



SB 2733  
RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT

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

February 9, 2008

10:00 a.m.

State Capitol Auditorium

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Aloha Chairs Tokuda, Hee, and Taniguchi, Vice Chairs English, Kokubun, and Hee, and Members. I am Trustee Walter Heen, Vice-Chair of the OHA Board of Trustees, speaking on behalf of Chair Apoliona and the OHA Board of Trustees. **OHA strongly supports Senate Bill No. 2733** Relating to the Public Trust Lands Settlement.

This bill would resolve and settle 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 State Constitution and any relevant statute or act, between November 7, 1978 and July 1, 2008. The bill would also fix, prospectively, the minimum amount of income and proceeds 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.

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

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

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

In recent days the media has repetitively highlighted a proposed deal, a Cayetano administration settlement offer to OHA in 1999. Fact is, Governor Cayetano's proposed offer was rejected and then countered by OHA. Governor Cayetano provided no timely response to OHA's counter offer; so after waiting nearly two weeks, the majority of OHA Trustees voted to end negotiations. The ultimate flaw of the Cayetano administration offer was that OHA was required to release claims that would bar all future claims by Native Hawaiians to ownership of State controlled ceded lands.

With regard to the period between November 7, 1978 and July 1, 2008, both the Settlement Agreement and the bill before you today include payment to OHA of \$13,189,860, financed by State general obligation bond funds, 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 contains a provision in Section 16 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.

Second, the release-of-claims provisions in Section 13 of the bill and in subsections (b) and (c) of the new Section of Chapter 10, HRS proposed in Section 2 of the bill apply only to OHA's right to income and proceeds from the public land trust pursuant to Article XII, sections 4 and 6, and not other claims such as overthrow claims relating to ownership of the public lands.

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

- Following many years of relatively small transfers to OHA, Act 304, Session Laws of Hawaii of 1990, sought to establish how the State would carry out its state constitutional and statutory mandate to dedicate 20 percent of public land trust revenues to OHA's activities.
- Act 35, Session Laws of Hawaii 1993, appropriated \$136.5 million in general obligation bond funds to OHA as a settlement of undisputed claims to that point in time.
- Act 329, Session Laws of Hawaii 1997, established OHA's pro rata share to be \$15.1 million for each of the fiscal years 1997-1998 and 1998-1999.

- In 2001, the Hawaii Supreme Court ruled that Act 304 was invalid due to a conflict between one of its technical provisions and federal law.
- Act 34, Session Laws of Hawaii 2003, required the transfer of several million dollars to OHA to help continue the revenue stream following the court ruling against Act 304.
- Executive Order No. 03-03 set forth Governor Lingle's procedure for continuing the revenue stream.
- Act 178, Session Laws of Hawaii 2006, included an interim provision setting OHA's annual amount of land trust revenues at \$15.1 million and providing a lump sum payment of \$17.5 million for certain amounts that the Legislature determined were underpaid between July 1, 2001 through June 30, 2005.

We are mindful that some have urged OHA to increase its communications with those most affected by the settlement. In this light, we are planning various meetings in the community to educate our beneficiaries and others on the settlement and to respond to questions. We will soon schedule public informational meetings as follows:

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

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

I urge your Committees to respond favorably to this bill, which would give effect to 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 property<sup>1</sup> by more than 25% (i.e., the fair market value of the property taking into account the environmental contamination is more than 25% less than what the fair market value of the property would have been had the environmental contamination not been present) (the total such reduction in the fair market value is the "reduction

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

#### Mediation

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

#### No Arbitration

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

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

### Title Insurance

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

### Proration

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

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

### Other Terms

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

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

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

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

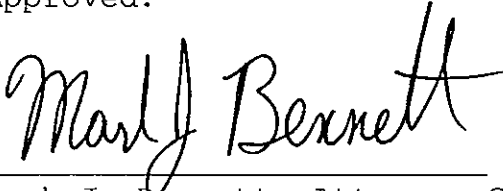
on the part of each party hereto. The Parties also represent and agree: (1) that they may hereafter discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of these releases; and (2) that this Agreement and the releases given in this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

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

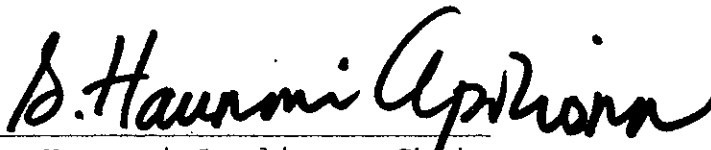


Linda Lingle, Governor  
State of Hawai'i

Approved:

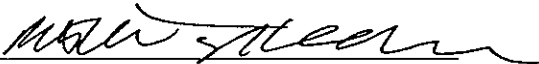


Mark J. Bennett, Attorney General



S. Haunani Apoliona, Chairperson  
Office of Hawaiian Affairs

Approved:



Robert G. Klein, Counsel to the Board of Trustees

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# 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

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

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

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

**B. NO.**           

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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:

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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~~

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

4           (2) The betterment of conditions of Hawaiians;

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

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

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

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

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

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

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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

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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."



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

3 "[~~f~~]~~\$206E-8~~[~~f~~] **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

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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

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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:

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- 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;

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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."]~~

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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

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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 &

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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



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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

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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,

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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

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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

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.

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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

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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

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

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

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

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

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

17



**EXHIBIT B - SETTLEMENT PROPERTIES**

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

## testimony

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**From:** KahiwaL@cs.com  
**Sent:** Thursday, February 07, 2008 11:06 PM  
**To:** testimony  
**Cc:** livingnation@yahoogroups.com; economics-hawaii@googlegroups.com; hawaii-independence@yahoogroups.com; Laura Mau; Theo Morrison; Hinano Rodrigues; Hui Pu; Maggie Hoopii; Myrna Ah Hee; Foster Ampong; Clayton Baybayan; Robert Brito; Charles Morales; Gordon Cockett; Daniel Garcia; Kenny Hoopai; Michele Hoopii; Greg Johnson; George Joy; Willie Kahaialii; Wilmont Kahaialii; Keeaumoku Kapu; Josephine Keliipio; Tony Kincannon; Clifford Naeole; "Maria C. Ornellas"; Lynette Ramos; Tony Vierra  
**Subject:** Testimony in Opposition to SB 2733

THE SENATE  
TWENTY-FOURTH LEGISLATURE  
REGULAR SESSION OF 2008  
STATE OF HAWAII

February 7, 2008

Senate Committees on: Agriculture and Hawaiian Affairs, Water and Land, AND Judiciary and Labor.

Hearing Date & Time: Saturday, February 9, 2008, 10:00 a.m. (HST)

Attention: Chairs: Jill N. Tokuda , Clayton Hee, AND Brian T. Taniguchi.

Subject: Testimony in Opposition to SB 2733: Public Trust Lands Settlement.

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

My name is Clarence Ku Ching, a Hawaiian Kingdom National, and I am testifying in strong opposition to SB 2733 which seeks to resolve claims and disputes between the so-called State of Hawaii and the Office of Hawaiian Affairs (a Hawaii state agency) by mis-appropriating lands located throughout the Hawaiian Islands alleged to have been "Ceded" to the United States Government by the Republic of Hawaii, that had no good title to those lands, then supposedly granted (1959 Admissions Act, Section 5(b)) unlawfully to the STATE OF HAWAII, ipso facto (i.e. U.S. Public Law 103-150) to render said settlement.

U.S. Public Law 103-150 of 1993 clarified;

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 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;"

The title to the so-called "ceded" lands remains in the Hawaiian Kingdom - the owner of "real" title.

The Kanaka Maoli people (Hawaiian Kingdom Nationals) - the "real" Native Hawaiians - as defined "politically" - are heirs and descendants of subjects of said Hawaiian Kingdom.

However, gross confusion abounds as to the definition of Native Hawaiian.

I submit that the "real" Native Hawaiians are the Kanaka Maoli people who continue to suffer allegiance to the Hawaiian Kingdom.

The so-called "Native Hawaiians" that the Office of Hawaiian Affairs represents are "Native" Hawaiians - as designated by race - who are not necessarily the "real" Native

Hawaiians who are the heirs of the Kingdom.

The Office of Hawaiian Affairs (OHA) is a Hawaii-state-created agency whose support of S. 310 - the so-called "Akaka Bill" - is masquerading as the proper agency to represent the genuine claims of "real" Native Hawaiians.

In fact, the "Akaka Bill" purports to create a process by which its American allegiant "racial" Hawaiians should then re-organize the existing Hawaiian Kingdom into a United States Governing Entity.

These "racial" Hawaiians pay no allegiance to the Hawaiian Kingdom - are definitely NOT its subjects - and have no standing to carry out said re-organization.

This attempt to re-organize the Kingdom is as absurd as Americans - who formally were citizens of the United Kingdom (after the Revolutionary War) - attempting to change that government to a different government of their choice.

However, OHA DOES NOT represent the Kanaka Maoli heirs of the Kingdom - those "political" persons who are the rightful claimants of the Kingdom's lands.

The proposed Lingle-OHA Ceded Lands Settlement - subject of SB 2733 - purports to convert (steal) the Kingdom-claimed so-called "ceded" lands, held in trust for its rightful owners, by the so-called "State of Hawaii" to itself through its agency - OHA - on behalf of the fictitious, so-called Native Hawaiian people.

You, Legislators of the State of Hawaii - have no rightful standing to convert (steal) the Kingdom's claimed lands and award it to one of your agencies - OHA.

This is the kind of "transfer" that the Hawaii Supreme Court, in Office of Hawaiian Affairs vs. State of Hawaii (2007), opined in its decision restricting the State of Hawaii from selling or otherwise disposing of the corpus of the so-called "ceded" lands - in deference to the "real" claimants of those lands.

Therefore, you are barred from taking any action to approve the subject SB 2733 - and must defeat it.

If the State of Hawaii is required to make a settlement with its agency, OHA, it can do so with other properties that it has clear title to - but not with these restricted, so-called "ceded" lands.

To NOT defeat SB 2733 would subject your selves - ministerially and personally - to prosecution under International Law and the laws of the Hawaiian Kingdom (that continues to exist - as recognized by proposed legislation of the so-called "Akaka Bill" to erroneously re-organize it) for mis-appropriating stolen lands in an illegal United States-State of Hawaii process.

Sincerely,

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

February 7, 2008

Senate Committee on Agriculture, and Hawaiian Affairs  
Jill Tokuda, Chair; J. Kalani English, Vice Chair  
Senate Committee on Water and Land  
Clayton Hee, Chair; Russell Kokubun, Vice Chair  
Committee on Judiciary and Labor  
Brian Taniguchi, Chair; Clayton Hee, Vice Chair

Hearing Date: Saturday, February 9, 2008  
Time: 10:00 a.m.  
Place: Auditorium, State Capitol

**Re: SB 2733 Ceded Lands Settlement  
Testimony in Opposition**

Aloha Senators:

I am forwarding this email testimony to you to request that you hold this measure for 1 year and direct OHA to return to the community that they were elected to represent for consultation and input. The OHA/Lingle negotiations were closed to beneficiaries. At no time has OHA or Governor Lingle presented this settlement to our peoples nor has there been any effort to obtain beneficiary input to the process.

Although the Senate passed a Resolution last week calling for OHA to conduct meetings and OHA has now allocated funds for 21 workshops on this and other resources, the Legislative session is moving concurrently. There is no time for beneficiary education and participation.

There has been no information provided to the Hawaiians on the values or amounts of this settlement. The settlement should not be made to OHA, which is currently a State organization. I am opposed to the settlement as proposed.

Sincerely,

Michael K. Trask  
P. O. Box 4822  
Hilo, HI 96720  
gibson@ilhawaii.net

**Robert K.U. Kihune**

1597 Haleloke Street  
Hilo, Hawaii 96720

February 7, 2008

To: Legislature's Public Access Room  
Email: [testimony@capitol.hawaii.gov](mailto:testimony@capitol.hawaii.gov)

For: COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS  
Senator Jill N. Tokuda, Chair  
Senator J. Kalani English, Vice Chair

Subject: Testimony on SB2733 Relating to the Public Trust Lands Settlement  
Hearing on 2/9/08 at 10:00 am in State Capitol Auditorium

Aloha Chair Tokuda, Vice Chair English and members of the Committee on Agriculture and Hawaiian Affairs. My name is Robert Kalani Uichi Kihune, and I want to extend my sincerest Mahalo for allowing me the opportunity to testify as a native Hawaiian in support of SB2733, relating to the public trust lands settlement.

While this bill does not fully satisfy the obligations to the Indigenous people of Hawaii that is set forth in the Constitution of the State of Hawaii, it retains the right of these people to seek redress for wrongs not covered under the Public Trust Lands Settlement. Furthermore, the revenues derived from this settlement will be directed towards the improvement of the well-being of Native Hawaiians, who continue to struggle because of the dispossession of their lands after the illegal overthrow in 1893 as well as being marginalized when their society changed under the pressures of outside influence.

For these reasons, I strongly support passage of this bill.

Mahalo,



Robert K. U. Kihune

RKUK:jgc

**testimony**

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**From:** Puanani Rogers [rogersn001@hawaii.rr.com]  
**Sent:** Thursday, February 07, 2008 7:38 PM  
**To:** testimony  
**Subject:** Re: TESTIMONY IN STRONG OPPOSITION TO SB 2733

**THE SENATE TWENTY-FOURTH LEGISLATURE REGULAR SESSION  
OF 2008  
STATE OF HAWAII**

February 7, 2008

**Senate Committees on: Agriculture and Hawaiian Affairs, Water and Land,  
AND Judiciary and Labor.**

**Hearing Date & Time: Saturday, February 9, 2008, 10:00 a.m. (HST)**

**Attention: Chairs: Jill N. Tokuda , Clayton Hee, and Brian T. Taniguchi.**

**Testimony Opposing SB 2733: Public Trust Lands Settlement.**

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

My name is PUANANI ROGERS and I am testifying in **strong opposition** to **SB 2733** which seeks to resolve claims and disputes of lands located throughout the Hawaiian Islands **alleged** to have been "Ceded" to the United States Government, then subsequently granted (1959 Admissions Act, Section 5(b)) unlawfully to the STATE OF HAWAII, **ipso facto (i.e. U.S. Public Law 103-150)**.

