United States Senate

MEMORANDUM

Miscellaneous for file on House Land Claims
TOGETHER WITH A HISTORY OF THE DETERMINATION AND
DISPOSITION OF THE PROPERTY RIGHTS OF NATIVE HAWAIIANS,
BEING A COMPARISON OF THESE TWO SITUATIONS IN
THE LIGHT OF PROPOSING A SETTLEMENT OF HAWAIIAN NATIVE LAND CLAIMS

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A. THE ALASKA SETTLEMENT

The accompanying CRS report ("Alaska Native Land Claims Settlement Act of 1971 (PL 92-203): History and Analysis") outlines the history of land tenure in Alaska as it pertains to native aboriginal claims. It is demonstrated therein that despite arguments that aboriginal rights to the land were extinguished by the 1867 Treaty of Cession, Congress did, subsequent to purchasing Alaska from Russia, protect the Alaska natives in the "use or occupation" of their lands and such legislation was upheld in the courts of Alaska. According to the Interior Department, "Congress and the administrative authorities... consistently recognized and respected the possessory rights of the natives of Alaska in the land actually occupied and used by them (United States v. Berrigan, 2 Alaska, 442, 448, [1905]; 13 L.D. [1891]; 23 L.D. 335 [1896]; 26 L.D. 517 [1898]; 28 L.D. 427 [1899]; 37 L.D. 334 [1908]; 50 L.D. 315 [1922]; 52 L.D. 597 [1929]; 53 L.D. 194 [1930]; 53 L.D. 593 [1932]...) The rights of the natives were in some respects
the same as those generally enjoyed by the Indians residing in the United States, viz: the right of use and occupancy with the fee in the United States (50 L.D. 315 [1924]). However, the recognition and protection thus accorded these rights of occupancy was construed as not constituting necessarily a recognition of title..." (Cf. Tee-Toh-Ton Indians v. United States [348 U.S. 272 (1955)].)

Legislation protecting the Alaska natives in their use and occupation of lands was embodied in the Alaska Organic Act of 1884 (23 Stat. 24). Sec. 8 of the Organic Act declared that:

"... the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress." [Emphasis added.]

The Alaska Native Claims Act of 1971 therefore embodies the "terms under which [the Alaska natives] may acquire title to such lands," and is thus the "future legislation" reserved to Congress by sec. 8 of the 1884 Alaska Organic Act. As noted above, numerous laws enacted by Congress between 1884 and 1971 protected the natives' right to "use and occupancy." The Act of March 3, 1891 (26 Stat. 1095), to repeal timber-culture laws, and for other purposes; the Act of May 14, 1898 (30 Stat. 409), extending the homestead laws to Alaska; and the Act of June 6, 1900 (31 Stat. 321), making further provision for civil government in Alaska, all contained clauses protecting native use and occupancy of land.
Congressional protection of native use and occupancy was repeatedly upheld by Alaska courts. Among the most important such decisions were United States v. Berrigan (2 Alaska Reports, 448) (1905); United States v. Cadzow (5 Alaska Reports 131) (1914); and United States v. Lynch (7 Alaska Reports 573) (1927).

Thus, ever since 1884, Congress and the courts had upheld the right of the Alaska natives, in varying degrees, to "use and occupancy" of the land where they lived. This did not constitute, however, a recognition of aboriginal title.

The case of U.S. v. Alcea Band of Tillamooks et. al (329 U.S. 40) (1946) was therefore a landmark in that it recognized the claim of aboriginal title for certain Oregon Indians (the Tillamooks) as a judicable issue: i.e., the Court held that "tribes which successfully identify themselves as entitled to sue..., prove their original Indian title to designated lands, and demonstrate that their interest in such lands was taken without their consent and without compensation, are entitled to recover compensation therefore without showing that the original Indian title ever was formally recognized by the United States" (329 U.S.40). This case prefigures two cases involving Alaska Indians and thus is pertinent to the presentation of Alaska native claims as a judicable issue.

The right of the Tillamooks to sue was based on a 1935 Act of Congress (49 Stat. 801) granting authority to the Court of Claims to hear the designated claims of certain Indian tribes or bands described
in certain unratified treaties negotiated with Indian tribes in the State of Oregon. Eleven Indian tribes sued the United States under authority of this Act and four of eleven tribes (the Tillamooks included) were held by the Court of Claims to have successfully identified themselves as entitled to sue under the Act, to have proved their original Indian title to designated lands, and to have demonstrated "an involuntary and uncompensated taking of such lands." The Court of Claims thus held that original Indian title was an interest the taking of which without the consent of the Indian tribes entitled them to compensation (59 F. Supp. 934) (1945).

The Supreme Court affirmed the Court of Claims decision.

Results similar to those obtained by the Tillamooks were sought by the Tee Hit Tons, a group of 60 to 70 Alaska Indians who brought suit before the Court of Claims to obtain compensation for the taking of forest timber from lands which they claimed to own in the Tongass National Forest (Tee Hit Tons v. United States, 120 F. Supp. 202) (1954).

In this suit, the natives claimed title to 350,000 acres of land and 150 square miles of water in the Tongass National Forest area. They maintained that timber taken from that area had been sold to a private company by the Department of Agriculture pursuant to the Joint Resolution of August 8, 1947 (61 Stat. 920). This, the natives claimed, amounted to a taking of their "'full proprietary ownership' of the land; or, in the alternative, at least [of their] 'recognized' right to unrestricted possession, occupation and use" (348 U.S. 277); and thus warranted compensation.
The Court of Claims had refused to address itself to the petitioner's questions dealing with the problem of aboriginal title. The Court of Claims did conclude, however, that "there is nothing in the legislation referred to which constitutes a recognition by Congress of any legal rights in the plaintiff tribe to the lands here in question." (120 F. Supp. 202, 208). (1954).

In reviewing this case the Supreme Court (348 U.S. 272) (1955) noted that "the compensation claimed does not arise from any statutory direction to pay. Payment, if it can be compelled, must be based upon a constitutional right of the Indians to recover." The Court concluded that since the Congress had never specifically recognized the Indians' title to the land in question, the Indians did not possess title thereto, and thus were not entitled to compensation as a constitutional right (under the Fifth Amendment). Accordingly, "Indian occupancy, not specifically recognized as ownership by action authorized by Congress, may be extinguished by the government without compensation."

The Court explicitly distinguished between the case of the Tee Hit Tons and that of the Tillamooks:

"The recovery in the United States v. Tillamooks... was based upon statutory direction to pay for the aboriginal title in the special jurisdictional act to equalize the Tillamooks with the neighboring tribes, rather than upon a holding that there had been a compensable taking under the Fifth Amendment." (348 U.S. 272) 2/

The dissenting justices in this case said that the Organic Act of Alaska (1884) had recognized the claims of the natives in sec. 8:
"the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress..."

The dissenters concluded, in effect, that in 1884 Congress had recognized the claim of these natives to title to their lands, leaving the specification of the "metes and bounds" of such lands and the terms of the acquisition of title for future legislation to determine.

A third case, that of the Tlingit and Haida Indians, finally settled in 1968, bears directly upon provisions of the Alaska Native Claims Settlement Act.

The Tlingits and Haidas had been authorized by Congress in 1935 to bring suit in the Court of Claims for the adjudication and judgment "upon any and all claims which said Indians may have, or claim to have, against the United States" (49 Stat. 388) (1935). Of particular concern was the provision in Sec. 2 which provided that:

"the loss to said Indians of their right, title, or interest arising from occupancy and use, in lands or other tribal or community property, without just compensation therefore, shall be held sufficient ground for relief hereunder..."

Congress did not directly confront the issue of aboriginal title, as it required only that the Tlingits and Haidas prove "use and occupancy" to establish claim to the lands for which compensation could be made. The Court of Claims found that the Tlingits and Haidas had used and occupied the land area in question and had thus established "Indian title" thereto (p. 468), and that the United States had taken such land, thus entitling these Indians to compensation under the 1935
Act (177 F. Supp. 452) (1959). The Court held that use and occupancy title of the Tlingit and Haida Indians to the land in question was not extinguished by the Treaty of 1867.

A separate determination of the amount of the liability was made and handed down on January 19, 1968 (Tlingit and Haida Indians of Alaska and Harry et al. Interveners v. United States [Ct. Cl. No. 479000, January 19, 1968.) Thus, while the Tlingit-Haida ruling would seem to constitute a limited recognition of the Tlingits' and the Haidas' claims to aboriginal title, it did not settle the larger issue of the claim of all Alaska natives to aboriginal title. Nevertheless, because the Tlingits and Haidas had been awarded some compensation for lands taken by the U.S., such compensation was recognized as an offset in the Native Claims Act (sec. 16) as follows:

"(c) The funds appropriated by the Act of July 9, 1968 (82 Stat. 307) to pay the judgment of the Court of Claims in the case of the Tlingit and Haida Indians of Alaska et al. against the United States, numbered 47.00, and distributed to the Tlingit and Haida Indians pursuant to the Act of July 13, 1970 (84 Stat. 431), are in lieu of the additional acreage to be conveyed to qualified villages listed in section 11."

This, then, is background to the Alaska Native Claims Settlement Act of 1971, signed into law on December 18, 1971, by President Nixon. The law was enacted by Congress to settle the claim of Alaska's native Indian, Aleut and Eskimo population to aboriginal title to the land on which they have lived for generations. The natives' claim to aboriginal title is explained in House Report No. 92-523 as follows:
"When the United States acquired the Territory of Alaska by purchase from Russia, the treaty (proclaimed June 21, 1867, 15 Stat. 539) conveyed to the United States dominion over the territory, and it conveyed title to all public lands and vacant lands that were not individual property. The lands used by the 'uncivilized' tribes were not regarded as individual property, and the treaty provided that those tribes would be subject to such laws and regulations as the United States might from time to time adopt with respect to aboriginal tribes.

"Congress provided by the Act of May 17, 1884 (23 Stat. 24), that the Indians and other persons in the territory (now commonly called Natives) should not be disturbed in the possession of any lands actually in their use or occupation or then claimed by them, but that the terms under which such persons could acquire title to such lands were reserved for future legislation by Congress. Congress has not yet legislated on this subject, and that is the purpose of this bill.

"Aboriginal title is based on use and occupancy by aboriginal peoples. It is not a compensable title protected by the due process clause of the Constitution, but is a title held subject to the will of the sovereign. The sovereign has the authority to convert the aboriginal title into a full fee title, in whole or in part, or to extinguish the aboriginal title either with or without monetary or other consideration.

"It has been the consistent policy of the United States Government in its dealings with Indian Tribes to grant to them title to a portion of the lands which they occupied, to extinguish the aboriginal title to the remainder of the lands by placing such lands in the public domain, and to pay the fair value of the titles extinguished. This procedure was initiated by treaties in the earlier part of our history, and was completed by the enactment of the Indian Claims Commission Act of 1946. That Act permitted the Indian Tribes to recover from the United States the fair value of the aboriginal titles to lands taken by the United States (by cession or otherwise) if the full value had not previously been paid.

"The Indian Claims Commission has not been available to the Natives in Alaska, in a practical sense, because the great bulk of the aboriginal titles claimed by the Natives have not been taken or extinguished by the United States. The United States has simply not acted."
"The extent to which the Natives in Alaska could prove their claims of aboriginal title is not known. Native leaders asserted that the Natives have in the past used and occupied most of Alaska. Use and occupancy patterns have changed over the years, however, and lands used and occupied in the past may not be used and occupied now. Moreover, with development of the State, many Natives no longer get their subsistence from the land.

The pending bill does not purport to determine the number of acres to which the Natives might be able to prove an aboriginal title. If the tests developed in the courts with respect to Indian Tribes were applied in Alaska, the probability is that the acreage would be large -- but how large no one knows. A settlement on this basis, by means of litigation if a judicial forum were to be provided, would take many years, would involve great administrative expense, and would involve a Federal liability of an undeterminable amount.

It is the consensus of the Executive Branch, the Natives, and the Committee on Interior and Insular Affairs of the House that a legislative rather than a judicial settlement is the only practical course to follow. The enactment of H.R. 10367 would provide this legislative settlement.

The Committee found no principle in law or history, or in simple fairness, which provides clear guidance as to where the line should be drawn, for the purpose of confirming or denying title to public lands in Alaska to the Alaskan Natives. The lands are public lands of the United States. The Natives have a claim to some of the lands. They ask that their claim be settled by conveying to them title to some of the lands, and by paying them for the extinguishment of their claim to the balance." 3/

This, in effect, is what PL 92-203 achieves; it settles the natives' claims by conveying to them title to 40 million acres of land and paying a cash award as compensation for extinguishment of their claim to the balance.
B. DETERMINATION AND DISPOSITION OF NATIVE PROPERTY RIGHTS IN
HAWAII: HISTORY

The relevant question here is to what degree, and in what ways, the history of the determination and disposition of native property rights in Hawaii is similar to the history of native property rights in Alaska. Is there any basis for proposing a native land claims settlement for Hawaii in light of the precedent set by the Alaska settlement?

First it is necessary to set forth a general background history of land tenure in Hawaii, which, at the time of the Annexation, was based on a system of individual patents in fee awarded by the Hawaiian government.

The modern land history of Hawaii began in 1795 with the conquest of the islands by Kamehameha I, the chief who conquered and unified the entire group of islands. The system of land tenure existing before this time is not clearly known, though it was in many ways similar to the feudal system of medieval England. It had been the custom, before Kamehameha I, to redivide the land every time a king died. The lands were then redistributed to the favorites of the new king. Thus when Kamehameha I unified all the islands under his rule, the lands were, according to custom, claimed by the conqueror and reapportioned among his chiefs and favorites.

Nonetheless, there had been instances in these periods of redistribution, both before and during the reign of Kamehameha, that indicate the recognition of hereditary land rights in a few families. Apart
from certain exceptions, however, the chiefs and favorites received from Kamehameha the conquered lands according to the new king's division, and these chiefs and favorites apportioned their holdings in tune to the second tank of chiefs. These likewise divided the lands in successively similar areas among their dependents -- a method of land division similar to that established in England by William the Conqueror.

No suggestion of ownership in the land itself was implied in passing tenure from rank to rank by the various persons who divided and subdivided it or to the tenant farmer to whom it was finally allotted. Beginning with the obligation assumed by the first-ranking chiefs in accepting stewardship of their allotted lands from the king, those who received it owed allegiance to his superior. This descending chain of authority thus comprised the system by which the king bound himself to the whole body of people on whom he was dependent for support. The same rights, therefore, which the king possessed over the superior landlords and all under them were possessed by the various grades of landlords over their inferiors. The king owned the allodial, or absolute, title, and those beneath him, in whose hands he placed the lands, held it in a kind of trust. When a chief died, his lands reverted, not to his family, but to the king, to be used by him as part of his personal holdings or to be given to another chief. When a chief was dispossessed of his lands, however, it was not the custom to divest the direct cultivators of the soil of the land which they
occupied. In this, therefore, the tenant farmers, or makaainana, enjoyed some measure of economic stability, even though they did not possess title to their lands and dispossession for various reasons did occur. Neither, however, were tenants bound to the land by law, nor were they bound to render military service.

* * * * * *

This ancient land system came to an end with the celebrated land reform, or "Great Mahele," which was executed in 1848 by King Kamehameha III, son of the Conqueror. In this reform, the King abolished the old system and replaced it with a new one based on fee simple ownership.

To effect this reform, the King divided the lands between himself, and chiefs, and the government. The king retained title to those lands he kept for himself; the chiefs were allowed to claim and gain title to those lands allotted as their portion; and the government received the balance, parts of which were then placed open to purchase by individuals. After 1850, the tenants who lived on their chiefs' lands were enabled to claim the plots they cultivated (kuleanas) and to obtain fee simple title thereto.

The antecedents of land reform are to be found as early as 1825, however, when Kamehameha III ascended the throne. Since the newly-chosen king was only 12 years old, a National council of chiefs was held to confirm the new king and establish policy. In order to deal with the growing chaos arising out of the old policy of redistributing the lands at each king's death, the council formally adopted as law the following recommendations:
1) That the lands belonging to the chiefs should descend to their legitimate children;

2) That the chiefs should assign their lands to the people to cultivate in order that they might maintain themselves from such cultivation;

3) That the people should be free and not bound to one chief; and

4) That a tax should be paid to the king.

Since, during his reign, the new king's predecessor, Kamehameha II, had made few changes in the distribution of lands, the lands as apportioned under the first Kamehameha were left essentially unchanged upon the accession of Kamehameha III. Passage of the "Law of 1825", as the Council's recommendations became known, thus effected the permanent abandonment of the redistribution custom and the adoption of the Western practice of inheritance.

The result of the "Law of 1825" was a greater sense of security in the occupancy of land and for the first time in the history of the kingdom, land began to be thought of as a commodity with a monetary value. A tenant could still be dispossessed by a king or a chief, and permission from the king was still necessary to mortgage, lease or transact any business pertaining to land. Nevertheless, while land still lay in the king's ultimate possession, security in the occupancy of the land by chiefs and tenants was greatly increased.

The promulgation of a new Constitution in 1840, therefore, was a significant milestone in that it declared the chiefs and people to be joint owners of the land: "Kamehameha I was the founder of the kingdom," declared the Constitution, "and to him belonged all the land from one
end of the islands to the other, although it was not his own private property. It belonged to the chiefs and the people in common of whom Kamehameha I was the head and had the management of the landed property..."

The significance of this statement is summarized thus:

"While adding the force of written law to the feudal right of the king to control land transfers, this paragraph, acknowledging the right of the people and the chiefs in and to the land itself with the king as executive head of the kingdom rather than the sole owner of its lands, is in actuality, the basis of Hawaii's modern land system. The right of these three, the people, the chiefs, and the king, to ownership of land was therein stated in law for the first time." 8/

Other innovations contained in the Constitution of 1840 included creation of a "representative body" of legislators elected by the people, and creation of a supreme court, to consist of the king, the kuhina nui, and four other judges appointed by the Hawaiian house representatives. 9/

* * * * *

The Law of 1825 and the Constitution of 1840 prepared the way for the actual land reform initiated by the work of the Land Commission created in 1845 and culminating in the "Great Mahele" of 1848. The Commission to Quiet Land Titles was created by an act of December 10, 1845, and thus preceded the Mahele by three years. The Commission was to decide the rights and interests of all persons claiming title to land in cases brought before it, judging the validity of all titles and claims arising prior to creation of the Commission, including those of foreigners (aliens were not allowed to acquire fee simple title until 1850).
The Commission was to consist of five members and to exist for two years. The Commissioners organized on February 11, 1846, but their powers were repeatedly extended, so that the Board was not finally dissolved until March 31, 1855. 10/

Full powers were conferred upon the Board as a court of record to investigate, confirm, or reject all claims to land arising prior to December 10, 1845. All persons were required to file their land claims with this Board, or be forever barred of all recovery rights in the courts. The Commission was not authorized to grant patents for land. Its duty was to ascertain the nature and extent of each claimant's rights in land, and to issue an award for the same which was prima facie evidence of title. The holder of a Land Commission award was thus entitled to receive a royal patent in fee simple from the Minister of the Interior, on payment of a commutation to be set by the King in privy counsel. Appeals of the Board's decisions were to be made to the supreme court, and such appeals had to be filed within 90 days of the decision. 11/

During the first two years of its existence the Land Commission was faced with the problem of deciding what constituted "a just and fair distribution where there existed evidence of overlapping rights, interests, and privileges growing out of the old system of landlordship. Another was the inability of many of the people to understand the new plan. Generations of living under the old system had not been conducive to the development of individualistic ideas concerning ownership of real property by the landlords and tenants. Consequently, many of them failed to make application for
title to their land, while others, who actually secured title, coming suddenly and for the first time into possession of something of marketable value, soon dissipated their holdings without recognizing the privileges or the responsibilities of land ownership." 12/

Therefore, on December 11, 1847, the matter was brought up for final decision before the King and chiefs in the Privy Council, and on December 18, 1847, the following set of rules for the division of lands was adopted:

"Whereas it has become necessary to the prosperity of our Kingdom and the proper physical, mental and moral improvement of our people that the undivided rights at present existing in the lands of our Kingdom, shall be separated, and distinctly defined:

"Therefore, We, Kamehameha III, King of the Hawaiian Islands and His Chiefs, in Privy Council assembled, do solemnly resolve that we will be guided in such division by the following rules:

"1. His Majesty, our Most Gracious Lord and King, shall in accordance with the Constitution and Laws of the Land, retain all his private lands, as his own individual property, subject only to the rights of the Tenants, to have and to hold to Him, His heirs and successors forever.

"2. One-third of the remaining lands of the Kingdom shall be set aside, as the property of the Hawaii Government subject to the direction and control of His Majesty, as pointed out by the Constitution and Laws, one-third to the chiefs and Konohikis in proportion to their possessions, to have and to hold, to them, their heirs and successors forever, and the remaining third to the Tenants, the actual possessors and cultivators of the soil, to have and to hold, to them, their heirs and successors forever.

"3. The division between the Chiefs or the Konohikis and their Tenants, prescribed by Rule 2d shall take place, whenever any Chief, Konohiki or Tenant shall desire such division, subject only to confirmation by the King in Privy Council.

"4. The Tenants of His Majesty's private lands, shall be entitled to a fee simple title to one-third of the lands possessed and cultivated by them; which shall be set off to the said Tenants in fee simple, whenever His Majesty or any of said Tenants shall desire such division.
"5. The division prescribed in the foregoing rules, shall in no wise interfere with any lands that may have been granted by His Majesty or His Predecessors in fee simple, to any Hawaiian subject or foreigner, nor in any way operate to the injury of the holders of unexpired leases.

