Study of Revenue Entitlements to the Department of Hawaiian Home Lands

A Report to the Governor and the Legislature of the State of Hawai'i

Report No. 91-9
February 1991

THE AUDITOR
STATE OF HAWAI'I

The Office of the Auditor

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OVERVIEW

THE AUDITOR
STATE OF HAWAII

Study of Revenue Entitlements to the Department of Hawaiian Home Lands

Summary

The Department of Hawaiian Home Lands (DHHL) is the agency created to administer the Hawaiian Homes Commission Act and place Native Hawaiians on the land. It is entitled to 30 percent of the revenues from the use and disposition of sugarcane lands. The Department of Land and Natural Resources (DLNR), the agency that manages and disposes of public lands, is responsible for transmitting the revenues from sugarcane lands to DHHL.

In the past two years, the Board of Land and Natural Resources has approved the conveyance of several parcels of sugarcane lands to the Housing Finance and Development Corporation (HFDC) without resolving the issue of DHHL's entitlement to compensation. HFDC is the state agency set up in 1987 to develop reasonably priced housing. The statutes give it substantial power and exempt it from many of the restrictions and ordinances governing private developers.

In May 1989, HFDC exchanged its pasture lands in Kaneohe for sugarcane lands in Hanapepe, Kauai, which it plans to use for housing. HFDC affordable housing projects in Honokowai and Lahaina on Maui also rest on former sugarcane lands. The HFDC is now negotiating with DLNR to resolve the entitlement question.

We found that the procedures used by the executive branch do not ensure that DHHL receives all income to which it is entitled nor do they ensure that trust obligations are being fulfilled. Through a memorandum of understanding, DLNR is to notify DHHL of actions taken on sugarcane lands. But in our Lahaina case study, we found that DHHL did not receive sufficient information about the pending conveyance of over 1,100 acres in fee to HFDC. Although the Board of Land and Natural Resources has approved conveyance of the land, DLNR and HFDC have yet to finalize the methods of compensating DHHL.

DLNR has not used a consistent method of valuing public lands that it exchanges. It has relied on appraisals by purchasers and has conveyed lands without requiring an appraisal. Part of the problem is that the statutes are silent on appraisal procedures when lands are exchanged or transferred *among government agencies.*

Recommendations and Response

We recommended that the Legislature amend Section 171-95, HRS, to require the Board of Land and Natural Resources to appraise all public lands before they are disposed of to other government agencies. DLNR should provide the entitlements due to DHHL for the sugarcane lands at Hanapepe, Honokowai, and Lahaina.

DLNR needs to plan for the future use of agricultural lands, especially sugarcane lands. We recommended that the department work with representatives from DHHL and other affected agencies in doing so. A new memorandum of understanding should, among other things, require DLNR to notify DHHL of all transactions involving sugarcane lands, and the amount and method of compensation.

The DHHL agreed with all of our recommendations. The DLNR did not agree with the recommendation to amend the statutes to require appraisals for land dispositions between public agencies. In its response, the HFDC said it understood that the 30 percent entitlement did not apply if public lands were used for public purposes. This contention may be one reason the entitlement issue has not been resolved.

Background

Since the constitutional amendments of 1978, the Office of Hawaiian Affairs (OHA) and DHHL have been entitled to portions of the revenues from certain public lands. OHA is entitled to 20 percent of the revenues from the use and disposition of ceded lands, and DHHL to 30 percent of the revenues from the use and disposition of sugarcane lands. Ceded lands make up approximately 1.3 million acres of state lands. Sugarcane lands, which are public lands leased for sugar cultivation, represent more than 80 percent of the 74,400 acres leased by the state for intensive agriculture.

Sugarcane lands are part of what is called the public land trust. The land trust is comprised of lands ceded to the United States when the Republic of Hawaii was annexed in 1889 and returned to the state under the Admission Act of 1959. These lands are held as a public trust to support public education, farm and home ownership, public improvements, public use, and the betterment of the conditions of Native Hawaiians.

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Submitted by

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STATE OF HAWAII

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Foreword

This report was prepared in response to Senate Concurrent Resolution 51 of 1990, which requested the auditor to examine the procedures used by the executive branch to ensure that Hawaiian beneficiary programs receive the revenues to which they are entitled from ceded lands and lands in sugarcane cultivation. The Legislature was concerned that the programs were not receiving their entitlements when public lands are exchanged or disposed of among government agencies for such purposes as affordable housing developments. This report focuses on the entitlements of the Department of Hawaiian Home Lands.

We wish to ackowledge the cooperation and assistance extended to us by the staff of the three agencies involved in this study--the Department of Land and Natural Resources, the Housing Finance and Development Corporation, and the Department of Hawaiian Home Lands.

Newton Sue
Acting Auditor
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February 1991

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Chapter 1
Introduction

Both the State Constitution and the statutes give the Office of Hawaiian Affairs (OHA) and the Department of Hawaiian Home Lands (DHHL) the right to revenues from certain public lands. The constitutional entitlements were adopted in 1978 to fund the newly established OHA and to remedy the "monumental and eternal funding dilemma" for DHHL.[1] The statutes entitle OHA to 20 percent of the revenues from the use and disposition of ceded lands and DHHL to 30 percent of the proceeds from the use and disposition of sugarcane lands. Ceded lands are public lands ceded to the United States upon annexation in 1898 and subsequently returned to the State. Ceded lands represent approximately 1.3 million acres of state lands. Sugarcane lands are public lands leased for sugar cultivation. These lands represent more than 80 percent of the state's 74,400 acres leased for intensive agriculture.[2]

Until the constitutional amendments were adopted in 1978, state agencies could freely transfer public lands among themselves. In May 1989, the issue of entitlements surfaced when the State Housing Finance and Development Corporation (HFDC) exchanged its pasture lands in Kaneohe for sugarcane lands in Hanapepe, Kauai, without the State's considering the loss of revenue entitlements to DHHL. The HFDC plans to use the Hanapepe land for housing. Other HFDC affordable housing projects in Honokowai and Lahaina on Maui also use sugarcane lease lands acquired by HFDC for nominal amounts. These land transactions among state agencies may result in a significant loss of revenues for DHHL, revenues that were intended to fund DHHL programs. The HFDC and the Department of Land and Natural Resources are now trying to resolve the entitlement question.

The 1990 Legislature realized that no mechanism existed to ensure the fair valuation of ceded lands and leased sugarcane lands that are conveyed among state agencies. When these lands are transferred to other state agencies or disposed of without compensation, OHA and DHHL may no longer receive the revenues to which they are entitled. The Legislature is especially concerned that DHHL has not taken a more active role in monitoring its entitlements. It therefore requested through Senate Concurrent Resolution 51, S.D.1, H.D.1, that the auditor conduct this study.

The resolution also asked the auditor to work with the Office of State Planning, which was directed under separate legislation (Act 304, SLH 1990) to examine revenues due to OHA. The auditor agreed to

focus on executive branch procedures for DHHL entitlements, while the planning office focused on OHA entitlements.

Objectives

This study examined executive branch procedures to determine whether Hawaiian beneficiary programs receive their proper entitlements. More specifically, we sought to:

1. Assess the adequacy of valuation procedures for land exchanges involving sugarcane lease lands.

2. Determine whether DHHL receives all revenues to which it is entitled from sugarcane leases and from dispositions of sugarcane lands.

3. Recommend changes to ensure fair entitlements to DHHL and to improve current procedures.

Scope and Methodology of the Study

A large number of state and county agencies have interests in sugarcane lands. These include the state Land Use Commission, the Department of Agriculture, the county planning commissions, and others. Each agency has its own functions and responsibilities. This study focused only on the three state agencies that are involved in sugarcane lands: the Department of Hawaiian Home Lands, the Department of Land and Natural Resources, and the Housing Finance and Development Corporation.

- The **Department of Hawaiian Home Lands** was established to administer the Hawaiian Homes Commission Act and place Hawaiians on lands. It is responsible for the monitoring of entitlement revenues and the disposition of sugarcane land.

- The **Department of Land and Natural Resources** is responsible for managing and disposing of public lands, planning and establishing their value, transmitting revenues from sugarcane lands, and planning and disposing of such land.

- The **Housing Finance and Development Corporation** was established in 1987 to develop reasonably priced housing. It appraises and purchases public lands for affordable housing

units. It recently purchased several parcels of sugarcane lands. The statutes give the corporation substantial power and exempt it from many restrictions and ordinances.

We reviewed the valuation procedures (ways of estimating property worth) of these agencies and past and current practices of DLNR and DHHL with respect to sugarcane lease revenues and the disposition of sugarcane lands. This report focused on the revenues from leases and the disposition of sugarcane lands, although much of the discussion also applies to water licenses. (DHHL is entitled to 30 percent of the revenues from both sugarcane leases and water licenses.) We also considered the practices of other governmental agencies for comparable information. Our information was gathered through reviews of the literature, interviews with agency personnel, reviews of agency files dating back eight years, and archival research. The assignment was conducted from June to December 1990, in accordance with generally accepted government auditing standards.

Chapter 2

Responsibility for the Public Land Trust

The Department of Land and Natural Resources (DLNR) is responsible for administering the public land trust and for managing the revenue entitlements of the Office of Hawaiian Affairs (OHA) and the Department of Hawaiian Home Lands (DHHL).