**U.S. Public Law 103-150** of 1993 clarified;

*"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 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;"*

That we kanaka maoli (native Hawaiians) *referred* to in **U.S. Public Law 103-150** as "indigenous Hawaiian people" and "Native Hawaiians" **never relinquished** our "legal" Titles (Royal Patents & Land Commission Awards from the Mahele) and claims over our national Lands incorrectly cited by the United States Government and STATE OF HAWAII as "ceded lands"; and that we kanaka maoli (native Hawaiians) *referred* to as "indigenous Hawaiian people" **never relinquished** neither our national Identity, nor our lawful government (Kingdom of Hawaii).

Recent ruling by the **Hawaii Supreme Court in Case No, 25570, (JANUARY 31, 2008) Office of Hawaiian Affairs (OHA) vs. STATE OF HAWAII** affirms that the STATE OF HAWAII has no "legal" right to sell or settle claims of the alleged "Ceded Lands"; therefore, *passing SB 2733 presumably would clearly be an "illegal" act subject to criminal and civil*

*liability.*

OHA, a part of the STATE OF HAWAII (Hawaii State Constitution 1978) cannot be viewed as a legal representative of the Hawaiian Nation; and/or implied to be *the* “governing entity” of the native Hawaiians and their national Lands. At the very least, it would be a serious perversion of justice and only exasperate the injury.

**SB 2733** is a direct violation of the tenets of the United States Constitution (Article I, Section 10), and if passed into law, further perpetuates crimes (*1893: Invasion by US Military Forces, 1898: Newlands Resolution Fraudulently Annexing the Hawaiian Islands, 1920: Hawaiian Homes Act by US Congress, 1959: Admissions Act, 1980; Office Of Hawaiian Affairs, 2007: U.S. HR 505/S. 310, 110<sup>th</sup> Congress: “Native Hawaiian Government Reorganization Act of 2007”*) against kanaka Maoli (native Hawaiians) by the Governments of the United States of America and State of Hawaii beginning and continuing unabated since January 17, 1893.

**REMEDY:**

If the State of Hawaii is sincere about addressing lands and other native Hawaiian issues, it must do so through international law; that is the Law of Occupation, Law of Restitution and the Law of self-determination. The tenets of your government’s constitution and your oath of office mandates you obey the law and not disregard and/or circumvent your fiduciary duties such as in the case of the recent Super Ferry Fiasco.

Mahalo a nui for this opportunity to testify.

Sincerely,

Puanani Rogers  
P. O. Box 88  
Kauai, HI  
Kingdom of Hawaii  
e-mail: [rogersn001@hawaii.rr.com](mailto:rogersn001@hawaii.rr.com)



# Chaminade University

O F H O N O L U L U

TESTIMONY OF DR. MARY C. WESSELKAMPER, PRESIDENT  
IN SUPPORT OF

**SB 2733 – RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT**

**SENATE COMMITTEES ON AGRICULTURE AND HAWAIIAN AFFAIRS;  
WATER AND LAND; AND JUDICIARY AND LABOR**

February 9, 2008

Aloha Chairs Tokuda, Hee and Taniguchi; Vice-Chairs English and Kokubun;  
and Members of the Senate Committees.

The University is private, Catholic (Marianist) independent, co-educational, liberal arts, teaching university that offers undergraduate and graduate programs in a Pacific Island environment rich in diversity. It provides access to education to assist others in valuing and exploring issues of importance to persons of Hawaiian and other Pacific Island descent. Fifteen percent of our University's day undergraduate students are of Native Hawaiian descent. Federally recognized as a Title III, Native Hawaiian-serving institution, the University has been awarded a grant from the U.S. Department of Education to help expand its services for Native Hawaiian students.

Thank you for this opportunity to testify in strong support of Senate Bill 2733, which would resolve claims and disputes relating to income and proceeds from public trust lands for use by the Office of Hawaiian Affairs and fix the minimum income and proceeds at \$15.1 million each fiscal year.

We are following very closely the details of the settlement and applaud the efforts of the Office of Hawaiian Affairs to resolve any and all claims and disputes in a fair and equitable manner. We realize that settlements on behalf of the Native Hawaiians are very sensitive issues, and yet we believe that these are positive steps to ensure the future of our Hawaiian youth.

Thank you again for the opportunity to testify in support of this bill.





# KO`OLAUPOKO HAWAIIAN CIVIC CLUB

February 5, 2008

To: Sen. Jill Tokuda Chair, & Members  
Senate Committee on Agriculture & Hawaiian Affairs  
Sen. Clayton Hee, Chair, & Members  
Senate Committee on Water & Land  
Sen. Brian Taniguchi, Chair, & Members  
Senate Committee on Judiciary & Labor

From: Mahealani Cypher, President  
Ko'olaupoko Hawaiian Civic Club

Subject: In Support of S.B.2733, Relating to the Public Land Trust Settlement

Aloha mai kakou. The Ko'olaupoko Hawaiian Civic Club, in its general membership meeting held earlier this week, has voted to support Senate Bill 2733, which provides a partial settlement of obligations by the State for the use of Hawaiian ceded lands and other resources from 1978 until now.

Our Civic Club urges complete restitution and resolution of all claims by native Hawaiians for the loss of lands and resources due to the actions of the U.S. government and others since 1893. We believe this bill is a good first step toward resolution of those claims, and urge your committees to approve this measure.

In comparing this settlement proposal to an earlier proposal, we feel the benefit of the current version is that it leaves open the opportunity to resolve outstanding claims that pre-dated the creation of the Office of Hawaiian Affairs. The earlier settlement proposal would have been global and, therefore, would have extinguished all other claims by native Hawaiians.

Mahalo for this opportunity to offer comment.

Me kealoha pumehana.

P. O. Box 664  
Kaneohe, HI 96744  
Ph. (808) 235-8111  
koolaupokohcc.org

Will be heard by AHW/WTL/JDL on Saturday, February 9 at 10:00am in the State Auditorium

February 9, 2008

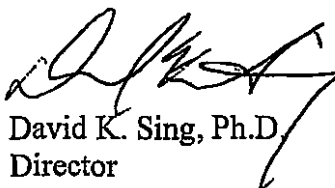
Aloha! I am writing on behalf of the thousands of students, families, and staff of Nā Pua No'eau/University of Hawaii in support of SB2733, "**RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT.**" Upon passage of the bill and receipt of the monies annually, the Office of Hawaiian Affairs and/or other entity 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, that 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



## **SB2733 RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT**

### **Testimony submitted by:**

T. Lulani Arquette, Executive Director  
Native Hawaiian Hospitality Association

Joint Committees on Agriculture and Hawaiian Affairs, Water and Land, and Judiciary and Labor:

- Senator Jill N. Tokuda, Chair
- Senator Clayton Hee, Chair
- Senator Brian T. Taniguchi, Chair

Saturday, February 9, 2008  
10:00am, Auditorium, State Capitol

**I strongly support** SB2733 relating to the settlement negotiated by the Office of Hawaiian Affairs (OHA) with the State of Hawaii on disputed ceded land revenues due OHA and the Hawaiian community. This settlement is long overdue and has remained in dispute for thirty years and four administrations back to the formation of OHA. I understand there have been four and a half years of arduous negotiations and mediation resulting in a \$200 million settlement of land and cash.

I have been working for over twenty years in Native Hawaiian organizations to help promote economic and social progress for our people. I am currently working to help perpetuate Hawaiian culture, traditions, and values in the visitor industry. Its interesting that all of the different people I meet and speak with; those born and raised here, long-time residents, relative newcomers, and visitors agree on one thing - Hawai'i is unique and has a special beauty and "character" unlike any other place. They further agree that Hawai'i's unique character has been greatly shaped by Native Hawaiian culture and values.

The 2008 State Legislature can make a statement by adopting SB2733 – one that shows Hawai'i honors its commitments to the indigenous people of Hawai'i. Such a measure of support demonstrates that Hawai'i is indeed a role model with committed leadership worthy of its high reputation. Please do what is fair and just, and support this legislation.

# HPACH

919 4th Street  
Pearl City, Hawaii 96782

February 9, 2008

Senator Jill N. 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: SB 2733 Relating To The Public Trust Lands Settlement, OPPOSE

ALOHA Kakou,

My name is Richard Pomaikaiokalani Kinney. As Sovereign of the Hawaiian Political Action Council of Hawaii, I "OPPOSE" the passage of SB 2733.

Presently under the laws of the United States and the State of Hawaii the Native Hawaiians as defined in the Hawaiian Homes Commission Act, 1920 are the wealthiest beneficiaries in the United States. I believe that the Native Hawaiians are the only native indigenous people of any state in union that is recognized by its State's Admission Act. If it was not for the Native Hawaiian people, there would be no State of Hawaii, no Department of Hawaiian Home Lands and no Office of Hawaiian Affairs.

The Office of Hawaiian Affairs is a creation of the 1978 Constitutional Convention and the voters of Hawaii. Created to be the Native Hawaiian governing entity that would receive a pro rata portion of all funds derived from the Public Land Trust. On the conditions that those funds would be held and used solely as a public trust for the "betterment of the conditions of the Native Hawaiians." In accordance with Section 5F of the Hawaii State Admission Act, 1959.

# HPACH

919 4th Street  
Pearl City, Hawaii 96782

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SB 2733

On March 18, 1959 when Hawaii became a State and up to the creation of OHA, the State has been in violation of its own Admission Act. As Native Hawaiians and including the Beneficiaries of the Department of Hawaiian Home Lands did not receive any revenues from the Public Land Trust. From Statehood of 1959 to this day as we gather here the State of Hawaii remains in violation of its "Trust Obligations" to Native Hawaiians.

SB 2733 does not resolve the claims and disputes relating to the portion of income and proceeds from the sale, lease, or other disposition of lands of the Public Land Trust. Instead SB 2733 SECTION 4, amends and terminates the lawful and constitutional trust rights of Native Hawaiians in regards to the Office of Hawaiian Affairs.

SB 2733 further moves OHA away as being a Trust Governmental Entity for Native Hawaiians. SB 2733 SECTION 6 (d) speaks of lands being conveyed in fee simple to OHA. There should be no lands conveyed by the State to OHA in fee simple. All lands conveyed by the State to OHA should be held in a perpetual Trust with the State continuing holding the Trust Title to those lands. All lands, property, improvements, and proceeds conveyed or paid to the State of Hawaii are considered as part of the Public Land Trust and are subject to the 5 (f) Trust terms and conditions of the State's Admission Act passed by the Congress of the United States in 1959 as Public Law 86-3. All lands that the State may purchase in fee simple are national lands of the Hawaiians Kingdom nation that the Native Hawaiian people have an Inherent Sovereign claim to those lands.

The OHA Trustees may go into the general public and out bid Governor Lingle and buy in fee simple the Turtle Bay Resort. But Governor Lingle can not lawfully buy the Turtle Bay Resort in fee simple and turn over the Resort to OHA or any other entity in fee simple. Without violating the 5 (f) Trust conditions of the Hawaii State Admission Act and Public Law 103-150.

In the past Legislative years, Native Hawaiians and our supporters have marched, rallied and testified at this capitol for many years to gain the right to sue the State for violations of the Trust Rights of Native Hawaiians. At that time Native Hawaiians was one of the three groups of people who did not have the right to sue the government.

# HPACH

919 4th Street  
Pearl City, Hawaii 96782

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SB 2733

SB 2733, SECTION 13 forever strips not only OHA but Native Hawaiians of their rights to sue the State for past wrongs in regards to the Public Land Trust. If the OHA Trustees are willing to make a compromising deal with their right to sue that's fine with me. But Governor Lingle and the Trustees of OHA do not have the right to make that same compromise for Native Hawaiians. If any Native Hawaiian, any other person or entity may want to sue the government in regards to Sections 4 and 6 of Article XII of the State Constitution, that lawful right should not be abridged! Not by Governor Lingle, the OHA Trustees or by this Bill.

I believe that Native Hawaiians should have a right to sue for the past wrongs beginning with March 18, 1959. I further believe that Native Hawaiians have a right to sue for the past wrongs for not receiving any revenues from 5(a) lands of the Public Land Trust. As 5(a) lands are Public Trust Lands that were under the controlled of the Territory of Hawaii government from 1900 to 1959. That became Public Trust Lands of the State upon March 18, 1959.

It is my understanding and research on the Public Land Trust that the State never considered the 5(a) lands to be part of the Public Land Trust. Historically 5(a) are also national lands of the lawful government of the Hawaiian Kingdom nation that Native Hawaiians never directly relinquished their claims to their inherent sovereignty as a people to the United States. 5(a) lands are a part of the Kanaka Maoli Homeland.

Besides the OHA Trustees, all of you who are elected as today's leaders of Hawaii are also Trustees of the Public Land Trust. It your Kuleana duty to educate your self and your staff on the State Admission Act, the Public Land Trust and Public Law 103-150. So that there will not be any more violations of the Public Land Trust by the executive branch. As a Kanaka Maoli of Hawaii I consider all violations of the Public Land Trust by the executive branch to be action for Impeachment!

The creation of the Office of Hawaiian Affairs with its trust obligation to the Native Hawaiian people was a great hope that "Justice for Hawaiians" was in

# HPACH

919 4th Street  
Pearl City, Hawaii 96782

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SB 2733

the making. For the first time since the overthrow of the lawful government of the Hawaiian nation, the native indigenous Hawaiian people of Hawaii would have a governing entity that we could participate in and hold to the high standards of Queen Liliuokalani and our ancestors. That OHA would be our governing entity of, by and for the Kanaka Maoli people.

SB 2733 is another greedy document that is mentioned in the famous song of Kaulana Na Pua O Hawaii that in the long run will continue violating the civil rights of the native indigenous people of Hawaii Nei.

