

**FEDERAL-STATE TASK FORCE
ON THE
HAWAIIAN HOMES COMMISSION ACT**

REPORT TO

**UNITED STATES SECRETARY OF THE INTERIOR
AND THE
GOVERNOR OF THE STATE OF HAWAII**

**HONOLULU, HAWAII
AUGUST 15, 1983**

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August 15, 1983

The Honorable James G. Watt
Secretary
United States Department of the Interior
Washington, D.C. 20240

The Honorable George R. Ariyoshi
Governor
State of Hawaii
Honolulu, Hawaii 96813

Dear Sirs:

It is with pleasure that I submit to you the Report of the Federal-State Task Force on the Hawaiian Homes Commission Act.

The overriding premise that formed the basis of the Task Force endeavors is found in the mission statement: "To better effectuate the purposes of the Hawaiian Homes Commission Act and to accelerate the distribution of benefits of the Act to the beneficiaries".

During the past nine months four substantive areas were studied in depth. These areas form the basis of this report. They are Federal and State trust and/or legal responsibilities; land and other trust assets; financial management; and acceleration of homestead awards.

An advisory committee is being recommended to find ways and means to further implement the recommendations of the Task Force. The recommendations suggest a wide range of necessary attention and involvement by government offices, and a complementary range of opportunities for private or individual assistance and support.

The Honorable James G. Watt
The Honorable George R. Ariyoshi
August 15, 1983
Page two

The Task Force recognizes that within the last decade the State of Hawaii has made substantial and successful efforts to improve its performance as a trustee; however, the findings and recommendations come from a single purpose and that is to accelerate the distribution of benefits of the Hawaiian Homes Commission Act of 1920 to the native Hawaiian. Each member of the Task Force has expressed appreciation for the opportunity to participate in this important work.

Respectfully submitted,



Ann K. Nathaniel
Chairperson

ACKNOWLEDGEMENTS

To accomplish its mission, the Task Force had the kokua of many agencies and organizations.

The Hawaiian Homes Commission and the Department of Hawaiian Home Lands have given the Task Force their full and open cooperation and have assisted throughout the Task Force process. It would not have been possible for the Task Force to review the implementation of the Hawaiian Homes Commission Act of 1920 for the Secretary and the Governor without DHHL resources, research, and information. Within the Commission and the Department there is clear evidence of dedication to the Task Force mission of better effectuating the purposes of the Act.

The Hawaiian Homes Commission and the Department of Hawaiian Home Lands have made significant strides in carrying out the purposes of the Act in the past several years. A shortage of funding and personnel continually hampers efforts to meet the needs of the beneficiaries, especially as demands for land and housing in Hawaii continue to increase. However, the progress they are making in serving the beneficiaries of the Hawaiian Homes trust is worthy of attention and support -- and thanks.

Both the Secretary of the Interior and the Governor of the State of Hawaii have provided support, in terms of funding and services, to the Task Force. The Task Force particularly appreciates the willingness of the Secretary and the Governor to provide the Task Force with an open environment in which to conduct its review through an objective process.

The Board of Trustees of the Office of Hawaiian Affairs made it possible for the Task Force to conduct its work in a smooth and coordinated fashion by providing funds for a Task Force staff. By providing such resources, the Board continues to serve native Hawaiian beneficiaries. Had the Board not provided funding, the work of the Task Force would have been difficult, if not impossible, and for this the Task Force extends its most appreciation.

The State Departments of Land and Natural Resources and Accounting and General Services provided special assistance to the Task Force in its research, as did Mr. Arthur Y. Akinaka. Messrs. V. Hecker and J. Wright of the Bureau of Land Management of the U.S. Department of the Interior also provided special assistance to the Task Force.

When called upon by the Task Force, individuals from both the public and the private sectors gave freely of their time and expertise.

The Task Force thanks these individuals.

Finally, members of the community, both beneficiaries and non-beneficiaries of the Hawaiian Homes Commission Act, gave the Task Force their fullest support and cooperation. Without their mana'o and encouragement, the Task Force would have been unable to address the needs of the community as fully as it has.

PREFACE

By the early 1900's, a substantial number of Hawaiians had moved into the developing towns of the Hawaiian Islands. Many of these people found themselves living in crowded urban conditions. By that time, there had also been a significant and steady decline in the Hawaiian population.

Both of these factors generated concern among leaders in the Hawaiian Islands and led to the growth of a movement which sought ways to improve conditions for Hawaiians.

In 1920, a delegation representing the Territory of Hawaii was sent to the United States Congress. One of the outcomes of that delegation's visit was the the submittal of legislation to provide rural homesteads for Hawaiians. It was believed that rural homesteading would provide opportunities for Hawaiians to improve their living conditions, particularly by making available land away from urbanizing areas. It was also believed that such a program could be a factor in reversing the trend of a declining native population.

On July 9, 1921, the United States Congress enacted the Hawaiian Homes Commission Act of 1920. As originally defined by Congress, the major objectives of the Act included placing Hawaiians on the land, preventing the alienation of lands set aside by the Act, providing adequate amounts of water for homestead lands, and aiding Hawaiians in establishing farming operations. Through these objectives the goal of enabling Hawaiians to return to their lands in order to provide for their self-sufficiency, initiative, and preservation of their native culture could be achieved.

The Hawaiian Homes Commission Act of 1920 was implemented and administered by the Territorial government through the Hawaiian Homes Commission until the Hawaiian Islands became a state in 1959. At that time, the Department of Hawaiian Home Lands was established and title to Hawaiian Home lands was transferred to the State of Hawaii. As a compact of agreement of statehood, the Hawaiian Homes Commission Act became part of the Hawaii State Constitution.

This report addresses the current Hawaiian Homes program and makes recommendations to the United States Secretary of the Interior and the Governor of the State of Hawaii on ways to better effectuate the purposes of the Hawaiian Homes Commission Act of 1920 and the distribution of benefits of the Act to native Hawaiian beneficiaries.

TABLE OF CONTENTS

Letter of Transmittal.	i
Acknowledgements	iii
Preface.	v
Selected Abbreviations & Terms Used.	1
Organization of the Report	2
The Task Force Record.	2
The Task Force Mission	4
History of the Federal-State Task Force.	6
Major Provisions of the Hawaiian Homes Commission Act.	12

FINDINGS AND RECOMMENDATIONS

Trust and/or Legal Responsibilities.	18
Federal Trust and/or Legal Responsibilities	19
State Trust and/or Legal Responsibilities	21
U.S. Congressional Consent for Amendments.	23
Beneficiaries' Right to Sue.	23
Beneficiary Entitlements	25
Advisory Committee on Funding Sources.	29
Strategies for Acceleration of Homestead Awards.	30
Land Transfers	
General Findings and Recommendations.	39
Governor's Executive Order.	40
Governor's Proclamations.	41
Land Exchanges As a Conveyance Method	43
General Leases Administered by the Department of Land and Natural Resources.	44
Licenses.	45
Revocable Permits and Rights-of-Entry	46
Other Unlawful Takings and Transfers.	47
Remedies for Improper Land Use by Non-Beneficiaries	
General Findings and Recommendations.	48
Land Exchanges As a Remedy.	49
Compensation for Present Use by Non-Beneficiaries	50
Compensation for Improper Past Use.	51
Lands Not Currently Used By the Beneficiaries.	53
Traditional and Cultural Concerns.	55
Mineral and Other Trust Assets	56
Land Inventory Discrepancies	
Discrepancies Between the Acreage Designated in the Act and Current Inventories	57
Discrepancies Between Current Inventories	59

Record Keeping and Associated Problems	61
Financial Management	62
Future Structure of the Department of Hawaiian Home Lands.	64
Management	65
Information and Access	66
Conclusion	68
Notes.	69

APPENDICES

1. Task Force Charter.	74
2. Hawaiian Homes Commission Act of 1920: original	76
3. Hawaiian Homes Commission Act of 1920: as amended through the 1983 Session of the Hawaii Legislature.	95
4. Eight Birthrights of the Hou Hawaiians.	130
5. Back-up Paper on citations to and extracts from the legislative history of the Hawaii Statehood Act as it pertains to the Hawaiian Homes Commission Act of 1920	133
6. Back-up Paper on Federal Responsibilities	192
7. Back-up Paper on State Responsibilities	203
8. Back-up Paper on Amendments to the Hawaiian Homes Commission Act.	213
9. Back-up Paper on a right of action for beneficiaries of the Hawaiian Homes Commission Act.	229
10. Memorandum of June 29, 1983, from the Department of Hawaiian Home Lands on cost estimates for construction.	247
11. Back-up Paper on Hawaiian Home lands and land use restrictions by other public agencies	250
12. Back-up Paper on conveyance methods	265
13. Back-up Paper on remedies for improper land use by non-beneficiaries.	302
14. Back-up Paper on lands of little use to the beneficiaries	313
15. Back-up Paper on discrepancies in the land inventory of the Department of Hawaiian Home Lands.	323

16.	Back-up Paper on Record Keeping and Other Related Problems361
17.	Back-up Paper on authorities as an alternative structure for administering the Hawaiian Homes Commission Act.365
18.	Schedule of Task Force recommendations.393

Selected Abbreviations And Terms Used in This Report

DHHL: The Department of Hawaiian Home Lands, which is headed by an executive board known as the Hawaiian Homes Commission. In this report, the abbreviation is used to refer to both the Department of Hawaiian Home Lands and the Hawaiian Homes Commission.

Governor's Executive Order: The setting aside of public land by the Governor to any department or agency of the State, city, county or other political subdivision of the State, for a public use or purpose.

General Lease: Lease issued under provisions of Chapter 171, Hawaii Revised Statutes, as amended, granting the right to possess and use Hawaiian Home lands for a term of years.

Hawaii Admission Act: The law enacted by the U.S. Congress which made Hawaii a state in 1959; also referred to as the Hawaii Statehood Act.

HHCA: The Hawaiian Homes Commission Act of 1920, as amended; enacted by the U.S. Congress in July, 1921 with all subsequent amendments.

License: A revocable right to enter on Hawaiian Home lands for a period not to exceed 21 years and for specific purposes; cannot be assigned to another party; includes church licenses.

Revocable permit: Authorizes temporary occupancy of Hawaiian Home lands on a month-to-month basis.

Right-of-entry: Authorizes short-term interim use of Hawaiian Home lands for specific purposes.

ORGANIZATION OF THE TASK FORCE DOCUMENT
AND
THE TASK FORCE RECORD

The Task Force document consists of two parts. The first part is the Task Force's findings and recommendations to the United States Secretary of the Interior and the Governor of the State of Hawaii.

The second part of the document consists of appendices to the Task Force report. The appendices are intended to provide general information for those who wish further detail in certain areas of concern. Most of the appendices were contained in a volume of back-up papers prepared by members of the Federal-State Task Force in support of preliminary findings and recommendations. Those back-up papers were largely prepared by individuals on the Task Force or its staff and it was agreed that they would not be submitted for approval by the Task Force as a whole.

Finally, all written comments supplied to the Task Force during its deliberations as well as the records of the Task Force, including meeting transcripts and minutes, will be kept at the main office of the Department of Hawaiian Home Lands, then deposited in a public repository in Honolulu, Hawaii.

THE TASK FORCE MISSION

When the United States Secretary of the Interior and the Governor of the State of Hawaii established the Federal-State Task Force on the Hawaiian Homes Commission Act, their instructions were that a comprehensive review of every facet of the Hawaiian Homes Commission Act of 1920 be conducted. With these instructions the members of the Task Force defined their mission:

The purpose of the Federal-State Task Force is to make recommendations to the Governor of Hawaii and to the Secretary of the Interior on ways to better effectuate the purposes of the Hawaiian Homes Commission Act and to accelerate the distribution of benefits of the Act to the beneficiaries.

HISTORY OF THE FEDERAL-STATE TASK FORCE

The Federal-State Task Force on the Hawaiian Homes Commission Act was jointly established by the United States Secretary of the Interior and the Governor of the State of Hawaii.

Background

The Hawaiian Homes Commission Act of 1920 (HHCA) was enacted by the United States Congress on July 9, 1921. It set aside certain Territorial lands as Hawaiian Home lands and established a homesteading program for native Hawaiians, that is, persons with 50% or more Hawaiian blood.

Over the years since the passage of the HHCA, native Hawaiians and others have voiced concerns about the administration of various sections of the Act. The HHCA had no statement of purpose as is common with legislation enacted in recent years and much of the concern expressed was whether amendments or administrative policy properly reflected the intent of the law. Among the key questions and concerns repeatedly raised are the amount of acreage set aside as Hawaiian Home lands, its suitability for homesteading, the nature of improvements required before homestead occupancy, the qualification and selection of those to be awarded homesteads, and the program support necessary to deliver the intended benefits to native Hawaiians under the Act.

When Hawaii became a state in 1959, Congress required that the HHCA become a provision of the State Constitution. In addition, title to Hawaiian Home lands which had been vested in the United States while Hawaii was a territory was transferred to the State of Hawaii. At that time, responsibility for administration of the HHCA passed to the State, with provisions for the United States government to maintain certain oversight responsibilities.

