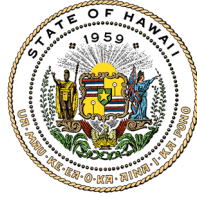


**JOSH GREEN, M.D.**  
GOVERNOR | KE KIA'ĀINA

**SYLVIA LUKE**  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



**STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
KA 'OIHANA KUMUWAIWAI 'ĀINA**

P.O. BOX 621  
HONOLULU, HAWAII 96809

**DAWN N.S. CHANG**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

**RYAN K.P. KANAKA'OLE**  
FIRST DEPUTY

**CIARA W.K. KAHAHANE**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES  
ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

January 9, 2026

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 25KD-111

Kauai

Conveyance of State-Owned Land to the Department of Hawaiian Home Lands, Anahola, Kawaihau (Koolau), Kauai, Tax Map Key: (4) 4-8-007: 013.

and

Grant of Immediate Management Right-of-Entry Permit to the Department of Hawaiian Home Lands, Anahola, Kawaihau (Koolau), Kauai, Tax Map Key: (4) 4-8-007: 013.

**APPLICANT:**

Department of Hawaiian Home Lands (DHHL).

**LEGAL REFERENCE:**

Sections 171-6 and -95, Hawaii Revised Statutes (HRS), as amended.

**LOCATION:**

Government lands of Anahola, Kawaihau (Koolau), Kauai, Tax Map Key: (4) 4-8-007: 013, as shown on the attached maps labeled Exhibits A-1 and A-2.

**AREA:**

4.48 acres, more or less

**ZONING:**

State Land Use District: Urban  
County of Kauai CZO: R4 Residential

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: Not applicable.

CURRENT USE STATUS:

Vacant and unencumbered.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with HAR § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 that states, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing," and Item 37 that states, "Transfer of title to land." The subject request is a de minimis action that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR, as a de minimis action.

APPLICANT REQUIREMENT:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost, if necessary.
- 2) Secure legal subdivision of the subject parcel at Applicant's own cost, if necessary.

REMARKS:

On October 28, 1994, under Item H-6, the Board of Land and Natural Resources (Board) approved an action authorizing the identification and transfer of approximately 16,518 acres of State-owned lands to DHHL to make the Hawaiian Home Lands Trust whole (Exhibit B). Subsequently, Act 14, Special Session Laws of Hawai'i 1995 (Act 14), was enacted to fully effectuate the settlement of claims between DHHL and the State of Hawai'i, including the transfer of specific lands to DHHL to resolve claims relating to the use or alienation of Hawaiian home lands (Exhibit C).

Over the last several years, staff have been working with DHHL to select lands for conveyance to DHHL to fully implement Act 14. By email dated November 18, 2025, DHHL formerly requested conveyance of the subject parcel. Located in the Anahola Residence Lots, the subject parcel is wholly surrounded by lands owned by DHHL. DHHL currently has tenants via revocable permit on the makai side parcel (Kumu Camp) and west side parcel (Camp Faith) and has requested to allow these tenants access to the subject parcel pending DHHL's eventual execution of the quitclaim deed. Accordingly, staff is requesting the Board issue DHHL a management right-of-entry permit (ROE).

Staff recommends that the Board authorize the conveyance via a quitclaim deed of the State's interests, if any, in the subject parcel to DHHL and grant DHHL a management ROE pending execution of the quitclaim deed.

Conveyance of the subject parcel to DHHL shall be credited toward the outstanding balance, if any, owed to DHHL pursuant to the October 28, 1994 Board Action and Act 14.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Grant a management right-of-entry permit to the Department of Hawaiian Home Lands covering the subject parcel under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current access right-of-entry form, as may be amended from time to time;
  - B. This management right-of-entry is effective upon Land Board approval and shall remain in effect for one (1) year. The Chairperson is authorized to extend the ROE for additional one-year periods, for good cause shown;
  - C. The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this right-of-entry is in force; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

3. Authorize the conveyance of the subject parcel to the Department of Hawaiian Home Lands, subject to its fulfillment of the Applicant Requirements listed above, if applicable, and further subject to the terms and conditions cited above, which are by this reference incorporated herein, and further subject to the following:
- A. The standard terms and conditions of the most current quitclaim deed form, as may be amended from time to time;
  - B. The subject parcel shall be conveyed as is;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

*Luke Sarvis*

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Luke J. Sarvis  
Special Assistant

APPROVED FOR SUBMITTAL:

For:

*[Signature]*

*[Signature]*

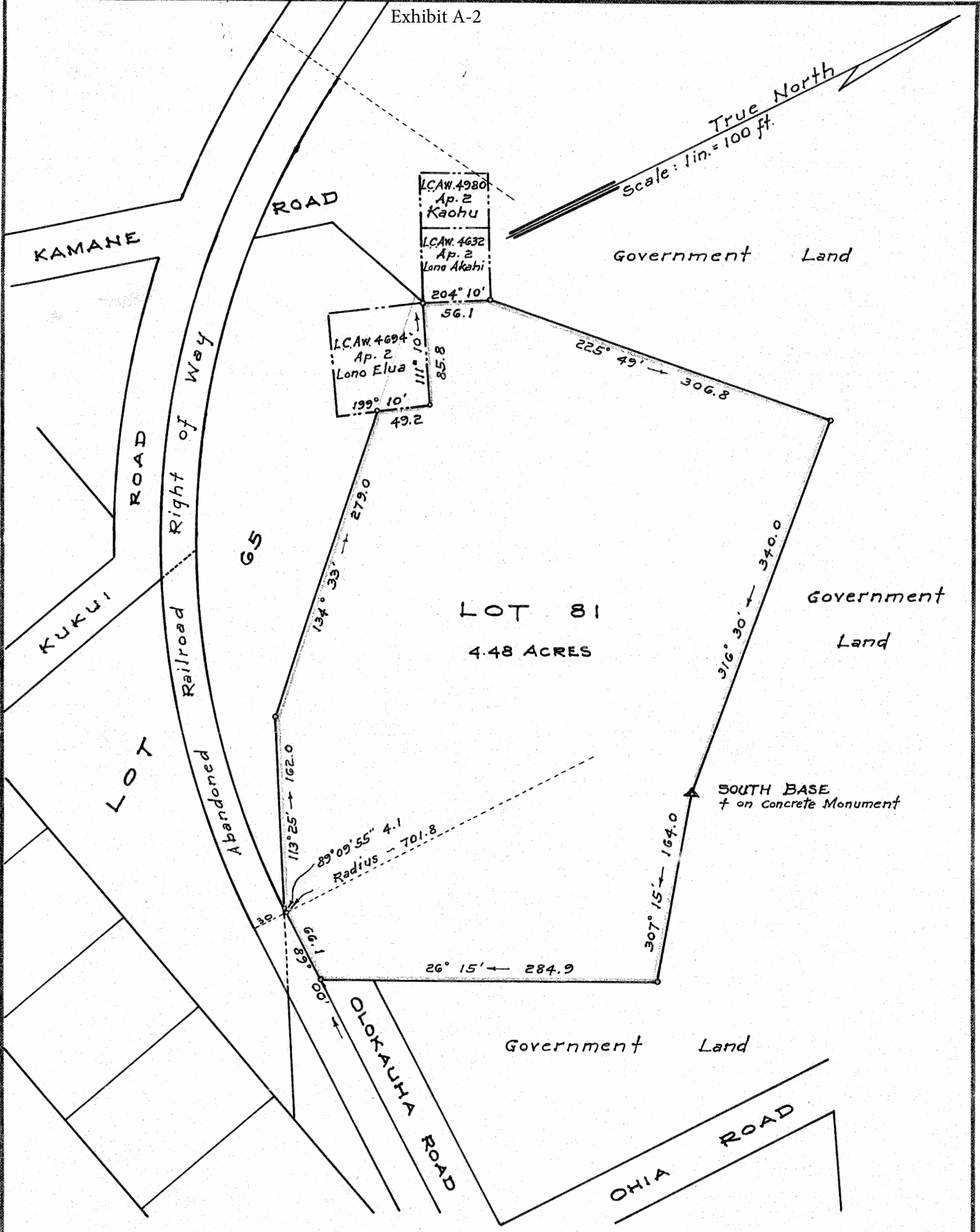
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Dawn N. S. Chang, Chairperson