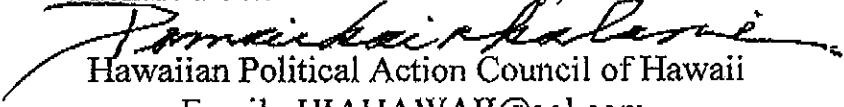
Any settlement relating to the Public Land Trust belongs to the Native Hawaiians as defined in the State Admission Act of 1959. The Trustees of the Office of Hawaiian Affairs primary kuleana is to administrate any and all settlements now and in the future to "the betterment of the conditions of native Hawaiians."

Like the Public Law 103-150, the State Admissions Act is law and it should be obeyed by all.

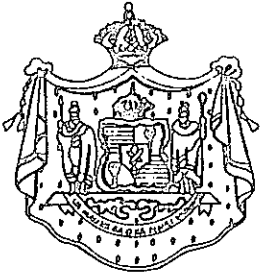
Once more HPACH "Strongly Oppose" the intent and passage of SB 2733. Mahalo Nui for the opportunity to present testimony on this important Bill.

ALOHA KUU AINA HAWAII

Richard Pomaikaiokalani Kinney, SOVEREIGN

  
Hawaiian Political Action Council of Hawaii

Email: [HIAHAWAII@aol.com](mailto:HIAHAWAII@aol.com)



# Hawaiian Civic Club of Honolulu

*Established December 1918*

P.O. Box 1513 • Honolulu, Hawai'i 96806  
hcchonolulu.org

Liholiho  
Onaona wale ia pua  
I ka miki 'ala mau 'ia  
Ua hele wale a nohea  
(Hele a nohonohea)  
I ka nou i kē kehau  
(I ka nou a kē kehau)  
O beautiful 'ilima  
Choice of my heart  
O sweet and charming  
flower  
Soft and lovely to behold

February 8, 2008

Aloha,

Chairs Senator Jill N. Tokuda, Senator Clayton Hee, and Senator Brian T. Taniguchi and  
Vice Chairs Senator J. Kalani English, Russell S. Kokubun:

Written testimony regarding: SB 2733 Relating to the Public Trust Lands Settlement

February 9, 2008                      10:00 a.m.                      State Capitol Auditorium

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

As President, I, Leatrice Maluhia Kauahi, and on behalf of the members of the Hawaiian Civic Club of Honolulu, as beneficiaries of the Office of Hawaiian Affairs, submit this testimony in **full support** of the purpose and intent of SB 2733. Our membership totals 220 at this time and is the "Mother" club designee when formed by Prince Kuhio in December, 1918

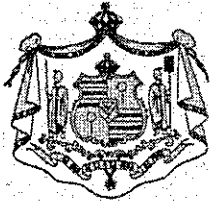
We are residents and citizens of the State of Hawaii and urge you to do the right thing by approving SB 2733. A government like its' residents need to move forward and waiting for over 30 years for a settlement on past due monies owed to the Hawaiian people is long enough.

We believe the settlement is fair to all the people of Hawaii.

We appreciate the opportunity to provide this testimony and urge you, as **OUR SENATORS**, to vote in support of SB 2733.

Mahalo.





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

TESTIMONY OF LEIMOMI KHAN, PRESIDENT  
IN SUPPORT OF

**SB 2733 – RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT**

**SENATE COMMITTEES ON AGRICULTURE AND HAWAIIAN AFFAIRS;  
WATER AND LAND; AND JUDICIARY AND LABOR**

February 9, 2008

Aloha Chairs Tokuda, Hee and Taniguchi; Vice-Chairs English and Kokubun;  
and Members of the Senate Committees.

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

Thank you for this opportunity to testify in strong support of Senate Bill 2733, which would resolve claims and disputes relating to income and proceeds from public trust lands for use by the Office of Hawaiian Affairs and fix the minimum income and proceeds at \$15.1 million each fiscal year.

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

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

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

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

In return, OHA waives its right to further income and proceeds from the public land trust, but this is not a global settlement of Kanaka Maoli land or reparations claims associated with the U.S. government's illegal overthrow of the Hawaiian Kingdom. It is our understanding that this is a major difference between the current settlement and the settlement offer made by the Cayetano administration -- the latter sought to extinguish all "ceded" lands claims associated with the overthrow.

Inasmuch as OHA retains its right to lobby the legislature for additional funds to reflect changed circumstances, the Association believes that all things considered, and in the interest of resolving 20-plus years of litigation for what is OHA's entitlement, and not a global settlement of all Kanaka Maoli land and reparations claims, the Association of Hawaiian Civic Clubs strongly supports Senate Bill 2733.

Thank you for this opportunity to testify in support of this bill.

Legislature State of Hawaii  
Senate Committee on Agriculture and Hawaiian Affairs  
Committee on Water and Lands  
Committee on Judiciary and Labor

Hearing scheduled for  
Saturday, February 9, 2008 at 10:00 a.m.  
On SB 2733 relating to the Public Lands Settlement

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

Aloha and good morning Chairs Tokuda, Hee, and Taniguchi and members of these important Senate committees.

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

I speak against SB 2733. It deals with the 1.2 million acres of the ceded lands separate from the 200,000 acres set aside under the Hawaiian Homes Commission Act. It would allow the Governor to violate this portion of the Ceded Lands Trust and breach the fiduciary duty the State of Hawaii, as Trustee, owes to all its citizens.

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

In footnote 9 to the Ninth Circuit Court's decision filed August 7, 2007, the Court noted that "the lands ceded in the Admission Act are to benefit 'all the people of Hawaii,' not simply Native Hawaiians." *Day v. Apoliona*, 496 F.3d 1027, 1034 (9<sup>th</sup> Cir. 2007) (emphasis in original), citing Justice Breyer's concurring opinion with whom Justice Souter joined in *Rice v. Cayetano*, 528 U.S. 495, 525 (2000), "But the Admission Act itself makes clear that the 1.2 million acres is to benefit *all* the people of Hawaii." (The 1.2 million acres consists of the 1.4 million acres returned to Hawaii upon

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

statehood under Admission Act §5(b), less the about 200,000 acres Congress had set aside in 1921 as “available lands” under the Hawaiian Homes Commission Act. See also, Admission Act §5(g). It is this same about 1.2 million acres which is the corpus of the Ceded Lands Trust which is the source of the moneys claimed by OHA and proposed to be “settled” by SB 2733.).

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

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

### **The claim by OHA proposed to be settled is invalid.**

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

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

If the State is not prepared to make that distribution promptly, it should require OHA to refund the over \$400M ceded lands revenues it still holds.

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

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

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

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

Since the past distributions to OHA from the Ceded Lands Trust have been based on 20% of gross revenues before expenses, the share of the other beneficiaries have thus been left with the burden of all those expenses. This is yet another illustration of the State's improper partiality.

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

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

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

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

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

Please reject SB 2733. Mahalo,

Honolulu, Hawaii February 8, 2008.

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H. William Burgess

Tel.: (808) 947-3234  
Fax: (808) 947-5822

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

**testimony**

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**From:** mhaia@juno.com

**Sent:** Friday, February 08, 2008 7:37 AM

**To:** testimony

**TO:** 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

**FROM:** MOSES K. N. HAIA III

**RE:** SENATE BILL 2733 RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT

**HEARING DATE:** SATURDAY, FEBRUARY 9, 2008, 10:00 A.M.

February 9, 2008

Aloha Chairpersons and members of the Senate Committees on Agriculture and Hawaiian Affairs; Water and Land; and Judiciary and Labor.

Thank you for this opportunity to testify in support of Senate Bill 2733, which would resolve claims and disputes relating to the portion of income and proceeds from the lands of the public land trust for use by the Office of Hawaiian Affairs between 11/7/1978 and 7/1/2008, and fix prospectively the amount of income and proceeds from the lands of the public land trust that are to be paid to the Office of Hawaii Affairs at \$15,100,000 each fiscal year effective July 1, 2008.

Thank you once again for this opportunity to testify.



## KAUMAKAPILI CHURCH

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

Established 1838

Reverend Richard K. Kamanu, Kahu Mua

February 2008

Re: SB2733 **RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT.**

February 9, 2008

10:00 am

State Capitol Auditorium

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

- Senator Jill N. Tokuda, Chair
- Senator Clayton Hee, Chair
- Senator Brian T. Taniguchi, Chair

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

THE SENATE  
TWENTY-FOURTH LEGISLATURE  
REGULAR SESSION OF 2008  
STATE OF HAWAII

February 7, 2008

Senate Committees on: Agriculture and Hawaiian Affairs, Water and Land, AND Judiciary and Labor.

Hearing Date & Time: Saturday, February 9, 2008, 10:00 a.m.  
(HST)

Attention: Chairs: Jill N. Tokuda , Clayton Hee, AND Brian T. Taniguchi.

Subject: Testimony in Opposition to SB 2733: Public Trust Lands Settlement.

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

My name is Kealii Makekahu, a Native Hawaiian and a beneficiary of the OHA, I am testifying in strong opposition to SB 2733 which seeks to resolve claims and disputes between the so-called State of Hawaii and the Office of Hawaiian Affairs (a Hawaii state agency) by mis-appropriating lands located throughout the Hawaiian Islands alleged to have been "Ceded" to the United States Government by the Republic of Hawaii, that had no good title to those lands, then supposedly granted (1959 Admissions Act, Section 5(b)) unlawfully to the STATE OF HAWAII, de facto (i.e. U.S. Public Law 103-150) to render said settlement.

U.S. Public Law 103-150 of 1993 clarified;

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 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;”

The title to the so-called "ceded" lands remains in the Hawaiian Kingdom - the owner of "real" title and National Lands.

The Kanaka Maoli people are the "real" Native Hawaiians - as defined "politically" - are heirs and descendants of the subjects of the Hawaiian Kingdom.

I submit that the "real" Native Hawaiians are the Kanaka Maoli people who continue to have their lawful Government suppressed thereby denying the proper claimant to be identified and come fourth.

The so-called "Native Hawaiians" that the Office of Hawaiian Affairs represents are "Native" Hawaiians - as designated by race - who are not necessarily the "real" Native Hawaiians who are the heirs of the Kingdom as evident as there OATH of allegiance to the state.

The Office of Hawaiian Affairs (OHA) is a Hawaii-state-created agency whose support of S. 310 - the so-called "Akaka Bill" - is masquerading as the de facto agency to represent the de jure claims of "real" Native Hawaiians.

In fact, the "Akaka Bill" purports to create a process by which its American allegiant "racial" Hawaiians should then re-organize the

existing Hawaiian Kingdom into a United States Governing Entity.  
Which is illegal under public International Law.

The attempt to re-organize the Kingdom is the heart of this proposed legislation, for the requirements for Nationhood is what OHA is trying and this bill only serves one purpose and that's to support the Akaka bill.

However, OHA DOES NOT represent the Kanaka Maoli people nor does it have the authority to exercise or extinguish there Inherent right to there Inherent Sovereignty the Kingdom of Hawaii.

The, Legislators of the State of Hawaii - have no rightful standing to convert (steal) the Kingdom's claimed lands and award it to one of your agencies - OHA. Further more OHA does not have a majority of support from its beneficiaries to undertake this task.

Therefore, I ask that you defer from taking any action to approve the subject SB 2733 - and repeal it. Further more until federal or International Law is enacted I think it best that the state rescue itself from any involvement.

Sincerely,

Kealii Makekau  
2563 Date st. #312  
Honolulu Hi 96826

**LEGISLATIVE TESTIMONY**  
**SB2733 - RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT**  
**February 9, 2008      10:00am      State Capitol Auditorium**

**COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS**  
**COMMITTEE ON WATER AND LAND**  
**COMMITTEE ON JUDICIARY AND LABOR**

Aloha Chair Tokuda, Chair Hee, Chair Taniguchi, Vice Chairs, and Members:

I support SB 2733 for the reasons stated below:

1. The State of Hawai'i clearly has a constitutional obligation to resolve the conflicts over the disputed revenue amounts relating to the portion of income and proceeds from the lands of the public land trust for use by the Office of Hawaiian Affairs.

2. The Admission Act of 1959 and the Hawai'i Revised Statutes mandates that a portion of the revenues from the use of ceded lands held in the Public Land Trust be provided to OHA and expended for benefit of all Hawaiians.

3. OHA's statutory obligation is to better the conditions of native Hawaiians and Hawaiians.

4. The Hawai'i Supreme Court ruled not once but on four separate occasions that the resolution of this lingering matter is a political question for the legislature to determine and to resolve with OHA.

5. The Settlement Agreement painstakingly reached between the State of Hawai'i and the Office of Hawaiian Affairs is a fair and reasonable one and will provide a steady annual revenue stream to OHA to fulfill its statutory mission to its beneficiaries.

As Hawai'i's seated legislators, you have the authority to judiciously settle the issue of OHA's past due entitlements determined to be legally owed to the indigenous Native Hawaiian people. Moreover, you have the opportunity to fulfill the State of Hawai'i's long outstanding obligation to the Hawaiian people.

For the foregoing reasons, I support this measure and strongly urge the Committees to also support and favorably respond to SB 2733. Mahalo for the opportunity to testify.

Sincerely,

  
Shirley Okamoto

## testimony

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**From:** Manu C. Kaiama [ckaiama@hawaii.edu]  
**Sent:** Friday, February 08, 2008 7:28 AM  
**To:** testimony  
**Subject:** Testimony in Opposition to SB 2733

THE SENATE  
TWENTY-FOURTH LEGISLATURE  
REGULAR SESSION OF 2008  
STATE OF HAWAII

February 7, 2008

Reg: Senate Bill 2733

Senate Committees on: Agriculture and Hawaiian Affairs, Water and Land, AND Judiciary and Labor.

Hearing Date & Time: Saturday, February 9, 2008, 10:00 a.m. (HST)  
Attention: Chairs: Jill N. Tokuda , Clayton Hee, AND Brian T. Taniguchi.

