

**PROGRESS REPORT
ON THE
PUBLIC LAND TRUST**

Act 121, Session Laws of Hawaii 1982

A Report to the Legislature of the State of Hawaii

Submitted by the

Legislative Auditor of the State of Hawaii

**Report No. 83-13
March 1983**

FOREWORD

This is a progress report on our accomplishment of the tasks assigned to our office by Act 121, SLH 1982. It reports on our findings so far of the inventory of the State's public lands and on the legal issues that have emerged from the provisions of the public land trust contained in Section 5(f) of the Admission Act and from the provisions of Chapter 10, HRS, requiring the payment of 20 percent of the trust land proceeds and income to the Office of Hawaiian Affairs. This report also outlines what more needs to be done to complete our assignment under Act 121.

State and county agencies and their staff have been extremely cooperative in our study. We wish to express our sincere appreciation to all of them: the Department of Land and Natural Resources, the Department of Transportation, the Hawaii Housing Authority, the University of Hawaii, the Department of Education, the City and County of Honolulu, the County of Hawaii, the County of Maui, and the County of Kauai. We wish to express a particular thank you to the staff of the cadastral engineering section of the Highways Division of the Department of Transportation and Dorothy Miyata, formerly with the Department of Transportation, for their assistance in performing the field survey and mapping of the Honolulu International Airport. We also wish to extend our appreciation to Nardess Awana for performing the title searches on lands within the Honolulu International Airport.

We are also grateful to our contract consultants who undertook parts of the study: Peat, Marwick, Mitchell & Co., Certified Public Accountants; and Coopers & Lybrand, Certified Public Accountants.

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Chapter 1

INTRODUCTION

Act 121, Session Laws of Hawaii 1982, appropriated funds to the Office of the Legislative Auditor “. . . (1) to complete the inventory of, (2) to study the numerous legal and fiscal issues relating to the use of and, (3) to study the use and distribution of revenues from ceded lands.”

This is a *progress* report on our performance with respect to the inventory of public lands. It is also a report on our findings, *thus far*, of the legal and fiscal issues associated with the use and distribution of revenues from public lands.

We emphasize that we have not completed the tasks assigned to us by Act 121. As this report makes evident, the work assigned by Act 121 is enormous. It requires more than the eight or nine months that were available since the effective date of the Act for all of the duties imposed by the Act to be completed. This report indicates what more must be done to finish the assigned tasks.

“Ceded Lands”: A Definitional Problem

Act 121 speaks in terms of “ceded lands.” Technically speaking, “ceded lands” are lands that were ceded to the United States by the Republic of Hawaii under the joint resolution of annexation of Hawaii approved July 7, 1898 (30 Stat. 750) and those that have been acquired in exchange for the lands so ceded.

Act 121, however, needs to be read in the context of the Hawaii constitutional and statutory provisions concerning the use, for the betterment of native Hawaiians, of the lands includable in the public trust created by Section 5(f) of the Admission Act (Public Law 86–3, 73 Stat. 4). Act 121 was enacted in a large measure because of the problems in implementing those constitutional and statutory provisions.

When Act 121 is read in this context, the tasks required include an examination of not only ceded, but other public lands as well. Although the bulk of the lands includable in the public trust are ceded lands, the trust also includes other public lands. Further,

the Admission Act does not expressly subject all ceded lands to the public trust. Only ceded and other non-ceded lands returned to Hawaii by the United States on and after statehood are made subject to the trust. In addition, the problems enumerated in Act 121 impact upon lands in the public domain, whether ceded or not, and whether includable in the public trust or not.

Our approach, therefore, in performing the work required by Act 121, has been to study both ceded and non-ceded lands.

Objectives

Legislative intent in enacting Act 121 is expressed in Senate Standing Committee Report No. 768–82, 1982 Regular Session, as follows:

“The purpose of this bill is to assist the State in resolving the many issues relating to ceded lands. This is to be accomplished by completing the ceded land inventory; studying the legal and fiscal issues relating to use of ceded lands; and studying the use and distribution of revenues generated from ceded lands.

“Your Committee finds that the many uncertainties surrounding the matter of ceded lands, and the disposition of revenues generated by the use of ceded lands can best be resolved by ascertaining what and where ceded lands exist, the legal and fiscal problems which may exist or arise from their use, and the effect on all parties concerned with the use and distribution of revenues generated from ceded lands.”

We have viewed Act 121 as requiring us to achieve the following:

1. Complete the public land inventory with emphasis on the lands included within the public trust established by Section 5(f) of the Admission Act.
2. Identify the legal and fiscal issues in the use of the lands and the proceeds and income from the lands in the public trust and determine the implication of these issues.
3. Ascertain the accuracy and propriety of the use and distribution of the proceeds of and income from the public trust.

We have only partially completed objectives 1 and 2. We have not as yet begun work toward accomplishment of objective 3.

Organization of This Report

This report contains five chapters. Chapter 1 is this introductory chapter. Chapter 2 contains background information on the development of the public land trust contained in Section 5(f) of the Admission Act and on the state constitutional and statutory provisions concerning the trust. In Chapter 3, we describe the status of the public land inventory and the problems associated with the inventory. We give special attention to the lands at the Honolulu International Airport and Sand Island. In Chapter 4, we discuss some legal issues pertaining to the use of the lands and the proceeds of and income from the lands in the public trust. Chapter 5 is devoted to a discussion of the work remaining to comply with Act 121.

Glossary

As used in this report, the following words have the meaning ascribed to them.

<i>Ceded lands:</i>	lands ceded to the United States by the Republic of Hawaii under joint resolution of annexation approved July 7, 1898.
<i>Territorial lands:</i>	lands acquired by the Territory of Hawaii through cash purchases, condemnation, gifts, etc.
<i>U.S. fee simple lands:</i>	lands acquired by the United States through cash purchases, condemnation, gifts, etc., excluding lands acquired from the Republic or State of Hawaii.
<i>Trust lands:</i>	lands subject to the public land trust provided in Section 5(f), Admission Act.

Chapter 2

BACKGROUND

In this chapter, we trace the history of the public trust created by Section 5(f) of the Admission Act, and we discuss the development of the state constitutional and statutory provisions concerning the public land trust. We begin with a brief discussion of the ownership of public lands in Hawaii between annexation and statehood.

Ownership of Public Lands: Annexation to Statehood

On the annexation of Hawaii by the United States in 1898, all lands owned by the Republic of Hawaii were ceded to the United States. At that time, Hawaii's public domain included about 1,800,000 acres.¹

During the period between annexation and statehood, although the legal title to the public lands in Hawaii was vested in the United States, the Territory of Hawaii was given administrative control and use of the lands by the Organic Act. The Territory of Hawaii, in essence, secured an equitable title to the ceded lands. As allowed by the Organic Act, however, certain parcels were from time to time formally "set aside" by presidential executive orders for use by the United States. As to these lands, the United States possessed both the legal and the equitable title. In addition, some parcels, although not formally "set aside," were nonetheless used by the United States under permits, licenses or permission (oral and written) from the territorial government. Technically, the Territory of Hawaii continued to possess the equitable title to these lands.

The Organic Act also allowed the United States to convey the legal title to the Territory of Hawaii to such portions of the ceded land as might be used by Hawaii for certain specified purposes. Pursuant to this authority, from time to time during the territorial period, the legal title to some of the ceded lands was conveyed by the federal government to the Territory of Hawaii.

1. R. Horwitz, J. Caesar, J. Finn & L. Vargha, *Public Land Policy in Hawaii: An Historical Analysis*, 59-107 (Legislative Reference Bureau Report No. 5, 1969) [hereafter cited as *Public Land Policy*].

In addition to ceded lands, both the Territory of Hawaii and the United States acquired during the territorial period, fee simple title to private lands by cash purchases, condemnations, gifts, and other ways. Some of these lands acquired by the Territory were “set aside” by the Governor of the Territory of Hawaii by executive orders for use by the United States.

At the time of statehood, then, there were the following categories of lands owned by the federal and territorial governments:

1. Ceded lands, title to which was vested in the Territory of Hawaii.
2. Non-ceded, territorial lands (hereafter “territorial lands”), title to which was vested in the Territory of Hawaii.
3. Ceded lands, title to which was vested in the United States, but the control and use were in the Territory of Hawaii.
4. Ceded lands formally “set aside” for the use of the federal government.
5. Territorial lands formally “set aside” by gubernatorial executive orders for the use of the federal government.
6. Ceded lands under the control of the Territory of Hawaii but used by the federal government under permits and licenses.
7. Non-ceded lands acquired and used by the federal government (hereafter “U.S. fee simple lands”).

Ownership of Public Lands: Under Admission Act

The act admitting Hawaii into the Union provided for a redefinition of the ownership of the public lands in Hawaii. Section 5 of the Admission Act in Subsections (a), (b), (c), (d), and (e) provided for the vesting of title to public lands as follows:

1. Under Subsection (a), except as provided in Subsection (c), the State of Hawaii succeeded to the title of the Territory of Hawaii in those *ceded and territorial* lands in which the Territory held title at the time of Hawaii’s admission into the Union.
2. Under Subsection (b), except as provided in Subsections (c) and (d), the State of Hawaii succeeded to the title of the United States in those *ceded* lands in which the United States held title at the time of statehood.

3. Under Subsection (c), the United States retained title to those *ceded and territorial* lands that had been formally “set aside” by presidential and gubernatorial executive orders for the use of the federal government.

4. Under Subsection (d), the federal government was given authority to vest in the United States, either by Congressional Act or presidential executive order, made pursuant to law, title to those ceded lands controlled by the United States at the time of statehood under permit, license or permission of the Territory of Hawaii. The authority was required to be exercised within five years of statehood.

5. Under Subsection (e), within five years of statehood each federal agency having control over any land or property that was retained by the United States pursuant to Subsections (c) and (d) was required to report to the President on the continuing need for such land or property, and the President was mandated to convey to the State of Hawaii the land or property if the President deemed it no longer needed by the United States.

The Public Land Trust

In Section 5(f), Congress provided that lands granted to the State of Hawaii under Subsection (b) and public lands retained by the United States under Subsections (c) and (d) and later conveyed to the State of Hawaii under Subsection (e), together with the proceeds from the sale or other disposition of any such lands and the income therefrom, should “be held by said State as a public trust for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians . . . , for the development of farm and home ownership on as widespread a basis as possible[,] for the making of public improvements, and for the provision of lands for public use.”

The requirement that lands returned to Hawaii via Sections 5(b) and 5(e) be held in trust for the purposes enumerated was a continuation of the trust concept initially embodied in the joint resolution of annexation of July 7, 1898.

By the joint resolution, the United States accepted the ownership of all public, government, or Crown lands, but provided that the existing laws of the United States relating to public lands would not apply and that Congress “shall enact special laws for their management and disposition.” These provisions of the joint resolution were a recognition on the part of Congress that there were significant differences in the patterns

of land ownership and utilization in Hawaii from those that prevailed elsewhere in the United States when the United States acquired land in those areas.

The joint resolution directed the President of the United States to appoint a five-man commission to make recommendations to Congress for the legislation needed for the management and disposition of public lands in Hawaii. While the details of management were yet to be spelled out in future legislation, the joint resolution in general terms stated that all revenue from or proceeds of the public lands, except those used or occupied for civil, military, or naval purposes of the United States, or assigned for the use of the local government, should be used “solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes.”

The special legislation called for by the joint resolution was enacted some two years later in the form of the Hawaii Organic Act. As already noted, the act provided for the possession, use, and control of the ceded lands by the government of the Territory of Hawaii, except those lands taken for the use and purposes of the United States by direction of the President or of the Governor of Hawaii. It also provided for the return to Hawaii of ceded lands taken for the use of the United States and for the actual transfer of title to the Territory in certain cases. In addition, while it made no provision for the sale of any of the ceded land by the United States, the Organic Act provided for sales by the Territory of Hawaii (in behalf of the federal government) and for the retention by the Territory of the proceeds of the sale, lease, or other disposition of any lands. It further required that revenues from lands set aside for federal use but which were leased or rented out by the federal government to private parties be paid into the treasury of the Territory.

These provisions collectively were held by the Attorney General of the United States as creating a “special trust” of the ceded lands, the federal government holding but a naked title to them for the benefit of the people of Hawaii.²

The trust provision of Section 5(f) of the Admission Act was, thus, a natural extension of the trust concepts embodied in the joint resolution of annexation and the Organic Act.

2. 22 Op Attorney General 574 (1899).

Public Law 88–233

On August 21, 1964, the five-year statutory period provided in Section 5(e) of the Admission Act for the determination and return to Hawaii of ceded and territorial lands no longer needed by the United States expired, and all ceded and territorial lands held by the United States on August 21, 1964, became the property of the United States, subject to the provisions of Public Law 88–233.

Public Law 88–233 was enacted by Congress on December 23, 1963, at the urging of the governmental leaders of the State of Hawaii. Without Public Law 88–233, whenever after August 21, 1964, any ceded or territorial land retained by the United States became surplus to the needs of the federal government, the disposition of such land would have been governed by the provisions of the general law on federal surplus property. Under the general law, with certain limited exceptions, the State of Hawaii would not have been able to obtain title to the property except through purchase at market value.

There appeared to be no reason why ceded or territorial land set aside to or otherwise controlled by the United States should be returnable to the State at no cost if it were deemed surplus to the needs of the United States *on or before* August 21, 1964, but not returnable to the State at no cost if it were deemed surplus *after* August 21, 1964. All ceded and territorial lands set aside for the use of or otherwise controlled by the United States had initially been given to the United States without cost by the Republic and the Territory of Hawaii; and they had been used and were being used by the United States without compensation to Hawaii. It seemed inequitable that Hawaii should be able to secure a return without cost as to some of these lands but not as to others. Further, to deny Hawaii a free return of the ceded and other lands retained by the United States beyond August 21, 1964, appeared to be contrary to the concept of the special trust status of those lands.

For these reasons, Congress enacted Public Law 88–233. The statute abolished the August 21, 1964 deadline and provided for the return to Hawaii of ceded and territorial lands retained by the United States whenever such lands became surplus to the needs of the federal government. The return is to be without cost to the State, except for payment by the State of the estimated fair market value of any buildings, structures, and other improvements erected on such lands after they were set aside for the use of the federal government.

Public Law 88–233 made all lands returned under it subject to the trust restrictions of Section 5(f) of the Admission Act in the same manner as lands returned under Sections 5(b) and 5(e) of the Admission Act.

The Hawaii Constitution

Section 5(f) of the Admission Act provides for the management and disposition of the lands, proceeds, and income of the public land trust for one or more of the enumerated purposes “in such manner as the constitution and laws of said State may provide.” However, before 1978, there was little in the State Constitution or state laws implementing Section 5(f) of the Admission Act. The only provisions in the Hawaii Constitution (as amended in 1968) that directly related to the Section 5(f) trust were Article X, Section 5, and Article XIV, Section 8. Neither was particularly illuminating as to the State’s emphasis or approach in administering the trust. Article X, Section 5, merely reiterated one of the objects of the trust spelled out in Section 5(f) of the Admission Act:

“The public lands shall be used for the development of farm and home ownership on as widespread a basis as possible, in accordance with procedures and limitations prescribed by law.”

Article XIV, Section 8, simply declared:

“Any trust provisions which the Congress shall impose, upon the admission of this State, in respect of the lands patented to the State by the United States or the proceeds and income therefrom, shall be complied with by appropriate legislation.”

The only statute on the public trust was Section 171–18, HRS, which reiterated the requirements of Section 5(f) of the Admission Act.

In the absence of a more definitive direction, either in the State Constitution or state statutes, the practice of the State of Hawaii before 1978 was to channel the proceeds and income of the lands included in the trust by and large to the Department of Education. The support of the public schools is a legitimate object for which the proceeds and income of the trust lands may be used.

The 1978 Constitutional Convention adopted amendments to the State Constitution that materially altered the perspective of the State in administering the trust imposed by Section 5(f) of the Admission Act.

The Convention expanded Article XII (previously Article XI) by adding Sections 4, 5, and 6. (The former Article XI had dealt solely with Hawaiian home lands.) Section 4 provides:

“The lands granted to the State of Hawaii by section 5(b) of the Admission Act and pursuant to Article XVI, section 7, of the State Constitution, excluding therefrom lands defined as ‘available lands’ by section 203 of the Hawaiian Homes Commission Act, 1920, as amended, shall be held by the State as a public trust for native Hawaiians and the general public.”

Section 5 establishes an Office of Hawaiian Affairs. It provides that the office shall hold title to all real and personal property set aside or conveyed to it “which shall be held in trust for native Hawaiians and Hawaiians.” Section 5 further provides for the election of a board of trustees for the Office of Hawaiian Affairs.

Section 6 provides, among other things, for the management and administration by the board of trustees of 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 section 4 of this article for native Hawaiians.”

In an apparent effort to emphasize the new orientation of the public land trust, the convention proposed at least two further amendments to the State Constitution. First, it proposed the deletion of former Article X, Section 5 (present Article XI, Section 10), providing for the use of public lands “for the development of farm and home ownership on as widespread basis as possible.” This proposal received the constitutionally required margin of votes of the electorate, but the Hawaii Supreme Court ruled that it was not validly ratified because of procedural defects in its submission to the voters.³

The other proposal concerned former Article XIV, Section 8 (present Article XVI, Section 7). This section provided for compliance by appropriate legislation with any public land trust provisions that Congress might impose on the admission of Hawaii into the Union. The convention proposed adding a new sentence to the section, reading, “Such legislation shall not diminish or limit the benefits of native Hawaiians under section 4 of Article XII.” Although this proposal, too, received the constitutionally

3. *Kahalekai v. Doi*, 60 H. 324 (1979).

required margin of votes of the electorate, there is some doubt as to whether it was validly ratified for there appears to have been the same procedural difficulties in the submission of this proposal to the electorate as in the case of the proposed deletion of former Article X, Section 5.

The invalidity of any or both of the two proposals above does not in any way diminish the intent of the convention to provide specifically for the benefit of native Hawaiians out of the public land trust required by the Admission Act. The Constitution, as amended, however, is vague as to the extent to which native Hawaiians are to benefit from the trust. Article XII, Section 6 refers to a “pro rata portion” of the trust as being subject to administration and management by the Office of Hawaiian Affairs. The meaning of “pro rata portion” cannot be gleaned from a reading of the constitutional provisions.

Chapter 10, HRS

The Legislature in 1979 fleshed out the newly adopted constitutional provisions. It enacted Act 196 which detailed the powers, authority, and responsibilities of the Office of Hawaiian Affairs. The Legislature, however, did not attempt in Act 196 to clarify the degree to which the public land trust should be administered for the benefit of native Hawaiians. That task was left to 1980 when it enacted Act 273. By Act 273, the Legislature provided that 20 percent of all funds derived from the public land trust shall be expended by the Office of Hawaiian Affairs (Section 10–13.5, HRS).

Chapter 3

INVENTORY

For many years, the State of Hawaii lacked an inventory of public lands from which one could glean what specific parcels of land are subject to the public land trust provided in Section 5(f) of the Admission Act and to the state constitutional and statutory provisions relating to the trust. The absence of such an inventory was noted in an earlier report of ours on the financial audit of the Department of Land and Natural Resources (DLNR).¹

Since our report in 1979, the DLNR has put together an inventory of the public lands for which it is accountable. This chapter examines the efforts of the department in compiling the inventory and the quality and completeness of the inventory. It also discusses the problems associated with the inventory.

The DLNR is not the only agency accountable for public lands in Hawaii. The department is accountable for most of the public lands, but there are two other state agencies—the University of Hawaii and the Hawaii Housing Authority—that are responsible separately for the lands used by them or under their control. In addition, each of the counties is accountable for the public lands under its jurisdiction. This chapter, thus, also reviews the status of the public land inventory compiled by the university, the Hawaii Housing Authority, and the counties.

The Department of Education (DOE) utilizes both state and county lands. Because of this, we also subjected the inventory maintained by the DOE of the lands it utilizes to an examination.

In our review of the inventory of state lands, we subjected the State's holdings at the Honolulu International Airport and Sand Island to particular scrutiny. We selected these two areas for an intensive review since these areas generate a considerable amount of income, and substantial questions have been raised as to the applicability of the public land trust provisions of the Admission Act and the state constitutional and statutory provisions on the public trust to the income from and proceeds of the lands at these two locations. This chapter contains our findings of this review.

1. Legislative Auditor, *Financial Audit of the Department of Land and Natural Resources*, Audit Report No. 79-1, January 1979.

Federal Versus State Holdings of Public Lands

On annexation, as already stated, approximately 1,800,000 acres of Hawaii's public domain were ceded to the United States. Under the Organic Act, the Territory of Hawaii obtained the possession, beneficial use, and control of most of these lands. It also acquired from the United States the legal title to some of these ceded lands. Certain portions of the ceded lands were set aside by presidential executive order for the use of the United States, and other portions, although not officially set aside, nevertheless came under the control of the United States pursuant to permits, licenses, and permission of the territorial government. In addition to the ceded lands, both the United States and the Territory of Hawaii secured title to other lands by cash purchases, condemnations, gifts, and other ways. Some of the lands so acquired by the Territory of Hawaii were set aside by executive orders of the Governor of Hawaii for use by the United States.

At statehood. Subject to certain exceptions, on statehood (August 21, 1959), the State of Hawaii succeeded to the title of the Territory of Hawaii in the ceded and territorial lands owned by the territory, and to the title of the United States in the ceded lands owned by the United States. The exceptions were: (1) ceded lands that had been set aside by the executive orders for the use of the United States; (2) territorial lands that had been set aside by executive orders of the Governor of Hawaii for the use of the United States; and (3) ceded lands controlled by the United States pursuant to permits, licenses, and permission of the Territory of Hawaii. On statehood, these excepted lands totaled 404,491.18 acres as follows:²

(1) Ceded lands set aside by)	
presidential executive orders)	
)	287,078.44 acres
(2) Territorial lands set aside by)	
gubernatorial executive orders)	
)	
(3) Ceded lands under control of the		
United States pursuant to permits,		
licenses, or permission of the		
Territory of Hawaii		<u>117,412.74 acres</u>
TOTAL		404,491.18 acres

2. Public Land Policy, 68. The total 404,491.18 acres is exclusive of Sand Island and U.S. fee simple property.

As of August 21, 1964. The Admission Act required the federal agencies having control of any of the lands listed above to review their continuing need for the lands and directed the President to convey to Hawaii any such lands he deemed no longer needed by the United States. Such determination and conveyance of land in excess of the needs of the United States were required to be made within five years of statehood. Within the statutorily mandated five-year period, the United States conveyed to the State of Hawaii 30,771.59 acres, as follows:³

(1) Ceded lands set aside by presidential executive orders)	
)	
)	595.41 acres
(2) Territorial lands set aside by gubernatorial executive orders)	
)	
(3) Ceded lands under control of the United States pursuant to permits, licenses, or permission of the Territory of Hawaii)	
)	<u>30,176.18 acres</u>
TOTAL		30,771.59 acres

The 30,176.18 acres of ceded lands under permits, licenses, or permission of the Territory of Hawaii which were conveyed to the State of Hawaii, were so conveyed as a result of negotiations between the State of Hawaii and the United States. The United States defense department was extremely reluctant to give up any of the lands it held under permits and licenses. Under the agreement negotiated, the United States secured 65-year leases to the 30,176.18 acres immediately upon their conveyance to Hawaii, for a nominal charge of \$1 per lease. The leases expire in 2029. Also under the agreement, 87,236 acres of the ceded lands that had been under the control of the United States pursuant to permits, licenses, and permission of the Territory of Hawaii were “set aside” for the use of the United States.