# Exhibit A-1

Tax Map Key: (4)4-8-007: 013





True North  
Scale: 1 in. = 100 ft.

LOT 81  
4.48 ACRES

(Revised August 1952)  
Lot 81  
Anahola Lots  
Anahola, Kawaihau (Koolau), Kauai, T. H.  
Scale: 1 in. = 100 ft.

Job No. 760

Tax Map 4-8-07  
CARTON 10-C

SURVEY DEPARTMENT  
TERRITORY OF HAWAII

Tracing by  
J. A. A. Aug. 11, 1952

State of Hawaii  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Hawaii Agricultural and Rural Redevelopment Program (HARRP)  
Honolulu, Hawaii 96813

October 28, 1994

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii 96813

STATE WIDE

Subject: Conveyance of Land from the Department of Land and Natural Resources to the Department of Hawaiian Home Lands at Various Sites Statewide

STATUTE:

Chapter 171-95, Hawaii Revised Statutes

FOR:

The Department of Land and Natural Resources (DLNR) to convey approximately 16,518 acres of State-owned lands to the Department of Hawaiian Home Lands (DHHL).

ZONING:

State Land Use: Various

County Zoning: Various

LAND TITLE STATUS:

Various both Ceded and Non-Ceded lands are being conveyed.

ENVIRONMENTAL REQUIREMENTS:

The subject conveyance is an "Exempt Class of Action" pursuant to Title 11, Chapter 200, Hawaii Environmental Impact Statement Rules, Department of Health. The subject conveyance proposes "no expansion or change of use beyond that previously existing on the property."

REMARKS:

Background

The Department of Land and Natural Resources has been involved in the Governor's Task Force on DHHL Land and Title Claims since 1990. The Hawaiian Homes Commission Act of 1921 designate certain public lands as "available lands," totaling approximately 203,500 acres, for use by the DHHL. Currently, the DHHL land inventory contains approximately 186,982 acres of land. In the Governor's 1994 State of the State address, he expressed his intent to transfer +/-16,000 acres of land to the DHHL to "make their trust whole."

Our role on the Task Force has been to basically "verify" the various claims made by DHHL and where verified, participate in alternative solutions to correct and compensate DHHL. It is interesting to note that to our knowledge, this is the first time that the State or Territory has attempted to collectively verify/identify what is considered to be "Hawaiian Home Lands."

The Task Force will end on December 31, 1994 and will be submitting its findings during the next legislative session. A detailed report of DLNR's participation on the Task Force will be provided to the Board at a later date.

as amended

**APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON**

OCT 28 1994

**TO BE DISTRIBUTED**

At the start of the Task Force, the DHHL Land Claims were as follows:

DHHL LAND CLAIMS

Acres

+/- 203,500	LAND DESIGNATED AS "AVAILABLE LANDS" BY CONGRESS IN 1921
<u>186,982</u>	DHHL CURRENTLY CONTROLS TODAY [DHHL FIGURES]
+/- 16,518	UNACCOUNTED LANDS

Current Situation - Conveyance of 16,518 acres

The Task Force was attempting to resolve most, if not all, of DHHL's claims as soon as possible. The Task Force intent has always been to resolve, once and for all, what is/was Hawaiian Home Lands, correct any unauthorized use of Hawaiian Home Lands, and compensate DHHL for the unauthorized uses.

Through this process, the Task Force has resolved all of the Executive Orders and Governor's Proclamations that were considered to be unauthorized uses of Hawaiian Home Lands. Many of these Executive Orders and Governor's Proclamations were canceled in 1984. The Task Force addressed any continued use agreements and sought funding from the legislature to compensate DHHL for back rent on these lands. The back rent paid to DHHL amounted to \$12,000,000.00.

The Task Force also resolved two nominal lease rent issues with DHHL concerning the United States' government use of DHHL lands at Kekaha and Pohakuloa. Land exchanges for these two areas with DHHL have been approved by the Board and are currently in process.

Currently, DLNR and DHHL have major differences in the definition of certain remaining land claims.

Despite our different interpretations, and in recognition of the necessity to resolve the remaining claims in a manner that is responsible to both trusts, we do support the Governor's intent of "making the DHHL trust whole." Through the efforts of the Task Force, DHHL has confirmed that they currently have 186,982 acres in their control. Thus, in order to restore their trust to the 203,500 acres figure listed in the Hawaiian Homes Commission Act, the State proposes to convey 16,518 acres. Rather than hold the transfer of lands in abeyance until a legal resolution of our different interpretations is completed, the immediate transfer of lands to "make the DHHL trust whole" will enable DHHL to utilize these lands in their continuing effort to fulfill its mission. A listing of the lands being considered for the transfer is attached as Exhibit "A." The list contains more than the 16,518 acres and thus DHHL will choose from this final list the parcels that they want included in the 16,518 acres conveyance.

Furthermore, in certain instances, the transfer of lands that are part of of long standing title claims made by DHHL essentially renders their claims moot. However, this does not preclude DHHL from continuing with their claims on their "Ahupuaa Theory" with the courts for other title claims throughout the state that are not part of this conveyance.

In addition, the transfer of lands at Waimanalo are part of an agreement regarding title claims and counter claims between both DHHL and DLNR within the Ahupuaa of Waimanalo. As a part of this agreement, DLNR would: 1) quitclaim our interest in the Beach Parks, and 2) 127 DHHL lease lots that are presently on lands owned by DLNR. DHHL would: 1) quitclaim its interest in the former pasture lands (currently the location of Waimanalo Elementary School and Hawaii Housing Authority Subdivisions), and 2) quitclaim its interest in the third party alienation claims (grants sold by the Territory). The Waimanalo lands listed on Exhibit "A" are only those lands which DLNR are quitclaiming to DHHL and are in addition to the 16,518 acres.