Subject: Testimony in Opposition to SB 2733: Public Trust Lands Settlement.

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

I am Manu Ka`iama and I am testifying strongly in opposition to SB 2733 which seeks to resolve claims and disputes between Hawaiian subjects and the United States of America through the State government of Hawai'i.

The Office of Hawaiian Affairs (OHA) continues to overstep its authority in attempting to "negotiate" with varying agencies on our (Hawaiian's) behalf. They have never taken this discussion to the people that they purport to represent. Any kind of partial settlement has to be inspired by the people first, before going forward to any group for representation to the powers that be. OHA has done the complete opposite. In secrecy, they have concocted this plan and only they know the true reasons they are doing this. There was NO representation of the people.

As legislators, be fully aware the the recent Hawai'i Supreme Court Ruling makes clear that each of you individually and collectively must "adhere to high fiduciary duties normally owed by a trustee to its beneficiaries.." and further more goes on to say that in Ahuna, "the use of the term 'most exacting fiduciary standards' imports the notion that this court will strictly scrutinize the actions of the government." We do not believe that receiving chump change and polluted land parcels is in our best interest. Do you?

It is your fiduciary duty to act as trustee for Hawaiians over Hawaiian stolen lands. Do not breach this fiduciary duty by supporting Senate Bill 2733.

Mahalo a nui,

Manu Ka`iama

2/8/2008

## testimony

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**From:** Tane . [tane\_1@msn.com]  
**Sent:** Friday, February 08, 2008 5:18 AM  
**To:** testimony  
**Subject:** Testimony in Opposition to SB 2733

THE SENATE  
TWENTY-FOURTH LEGISLATURE  
REGULAR SESSION OF 2008  
STATE OF HAWAII

08 February 2008

Senate Committees on: Agriculture and Hawaiian Affairs, Water and Land, AND Judiciary and Labor.

Hearing Date & Time: Saturday, February 9, 2008, 10:00 a.m. (HST)

Attention: Chairs: Jill N. Tokuda , Clayton Hee, AND Brian T. Taniguchi.

Subject: Testimony in Opposition to SB 2733: Public Trust Lands Settlement.

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

I am David Michael Kaipolaua'eoekuaahiwi Inciong, II, better known as Tane, a Hawaiian Kingdom National, and I am testifying strongly in opposition to SB 2733 which seeks to resolve claims and disputes between the ipso facto-State of Hawaii and its own agency, the Office of Hawaiian Affairs by mis-appropriating lands located throughout the Hawaiian Islands alleged to have been "ceded" to the United States Government by the Republic of Hawaii, that had no clear title to those lands, who consequently granted through the 1959 Admissions Act, Section 5(b)) unlawfully to the STATE OF HAWAII, ipso facto and being in gross dereliction of its trust obligations while extremely violating the laws of occupation and disregard of our nation-state's neutrality.

U.S. Public Law 103-150 of 1993 clarified the U.S. complicit acts and that their illegal actions deem this matter to be resolved within the international arena with its laws. Thus, the title to the so-called "ceded" lands remains in the Hawaiian Kingdom with the rights of the native tenants and their heirs in allodial as prescribed in the Kingdom's laws.

To date, the U.S.A. and its governing entities, ipso facto, have grossly violated the laws of occupation, betraying its self-incurred trust of the Hawaiian Kingdom's crown, government, and public lands of which the bona fide Hawaii Nationals have not relinquished their rights nor have been justly compensated as proven by the Ku's Petitions of 1897.

Queen Liliuokalani placed her trust in the Unites States of America to right the wrong its representatives have committed against the Hawaii Nationals, the Queen and her government, and our nation-state in general. Various journals many archived in the Library of Congress and elsewhere confirm covert and overt actions of the U.S. against the Hawaiian Kingdom. This is no surprise that the U.S.A. unlawfully, illegally invaded and belligerently occupied our friendly neutral nation.

Several of the U.S. Senators and U. S. Representatives back then and now have stated that the logical consequence is de-occupation for the Hawaiian Kingdom to regain its total independence. This reveals that the Hawaiian Kingdom still exists in international and national laws; hence, subject to them. The Ku'e Petitions of

2/8/2008

1897 was a form of a plebiscite/referendum of the Hawaii Nationals whereby over 96% signed and protested the U.S. actions and against annexation.

OHA, a U.S. state agency, cannot legally nor lawfully have the jurisdiction to negotiate in the name of the Hawaiian Kingdom Nationals for its lands and resources, territory, nor usurp its jurisdiction and authority. This further emphasizes that it is an international issue and not a foreign national internal domestic issue. It cannot be resolved by an ipso facto state and its agency. OHA and U.S American citizens have no standing in this matter. The Hawaii Nationals and their descendants have been errantly named U.S citizens by the U.S. and never voluntarily agreed to it; which is contrary to the laws of occupation. The Akaka Bill alters the Hawaii Nationals' status, once again, to a U.S. tribal governing entity as a make-believe nation with its government subject to the plenary authority of Congress (the U.S. government) while invalidating other Hawaii Nationals that don't fit into its racial or ethnic definition.

Internally and domestically, you as an instrument of the U.S. fictitious entity, created OHA to be the receivership of 20% of the revenues from our Hawaiian Kingdom's national and private lands to be utilized for the betterment of the "native Hawaiians" within your self-imposed WASP society. Familiarize yourself with the laws of occupation. You will know that all revenues are for the bona fide Hawaii Nationals and their country with stipulations and guidelines that are obligatory to be followed.

The Hawaii Supreme Court's actions in restricting the ipso facto State of Hawaii from disposing the corpus of the alleged "ceded" lands without regarding the lawful claimants of those lands, is a legally just and honorable decision. To ignore such a decision is to commit an egregious affair. By not defeating SB 2733 it will further be complicit in aiding and abetting to commit crimes which subjects you and your ipso facto government to be prosecuted under the International Laws and that of the Hawaiian Kingdom.

The alleged "ceded" lands belong to the Hawaii Nationals; thus you are obligated to disapprove the SB 2733 and defeat such a devious bill. It is in your best interest and those of the heirs to the lands to make an educated choice rather than escalate the situation. The only logical course is to defer the case to the international courts to resolve amicably.

Mahalo in all you do with aloha,

Tane  
AKA: David M. K. Inciong, II

He Hawai'i au  
Hawaiian Kingdom National

1107 Acacia Road #113  
Pearl City, Hawai'i, 96782  
U.S. Occupied Hawaiian Kingdom

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# HISTORIC HAWAII FOUNDATION

**VIA EMAIL:** SenateTestimony@capitol.hawaii.gov

**To:** Senator Jill N. Tokuda, Chair  
Committee on Agriculture & Hawaiian Affairs

Senator Clayton Hee, Chair  
Committee on Water and Land

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

**From:** Kiersten Faulkner  
Executive Director, Historic Hawai'i Foundation

**Committee Date:** Saturday, February 9, 2008  
10:00 a.m.  
Auditorium

**Subject:** Support for SB2733 Relating to the Public Trust Lands Settlement

On behalf of Historic Hawai'i Foundation (HHF), I am writing in support of SB2733. Since 1974, Historic Hawai'i Foundation has been a statewide leader for historic preservation. HHF works to preserve the unique architectural and cultural heritage of Hawai'i and believes that historic preservation is an important element in the present and future quality of life and economic vitality of the state.

SB2733 would resolve claims and disputes relating to the portion of income and proceeds from the lands of the public land trust for use by the Office of Hawaiian Affairs.

The historic and cultural sites of Hawai'i are irreplaceable. It takes many people working together to ensure that the historic places we use and enjoy today will be here for future generations. To ensure that the special places of Hawai'i are preserved, used and enjoyed, all people need to work together to protect the heritage and physical legacy of the Islands.

The Office of Hawaiian Affairs has demonstrated leadership in perpetuating the cultural sites of the Islands for the benefit of the Hawaiian people and for the community at large. By resolving outstanding issues and claims, OHA will be able to have greater certainty and resources to provide for its beneficiaries. By ending a long-unsettled issue, all parties will be able to turn their time, energy and attention to the betterment of Hawai'i.

Very truly yours,



Kiersten Faulkner



**testimony**

---

**From:** by@yamashitalaw.com  
**Sent:** Thursday, February 07, 2008 7:22 PM  
**To:** testimony  
**Cc:** erniek@oha.org  
**Subject:** Testimony for SB 2733: Public Trust Lands Settlement  
**Attachments:** Legislative Testimony SB 2733.doc

February 7, 2008

Dear Sir/Madam,

I respectfully attach testimony regarding SB 2733: Relating to the Public Trust Lands Settlement. It should be submitted to the Joint Committee on Agriculture and Hawaiian Affairs; Judiciary; and Water and Land. The hearing is scheduled for Saturday, February 9, 2008 at 10AM.

Bruce I. Yamashita, ESQ  
1025 Connecticut Avenue NW  
Suite 1012  
Washington D.C. 20036  
(202) 487 6134

**RE: SB2733 related to the Public Trust Lands Settlement – In Support  
WRITTEN TESTIMONY ONLY**

February 9, 2008  
10am  
State Capital Auditorium

*Welina mai nei kakou to Chairs Senator Jill Tokuda, Clayton Hee and Brian Taniguchi,  
and members of the Joint Committees on Agriculture & Hawaiian Affairs, Water and  
Land, and Judiciary and Labor*

**I write in strong support of SB2733.** It's time to move forward, together. OHA has earned the respect of the Hawaiian people and has negotiated in our best interests on the settlement with the State of Hawai'i on ceded land revenues.

The State of Hawai'i has the opportunity to do the right thing, it's that simple. We talk about pono and aloha, living these values is what really matters. This is an opportunity to send a clear message to all people living in Hawai'i—that the native population, the root culture of these Islands, will be treated with respect and fairness. Many, many good and just people, on both sides of the issue, have spent countless hours working toward this point in time. It's historic—if we are to move forward, together, this settlement is a beginning.

The depth of the pain of our past cannot be understood without experience. Experience that every Hawaiian family shares. We are no longer ignorant of our past, or the tools available today to keep us moving forward as a people, in our homeland. This settlement is one of those tools. Please, do what must be done, adopt HB 2733 relating to the Public Trust lands Settlement—so that we can all move forward together.

*Me ke mahalo pau'ole*

Maile Meyer  
Meyer 'ohana, Aluli 'ohana  
Native Books  
Na Mea Hawai'i  
'Ai Pohaku Press  
Mana Hawai'i

February 7, 2007

Chair Jill Tokuda  
Chair Clayton Hee  
Chair Brian Taniguchi  
Hawaii State Senate  
(Via Email)

**RE: TESTIMONY IN SUPPORT OF SB 2733 RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT**

Hearing Before: SENATE COMMITTEES ON AGRICULTURE AND HAWAIIAN AFFAIRS; WATER AND LAND; AND JUDICIARY AND LABOR

I am in strong support of the Senate Bill 2733 which resolves the claims and disputes of the Ceded Lands. This settlement represents an important milestone for the Office of Hawaiian Affairs and a window of opportunity for those of us beneficiaries of OHA.

Contrary to the claims of some, this is not a "global settlement"; this bill will resolve the issue about how much is owed to OHA which has been an unresolved matter left over from 1993.

This is a good bill and any attempt to make changes at this stage will be counterproductive, resulting in further delays to a just resolution. This said, it is also important that the \$15.1 million be considered a minimum level of support and this amount should be increased as the state realizes increases in the revenues generated by the Ceded Lands.

I am adding my voice to those of many individuals and organizations (such as the Association of Hawaiian Civic Clubs) because I believe it is imperative that we do not let this opportunity languish; it may never come around again. We have faced and will continue to face challenges. Thank you for your consideration of my testimony and I ask for your support of this bill.

Mahalo a nui loa,



Diane Peters-Nguyen

**testimony**

---

**From:** Natalie Hanson [kaiulani1950@hotmail.com]  
**Sent:** Thursday, February 07, 2008 9:44 PM  
**To:** testimony; crystalk@oha.org  
**Subject:** SB 2733

COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS

Hearing on Saturday, Feb. 9, 2008 at 10:00AM

I support SB 2733. Please approve the bill and settlement.

Thank you  
Natalie Hanson

---

Climb to the top of the charts! Play the word scramble challenge with star power. [Play now!](#)

## Darlene Tsukazaki

---

**From:** Sen. Jill Tokuda  
**Sent:** Thursday, February 07, 2008 6:49 PM  
**To:** Darlene Tsukazaki; Kamakana Kaimuloa  
**Subject:** FW: TESTIMONY IN SUPPORT OF SB2733

---

**From:** MarnWeeks@aol.com [mailto:MarnWeeks@aol.com]  
**Sent:** Thursday, February 07, 2008 2:39 PM  
**To:** Sen. Jill Tokuda  
**Cc:** info@oha.org  
**Subject:** TESTIMONY IN SUPPORT OF SB2733

To:  
Committee on Agriculture and Hawaiian Affairs  
Chair, Jill N. Tokuda  
24th Senatorial District  
Hawaii State Capitol, Room 218  
415 South Beretania Street  
Honolulu, HI 96813  
phone 808-587-7215; fax 808-587-7220

### TESTIMONY IN SUPPORT OF SB2733 FOR NOV 9, 2008 HEARING

To Committee Chair Tokuda and members of the Committee on Agriculture and Hawaiian Affairs, I am testifying in support of SB2733, to approve the settlement agreement between the state and OHA regarding ceded lands payments. The settlement is reasoned, fair and long overdue. As a non-Hawaiian resident of Hawaii, born in another US state, I would appreciate your passing the settlement bill out of committee for a floor vote, with a positive recommendation, on behalf of those of us who wish to make good on the promises made in our names when statehood was established. Mahalo for your efforts to this end.