Public Land Trust

Sugarcane lands are part of the public land trust for which DLNR has certain responsibilities. The public land trust is comprised of lands ceded to the United States by the Republic of Hawaii under the Joint Resolution of Annexation, approved July 7, 1898, and later returned to the State of Hawaii under Section 5 of the Admission Act, approved March 18, 1959. These lands are held as a public trust for the support of the public schools and other public educational institutions, the betterment of the conditions of native Hawaiians as defined in the 1920 Hawaiian Homes Commission Act, the development of farm and home ownership, the making of public improvements, and the provision of lands for public use.

Categories of Lands Involved

OHA and DHHL entitlements derive from state lands that fall into several overlapping and closely related categories:

- **Public lands** are lands managed by DLNR that include ceded lands and federal lands returned to the State, and other lands the State acquired through purchase, exchange, or condemnation.

- **Ceded lands** are lands belonging to the Hawaiian Republic that were ceded to the United States upon annexation in 1898. They are part of today's public land trust, subject to statehood trust provisions. OHA is entitled to 20 percent of the revenues from these lands.

- **DHHL or "available" lands** are lands set aside to the Hawaiian Homes Commission in 1920. Some of these lands under sugarcane lease are managed by DLNR.

- **Sugarcane or "protected" lands** are lands in sugarcane production from which DHHL is entitled to 30 percent of the

lease revenue. There are also some DHHL "available" lands on which sugar is growing from which DHHL is entitled to 100 percent of the lease revenue.

It should be noted that public lands include ceded lands and nonceded lands, such as privately owned parcels taken by the State or Territory for utilities, parks, and schools. Sugarcane lands can also be categorized as ceded lands and are therefore subject to both OHA and DHHL entitlements. The parcels at issue in this study--Hanapepe, Honokowai, and Lahaina--are categorized as both sugarcane and ceded lands. The origins of these categories of lands derive from Hawaiian history.

Hawaiian Kingdom

Land in Hawaii was divided and managed in part for the benefit of the general population as early as 1848. The Great Mahele reserved one-third for the crown, gave one-third to chiefs, and intended one-third for the people. As early as 1835, the king had leased or sold crown lands to sugar interests, but under an 1865 act, all crown lands came under the management of the Minister of the Interior and were made nontransferable.

Republic Period (1893-98)

During this period, crown lands became public lands that were managed by the Minister of the Interior and two commissioners appointed by the president of the Republic of Hawaii. They were responsible for surveying and grading public land and appraising it at reasonable market rates. Homesteading was promoted to counter large plantation developments. Homestead acreage could be leased or bought by citizens under three options: long-term 999-year leases, short-term leases with right of purchase, and cash purchases. Homesteaders had to agree to reside on and cultivate the lands. Large-scale plantations continued to lease lands from the Republic, but were restricted to 100 acres and 21-year terms. Proceeds from sales and leases were set apart in a special fund for government bond payments or for purchasing other lands.[1]

Territorial Period (1898-1959)

The 1898 Annexation Act required Congress to enact special laws to ensure that funds from the sale or lease of public lands were used solely to benefit the people of Hawaii, their education, and other public purposes. When Hawaii became a U.S. Territory, it was governed by the Organic Act passed by Congress in 1900. Section 73 of the act continued in force the land laws of the Republic under a

Commissioner of Public Lands, formerly the Minister of Interior. The Organic Act gave the federal government legal *title* to all public lands, to be held in "special trust," but gave the Territory *administrative control and use* of these lands.[2]

Amendments in 1910 to Section 73 of the Organic Act addressed abuses in the management of public lands and expanded homesteading policies. Land sales or other dispositions required the consent of the land commissioner and governor. All government land leases now required withdrawal provisions that allowed the board to withdraw leases whenever 25 or more citizens applied for homesteading on that land.[3]

Hawaiian Homes Commission Act

In 1921, Congress passed the Hawaiian Homes Commission Act, as amended, to protect and rehabilitate Hawaiians through homesteading. The act established a Hawaiian Homes Commission that leased certain agricultural and pastoral lands for $1 per year to persons of not less than one-half Hawaiian ancestry. Congress justified benefitting a special class of people because much of the land that was to have gone to commoners under the Great Mahele had reverted to the crown, and upon annexation, had become a part of the public lands of the Territory.[4] Commission members were appointed by the territorial governor.

The commission was funded by receiving a 30-percent share of the receipts from certain public lands. These lands were "highly cultivatable" prime lands that had been leased mainly to the sugarcane companies. The act allowed the best of these public lands to be set aside for sugarcane leases, permitted less suitable "available" lands and lands "not in sugar cultivation" to be used for homesteading, and protected the sugarcane leases from the withdrawal provision that could be activated when 25 citizens applied for homesteading. The revenues were to be deposited in a Hawaiian home loan special fund.[5] In short, the commission was given its 30-percent share of the sugarcane lease receipts for its program in exchange for excluding sugarcane lands from homesteading. The commissioner of public lands revised the leases to triple the annual income to support the expanded homestead program.[6]

Some local newspapers, however, criticized the homestead act from the start because Hawaiians were put on poor lands in inaccessible places and given limited funding.[7] Revenues from the sugarcane leases were never sufficient for the commission's homesteading and administrative costs. Congress created additional loan funds and accounts to accrue supplemental revenues. Eventually, other revenue

sources, such as commercial leasing of the commission's available lands, became the bulk of funding for the program.[8]

State Assumption of Obligations

The public land trust was reaffirmed in the 1959 Admission Act, Section 5. Congress returned title to the ceded lands if Hawaii would agree to use them for specific public purposes, including bettering conditions for native Hawaiians. Hawaii agreed as a compact with the United States to adopt the Hawaiian Homes Commission Act as a constitutional provision and not reduce or impair its funds, which included the Hawaiian home loan fund. All territorial laws in force at the time of admission were continued until repealed or amended by the State Legislature.

The public land trust by then was comprised of the original crown and government lands ceded to the United States during annexation, plus lands acquired by the federal and territorial governments. "Available" lands were not included in the public land trust, but were held in a separate trust by the Hawaiian Homes Commission.

Constitutional Entitlements

Recognizing the futility of relying on sugarcane lease revenues to support the Hawaiian homestead program, the 1978 Constitutional Convention expanded the DHHL entitlements. It proposed sufficient general fund appropriations for DHHL in addition to continuing the agency's entitlement to 30 percent of the sugarcane lease revenues. The intent was to protect and preserve funding for DHHL whether the lands were leased, sold, or otherwise disposed of. The Committee on Hawaiian Affairs of the 1978 convention stated in its report:

> Your Committee has decided that this source of moneys should be protected and preserved and therefore provided that, regardless of the use to which these lands are put, the revenues derived therefrom would be subject to these provisions [30 percent to be diverted to DHHL in perpetuity]. Only when these lands are sold in fee simple would these lands not be subject to the provisions of this proposal. However, the proceeds received from the sale of the land would be subject to the provisions of this proposal.[9]

The revenues would be deposited in a new native Hawaiian rehabilitation fund that would finance educational, economic, political, social, and cultural programs as well as home loans.

The Convention also gave OHA entitlement to a pro rata portion of the funds derived from the public land trust. OHA would receive its pro rata share whenever public ceded lands were sold, leased, or otherwise disposed of. OHA was charged with improving a wide range of conditions of the native Hawaiians. It was empowered to hold and own property, create and administer programs, and govern itself under certain general laws of the State as well as the Constitution.[10]

The Constitutional Convention also reaffirmed the Admission Act compact not to diminish or limit the benefits of native Hawaiians--a provision that applied to DHHL and OHA entitlements. DLNR is responsible for assigning the OHA entitlement from the public land trust revenues and the DHHL entitlement from sugarcane lease revenues. In 1978, these amendments were ratified by the electorate.

Current Land Management Responsibilities

The Department of Land and Natural Resources (DLNR) is responsible for administering and managing the public land trust, the homestead leases, and the sugarcane leases under Section 73 of the Organic Act.

State laws for managing and disposing of public lands were enacted in 1962 because the Legislature felt that state land laws lacked order and direction.[11] Chapter 103, *Revised Laws of Hawaii,* based on the Organic Act, Section 73, was recodified in 1967 as Chapter 171, *Hawaii Revised Statutes.* DLNR is authorized to sell, lease, or exchange public lands based on fair market appraisals; set minimum prices when public lands are sold for residential use based on fair market value; and, two years prior to the expiration of leases, determine intended land uses that would discourage speculation. The law does not require DLNR to appraise public lands when they are disposed of among government agencies for public purposes.

In managing public lands, DLNR has entered into various kinds of transactions. They include leases, licenses, revocable permits, patents, easements, sales, exchanges, transfers, and set-asides, among others. Decisions on these transactions are made by the Board of Land and Natural Resources.

Chapter 3
Findings and Recommendations

In this chapter, we present our findings and recommendations on whether the Department of Hawaiian Home Lands (DHHL) is receiving all the revenues to which it is entitled and whether trust responsibilities for sugarcane lands are being fulfilled.

Findings

Our principal finding is that current procedures do not ensure that the Department of Hawaiian Home Lands is receiving all income to which it is entitled from sugarcane lands, nor do they ensure that trust obligations relating to sugarcane lands are being fulfilled. More specifically we find that:

1. The Department of Land and Natural Resources (DLNR) has disposed of sugarcane lands without compensating the Department of Hawaiian Home Lands;

2. The DLNR has not used a consistent approach in appraising sugarcane lands; and

3. The DLNR has not planned for the use and disposition of sugarcane lands.

Trust Obligations Are Not Being Met

The DLNR has sold sugarcane lands without resolving the issue of entitlements and without fully informing DHHL of significant land transactions. In appraising the value of these lands, DLNR has not been consistent. The department has not carried out the statutes requiring it to plan for future uses of its land nor has it consulted with other agencies about potential conflicts in land use between such purposes as housing and agriculture.