Moving from territorial status to statehood brought about constitutional conventions, with public forums and the media addressing basic philosophical issues that had to be reflected in the procedural and administrative framework being hammered out to forge a viable state from a unique and varied territory. Organizations were strengthened and new associations formed to identify and speak out for the special distinctions, rights, and needs of native Hawaiians based on their ancestry and history, which was also the history of the new island state. The key questions and concerns about the implementation of the HHCA remained in the midst of this wider concern for native Hawaiian identity, status, and rights. Changes were made in the Hawaiian Homes programs by

legislative amendment and administrative policy, but the changes did not answer all the questions nor address all the concerns.

Then, in 1980, many of these long-time and continuing concerns of and for native Hawaiians were focused and articulated in a civil action filed by the Hou Hawaiians and others against the United States of America.*

A review of the administrative records on the implementation policy and practice relative to the HHCA during territorial years and the years since statehood gave government executives no comprehensive view of the program's effectiveness.

The Secretary of the Interior and the Governor agreed to establish a Federal-State Task Force to review the HHCA and the programs carried out under the Act. The Task Force would report to the Secretary and the Governor at the end of its review and make recommendations on implementation of the Act.

* Maui Loa, Chief of the Hou Hawaiians, has produced a document which presents "Eight Birthrights" of native Hawaiians for consideration by the Task Force as the official position of the Hou. It is an articulation of many of the concerns which formed the basis of the suit brought by the Hou Hawaiians and others. The document is included in its entirety as an appendix to this report.

The complainants sought a declaratory judgement, writ of mandamus and an accounting for breach of trust duties. The complainants requested that either of two actions be taken:

1. That a writ or an injunction be handed down by the court to direct the defendants to bring suit against the State to cease violations, to commence immediate and widespread distribution of Hawaiian Home lands, to void commercial leases, and to provide an accounting to the plaintiffs and all other native Hawaiians for the economic loss they have suffered due to the failure of the State to carry out the HHCA; or
2. That the defendants be required to bring suit seeking a termination of the Hawaiian Homes trust, a return of Hawaiian Home lands to the United States, and for the United States to establish and administer a program of distribution of Hawaiian Home lands to native Hawaiians for homesteading purposes.

Membership

The Task Force was created on July 14, 1982. Eleven members were appointed: 8 from Hawaii, one of whom is a non-voting member, and 3 members from the Federal government.

The members from Hawaii, who were appointed by the Governor, are Kenneth F. Brown, Rodney K. Burgess, III, Ben Gaddis, Abbie Napeahi (non-voting), Ann K. Nathaniel, Georgiana K. Padeken, Kamuela Price, and Mililani Trask. Mr. Burgess was selected by the Office of Hawaiian Affairs as its representative on the Task Force.

The Federal members appointed by the Secretary of the Interior were all from the Department of the Interior. They are Cecil S. Hoffmann, Stephen P. Shipley, and Ruth G. Van Cleve.

Timing

When it was established, it was estimated that the Task Force could accomplish its review and make its recommendations in six months. The life of the Task Force was later extended so that sufficient time would be available for it to conduct its business and to hold public meetings.

Inspector General's Report

In February, 1982, before the actual establishment of the Task Force, the Secretary of the Interior requested that the Office of the Inspector General of the U.S. Department of the Interior conduct a review of selected aspects of Hawaiian Homes programs to determine whether the Department of the Interior was carrying out its responsibilities under the HHCA, to examine whether the programs had been working, and to determine whether improvements were needed. Personnel from the Inspector General's office spent approximately two months in the Department of Hawaiian Home Lands conducting their review.

The final report was issued by the Inspector General in September, 1982. Although the Federal-State Task Force was not established to address the Inspector General's report, the report was used as background and as a starting point by the Task Force.

Meetings and Methods

The first meeting of the Task Force was held in September, 1982. This and all other Task Force meetings were convened in Honolulu. At the September meeting, Ann K. Nathaniel was elected chairperson by the Task Force members. Other officers elected were Stephen P. Shipley as vice-chairperson, and Mililani Trask as secretary-treasurer. The members discussed the purpose of the Task Force and drafted a preliminary work plan. In addition to its primary mission of making recommendations on ways to better effectuate the purposes of the Act and to accelerate the distribution of benefits to beneficiaries, the Task Force identified other concerns to be examined. These included alternative sources of funding for the program; reviewing the HHCA in light of today's conditions and beneficiary needs; the promotion of native initiative for improvements; and the definition of the roles and responsibilities of the Federal and State governments and other parties, including the beneficiaries.

To more efficiently undertake its review, the Task Force formed four committees to examine various areas. These committees and their areas of concern were:

COMMITTEE ON TRUST AND/OR LEGAL RESPONSIBILITIES:

Comprised of all Task Force members, this committee addressed the Task Force's primary concern--the responsibilities of the Federal and State governments for the Hawaiian Homes trust. A legal subcommittee was appointed to research and make recommendations on the trust and/or legal responsibilities.

COMMITTEE ON LAND AND OTHER TRUST ASSETS:

The focus of this committee was the Hawaiian Homes land inventory and actions affecting that inventory. The land inventory forms the basic asset of the trust. Other trust assets were briefly addressed.

COMMITTEE ON FINANCIAL MANAGEMENT:

This committee followed up on the findings and recommendations of the Inspector General's report relating to financial management and accounting systems of the Department of Hawaiian Home Lands and other administrative areas.

COMMITTEE ON THE PLACEMENT OF PEOPLE ON THE LAND:

The beneficiaries' needs and desires and how to accelerate the distribution of benefits to beneficiaries were the areas focused upon by this committee. This committee reviewed existing programs and potential ones for placing more people on the land.

At the September meeting, the Task Force agreed that its review was to be an overall one with a view towards making long-range improvements for the future. Its recommendations would protect the trust established by Congress. The Task Force also agreed that because its responsibility was an overall review and the life of the Task Force was very limited, it would not be able to examine problems which were limited in scope or case specific.

Following the September meeting, it became evident to the Task Force that staff would be needed to assist it in its work. The Board of Trustees of the Office of Hawaiian Affairs provided funds for Task Force staff. By November a three-person staff had been contracted through the Office of Hawaiian Affairs. Office space for the Task Force was provided by the Department of Hawaiian Home Lands.

A second Task Force meeting was held at the beginning of December. The purpose of this meeting was to present committee reports, especially findings, and to allow each committee the time to work together.

Towards the end of February, 1983, the Task Force held its third meeting. The preliminary findings and recommendations of the various committees were presented to the Task Force as a whole and action was taken. The findings and recommendations which were approved at that meeting formed the basis of the Task Force's preliminary draft report. At the beginning of April, the preliminary draft report was widely circulated for public review. Copies were mailed to all current Hawaiian Home lessees as well as those persons who had applied for homestead awards.

In mid-May the Task Force conducted public meetings to obtain public input on its preliminary findings and recommendations. In order to be able to hold meetings throughout the State of Hawaii, the Task Force members formed teams which visited the various islands. Prior to the final public meeting which was held in Honolulu, team members reported back to the Task Force on the major issues and concerns raised by the public. In total, approximately 300 persons attended the series of public meetings.

Following the public meetings, a committee was appointed by the Task Force chairperson to make appropriate revisions to the preliminary findings and recommendations.

Revised findings and recommendations were reviewed and acted upon by the Task Force at its final meeting held at the end of June, 1983.

Following the June meeting, a draft of the final report of the Task Force was prepared, circulated to Task Force members, and revised for submission to the Secretary of the Interior and the Governor. With the submission of the Task Force report in August, 1983, the Task Force was terminated.

Task Force Follow-up

The Task Force as a group found that it was important to seek long-term solutions to the long-term problems which have been faced in carrying out the Act. It has been the Task Force's desire to look towards the future and provide a direction for that future to the Governor and the Secretary. It was thus decided that specific cases or problems would serve as examples of the long-term problems, but that the Task Force would not examine nor try to solve those specific problems. The history of the Task Force ends, but resolution of specific problems, and implementation of Task Force recommendations will take continued dedication and hard work by the Commission and the DHHL, along with their continuing day-to-day operations on behalf of the native Hawaiian beneficiaries of the Hawaiian Homes Commission Act.

MAJOR PROVISIONS OF THE HAWAIIAN HOMES COMMISSION ACT*

The Hawaiian Homes Commission Act of 1920 provides the authority for distributing benefits to beneficiaries in keeping with the moral and philosophical intent of the Act to provide land for use by native Hawaiians.

The original Act provided for a commission of five members, the Hawaiian Homes Commission. Updating amendments called for the present State Department of Hawaiian Home Lands to be headed by an executive board, the Commission. The Chairman of the Commission, appointed by the Governor from among its members, also is the Director of the Department.

Certain public lands were designated by the Act as "available lands." The lands were identified by place names given in the Act, followed by acreages in parentheses; e.g., "On the island of Hawaii: Kamaoa-Puueo (eleven thousand acres, more or less), in the district of Kau" (emphasis added).

The Act itself did not cite a total, but addition of the general acreages described as above gives a total of 200,000 plus acres. These lands became the basic "corpus" or body of the trust. No surveys or maps of these acreages which indicate the actual location of the areas listed accompanied the Act.

The DHHL currently administers programs which directly benefit native Hawaiians through the awarding of homestead leases to individual beneficiaries. These are residential homesteads, farm lots, ranch plots, and community pasture. The residential program is the program for which the demand is highest. The commission policy is to provide residential lots in improved subdivisions. The DHHL has, in the past, provided house and lot packages as well as improved lots with the beneficiary being responsible for the construction of his own house. Inasmuch as the greatest demand is for residential awards, the focus of the department has been on this type of development.

* Copies of the original Act passed by Congress in 1921 and the Act as amended through 1983 are included as appendices to this report. See Appendix No. 5 - Back-up paper on Legislative History of the Hawaii Statehood Act.

Section 207 of the HHCA authorizes the DHHL to lease to beneficiaries the right to the use and occupancy of a tract or tracts of Hawaiian Home lands. The section specifies the acreage limits for each lessee as follows:

- Agriculture or aquaculture: not less than one nor more than forty acres;
- First-class pastoral lands: not less than 100 nor more than 500 acres;
- Second-class pastoral lands: not less than 250 nor more than 1,000 acres;
- Irrigated pastoral lands: not less than 40 nor more than 100 acres; and,
- Residential: not more than one acre, except in Kalaniana'ole Settlement, Molokai, where, for existing leases of farm lots, a residence lot may exceed one acre but not more than four acres.

The Act authorizes DHHL to undertake and carry out general water and other development projects in respect to Hawaiian Home lands. The Department has the right to use water which it "deems necessary adequately to supply the livestock, aquaculture operations, or the domestic needs of individuals upon any tract."

The DHHL is authorized by the Act to provide assistance to lessees so they may obtain maximum utilization of their awards in keeping with the purpose for which those lands were leased. Lessees are to be assisted in all phases of farming, ranching, and aquaculture operations, including marketing and also in other kinds of economic development. Assistance may take the form of loans to qualifying beneficiaries, or technical assistance and counsel from DHHL staff, staff of other government agencies, and private consultants.

To preserve the trust established for native Hawaiians through the HHCA, the Act does not allow Hawaiian Home lands to be alienated. This means that title to the land may not be encumbered and, as a result, problems arise for homestead leases in terms of successorship to homestead awards, the ability of a lessee to build equity, and the ability of lessees to qualify for conventional financing.

General leases are also allowed. Through general leases the DHHL may lease lands "to the public, including native Hawaiians, on the same terms, conditions, restrictions and uses applicable to the disposition of public lands...." General leases to non-beneficiaries produce income used for DHHL programs of assistance to beneficiaries.

In addition to homestead awards, native Hawaiians may receive general leases on Hawaiian Home lands. Section 204 of the HHCA expressly authorizes the DHHL "to negotiate, prior to negotiation with the general public, the disposition of a lease of Hawaiian Home lands to a native Hawaiian, or organization or association owned or controlled by native Hawaiians, for commercial, industrial or other business purposes..." This provision of the Act provides additional options for beneficiaries. Negotiated general leases can be used as equity and with Hawaiian Homes Commission approval can be subleased to other parties.

The Act lacks a statement of intent or purpose, but from the discussion and debate at the time of passage, and from the provisions of the Act itself, the principal objectives of the HHCA are to place native Hawaiians on the land, to prevent alienation of the leasehold so the land could not be taken but would always be held in trust for continued use by native Hawaiians, to provide adequate amounts of water so all tracts would be useable, and to provide support and assistance to native Hawaiians to get farming operations well under way. In the 1920's, the general term used was "rehabilitation" of the native Hawaiian which has since come to have a narrower meaning. Overall the goal was and still is to enable native Hawaiians to return to their lands in order to provide for their self-sufficiency, initiative, and preservation of native Hawaiian culture.

**FINDINGS
AND
RECOMMENDATIONS**

All time periods in the Task Force recommendations begin on August 15, 1983, the date of submission of this report to the Secretary of the Interior and the Governor, unless otherwise indicated.

For easy reference the recommendations are numbered sequentially. Each recommendation is followed by its number in parentheses.