In another agreement on title claims and counter claims involving lands at Anahola, Kealia, Kamalomalo and Moloaa, DLNR would: 1) quitclaim our interest in the cane lands which have been confirmed as being DLNR lands, 2) quitclaim our interest in the fallow cane lands, pasture lands and reservoirs at Anahola and Kamalomalo which are the subject of competing title claims with DHHL. In turn, DHHL would: 1) quitclaim its interest in the third party alienation claims (grants sold by the Territory) at Anahola, Kamalomalo and Moloaa. The Anahola, Kealia, Kamalomalo lands listed on Exhibit "A" are only those lands which have been confirmed as DLNR lands and are being quitclaiming to DHHL as a part of the 16,518 acres. The lands which both DLNR and DHHL are claiming (approx. 1,150 acres) are being conveyed in addition to the 16,518 acres.

Finally, in compiling the list of properties for conveyance, we must also deal with the BLNR's "Public Trust Responsibility" on the management of state-owned lands. There are strong philosophical arguments on why the state should convey properties to DHHL in an effort to move their program forward. However, we do not want to create a situation where one "trust" is made whole at the expense of another. As such, in selecting the properties for transfer, we applied certain guidelines and principles that we believe strike an equitable balance between both public trust responsibilities.

The list contains certain selected parcels are part of larger existing parcels. In these instances, survey maps and descriptions will be required to delineate the lands available for selection, and the subsequent conveyance of these properties. Specific issues of surveying and subdivisions will be worked out by the DHHL and DLNR.

#### General Guidelines for Selecting Properties for Conveyance

##### **I. Existing Government Users**

Parcels currently used by other government agencies were excluded from the list of possible sites unless DHHL has obtained some type of approval by the agency that they have no objection to the transfer.

##### **II. Existing Leases and/or Those Eligible to Obtain Long-Term Leases Pursuant to Act 237, SLH 1988**

For those lands which have existing encumbrances and/or are involved in the permit to lease conversion (Act 237), the transfer of the property will include the existing encumbrances. DHHL will then act as the lessor on behalf of DLNR. Should DHHL require any of the lands encumbered by a lease prior to the expiration of the lease, DHHL will be able to use the standard "Withdrawal" provision in the lease to remove the lands; however, DHHL will be responsible for compensation, if due, to the lessee.

October 28, 1994

With respect to our existing tenants who may be affected by the conveyance of their lease lands to DHHL, all of our existing tenants received a letter from us informing them of the following:

This is to inform you that the Department of Hawaiian Home Lands has identified your subject area for possible transfer to the Department of Hawaiian Home Lands. ANY TRANSFER OF LANDS FROM THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO THE DEPARTMENT OF HAWAIIAN HOME LANDS WILL BE SUBJECT TO THE EXISTING ENCUMBRANCE (LEASE AND/OR PERMIT). In effect, if your area is transferred, your landlord will be the Department of Hawaiian Home Lands rather than the Department of Land and Natural Resources.

Once the list of properties has been finalized, we will inform all affected tenants of the transfer and lay out a process for the transition.

### III. Revenue Generating Lands [Commercial/Industrial/Resort]

The conveyance of 16,518 acres of state lands to "make the DHHL trust whole" did not include a large amount of existing revenue generating lands. Usually, existing revenue generating lands do not involve large acreage and as such, transfer of these lands based entirely on acreage would, in our mind, be a disservice to the larger public trust.

The lands proposed for conveyance however, do contain some revenue producing lands and further, contain lands that we believe have income potential in the future. However, in order to realize revenue from these properties, DHHL will need to plan and develop these sites accordingly.

### RECOMMENDATION:

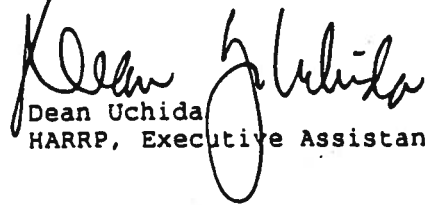
That the Board approve the conveyance of +/-16,518 acres of State land, as selected by DHHL from the list identified as Exhibit "A," subject to the following:

1. Compliance with the applicable parts of Chapter 171-95, Hawaii Revised Statutes, as amended.
2. For those lands which have existing encumbrances [i.e. leases, permits, easements, etc.] and/or are involved in the permit to lease conversion [Act 237], the transfer of the property will include the existing encumbrances.
3. On all of the intensive agricultural leases [i.e. sugarcane, pineapple] being transferred, the DHHL will encourage long-term use of these lands for intensive agricultural purposes as long as it is economically viable.
4. Authorize the Chairperson to finalize the details [selection of the lots] and logistics [i.e. survey maps/descriptions, subdivisions, deeds, etc.] on the transfer of these properties with the DHHL.
5. Allow the Department of Hawaiian Home Lands up to December 31, 1994 to select 16,518 acres from the parcels listed on Exhibit "A," after which, the Board may select the parcels.

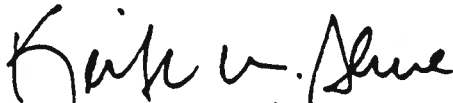
October 28, 1994

6. Authorize the Chairperson to resolve all boundary and/or area disputes regarding the final configuration of specific parcels to be conveyed.
7. Authorize the Chairperson to prescribe other terms and conditions as may be necessary to carry out the intent of the Board.

Respectfully submitted,

  
Dean Uchida  
HARRP, Executive Assistant

APPROVED FOR SUBMITTAL:

  
KEITH W. AHUE, Chairperson

STATEWIDE TOTAL

KAUAI	1,948.579
MAUI	2,625.522
MOLOKAI	518.198
LANAI	50.000
HAWAII	11,015.046
OAHU	441.138
TOTAL	16,598.483

LIST OF DLNR LANDS TO BE TRANSFERRED TO DHHL  
 APPROXIMATELY 16,600 ACRES +/-  
 OCTOBER 28, 1994

**District**	**Tax Map Key**	*Acres*	*COMMENT(S)*
Kekaha	1-2-2-32	20.000	RP #5860 Pioneer Hi - Bred subject to a lease pursuant to ACT 237 SLH 1988
Hanapepe	1-8-8-35	5.777	Former Amfac Lumber yard -- Subject to direct lease to the County of Kauai
Wailua	3-9-2-3	43.920	Exclude GEO 2994 to County (15,410 sf Well Site and 6,378 sf access easement of .5 acres)
Wailua	3-9-2-12	320.192	RP #6327/LL295 Lihue Plantation -- Sugarcane
Wailua	3-9-2-17	9.960	GL #4585 Walter Palmeira -- Truck Crops
Wailua	3-9-2-24	12.353	GL #4413 Lihue Plantation -- Pasture
Wailua	3-9-2-25	67.000	GL #4412/LL #295 Lihue Plantation -- Pasture
Wailua	3-9-2-26	12.000	GL #4413 Lihue Plantation -- Pasture
Wailua	3-9-2-27	14.000	GL #4412/LL #295 Lihue Plantation -- Sugarcane/Pasture
Wailua	3-9-6-9	41.291	GL #0295/LL295 Lihue Plantation -- Sugarcane
Wailua	3-9-6-11	11.482	GL #4939 George Fernandez -- Sugarcane
Kapaa	4-5-5-6	1.871	Income potential
Kapaa	4-5-15-3	11.093	Income potential
Kapaa	4-5-15-34	5.700	Income potential
Kapaa	4-5-15-47	0.060	Income potential
Kapaa	4-5-15-48	0.060	Income potential
Kealia	4-7-2-4	994.120	* Co-mingled lands of Anahola/Kamalomalo
Kamalomalo	4-7-4-2	422.150	* GL #4576 Lihue Plantation covers 448.666 ac State & 545.454 ac DHHL
Kamalomalo	4-7-4-7	227.438	* Total area of 2,922.966 acres of which 963.40 confirmed DLNR lands
Anahola	4-8-2-1	643.735	* 809.20 DHHL lands with 1,150.366 acres of counter claims
Anahola	4-8-3-4	35.720	
Anahola	4-8-3-6	360.204	
Anahola	4-8-3-11	42.287	
Anahola	4-8-3-16	38.710	
Anahola	4-8-3-22	139.092	
Anahola	4-8-3-29	19.510	
Hanapepe	1-8-7-3	358.720	RP #6627 Olokele Sugar -- Sugarcane (Approx. 12 acres exchanged for Kekaha)
Anahola	4-8-1-1	62.200	Part of Existing DHHL Subdivision at Anahola Farm Lots