One cause of these conditions, we believe, is that the DLNR has not established policies and procedures to govern the disposition of sugarcane lands and to ensure fair compensation to DHHL when transactions occur. The department's January 1980 memorandum of understanding with DHHL has not been sufficient to ensure that DHHL receives timely information about changes in the status of sugarcane lands.

In the memorandum, DLNR acknowledged that it would maintain copies of leases, maps, photographs, records of rentals due, and other

information, and that it would notify DHHL of any action to be taken on the use and disposition of state and protected lands leased for sugarcane production. The DLNR also agreed to submit copies of public notices, agendas of board meetings, and minutes of board actions.

While the DLNR follows, for the most part, the "letter" of the agreement, the information is not sufficient to keep DHHL abreast of significant land transactions. We found that DLNR sends DHHL quarterly fiscal reports on revenues, but it only notifies DHHL about sugarcane land transactions in Hawaii county (most DHHL lands are in Hawaii county). DLNR sends out notices of the board agenda, but these do not show whether proposed actions involve sugarcane lands. They merely give the location of the land and the requested action.

For its part, DHHL has not been diligent in keeping apprised of transactions involving sugarcane lands and in obtaining its entitlements. It receives considerable information that its staff does not always have time to review.

We present the following case study of Lahaina lands to illustrate what has gone wrong in the current process. Following the case study, we discuss in further detail some specific conditions we found involving sugarcane land transactions.

Lahaina transaction

In June 1990, the Board of Land and Natural Resources approved the withdrawal of approximately 68 acres of ceded lands previously leased to the Pioneer Mill Company for sugarcane production and its conveyance in fee to the Housing Finance and Development Corporation (HFDC).[1] The board took these actions without formally notifying and consulting the DHHL. The DHHL reportedly found out about the disposition of these lands, valued in the millions, by chance.

The parcel contains the first increment of an affordable housing project that will eventually take over 1100 acres of state sugarcane land. HFDC has a master plan for 3,750 single and multi-family homes, parks, recreational facilities, churches, schools, a commercial center, golf course, and civic center. The project will be developed over a ten-year period.

Contrary to usual practice, the DLNR did not send a disposition form on the Lahaina lands to DHHL. Land transactions usually begin with an application from a person or agency. DLNR then sends out a disposition form (Form 70A) to all state agencies asking for their review and comment on the application. The single-page form notes

the name of applicant, location of the property, the tax map key, and other information.

Background

HFDC's plans for the Lahaina land first came to the attention of the Board of Land and Natural Resources in October 1987 when HFDC submitted a request for right-of-entry to approximately 40 acres of sugarcane lands to study the feasibility of a commercial and residential project. The work included topographic surveys, environmental assessments, preliminary planning, and engineering tasks. HFDC planned to acquire the lands should the results be favorable. At its November meeting, the board approved HFDC's request.

DLNR's agenda and minutes of the board's meeting do not show that this request involved ceded sugarcane lands. One of more than 70 items on the board's agenda, the request was listed as one for right-of-entry to lands at Lahaina and other sites. Board minutes show no discussion of whether these were ceded or sugarcane lands. No mention was made of Hawaiian entitlements.[2]

In March 1989, the board approved another right-of-entry request from HFDC to conduct site investigation studies in Lahaina--this time on 1,122 acres of state-owned lands. Minutes of the meeting show that board members were concerned about the affordability of homes and the impact of the project on Pioneer Mill. Again, there was no discussion about what HFDC's plans would mean to Hawaiian entitlement programs.[3]

To construct the project, HFDC needed a land-use boundary amendment to reclassify the land from agriculture to urban. As part of its petition, HFDC had to have an approved environmental impact statement (EIS) and a master plan for the project. In October 1989, a draft EIS was circulated among agencies for their comment. The Department of Agriculture raised some concerns about the removal of high-yield agricultural lands from cultivation. In its comments the Office of Hawaiian Affairs (OHA) said that its major concern was the proposed sale of ceded land. It noted that ceded land carried heavy obligations to both the general public and the native Hawaiian community:

> While a proposal such as the Lahaina Master Planned Project serves a portion of the public, namely those needing affordable housing, the sale of ceded land is nonetheless a detriment to other recipients of ceded land trust benefits.
>
> Unfortunately, there is no discussion in the draft EIS of the responsibilities of the ceded land trusts or how this project will affect

> those responsibilities...It is the position of this office that until issues concerning ceded lands are resolved that there be a moratorium on all sales, transfers or exchanges of all ceded land, irrespective of the appropriateness of the project.[4]

In a response to OHA, the HFDC executive director reassured the office that the ceded land issue was important. He said HFDC would continue to meet with OHA as well as DLNR and DHHL on how best to dispose of this issue, adding that discussions would continue until the issue was resolved.[5]

No comments were received from DHHL on the draft EIS.

In February 1990, the chairman of the Board of Land and Natural Resources authorized HFDC to petition the Land Use Commission for a district boundary amendment. In his letter to HFDC, the chairman supported the project saying that DLNR had worked with HFDC on the project for over two years and the project would provide much-needed affordable housing.[6]

The Land Use Commission held a hearing in April 1990 on HFDC's petition to reclassify the lands to urban. The Office of State Planning testified in support of the petition, pointing to the need for housing. The office, however, did note that the proposed project would require compensation to OHA and DHHL, and it recommended that HFDC work with DLNR and OHA to address the issue.[7] Here again, neither DLNR or HFDC brought up the issue of DHHL entitlements. The Land Use Commission approved the boundary amendment without imposing any conditions to resolve the entitlement issue.[8]

To begin construction of the first phase of the project, HFDC's next step was to ask DLNR to withdraw 68.620 acres of land from the lease to Pioneer Mill and to convey it in fee to HFDC. The board approved this request at its June 1990 meeting. At the meeting, DLNR staff said that the department had executed a memorandum of understanding with HFDC. DLNR would convey the lands to HFDC for $1, and subsequently, public facilities, parks, and schools built by HFDC would be set aside to the appropriate government agency, and 20 percent of the appraised value of those facilities would be given back to OHA as compensation. One board member noted that the memorandum should make clear that OHA should get what it is entitled to under the highest and best use. The board approved the memorandum of understanding (subject to review by the attorney general) and the conveyance of the 68.620 acres in fee to HFDC.[9]

The memorandum established the method that HFDC would use in acquiring state lands for affordable housing. The two agencies

agreed that HFDC would acquire these lands from DLNR on the basis of the existing use (as opposed to the planned or future use). The memorandum outlined various methods of compensating OHA and DHHL such as full cash payment when the land is conveyed, payment by the Legislature, payment through the conveyance of improved residential lots or housing units, and others.

After the board had approved the memorandum of understanding, the chairman of the board raised the question of DHHL entitlements in a letter to the attorney general. The chairman noted that board action in conveying sugarcane lands "raises a multitude of questions and concerns regarding their implementation and effect(s) of applicable State constitutional provisions." Among other provisions, the chairman referred to those requiring that 30 percent of the receipts be transferred to the native Hawaiian rehabilitation fund, that the lands be held as a public trust for native Hawaiians, and that legislation not diminish or limit the benefits of native Hawaiians.[10] As of December 31, 1990, the memorandum of understanding had not been approved by the attorney general, and its status remains unclear.

Substantial value of Lahaina lands

Sugarcane lands have substantial value, not for the revenues they generate, but for their fee-simple potential. Sugarcane lands have not generated large revenues in recent years. In FY1989-90, the Lahaina lease yielded $37,490 to DHHL.[11] However, 30 percent of the *appraised* value would yield DHHL substantially higher revenues. An independent appraiser concluded that, as of March 1990, the fair and reasonable value of the Lahaina lands was $35,000 per acre or over $39.5 million for the 1,122 acres.[12]

HFDC does not have the resources to purchase the land in fee from DLNR. In testimony before the Land Use Commission, the Office of State Planning said that the net income of the housing project in 1990 was a "negative" $18.8 million. Although HFDC had not yet acquired the land, it planned to offset the projected deficit by selling 40 acres of additional light industrial land for $20 million, selling golf course land for $19 million, using capital improvement project funds to subsidize off-site costs by $19 million, and waiving or reducing interest expenses of approximately $16 million.[13]

DLNR Conveyed Other Sugarcane Lands Without Consulting DHHL

The DLNR has taken other sugarcane lands out of DHHL's intended revenue stream for low and affordable housing projects and other public purposes without considering DHHL's loss of revenues or what might be fair compensation for this loss.

Hanapepe lands exchanged

DLNR exchanged sugarcane lands in Hanapepe for HFDC's lands in Kaneohe (designated for a veterans' cemetery) without appraising either property or compensating DHHL. Instead, the agencies agreed to the exchange because the parcels were premised to be of equal value, based on their size (88 and 89.5 acres) and class (both were urban).[14]

HFDC plans to use the Hanapepe lands for a housing project contracted through a private developer. The developer's financial plans show 256 low and affordable homes and 100 market-priced house lots. Although the land was not appraised, prorated land costs are shown to be $1.4 million. The plans also show that land and construction costs will be covered by an HFDC construction loan.[15] It is not clear how much of the land "cost" of $1.4 million and the subsequent repayment of the construction loan will be recovered by the sale of the units. Payment of DHHL entitlements was not part of the calculation.