As a result of the foregoing conveyances, on August 21, 1964, the federal government owned the following:

3. Public Land Policy, 70–71 (Table 8); 73–75.

(1) Ceded lands set aside by presidential executive orders)	
)	
(2) Territorial lands set aside by gubernatorial executive orders)	286,483.03 acres
)	
(3) Ceded lands under control of the United States pursuant to permits, licenses, or permission of the Territory of Hawaii)	<u>87,236.55 acres</u>
TOTAL)	373,679.58 acres ⁴

Of the total 286,483.03 acres of ceded and territorial lands “set aside” for the use of the federal government, 227,972.62 acres constituted national park lands and 58,510.41 acres were other ceded and territorial lands.⁵

On August 21, 1964, the distinction between “set aside” lands and lands controlled by the United States under permits, licenses, and permission of the Territory of Hawaii became irrelevant. The five-year statutory period for returning to Hawaii ceded and territorial lands no longer needed by the United States having expired, all lands held by the United States on August 21, 1964, became the property of the United States, subject to the provisions of Public Law 88–233.

By Public Law 88–233, the 227,972.62 acres of ceded and territorial lands in national parks became the fee simple property of the United States government, and the remaining 58,510 acres of “set aside” ceded and territorial lands and the 87,237 acres of ceded lands under permits and licenses were combined in a new category of “set aside” lands (145,746.97 acres total).

As of today. It is not entirely clear as to how much of the ceded and territorial lands are still owned by the United States, subject to return under Public Law 88–233. Some of these lands were returned to Hawaii since August 21, 1964. It is clear, however, that the State of Hawaii has become vested in more than 1.4 million acres of ceded and territorial lands between August 21, 1959 and August 21, 1964.

4. Exclusive of Sand Island and U.S. fee simple property.

5. Public Land Policy, 68, 72.

DLNR Inventory

In September 1981, the DLNR, through its Division of Land Management, completed an inventory of all state-owned public lands for which the department is accountable. The inventory lists approximately 1,271,652 acres. The inventory does not include public lands under the control and use of the University of Hawaii and the Hawaii Housing Authority. They are not included because the University of Hawaii and the Hawaii Housing Authority are empowered by the State Constitution or by law to hold title to real property conveyed to or acquired by them,⁶ and these agencies are, therefore, independently responsible for accounting for the lands they hold. Also excluded from the inventory are all lands defined as “available lands” by the Hawaiian Homes Commission Act, except those encumbered by a lease to a state agency. In addition, state highways and roads are excluded.⁷

Of the 1,271,652 acres, approximately 1,254,776 acres are managed and controlled by the DLNR. About 14,656 acres are set aside to the Department of Transportation (DOT) for airport and harbor purposes, and about 2,240 acres are used by the DOE for school and library purposes.

The inventory is in two volumes. Volume I includes encumbered public lands. Volume II lists unencumbered public lands.

A parcel is “encumbered” when it is covered by some specific written instrument dealing with its use, i.e., Governor’s executive order, general lease, revocable permit, Governor’s executive order for forest reserves, and Governor’s proclamation for forest reserves. Unencumbered lands include conservation lands; lands without access; lands zoned urban, rural, and agriculture with access; and rivers, beaches, and coastal lands. Table 3.1 shows a break-out of the 1,271,652 acres by these groupings. As noted, 88.4 percent of the lands are encumbered and 11.6 percent are unencumbered.

6. Section 5 of the State Constitution provides that the University of Hawaii “. . . shall have title to all real and personal property now or hereafter set aside or conveyed to it. . . .”

Chapter 356, HRS, establishes the Hawaii Housing Authority as a public corporation and empowers it to acquire by purchase or by eminent domain, any real property for any housing project.

7. Lands used for state highways and roads are excluded from the inventory because the lands have no tax key number and title to many roads is unclear.

Table 3.1
State Public Land Inventory
September 1981

	<i>Number of Acres</i>	<i>Percent</i>
ENCUMBERED LAND		
Governor's Executive Orders	46,956	
General Leases	251,204	
Revocable Permits	76,271	
Governor's Executive Orders for Forest Reserves	173,826	
Governor's Proclamations for Forest Reserves	575,636	
Total—Encumbered Land	1,123,893	88.4
UNENCUMBERED LAND		
Conservation	42,703	
Land With No Access	32,643	
Urban, Rural and Agricultural Land With Access	48,229	
Rivers, Beaches, and Coastal Land	24,184	
Total—Unencumbered Land	147,759	11.6
TOTAL ENCUMBERED AND UNENCUMBERED STATE-OWNED PUBLIC LAND	1,271,652	100.0

For both encumbered and unencumbered lands, the inventory lists the parcels by counties. Within each county, the parcels are listed in a chronological order by tax map key numbers. The inventory notes for each parcel, the number of acres; the land use commission zoning (urban, rural, agricultural, conservation) and Section 171-10, HRS, classification (intensive agriculture, pasture, residential, industrial, etc.), as appropriate; a brief description of the parcel; and the source of Hawaii's title to the parcel. With respect to the last of these items, the appropriate subsection of Section 5 of the Admission Act is noted where applicable. That is to say, if Hawaii acquired title to the parcel via Section 5(a) of the Admission Act, the symbol "A" or "5A" is noted for the parcel; if it was acquired via Section 5(b) of the Admission Act, the symbol "B" or "5B" is noted; and so on. Pertinent survey maps and land office deeds upon which reliance was had in developing the inventory are also noted.

For encumbered lands, in addition to the above the inventory identifies for each parcel, the pertinent executive order, lease document, etc., and lists the name or names of the occupants or users of the parcel. Where a lease or revocable permit is involved, the inventory also notes the annual rental amount being charged at the time the inventory was put together.

Development of the inventory. The DLNR commenced development of the inventory in April 1979. It began the task by assembling available and pertinent tax maps, survey maps, and various land documents (i.e., deeds, Governor's executive orders and proclamations, lease and permit documents, etc.). A 1979 computer listing of encumbered and unencumbered state-owned acreages from the Department of Taxation's real property division was of material assistance.⁸

At the outset, the effort was devoted simply to listing all public lands by tax map key numbers, and to note for each parcel, the acreage, the zoning, and if encumbered, the encumbrances, the effective date of the encumbrance and the annual rent, if applicable. However, in June 1980, Act 273, SLH 1980, which mandated the payment to the Office of Hawaiian Affairs of 20 percent of trust fund revenues from lands conveyed to Hawaii under Sections 5(b) and 5(e) of the Admission Act took effect. That law necessitated a reorientation in the department's efforts in developing the inventory. Under the law, it became necessary for the department to identify what lands were conveyed to Hawaii under Sections 5(b) and 5(e) of the Admission Act.

Work toward completion of the inventory came to a temporary halt in June 1980 as the Division of Land Management devoted six months researching the title histories of and the sources of the State of Hawaii's title to the encumbered lands, with particular attention being given to lands encumbered by general leases and revocable permits.

Title histories of the parcels were determined primarily through survey maps and documents previously prepared for other purposes by the survey division of the Department of Accounting and General Services and through land transfer documents, including presidential executive orders, kept in the files of the DLNR. These documents and deeds were consulted for the legal authority cited for the transfer to Hawaii and the history of conveyances of the lands. Where a title history of a particular parcel was missing, the title history of the surrounding property was examined to assist in determining the history of the land in question. The Confirmation Act of 1848⁹ which

8. A 1978 amendment to Article VII, Section 3 of the State Constitution transferred the functions, powers, and duties relating to real property taxes from the State to the counties. The transfer took effect on July 1, 1981.

9. The Confirmation Act confirmed land title awarded to private individuals by the Land Commission. Title to lands were awarded as a part of the Great Mahele. The Confirmation Act also served to delineate those lands declared by King Kamehameha III as belonging to the Crown and those belonging to the Hawaiian government. Both Crown and government lands were ceded to the United States upon annexation.

separately listed the lands then owned by the Crown and those owned by the government, and other land laws of the past were reviewed to determine whether a particular land was ceded land or not.

As a result of the research, examination, and review, encumbered lands were segregated into ceded and non-ceded lands, and the legal bases for the acquisition of title in the State of Hawaii as to each parcel was determined. Table 3.2 outlines the classification system used by the DLNR. Table 3.2 separately lists submerged lands as Category 5(i), non-ceded lands. This designation subsequently changed when in 1982, the state attorney general ruled that all submerged lands are ceded lands. Submerged lands are now classified by the department as ceded, 5(b) lands.

Table 3.2

Ceded and Non-Ceded Classifications by Land Description and Category

<i>Land Description</i>	<i>Category</i>
CEDED LAND	
· Lands acquired by the Territory from the U.S. after 1900, but prior to Statehood	5(a)
· Lands acquired at Statehood from the federal government	5(b)
· Lands retained under 5(c) or 5(d) of the Admission Act and conveyed under 5(e)	5(e)
· Lands conveyed to the State after 1964 pursuant to P.L. 88-233	P.L. 88-233
NON-CEDED LAND	
· Lands acquired by the Territory from private individuals after 1900, but prior to Statehood	5(a)
· Lands purchased by the State from private individuals after 1959	(x)
· Submerged land*	5(i)

*Based on the opinion issued by the Attorney General on June 24, 1982, submerged land is now treated as ceded land under 5(b).

Some parcels finally listed by the department as ceded or non-ceded consisted of both ceded and non-ceded lands. In these cases, the department applied the “majority rule,” that is to say, the parcel was classified as ceded when it contained more ceded than non-ceded lands and it was classified as non-ceded when it contained more

non-ceded than ceded lands. According to the Division of Land Management, the application of this majority rule was limited to some 30 parcels. The division, however, has not maintained a listing of these parcels.

In order to ascertain the reasonableness of the application of the majority rule, we sought to identify the parcels on which the rule was applied. With the assistance of the Division of Land Management, we identified seven parcels. Of the seven, five were encumbered by general leases, and two by revocable permits. An examination of these parcels revealed that in all cases, the rule had been consistently applied.

Table 3.3 shows the application of the majority rule on the seven parcels. As shown, some 11.645 acres of non-ceded lands were treated as ceded, and 1.605 acres of ceded lands (Parcels 1 and 2) were treated as non-ceded.

Table 3.3
Application of Majority Rule

<i>Parcel Number</i>	<i>5(b)</i>	<i>Categories</i>		<i>Non-Ceded (Acres)</i>		<i>DLM Assigned Category</i>	<i>Annual Rent</i>	<i>Amount to OHA</i>
		<i>Ceded (Acres) 5(e)</i>	<i>P.L. 88-233</i>	<i>5(a)</i>	<i>(x)</i>			
1	.605	—	—	.835	—	5(a)	\$ 100.00	\$ —
2	1.000	—	—	4.350	—	5(a)	3,500.00	—
3	.551	—	—	.085	—	5(b)	334.00	66.80
4	9144.000	—	—	10.000	—	5(b)	4,500.00	900.00
5	4.080	—	—	—	.560	5(b)	1,100.00	220.00
6	4.220	—	—	1.000	—	5(b)	120.00	24.00
7	—	2.267	1.637	—	—	5(e)	300.00	60.00
TOTAL	9160.766	2.267	1.637	16.270	.560		\$9,954.00	\$1,270.80

The problems. The inventory put together by the DLNR is as precise and complete as can be expected given the circumstances under which it was prepared. The DLNR is first to admit, however, that the inventory contains inaccuracies and that it needs reworking to make it as exact as possible.

To begin with, the inventory is without the benefit of field surveys and title searches. In developing the inventory, the Division of Land Management relied heavily on secondary sources of information. It relied upon the survey maps and documents previously prepared for varied purposes by the survey division of the Department of Accounting and General Services. It relied also on land transfer documents, copies of which are on file at the DLNR.

The survey maps and the land documents themselves are of questionable accuracy. For the most part, the survey maps were prepared based on available documents and other information, and not on field surveys. The land documents were prepared on the basis of previously executed documents. Moreover, as demonstrated in our title search of the lands at Honolulu International Airport, some of these documents conveyed portions of previously existing parcels, sometimes in combination with portions of other existing parcels, and in the process conveyed property to which the grantor possessed no title or which had previously been conveyed to the grantee. The result is confusion which cannot always be untangled without a search of title and survey in the fields. One other problem with relying on existing land documents is that some of these documents contain vague descriptions. The Confirmation Act, for example, which was consulted for the purpose of determining what lands were ceded and what lands were not ceded to the United States, identifies lands by Hawaiian names given to areas and by geographical features, such as streams, rivers, and mountains.

The DLNR through the Division of Land Management is currently seeking to correct some of the more obvious errors in the inventory. For one thing, it is clear that the account of the forest reserve acreage is not correct. It seems that some areas were counted more than once. This has occurred because, as noted above, land documents upon which reliance was had in preparing the inventory often conveyed lands more than once. The department is also seeking to re-examine those parcels where it applied the "majority rule" in designating the parcels as ceded or non-ceded. It is seeking to differentiate the ceded from the non-ceded portions of the parcels.

We think the DLNR, through its Division of Land Management, is doing the best it can with the resources at its disposal. The inventory, however, will never be completely accurate, or comprehensive without a survey and title search. However, surveys and title searches are expensive to conduct. We do not believe that a completely accurate and full inventory is necessary at this time. We do think, however, that accuracy and completeness with respect to some public lands is desirable. We make a recommendation with respect to surveys and title searches for such lands later in this chapter.

We note one operational problem in connection with the inventory. The Division of Land Management is currently in the process of placing the land inventory on the State's computer system. A program has been written by the electronic data processing division of the Department of Budget and Finance and the program has already been test run.

Within the next year, monthly update reports on any changes made to the inventory within any given month will be available. Semi-annual reports, which include a summary of lands encumbered by general leases and permits, a summary of lands encumbered by Governor's executive orders and proclamations, and a listing of lands leased or controlled by the State will also be made available. In addition, annual reports relating to state parks, forestry, rental reopenings, and lease expirations will be produced.

The program allows for changes to be made in the inventory no more frequently than once each month. If the Division of Land Management is to make timely corrections to its inventory and have ready access to such things as number of leases and permits by Admission Act sections, number of income-producing acres by Admission Act sections, etc., then it needs daily access to the State's computer. Without daily access to the computer, the manual maintenance of the inventory will not be completely eliminated. In fact, an additional manual step will become necessary. The Division of Land Management personnel will be required manually to log all corrections in the inventory books as corrections become necessary. Then, monthly, they will need manually to complete the necessary input forms to allow the electronic data processing division to make the corrections on the computer.

The most feasible solution to this problem, it appears, is to provide the Division of Land Management with an on-line access to the computer. The division will then have ready access to all land inventory information and will be able to make timely corrections immediately. Such on-line access will completely eliminate the need to manually maintain inventory records.

**Inventory: University of Hawaii,
Hawaii Housing Authority, Department
of Education, and the Counties**

In addition to the approximately 1.3 million acres of public lands accountable by DLNR, another 2,324 acres of public lands are controlled by the University of Hawaii (UH) and the Hawaii Housing Authority (HHA). Additional public lands are also under the jurisdiction of each of the four counties. In this section, we discuss the land inventories of these agencies.

We also discuss in this section, the lands and the land inventory of the Department of Education (DOE). This is because the DOE uses both state and county lands. And even

though state lands used by the DOE are included in the DLNR's public land inventory, county lands are presently excluded from that inventory.

Generally. To complete the picture of all public lands in Hawaii, we requested the UH, the HHA, the DOE, and the counties to send us an inventory of the public lands under their control and to indicate, if possible, the ceded or non-ceded status of each parcel.

Only the UH produced a comprehensive, up-to-date land inventory which identifies each parcel under its control by tax map key number, location, acreage, etc. The HHA is in the process of completing its inventory. The inventory maintained by the DOE is incomplete and outdated.

Among the counties, all except Kauai maintain a land inventory which is at least partially complete. The only available listing from which information on lands controlled by Kauai county can be obtained is a listing, entitled, "real property tax exemptions."

No agency or county has been able to identify the ceded and non-ceded status of its lands or the legal source of title by Admission Act sections and Public Law 88-233. As a result, the specific acreages controlled by the agencies and counties which are subject to the public land trust of Section 5(f) of the Admission Act and to the provisions of Chapter 10, HRS, are not readily discernible. Under these circumstances, we sought to identify those parcels controlled by each of the agencies and counties that appeared to generate some income and subject those parcels to a brief review to estimate roughly their acreages and their apparent status as ceded or non-ceded lands subject to the public land trust of Section 5(f) of the Admission Act and the provisions of Chapter 10, HRS.

University controlled lands. The UH controls a total of 53 parcels totaling approximately 1,700 acres. Of this amount, about 1,275 acres or 75 percent is set aside to the university by various Governor's executive orders. The remaining 425 acres or 25 percent were acquired by purchase, gift, or grant. Of the 1,275 set aside acres, a large amount is held in fee by the university.

We examined the lands set aside to the university by gubernatorial executive orders. We reasoned that these lands, if any, among the lands set aside to the UH, would likely include ceded lands. From these set aside lands, we identified those that appeared to generate income of some significance. The lands set aside by executive orders that

appeared to generate significant revenue included lands used for student and faculty housing.

We have determined that approximately 42 acres at Manoa on which five faculty apartment buildings are situated and 60 acres at Hilo on which four student dormitories are situated are former Crown or government lands and are thus ceded lands, title to which passed to Hawaii under Section 5(b) of the Admission Act. In addition, it appears that .515 acres at Manoa on which sits the Hale Laulima student dormitory, are lands acquired in exchange for former Crown or government lands and may thus be considered as ceded lands, title to which passed to Hawaii under Section 5(b) of the Admission Act.

Table 3.4
University of Hawaii Ceded and Non-Ceded Lands

<i>Tax Map Key No.</i>	<i>Owner</i>	<i>GEO No.</i>	<i>Date</i>		<i>Total Ceded Acreage</i>	<i>Admission Act Section</i>
3-3-56	UH Manoa—Faculty Housing	1807	10/25/57		42.000	5(b)
2-4-1	UH Hilo—Hilo Campus including Student Housing	1807	10/25/57	29.015		
		1974	12/02/61	.855		
		2016	4/16/62	3.214		
		2252	12/20/65	<u>26.847</u>		
				59.931	60.000	5(b)
2-8-23	UH Manoa—Hale Laulima Student Dormitory	1807	10/25/57		.515	5(b)
TOTAL CEDED ACREAGE					102.515	

HHA lands. The HHA is now in the process of finalizing a comprehensive land inventory describing each land parcel by location, tax map key number, acreage, method of acquisition (i.e., purchase or Governor’s executive order), acquisition source (i.e., from the DLNR or other government agencies or private parties), and acquisition date. Based on the preliminary draft of the inventory, a summary of the HHA’s current land holdings is presented in Table 3.5.

Table 3.5

Summary of Hawaii Housing Authority Landholdings by Source
As of November 22, 1982*

Source of Land	Total No. of Parcels	Purchase/ Grant	Percent	Acreage		Total	Percent
				Executive Order	Percent		
Department of Land and Natural Resources	49	281.989	45.2	35.216	5.6	317.205	50.8
Other Government Agencies	10	22.610	3.6	—	—	22.610	3.6
Private Parties	56	284.514	45.6	—	—	284.514	45.6
TOTAL	115	589.113	94.4	35.216	5.6	624.329	100.0

*Excludes three unclassified parcels totaling 9,461 acres.

Source: Hawaii Housing Authority, preliminary land inventory, November 22, 1982.

As shown, the HHA controls 115 parcels which total approximately 624.3 acres. Of the 624.3 acres, more than 317 acres or almost 51 percent were acquired from the DLNR. About 22.5 acres or 3 percent were acquired from other government agencies and some 284.5 acres or 45.6 percent were acquired from private parties.

The bulk of the HHA's lands is owned in fee and was acquired by purchase or grant. Only 10 parcels consisting of 35 acres were obtained by Governor's executive orders. These 35 acres were acquired for the development of public or teacher rental housing units. The other 281.9 acres were acquired in fee for the development of homes for sale.

Because a substantial portion of the HHA's land holdings were acquired from the DLNR, and because the majority of state lands controlled by the DLNR consist of ceded lands, it can be expected that a substantial number of the HHA's projects are located on ceded lands. This expectation was confirmed in a review of the six major housing projects located on lands acquired from the DLNR that were started and completed by the HHA from November 1978. All of the six projects involved the production of single-family homes, the majority of which were sold in fee to home buyers.

A summary of the land parcels involved in the projects are shown in Table 3.6. As shown, 93 percent of the projects total land area and substantially all of the parcels acquired from the DLNR were former government or Crown lands and thus ceded lands.

Table 3.6

Land Parcels of Selected Housing Projects
Involving Land Acquired from DLNR (State)

Project	Acreage			Acreage from DLNR (State)			Acreage from Private Parties		
	Total	Ceded*	Non-Ceded	Total	Ceded*	Non-Ceded	Total	Ceded*	Non-Ceded
Kauhale Aupuni O'Kuliouou (Kuliouou Valley)	52.061	43.057	9.004	43.061	43.057	.004	9.000	—	9.000
Ainaola House Lots III	14.816	14.816	—	14.816	14.816	—	—	—	—
Kealakehe House Lots	16.591	16.591	—	16.591	16.591	—	—	—	—
Kaumana House Lots	8.317	8.317	—	8.317	8.317	—	—	—	—
Puainako II	19.897	19.897	—	19.897	19.897	—	—	—	—
Kawailani	17.072	17.072	—	17.072	17.072	—	—	—	—
TOTALS	128.754	119.750	9.004	119.754	119.750	.004	9.000	—	9.000
PERCENTAGES	100.0%	93.0%	7.0%	100.0%	100.0%	—	100.0%	—	100.0%

*Described as government (Crown) land in land patents and related surveys and maps.

Sources: State of Hawaii land patents, deeds and related surveys and maps.

The assumption that the majority of the State's lands are ceded lands when combined with the previously presented finding that state lands are used extensively by the HHA, leads to a conclusion that to a significant degree, the HHA's housing developments rest on ceded lands and that ceded lands play a substantial role in the activities of the HHA's housing development programs. The extent to which the ceded lands involved in the HHA's programs are subject to the public land trust and to Chapter 10, HRS, has not been determined at this time.

DOE land inventory. The DOE, unlike the university and the HHA, is not a corporate entity and thus is not empowered to hold title to lands. For the most part, lands used for school and library purposes are either state- or county-owned lands. Shown below is a summary of the lands presently utilized by the DOE:

	Acreage	Percent
State-owned lands	1,777	55.0
County-owned lands	1,212	38.0
Leased lands	217	7.0
	<u>3,206</u>	<u>100.0</u>

Based on the DLNR's classification of state-owned lands, approximately 559 acres are designated as lands conveyed by Section 5(a) of the Admission Act and another 1,272 acres are designated as 5(b) and 5(e) lands. The remaining acreage, which accounts for county-owned lands, could not be designated as either ceded or non-ceded by the DLNR.

The county inventories. Each of the counties maintains a listing or inventory of some sort of the properties under its control. The inventories are of varying degrees of completeness and quality.

Table 3.7 summarizes the land holdings of each of the counties.

