

EXECUTIVE ORDER NO. 22-04
(Receipts Collected from the Use of Public Land Trust Lands)

WHEREAS, Section 3 of Act 178, 2006 Session Laws of Hawaii, as amended by Act 226, 2022 Session Laws of Hawaii, requires each agency of the State that “collects receipts from the lands within the public land trust” to determine and transfer a portion of those receipts as necessary to ensure that a total of \$5,375,000 is transferred to the Office of Hawaiian Affairs (“OHA”) within thirty days after the close of each fiscal quarter;

WHEREAS, Section 3 of Act 178, as amended, expressly authorizes the Governor to fix by executive order the exact amount each agency is to transfer to OHA on a quarterly basis;

WHEREAS, pending the Legislature's policy determinations regarding how best to give long-term “effect to the right of native Hawaiians to benefit from the [public land] trust,” OHA v. State, 96 Hawai'i 388, 401, 31 P.3d 901, 914 (2001), it continues to be appropriate to rely upon procedures set out by executive order for determining which receipts from the use of public land trust lands are to be transferred to OHA on a quarterly basis, to satisfy the requirements of Section 3 of Act 178, as amended;

WHEREAS, for purposes of this executive order, “public land trust land” is land assigned “Trust Land Status,” or “5(b),” “5(e)” or “Pub. L. 88-233” status on the Department of Land and Natural Resources’ State Land Inventory Listing, or described in the agency’s records as land acquired by the State through Section 5(b) or 5(e) of the Admission Act or Pub. L. 88-233, or in exchange for such a parcel;

NOW, THEREFORE, I, David Y. Ige, Governor of Hawai'i, pursuant to the authority conferred upon me by Section 3 of Act 178, 2006 Session Laws of Hawaii, as amended, direct that the following accounts be established, and the following determinations and procedures

made and implemented, so that the requirements of Section 3 of Act 178, as amended, may be satisfied within thirty days after the close of each fiscal quarter.

1. All departments and agencies that collect receipts for the use of public land trust land shall:

a. Establish trust holding accounts to accumulate OHA's portion of each receipt that would otherwise be deposited into the general fund or a special fund ("OHA trust holding account"), and to accumulate the remainder of each receipt that would otherwise be deposited into the general fund for the rest of the fiscal year ("GFRTHA");

b. Determine if:

(1) Any federal or state law precludes any portion of the receipt from being used to better the conditions of native Hawaiians; or

(2) The transfer of any portion of the receipt will cause the department or agency to renege on or otherwise impact any pre-existing pledge, rate covenant, debt service, or other pre-existing obligation to holders of revenue bonds or other indebtedness of the State, department, or agency;

c. After subtracting the portions of the receipt affected by paragraph 1.b.(1) and 1.b.(2) above,

(1) Determine OHA's share of the remainder of the receipt by calculating the ceded/non-ceded fraction for the parcel that generated the receipt by area (square feet or acres), multiplying the receipt by the ceded/non-ceded fraction, and multiplying that result by 20% or any alternative percentage the Governor specifies,

- (2) Deposit the resulting amount into the appropriate OHA trust holding account established pursuant to paragraph 1.a above to accumulate OHA's portion, and
 - (3) Deposit the remaining portion of the receipt into the GFRTHA if it would otherwise be deposited into the general fund; otherwise, deposit the remaining portion of the receipt into the appropriate special fund, using separate Treasury Deposit Receipt slips (State Accounting Form B-13) for each trust holding account into which receipts are deposited.
- d. If use of a receipt is limited by paragraph 1.b.(1) or 1.b.(2) above, report the receipt as a gross receipt on the electronic spreadsheet developed by the Department of Land and Natural Resources to effect the reporting requirements of Act 178, Session Laws of Hawaii 2006, and deposit the entire amount to the credit of the general fund or special fund as appropriate.
- e. Within ten calendar days of the close of each fiscal quarter,
- (1) Complete, and email and deliver a copy of the "Transmittal Re: Quarterly Transfer of Public Land Trust Receipts to B&F," attached here as Attachment "A," to the Department of Budget and Finance ("B&F"), Attn: Administrator, Budget, Program Planning and Management Division, and to OHA, Attn: Chief Executive Officer, to inform B&F and OHA of the receipts collected, deposited in each of its OHA trust holding accounts, and transferred to B&F; and
 - (2) Transfer entire amount deposited in its OHA trust holding account to B&F by journal voucher using the accounting information and processes described in paragraph 4 below, and transmit a copy of each journal voucher used to transfer the receipts, to the Department of Budget

and Finance with the Transmittal prepared pursuant to paragraph 1.e.(1) above.

2. No later than 30 calendar days after the close of each fiscal quarter, the Director of Finance or the Director's designee, shall transfer \$5,375,000 to OHA from the carry-forward trust holding account maintained by B&F to effectuate Section 3 of Act 178, as amended ("CFTHA").

3. No later than 15 calendar days after the close of each fiscal quarter, each department or agency shall,

a. If notified by the Director of Finance that additional receipts must be transferred to B&F from its special funds to satisfy OHA's quarterly share, reverse earlier deposits of receipts into its special funds in the amounts specified by the Director, and deposit the same into the appropriate OHA trust holding account established pursuant to paragraph 1.a., and

b. Transfer all amounts specified for transfer from its GFRTHAs and its OHA trust holding accounts, to B&F, by journal voucher using the accounting information and processes described in paragraph 4 below.

4. Accounting Information and Process.

a. Use Account No; T-YY-955-0; transaction codes 805 for B&F and 804 for the department or agency;

b. Include the following note under the "Explanation" section of the journal voucher: "to record transfer of funds derived from the public land trust to B&F, pursuant to Executive Order 22-04 and Act 178, 2006 Session Laws of Hawaii, as amended by Act 226, Session Laws of Hawaii 2022."

5. Within 90 days after the close of the fourth fiscal quarter, each department or agency shall deposit any balance remaining in any OHA trust holding account established pursuant to paragraph 1.a. to the credit of the general fund or the special fund into which the receipt would have been deposited if it had not been deposited into the trust holding account.

6. No later than 90 days after the close of each fiscal year, the Director of Finance or the Director's designee shall transfer any balance remaining in the CFTHA in excess of \$21,500,000 to each department or agency that transferred funds from their respective OHA trust holding accounts, in amounts proportionate to each department's or agency's total contributions as determined by the Director of Finance.

Each department or agency shall also maintain a separate file for each fiscal year, of all Treasury Deposit Receipts (State Accounting Form B-13) and all journal vouchers it used to deposit receipts for the use of public land trust land to the separate trust holding accounts established under paragraph 1.a., and to transfer OHA's portion of the same to B&F.

DONE at the State Capitol, this 27th
day of September 2022.



DAVID Y. IGE
Governor of Hawai'i

APPROVED:



Holly T. Shikada
Attorney General
State of Hawai'i