Honokowai lands sold for $1

DLNR conveyed to HFDC title to 11.93 acres of sugarcane lands in Honokowai, Maui, for a rental housing project. This again was done without appraising the land or compensating DHHL. Although the project is nearing completion, no provisions for entitlements have been made.

DLNR gave the needs of HFDC precedence over the entitlements of DHHL. Originally, the Board of Land and Natural Resources approved the HFDC request for a lease on the land of $1 per year for 65 years. In a memo dated July 1, 1988, the chairman of the board cautioned the HFDC executive director that the constitutional entitlement "may pose dire consequences to the success of HFDC's affordable housing project and its ramifications should be further explored."[16] Subsequently, on August 10, 1990, the board rescinded its lease and gave HFDC the Honokowai parcel in fee simple. In recommending that the board take this action, DLNR staff noted that the Honokowai project was well under way:

> Due to certain restrictive covenants contained in the standard general lease form, HFDC has not completed requirements for the construction bond financing. Therefore, in order to attain completion of its 184 unit rental housing development now under construction on State land at Honokowai, Lahaina, Maui, HFDC wishes to acquire the State's fee simple interest in the subject project site.[17]

Other sugarcane land set aside

Without appraising the land or compensating DHHL, the DLNR approved 22 acres of sugarcane lands to be set aside for a National Guard facility in Kula, Maui. Section 171-11, HRS, permits public lands to be set aside for public purposes without public auction, subject to disapproval by the Legislature by two-thirds vote in the session following the set-aside date. DHHL has requested information regarding the applicability of its 30 per cent entitlement for this transaction.

State constitution and laws require compensation

Both the State Constitution and the Admission Act require 30 percent of the receipts from sugarcane leases to be paid to DHHL. The State Constitution, Article XII, Section 1, clearly requires that 30 percent of receipts from leases on sugarcane lands shall continue to be transferred to the native Hawaiian rehabilitation fund "whenever such lands are sold, developed, leased, utilized, transferred, set aside, or otherwise disposed of for purposes other than the cultivation of sugarcane." The Admission Act, Section 4, requires that the State, as a compact with the United States, shall not reduce or impair various Hawaiian home funds. The State Constitution, Article XII, Section 3, repeats the language of the Admission Act that pledges the State's compact as to the Hawaiian Homes Commission Act.

Compensation owed to DHHL

DHHL is owed 30 percent on the Hanapepe and Honokowai projects currently under way. The executive branch should provide for fair compensation for the entitlements before the projects are completed. HFDC already holds title to the Hanapepe and Honokowai parcels. Whether entitlements can be recovered from particular lands once they have been conveyed to HFDC must also be addressed.

Among the options for providing the entitlements in the case of Hanapepe are recovery from HFDC, from the developer, and/or from some of the purchasers when the homes and the lots are sold. The land has been valued in financial plans at $1.4 million, and entitlement could be recovered on that basis. Another option is to give DHHL title to other public parcels that are of the same value as the Hanapepe and Honokowai parcels.

Still another option to meet the entitlement obligation is a general fund appropriation. This may be necessary in the case of Honokowai where the project's revenues are already obligated to repay construction bonds. *With Hanapepe, however, making a general fund appropriation instead of recovering payment from home buyers may mean that the public pays twice: first because general fund revenues are being expended; and second because the State may have paid for the original parcels that were exchanged for the*

sugarcane lands. "Free" lands that are exchanged are free only to home buyers whose prices do not reflect actual land costs. Their purchase price would be subsidized by a general fund appropriation to satisfy DHHL entitlements.

The HFDC has found it desirable to use sugarcane lands because the nominal costs for these lands have made possible its low and affordable housing projects. If the executive branch intends to continue providing low and affordable housing by building on sugar lands, DLNR should consider such additional options as (1) the long-term lease rather than sale of land and (2) shared appreciation. The long-term lease would maintain a revenue stream for DHHL and also keep homes affordable. In the option of shared appreciation, the purchaser of low or affordable housing shares with the State any increase in value. Whenever the purchaser decides to sell, DHHL could participate in the increased value.

DLNR Does Not Use a Consistent Process for Appraising Sugarcane Lands

The valuation procedures of DLNR have been marked by inconsistency both as to *whether* to appraise and *by what standards* to appraise. The department approaches dispositions on a case-by-case basis. In some instances, it has relied on valuations done by the party seeking to acquire the land. In other instances, it has applied a "highest and best use" appraisal standard. And in others, it has done no appraisals at all.

Appraisals by purchasers

DLNR has relied on HFDC's valuations for lands set aside for housing projects. When DLNR allowed HFDC to exchange its Kaneohe land for land in Hanapepe, HFDC estimated the Kaneohe lands to be worth $1.6 million. The valuation was based on the cost of acquiring the Kaneohe land in 1982 ($1.081 million) plus interest and other costs carried over during the eight years of HFDC's (then the Hawaii Housing Authority's) ownership. A subsequent appraisal requested by the Department of Defense after being assigned the property was $1.7 million.[18]

As discussed earlier, DLNR approved a conveyance of 1,122 acres of sugarcane lands in Lahaina to HFDC without first appraising the parcel. HFDC later obtained an appraisal based on the land's current sugarcane use. HFDC's appraisal figure of $35,000 per acre, or $39.5 million for the parcel, is now under negotiation with DLNR. The project is in the design phase with models to be constructed by the end of 1990.

Recently, DLNR exchanged several properties with the City and County of Honolulu, accepting the county's appraisal of its own properties at $7 million without appraising the state lands involved.[19]

Other appraisal methods

DLNR has used varying methods to appraise other state lands. It used a "highest and best use" standard in exchanging public lands for DHHL "available" lands that were designated for school sites. DHHL "available" lands under airports were exchanged for the title and future revenues of state leased lands at Shafter Flats even though the lands were not equal in classification or acreage.[20]

For construction of a civic center, DLNR sold to the Department of Accounting and General Services (DAGS) a 4.5 acre parcel in Ewa owned by HFDC. No appraisal was done by DLNR, but DAGS paid the original purchase price of $1.19 million because HFDC needed to recover its land costs.[21]

No appraisal requirement

We believe that a primary reason for DLNR's inconsistent valuation methods lies in Section 171-95(a), HRS, which permits DLNR to rent, sell, or lease public lands to government agencies without appraisal. Section 171-95(a) is silent on valuation requirements, thereby giving DLNR leeway to deal with dispositions on a case-by-case basis, including those cases involving public lands with entitlement obligations.

When the transaction is *not* with a government agency, the statutes require DLNR to conduct fair market appraisals. Fair market appraisals involve setting the value of a property at its highest and most profitable use in open market competition with other similar properties. These statutes require fair market appraisals when public lands are sold or leased at public auctions, when public lands are planned for residential developments or other public purposes, when public lands are exchanged with private entities, and when public lands are sold for single or multifamily residential use.[22]

Without an appraisal of public lands, no determination of entitlements can be made. DLNR should use consistent valuation procedures based on a policy decision that when a new use is proposed for sugarcane land, the value of the land for entitlement purposes should be based on its highest and best use.

In determining the value of land, DLNR should apply accepted appraisal standards such as (a) "comparable market data" (an analysis of sales, leases, offerings, and asking prices of properties of similar use and nature); (b) "raw land costs" (an analysis of the

replacement cost of the property less depreciation); and (c) an "income capitalization approach" (an analysis of the income-producing capacity of the property with the resultant income flow converted to a capital value).[23]

To clarify the expectations and obligations of all parties involved in exchanges of public lands, Section 171-95(a) should be amended to mandate appraisals of all public lands before they are disposed of between public agencies.

DLNR should come to an agreement soon with DHHL and OHA on any pending requests for dispositions of public and sugarcane lands, the method of compensation, the circumstances, and the degree of involvement by OHA and DHHL. The three agencies should finalize a new memorandum of understanding. Where necessary, land disposition agreements should be amended to include language requiring the designated parties to meet DHHL entitlements before final conveyance.

Better Planning Needed for Sugarcane Lands

DLNR should plan more systematically for the future use of agricultural lands, especially sugarcane lands. It needs to consult with affected agencies about possible conflicts in land use between such purposes as housing and agriculture. Thus far, these agencies have reacted to problems and situations as they arose. The Hanapepe project, for example, elicited disapproving and cautionary testimony from OHA, the Office of Environmental Quality Control, the Department of Agriculture, and the County of Kauai. Several agencies voiced similar concerns about the Lahaina project. Since the statutes give HFDC substantial power and exempt it from numerous restrictions and ordinances, the concerns of agencies affected by the transaction had little weight.

The statutes require DLNR to plan for future uses of public lands and to decide on the conditions to be imposed when it intends to dispose of sugarcane lands. The statutes include:

- Section 171-33(2), HRS, that the State determine uses for intended land dispositions.

- Section 171-33(6), HRS, that the State determine the conditions it needs to impose on a disposition in order to discourage speculation.

- Section 171-33(9), HRS, that the State, two years before the expiration of a lease, determine whether the same or some

other use of the land shall be made, and that it promptly notify lessee.

In carrying out its statutory charge to plan the future uses of sugarcane lands, the DLNR should strive for an approach that reconciles conflicting public purposes, recognizes the entitlement obligations to OHA and DHHL, and meets the needs of other government agencies. The future of the sugar industry is uncertain, and substantial changes are likely in the use of lands now in sugarcane cultivation. These lands may need to be given over to residential, commercial, and industrial purposes. In planning, DLNR should work with representatives of OHA and DHHL to identify such issues as the conditions for land use changes, appropriate methods of transaction (exchanges, sales, leases), methods for appraising lands, appropriate forms of compensation if other than cash, and so forth.