TRUST AND/OR LEGAL RESPONSIBILITIES

Preface

After reviewing the evolution of the Hawaiian Homes Commission Act of 1920 (HHCA) and its impact on native Hawaiians, the Hawaii Supreme Court concluded (1) that the Federal government set aside certain public lands to be considered Hawaiian Home lands and to be utilized in the rehabilitation of native Hawaiians, thereby undertaking a trust obligation benefiting an aboriginal people; and (2) that the State of Hawaii assumed this fiduciary obligation upon being admitted into the Union as a state. (Ahuna vs. Department of Hawaiian Home Lands, February 17, 1982.)

A review of the pertinent provisions of the HHCA indicates that the congressional intent was to create a class of lands separate and distinct from other public lands to be utilized for the rehabilitation of native Hawaiians. Provisions of the Act further vest control over the use of such lands in the Hawaiian Homes Commission and not in any other government agency.

It is well established that the Hawaiian Homes Commission stands in the position of a trustee and owes beneficiaries of the HHCA the following duties:

1. To act exclusively in the interests of beneficiaries under the HHCA;
2. To hold and protect the trust property for the beneficiaries of the HHCA;
3. To exercise such skill and care as a person of ordinary prudence would exercise in dealing with one's own property in the management of Hawaiian Home lands; and
4. To adhere to the terms of the trust as set forth in the HHCA.

In dealing with eligible native Hawaiians collectively or individually, the Hawaiian Homes Commission must adhere to exacting standards. In administering the trust assets, the actions of the trustees are measured by the same fiduciary standards applicable to private trusts. The Hawaii Supreme Court has stated that it will strictly scrutinize the actions of the government in administering this trust on behalf of the beneficiaries.

The trust assets consist of all revenues and property administered by the Hawaiian Homes Commission on behalf of the beneficiaries of the HHCA. Examples of trust assets include but are not limited to Hawaiian Home lands, minerals, water resources, legislative allotments, and general lease revenues.

Beneficiaries of the HHCA are also beneficiaries of the Section 5(f) trust created by the Hawaii Admission Act.

As a general principle of trust law, any trustee who breaches trust duties is liable to make restitution to the trust for any and all of the losses suffered as a result of the breach.

It is in light of these duties and responsibilities that the Federal-State Task Force makes the following findings and recommendations.

Federal Trust And/Or Legal Responsibilities *

FINDINGS

- >The Supreme Court of Hawaii has said that in the years preceding Hawaii's admission to the Union, the government of the United States served as trustee with respect to Hawaiian Home lands and the native Hawaiian beneficiaries of those lands. During those years, Hawaiian Home lands were made available for public use by Federal and Territorial agencies through executive actions that were not authorized by the law. No compensation was provided to the trust for the use of these lands.
- >Under the provisions of Section 4 of the Hawaii Admission Act, the United States has assumed a continuing responsibility for certain modifications of the HHCA in that certain amendments to the Act require the consent of the United States.
- >The HHCA requires the United States Secretary of the Interior to approve land exchanges involving Hawaiian Home lands.
- >Section 5(f) of the Hawaii Admission Act creates a public trust of certain lands, including lands set aside under the HHCA, with the State serving as a trustee. If the trust is breached by the State, the United States may bring suit.

* See Appendix No. 6

RECOMMENDATIONS

The Department of the Interior should serve as the lead agency within the Federal establishment with respect to matters touching the Hawaiian Homes program that are the responsibility of the United States. For this purpose, there should always be designated by the Secretary of the Interior an officer or employee of the Department of the Interior in Washington, D.C. and an officer or employee in Hawaii to contact on matters relating to the program. Such persons should be available and knowledgeable sources to whom questions can be put and to whom information on the Hawaiian Homes program may be supplied by beneficiaries of the Act, other concerned citizens of Hawaii, and interested officers and agencies in Hawaii and Washington, D.C. (1) [See note 1]

The United States should give conscientious and expeditious consideration to amendments from the State of Hawaii that modify the HHCA if such amendments require the consent of the United States. (2) [See note 2]

In light of the responsibilities lodged with the United States under the HHCA and the Hawaii Admission Act, the United States should undertake to: (a) be aware of the manner in which the State manages or disposes of the lands that constitute the trust under Section 5(f); (b) satisfy itself that the State is not abusing its responsibilities as trustee; and, (c) if the State is failing to discharge properly its responsibility under Section 5(f), then to institute proceedings against it for breach of trust. Either the Department of Justice or the Department of the Interior, or both, should be prepared to discharge this responsibility. These steps could include the designation of personnel of either department already stationed in Hawaii to review pertinent portions of the Hawaiian Homes Commission program. Other steps could include a follow-up audit of the Hawaiian Homes Commission program and of other aspects of the trust under Section 5(f) by Federal auditing personnel; the designation of Federal personnel to work with State personnel on a short-term basis on matters touching the Hawaiian Homes Commission program; and a lawsuit against the State for breach of trust. (3)

In light of its other findings, the Task Force recommends that within two years of the date of submission of this report the Department of the Interior should formally assess progress made in correcting problems identified in this Task Force report, using one or more of the methods described herein. (4)

While the statutory language on Federal responsibilities for the Hawaiian Homes program may be subject to varying interpretations, the Task Force agrees that the United States must bear responsibility for its past and/or present misuses of Hawaiian Home lands as discussed in this report. (5)

State Trust And/Or Legal Responsibilities*

FINDINGS

>As a compact with the United States relating to the management and disposition of Hawaiian Home lands, the Hawaii Admission Act required that the HHCA be adopted as a provision of the Constitution of the State of Hawaii, subject to the limitation that the State may modify certain provisions of the HHCA only with the consent of the United States.

>Section 5(f) of the Hawaii Admission Act provides that certain lands granted to the State, including Hawaiian Home lands, constitute a public trust to be devoted to specified purposes that include the betterment of the conditions of native Hawaiians. The use of trust assets for any purpose other than those specified in the Hawaii Admission Act constitutes a breach of trust by the State of Hawaii for which suit may be brought by the United States.

>Since its admission to the Union, the State of Hawaii has occupied the position of trustee with respect to Hawaiian Home lands and the native Hawaiian beneficiaries of those lands.

>The 1978 Constitutional Convention of the State of Hawaii reaffirmed the commitment of the State to fund the Hawaiian Homes program adequately when it added the following provision to the State Constitution:

The legislature shall make sufficient sums available for the following purposes: (1) development of home, agriculture, farm and ranch lots; (2) home, agriculture, aquaculture, farm and ranch loans; (3) rehabilitation projects to include, but not limited to, educational, economic, political, social and cultural processes by which the general welfare and conditions of native Hawaiians are thereby improved; (4) the administration and operating budget of the department of Hawaiian home lands; in furtherance of (1), (2), (3) and (4) herein, by appropriating the same in the manner provided by law. (Article XII.)

* See Appendix No. 7

- >To date, this constitutional amendment has had little effect on State Funding for the Hawaiian Homes program.
- >The State, particularly within the last decade, has made substantial and successful efforts to improve its performance as a trustee. Recent efforts have resulted in a greater number of beneficiaries receiving awards.
- >Nevertheless, substantial problems remain and the State as trustee will not meet all of its fiduciary obligations until more has been accomplished. For example, as of May 31, 1983, 7,901 applicants continue to wait for homestead awards. In addition the State has not identified with precision the Hawaiian Home lands that constitute the assets of the trust; it has not at all times accounted accurately for revenues associated with trust lands; it has not maintained auditable financial records and statements; and, it has entered into conveyances and encumbrances of Hawaiian Home lands that have not been authorized by law.

RECOMMENDATIONS

The Department of Hawaiian Home Lands should continue its efforts to correct shortcomings in the administration of the Hawaiian Homes Commission Act and, taking note of the areas identified by the Task Force where corrective actions are required, should promptly implement the recommendations of the Task Force. (6)

Although the Department of Hawaiian Home Lands is the central agency of the State charged with the administration of the HHCA, it cannot by its own acts alone eliminate the shortcomings of the State in its role as trustee. The Governor of the State should require all appropriate State agencies to cooperate fully with the DHHL to implement the recommendations of the Task Force. (7)

The State of Hawaii, through its executive and legislative branches, should implement the mandate of Article XII of the State Constitution to provide adequate funding for the administration and operation of the DHHL, as well as the described rehabilitation projects. (8)

U.S. CONGRESSIONAL CONSENT FOR AMENDMENTS*

FINDINGS

- >With certain exceptions, the Hawaii Admission Act requires that the HHCA may be amended by the Legislature of Hawaii or by a Constitutional Convention in Hawaii only with the consent of the United States.
- >Certain amendments to the HHCA that have been adopted since Hawaii's admission to the Union are subject to this consent requirement, but such amendments have not been submitted to Congress to obtain the consent required.
- >The failure of the State of Hawaii to comply with the consent requirement results in uncertainty which could breed mischief. Interested parties cannot be certain which amendments to the HHCA are in effect and which are not. Such uncertainty makes the administration of the program less secure than is desirable and could lead to lawsuits.

RECOMMENDATION

As soon as reasonably possible, the State of Hawaii should seek to obtain the consent of the United States to all amendments to the HHCA that are required to have such consent under the Hawaii Admission Act. (9) [See note 3]

BENEFICIARIES' RIGHT TO SUE**

FINDINGS

- >It is now well established that in dealing with eligible native Hawaiians, the Hawaiian Homes Commission must meet the high standards which a trustee owes to beneficiaries. The Hawaii Supreme Court has stated that it will strictly scrutinize the actions of the government in administering the Hawaiian Homes trust on behalf of the beneficiaries.

* See Appendix No. 8

** See Appendix No. 9

- >The Hawaii Admission Act states that the United States may sue for breach of trust if Hawaiian Home lands or their proceeds are used for purposes other than the trust. Unlike some other state admission acts, the Hawaii Admission Act does not expressly authorize HHCA beneficiaries to bring an action to enforce the trust.
- >While the United States and the State of Hawaii have obligations to superintend the trust, the beneficiaries are the parties most concerned and directly affected by the decisions of the Hawaiian Homes Commission. Over the years the beneficiaries and homestead associations have demonstrated a keen interest in the administration of the program and have resorted to court actions to enforce various provisions of the trust with significant results.
- >The United States has recognized the need for this role by the beneficiaries and has consistently supported their right to bring suit for breach of trust in both State and Federal court.
- >Congress could enact legislation that would expressly grant beneficiaries the right to sue in Federal court for breach of trust. The Hawaii Legislature could enact similar legislation that would expressly authorize such lawsuits in State court. Such legislation need not amend either the HHCA or the Hawaii Admission Act.

RECOMMENDATIONS

The Hawaii Legislature should enact legislation which would resolve present uncertainties by granting beneficiaries the right to sue for breach of trust in State courts. (10) [See note 4]

Congress should enact legislation granting beneficiaries the right to sue for breach of trust in Federal court. (11) [See note 5]

BENEFICIARY ENTITLEMENTS

FINDINGS

>Who are the beneficiaries of the Hawaiian Homes Commission Act of 1920, as amended?

The Act says that beneficiaries are to be native Hawaiians, that is "any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778". This is generally referred to as the "blood quantum" requirement. This legal definition only identifies the segment of the Hawaiian community entitled to benefits under the Hawaiian Homes Commission Act. Beneficiaries must be 21 years of age to apply for homestead leases under the Act.

The blood quantum requirement has historically limited successorship to lease awards to family members who have at least 50% Hawaiian blood. In 1982, the Hawaii State Legislature passed legislation to lower the blood quantum for successorship to 25% Hawaiian blood. This amendment to the HHCA cannot be implemented without Congressional approval. Until all qualified native Hawaiians receive awards, the issue of survivorship will remain controversial.

>What are beneficiaries entitled to under the HHCA?

The Act provides direct benefits to beneficiaries in the form of 99-year homestead leases. The lease awards are for residential, agricultural, aquacultural, or pastoral uses. When the Act was passed by Congress, a Committee Report also stated that accessible water in adequate amounts must be provided for all DHHL tracts.

The intent of the lease awards is to increase the economic self-sufficiency of native Hawaiians through the provision of land. Beneficiaries with residential leases may also apply for and receive agricultural or pastoral lots.

Other than homestead leases, direct benefits of the current Hawaiian Home programs include: non-homestead leases ("general leases") for commercial, industrial, and other purposes; training and technical assistance, mainly to homestead lessees; loans to support homestead awards; and, Native Hawaiian Rehabilitation Fund programs, including grants, technical assistance, consultation, and loans for economic development. Other benefits include such things as water system development.

Revenues from non-homestead uses of Hawaiian Home lands are used first to meet the costs of running the department and then the cost of homestead development.

By and large, the form of direct and other benefits have developed as departmental policy and practices over time.

Many benefits, direct and indirect, are provided only to those who have homestead awards.

Not all native Hawaiians entitled to benefits under the Act want a homestead package with a house already built in an improved subdivision.

A native Hawaiian who does not have financial standing, for example, who cannot meet loan payments, will not be awarded a homestead. Until recently, if a native Hawaiian owned real estate, he also could not receive an award.

Hawaiian Home lands which have been awarded as homesteads are assessed in the same manner as privately held lands for real property tax purposes. Since Hawaiian Home lands cannot be alienated, it may be appropriate for such lands to be assessed differently.