"6. It shall be optional with any Chief or Konohiki, holding lands in which the Government has a share, in the place of setting aside one-third of the said lands as Government property, to pay into the Treasury one-third of the unimproved value of said lands, which payment shall operate as a total extinguishment of the Government right in said lands." 13/

These rules resulted in the official "Mahele" or land division, which took place between January 27, and March 7, 1848. By that action the King officially divided all of the lands with his chiefs. The book in which this division was recorded was called the "Mahele Book," and contained the releases or quit claim deeds signed by the King and the chiefs to the lands which they respectively surrendered to each other. Following the Mahele between the King and his chiefs, the King proceeded to set aside the larger part of his share of the lands for the Hawaiian government, "reserving to himself what he deemed a reasonable amount of land as his own estate. On June 7, 1848, the Legislative Council passed an act "relating to the lands of His Majesty the King and of the Government," which confirmed and ratified the divisions between King and chiefs and between King and government. The lands retained by the King were designated as "Crown Lands," while those apportioned to the government were termed "Government Lands."

A second division took place in 1850, whereby the chiefs ceded a third of their lands to the government as a "commutation." (A tax amounting to one-third of the unimproved value of the land could be
paid in lieu of the land cession (as provided by the sixth rule adopted by the Council in 1847). The Privy Council accepted this division between chiefs and government on August 27, 1850. Thus, by either ceding one-third of their allotment to the government, or by paying a commutation tax, the chiefs became eligible to receive full (allodial) title to all valid claims upon the remaining share of lands they received in the Mahele.

The last step in implementing the land reform was recognition of fee simple title to the lands occupied by the tenants. The Act of August 6, 1850, confirmed a resolution passed by the Privy Council on December 21, 1849, granting fee simple title free of all commutation to native tenants for their cultivated lands (kuleanas) and house lots (except house lots in the towns of Honolulu, Lahaina and Hilo). It was assumed that the commutation on tenants' lands had already been paid by the chiefs, since the tenants' kuleanas had to be carved out of lands already apportioned to the chiefs.

Until its dissolution on March 31, 1855, the land Commission issued thousands of awards to the native tenants for their kuleanas. However, there were many native tenants who failed to receive awards for the lands they had occupied and improved. Some failed to file their claims with the Land Commission and others, after filing their claims, failed to appear before the Land Commission to support their claims. Many in the latter group, after filing their claims, relinquished such claims to the chiefs of the lands in which their cultivated plots were situated.
Whereas over 1,500,000 acres of land were set aside for the chiefs in The Great Mahele of 1848, and approximately 1,000,000 acres were reserved by Kamehameha III as "Crown Lands," and 1,500,000 acres were given by the king to the "government and people," less than 30,000 acres of land were awarded to the native tenants. 17/

Although the Land Commission was disbanded in 1855, certain claims could be presented (by statutory extension of the deadline) until June 1862 — after which time those who failed to present their claims were declared to be "forever barred and their rights under the Mahele Book to have reverted to the Government."18/

The Crown Lands were rendered inalienable by the Act of January 3, which decreed that such crown lands "shall descend to the heirs and successors of the Hawaiian crown forever." After the Revolution, the Constitution of the Republic (proclaimed July 4, 1894) stated (in Article 95) that "that portion of the public domain heretofore known as Crown Land is hereby declared to have been heretofore, and now to be, the property of Hawaiian Government.... It shall be subject to alienation and other uses as may be provided by law." 19/

With the Annexation of Hawaii by the United States in 1898, the Republic of Hawaii ceded the "absolute fee and ownership" of all government lands to the United States. The Newlands Resolution of the U.S. Congress (30 Stat. 750) (July 7, 1898), providing for the Annexation declared, in addition to the cession of government lands, that "the existing laws of the United States relative to public lands shall not
apply to such lands in the Hawaiian Islands: but the Congress of the
United States shall enact special laws for their management and
disposition."

This was followed by the Organic Act of 1900, (31 Stat. 141),
which established a Territorial government in Hawaii. Sec. 73 of this
Act provided that "the laws of Hawaii relating to public lands, the
settlement of boundaries, and the issuance of patents on land-
commission awards, except as changed by this Act, shall continue in
force until Congress shall otherwise provide.

Sec. 91 declared the lands ceded by provision of the Annexation
Resolution (30 Stat. 750) should "remain in the possession, use, and
control of the government of the Territory of Hawaii... until otherwise
provided for by Congress, or taken for the uses and purposes of the
United States by direction of the President or of the governor of
Hawaii." [Emphasis added] Sec. 99 added the once "Crown Lands" to
the "property of the Hawaiian government."

When Hawaii became a State, the Hawaii Statehood Act (PL 86-3)
(73 Stat. 4) (March 18, 1959) granted to the State of Hawaii title to
all public lands and other public property within the boundaries of
the State, to which the United States held title immediately prior to
the admission of Hawaii into the Union. This was with the exception
of lands which were, at the time of Hawaii's admission into the Union,
set aside for use by the United States government. (Sec. 5(b)). *

* Sec. 5(a) of PL 86-3 provided that (except as indicated elsewhere)
the State of Hawaii would also succeed to the title of the
Territory of Hawaii in those lands in which the Territory held
title at the time the Statehood Act was passed.
In 1971 there were still 396,000 acres of land in Hawaii, title to, or use of which, remained with the Federal Government. Of these, approximately 218,000 acres was assigned to the National Park Service, 106,500 to the Army, 62,500 to the Navy, 6,000 to the Air Force, and the rest to other agencies. The total land area of the State of Hawaii comprises 4,105,600 acres. 19a/

Most of the historic lands of the Hawaiian people are not owned by native Hawaiians today. After the Great Mahele, "a large percentage of the natives, naive in matters of real estate value, sold their lands soon after purchasing them. As a result, white speculators and planters acquired great tracts, making it possible later for large corporations to control all but small segments of the arable land." 20/

As has already been indicated (p.18 above), many tenants failed to claim the lands (kuleanas) they occupied and to which they were entitled during the tenure of the Land Commission.

Contemporaneously with the Kuleana grant, the government lands were made available for purchase or lease, and it was made possible for those Hawaiians who did not have kuleanas to buy small plots of land from the government at a low price. Some took advantage of this opportunity. In course of time, however, many of these early homesteads passed out of the hands of the Hawaiians

"by direct sale, by mortgages which the native owners were unable to pay off, or by failure of heirs. During the third quarter of the nineteenth century, as the population declined and the sugar industry developed, many kuleanas and other small holdings were absorbed into plantations, and large tracts of government land
and crown land were sold or leased for long periods to plantation companies, cattle ranches, or the like. During this period and later, the trend was away from individual homesteads (small farms) and toward large-scale agricultural enterprises." 21/

A 1967 report of the Legislative Reference Bureau, University of Hawaii, stated that

"As plantation agriculture flourished in Hawaii, concentration of land ownership and control increased. Records of land sales reveal that plantations purchased considerable quantities of public land, while securing long-term leases on other portions of public land and crown land. The plantations also obtained title to many of the small land holdings received by native Hawaiians during the mahele. The census of 1890 revealed something of the degree of concentration of land ownership as well as the extent to which title to land had been secured by the Islands' American-European residents. This census, the last taken before the overthrow of Hawaii's monarch, reported that, of a total population of approximately 90,000 fewer than 5,000 people actually owned any land. The relatively small number of Westerners reportedly owned over one million acres, or approximately 56 percent of all privately owned land in the islands." 22/

In 1884, therefore, a law was enacted "to facilitate the acquiring and settling of homesteads." In accordance with this law, portions of available government lands were laid out in lots of not more than twenty acres and offered for sale as homesteads. Homesteaders were allowed five years to obtain fee simple titles. Under this law nearly 600 homestead lots were taken, most of them by Hawaiians and Portuguese, but less than half were finally patented. The generally poor response to the 1884 law led to passage of a new homestead law, the comprehensive Land Act of 1895, which provided for the sale or lease of government lands according to several plans. General leases for not more than 21
years and cash sales at auction (limited to 1000 acres in one piece) were methods usually applied to sugar cane and grazing land in large tracts, while smaller areas could be acquired in three ways: (1) the "homestead lease" (inalienable, for a term of 999 years); (2) the "right-of-purchase lease" (for 21 years, with option to purchase after three years); and (3) the "cash freehold" agreement, an installment purchase extending over a period of three years. The "homestead lease" was devised for native Hawaiians and was used almost exclusively by them. 23/

Passage of the Hawaiian Homes Commission Act by the U.S. Congress in 1921 (42 Stat. 108) inaugurated a new plan of homesteading in Hawaii. The purpose of this law was to get the Hawaiian and part-Hawaiian people out of the congested city areas in which many of them were living, and to put them back on the land as homesteaders, and thereby better their condition and in time develop among them a class of independent citizen farmers.

The project was placed under control of a commission; it was financed mainly by a revolving fund of one million dollars (later increased to two million) built up from rentals of public lands and water licenses. There was made available to the commission about 200,000 acres of government land, which did not include any sugar cane land; from this available land, portions were laid out in homestead lots of different sizes, which were to be leased for 99 years at a nominal rental to people of not less than one-half Hawaiian blood.
Financial and technical assistance was to be provided to the homesteaders by the Commission. 24/

The effectiveness of the Hawaiian Homes Commission "rehabilitation scheme" is assessed by R. S. Kuykendall and A. G. Day (1961):

"Operations were at first confined to a small area of Molokai but have been gradually extended to other islands. The main agricultural homestead settlement developed by the Hawaiian Homes Commission is located at Hoolehua, Molokai. It was originally intended to be a diversified farming area, but has been given over to the production of pineapples under agreements with three pineapple companies. Diversified crops failed in this place because of the lack of water for irrigation. It is generally agreed that pineapples saved the Hoolehua homesteaders, but did so without making independent farmers of them. One of the most useful features of the rehabilitation scheme has been the opening of numerous small residential and subsistence homesteads in the vicinity of Honolulu and other towns where many of the Hawaiians have employment. At the end of 1956 there were more than 10,000 Hawaiians living in the various homestead communities, farm and residential, on the islands of Molokai, Hawaii, and Oahu. Since that date, a new homestead settlement has been established at Anahola on Kauai." 25/

In a contrary vein, it is the opinion of the Land Laws Revision Commission, created by the Legislature in 1943, that homesteading under the 1884 and 1895 Acts was generally successful in providing homesteads to native Hawaiians:

"In its final report (December 31, 1946) the commission asserted that "the majority of homesteaders have proved themselves to be mere speculators or investors," and it said that the "only legitimate present demands for public lands are for pastoral lands... and for lots for homesites convenient to occupational locale." It recommended, among other things, 'that all sales of public lands be discontinued except for residential purposes,' and 'that the public lands... not suitable for residential purposes be conserved and disposed of only upon lease.'" 26

These authors conclude:
"In recent years there has been much talk about land monopoly in Hawaii. Attention has been focused upon this subject by the rapid growth of population and the acute housing shortage which developed during and after World War II... The complaint is not new. As far back as 1890, W. R. Castle said, 'One of the crying evils of Hawaii is its land ownership. Two immense estates are said to own over one third of the kingdom.' Today, in 1960, the cry is still against a few estates which keep a tight hold on huge areas of land." 27/

Or, as the University of Hawaii Legislative Reform Bureau states the matter:

"Land ownership in the State of Hawaii remains, as it has been since the time of Kamehameha I, highly concentrated. The largest single owner is the state government, which owns a total of 1,590,532 acres, or 38.74 percent of the total land area of Hawaii. The federal government owns 255,717.34 acres in fee simple and another 145,764.97 acres of ceded land for a total of 401,482.31 acres or 9.78 percent of the total area of the State. The greatest percentage of land, however, is owned by the 72 major private landowners who own more than 1,000 acres each in fee simple. These major private landowners own 1,923,182.56 acres, or 47 percent of the total land area of the State. Taken together, the state and federal governments and the 72 major private landowners own a total of 3,915,196.87 acres, which is 95.36 percent of the total land area of the State. Therefore, the remaining private landowners own less than 5 percent of the lands of the State of Hawaii." 28/

It is relevant at this point to suggest, on the basis of the foregoing history, the ways in which the Hawaiian land situation is comparable to the land system which pertained in Alaska before the 1971 settlement. Is there a basis for proposing a Hawaiian land claims settlement in light of the Alaska precedent? In what ways is the argument for a settlement of Hawaiian native claims similar, and in what ways is it dis-similar, to the Alaska precedent?
C. SIMILARITIES BETWEEN HAWAIIAN AND ALASKAN NATIVE CLAIMS ARGUMENTS

The similarities between the land situation in Alaska and Hawaii, which might serve as arguments in support of providing a Hawaiian native claims settlement like that in Alaska, are as follows:

1. HAWAII BECAME AN AMERICAN TERRITORY UNDER FOREIGN INFLUENCE AND WITHOUT THE CONSENT OF THE NATIVE HAWAIIAN PEOPLE

The U.S. acquired Alaska from Russia without the consent of the Alaska natives who lived there. Thus the assumption of title to public domain in Alaska by the U.S. Government left the natives without compensation for any of Alaska's 365 million acres, which they had used and occupied for centuries, and to which, on the basis of use and occupancy, they claimed aboriginal title. The Alaska settlement vested title in the natives to 40 million acres and provided a cash settlement totalling nearly one billion dollars as payment for extinguishment of aboriginal title to the rest of the land.

It has been argued ever since the 1893 Revolution in Hawaii that Annexation to the U.S. was not the will of most of Hawaii's native population.

President Grover Cleveland appointed a special commissioner to Hawaii, James H. Blount who investigated the circumstances relating to the overthrow of the Hawaiian monarchy in January 1893 and flatly concluded that the revolution was the result of a conspiracy between the U.S. Minister to Hawaii, John L. Stevens, and revolutionary leaders in Hawaii. 29/
President Cleveland's Secretary of State, Walter Q. Gresham, wrote the President in October of 1893:

"Mr. Blount states that while at Honolulu he did not meet a single annexationist who expressed willingness to submit the question to a vote of the people, nor did he talk with one on that subject who did not insist that if the Islands were annexed suffrage should be so restricted as to give complete control to foreigners or whites. Representative annexationists have repeatedly made similar statements to the undersigned." 30/

It was the President's conclusion, based on the reports, that

"The Government of Hawaii was overthrown without the drawing of a sword or the firing of a shot by a process every step of which, it may safely be asserted, is directly traceable to and dependent for its success upon the agency of the United States acting through its diplomatic and naval representatives.

"But for the notorious predilections of the United States Minister for Annexation, the Committee of Safety, which should be called the Committee of Annexation, would never have existed.

"But for the landing of the United States forces upon false pretexts respecting the danger to life and property the committee would never have exposed themselves to the pains and penalties of treason by undertaking the subversion of the Queen's Government.

"But for the presence of the United States forces in the immediate vicinity and in position to afford all needed protection and support the committee would not have proclaimed the provisional government from the steps of the Government building.

"And finally, but for the lawless occupation of Honolulu under false pretexts by the United States forces, and but for Minister Steven's recognition of the provisional government when the United States forces were its sole support and constituted its only military strength, the Queen and her Government would never have yielded to the provisional government, even for a time and for the sole purpose of submitting her case to the enlightened justice of the United States." 31/
On the basis of these conclusions, President Cleveland refused to resubmit to the Senate a Treaty of Annexation which had been drawn up in 1893.

The Republic which governed Hawaii between 1894 and 1898 served as a kind of "interim government" between the Monarchy and Annexation, and, in the opinion of many scholars, did not truly represent the Hawaiian people:

"The new government was considerably more 'republican' than democratic. The president was to be elected by the legislature for a single term of six years, although (the first and only President, Sanford B. Dole) was named by the Constitution as president until the end of the year 1900. Property qualifications were imposed upon members of the two-house legislature, as well as on voters eligible to elect senators...." 32/

The President, Sanford B. Dole, was a white man.

Thus it can be argued that the Annexation treaty, approved by the Hawaiian Senate and signed by President Dole on September 10, 1897, was sanctioned by a legislature and government that arose from an act that, in the opinion of the President's special emissary, was contrary to the will of the Hawaiian people (Cf. p. 27 above)

It could thus be argued that when Hawaii joined the U.S. and ceded the government and crown lands of the Hawaiian people to the U.S., (30 Stat. 750), it did so without consent (and possibly against the will) of the native population, who, as in Alaska, found themselves without title to the ancestral lands on which they had lived and which they had used from time immemorial. Although the Statehood Act retroceded these lands to the State of Hawaii (Cf. p.20 above), nearly
400,000 acres of what was originally Hawaiian government lands are still owned by the U.S. government. While it would not seem feasible to redistribute this land to the people (the bulk being either assigned to the Interior Department, as part of the National Park System or the military), a cash compensation for extinguishment of aboriginal title, similar to that provided in the Alaska settlement, would seem to be justified in light of the Alaska precedent.

This leads us to point two.

2. FEDERALLY OWNED OR USED LANDS IN HAWAII AT THE PRESENT TIME WERE NEVER COMPENSATED FOR BY THE UNITED STATES GOVERNMENT; THE PEOPLE OF HAWAII HAVE A LEGITIMATE CLAIM TO THESE LANDS OR COMPENSATION THEREFOR

A close similarity with the land situation (before settlement) in Alaska thus is to be found in the Federal lands which have been set aside for use by the Federal Government in Hawaii, and for which the United States has not compensated the Hawaiian people. (See p. 28 above) In Alaska some 353 million acres of the State's 365 million acres were in the public domain at the time of the settlement. The Alaska natives' claim to aboriginal title to Alaska was settled by granting title to 40 million acres to the natives and paying them for extinguishment of the balance. As noted above, the 1971 Bureau of Land Management report (Dept. of the Interior) entitled "Public Land Statistics," shows that 396,000 acres of land in Hawaii are still owned by the Federal government. The Hawaiian people have not been compensated by the U.S. for the taking of this land, and thereby find themselves
in a situation comparable to that of the Alaska natives before the 1971 settlement. If compensible aboriginal title in Alaska means lands the Alaska natives have "used and occupied" from "time immemorial," then the same definition can be applied to lands used and occupied by Hawaii natives for centuries, which are now owned and used by the U.S. government.

The Alaska precedent was accomplished in the context of the precedent set by establishment of the Indian Claims Commission in 1946; and the Indian Claims Commission precedent is directly relevant to the Hawaii situation in that the Claims Commission was established to hear the claims of Indian tribes to compensation for an uncompensated or inadequately compensated taking by the U.S. government of lands to which they held (and must prove) aboriginal title or recognized title (granted by Congress). A case might be established for creating a Hawaiian Claims Commission to study possible compensation to Hawaiian natives for the lands which were ceded to the U.S. in 1898.

An explanation by the Indian Claims Commission of its purpose is pertinent at this point: "..... Indian land cessions to the United States constitute the prime source of the alleged wrongs for which today's Indian claimants seek redress. Their chief complaint is that because of their ancestors' illiterate condition, the United States was able to acquire much of its valuable land for an unfair price."
The jurisdiction of the Commission includes "all claims which would arise if treaties, contracts, or agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration mutual or unilateral mistake or other equitable consideration" [Emphasis added].... Finally, the Commission's jurisdiction extends to all claims based upon 'fair and honorable dealings that are not recognized by any existing rule of law or equity.' 35/ Aboriginal title, based on use and occupancy, could possibly be claimed by Hawaii natives. The taking by the U.S. government of lands to which the natives claimed such title could possibly be shown to have been without payment and hence compensible.

3. IN BOTH ALASKA AND HAWAII ORGANIC ACTS CONGRESS LEFT OPEN THE POSSIBILITY OF A FUTURE SETTLEMENT OF LAND CLAIMS

As has already been noted, the Hawaii Organic Act of 1900 provided in Sec. 73 that the (then) present land laws of Hawaii should remain in effect "until Congress shall otherwise provide." [Emphasis added] More specifically, the Alaska Organic Act of 1884 provided (in Sec. 8) that "the terms under which [natives] may acquire title to such lands [actually in their use or occupation now claimed by them] is reserved for future legislation by Congress." [Emphasis added] The Congressional provision for future settlement of the Alaska native land claims herein cited is explicit, whereas any such provision as is contained in Sec. 73 of the Hawaii Organic Act is merely implied in the
phrase "until Congress shall otherwise provide." However, it is possible to argue that by suggesting that Congress might enact new land laws to replace those then applicable in Hawaii, Congress provided the basis for the enactment of future land laws which could, in light of the Alaska settlement, provide for settlement of Hawaiian native land claims.

D. WAYS IN WHICH THE HAWAII LAND SITUATION DIFFERS FROM THAT IN ALASKA PRIOR TO THE SETTLEMENT

1. THE SYSTEM OF LAND TENURE IN HAWAII PRIOR TO ANNEXATION WAS DIFFERENT FROM THE SYSTEM IN ALASKA (AS IT AFFECTED NATIVES) PRIOR TO THE 1867 CESSION

The Alaska natives under Russian administration did not have the opportunity to obtain title to the lands they occupied, since individual ownership of land by natives was not regulated by the Russian government. Neither the 1844 Russian Charter nor the 1867 Treaty of Cession was specific in delineating native property rights. "Settled" tribes — those within the economic sphere of influence of the Russian American Company — were considered Russian subjects and were guaranteed "property rights" by the 1844 Charter; but these were primarily personal property rights and did not include the right to land-holding, which at that time was virtually unknown among Russian peasants and consequently unregulated in the colonies.

On the contrary, at the time of Annexation (1898), there was a highly developed system of fee simple land ownership in Hawaii which had been instituted by the Hawaiian King Kamehameha III in the Great Mahele. The 1900 Organic Act for Hawaii specifically left intact
the land laws of Hawaii which had been in force at the time of Annexation (Sec. 73), and which included existing land titles.* Moreover, land allotments awarded under the Mahele were alienable and thus could be sold without restriction. The Crown Lands were also alienable until the Act of January 3, 1865, rendered them "henceforth inalienable" and descending to the "heirs and successors of the Hawaiian crown forever."

Thus there was no legal prohibition to the alienation of Hawaiian government lands or of chiefs' and tenants' lands under the monarchy, nor of the former Crown Lands, after establishment of the Republic. Such lands as were alienated from native ownership were sold by the natives according to the laws of the Kingdom, Republic, or Territory of Hawaii.