With the pending expiration of sugarcane leases and the planned withdrawals of these lands from sugarcane production, the resolution of the entire issue is urgent. Toward this effort, the 1990 Legislature appropriated $400,000 for DLNR to undertake strategic planning of state lands. DLNR should make sure that its expenditure of these funds yields a plan that recognizes DHHL's entitlements to sugarcane lease revenues and a voice in the disposition of these lands.

Recommendations

1. The Legislature should amend Section 171-95(a), HRS, to require the Board of Land and Natural Resources to appraise all public lands before disposition to government agencies.

2. The Department of Land and Natural Resources should provide the entitlements due to the Department of Hawaiian Home Lands from the sugarcane lands at Hanapepe, Honokowai, and Lahaina.

3. The Department of Land and Natural Resources should work with representatives from the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, and other affected government agencies in planning for sugarcane lands. The DLNR should recognize in its plan DHHL's entitlements to sugarcane lease revenues and a voice in the disposition of these lands.

4. The Department of Land and Natural Resources and the Department of Hawaiian Home Lands should develop a new memorandum of understanding that requires DLNR to notify DHHL of transactions relating to sugarcane lands. The

memorandum should delineate the responsibilities of each agency when sugarcane lands are disposed of, the degree of DHHL involvement in the disposition, and the amount and method of compensation to DHHL.

5. The Department of Hawaiian Home Lands should monitor its entitlements more vigilantly. This responsibility should be assigned to one of its staff.

Notes

Chapter 1

1. Hawaii, *Proceedings of the Constitutional Convention of Hawaii of 1978*, Volume II, p. 410.

2. Hawaii, *Department of Hawaiian Home Lands Annual Report, 1989*, p. 9; Hawaii, *Department of Land and Natural Resources Annual Report, 1988-89*, pp. 71, 85, 89, 99.

Chapter 2

1. Republic of Hawaii, Land Act, 1895.

2. U.S. Congress, Organic Act, 1900, Sections 1 and 91.

3. U. S. Congress, House Committee on the Territories, *Hearings*, February 1920, pp. 9-10.

4. Grace Humphries, *Hawaiian Homesteading: A Chapter in the Economic Development of Hawaii*, Master of Arts Thesis, Honolulu, University of Hawaii, 1937, p. 18.

5. Marilyn M. Vause, *The Hawaiian Homes Commission Act, 1920, History and Analysis*, Master of Arts Thesis, Honolulu, University of Hawaii, 1968, pp. 74-118.

6. Humphries, *Hawaiian Homesteading*, p. 25.

7. Alexander Robertson, *Hawaiian Rehabilitation Bill, Arguments Against It*, Robertson, Castle, Anthony, Honolulu, 1920, pp. 55, 56, 57, 65.

8. Vause, *The Hawaiian Homes Commission Act*, pp. 125-130.

9. Hawaii, *Proceedings of the Constitutional Convention of Hawaii of 1978*, Volume 1, pp. 632-633.

10. Sections 10-3 and 10-4, HRS.

11. Hawaii, *House Journal Budget Session of 1962*, p. 210.

Chapter 3

1. Minutes of the Board of Land and Natural Resources, Honolulu, June 22, 1990, Item F-5, p. 2.

2. Minutes of the Board of Land and Natural Resources, Wailuku, November 20, 1987, p. 3.

3. Minutes of the Board of Land and Natural Resources, Hilo, March 10, 1989, pp. 2-3.

4. Letter to Neal Wu, Project Coordinator, Housing Finance and Development Corporation, from Richard Paglinawan, Administrator, Office of Hawaiian Affairs, January 18, 1990.

5. Letter to Richard Paglinawan, from Joseph K. Conant, Executive Director, Housing Finance and Development Corporation, February 2, 1990.

6. Letter to Joseph K. Conant, from William W. Paty, Chairman of the Board of Land and Natural Resources, February 23, 1990.

7. Testimony on Docket No. A89-652 submitted by the Office of State Planning to the Land Use Commission, April 4, 1990.

8. Docket No. A89-652, HFDC, Decision and Order, State Land Use Commission, May 18, 1990.

9. Minutes of the Board of Land and Natural Resources, Honolulu, June 22, 1990, p. 27.

10. Letter to the Honorable Warren Price, Attorney General, from William W. Paty, July 26, 1990.

11. Department of Land and Natural Resources, Fiscal Division, FY1989-90 revenues for Lahaina, Tax Map Keys 2nd Division, Zone 4, Section 5, Plat 21, Parcels: 3, 5, 9, 11, 17, Por. 2, January 3, 1991.

12. M. Shimizu, Inc., *Appraisal Report for Lahaina Master Planned Project, Housing Finance and Development Corp.*, February 5, 1990.

13. Testimony on Docket No. A89-652 submitted by Office of State Planning to Land Use Commission, April 4, 1990.

14. Exchange Deed and Agreement to Exchange, Bureau of Conveyances Doc. No. 90-086598, June 1, 1990.

15. Housing Finance and Development Corp., "For Board Action Report," Hanapepe Heights III project, May 12, 1989, p. 5; Exhibit A.

16. Memo to HFDC Housing Development Section from Joseph Conant, June 1988.

17. Minutes of the Board of Land and Natural Resources, Honolulu, August 19, 1990, Item F-8, p. 3.

18. Larry Medeiros, A.S.A., *Appraisal Report for Department of Land and Natural Resources*, Tax Map Key No. 1: 4-5-33, Por. 2, April 14, 1989.

19. "Land Swap Stalled While City Makes Sure It's Getting Full Value," *The Honolulu Advertiser*, June 29, 1990; City Council Resolution 90-199, City and County of Honolulu, October 3, 1990.

20. Raymond Lescher & Co., *Appraisal Report*, October 13, 1982; Agreement of November 30, 1984 among DHHL, DOT, and DLNR, Honolulu.

21. Letter to William Paty from Russel S. Nagata, State Comptroller, February 12, 1988; letter to Russel S. Nagata from Russell N. Fukumoto, Executive Director, Hawaii Housing Authority, March 12, 1987.

22. Sections 171-17, 171-33.5, 171-50, 171-60(b), 171-70, 171-77, 171-79, HRS.

23. John Hulten, "Appraisal Methods in Hawaii," *Appraisal and Valuation Manual of the American Society of Appraisers*, Volume 5, 1960, p. 97.

Responses of the Affected Agencies

Comments on Agency Responses

A preliminary draft of this report was transmitted on January 15, 1991, to the Department of Land and Natural Resources, Department of Hawaiian Home Lands, and the Housing Finance and Development Corporation. A copy of the transmittal letter is included as Attachment 1. The responses from the Department of Land and Natural Resources, the Department of Hawaiian Home Lands, and the Housing Finance and Development Corporation are included as Attachments 2, 3, and 4, respectively.

The Department of Land and Natural Resources agreed with our recommendations that it provide the Department of Hawaiian Home Lands the entitlements to which it is due and that it work together with representatives from affected agencies in planning for sugarcane lands. With respect to our recommendation that it appraise public lands before disposing of them to other government agencies, the department says that this may be inappropriate. It says that it is willing to hold discussions with the Department of Hawaiian Home Lands concerning a new memorandum of understanding. In its response, the department also added some information about its disposition of lands at Honokowai, Hanapepe, and Lahaina.

The Department of Hawaiian Home Lands concurred with all recommendations in the report. Other options suggested by the department for compensating it for lost revenues were to use the revenues from sale of lands to private parties in the case of Hanapepe and to use revenues from rentals at Honokowai. The department pointed to certain errors of fact in the draft, which we have corrected.

The Housing Finance and Development Corporation did not comment on recommendations, but stated that its understanding was that the 30 percent entitlement would not apply if public lands are used for public purpose. It pointed out that the Honokowai project is a rental project and not a fee-simple for-sale project. We made this correction in our draft.

ATTACHMENT 1

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813

(808) 548-2450
FAX: (808) 548-2693

C O P Y

January 15, 1991

The Honorable William W. Paty, Jr.
Chairman
Department of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813

Dear Mr. Paty:

Enclosed are three copies, numbers 6 to 8 of our draft report, *Study of Revenue Entitlements to the Department of Hawaiian Home Lands.* We ask that you telephone us by January 18, 1991, on whether you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than January 29, 1991.

Mrs. Hoaliku Drake, Director of the Department of Hawaiian Home Lands, Mr. Joseph Conant, Executive Director of the Housing Finance and Development Corporation, the Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Newton Sue
Acting Legislative Auditor

Enclosures

JOHN WAIHEE
GOVERNOR OF HAWAII

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
P. O. BOX 621
HONOLULU, HAWAII 96809

WILLIAM W. PATY, CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

DEPUTIES

KEITH W. AHUE
MANABU TAGOMORI
RUSSELL N. FUKUMOTO

AQUACULTURE DEVELOPMENT PROGRAM
AQUATIC RESOURCES
CONSERVATION AND ENVIRONMENTAL AFFAIRS
CONSERVATION AND RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION PROGRAM
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

Ref:LM-GA

JAN 29 1991

MEMORANDUM

Refer:MA-91:311

TO: Mr. Newtown Sue, Acting Legislative Auditor
Office of the Auditor

RECEIVED
JAN 29 2 49 PM '91
OFC. OF THE AUDITOR
STATE OF HAWAII

FROM: William W. Paty, Chairperson
Board of Land and Natural Resources

SUBJECT: DLNR's Comments to Draft Study of Revenue Entitlements to the Department of Hawaiian Home Lands

With respect to the above-captioned subject and Department of Land and Natural Resources' (DLNR) Division of Land Management's review thereof, I am providing your office with the following comments:

1. Page 8, relating to Constitutional Entitlements:

   The 1978 State Constitutional Convention's Committee on Hawaiian Affairs Report on DHHL's revenue entitlements appears to be in conflict with the actual language contained in Article XII, Section 1, Constitution of the State of Hawaii. Thus, this State constitutional provision may require further clarification by the State Department of the Attorney General.