>What is a waiting list and how does it work?

Once an application from a native Hawaiian is received and the applicant is determined to qualify as a beneficiary because of blood quantum and age, the applicant is placed on a waiting list for the island of his choice until the requested entitlement is available. Applicants remain on waiting lists between applying for a homestead lease and being awarded one.

The order that they appear on the waiting lists is based on a complex system of priority rankings which has developed over time. There were 7,901 applicants at the end of May, 1983. Of these, 4,075 applications were for residential homesteads on the island of Oahu.

Once on the waiting list, beneficiaries can wait as long as 30 years to receive an entitlement as a result of the inability of the DHHL to deliver benefits.

Beneficiaries have difficulty understanding delays, the DHHL programs, and procedures. Explanations of process and paper work and limited funding sound like "excuses".

Distribution of homestead leases is slow. Planning and design of projects, such as subdivisions, take time. On-site and off-site preparation and other project area improvements take a long time before homestead leases for a given subdivision can be awarded.

Lack of funds and staff mean even longer delays in delivery, even after planning is done.

Additional staff would be needed if more areas were to be planned and developed concurrently.

Until recently, there has been a restriction in the amount of acreage that could be awarded in a 5-year period. While this restriction has recently been lifted, DHHL operations are still geared to that old restriction.

Because applicants fail to notify DHHL of key current information, such as change of address or a death in the family, the DHHL cannot reach applicants to notify them of awards or changes in procedure.

Applicants on the list for 20 to 30 years may have been offered awards which they have turned down, either because they do not meet financial criteria or because of their personal choice. The DHHL defers such applications, yet these applicants maintain their position on the waiting lists.

Systems for management of the information files and using the information in the files on each of the 7,901 applicants on the various waiting lists as of May 31, 1983, are grossly inefficient. It is a time-consuming process to add or subtract information that belongs in an applicant's file. Recording and checking information on beneficiaries' needs and desires is also a time-consuming process, presenting a real management challenge. The retrieval of pertinent data about beneficiaries is difficult.

RECOMMENDATIONS

As soon as possible, the State of Hawaii and the United States should seek congressional approval for the amendment to the HHCA passed by the Hawaii State Legislature in 1982 which lowers the blood quantum for successorship. (12)
[See note 6]

The DHHL should remove unnecessary restrictions on benefits and expand the options for both non-homesteaders and homesteaders to receive their entitlements. Examples of ways of doing this are direct loans for homes on non-DHHL lands; down payments on homes through such means as an agreement of sale with the beneficiary meeting the remainder of payments; and the Task Force recommendation for designing and testing alternative development programs, such as awards of raw land with a waiver of water requirements, or cluster housing on smaller lots with common open space. (13)

Limits of financial restrictions should be set so as to avoid discrimination against native Hawaiians at either end of the economic scale. A real estate holding should not eliminate a beneficiary from accepting an award nor should a lack of any assets. (14)

The policy governing the selection for awards needs to be clearly and mutually understood by beneficiaries and the DHHL. Beneficiaries need to clearly understand the process for receiving their entitlements. (15)

Administrative services for the DHHL should be paid from State general funds, as are other State departments, rather than paid from revenues from Hawaiian Home lands that could be used directly for beneficiary programs. (16)

Until the DHHL can secure other sources of funds to finance the Hawaiian Homes program, it should continue the general leasing program, but utilize such revenues directly for rehabilitation purposes instead of for the administration and operating budget of the department. (17)

The present system for assigning rank on the waiting lists serves current programs adequately. When further options are developed, such as those for alternative development programs and others, modifications to the system which become necessary can be made at that time after providing public information and soliciting beneficiary input. (18)

The identity of persons on the DHHL waiting lists and the ranking of individuals on the waiting lists should be made available to the public. (19)

The waiting lists and any information derived from them should be computerized to facilitate managing the volume of the waiting lists efficiently and to allow for the prompt retrieval of data and statistics for reports and substantive information for policy formulation. (20)

A computerized system which could generate a profile or description of beneficiaries and their expressed needs and desires relative to location, lifestyles and means of economic self-sufficiency based on need assessments, surveys, or other methods should be developed and maintained over time to assist DHHL's program development. (21)

The DHHL should actively pursue land exchanges or acquisitions with government or private interests to acquire lands in areas of the State where no Hawaiian Home lands now exist but where a significant number of beneficiaries desire homestead lots. Examples of such areas are Lanai; East Maui; and Kona, Hawaii. (22) [See note 7]

ADVISORY COMMITTEE ON FUNDING SOURCES

FINDINGS

- >To better deal with the complex nature of the HHCA and the programs established under it requires particular expertise and knowledge not always found in government agencies. This may be due to the highly specialized or technical nature of the expertise required or to the hiring constraints of the government agency. In many cases, it is possible to enlist assistance from the general community in the form of a high level advisory committee.
- >While the Task Force suggests several means by which the distribution of homestead awards could be accelerated, other options could be developed and more detailed investigation and planning is needed on how to finance these alternative proposals.

RECOMMENDATIONS

The Governor should appoint within thirty days of the date of submission of this report a committee to advise him on financing the acceleration strategies. (23)

Persons appointed to this advisory committee should include a representative of the State executive branch, and experts in fields such as banking, real estate, land development, construction, and agriculture, and a representative from the beneficiary group. (24)

The Advisory Committee on Funding Sources should work with the Chairman of the Hawaiian Homes Commission and appropriate DHHL staff in making its recommendations. (25)

The recommendations of the Advisory Committee should be made within seven months after the submission of this report and should be made public promptly. (26)

STRATEGIES FOR ACCELERATION OF HOMESTEAD AWARDS*

FINDINGS

- >While current DHHL programs meet the needs of more applicants each year, there is no prospect that all eligible beneficiaries now on waiting lists can be accommodated unless some means can be found to accelerate substantially the award of homesteads.
- >As of May 1983, 7,901 eligible beneficiaries of the HHCA remain on waiting lists for homestead awards. Some of these applicants have waited for awards for over 30 years.
- >The DHHL staff estimates that basic site development costs for residential subdivisions, such as surveys, roads, utilities, and lot grading, average \$30,000 per lot at today's costs. The cost of construction of a single-family dwelling averages \$40,000 at today's costs.**
- >It is estimated that \$250 million would be needed to complete basic site developments, not including the cost of constructing houses for all beneficiaries now on the waiting lists. This estimate is based on current development costs and the number of beneficiaries on the waiting lists as of May 31, 1983.
- >Even if the DHHL were to discontinue most other programs and services and continue to expend most revenues at past levels so as to construct site improvements for new homestead awards, over forty years would be required to furnish site improvements at present day costs for all beneficiaries now on DHHL waiting lists.
- >The Task Force has formulated a strategy based on economic development which directly addresses the acceleration of the distribution of benefits. The major goal of the plan is to meet the existing beneficiary demand for land, as represented by the DHHL waiting lists.
- >Economic development involves raising standards of living for beneficiaries. This includes making possible home ownership, farming one's own land, acquiring valuable job

* These strategies were formulated by the Task Force with the assistance of DHHL staff and are based, in part, on DHHL research and analysis.

** See Appendix for Memorandum of June 29, 1983 from DHHL to the Task Force on cost estimates for construction.

skills, and being part of a community with access to good health, education and commercial services. The acceleration of homestead awards would benefit not only native Hawaiians, but would also be economically beneficial to many thousands of other people in the State. The acceleration program would bring increased prosperity to Hawaii.

- >The DHHL holds lands in areas of the State which are economically depressed and its programs can provide a significant stimulus for community development. An infusion of well-targetted public funds could attract a much larger amount of money from banks and other lending institutions to help place native Hawaiians on the land. Such a stimulus could also aid in the development of homes, farms, jobs, and dollars in areas such as Nanakuli, Molokai, Panaewa, Kawaihae and Puukapu, providing an infusion of ideas, funds and leadership in areas removed from Hawaii's economic mainstream.
- >It is understood that the financial resources of the Federal and State governments are limited and cannot provide billions of dollars in aid or damages for breach of trust. However, the State of Hawaii and the United States could fulfill the purposes and promise of the HHCA by providing substantial short-term funding for an acceleration strategy which would allow eligible beneficiaries to select homesteads and receive awards.
- >An Advisory Committee on Funding Sources has been recommended to secure funding for implementation of the acceleration strategy and to explore alternatives for securing private sector financing for home construction and farm and ranch development.
- >The initial stages of the acceleration strategy can be implemented without waiting until funding for the entire acceleration strategy is secured.
- >Unless strategies for the acceleration of homestead awards can be implemented, the vast majority of eligible native Hawaiians will not receive homestead awards.

RECOMMENDATIONS

To implement the acceleration strategy, the State of Hawaii and the United States should each make matching contributions of \$25 million per year in appropriations or needed services for a period of five years.(27)

The DHHL should take steps to implement the acceleration strategy by devoting most of its financial resources to the following:

- (a) a survey of the beneficiaries on the waiting lists to determine their choice of available options for awards;
- (b) the implementation of the existing departmental development plans;
- (c) the survey of lands to be awarded and the awarding of leases to beneficiaries;
- (d) the design and construction of site improvements, such as roads, water, utilities, sewer systems, and grading;
- (e) the continuation of planning for additional needed developments; and,
- (f) the maintenance of basic services for present homesteaders, including home repair and replacement.(28)

The DHHL should not finance or build any housing, except to implement existing housing commitments to applicants who have been notified that they will receive a residence lot with a house constructed on it. (29)

Present development plans of the DHHL, such as the Nanakuli Valley Development Plan, should be expanded to accommodate the vast majority of beneficiaries now on the waiting lists. (30)

Based on these development plans, land surveys and subdivision file plans should be completed which would permit DHHL to make leasehold awards quickly. (31)

Beneficiaries who receive residence awards under this accelerated plan should not be required to live on their homestead lands before the site improvements are completed and the beneficiaries are able to obtain financing to construct their homes. (32)

The DHHL should require economically qualified homesteaders to obtain funds for construction of residences

and capital for farms and ranches through existing public loan programs or through the private sector. (33)

The DHHL should actively assist homesteaders who cannot qualify for private sector financing in finding avenues to develop their awards. (34)

In order to allow beneficiaries to obtain credit in the private lending market, a revolving fund should be created composed of repayments from appropriate DHHL loan funds and other revenues. This revolving fund should be used to guarantee private sector financing. (35)

The DHHL should continue the current practice of cancelling and repossessing leaseholds if homesteaders fail to keep loan payments current. (36)

The Advisory Committee on Funding Sources should identify sources of funding to cover the various elements of the acceleration strategy within the time frames set out in this strategy. If within six months of its establishment the Advisory Committee is not successful in identifying all sources of funding needed to finance the acceleration strategy, including construction and farm and ranch development, then the recommendations for full Federal and State funding should be implemented. Further if financing to implement the acceleration strategy is not secured in time to meet the deadlines established herein, then the recommendations for Federal and State funding should be implemented. (37)

The findings and recommendations of the Advisory Committee on Funding sources should be made available to the beneficiaries and the public at the time they are presented to the Governor. (38)

The DHHL should begin immediately to pursue the initial steps outlined in the acceleration strategy. (39)

The United States Department of the Interior should immediately undertake a study of all existing Federal laws and pending legislative proposals to determine the extent to which any may facilitate the implementation and/or financing of the strategy for acceleration, giving particular attention to the existing Federal programs for housing for native Americans administered by the Department of Housing and Urban Development. (40)

The strategy for accelerating benefits should be implemented within the following time frames:

1. Within six months the DHHL should review the HHCA and prepare a State legislative proposal for amendments to the HHCA needed to implement the acceleration strategy. Changes in timing of occupancy, funding requirements and other statutory restrictions may be necessary to put the strategy into effect.
2. Within one year the beneficiary waiting lists should be assessed to determine the eligibility of each applicant, his desires as to an award, the location of the award desired, and a description of the type of residence or other award required.
3. Within two years existing DHHL development plans should be revised and expanded to provide for applicants presently on the waiting lists. The Nanakuli Valley Development Plan could be expanded to satisfy the present Oahu waiting list for residential awards. Development plans on other islands would satisfactorily meet most other waiting lists. In certain areas where Hawaiian Home lands are not available or development plans have not been established, a more extended period of time would be required because lands would need to be acquired through exchanges and development plans formulated.
4. Within three years detailed designs, construction drawings, and subdivision file plans should be completed for each homestead area where awards are to occur. After each subdivision file plan is completed, homestead leases should be awarded to the beneficiaries on the waiting list for that particular subdivision, even though the site improvements and amenities have not yet been completed. These homestead leases would be awarded during the first one to three years of the acceleration strategy.
5. Within five years all site improvements should be completed by the DHHL for leaseholds awarded. The DHHL should make no additional home loans during the five-year period in order to accumulate a revolving fund which will provide guarantees to the private sector for loans needed to construct homes and to develop farms and ranches. (41)

After the five steps described above have been achieved, the DHHL should direct its resources towards (1) assisting economically disadvantaged beneficiaries who could not obtain credit from other sources with the

construction of low cost houses and other enterprises which will contribute to self-sufficiency, and (2) providing homestead awards and site improvements for new applicants. (42)

Alternative Development Models

FINDINGS

- >If a full scale acceleration strategy is not funded, it may be possible to accelerate the distribution of homestead awards through other strategies, such as alternative development models. The alternative development models suggested here cannot be expected to accommodate all eligible beneficiaries on the waiting lists, but are intended to broaden the range of options.
- >Alternative development models are programs which the DHHL can develop in addition to its current programs. They would be intended to supplement the existing programs and to create additional opportunities for beneficiaries to receive their entitlements as established in the HHCA. The alternative development models would be designed to allow the DHHL to undertake developments that are less costly than current programs.
- >There are various components of development which can be modified and combined to create alternatives. These include the level of land improvements, types of housing, types and levels of financing, and the active participation of beneficiaries in development. Some of these alternatives have already been examined by the DHHL.
- >The DHHL development plans feature not only residential subdivisions and agricultural and ranch tracts, but also economic enterprises, like shopping facilities, industrial facilities and resorts, in the planned homestead areas. The enterprises can provide access to jobs and shopping for native Hawaiians and the general public. They will also give native Hawaiians the opportunity to engage in joint ventures in establishing and operating the new enterprises built on Hawaiian Home lands.
- >It will be necessary for the DHHL to have an indication of the number of beneficiaries interested in the options provided through the various alternative development models.

