June 7, 2006

The Honorable Robert Bunda, President
and Members of the Senate
Twenty-Third State Legislature
State Capitol, Room 003
Honolulu, Hawaii 96813

Dear Mr. President and Members of the Senate:

This is to inform you that on June 7, 2006, the following bill was signed into law:

SB2948 SD1 HD2 CD1 A BILL FOR AN ACT RELATING TO THE PUBLIC LAND TRUST. (ACT 178)

Sincerely,

GEORGINA K. KAWAMURA
Acting Governor
A BILL FOR AN ACT

RELATING TO THE PUBLIC LAND TRUST.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAI'I:

1 SECTION 1. In Trustees of the Office of Hawaiian Affairs
2 v. Yamasaki, 69 Haw. 154, 737 P.2d 446 (1987), the Hawaii
3 supreme court concluded that the issue of what constitutes the
4 office of Hawaiian affairs' pro rata portion of all the revenues
5 derived from the public land trust pursuant to article XII,
6 section 6 of the Hawaii Constitution, is a political question
7 for the legislature to determine. In Yamasaki, the office of
8 Hawaiian affairs sought a pro rata portion of revenues arising
9 out of the illegal mining of sand on Molokai and sales, leases,
10 and other disposition of lands surrounding state harbors, and
11 lands on Sand Island, the Honolulu International Airport, and
12 the Aloha Tower complex. The supreme court declined to rule
13 upon the substance of the case because it presented issues "of a
14 peculiarly political nature and therefore not meet for judicial
15 determination." Id., at 175, 737 P.2d at 459.
16
17 In response to the Yamasaki decision, the legislature
18 enacted Act 304, Session Laws of Hawaii 1990 (Act 304), to
19 clarify the extent and scope of the State's constitutional
obligation to provide a portion of the revenues derived from the
public land trust to the office of Hawaiian affairs.

On September 12, 2001, the Hawaii supreme court ruled in
Office of Hawaiian Affairs v. State of Hawai‘i, 96 Haw. 388, 31
P.3d 901 (2001), that Act 304 was effectively repealed by its
own terms, so that once again, it was necessary for the
legislature to specify what portion of which receipts, from
which lands the office of Hawaiian affairs was to receive a
portion of the revenues under the state constitution. In its
decision, the supreme court affirmed Yamasaki, observing:

[T]he State's obligation to native Hawaiians is
firmly established in our constitution. How the
State satisfies that constitutional obligation
requires policy decisions that are primarily within
the authority and expertise of the legislative
branch. As such, it is incumbent upon the
legislature to enact legislation that gives effect
to the right of native Hawaiians to benefit from the
Although this court cannot and will not judicially
legislate a means to give effect to the
constitutional rights of native Hawaiians, we will
not hesitate to declare unconstitutional those enactments that do not comport with the mandates of the constitution. At this juncture, we believe it fitting to quote then-state Senator Neil Abercrombie's prophetic statement to the legislature at the time HRS §10-13.5 was first enacted:

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

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

Now, more than twenty years later, as we continue to struggle with giving effect to that enactment, we trust that the legislature will re-examine the State's constitutional obligation to native Hawaiians and the purpose of HRS § 10-13.5 and
enact legislation that most effectively and
responsibly meets those obligations. (Office of
Hawaiian Affairs v. State of Hawai‘i, 96 Haw. at 401,
31 P.3d at 914 (citations omitted; emphasis in
original)).

The legislature acknowledges that the State's obligation to
native Hawaiians is firmly established in the state
constitution. (See Haw. Const. art. XII.) While many complex
issues require the legislature's further attention and
consideration in the wake of the repeal of Act 304, the
legislature finds, in furtherance of the decision in Yamasaki,
that immediate action should be taken to clearly designate the
pro rata share of revenues derived from the public land trust
that the office of Hawaiian affairs is to receive annually.

The legislature also finds that information pertaining to
revenue generated by the public land trust should be
consolidated within a single state department or agency. In
prior years, it has been difficult to account for revenues
generated by the public land trust because basic revenue-
generating data was and is dispersed among multiple state
agencies. A single state department should be responsible for
compiling and providing an accounting of such information.
Accordingly, the specific purposes of this Act are to:

(1) Provide interim measures to ensure that an adequate amount of income and proceeds is made available to the office of Hawaiian affairs from the pro rata portion of the public land trust, for the betterment of the conditions of native Hawaiians; and

(2) Identify revenue-generating public trust lands and the amounts derived from those lands by requiring that the department of land and natural resources provide an annual accounting to the legislature.