Marnie N. Weeks  
3458A Kalihi Street  
Honolulu HI 96819

Phone 808-843-8002

---

Who's never won? [Biggest Grammy Award surprises of all time on AOL Music.](#)

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

**Hearing on SB2733 Relating to the Public Trust Lands Settlement**  
**Saturday, February 9, 2008**  
**10:00 a.m.**  
**State Capitol Auditorium**

**Testimony of Jon M. Van Dyke**  
2515 Dole Street  
Honolulu, Hawaii 96822

This testimony is offered in my personal capacity and does not represent an institutional position of the University of Hawaii or the William S. Richardson School of Law. I regret that I am unable to give this testimony in person, because of prior obligations.

I am providing this testimony in support of HB 2701, which is a fair and just settlement of the back-pay owed to the Office of Hawaiian Affairs from the revenues generated from the “ceded lands” since 1978. The following paragraphs are designed to provide background regarding the basis for this settlement.

When Hawaii was annexed by the United States in 1898, about 1.8 million acres of land (more than 43% of the 4.1 million acres on Hawaii’s main islands) were “ceded” by the Republic of Hawaii to the United States. These lands had been classified as “Crown Lands” (which supported the monarchy) and the “Government Lands” (which supported the government as a whole) during the Kingdom Period. When the Kingdom was overthrown in 1893, the Republic combined these two groups of lands as “Public Lands,” and this merger continued during the Territorial Period (1898-1959). In 1993, the U.S. Congress apologized for U.S. participation in the overthrow, characterized the U.S. military and diplomatic role in the overthrow as “illegal” and a violation of “international law,” and said that the lands were transferred “without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government.”

It was recognized almost immediately after annexation that these “ceded lands” should not be merged with the other public lands of the United States, and, because of their special history and meaning, that they should not be freely disposed of. The U.S. Attorney General wrote in 1899 that the 1898 Annexation Resolution had created a “special trust” for the benefit of Hawaii’s people. Later, in 1977, the Hawaii Supreme Court explained that in the 1900 Organic Act, Congress had “provided that the United States would have no more than *naked title* to the public lands other than those set aside for federal uses and purposes.”

In 1959, the federal government transferred about 1.4 million acres of the “ceded lands” to the new State of Hawaii, to be held in trust, with the revenue generated from these lands to be used for five named purposes, including “for the benefit of the conditions of native Hawaiians.” In the next two decades, however, the State failed to allocate any of the revenue specifically for

this purpose, devoting almost all of it to public education. To address this failure, the delegates to the 1978 Constitutional Convention proposed (and the voters adopted) amendments creating OHA and requiring the State Legislature to allocate a pro rata share of the revenues from the “ceded lands” to OHA to be used explicitly for the betterment of Native Hawaiians.

The 1980 State Legislature determined that the appropriate pro rata share for OHA should be 20%. This compromise figure was adopted because the “betterment of the conditions of native Hawaiians” was one of five purposes listed in the 1959 Admission Act and also perhaps because persons of Hawaiian ancestry constituted about 20% of the population of the State.

Difficulties arose almost immediately, however, about how to define “revenues” and which lands should be viewed as within the “ceded lands.” After a lawsuit was filed by OHA in the 1980s, the Waihee Administration negotiated an agreement dividing revenues into two categories – (1) “sovereign revenues” coming from activities unique to a government, such as collecting taxes and tuition at the University, and (2) “proprietary revenues” coming from activities that any landowner could engage in, such as leases to farmers or operating airports or other profitable enterprises. It was agreed that OHA would receive 20% of the proprietary revenues, but none of the sovereign revenues, and the State then paid almost \$135 million to OHA for revenues it had received in the 1980s but had not shared with OHA.

Disputes continued regarding the allocation of revenues between these two categories, focusing, for instance, on the duty free sales from stores in Waikiki, because the customers receive their purchases when they depart at the airport, which is partially on “ceded lands.” The Hawaii Supreme Court refused to address the merits of this dispute, characterizing it as a “political question” that should be resolved by the Legislature, but the Court stated clearly in 2001 (and again in 2006) that “the State’s obligation to native Hawaiians is firmly established in our constitution” and “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.”

The current settlement – a combination of selected lands and money – is designed to provide OHA with the funds it should have been receiving from the revenue stream generated by the “ceded lands” since this dispute arose. It is a fair settlement, reached in good faith through arms-length negotiations between the relevant State officials and OHA’s Trustees. It will enable OHA to maintain its existing programs and develop new ones to promote the well being of Native Hawaiians, the Hawaiian language, and Hawaiian culture.

This is an important interim settlement, and an important step toward the ultimate resolution of the festering claims of the Native Hawaiians, which could occur once the Akaka Bill is enacted, and negotiations begin between the Native Hawaiian governing entity, on the one hand, and the State and Federal Governments, on the other.

\*\*\*\*\*

*Professor Van Dyke teaches Constitutional and International Law at the William S. Richardson School of Law, University of Hawaii at Manoa. His latest book is “Who Owns the Crown Lands of Hawaii?” published by the University of Hawaii Press.*





**JAPANESE AMERICAN CITIZENS LEAGUE OF HAWAII**  
**HONOLULU CHAPTER**  
 P.O. BOX 1291, HONOLULU, HAWAII 96807  
 PHONE: 523-8464 EMAIL: [www.jaclhawaii.org](http://www.jaclhawaii.org)

*Working For A Greater America*

**SB 2733: Relating to the Public Trust Lands Settlement  
 Testimony in Support**

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**Legal Counsel**  
 Benjamin Kudo

**Advisory Council**  
 Allicyn Hikida-Tasaka  
 Clayton Ikei  
 William Kaneko  
 Colbert Matsumoto  
 Alan Murakami

**Hearing: Saturday, February 9, 2008 at 10:00 a.m. in the Auditorium**

To: The Honorable Jill N. Tokuda, Chair, Agriculture and Hawaiian Affairs  
 The Honorable Clayton Hee, Chair, Water and Land  
 The Honorable Brian T. Taniguchi, Chair, Judiciary and Labor  
 Members of the Committee on Agricultural and Hawaiian Affairs, Committee on  
 Water and Land, and Committee on Judiciary and Labor

The JACL Hawai'i, Honolulu Chapter strongly supports SB 2733, relating to the public trust land settlement.

Founded in 1929, the Japanese American Citizens League is the nation's oldest and largest Asian Pacific American Civil Rights organization made up of over 20,000 members. Locally, we are a strong civil rights organization committed to the protection of civil and human rights of all. The Honolulu chapter is a staunch supporter of the human and civil rights of Native Hawaiians, including their right to self-determination. We have been, and are, alarmed by the erosion of Native Hawaiian rights.

We were among the many groups supporting the 1993 Apology Bill, which acknowledged the illegal overthrow of the Kingdom of Hawaii on Jan. 17, 1993. The Apology Bill also acknowledged that 1.8 million acres of crown, government and public lands in the Kingdom of Hawaii was ceded without the consent of or compensation to the Native Hawaiian people of their sovereign government. Native Hawaiians are the indigenous people of Hawai'i. Until 1893, Hawai'i was a sovereign and self-governing nation recognized in the international community. In 1868, the *Gannenmono*, the first Japanese contract laborers, arrived in Honolulu. Beginning in 1885, the first 955 *Kanyaku Imin* arrived in Hawai'i. Over the next thirty-five years, 86,000 Japanese contract workers were brought to Hawai'i to work on sugar plantations. They were later joined by 132,000 Japanese immigrants from 1900 and 1924.

Although Japanese workers faced harsh conditions on the plantations, the Native Hawaiians treated them with aloha. They were allowed to become naturalized subjects of the Kingdom of Hawaii, with suffrage rights, under the Hawaii Constitution of 1852 (whereas Japanese immigrants were denied suffrage rights in the United States for nearly a century). In 1887, however, Western businessmen used extraordinary political and military pressure to force King Kalakaua to sign the "Bayonet Constitution", which denied Japanese suffrage, among other things. We note with dismay that, after the annexation of Hawaii by joint resolution in 1898, the United States government denied the privilege of naturalization to persons of Japanese ancestry until after World War II.

February 8, 2008

TO: 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: SB 2733 - PUBLIC TRUST LAND SETTLEMENT  
The Senate: The Twenty-Fourth Legislature Regular  
Session of 2008

Aloha!

My name is Phyllis Ann Kapono Dawson Ryan, and I support  
SB 2733.

Mahalo,

  
Signature

2055 Nuuanu Ave #804  
Address

Honolulu, HI  
City/state/zip

FAKED TO Sen. Sgt-At-Arms 586-6659

**testimony**

---

**From:** John Rosa [rosaj001@hawaii.rr.com]  
**Sent:** Thursday, February 07, 2008 4:57 PM  
**To:** testimony  
**Cc:** Debra Rosa  
**Subject:** SB 2733 Public Trust Lands Settlement

**TO:** 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:** SB 2733 - PUBLIC TRUST LANDS SETTLEMENT  
The Senate: The Twenty-Fourth Legislature Regular Session of 2008

Aloha!

My name is John K Rosa, and I support SB 2733.  
I am requesting your support in favor of the bill. I am a supporter and I Vote!

Mahalo,

John K Rosa  
PO Box 240501  
Honolulu, HI. 96824  
[rosaj001@hawaii.rr.com](mailto:rosaj001@hawaii.rr.com)  
Ph.808 728-0328  
Fax: 808 395-1090

February 6, 2008

Statement by Richard Pezzulo

Re: SB 2733 RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT – **IN SUPPORT**

February 9, 2008

10:00am

State Capitol Auditorium

**SB2733** Resolves claims and disputes relating to the portion of income and proceeds from the lands of the public land trust for use by the office of Hawaiian affairs between 11/7/1978 and 7/1/2008; fixes prospectively the minimum amount of income and proceeds from the lands of the public land trust that are to be paid to the office of Hawaii affairs at \$15,100,000 each fiscal year.

**Submitted to:**

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

Senator Jill N. Tokuda, Chair

Senator Clayton Hee, Chair

Senator Brian T. Taniguchi, Chair

**Testimony:**

I am a non-Hawaiian and my family and I **strongly support Bill SB2733** which resolves claims and disputes relating to the portion of income and proceeds from the lands of the public land trust for use by the office of Hawaiian affairs between 11/7/1978 and 7/1/2008 and sets the annual ceded lands payments at \$15,100,000.

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 SB2733, which provides fair compensation in the form of land and cash.

By adopting SB2733, 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

**testimony**

---

**From:** Lynette Ramos [lynramos@sbcglobal.net]  
**Sent:** Thursday, February 07, 2008 3:05 PM  
**To:** testimony  
**Subject:** Testimony Opposing SB 2733

**THE SENATE  
TWENTY-FOURTH LEGISLATURE  
REGULAR SESSION OF 2008  
STATE OF HAWAII**

February 7, 2008

**Senate Committees on: Agriculture and Hawaiian Affairs,  
Water and Land, AND Judiciary and Labor.**

**Hearing Date & Time: Saturday, February 9, 2008,  
10:00 a.m. (HST)**

**Attention: Chairs: Jill N. Tokuda , Clayton Hee, AND Brian T. Taniguchi.**

**Testimony Opposing SB 2733: Public Trust Lands Settlement.**

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

My name is Lynette Ramos and I am testifying in **strong opposition** to **SB 2733** which seek to resolve claims and disputes of lands located throughout the Hawaiian Islands **alleged** to have been "Ceded" to the United States Government, then subsequently granted (1959 Admissions Act, Section 5(b)) unlawfully to the STATE OF HAWAII, **ipso facto** (i.e. **U.S. Public Law 103-150**).

**U.S. Public Law 103-150** of 1993 clarified;

*"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 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;"*

That we kanaka maoli (native Hawaiians) *referred* to in **U.S. Public Law 103-150** as "indigenous Hawaiian people" and "Native Hawaiians" **never relinquished** our "legal" Titles (Royal Patents & Land Commission Awards from the Mahele) and claims over our national Lands incorrectly cited by the United States Government and STATE OF HAWAII as "ceded lands"; and that we kanaka maoli (native Hawaiians) *referred* to as "indigenous Hawaiian people" **never relinquished** neither our national Identity, nor our lawful government.

Recent ruling by the Hawaii Supreme Court in Case No, 25570, (JANUARY 31, 2008) Office

**of Hawaiian Affairs (OHA) vs. STATE OF HAWAII** affirms the STATE OF HAWAII has no "legal" right to sell or settle claims of the alleged "Ceded Lands"; therefore, *passing SB 2733 presumably would clearly be an "illegal" act subject to criminal and civil liability.*

OHA, a part of the STATE OF HAWAII (Hawaii State Constitution 1978) cannot be viewed as a legal representative of the Hawaiian Nation; and/or implied to be *the* "governing entity" of the native Hawaiians and their national Lands. At the very least, it would be a serious perversion of justice and only exasperate the injury.

Together, **U.S. Public Law 103-150** and the recent **Hawaii Supreme Court Ruling, January 31, 2008, No. 2557** subjects **OHA (i.e. STATE OF HAWAII)** to the same legal restraints decreed in both laws. Simply stated, OHA is also in legal effect barred from selling or settling claims on *behalf* of the native Hawaiians "*until the claims of the native Hawaiians [kanaka Maoli] to the [alleged] ceded lands has been resolves.*"

**SB 2733** is a direct violation of the tenets of the United States Constitution (Article I, Section 10), and if passed into law, further perpetuates crimes (1893: Invasion by US Military Forces, 1898: Newlands Resolution Fraudulently Annexing the Hawaiian Islands, 1920: Hawaiian Homes Act by US Congress, 1959: Admissions Act, 1980; Office Of Hawaiian Affairs, 2007: U.S. HR 505/S. 310, 110<sup>th</sup> Congress: "Native Hawaiian Government Reorganization Act of 2007") against kanaka Maoli (native Hawaiians) by the Governments of the United States of America and State of Hawaii beginning and continuing unabated since January 17, 1893.

#### **REMEDY:**

If the State of Hawaii is sincere about addressing lands and other native Hawaiian issues, it must do so through international law; that is the Law of Occupation, Law of Restitution and the Law of self-determination. The tenets of your government's constitution and your oath of office mandates you obey the law and not disregard and/or circumvent your fiduciary duties such as in the case of the recent Super Ferry Fiasco.