This situation is not analogous with that in Alaska, where the natives did not have legal title to their lands before U.S. acquisition, and thus could not sell what they did not own. Furthermore, the U.S. Congress enacted legislation specifically protecting the Alaska natives' rights in such property and promising future legislation to provide the means by which the natives should secure title. Congress thus indicated the U.S. had assumed responsibility for the natives' land rights in Alaska and had guaranteed some kind of future settlement:

* Although, as has been demonstrated above (p.32 ), Sec. 73 did specify that the existing laws should remain in force only "until Congress shall otherwise provide."
"...the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress." [Emphasis added] (23 Stat. 24) (Sec. 8).

No such guarantee to Hawaii natives is contained in the Hawaii Organic Act.

2. MORE FEDERALLY - OWNED LAND IN ALASKA UNASSIGNED THAN IN HAWAII, WHERE ALL FEDERAL LAND IS ASSIGNED

The vast majority of acreage in Alaska came into the public domain when the U.S. purchased the territory, and at the time of the settlement (1971) most of this remained unassigned. Contrariwise, the Hawaii Organic Act granted to the Territory of Hawaii "possession, use and control" of all government lands ceded by Hawaii to the U.S., except those taken for use of the U.S. Government by Congress, the President or the Governor of Hawaii (Sec. 91). The former Crown Lands were also declared by the Organic Act to be the "property of the Hawaiian government." (Sec. 99). Of the land Hawaii ceded to the U.S. at the time of Annexation (1898), therefore, only 396,000 acres are now owned by the Federal government, and all of this appears to be assigned.

Moreover, it is clear that the amount of Federally-owned land is vastly smaller in Hawaii than in Alaska, while the number of natives (or part-natives) is larger in Hawaii. As has already been noted, the Federal government owns approximately 396,000 acres in Hawaii, all of

* This argument may be countered by the thesis set forth on page 31 of this report; i.e., that Sec. 73 of the Hawaii Organic Act also leaves open the possibility that a basis for a Hawaiian settlement is established therein.
which appears to be assigned. This would have to be shared by 71,000 natives in the event of a settlement involving land redistribution (1970 Census Bureau figures). In Alaska at the time of the settlement, there were some 353,000,000 acres in the public domain, much of which was unassigned. Forty million acres was granted to some 54,000 natives. Thus a settlement in Hawaii involving land title awards would not seem to be feasible, as it was in Alaska. Rather, the option in Hawaii would seem to be for cash settlement in payment for an uncompensated taking of Hawaiian government lands.

3. NO DISTINCTION WAS MADE BY THE HAWAII STATEHOOD ACT BETWEEN THE RIGHT OF THE HAWAIIAN PEOPLE TO TITLE TO PUBLIC LANDS IN THE STATE, AND THE RIGHT OF THE STATE TO SUCH LANDS; SUCH A DISTINCTION WAS MADE IN ALASKA

The State of Alaska was expressly prohibited by the Statehood Act of 1958 (85 Stat. 508) (Sec. 4) from claiming any right and title to land to which the natives claimed right and title. On the other hand, no such distinction between the rights of natives and the rights of the State was made in the Hawaii Statehood Act (73 Stat. 4) of 1959; title to all public lands in Hawaii to which the United States held title immediately prior to the Statehood Act were (with specified exceptions) granted to the State of Hawaii (Sec. 5(b)). No special consideration of the natives was made. In short, the Hawaii Statehood Act did not distinguish the right of the Hawaii natives to title to public lands from the right of the State to such lands.
The fact that this difference exists could, however, be used to support an argument that such a distinction should have been made in Hawaii; and that because it was not, the natives were deprived of their land rights, and thus are eligible for (monetary) compensation in settlement of those rights. This action (compensation) might be supported by the declaration in the Constitution of 1840 that "all the land from one end of the islands to the other belonged to the chiefs and the people in common ...." (Cf. p. 14 above).
FOOTNOTES


2/ Four years earlier, the Supreme Court had unanimously found that compensation granted to the Tillamooks by the Court of Claims (87 F. Supp. 938) (1950) pursuant to the Supreme Court decision of 1946 (329 U.S. 40; Cf. p24 above) was not based upon a taking under the Fifth Amendment. On the basis of this finding the Court denied the payment of interest which had been awarded by the Court of Claims (Cf. 341, U.S. 48) (1951).


8/ Hobbs, p. 29.


12/ Hobbs, p. 42.
13/ Hobbs, p. 45.


15/ Ibid.


19/ Hobbs, pp. 70, 110.


21/ Kuykendall, p. 204.

22/ Horwitz, pp. 3-4.

23/ Kuykendall, p. 206.

24/ Kuykendall, p. 208.

25/ Kuykendall, p. 209.

26/ Ibid.


28/ Horwitz, p. 13.

29/ Kuykendall, p. 179.


32/ Tansill, p. 15.


35/ Ibid.


37/ Ibid.


Richard S. Jones
Analyst in History and Public Affairs
Government and General Research Division
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TOGETHER WITH A HISTORY OF THE DETERMINATION AND
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BEING A COMPARISON OF WHICH THE SITUATIONS IN
THE LIGHT OF PROPOSING A SETTLEMENT OF HAWAIIAN NATIVE LAND CLAIMS

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BEING A COMPARISON OF THESE TWO SITUATIONS IN
THE LIGHT OF PROPOSING A SETTLEMENT OF HAWAIIAN NATIVE LAND CLAIMS

A. THE ALASKA SETTLEMENT

The accompanying CRS report ("Alaska Native Land Claims Settlement
Act of 1971 (PL 92-203): History and Analysis") outlines the history
of land tenure in Alaska as it pertains to native aboriginal claims.
It is demonstrated therein that despite arguments that aboriginal
rights to the land were extinguished by the 1867 Treaty of Cession,
Congress did, subsequent to purchasing Alaska from Russia, protect the
Alaska natives in the "use or occupation" of their lands and such
legislation was upheld in the courts of Alaska. According to the
Interior Department, "Congress and the administrative authorities...
consistently recognized and respected the possessory rights of the
natives of Alaska in the land actually occupied and used by them
(United States v. Berrigan, 2 Alaska, 442, 448, [1905]; 13 L.D. [1891];
23 L.D. 335 [1896]; 26 L.D. 517 [1898]; 28 L.D. 427 [1899]; 37 L.D. 334
[1908]; 50 L.D. 315 [1922]; 52 L.D. 597 [1929]; 53 L.D. 194 [1930];
53 L.D. 593 [1932]...) The rights of the natives were in some respects
the same as those generally enjoyed by the Indians residing in the United States, viz: the right of use and occupancy, with the fee in trust for the Indians residing in the United States (30 L it. 317 [1831]). However, the recognition and protection thus accorded these rights of occupancy was construed as not constituting necessarily a recognition of title..." (Cf. Tee-Hit-Ton Indians v. United States [348 U.S. 272 (1955)].)

Legislation protecting the Alaska natives in their use and occupation of lands was embodied in the Alaska Organic Act of 1884 (23 Stat. 24). Sec. 8 of the Organic Act declared that:

"... the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress." [Emphasis added.]

The Alaska Native Claims Act of 1971 therefore embodies the "terms under which [the Alaska natives] may acquire title to such lands," and is thus the "future legislation" reserved to Congress by sec. 8 of the 1884 Alaska Organic Act. As noted above, numerous laws enacted by Congress between 1884 and 1971 protected the natives' right to "use and occupancy." The Act of March 3, 1891 (26 Stat. 1095), to repeal timber-culture laws, and for other purposes; the Act of May 14, 1893 (30 Stat. 409), extending the homestead laws to Alaska; and the Act of June 6, 1900 (31 Stat. 321), making further provision for civil government in Alaska, all contained clauses protecting native use and occupancy of land.
Congressional protection of native use and occupancy was repeatedly upheld by Alaska courts. Among the most important such decisions were United States v. Bruder (2 Alaska Reports, 446) (1905); United States v. Cadzow (5 Alaska Reports 131) (1914); and United States v. Lynch (7 Alaska Reports 573) (1927).

Thus, ever since 1894, Congress and the courts had upheld the right of the Alaska natives, in varying degrees, to "use and occupancy" of the land where they lived. This did not constitute, however, a recognition of aboriginal title.

The case of U.S. v. Alcea Band of Tillamooks et. al (329 U.S. 40) (1946) was therefore a landmark in that it recognized the claim of aboriginal title for certain Oregon Indians (the Tillamooks) as a judicable issue: i.e., the Court held that "tribes which successfully identify themselves as entitled to sue..., prove their original Indian title to designated lands, and demonstrate that their interest in such lands was taken without their consent and without compensation, are entitled to recover compensation therefore without showing that the original Indian title ever was formally recognized by the United States" (329 U.S. 48). This case prefigures two cases involving Alaska Indians and thus is pertinent to the presentation of Alaska native claims as a judicable issue.

The right of the Tillamooks to sue was based on a 1935 Act of Congress (49 Stat. 801) granting authority to the Court of Claims to hear the designated claims of certain Indian tribes or bands described
In certain unratified treaties negotiated with Indian tribes in the State of Oregon. Eleven Indian tribes sued the United States under authority of this Act and four of eleven tribes (the Tillamooks included) were held by the Court of Claims to have successfully identified themselves as entitled to sue under the Act, to have proved their original Indian title to designated lands, and to have demonstrated "an involuntary and uncompensated taking of such lands." The Court of Claims thus held that original Indian title was an interest the taking of which without the consent of the Indian tribes entitled them to compensation (59 F. Supp. 934) (1945).

The Supreme Court affirmed the Court of Claims decision.

Results similar to those obtained by the Tillamooks were sought by the Tee Hit Tons, a group of 60 to 70 Alaska Indians who brought suit before the Court of Claims to obtain compensation for the taking of forest timber from lands which they claimed to own in the Tongass National Forest (Tee Hit Tons v. United States, 120 F. Supp. 202) (1954).

In this suit, the natives claimed title to 350,000 acres of land and 150 square miles of water in the Tongass National Forest area. They maintained that timber taken from that area had been sold to a private company by the Department of Agriculture pursuant to the Joint Resolution of August 8, 1947 (61 Stat. 920). This, the natives claimed, amounted to a taking of their "'full proprietary ownership' of the land; or, in the alternative, at least [of their] 'recognized' right to unrestricted possession, occupation and use" (348 U.S. 277); and thus warranted compensation.
The Court of Claims had refused to address itself to the petitioner's questions dealing with the problem of aboriginal title. The Court of Claims did conclude, however, that "there is nothing in the legislation referred to which constitutes a recognition by Congress of any legal rights in the plaintiff tribe to the lands here in question." (120 F. Supp. 202, 203. (1954).

In reviewing this case the Supreme Court (343 U.S. 272) (1955) noted that "the compensation claimed does not arise from any statutory direction to pay. Payment, if it can be compelled, must be based upon a constitutional right of the Indians to recover." The Court concluded that since the Congress had never specifically recognized the Indians' title to the land in question, the Indians did not possess title thereto, and thus were not entitled to compensation as a constitutional right (under the Fifth Amendment). Accordingly, "Indian occupancy, not specifically recognized as ownership by action authorized by Congress, may be extinguished by the government without compensation."

The Court explicitly distinguished between the case of the Tee Hit Tons and that of the Tillamooks:

"The recovery in the United States v. Tillamooks... was based upon statutory direction to pay for the aboriginal title in the special jurisdictional act to equalize the Tillamooks with the neighboring tribes, rather than upon a holding that there had been a compensable taking under the Fifth Amendment." (343 U.S. 272). 2

The dissenting justices in this case had that the Organic Act of Alaska (1884) had recognized the claims of the natives in sec. 3:
"the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress..."

The dissenters concluded, in effect, that in 1864 Congress had recognized the claim of these natives to title to their lands, leaving the specification of the 'losses and bounds' of such lands and the terms of the acquisition of title for future legislation to determine.

A third case, that of the Tlingit and Haida Indians, finally settled in 1968, bears directly upon provisions of the Alaska Native Claims Settlement Act.

The Tlingits and Haidas had been authorized by Congress in 1935 to bring suit in the Court of Claims for the adjudication and judgment "upon any and all claims which said Indians may have, or claim to have, against the United States" (49 Stat. 388) (1935). Of particular concern was the provision in Sec. 2 which provided that:

"the loss to said Indians of their right, title, or interest arising from occupancy and use, in lands or other tribal or community property, without just compensation therefore, shall be held sufficient ground for relief hereunder..."

Congress did not directly confront the issue of aboriginal title, as it required only that the Tlingits and Haidas prove "use and occupancy" to establish claim to the lands for which compensation could be made. The Court of Claims found that the Tlingits and Haidas had used and occupied the land area in question and had thus established "Indian title" thereto (p. 468), and that the United States had taken such land, thus entitling these Indians to compensation under the 1935
Act (177 F. Supp. 452) (1959). The Court held that use and occupancy title of the Tlingit and Haida Indians to the land in question was not extinguished by the Treaty of 1867.

A separate determination of the amount of the liability was made and handed down on January 19, 1968 (Tlingit and Haida Indians of Alaska et al. v. United States [Col. Cl. No. 479000, January 19, 1968. Thus, while the Tlingit-Haida ruling would seem to constitute a limited recognition of the Tlingits' and the Haidas' claims to aboriginal title, it did not settle the larger issue of the claim of all Alaska natives to aboriginal title. Nevertheless, because the Tlingits and Haidas had been awarded some compensation for lands taken by the U.S., such compensation was recognized as an offset in the Native Claims Act (sec. 16) as follows:

"(c) The funds appropriated by the Act of July 9, 1958 (82 Stat. 307) to pay the judgment of the Court of Claims in the case of the Tlingit and Haida Indians of Alaska et al. against the United States, numbered 47.00, and distributed to the Tlingit and Haida Indians pursuant to the Act of July 13, 1970 (84 Stat. 431), are in lieu of the additional acreage to be conveyed to qualified villages listed in section 11."

This, then, is background to the Alaska Native Claims Settlement Act of 1971, signed into law on December 18, 1971, by President Nixon. The law was enacted by Congress to settle the claim of Alaska's native Indian Aleut and Eskimo population to aboriginal title to the land on which they have lived for generations. The natives' claim to aboriginal title is explained in House Report No. 92-523 as follows:
"When the United States acquired the Territory of Alaska by purchase from Russia, the treaty (proclaimed June 21, 1867, 15 Stat. 539) conveyed to the United States dominion over the territory, and it conveyed title to all public lands and vacant lands that were not individual property. The lands used by the 'sociable' tribes were not regarded as individual property, and the treaty provided that these tribes would be subject to such laws and regulations as the United States might from time to time adopt with respect to aboriginal tribes.

"Congress provided by the Act of May 17, 1884 (23 Stat. 24), that the Indians and other persons in the territory (now commonly called Natives) should not be disturbed in the possession of any lands actually in their use or occupation or then claimed by them, but that the terms under which such persons could acquire title to such lands were reserved for future legislation by Congress. Congress has not yet legislated on this subject, and that is the purpose of this bill.

"Aboriginal title is based on use and occupancy by aboriginal peoples. It is not a compensable title protected by the due process clause of the Constitution, but is a title held subject to the will of the sovereign. The sovereign has the authority to convert the aboriginal title into a full fee title, in whole or in part, or to extinguish the aboriginal title either with or without monetary or other consideration.

"It has been the consistent policy of the United States Government in its dealings with Indian Tribes to grant to them title to a portion of the lands which they occupied, to extinguish the aboriginal title to the remainder of the lands by placing such lands in the public domain, and to pay the fair value of the titles extinguished. This procedure was initiated by treaties in the earlier part of our history, and was completed by the enactment of the Indian Claims Commission Act of 1946. That Act permitted the Indian Tribes to recover from the United States the fair value of the aboriginal titles to lands taken by the United States (by cession or otherwise) if the full value had not previously been paid.

"The Indian Claims Commission has not been available to the Natives in Alaska, in a practical sense, because the great bulk of the aboriginal titles claimed by the Natives have not been taken or extinguished by the United States. The United States has simply not acted."
The extent to which the Natives in Alaska could prove their claims of aboriginal title is not known. Native leaders asserted that the Natives have in the past used and occupied most of Alaska. Use and occupancy patterns have changed over the years, however, and land used and occupied in the past may not be used and occupied now. Moreover, with development of the State, many Natives no longer get their subsistence from the land.

The pending bill does not purport to determine the number of acres to which the Natives might be able to prove an aboriginal title. If the tests developed in the courts with respect to Indian Tribes were applied in Alaska, the probability is that the acreage would be large — but how large no one knows. A settlement on this basis, by means of litigation if a judicial forum were to be provided, would take many years, would involve great administrative expense, and would involve a Federal liability of an undeterminable amount.

It is the consensus of the Executive Branch, the Natives, and the Committee on Interior and Insular Affairs of the House that a legislative rather than a judicial settlement is the only practical course to follow. The enactment of H.R. 10367 would provide this legislative settlement.

The Committee found no principle in law or history, or in simple fairness, which provides clear guidance as to where the line should be drawn, for the purpose of confirming or denying title to public lands in Alaska to the Alaskan Natives. The lands are public lands of the United States. The Natives have a claim to some of the lands. They ask that their claim be settled by conveying to them title to some of the lands, and by paying them for the extinguishment of their claim to the balance.

This, in effect, is what PL 92–203 achieves; it settles the natives' claims by conveying to them title to 40 million acres of land and paying a cash award as compensation for extinguishment of their claim to the balance.
E. DETERMINATION AND DISPOSITION OF NATIVE PROPERTY RIGHTS IN HAWAII: HISTORY

The relevant question here is to what degree, and in what ways, the history of the determination and disposition of native property rights in Hawaii is similar to the history of native property rights in Alaska. Is there any basis for proposing a native land claims settlement for Hawaii in light of the precedent set by the Alaska settlement?

First it is necessary to set forth a general background history of land tenure in Hawaii, which, at the time of the Annexation, was based on a system of individual patents in fee awarded by the Hawaiian government.

The modern land history of Hawaii began in 1795 with the conquest of the islands by Kamehameha I, the chief who conquered and unified the entire group of islands. The system of land tenure existing before this time is not clearly known, though it was in many ways similar to the feudal system of medieval England. It had been the custom, before Kamehameha I, to redivide the land every time a king died. The lands were then redistributed to the favorites of the new king. Thus when Kamehameha I unified all the islands under his rule, the lands were, according to custom, claimed by the conqueror and reapportioned among his chiefs and favorites.

Nonetheless, there had been instances in these periods of redistribution, both before and during the reign of Kamehameha, that indicate the recognition of hereditary land rights in a few families. Apart
from certain exceptions, however, the chiefs and favorites received from Kamahameha the conquered lands according to the new king's division, and these chiefs and favorites apportioned their holdings in tune to the second rank of chiefs. These likewise divided the lands in successively similar areas among their dependents — a method of land division similar to that established in England by William the Conqueror.

No suggestion of ownership in the land itself was implied in passing tenure from rank to rank by the various persons who divided and subdivided it or to the tenant farmer to whom it was finally allotted. Beginning with the obligation assumed by the first-ranking chiefs in accepting stewardship of their allotted lands from the king, those who received it owed allegiance to his superior. This descending chain of authority thus comprised the system by which the king bound himself to the whole body of people on whom he was dependent for support. The same rights, therefore, which the king possessed over the superior landlords and all under them were possessed by the various grades of landlords over their inferiors. The king owned the *allodial*, or absolute, title, and those beneath him, in whose hands he placed the lands, held it in a kind of *trust*. When a chief died, his lands reverted, not to his family, but to the king, to be used by him as part of his personal holdings or to be given to another chief. When a chief was dispossessed of his lands, however, it was not the custom to divest the direct cultivators of the soil of the land which they
occupied. In this, therefore, the tenant farmers, or makaainana, enjoyed some measure of economic stability, even though they did not possess title to their lands and dispossession for various reasons did occur. Neither, however, were tenants bound to the land by law, nor were they bound to render military service. 

This ancient land system came to an end with the celebrated land reform, or "Great Mahele," which was executed in 1848 by King Kamehameha III, son of the Conqueror. In this reform, the King abolished the old system and replaced it with a new one based on fee simple ownership.

To effect this reform, the King divided the lands between himself, and chiefs, and the government. The king retained title to those lands he kept for himself; the chiefs were allowed to claim and gain title to those lands allotted as their portion; and the government received the balance, parts of which were then placed open to purchase by individuals. After 1850, the tenants who lived on their chiefs' lands were enabled to claim the plots they cultivated (kuleanas) and to obtain fee simple title thereto.

The antecedents of land reform are to be found as early as 1825, however, when Kamehameha III ascended the throne. Since the newly-chosen king was only 12 years old, a National council of chiefs was held to confirm the new king and establish policy. In order to deal with the growing chaos arising out of the old policy of redistributing the lands at each king's death, the council formally adopted as law the following recommendations:
1) That the lands belonging to the chiefs should descend to their legitimate children;

2) That the chiefs should assign their lands to the people to cultivate in order that they might maintain themselves from such cultivation;

3) That the people should be free and not bound to one chief; and

4) That a tax should be paid to the king.

Since, during his reign, the new king's predecessor, Kamehameha II, had made few changes in the distribution of lands, the lands as apportioned under the first Kamehameha were left essentially unchanged upon the accession of Kamehameha III. Passage of the "Law of 1825", as the Council's recommendations became known, thus effected the permanent abandonment of the redistribution custom and the adoption of the Western practice of inheritance.

The result of the "Law of 1825" was a greater sense of security in the occupancy of land and for the first time in the history of the kingdom, land began to be thought of as a commodity with a monetary value. A tenant could still be dispossessed by a king or a chief, and permission from the king was still necessary to mortgage, lease or transact any business pertaining to land. Nevertheless, while land still lay in the king's ultimate possession, security in the occupancy of the land by chiefs and tenants was greatly increased.

The promulgation of a new Constitution in 1840, therefore, was a significant milestone in that it declared the chiefs and people to be joint owners of the land: "Kamehameha I was the founder of the kingdom," declared the Constitution, "and to him belonged all the land from one
end of the islands to the other, although it was not his own private property. It belonged to the chiefs and the people in common of whom Kamehameha I was the head and had the management of the landed property..."