2. Page 11, relating to Findings:

   I have no objections to Finding Nos. 1 and 3. However, I would like to clarify that pursuant to Sections 171-11 and 95, Hawaii Revised Statutes, as amended (HRS), fair market appraisals are not required for land dispositions (i.e. Governor's Executive Orders and Grants of Non-Exclusive Easement) to government agencies for public purposes even though the public lands disposed of are sugarcane lands.

3. Pages 13 and 14, relating to Background:

   I question whether it would be prudent to have a moratorium on all public land sales until the issues concerning the sale of public lands are resolved. These issues are complex and may entail a substantial amount of time to resolve. However, further discussions are needed with the affected parties on how best to resolve these issues.

4. Pages 14 and 15, relating to the Lahaina Transaction:

   The paragraphs on these pages pertaining to the Memorandum of Understanding (MOU) between DLNR and the State Housing Finance and Development Corporation (HFDC) contain many inaccuracies. For this reason, I am enclosing copies of agenda Item F-4 dated June 22, 1990 and the proposed MOU, which were approved as amended by the State Board of Land and Natural Resources (Land Board), subject to various terms and conditions. Any references to the proposed MOU in your legislative report should be factual, complete and in accord with the approved and amended Land Board submittal and the MOU.

   As of this date, the MOU between DLNR and HFDC has not been finalized by the State Department of the Attorney General as to form and legality.

5. Page 16, relating to the Hanapepe Land Exchange:

   With respect to the Hanapepe land exchange, I would like to point out that the lands exchanged would be revenue ceded lands and that revenues generated from the lands would go to OHA and DHHL in accordance with constitutional and statutory provisions.

6. Page 16, relating to the Honokowai Lands:

   Because the chronological events leading up to HFDC's acquisition of fee simple title to the Honokowai lands are inaccurate, this section must be clarified. The true facts are as follows:

a. At its meeting held on June 9, 1988, under agenda Item F-4, the Land Board approved HFDC's request for a direct lease covering the Honokowai lands for the development of an affordable rental housing project. Although the proposed lease to HFDC was for a term of sixty-five (65) years at a nominal rental rate of one dollar ($1.00) per annum for the full lease term, the subsequent development of affordable rental housing units are in conformity with the State's plan to provide safe, sanitary and reasonably priced housing to meet the needs of Hawaii families residing in West Maui.

b. Certain restrictive covenants contained in DLNR's standard general lease form prevented HFDC from securing adequate construction bond financing for the Honokowai rental housing project. Therefore, at its August 10, 1990 meeting, under agenda Item F-8, the Land Board:

(1) Rescinded its action (Action D) taken on June 9, 1988, under agenda Item F-4, authorizing the issuance of a direct lease to HFDC covering the Honokowai lands for an affordable rental housing development.

(2) Found the subject land area to be an economic unit in terms of the intended use.

(3) Authorized the Honokowai lands to be conveyed (by way of a quitclaim deed) in fee simple to HFDC for development of an affordable rental housing project, subject to the terms and conditions listed in said Land Board agenda item, including:

Consideration:

Shall be in accordance with applicable paragraphs set forth in Memorandum of Understanding (MOU) between DLNR and HFDC relating to establishment of a policy for acquisition of State lands by HFDC for its planned and future affordable housing development projects.

c. Due to unresolved issues related to revenue entitlements due:

(1) Department of Hawaiian Home Lands' (DHHL) Native Hawaiian Rehabilitation Fund pursuant to Article XII, Section 1, The Constitution of the State of Hawaii (State Constitution), and

(2) Office of Hawaiian Affairs (OHA) pursuant to Sections 10-1, 10-3 and 10-13.5, HRS, the MOU between DLNR and HFDC has not been finalized as to form and legality by the State Department of the Attorney General. Therefore, the Land Board at its November 9, 1990 meeting, under agenda Item F-4, amended its August 10, 1990 action taken under agenda Item F-8, under the heading of Consideration by replacing said section with the following:

(a) That DLNR, with prior formal authorization from the Land Board, shall transfer fee simple title (by way of a quitclaim deed) to the "Honokowai Affordable Housing Site" to HFDC for a sum of $1.00, subject to the review and approval of the State Department of the Attorney General as to form and legality; and

(b) For the "Honokowai Affordable Housing Site" land transaction only, revenues/compensation due to the Office of Hawaiian Affairs (20%) and the Native Hawaiian Rehabilitation Fund (30%), administered by the State Department of Hawaiian Home Lands, in order to satisfy State constitutional and statutory requirements (specifically Article XII, Sections 1 and 4, State Constitution, and Section 10-13.5, HRS) relative to public trust "ceded" lands and sugarcane-cultivated lands, respectively, shall be provided with a retroactive compensation payment paid for by HFDC but coordinated by the Office of State Planning, subject to the review and approval of the State Department of the Attorney General as to form and legality.

(c) Effective as of January 10, 1991, the State of Hawaii, by its Board of Land and Natural Resources, acting pursuant to Section 171-95(a)(1), HRS, for and in consideration of $1.00 paid to DLNR by HFDC quitclaimed unto HFDC, its successors and assigns, all of its right, title, interest, claim and demand in and to the Honokowai lands (aka Honokowai Affordable Housing Project Site) containing a revised land area of 11.806 acres, more or less, subject to the following special covenant:

"Any and all compensation due the OHA and the DHHL, in satisfaction of constitutional and statutory provisions, as a result of this quitclaim deed, shall be paid by Grantee (HFDC) in coordination with the Office of State Planning, subject to the review and approval of the State Department of the Attorney General as to form and legality."

7. Page 17, relating to National Guard Facility Site:

At its May 11, 1990 meeting, under agenda Item F-7, the Land Board:

a. Approved the withdrawal of approximately 22 acres of State-owned sugarcane lands from General Lease No. S-4197 to A&B-Hawaii, Inc., subject to the following terms and conditions:

(1) The minimum annual lease rental shall be decreased at the rate of $5.00 per acre per annum as a result of the area to be withdrawn. The lease provides that the minimum annual lease rental then in effect at the time of withdrawal shall be decreased at the rate of $5.00 per acre per annum for any area classified as "potential lands"; and

(2) Effective date of the land withdrawal and rental reduction to be determined by the Chairperson.

b. Approved of and recommended to the Governor, issuance of an executive order setting aside the subject State land to the State Department of Defense for Consolidated Hawaii Army National Guard Facility Site purposes, subject to the following terms and conditions:

(1) Disapproval by the State Legislature in any regular or special session next following the date of the executive order;

(2) Compliance with all applicable Federal, State and County laws, ordinances, rules and regulations relative to the occupancy and use of the set aside lands; and

(3) Such other terms and conditions as may be prescribed by the Chairperson.

Prior to the Land Board's action on the preceding items related to a set aside of the subject State lands classified as lands potentially suitable for the cultivation of sugarcane, the Division of Land Management (Land Management), requested that the OHA and DHHL review and comment on this State land disposition through the transmittal of Form 70-A dated March 28, 1990.

OHA acknowledged its receipt of Form 70-A, but did not provide Land Management with any comments. DHHL asked if the proposed land disposition would affect DHHL's revenue entitlements as provided by Article XII, Section 1, State Constitution.

Land Management staff verbally informed DHHL staff that since the sugarcane lands affected were classified as only "potentially suitable" for the cultivation of sugarcane, total lease revenues from A&B-Hawaii, Inc. would only be decreased by approximately $110.00 per annum. Of this lease revenue amount attributable to 22 acres of "potentially suitable" sugarcane lands, DHHL's existing revenue entitlement from General Lease No. S-4197 would be decreased by only $33.00 per annum ($110.00 per annum x 30% DHHL revenue entitlement).

8. Page 17, relating to State Constitutional and laws require compensation:

If your draft report includes references to certain sections or articles of the State Admission Act, State Constitution and Hawaii Revised Statutes, please state them in their entirety.

To use these provisions out of context or to quote them in part will lead to misinterpretation by an uninformed reader.

9. Page 17, relating to Compensation owed to DHHL:

The material presented in this section of the draft report is erroneous. It is based on the writer's interpretation or misinterpretation of the applicable constitutional provisions which DLNR doesn't necessarily agree with.

Please refer back to comments on Page 16, relating to Hanapepe and Honokowai lands.

Bottom of Page 17 to top of Page 18 is not relevant to the issue of revenue entitlements to DHHL.

Clarification as to the point being made in the last paragraph of this section is needed. Factually, it is in error because the draft report makes reference to the wrong project. But, more importantly, I feel that further clarification is needed for better understanding. Land Management staff is puzzled as to what is being conveyed.