SUB TOTALS: 3,920.645  
 LESS 0.500  
 809.200  
 1,150.366  
 12.000

1,948.579

TOTAL KAUAI

LIST OF DLNR LANDS TO BE TRANSFERRED TO DHHL  
 APPROXIMATELY 16,600 ACRES +/-  
 OCTOBER 28, 1994

**District**	**Tax Map Key**	*Acres*	*COMMENTS*
Keenae	1-1-3-60	0.730	VACANT
Keenae	1-1-3-69	1.040	VACANT
Waikua	1-1-4-7	2.500	VACANT
Waikua	1-1-4-8	2.330	VACANT
Waikua	1-1-4-33	2.080	VACANT
Waikua	1-1-4-34	1.860	VACANT
Waikua	1-1-4-41	3.300	VACANT
Waikua	1-1-5-1	3.150	VACANT
Waikua	1-1-5-8	1.600	VACANT
Waikua	1-1-5-22	0.770	VACANT
Waikua	1-1-5-35	1.700	VACANT
Waikua	1-1-5-38	1.600	VACANT
Waikua	1-1-5-47	5.550	VACANT
Waikua	1-1-6-13	2.780	VACANT
Waikua	1-1-6-31	0.610	VACANT
Waikua	1-1-6-69	0.560	VACANT
Waikua	1-1-6-73	0.750	VACANT
Keenae	1-1-8-8	148.700	RP # 6700 Hansel Ah Koi -- Pasture
Keenae	1-1-8-14	59.910	GL # 5274 Michael Adams -- Pasture
Keenae	1-1-8-25	0.750	VACANT
Hana	1-3-4-12	743.333	Exclude approx. 90 acres for Hana Cinder Pit -- Map is being prepared by DAGS -- Survey
Makawao	2-1-4-114	73.000	RP # 4371 Ulepelekua Ranch -- Pasture
Makawao	2-1-4-15	21.340	RP # 4371 Ulepelekua Ranch -- Pasture
Makawao	2-1-4-49	100.000	RP # 4371 Ulepelekua Ranch -- Pasture -- REQUIRES SUBDIVISION FROM 999.87 ACRES
Makawao	2-1-4-94	20.820	VACANT
Makawao	2-1-8-50	2.005	RP # 5963 Ulepelekua Ranch -- Pasture
Waikuku	3-4-11-31	0.846	RP # 5000 Frank Makimoto -- Easement
Puunene	3-8-8-1	1,622.300	* Part of a Master Plan being developed by the State (DOT/DLNR/DOD), and County of Maui
Puunene	3-8-8-8	185.329	* Total area 1,807.629 -- Area required for Government uses is approximately 1085 acres.
Puunene	4-4-2-3	165.207	* Exclude GEO # 3349 to County of Maui (3.594 acres) lease to Maui Humane Society
Kaanapali	4-4-2-8	86.284	* Exclude GEO # 3598 Pioneer Mill Co. -- Sugarcane -- Exclude GEO 3206 to Maui County
Kaanapali	4-4-2-9	4.680	GL # 3598 Pioneer Mill Co. -- Sugarcane
Kaanapali	4-4-2-11	1.700	GL # 4523 Pioneer Mill Co. -- Sugarcane
Kaanapali	4-4-2-15	12.850	GL # 3598 Pioneer Mill Co. -- Sugarcane
Kaanapali	4-4-2-17	20.418	GL # 3598 Pioneer Mill Co. -- Sugarcane
Kaanapali	4-4-2-18	292.740	GL # 3598 Pioneer Mill Co. -- Sugarcane -- Exclude GEO 3206 to Maui County
Kaanapali	4-4-2-20	213.713	GL # 3598 Pioneer Mill Co. -- Sugarcane -- Exclude GEO 3206 to Maui County
SUB TOTALS		3,808.845	GEO 3206 to Maui County
LESS		4.729	Puunene -- COM Government Uses
		140.000	Puunene -- COM Recreational Uses
		175.000	Puunene -- COM Army National Guard
		60.000	Puunene -- DOD General Aviation Airport
		510.000	Puunene -- DOT General Aviation Airport
		200.000	Puunene -- DLNR Income Potential Industrial Parks
		3.594	Exclude GEO # 3349 to County of Maui -- Lease to Maui Humane Society
		90.000	Hana -- Cinder Pit
TOTAL MAUI		2,625.522	

MOLOKAI:

LIST OF DLNR LANDS TO BE TRANSFERRED TO DHHL  
 APPROXIMATELY 16,600 ACRES +/-  
 OCTOBER 28, 1994

**District**	**Tax Map Key**	*Acres*	*COMMENT(S)*
Kalamaula	5-2-10-2	1.831	DHHL water tank
Makoleiau	5-5-1-8	8.465	Kipepa Fish Pond
Makoleiau	5-5-1-10	19.768	Pahlomu Fish Pond
Ualapue	5-6-1-1	22.250	Ualapue Fish Pond
Ualapue	5-6-2-1	2.100	GL #4350 Anna King
Ualapue	5-6-2-24	2.260	Vacant
Ualapue	5-6-2-26	13.560	Vacant
Ualapue	5-6-2-27	1.221	Vacant
Ualapue	5-6-2-34	1.980	RP #6114 Richard Chock
Ualapue	5-6-2-36	1.221	Vacant
Ualapue	5-6-3-35	3.300	Ualapue Fish Pond
Ualapue	5-6-6-9	36.500	Fish Pond -- No Name
Ualapue	5-6-6-17	375.360	RP #6552 Michael DeCoite
Kupeke	5-7-6-18	1.450	Nahiole Fish Pond. State has only 1/2 interest of the 1.45 acre pond
Pukoo	5-7-7-22	13.800	Panahana Fish Pond
Kaluaaha	5-7-10-31	6.670	Kaluaaha Fish Pond
Honouliwai	5-8-1-2	4.910	Kaapohuku Fish Pond
Honouliwai	5-8-1-3	1.690	Ohalahala Fish Pond
Honouliwai	5-8-2-68	0.587	Fish Pond -- No Name
Lanai City	TBD	50.000	Required as part of Re-zoning by the Land Use Commission
SUB TOTAL MOLOKAI AND LANAI LESS		568.923	
TOTAL MOLOKAI		0.725	50% OF NAHIOLE FISH POND
		568.198	

