MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES

DATE:	THURSDAY, MARCH 23, 2006
TIME:	4:00 P.M.
PLACE:	KALANIMOKU BUILDING LAND BOARD CONFERENCE ROOM 132 1151 PUNCHBOWL STREET HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 4:45 p.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Ted Yamamura
Mr. Ron Agor
Mr. Tim Johns
Mr. Gerald DeMello
Ms. Taryn Schuman

STAFF

Mr. Russell Tsuji, Land
Juliet Kazanjian, Fiscal

OTHERS

Mr. Colin Lau, Deputy Attorney General
Mr. William Wynhoff, Deputy Attorney General
Ms. Haunani Apoliona
Mr. Ernie Kimoto
Mr. Clyde Namuo

Briefing on ceded land issues conducted by Haunani Apoliona and Clyde Naumuo of the Office of Hawaiian Affairs.

Clyde Namuo representing the Office of Hawaiian Affairs (OHA) started off the briefing by showing a video presentation that talked about the western and Hawaiians view of land ownership. The Hawaiian system was viewed that the alii held the lands in trust for the gods and for the benefit of the people. The western system in contrast was oriented to specific people owned specific parcels of land. The western concept was that land was meant to be bought and sold and possessed. This difference in opinion provided turmoil for the people. In 1848 process called the Mahele took place – a sharing/division of land

that would lead to fee simple ownership. These lands today are known as the ceded lands. Later the Organic Act was adopted which recognizes that Hawaiian ceded lands were special. I stated the territorial government had the authority to manage the land but they also had a special duty – the income and proceeds generated by the lands will be used for the benefit of the inhabitants of Hawaii, primarily for education. Under the newly created state of Hawaii the Admission Act (5f) was signed which defines how the ceded lands were to be governed.

Mr. Namuo continued the presentation by discussing Section 5(f) of the Admission Act. Under section 5(f) of the Admission Act it states that these lands which were ceded from the government to the provisional to the territory to the State would become a public trust. Mr. Namuo noted the Admission's Act does not establish the trust itself it just states that a trust must be establish if Hawaii becomes a state. In 1978 the State held a constitutional convention and created article twelve which provided constitutional rights to Native Hawaiians to create a public trust. In Section Six, Article Twelve it stated "the board of trustees of the Office of Hawaiian Affairs shall exercise power as provided by law: to manage and administer the proceeds from the sale or other disposition of the lands, natural resources, minerals and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in §4 of this article for native Hawaiians." A representative from OHA made it known their office is currently being sued for providing benefits to people with less than fifty percent (50%) Hawaiian. These individuals suing OHA believe the law does not allow OHA to provide for individuals with less than 50 % Hawaiian. OHA on the other hand believes that Article 12, Section 6 of the Constitution clearly states that the benefits they provide are to Hawaiians and native Hawaiians. There position is the Admission's Act simple said you will have a public land trust and the State constitution defines it further by saying the proceeds from the lands will be used for Hawaiians and native Hawaiians. Mr. Namuo believes there is some misunderstanding in the community with regards to the interpretation on this section. Mr. Namuo discussed the purpose of OHA which is the betterment of conditions of native Hawaiians. He went on to discuss HRS §171-18 and spoke of the difference between the Public Land Trust and the Department of Land and Natural Resources (DLNR) Land Trust. At present the size of the Public Land Trust is estimated to be approaching two million acres but according to a consultant hired by the State Auditor that total amount may be between 1.2 and 1.4 million acres.

Haunani Apoliona, a Trustee with OHA continued the presentation by communicating on September 7, 1983 OHA filed a Complaint for Declaratory and Injunctive Relief against The Chairman of the Board of Land and Natural Resources (BLNR). On March 8, 1984 the trustees at OHA filed a second complaint for Declaratory and Injunctive Relief. Once again nothing happened. In 1987, the court consolidated 1983 and 1984 cases and the Hawaii Supreme Court ruled there are no "judicially discoverable and manageable standards" and that what OHA is entitled to must be clarified by the Legislature. In 1990 the governor's office and OHA began negotiations of clarify OHA's revenue entitlement. In January 1990 Act 304 appeared to resolve three main issues: 1) What lands were subject to the trust; 2) The type of revenue from which OHA should receive a share; and

3) The formula for deriving past and future income to OHA. The Act also mandated that the State negotiate with OHA to determine the amounts due to OHA for use of ceded lands from 1980 through 1991. In 1993 Act 35 enabled a partial settlement agreement in the amount of approximately 135 million and stated how the State would come up with the money. In 1994 OHA sued the State on the unresolved issues and in 1996 Judge Heely rules in favor of OHA's motion. In April 1998 the Supreme Court heard the dispute and urged both sides to negotiate and reach an out of court settlement.

Mr. Namuo took over the presentation and continued with the events that have transpired. In 1997, the Legislature enacted Act 329 which suspended the revenue stream and instead substituted $15.1 million for two fiscal years 1997-1998 and 1998-1999. It also established an eight member committee to study and make recommendation on "all outstanding and anticipated issues . . . currently or potentially relating to the public land trust." Also in 1997 Congress enacted the Forgiveness Act which excused $28.2 million in payments the state made from the airport to fund OHA as public land trust revenue. Along with the mandate clear instruction were given from Congress that airport related money should not be used to pay ceded lands claim. The Forgiveness Act also stated that nothing in its terms should be construed to affect trust obligations or state statutes defining their obligations to native Hawaiians. Two years later in April 1999 negotiations between OHA and the State were held at which time the State offered a settlement which included cash and lands but required an amendment to Article 12, Section 6 as well as portions of Chapter 10 which governs the entitlements of OHA, and also a repeal of OHA's constitutional and statutory entitlements to further Public Land Trust revenues. Following attempts to arrive at a settlement in 2000 there were two landmark cases Rice vs. Cayetano which stuck down the state's Hawaiians only requirement to vote in the OHA election and OHA v. State of Hawaii which challenged the existence of OHA. On September 12, 2001 the Hawaii Supreme Court decided that Judge Heely's decision was in essence correct but the Court found conflict between the Federal Forgiveness Act and Act 304. As a result of the Supreme Court's decision, the State stopped all Public Land Trust revenue payments to OHA. On February 11, 2003 soon after taking office, Governor Linda Lingle issued an Executive Order restoring public land trust revenue payments to OHA as well as back pay to July 2001. Moving forward to present day, Mr. Namuo acknowledged there are currently two lawsuits filed by OHA relating to ceded lands that are pending in the Hawaii Supreme Court.

Ms. Apoliona came forward to speak of how we can improve our working relationship between DLNR and OHA. Ms. Apoliona made six recommendations: 1) An ex officio seat on the BLNR designated and named by OHA would expedite communication between the Boards; 2) Make consultation with OHA with respect to management and disposition of Public Land Trust assets a matter of routine; 3) Ensure that lands traded for Public Lands Trust lands retain trust land character as required by law; 4) Ensure that Public Lands Trust lands set aside by Executive Order retain trust land character as required by law; 5) Assist OHA in its mission to preserve the history, cultural significance and traditional Hawaiian practices on the lands in the Public Land Trust; 6) Ensure that administrators and staff directly involved in managing, maintaining and leasing Public Land Trust Lands, receive orientation and training in Hawaiian traditional

practices, culture and language, as appropriate. On going consultation with Hawaiian experts should be made readily accessible to the DLNR administrators and staff.

There being no further business, Chairperson Young adjourned the meeting at 6:00 p.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

Terry Crowell

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Approved for submittal:

PETER T. YOUNG
Chairperson
Department of Land and Natural Resources