10. Page 18, relating to Process for Appraising Sugarcane Lands:

This section contains erroneous material and is based on the writer's interpretation of the applicable law which Land Management staff doesn't necessarily agree with. The writer is trying to compare "apples and oranges."

First of all, as our comments to Page 11, relating to Findings, the applicable law does not require DLNR to appraise public lands when they are disposed of among government agencies for public purposes.

Secondly, if we choose to do an in-house appraisal, it is at the Land Board's discretion pursuant to law.

11. Pages 21 and 22, relating to Recommendations:

a. With respect to Recommendation No. 1, DLNR feels that this recommendation may be inappropriate. The bigger question is not whether lands should be appraised, but whether State or County agencies who use such lands for public purposes (i.e. parks, schools, roads, and other public facilities) for which no revenues are generated, should be required to compensate DHHL for their use.

b. With respect to Recommendation No. 2, DLNR hopes to present recommendations to the Land Board in the near future relative to compensation to DHHL for the sugar lands at Hanapepe, Honokowai and Lahaina.

c. DLNR concurs with Recommendation No. 3.

d. If appropriate, DLNR Land Management staff would be willing to hold discussions with DHHL staff concerning a new Memorandum of Understanding.

In closing, we concur with the basic thrust of this report based on the liberal assumptions that the writer used. However, we believe the basic question left unanswered is the proper interpretation of Article XII, Section 1, State Constitution, relating to revenue entitlements due DHHL from the public lands cultivated in sugarcane as of November 7, 1978.

The writer's liberal interpretation of this constitutional provision is broad in scope. It should be noted that our current Land Management operations provide to DHHL 30% of all revenues received from the lease or sale of public lands cultivated in sugarcane as of November 7, 1978.

I admit that DLNR may have been inconsistent in its interpretation of the applicable State constitutional and statutory provisions in the past.

However, we have tried to attain legal clarification in the past as the attachments indicate but without success.

Aside from the management of public lands for the benefit and betterment of Native Hawaiians, we wish to apprise you that our department is also charged with responsibility of management of these lands as a trust for the support of public schools, other public education institutions and development of farm and home ownership, the making of public improvements, and the provisions of 5(f) land for public use, pursuant to subsection 5(f) of the State Admission Act.

Should your staff have any questions with regards to this subject matter, they may contact Mr. Glenn Abe of our Land Management staff at 548-6460 or 548-6463.

Enc.

cc Land Board Members
District Land Offices

MEMORANDUM OF UNDERSTANDING

PURPOSE: The purpose of this MEMORANDUM OF UNDERSTANDING between the Department of Land and Natural Resources (DLNR) and the Housing Finance and Development Corporation (HFDC) is to establish the method of acquisition of State lands by HFDC for affordable housing development.

I. DLNR is the administrator of all State lands and Trustee of ceded lands.

II. HFDC is responsible for effectuating the Governor's Comprehensive Housing Program.

III. HFDC's housing programs are premised on the utilization of State owned parcels.

In consideration of the above, the parties hereby agree to the following:

I. Valuation:

A. HFDC will acquire from DLNR net residential lands for its planned Communities. Net residential lands are defined as all lands designated for residential purposes only. Land for major roadways (backbone), public parks, schools and other public facilities are not considered net residential lands.

B. Only net residential lands shall be subject to a valuation process when the property is conveyed to HFDC. All other lands shall be conveyed to the appropriate agency having jurisdiction over its respective uses (i.e., school sites to DOE, etc.).

C. Valuation of net residential land shall be established at the current, existing use (State land use classification and county zoning) of the particular parcel being considered for acquisition, as determined by a market data/comparable sales approach appraisal.

II. Method of Compensating OHA and DHHL when land is conveyed from DLNR to HFDC:

A. Compensating OHA:

Full cash payment made when land is conveyed with subsequent full or partial reimbursement to HFDC by the State legislature if required.

B. Compensating DHHL: (various methods)

1. Full cash payment made when land is conveyed.

2. Full or partial payment through the conveyance of parcel(s) of land with off-site infrastructure for residential development. (If conveyance does not fully satisfy obligation, remainder of payment may be made in cash or using other alternatives.); or

3. Full or partial payment through the conveyance of improved residential lots and/or housing units. (If conveyance does not fully satisfy obligation, remainder of payment may be made in cash or using other alternatives.); or

4. Full or partial payment through conveyance, in whole or in part, of parcel of land with off-site infrastructure for commercial or light industrial use. (If conveyance does not fully satisfy obligation, remainder of payment may be made in cash or using other alternatives.)

   a. If ownership of commercial/light industrial site is shared by HFDC with DHHL/OHA, the proceeds received from the lease premium and payment of lease rent would be shared in proportion to the respective percentage interest in the development.

5. Full or partial payment by the State Legislature.

6. Combination of the above alternatives under B.

It is understood that certain flexibility would be required depending upon the financial or other situation that the various parties may be subjected to at the time of structuring the compensation method.

III. Compensation to DLNR:

A. Method of Payment:

DLNR would transfer its interest to HFDC for $1.00 at the time of conveyance. Proceeds from the sale of the land will be retained by the HFDC in a separate account for the purpose of supporting future land acquisitions in furthering the production of affordable housing.

B. Miscellaneous Condition:

When the agreement with DLNR is executed - OHA and/or DHHL shall have no further interest on the subject land.

IV. Acquisition Processing Steps:

A. HFDC to submit formal request to purchase land.

B. DLNR - response to availability of land (30 days).

C. DLNR - Arranges and meets with OHA and/or DHHL as appropriate to inform them of the pending request for purchase of land.

D. HFDC agrees to pay for appraisal to be performed by DLNR (60 days).

E. DLNR and HFDC agree to an appraised value.

F. DLNR and HFDC agree to compensation method to OHA and/or DHHL.

G. DLNR processes HFDC's request to obtain BLNR approval.

V. Subject to the approval of both DLNR and HFDC Boards.

DEPARTMENT OF LAND AND NATURAL RESOURCES

By _____
Its CHAIRMAN

Date _____

HOUSING FINANCE AND DEVELOPMENT CORPORATION

By _____
Its EXECUTIVE DIRECTOR

Date _____

ATTACHMENT 3

JOHN WAIHEE
GOVERNOR
STATE OF HAWAII

HOALIKU L. DRAKE
CHAIRMAN
HAWAIIAN HOMES COMMISSION

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
P. O. BOX 1879
HONOLULU, HAWAII 96805

January 29, 1991

RECEIVED
JAN 30 1 53 PM '91
OFC. OF THE AUDITOR
STATE OF HAWAII

The Honorable Newton Sue
Acting Legislative Auditor
Office of the Auditor
465 South King Street, Room 500
Honolulu, Hawaii 96813

Dear Mr. Sue:

The Department of Hawaiian Home Lands (DHHL) is in receipt of your letter of January 15, 1991, transmitting a copy of the draft report, "Study of Revenue Entitlements to the Department of Hawaiian Home Lands."

Our comments on the report recommendations are as follows:

Basis for Compensation

We concur with Recommendation No. 1 on page 21, relating to an amendment to Section 171-95(a), HRS, to require appraisals of public lands before disposition to government agencies.

In the case where public lands are to be sold in fee, the issue that needs to be resolved is at what point in the land transaction process should land values be determined to establish the DHHL entitlement. In other words, should DHHL's entitlement be based on 30% of the land value when public lands are sold to government agencies, or when public lands are sold to private parties? A related issue is how the land value should be determined. Should the land value be based on the actual sales price to government agencies or to private parties, the projected land value established by the master plans, or fair market value established by an independent appraisal?

While DHHL is keenly aware of the need for affordable housing and supports the state housing program objectives, the achievement of this public purpose should not involve reducing DHHL's entitlement under the law. DHHL's mission of

accelerating native Hawaiian settlement on its lands is part of state housing program objectives. Promoting "home ownership on as widespread a basis as possible" and "the betterment of the conditions of native Hawaiians" are purposes specified under Section 5(f) of the State Admissions Act for which public land trust assets (lands, proceeds, and income) can be used. DHHL's mission and its programs are geared to these same purposes.

Prior Land Transactions

We concur with Recommendation No. 2 on page 21, relating to entitlements due to DHHL for past land transactions involving former sugarcane lands.

It is recommended that all public land transactions from November 7, 1978, be audited to verify whether former sugarcane lands were involved and, if so, whether the proper disbursements were made to DHHL. Any revenues due DHHL should be paid retroactively, with interest. It is noted that the constitutional provision applies to sugarcane or former sugarcane lands under the management of the Department of Land and Natural Resources and other agencies, such as sugarcane uses within airport boundaries under the management of the Department of Transportation.

Planning for Sugarcane Lands

We concur with Recommendation No. 3 on page 21, relating to DHHL involvement in DLNR's planning process for sugarcane lands.

Ongoing Monitoring and Reconciliation

We concur with Recommendation No. 4 on page 21, relating to a new Memorandum of Understanding (MOU) between DHHL and DLNR that would require DLNR to notify DHHL of transactions relating to sugarcane lands. The existing MOU should be evaluated and strengthened so that responsibilities are clear.

We concur with Recommendation No. 5 on page 22, relating to more diligent monitoring by DHHL and the need for staff resources to carry out this responsibility. DHHL will take action in this regard.

Detailed Comments

Our detailed comments are enclosed for your review.

DHHL appreciates this opportunity to provide its comments. Should you have any questions, please call me at 548-6450.