LIST OF DLNR LANDS TO BE TRANSFERRED TO DHHL  
 APPROXIMATELY 16,600 ACRES +/-  
 OCTOBER 28, 1994

**District**	**Tax Map Key**	*Acres*	*COMMENTS*	VACANT
Puna	1-5-10-36	100.000		VACANT
Kurtistown	1-7-7-41	0.500	State owned house on property -- Estimated value at \$75,000.00.	VACANT
Kurtistown	1-7-7-42	0.600		VACANT
Kurtistown	1-7-7-44	0.600		VACANT
Olaa	1-8-11-12	100.000		VACANT
Olaa	1-8-11-16	99.170	RP #5115 Leslie Wung -- Pasture	VACANT
Olaa	1-8-11-23	231.630		VACANT
Olaa	1-8-11-24	124.300		VACANT
Olaa	1-8-11-25	150.000	RP #5124 Jack Ramos -- Pasture	VACANT
Olaa	1-9-2-6	33.000		VACANT
Olaa	1-9-2-7	27.000		VACANT
Olaa	1-9-2-8	42.000		VACANT
Olaa	1-9-2-9	42.000		VACANT
Olaa	1-9-13-2	1.103		VACANT
Keaukaha	2-1-11-2	1.505		VACANT
Hilo	2-1-12-1	43.594		VACANT
Hilo	2-1-12-29	184.820		VACANT
Hilo	2-1-12:Various	29.685	Exclude 5 acres for County of Hawaii -- Foreign Trade Zone	VACANT
Hilo	2-1-12:Various		Exclude 13 acres for DLNR Potential Industrial Park Development	VACANT
Panaewa	2-1-13-154	230.000		VACANT
Panaewa	2-1-13-155	367.000		VACANT
Keaukaha	2-1-17-46	0.554		VACANT
Keaukaha	2-1-17-47	0.575		VACANT
Keaukaha	2-1-17-48	0.596		VACANT
Keaukaha	2-1-18-8	1.198		VACANT
Keaukaha	2-1-19-20	0.540		VACANT
Keaukaha	2-1-19-29	0.540		VACANT
Keaukaha	2-1-19-30	0.540		VACANT
Keaukaha	2-1-19-31	0.498		VACANT
Kaumana	2-3-25-14	0.805		VACANT
Kaumana	2-3-25-15	0.697		VACANT
Kaumana	2-3-25-16	0.398		VACANT
Kaumana	2-3-25-17	0.453		VACANT
Kaumana	2-3-25-47	2.670		VACANT
Waiakea	2-4-24-138	0.235		VACANT
Waiakea	2-4-24-151	0.246		VACANT
Waiakea	2-4-24-154	0.248		VACANT
Waiakea	2-4-26-1	0.264		VACANT
Piihonua	2-4-28-1	0.370		VACANT
Waiakea	2-4-49-19	23.277		VACANT
Kaumana	2-5-4-27	3.684		VACANT
Kaumana	2-5-4-43	0.230		VACANT
Kaumana	2-5-4-47	0.689		VACANT
Kaumana	2-5-4-60	0.085		VACANT
Kaumana	2-5-4-61	0.269		VACANT

LIST OF DLNR LANDS TO BE TRANSFERRED TO DHHL  
APPROXIMATELY 16,600 ACRES +/-  
OCTOBER 28, 1994

**District**	**Tax Map Key**	*Acres*	*COMMENTS*
Kaumana	2-5-5-1	0.269	VACANT
Kaumana	2-5-5-3	0.273	VACANT
Kaumana	2-5-5-5	0.273	VACANT
Kaumana	2-5-5-6	0.273	VACANT
Kaumana	2-5-5-7	0.273	VACANT
Kaumana	2-5-5-10	0.273	VACANT
Kaumana	2-5-5-28	0.258	VACANT -- Subject to electrical easement
Kaumana	2-5-5-29	0.272	VACANT -- Subject to electrical easement
Kaumana	2-5-5-30	0.230	VACANT
Kaumana	2-5-5-31	0.230	VACANT
Kaumana	2-5-5-32	0.230	VACANT
Kaumana	2-5-5-33	0.191	VACANT
Kaumana	2-5-5-72	0.383	VACANT
Kaumana	2-5-5-74	0.160	VACANT
Kaumana	2-5-5-77	0.743	VACANT
Kaumana	2-5-5-79	1.183	VACANT
Kaumana	2-5-5-80	5.339	VACANT
Piionoua	2-6-9-5	1,852.320	Subject to General Lease #S-5220 to Wailuku Hydroelectric Exclude approximately 10 acres for the Piionoua Camp [RP #6793] (to be conveyed to County of Hawaii).
Honoumu - Kahua	2-8-11-9	292.886	GL #3585 Mauna Kea Agribusiness Company
Honoumu - Kahua	2-8-11-11	475.609	GL #3585 Mauna Kea Agribusiness Company
Nienuie	4-6-11-3	739.311	GL #4467 Richard Smart -- Pasture
Nienuie	4-6-11-4	649.077	GL #4466 Honokaia Ranch -- Pasture
Nienuie	4-6-11-5	93.419	GL #4466 Honokaia Ranch -- Pasture
Nienuie	4-6-11-11	522.000	GL #4468 Richard Smart -- Pasture
Nienuie	4-6-11-12	500.000	GL #4469 Richard Smart -- Pasture
Nienuie	4-6-11-13	738.233	GL #4470 Richard Smart -- Pasture
Kawaihae	6-1-2-66	0.248	RP #6327 Randy Roberts -- Parking Lot
Kawaihae	6-1-4-3	1.955	VACANT -- Former Light House Site
Kawaihae	6-1-4-41	6.940	VACANT -- Pasture
Kooniki	6-5-1-10	230.127	GL #4663 Richard Smart -- Pasture
Lalamilo	6-6-1-2	2,105.000	Subject to RP #6442 Palekoki Ranch eligible for direct lease pursuant to ACT 237 SLH 1988 Also withdraw area for proposed Mudlane Road, and Archeological Sites
Kona - Honokohau	7-4-8-3	643.069	Exclude 443.069 acres for the existing Honokohau Small Boat Harbor and Future Expansion
Kona - Kailua	7-4-8-56	450.000	Recently acquired OLT lands
Waiohinu	9-5-5-2	282.410	GL #3617 Andrade/Okuna -- Pasture
Wailau	9-5-19-16	64.500	RP #6681 Kau Agribusiness -- Pasture
<b>SUB TOTALS:</b>		11,486.115	Exclude 5 acres for County of Hawaii -- Foreign Trade Zone
<b>LESS</b>		5.000	Exclude 443.069 acres for the existing Honokohau Small Boat Harbor and Future Expansion
		443.069	Exclude 13 acres for DLNR Potential Industrial Park Development
		13.000	Exclude approximately 10 acres for the Piionoua Camp [RP #6793] (to be conveyed to COH)
		10.000	
<b>TOTAL HAWAII</b>		11,015.046	



## ACT 14

H.B. NO. 10-S

A Bill for an Act Relating to Hawaiian Home Lands.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1. Findings.** The legislature finds that when the United States Congress passed the Hawaiian Homes Commission Act of 1920 (HHCA) and set aside 203,500 acres, more or less, of public lands as Hawaiian home lands for the rehabilitation of native Hawaiians, the United States reaffirmed the trust responsibility it had assumed toward the Hawaiian people.