Table 3.7
County Land Holdings

<i>County</i>	<i>No. of Parcels</i>	<i>Total Acreage</i>	<i>Acquisition Cost</i>
Honolulu	16,000	14,400	\$159.0 million
Hawaii	670	230	8.9 million
Mau	300	2,417	4.3 million
Kauai	250	—	—

The City and County of Honolulu (the city) owns by far the largest inventory of lands. It controls over 16,000 separate land parcels comprising an area of about 14,400 acres. Each of the other counties controls less than 700 parcels comprising a proportionately smaller total land area.

The most common methods by which the counties acquired their lands are condemnation, purchase, and Governor's executive order. With the first two methods, the fee title to the acquired land rests with the county; with executive orders, the State has retained the fee title, conveying only the right to use the land, usually for specified purposes. Other methods of land acquisition include the use of Governor's proclamation, grants and gifts.

Inventory: Honolulu. The City and County of Honolulu maintains a comprehensive inventory that is updated on a regular basis. The inventory is organized by agency, tax map key number, location, use, acreage, and method, cost and year of acquisition.

The city's land inventory does not distinguish between ceded and non-ceded parcels. However, the acquisition method identified for each parcel gives an indication as to whether the parcel is ceded or non-ceded. The acquisition methods are: (1) condemnation, (2) deed (purchase in fee), (3) Governor's executive order, (4) federal surplus land, (5) dedicated land, and (6) lease.

The only lands controlled by the city that could possibly be ceded lands and subject to the public land trust are those lands set aside to the county by the Governor's executive orders. This is based on our understanding that most, if not all, of the parcels acquired by condemnation and deed were acquired from private parties and, therefore, would not fall within the ceded classification of lands subject to the public trust. Federal surplus and dedicated lands could be ceded; however, they are insignificant in terms of the total acreage. Parcels leased by the city from private parties are, of course, non-ceded, non-trust lands.

We identified those lands listed on the inventory which appeared to have been acquired by the city through gubernatorial executive orders and which appeared to be revenue producing. We sought to subject these parcels to an examination to determine whether they are subject to the public land trust and to Chapter 10, HRS. Our initial review discerned that only the following parcels are possibly ceded lands subject to the trust and Chapter 10: Kapiolani Park, Ala Moana Beach Park, and a portion of the off-street parking lot between Smith and Maunakea Streets.

The Ala Wai Golf Course was initially thought to be also ceded land subject to the trust. However, it appears that the Ala Wai Golf Course land, owned by the State but set aside to the city for use as a golf course by the Governor's executive order, consists of many smaller parcels acquired by the Territory of Hawaii from private parties.

There are other city-owned off-street parking lots in addition to the one situated between Smith Street and Maunakea Street. However, our initial finding is that the underlying lands in these other parking lots were acquired by the city through condemnation.

1. *Kapiolani Park*. It appears that Kapiolani Park consists of ceded land. It is owned by the State but controlled by the city through a Governor's executive order issued during the territorial period. It appears that title to the parcel was conveyed to Hawaii under Section 5(b) of the Admission Act and is thus subject to the public land

trust and to Chapter 10, HRS. Kapiolani Park generates income to the city through rentals of the Waikiki Shell, the parking meters at the zoo, and concession fees from the Kapiolani Park driving range, Waikiki Shell Camera Shop, Waikiki Shell Hula Show Lei Vendors, and Waikiki Shell Hula Show.

2. *Ala Moana Beach Park.* The lands underlying the Ala Moana Beach Park appear to be largely comprised of reclaimed tidal or submerged lands, the title to which the United States apparently obtained upon Hawaii's annexation in 1898. It appears that the lands are, therefore, ceded lands. In 1927, the title to the lands was transferred to the Territory of Hawaii by presidential proclamation. Subsequently, in 1928, the territorial governor conveyed the lands to the City and County of Honolulu by proclamation. The proclamation stipulated that in the event the lands ceased to be used as a public park or for other similar public purposes, they would revert to the territory (state).

Because title to the lands was transferred to the territory before statehood, the lands apparently fall under Section 5(a) of the Admission Act and are not part of the public land trust and not subject to Chapter 10, HRS.

The revenues for Ala Moana Park are limited to the food concessions located in the park.

3. *Parking lot.* A portion of the parking lot situated between Smith Street and Maunakea Street was acquired by the city under a gubernatorial executive order. The remainder of the parking lot was acquired by the city through condemnation of private lands. That portion acquired under gubernatorial executive order appears clearly to be ceded lands, title to which was acquired by the State of Hawaii under Section 5(b) of the Admission Act.

Inventory: Hawaii. The County of Hawaii maintains a "Real Property Inventory" that lists each land parcel controlled by the county by tax map key number. Each parcel is described by type (fee, leasehold, etc.), location, use, area and cost.

As in the case of the other counties, the inventory does not distinguish between ceded and non-ceeded parcels. For each parcel, however, one of four codes is indicated. The four codes are: Blank (owned in fee), License (use obtained by permit), Leasehold (use obtained by lease), and Executive Order (use obtained by executive order).

It is our understanding that the majority of the parcels owned in fee were acquired by the county by cash purchase from private parties or by condemnation. The fee-owned parcels, therefore, generally are not ceded lands. The parcels under leases and permits are, by definition, non-ceded lands. Only those parcels acquired through executive orders are possible ceded lands, subject to the public land trust and Chapter 10, HRS.

Of the lands acquired through executive orders, we identified only one as producing any significant revenues. That parcel is the Hilo Municipal Golf Course. The golf course is comprised of two parcels totaling 165 acres. See table below.

<i>Parcel Number</i>	<i>Owner</i>	<i>Total Acreage</i>	<i>Ceded Acreage</i>	<i>Non-Ceded Acreage</i>
1	State of Hawaii	145	145	—
2	County of Hawaii	20	—	20
TOTAL		165	145	20

Parcel 1 consists of 145 acres which were conveyed to the county by Executive Order No. 1223 on March 1, 1948. The entire 145 acres were former Crown lands. Parcel 2 was formerly government land which was sold by the territory to a private party in 1925. The county subsequently purchased this parcel from the private party in 1972. Parcel 1 may be considered to be ceded lands, but Parcel 2 lost its ceded status upon the sale to a private party in 1925. We do not think it can now be considered as ceded land, nor can it be said to be subject to the public land trust or Chapter 10, HRS. Parcel 1 is subject to the trust and to Chapter 10, HRS, because title to the parcel vested in Hawaii on statehood under Section 5(b) of the Admission Act.

Inventory: Maui. The County of Maui maintains a list of the lands it controls by area, tax map key number, purpose of acquisition, year acquired, and original cost.

The inventory does not identify parcels as ceded or non-ceded. It is our understanding, however, that the majority of of the county-owned parcels were acquired from private parties through condemnation or purchase. These parcels are not ceded. Only those parcels acquired under executive orders may be considered possibly ceded and subject to the land trust and Chapter 10, HRS.

The only real revenue generating land acquired by executive orders appears to be the county-operated Waiehu Golf Course.

The land underlying the Waiehu Golf Course is comprised of five separate parcels with a total land area of 178 acres. Three of the parcels (69 percent of the total area) are state-owned and under executive order to the county. The remaining two parcels (31 percent of the total area) are property acquired by the county through condemnation. These two parcels are clearly not ceded lands and not subject to the trust provisions of Section 5(f) of the Admission Act or to the provisions of Chapter 10, HRS.

Of the state-owned parcels, 43 acres were acquired by the Territory of Hawaii from a private party in 1928. This land is, thus, not ceded and title to it passed to the State under Section 5(a) of the Admission Act. The rest of the state-owned acreage is described in the conveying executive order as former government land and appears to be ceded, title passing to the State under Section 5(b) of the Admission Act.

Inventory: Kauai. The County of Kauai does not presently maintain a comprehensive land inventory. There is, however, a listing of properties by real property tax key numbers (“Real Property Exemptions by Exemption Code”) from which some information on lands controlled by the county can be obtained. According to the listing, the county currently controls about 250 separate parcels. Several of these parcels are owned by private entities and are being used by the county. The majority of the parcels are owned by the county and State. The large number of state-owned parcels suggests that a significant portion may be former Crown or government lands. It is our understanding that all state-owned parcels controlled by the county have been classified by Admission Act section and are included in the DLNR’s State Land Inventory.

The only state-owned parcel under the control of the County of Kauai that produces any significant amount of revenues is the county’s Wailua Golf Course. Green and locker fees, and rents and concessions comprise the revenues.

The golf course consists of 195 acres. The land underlying the golf course is owned by the State and is controlled by the county under two Governor’s executive orders, issued during the territorial period. Executive Order No. 97 issued on April 20, 1921, granted use of 190 acres to the county, and Executive Order No. 112 dated May 10, 1945, granted use of 4.51 acres. Based upon a limited review of available documentation, it appears that the entire golf course rests on former Crown or government land which had been ceded to the United States on annexation. Title to the parcel appears to have been conveyed to the State under Section 5(b) of the Admission Act.

Honolulu International Airport

The airport system generates a considerable amount of revenue each year, and Hawaii's airports sit in part on lands subject to the trust of Section 5(f) of the Admissions Act. This being so, the Office of Hawaiian Affairs has, understandably, a particular interest in the lands occupied by the airports. Therefore, we subjected the Honolulu International Airport (the largest airport in Hawaii in terms of acreage and revenue) to an extensive examination to determine the accuracy with which the lands occupied by the airport are listed in the state inventory. The examination included a land survey as appropriate of, and a search of the title to the lands of the airport. The survey was conducted by the cadastral engineering section of the highways division in the Department of Transportation. The title search was performed by an independent title researcher, formerly with the Department of Transportation.

The maps. The maps that resulted from the survey are appended to this report. There are seven sheets of maps. The present physical boundaries of the Honolulu International Airport are outlined on each map. It is noted that there are two parcels of land (designated Parcels 8 and 9) which are outside the physical boundaries of the airport. They are, however, currently under the jurisdiction of the airports division of the Department of Transportation and are considered to be a part of the airport property. It is also noted that there are two parcels (Parcels 2-D and 7-B-1-C) that are within the airport boundaries, but not owned by the State of Hawaii. They are currently still owned by the United States government.

Sheet No. 1 of the maps shows the parcels of land that were, at annexation, within the present physical boundaries of the Honolulu International Airport. Parcels 1, 2, 3, and 4 were privately-owned at that time, and Parcels 5 through 11 were Crown and government lands owned by the Republic of Hawaii. Parcels 5 through 11 were ceded to the United States upon annexation.

Sheet Nos. 2, 3, 4, and 5 show how the original 11 parcels were divided and subdivided into smaller parcels for purposes of transferring title or the use, possession, and control of the lands between and among private owners, the Territory and State of Hawaii, and the federal government. Sheet Nos. 2 and 3 are concerned with land transfers occurring during the territorial period, and Sheet Nos. 4 and 5 deal with transfers occurring after statehood. The transfers of specific parcels as divided and subdivided are noted in the chain of title explanation attached to the maps.

Sheet No. 6 depicts our conclusion as to the inclusions and exclusions of the various parcels at the airport from the public land trust provided in Section 5(f) of the Admission Act and from the 20 percent provision of Section 10-13.5, HRS.

The last sheet of maps provides a pictorial view of the parcels in terms of the character of the lands at the airport: submerged lands, awarded lands, registered lands, and filled lands.

The acreage and classification of airport lands. It is our finding that the State of Hawaii owns an aggregate of 4,457 acres (more or less) of land at the Honolulu International Airport. For purposes of determining which of the parcels are includable and which are excludable from the public land trust provided in Section 5(f) of the Admission Act and the 20 percent provision of Section 10-13.5, HRS, we determined for each parcel the legal authority under which the State of Hawaii acquired the fee title to the parcel as follows (see also Sheet No. 6 of the maps):

<i>Parcel Number</i>	<i>Legal Authority Under Which Title Acquired</i>
1-A	5(a)
1-B	5(a)
1-C	5(b)
1-D	Other
2-A	FAA/FA & ADA
2-B	FAA/FA & ADA
2-C	FAA/FA & ADA
3	5(a)
4	5(a)
5-A	5(b)
5-B	5(a)
5-C	Other
5-D	FAA/FA & ADA
6-A	FAA/FA & ADA, but treatable as Public Law 88-233
6-B	FAA/FA & ADA, but treatable as Public Law 88-233
6-C	5(b)
7-A-1	FAA/FA & ADA, but treatable as Public Law 88-233
7-A-2	5(a)
7-B-1-A	FAA/FA & ADA, but treatable as Public Law 88-233
7-B-1-B	FAA/FA & ADA, but treatable as Public Law 88-233
7-B-2	FAA/FA & ADA, but treatable as Public Law 88-233
7-B-3	FAA/FA & ADA, but treatable as Public Law 88-233
7-B-4	5(b)
7-C-1-A	FAA/FA & ADA, but treatable as Public Law 88-233
7-C-1-B	FAA/FA & ADA, but treatable as Public Law 88-233
7-C-2	FAA/FA & ADA, but treatable as Public Law 88-233
7-C-3	5(b)
7-C-4	5(b)
8-A	5(b)
8-B	5(e)
9-A	5(b)
9-B	5(e)
9-C	Public Law 88-233
10	5(b)
11	5(b)

The ceded and non-ceded acreages within each category are as follows:

<i>Legal Source of Title</i>	<i>Acreage</i>	
	<i>Ceded</i>	<i>Non-Ceded</i>
5(a)	351.8	408.6
5(b)	2,683.7	—
5(e)	50.8	—
Public Law 88-233	11.0	—
FAA/FA & ADA, but treatable as Public Law 88-233	640.7	—
FAA/FA & ADA	—	138.7
Other	—	171.7
TOTAL	3,738.0	719.0

Table 3.8 compares the acreages above with those noted on the state inventory prepared by the DLNR and those kept by the Department of Transportation, airports division.

Some observations. We note here some pertinent facts which explain the classification accorded some of the parcels.

1. *Exchanged lands.* Parcels 1C and 5A were initially privately-owned lands. They were acquired by the United States by condemnation in 1935. In 1942, the United States quitclaimed the parcels by a deed to the Territory of Hawaii. Since Hawaii acquired the fee title to the parcels before statehood, it would seem that Parcels 1C and 5A should be classified as Section 5(a) lands. We have, however, concluded that Parcels 1C and 5A should be classified as Section 5(b) lands.

Parcels 1C and 5A were acquired by the Territory of Hawaii from the United States in exchange for ceded lands which were under the possession, use, and control of the Territory of Hawaii. Under the Organic Act, Section 73(q), lands conveyed to the territory in exchange for other lands that were subject to the land laws of Hawaii (including ceded lands) assumed the same status as if they had previously been public lands of Hawaii. Thus when Hawaii acquired Parcels 1C and 5A from the United States, those parcels assumed the same status as the ceded lands set aside to the United States government in exchange. Title to the ceded lands given in exchange vested in the United States. Thus, title to Parcels 1C and 5A remained in the United States, notwithstanding the quitclaim deed, Hawaii having acquired the equitable right to possess, use, and control the parcels. Upon attaining statehood, Hawaii succeeded to the title of the United States in those parcels under Section 5(b) of the Admission Act.

Table 3.8

**Honolulu International Airport
Ceded and Non-Ceded Acreage by Legal Source of Title
As Determined by LAO, DLNR, and Airports Division**

<i>Legal Source of Title</i>	<i>Acreage</i>		<i>Total Acreage</i>
	<i>Ceded</i>	<i>Non-Ceded</i>	
Legislative Auditor			
5(a)	351.8	408.6	760.4
5(b)	2,683.7	—	2,683.7
5(e)	50.8	—	50.8
Public Law 88—233	11.0	—	11.0
FAA/FA & ADA, but treatable as Public Law 88—233	640.7	—	640.7
FAA/FA & ADA	—	138.7	138.7
Other	—	171.7	171.7
Total	3,738.0	719.0	4,457.0
Department of Land and Natural Resources			
5(a)	467.0	180.9	647.9
5(b)	3,050.1	—	3,050.1
Public Law 88—233	517.0	—	517.0
x*	—	265.1	265.1
Total	4,034.1	446.0	4,480.1
Airports Division			
5(a)	—	791.3	791.3
5(b)	2,953.7	—	2,953.7
x**	—	665.8	665.8
Total	2,953.7	1,457.1	4,410.8

*Lands acquired from private individuals after statehood.

**Lands acquired from private individuals and the U.S. after statehood.

2. *Federal Airport Act/Federal Airports and Airway Development Act.* The Federal Airport Act was initially enacted in 1946. In 1970, the Federal Airport Act was superseded by the Federal Airports and Airway Development Act. Under both acts, the United States government was authorized to convey to a public agency any lands owned or controlled by the United States whenever it was deemed necessary for carrying out a project for the development or for the operation of a public airport.

The United States, citing as authority the Federal Airport Act and the Federal Airport and Airway Development Act, conveyed to the State of Hawaii after August 21, 1964, 779.3492 acres of land for the development of the Honolulu International Airport.

Of this acreage, 138.6977 acres consist of federal fee simple lands—that is, lands acquired by the federal government from private persons by way of cash purchase, condemnation, gift, or otherwise.¹⁰ The remaining 640.6515 acres are ceded lands which were set aside and “deeded” over to the United States by the Territory of Hawaii shortly before statehood. Eight different parcels, consisting of 522.4955 acres were “deeded” to the United States on July 30, 1959. Three parcels, having an aggregate of 118.1560 acres were “deeded” over to the United States on August 20, 1959 (one day before statehood). The entire 640.6515 acres were ostensibly “deeded” over to the United States in exchange for two parcels, having a total acreage of 171.733 acres owned by the United States as a result of condemnation by the United States government of private lands.

Although the documents transferring the fee title to this 640.6515 acres of land to Hawaii recited as authority for the transfer the Federal Airport Act or the Federal Airport and Airway Development Act, we think that this acreage should be treated as if it were returned to Hawaii under Public Law 88–233. The reason for this is as follows. These are ceded lands that were set aside for use by the federal government. Although some or all were also conveyed by Hawaii to the United States by deed, the deeds were irrelevant, for the federal government already had legal title to these ceded lands, having acquired it upon annexation. The deeds did not act to pass title to the United States; they acted merely as instruments to set aside lands for the use of the United States. Since these lands are ceded lands which were set aside for the use of the federal government and retained by it on August 21, 1964, they were otherwise required to be returned to Hawaii under Public Law 88–233 whenever they became surplus to the needs of the United States.

3. *Ineffective conveyances.* By a deed dated November 19, 1976, the United States, citing as partial authority the Airport and Airway Development Act of 1970, conveyed to the State of Hawaii a number of parcels. Since this deed was executed sometime after Hawaii attained statehood and sometime after the five-year cutoff date provided in Section 5(e) of the Admission Act for the return of public lands not needed

10. Seventeen acres of the 138,6977 acres were initially ceded lands conveyed by the Territory of Hawaii under authority of Section 91 of the Organic Act to Samuel M. Damon in a land exchange. These 17.00 acres were then subsequently acquired by the United States by way of condemnation.

by the United States, it would seem that on the face of the deed, none of the parcels enumerated therein could be considered to have been returned to Hawaii under any of the subsections of Section 5 of the Admission Act. This conclusion, however, is incorrect.

The deed of November 25, 1976, was an omnibus deed, which included parcels, title to which had vested in Hawaii some time before 1976. Title to Parcels 3 and 4, for instance, had passed to Hawaii during the territorial period. These parcels were privately-owned lands acquired by the Territory of Hawaii by condemnation. The State of Hawaii, therefore, became the fee owner of these parcels under Section 5(a) of the Admission Act.

Parcels 6-C, 7-B-4, 7-C-3, 7-C-4, 8-A, 9-A, and 11 were owned by the Republic of Hawaii and title to these parcels vested in the United States on annexation. However, since these parcels were never set aside during the territorial period for the use of the United States, title to them vested in the State of Hawaii on statehood pursuant to Section 5(b) of the Admission Act.

Parcels 6-A, 7-C-1-A, 8-B, 9-B and 9-C had previously been conveyed by the United States to the State of Hawaii. Parcels 8-B and 9-B had been so conveyed in 1963 and hence title to these parcels vested in the State of Hawaii pursuant to Section 5(e) of the Admission Act. As to Parcel 9-C, a deed dated July 23, 1965 cited Public Law 88-233 as authority for the conveyance to the State of Hawaii. Parcels 6A and 7-C-1-A had been conveyed to the State of Hawaii by a prior deed dated May 3, 1971.

As to the above enumerated parcels, the deed dated November 29, 1976, conveyed nothing to Hawaii. Their status, with reference to the public land trust, was determined by the nature of their earlier conveyances to Hawaii.

Sand Island

We examined Sand Island for the same basic purpose that we examined the Honolulu International Airport—to ascertain the accuracy with which the lands are listed on the state inventory. Sand Island generates annually sizeable revenues, although not as much as the Honolulu International Airport. In fiscal year 1981-82, the revenues amounted to \$5.6 million. The Office of Hawaiian Affairs, therefore, has an interest in assuring that the Sand Island lands are properly accounted for.

Unlike the case of the Honolulu International Airport, we did not find it necessary to have a field survey done or to make an exhaustive search of the chain of title. It is generally conceded by all parties that Sand Island encompasses about 507 acres of land plus surrounding submerged lands. Most of the 507 acres are filled lands. Forty-nine acres of the 507 acres are still set aside for the use of the United States government. The 49 acres are being used for coast guard purposes.

It is also generally agreed that Sand Island is ceded lands, although for a time in the 1900s there was a continuing dispute as to the ceded or non-ceded status of the island, and although upon the enactment of Chapter 10, HRS, particularly Section 10–13.5, this issue of ceded versus non-ceded status of Sand Island surfaced again briefly.

The major concern with respect to Sand Island is whether the DLNR properly classified the lands in terms of the statutory source of Hawaii's title to the lands.

It is our finding that the DLNR's classification of the lands on Sand Island is technically correct. However, we believe that all of Sand Island should be considered a part of the trust established by Section 5(f) of the Admission Act and subject to Section 10–13.5, HRS.

A summary of the transfer of fee title to Hawaii. At annexation, the U.S. took over Sand Island, which at that time consisted of less than 10 acres of land. It was set aside by presidential executive order for use by the United States as a military reservation. Between 1902 and 1941, the Army and Navy filled the surrounding reefs from materials dredged from the entrance to Honolulu Harbor and Keehi Lagoon.

Sand Island was returned to Hawaii in three segments. The first segment consisted of 16 acres. By two presidential executive orders, one in 1946 and the other in 1947, the Territory of Hawaii acquired the possession, use, and control, but not fee title to the 16 acres.¹¹ The DLNR has treated the 16 acres as lands, the fee title to which was returned to Hawaii at statehood under Section 5(b) of the Admission Act.

11. Of the 16 acres, 12 acres previously set aside in 1920 by Presidential Executive Order No. 3358 for military purposes were restored in Presidential Executive Order No. 9752 for a sewerage treatment plant. Another four acres were restored under Presidential Executive Order 9860. The four acres, which are part of the Keehi Lagoon seaplane runway, are submerged and not included in the 507 acres that compose Sand Island land.

In 1955, the territorial government sought title to some 202 acres of Sand Island. The impetus to gain the fee title to the land came from an offer by Standard Oil of California to purchase the 202-acre site for its \$30 million oil refinery. This site was conveyed to the territory on August 20, 1959, one day before statehood, by Presidential Executive Order No. 10833. Since the return was before statehood, the 202 acres have been classified by the DLNR as lands returned to Hawaii under Section 5(a) of the Admission Act.

