

[After Act 304 was enacted]

MEMORANDUM

I. PURPOSE OF MEMORANDUM

The purpose of this Memorandum is to document the results of the efforts undertaken by the Department of Budget & Finance ("B&F"), the Office of State Planning ("OSP"), and the Office of Hawaiian Affairs ("OHA") to ascertain the amount which should be paid to OHA, pursuant to Act 304, 1990 Session Laws of Hawaii 951.

By Act 273, 1980 Hawaii Session Laws 525, Chapter 10, Hawaii Revised Statutes ("HRS"), was amended to authorize OHA to expend twenty percent of all funds derived from the public land trust, as described in section 10-3, HRS.

In the Trustees of the Office of Hawaiian Affairs v. Yamasaki, 69 Hawaii 154, 737 P.2d 446 (1987), certiorari denied, 108 S.Ct. 234, 484 U.S. 898, 98 L.Ed.2d 192 (1987), the Hawaii Supreme Court ruled that (1) nothing in section 10-3, HRS, serves as a statutory base for ruling that twenty percent of a settlement reached by the State in its litigation with Molokai Ranch should be paid or conveyed to OHA, and (2) legislative clarification of Chapter 10, HRS, was necessary to resolve facial statutory inconsistencies and to establish the funding of OHA under chapter 10, HRS, because of a lack of judicially discoverable or manageable standards adequate to permit a judicial resolution.

By Act 304, 1990 Session Laws of Hawaii 947, the legislature amended Chapter 10, HRS, to (1) clarify the lands

public land in full or partial satisfaction of the amount payable to OHA, pursuant to Act 304 or as otherwise permitted by law.

Section II documents the results of the efforts of OSP and OHA to implement Act 304.

## II. RESULTS

1. OHA Funding. In accordance with Act 304, OSP and OHA have determined that, in addition to the sum of \$7.2 million appropriated and received by OHA pursuant to Act 304, and any other revenue received by OHA from the Department of Land and Natural Resources or other state agencies for fiscal year 1990-1991, the sum of \$111,859,000.00 is payable to OHA pursuant to Chapter 10, HRS, as amended by Act 304, for the period of June 16, 1980 through June 30, 1991, (the total amount thereof being hereinafter collectively referred to as the "Amount"); provided that this Amount (a) may increase or decrease based on audit, and (b) does not include any matters referred to in sections 6 and 7.

2. Definitions. As used herein, unless a different meaning clearly appears from the context:

a. "Audit" means the examination, review, verification and adjustment or correction of the Amount payable to OHA pursuant to Chapter 10, HRS, as amended, including review and consideration of the following matters:

(1) fiscal year 1989-1990 and 1990-1991 revenues;

- (2) completion by OSP, and the review and verification, by OSP and OHA, of title reports covering public lands presently or formerly under the jurisdiction of the Harbors Division, Department of Transportation, State of Hawaii, including those lands transferred and designated for use as part of the Foreign Trade Zone (being Tax Map Key Parcel Nos. 1/2-1-15:9, sub 2, 7, 8, and 9);
- (3) the inclusion of revenues derived from the State's small boat harbors;
- (4) the value of the parcels of land situate at Hanapepe (Waimea District), Island of Kauai, Hawaii, which were developed by the Housing Finance and Development Corporation ("HFDC") for the Cliffside at Hanapepe Housing Project, and being TMK Parcel Nos. 4/1-8-7:3 (por.) and :18(por.), 4/1-8-12:1 (por.) and :32 (por.), and 4/1-8-13:1 (por.) and containing 88.48 acres, more or less;
- (5) "Miscellaneous Revenues" reported by the Airports Division, Department of Transportation, State of Hawaii;

- (6) revenue derived by the State of Hawaii in connection with parking at Iolani Palace; and
- (7) revenue derived by the Department of Accounting and General Services, State of Hawaii, from the public land trust in connection with the storage of surplus property and parking facilities.

- (b) "Revenue" means all proceeds, fees, charges, rents, or other income, or any portion thereof, as further defined in Section 10-2, HRS.
- (c) "Public land trust" means those lands as defined in Section 10-2, HRS.

3. Partial Payment. OSP requested the 1992

Legislature in regular session to appropriate and the 1992 Legislature appropriated the sum of \$5 million, for partial payment of the sum of \$111,859,000.00 specified in section 1 hereinabove. The aforesaid sum will be reduced upon payment to OHA of the \$5 million appropriated by the 1992 Legislature under Act 300, 1992 Hawaii Session Laws 831.

4. Included Items. OSP and OHA recognize that the

Amount under section 1 hereinabove, subject to audit, includes (a) OHA's portion of revenues from the public land trust, except as provided in section 6 and 7 hereof, and (b) interest, at such rates as provided under Act 304, on the revenues included in (a) through June 30, 1991.