RECOMMENDATIONS

The DHHL should pursue development alternatives. Examples of alternatives which have been identified by the Task Force include:

- (a) Undeveloped raw land without any improvements whatsoever provided by the DHHL;
- (b) Minimally improved agricultural lots, such as where the provision of water is waived by the beneficiary and only a rough graded access is provided to the lots;
- (c) Cluster agricultural development where lessees could farm on a cooperative basis and certain facilities could be shared by a number of lessees;
- (d) Minimally improved residential lots, such as an ungraded lot with no housing provided by the DHHL;
- (e) Cluster housing development, especially for the island of Oahu, where lot sizes are smaller, density is greater than the typical subdivision, and adjacent open space is left for general common use by all lessees in the development;
- (f) General leases to beneficiaries with rights to transfer the lease to other eligible beneficiaries; and
- (g) Cluster housing especially planned for the needs of elderly native Hawaiian beneficiaries. (43)

The DHHL should conduct surveys of the beneficiaries and should hold public meetings to determine the number of beneficiaries interested in the proposed options. (44)

A prototype should be developed for each alternative development model selected. Prototypes should define the various alternatives in enough depth and detail so that feasibility and costs could be generally determined. Prototypes also should identify the conditions which a beneficiary would have to accept should he choose one of the alternative programs. For example, if a beneficiary were given the opportunity for an award of raw land, he would have to understand that the conditions of the award would include no improved access to the land and no water system. DHHL should clearly define such conditions, so that expectations would not be raised that improvements would eventually be made. (45)

Once a prototype is developed, DHHL should determine which Hawaiian Home lands would be appropriate sites for alternative development programs. Prototypes should be developed as pilot or demonstration projects. (46)

Alternative Programs Which Do Not Provide Land

FINDING

>Although the focus of beneficiary demands is on land, it is possible for the DHHL to examine ways to distribute benefits without providing land awards. There may be beneficiaries, for example, who already have property but who may not have the financial means to construct a home. Other beneficiaries may be able to meet monthly payments under conventional financing but may need help with a down payment for a home.

RECOMMENDATION

The DHHL should examine ways to distribute benefits not attached to the provision of land. These might include direct loans to beneficiaries for homes on non-Hawaiian Home lands, down payments for homes under agreements of sale with the beneficiary meeting the remainder of payments, and other innovative and creative options. (47)

Beneficiary Participation In Development

FINDING

>An important part of any development program is the creation of opportunities for beneficiaries to participate in development projects and to foster initiative using the skills and talents of beneficiaries. With some alternative development models, beneficiaries could actively take part in building a project. An example is self-help housing projects where beneficiaries in the same area might form a hui or association to build their own houses.

RECOMMENDATION

Opportunities should be created for the beneficiaries to work cooperatively on alternatives. (48)

Socio-Economic Considerations

FINDINGS

- >Socio-economic concerns and considerations are an important aspect of the alternative development models program. Socio-economic considerations include jobs, schools and educational opportunities, recreation, health services, emergency services, travelling distances, and other community necessities and amenities.
- >The effects of implementing any of the alternative development models need to be understood as clearly as possible. As an example, raw land distribution may have an initial appeal. In time, however, such awards may prove unsatisfactory for beneficiaries not prepared to live with rough roads, inadequate water supplies, and no electricity or telephones, or community facilities and services.

RECOMMENDATION

Socio-economic concerns should be examined in light of the needs and best interests of the beneficiaries. (49)

LAND TRANSFERS*

General Findings

- >The Hawaiian Homes Commission Act, in Section 204, provides that the Department of Hawaiian Home Lands may exchange title to its lands for public or private lands of equal value if the purpose of such exchange is to consolidate the holdings of the DHHL or to better effectuate the purposes of the Act. The Act requires the Secretary of the Interior to approve all such exchanges.
- >Actions since the passage of the HHCA, including Executive Orders and Proclamations of Territorial and State Governors, have resulted in the transfer of the management and use of various parcels of Hawaiian Home lands from the DHHL's jurisdiction to other agencies, departments and individuals. Over 30,000 acres of Hawaiian Home lands are currently devoted to uses which benefit the general public rather than the beneficiaries. These lands were the subject of land transfers and withdrawals which were not authorized by the HHCA.
- >Many of the transfers and withdrawals appear to be breaches of the Hawaiian Homes trust because Hawaiian Home lands were transferred in a manner not authorized by the Act.
- >The land exchange mechanism could be used to restore lands to the Hawaiian Homes trust to replace Hawaiian Home lands unlawfully conveyed by the Federal and State governments.
- >The land exchange mechanism could also be used to exchange Hawaiian Home lands for other public or private lands of equal value where DHHL holdings are of little present or potential future benefit to the beneficiaries.
- >If public ceded lands are included as replacement lands in a land exchange, the Office of Hawaiian Affairs may lose its share of the revenue from such ceded lands.

General Recommendations

While these unauthorized land transfers no longer occur, the State of Hawaii with Federal assistance must intensify its efforts to secure the return of lands wrongfully taken or recover compensation, in dollars, land, services or treasury credits, for the use of those lands. (50)

When the land exchange mechanism is utilized, priority should be given to restoring lands to the Hawaiian Homes

* See Appendix No. 12

trust for those Hawaiian Home lands unlawfully conveyed to the Federal and State governments. (51)

If public ceded lands are to be used as replacement lands in a land exchange, the DHHL and the Office of Hawaiian Affairs must work together to maximize the benefits to both trusts. (52)

Hawaiian Home lands to be exchanged should be appraised at the highest and best use for the land allowed by law, even if the lands are actually used for public projects such as schools or flood control channels. (53)

Governor's Executive Orders

FINDINGS

- >After the HHCA was enacted by Congress on July 9, 1921, governors of the Territory and the State of Hawaii were not authorized to transfer control and possession of Hawaiian Home lands to other public agencies by executive orders.
- >There have been thirty-four withdrawals of Hawaiian Home lands under executive orders, totalling 13,580 acres. One of these orders withdrew 11,124 acres for use as a game reserve. Two executive orders withdrew 1,356 acres at Lualualei, Oahu, for military use.
- >Of the thirty-four executive order withdrawals, only nine parcels with a total area of 892 acres are now controlled by the DHHL. The remaining 12,688 acres are controlled by federal, state and county agencies and are utilized for various public purposes.
- >Twenty-nine executive order withdrawals, covering 13,578 acres of land, were issued by Territorial governors. Five executive orders, covering two acres of land, were issued after Statehood.
- >Although executive orders are no longer used to transfer control of Hawaiian Home lands, none of the executive orders previously issued have been formally cancelled.
- >Until these executive orders are formally cancelled, they could be used by other agencies as a defense against claims for possession or compensation by the DHHL.

RECOMMENDATIONS

The Governor of the State of Hawaii should revoke all known executive orders covering Hawaiian Home lands within sixty days of the date of this report. (54)

Within one year of the date of submission of this report the DHHL should complete an assessment of the lands taken under executive orders to determine whether they are needed for beneficiary uses or can generate revenue. Some lands withdrawn by executive orders, such as airports, do have great potential for generating income and should be retained as Hawaiian Home lands under general leases. Lands not needed for beneficiary uses or revenue production should be earmarked for land exchanges. (55)

The DHHL should notify all agencies using Hawaiian Home lands that were transferred to them under executive orders that such orders were not authorized. The DHHL should recover the possession of those lands or the DHHL should advise the agency how it can secure lawful possession. The DHHL should take possession of its lands if other agencies fail to make appropriate arrangements to continue present uses. (56)

The United States and the DHHL should immediately commence negotiations to resolve the issues surrounding the extremely valuable lands of Lualualei, Oahu. Such issues include questions of ownership, possession, and compensation. If meaningful progress has not been made within one year of the date of submission of this report, the DHHL should initiate litigation to resolve the status of these lands. (57)

The Governor and the DHHL should establish a deadline of two years from the date of submission of this report to resolve other executive order uses by public agencies. If reasonable progress in resolving this problem has not been achieved within one year, the Department of the Interior should request the Department of Justice to initiate appropriate litigation. (58)

Governor's Proclamations

FINDINGS

>Governor's proclamations which were issued after passage of the HHCA and which withdrew Hawaiian Home lands for forest reserves appear to be unauthorized and unlawful.

- > Since the enactment of the HHCA, there have been nine governor's proclamations withdrawing 16,586 acres of Hawaiian Home lands for forest reserves. All of these governor's proclamations were acts of Territorial governors.
- > Only one parcel of forest reserve land generates any income for the DHHL. No rental or other consideration has ever been paid to the DHHL for the public use of other forest reserve lands.
- > Four pastoral leases to beneficiaries in the Hamakua Forest Reserve illustrate that homesteading or other uses may be possible for some of these lands. The vast majority of these lands, however, will continue to serve the needs of the general public rather than the direct needs of the beneficiaries.

RECOMMENDATIONS

Within 60 days of the date of submission of this report the Governor of the State of Hawaii should revoke all governor's proclamations which place Hawaiian Home lands in forest reserve status and the DHHL should enter into appropriate instruments of conveyance with the Department of Land and Natural Resources to allow its Division of Forestry to continue to manage these lands until their value can be assessed. (59)

Within one year of the date of submission of this report the DHHL should complete an assessment of its forest reserve lands on a tract by tract basis to determine whether the lands are suitable for beneficiary use, such as homesteading, income production or traditional native rights activities, or whether the lands have valuable surface or subsurface resources. (60)

The Governor and the DHHL should establish a deadline of two years to resolve the matter of governor's proclamations for forest reserves on Hawaiian Home lands. (61)

If Hawaiian Home lands in forest reserve status are of little value to the beneficiaries or are assessed to have little revenue-producing potential, such lands should be exchanged for other public or private lands which could be put to use for the beneficiaries. (62) [See note 8]

If reasonable progress in resolving this problem has not been achieved within one year of the date of submission of this report, the Department of the Interior should request the Department of Justice to initiate appropriate litigation. (63)

Land Exchanges As A Conveyance Method

FINDINGS

- >The HHCA allows the DHHL to exchange title to Hawaiian Home lands for other lands, privately or publicly owned, of an equal value in order to consolidate its holdings or to better effectuate the purposes of the HHCA. The Act requires the Secretary of the Interior to approve all such exchanges. Exchanges for public lands owned by the State must be approved by two-thirds of the members of the Board of Land and Natural Resources.
- >There have been seven exchanges of Hawaiian Home lands. Two were approved by congressional legislation and five were approved by the Secretary of the Interior.
- >Three of the seven exchanges do not conform to the provisions of the HHCA. Two of these exchanges were done on an acre for acre basis and were not supported by appraisals. In a third exchange the value of the lands to be conveyed by the DHHL were determined by tax assessments made years before the tax assessments which were used to value the replacement lands provided by the State.
- >In one land exchange the State of Hawaii retained the mineral rights to its lands, while the DHHL gave up its mineral rights for the lands it exchanged to the State. There is no documentation which shows that the value of mineral rights was considered in the tax assessments which formed the basis for the exchange.
- >Past land exchanges were initiated because Hawaiian Home lands were well situated for public purposes such as airports, schools, parks, sewage treatment plants, flood control channels, and roadways. The Hawaiian Homes Commission gave up its lands to be used for such public purposes before the Territory or State agreed on the amount and location of the replacement lands to be provided.
- >The practice of allowing Hawaiian Home lands to be used or altered by other public agencies before replacement lands are identified and committed to an exchange violates the HHCA because there is no assurance provided as to how or when the trust will receive lands of equal value in exchange. This practice also deprives native Hawaiian beneficiaries of the protection afforded by the independent review of such exchanges by the Secretary of the Interior. At present, the DHHL no longer allows Hawaiian Home lands to be used by other public agencies, pending the completion of land exchanges.