The final transfer occurred in 1963 when another 360 acres were conveyed under the Revised Conveyance Act (Public Law 88-233). Of the 360 acres, approximately 244 acres are landed property. Another 116 acres are still submerged.

Map A, appended to this report, depicts the return of the foregoing parcels.

Controversy over the ceded status. Although it is generally agreed that the lands on Sand Island are ceded lands, it is appropriate that we review briefly the controversy over the ceded, non-ceded status of the lands. We do so for two reasons. *First*, to put the issue to rest. *Second*, the ceded, non-ceded controversy has impacted upon the mode of the return of the island to Hawaii.

Our study of the matter leads us to conclude that the lands on Sand Island are indeed ceded lands. They were owned by the Republic of Hawaii at the time of annexation, and upon annexation, the United States succeeded to the Republic's title to the lands.

Sand Island lies within what used to be the Mokauea and Kaholaloa fishing grounds. Sand Island as we know it today was essentially built by filling the reefs within these grounds. The controversy over whether Sand Island constituted ceded or non-ceded lands stemmed largely from the Land Commission awards made of the Mokauea and Kaholaloa fisheries. The Land Commission which was established in 1846¹² to adjudicate all private claims to landed property acquired before 1846, awarded the fishing grounds to private individuals. Moreover, in making the awards, it used language which appeared to grant the fee title to the lands beneath the fisheries (the submerged lands).

12. An Act to Organize the Executive Department of the Hawaiian Islands Pt 1 Ch VII, Art IV; April 27, 1946. Section 1 states in part that "His Majesty shall appoint through the Minister of the Interior and upon consultation with the Privy Council, five Commissioners, one of whom shall be the Attorney General of this kingdom, to be a board for the investigation and final ascertainment or rejection of all claims of private individuals, whether natives or foreigners to any landed property acquired anterior to the passage of this Act; the awards of which unless appealed from as hereinafter allowed shall be binding upon the Minister of the Interior and upon the applicant . . ."

Had the Land Commission the authority to make the awards in the first instance and to award the fee to the lands beneath the fisheries, the awards would have deprived the Republic of Hawaii of title to the fisheries and the lands beneath them, and Sand Island today would not be considered to be ceded lands.

However, it does not appear that the Land Commission had the authority to make awards of fishing grounds or the lands beneath the fisheries. The Land Commission's authority extended only to making grants of landed property. Fishing rights had been conferred initially by King Kamehameha III in 1839,¹³ and in subsequent years the Republic of Hawaii enacted laws governing fisheries and fishing rights as a means of regulating and controlling the coastal waters and its fish. As the term implies, fishing rights were simply rights to fish in defined coastal areas.

The dispute came to the fore upon the enactment of the Organic Act. A portion of the act brought to an end the exclusive rights to fish in the sea waters of the islands that had been conferred to individual persons by the laws of Kamehameha III.

Soon after the enactment of the Organic Act, those who had received Land Commission awards to fishing grounds brought suit to confirm their title to the fishing grounds and the lands beneath the fisheries. In one case, the Land Commission had eliminated in a subsequent order the fishing ground from its award, and the awardee petitioned the court to re-establish its claim to the fishery. In that case, the court awarded the fishery rights to the awardee but the Territory of Hawaii took strong exceptions to the judgment.

All cases relating to the Mokauea and Kaholaloa fisheries ended in a settlement between the parties. As part of the settlement, all fishing rights, title and interest in the Mokauea and Kaholaloa fisheries were quitclaimed to the Territory of Hawaii and the awardees received other lands in exchange.

Although the court in one case held for the awardee, the position of the government of Hawaii and that of the United States has consistently been (and we believe rightly so) that the Land Commission had no authority to make awards of fishing grounds and that the private claims to the fisheries were not valid. The present treatment by the State of Sand Island as ceded lands is consistent with this early position.

13. Laws of 1839, Chapter 3, Section 8.

The return of 202 acres. About 1955, the territorial government received an offer from the Standard Oil Company of California to purchase the 202-acre site for its \$30 million oil refinery. All of Sand Island, however, had been set aside by presidential executive order for the use of the United States. Hawaii, therefore, needed to have the acreage returned to Hawaii's control before it could sell the site to Standard Oil. The Territory of Hawaii initiated action to have the 202-acre site returned to Hawaii.

However, the transfer of the lands to Hawaii was not easily accomplished. Between 1955 and 1956, the U.S. Department of Justice wrestled with the question, whether a presidential executive order would be sufficient to transfer the lands to the territory, or whether an act of Congress was also required. Although Section 91 of the Organic Act provided that public property ceded at annexation for the uses and purposes of the United States could be restored to its previous status by the direction of the President, the U.S. Department of Justice was troubled by the earlier asserted private claims to the fisheries and it questioned, assuming that Sand Island constituted ceded lands, whether the 202-acre site, ceded as submerged land could be restored under Section 91 as filled land.

In view of the fact that the territory intended to sell the filled land and therefore required clear title, the U.S. Department of Justice ruled in late 1956 that special congressional legislation would be required to enable the President to return the land by executive order.

On January 21, 1958, Hawaii's delegate to Congress, the late John A. Burns, introduced HR 10173. The purpose of this bill was "to authorize the President, by executive order, to transfer to the Territory of Hawaii, without monetary reimbursement, not to exceed 202 acres of the Sand Island Military Reservation. . . ." According to Senate Committee Report No. 2257, which accompanied the bill,

"It appears that an Executive order may not be sufficient in this instance, however, for although the lands in question appear to be public lands ceded within the meaning of the Hawaiian Organic Act, there is some question whether they may be sold or otherwise disposed of by the Territory. This question arises because portions of Sand Island are made up of land filled in subsequent to annexation. Inasmuch as the Sand Island property is likely to be a useful site for commercial development, it is desirable that the Territory have full authority to dispose of such portions of the land as are not required for military purposes."

HR 10173 became law (Public Law 85–756) on August 25, 1958; however, actual transfer of the 202 acres did not occur immediately. There was some difficulty in negotiating the exact parcel to be transferred. At one point, talks were stalled because the Army claimed that part of the area sought by the territory was needed for a highly classified missile site.

When it became clear that Hawaii would attain statehood, efforts to transfer the 202-acre site by executive order intensified. The territorial government and Hawaii's delegate to Congress expressed concern that Public Law 85–756 would be invalidated once Hawaii became a state because the law made specific reference to Hawaii as a territory. The territorial government reasoned that if Hawaii became a state before the executive order was signed by the President, a new congressional legislation would be required and the transfer of land, which had been delayed for almost four years, would be further delayed. On August 20, 1959, one day before statehood, title to the 202 acres of Sand Island was transferred to the territory by Executive Order 10833.

Had the President not signed the executive order and the 202 acres not been transferred to Hawaii on August 20, 1959, we can only speculate as to how Hawaii might have, after statehood, acquired title to the 202 acres. In all probability, it would have been conveyed to Hawaii by Public Law 88–233, together with the 244 acres that were conveyed to Hawaii under that public law in 1963.

The 244 acres were conveyed to Hawaii under Public Law 88–233, rather than under Section 5(e) of the Admission Act, even though the conveyance was had within the five-year review period provided in Section 5(e), because of the same two problems that compelled the U.S. Department of Justice to require congressional authority for the conveyance of the 202-acre site—the earlier asserted private claims to what used to be the Mokauea and Kaholaloa fishing grounds, and the questionable ability of the United States to return to Hawaii as filled lands what the United States had received on annexation as submerged lands.

The treatment awarded the 202-acre site. Since the presidential executive order returning the 202 acres to Hawaii was signed before Hawaii became a state, the acreage is listed in the state inventory as having been received by Hawaii under Section 5(a) of the Admission Act. As Section 5(a) land, the 202-acre site is not subject to the Section 5(f) trust or the 20 percent provision of Section 10–13.5, HRS.

Technically, the listing of the acreage as Section 5(a) land is correct. However, there is no good reason why the 202 acres should not be treated in the same manner as the later conveyed 244 acres, particularly since the 202 acres were restored to Hawaii's control only one day before statehood. The only reason why the presidential order was rushed was the fear that if the land was not transferred before statehood, another congressional act would be required for the transfer, since the earlier congressional act, authorizing the return of the land to Hawaii mentioned the "Territory of Hawaii" and not the "State of Hawaii." There was no urgency for the conveyance, for Standard Oil Company in 1958 had decided to locate its refinery on Campbell Estate land at Barbers Point. If the presidential order had not been signed before statehood, the 202 acres could have been included and, as pointed out above, in all probability would have been included in Public Law 88-233, together with the 244 acres conveyed to Hawaii by that public law.

Since the 202-acre site was conveyed to Hawaii just one day before statehood, and since there was no good reason for the transfer to Hawaii just shortly before statehood, and since in all probability, the 202 acres would have been included in Public Law 88-233 had the acreage not been conveyed to Hawaii before statehood, it would appear to be fair to treat the 202-acre site in the same manner as the 244 acres that were conveyed to Hawaii by Public Law 88-233, and to subject both the 202-acre site and the 244 acres to the public trust provision of Section 5(f) of the Admission Act. To accomplish this, however, would require legislative action.

The Harbors

We did not subject any of the harbors of the State to a field survey or to a title search. We have, however, reviewed the listing of the harbor properties in the state inventory developed by the DLNR for the purpose of acquiring some idea of the probable acreage of harbor lands that might conceivably be subject to the trust provisions of Section 5(f) of the Admission Act and the provisions of Chapter 10, HRS, and for the purpose of determining probable impact on the revenues of the harbor system if any harbor lands are subject to the trust and to Chapter 10, HRS.

Since the state harbor system, like the State's airport system, generates income of some magnitude, it appears to us that a survey and a title search of the harbor properties should be made, in the same manner as we caused a survey and a title search to be made of the lands at the Honolulu International Airport, to insure accuracy in accounting for the lands and the proceeds. We include such survey and title search in a subsequent part of this report where we outline the work yet to be done to complete our responsibilities under Act 121, Session Laws of Hawaii 1982.

We subjected the entire state harbor system to scrutiny. In this phase of the study, the ceded, non-ceded categorization and the classification by source of title as identified in the inventory prepared by DLNR were taken as givens. We have also derived the acreages for each commercial and small boat harbor from the inventory, cross-checked, however, against the Department of Transportation's listing of "Lands Set Aside by the Governor's Executive Order to the Harbors Division"¹⁴ to ensure that all acreages were accounted for. Any difference between the total acreage given on DLNR's inventory and Department of Transportation's listing for a specific harbor was resolved by examining all executive orders relating to that harbor.

The Statewide Harbor System. The Department of Transportation through its harbors division operates and manages the statewide harbor system which consists of two separate financial entities: commercial harbors and small boat harbors.

There are eight commercial harbors, six deep-draft and two medium or small draft. They provide for the movement of most commercial cargo entering and leaving the state. The deep-draft harbors, in order of cargo volume are: Honolulu harbor, Oahu; Kahului harbor, Maui; Hilo harbor, Hawaii; Nawiliwili harbor, Kauai; Kawaihae harbor, Hawaii; and Port Allen, Kauai. The two medium draft harbors are: Kaunakakai, Molokai and Kewalo Basin, Oahu.

There are some 11 small boat harbors, located throughout the State. They provide recreational ocean based boating and physical facilities to small boaters.

14. Department of Transportation's listing of "Lands Set Aside by Governor's Executive Order to the Harbor's Division" lists each commercial and small boat harbor together with the executive order which set aside the land.

Lands set aside for harbor purposes in the aggregate. Almost 1,483 acres of public lands, including submerged lands, have been set aside by gubernatorial executive orders for harbor purposes.¹⁵ The island of Oahu has almost 656 acres set aside for harbors. Maui has some 573 acres followed by Hawaii and Kauai with 165.6 and 87.9 acres, respectively.

Table 3.9 provides a breakdown of the number of ceded and non-ceded acres occupied by commercial and small boat harbors within each district by Admission Act sections and Public Law 88-233. As the table shows, of the total 1,483 acres occupied by commercial and small boat harbors, about 1,278 acres or 86.2 percent are ceded. Only some 204 acres or 13.8 percent are non-ceded. Of the 1,278 ceded acres, title to almost 282 acres were conveyed to Hawaii before statehood and are classified as 5(a). Title to another 834 acres were conveyed at statehood under Section 5(b) of the Admission Act. Title to some 43 acres, retained by the U.S. at statehood, were transferred to Hawaii under Section 5(e) of the Admission Act, and over 120 acres were conveyed to Hawaii pursuant to Public Law 88-233.

Included in the 204 acres of non-ceded land are those lands acquired by the territory from private individuals after 1900, but before statehood, and those lands purchased by the State from private individuals after statehood.

Table 3.9
Ceded and Non-Ceded Acres Occupied by Commercial and Small Boat Harbors by District

<i>District*</i>	<i>Total Acreage</i>	<i>Number of Ceded Acres</i>				<i>Total No. of Ceded Acres</i>	<i>Percent</i>	<i>Total No. of Non-Ceded</i>	
		<i>5(a)</i>	<i>5(b)</i>	<i>5(e)</i>	<i>P.L. 88-233</i>			<i>Acres</i>	<i>Percent</i>
Oahu	656.0	189.0	170.0	36.0	120.0	515.0	78.5	141.0	21.5
Maui	573.0	11.0	533.0	—	—	544.0	94.9	29.0	5.1
Hawaii	165.6	38.0	99.6	7.0	—	144.6	87.3	21.0	12.7
Kauai	87.9	43.8	31.0	—	—	74.8	85.1	13.1	14.9
TOTAL	1482.5	281.8	833.6	43.0	120.0	1278.4	86.2	204.1	13.8

*Listed in order of acreage.

15. An additional 546 acres have been set aside to the Department of Transportation for boat launching ramps, moorages, easements and an energy corridor. Another 392 acres, presently being used for harbor purposes, are in the process of being set aside by Governor's executive orders to the Department of Transportation.

Lands set aside for commercial harbors. Of the total 1,483 acres set aside for harbor purposes, some 1,210 acres are used for commercial harbors. The remaining 273 acres are designated for small boat purposes.

As shown in Table 3.10, of the 1,210 acres encumbered by commercial harbors, 1,037 acres or 85.7 percent are ceded. Only 173 acres or 14.3 percent are non-ceded.

Of the 1,037 ceded acres, title to some 737 acres was conveyed to Hawaii under Section 5(b) of the Admission Act and title to another 19 acres was transferred by Section 5(e) of the Admission Act. Title to 161 acres was conveyed to Hawaii by Section 5(a) of the Admission Act, and title to 120 acres was transferred pursuant to Public Law 88-233. Thus a total of 876 acres are subject to the trust provisions of Section 5(f) of the Admission Act, and 161 acres are not.

Two hundred twenty-four acres or more than one-half (55 percent) of Honolulu harbor and 375 acres or approximately 92.6 percent of Kahului harbor are public trust lands. These two commercial harbors are ranked first and second respectively in terms of cargo volume and acreage. One hundred six acres or almost 84 percent of Kawaihae harbor; 10 acres or 76.9 percent of Port Allen; and all 100.0 percent of Kaunakakai harbor's 114 acres are subject to the trust. Also subject to the trust are 47 acres or 85.5 percent of Kewalo Basin.

Table 3.10
Ceded and Non-Ceded Acres by Commercial Harbor

Commercial Harbors	Total Acreage	Number of Ceded Acres				Total No. of Ceded Acres	Percent	Total No. of Non-Ceded	
		5(a)	5(b)	5(e)	P.L. 88-233			Acres	Percent
Deep-Draft*									
Honolulu (Oahu)	408.0	69.0	92.0	12.0	120.0	293.0	71.8	115.0	28.2
Kahului (Maui)	405.0	11.0	375.0	—	—	386.0	95.3	19.0	4.7
Hilo (Hawaii)	38.0	38.0	—	—	—	38.0	100.0	—	—
Nawiliwili (Kauai)	50.0	43.0	—	—	—	43.0	86.0	7.0	14.0
Kawaihae (Hawaii)	127.0	—	99.0	7.0	—	106.0	83.5	21.0	16.5
Port Allen (Kauai)	13.0	—	10.0	—	—	10.0	76.9	3.0	23.1
Medium-Draft									
Kaunakakai (Molokai)	114.0	—	114.0	—	—	114.0	100.0	—	—
Kewalo Basin (Oahu)	55.0	—	47.0	—	—	47.0	85.5	8.0	14.5
TOTAL	1210.0	161.0	737.0	19.0	120.0	1037.0	85.7	173.0	14.3

* Listed in order of cargo volume.

Lands set aside for small boat harbors. Table 3.11 shows that the State's 11 small boat harbors occupy a total of almost 273 acres. Of the 273 acres, some 241 acres or 88.6 percent are ceded. Only 31 acres are non-ceded. One hundred twenty-one of the ceded acres consist of lands conveyed to Hawaii by Section 5(a) of the Admission Act and thus, are not included in the public land trust. However, slightly more than 120 acres have been conveyed to Hawaii by Sections 5(b) and 5(e) of the Admission Act and are subject to the trust.

Only the Honolulu district has a significant amount of small boat harbor acreage. Four small boat harbors, Ala Wai, Keehi, Heeia Kea and Haleiwa, occupy a total of 193 acres. Of this amount, approximately 55 acres or 28.5 percent are subject to the trust.

Table 3.11
Ceded and Non-Ceded Acres by District and Small Boat Harbor

District/Harbor	Total Acreage	Number of Ceded Acres				Total No. of Ceded Acres	Percent	Total No. of Non-Ceded Acres	
		5(a)	5(b)	5(e)	P.L. 88-233			Acres	Percent
HONOLULU									
Ala Wai	124.0	120.0	1.0	—	—	121.0	98.0	3.0	2.0
Keehi	24.0	—	—	24.0	—	24.0	100.0	—	—
Heeia Kea	14.0	—	14.0	—	—	14.0	100.0	—	—
Haleiwa	31.0	—	16.0	—	—	16.0	51.6	15.0	48.4
Total	193.0	120.0	31.0	24.0	—	175.0	90.7	18.0	9.3
HAWAII									
Keauhou	.6	—	.6	—	—	.6	100.0	—	—
Total	.6	—	.6	—	—	.6	100.0	—	—
MAUI									
Maalaea	33.0	—	32.0	—	—	32.0	97.0	1.0	3.0
Lahaina	12.0	—	12.0	—	—	12.0	100.0	—	—
Manele (Lanai)	9.0	—	—	—	—	—	—	9.0	100.0
Total	54.0	—	44.0	—	—	44.0	81.5	10.0	18.5
KAUAI									
Nawiliwili	8.0	—	8.0	—	—	8.0	100.0	—	—
Kikiaola	16.0	—	13.0	—	—	13.0	81.3	3.0	18.7
Kukuiaola	.9	.8	—	—	—	.8	88.9	.1	11.1
Total	24.9	.8	21.0	—	—	21.8	87.6	3.1	12.4
TOTAL—ALL DISTRICTS	272.5	120.8	96.6	24.0	—	241.4	88.6	31.1	11.4

Additional Survey, Title Search

Of the approximately 1.4 million acres of public land, we have completed a survey and title search of only 4,457 acres situated at the Honolulu International Airport. We think more surveys and title searches are needed to make the inventory of public lands accurate and complete. We do not believe, however, that, although desirable, a survey and title search are necessary at this time for every parcel of public land. It would appear that we may at this time forego the survey and title searches of land under leases and permits and those which are presently unencumbered. Surveys and title searches of these parcels may be accomplished as the need arises and funds become available.

We believe, however, that a survey and title search are imperative with respect to the airports on the neighbor islands and all commercial harbors of the State. Indeed, we think that a survey and title search should be made of all lands being used for the operation of public enterprises. The reason is that these enterprises generate considerable amounts of income and they often sit, as in the case of the airports and harbors, on both trust and non-trust lands. When enterprises sit on both trust and non-trust lands, there is a problem of allocating the enterprises' income to the trust and non-trust lands. An accurate inventory of these trust and non-trust lands is needed to insure a proper allocation of the income.

For the foregoing reasons, we have included in our plans for the next year, a field survey and title searches of the lands at the neighbor island airports and the lands in the State used for commercial harbors.

Chapter 4

LEGAL ISSUES

One of the purposes of Act 121, Session Laws of Hawaii 1982, is to study the legal and fiscal issues arising from the public land trust provisions of the Admission Act and the State Constitution and statutes. The issues center on the meaning and application of the provisions of the Admission Act and the state statute on the use of the trust funds for the betterment of native Hawaiians.

In this chapter we describe the issues. We have arrived at a definitive conclusion on only one of the issues. All other issues require further study and analysis. Some of the issues may require resolution by the Legislature; others may need an opinion of the State Attorney General. On some of the issues we express what we think ought to be the probable outcome. However, our writing here is not intended as a legal opinion.

Overall Issue Summarized

The overall question that arises from the Admission Act and Chapter 10, HRS, is: what revenues are includable in the public trust fund established by Section 5(f) of the Admission Act and are subject to the 20 percent requirement of Section 10-13.5, HRS.

We identified several subissues, each focusing on a much narrower aspect of the overall question.

The amount of income that the Office of Hawaiian Affairs (OHA) is entitled to receive is greatly impacted by the issues. To date, OHA has received \$2.7 million. See Table 4.1. This sum represents 20 percent of the revenues collected by the Department of Land and Natural Resources (DLNR) from general leases and permits during the period June 16, 1980 to June 30, 1982. The general leases and permits include only those general leases and permits covering lands, title to which vested in the State of Hawaii under Sections 5(b) and 5(e) of the Admission Act. OHA has received no portion of any other revenue from public lands. The issues we have identified, if given favorable resolution, have the potential of increasing the amounts to which OHA would be entitled.

Table 4.1
Revenue from Lands Conveyed Under Sections 5(b)* and
5(e) of the Admission Act and Payments Remitted to OHA
For the Period Ending June 30, 1982

<i>Period</i>	<i>Quarter</i>	<i>Revenue from 5(b) and 5(e)</i>	<i>Amount Remitted to OHA</i>
FY 1980-81			
June 16, 1980-March 1981**		\$ 6,512,129	\$ 1,302,426
April-June	4th	1,257,546	251,509
FY 1981-82			
July-September	1st	1,278,514	255,703
October-December	2nd	1,205,623	241,125
January-March	3rd	2,325,072	465,014
April-June	4th	775,818	155,163
TOTAL		\$13,354,702	\$ 2,670,940

*Prior to an attorney general's opinion issued on June 24, 1982, revenues derived from submerged lands were not treated as income subject to Section 10-13.5, HRS. Based on the attorney general's opinion that submerged lands are ceded lands granted in Section 5(b), the Department of Land and Natural Resources remitted \$53,543 to the Office of Hawaiian Affairs in October 1982.

**Includes two weeks of the last quarter of FY 1979-80.

Lands Conveyed Under Public Law 88-233

Congressional statutes appear fairly clear as to what lands are subject to the public land trust established by Section 5(f) of the Admission Act. The Admission Act provides for the inclusion within the trust of: (1) all ceded lands, title to which vested in Hawaii upon statehood pursuant to Section 5(b) of the Admission Act; and (2) all ceded and territorial lands which at the time of statehood were under the control and use of the United States, either as "set aside" lands or pursuant to permits, licenses, or permission of the Territory of Hawaii, but were returned to Hawaii within five years of statehood (i.e., by August 21, 1964) pursuant to Section 5(e) of the Admission Act. In addition, Public Law 88-233 provides for the inclusion in the public land trust of all lands set aside or under the control of the United States on August 21, 1964, which are returned to Hawaii at any time after August 21, 1964.