The significance of this statement is summarized thus:

"While adding the force of written law to the feudal right of the king to control land transfers, this legislation, acknowledging the right of the people and the chiefs in and to the land itself with the king as executive head of the kingdom rather than the sole owner of its lands, is in actuality, the basis of Hawaii's modern land system. The right of these three, the people, the chiefs, and the king, to ownership of land was therein stated in law for the first time." 8/

Other innovations contained in the Constitution of 1840 included creation of a "representative body" of legislators elected by the people, and creation of a supreme court, to consist of the king, the kuhina nui, and four other judges appointed by the Hawaiian house representatives. 9/

* * * * * *

The Law of 1825 and the Constitution of 1840 prepared the way for the actual land reform initiated by the work of the Land Commission created in 1845 and culminating in the "Great Mahele" of 1848. The Commission to Quiet Land Titles was created by an act of December 10, 1845, and thus preceded the Mahele by three years. The Commission was to decide the rights and interests of all persons claiming title to land in cases brought before it, judging the validity of all titles and claims arising prior to creation of the Commission, including those of foreigners (aliens were not allowed to acquire fee simple title until 1850).
The Commission was to consist of five members and to exist for two years. The Commissioners organized on February 11, 1846, but their powers were repeatedly extended, so that the Board was not finally dissolved until March 31, 1855. 

Full powers were conferred upon the Board as a court of record to investigate, confirm, or reject all claims to land arising prior to December 10, 1845. All persons were required to file their land claims with this Board, or be forever barred of all recovery rights in the courts. The Commission was not authorized to grant patents for land. Its duty was to ascertain the nature and extent of each claimant's rights in land, and to issue an award for the same which was prima facie evidence of title. The holder of a Land Commission award was thus entitled to receive a royal patent in fee simple from the Minister of the Interior, on payment of a commutation to be set by the King in privy council. Appeals of the Board's decisions were to be made to the supreme court, and such appeals had to be filed within 90 days of the decision.

During the first two years of its existence the Land Commission was faced with the problem of deciding what constituted "a just and fair distribution where there existed evidence of overlapping rights, interests, and privileges growing out of the old system of landlordship. Another was the inability of many of the people to understand the new plan. Generations of living under the old system had not been conducive to the development of individualistic ideas concerning ownership of real property by the landlords and tenants. Consequently, many of them failed to make application for
title to their land, while others, who actually secured
title, coming suddenly and for the first time into possession
of something of marketable value, soon dissipated their
holdings without recognizing the privileges or the respons-
sibilities of land ownership.

Therefore, on December 11, 1847, the matter was brought up for
final decision before the King and chiefs in the Privy Council, and on
December 13, 1847, the following set of rules for the division of lands
was adopted:

"Whereas it has become necessary to the prosperity of
our Kingdom and the proper physical, mental and moral
improvement of our people that the undivided rights at
present existing in the lands of our Kingdom, shall be
separated, and distinctly defined;

"Therefore, We, Kamehameha III, King of the Hawaiian
Islands and His Chiefs, in Privy Council assembled, do
solemnly resolve that we will be guided in such division
by the following rules:

"1. His Majesty, our Most Gracious Lord and King, shall
in accordance with the Constitution and Laws of the Land,
retain all his private lands, as his own individual
property, subject only to the rights of the Tenants, to have
and to hold to Him, His heirs and successors forever.

"2. One-third of the remaining lands of the Kingdom
shall be set aside, as the property of the Hawaii Government
subject to the direction and control of His Majesty, as
pointed out by the Constitution and Laws, one-third to the
chiefs and Konohikis in proportion to their possessions,
to have and to hold, to them, their heirs and successors
forever, and the remaining third to the Tenants, the actual
possession and cultivators of the soil, to have and to hold,
to them, their heirs and successors forever.

"3. The division between the Chiefs or the Konohikis
and their Tenants, prescribed by Rule 2d shall take place,
whenever any Chief, Konohiki or Tenant shall desire such
division, subject only to confirmation by the King in
Privy Council.

"4. The Tenants of His Majesty's private lands, shall
be entitled to a fee simple title to one-third of the
lands possessed and cultivated by them; which shall be set
off to the said Tenants in fee simple, whenever His Majesty
or any of said Tenants shall desire such division."
"5. The division prescribed in the foregoing rules, shall in no wise interfere with any lands that may have been granted by His Majesty or His Predecessors in fee simple, to any Hawaiian subject or foreigner, nor in any way operate to the injury of the holders of unexpired leases.

3. It shall be mutual with any Chief or Ponohiki, holding lands in which the Government has a share, in the place of setting aside one-third of the said lands as Government property, to pay into the Treasury one-third of the unimproved value of said lands, which payment shall operate as a total extinguishment of the Government right in said lands."

These rules resulted in the official "Mahele" or land division, which took place between January 27, and March 7, 1848. By that action the King officially divided all of the lands with his chiefs. The book in which this division was recorded was called the "Mahele Book," and contained the releases or quit claim deeds signed by the King and the chiefs to the lands which they respectively surrendered to each other. Following the Mahele between the King and his chiefs, the King proceeded to set aside the larger part of his share of the lands for the Hawaiian government, "reserving to himself what he deemed a reasonable amount of land as his own estate. On June 7, 1848, the Legislative Council passed an act "relating to the lands of His Majesty the King and of the Government," which confirmed and ratified the divisions between King and chiefs and between King and government. The lands retained by the King were designated as "Crown Lands," while those apportioned to the government were termed "Government Lands."

A second division took place in 1850, whereby the chiefs ceded a third of their lands to the government as a "commutation." (A tax amounting to one-third of the unimproved value of the land could be
paid in lieu of the land cession (as provided by the sixth rule adopted by the Council in 1847). The Privy Council accepted this division between chiefs and government on August 27, 1892. Thus, by either ceding one-third of their allotment to the government, or by paying a commutation tax, the chiefs became eligible to receive full (allodial) title to all valid claims upon the remaining share of lands they received in the Mahiai, 16/ 

The last step in implementing the land reform was recognition of fee simple title to the lands occupied by the tenants. The Act of August 6, 1850, confirmed a resolution passed by the Privy Council on December 21, 1849, granting fee simple title free of all commutation to native tenants for their cultivated lands (kuleanas) and house lots (except house lots in the towns of Honolulu, Lahaina and Hilo). It was assumed that the commutation on tenants' lands had already been paid by the chiefs, since the tenants' kuleanas had to be carved out of lands already apportioned to the chiefs. 16/ 

Until its dissolution on March 31, 1855, the land Commission issued thousands of awards to the native tenants for their kuleanas. However, there were many native tenants who failed to receive awards for the lands they had occupied and improved. Some failed to file their claims with the Land Commission and others, after filing their claims, failed to appear before the Land Commission to support their claims. Many in the latter group, after filing their claims, relinquished such claims to the chiefs of the lands in which their cultivated plots were situated.
Whereas over 1,500,000 acres of land were set aside for the chiefs in The Great Mahele of 1848, and approximately 1,000,000 acres were reserved by Kamehameha III as "Crown Lands," and 1,500,000 acres were given by the king to the "government and people," less than 30,000 acres of land were awarded to the native tenants. 17/

Although the Land Commission was disbanded in 1853, certain claims could be presented (by statutory extension of the deadline) until June 1862 — after which time those who failed to present their claims were declared to be "forever barred and their rights under the Mahele Book to have reverted to the Government." 18/

The Crown Lands were rendered inalienable by the Act of January 3, which decreed that such crown lands "shall descend to the heirs and successors of the Hawaiian crown forever." After the Revolution, the Constitution of the Republic (proclaimed July 4, 1894) stated (in Article 95) that "that portion of the public domain heretofore known as Crown Land is hereby declared to have been heretofore, and now to be, the property of Hawaiian Government.... It shall be subject to alienation and other uses as may be provided by law." 19/

With the Annexation of Hawaii by the United States in 1898, the Republic of Hawaii ceded the "absolute fee and ownership" of all government lands to the United States. The Newlands Resolution of the U.S. Congress (30 Stat. 750) (July 7, 1898), providing for the Annexation declared, in addition to the cession of government lands, that "the existing laws of the United States relative to public lands shall not
apply to such lands in the Hawaiian Islands; but the Congress of the United States shall enact special laws for their management and disposition."

This was followed by the Organic Act of 1900, (31 Stat. 141), which established a territorial government in Hawaii. Sec. 73 of this Act provided that "the laws of Hawaii relating to public lands, the settlement of boundaries, and the issuance of patents on land-commission awards, except as changed by this Act, shall continue in force until Congress shall otherwise provide.

Sec. 91 declared the lands ceded by provision of the Annexation Resolution (30 Stat. 750) should "remain in the possession, use, and control of the government of the Territory of Hawaii... until otherwise provided for by Congress, or taken for the uses and purposes of the United States by direction of the President or of the governor of Hawaii." [Emphasis added] Sec. 99 added the once "Crown Lands" to the "property of the Hawaiian government."

When Hawaii became a State, the Hawaii Statehood Act (PL 86-3) (73 Stat. 4) (March 18, 1959) granted to the State of Hawaii title to all public lands and other public property within the boundaries of the State, to which the United States held title immediately prior to the admission of Hawaii into the Union. This was with the exception of lands which were, at the time of Hawaii's admission into the Union, set aside for use by the United States government. (Sec. 5(b)). *

* Sec. 5(a) of PL 86-3 provided that (except as indicated elsewhere) the State of Hawaii would also succeed to the title of the Territory of Hawaii in those lands in which the Territory held
In 1971 there were still 395,000 acres of land in Hawaii, title to, or use of which, remained with the Federal Government. Of these, approximately 218,000 acres was assigned to the National Park Service, 106,500 to the Army, 62,500 to the Navy, 6,000 to the Air Force, and the rest to other agencies. The total land area of the State of Hawaii comprises 3,218,000 acres. 102/

Most of the historic lands of the Hawaiian people are not owned by native Hawaiians today. After the Great Mahele, "a large percentage of the natives, naive in matters of real estate value, sold their lands soon after purchasing them. As a result, white speculators and planters acquired great tracts, making it possible later for large corporations to control all but small segments of the arable land." 20/

As has already been indicated (p.18 above), many tenants failed to claim the lands (kuleanas) they occupied and to which they were entitled during the tenure of the Land Commission.

Contemporaneously with the Kuleana grant, the government lands were made available for purchase or lease, and it was made possible for those Hawaiians who did not have kuleanas to buy small plots of land from the government at a low price. Some took advantage of this opportunity. In course of time, however, many of these early homesteads passed out of the hands of the Hawaiians "by direct sale, by mortgages which the native owners were unable to pay off, or by failure of heirs. During the third quarter of the nineteenth century, as the population declined and the sugar industry developed, many kuleanas and other small holdings were absorbed into plantations, and large tracts of government land
and crown land were sold or leased for long period to plantation companies, cattle ranches, or the like. During this period and later, the trend was away from individual homesteads (small farms) and toward large-scale agricultural enterprises. 21/

A 1967 report of the Legislative Reference Bureau, University of Hawaii, stated that

The plantation agriculture flourished in Hawaii, concentration of land ownership and control increased. Records of land sales reveal that plantations purchased considerable quantities of public land, while securing long-term leases on other portions of public land and crown land. The plantations also obtained title to many of the small land holdings received by native Hawaiians during the mahele. The census of 1890 revealed something of the degree of concentration of land ownership as well as the extent to which title to land had been secured by the Islands' American-European residents. This census, the last taken before the overthrow of Hawaii's monarchy, reported that, of a total population of approximately 90,000 fewer than 5,000 people actually owned any land. The relatively small number of Westerners reportedly owned over one million acres, or approximately 56 percent of all privately owned land in the islands. 22/

In 1884, therefore, a law was enacted "to facilitate the acquiring and settling of homesteads." In accordance with this law, portions of available government lands were laid out in lots of not more than twenty acres and offered for sale as homesteads. Homesteaders were allowed five years to obtain fee simple titles. Under this law nearly 600 homestead lots were taken, most of them by Hawaiians and Portuguese; but less than half were finally patented. The generally poor response to the 1884 law led to passage of a new homestead law, the comprehensive Land Act of 1895, which provided for the sale or lease of government lands according to several plans. General leases for not more than 21
years and cash sales at auction (limited to 1029 acres in one piece) were methods usually applied to sugar cane and grazing land in large tracts, while smaller areas could be acquired in three ways: (1) the "homestead lease" (inalienable, for a term of 999 years); (2) the "right-of-purchase lease" (for 21 years, with option to purchase after three years); and (3) the "cash freehold" agreement, an installment purchase extending over a period of three years. The "homestead lease" was devised for native Hawaiians and was used almost exclusively by them. 23/

Passage of the Hawaiian Homes Commission Act by the U.S. Congress in 1921 (42 Stat. 103) inaugurated a new plan of homesteading in Hawaii. The purpose of this law was to get the Hawaiian and part-Hawaiian people out of the congested city areas in which many of them were living, and to put them back on the land as homesteaders, and thereby better their condition and in time develop among them a class of independent citizen farmers.

The project was placed under control of a commission; it was financed mainly by a revolving fund of one million dollars (later increased to two million) built up from rentals of public lands and water licenses. There was made available to the commission about 200,000 acres of government land, which did not include any sugar cane land; from this available land, portions were laid out in homestead lots of different sizes, which were to be leased for 99 years at a nominal rental to people of not less than one-half Hawaiian blood.
Financial and technical assistance was to be provided to the homesteaders by the Commission. 24/ 

The effectiveness of the Hawaiian Homes Commission "rehabilitation scheme" is assessed by R. S. Kuykendall and A. C. Day (1951):

"Operations were at first confined to a small area of Molokai but have been gradually extended to other islands. The main agricultural homestead settlement developed by the Hawaiian Homes Commission is located at Hoolehua, Molokai. It was originally intended to be a diversified farming area, but has been given over to the production of pineapples under agreements with three pineapple companies. Diversified crops failed in this place because of the lack of water for irrigation. It is generally agreed that pineapples saved the Hoolehua homesteaders, but did so without making independent farmers of them. One of the most useful features of the rehabilitation scheme has been the opening of numerous small residential and subsistence homesteads in the vicinity of Honolulu and other towns where many of the Hawaiians have employment. At the end of 1956 there were more than 10,000 Hawaiians living in the various homestead communities, farm and residential, on the islands of Molokai, Hawaii, and Oahu. Since that date, a new homestead settlement has been established at Anahola on Kauai." 25/

In a contrary vein, it is the opinion of the Land Laws Revision Commission, created by the Legislature in 1943, that homesteading under the 1884 and 1895 Acts was generally successful in providing homesteads to native Hawaiians:

"In its final report (December 31, 1946) the commission asserted that "the majority of homesteaders have proved themselves to be mere speculators or investors," and said that the "only legitimate present demands for public lands are for pastoral lands... and for lots for homesites convenient to occupational locale." It recommended, among other things, 'that all sales of public lands be discontinued except for residential purposes,' and 'that the public lands... not suitable for residential purposes be conserved and disposed of only upon lease.'" 26/

These authors conclude:
In recent years there has been much talk about land monopoly in Hawaii. Attention has been focused upon this subject by the rapid growth of population and the acute housing shortage which developed during and after World War II. The problem is acute. As far back as 1900, J. R. Castle said, 'One of the crying evils of Hawaii is its land ownership. Two immense estates are said to own over one third of the kingdom.' Today, in 1960, the cry is still against a few estates which keep a tight hold on huge areas of land.27)

Or, as the University of Hawaii Legislative Reform Bureau states the matter:

"Land ownership in the State of Hawaii remains, as it has been since the time of Kamehameha I, highly concentrated. The largest single owner is the state government, which owns a total of 1,590,532 acres, or 33.74 percent of the total land area of Hawaii. The federal government owns 235,717.34 acres in fee simple and another 145,764.97 acres of ceded land for a total of 401,482.31 acres or 9.73 percent of the total area of the State. The greatest percentage of land, however, is owned by the 72 major private landowners who own more than 1,000 acres each in fee simple. These major private landowners own 1,923,132.56 acres, or 47 percent of the total land area of the State. Taken together, the state and federal governments and the 72 major private landowners own a total of 3,915,196.87 acres, which is 95.36 percent of the total land area of the State. Therefore, the remaining private landowners own less than 5 percent of the lands of the State of Hawaii."28)

It is relevant at this point to suggest, on the basis of the foregoing history, the ways in which the Hawaiian land situation is comparable to the land system which pertained in Alaska before the 1971 settlement. Is there a basis for proposing a Hawaiian land claims settlement in light of the Alaska precedent? In what ways is the argument for a settlement of Hawaiian native claims similar, and in what ways is it dissimilar, to the Alaska precedent?
G. SIMILARITIES BETWEEN HAWAIIAN AND ALASKAN NATIVE CLAIMS ARGUMENTS

The similarities between the land situation in Alaska and Hawaii, which might serve as arguments in support of providing a Hawaiian native claims settlement like that in Alaska, are as follows:

1. HAWAII BECAME AN AMERICAN TERRITORY UNDER FOREIGN INFLUENCE AND WITHOUT THE CONSENT OF THE NATIVE HAWAIIAN PEOPLE

The U.S. acquired Alaska from Russia without the consent of the Alaska natives who lived there. Thus the assumption of title to public domain in Alaska by the U.S. Government left the natives without compensation for any of Alaska's 365 million acres, which they had used and occupied for centuries, and to which, on the basis of use and occupancy, they claimed aboriginal title. The Alaska settlement vested title in the natives to 40 million acres and provided a cash settlement totalling nearly one billion dollars as payment for extinguishment of aboriginal title to the rest of the land.

It has been argued ever since the 1893 Revolution in Hawaii that Annexation to the U.S. was not the will of most of Hawaii's native population.

President Grover Cleveland appointed a special commissioner to Hawaii, James H. Blount, who investigated the circumstances relating to the overthrow of the Hawaiian monarchy in January 1893 and flatly concluded that the revolution was the result of a conspiracy between the U.S. Minister to Hawaii, John L. Stevens, and revolutionary leaders in Hawaii. 29/
President Cleveland's Secretary of State, Walter Q. Gresham, wrote the President in October of 1893:

"Mr. Thom... states that while at Honolulu he did not see a single American who expressed willingness to submit the question to a vote of the people, nor did he talk with one on that subject who did not insist that if the Islands were annexed suffrage should be so restricted as to give entire control to foreigners or whites. Representative unionists have repeatedly made similar statements to the undersigned." 30/

It was the President's conclusion, based on the reports, that

"The law... Government of Hawaii was overthrown without the drawing of a sword or the firing of a shot by a process every step of which, it may safely be asserted, is directly traceable to and dependent for its success upon the agency of the United States acting through its diplomatic and naval representatives. But for the notorious predilections of the United States Minister for Annexation, the Committee of Safety, which should be called the Committee of Annexation, would never have existed. But for the landing of the United States forces upon false pretexts respecting the danger to life and property the committee would never have exposed themselves to the pains and penalties of treason by undertaking the subversion of the Queen's Government. But for the presence of the United States forces in the immediate vicinity and in position to afford all needed protection and support the committee would not have proclaimed the provisional government from the steps of the Government building. And finally, but for the lawless occupation of Honolulu under false pretexts by the United States forces, and but for Minister Steven's recognition of the provisional government when the United States forces were its sole support and constituted its only military strength, the Queen and her Government would never have yielded to the provisional government, even for a time and for the sole purpose of submitting her case to the enlightened justice of the United States." 31/
On the basis of these conclusions, President Cleveland refused to resubmit to the Senate a Treaty of Annexation which had been drawn up in 1893.

The Republic which governed Hawaii between 1894 and 1898 served as a kind of "interim government" between the Monarchy and Annexation, and, in the opinion of many scholars, did not truly represent the Hawaiian people:

"The new government was considerably more 'republican' than democratic. The president was to be elected by the legislature for a single term of six years, although (the first and only President, Sanford B. Dole) was named by the Constitution as president until the end of the year 1900. Property qualifications were imposed upon members of the two-house legislature, as well as on voters eligible to elect senators...." 32/

The President, Sanford B. Dole, was a white man.

Thus it can be argued that the Annexation treaty, approved by the Hawaiian Senate and signed by President Dole on September 10, 1897, was sanctioned by a legislature and government that arose from an act that, in the opinion of the President's special emissary, was contrary to the will of the Hawaiian people (Cf. p. 27 above)

It could thus be argued that when Hawaii joined the U.S. and ceded the government and crown lands of the Hawaiian people to the U.S., (30 Stat. 750), it did so without consent (and possibly against the will) of the native population, who, as in Alaska, found themselves without title to the ancestral lands on which they had lived and which they had used from time immemorial. Although the Statehood Act retroceded these lands to the State of Hawaii (Cf. p.20 above), nearly
400,000 acres of what was originally Hawaiian government lands are still owned by the U.S. government. While it would not seem feasible to redistribute this land to the people (the bulk being either assigned to the Interior Department, as part of the National Park System or the military), a cash compensation for extinguishment of aboriginal title, similar to that provided in the Alaska settlement, would seem to be justified in light of the Alaska precedent.

This leads us to point two.

2. FEDERALLY OWNED OR USED LANDS IN HAWAII AT THE PRESENT TIME WERE NEVER COMPENSATED FOR BY THE UNITED STATES GOVERNMENT; THE PEOPLE OF HAWAII HAVE A LEGITIMATE CLAIM TO THESE LANDS OR COMPENSATION THEREFOR

A close similarity with the land situation (before settlement) in Alaska thus is to be found in the Federal lands which have been set aside for use by the Federal Government in Hawaii, and for which the United States has not compensated the Hawaiian people. (See p.23 above) In Alaska some 353 million acres of the State's 365 million acres were in the public domain at the time of the settlement. The Alaska natives' claim to aboriginal title to Alaska was settled by granting title to 40 million acres to the natives and paying them for extinguishment of the balance. As noted above, the 1971 Bureau of Land Management report (Dept. of the Interior) entitled "Public Land Statistics," shows that 396,000 acres of land in Hawaii are still owned by the Federal government. The Hawaiian people have not been compensated by the U.S. for the taking of this land, and thereby find themselves
in a situation comparable to that of the Alaska natives before the 1971 settlement. If comparable aboriginal title in Alaska means lands the Alaska natives have "used and occupied" from "time immemorial," then the same definition can be applied to lands used and occupied by Hawaiian natives for centuries, which are now owned and used by the U.S. government.