The legislature also finds that under the Admission Act, the State of Hawaii assumed the trust responsibility to carry out the mandates of the HHCA.

The legislature further finds that thousands of acres of Hawaiian home lands were allegedly used, disposed of, or withdrawn from the trust by territorial or state executive actions in contravention of the HHCA. In recognition of these allegations and toward their resolution, the legislature enacted Act 395, Session Laws of Hawaii 1988, which, among other actions, provided a limited waiver of sovereign immunity for breaches of the Hawaiian home lands trust from July 1, 1988 forward. Act 395 also required the governor to present a proposal to the legislature prior to the convening of the 1991 Regular Session to resolve controversies which arose between August 21, 1959 and July 1, 1988. The governor's Action Plan to Address Controversies under the Hawaiian Home Lands Trust and the Public Land Trust (governor's Action Plan) was accepted by the legislature pursuant to its adoption of S.C.R. No. 185, H.D. 1, in 1991.

The governor's Action Plan, among other actions, proposed convening a task force of representatives from the department of Hawaiian home lands, the department of land and natural resources, the office of state planning, and the department of the attorney general to accelerate the review process concerning department of Hawaiian home lands' land title and compensation claims. The actions of the task force were to include verifying title claims, determining if improper uses were still in existence and whether these uses should be canceled or continued if authorized by the Hawaiian homes commission, conducting appraisals and determining appropriate compensation for past and continued use of Hawaiian home lands, and pursuing all avenues for return of lands and compensation from the federal government for wrongful actions during the territorial period.

In 1992, the legislature approved the resolution of the first set of claims covering gubernatorial executive orders and proclamations which set aside 29,633 acres of lands for public uses such as forest reserves, schools, and parks. Act 316, Session Laws of Hawaii 1992, provided \$12,000,000 to pay verified claims and provide other means to resolve public use controversies.

In 1993, the legislature approved further means to resolve verified claims. Act 352, Session Laws of Hawaii 1993, extended the period within which to pay compensation, continued the authorization to the State to pursue claims against the

United States for the federal government's wrongful actions, and authorized land exchanges to resolve alienations of Hawaiian home lands.

By these previous acts, the State has resolved all disputed set asides of Hawaiian home lands that remain in the control of the State; paid compensation for uncompensated use of Hawaiian home lands from August 21, 1959 through October 28, 1992; paid fair market rent as set by the Hawaiian homes commission for continuing uses from October 28, 1992 through June 30, 1995; paid fair market rent for the use of lands under Nanaikapono elementary school through April 4, 1996; and initiated land exchanges for Hawaiian home lands held by the federal government under lease for nominal rents of \$1 for sixty-five years at Pohakuloa and Kekaha. The legislature also recognizes that in 1994, by a separate administrative initiative, the State initiated the transfer of 16,518 acres of additional useable lands to the department of Hawaiian home lands to be used and administered in accordance with the HHCA.

In 1994, the task force continued to verify and value certain of the claims which remained unresolved, including claims for lands in Lualualei and Waimanalo on Oahu, Anahola, Moloaa, Kamalomalo, and Waimea on Kauai, Puukapu, Keaukaha, Panaewa, and Kawaihae on Hawaii, Kula on Maui, and Kalaupapa on Molokai; and compensation for periods of public use of trust land not already paid. The Hawaiian homes commission's claims to approximately 39,000 acres of such land are disputed due to different interpretations of the HHCA as it describes the lands to be made available for use under the provisions of HHCA. Due to the difficulty of determining the intent of Congress in 1921, it is untenable to administratively prove or disprove the validity of these claims.

The legislature finds that, due to the difficulty, time, uncertainty, disruption of public purposes, impact on the public land trust and private landowners, and expense of judicial resolution of remaining disputed claims, another approach, which results in the repair of the Hawaiian home lands trust and the final resolution of claims against the State, is necessary and in the best interests of the State and the beneficiaries of the trust.

The legislature recognizes and appreciates the hard work and valuable contributions of the task force in reviewing and presenting to the legislature certain recommendations as set forth in the Memorandum of Understanding dated December 1, 1994 (MOU). The legislature notes and expressly finds that the MOU does not bind the legislature and that it is the right and duty of the legislature to exercise its independent judgment and oversight in developing such implementing and related legislation which is in the overall public interest.

In so doing, the legislature finds that the recommendations set forth in the MOU do not bring closure to all matters charged to the task force for review and to all related issues. The legislature by this Act hereby takes these measures to bring the desired closure, to fully effectuate in part the intent of S.C.R. No. 185, H.D. 1, 1991 and the governor's Action Plan, and to fully effectuate the legislature's intent of final disposition of the matters addressed by this Act. The legislature also finds that the disputes surrounding the Hawaiian home lands trust have caused uncertainty in the State with regard to the limited waiver of sovereign immunity contained in Act 395, Session Laws of Hawaii 1988. With respect to all controversies arising between August 21, 1959 and July 1, 1988, excluding individual claims provided for pursuant to chapter 674, Hawaii Revised Statutes, the State hereby affirms that the limited waiver of sovereign immunity permitted by Act 395, Session Laws of Hawaii 1988, is now withdrawn and, to the extent the waiver was not previously withdrawn, it is now fully withdrawn. All claims arising between August 21, 1959 and July 1, 1988, or under any other law enacted in furtherance of the purposes or objectives of Act 395, Session Laws of Hawaii 1988, except those permitted by chapter 674, Hawaii Revised Statutes, are hereby forever barred.

The legislature also finds that the court-appointed independent representative of the beneficiaries of the Hawaiian home lands trust, who is deemed the sole representative of the beneficiary class, has participated in the non-judicial proceedings of the task force as required by Act 352, Session Laws of Hawaii 1993, and as contemplated by *Ka'ai'ai v. Drake*, First Circuit Civil No. 92-3642.

In passing this Act, it is the intent of the legislature in part to (a) resolve all controversies for the period between August 21, 1959 and July 1, 1988, allowed by Act 395, Session Laws of Hawaii 1988, except those permitted by chapter 674, Hawaii Revised Statutes, (b) resolve all controversies relating to the validity of patents issued after 1920 and prior to July 1, 1988 and affecting any lands covered by or allegedly covered by the HHCA and to all rights arising from or relating to such patents as issued, and (c) make certain other related amendments to chapters 673 and 674, Hawaii Revised Statutes. Additionally, it is the intent of the legislature that if the State is alleged to be liable, for claims of breaches of the Hawaiian home lands trust prior to statehood, this Act shall dispose of and resolve those claims against the State as well.

The legislature also finds that in order to properly utilize Hawaiian home lands, there is a need for a substantial, predictable funding mechanism for the department to appropriately plan for the development of these lands. Therefore, the establishment of a Hawaiian home lands trust fund to provide a steady availability of capital to fund Hawaiian home lands programs is appropriate.