Although it is clear that lands returned to Hawaii under Public Law 88-233 are subject to the same Section 5(f) trust as are lands returned under Sections 5(b) and

5(e) of the Admission Act, it has been urged that OHA is not entitled to 20 percent of the funds derived from lands conveyed to the State under Public Law 88–233. The language of Chapter 10 is said to compel this result.

Section 10–13.5, HRS, states that 20 percent of all funds derived from “the public land trust, described in section 10–3,” shall be expended by OHA for the purposes of the chapter. Section 10–3, HRS, is an enumeration of the purposes of OHA. In paragraph (1), one of the purposes is stated to be the betterment of the conditions of native Hawaiians. Section 10–3(1), HRS, then states that “a pro rata portion of all funds derived from the public land trust shall be funded in an amount to be determined by the legislature for this purpose, and shall be held and used solely as a public trust for the betterment of the conditions of native Hawaiians.” Section 10–3(1), HRS, defines “public land trust” for the purpose of Chapter 10 to be “all proceeds and income from the sale, lease or other disposition of lands ceded to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July 7, 1898 (30 Stat. 750), or acquired in exchange for lands so ceded, *and conveyed to the State of Hawaii by virtue of section 5(b) of the [Admission Act]* . . . and all proceeds and income from the sale, lease, or other disposition of lands retained by the United States under section 5(c) and 5(d) of the [Admission Act], later *conveyed to the State under section 5(e).*” (Emphasis supplied.)

Section 10–3(1) mentions lands conveyed to the State under Sections 5(b) and 5(e) of the Admission Act, but fails to mention lands conveyed to the State under Public Law 88–233. Thus, it is said, that OHA is not entitled to 20 percent of the funds derived from lands conveyed to Hawaii under Public Law 88–233.

This issue is currently under review by the State Attorney General. A legal opinion on the matter has been sought by the DLNR. The Office of Hawaiian Affairs is of the belief that the 20 percent provision of Section 10–13.5, HRS, is applicable to lands returned to the State under Public Law 88–233. Our review of the statute and of the State Constitution appears to support OHA’s views.

Chapter 10, HRS, was enacted to implement the amendments made to the State Constitution in 1978 relating to OHA and the use for the betterment of native Hawaiians of the public trust fund established by Section 5(f) of the Admission Act. When read in

light of the 1978 amendments to the State Constitution, it appears that the 20 percent directive of Section 10–13.5, HRS, should apply to all lands included in Section 5(f) of the public land trust.

In 1978, Sections 4, 5, and 6 were added to Article XII (formerly Article XI) of the State Constitution. These sections are the bases for Chapter 10, HRS. Section 6 provides for the management and administration by OHA of “all income and proceeds from that pro rata portion of the trust *referred to in section 4 of this article* for native Hawaiians.” (Emphasis supplied.) Section 4 of Article XII states:

“The lands granted to the State of Hawaii by section 5(b) of the Admission Act and pursuant to Article XVI, section 7, of the State Constitution, excluding therefrom lands defined as “available lands” by section 203 of the Hawaiian Homes Commission Act, 1920, as amended, shall be held by the State as a public trust for native Hawaiians and the general public.”

Although Section 4 specifically mentions lands conveyed to Hawaii by Section 5(b) of the Admission Act, but not lands conveyed to the State pursuant to Section 5(e) or pursuant to Public Law 88–233, the inclusion of Section 5(e) and Public Law 88–233 lands is evident by the language “and pursuant to Article XVI, section 7, of the State Constitution.” Article XVI, Section 7, provides for compliance by the State with “any trust provisions which Congress shall impose, upon the admission of this State, in respect to lands patented to the State by the United States or the proceeds and income therefrom.” Congress has imposed a trust provision on lands conveyed to Hawaii under Section 5(e) as well as under Section 5(b) of the Admission Act. It has also imposed a trust provision on lands conveyed to the State under Public Law 88–233.

Public Law 88–233 in effect amended Section 5(e) of the Admission Act by eliminating the five-year deadline for the return of unneeded ceded and other lands by the United States to the State of Hawaii. With Public Law 88–233, all ceded and territorial lands retained by the United States are returnable to Hawaii at any time they are no longer needed by the United States. And, once returned, they are subject to the trust provisions of Section 5(f).

The definition of “public land trust” contained in Section 10–3(1), HRS, is unfortunate. It is couched in terms of land transfers to the State rather than in terms of

the trust created by Section 5(f) of the Admission Act. However, in light of the fact that Chapter 10, HRS, is intended to implement Article XII, Sections 4, 5, and 6 of the State Constitution, and the apparently clear inclusion of all Section 5(f) lands within the ambit of Sections 4, 5, and 6, it appears to us that Section 10-13.5, HRS, should be read to apply to funds derived from lands conveyed to the State under Public Law 88-233 as well as to funds derived from lands conveyed to Hawaii under Sections 5(b) and 5(e) of the Admission Act. It further appears that if in fact the statute as currently worded excludes funds derived from lands conveyed to the State under Public Law 88-233 from the application of Section 10-13.5, HRS (even though such lands are a part of Admission Act Section 5(f) trust), then Section 10-3(1), HRS, should be amended so that the "public land trust" as used in Chapter 10 would apply to the income and proceeds of all lands included within the trust provided in Section 5(f) of the Admission Act.

The impact of the inclusion of Public Law 88-233 lands within the provisions of Chapter 10 is significant. Sand Island is a case in point.

We noted in the previous chapter that 360 acres of land at Sand Island (244 landed and 116 submerged) were returned to Hawaii in 1963 pursuant to Public Law 88-233. We also urged that 202 acres of land at Sand Island which were returned to Hawaii one day before statehood be treated as if they were returned pursuant to Public Law 88-233. These two parcels of land today generate sizeable revenues. Map A in the appendix illustrates what lands are included in the 360 acres and what lands in the 202 acres. Map B shows how these lands are currently being utilized.

Some 144 acres, consisting of portions of the 360 and 202 acres are under the jurisdiction of the DOT and are being used as a container yard/marginal wharf and storage area. Sixty-three acres of the 202 acres returned to Hawaii one day before statehood are under the jurisdiction of the DLNR and are leased out under revocable permits for light industrial uses. The remainder of Sand Island is non-revenue producing, except for a pipeline easement granted to the Union Oil Company of California.

The revenues from these various uses are shown on Table 4.2. As shown, the revenues in fiscal year 1981-82 totaled \$5.6 million. The 20 percent provision of Section 10-13.5, HRS, has not been applied to any of these revenues, except to the yearly rental for the Union Oil pipeline easement. If the 202 acres are treated the same as

the 360 acres received by Hawaii from the United States pursuant to Public Law 88-233, and if the 20 percent provision of Section 10-13.5, HRS were applicable to lands returned to Hawaii via Public Law 88-233, OHA would have been entitled to receive 20 percent of the \$5.6 million or in excess of \$1.1 million.

Table 4.2

Sand Island Revenue by Controlling Agency and Use

<i>Controlling Agency/Use</i>	<i>Fiscal Year 1978-79</i>	<i>Fiscal Year 1979-80</i>	<i>Fiscal Year 1980-81</i>	<i>Fiscal Year 1981-82</i>
Department of Land and Natural Resources				
Light Industrial (63 acres)	\$ 240,000	\$ 760,000	\$ 800,000	\$1,200,000
Union Oil Pipeline (.796 acres)	2,000	2,000	2,000	2,000
Recreational Area	—	—	24	33
	<u>\$ 242,000</u>	<u>\$ 762,000</u>	<u>\$ 802,024</u>	<u>\$1,202,033</u>
Department of Transportation				
Container Yard/Marginal Wharf and Storage (148 acres)	<u>\$2,000,000</u>	<u>\$1,900,000</u>	<u>\$1,500,000</u>	<u>\$4,400,000</u>
	\$2,000,000	\$1,900,000	\$1,500,000	\$4,400,000
TOTAL	\$2,242,000	\$2,662,000	\$2,302,024	\$5,602,033

Admission Act, Section 5(a) Lands

Section 5(f) of the Admission Act specifically subjects lands conveyed to the State pursuant to Sections 5(b) and 5(e) of the Act to the public land trust. It does not include lands, title to which vested in the State pursuant to Section 5(a). Nevertheless, it has been urged that Section 5(a) lands should also be made a part of the Section 5(f) public land trust and be subject to the 20 percent provision of Section 10-13.5, HRS. It is said that such inclusion is in keeping with the spirit of the law.

It is evident that since annexation, public lands have been considered to be trust property to be used for the benefit of the inhabitants of Hawaii. This trust concept has been carried forward into the Organic Act and to the public land laws of Hawaii (Chapter 171, HRS). The Admission Act is clear, however, and Section 171-18, HRS, reiterates, that the only lands included in Section 5(f) of the Admission Act are lands

conveyed to the State pursuant to Sections 5(b) and 5(c) of the Act, not to lands title to which vested in Hawaii pursuant to Section 5(a). It would thus appear that for lands that passed to Hawaii under Section 5(a) of the Admission Act to be included in Section 5(f) public land trust and be subject to Section 10-13.5, HRS, appropriate legislation will need to be enacted.

We make two observations in this connection. In our report on the audit of DLNR,¹ we suggested that an alternative solution to the confusion in accounting for the revenues of the public trust lands would be to treat all public lands as being a part of the public trust fund. We noted then that given the inability to distinguish between ceded and non-ceded lands, this determination appeared to be the most practical solution. We continue to endorse this position. Treating all public lands as being a part of the trust created by Section 5(f) of the Admission Act would alleviate the need for accurate inventory based on costly surveys and title searches and will ease the administration of the public trust.

The second observation we make is that the inclusion of Section 5(a) lands is advanced in part because of the conveyance of 202 acres on Sand Island one day before statehood. There has been a general belief, that if the President had not signed the order one day before statehood to return the 202 acres to Hawaii, Hawaii would have acquired title to the land under Section 5(b) of the Admission Act, in which case the income from the acreage would have been subject to Chapter 10, HRS.

As explained in the previous chapter, it is our belief that had the President not signed the order one day before statehood, the 202 acres would probably have been conveyed to Hawaii under Public Law 88-233, in the same manner that 360 acres were so conveyed in 1963.

Other Issues

The other legal issues which we identified are described below. Although we are not prepared to suggest possible solutions to any of them at this time, on some issues we offer tentative conclusions. More definitive conclusions must await further study and analysis.

Uses of land. Public lands are put to a variety of uses. Some are sold. Some others are leased out to private individuals. Others are used for governmental purposes.

1. Legislative Auditor, *Financial Audit of the Department of Land and Natural Resources*, Audit Report No. 79-1, January 1979.

It seems reasonably clear that where lands subject to the Section 5(f) trust and to Chapter 10, HRS, are sold, the proceeds from such sale are subject to the trust and to the 20 percent provision of Section 10–13.5, HRS. It seems also clear that where trust lands are leased out to private individuals, the lease rentals are subject to the trust and to Section 10–13.5, HRS.

The picture becomes a bit cloudy when trust lands are used for governmental purposes. Obviously, when trust lands are used to house governmental offices, with no income being derived on account of the use of the trust lands, the provisions of Section 5(f) and Section 10–13.5, HRS, are inoperative. But some trust lands are used to operate public facilities from which income is derived. Harbors, airports, public parking structures, and municipal golf courses are examples. In addition, sometimes privately operated concessions are allowed within government facilities situated on trust lands. Examples are blind vendor concessions in office buildings, the golf driving range at Kapiolani Park in Honolulu, the food concession at the Honolulu zoo, the food concessions at municipal golf courses, and the concessions at the airports. There are also times when government provides services to the public at a cost within government facilities. An example here is the lunches served in public schools. Further, sometimes government develops its public lands and sells them to private individuals. An example is the development and sale of affordable residential property by the Hawaii Housing Authority.

At issue is to what extent, if any, the income from these sources is subject to the trust of Section 5(f), Admission Act, and to the 20 percent provision of Chapter 10, HRS.

There is nothing in the Admission Act or in the state statute that distinguishes between income derived from trust lands used for public purposes and income derived from trust lands used for private purposes. Nonetheless, it has been urged that income derived from trust lands used for governmental purposes should be excluded from the trust and Chapter 10, HRS.

It may well be that a distinction might be drawn between income derived from private operations and income derived from government operation of services on public facilities situated on trust lands. This distinction would eliminate from the operation of Section 5(f) trust and Chapter 10, HRS, income derived from landing fees charged at the

airports, the green fees at municipal golf courses and school lunch receipts at public schools, but subject to the trust and the statute income from the private concessions operated at the Honolulu zoo, the airport, and other public facilities. The impact of such a distinction has not as yet been fully explored. We illustrate, however, some rationale for the distinction.

The Hawaii Housing Authority has a program of developing and selling affordable residential housing. This is a program undertaken pursuant to Act 105, SLH 1970, which set up a dwelling unit revolving fund. The object of the program is to make housing available on the market at the lowest price possible. The revolving fund is used to develop state-owned lands (including lands subject to the public land trust) into residential lots and to construct residences on the lots. The completed residential lots are then supposed to be sold at a price sufficient to cover the costs of development and construction of the residences.

In the 10 years since 1970, over 4,300 homes have been made available for purchase under this program. Rarely has the program achieved breakeven operation. Total program costs, including administrative expenses, have consistently exceeded revenues. Table 4.3 presents a financial summary of six major projects involving lands acquired from the DLNR that were started and completed from November 1978. As the table notes, each of the projects had a gross profit of less than 7.5 percent. Combined, the projects had a gross profit of only 5.0 percent. The gross profit figures are before deduction of any administrative expenses.

Table 4.3
Selected Dwelling Unit Revolving Fund Housing Projects
Summary of Financial Results

	<i>Kuliouou Valley</i>	<i>Ainaola House Lots III</i>	<i>Kealakehe House Lots</i>	<i>Kaumana House Lots</i>	<i>Puainako II</i>	<i>Kawailani</i>	<i>Total</i>
Sales Dwelling Units	\$19,171,000	\$ 1,574,000	\$ 3,135,000	\$ 955,000	\$ 2,802,000	\$ 1,754,000	\$29,391,000
Less Cost of Sales	17,773,000	1,548,000	3,112,000	955,000	2,801,000	1,719,000	27,908,000
Gross Profit	\$ 1,398,000	\$ 26,000	\$ 23,000	\$ —	\$ 1,000	\$ 35,000	\$ 1,483,000
Gross Profit Percentage	7.3%	1.7%	0.7%	—	—	2.0%	5.0%

Source: Hawaii Housing Authority, finance section.

It is obvious that if the proceeds of the sale of the residential lots developed on lands included in the public land trust are made subject to the 20 percent provision of Section 10–13.5, HRS, the prices for the homes will need to be increased, if the program is to be a breakeven operation or nearly so. Such increase in price, however, detracts from the achievement of the State’s objective of making homes available at affordable prices. The requirement of Section 10–13.5, HRS, clashes with an important state program objective.

Gross versus net income. Both Section 5(f) of the Admission Act and Section 10–3(1), HRS, speak in terms of the “income” of the trust property. Under Section 10–13.5, HRS, 20 percent of the income from the properties enumerated in Section 10–3(1), HRS, is to be paid over to OHA. Neither the Admission Act nor Chapter 10, HRS, however, is explicit as to whether “income” means “gross income” or “net income,” and if it means “net income,” how the net is to be derived.

It would seem that in the absence of any express limitation of the term in the statutes, “income” means “gross income.” There are, however, important implications in this approach, just as there are important implications in defining the term as “net income.”

There are public enterprises which are intended to be self-operating. The revenues of the enterprise are expected to defray the cost of the operation and maintenance of the operation and the cost of making improvements to the facilities of the enterprise. The fees charged the general public are supposed to be at such a level as to enable the enterprise to break even. Although intended to be self-operating, many such public enterprises are today subsidized from the general fund of the State or the county.

If the 20 percent provision of Chapter 10, HRS, is applied to the gross income of these enterprises, conceivably such enterprises will need to raise the public fees or secure additional subsidies from government. We illustrate this point with an example involving the County of Kauai Wailua Golf Course. We indicated in an earlier chapter that this course is probably on trust land subject to the provisions of Chapter 10, HRS. Table 4.4 shows the revenues and expenditures of the golf course for fiscal years 1979, 1980, 1981, and 1982. For each year, there is displayed a calculation as to what happens to the golf courses’ ability to finance itself, if the 20 percent OHA is entitled to is applied to the gross income.

Table 4.4

County of Kauai
Wailua Golf Course
Effect of 100% and 20% Allocation of Revenues
Fiscal Years 1979 to 1982

	<i>Fiscal Year</i> 1978-79	<i>Fiscal Year</i> 1979-80	<i>Fiscal Year</i> 1980-81	<i>Fiscal Year</i> 1981-82
ACTUAL				
Revenues	\$ 476,000	\$ 429,000	\$ 512,000	\$ 458,000
Expenditures	348,000	440,000	525,000	523,000
Excess	\$ 128,000	\$ (11,000)	\$ (13,000)	\$ (65,000)
Fund Balance	\$ 264,000	\$ 253,000	\$ 240,000	\$ 175,000
100% ALLOCATION OF REVENUES*				
Revenues	\$ 476,000	\$ 429,000	\$ 512,000	\$ 458,000
Less Allocation of Revenues	339,000	429,000	512,000	458,000
Net Revenues	137,000	-	-	-
Expenditures	348,000	440,000	525,000	523,000
Excess	\$ (211,000)	\$ (440,000)	\$ (525,000)	\$ (523,000)
Fund Balance	\$ (75,000)	\$ (515,000)	\$ (1,040,000)	\$ (1,563,000)
20% ALLOCATION OF REVENUES*				
Revenues	\$ 476,000	\$ 429,000	\$ 512,000	\$ 458,000
Less Allocation of Revenues	68,000	86,000	102,000	92,000
Net Revenues	408,000	343,000	410,000	366,000
Expenditures	348,000	440,000	525,000	523,000
Excess	\$ 60,000	\$ (97,000)	\$ (115,000)	\$ (157,000)
Fund Balance	\$ 196,000	\$ 99,000	\$ (16,000)	\$ (173,000)

*From November 7, 1978.

Sources: County of Kauai, "Estimated Revenue Collections Ledger," Fiscal Year 1978-79 to 1981-82; County of Kauai, "Finance Director's Annual Report," Fiscal Year 1978-79 to 1980-81; and County of Kauai, Department of Finance.

The use of "net income" has its problems also. Under net income, there would probably be no income to which OHA's 20 percent entitlement can be applied. Taking again Kauai's Wailua Golf Course as an example, we illustrate this in Table 4.5.

Table 4.5
County of Kauai
Wailua Golf Course
Effect of 100% and 20% Allocation of Net Income
Fiscal Years 1979 to 1982

	<i>Fiscal Year</i> 1978-79	<i>Fiscal Year</i> 1979-80	<i>Fiscal Year</i> 1980-81	<i>Fiscal Year</i> 1981-82
ACTUAL				
Excess—Revenues Over (Under) Expenditures	\$ 128,000	\$ (11,000)	\$ (13,000)	\$ (65,000)
Less Allocated Income	—	—	—	—
Excess After Allocation	\$ 128,000	\$ (11,000)	\$ (13,000)	\$ (65,000)
Fund Balance	\$ 264,000	\$ 253,000	\$ 240,000	\$ 175,000
100% ALLOCATION OF NET INCOME				
Excess	\$ 128,000	\$ (11,000)	\$ (13,000)	\$ (65,000)
Less Allocated Income*	85,000	—	—	—
Excess After Allocation	\$ 43,000	\$ (11,000)	\$ (13,000)	\$ (65,000)
Fund Balance	\$ 179,000	\$ 168,000	\$ 155,000	\$ 90,000
20% ALLOCATION OF NET INCOME				
Excess	\$ 128,000	\$ (11,000)	\$ (13,000)	\$ (65,000)
Less Allocated Income*	17,000	—	—	—
Excess After Allocation	\$ 111,000	\$ (11,000)	\$ (13,000)	\$ (65,000)
Fund Balance	\$ 247,000	\$ 236,000	\$ 223,000	\$ 158,000

*November 1978 to June 30, 1979 estimated at two-thirds fiscal year income.

Sources: County of Kauai, "Estimated Revenue Collections Ledger," Fiscal Year 1978-79 to 1981-82; County of Kauai, "Finance Director's Annual Report," Fiscal Year, 1978-79 to 1980-81; and County of Kauai, Department of Finance.

The net income approach presents a problem because no matter how much income the public enterprise may generate, there may be no net at all. All of the income may all be expended for operation and maintenance and for making physical improvements to the facilities of the enterprise.

The difficulty of “gross” versus “net” is further illustrated by the Hawaii Housing Authority’s program of development and sale of affordable residential housing. Under the program, developed residences are intended to be sold at a price only sufficient to recover the costs of development, construction, and administration. Assuming that the proceeds of such sale are subject to the 20 percent requirement of Section 10–13.5, HRS, the application of the “gross income” concept would mean either a loss to the Hawaii Housing Authority (and a consequent subsidy by the State) or an increase in the sales price to the detriment of the objective of the program. On the other hand, the application of the “net income” approach would mean that none of the proceeds would ever be payable to OHA.

Bond covenants. The issue of “gross” versus “net” income has particular relevance to the airports and commercial harbors. The airports and commercial harbors of the State are constructed largely through the floating of revenue bonds. The income of the airports and harbors are pledged to secure these bonds. There are some \$300 million in airport and harbor revenue bonds currently outstanding.

The bond covenants generally prescribe the priority order in which payments are to be made out of the revenues of the airports or harbors. For instance, the original May 1, 1969, bond certificate which provided for the issuance of \$40 million of State of Hawaii Airport System Revenue bonds and all supplemental certificates issued for subsequent bond offerings have established the following priority order of payments:

- (1) Bonds, principal, and interest.
- (2) Costs of operation, maintenance, and repair of airports’ properties.
- (3) Funding major maintenance, renewal, and replacement account.
- (4) Reimbursement of the state general fund for general obligation bond requirements.
- (5) Providing for betterments and improvements to the airports.
- (6) Providing for special reserve funds and other special funds as created by law.
- (7) For any other purpose connected with or pertaining to the bonds or the airports authorized by law.

The bond certificates also require that the airport system impose and collect revenues which will yield net revenues and taxes at least equal to 35 percent of the revenue bond debt service requirements for the following fiscal year. For the year ended June 30, 1982, the debt service coverage requirement for the following fiscal year was \$10,256,093.

The use of the gross income approach raises possible constitutional issues concerning the impairment of the obligation of contracts. The question is whether the 20 percent provision of Section 10-13.5, HRS, may be applied to any part of the revenues without violating the bond covenants.

Allocation issue. Some public facilities straddle trust as well as non-trust lands. The question is, if all or any portion of the revenues generated from a government-operated public facility on trust lands must be accounted for as trust fund moneys and be subject to the provisions of Chapter 10, HRS, how is that accounting to be had where the facility straddles trust and non-trust lands.

