, ". . .OHA

3/17/2008

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 section 4 and 6 of Article XII of the Constitution or any statute or act. Such claims are forever barred . . ."

The above mentioned waiver will forever take away the rights of any persons or entity to due process. Individual rights and the rights of future generations to due process are being stripped away from us through the waiver in the signed Settlement Agreement between the Office of Hawaiian Affairs and the State Administration dated January 17, 2008. I believe that the Hawaii State Legislature will work to protect the principles of democracy now and for future generations by opposing the Ceded Land Settlement (SB2733 SD2 & HB266 HD2).

Sincerely,

- pi -

Mr Pi (full legal name)
PO Box 980
Makawao, HI 96768
808-280-8679

P.S. Here is a more complete legal basis for the above opinion: <http://BumpyKanahele.com>

tokuda1 - Jennifer

From: Sen. Jill Tokuda
Sent: Friday, March 14, 2008 4:35 PM
To: tokuda1 - Jennifer; Kamakana Kaimuloa
Subject: FW: Testimony in Opposition to SB 2733 SD2 & HB266 HD2 (Public Trust Lands Settlement)

-----Original Message-----

From: KahiwaL@cs.com [mailto:KahiwaL@cs.com]
Sent: Friday, March 14, 2008 4:19 PM
To: All Reps; All Senators; Sen. Jill Tokuda; Sen. Clayton Hee; Sen. Brian Taniguchi; Sen. Roz Baker; Rep. Ken Ito; Rep. Thomas Waters; Rep. Marcus Oshiro
Subject: Testimony in Opposition to SB 2733 SD2 & HB266 HD2 (Public Trust Lands Settlement)

The Senate & House
Twenty-Fourth Legislature
Regular Session of 2008
State of Hawai'i

March 14, 2008

To Senate Committees:
Agriculture and Hawaiian Affairs, Chair Jill N. Tokuda Water and Land, Chair Clayton Hee
Judiciary and Labor, Chair Brian T. Taniguchi Ways and Means, Chair Rosalyn Baker

To House Committees:
Water, Land, Ocean, Resources, and Hawaiian Affairs, Chair Ken Ito Judiciary, Chair Tommy
Waters Finance, Chair Marcus Oshiro

Subject: Testimony in Opposition to SB 2733 SD2 &
HB266 HD2 (Public Trust Lands Settlement)

Chairmen, Chairwomen and members of the committees:

I am Clarence Ku Ching, former Trustee of the Office of Hawaiian Affairs ('86 - '90) and I'm here to present testimony in opposition to SB 2733 SD 2 and HB266 HD2 (Public Trust Lands Settlement).

The recent pronouncement of the Hawai'i Supreme Court in its opinion in the Leali'i (so-called "Ceded Lands") case, and its legal significance, in light of Hawaiian history of the 1890s, must be considered in your deliberations of the subject bills.

The Court said:

"For the reasons discussed infra , we vacate the January 31, 2003 judgment and remand this case to the circuit court with instructions to issue an order granting the plaintiffs' *[OHA]* request for an* injunction *against >the defendants *[HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF >HAWAI'I (HCDCH),]* *from selling or otherwise transferring to third parties* (1) the parcel of ceded land on Maui and (2) any ceded lands from the public lands trust *until the claims of the native Hawaiians to the ceded lands has been resolved.*"

The Court also cited the so-called *"Apology Resolution"* (United States Public Law 103-150, 103d Congress Joint Resolution 19, dated November 23, 1993) in making its decision.

The relevant parts of the so-called "Apology Resolution" (that the Court probably considered) state (with emphasis added):

Whereas, the report of a Presidentially established investigation conducted by former

Congressman James Blount into the events surrounding the insurrection and overthrow of January 17, 1893, concluded that the United States diplomatic and military representatives had abused their authority and were responsible for the change in government;

* * *

Whereas, in a message to Congress on December 18, 1893, President Grover Cleveland reported fully and on the illegal acts of the conspirators, described such acts as an "act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress", and acknowledged that by such acts the government of a peaceful and friendly people was overthrown;

Whereas, President Cleveland further concluded that a "substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair" and called for the restoration of the Hawaiian monarchy;

Whereas, the *Provisional Government* protested President Cleveland's call for the restoration of the monarchy and continued to hold state power and pursue annexation to the United States;

* * *

Whereas, although the Provisional Government was able to obscure the role of the United States in the illegal overthrow of the Hawaiian monarchy, it was unable to rally the support from two-thirds of the Senate needed to ratify a treaty of annexation;

Whereas, on July 4, 1894, *the Provisional Government declared itself to be the Republic of Hawaii*;

Whereas, on January 24, 1895, while imprisoned in Iolani Palace, Queen Liliuokalani was forced by representatives of the Republic of Hawaii to officially abdicate her throne;

* * *

Whereas, on July 7, 1898, as a consequence of the Spanish-American War, President McKinley signed the Newlands Joint Resolution that provided for the annexation of Hawaii;