The Alaska precedent was accomplished in the context of the precedent set by establishment of the Indian Claims Commission in 1946; and the Indian Claims Commission precedent is directly relevant to the Hawaii situation in that the Claims Commission was established to hear the claims of Indian tribes to compensation for an uncompensated or inadequately compensated taking by the U.S. government of lands to which they held (and must prove) aboriginal title or recognized title (granted by Congress). A case might be established for creating a Hawaiian Claims Commission to study possible compensation to Hawaiian natives for the lands which were ceded to the U.S. in 1898.

An explanation by the Indian Claims Commission of its purpose is pertinent at this point: "..... Indian land cessions to the United States constitute the prime source of the alleged wrongs for which today's Indian claimants seek redress. Their chief complaint is that because of their ancestors' illiterate condition, the United States was able to acquire much of its valuable land for an unfair price."
The jurisdiction of the Commission includes "all claims which would arise if treaties, contracts, or agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration mutual or unilateral mistake or other equitable consideration." Finally, the Commission's jurisdiction extends to all claims based upon 'fair and honorable dealings that are not recognized by any existing rule of law or equity.' 337

Aboriginal title, based on use and occupancy, could possibly be claimed by Hawaii natives. The taking by the U.S. government of lands to which the natives claimed such title could possibly be shown to have been without payment and hence compensable.

3. IN BOTH ALASKA AND HAWAII ORGANIC ACTS CONGRESS LEFT OPEN THE POSSIBILITY OF A FUTURE SETTLEMENT OF LAND CLAIMS

As has already been noted, the Hawaii Organic Act of 1900 provided in Sec. 73 that the (then) present land laws of Hawaii should remain in effect "until Congress shall otherwise provide." [Emphasis added] More specifically, the Alaska Organic Act of 1884 provided (in Sec. 8) that "the terms under which [natives]..... may acquire title to such lands [actually in their use or occupation now claimed by them] is reserved for future legislation by Congress." [Emphasis added] The Congressional provision for future settlement of the Alaska native land claims herein cited is explicit, whereas any such provision as is contained in Sec. 73 of the Hawaii Organic Act is merely implied in the
phrase "until Congress shall otherwise provide." However, it is possible to argue that by suggesting that Congress might enact new land laws to replace those then applicable in Hawaii, Congress provided the basis for the enactment of future land laws which could, in light of the Alaska settlement, provide for settlement of Hawaiian native land claims.

D. WAYS IN WHICH THE HAWAII LAND SITUATION DIFFERS FROM THAT IN ALASKA PRIOR TO THE SETTLEMENT

1. THE SYSTEM OF LAND TENURE IN HAWAII PRIOR TO ANNEXATION WAS DIFFERENT FROM THE SYSTEM IN ALASKA (AS IT AFFECTED NATIVES) PRIOR TO THE 1867 CESSION

The Alaska natives under Russian administration did not have the opportunity to obtain title to the lands they occupied, since individual ownership of land by natives was not regulated by the Russian government. Neither the 1844 Russian Charter nor the 1867 Treaty of Cession specified in delineating native property rights. "Settled" tribes — those within the economic sphere of influence of the Russian American Company — were considered Russian subjects and were guaranteed "property rights" by the 1844 Charter; but these were primarily personal property rights and did not include the right to land-holding, which at that time was virtually unknown among Russian peasants and consequently unregulated in the colonies.

On the contrary, at the time of Annexation (1893), there was a highly developed system of fee simple land ownership in Hawaii which had been instituted by the Hawaiian King Kamehameha III in the Great Mahele. The 1900 Organic Act for Hawaii specifically left intact
the land laws of Hawaii which had been in force at the time of Annexation (Sec. 73), and which included existing land titles. Moreover, land allotments awarded under the treaty were alienable and thus could be sold without restriction. Moreover, land allotments awarded under the treaty were alienable and thus could be sold without restriction. The Crown Lands were also alienable until the Act of January 3, 1865, rendered them "henceforth inalienable" and "henceforth inalienable."

Thus there was no legal prohibition to the alienation of Hawaiian government lands or of chiefs' and tenants' lands under the monarchy, nor of the former Crown Lands, after establishment of the Republic. Such lands as were alienated from native ownership were sold by the natives according to the laws of the Kingdom, Republic, or Territory of Hawaii.

This situation is not analogous with that in Alaska, where the natives did not have legal title to their lands before U.S. acquisition, and thus could not sell what they did not own. Furthermore, the U.S. Congress enacted legislation specifically protecting the Alaska natives' rights in such property and promising future legislation to provide the means by which the natives should secure title. Congress thus indicated the U.S. had assumed responsibility for the natives' land rights in Alaska and had guaranteed some kind of future settlement:

* Although, as has been demonstrated above (p.32 ), Sec. 73 did specify that the existing laws should remain in force only "until Congress shall otherwise provide."
"... the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress." [Emphasis added (in Sec. 10).]

No such guarantee to Hawaii natives is contained in the Hawaii Organic Act.

2. MORE FEDERALLY - OWNED LAND IN ALASKA ASSIGNED THAN IN HAWAII, WHERE ALL FEDERAL LAND IS ASSIGNED

The vast majority of acreage in Alaska came into the public domain when the U.S. purchased the territory, and at the time of the settlement (1971) most of this remained unassigned. Contrariwise, the Hawaii Organic Act granted to the Territory of Hawaii "possession, use and control" of all government lands ceded by Hawaii to the U.S., except those taken for use of the U.S. Government by Congress, the President or the Governor of Hawaii (Sec. 91). The former Crown Lands were also declared by the Organic Act to be the "property of the Hawaiian government." (Sec. 99). Of the land Hawaii ceded to the U.S. at the time of Annexation (1898), therefore, only 396,000 acres are now owned by the Federal government, and all of this appears to be assigned.

Moreover, it is clear that the amount of Federally-owned land is vastly smaller in Hawaii than in Alaska, while the number of natives (or part-natives) is larger in Hawaii. As has already been noted, the Federal government owns approximately 396,000 acres in Hawaii, all of

* This argument may be countered by the thesis set forth on page 31 of this report; i.e., that Sec. 73 of the Hawaii Organic Act also leaves open the possibility that a basis for a Hawaiian settlement is established there.
which appears to be assigned. This would have to be shared by 71,000 natives in the event of a settlement involving land redistribution (1970 Census Bureau figures). In Alaska at the time of the settlement, there were some 355,000,000 acres in the public domain, much of which was unassigned. Forty million acres was granted to some 54,000 natives. Thus a settlement in Hawaii involving land title awards would not seem to be feasible, as it was in Alaska. Rather, the option in Hawaii would seem to be for cash settlement in payment for an uncompensated taking of Hawaiian government lands.

3. NO DISTINCTION WAS MADE BY THE HAWAII STATEHOOD ACT BETWEEN THE RIGHT OF THE HAWAIIAN PEOPLE TO TITLE TO PUBLIC LANDS IN THE STATE, AND THE RIGHT OF THE STATE TO SUCH LANDS; SUCH A DISTINCTION WAS MADE IN ALASKA.

The State of Alaska was expressly prohibited by the Statehood Act of 1958 (35 Stat. 508) (Sec. 4) from claiming any right and title to land to which the natives claimed right and title. On the other hand, no such distinction between the rights of natives and the rights of the State was made in the Hawaii Statehood Act (73 Stat. 4) of 1959; title to all public lands in Hawaii to which the United States held title immediately prior to the Statehood Act were (with specified exceptions) granted to the State of Hawaii (Sec. 5(b)). No special consideration of the natives was made. In short, the Hawaii Statehood Act did not distinguish the right of the Hawaii natives to title to public lands from the right of the State to such lands.
The fact that this difference exists could, however, be used to support an argument that such a distinction should have been made in detail, and that because in the past, the Tlingit were deprived of their land rights, and thus are eligible for (monetary) compensation in settlement of their rights. This notion (compensation) might be supported by the declaration in the Constitution of 1850 that "all the land from one end of the islands to the other" belonged to the chiefs and the people in common ...." (Cf. p. 13 above).
FOOTNOTES


2/ Four years earlier, the Supreme Court had overruled a claim that compensation granted to the Tillamooks by the Court of Claims (87 F. Supp. 933) (1950) pursuant to the Supreme Court decision of 1945 (322 U.S. 40; Cf. p24 above) was not based upon a taking under the Fifth Amendment. On the basis of this finding, the Court denied the payment of interest which had been awarded by the Court of Claims (Cf. 344, U.S. 48) (1951).


8/ Hobbs, p. 29.


12/ Hobbs, p. 42.
13/ Hobbs, p. 45.


15/ Ibid.


19/ Hobbs, pp. 70, 110.


21/ Kuykendall, p. 204.

22/ Horwitz, pp. 3-4.

23/ Kuykendall, p. 206.

24/ Kuykendall, p. 208.

25/ Kuykendall, p. 209.

26/ Ibid.

27/ Kuykendall, p. 210

28/ Horwitz, p. 13.

29/ Kuykendall, p. 179.
Richard S. Jones  
Analyst in History and Public Affairs  
Government and General Research Division  
April 20, 1973
TO: The Honorable
Daniel E. Inouye
Attn: Dick Rust

The attached information is forwarded in response to your recent inquiry. We hope it meets your needs in this matter.

Please do not hesitate to call on us for further assistance.

Sincerely,

Lester S. Jayson
Director

FROM: Richard S. Jones
Govt. & General Research Division
proviso of section 402(c) of the Federal Food, Drug, and Cosmetic Act is amended by striking out "March 1, 1959," and inserting in thereof "May 1, 1959."

(b) The third proviso of section 402(c) of such Act is amended to read as follows: "And provided further, That, without regard to the requirements of sections 406(b) and 701(e), the Secretary promptly establish, and may from time to time amend, regulations:

(1) prescribing the conditions (including quantitative tolerance limitations) under which the coal-tar color known as Citrus Red No. 2 (more particularly to be defined in such regulations) may be used in coloring the skins of oranges which are not intended or used for processing (or, if so used, are oranges designated in the trade as ‘packing house elimination’), and which meet minimum maturity standards established by or under the laws of the States in which the oranges are grown, (2) providing for separately listing such color solely for such use on such oranges, and (3) providing for certification of batches of such color, with or without harm diluents, for such restricted use: and such oranges, if colored prior to September 1, 1961, and to the enactment by the Congress (subsequent to the date of enactment of this proviso) of general legislation on the listing and certification of food color additives under safe tolerances, in conformity with this proviso and such regulations, with or without diluents, for such restricted use, shall not be deemed to be adulterated within the meaning of this paragraph."

Approved March 17, 1959.

Public Law 86-3

AN ACT

To provide for the admission of the State of Hawaii into the Union.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, subject to the provisions of this Act, and upon issuance of the proclamation require by section 7(c) of this Act, the State of Hawaii is hereby declared to be a State of the United States of America, is declared admitted into the Union on an equal footing with the other States in all respect whatever, and the constitution formed pursuant to the provisions of the Act of the Territorial Legislature of Hawaii entitled "An Act to provide for a constitutional convention, the adoption of a State constitution, and the forwarding of the same to the Congress of the United States, and appropriating money therefor", approved May 20, 1947 (Act 334, Session Laws of Hawaii, 1949), and adopted by a vote of the people of Hawaii in the election held on November 7, 1950, is hereby found to be republican in form and in conformity with the Constitution of the United States and the principles of the Declaration of Independence, and is hereby accepted, ratified, and confirmed.

Sec. 2. The State of Hawaii shall consist of all the islands, together with their appurtenant reefs and territorial waters, included in the Territory of Hawaii on the date of enactment of this Act, except the atoll known as Palmyra Island, together with its appurtenant reefs and territorial waters; but said State shall not be deemed to include the Midway Islands, Johnston Island, Sand Island (offshore from Johnston Island), or Kingman Reef, together with their appurtenant reefs and territorial waters.
Sec. 3. The constitution of the State of Hawaii shall always be republican in form and shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence.

Sec. 4. As a compact with the United States relating to the management and disposition of the Hawaiian home lands, the Hawaiian Homes Commission Act, 1920, as amended, shall be adopted as a provision of the Constitution of said State, as provided in section 7, subsection (b) of this Act, subject to amendment or repeal only with the consent of the United States, and in no other manner: Provided, That (1) sections 202, 213, 219, 220, 222, 224, and 225 and other provisions relating to administration, and paragraph (3) of section 204, sections 206 and 212, and other provisions relating to the powers and duties of officers other than those charged with the administration of said Act, may be amended in the constitution, or in the manner required for State legislation, but the Hawaiian home-loan fund, the Hawaiian home-operating fund, and the Hawaiian home-development fund shall not be reduced or impaired by any such amendment, whether made in the constitution or in the manner required for State legislation, and the encumbrances authorized to be placed on Hawaiian home lands by officers other than those charged with the administration of said Act, shall not be increased, except with the consent of the United States; (2) that any amendment to increase the benefits to lessees of Hawaiian home lands may be made in the constitution, or in the manner required for State legislation, but the qualifications of lessees shall not be changed except with the consent of the United States; and (3) that all proceeds and income from the “available lands”, as defined by said Act, shall be used only in carrying out the provisions of said Act.

Sec. 5. (a) Except as provided in subsection (c) of this section, the State of Hawaii and its political subdivisions, as the case may be, shall succeed to the title of the Territory of Hawaii and its subdivisions in those lands and other properties in which the Territory and its subdivisions now hold title.

(b) Except as provided in subsection (c) and (d) of this section, the United States grants to the State of Hawaii, effective upon its admission into the Union, the United States title to all the public lands and other public property within the boundaries of the State of Hawaii, title to which is held by the United States immediately prior to its admission into the Union. The grant hereby made shall be in lieu of any and all grants provided for new States by provisions of law other than this Act, and such grants shall not extend to the State of Hawaii;

(c) Any lands and other properties that, on the date Hawaii is admitted into the Union, are set aside pursuant to law for the use of the United States under any (1) Act of Congress, (2) Executive order, (3) proclamation of the President, or (4) proclamation of the Governor of Hawaii shall remain the property of the United States subject only to the limitations, if any, imposed under (1), (2), (3), or (4), as the case may be.

(d) Any public lands or other public property that is conveyed to the State of Hawaii by subsection (b) of this section but that, immediately prior to the admission of said State into the Union, is controlled by the United States pursuant to permit, license, or permission, written or verbal, from the Territory of Hawaii or any department thereof may, at any time during the five years following the admission of Hawaii into the Union, be set aside by Act of Congress or by Executive order of the President, made pursuant to law, for the use of the United States, and the lands or property so set aside shall, subject only to valid rights then existing, be the property of the United States.
(e) Within five years from the date Hawaii is admitted into the Union, each Federal agency having control over any land or property that is retained by the United States pursuant to subsections (c) and (d) of this section shall report to the President the facts regarding its continued need for such land or property, and if the President determines that the land or property is no longer needed by the United States it shall be conveyed to the State of Hawaii.

(f) The lands granted to the State of Hawaii by subsection (b) of this section and public lands retained by the United States under subsections (c) and (d) and later conveyed to the State under subsection (e), together with the proceeds from the sale or other disposition of any such lands and the income therefrom, shall be held by said State as a public trust for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended, for the development of farm and home ownership on as widespread a basis as possible for the making of public improvements, and for the provision of lands for public use. Such lands, proceeds, and income shall be managed and disposed of for one or more of the foregoing purposes in such manner as the constitution and laws of said State may provide, and their use for any other object shall constitute a breach of trust for which suit may be brought by the United States. The schools and other educational institutions supported, in whole or in part, out of such public trust shall forever remain under the exclusive control of said State; and no part of the proceeds or income from the lands granted under this Act shall be used for the support of any sectarian or denominational school, college, or university.

(g) As used in this Act, the term "lands and other properties" includes public lands and other public property, and the term "public lands and other public property" means, and is limited to, the lands and properties that were ceded to the United States by the Republic of Hawaii under the joint resolution of annexation approved July 7, 1898 (30 Stat. 750), or that have been acquired in exchange for lands or properties so ceded.

(h) All laws of the United States reserving to the United States the free use or enjoyment of property which vests in or is conveyed to the State of Hawaii for its political subdivisions pursuant to subsection (a), (b), or (e) of this section or reserving the right to alter, amend, or repeal laws relating thereto shall cease to be effective upon the admission of the State of Hawaii into the Union.

(i) The Submerged Lands Act of 1933 (Public Law 31, Eighty-third Congress, first session; 67 Stat. 29) and the Outer Continental Shelf Lands Act of 1953 (Public Law 212, Eighty-third Congress, first session, 67 Stat. 462) shall be applicable to the State of Hawaii, and the said State shall have the same rights as do existing States thereunder.

6. As soon as possible after the enactment of this Act, it shall be the duty of the President of the United States to certify such fact to the Governor of the Territory of Hawaii. Thereupon the Governor of the Territory shall, within thirty days after receipt of the official notification of such approval, issue his proclamation for the elections, as hereinafter provided, for officers of all State elective offices provided for by the constitution of the proposed State of Hawaii, and for two Senators and one Representative in Congress. In the first election of Senators from said State the two senatorial offices shall be separately identified and designated, and no person may be a candidate for both offices. No identification or designation of either of
the two senatorial offices, however, shall refer to or be taken to refer to the term of that office, nor shall any such identification or designation in any way impair the privilege of the Senate to determine the class to which each of the Senators elected shall be assigned.

Sec. 7. (a) The proclamation of the Governor of Hawaii required by section 6 shall provide for the holding of a primary election and a general election and at such elections the officers required to be elected as provided in section 6 shall be chosen by the people. Such elections shall be held, and the qualifications of voters thereat shall be, as prescribed by the constitution of the proposed State of Hawaii for the election of members of the proposed State legislature. The returns thereof shall be made and certified in such manner as the constitution of the proposed State of Hawaii may prescribe. The Governor of Hawaii shall certify the results of said elections, as so ascertained, to the President of the United States.

(b) At an election designated by proclamation of the Governor of Hawaii, which may be either the primary or the general election held pursuant to subsection (a) of this section, or a Territorial general election, or a special election, there shall be submitted to the electors qualified to vote in said election, for adoption or rejection, the following propositions:

"(1) Shall Hawaii immediately be admitted into the Union as a State?

"(2) The boundaries of the State of Hawaii shall be as prescribed in the Act of Congress approved _________ , ________ , and all claims of this State to any areas of land or sea outside the boundaries so prescribed are hereby irrevocably relinquished to the United States.

"(3) All provisions of the Act of Congress approved _________ , ________ , reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Hawaii are consented to, fully by said State and its people."

In the event the foregoing propositions are approved at said election by a majority of the legal votes cast on said submission, the proposed constitution of the proposed State of Hawaii, ratified by the people at the election held on November 7, 1950, shall be deemed amended as follows: Section 1 of article XIII of said proposed constitution shall be deemed amended so as to contain the language of section 2 of this Act in lieu of any other language; article XI shall be deemed to include the provisions of section 4 of this Act; and section 8 of article XIV shall be deemed amended so as to contain the language of the third proposition above stated in lieu of any other language, and section 10 of article XVI shall be deemed amended by inserting the words "at which officers for all state elective offices provided for by this constitution and two Senators and one Representative in Congress shall be nominated and elected" in lieu of the words "at which officers for all state elective offices provided for by this constitution shall be nominated and elected; but the officers so to be elected shall in any event include two Senators and two Representatives to the Congress, and unless and until otherwise required by law, said Representatives shall be elected at large".

In the event the foregoing propositions are not adopted at said election by a majority of the legal votes cast on said submission, the provisions of this Act shall cease to be effective.

The Governor of Hawaii is hereby authorized and directed to take such action as may be necessary or appropriate to assure the submission of said propositions to the people. The return of the votes cast...
on said propositions shall be made by the election officers directly to the Secretary of Hawaii, who shall certify the results of the submission to the Governor. The Governor shall certify the results of said submission, as so ascertained, to the President of the United States.

(c) If the President shall find that the propositions set forth in the preceding subsection have been duly adopted by the people of Hawaii, the President, upon certification of the returns of the election of the officers required to be elected as provided in section 6 of this Act, shall thereupon issue his proclamation announcing the results of said election as so ascertained. Upon the issuance of said proclamation by the President, the State of Hawaii shall be deemed admitted into the Union as provided in section 1 of this Act.

Until the said State is so admitted into the Union, the persons holding legislative, executive, and judicial office in, under, or by authority of the government of said Territory, and the Delegate in Congress thereof, shall continue to discharge the duties of their respective offices. Upon the issuance of said proclamation by the President of the United States and the admission of the State of Hawaii into the Union, the officers elected at said election, and qualified under the provisions of the constitution and laws of said State, shall proceed to exercise all the functions pertaining to their offices in, under, or by authority of the government of said State, and officers not required to be elected at said initial election shall be selected or continued in office as provided by the constitution and laws of said State. The Governor of said State shall certify the election of the Senators and Representative in the manner required by law, and the said Senators and Representative shall be entitled to be admitted to seats in Congress and to all the rights and privileges of Senators and Representatives of other States in the Congress of the United States.

Sec. 8. The State of Hawaii upon its admission into the Union shall be entitled to one Representative until the taking effect of the next reapportionment, and such Representative shall be in addition to the membership of the House of Representatives as now prescribed by law: Provided, That such temporary increase in the membership shall not operate to either increase or decrease the permanent membership of the House of Representatives as prescribed in the Act of August 8, 1911 (37 Stat. 13), nor shall such temporary increase affect the basis of apportionment established by the Act of November 15, 1941 (55 Stat. 761; 2 U.S.C., sec. 2a), for the Eighty-third Congress and each Congress thereafter.