The Honolulu International Airport (HIA) is an example of this. The airport is comprised of 4,457 acres, of which we identified 3,386.2 acres as being subject to the public land trust provided in Section 5(f) of the Admission Act. Two thousand seven hundred thirty four and one-half acres were returned to Hawaii under Sections 5(b) and 5(e) of the Admission Act, and 651.7 acres under Public Law 88-233. For the purpose of this discussion, we assume that lands returned under Public Law 88-233, as well as lands returned under Sections 5(b) and 5(e) are subject to Chapter 10, HRS.

At the HIA, the gross operating revenues during the period November 7, 1978 to June 30, 1982, totaled nearly \$216.0 million. The net operating revenues (after operating and depreciation expenses) was about \$119.0 million. Most of the revenue was generated from the concessions in the terminal building which is situated on non-trust lands. Indeed, a sizeable amount of the concession income is from the duty free shops located outside the airport proper.

Assuming that the income of the airport trust lands is subject to the trust and to Chapter 10, HRS, how do we determine what portion of the airport's total gross or net revenues is to be accounted for and be made subject to Chapter 10, HRS.

One alternative is to make subject to the trust and to Chapter 10, HRS, only that portion of the total revenues that comes directly from the lands subject to the trust. As applied to HIA, however, this approach produces only negligible amounts that would be subject to the trust. As noted, most of the revenues of the airport are from concessions situated in the terminal building located on non-trust lands. Further, most of the trust lands at the HIA consist of landing strips. The revenues most directly related to landing strips are the use charges (landing fees) charged the airlines. Due to the large amount of other revenues, no use charges have been assessed the airlines in recent years.²

There is something to be said for attributing to the trust lands an amount greater than what is otherwise generated directly by these lands from user charges. The concessions and the resultant revenues would not exist, but for the landing strips on trust lands. One way to accomplish this is to attribute to the trust lands so much of the revenues as they bear to the total revenues as the trust land acreage bears to the total airport acreage. When measured in this way, 76 percent of the HIA revenues would become subject to the trust and to Chapter 10, HRS.

There are, however, other problems that require the matter to be studied further. One of these is that the HIA is considered to be only one of several airports in a single, statewide airport system. The Hawaii airports as a system produced in the period November 7, 1978 to June 30, 1982, total operating revenues of \$40.5 million and operating expenses of \$14.8 million, for an operating income before depreciation of \$33.3 million. After depreciation (\$7.0 million), the net operating income was about \$18.6 million. Every airport other than the HIA experienced a net operating loss. The application of the trust and Chapter 10, HRS, to the statewide system figures will result in an amount smaller than if the trust and Chapter 10, HRS, are applied on an airport by airport basis.

The allocation problem illustrated above with the HIA and Hawaii's airport system exists also with respect to the Honolulu harbor and the state commercial harbor system.

Income from land versus income from improvements. The final issue we describe here is whether Section 5(f) of the Admission Act and Chapter 10, HRS, apply to the

2. The Airport-Airlines Leases, until amended in 1982, in effect provided in Exhibit I for no payment of use charges when other revenues of the airport were sufficient to meet expenses. In 1982, Exhibit I was amended to reflect the payment of a minimum use charge.

income from improvements as well as to the income from the underlying land. This issue is of particular relevance where government operates a public enterprise on lands subject to the trust—airports, harbors, public parking structures, municipal golf courses, etc., which assess fees or charges.

When trust lands are leased, clearly the lease rentals and only the lease rentals are subject to the requirements of Section 5(f) of the Admission Act and to Chapter 10, HRS. The income that the lessees derive from the use of the lands are clearly not. It belongs exclusively to the lessees. Further, any income that the lessees derive from the improvements made to the lands at the cost of the lessees also belong exclusively to the lessees.

It has been urged that when government operates a public enterprise on trust lands, government is in the same shoes as lessees of public lands. Thus, Section 5(f) of the Admission Act and Chapter 10, HRS, ought to apply only to the rental value of the trust lands in its unimproved state and not to any income that may be derived from the use of the lands or the improvements made to the lands.

There appears to be some logic to this argument. However, government is not a lessee; it pays no rent; and it derives income from the use of the lands which income is payable into the treasury of the government. We are thus uncertain at this time as to the wisdom and appropriateness of the approach of subjecting only the rental value of the land in its unimproved state to the requirements of Section 5(f) of the Admission Act and to Chapter 10, HRS.

Chapter 5

TASKS REMAINING

There are a number of tasks yet to be done to complete our assignment under Act 121, Session Laws of Hawaii 1982. We outline here what these tasks are.

Inventory

Field surveys and title searches. As stated earlier, we do not believe that it is necessary to cause every parcel of public land surveyed and title searched, at least not at this time. There are, however, certain parcels which we believe should be field surveyed and their title researched. These include public lands devoted to public enterprises where a considerable amount of income is generated and where both trust and non-trust lands are involved. The neighbor island airports, particularly General Lyman Field and Molokai airport, and the State's commercial harbors; namely, Honolulu harbor and Kahului harbor, should be subjected to surveys and title searches.

County, Hawaii Housing Authority, University of Hawaii, and Department of Education inventories. The inventories of public lands under the control of the counties, the Hawaii Housing Authority, and the University of Hawaii need to be completed and the trust lands included in the inventories properly identified. The trust lands used by the Department of Education should also be described.

Department of Land and Natural Resources inventory. The Department of Land and Natural Resources is currently updating and correcting its inventory of public lands. This effort needs to be monitored.

Legal Issues

The legal issues identified in Chapter 4 require further study and analysis. The study should include an examination of the impact of any suggested resolution of the issues. The issues that are likely to present the most difficulties are: (1) the application of the Admission Act Section 5(f) trust fund and the Chapter 10, HRS, provisions to the income of public enterprises, and (2) the method of allocating the revenues of public enterprises which sit on both trust and non-trust lands (if they are subject to Section 5(f) and Chapter 10, HRS) between the trust lands and the non-trust lands.

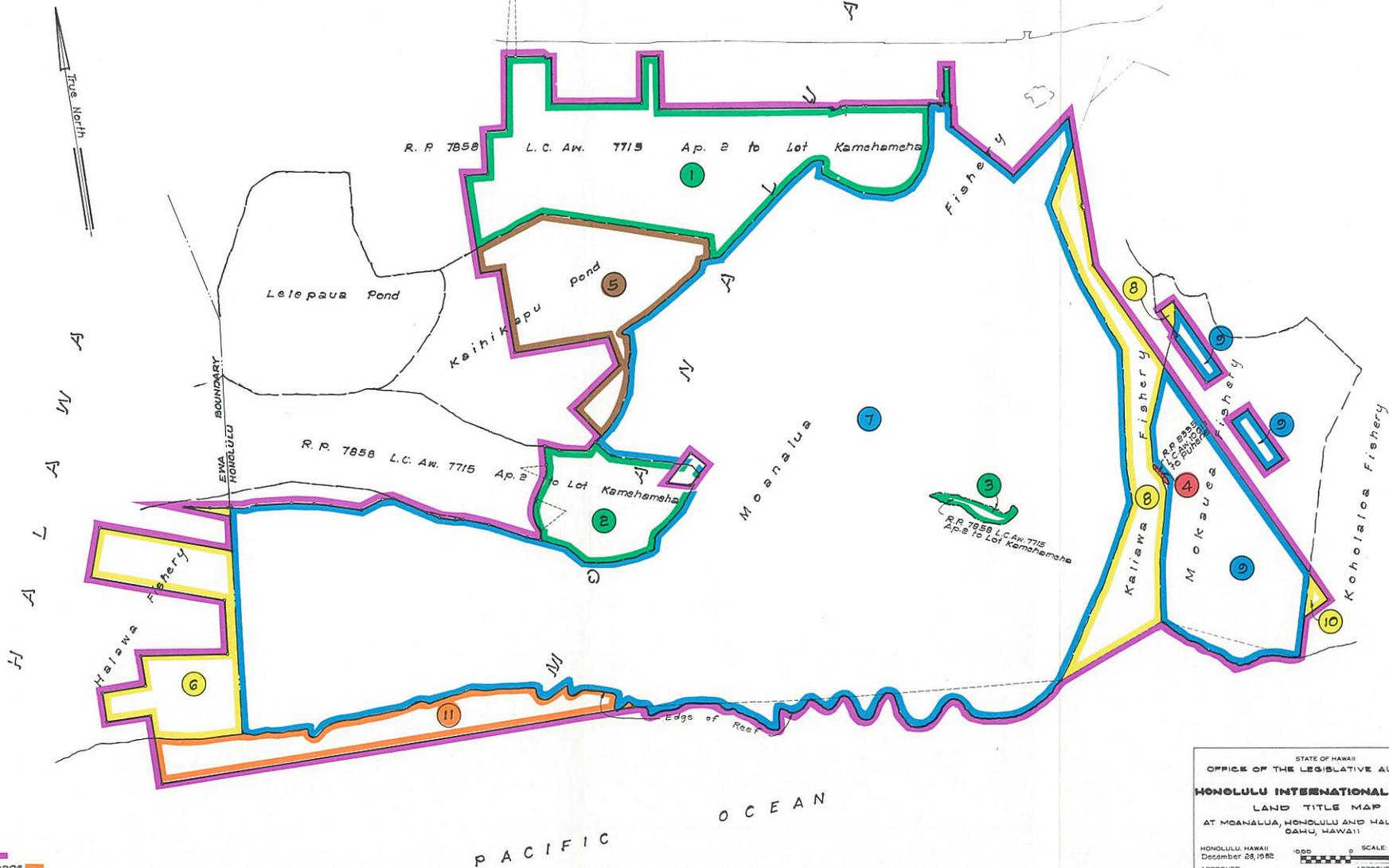
Fiscal Issues

We have not as yet started an analysis of the fiscal issues arising from the public land trust and the Office of Hawaiian Affairs's entitlement to a portion of the income of the trust lands. The next phase of the study must wrestle with these issues. Included among the issues are the basis for establishing lease rentals on trust fund lands which are let under general leases and permits.

APPENDICES

APPENDIX A

Honolulu International Airport



NOTE:

Ⓢ = Parcel Number

- Airport Boundary - Heliotrope
- Submerged Lands adjoining } - Orange
- Moanalua & Halawa Fisheries } - Blue & Yellow
- Sea Fisheries - Blue & Yellow
- Fish Ponds - Brown
- Awarded Lands - Red & Green

STATE OF HAWAII

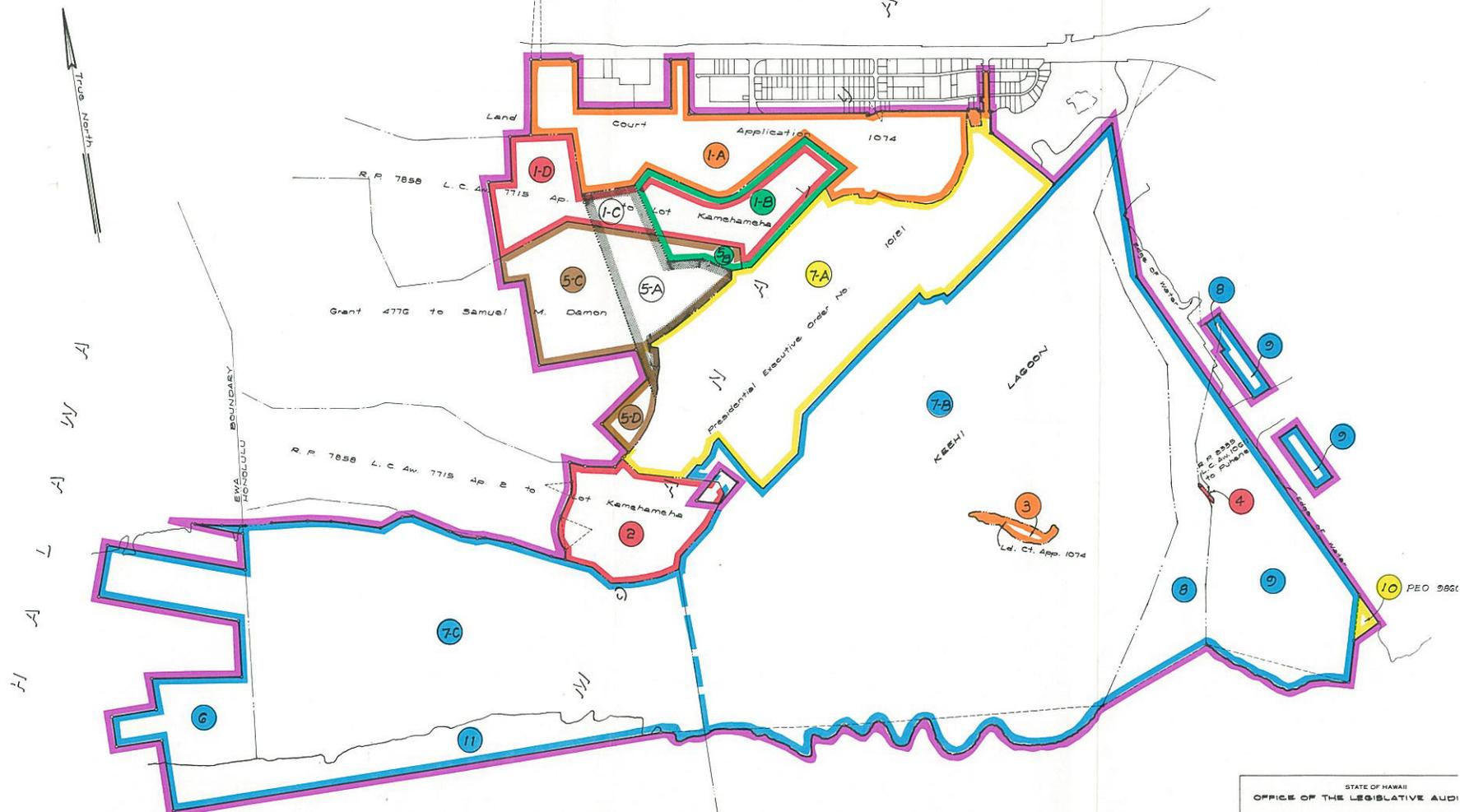
OFFICE OF THE LEGISLATIVE AUDIT

HONOLULU INTERNATIONAL AIRPORT
LAND TITLE MAP
AT MOANALUA, HONOLULU AND HALAWA, HAWAII

HONOLULU, HAWAII 1000 SCALE 100:1
 DESIGNED BY 28, 1982

APPROVED: _____ APPROVED: _____
Harold Magnusson *Clifford A. Jones*
 CHIEF ENGINEER LEGISLATIVE AUDIT

SHEET NO. 1 OF 7 SHEETS



NOTE:
 Airport Boundary - Heliotrons

○ • Denotes Target Designation

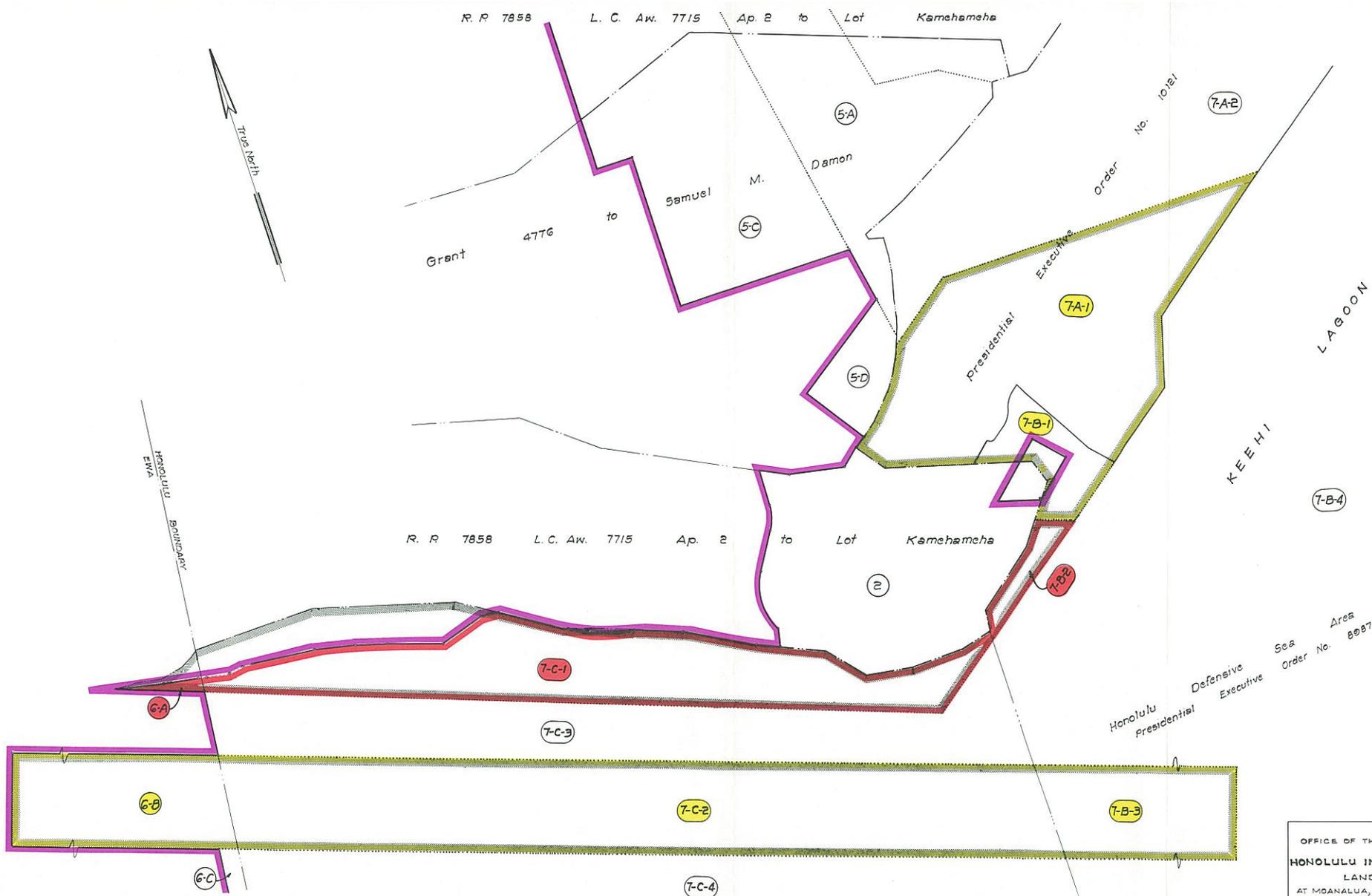
Pearl Harbor Defensive Sea Area
 Presidential Executive Order No. 8149

Honolulu Defensive Sea Area
 Presidential Executive Order No. 8987

STATE OF HAWAII
 OFFICE OF THE LEGISLATIVE AUDIT
HONOLULU INTERNATIONAL AIRPORT
 LAND TITLE MAP
 AT MOANALUA, HONOLULU AND HALAHALA, HAWAII

HONOLULU, HAWAII 1056 SCALE 100
 JANUARY 28, 1983
 APPROVED: [Signature] CADASTRAL ENGINEER
 APPROVED: [Signature] LEGISLATIVE

SHEET NO. 2 OF 7 SHEETS



Pearl Harbor Defensive Sea Area
 Presidential Executive Order No. 8143

STATE OF HAWAII
 OFFICE OF THE LEGISLATIVE AUDIT
HONOLULU INTERNATIONAL AIR
 LAND TITLE MAP
 AT MOANALUA, HONOLULU AND HALAWA,
 OAHU, HAWAII

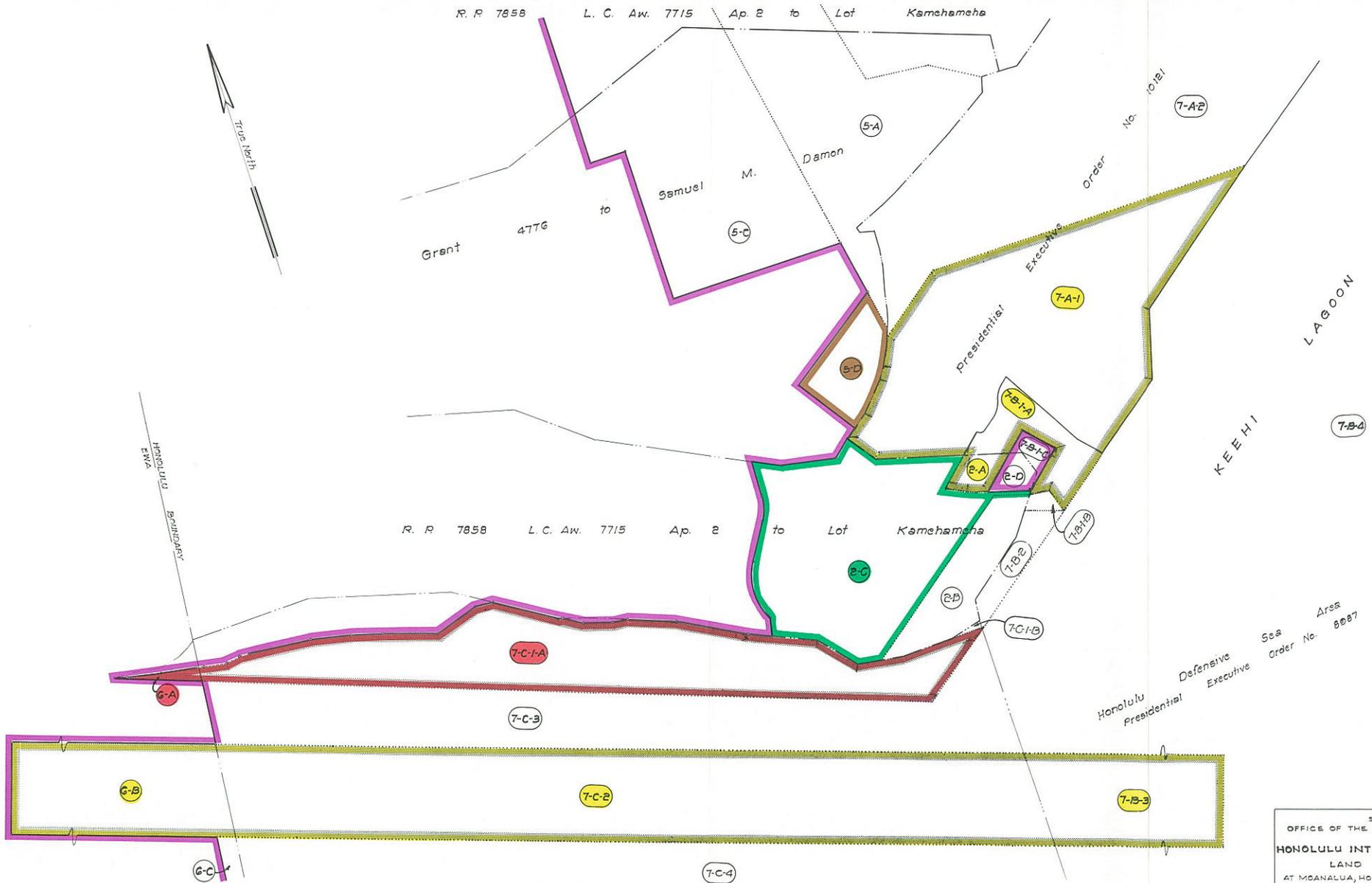
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 JANUARY 28, 1983
 APPROVED