Whereas, through the Newlands Resolution, the self-declared Republic of Hawaii ceded sovereignty over the Hawaiian Islands to the United States;

Whereas, the Republic of Hawaii also ceded 1,800,000 acres of crown, government and public lands of the Kingdom of Hawaii, without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government;

Whereas, the Congress, through the Newlands Resolution, ratified the cession, annexed Hawaii as part of the United States, and vested title to the lands in Hawaii in the United States;

Whereas, the Newlands Resolution also specified that treaties existing between Hawaii and foreign nations were to immediately cease and be replaced by United States treaties with such nations;

Whereas, the Newlands Resolution effected the transaction between the Republic of Hawaii and the United States Government;

Whereas, *the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum;

In brief, the Apology Resolution *stated that the overthrow of the Hawaiian Kingdom was illegal, that there was a "taking" (theft) of the Kingdom's lands without consent or compensation and that the indigenous Hawaiian people never relinquished their claims over their national lands.

The Apology Resolution also traces the stolen lands from the Provisional Government to the Republic of Hawaii to the United States of America and finally to the so-called "State of Hawaii."

To put it simply, *the national lands of the Hawaiian Kingdom were stolen*and the so-called "indigenous Hawaiian people" continue to claim those lands.

No matter how many hands the "stolen lands" go through - its character never changes - and it remains stolen lands.

The State holds these "stolen" lands as a trustee, as the decision of the Leali'i case infers, and *cannot sell or transfer those lands to third parties until the claims of the native Hawaiians to the ceded lands has been resolved.

However, let me point out that there are many different entities of "Hawaiian" and even the Supreme Court of the State of Hawaii may not be correct "Hawaiian" in labeling the correct Hawaiian entity in law.

The Office of Hawaiian Affairs (OHA) deals with *n*ative Hawaiians (those Hawaiians defined as having more than 50% of the blood) and *N*ative Hawaiians (all Hawaiians including less than 50% Hawaiians). In other words, OHA is concerned with "blooded" or "racial" Hawaiians.

However, the *Apology Resolution* has it partially correct when it says that the Republic of Hawaii also ceded 1,800,000 acres of crown, government and public lands of the Kingdom of Hawaii, *without the consent of or compensation *to the Native Hawaiian people of Hawaii or their sovereign government.

First of all - *How did the Republic of Hawaii get good title to the "Ceded Lands" so it could "cede" them to the United States? Well, these "taken" (stolen) lands, illegally "ceded" - continue to retain the character as "stolen" lands.

Secondly, Who has good title to the "ceded" (stolen) lands? Well, the Apology Resolution states, and it is clear historically, that the lands were "ceded" (stolen) "without the consent of or compensation to the Native Hawaiian people of Hawaii or *their sovereign government*."

My opinion is that Congress wasn't exactly correct when it mentioned that "the Native Hawaiian people of Hawaii" are "owners" of the "ceded" (stolen) lands.

The lands (attempted to be "ceded") belong to the Hawaiian Kingdom and to its subjects. However, the subjects of the Hawaiian Kingdom weren't exclusively "the Native Hawaiian people of Hawaii." The *Hawaiian Kingdom*, including its real subjects -the Hawaiian Nationals - that includes non-blooded or non-racial Hawaiians - are the real holders of title - and this is where the real issue lies.

This is the correct category of "indigenous Hawaiian people" - the Hawaiian Nationals - whose claims need to be remedied - *not the blooded or racial Hawaiians of OHA.

Therefore, while OHA may represent the blooded or racial Hawaiians - and definitely not the Hawaiian Nationals - it (OHA) is relegated to being a "third party" to the situation.

It is my opinion that if these bills are passed out of your respective committees, that you will be in violation of the finding and judgment of the Hawaii Supreme Court - specifically when it states that the State is enjoined from* "selling or otherwise transferring (any "ceded" lands) to third parties."

An alternate way to characterize what you are attempting to do is to convert "trust" lands to "fee simple" (unless OHA continues to hold these lands in trust for "the State") in another entity (agency) of the State.

Therefore, I must oppose these potential actions and recommend that these bills NOT be passed out.

If, after being properly noticed, you knowingly - as I've outlined the relevant facts for you in this testimony - insist on passing these bills out - you may be liable, not only in your ministerial capacities, but also in your personal capacities, of violating the judgment and edict of the Hawai'i Supreme Court.

You will also be joining the initial and subsequent wrongdoers - the Provisional

Government, the Republic of Hawaii and the United States in complicitly "taking" and "converting" the stolen lands of the Hawaiian Kingdom - referred to in this testimony as the so-called "ceded" lands - in direct opposition to a Judgment of the Hawai'i State Supreme Court.

I thank you.

Clarence Ku Ching
PO Box 6916
Kamuela, HI 96743
Phone: (808)776-1199

>
>
>
>
>
>
>
>
>