

SETTLEMENT AGREEMENT

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

THE PARTIES TO THIS AGREEMENT HEREBY AGREE AS FOLLOWS:

Proposed Legislation

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

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

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

Effective Date

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

Claims Against the STATE

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

Waiver of Claims Against the STATE

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

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

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

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

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

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

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

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

Settlement Payment

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

Environmental Due Diligence

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

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

If, with regard to any of the three properties, each of these conditions is satisfied: 1) Environmental contamination on the property is discovered; 2) The environmental contamination reduces the fair market value of the property¹ by more than 25% (i.e., the fair market value of the property taking into account the environmental contamination is more than 25% less than what the fair market value of the property would have been had the environmental contamination not been present) (the total such reduction in the fair market value is the "reduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mediation

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

No Arbitration

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

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

Title Insurance

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

Proration

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

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

Other Terms

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

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

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

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

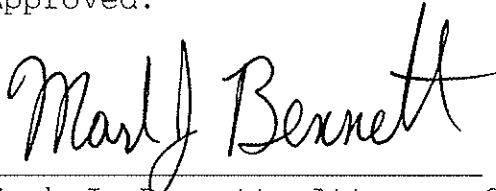
on the part of each party hereto. The Parties also represent and agree: (1) that they may hereafter discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of these releases; and (2) that this Agreement and the releases given in this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

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



Linda Lingle, Governor
State of Hawai'i

Approved:

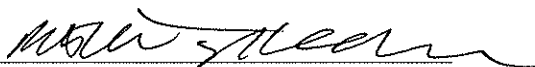


Mark J. Bennett, Attorney General



S. Haunani Apoliona, Chairperson
Office of Hawaiian Affairs

Approved:



Robert G. Klein, Counsel to the Board of Trustees

____.B. NO.____

A BILL FOR AN ACT

RELATING TO THE PUBLIC TRUST LANDS SETTLEMENT.

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

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

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

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

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

____.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

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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

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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,

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

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

____.B. NO. _____

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

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

5 (1) Which were ceded to the United States by the Republic
6 of Hawaii under the joint resolution of annexation,
7 approved July 7, 1898 (30 Stat. 750), or acquired in
8 exchange for lands so ceded, and which were conveyed
9 to the State of Hawaii by section 5(b) of the
10 Admission Act (excluding lands defined as "available
11 lands" by section 203 of the Hawaiian Homes Commission
12 Act, 1920, as amended);

13 (2) Retained by the United States under sections 5(c) and
14 5(d) of the Admission Act, and later conveyed to the
15 State under section 5(e) of the Admission Act; and

16 (3) Which were ceded to and retained by the United States
17 under sections 5(c) and 5(d) of the Admission Act and
18 later conveyed to the State pursuant to Pub. L. 88-233
19 (77 Stat. 472)."

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

____.B. NO. _____

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

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

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

4 (2) The betterment of conditions of Hawaiians;

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

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

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

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

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

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

____.B. NO. _____

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

____.B. NO. _____

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

_____.B. NO. _____

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

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

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

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

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

_____.B. NO. _____

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

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

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

_____.B. NO. _____

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

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

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

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

17 (c) The Hawaii community development authority shall:

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

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

____.B. NO. _____

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

____.B. NO. _____

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

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

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

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

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

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

____.B. NO. ____

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

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

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

____.B. NO. ____

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

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

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

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

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

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

22 Hilo Hawaiian Hotel (TMK: (3)-2-1-3:5); Naniloa Hotel &

____.B. NO. _____

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

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

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

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

____.B. NO. _____

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

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

____.B. NO. ____

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

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

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

____.B. NO. ____

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

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

_____.B. NO. _____

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

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

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

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

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

____.B. NO. _____

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

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

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

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

_____.B. NO. _____

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

____.B. NO. _____

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

____.B. NO. _____

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

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

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

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

16 INTRODUCED BY: _____

17

EXHIBIT B - SETTLEMENT PROPERTIES

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