- >In past exchanges the Hawaiian Homes Commission has allowed parcels of land to be used for purposes which seriously reduce the value of surrounding Hawaiian Home lands without receiving compensation for the loss in value.
- >The Department of the Interior has not adopted any procedures for reviewing the DHHL land exchanges. It also has failed to delegate its responsibility to monitor and review these transactions to any specific office.
- >The three questionable land exchanges referred to above show that the Department of the Interior has not properly fulfilled its land exchange responsibilities as specified by the HHCA.

RECOMMENDATIONS

The Department of the Interior should establish procedures for reviewing DHHL land exchanges to ensure that such land exchanges receive prompt and careful scrutiny and that all of the requirements of the HHCA are satisfied before such exchanges are approved. (64)

The Department of the Interior should assign to one of its offices the responsibility for monitoring and reviewing DHHL land exchanges. (65)

Hawaiian Home lands to be exchanged should be appraised at the highest and best use for the land allowed by law, even if the lands are actually used for public projects such as schools or flood control channels. (66)

General Leases Administered by the Department of Land & Natural Resources

FINDINGS

- >The HHCA allows Hawaiian Home lands not needed for purposes of the Act and beneficiary use to be returned to the Department of Land and Natural Resources for general leasing. Until 1964, the Department of Land and Natural Resources was the only agency authorized to enter into general leases of Hawaiian Home Lands with non-beneficiaries. In 1964, the HHCA was amended to authorize the DHHL to enter into general leases of its own lands with non-beneficiaries in order to generate revenue.

- >After statehood, the Department of Land and Natural Resources issued four long-term general leases, primarily to United States military authorities, for approximately 332 acres of Hawaiian Home lands at \$1 each.
- >In the past decade the number of general leases and licenses administered by the Department of Land and Natural Resources has greatly decreased as the DHHL has gradually assumed the responsibility for general leasing its own lands.
- >Currently, the Department of Land and Natural Resources manages only 20 leases covering 16,406 acres of Hawaiian Home lands. These leases generate \$80,691 per year in rental payments.
- >At this time no purpose is served in many of the instances in which Hawaiian Home lands are being administered by the Department of Land and Natural Resources through a general leasing program.

RECOMMENDATIONS

The United States and the State of Hawaii should jointly rescind all general leases issued for nominal consideration within six months of the date of submission of this report. Within one year the United States and the DHHL should negotiate new leases for the use of these lands for fair compensation or the DHHL should seek possession of these lands. (67) [See note 9]

All existing general leases of Hawaiian Home lands managed by the Department of Land and Natural Resources should be assigned to the DHHL for further management unless such assignments are prohibited by law or unless greater revenues can be generated through pooling Hawaiian Home lands with other State lands. (68)

Licenses

FINDINGS

- >The HHCA authorizes the DHHL to issue licenses to the United States, public utility companies, churches, hospitals, public schools, post offices, theaters, garages and a variety of other users under a bewildering array of terms and conditions. Provisions for licenses in the rules and regulations of the DHHL impose further restrictions and conditions.
- >It is difficult to determine when a DHHL license is appropriate and what terms and restrictions the license should contain.

- >Formerly, the rules and regulations of DHHL required all licenses to be issued for \$1.00 per year. Present rules require license rentals to be established by appraisal unless the use benefits the DHHL or beneficiaries, in which case the rental may be nominal.
- >Many of the licenses issued under prior rules by the DHHL for nominal consideration do not primarily benefit the DHHL or the beneficiaries. Yet, such licenses have not been revoked nor has the DHHL attempted to negotiate new licenses for fair compensation.

RECOMMENDATIONS

The DHHL should allow licenses which primarily benefit the trust or the beneficiary to be issued for nominal compensation. The DHHL should require fair compensation for licenses which primarily benefit non-beneficiaries or the general public. (69)

Within six months of the date of submission of this report the DHHL should issue notices to all entities holding licenses for nominal rental which do not primarily benefit the DHHL or the beneficiaries. The notices should state that such licenses are not authorized by law and that the licenses are cancelled. The DHHL should offer to issue new licenses for fair compensation. (70)

If reasonable progress in resolving this problem has not been achieved within one year of the date of submission of this report, the Department of the Interior should request the Department of Justice to initiate appropriate litigation. (71)

Revocable Permits and Rights-of-Entry

FINDINGS

- >The DHHL has not adopted administrative rules for revocable permits or rights-of-entry. There is no formal policy defining the circumstances or conditions which would justify awarding a revocable permit as opposed to a license or a right-of-entry.

>Revocable permits have been issued for a variety of uses, including private residences, churches, and public services. Many rights-of-entry have been in existence for several years and licenses should have been issued for many of these uses.

RECOMMENDATIONS

The DHHL should adopt rules which define the conditions and circumstances under which revocable permits and rights-of-entry will be allowed and to ensure that these are issued on a fair and uniform basis. The DHHL should also set standards for compensation and the duration of such revocable permits and rights-of-entry. (72) [See note 10]

Other Unlawful Takings and Transfers

FINDINGS

>Some Hawaiian Home lands have been taken for use as schools and other public purposes. These takings appear to be unlawful. For example, 65 acres of lands in Nanakuli, Oahu are used by the State Department of Education for Nanakuli High School. There is no evidence that this site was lawfully transferred from the DHHL to the Department of Education. Public agencies continue to use many such lands without proper authority.

>Such takings have surfaced as a result of on-going attempts by the DHHL to obtain an accurate inventory of its lands. Additional takings may surface as the DHHL further refines its land inventory.

RECOMMENDATIONS

The DHHL should issue notices immediately to unauthorized users requesting that the user enter into an appropriate conveyance instrument for fair compensation or relinquish possession of Hawaiian Home lands. (73)

The Governor and the DHHL should establish a deadline of two years from the date of submission of this report to resolve the matter of unlawful takings and transfers of Hawaiian Home lands. (74)

If reasonable progress in resolving this problem has not been achieved within one year, the Department of the Interior should request the Department of Justice to initiate appropriate litigation. (75)

REMEDIES FOR IMPROPER LAND USE BY NON-BENEFICIARIES*

GENERAL FINDINGS

- > Large amounts of Hawaiian Home lands continue to be used for purposes which directly benefit the general public rather than beneficiaries. Such lands are used without appropriate authority and for little or no compensation.
- > The DHHL can resolve these problems by: (1) regaining possession and control of the lands; (2) completing land exchanges; or (3) obtaining compensation for present and past land use.
- > The DHHL cannot fulfill its trust obligation to hold and protect the lands which are the trust assets unless it resolves those questionable land withdrawals and uses.
- > The United States and the State of Hawaii have each contributed to these misuses and have received the beneficial use and enjoyment of some of these lands.

GENERAL RECOMMENDATIONS

The United States and the State of Hawaii should assure that the DHHL resolves these questionable withdrawals and uses and should assist the DHHL in all possible ways to resolve this problem promptly. (76)

The majority of the Task Force recommends that the United States should not proceed to dispose of surplus federal lands in Hawaii until its responsibilities for questionable land withdrawals and land uses are resolved. (77) [See note 11]

The Department of the Interior should assist the DHHL by channelling and monitoring all claims against Federal agencies for questionable withdrawals, renegotiation of contractual agreements, and compensation for past uses of land in a conscientious and prompt manner. (78)

* See Appendix No. 13

The Governor of Hawaii, as the Chief Executive of the State, should assist the DHHL by channelling and monitoring all claims against State and County agencies for questionable withdrawals, renegotiation of contractual agreements, and compensation for past uses of land in a conscientious and prompt manner. (79)

Land Exchanges As A Remedy

FINDINGS

- >The HHCA provides a procedure whereby the DHHL may exchange title to its lands for lands privately or publicly owned of an equal value.
- >In recent years, the DHHL has made several attempts to complete land exchanges but each attempt has been abandoned as administrations of the DHHL have changed. As a consequence no land exchange has been completed for Hawaiian Home lands since 1967.
- >Although several land exchanges are pending for small amounts of land, the present administration has elected not to pursue larger scale land exchanges until it gathers more information on lands in the Hawaiian Homes land inventory.
- >In the past, the Department of Land and Natural Resources has considered land exchanges with the DHHL a relatively low priority. At present, there is an express willingness by the Department of Land and Natural Resources to work out a comprehensive land exchange program with the DHHL.
- >Implementation of a comprehensive land exchange program may generate controversy and may have a high administrative cost, but it is unlikely that serious land use problems of the DHHL will be resolved unless the Hawaiian Homes Commission adopts an innovative and aggressive approach to land exchanges.

RECOMMENDATIONS

In order to resolve the improper uses of Hawaiian Home lands, the DHHL must aggressively seek land exchanges of lands occupied by non-beneficiaries for public or private lands of equal value. (80) [See note 12]

The Hawaiian Homes Commission should determine as a matter of policy the types of replacement lands needed for its programs. Once a policy for replacement lands has been established, the policy should not be altered even if the DHHL administrations change. (81)

If Federal law permits, the DHHL should consider land exchanges with the United States for Hawaiian Home lands in use by Federal agencies for little or no compensation. (82)

The Governor and State agencies, such as the Department of Land and Natural Resources and the Department of Accounting and General Services, must designate Hawaiian Home land exchanges as a high priority so meaningful progress can be made on large scale exchanges. (83)

The Department of Land and Natural Resources and the DHHL should reach a written agreement at the highest levels on the land exchange process. This agreement should specify the steps which each agency agrees to complete to conclude the exchange, the staff responsible for completing each step, and an estimated completion date. Each agency should establish Hawaiian Home land exchanges as the primary responsibility of one individual who should not be removed from the assignment to assist with other short-term agency demands. (84)

Compensation For Present Use By Non-Beneficiaries

FINDINGS

- >In the last decade the DHHL has begun to assert the right of beneficiaries to compensation for the unauthorized use of Hawaiian Home lands for the first time. It has regained possession of some lands and has demanded possession or compensation for others.
- >Such claims often involve long and complex lawsuits, but the rewards can be great. A lawsuit involving 91.6 acres of Hawaiian Home lands withdrawn through a Governor's Executive Order for General Lyman Airfield in Hilo has greatly increased the revenue produced from Hawaiian Home lands and has assisted the settlement of similar unauthorized uses at the Waimea-Kohala and Molokai airports.
- >Other uses by public agencies which are unauthorized may also generate substantial revenues for the DHHL if claims can be proven and proper compensation awarded. These claims include the following:

1. Portions of the Naval Transmitting Station and Depot at Lualualei, Oahu, set aside by Governor's Executive Orders.
 2. Leases and licenses issued for one dollar a year to the United States for military purposes.
 3. Various State schools located on Hawaiian Home lands for no compensation or under improper authority.
- >If the DHHL allocates the staff time and resources needed to resolve such claims, it appears likely that additional compensation secured would more than reimburse the DHHL for any resources expended.

RECOMMENDATIONS

The DHHL should set aside the staff time and resources needed to recover or obtain compensation for Hawaiian Home lands in use by non-beneficiaries. (85)

Selected staff of the DHHL should be instructed to pursue such claims as their primary assignment. (86)

Notices should be issued to all unauthorized users requesting fair compensation or possession of the parcels involved unless the Hawaiian Homes Commission makes express findings that a particular use primarily benefits the beneficiaries. In such cases the DHHL should issue a license or other form of conveyance for a limited term to allow the use to continue under a proper authority. (87) [See note 13]

Compensation For Improper Past Use

FINDINGS

>From the beginning of the Hawaiian Homes program, large amounts of Hawaiian Home lands have been used for purposes which benefit the general public rather than the beneficiaries of the HHCA. Little or no compensation has been paid to the DHHL for such uses.

>As a result, eligible native Hawaiians have been deprived of the beneficial use of this land as well as revenues for use of this land by others.

- >In some instances, use of Hawaiian Home lands for public projects has greatly reduced the value of adjacent Hawaiian Home lands for homesteading.
- >This misuse of Hawaiian Home lands appears to be a breach of trust for which compensation is due and owing.
- >Claims for present possession or compensation are ordinarily joined with claims for wrongful back use. However, damage claims for wrongful back use often substantially delay settlements and compensation for present use.