Thank you for this opportunity to testify.

Sincerely,

Lynette Ramos  
12567 Toulouse  
Houston, TX 77015  
Phone: (713)453-7691  
Email: [lynramos@sbcglobal.net](mailto:lynramos@sbcglobal.net)

**testimony**

---

**From:** Kekahuna Keaweii [kekahunakeaweii@yahoo.com]  
**Sent:** Thursday, February 07, 2008 1:26 PM  
**To:** testimony  
**Cc:** Laura Mau; Theo Morrison; Hinano Rodrigues; Hui Pu; Hawaii Independence; Living Nation; Maggie Hoopii; Myrna Ah Hee; Foster Ampong; Clayton Baybayan; Robert Brito; Charles Morales; Gordon Cockett; Daniel Garcia; Kenny Hoopai; Michele Hoopii; Greg Johnson; George Joy; Willie Kahaialii; Wilmont Kahaialii; Keeaumoku Kapu; Josephine Keliipio; Tony Kincannon; Clifford Naeole; Maria C. Ornellas; Lynette Ramos; Tony Vierra  
**Subject:** Testimony Opposing SB 2733

**THE SENATE  
 TWENTY-FOURTH LEGISLATURE  
 REGULAR SESSION OF 2008  
 STATE OF HAWAII**

February 7, 2008

**Senate Committees on:** Agriculture and Hawaiian Affairs, Water and Land, AND  
 Judiciary and Labor.

**Hearing Date & Time:** Saturday, February 9, 2008,  
 10:00 a.m. (HST)

**Attention: Chairs:** Jill N. Tokuda , Clayton Hee, AND Brian T. Taniguchi.

**Testimony Opposing SB 2733: Public Trust Lands Settlement.**

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

My name is Foster Robin Ampong and I am testifying in **strong opposition** to **SB 2733** which seek to resolve claims and disputes of lands located throughout the Hawaiian Islands **alleged** to have been "Ceded" to the United States Government, then subsequently granted (1959 Admissions Act, Section 5(b)) unlawfully to the STATE OF HAWAII, **ipso facto** (i.e. **U.S. Public Law 103-150**).

**U.S. Public Law 103-150** of 1993 clarified;

*"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 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;"*

That we kanaka maoli (native Hawaiians) *referred* to in **U.S. Public Law 103-150** as "indigenous Hawaiian people" and "Native Hawaiians" **never relinquished** our "legal" Titles (Royal Patents & Land Commission Awards from the Mahele) and claims over our national Lands incorrectly cited by the United States Government and STATE OF HAWAII as "ceded

lands”; and that we kanaka maoli (native Hawaiians) *referred* to as “indigenous Hawaiian people” ***never relinquished*** neither our national Identity, nor our lawful government.

Recent ruling by the **Hawaii Supreme Court in Case No, 25570, (JANUARY 31, 2008) Office of Hawaiian Affairs (OHA) vs. STATE OF HAWAII** affirms the STATE OF HAWAII has no “legal” right to sell or settle claims of the alleged “Ceded Lands”; therefore, *passing SB 2733 presumably would clearly be an “illegal” act subject to criminal and civil liability.*

OHA, a part of the STATE OF HAWAII (Hawaii State Constitution 1978) cannot be viewed as a legal representative of the Hawaiian Nation; and/or implied to be *the* “governing entity” of the native Hawaiians and their national Lands. At the very least, it would be a serious perversion of justice and only exasperate the injury.

Together, **U.S. Public Law 103-150** and the recent **Hawaii Supreme Court Ruling, January 31, 2008, No. 2557** subjects **OHA (i.e. STATE OF HAWAII)** to the same legal restraints decreed in both laws. Simply stated, OHA is also in legal effect barred from selling or settling claims on *behalf* of the native Hawaiians “*until the claims of the native Hawaiians [kanaka Maoli] to the [alleged] ceded lands has been resolves.*”

**SB 2733** is a direct violation of the tenets of the United States Constitution (Article I, Section 10), and if passed into law, further perpetuates crimes (1893: Invasion by US Military Forces, 1898: Newlands Resolution Fraudulently Annexing the Hawaiian Islands, 1920: Hawaiian Homes Act by US Congress, 1959: Admissions Act, 1980; Office Of Hawaiian Affairs, 2007: U.S. HR 505/S. 310, 110<sup>th</sup> Congress: “Native Hawaiian Government Reorganization Act of 2007”) against kanaka Maoli (native Hawaiians) by the Governments of the United States of America and State of Hawaii beginning and continuing unabated since January 17, 1893.

#### **REMEDY:**

If the State of Hawaii is sincere about addressing lands and other native Hawaiian issues, it must do so through international law; that is the Law of Occupation, Law of Restitution and the Law of self-determination. The tenets of your government’s constitution and your oath of office mandates you obey the law and not disregard and/or circumvent your fiduciary duties such as in the case of the recent Super Ferry Fiasco.

Thank you for this opportunity to testify.

Sincerely,  
 Living Being in the HuMan function with the attached name  
 Foster Robin Ampong  
 Phone: (808) 281-3894 - Email: kekahunakeaweiwi@yahoo.com

---

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**testimony**

---

**From:** Wong, Lucien [Lucien.Wong@actuslendlease.com]  
**Sent:** Thursday, February 07, 2008 11:36 AM  
**To:** testimony  
**Subject:** SB 2733 Relating to the Public Trust Lands Settlement

Please provide copies of this email to the following:

Committee on Agriculture and Hawaiian Affairs

Committee on Water and Land

Committee on Judiciary and Labor

SB 2733 Relating to the Public Trust Lands Settlement

Hearing date Feb 2, 2008, at 10:00 AM

Aloha,

I am writing to express my support for SB 2733 which provides for the settlement of claims and disputes between Nov 7, 1978, and July 1, 2008, relating to the income and proceeds from the lands of the public trust for use by the Office of Hawaiian Affairs (OHA). This matter has been in contention for many years and needs to be resolved. The legitimacy of the claims and disputes is not in question thus leaving only the matter of how best to arrive at a reasonable settlement. This has been done by the negotiating parties, subject only to the approval of the Legislature.

Some may argue that the settlement is too much while others will say too little. As in all negotiated settlements there will always be these differing opinions. However, the Legislature upon review of the entire contentious matter will likely find that through the negotiating process this settlement deemed reasonable by the negotiating parties, should be approved.

Thank you for allowing me to express my support on resolving this important matter.

Mahalo

**Lucien P. Wong | Senior Advisor | Actus Lend Lease**  
T 808 536-8886 x337 | F 808 536 8825 | [www.actuslendlease.com](http://www.actuslendlease.com)  
1132 Bishop Street, Suite 2400, Honolulu, Hawaii 96813

[lucien.wong@actuslendlease.com](mailto:lucien.wong@actuslendlease.com)

 Please consider the environment before printing this e-mail.

2/7/2008

TO: 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

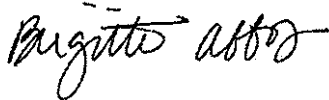
RE: SB 2733 - PUBLIC TRUST LANDS SETTLEMENT  
The Senate: The Twenty-Fourth Legislature Regular Session of 2008

2/8/08

Aloha!

My name is Brigitte Abbot, and I support SB 2733. I am requesting your support in favor of the bill. I am a supporter and I vote!

Mahalo,



Brigitte Abbot  
45-161 Kumakua Place #76  
Kaneohe, HI 96744

## T J 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](http://www.reawakeningforwomen.org)

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#### 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 Saturday, February 9, 2008  
TIME 10:00 a.m.  
PLACE Hawaii State Capitol, Auditorium  
RE **Senate Bill 2733**

Good morning, 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 morning in support of Senate Bill 2733, 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.

Mahealani Wendt  
P.O. Box 37085  
Honolulu, HI 96837

TESTIMONY OF MAHEALANI WENDT  
IN SUPPORT OF SENATE BILL 2733  
RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT

February 9, 2008

Aloha Chairpersons Hee and Taniguchi; Vice-Chairperson Kokubun; and members of the Senate Committees on Agriculture and Hawaiian Affairs; Water and Land; and Judiciary and Labor.

Thank you for this opportunity to testify in support of Senate Bill 2733, which would resolve claims and disputes relating to income from the public trust lands for use by the Office of Hawaiian Affairs and fix the minimum income and proceeds at \$15.1 million each fiscal year.

This issue has been pending resolution since OHA's inception, nearly 30 years. I support the proposed settlement because it is a culmination of the efforts of several Governors, many successive boards of trustees, many lawsuits, and many sessions of the legislature. It is a \$200 million package and it provides for a guaranteed revenue stream consistent with past annual payments to OHA. Although OHA gives up its right to sue for additional revenues, it has recourse to the legislature, which is consistent with what has happened for the past several decades with respect to the legislature and the courts.

Please support the proposed OHA ceded lands settlement. Thank you for this opportunity to testify.

**testimony**

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**From:** Ken Conklin [ken\_conklin@yahoo.com]  
**Sent:** Wednesday, February 06, 2008 4:36 PM  
**To:** testimony  
**Subject:** SB 2733 for hearing on Saturday February 9

testimony@capitol.hawaii.gov

Aloha PAR people,

Below the line is testimony I ask you to deliver for a Senate hearing by 3 committees as follows.

DATE: Saturday, February 9, 2008  
TIME: 10:00 AM  
PLACE: Auditorium

COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS COMMITTEE ON WATER AND LAND COMMITTEE ON JUDICIARY AND LABOR

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  
\

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TO:

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

CONCERNING: SB 2733  
RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT

DATE OF HEARING: February 9, 2008

TESTIMONY 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 kakou

One small step for OHA, one giant leap toward racial apartheid in Hawaii. SB2733

threatens to slice off another piece of Hawaii, slowly killing our state through the death of 1,000 cuts.

That's the big picture regarding the ceded lands agreement between Governor Lingle and OHA which SB2733 seeks to enact into law:

Let me move from the general to the specific. First I'll describe that big picture. Then I'll discuss the ownership of ceded lands and allocation of revenues from them. Finally I'll address a particular element of SB2733; namely, the disaster awaiting the hotels along Banyan Drive in Hilo.

#### THE BIG PICTURE

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

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

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

District Court in Honolulu and the 9th Circuit Court of Appeals in Arakaki v. State of Hawaii.

But the third pillar remains standing despite substantively correct lawsuits dismissed on technicalities.

In response to those lawsuits, the Akaka bill has been continuously re-introduced in Congress for nearly eight years, with zealous support from our Governor, Attorney General, and nearly every member of our Legislature. The Akaka bill seeks to authorize creation of a racially exclusionary government for all persons worldwide who have a drop of Hawaiian native blood -- that is the sole requirement for membership. The bill would authorize transfer of land, money, and jurisdictional authority to the phony Akaka tribe.

The whole concept of a racially exclusionary government is evil. And unlike any of the real Indian tribes which include a small number of people in a restricted and usually remote area of land, this one would legally segregate 20% of the entire population of a State, and perhaps 50% of the State's lands; thus deserving the label "apartheid." Hawaii's Evil Empire of racially exclusionary institutions has grown so powerful that hardly any public officials will dare to stand up against it. The multiracial, multicultural society of Hawaii has hardly any voice in government to advocate for unity and equality; because the wealthy, powerful institutions of the Evil Empire have silenced their voice through the expenditure of untold millions of dollars in lobbying, advertising, school curriculum, and outright intimidation. Who hasn't seen expensive, racist Kau Inoa commercials beamed into their living rooms at least 200 times, or newspaper ads "explaining" the Akaka bill?

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

Bills are now pending in the Legislature that would create racially stacked commissions to manage Ha'iku Valley and Makua Valley, with OHA having seats on those boards, and including a provision for outright transfer of the entire valley to OHA. OHA keeps asking for money to build its new headquarters, which would become the national capitol of the new Akaka

tribal nation (until 'Iolani Palace which taxpayers renovated is handed over). Now comes the State of Hawaii ready to give away \$200 Million of public land and money to OHA through SB2733.

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

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

Hawaii is experiencing the death of 1,000 cuts.

Waimea Valley and Waokele O Puna were two of those cuts. SB2733 would take another cut out of the State of Hawaii, continuing the erosion of our tax base. To stop death by 1,000 cuts there must come a time when the knife is brushed aside before it can cut again.

#### CEDED LANDS AND REVENUES

It is historically, legally, and morally wrong to allocate government land, or revenues from land, for exclusive use by a racial group. Neither Kingdom law, nor the Organic Act for annexation, nor the Statehood Admissions Act, contemplated or required the creation of OHA. The Constitutional amendment that created OHA in 1978 was passed by the smallest number of yes votes among all the amendments coming out of the Constitutional Convention; and the amendment creating OHA would have been defeated except that blank votes were counted as yes votes at that time, contrary to the way we count blank votes today. 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 public lands of Hawaii, including the ceded lands, belong to all the people of Hawaii without racial distinction. During the Kingdom, following the Mahele, the government lands were held by the government on behalf of all the people, just as now. The Crown lands also became government property by act of the Kingdom Legislature, gladly signed by the King, to issue government bonds to pay a mortgage lien on the Crown Lands the King had incurred to pay the King's personal (gambling) debts. Thereafter the government owned the Crown Lands, while income from the Crown Lands was set aside to maintain the office of head of government in his official capacity but not as his private property. Thus, when the monarchy ended, the Crown lands and government lands were indistinguishable, all held by government as public lands to benefit all the people without regard to race -- both then and now.

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

TELL OHA TO SPEND ITS HOARDED CASH AND STOP GIVING THEM MORE

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

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

UPCOMING EXPIRATION OF LEASES ALONG BANYAN DRIVE IN HILO

One specific objection to SB2733 concerns the giveaway of lands along Banyan Drive in Hilo which are currently leased to the companies which built extremely valuable privately owned hotels. A few years from now those land leases will expire. OHA will then become the owner of the hotels, without paying one penny to the builders and current owners.