Sec. 9. Effective upon the admission of the State of Hawaii into the Union—

(a) the United States District Court for the District of Hawaii established by and existing under title 28 of the United States Code shall thenceforth be a court of the United States with judicial power derived from article III, section 1, of the Constitution of the United States: Provided, however, That the terms of office of the district judges for the district of Hawaii then in office shall terminate upon the effective date of this section and the President, pursuant to sections 133 and 134 of title 28, United States Code, as amended by this Act, shall appoint, by and with the advice and consent of the Senate, two district judges for the said district who shall hold office during good behavior;

(b) the last paragraph of section 133 of title 28, United States Code, is repealed; and

(c) subsection (a) of section 134 of title 28, United States Code, is amended by striking out the words "Hawaii and". The second sentence of the same section is amended by striking out the words "Hawaii and", "six and", and "respectively".
SEC. 10. Effective upon the admission of the State of Hawaii into the
the Union the second paragraph of section 451 of title 28, United
States Code, is amended by striking out the words "including the
district courts of the United States for the districts of Hawaii and
Puerto Rico," and inserting in lieu thereof the words "including the
United States District for the District of Puerto Rico."

SEC. 11. Effective upon the admission of the State of Hawaii into
the Union—

(a) the last paragraph of section 501 of title 28, United States
Code, is repealed;

(b) the first sentence of subsection (a) of section 504 of
title 28, United States Code, is amended by striking out at the end thereof the words "except in the district of Hawaii, where
the term shall be six years";

(c) the first sentence of subsection (c) of section 541 of title
28, United States Code, is amended by striking out at the end thereof the words "except in the district of Hawaii where the
term shall be six years"; and

(d) subsection (d) of section 541 of title 28, United States
Code, is repealed.

SEC. 12. No writ, action, indictment, cause, or proceeding pending in
any court of the Territory of Hawaii or in the United States District
Court for the District of Hawaii shall abate by reason of the
admission of said State into the Union, but the same shall be transferred to and proceeded with in such appropriate State courts as shall
be established under the constitution of said State, or shall continue
in the United States District Court for the District of Hawaii, as the
nature of the case may require. And no writ, action, indictment, cause or proceeding shall abate by reason of any change in the courts, but
shall be proceeded with in the State or United States courts according
to the laws thereof, respectively. And the appropriate State courts
shall be the successors of the courts of the Territory as to all cases
arising within the limits embraced within the jurisdiction of such
courts, respectively, with full power to proceed with the same, and
award mesne or final process therein, and all the files, records, indict­
ments, and proceedings relating to any such writ, action, indictment, cause or proceeding shall be transferred to such appropriate State
courts and the same shall be proceeded with therein in due course of
law.

All civil causes of action and all criminal offenses which shall have
arisen or been committed prior to the admission of said State, but as
to which no writ, action, indictment or proceeding shall be pending
at the date of such admission, shall be subject to prosecution in the
appropriate State courts or in the United States District Court for
the District of Hawaii in like manner, to the same extent, and with
like right of appellate review, as if said State had been created and
said State courts had been established prior to the accrual of such
causes of action or the commission of such offenses. The admission
of said State shall effect no change in the substantive or criminal law
governing such causes of action and criminal offenses which shall have
arisen or been committed; and such of said criminal offenses as shall
have been committed against the laws of the Territory shall be tried
and punished by the appropriate courts of said State, and such as shall
have been committed against the laws of the United States shall be
tried and punished in the United States District Court for the District
of Hawaii.
Appeals.

Sec. 13. Parties shall have the same rights of appeal from and appellate review of final decisions of the United States District Court for the District of Hawaii or the Supreme Court of the Territory of Hawaii in any case finally decided prior to admission of said State into the Union, whether or not an appeal therefrom shall have been perfected prior to such admission, and the United States Court of Appeals for the Ninth Circuit and the Supreme Court of the United States shall have the same jurisdiction therein, as by law provided prior to admission of said State into the Union, and any mandate issued subsequent to the admission of said State shall be to the United States District Court for the District of Hawaii or a court of the State, as may be appropriate. Parties shall have the same rights of appeal from and appellate review of all orders, judgments, and decrees of the United States District Court for the District of Hawaii and of the Supreme Court of the State of Hawaii as successor to the Supreme Court of the Territory of Hawaii, in any case pending at the time of admission of said State into the Union, and the United States Court of Appeals for the Ninth Circuit and the Supreme Court of the United States shall have the same jurisdiction therein, as by law provided in any case arising subsequent to the admission of said State into the Union.

Sec. 14. Effective upon the admission of the State of Hawaii into the Union—

(a) title 28, United States Code, section 1252, is amended by striking out "Hawaii and" from the clause relating to courts of record;

(b) title 28, United States Code, section 1293, is amended by striking out the words "First and Ninth Circuits" and by inserting in lieu thereof "First Circuit", and by striking out the words, "supreme courts of Puerto Rico and Hawaii, respectively" and inserting in lieu thereof "supreme court of Puerto Rico";

(c) title 28, United States Code, section 1294, as amended, is further amended by striking out paragraph (4) thereof and by renumbering paragraphs (5) and (6) accordingly;

(d) the first paragraph of section 373 of title 28, United States Code, as amended, is further amended by striking out the words "United States District Courts for the districts of Hawaii or Puerto Rico," and inserting in lieu thereof the words, "United States District Court for the District of Puerto Rico,"; and by striking out the words "and any justice of the Supreme Court of the Territory of Hawaii": Provided, That the amendments made by this subsection shall not affect the rights of any judge or justice who may have retired before the effective date of this subsection: And provided further, That service as a judge of the District Court for the Territory of Hawaii or as a judge of the United States District Court for the District of Hawaii or as a justice of the Supreme Court of the Territory of Hawaii or as a judge of the circuit courts of the Territory of Hawaii shall be included in computing under section 371, 372, or 373 of title 28, United States Code, the aggregate years of judicial service of any person who is in office as a district judge for the District of Hawaii on the date of enactment of this Act;

(e) section 92 of the Act of April 30, 1900 (ch. 339, 31 Stat. 159), as amended, and the Act of May 29, 1928 (ch. 904, 45 Stat. 997), as amended, are repealed;

(f) section 86 of the Act approved April 30, 1900 (ch. 339, 31 Stat. 158), as amended, is repealed;
(g) section 3771 of title 18, United States Code, as heretofore amended, is further amended by striking out from the first paragraph of such section the words "Supreme Courts of Hawaii and Puerto Rico" and inserting in lieu thereof the words "Supreme Court of Puerto Rico";

(h) section 3772 of title 18, United States Code, as heretofore amended, is further amended by striking out from the first paragraph of such section the words "Supreme Courts of Hawaii and Puerto Rico" and inserting in lieu thereof the words "Supreme Court of Puerto Rico";

(i) section 91 of title 28, United States Code, as heretofore amended, is further amended by inserting after "Kure Island" and before "Baker Island" the words "Palmuya Island,"; and

(j) the Act of June 15, 1950 (64 Stat. 217; 48 U.S.C., sec. 644a), is amended by inserting after "Kure Island" and before "Baker Island" the words "Palmuya Island,"

Sec. 15. All Territorial laws in force in the Territory of Hawaii at the time of its admission into the Union shall continue in force in the State of Hawaii, except as modified or changed by this Act or by the constitution of the State, and shall be subject to repeal or amendment by the Legislature of the State of Hawaii, except as provided in section 4 of this Act with respect to the Hawaiian Homes Commission Act, 1920, as amended; and the laws of the United States shall have the same force and effect within the said State as elsewhere within the United States: Provided, That, except as herein otherwise provided, a Territorial law enacted by the Congress shall be terminated two years after the date of admission of the State of Hawaii into the Union or upon the effective date of any law enacted by the State of Hawaii, whichever may occur first. As used in this section, the term "Territorial laws" includes (in addition to laws enacted by the Territorial Legislature of Hawaii) all laws or parts thereof enacted by the Congress the validity of which is dependent solely upon the authority of the Congress to provide for the government of Hawaii prior to its admission into the Union, and the term "laws of the United States" includes all laws or parts thereof enacted by the Congress that (1) apply to or within Hawaii at the time of its admission into the Union, (2) are not "Territorial laws" as defined in this paragraph, and (3) are not in conflict with any other provision of this Act.

Sec. 16. (a) Notwithstanding the admission of the State of Hawaii into the Union, the United States shall continue to have sole and exclusive jurisdiction over the area which may then or thereafter be included in Hawaii National Park, saving, however, to the State of Hawaii the same rights as are reserved to the Territory of Hawaii by section 1 of the Act of April 19, 1930 (46 Stat. 227), and saving, further, to persons then or thereafter residing within such area the right to vote at all elections held within the political subdivisions where they respectively reside. Upon the admission of said State all references to the Territory of Hawaii in said Act or in other laws relating to Hawaii National Park shall be deemed to refer to the State of Hawaii. Nothing contained in this Act shall be construed to affect the ownership and control by the United States of any lands or other property within Hawaii National Park which may now belong to, or which may hereafter be acquired by, the United States.

(b) Notwithstanding the admission of the State of Hawaii into the Union, authority is reserved in the United States, subject to the proviso hereinafter set forth, for the exercise by the Congress of the United States of the power of exclusive legislation, as provided by
article I, section 8, clause 17, of the Constitution of the United States, in all cases whatsoever over such tracts or parcels of land as, immediately prior to the admission of said State, are controlled or owned by the United States and held for Defense or Coast Guard purposes, whether such lands were acquired by cession and transfer to the United States by the Republic of Hawaii and set aside by Act of Congress or by Executive order or proclamation of the President or the Governor of Hawaii for the use of the United States, or were acquired by the United States by purchase, condemnation, donation, exchange, or otherwise: Provided, (i) That the State of Hawaii shall always have the right to serve civil or criminal process within the said tracts or parcels of land in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed within the said State but outside of the said tracts or parcels of land; (ii) that the reservation of authority in the United States for the exercise by the Congress of the United States of the power of exclusive legislation over the lands aforesaid shall not operate to prevent such lands from being a part of the State of Hawaii, or to prevent the said State from exercising over or upon such lands, concurrently with the United States, any jurisdiction whatsoever which it would have in the absence of such reservation of authority and which is consistent with the laws hereafter enacted by the Congress pursuant to such reservation of authority; and (iii) that such power of exclusive legislation shall vest and remain in the United States only so long as the particular tract or parcel of land involved is controlled or owned by the United States and used for Defense or Coast Guard purposes: Provided, however, that the United States shall continue to have sole and exclusive jurisdiction over such military installations as have been heretofore or hereafter determined to be critical areas as delineated by the President of the United States and/or the Secretary of Defense.

Sec. 17. The next to last sentence of the first paragraph of section 2 of the Federal Reserve Act (38 Stat. 251) as amended by section 19 of the Act of July 7, 1958, (72 Stat. 339, 350) is amended by inserting after the word “Alaska” the words “or Hawaii.”

Sec. 18. (a) Nothing contained in this Act shall be construed as depriving the Federal Maritime Board of the exclusive jurisdiction heretofore conferred on it over common carriers engaged in transportation by water between any port in the State of Hawaii and other ports in the United States, or possessions, or is conferring on the Interstate Commerce Commission jurisdiction over transportation by water between any such ports.

(b) Effective on the admission of the State of Hawaii into the Union—

(1) the first sentence of section 506 of the Merchant Marine Act, 1936, as amended (46 U.S.C., sec. 1156), is amended by inserting before the words “an island possession or island territory”, the words “the State of Hawaii, or”;

(2) section 605(a) of the Merchant Marine Act, 1936, as amended (46 U.S.C., sec. 1175), is amended by inserting before the words “an island possession or island territory”, the words “the State of Hawaii, or”;

and

(3) the second paragraph of section 714 of the Merchant Marine Act, 1936, as amended (46 U.S.C., sec. 1204), is amended by inserting before the words “an island possession or island territory”, the words “the State of Hawaii, or”.

Sec. 19. Nothing contained in this Act shall operate to confer United States nationality, nor to terminate nationality heretofore lawfully acquired, or restore nationality heretofore lost under any law of the United States or under any treaty to which the United States is or was a party.
PUBLIC LAW 86-4—MAR. 23, 1959

SEC. 20. (a) Section 101(a)(36) of the Immigration and Nationality Act (66 Stat. 170, 8 U.S.C., sec. 1101(a)(36)) is amended by deleting the word “Hawaii.”

(b) Section 212(d)(7) of the Immigration and Nationality Act (66 Stat. 188, 8 U.S.C. 1182(d)(7)) is amended by deleting from the first sentence thereof the word “Hawaii,” and by deleting the proviso to said first sentence.

(c) The first sentence of section 310(a) of the Immigration and Nationality Act, as amended (66 Stat. 239, 8 U.S.C. 1421(a), 72 Stat. 351) is further amended by deleting the words “for the Territory of Hawaii, and”.

(d) Nothing contained in this Act shall be held to repeal, amend, or modify the provisions of section 305 of the Immigration and Nationality Act (66 Stat. 237, 8 U.S.C. 1405).

SEC. 21. Effective upon the admission of the State of Hawaii into the Union, section 3, subsection (b), of the Act of September 7, 1957 (71 Stat. 629), is amended by substituting the words “State of Hawaii” for the words “Territory of Hawaii”.

SEC. 22. If any provision of this Act, or any section, subsection, sentence, clause, phrase, or individual word, or the application thereof in any circumstance is held invalid, the validity of the remainder of the Act and of the application of any such provision, section, subsection, sentence, clause, phrase, or individual word in other circumstances shall not be affected thereby.

SEC. 23. All Acts or parts of Acts in conflict with the provisions of this Act, whether passed by the legislature of said Territory or by Congress, are hereby repealed.

Approved March 18, 1959.

Public Law 86-4

AN ACT

To extend the induction provisions of the Universal Military Training and Service Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 17(c) of the Universal Military Training and Service Act, as amended (50 App. U.S.C. 467(c)), is amended by striking out the words “July 1, 1959” and inserting the words “July 1, 1963” in place thereof.

SEC. 2. Section 1 of the Act of August 3, 1950, chapter 537, as amended (71 Stat. 208), is amended by striking out the words “July 1, 1959” and inserting the words “July 1, 1963” in place thereof.


SEC. 5. Section 203 of the Career Compensation Act of 1949, as amended, is amended by striking out “July 1, 1959” wherever such date appears therein and inserting “July 1, 1963” in lieu thereof.

Approved March 23, 1959.
CHAP. 338.—An Act To provide an American register for the steamship Garonne.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of Navigation is hereby authorized and directed to cause the foreign-built steamship Garonne, owned by Charles Richardson, of Tacoma, State of Washington, and Frank Waterhouse, of Seattle, State of Washington, citizens of the United States, to be registered as a vessel of the United States.

Approved, April 27, 1900.

CHAP. 339.—An Act To provide a government for the Territory of Hawaii.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

CHAPTER I.—GENERAL PROVISIONS.

DEFINITIONS.

Sec. 1. That the phrase "the laws of Hawaii," as used in this Act without qualifying words, shall mean the constitution and laws of the Republic of Hawaii, in force on the twelfth day of August, eighteen hundred and ninety-eight, at the time of the transfer of the sovereignty of the Hawaiian Islands to the United States of America.

The constitution and statute laws of the Republic of Hawaii then in force, set forth in a compilation made by Sidney M. Ballou under the authority of the legislature, and published in two volumes entitled "Civil Laws" and "Penal Laws," respectively, and in the Session Laws of the Legislature for the session of eighteen hundred and ninety-eight, are referred to in this Act as "Civil Laws," "Penal Laws," and "Session Laws."

TERRITORY OF HAWAII.

Sec. 2. That the islands acquired by the United States of America under an Act of Congress entitled "Joint resolution to provide for annexing the Hawaiian Islands to the United States," approved July seventh, eighteen hundred and ninety-eight, shall be known as the Territory of Hawaii.

GOVERNMENT OF THE TERRITORY OF HAWAII.

Sec. 3. That a Territorial government is hereby established over the said Territory, with its capital at Honolulu, on the island of Oahu.

CITIZENSHIP.

Sec. 4. That all persons who were citizens of the Republic of Hawaii on August twelfth, eighteen hundred and ninety-eight, are hereby declared to be citizens of the United States and citizens of the Territory of Hawaii.

And all citizens of the United States resident in the Hawaiian Islands who were resident there on or since August twelfth, eighteen hundred and ninety-eight, and all the citizens of the United States who shall hereafter reside in the Territory of Hawaii for one year shall be citizens of the Territory of Hawaii.

APPLICATION OF THE LAWS OF THE UNITED STATES.

Sec. 5. That the Constitution, and, except as herein otherwise provided, all the laws of the United States which are not locally appli-
cable, shall have the same force and effect within the said Territory as elsewhere in the United States: Provided, That sections eighteen hundred and fifty and eighteen hundred and ninety of the Revised Statutes of the United States shall not apply to the Territory of Hawaii.

**LAW S OF HAWAI I.**

**SEC. 6.** That the laws of Hawaii not inconsistent with the Constitution or laws of the United States, or the provisions of this Act shall continue in force, subject to repeal or amendment by the legislature of Hawaii or the Congress of the United States.

**SEC. 7.** That the constitution of the Republic of Hawaii and the laws of the civil laws, penal laws, and session laws, and relating to the following subjects, are hereby repealed:

**CIVIL LAWS:** Sections two and three, Promulgation of laws; chapter five, Flag and seal; sections thirty to thirty-three, inclusive, Tenders for supplies; chapter seven, Minister of foreign affairs; chapter eight, Diplomatic and consular agents; sections one hundred and thirty-four and one hundred and thirty-five, National museum; chapter twelve, Education of Hawaiian youths abroad; sections one hundred and fifty to one hundred and fifty-six, inclusive, Aid to board of education; chapter fourteen, Minister of the interior; sections one hundred and sixty-six to one hundred and sixty-eight, inclusive, one hundred and seventy-four and one hundred and seventy-five, Government lands; section one hundred and ninety, Board of commissioners of public lands; section four hundred and twenty-four, Bureau of agriculture and forestry; chapter thirty-one, Agriculture and manufactures; chapter thirty-two, Ramin; chapter thirty-three, Taro flour; chapter thirty-four, Development of resources; chapter thirty-five, Agriculture; section four hundred and seventy-seven, Brands; chapter thirty-seven, Patents; chapter thirty-eight, Copyrights; sections five hundred and fifty-six and five hundred and fifty-seven, Railroad subsidy; chapter forty-seven, Pacific cable; chapter forty-eight, Hospitals; chapter fifty-one, Coins and currency; chapter fifty-four, Consolidation of public debt; chapter fifty-six, Post-office; chapter fifty-seven, Exemptions from postage; chapter fifty-eight, Postal savings banks; chapter sixty-five, Import duties; chapter sixty-six, Imports, Ports of entry and collection districts; chapter sixty-seven, Collectors; chapter sixty-nine, Registry of vessels; section one thousand and eleven, Custom-house charges; section eleven hundred and two, Elections; section one thousand and thirty-two, Appointment of magistrates; last clause of first subdivision and fifth subdivision of section one thousand and forty-four, first subdivision of section one thousand and forty-five, Jurisdiction; sections one thousand and seventy-three to one thousand and seventy-eight, inclusive, Translation of decisions; section one thousand and eighty-eight, Clerk of court; sections one thousand and twenty-nine, one thousand and thirty-one, one thousand and thirty-two, one thousand and thirty-three, one thousand and thirty-four to one thousand and thirty-nine, inclusive, Juries; sections fifteen hundred and five to fifteen hundred and fourteen, inclusive, Maritime matters; chapter one thousand and two, Naturalization; section sixteen hundred and seventy-eight, Habeas corpus; chapter one thousand and eight, Arrest of debtors; subdivisions six, seven, ten, twelve to fifteen, subdivision of section one thousand and thirty-six, Garnishment; sections seventeen hundred and fifty-five to seventeen hundred and fifty-eight, inclusive, Liens on vessels; chapter one thousand and sixteen, Bankruptcy, and sections eighteen hundred and twenty-eight to eighteen hundred and thirty-two, inclusive, Water rights.

**PENAL LAWS:** Chapter six, Treason; section sixty-five to sixty-seven, inclusive, Foot binding; chapter seventeen, Violation of postal laws;
section three hundred and fourteen, Blasphemy; sections three hundred and seventy-one to three hundred and seventy-two, inclusive, Vagrants; sections four hundred and eleven to four hundred and thirteen, inclusive, Manufacture of liquors; chapter forty-three, Offenses on the high seas and other waters; sections five hundred and ninety-five and six hundred and two to six hundred and five, inclusive, Jurisdiction; section six hundred and twenty-three, Procedure; sections seven hundred and seven hundred and one, Imports; section seven hundred and fifteen, Auction license; section seven hundred and forty-five, Commercial travelers; sections seven hundred and forty-eight to seven hundred and fifty-five, inclusive, Firearms; sections seven hundred and ninety-six to eight hundred and nine, inclusive, Coasting trade; sections eight hundred and eleven and eight hundred and twelve, Peddling foreign goods; sections eight hundred and thirteen to eight hundred and fifteen, inclusive, Importation of live stock; section eight hundred and nineteen, Imports; sections eighty-six to nine hundred and nineteen, inclusive, Quarantine; section eleven hundred and thirty-seven, Consuls and consular agents; chapter sixty-seven, Whale ships; sections eleven hundred and forty-five to eleven hundred and seventy-nine, inclusive, Navigation and other matters within the exclusive jurisdiction of the United States; sections thirteen hundred and forty-seven and thirteen hundred and forty-eight, Fraudulent exportation; chapter seventy-eight, Masters and servants; chapter ninety-three, Immigration; sections sixteen hundred and one, sixteen hundred and twelve, Agriculture and forestry; chapter ninety-six, Seditious offenses; and chapter ninety-nine, Sailing regulations.

Session Laws: Act fifteen, Elections; Act twenty-six, Duties; Act twenty-seven, Exemptions from duties; Act thirty-two, Registry of vessels; section four of Act thirty-eight, Importation of live stock; Act forty-eight, Pacific cable; Act sixty-five, Consolidation of public debt; Act sixty-six, Ports of entry; and Act sixty-eight, Chinese immigration.