RECOMMENDATIONS

The DHHL should seek possession or compensation, in money, land, services, treasury credits or other appropriate methods, as soon as possible for all lands which it claims are unlawfully used by other agencies or individuals. (88)

If the DHHL is forced to initiate a lawsuit, it should make claims for wrongful back use, but should place its priority on resolving present uses and compensation problems. (89)

The DHHL and native Hawaiians should seek effective remedies for past abuses of Hawaiian Home lands from the State and/or Federal governments. Litigation should be pursued only as a last resort. (90)

Questions of compensation for improper past use of Hawaiian Home lands by the State and Federal governments could be resolved through funding of the "Strategies for the Acceleration of Homestead Awards" described elsewhere in this report. (91)

The DHHL should not waive claims to back compensation for wrongful past use. If such claims cannot be settled, all public agencies involved should settle on-going use problems, but the DHHL should expressly reserve the right to prosecute or defend claims for back use in the future. (92)

LANDS NOT CURRENTLY USED BY THE BENEFICIARIES*

FINDINGS

- >It is estimated that 66% of the land inventory of the DHHL, or approximately 123,000 acres of land, are not currently used for homesteading purposes or do not generate significant revenues.
- >At least 30,000 to 40,000 acres are either not usable because of physical characteristics or are used for public purposes with minimal compensation to the DHHL.
- >Other large tracts of Hawaiian Home lands totalling approximately 88,000 acres are leased to private interests but generate relatively modest revenues.
- >Native Hawaiians have been deprived of the beneficial use of some of these lands because of land use laws which have designated Hawaiian Home lands as forest reserves and conservation areas. Hawaiian Home lands are not subject to such land use laws unless the lands are leased to non-beneficiaries.**
- >The Hawaiian Homes Commission has passed a rule which requires building structures or improvements constructed by beneficiaries to comply with all building and zoning codes and other ordinances and regulations of the counties. This rule imposes additional restrictions on the use of Hawaiian Home lands by the beneficiaries which are not required by law.
- >One means by which the DHHL could cause lands of little value to the beneficiaries to contribute towards the program is to exchange such lands for more suitable lands.
- >If Hawaiian Home lands are exchanged with the State of Hawaii and income-producing ceded lands are included as replacement lands in the exchange, then the Office of Hawaiian Affairs may lose its share of the revenue from such ceded lands.

* See Appendix No. 14

** See back-up paper #11 on Hawaiian Home lands and land use restrictions by other public agencies in the Appendix.

RECOMMENDATIONS

The DHHL, guided by the position that State and County land use laws do not apply to Hawaiian Home lands unless they are leased to non-beneficiaries, should examine its lands not now under homestead or general lease to establish whether the lands can be used more effectively for the purposes of the Act. (93)

The DHHL should amend its rules which require beneficiaries to comply with zoning and land use laws so that the DHHL retains the authority to determine whether beneficiaries should comply with zoning and land use restrictions. (94)

The DHHL should assess these lands to determine whether the lands may be required for homesteading or revenue production, including the development of resources such as mineral, water or geothermal. Following the assessment, the DHHL should develop policies for those lands which are not suitable for the purposes described above. The DHHL should determine whether such lands should be exchanged for other lands of greater utility or should be retained for future use. (95)

The DHHL should enter into public or private land exchanges to obtain replacement lands for Hawaiian Home lands which have little potential for use by the beneficiaries or for general leasing to non-beneficiaries for revenue. (96)

If State-owned ceded lands are to be used as replacement lands in a land exchange, the DHHL and the Office of Hawaiian Affairs must work together to maximize the benefits to both trusts. (97)

The Governor should ask the key State agencies* involved in a public land exchange to cooperate by placing a high priority upon consummating the exchange; by providing him with a timetable showing when the exchange will be achieved; and by proceeding to achieve the exchange by the date specified. The Task Force understands that large scale exchanges are complex and inevitably time-consuming but recommends that the timetable provide for the completion of such exchanges within no more than five years from the date of submission of the Task Force report. (98)

* These key State agencies are the Department of Hawaiian Home Lands, the Department of Land and Natural Resources, and the Department of Accounting and General Services.

TRADITIONAL AND CULTURAL CONCERNS

FINDINGS

- >There is no reference to native rights or cultural practices in the HHCA as amended or the rules and regulations of the Hawaiian Homes Commission.
- >Section 7-1 of the Hawaii Revised Statutes does not prevent the Hawaiian Homes Commission or the DHHL from acknowledging native Hawaiian rights, cultural or traditional practices or from implementing regulatory provisions acknowledging such rights.
- >Rehabilitation of the native Hawaiian implies that traditional and cultural practices of native beneficiaries, to the extent not precluded by law, should be respected and acknowledged by the DHHL in order to enable native beneficiaries to return to their lands and to provide for their self-sufficiency and initiative and for the preservation of their culture.
- >Native rights should include but are not limited to the following:
 1. Rights to gather, hunt and fish for subsistence and livelihood purposes;
 2. Rights to have access to the mountains and the sea and to traditional trails;
 3. Right of worship and access to sacred places of worship; and,
 4. Rights to running water for subsistence and agricultural purposes.

RECOMMENDATIONS

The Hawaiian Homes Commission should adopt policies and promulgate rules and regulations acknowledging the traditional and cultural rights of the native Hawaiian people. (99)

Leases or other legal documents issued by the DHHL which award rights to land to native beneficiaries or others should contain provisions whereby the traditional and cultural use rights of native Hawaiians are acknowledged and allowed on Hawaiian Home lands. (100)

The Hawaiian Homes Commission and the DHHL should adopt policies and procedures whereby native Hawaiians, or associations or hui of which they are members, may obtain access to Hawaiian Home lands in order to exercise native rights such as gathering, fishing, hunting and religious worship. (101)

MINERAL & OTHER TRUST ASSETS

FINDINGS

- >The DHHL currently has no active program by which it can identify surface or subsurface natural resources and minerals, such as timber, geothermal, water, sand, or coral, which constitute part of the Hawaiian Homes trust.
- >The compilation of such an inventory of mineral deposits and other natural resources is not and should not be within the scope of expertise of the Department of Hawaiian Home Lands staff.
- >The State of Hawaii through its various agencies and the University of Hawaii has identified such resources on public lands but has not extended its efforts to Hawaiian Home lands.
- >The identification of potential or existing natural resources and minerals should be achieved since: (1) the correct valuation of lands exchanged requires that the value of such surface and subsurface resources be considered; (2) leasing and licensing for the extraction of such resources could provide increased revenue and alternative sources of funding for the Department of Hawaiian Home Lands; and, (3) the DHHL or its lessees may be able to use these assets directly.
- >In at least one land exchange, the DHHL granted title to Hawaiian Home lands with mineral rights, but the Department of Land and Natural Resources reserved to the State the mineral rights to the replacement lands provided.
- >The Task Force has not explored problems concerning water resources or offshore assets because of the scope and complexity of the problem and the limited time available for the Task Force's work. Similarly, the Task Force has not explored whether some Hawaiian Home lands might contain

cultural resources which should be identified, protected, enhanced, and/or developed for the benefit of native Hawaiians. Examples of cultural resources are historical and/or archaeological sites and artifacts or sources of natural materials for native crafts and arts used for religious or social purposes.

RECOMMENDATIONS

The State of Hawaii should identify mineral and other natural resources on Hawaiian Home lands, with the priority of identification being given to lands to be exchanged. The United States should assist the State in identifying and assessing these resources. (102)

If efforts involving land exchanges would be delayed by the above identification process, the Federal-State Task Force recommends that only known natural resources should be appraised and their value included in the total value of lands exchanged. (103)

The DHHL and the Department of Land and Natural Resources should treat mineral rights consistently in land exchanges. Both agencies should either include or exclude mineral rights from conveyances. (104)

Questions concerning water, offshore, and cultural resources merit further study by the DHHL and others such as the Office of Hawaiian Affairs, the University of Hawaii, other public agencies, or private foundations. (105)

LAND INVENTORY DISCREPANCIES*

Discrepancies Between The Acreage Designated In The Act and Current Inventories

FINDINGS

>The original provisions of the HHCA purported to set aside 203,500 acres, more or less, as Hawaiian Home lands. Subsequent additions and withdrawals authorized by Congress as well as land exchanges should result in about 207,695 acres in the current Hawaiian Homes land inventory.

* See Appendix No. 15

- >The United States did not attempt a comprehensive inventory or survey of Hawaiian Home lands before transferring title to these trust assets to the State of Hawaii at statehood.
- >Modern land inventories show between 187,500 acres and 192,000 acres as Hawaiian Home lands. The best documented current estimate is 187,542 acres in the Kaeo Report, which includes several thousand acres of unresolved claims. If such claims are resolved adversely to the Hawaiian Homes Commission, this may further erode the final inventory tally.
- >Lands originally set aside by Congress in the HHCA were described only by ahupua'a or land division, name and only a general designation of acreage was given. No metes and bounds descriptions or other survey information was provided for Hawaiian Home lands originally set aside by Congress.
- >The Task Force has conducted an extensive search for maps which designate the original lands set aside as Hawaiian Home lands. Numerous sources have been consulted both in Hawaii and Washington, D.C., but no such maps can be found.
- >The lack of survey data or maps makes it most difficult to determine which lands Congress intended to set aside as Hawaiian Home lands.
- >These problems are compounded by difficulties in determining which lands were required to be excluded from becoming Hawaiian Home lands by the terms of the HHCA. Lands designated as forest reserve, cultivated sugar lands, or public lands held under certificate of occupation, homestead lease, right of purchase lease, or special homestead agreement at the date of enactment of the HHCA cannot be considered Hawaiian Home lands. Congress apparently considered some exclusions but not others when it designated the acreages specified in the Act.
- >In some instances poor surveys also compound the problem.
- >The Task Force conducted a detailed review of the acreage specified by the Act and the acreage actually received. In this review no evidence was discovered which would suggest that land thefts, fraud, or other wrongdoings caused the land inventory discrepancies.
- >Through an analysis of individual tracts it is possible to identify a probable basis for the acreage designations specified in the Act for most tracts and to arrive at reasonable explanations for most discrepancies between the acreage actually received.

>For other tracts, as discussed in an appendix to this report, the discrepancies are simply too large to be explained in terms of exclusions or survey error. The Task Force has suggested some possible explanations for some of the larger discrepancies.

RECOMMENDATIONS

While further research might shed light on some discrepancies, such research will probably produce few practical results and should be a low priority for the DHHL. This research could be a fascinating project for University of Hawaii law school or other advanced level students interested in native rights and Hawaii land law. (106)

A few of the major discrepancies in tracts such as Luaualalei, Anahola, and Kalaupapa merit further study by the DHHL. (107)

Discrepancies Between Current Inventories

FINDINGS

>The DHHL does not have a complete or accurate inventory of the Hawaiian Home lands for which it claims responsibility.

>Several inventories of Hawaiian Home lands have been prepared. A Land Inventory and Land Use Study, by Akinaka and Dunn and referred to as the Akinaka Study, was prepared in 1972. The Income and Maintenance Branch of the DHHL maintains a listing of Hawaiian Home lands indexed by tax map keys referred to as the "Blue Book". The DHHL lacks references to the sources and data which support the acreage estimates and conclusions made in these inventories.

>At the request of the Task Force, the DHHL has prepared another inventory, referred to as the Kaeo Report, which provides the department's current best estimate of its present land inventory. The Kaeo Report includes a tract by tract analysis of the DHHL lands with references to surveys, land conveyances and other data which support the estimates.

>The approach taken in compiling the Kaeo report was reviewed by experts from the Bureau of Land Management of the Department of the Interior. They concluded that the approach is as effective as any, given historical sources

for such information in the State of Hawaii, and that all of the references for each tract are valuable elements of a viable land record. The Task Force concurs with the Department of the Interior experts.

- >The Kaeo Report estimates that the Hawaiian Homes land inventory should consist of 187,542 acres. This total is considerably less than estimates made in other inventories, even though the estimate includes disputed land claims which have yet to be resolved.
- >Many of the major discrepancies between the various land inventories can be readily explained.
- >Nevertheless, the DHHL cannot reconcile other discrepancies in the inventories at this time. Some data used in the Kaeo Report conflicts with records of the Department of Taxation. The Department of Taxation records form the basis for the Blue Book inventory. The Blue Book also contains errors. The Kaeo Report estimates and the Blue Book estimates also classify some land tracts in different ways, making comparisons and reconciliation difficult.

RECOMMENDATIONS

Tax map keys should continue to be the basic system of reference for the Hawaiian Homes land inventory because they represent the most readily available and common means of property identification in the State of Hawaii. (108)

The Kaeo Report, which is an inventory of Hawaiian Home lands based on tracts, and the Blue Book, which contains property data based on tax map keys, should be reconciled as quickly as possible. If discrepancies result for reasons other than computation errors, the acreage estimates and supporting data in the Kaeo Report should be submitted to the Survey Division of the Department of Accounting and General Services for verification and forwarded through channels to correct the Department of Taxation records. After the Department of Taxation records are corrected, the Blue Book should be adjusted to reflect accurate acreage totals. (109)

The DHHL should permanently maintain and update the Kaeo Report to provide a historical index for all tracts in the Hawaiian Homes land inventory. (110)

For large acreage discrepancies or lands of great value, a detailed assessment should be made to determine the verification required. Verification may require surveys or additional research. As acreages are verified, these figures should also be submitted through the established channels to correct the Department of Taxation records. This action should ultimately provide the DHHL with an accurate inventory and should resolve existing discrepancies. (111)

Until the Blue Book and the Kaeo Report are reconciled, the Kaeo Report should be consulted as the basic reference document for questions as to ownership of Hawaiian Home lands. (112)

Separate categories should be established and maintained in the DHHL land inventory system for settled and unresolved land claims. (113)

Unless the data base for the Akinaka Study can be easily secured and utilized, little purpose will be served in reconciling the present records of the DHHL to the Akinaka Study. (114)

The Akinaka Study continues to provide a very useful graphic display of most Hawaiian Home lands. A short supplement to the Akinaka Study should be prepared which notes the major corrections which need to be made in the study. (115)

In the future, consultants preparing studies such as land inventories should be required to furnish the DHHL with all base data which support their studies. (116)

RECORD KEEPING & ASSOCIATED PROBLEMS*

FINDINGS

>The DHHL manages general leases, licenses, revocable permits, rights-of-entry, and homestead leases. There exists, however, no central docket in which all of the data related to each parcel of the Hawaiian Homes land inventory can be located. The DHHL also has no automated system for data collection and preservation. Each of the thirty-three major tracts of Hawaiian Home lands designated in the HHCA should be the subject of a file which shows the complete history of the tract and its parcels and which clearly records all leases, permits, and other instruments and documents which have encumbered or are encumbering the land.