OHA could choose to knock down the hotels to honor the fact that the lands are "sacred" to Native Hawaiians. Does anyone doubt there are mo'olelo (stories) about the gods or the chiefs frolicking on the beach there, or having heiau, fishponds, or taro patches there? Aren't ancient bones buried there?

OHA could choose to continue hotel operations reaping tremendous income from the hotels it will own.

OHA could choose to convert the hotels into condominiums which OHA could then sell leasehold for another cycle of years until it confiscates them yet again.

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

The State of Hawaii as owner of the Banyan Drive land would treat the hotel owners fairly when their leases expire. But OHA is ruthless and the hotel owners had better prepare for financial disaster if SB2733 passes.

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## testimony

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**From:** Jesse Ponce De Leon [jponce@hawaii.edu]  
**Sent:** Friday, February 08, 2008 9:50 AM  
**To:** testimony  
**Subject:** SB2733

SB2733

Public Trust Lands Settlement

TO  
COMMITTEES  
AHW/WTY/JDL

I am submitting testimony against the passage of SB2733. This needs to be stopped in order for people to have more time in discussion because of the Supreme Court decision. The Super Ferry push by the administration has yet to be resolved. I expect the members of the committees to stop this rush and to let other peoples and the Hawaiian people given more time to realize the consequences.

Mahalo  
Jesse Ponce de Leon

**testimony**

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**From:** Ernie Kimoto [erniek@oha.org]  
**Sent:** Thursday, February 07, 2008 4:38 PM  
**To:** Joycelynn Costa; testimony  
**Subject:** RE: Testimony letter re SB2733

Aloha Joycelynn:

Mahalo a nui loa Admiral Kihune and Joycelynn.

Semper Fi from a former Marine.

Ernie Kimoto

*Ernest M. Kimoto*

*Senior Staff Attorney*

---

**From:** Joycelynn Costa [mailto:jcosta@waimana.com]  
**Sent:** Thursday, February 07, 2008 4:04 PM  
**To:** testimony@capitol.hawaii.gov  
**Subject:** Testimony letter re SB2733

Aloha,

Attached is a letter in support of SB2733 from Robert K.U. Kihune.

Thank you,  
Joycelynn Costa  
Phone: 540-5779

**Robert K.U. Kihune**  
1597 Haleloke Street  
Hilo, Hawaii 96720

February 7, 2008

To: Legislature's Public Access Room  
Email: [testimony@capitol.hawaii.gov](mailto:testimony@capitol.hawaii.gov)

For: COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS  
Senator Jill N. Tokuda, Chair  
Senator J. Kalani English, Vice Chair

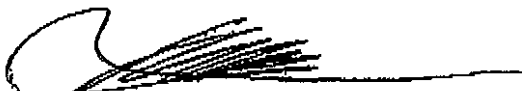
Subject: Testimony on SB2733 Relating to the Public Trust Lands Settlement  
Hearing on 2/9/08 at 10:00 am in State Capitol Auditorium

Aloha Chair Tokuda, Vice Chair English and members of the Committee on Agriculture and Hawaiian Affairs. My name is Robert Kalani Uichi Kihune, and I want to extend my sincerest Mahalo for allowing me the opportunity to testify as a native Hawaiian in support of SB2733, relating to the public trust lands settlement.

While this bill does not fully satisfy the obligations to the Indigenous people of Hawaii that is set forth in the Constitution of the State of Hawaii, it retains the right of these people to seek redress for wrongs not covered under the Public Trust Lands Settlement. Furthermore, the revenues derived from this settlement will be directed towards the improvement of the well-being of Native Hawaiians, who continue to struggle because of the dispossession of their lands after the illegal overthrow in 1893 as well as being marginalized when their society changed under the pressures of outside influence.

For these reasons, I strongly support passage of this bill.

Mahalo,



Robert K. U. Kihune

RKUK:jgc

Dear Legislators,

As a Native Hawaiian, mahuwahine (advocate), Executive Director of Kulia Na Mamo, a 501(c)3 non-profit organization established to serve the economically disadvantaged mahu/mahuwahine (men-who-sleep-with-men/transgenders) of Hawaii. I write to inform you of my support to SB 2733, relating to the public trust lands settlement agreement assigning OHA (Office of Hawaiian Affairs) as beneficiaries to receiving payments totaling the sum of \$200,000,000, for income and proceeds from the lands public land trust for the period 11/7/78 to 6/30/08. As an entity truly dedicated towards improving the lives of our Native Hawaiian people, OHA continues to exceed their commitment of providing support and aid to Native Hawaiian people throughout the Hawaiian Islands.

Me ke aloha pumehana,

Ashliana Hawelu-Fulgoni  
Executive Director  
Kulia Na Mamo



M. Haunani Ching  
3545 McCarriston Street  
Honolulu, Hawai'i 96815  
Phone: 808 735-5808  
Email: Chaunani@aol.com

February 7, 2008

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

RE: Senate Bill 2733 Relating to Public Trust Lands Settlement  
Saturday, February 9, 2008 – Capitol Auditorium

Aloha Chairpersons and Members of the Committees:

I am Haunani Ching of Kapahulu, Oahu who represented my area as a 1978 Constitutional Convention Delegate.

As I prepared my written remarks for today, I realized that I have not specifically testified on a Hawaiian issue since the enabling legislation creating the Office of Hawaiian Affairs in 1979/1980. From 1972 to 1988 I have testified at the legislature on behalf of Amfac Hotels and Resorts and also as Director of Community Affairs for the Hawaii Hotel Association as well as Aston Hotels and Resorts. I am honored and humbled to be here this morning to share my personal views on Senate Bill 2733, Relating to Public Trust Lands Settlement.

Bare with me by allowing me my kupuna status in sharing with you a couple of stories:

My Dad was a wonderful man with profound understanding and wisdom. He was so smart and oft times shared his view and ideas on a variety of issues. In 1965, I filled out an application for a Hawaiian Homestead and my Father hit the roof. "why did you do that? You don't need to, you have land. In a couple of years, when you save enough money, you build your house next to ours. Homestead land is for the Hawaiians who do not have land, you leave it for them. Always remember, you mālama those who don't have, you share and take care of those that are less fortunate." That is our family philosophy and they raised us with the same ideas and values.

In 1978 my Dad read the newspaper of a proposal to create the Office of Hawaiian Affairs was being considered. Daddy called me at the Office sharing his mana'o (thoughts). "About time our people are given a chance, we will have our own department. You know, the one thing Mama and I always regret was that we didn't raise you kids to speak Hawaiian. We were occupied with



M. Haunani Ching  
3545 McCorriston Street  
Honolulu, Hawai'i 96815  
Phone: 808 735-5808  
Email: Chaunani@aol.com

other things; main thing we a house to live in and food on the table; providing a good education for all 8 of you. I want you to include in the Constitution that all our children be taught the Hawaiian language and Hawaiian history in our schools. Never mind the nationality, all children must learn...this is Hawaii. This is Mama and my dream for our mo'opuna and your mo'opuna too, all the keiki to speak Hawaiian. Hawaiian language should be first language, English 2<sup>nd</sup>. A few days later, I received another phone call, this time from my Brother Sam, who was Jack Burn's neighbor in Lanikai. "Hey girl, you're going to make the old man happy, he's smiling in heaven. At last our people will have a say, how about that, a Department for Hawaiians. Sam went on to share Governor Burn's thoughts on the same issue. While a Delegate to Congress, Jack Burns was concerned about the Hawaiian people and one day while playing golf at Mid Pac Country Club, asked his foursome, "Come on guys, you're part Hawaiian and you know the Hawaiian people need help. We have to do something, give me some ideas and let's work on this. This same discussion from Governor Burns continued for years with his family, friends, legislators, and business associates. Sam said to me, 'do it Haunani, the time is now, form a Hawaiian Department in our government, you know we'll support you.'" You notice, my family doesn't ask, they tell you what to do.

Discussions and deliberations at Con Con 78 were intense, thorough, long, boring, confusing, emotional and tough. What is right? How do we do this? Elections for only Hawaiians, possibly unconstitutional "ah never mind—go for it" let the courts challenge us – and challenge us, they did. We were fortunate to have Senator Spark Matsunaga and Senator Dan Inouye speak and counsel us. Sharing their words of wisdom were fellow delegates Senators Donald Ching, Bob Taira, Representative Akira Sakima along with numerous others from the community expressing their over-whelming support to create a Hawaiian department. Congressional Senators shared their views, we may receive reparations from the federal government and we need a special entity to receive these funds. It must be a quasi agency, and not a department within the State of Hawaii. With sound and profound advice from so many people, history was made 30 years ago.

After the 1978 Election, and the House of Representatives was organized, and Representative Richard Kawakami from Kauai, was again Chairman of Water, Land and Hawaiian Affairs Committee and he called me. "You're going to help or what? This is not going to be easy creating an office for Hawaiians. As I reflect on that period of time, how fortunate my life has been to have such good friends and wonderful mentors as Senators John Ushijima, Mamoru Yamasaki, Patsy Young, Representatives Kawakami, Tony Kunimura, Jack Suwa and so many others who took the time to teach and mentor me. Several life-learning lessons were taught; be prepared, evaluate all sides of an issue, be compassionate, but most of all have integrity.

All stories aside; many people contributed to the legislation creating chapter 10. A Big Mahalo to Governor Ariyoshi for signing the legislation and to all legislators for your continuing the wisdom and understanding in supporting the Office of Hawaiian Affairs.



M. Haunani Ching  
3545 McCarriston Street  
Honolulu, Hawai'i 96815  
Phone: 808 735-5808  
Email: Chaunani@aol.com

One more story and I promise I'll be pau. General Election Day of 1980, Mama walked into the Diamond Head Deaf and Blind School, and asked the poll worker – "I want an OHA ballot, I am a Hawaiian and very proud and happy to be voting for Hawaiian trustees, in a Hawaiian election. After we were pau vote, I heard her soft voice say "I vote for you too Daddy, I'm so sad and sorry you cannot be here today, but we did it Daddy, our baby girl did it". My Dad passed away 2 months prior to the first OHA election. I looked at the shining and smiling face of my Mama with happy tears in her eyes and tears running down her cheeks. Mom, I said, don't do this, I'm not the only one, I didn't do it by myself! Of course not, I know you didn't, but you were there and helped make it happen. You think I don't know my daughter because I sure do, you're just like me, you don't let anyone win an argument...you're going to yak and yak, wear them down until they say Yes.

As I've shared in my opening comments, it has been many years since I've shared my mana'o regarding Hawaiian legislation. My life has come full circle. I was there at the beginning, there in the middle and the now at the Office of Hawaiian Affairs for the past 10 years. How exciting for me to be in the canoe, who paddled in the first seat, then in the 3<sup>rd</sup> seat and now in the last seat as a part of the steering crew.

To past Legislative members for helping make our dream a reality and the legislators of today, who will continue the reality by allowing OHA to carry on Daddy's philosophy of "mālama those who need kōkua and remember to take care of the less fortunate."

I understand that as Senators you receive myriad requests for kōkua. I humbly ask you to continue the legacy set by previous visionaries, be courageous in continuing Daddy's dream of perpetuating the Hawaiian culture through its history, its language, its dance and song. Vote YES on SB 2733 and follow Uncle Tony Kunimura's words of wisdom "Think with the Brain and vote with the heart."

Mahalo nui loa for the opportunity to share my comments with you and for listening to my stories.

*'O wau nō me ka mahalo  
I am yours respectfully*

Haunani Ching  
1978 Constitutional Convention Delegate

**BIA-HAWAII**  
**BUILDING INDUSTRY ASSOCIATION**

**COMMITTEES ON AGRICULTURE AND HAWAIIAN AFFAIRS,  
WATER AND LAND, AND JUDICIARY AND LABOR HEARING ON**

**SB 2733 RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT**

**Saturday, February 9, 2008**

**10 a.m.**

**State Capitol Auditorium**

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

I am Karen Nakamura, Chief Executive Officer and Executive Vice President of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii is in **strong support** of SB 2733, "Relating to the Public Trust Lands Settlement". SB 2733 is a bill to fund the settlement agreement between the Office of Hawaiian Affairs (OHA) and the State of Hawaii that was reached after four and a half years of negotiations and mediation.

SB 2733 has two main purposes:

1. Finally and completely resolve 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 the Office of Hawaiian Affairs between November 7, 29788 and July 1, 2008, and
2. Fix prospectively the minimum amount of income and proceeds from the lands of the public land trust at \$15, 200,000 each fiscal year.

BIA-Hawaii acknowledges the perseverance of both the Office of Hawaiian Affairs and the State Administration in reaching this agreement. BIA-Hawaii requests passage of this bill in order to fund the settlement.

Thank you for the opportunity to share our strong support for SB 2733 with you.

*Karen I. Nakamura*



# Filipino American Citizens League

Jake Manegdeg, President  
P. O. Box 270126 \* Honolulu, Hawai'i 96827

## **In Support of SB 2733**

RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT.

Senate Committee on Agriculture and Hawaiian Affairs

Senate Committee on Water and Land

Senate Committee on Judiciary and Labor

Date: Feb. 9, 2008

Time: 10:00 am

Place: Hawai'i State Capitol Auditorium.

To: Senate Committee on Agriculture and Hawaiian Affairs  
Hon. Jill Tokuda, Chair; Hon. Kalani English, Vice Chair, and Hon. Committee Members  
Senate Committee on Water and Land  
Hon. Clayton Hee, Chair, Hon. Russell Kokubun, Vice Chair, and Hon. Committee Members  
Senate Committee on Judiciary and Labor  
Hon. Brian Taniguchi, Chair, Hon. Clayton Hee, Vice Chair, Hon. Committee Members

From: Jake Manegdeg  
President, Filipino American Citizens League

My name is Jake Manegdeg. As president of the Filipino American Citizens League, I am proud to provide strong support of SB 2733. The Filipino American Citizens League was formed over ten years ago to contribute to the advancement of civil rights and social justice for minority groups, underserved populations, and vulnerable communities through education, advocacy, and social action.