CERTAIN OFFICES ABOLISHED.

Sec. 8. That the offices of President, minister of foreign affairs, minister of the interior, minister of finance, minister of public instruction, auditor-general, deputy auditor-general, surveyor-general, marshal, and deputy marshal of the Republic of Hawaii are hereby abolished.

AMENDMENT OF OFFICIAL TITLES.

Sec. 9. That wherever the words “President of the Republic of Hawaii,” or “Republic of Hawaii,” or “Government of the Republic of Hawaii,” or their equivalents, occur in the laws of Hawaii not repealed by this Act, they are hereby amended to read “Governor of the Territory of Hawaii,” or “Territory of Hawaii,” or “Government of the Territory of Hawaii,” or their equivalents, as the context requires.

CONSTRUCTION OF EXISTING STATUTES.

Sec. 10. That all rights of action, suits at law and in equity, prosecutions, and judgments existing prior to the taking effect of this Act shall continue to be as effectual as if this Act had not been passed; and those in favor of or against the Republic of Hawaii, and not assumed by or transferred to the United States, shall be equally valid in favor of or against the government of the Territory of Hawaii. All offenses which by statute then in force were punishable as offenses against the
Republic of Hawaii shall be punishable as offenses against the government of the Territory of Hawaii, unless such statute is inconsistent with this Act, or shall be repealed or changed by law. No person shall be subject to imprisonment for nonpayment of taxes nor for debt. All criminal and penal proceedings then pending in the courts of the Republic of Hawaii shall be prosecuted to final judgment and execution in the name of the Territory of Hawaii; all such proceedings, all actions at law, suits in equity, and other proceedings then pending in the courts of the Republic of Hawaii shall be carried on to final judgment and execution in the corresponding courts of the Territory of Hawaii; and all process issued and sentences imposed before this Act takes effect shall be as valid as if issued or imposed in the name of the Territory of Hawaii: Provided, That no suit or proceedings shall be maintained for the specific performance of any contract heretofore or hereafter entered into for personal labor or service, nor shall any remedy exist or be enforced for breach of any such contract, except in a civil suit or proceeding instituted solely to recover damages for such breach: Provided further, That the provisions of this section shall not modify or change the laws of the United States applicable to merchant seamen. That all contracts made since August twelfth, eighteen hundred and ninety-eight, by which persons are held for service for a definite term, are hereby declared null and void and terminated, and no law shall be passed to enforce said contracts in any way; and it shall be the duty of the United States marshal to at once notify such persons so held of the termination of their contracts. That the Act approved February twenty-sixth, eighteen hundred and eighty-five, "To prohibit the importation and migration of foreigners and aliens under contract or agreement to perform labor in the United States, its Territories, and the District of Columbia," and the Acts amendatory thereof and supplemental thereto, be, and the same are hereby, extended to and made applicable to the Territory of Hawaii.

STYLE OF PROCESS.

SEC. 11. That the style of all process in the Territorial courts shall hereafter run in the name of "The Territory of Hawaii," and all prosecutions shall be carried on in the name and by the authority of the Territory of Hawaii.

CHAPTER II.—THE LEGISLATURE.

THE LEGISLATIVE POWER.

SEC. 12. That the legislature of the Territory of Hawaii shall consist of two houses, styled, respectively, the senate and house of representatives, which shall organize and sit separately, except as otherwise herein provided.

The two houses shall be styled "The legislature of the Territory of Hawaii."

SEC. 13. That no person shall sit as a senator or representative in the legislature unless elected under and in conformity with this Act.

GENERAL ELECTIONS.

SEC. 14. That a general election shall be held on the Tuesday next after the first Monday in November, nineteen hundred, and every second year thereafter: Provided, however, That the governor may, in his discretion, on thirty days' notice, order a special election before the first general election, if, in his opinion, the public interests shall require a special session of the legislature.
EACH HOUSE JUDGE OF QUALIFICATIONS OF MEMBERS.

SEC. 15. That each house shall be the judge of the elections, returns, and qualifications of its own members.

DISQUALIFICATIONS OF LEGISLATORS.

SEC. 16. That no member of the legislature shall, during the term for which he is elected, be appointed or elected to any office of the Territory of Hawaii.

DISQUALIFICATIONS OF GOVERNMENT OFFICERS AND EMPLOYEES.

SEC. 17. That no person holding office in or under or by authority of the Government of the United States or of the Territory of Hawaii shall be eligible to election to the legislature, or to hold the position of a member of the same while holding said office.

SEC. 18. No idiot or insane person, and no person who shall be expelled from the legislature for giving or receiving bribes or being accessory thereto, and no person who, in due course of law, shall have been convicted of any criminal offense punishable by imprisonment, whether with or without hard labor, for a term exceeding one year, whether with or without fine, shall register to vote or shall vote or hold any office in, or under, or by authority of, the government, unless the person so convicted shall have been pardoned and restored to his civil rights.

OATH OF OFFICE.

SEC. 19. That every member of the legislature, and all officers of the government of the Territory of Hawaii, shall take the following oath or affirmation:

I solemnly swear (or affirm), in the presence of Almighty God, that I will faithfully support the Constitution and laws of the United States, and conscientiously and impartially discharge my duties as a member of the legislature, or as an officer of the government of the Territory of Hawaii (as the case may be).

OFFICERS AND RULES.

SEC. 20. That the senate and house of representatives shall each choose its own officers, determine the rules of its own proceedings, not inconsistent with this Act, and keep a journal.

AYES AND NOES.

SEC. 21. That the ayes and noes of the members on any question shall, at the desire of one-fifth of the members present, be entered on the journal.

QUORUM.

SEC. 22. That a majority of the number of members to which each house is entitled shall constitute a quorum of such house for the conduct of ordinary business, of which quorum a majority vote shall suffice; but the final passage of a law in each house shall require the vote of a majority of all the members to which such house is entitled.

SEC. 23. That a smaller number than a quorum may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each house may provide.

SEC. 24. That, for the purpose of ascertaining whether there is a quorum present, the chairman shall count the number of members present.
PUNISHMENT OF PERSONS NOT MEMBERS.

Sec. 25. That each house may punish by fine, or by imprisonment not exceeding thirty days, any person not a member of either house, who shall be guilty of disrespect of such house by any disorderly or contemptuous behavior in its presence or that of any committee thereof; or who shall, on account of the exercise of any legislative function, threaten harm to the body or estate of any of the members of such house; or who shall assault, arrest, or detain any witness or other person ordered to attend such house, on his way going to or returning therefrom; or who shall rescue any person arrested by order of such house.

But the person charged with the offense shall be informed, in writing, of the charge made against him, and have an opportunity to present evidence and be heard in his own defense.

COMPENSATION OF MEMBERS.

Sec. 26. That the members of the legislature shall receive for their services, in addition to mileage at the rate of ten cents a mile each way, the sum of four hundred dollars for each regular session of the legislature, payable in three equal installments on and after the first, thirtieth, and fiftieth days of the session, and the sum of two hundred dollars for each extra session of the legislature.

PUNISHMENT OF MEMBERS.

Sec. 27. That each house may punish its own members for disorderly behavior or neglect of duty, by censure, or by a two-thirds vote suspend or expel a member.

EXEMPTION FROM LIABILITY.

Sec. 28. That no member of the legislature shall be held to answer before any other tribunal for any words uttered in the exercise of his legislative functions in either house.

EXEMPTION FROM ARREST.

Sec. 29. That the members of the legislature shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during their attendance at the sessions of the respective houses, and in going to and returning from the same: Provided, That such privilege as to going and returning shall not cover a period of over ten days each way.

THE SENATE.

NUMBER OF MEMBERS.

Sec. 30. That the Senate shall be composed of fifteen members, who shall hold office for four years: Provided, however, That of the senators elected at the first general election, two from the first district, one from the second, three from the third, and one from the fourth district shall hold office for two years only, the details of such appointment to be provided for by the legislature.

VACANCIES.

Sec. 31. That vacancies caused by death, resignation, or otherwise shall be filled for the unexpired term at general or special elections.
SENATORIAL DISTRICTS.

Sec. 32. That for the purpose of representation in the senate, until otherwise provided by law, the Territory is divided into the following senatorial districts, namely:

- **First district**: The island of Hawaii.
- **Second district**: The islands of Maui, Molokai, Lanai, and Kahoolawe.
- **Third district**: The island of Oahu.
- **Fourth district**: The islands of Kauai and Niilau.

Sec. 33. That the electors in the said districts shall be entitled to elect senators as follows:

- In the first district, four;
- In the second district, three;
- In the third district, six;
- In the fourth district, two.

QUALIFICATIONS OF SENATORS.

Sec. 34. That in order to be eligible to election as a senator a person shall—

- Be a male citizen of the United States;
- Have attained the age of thirty years;
- Have resided in the Hawaiian Islands not less than three years and be qualified to vote for senators in the district from which he is elected.

THE HOUSE OF REPRESENTATIVES.

NUMBER OF REPRESENTATIVES.

Sec. 35. That the house of representatives shall be composed of thirty members, elected, except as herein provided, every second year.

TERM OF OFFICE.

Sec. 36. That the term of office of the representatives elected at any general or special election shall be until the next general election held thereafter.

VACANCIES.

Sec. 37. That vacancies in the office of representative caused by death, resignation, or otherwise shall be filled for the unexpired term at special elections.

REPRESENTATIVE DISTRICTS.

Sec. 38. That for the purpose of representation in the house of representatives, until otherwise provided by law, the Territory is divided into the following representative districts, namely:

- **First district**: That portion of the island of Hawaii known as Puna, Hilo, and Hamakua.
- **Second district**: That portion of the island of Hawaii known as Kau, Kona, and Kohala.
- **Third district**: The islands of Maui, Molokai, Lanai, and Kahoolawe.
- **Fourth district**: That portion of the island of Oahu lying east and south of Nuuanu street and a line drawn in extension thereof from the Nuuanu Pali to Mokapu Point.
- **Fifth district**: That portion of the island of Oahu lying west and north of the fourth district.
- **Sixth district**: The islands of Kauai and Niilau.
APPORTIONMENT.

Sec. 39. That the electors in the said districts shall be entitled to elect representatives as follows:
- In the first district, four;
- In the second district, four;
- In the third district, six;
- In the fourth district, six;
- In the fifth district, six;
- In the sixth district, four.

QUALIFICATIONS OF REPRESENTATIVES.

Sec. 40. That in order to be eligible to be a member of the house of representatives a person shall, at the time of election—
- Have attained the age of twenty-five years;
- Be a male citizen of the United States;
- Have resided in the Hawaiian Islands not less than three years;
- And shall be qualified to vote for representatives in the district from which he is elected.

LEGISLATION.

SESSIONS OF THE LEGISLATURE.

Sec. 41. That the first regular session of the legislature shall be held on the third Wednesday in February, nineteen hundred and one, and biennially thereafter, in Honolulu.

Sec. 42. That neither house shall adjourn during any session for more than three days, or sine die, without the consent of the other.

Sec. 43. That each session of the legislature shall continue not longer than sixty days, excluding Sundays and holidays: Provided, however, that the governor may extend such session for not more than thirty days.

The governor may convene the legislature, or the senate alone, in special session, and, in case the seat of government shall be unsafe from an enemy, riot, or insurrection, or any dangerous disease, direct that any regular or special session shall be held at some other than the regular meeting place.

ENACTING CLAUSE—ENGLISH LANGUAGE.

Sec. 44. That the enacting clause of all laws shall be, "Be it enacted by the legislature of the Territory of Hawaii."

All legislative proceedings shall be conducted in the English language.

TITLE OF LAWS.

Sec. 45. That each law shall embrace but one subject, which shall be expressed in its title.

READING OF BILLS.

Sec. 46. That a bill in order to become a law shall, except as herein provided, pass three readings in each house, on separate days, the final passage of which in each house shall be by a majority vote of all the members to which such house is entitled, taken by ayes and noes and entered upon its journal.
CERTIFICATION OF BILLS FROM ONE HOUSE TO THE OTHER.

Sec. 47. That every bill when passed by the house in which it originated, or in which amendments thereto shall have originated, shall immediately be certified by the presiding officer and clerk and sent to the other house for consideration.

SIGNING BILLS.

Sec. 48. That, except as herein provided, all bills passed by the legislature shall, in order to be valid, be signed by the governor.

VETO OF GOVERNOR.

Sec. 49. That every bill which shall have passed the legislature shall be certified by the presiding officers and clerks of both houses, and shall thereupon be presented to the governor. If he approves it, he shall sign it, and it shall become a law. If the governor does not approve such bill, he may return it, with his objections, to the legislature.

He may veto any specific item or items in any bill which appropriates money for specific purposes; but shall veto other bills, if at all, only as a whole.

PROCEDURE UPON RECEIPT OF VETO.

Sec. 50. That upon the receipt of a veto message from the governor each house of the legislature shall enter the same at large upon its journal and proceed to reconsider such bill, or part of a bill, and again vote upon it by ayes and noes, which shall be entered upon its journal.

If after such reconsideration such bill, or part of a bill, shall be approved by a two-thirds vote of all the members to which each house is entitled, it shall thereby become law.

FAILURE TO SIGN OR VETO.

Sec. 51. That if the governor neither signs nor vetoes a bill within ten days after it is delivered to him it shall become a law without his signature, unless the legislature adjourns sine die prior to the expiration of such ten days.

If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislature by their adjournment prevents its return, in which case it shall not be a law.

APPROPRIATIONS.

Sec. 52. That appropriations, except as otherwise herein provided, shall be made biennially by the legislature: Provided, however, That pending the time when this Act shall take effect and until a session of the legislature of the Territory of Hawaii shall be held, the President may, in his discretion, authorize and direct the use of such money in the treasury of the Republic of Hawaii as well as of the Territory of Hawaii, as he shall think requisite and proper for carrying on the government of the Territory of Hawaii, the preservation of the public health, the completion of the sewerage system of the city of Honolulu, and such other expenditures as in the President's judgment shall seem to be appropriate.

Sec. 53. That the governor shall submit to the legislature, at each regular session, estimates for appropriations for the succeeding biennial period.
FAILURE TO APPROPRIATE FOR CURRENT EXPENSES.

SEC. 54. That in case of failure of the legislature to pass appropriation bills providing for payments of the necessary current expenses of carrying on the government and meeting its legal obligations as the same are provided for by the then existing laws, the governor shall, upon the adjournment of the legislature, call it in extra session for the consideration of appropriation bills, and until the legislature shall have acted the treasurer may, with the advice of the governor, make such payments, for which purpose the sums appropriated in the last appropriation bills shall be deemed to have been reappropriated. And all legislative and other appropriations made prior to the date when this Act shall take effect, shall be available to the government of the Territory of Hawaii.

LEGISLATIVE POWER.

SEC. 55. That the legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States locally applicable. The legislature, at its first regular session after the census enumeration shall be ascertained, and from time to time thereafter, shall reapportion the membership in the senate and house of representatives among the senatorial and representative districts on the basis of the population in each of said districts who are citizens of the Territory; but the legislature shall not grant to any corporation, association, or individual any special or exclusive privilege, immunity, or franchise without the approval of Congress; nor shall it grant private charters, but it may by general act permit persons to associate themselves together as bodies corporate for manufacturing, agricultural, and other industrial pursuits, and for conducting the business of insurance, savings banks, banks of discount and deposit (but not of issue), loan, trust, and guaranty associations, for the establishment and conduct of cemeteries, and for the construction and operation of railroads, wagon roads, vessels, and irrigating ditches, and the colonization and improvement of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any other benevolent, charitable, or scientific association: Provided, That no corporation, domestic or foreign, shall acquire and hold real estate in Hawaii in excess of one thousand acres; and all real estate acquired or held by such corporation or association contrary hereto shall be forfeited and escheat to the United States, but existing vested rights in real estate shall not be impaired. No divorce shall be granted by the legislature, nor shall any divorce be granted by the courts of the Territory unless the applicant therefor shall have resided in the Territory for two years next preceding the application, but this provision shall not affect any action pending when this Act takes effect; nor shall any lottery or sale of lottery tickets be allowed; nor shall spirituous or intoxicating liquors be sold except under such regulations and restrictions as the Territorial legislature shall provide; nor shall any public money be appropriated for the support of any sectarian, denominational, or private school, or any school not under the exclusive control of the government; nor shall the government of the Territory of Hawaii, or any political or municipal corporation or subdivision of the Territory, make any subscription to the capital stock of any incorporated company, or in any manner lend its credit for the use thereof; nor shall any debt be authorized to be contracted by or on behalf of the Territory, or any political or municipal corporation or subdivision thereof, except to pay the interest upon the existing indebtedness, to suppress insurrection, or to provide for the common defense, except that in addition to any indebtedness created for such purposes the legislature may authorize loans by the Territory, or any such subdivision thereof, for the erection of penal, charitable, and educational institutions, and for public buildings, wharves, roads, and harbor and
other public improvements, but the total of such indebtedness incurred in any one year by the Territory or any subdivision shall not exceed one per centum upon the assessed value of taxable property of the Territory or subdivision thereof, as the case may be, as shown by the last general assessment for taxation, and the total indebtedness for the Territory shall not at any time be extended beyond seven per centum of such assessed value, and the total indebtedness of any subdivision shall not at any time be extended beyond three per centum of such assessed value, but nothing in this provision shall prevent the refunding of any existing indebtedness at any time; nor shall any such loan be made upon the credit of the public domain or any part thereof, nor shall any bond or other instrument of any such indebtedness be issued unless made redeemable in not more than five years and payable in not more than fifteen years from the date of the issue thereof; nor shall any such bond or indebtedness be incurred until approved by the President of the United States.

TOWN, CITY, AND COUNTY GOVERNMENT.

Sec. 56. That the legislature may create counties and town and city municipalities within the Territory of Hawaii and provide for the government thereof.

Elections.

EXEMPTION OF ELECTORS ON ELECTION DAY.

Sec. 57. That every elector shall be privileged from arrest on election day during his attendance at election and in going to and returning therefrom, except in case of breach of the peace then committed, or in case of treason or felony.

Sec. 58. That no elector shall be so obliged to perform military duty on the day of election as to prevent his voting, except in time of war or public danger, or in case of absence from his place of residence in actual military service, in which case provision may be made by law for taking his vote.

METHOD OF VOTING FOR REPRESENTATIVES.

Sec. 59. That each voter for representative may cast a vote for as many representatives as are to be elected from the representative district in which he is entitled to vote.

The required number of candidates receiving the highest number of votes in the respective representative districts shall be the representatives for such districts.

QUALIFICATIONS OF VOTERS FOR REPRESENTATIVES.

Sec. 60. That in order to be qualified to vote for representatives a person shall—

First. Be a male citizen of the United States.

Second. Have resided in the Territory not less than one year preceding and in the representative district in which he offers to register not less than three months immediately preceding the time at which he offers to register.

Third. Have attained the age of twenty-one years.

Fourth. Prior to each regular election, during the time prescribed by law for registration, have caused his name to be entered on the register of voters for representatives for his district.

Fifth. Be able to speak, read, and write the English or Hawaiian language.
FIFTY-SIXTH CONGRESS. Sess. I. Ch. 339. 1900.

METHOD OF VOTING FOR SENATORS.

Sec. 61. That each voter for senator may cast one vote for each senator to be elected from the senatorial district in which he is entitled to vote.

The required number of candidates receiving the highest number of votes in the respective senatorial districts shall be the senators for such district.

QUALIFICATIONS OF VOTERS FOR SENATORS AND IN ALL OTHER ELECTIONS.

Sec. 62. That in order to be qualified to vote for senators and for voting in all other elections in the Territory of Hawaii a person must possess all the qualifications and be subject to all the conditions required by this Act of voters for representatives.

Sec. 63. That no person shall be allowed to vote who is in the Territory by reason of being in the Army or Navy or by reason of being attached to troops in the service of the United States.

Sec. 64. That the rules and regulations for administering oaths and holding elections set forth in Ballou's Compilation, Civil Laws, Appendix, and the list of registering districts and precincts appended, are continued in force with the following changes, to wit:

Strike out the preliminary proclamation and sections one to twenty-six, inclusive, sections thirty and thirty-nine, the second and third paragraphs of section forty-eight, the second paragraph of section fifty, and sections sixty-two, sixty-three, and sixty-six, second paragraph of section one hundred.

In section twenty-nine strike out all after the word "Niihau" and in lieu thereof insert: "The boards of registration existing at the date of the approval of this Act shall go out of office, and new boards, which shall consist of three members each, shall be appointed by the governor, by and with the advice and consent of the senate, whose terms of office shall be four years. Appointments made by the governor when the senate is not in session shall be valid until the succeeding meeting of that body."

In section thirty-one strike out "the first day of April and the thirtieth day of June, in the year eighteen hundred and ninety-seven," and insert in lieu thereof "the last day of August and the tenth day of October, in the year nineteen hundred."

Strike out the words "and the detailed record" in sections fifty-two and one hundred and twelve.

Strike out "marshal" wherever it occurs and insert in lieu thereof "high sheriff."

Strike out of section fifty-three the words "except as provided in section one hundred and fourteen hereof."

In sections fifty-three, fifty-four, fifty-six, fifty-seven, fifty-nine, sixty, seventy-one, seventy-five, eighty-six, ninety-two, ninety-three, ninety-four, ninety-five, one hundred and eleven, one hundred and twelve, and one hundred and thirteen strike out the words "minister" and "minister of the interior" wherever they occur and insert in lieu thereof the words "secretary of the Territory."

In section fifty-six, paragraph three, strike out "interior office" and insert "office of the secretaiy of the Territory."

In section fifty-six, first paragraph, after the words "candidate for election" insert "to the legislature;" and in the last paragraph strike out the word "only."

Strike out the word "elective" in section sixty-four.

In sections twenty-seven, sixty-four, sixty-five, sixty-eight, seventy, and seventy-two strike out the words "minister of the interior" or
“minister” wherever they occur and insert in lieu thereof the word “governor.”