5. Conveyance of Public Land.

Act 304 contemplates that OHA receive (a) moneys in an amount, as determined by B&F, equivalent to the revenues under sections 10-2 and 10-13.3, HRS, as amended, which OHA should have received for the period of June 16, 1980 through June 30, 1991, plus accrued interest in accordance with Act 304, or (b) parcels of public land of equivalent value to such amount, plus accrued interest in accordance with Act 304, or (c) moneys and public lands, which together are equivalent to such amount, plus accrued interest in accordance with Act 304.

OSP and OHA accordingly agree that OHA may, subject to the concurrence of the Department of Land and Natural Resources, by its Board of Land and Natural Resources (hereinafter referred to as the "BLNR"), select and designate for conveyance to OHA, any or all of the following parcels of public land under such terms and conditions as are acceptable to OSP and the BLNR:

- (1) 200 acres, more or less, situated at Lalamilo, Island of Hawaii, Hawaii, being a portion of Tax Map Key Parcel No. 3/6-6-1:2;
- (2) 200 acres, more or less, situated at Kukio-Maniniowali, South Kohala, Island of Hawaii, Hawaii, being a portion of Tax Map Key Parcel No. 3/7-2-4:4;

- (3) the Canoe Center site, situated at Keehi Lagoon, Oahu, Hawaii, being Tax Map Key Parcel No. 1/1-1-3:3;
- (4) 6.215 acres, more or less, situate at Sand Island, Oahu, Hawaii, being Tax Map Key Parcel No. 1/1-2-21: 36, 37, 40, 41, 42, and 44;
- (5) 322.4 acres, more or less, situated at Wailua, Kauai, being Tax Map Key Parcel Nos. 4/3-9-2:12 and 13; and
- (6) such other parcels of public land as may be agreed to by OSP (in consultation with the BLNR) and OHA, including but not limited to (i) the Waikiki Yacht Club site (Tax Map Key Parcel No. 1/2-3-37:6), and (ii) the Stadium Bowl-O-Drome site (Tax Map Key Parcel No. 1/2-7-8:13 and 20).

In the event OHA selects any lands which were cultivated in sugar cane on November 7, 1978, such lands will be conveyed to OHA, subject to a covenant running with the land, requiring OHA, as the Grantee of such lands, its successors and assigns, to pay all sums owed pursuant to Article XII, Section 1 of the Hawaii State Constitution into the native Hawaiian rehabilitation fund established by the Department of Hawaiian Home Lands.

Except as may otherwise be agreed to by OSP and the BLNR, OSP and OHA further agree that the parcels selected by OHA shall be conveyed by quitclaim deed, without any warranties or representations whatsoever.

OSP and OHA agree that the value of the parcels which OHA selects will be based on appraisal, and will consider:

- (1) any restrictions or limitations on use applicable to the parcel, and the limited market for the parcel;
- (2) any encumbrances, leases, licenses, permits, encroachments, easements, access rights, or other interests therein which currently encumber the parcel, or which will be reserved by the State of Hawaii in favor of the general public, or for public purposes;
- (3) such appropriate adjustments, acceptable to OSP, to the value estimate reflecting the ceded land status of any parcels;
- (4) any public purpose or benefit, which will be served by or through the development of such lands by OHA.

The Amount specified in section 1 above shall be reduced by the value, as established above, of any parcel which is selected by and conveyed to OHA.

6. Housing.

Except for the sum of \$1,026,000.00 (subject to audit) derived in connection with the housing project located on public land trust lands at Hanapepe (which is included in the Amount specified in section 1 hereinaabove), the amount payable to OHA for housing projects utilizing the public land trust during the period of 1981 to 1990, including the Honokowai Kauhale Rental Housing Project situated at Honokowai (Lahaina District), Island of Maui, Hawaii, is not included in the Amount. As the legislature is examining the use of the public land trust in connection with affordable housing projects, and Act 304 requested OSP to review, evaluate and to provide recommendations for a revision of existing policies, practices and procedures relating to the public land trust, this matter has been bifurcated and OHA and OSP intend to examine and resolve this as a separate matter.

7. Excluded Matters. Notwithstanding any other provisions of this Memorandum to the contrary, OSP and OHA recognize and agree that the Amount specified in section 1 hereof does not include several matters regarding revenue which OHA has asserted is due to OHA and which OSP has not accepted and agreed to.

III. CONCLUSION

This Memorandum reflects the results of OHA's and OSP's efforts to determine the amount which OHA should receive for the

period of June 16, 1980 through June 30, 1991 pursuant to Act 304. It is the intent of OHA and OSP that its provisions be implemented by Act 35, Act 300, 1992 Hawaii Session Laws 831, or the conveyance of parcels of public lands selected by OHA, pursuant to Act 304 or as otherwise permitted by law.

CONCUR:

OFFICE OF STATE PLANNING

By Norma Honey  
Its Deputy Director  
Dated: April 27, 1993

CONCUR:

OFFICE OF HAWAIIAN AFFAIRS

By Lepton Hwe Hee  
Its Chairman, Board of Trustees  
Dated: April 28, 1993

By Richard K. Paghinawan  
Its Administrator  
Dated: April 28, 1993