500 0 SCALE 500

APPROVED

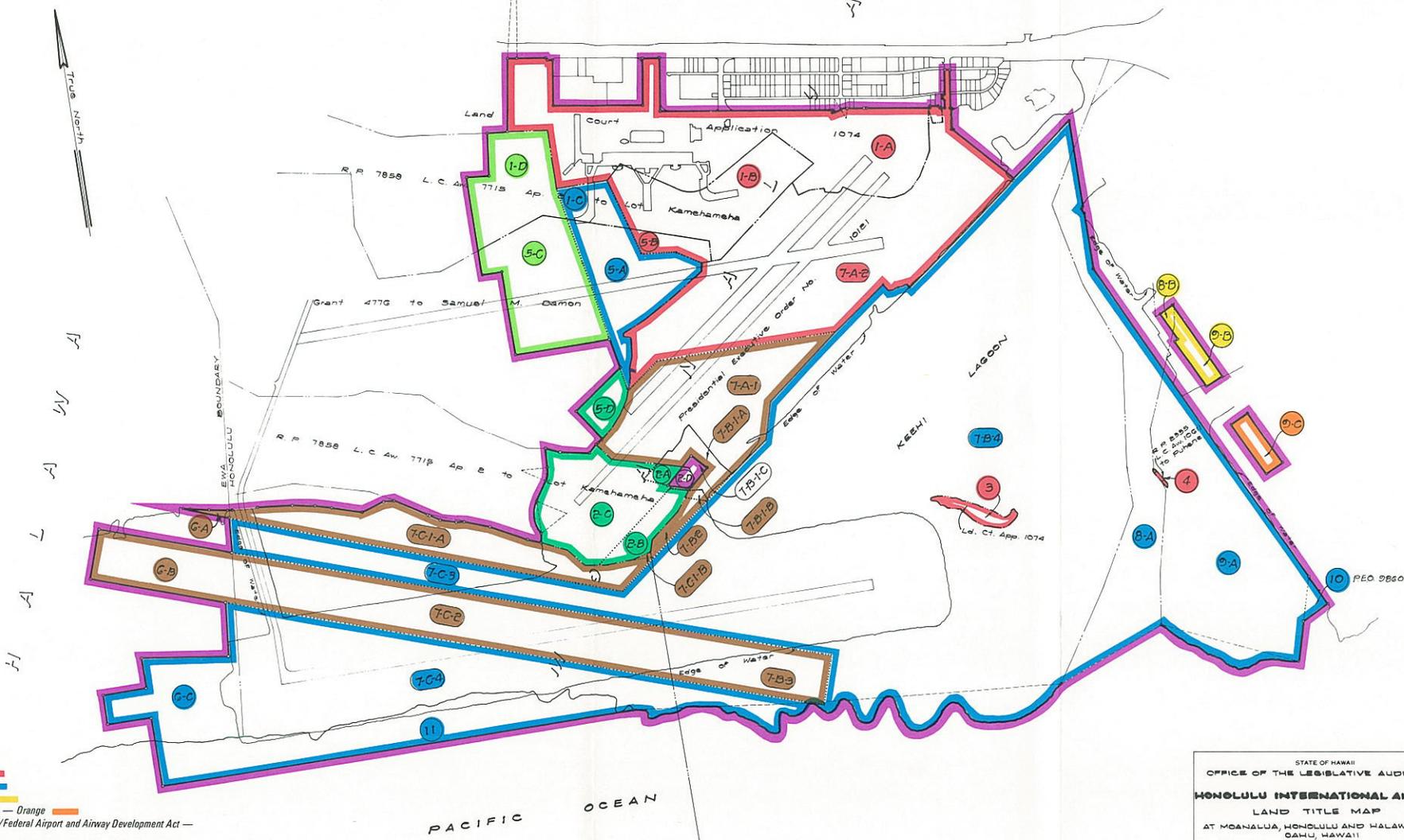
Shirley M. ... CADASTRAL ENGINEER
... LEGISLATIVE AUDIT

SHEET NO. 3 OF 7 SHEETS



Pearl Harbor Defensive Sea Area
Presidential Executive Order No. 8143

STATE OF HAWAII
OFFICE OF THE LEGISLATIVE AUDITOR
HONOLULU INTERNATIONAL AIRPORT
LAND TITLE MAP
AT MOANALUA, HONOLULU AND HALAWA, HAWAII
HONOLULU, HAWAII JANUARY 28, 1983
APPROVED: *Walter M. ...* LEGISLATIVE ENGINEER
APPROVED: *...* LEGISLATIVE ENGINEER
SHEET NO. 4 OF 7 SHEETS



LAND CLASSIFICATIONS

Airport Boundary — Heliotrope

Legend:

- Admission Act Section 5(a) — Red
- Admission Act Section 5(b) — Blue
- Admission Act Section 5(c) — Yellow
- Public Law 88-233 — Orange
- Federal Airport Act/Federal Airport and Airway Development Act — Green
- Federal Airport Act/Federal Airport and Airway Development Act, but treatable as P.L. 88-233. — Brown
- Others — Light Green

○ — Denotes Parcel Designation

STATE OF HAWAII

OFFICE OF THE LEGISLATIVE AUDIT

HONOLULU INTERNATIONAL AIRPORT

LAND TITLE MAP

AT MOANALUA, HONOLULU AND HALAWA, OAHU, HAWAII

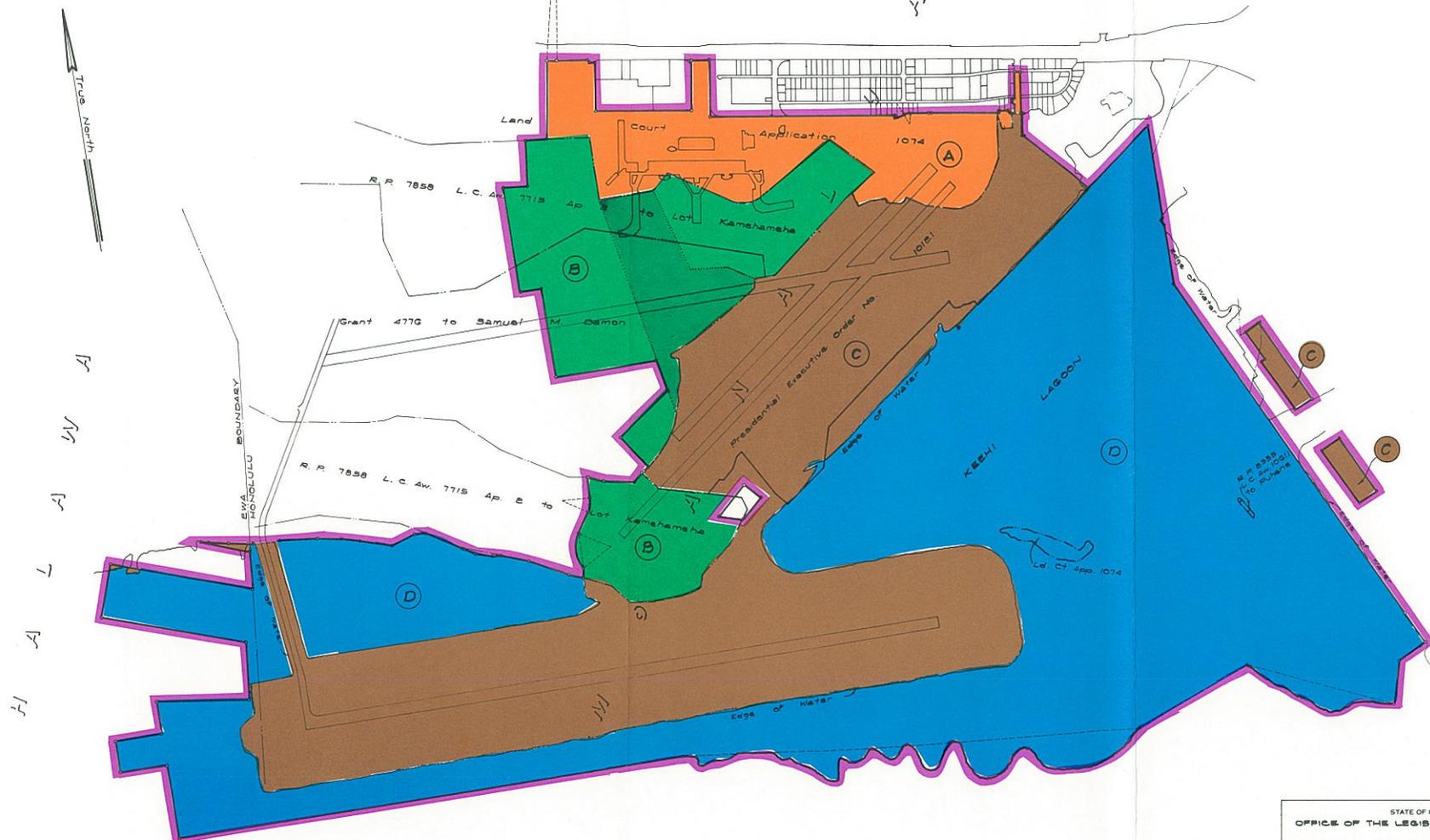
HONOLULU, HAWAII 1985 SCALE 1:500

FEBRUARY 9, 1985

APPROVED: *Harold W. ...* APPROVED: *Christine ...*

CADASTRAL ENGINEER LEGISLATIVE AUDIT

SHEET No. 6 OF 7 SHEET



NOTE:
 Airport Boundary - Purple
 Submerged Lands - Blue
 Awarded Lands - Green
 Registered Lands - Orange
 Filled Lands - Brown

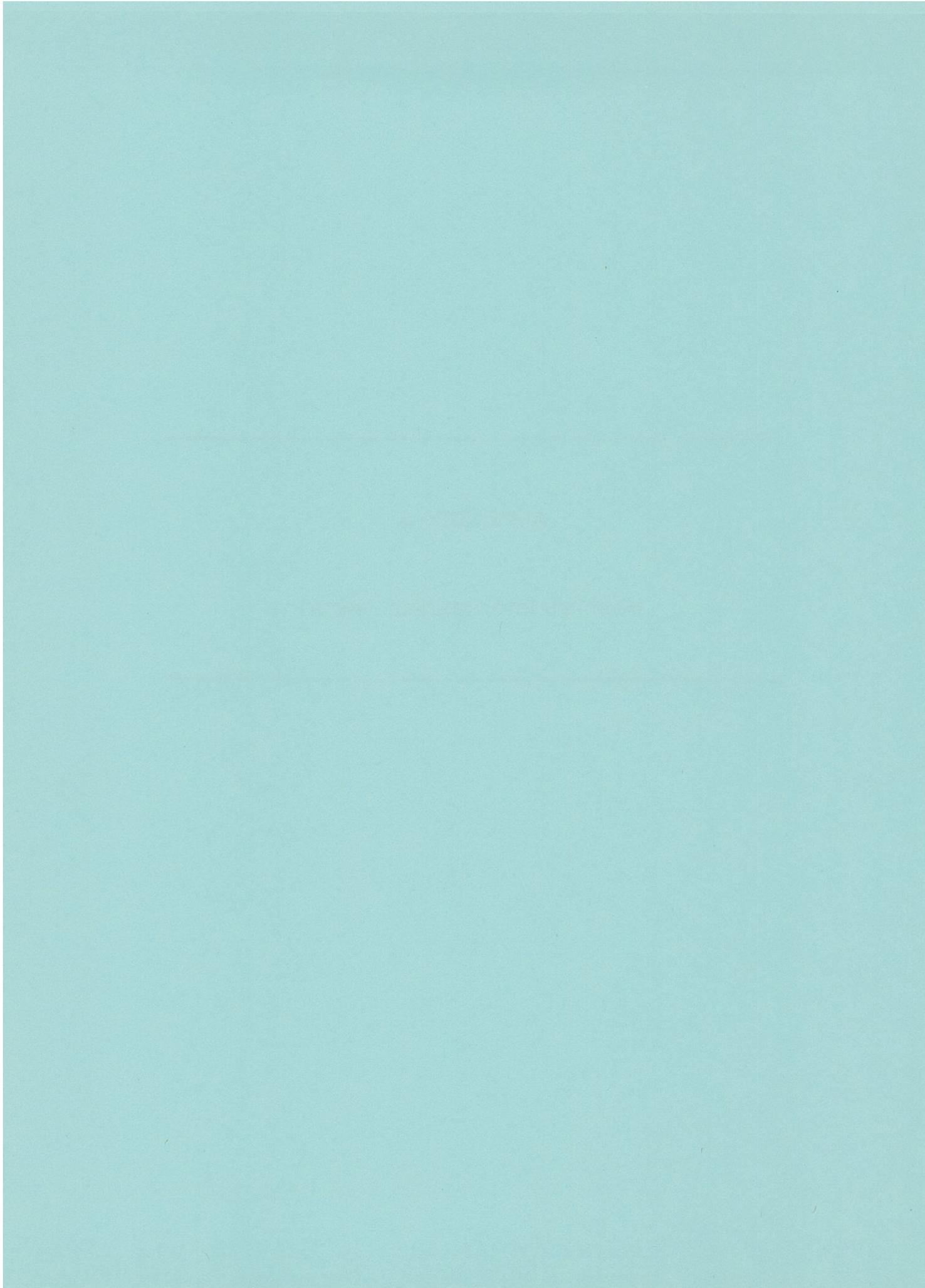
(A) • Denotes Parcel Designation

STATE OF HAWAII
 OFFICE OF THE LEGISLATIVE AUDITOR
HONOLULU INTERNATIONAL AIRPORT
 LAND TITLE MAP
 AT MOANALUA, HONOLULU AND HALAWA
 OAHU, HAWAII

HONOLULU, HAWAII 1008 SCALE 1:50
 JANUARY 5, 1983

APPROVED: *David M. ...* CADASTRAL ENGINEER
 APPROVED: *...* LEGISLATIVE COUNSEL

SHEET No. 7 OF 7 SHEETS



Chain of Title for Lands Within the Boundary of Honolulu International Airport

Classification	Parcel No.	Acreage	Land Transactions			
			Before Annexation	Territorial Period	After Statehood	
5(a)	1-A	279.3780	R.P. 7858, L.C. Aw. 7715, Apana 2 to Lot Kamehameha 3/19/1855	By testate succession to S. M. Damon P. No. 2425, Supreme Court 1884	L.C. App. No. 1074 to Trustees of S. M. Damon, est. decd. 1939	Trustees of S. M. Damon, est. decd. to T.H./ State of Hawaii by mesne conveyances
5(a)	1-B	119.3000 (incl. 5-B)	R.P. 7858, L.C. Aw. 7715, Apana 2 to Lot Kamehameha 3/19/1855	By testate succession to S. M. Damon P. No. 2425, Supreme Court 1884	S. M. Damon and wife to T.H. Deed/ Liber 865, pp. 181-185 12/27/1926	
5(b)	1-C	97.1300 (incl. 5-A)	R.P. 7858, L.C. Aw. 7715, Apana 2 to Lot Kamehameha 3/19/1855	By testate succession to S. M. Damon P. No. 2425, Supreme Court 1884	Trustees, S. M. Damon to U.S.A. Final Order of Condemnation/ Liber 1275, pp. 314-322 4/9/1935	U.S.A. to T.H. Quitclaim Deed/ Liber 1691, pp. 383-385 2/5/1942
Other	1-D	171.7330 (incl. 5-C)	R.P. 7858, L.C. Aw. 7715, Apana 2 to Lot Kamehameha 3/19/1855	By testate succession to S. M. Damon P. No. 2425, Supreme Court 1884	Trustees, S. M. Damon to U.S.A. Final Order of Condemnation/ Liber 1275, pp. 314-322 4/9/1935	U.S.A. to State of Hawaii Quitclaim Deed/ Liber 3882, pp. 212-216 5/12/1960
FAA/FA & ADA	2-A	4.6380	R.P. 7858, L.C. Aw. 7715, Apana 2 to Lot Kamehameha 3/19/1855	By testate succession to S. M. Damon P. No. 2425, Supreme Court 1884	S. M. Damon and wife to U.S.A. Deed/Liber 345, pp. 336-341 6/17/1911	U.S.A. to State of Hawaii Quitclaim Deed/Liber 8583, pp. 225-243 9/10/1971
FAA/FA & ADA	2-B	21.7277	R.P. 7858, L.C. Aw. 7715, Apana 2 to Lot Kamehameha 3/19/1855	By testate succession to S. M. Damon P. No. 2425, Supreme Court 1884	S. M. Damon and wife to U.S.A. Deed/Liber 345, pp. 336-341 6/17/1911	U.S.A. to State of Hawaii Quitclaim Deed/Liber 12062, pp. 247-261 11/29/1976

Guide to Abbreviations

FAA/FA & ADA	Federal Airport Act/Federal Airports and Airway Development Act
G.E.O. No.	Governor's Executive Order Number
L.C. App. No.	Land Court Application Number
L.C. Aw.	Land Commission Award
P.E.O. No.	Presidential Executive Order Number
P. L.	Public Law
P. No.	Probate Number
R. P.	Royal Patent

Classification	Parcel No.	Acreage	Land Transactions					
			Before Annexation		Territorial Period		After Statehood	
FAA/FA & ADA	2-C	95.3320	R.P. 7858, L.C. Aw. 7715, Apana 2 to Lot Kamehameha 3/19/1855	By testate succession to S. M. Damon P. No. 2425, Supreme Court 1884	S. M. Damon and wife to U.S.A. Deed/Liber 345, pp. 336-341 6/17/1911		U.S.A. to State of Hawaii Quitclaim Deed/Liber 8613, pp. 332-341 3/5/1971	
5(a)	3	9.0000	R.P. 7858, L.C. Aw. 7715, Apana 2 to Lot Kamehameha 3/19/1855	By testate succession to S. M. Damon P. No. 2425, Supreme Court 1884	L.C. App. No. 1074 to Trustees under the Will and of the estate of S. M. Damon, deceased 1939	Trustees, S. M. Damon to T.H. Final Order of Condemnation/ TCT No. 59,941 1/28/1955		U.S.A. to State of Hawaii Quitclaim Deed/Liber 12062, pp. 247-261 11/29/1976
5(a)	4	0.8800	R.P. 2335, L.C. Aw. 10611 to Puhene		Heirs of Puhene (Gardie T. Perkins, et. al.) to T.H. Deed/ Liber 3543, pp. 353-358 12/15/1958	and by Final Judgment/ Liber 3651, pp. 103-112 6/29/1959		U.S.A. to State of Hawaii Quitclaim Deed/Liber 12062, pp. 247-261 11/29/1976
5(b)	5-A	see 1-C	Government land/ Kaihikapu Fish Pond	Republic of Hawaii to U.S.A. Annexation	Grant 4776 to S. M. Damon 11/5/1903	Trustees, S. M. Damon to U.S.A. Final Order of Condemnation/ Liber 1275, pp. 314-322 4/9/1935	U.S.A. to T.H. Quitclaim Deed/ Liber 1691, pp. 383-385 2/5/1942	
5(a)	5-B	see 1-B	Government land/ Kaihikapu Fish Pond	Republic of Hawaii to U.S.A. Annexation	Grant 4776 to S. M. Damon 11/5/1903	S. M. Damon and wife to T.H. Deed/ Liber 865, pp. 181-185 12/27/1926		
Other	5-C	see 1-D	Government land/ Kaihikapu Fish Pond	Republic of Hawaii to U.S.A. Annexation	Grant 4776 to S. M. Damon 11/5/1903	Trustees, S. M. Damon to U.S.A. Final Order of Condemnation/ Liber 1275, pp. 314-322 4/9/1935	U.S.A. to State of Hawaii Quitclaim Deed/Liber 3882, pp. 212-216 5/12/1960	and by Quitclaim Deed/Liber 4625, pp. 537-540 10/14/1963
FAA/FA & ADA	5-D	17.0000	Government land/ Kaihikapu Fish Pond	Republic of Hawaii to U.S.A. Annexation	Grant 4776 to S. M. Damon 11/5/1903	Trustees, S. M. Damon to U.S.A. Final Order of Condemnation/ Liber 1275, pp. 314-322 4/9/1935	U.S.A. to State of Hawaii Quitclaim Deed/Liber 7673, pp. 82-89 5/3/1971	
FAA/FA & ADA, but treatable as P.L. 88-233	6-A	118.1560 (incl. 7-C-1-A)	Submerged land/sea fishery of Halawa	Republic of Hawaii to U.S.A. Annexation	P.L. 85-534, an act to authorize land exch. in the T.H. 7/18/1958	T.H. to U.S.A. Quitclaim Deed/ Liber 3674, pp. 181-185 8/20/1959	U.S.A. to State of Hawaii Quitclaim Deed/Liber 7673, pp. 82-89 5/3/1971	U.S.A. to State of Hawaii Quitclaim Deed/Liber 12062, pp. 247-261 * 11/29/1976 *see prior conveyance