Finally, the legislature acknowledges that generations of beneficiaries and potential beneficiaries have been patient and charitable in their prolonged wait for truth, justice and fair play. The legislature acknowledges the frustration, anxiety and spiritual loss of a class of native people whose culture welcomed strangers and generously shared finite resources. The legislature acknowledges that this Act represents an opportunity to effectuate the purposes of the HHCA.

**SECTION 2. Purpose.** The primary purposes of this Act are to:

- (1) Resolve all controversies relating to the Hawaiian home lands trust which arose between August 21, 1959 and July 1, 1988;
- (2) Prohibit any and all future claims against the State resulting out of any controversy relating to the Hawaiian home lands trust which arose between August 21, 1959 and July 1, 1988;
- (3) Resolve all controversies after 1920 and prior to July 1, 1988 relating to the validity of patents issued and affecting any lands covered by or allegedly covered by HHCA and to all rights arising from or relating to such patents as issued;
- (4) Appropriate such funds and provide additional means as may be necessary to accomplish the intent and purpose of this Act;
- (5) Establish a trust fund to provide a substantial, secure, and predictable funding source for the department of Hawaiian home lands to use to effectuate the purposes of the HHCA;
- (6) Further the public interest by ensuring that claims which have arisen or may arise in the future with respect to the administration of the Hawaiian home lands trust and are brought pursuant to chapters 673 and 674, Hawaii Revised Statutes, are resolved in a fair, complete, and timely manner.

This Act is not intended to replace or affect the claims of beneficiaries with regard to reparations from the federal government. It is however, intended to preclude forever any derivative or other claims of any description which the federal government may attempt to tender to the State.

**SECTION 3. Definitions.**

“Beneficiary” means any person eligible to receive benefits of home-  
steading and related programs of the Hawaiian home lands trust.

“Commission” means the Hawaiian homes commission.

“Department” means the department of Hawaiian home lands.

“Fair market value” means the definition of that term or, if that term is not defined, the definition of the term “market value”, in the then-current edition of the Uniform Standards of Professional Appraisal Practice issued by The Appraisal Foundation or, if that publication is not in publication, then another publication of standard professional appraisal practice recognized by the department of commerce and consumer affairs.

“Governmental agency” or “State” means the State of Hawaii, municipal or county governments, or any department, bureau, division, agency or political subdivision thereof, or any board, commission, or administrative agency thereof.

“Hawaiian home lands” has the same meaning as defined in section 201(a)(5) of the HHCA.

“HHCA” means the Hawaiian Homes Commission Act of 1920, as amended.

“Independent representative” means the independent representative appointed in accordance with Act 352, Session Laws of Hawaii 1993.

“Patent” means any land patent grant, royal patent grant, patent upon award of the land commission, deed, grant, or other similar instrument in regular form duly executed on behalf of the State or its predecessors from and after January 1, 1846.

“Task force” means that task force created pursuant to the Governor’s Action Plan to Address Controversies under the Hawaiian Home Lands Trust and the Public Land Trust as acknowledged by the legislature in its adoption of S.C.R. No. 185, H.D. 1, in 1991.

“Trust” means the Hawaiian home lands trust.

“Trust fund” means the Hawaiian home lands trust fund created by this Act and any additions thereto or increment thereon.

SECTION 4. The passage of this Act is in full satisfaction and resolution of all controversies at law and in equity, known or unknown, now existing or hereafter arising, established or inchoate, arising out of or in any way connected with the management, administration, supervision of the trust, or disposition by the State or any governmental agency of any lands or interests in land which are or were or are alleged to have been Hawaiian home lands, or to have been covered by the HHCA arising between August 21, 1959 and July 1, 1988.

The passage of this Act shall have the effect of *res judicata* as to all parties, claims, and issues which arise and defenses which have been at issue, or which could have been, or could in the future be, at issue, which arose between August 21, 1959 and July 1, 1988, whether brought against the State or its officials, directly or indirectly, by subrogation, derivative or third party action, tender, federal action, or by any other means whatsoever.

The passage of this Act shall not replace or affect the claims of beneficiaries against the federal government arising under the HHCA, provided that such claims are barred as against the State to the extent the State is alleged to be derivatively liable on such claims, or if the federal government tenders such claims to the State.

Nothing in this section shall replace or affect the claims of beneficiaries with regard to (a) reparations from the federal government, (b) claims arising subsequent to July 1, 1988 and brought pursuant to sections 2, 3, and 4 of Act 395, Session Laws of Hawaii 1988, except as otherwise provided in section 13 of this Act or (c) Hawaiian home lands trust individual claims brought pursuant to chapter 674, Hawaii Revised Statutes, except as otherwise provided in sections 14, 15 and 16 of this Act.

SECTION 5. All patents issued and affecting any lands covered by, or alleged to be covered by, the HHCA, from the inception of that Act to July 1, 1988, whether issued by the territory or the State of Hawaii, are hereby confirmed as issued, and no action on such patents may be maintained.

SECTION 6. The State, while not admitting the validity of any claims, hereby resolves and satisfies all controversies and claims encompassed by this Act by:

- (1) The establishment of the Hawaiian home lands trust fund and the requirement that the State make twenty annual deposits of \$30,000,000, or their discounted value equivalent, into the trust fund; provided that in lieu of sums deposited hereunder, the State may, with the approval of the Commission, substitute from time to time land or other consideration having the fair market value of such deposit, as mutually agreed by the State and Commission; provided that the State may, at any time, prepay sums due hereunder, without penalty, and that the total amount to be deposited into the trust fund shall be adjusted by such prepayment based on a discount rate per year equal to the then-average weekly investment rate on five year Treasury Bills; and provided further that the payment of funds into the trust fund shall include any interest, as determined by section 478-2, Hawaii Revised Statutes, on the unpaid balance of any funds due but not appropriated by the end of each respective fiscal year;
- (2) The transfer of lands and resolution of claims in the Waimanalo, Anahola, Kamalomalo, and Moloaa areas; the compensation for all remaining confirmed uncompensated public uses of Hawaiian home lands; the initiation of a land exchange to remedy uncompensated use of Hawaiian home lands for state roads claims and highways; and the provision of the first selection of up to two hundred acres of land, to be conveyed to the department to fulfill the provisions of claims resolution, upon the return to the State of any ceded lands, comprising all, or a portion of Bellows Air Force Station (TMK: 4-1-15.) Disputes with respect to the transfer of lands and resolution of claims in the Waimanalo, Anahola, Kamalomalo and Moloaa areas, as identified by the task force and approved by the Commission at its meeting on November 4, 1994, are resolved by the exchanges more particularly described in the Commission's action;
- (3) The payment of \$2,348,558, appropriated herein, for the purpose of paying in advance all rent due for department of Hawaiian home lands license agreement no. 308 for the continued State use of trust lands under Nanaikapono elementary school between April 4, 1996 and October 27, 2002;
- (4) The payment of \$2,390,000, appropriated herein for the purpose of paying compensation for the State's uncompensated use of Hawaiian home lands between 1959 and 1995; and
- (5) The payment of \$1,539,000, appropriated herein, for the purpose of payment of moneys owed the department of Hawaiian home lands as its thirty per cent entitlement for the use of Hanapepe, Kauai, public lands formerly under lease of sugarcane cultivation on November 7, 1978, pursuant to section 1 of article XII of the Constitution of the State of Hawaii.