We believe that this measure best resolves the historical claims and disputes at hand, and serves the best interest of all of Hawai'i's people. Thank you for the opportunity to provide this testimony. Please support the enactment of this very important bill.

Sincerely,

Jake Manegdeg

President, Filipino Coalition For Solidarity

**Senate Committees:**

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

**Testimony Opposing SB 2733: Relating to Public Land Trust Settlement**

**February 89, 2008, 10:00 a.m.**  
**Conference Room : Auditorium**

Aloha Chairs Tokuda, English, Hee, Kokubun, Taniguchi and Members of the Committees:

My name is Edward Gomes and I am testifying in strong opposition to SB 2733, which seeks a settlement regarding the Public Land Trust and OHA. I greatly appreciate the foresight of our Legislative body to bring this bill forward for testimony and dialog. I am presenting this testimony because OHA did not ask for nor grant beneficiary input into the settlement negotiation. This bill does not meet the criteria of prudent fiscal responsibility by negotiating bodies and up till now, has not been transparent and open to public dialog.

In looking over this bill, I could not identify a clear path as to why such urgency was placed on the settlement, and why these specific remedies were identified by the Governor and OHA. Stated goals and objectives for the intended use of these properties and how compensation was formulated and assessed values for these properties were never clearly outlined by the governor's office or OHA.

Kalaeloa

OHA stated that the Kalaeloa property has the promise to be used for solar energy production, due the location within a area of highest solar energy potential.

In researching the recent environmental documents pertaining to Kalaeloa, The Department of Health has incident report numbers that document more than 200 releases(air, ground and water issues) above reportable quantities of hazardous chemicals that have a direct and indirect impact on the Olai Street property. (TMK: (1)-9-1-31:1). The majority of these releases involve Hydrogen sulfide and nitrogen sulfide which are acid gases. My point is that acid gases when

exposed to moisture produce highly acidic compounds which have negative effects on electrical components.

Also noted in recent historical research is that the Olai property is used for a slaughterhouse operation and is still listed as such under the Department of Agriculture. This operation was funded by state monies to aid Hawaii's meat industry, although recent costs have shifted the majority of livestock processing to mainland facilities. The slaughterhouse operation has only one employee listed under CLEAN. CLEAN (Campbell Local Emergency Action Network) is the coordination entity for emergency response and evacuation notification to businesses and communities within the area and as of 2007, still lists the slaughterhouse at Olai Street. Noted is that the joint press release reported that the property is vacant.

I would impress upon the legislature to answer these concerns:

- How was the proposed idea conceived by OHA that a solar energy generation facility in such close proximity and most times downwind to industrial processes be an effective way to expend trust assets.
- Why a phase one and phase two environmental study has not been addressed or mandated. A loan through most banking sources would have immediately triggered an environmental study of this property, knowing the location, history and proximity within the industrial complex.
- An explanation on how the land value was formulated. Comparable properties within the complex have lower and in some cases significantly lower property values. These values are reflected in the county tax assessment records and realty reports for comparative parcels in the area. How did the OLAI property get such an inflated value.
- What is the status of Hawaii Livestock Cooperative on Olai Street and how is this entity affected by the bill.

### Kakaako

The Kakaako properties referred to in the settlement bill by OHA, historically has been identified with environmental contamination issues that have not been addressed. As part of a former landfill, commercial shipyard used in manufacturing overhaul, maintenance and maritime refueling depot, the parcels have never had adequate characterization of residual ground contaminants.

IN 2006, the Legislature passed House Bill 2555 CD1, which prohibits Hawaii Community Development Authority (HCDA) from selling land in the Kakaako community development district. In addition, this bill prevents HCDA from approving any residential development makai of Ala Moana Boulevard. The bill addresses the underlying concern that public land of unique value like the Kaka'ako waterfront should not be sold, but developed for the benefit of future generations.

The HCDA has formed an advisory committee that would allow greater public input into the future development of the parcel, which is a step in the right direction. We all need to come together and agree on a plan that will benefit our children, and our children's children.

I would impress upon the legislature to answer these concerns:

- Why does the settlement bill specifically state that OHA would be exempt from the stipulations of state bill 2555.
- Why has a phase one and phase two environmental study not been addressed and mandated.

### Hilo Bay

I have chosen not to address Hilo Bay out of respect for the constituents on Hawaii Island and hope that they be given the opportunity to provide testimony at there locale.

In summary, has the governor tried to effect a political solution and bailout for the current administration by negotiating these properties, especially at an overvalued amount. Why has the administration negotiated these properties without due diligence and at the same time attempt to indemnify themselves from responsibility of any residual land issues.

In Hawai`i, land and water is a public trust resource in which all citizens have an interest. Our State Constitution was carefully crafted to strike a balance between the protection and beneficial use of our resources. Please respect the Public Trust doctrine as articulated in our State constitution and Hawaii Revised Statutes, kill SB 2733.

Thank you for this opportunity to testify.

O wau iho no,  
Edward J. Gomes Jr.  
(808) 295 1483

[Egomes01@gmail.com](mailto:Egomes01@gmail.com)

To: 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: Saturday, February 9, 2008

Time: 10:00 AM

Location: Auditorium, State Capitol

Subject: TESTIMONY IN SUPPORT OF SB 2733, RELATING TO THE  
PUBLIC TRUST LANDS SETTLEMENT

Aloha Chairs Tokuda, Hee and Taniguchi and Vice Chairs English, Kokubun and Hee, and committee members. Pauline Worsham Marketing is pleased to voice its support of SB 2733, RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT.

In 1978, The Hawaii State Legislature recognized its obligation to the indigenous people of Hawaii by establishing The Office of Hawaiian Affairs. For 30 years, OHA has been serving the needs of Native Hawaiians throughout our state.

During this time, OHA has used its resources to address some of the most critical problems facing Native Hawaiians today --- health care, education, economic development and workforce training, housing, protecting and preserving our precious legacy lands, and more.

While it may not satisfy all, this bill is a good faith effort in arriving at a settlement aimed at resolving disputed revenues due to OHA and its constituents from income and proceeds of the public land trust from November 11, 1978 to July 1, 2008. I stand in support of SB 2733.

Mahalo a nui loa for your support,

Pauline Worsham  
President, Pauline Worsham Marketing

LEGISLATIVE TESTIMONY IN SUPPORT OF  
SB 2733 RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT

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

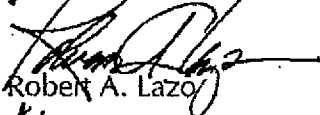
Saturday, February 9, 2008  
10:00 am  
State Capitol-Auditorium

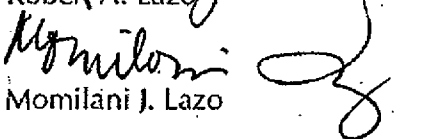
Aloha Chairperson Tokuda, Chairman Taniguchi and Chairman Hee, and members of the joint committees. My name is Momilani Lazo along with my husband Robert A. Lazo. As concerned parents of Hawaiian children we both ask for your support of SB 2733 for the following reasons:

1. This Settlement will finally address the issue of revenues owed to OHA during the period of November 1978 through July 2008, a thirty year period of inconsistent funding, and unknowing support from the legislature.
2. This Settlement will continually allow OHA to meet its mission of bettering the conditions of Native Hawaiians by providing a steady stream of income to the agency.
3. And although this Settlement does not address all historical wrongs it shows that the state is finally willing to meet its own requirements as written in statute, and in session laws.

For these reasons and in hopes of a great future for our children we support SB 2733.

Mahalo for your time and support.

  
Robert A. Lazo

  
Momilani J. Lazo

TESTIMONY TO THE COMMITTEE ON AGRICULTURE AND HAWAIIAN  
AFFAIRS, COMMITTEE ON WATER AND LAND AND COMMITTEE ON  
JUDICIARY AND LABOR  
REGARDING  
**SUPPORT FOR SB 2733, REGARDING THE PUBLIC TRUST LANDS  
SETTLEMENT**

Saturday, February 9, 2008  
10:00 a.m., Auditorium

Chairpersons Tokuda, Hee, Taniguchi and Members of the Committees on Agriculture and Hawaiian Affairs, Water and Land, and Judiciary and Labor

My name is Jon Matsuoka. I am the dean at the University of Hawai`i, School of Social Work. The School has worked closely with the Office of Hawaiian Affairs on multiple projects over the course of several years.

I am writing in support of Senate Bill 2733 relating to the Public Trust Lands Settlement. The primary entity representing Native Hawaiians, the Office of Hawaiian Affairs, who has the statutory right and is entitled to the income and proceeds from public trust lands in the amount of \$15,100,000. The State of Hawai`i has affirmed that these lands are historically and rightfully those of a receptacle agency representing the Native Hawaiian populace and should be used for reparations.

The revenues generated from the land trust are critical to the betterment of conditions through the implementation and sustainability of programs aimed at addressing social problems afflicting Hawaiian communities. Having been a consultant to OHA in developing a paradigm aimed at improving the quality of life of citizens of Hawaiian ancestry, I am convinced of OHA's commitment to such a cause and the methods and practices they are currently employing to achieve their objectives. We at the University of Hawai`i, School of Social Work, are currently conducting program evaluations of OHA funded projects. Thus, it is clear that they are mindful of how monies are being spent, matters of quality assurance and cost effectiveness, the promotion of best practices, and the overall benefits of programs to improving the social and mental health statuses of Native Hawaiians.

In summary, revenues drawn from public trust lands are essential to reparatory activities for Native Hawaiians. Historical events and current statuses of Native Hawaiians warrant the continuation of funds to support critically needed social service programs receiving OHA support.

# **In Support of SB 2733**

## **RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT.**

Senate Committee on Agriculture and Hawaiian Affairs

Senate Committee on Water and Land

Senate Committee on Judiciary and Labor

Date: Feb. 9, 2008

Time: 10:00 am

Place: Hawai'i State Capitol Auditorium.

To: Senate Committee on Agriculture and Hawaiian Affairs  
Hon. Jill Tokuda, Chair; Hon. Kalani English, Vice Chair, and  
Hon. Committee Members

Senate Committee on Water and Land  
Hon. Clayton Hee, Chair, Hon. Russell Kokubun, Vice Chair, and  
Hon. Committee Members

Senate Committee on Judiciary and Labor  
Hon. Brian Taniguchi, Chair, Hon. Clayton Hee, Vice Chair, and  
Hon. Committee Members

From: Amy Agbayani, Private Citizen  
3432 BI Kalihi Street  
Honolulu, Hawai'i 96819

My name is Amy Agbayani. As a private citizen, I am in full support of the measures to rectify the longstanding Native Hawaiian land disputes and claims as outlined in SB 2733.

I appreciate this opportunity to support the years of preparation, study, and dialog that the Office of Hawaiian Affairs facilitated in good faith with all stakeholders. Thank you for hearing this landmark bill. Please vote yes.

All my best,

Amy Agbayani



## A Work of Heart

Charlene Cuaresma, MPH Sole Proprietor · 728 Nunu Street · Kailua, Hawai'i 96734 · Phone/Fax: 254-4522  
Email: ccuaresma@hawaiiantel.net

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## In Support of SB 2733

RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT.

Senate Committee on Agriculture and Hawaiian Affairs

Senate Committee on Water and Land

Senate Committee on Judiciary and Labor

Date: Feb. 9, 2008

Time: 10:00 am

Place: Hawai'i State Capitol Auditorium.

To:

Senate Committee on Agriculture and Hawaiian Affairs

Hon. Jill Tokuda, Chair; Hon. Kalani English, Vice Chair, and

Hon. Committee Members

Senate Committee on Water and Land

Hon. Clayton Hee, Chair, Hon. Russell Kokubun, Vice Chair, and

Hon. Committee Members

Senate Committee on Judiciary and Labor

Hon. Brian Taniguchi, Chair, Hon. Clayton Hee, Vice Chair, and

Hon. Committee Members

From:

Charlene Cuaresma, Private Citizen

My name is Charlene Cuaresma. I serve as president of the Filipino Coalition for Solidarity and secretary of the National Federation of Filipino American Associations. As a private citizen, I support SB 2733 and the provisions as stated in order to resolve the historical Native Hawaiian land disputes and claims.

Thank you for this opportunity to voice my support and confidence in the Office of Hawaiian Affairs to be good stewards of the land for all of Hawai'i's people, starting with Native Hawaiians.

Respectfully,

Charlene Cuaresma

## In Support of SB 2733

RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT.

Senate Committee on Agriculture and Hawaiian Affairs

Senate Committee on Water and Land

Senate Committee on Judiciary and Labor

Date: Feb. 9, 2008

Time: 10:00 am

Place: Hawai'i State Capitol Auditorium.

To: Senate Committee on Agriculture and Hawaiian Affairs  
Hon. Jill Tokuda, Chair; Hon. Kalani English, Vice Chair, and Hon.  
Committee Members

Senate Committee on Water and Land  
Hon. Clayton Hee, Chair, Hon. Russell Kokubun, Vice Chair, and Hon.  
Committee Members

Senate Committee on Judiciary and Labor  
Hon. Brian Taniguchi, Chair, Hon. Clayton Hee, Vice Chair, Hon.  
Committee Members

From: Helena Manzano  
2521 Puunui Avenue  
Honolulu, HI 96817

Dear Chairs, Vice Chairs, and Members of the Senate Committee on Agriculture and Hawaiian Affairs, Senate Committee on Water and Land, and Senate Committee on Judiciary and Labor:

My name is Helena Manzano. I am a social worker in domestic violence. As a concerned citizen, I am submitting my strong support of SB 2733. I believe that Native Hawaiians have a historical and legal right to bring resolution to the land disputes and claims under consideration in this bill. Social justice is long overdue.

Thank you for the opportunity to provide this written testimony. Your consideration to vote in favor of the provisions worked out in this bill is greatly appreciated.

Respectfully submitted,

Helena Manzano, Concerned Citizen