

Legal Mandate for the Public Land Trust Land Inventory: Act 125 (2000) & ACT 54 (2011)

Fulfilling the State's Mandate Under Act 125 (2000): A Legal, Fiscal, and Moral Imperative

Introduction:

The State of Hawai'i has a constitutional obligation, affirmed in Article XII, Section 6, to manage the Public Land Trust (PLT) in a manner that upholds the rights of Native Hawaiians. For more than four decades, the Office of Hawaiian Affairs (OHA) has been charged with receiving a pro rata share of revenues from these lands "for the betterment of conditions of Native Hawaiians." However, the State's persistent failure to complete a comprehensive inventory of PLT lands, as required under Act 125 (2000), has perpetuated systemic ambiguity, misaccounting, and injustice.

1. Act 125 (200) and Act 54 (2011) Is Not Aspirational - It's Binding Law

Act 125 (SLH 2000) explicitly reaffirmed and transferred the statutory requirement from Act 304 (1990) for the State to complete a comprehensive inventory of Hawaiian Kingdom Crown and Government Lands in the Public Land Trust. It designated the Office of the State Auditor as the agency responsible for carrying out this task. More than two decades later, despite intermittent reports, the land inventory remains incomplete. This is not a policy suggestion, it is an unfulfilled legal mandate.

Pursuant to Act 125 (SLH 2000), the Auditor selected R.M. Towill Corporation to develop a proposal to complete the inventory and give an estimate of the inventory's cost. Among other things, Towill recommended "[t]o ensure that ceded lands are properly identified, title searches back to the Great Mahele are needed." Towill recommended relying on state agencies such as the DLNR for assistance, a GIS system, as the most effective and estimated a cost approximately \$18.5 to \$19.1 million. (See, Establishment of a Public Land Trust Information System, Phase One, A Report to the Governor and the Legislature of the State of Hawai'i Prepared by: R. M. Towill Corporation, March 2021, attached hereto). Towill's recommendations were not followed.

Act 54 (SLH 2011) has the exact same language as Act 125 (SLH 2000) relating to purpose. "The purpose of the Act is to facilitate and maintain information about the lands of the public land trust described in section 5(f) of the Admission Act and article XII, section 4 of the Hawaii State Constitution."

Act 54 has additional language to mandate what is to be accomplished. Section 2(b) "The information system shall consist of a **complete and accurate inventory of all lands in the public land trust** to which agencies hold title or over which they maintain management control."

2. A Land Inventory Is a Precondition for Fairness and Accountability

OHA is entitled to 20% of all revenue generated from the PLT, a figure that cannot be accurately determined without knowing which lands are in the trust, how they are classified, used, and monetized. Without an inventory:

- The annual payments to OHA are arbitrary, not data-driven.
- There is no transparency or accountability for how PLT lands are leased, licensed, or used by state agencies.
- Native Hawaiian beneficiaries are systematically underpaid and underserved.

3. Billions at Stake: For Both the State and Native Hawaiians

The PLT comprises approximately 1.8 million acres of former Hawaiian Kingdom Crown and Government lands. Revenues generated from these lands likely exceed \$100 million annually. Yet OHA has been capped at \$15.1M and now \$21.5M annually, without justification grounded in actual revenue or land data. A complete land inventory would allow the State to:

- Regularize accounting of trust income.
- Avoid future litigation and liability exposure.
- Ensure compliance with its fiduciary duties under state and federal law.

4. Failure to Act Is a Breach of Public Trust and Kuleana

The PLT was established under Section 5(f) of the Admission Act (1959), with Native Hawaiians named explicitly as one of the five beneficiary groups. The State has an ongoing fiduciary duty to manage these lands with utmost loyalty, transparency, and diligence. Failing to complete the inventory is a dereliction of kuleana and constitutes structural negligence. It undermines the public's trust in the State's capacity to steward Hawaiian lands fairly and lawfully.

5. A Path to Reconciliation and Good Governance

Completing the PLT inventory is a first and necessary step toward repairing generations of broken promises. It opens the door to meaningful policy reform, more equitable resource allocation, and truthful public disclosure.