* See Appendix No. 16

- >The DHHL has been unable to reconcile differences between land acreage estimates of its Income and Maintenance Branch in the Blue Book and the estimates compiled by its legal staff in the Kaeo Report. No administrative procedures have been developed to achieve a reconciliation. State departments involved in this matter have not made such verification a high priority.
- >The development and maintenance by the DHHL of a perfected land inventory will be difficult to achieve as long as the department remains subject to present statutory restrictions on hiring. Present restrictions force the DHHL to dismiss contract personnel after six years. As a result, the DHHL has been unable to keep a core of key personnel who have developed the experience needed to properly manage and maintain the DHHL record keeping systems.

RECOMMENDATIONS

The DHHL should compile and maintain an historical index of its lands, listing every action and encumbrance affecting each tract in its inventory. All data related to each parcel should be located in one place. (117)

The DHHL should examine the possibility of automating its lease management record keeping system. To do this will require expert advice through a contract or other arrangements for services from either the public or private sector. Such technical expertise should provide advice as to whether the department should rely upon computer services from the State or whether it should acquire its own equipment. (118)

Appropriate legislation should be sought to remove the restrictions on hiring by the DHHL to allow the department to retain key contract employees on a long-term basis. (119)

FINANCIAL MANAGEMENT

FINDINGS

- >To maximize revenues, to be able to make sound management decisions, and to carry out its trust responsibilities, the DHHL needs to make improvements in its financial management and reporting systems.

- >In its review of the programs of the DHHL, the Office of the Inspector General of the Department of the Interior found that cash management has not been as effective as possible, complete financial statements have not been prepared, the DHHL accounting system was unauditable, and the annual report which the department is required to prepare was not based on entirely accurate data. Since the release of the Inspector General's report, the DHHL has prepared a plan to meet the suggestions contained in that report and has begun to make substantial improvements in its financial management and reporting systems.
- >Personnel constraints in the Fiscal Office of the DHHL mean that it will take time to bring the financial management and reporting systems to a satisfactory condition.
- >"Excess" cash funds of the DHHL can be invested to maximize revenues from interest on investments. The State Department of Budget and Finance invests those "excess" cash funds on behalf of the DHHL. In the past there have been instances when the DHHL was not advised that it had funds which could have been invested and has not made a practice of monitoring "excess" cash funds.
- >Advice from other agencies as well as the private sector in the area of financial management and investment practices would be valuable to the DHHL.

RECOMMENDATIONS

The Chairman of the Hawaiian Homes Commission should monitor the plan which the Fiscal Office of the DHHL has prepared to meet suggestions contained in the Inspector General's report to make certain that all items contained in that plan are completed in a satisfactory and timely manner. (120)

The DHHL should establish a Financial Review Advisory Committee which would be convened annually for the purpose of reviewing the financial efforts of the DHHL in the fiscal and accounting areas. This advisory committee would have representatives from the DHHL, the Department of Budget and Finance, the Department of Accounting and General Services, the Legislative Auditor, the Office of the Inspector General of the Department of the Interior, and the private sector. (121)

The DHHL should reach an agreement with the State Department of Budget and Finance whereby the Chairman of the Hawaiian Homes Commission is advised when the Department of Budget and Finance receives funds without specific instructions on what portion of those funds should be invested for Hawaiian Homes purposes. (122)

FUTURE STRUCTURE OF THE DEPARTMENT OF HAWAIIAN HOME LANDS

FINDINGS:

- >As a department of the State of Hawaii, the DHHL is subject to laws, policies, and regulations governing all such governmental agencies. The DHHL can be considered a special purpose agency in its administration of the Hawaiian Homes trust.
- >The Hawaiian Homes Commission and the DHHL face constraints in carrying out their functions, particularly in generating revenue, in investing their own income, and in maintaining hiring practices flexible enough to meet their mission of carrying out the purposes of the HHCA.
- >Alternative and creative solutions to existing constraints may be appropriate in administering the trust established by the HHCA. One such solution may be found in the public authority device, which has been used throughout the United States and the world to meet special situations. A public authority is a semi-autonomous government corporation established by law for specific purposes. This device can provide flexibility and a degree of autonomy with accountability, especially in the area of generating revenue through the issuance of bonds.*

RECOMMENDATIONS:

The Task Force recommends that the public authority device be examined as a possible means of providing creative solutions to current constraints and problems of administering the Hawaiian Homes trust. This device should be examined to see if it can aid in the generation of revenue to carry out the purposes of the HHCA. The authority device should also be examined to see if it can provide an effective mechanism for development. It should also be examined to see if it can provide flexibility in hiring practices to more effectively accommodate the personnel needs of the department. If the public authority device is found to be appropriate, all or part of the Hawaiian Homes program should be converted to a public authority of the State of Hawaii reporting to the Office of the Governor.
(123)

If the DHHL is not changed to an authority, the Task Force recommends that ways to achieve the objectives of a hiring and bonding authority as well as the ability for the Hawaiian Homes Commission and the DHHL to invest their own income should be vigorously pursued. (124)

* See Appendix No. 17

MANAGEMENT

FINDINGS

- >The Task Force review of many DHHL activities showed a need for increased staff and further expertise in a variety of disciplines throughout the Department of Hawaiian Home Lands. A management audit would address job descriptions, organizational structure, staffing patterns, and other such considerations. Such an audit would provide guidance to the DHHL on how it can be organized and managed to carry out its daily functions, potentially including the implementation of the Task Force recommendations.
- >The need for computerization in several areas of DHHL operations has become evident to the Task Force in its review. Currently, the DHHL handles a great deal of data on land and people. In addition, fiscal management is constrained by the lack of staff and the volume of work. It will have to be determined whether it is more efficient to utilize microcomputers for fiscal management and separate that system from a general information system. Computerization can be very valuable for formulating policy as well as encouraging the analysis of data. Computerization could help to increase DHHL productivity within the necessary staff constraints of the department.

RECOMMENDATION

A management audit should be undertaken within a year from the date of submission of this report to address the numbers and qualifications of staff in various areas of expertise which are necessary for the DHHL to carry out its mission promptly and efficiently. The management audit should review the employment status of DHHL personnel, such as contract versus civil service. (125)

The DHHL should develop an information management system which can handle its land inventory, waiting lists, and homesteader files. That system or a separate one should also be developed to include fiscal management. (126)

INFORMATION AND ACCESS

FINDINGS

- > Misunderstandings and misconceptions about the HHCA and DHHL programs exist. Substantive information provides a positive step towards dispelling these and is also important in developing realistic expectations on the part of beneficiaries.
- > Beneficiaries are the primary group needing access to information about the HHCA and DHHL programs. Others who need information are the community at large, policy and decision-makers, the Hawaiian Homes Commission, and the DHHL staff.
- > Governmental procedures and regulations are often discouraging to citizens.
- > Beneficiaries feel they do not have ready access to information about the homesteading and other DHHL programs or options available to them.
- > Beneficiaries feel there are not enough opportunities for them to participate in decision-making which leads to policies governing the use of assets and the distribution of benefits.

RECOMMENDATIONS

The DHHL should review brochures, pamphlets and other informational material about the HHCA and DHHL programs to make sure that they are clearly understandable to beneficiaries and others as well as to look for areas of information not covered by the existing material. (127)

Statutory mandates and DHHL policy should be identified and clearly set forth in a "policy and procedures" manual. This would be useful to beneficiaries, decision-makers, and contractual consultants. (128)

The DHHL should explore a range of methods to gather information, such as surveys, forums, meetings, workshops, and the like, in addition to the formal Commission meetings. (129)

The DHHL should consider designating staff members at project offices as part-time ombudsmen. Such staff members would be available to answer inquiries, receive concerns, complaints and problems of the beneficiaries, and ensure that the appropriate division of the DHHL provides the beneficiary with an answer which is prompt and responsive. (130)

The DHHL should seek innovative approaches for outreach, extension, counseling or similar activities that can be utilized in beneficiary programs throughout the department. As an example, some agencies have initiated Saturday open houses for informational purposes. (131)

CONCLUSION

FINDINGS

- >The Task Force has considered the broad range of issues associated with the implementation of the Hawaiian Homes Commission Act of 1920 in the 1980's. The focus of Task Force efforts has been those issues and those DHHL operations which relate to available lands and the distribution such lands to the beneficiaries of the Act.
- >The Task Force finds that there is an urgent need and a clear responsibility for the Federal and State governments to work together to solve the problems and fulfill the promises of the HHCA now and for the future. The Task Force offers its recommendations as directions for the beginning steps of effectuating the purposes of the HHCA and accelerating the benefits of the Act to the beneficiaries.
- >At public hearings on the preliminary draft report concern was expressed as to how beneficiaries will know which recommendations of the Federal-State Task Force on the Hawaiian Homes Commission Act will be implemented and when.

RECOMMENDATIONS

The Task Force urges the Secretary and the Governor to sustain the momentum toward better implementation of the HHCA which was begun when they established the Task Force. The Task Force recommends that the Secretary and the Governor continue to exercise strong leadership and offer incentives so that the ideas contained in the findings, as well as the steps set out in the recommendations, become agenda items of action for the many public and private offices, organizations, and individuals who have responsibilities and interests affecting the native Hawaiian people as beneficiaries of the Hawaiian Homes Commission Act. (132)

Both the Governor and the Secretary of the Interior should issue a written response to the findings and recommendations of the Task Force specifying how recommendations will be implemented. (133)

The Task Force further recommends that the Secretary of the Interior and the Governor convene a Federal-State Task Force to meet approximately one year from the date of submission of this report in order to assess and to report back to them upon progress in the implementation of these recommendations. (134)

NOTES

1. The Federal members agree that the efficient conduct of Hawaiian Homes Commission business requires the designation of an officer or employee of the Department of the Interior as a point of contact in the United States government, but they believe that the Secretary of the Interior should be permitted to decide whether it is necessary and appropriate that the designee or designees serve in Washington, D.C., or in Hawaii or both.

2. Dissent by Kamuela Price:

On behalf of the Hou Hawaiians and other native Hawaiian beneficiaries whom I represent, I must dissent from any and all recommendations that the United States Congress be requested to change or modify the HHCA at this time.

Congressional action on amendments to the HHCA or new Federal legislation pertaining to the HHCA should be deferred until all eligible beneficiaries currently on DHHL waiting lists are awarded leases to their homestead land. Once these beneficiaries have their leases, the native Hawaiian homesteaders and leaseholders should vote on whether any new HHCA legislation or amendment is desired. The results of this vote should be presented to Congress with any proposed Federal legislation or amendment changing the HHCA.

I fear that at this time Congress might inadvertently or otherwise abort the HHCA or change it in a manner detrimental to the best interests of the beneficiaries.

3. See note 2 above, "Dissent by Kamuela Price."

4. See note 2 above, "Dissent by Kamuela Price."

5. See note 2 above, "Dissent by Kamuela Price."

6. See note 2 above, "Dissent by Kamuela Price."

7. Dissent and Concurring Opinion of Kamuela Price:

My constituency, the Hou Hawaiians, and other native Hawaiians take the position that there should be no new land exchanges until all past unlawful Federal and State conveyance problems have been resolved and the DHHL has made an in-depth study of the mineral, cultural and other Hawaiian Homestead land resources.

8. See note 7 above, "Dissent and Concurring Opinion of Kamuela Price."
9. On behalf of his constituency Mr. Kamuela Price has recommended that general leases should be made available to beneficiaries for a nominal sum on a preferential basis.
10. On behalf of his constituency Mr. Kamuela Price has recommended that revocable permits should be given to beneficiaries for a nominal sum on a preferential basis.
11. The Federal members must dissent from this recommendation because (1) there is a Federal law and a series of well-defined procedures for the disposition of Federal surplus property wherever located, and (2) there has been court action on a directly relevant case in Hawaii recently. Thus, other authorities and other forums than the Federal-State Task Force exist for the appropriate resolution of specific surplus property issues with respect to Hawaiian Home lands.
12. See note 7 above, "Dissent and Concurring Opinion of Kamuela Price."

We concur that where land exchanges have not been completed, the land should either be returned or DHHL should be given land of equal acreage and value. We further recommend as a protective measure, should DHHL make an exchange that it be of at least equal value and acreage.

13. Dissent and Concurring Opinion of Kamuela Price:

The Hou Hawaiians and constituency contend that leases issued to the United States government for military purposes for one dollar per year should remain in effect if the United States government agrees to give 25 million dollars annually for the next five years to accelerate the Hawaiian Homestead program.