The fair market value of land or other consideration under subsection (1) of this section shall be established by the department of land and natural resources with the approval of the Commission.

Payments made under this Act shall not diminish funds that the department is entitled to under article XII, section 1, of the Constitution of the State of Hawaii.

SECTION 7. The HHCA is amended by adding a new section to be appropriately designated and to read as follows:

“§ - **Hawaiian home lands trust fund.** There is established in the treasury of the State a trust fund to be known as the Hawaiian home lands trust fund, into which shall be deposited all appropriations by the State legislature specified to be deposited therein. Moneys of the Hawaiian home lands trust fund shall be expended by the department as provided by law upon approval by the commission and shall be used for capital improvements and other purposes undertaken in furtherance of the Act. The department shall have fiduciary responsibility toward the trust fund, and shall provide annual reports therefor to the legislature and to the beneficiaries of the trust. Any interest or other earnings arising out of investments from the trust fund shall be credited to and deposited into the trust fund.”

SECTION 8. (a) Notwithstanding the provisions of section 201E-207.5, Hawaii Revised Statutes, there is authorized and appropriated from moneys on deposit in the homes revolving fund created by section 201E-207, Hawaii Revised Statutes, \$30,000,000 for fiscal year 1995–96 for deposit into the Hawaiian home lands trust fund. The foregoing authorization and appropriation constitutes a legislative reallocation of the moneys in the homes revolving fund and such transfer shall not constitute or be deemed to constitute a loan from the homes revolving fund.

(b) There is authorized and appropriated \$30,000,000 in general obligation bond funds of the State of Hawaii for fiscal year 1996–97 for deposit into the Hawaiian home lands trust fund.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,348,558, or so much thereof as may be necessary for fiscal year 1995–96, for the purpose of paying in advance all rent due for department of Hawaiian home lands license agreement no. 308, for the continued State use of Hawaiian home lands under Nanaikapono elementary school, for the period of April 4, 1996, through October 27, 2002. The sum appropriated shall be expended by the department of education.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,390,000, or so much thereof as may be necessary for fiscal year 1995–96, for the purpose of paying compensation for the State’s uncompensated use of Hawaiian home lands for the period of August 21, 1959 through June 30, 1995. The sum appropriated shall be expended by the department of budget and finance upon certification from the office of state planning that a wrongful use has been verified. Compensation may be paid as claims are verified and the amounts of compensation owed are determined.

SECTION 11. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,539,000, or so much thereof as may be necessary for fiscal year 1995–1996, for the purpose of payment of moneys owed the department of Hawaiian home lands as its thirty per cent entitlement for the use of Hanapepe, Kauai, public lands formerly under lease for sugarcane cultivation on November 7, 1978, pursuant to section 1 of article XII of the Constitution of the State of Hawaii. The sum appropriated shall be expended by the department of budget and finance.

SECTION 12. To the extent still available, the limited waiver of sovereign immunity is hereby withdrawn with respect to any claim, cause of action or right of action against the State arising out of an act or omission committed or omitted between August 21, 1959 and July 1, 1988, excluding individual claims under chapter 674, Hawaii Revised Statutes, as first permitted by Act 395, Session Laws of Hawaii 1988, or under any other law enacted in furtherance of the purposes of that Act. Any claim, cause of action or right of action permitted by Act 395, Session Laws of Hawaii 1988, is forever barred except with regard to:

- (1) A cause of action accruing after June 30, 1988 as may be permitted by chapter 673, Hawaii Revised Statutes; or
- (2) An individual claim as may be permitted by chapter 674, Hawaii Revised Statutes.

SECTION 13. Section 673-10, Hawaii Revised Statutes, is amended to read as follows:

“**[§673-10] Limitation on actions; native Hawaiians.** Every claim arising under this chapter shall forever be barred unless the action is commenced within two years after the cause of action first accrues; provided that this statute of limitations shall be tolled until July 1, 1990; provided<sup>1</sup> that the filing of the claim in an administrative proceeding pursuant to this [chapter] shall toll any applicable statute of limitations, and any such statute of limitations shall remain tolled until ninety days after the date the decision is rendered in the administrative proceeding;<sup>2</sup> provided further that any cause of action that first accrues after July 1, 1995 shall forever be barred unless the action is commenced within two years after the cause of action first accrues.”

SECTION 14. Section 674-2, Hawaii Revised Statutes, is amended by amending the definition of “actual damages” to read:

““Actual damages” means direct, monetary out-of-pocket loss, excluding noneconomic damages as defined in section 663-8.5 and consequential damages, sustained by the claimant individually rather than the beneficiary class generally, arising out of or resulting from a breach of trust, which occurred between August 21, 1959, and June 30, 1988, and was caused by an act or omission by an employee of the State with respect to an individual beneficiary in the management and disposition of trust resources.”

SECTION 15. Section 674-19, Hawaii Revised Statutes, is amended to read as follows:

“**§674-19 Limitation on actions.** Every claim cognizable under this part shall forever be barred unless the action is commenced by September 30, [1999.] 1998.”

SECTION 16. Chapter 674, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§674- Preclusion of title-related claims.** Nothing in this chapter shall be construed to affect title, or conveyance of title, or place a cloud upon title, to any lands in the State, including but not limited to lands which were, are, or may have been Hawaiian home lands.”

SECTION 17. Notwithstanding any other law to the contrary, the State and its officials, the members of the board, the members of the Commission and the independent representative shall not be subject to suit by any party on any decision relating to the resolution of these claims, except for actions to enforce the provisions of this Act.

SECTION 18. If any portions of chapters 673 and 674, Hawaii Revised Statutes, are inconsistent with any of the provisions of this Act, then the provisions of this Act shall prevail. The Memorandum of Understanding is not binding on the legislature and the State and does not have the force and effect of law. To the extent that the Memorandum of Understanding is inconsistent with the provisions of this Act, then the provisions of this Act shall prevail.

SECTION 19. The 16,518 acres of land conveyed by the State to the department of Hawaiian home lands for the purpose of replenishing the trust corpus shall be treated by the department of Hawaiian home lands in the same manner as those lands originally established in the trust and subject to all the conditions thereon.

SECTION 20. Notwithstanding section 1-23, Hawaii Revised Statutes, if any provision of this Act or the application thereof to any person or circumstance is held invalid in whole or in part, this Act shall be invalid and no other provision shall have the force or effect of law, except that nothing in this section shall operate to (a) invalidate the withdrawal of the limited waiver of sovereign immunity as provided by section 12 of this Act, (b) the confirmation of patents as provided by section 5 of this Act, and (c) the undertakings set forth in sections 9, 10 and 11 of this Act.

SECTION 21. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>3</sup>

SECTION 22. This Act shall take effect upon its approval; except that sections 8, 9, 10 and 11 shall take effect on July 1, 1995.

(Approved June 29, 1995.)

#### Notes

1. Prior to amendment "further" appeared here.
2. Semicolon should be underscored.
3. Edited pursuant to HRS §23G-16.5.