SECTION 2. Notwithstanding the provisions of chapter 10, Hawaii Revised Statutes, including section 10-13.5, Hawaii Revised Statutes, and until further action is taken by the legislature for this purpose, 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 fiscal year beginning with fiscal year 2005-2006 shall be $15,100,000.

SECTION 3. Notwithstanding the provisions of chapter 10, Hawaii Revised Statutes, or the requirements of Executive Order No. 03-03, beginning in fiscal year 2005-2006, the departments
of agriculture, accounting and general services, business, economic development, and tourism, education, land and natural resources, and transportation (for its harbors division), and any other department or agency that collects receipts from the lands within the public land trust, shall determine and transfer to the office of Hawaiian affairs that portion of their receipts from the use of lands within the public land trust collected during each fiscal quarter, necessary to ensure that a total of $3,775,000 of revenues generated by the public land trust is transferred to the office of Hawaiian affairs, within thirty days of the close of each fiscal quarter; provided that for fiscal year 2005-2006, the departments shall have until thirty days after the close of the fiscal year to transfer a total of $15,100,000 from their receipts from the use of lands within the public land trust collected during fiscal year 2005-2006, to the office of Hawaiian affairs whether by the procedures set out in Executive Order No. 03-03 or this Act.

The governor is expressly authorized to fix the amounts each agency shall transfer to the office of Hawaiian affairs in each quarter by executive order to implement the provisions of this section.
SECTION 4. There is appropriated out of the general
revenues of the State of Hawaii the sum of $17,500,000 or so
much thereof as may be necessary for fiscal year 2005-2006 to
pay to the office of Hawaiian affairs amounts received from the
use of lands in the public land trust that the legislature has
determined were underpaid between July 1, 2001, through June 30,
2005. The sum appropriated shall be expended by the department
of budget and finance.

SECTION 5. Not later than January 1 of each year, the
department of land and natural resources, with the cooperation
of the department of budget and finance and any other state
department or agency that uses or manages public lands, shall
provide an accounting of all receipts from lands described in
section 5(f) of the Admission Act for the prior fiscal year.
With respect to each receipt, the department of land and natural
resources shall identify:

(1) The total gross amount;

(2) The amount transferred to the office of Hawaiian
    affairs;

(3) The amount retained by the State;

(4) The account or fund in which the amount specified in
    paragraph (3) was transferred or deposited;
(5) The parcel of land subject to section 5(f) of the Admission Act that generated the receipt, whether by tax map key number, department of land and natural resources inventory number, or other recognizable description; and

(6) The state department or agency that received the total gross amount identified in paragraph (1).

The accounting shall also indicate whether any parcel of land described in section 5(f) of the Admission Act was sold or exchanged in the prior fiscal year and, if so, the amount of consideration that the State received for the respective parcels.

The office of Hawaiian affairs shall be consulted by the department of land and natural resources in determining the method in which the accounting shall be conducted.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of $250,000 or so much thereof as may be necessary for fiscal year 2006-2007 to carry out the purpose of section 5.

The sum appropriated shall be expended by the department of land and natural resources. Should any additional funds be necessary to carry out the purpose of section 5 after the
The department of land and natural resources has expended the
$250,000 appropriated out of the general revenues of the State
of Hawaii, the office of Hawaiian affairs shall provide the
additional funds up to $250,000.

SECTION 7. Nothing in this Act shall resolve or settle, or
be deemed to acknowledge the existence of, the claims of native
Hawaiians to the income and proceeds of a pro rata portion of
the public land trust under article XII, section 6, of the state
constitution.

SECTION 8. This Act shall take effect upon its approval.

[Signature]

GOVERNOR OF THE STATE OF HAWAII

Approved this day: June 7, 2006
THE SENATE OF THE STATE OF HAWAII

Date: May 2, 2006
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2006.

[Signature]
President of the Senate

[Signature]
Clerk of the Senate

THE HOUSE OF REPRESENTATIVES
OF THE STATE OF HAWAII

Date: May 2, 2006
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the House of Representatives of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2006.

[Signature]
Speaker, House of Representatives

[Signature]
Clerk, House of Representatives