With warmest aloha,

Hoaliku L. Drake, Chairman
Hawaiian Homes Commission

HLD:DY:as

Enclosure

DETAILED COMMENTS
ON
DRAFT "STUDY OF REVENUE ENTITLEMENTS
TO THE DEPARTMENT OF HAWAIIAN HOME LANDS"
OFFICE OF THE AUDITOR

1. Page 1, first paragraph, should contain the exact language of Article XII, Section 1 of the Constitution of the State of Hawaii, which states:

> Thirty percent of the state receipts derived from the leasing of cultivated sugarcane lands under any provision of law or from water licenses shall be transferred to the native Hawaiian rehabilitation fund, section 213 of the Hawaiian Homes Commission Act, 1920, for the purposes enumerated in that section. Thirty percent of the state receipts derived from the leasing of lands cultivated as sugarcane lands on the effective date of this section shall continue to be so transferred to the native Hawaiian rehabilitation fund whenever such lands are sold, developed, leased, utilized, transferred, set aside, or otherwise disposed of for purposes other than the cultivation of sugarcane. There shall be no ceiling established for the aggregate amount transferred into the native Hawaiian rehabilitation fund.

   This law provides for the basic entitlements to the DHHL under the Native Hawaiian Rehabilitation Fund.

2. Page 7, relating to the Hawaiian Homes Commission Act, first line, "1920" should be "1921".

3. Page 7, relating to the Hawaiian Homes Commission Act, fifth line, "persons of whole or part Hawaiian ancestry" should be the definition of native Hawaiian as per Section 201 of the Hawaiian Homes Commission Act:

> The term "native Hawaiian" means any descendant of not less than one-half the blood of the races inhabiting the Hawaiian Islands previous to 1778

4. Pages 7-8, comments to last paragraph beginning on page 7 and ending on page 8:

   It is true that the homestead program received poor lands in inaccessible places with limited funding. Given the needs of the program, revenues from sugarcane leases and water licenses were not sufficient. Revenues were not sufficient because of

ceilings imposed by the U. S. Congress. Once these ceilings were reached, it took many years before the U. S. Congress restored or increased these funding ceilings. Without funding ceilings, the program could have made significant progress.

Regarding "commercial leasing" of available lands, leasing of Hawaiian home lands for commercial and industrial purposes was not authorized until after statehood.

Regarding the creation of additional loan funds, the Hawaiian Homes Commission did not have this authority. Authority vested in the U. S. Congress. During the period July 9, 1921 through August 21, 1959, there was one loan fund only, the Hawaiian home loan fund. The sources of funds and uses to which the loan fund moneys could be put evolved during that period of time. It was not until 1948 that the 30% revenue would directly fund the Hawaiian home loan fund, and indirectly, the Hawaiian home development fund. It was not until 1948 that it was clear that the loan fund could only be used to make loans to homestead lessees.

5. Page 9, relating to constitutional entitlements, first sentence indicates that the constitutional convention provided the Office of Hawaiian Affairs (OHA) its 20% entitlement of the funds derived from the public land trust. Article XII, Section 6, only indicates that OHA is entitled to a pro rata portion. The legislature, by Act 273, SLH 1980, defined the OHA entitlement as 20%.

6. Page 16, relating to the Hanapepe land exchange, it should be noted that, at the same time, the DLNR issued a new revocable permit (S-6627) to Olokele Sugar for the remaining 1,786.64 acres at a reduced rent of $72,000 for five years. When the board questioned DLNR on what impacts the proposed rent reduction would have on the State of Hawaii, no mention was made of a loss of revenues to DHHL. Over the five year term, the State would not receive a total of $204,000; DHHL would not receive a total of $61,200.

7. Page 17, relating to compensation owed to DHHL, second paragraph, indicates a number of options to provide entitlements to DHHL. Other options that need to be examined include:

    In the case of the Hanapepe project where public lands were sold in fee to private persons, the

fair market value as established by independent appraisal at the time of the land transaction to HFDC, to private parties.

In the case of the Honokawai project, where public lands were used for rental housing, 30% of revenues (rentals) generated.

8. Page 19, relating to other appraisal methods, DHHL's lands under airports were exchanged on a value-for-value basis as required by law, as established by independent appraisals, for state leased lands at Shafter Flats, Oahu.

9. Page 19, relating to no appraisal requirement, the issues that need to be examined include whether the proceeds from a sale of public lands by a government entity (e.g., HFDC) to a non-government entity (e.g., private persons) are subject to the DHHL entitlement, should be set at fair market value, should be established by appraisal.

10. Page 20, relating to a DLNR agreement with OHA and DHHL, DLNR has formulated a policy regarding the disposition of public lands to HFDC for its housing projects. DLNR has transmitted its policy to DHHL for review and comment prior to any action by the Board of Land and Natural Resources.

ATTACHMENT 4

JOHN WAIHEE
GOVERNOR

JOSEPH K. CONANT
EXECUTIVE DIRECTOR

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
HOUSING FINANCE AND DEVELOPMENT CORPORATION
SEVEN WATERFRONT PLAZA, SUITE 300
500 ALA MOANA BOULEVARD
HONOLULU, HAWAII 96813
FAX (808) 543-6841

IN REPLY REFER TO:

91:PLNG/490 dl

January 30, 1991

TO: Mr. Newton Sue
Acting Legislative Auditor

FROM: Joseph K. Conant, Executive Director

SUBJECT: COMMENTS ON HAWAIIAN HOME LANDS REVENUE ENTITLEMENTS REPORT

We have reviewed the draft report on revenue entitlements to the Hawaiian Home Lands, and have the following comments to offer.

1) **page 9, 2nd to last paragraph** - This paragraph states that the law does not require DLNR to appraise public lands when they are disposed of among government agencies for public purposes. We suggest that this paragraph be expanded to explain that housing is a public purpose. Article IX, Section 5 of the State Constitution states: "The State shall have the power to provide for, or assist in, slum clearance and the development or rehabilitation of substandard areas. The exercise of such power is deemed to be for a **public use and purpose.**" (Emphasis added.)

   Further, Article XI, Section 10 of the State Constitution states: "The **public lands shall be used for the development of** farms and **home ownership on as widespread a basis as possible**, in accordance with procedures and limitations prescribed by law."

   Our understanding of the DHHL entitlements is that if the use is for a public purpose, the 30% entitlement would not apply.

2) **page 11, 2nd to last paragraph** - We understand that DLNR is in the process of establishing policies and procedures to govern the disposition of sugarcane lands. This should be mentioned.

3) **page 12, 5th paragraph** - This paragraph states that the HFDC Board of Directors took action (on the Lahaina parcel) without formally notifying and consulting the DHHL. We would like to point out that the Board's action was subject to the memorandum of understanding between DLNR and HFDC, and therefore the transfer of land is contingent upon the DHHL/OHA compensation issue being resolved.

4) **page 15, 3rd paragraph** - We recommend that you add to the last sentence: "based on the land's agricultural use at that time."

5) **page 15, last paragraph** - We recommend that the last sentence be amended to read as follows: "Although HFDC had not yet acquired the land, it planned to offset the projected deficit by <u>either</u> selling 40 acres of additional light industrial land for $20 million, selling golf course land for <u>$37.8 million which would yield a net income of</u> $19 million, using capital improvement project funds to subsidize off-site costs by $19 million, and waiving or reducing <u>estimated</u> interest expenses of approximately $16 million." (Suggested additional material is underscored.)

6) **page 16, 1st paragraph** - This statement is not really true. HFDC's lands in Kaneohe (designated for a veterans' cemetery) was originally acquired through a three-way land exchange with DHHL and DLNR, and involved lands in Waianae Kai.

7) **page 16, 2nd paragraph** - The Hanapepe project will consist of 188 affordable homes and 118 market-priced houselots.

8) **page 16, 3rd paragraph** - We have ordered an appraisal of the land.

   The Honokowai Kauhale project is not a fee simple, for sale project. The project consists of 184 **rental** units.

   Finally, the last sentence in the paragraph is misleading. Compensation to DHHL will be included in a settlement now being worked on by the Office of State Planning, OHA, and DHHL.

9) **page 17, 3rd paragraph** - Compensation for both the Hanapepe and Honokowai projects will be included in the State's settlement with OHA and DHHL.

10) **page 17, last paragraph** - The second sentence should be

amended to read: "This may be necessary in the case of Honokowai where the project's revenues are already obligated to repay [construction] revenue bonds. ("Construction" bonds should be replaced with "revenue" bonds.)

11) **page 18, 2nd paragraph** - Our understanding was that once DLNR conveys a parcel of land in fee to the HFDC and revenue entitlements are paid to DHHL, continual payments to DHHL would not be a requirement.

12) **page 18, 2nd to last paragraph** - The valuation of the Kaneohe land was based on the cost of acquiring the Kaneohe land in 1982, plus the cost of carrying the land up to the date of transfer.

13) **page 19, 3rd paragraph** - DLNR sold a parcel of land located on the Crown Properties site in Waipahu (not Ewa) to the Department of Accounting and General Services.

    Additionally, the $1.19 million reflects HFDC's acquisition and land carrying costs at that date.

13) **page 19, paragraphs 5 and 6** - Fair market appraisals are based on **existing** zoning, therefore it stands to reason that the value of the land for entitlement purposes should also be based on existing zoning.

14) **page 20, paragraph 2** - Mandating appraisals of public lands for public purposes, particularly those lands which are not ceded or are not in sugar cane cultivation, appears to be unnecessary.

If you have any questions regarding our comments, please call Debbie Luning at 543-6807.

JKC/DL