Land Transactions

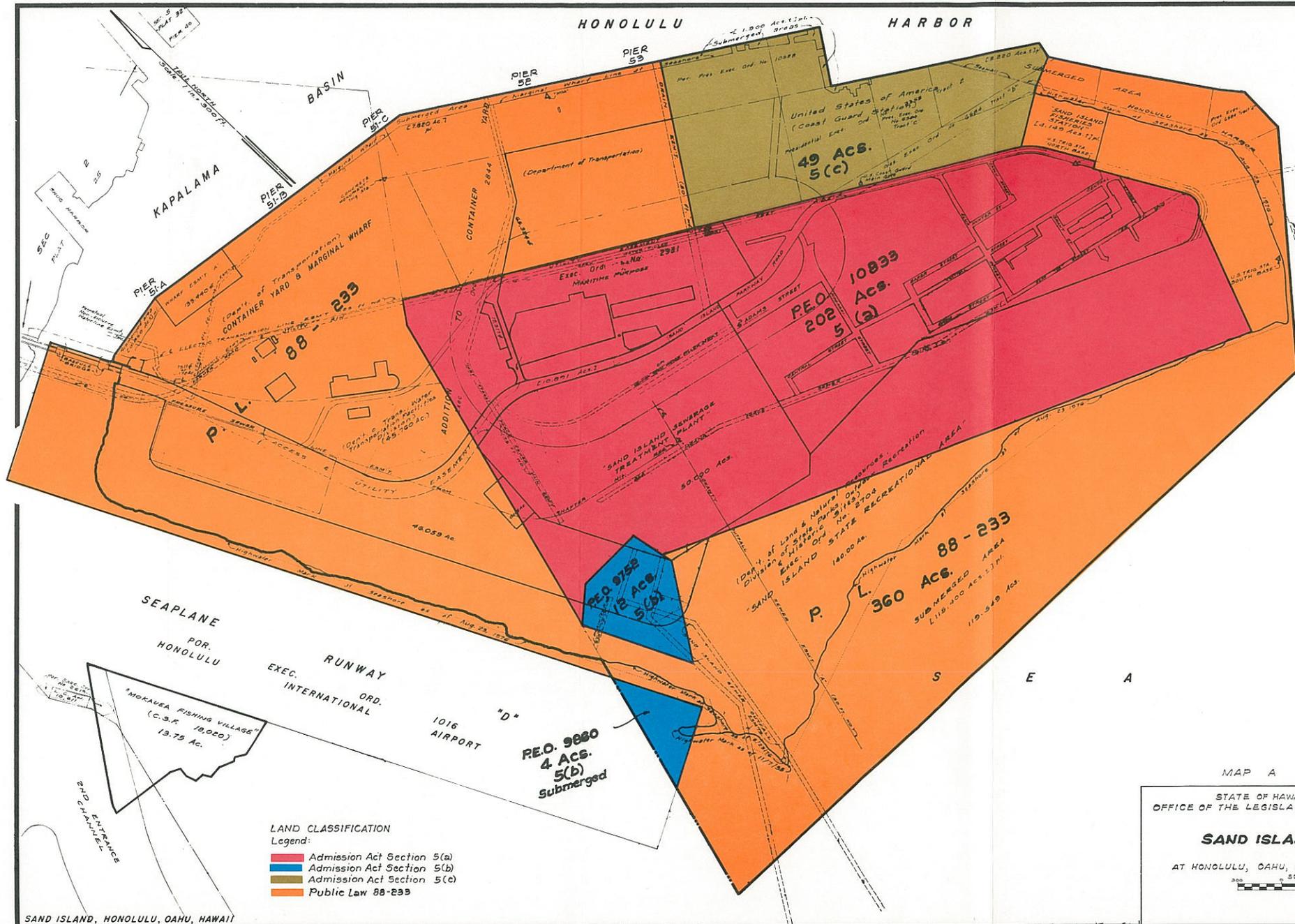
Classification	Parcel No.	Acreage	Before Annexation		Territorial Period				After Statehood
FAA/FA & ADA, but treatable as P.L. 88-233	6-B	344.3530 (incl. 7-C-2 7-B-3)	Submerged land/sea fishery of Halawa	Republic of Hawaii to U.S.A. Annexation	T.H. to U.S.A. G.E.O. No. 1801 8/22/1957	P.L. 85-534, an act to authorize land exch. in the T.H. 7/18/1958	T.H. to U.S.A. Quitclaim Deed/Liber 3674, pp. 171-180 7/30/1959		U.S.A. to State of Hawaii Quitclaim Deed/Liber 8583, pp. 225-243 9/10/1971
5(b)	6-C	235.0000 (incl. 11)	Submerged land/sea fishery of Halawa	Republic of Hawaii to U.S.A. Annexation	U.S.A. to State of Hawaii Statehood				U.S.A. to State of Hawaii Quitclaim Deed/Liber 12062, pp. 247-261 11/29/1976
FAA/FA & ADA, but treatable as P.L. 88-233	7-A-1	151.0550	Submerged land/sea fishery of Moanalua	Republic of Hawaii to U.S.A. Annexation	U.S.A. to T.H. by P.E.O. No. 10121 4/12/1950	T.H. to U.S.A. by G.E.O. No. 1801 8/22/1957	P.L. 85-534, an act to authorize land exch. in the T.H. 7/18/1958	T.H. to U.S.A. Quitclaim Deed/Liber 3674, pp. 171-180 7/30/1959	U.S.A. to State of Hawaii Quitclaim Deed/Liber 8583, pp. 225-243 9/10/1971
5(a)	7-A-2	351.7620	Submerged land/sea fishery of Moanalua	Republic of Hawaii to U.S.A. Annexation	U.S.A. to T.H. by P.E.O. No. 10121 4/12/1950				
FAA/FA & ADA, but treatable as P.L. 88-233	7-B-1-A	17.3000	Submerged land/sea fishery of Moanalua	Republic of Hawaii to U.S.A. Annexation	T.H. to U.S.A. G.E.O. No. 1801 8/22/1957	P.L. 85-534, an act to authorize land exch. in the T.H. 7/18/1958	T.H. to U.S.A. Quitclaim Deed/Liber 3674, pp. 171-180 7/30/1959		U.S.A. to State of Hawaii Quitclaim Deed/Liber 8583, pp. 225-243 9/10/1971
FAA/FA & ADA, but treatable as P.L. 88-233	7-B-1-B	9.7875 (incl. 7-B-2 7-C-1-B)	Submerged land/sea fishery of Moanalua	Republic of Hawaii to U.S.A. Annexation	T.H. to U.S.A. G.E.O. No. 1801 8/22/1957	P.L. 85-534, an act to authorize land exch. in the T.H. 7/18/1958	T.H. to U.S.A. Quitclaim Deed/Liber 3674, pp. 171-180 7/30/1959		U.S.A. to State of Hawaii Quitclaim Deed/Liber 12062, pp. 247-261 11/29/1976
FAA/FA & ADA, but treatable as P.L. 88-233	7-B-2	see 7-B-1-B	Submerged land/sea fishery of Moanalua	Republic of Hawaii to U.S.A. Annexation	P.L. 85-534, an act to authorize land exch. in the T.H. 7/18/1958	T.H. to U.S.A. Quitclaim Deed/Liber 3674, pp. 181-185 8/20/1959			U.S.A. to State of Hawaii Quitclaim Deed/Liber 12062, pp. 247-261 11/29/1976
FAA/FA & ADA, but treatable as P.L. 88-233	7-B-3	see 6-B	Submerged land/sea fishery of Moanalua	Republic of Hawaii to U.S.A. Annexation	T.H. to U.S.A. G.E.O. No. 1801 8/22/1957	P.L. 85-534, an act to authorize land exch. in the T.H. 7/18/1958	T.H. to U.S.A. Quitclaim Deed/Liber 3674, pp. 171-180 7/30/1959		U.S.A. to State of Hawaii Quitclaim Deed/Liber 8583, pp. 225-243 9/10/1971
5(b)	7-B-4	2,347.3200 (incl. 7-C-3 7-C-4 8-A 9-A)	Submerged land/sea fishery of Moanalua	Republic of Hawaii to U.S.A. Annexation	U.S.A. to State of Hawaii Statehood				U.S.A. to State of Hawaii Quitclaim Deed/Liber 12062, pp. 247-261 11/29/1976

Classification	Parcel No.	Acreage	Land Transactions					After Statehood	
			Before Annexation		Territorial Period				
FAA/FA & ADA, but treatable as P.L. 88-233	7-C-1-A	see 6-A	Submerged land/sea fishery of Moanalua	Republic of Hawaii to U.S.A. Annexation	P.L. 85-534, an act to authorize land exch. in the T.H. 7/18/1958	T.H. to U.S.A. Quitclaim Deed/Liber 3674, pp. 181-185 8/20/1959		U.S.A. to State of Hawaii Quitclaim Deed/Liber 7673, pp. 82-89 5/3/1971	U.S.A. to State of Hawaii Quitclaim Deed/Liber 12062, pp. 247-261* 11/29/1976 *see prior conveyance
FAA/FA & ADA, but treatable as P.L. 88-233	7-C-1-B	see 7-B-1-B	Submerged land/sea fishery of Moanalua	Republic of Hawaii to U.S.A. Annexation	P.L. 85-534, an act to authorize land exch. in the T.H. 7/18/1958	T.H. to U.S.A. Quitclaim Deed/Liber 3674, pp. 181-185 8/20/1959		U.S.A. to State of Hawaii Quitclaim Deed/Liber 12062, pp. 247-261 11/29/1976	
FAA/FA & ADA, but treatable as P.L. 88-233	7-C-2	see 6-B	Submerged land/sea fishery of Moanalua	Republic of Hawaii to U.S.A. Annexation	T.H. to U.S.A. G.E.O. No. 1801 8/22/1957	P.L. 85-534, an act to authorize land exch. in the T.H. 7/18/1958	T.H. to U.S.A. Quitclaim Deed/Liber 3674, pp. 171-180 7/30/1959	U.S.A. to State of Hawaii Quitclaim Deed/Liber 8583, pp. 225-243 9/10/1971	
5(b)	7-C-3	see 7-B-4	Submerged land/sea fishery of Moanalua	Republic of Hawaii to U.S.A. Annexation	U.S.A. to State of Hawaii Statehood			U.S.A. to State of Hawaii Quitclaim Deed/Liber 12062, pp. 247-261 11/29/1976	
5(b)	7-C-4	see 7-B-4	Submerged land/sea fishery of Moanalua	Republic of Hawaii to U.S.A. Annexation	U.S.A. to State of Hawaii Statehood			U.S.A. to State of Hawaii Quitclaim Deed/Liber 12062, pp. 247-261 11/29/1976	
5(b)	8-A	see 7-B-4	Submerged land/sea fishery of Kaliawa	Republic of Hawaii to U.S.A. Annexation	U.S.A. to State of Hawaii Statehood			U.S.A. to State of Hawaii Quitclaim Deed/Liber 8583, pp. 247-261 11/29/1976	
5(e)	8-B	50.7600 (incl. 9-B)	Submerged land/sea fishery of Kaliawa	Republic of Hawaii to U.S.A. Annexation	Set aside to U.S.A. P.E.O. No. 3358 11/24/1920			U.S.A. to State of Hawaii Quitclaim Deed/Liber 4485, pp. 529-532 3/15/1963	
5(b)	9-A	see 7-B-4	Submerged land/sea fishery of Mokauea	Republic of Hawaii to U.S.A. Annexation	U.S.A. to State of Hawaii Statehood			U.S.A. to State of Hawaii Quitclaim Deed/Liber 12062, pp. 247-261 11/29/1976	
5(e)	9-B	see 8-B	Submerged land/sea fishery of Mokauea	Republic of Hawaii to U.S.A. Annexation	Set aside to U.S.A. P.E.O. No. 3358 11/24/1920			U.S.A. to State of Hawaii Quitclaim Deed/Liber 4485, pp. 529-532 3/15/1963	

Classification	Parcel No.	Acreage	Land Transactions				
			Before Annexation		Territorial Period		After Statehood
P.L. 88-233	9-C	11.0000	Submerged land/sea fishery of Mokauea	Republic of Hawaii to U.S.A. Annexation	Set aside to U.S.A. P.E.O. No. 3358 11/24/1920		U.S.A. to State of Hawaii Quitclaim Deed/Liber 5334, pp. 226-232 7/23/1965
5(b)	10	4.2890	Submerged land/sea fishery of Koholaloa	Republic of Hawaii to U.S.A. Annexation	Set aside to U.S.A. P.E.O. No. 3358 11/24/1920	U.S.A. to T.H. P.E.O. No. 9860 5/31/1947	U.S.A. to State of Hawaii Statehood
5(b)	11	see 6-C	Submerged land adjoining sea fisheries of Halawa and Moanalua	Republic of Hawaii to U.S.A. Annexation	U.S.A. to State of Hawaii Statehood		U.S.A. to State of Hawaii Quitclaim Deed/Liber 12062, pp. 247-261 11/29/1976

APPENDIX B

Sand Island

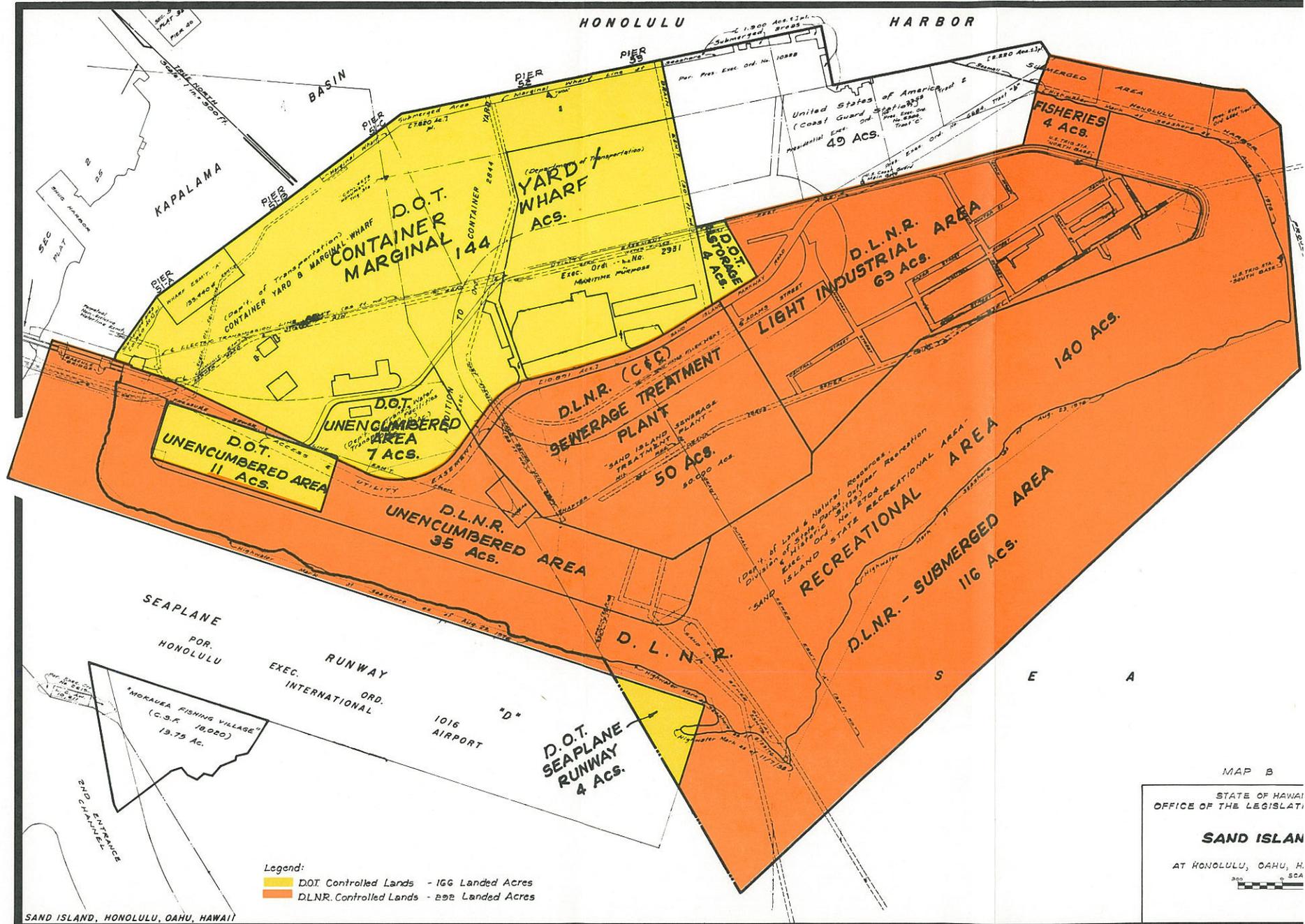


SAND ISLAND, HONOLULU, OAHU, HAWAII

LAND CLASSIFICATION
Legend:

- Admission Act Section 5(a)
- Admission Act Section 5(b)
- Admission Act Section 5(c)
- Public Law 88-233

MAP A
STATE OF HAWAII
OFFICE OF THE LEGISLATIVE COUNSEL
SAND ISLAND
AT HONOLULU, OAHU, H.
300
SCA



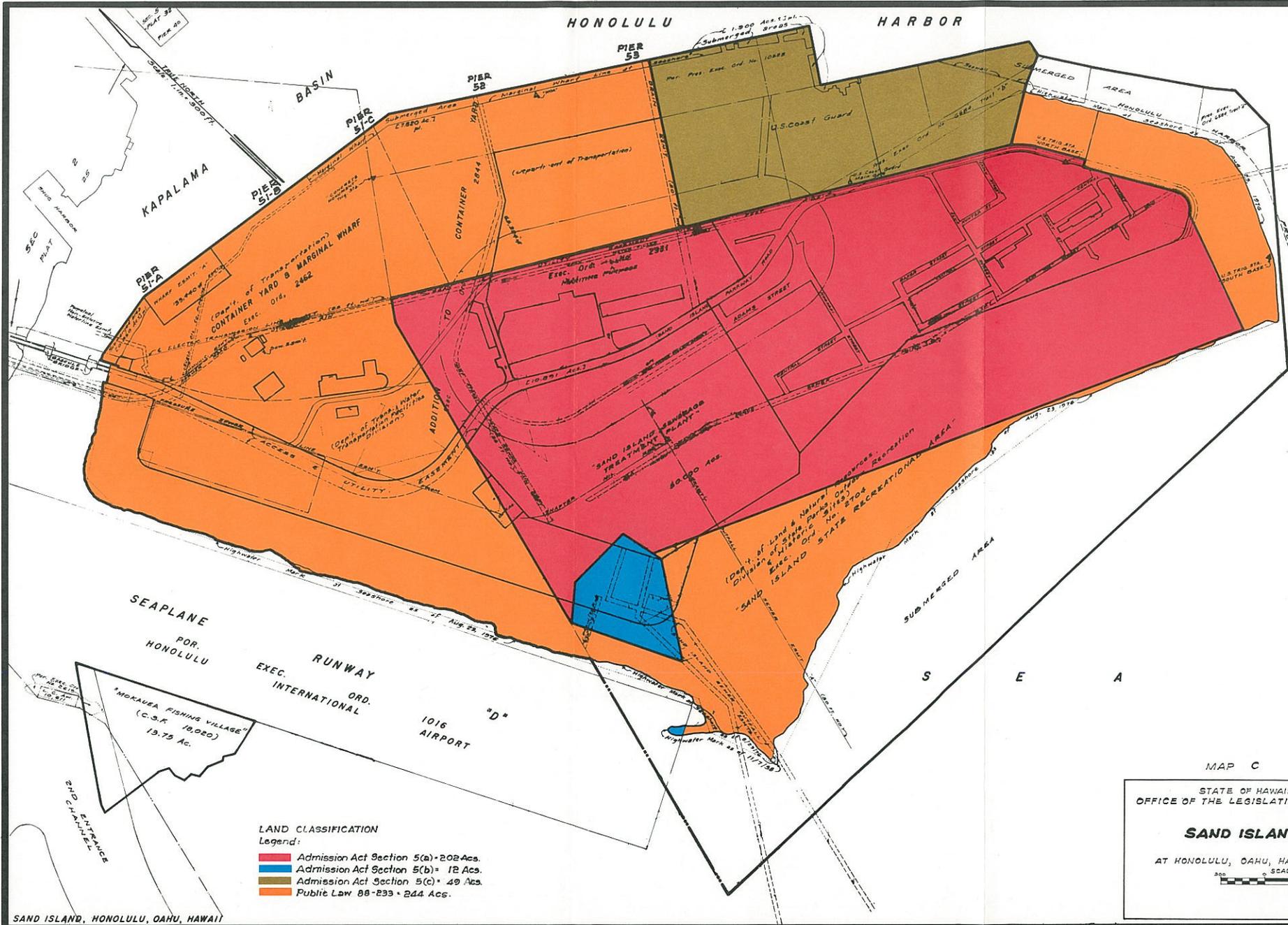
Legend:
 Yellow: D.O.T. Controlled Lands - 166 Landed Acres
 Orange: D.L.N.R. Controlled Lands - 292 Landed Acres

MAP B
 STATE OF HAWAII
 OFFICE OF THE LEGISLATIVE COUNSEL
SAND ISLAND
 AT HONOLULU, OAHU, H.
 300 0 SCA

SAND ISLAND, HONOLULU, OAHU, HAWAII

HONOLULU

HARBOR



- LAND CLASSIFICATION
Legend:
- Admission Act Section 5(a) - 202 Acs.
 - Admission Act Section 5(b) - 12 Acs.
 - Admission Act Section 5(c) - 49 Acs.
 - Public Law 88-233 - 244 Acs.

SAND ISLAND, HONOLULU, OAHU, HAWAII

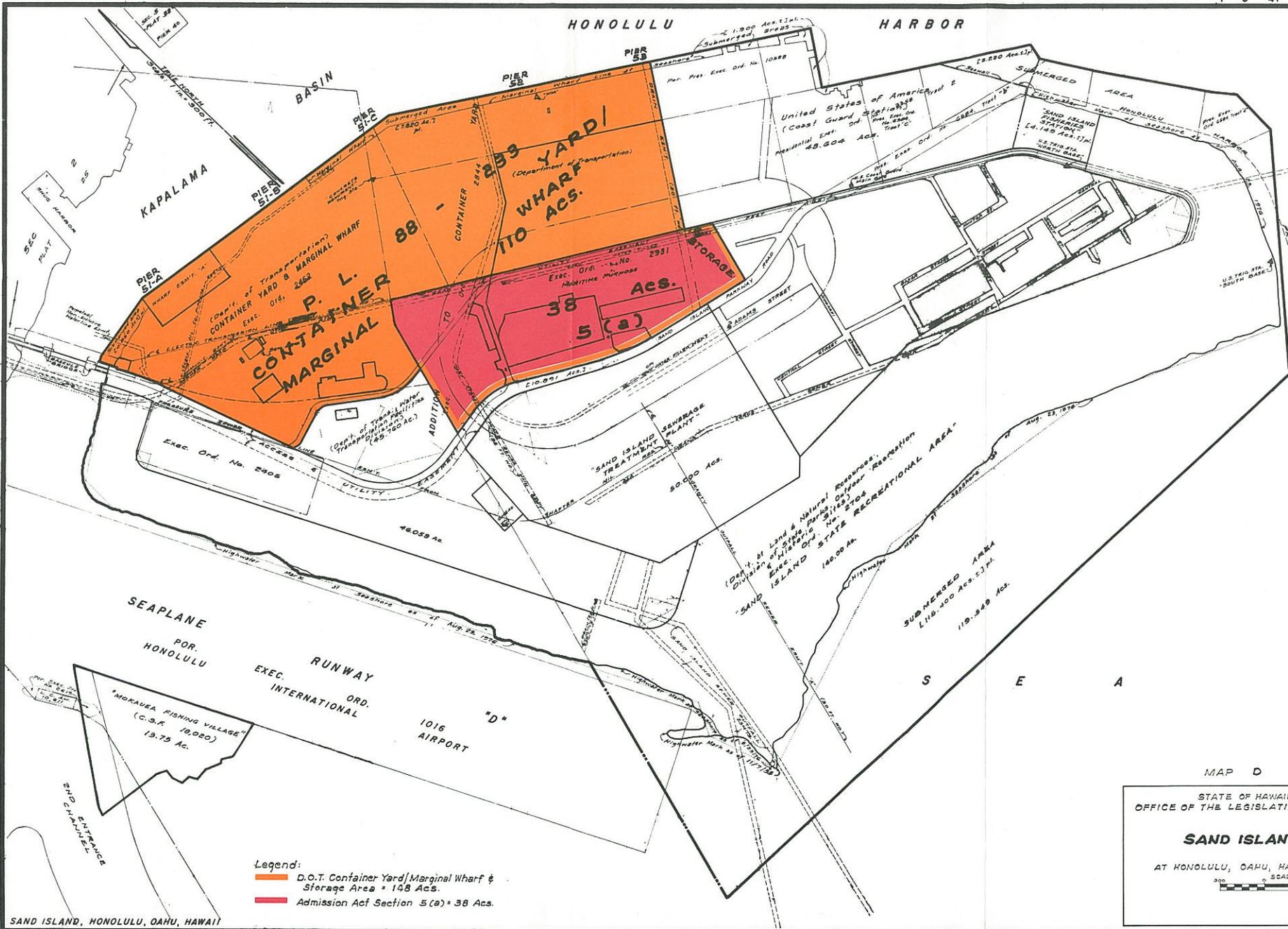
MAP C

STATE OF HAWAII
OFFICE OF THE LEGISLATIVE COUNSEL

SAND ISLAND

AT HONOLULU, OAHU, HA

300' SCALE



SAND ISLAND, HONOLULU, OAHU, HAWAII

Legend:

- D.O.T. Container Yard/Marginal Wharf & Storage Area = 148 Acs.
- Admission Act Section 5(a) = 38 Acs.

MAP D

STATE OF HAWAII
OFFICE OF THE LEGISLATIVE

SAND ISLAND

AT HONOLULU, OAHU, HAWAII

SCALE