Amend section sixty-seven so that it will read: “At least forty days before any election the governor shall issue an election proclamation and transmit copies of the same to the several boards of inspectors throughout the Territory, or where such election is to be held.”

In section seventy-five strike out the word “perfectly,” and in section seventy-six strike out “in” and insert “on.”

In section one hundred and twelve strike out “interior department” and insert in lieu thereof “office of the secretary of the Territory.”

In section one hundred and fourteen strike out the word “Republic” wherever it occurs and insert in lieu thereof “Territory.”

In section one hundred and fifteen strike out the words “minister” and “minister of the interior” and insert in lieu thereof “treasurer,” and strike out all after the word “refreshments.” Provided, however, that for the holding of a special election before the first general election the governor may prescribe the time during which the boards of registration shall meet and the registration be made.

Sec. 65. That the legislature of the Territory may from time to time establish and alter the boundaries of election districts and voting precincts and apportion the senators and representatives to be elected from such districts.

CHAPTER 3.—THE EXECUTIVE.

THE EXECUTIVE POWER.

Sec. 66. That the executive power of the government of the Territory of Hawaii shall be vested in a governor, who shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and shall hold office for four years and until his successor shall be appointed and qualified, unless sooner removed by the President. He shall be not less than thirty-five years of age; shall be a citizen of the Territory of Hawaii; shall be commander in chief of the militia thereof; may grant pardons or reprieves for offenses against the laws of the said Territory and reprieves for offenses against the laws of the United States until the decision of the President is made known thereon.

ENFORCEMENT OF LAW.

Sec. 67. That the governor shall be responsible for the faithful execution of the laws of the United States and of the Territory of Hawaii within the said Territory, and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the Territory of Hawaii, or summon the posse comitatus, or call out the militia of the Territory to prevent or suppress lawless violence, invasion, insurrection, or rebellion in said Territory, and he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of habeas corpus, or place the Territory, or any part thereof, under martial law until communication can be had with the President and his decision thereon made known.

GENERAL POWERS OF THE GOVERNOR.

Sec. 68. That all the powers and duties which, by the laws of Hawaii, are conferred upon or required of the President or any minister of the Republic of Hawaii (acting alone or in connection with any other officer or person or body) or the cabinet or executive council, and not inconsistent with the Constitution or laws of the United States,
SECRETARY OF THE TERRITORY.

Sec. 69. That there shall be a secretary of the said Territory, who shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and who shall be a citizen of the Territory of Hawaii and hold his office for four years and until his successor shall be appointed and qualified, unless sooner removed by the President. He shall record and preserve all the laws and proceedings of the legislature and all acts and proceedings of the governor, and promulgate proclamations of the governor. He shall, within thirty days after the end of each session of the legislature, transmit to the President, the President of the Senate, and the Speaker of the House of Representatives of the United States one copy each of the laws and journals of such session. He shall transmit to the President, semiannually, on the first days of January and July, a copy of the executive proceedings, and shall perform such other duties as are prescribed in this Act or as may be required of him by the legislature of Hawaii.

ACTING GOVERNOR IN CERTAIN CONTINGENCIES.

Sec. 70. That in case of the death, removal, resignation, or disability of the governor, or his absence from the Territory, the secretary shall exercise all the powers and perform all the duties of governor during such vacancy, disability, or absence, or until another governor is appointed and qualified.

ATTORNEY-GENERAL.

Sec. 71. That there shall be an attorney-general, who shall have the powers and duties of the attorney-general and those of the powers and duties of the minister of the interior which relate to prisons, prisoners, and prison inspectors, notaries public, and escheat of lands under the laws of Hawaii, except as changed by this Act and subject to modification by the legislature.

TREASURER.

Sec. 72. That there shall be a treasurer, who shall have the powers and duties of the minister of finance and those of the powers and duties of the minister of the interior which relate to licenses, corporations, companies, and partnerships, business conducted by married women, newspapers, registry of conveyances, and registration of prints, labels, and trade-marks under the laws of Hawaii, except as changed in this Act and subject to modification by the legislature.

COMMISSIONER OF PUBLIC LANDS.

Sec. 73. That the laws of Hawaii relating to public lands, the settlement of boundaries, and the issuance of patents on land-commission awards, except as changed by this Act, shall continue in force until Congress shall otherwise provide. That, subject to the approval of the President, all sales, grants, leases, and other dispositions of the public domain, and agreements concerning the same, and all franchises granted by the Hawaiian government in conformity with the laws of Hawaii between the seventh day of July, eighteen hundred and ninety-eight, and the twenty-eighth day of September, eighteen hundred and
ninetynine, are hereby ratified and confirmed. In said laws "land patent" shall be substituted for "royal patent"; "commissioner of public lands" for "minister of the interior," "agent of public lands," and "commissioners of public lands," or their equivalents; and the words "that I am a citizen of the United States," or "that I have declared my intention to become a citizen of the United States, as required by law," for the words "that I am a citizen by birth (or naturalization) of the Republic of Hawaii," or "that I have received letters of denization under the Republic of Hawaii," or "that I have received a certificate of special right of citizenship from the Republic of Hawaii." And no lease of agricultural land shall be granted, sold, or renewed by the government of the Territory of Hawaii for a longer period than five years until Congress shall otherwise direct. All funds arising from the sale or lease or other disposal of such lands shall be appropriated by the laws of the government of the Territory of Hawaii and applied to such uses and purposes for the benefit of the inhabitants of the Territory of Hawaii as are consistent with the joint resolution of annexation, approved July seventh, eighteen hundred and ninety-eight: Provided, There shall be excepted from the provisions of this section all lands heretofore set apart, or reserved, by Executive order, or orders, by the President of the United States.

COMMISSIONER OF AGRICULTURE AND FORESTRY.

SEC. 74. That the laws of Hawaii relating to agriculture and forestry, except as changed by this Act, shall continue in force, subject to modification by Congress or the legislature. In said laws "commissioner of agriculture and forestry" shall be substituted, respectively, for "bureau," "bureau of agriculture and forestry," "commissioner," "commissioners of agriculture," and "commissioners for the island of Oahu."

SUPERINTENDENT OF PUBLIC WORKS.

SEC. 75. That there shall be a superintendent of public works, who shall have the powers and duties of the superintendent of public works and those of the powers and duties of the minister of the Interior which relate to streets and highways, harbor improvements, wharves, landings, waterworks, railways, electric light and power, telephone lines, fences, pounds, brands, weights and measures, fires and fireproof buildings, explosives, eminent domain, public works, markets, buildings, parks and cemeteries, and other grounds and lands now under the control and management of the minister of the Interior, and those of the powers and duties of the minister of finance and collector-general which relate to pilots and harbor masters under the laws of Hawaii, except as changed by this Act and subject to modification by the legislature. In said laws the word "legislature" shall be substituted for "councils" and the words "the circuit court" for "the Hawaiian Postal Savings Bank."

SUPERINTENDENT OF PUBLIC INSTRUCTION.

SEC. 76. That there shall be a superintendent of public instruction, who shall have the powers and perform the duties conferred upon and required of the minister of public instruction by the laws of Hawaii as amended by this Act, and subject to modification by the legislature. It shall be the duty of the United States Commissioner of Labor to collect, assort, arrange, and present in annual reports statistical details relating to all departments of labor in the Territory of Hawaii, especially in relation to the commercial, industrial, social, educational, and sanitary condition of the laboring classes, and to all such other subjects
as Congress may, by law, direct. The said commissioner is especially charged to ascertain, at as early a date as possible, and as often thereafter as such information may be required, the highest, lowest, and average number of employees engaged in the various industries in the Territory, to be classified as to nativity, sex, hours of labor, and conditions of employment, and to report the same to Congress.

AUDITOR AND DEPUTY AUDITOR.

Sec. 77. That there shall be an auditor and deputy auditor, who shall have the powers and duties conferred upon and required of the auditor-general and deputy auditor-general, respectively, by act thirty-nine of the Session Laws, as amended by this Act, subject to modification by the legislature. In said act “officer” shall be substituted for “minister” where used without other designation.

SURVEYOR.

Sec. 78. That there shall be a surveyor, who shall have the powers and duties heretofore attached to the surveyor-general, except such as relate to the geodetic survey of the Hawaiian Islands.

HIGH SHERIFF.

Sec. 79. That there shall be a high sheriff and deputies, who shall have the powers and duties of the marshal and deputies of the Republic of Hawaii under the laws of Hawaii, except as changed by this Act, and subject to modification by the legislature.

APPOINTMENT, REMOVAL, TENURE, AND SALARIES OF OFFICERS.

Sec. 80. That the President shall nominate and, by and with the advice and consent of the Senate, appoint the chief justice and justices of the supreme court, the judges of the circuit courts, who shall hold their respective offices for the term of four years, unless sooner removed by the President; and the governor shall nominate and, by and with the advice and consent of the Senate of the Territory of Hawaii, appoint the attorney-general, treasurer, commissioner of public lands, commissioner of agriculture and forestry, superintendent of public works, superintendent of public instruction, auditor, deputy auditor, surveyor, high sheriff, members of the board of health, commissioners of public instruction, board of prison inspectors, board of registration and inspectors of election, and any other boards of a public character that may be created by law; and he may make such appointments when the Senate is not in session by granting commissions, which shall, unless such appointments are confirmed, expire at the end of the next session of the Senate. He may, by and with the advice and consent of the Senate of the Territory of Hawaii, remove from office any of such officers. All such officers shall hold office for four years and until their successors are appointed and qualified, unless sooner removed, except the commissioners of public instruction and the members of said boards, whose terms of office shall be as provided by the laws of the Territory of Hawaii.

The manner of appointment and removal and the tenure of all other officers shall be as provided by law; and the governor may appoint or remove any officer whose appointment or removal is not otherwise provided for.

The salaries of all officers other than those appointed by the President shall be as provided by the legislature, but those of the chief justice and the justices of the supreme court and judges of the circuit courts shall not be diminished during their term of office.
All officers appointed under the provisions of this section shall be citizens of the Territory of Hawaii.

All persons holding office in the Hawaiian Islands at the time this Act takes effect shall continue to hold their respective offices until their successors are appointed and qualified, but not beyond the end of the first session of the senate of the Territory of Hawaii unless reappointed as herein provided.

CHAPTER IV.

THE JUDICIARY.

Sec. 81. That the judicial power of the Territory shall be vested in one supreme court, circuit courts, and in such inferior courts as the legislature may from time to time establish. And until the legislature shall otherwise provide, the laws of Hawaii heretofore in force concerning the several courts and their jurisdiction and procedure shall continue in force except as herein otherwise provided.

SUPREME COURT.

Sec. 82. That the supreme court shall consist of a chief justice and two associate justices, who shall be citizens of the Territory of Hawaii and shall be appointed by the President of the United States, by and with the advice and consent of the Senate of the United States, and may be removed by the President: Provided, however, That in case of the disqualification or absence of any justice thereof, in any cause pending before the court, on the trial and determination of said cause his place shall be filled as provided by law.

LAWS CONTINUED IN FORCE.

Sec. 83. That the laws of Hawaii relative to the judicial department, including civil and criminal procedure, except as amended by this Act, are continued in force, subject to modification by Congress, or the legislature. The provisions of said laws or any laws of the Republic of Hawaii which require juries to be composed of aliens or foreigners only, or to be constituted by impanelling natives of Hawaii only, in civil and criminal cases specified in said laws, are repealed, and all juries shall hereafter be constituted without reference to the race or place of nativity of the jurors; but no person who is not a male citizen of the United States and twenty-one years of age and who can not understandingly speak, read, and write the English language shall be a qualified juror or grand juror in the Territory of Hawaii. No person shall be convicted in any criminal case except by unanimous verdict of the jury. No plaintiff or defendant in any suit or proceeding in a court of the Territory of Hawaii shall be entitled to a trial by a jury impaneled exclusively from persons of any race. Until otherwise provided by the legislature of the Territory, grand juries may be drawn in the manner provided by the Hawaiian statutes for drawing petty juries, and shall sit at such times as the circuit judges of the respective circuits shall direct; the number of grand jurors in each circuit shall be not less than thirteen, and the method of the presentation of cases to said grand jurors shall be prescribed by the supreme court of the Territory of Hawaii. The several circuit courts may subpoena witnesses to appear before the grand jury in like manner as they subpoena witnesses to appear before their respective courts.

DISQUALIFICATION BY RELATIONSHIP, PECUNIARY INTEREST, OR PREVIOUS JUDGMENT.

Sec. 84. That no person shall sit as a judge or juror in any case in which his relative by affinity or by consanguinity within the third
degree is interested, either as a plaintiff or defendant, or in the issue of which the said judge or juror may have, either directly or through such relative, any pecuniary interest. No judge shall sit on an appeal, or new trial, in any case, in which he may have given a previous judgment.

Chapter 5.—United States Officers.

Delegate to Congress.

SEC. 85. That a Delegate to the House of Representatives of the United States, to serve during each Congress, shall be elected by the voters qualified to vote for members of the house of representatives of the legislature; such Delegate shall possess the qualifications necessary for membership of the senate of the legislature of Hawaii. The times, places, and manner of holding elections shall be as fixed by law. The person having the greatest number of votes shall be declared by the governor duly elected, and a certificate shall be given accordingly. Every such Delegate shall have a seat in the House of Representatives, with the right of debate, but not of voting.

Federal Court.

SEC. 86. That there shall be established in said Territory a district court to consist of one judge, who shall reside therein and be called the district judge. The President of the United States, by and with the advice and consent of the Senate of the United States, shall appoint a district judge, a district attorney, and a marshal of the United States for the said district, and said judge, attorney, and marshal shall hold office for six years unless sooner removed by the President. Said court shall have, in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction of all cases cognizable in a circuit court of the United States, and shall proceed therein in the same manner as a circuit court; and said judge, district attorney, and marshal shall have and exercise in the Territory of Hawaii all the powers conferred by the laws of the United States upon the judges, district attorneys, and marshals of district and circuit courts of the United States. Writs of error and appeals from said district court shall be had and allowed to the circuit court of appeals in the ninth judicial circuit in the same manner as writs of error and appeals are allowed from circuit courts to circuit courts of appeals as provided by law, and the laws of the United States relating to juries and jury trials shall be applicable to said district court. The laws of the United States relating to appeals, writs of error, removal of causes, and other matters and proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the courts of the United States and the courts of the Territory of Hawaii. Regular terms of said court shall be held at Honolulu on the second Monday in April and October and at Hilo on the last Wednesday in January of each year; and special terms may be held at such times and places in said district as the said judge may deem expedient. The said district judge shall appoint a clerk for said court at a salary of three thousand dollars per annum, and shall appoint a reporter of said court at a salary of twelve hundred dollars per annum.

Internal-Revenue District.

SEC. 87. That the Territory of Hawaii shall constitute a district for the collection of the internal revenue of the United States, with a collector, whose office shall be at Honolulu, and deputy collectors at such
other places in the several islands as the Secretary of the Treasury shall direct.

**CUSTOMS DISTRICT.**

**Sec. 88.** That the Territory of Hawaii shall comprise a customs district of the United States, with ports of entry and delivery at Honolulu, Hilo, Mahukona, and Kahului.

**CHAPTER 6.—MISCELLANEOUS.**

**REVENUES FROM WHARVES.**

**Sec. 89.** That until further provision is made by Congress the wharves and landings constructed or controlled by the Republic of Hawaii on any seacoast, bay, roadstead, or harbor shall remain under the control of the government of the Territory of Hawaii, which shall receive and enjoy all revenues derived therefrom, on condition that said property shall be kept in good condition for the use and convenience of commerce, but no tolls or charges shall be made by the government of the Territory of Hawaii for the use of any such property by the United States, or by any vessel of war, tug, revenue cutter, or other boat or transport in the service of the United States.

**Sec. 90.** That Hawaiian postage stamps, postal cards, and stamped envelopes at the post-offices of the Hawaiian Islands when this Act takes effect shall not be sold, but, together with those that shall thereafter be received at such offices as herein provided, shall be canceled under the direction of the Postmaster-General of the United States; those previously sold and uncanceled shall, if presented at such offices within six months after this Act takes effect, be received at their face value in exchange for postage stamps, postal cards, and stamped envelopes of the United States of the same aggregate face value and, so far as may be, of such denominations as desired.

**Sec. 91.** That the public property ceded and transferred to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July seventh, eighteen hundred and ninety-eight, shall be and remain in the possession, use, and control of the government of the Territory of Hawaii, and shall be maintained, managed, and cared for by it, at its own expense, until otherwise provided for by Congress, or taken for the uses and purposes of the United States by direction of the President or of the governor of Hawaii. And all moneys in the Hawaiian treasury, and all the revenues and other property acquired by the Republic of Hawaii since said cession shall be and remain the property of the Territory of Hawaii.

**Sec. 92.** That the following officers shall receive the following annual salaries, to be paid by the United States: The governor, five thousand dollars; the secretary of the Territory, three thousand dollars; the chief justice of the supreme court of the Territory, five thousand five hundred dollars, and the associate justices of the supreme court, five thousand dollars each, and the judges of the circuit courts, three thousand dollars each. The salaries of the said chief justice and the associate justices of the supreme court, and the judges of the circuit courts as above provided shall be paid by the United States; the United States district judge, five thousand dollars; the United States marshal, two thousand five hundred dollars; the United States district attorney, three thousand dollars. And the governor shall receive annually, in addition to his salary, the sum of five hundred dollars for stationery, postage, and incidentals; also his traveling expenses while absent from the capital on official business, and the sum of two thousand dollars annually for his private secretary.
Sec. 93. That imports from any of the Hawaiian Islands, into any State or any other Territory of the United States, of any dutiable articles not the growth, production, or manufacture of said islands, and imported into them from any foreign country after July seventh, eighteen hundred and ninety-eight, and before this Act takes effect, shall pay the same duties that are imposed on the same articles when imported into the United States from any foreign country.

Investigation of fisheries.

Sec. 94. That the Commissioner of Fish and Fisheries of the United States is empowered and required to examine into the entire subject of fisheries and the laws relating to the fishing rights in the Territory of Hawaii, and report to the President touching the same, and to recommend such changes in said laws as he shall see fit.

Repeal of laws conferring exclusive fishing rights.

Sec. 95. That all laws of the Republic of Hawaii which confer exclusive fishing rights upon any person or persons are hereby repealed, and all fisheries in the sea waters of the Territory of Hawaii not included in any fish pond or artificial inclosure shall be free to all citizens of the United States, subject, however, to vested rights; but no such vested right shall be valid after three years from the taking effect of this Act unless established as hereinafter provided.

Proceedings for opening fisheries to citizens.

Sec. 96. That any person who claims a private right to any such fishery shall, within two years after the taking effect of this Act, file his petition in a circuit court of the Territory of Hawaii, setting forth his claim to such fishing right, service of which petition shall be made upon the attorney-general, who shall conduct the case for the Territory, and such case shall be conducted as an ordinary action at law.

That if such fishing right be established, the attorney-general of the Territory of Hawaii may proceed, in such manner as may be provided by law for the condemnation of property for public use, to condemn such private right of fishing to the use of the citizens of the United States upon making just compensation, which compensation, when lawfully ascertained, shall be paid out of any money in the treasury of the Territory of Hawaii not otherwise appropriated.

Quarantine.

Sec. 97. That quarantine stations shall be established at such places in the Territory of Hawaii as the Supervising Surgeon-General of the Marine-Hospital Service of the United States shall direct, and the quarantine regulations for said islands relating to the importation of diseases from other countries shall be under the control of the Government of the United States. The quarantine station and grounds at the harbor of Honolulu, together with all the public property belonging to that service, shall be transferred to the Marine-Hospital Service of the United States, and said quarantine grounds shall continue to be so used and employed until the station is changed to other grounds which may be selected by order of the Secretary of the Treasury.

The health laws of the government of Hawaii relating to the harbor of Honolulu and other harbors and inlets from the sea and to the internal control of the health of the islands shall remain in the jurisdiction of the government of the Territory of Hawaii, subject to the quarantine laws and regulations of the United States.
SEC. 98. That all vessels carrying Hawaiian registers on the twelfth day of August, eighteen hundred and ninety-eight, and which were owned bona fide by citizens of the United States, or the citizens of Hawaii, together with the following-named vessels claiming Hawaiian register, Star of France, Euterpe, Star of Russia, Falls of Clyde, and Wilscott, shall be entitled to be registered as American vessels, with the benefits and privileges appertaining thereto, and the coasting trade between the islands aforesaid and any other portion of the United States, shall be regulated in accordance with the provisions of law applicable to such trade between any two great coasting districts.

SEC. 99. That the portion of the public domain heretofore known as Crown land is hereby declared to have been, on the twelfth day of August, eighteen hundred and ninety-eight, and prior thereto, the property of the Hawaiian government, and to be free and clear from any trust of or concerning the same, and from all claim of any nature whatsoever, upon the rents, issues, and profits thereof. It shall be subject to alienation and other uses as may be provided by law.

SEC. 100. That for the purposes of naturalization under the laws of the United States residence in the Hawaiian Islands prior to the taking effect of this Act shall be deemed equivalent to residence in the United States and in the Territory of Hawaii, and the requirement of a previous declaration of intention to become a citizen of the United States and to renounce former allegiance shall not apply to persons who have resided in said islands at least five years prior to the taking effect of this Act; but all other provisions of the laws of the United States relating to naturalization shall, so far as applicable, apply to persons in the said islands.

SEC. 101. That Chinese in the Hawaiian Islands when this Act takes effect may within one year thereafter obtain certificates of residence as required by "An Act to prohibit the coming of Chinese persons into the United States," approved May fifth, eighteen hundred and ninety-two, as amended by an Act approved November third, eighteen hundred and ninety-three, entitled "An Act to amend an Act entitled 'An Act to prohibit the coming of Chinese persons into the United States,' approved May fifth, eighteen hundred and ninety-two," and until the expiration of said year shall not be deemed to be unlawfully in the United States if found therein without such certificates: Provided, however, That no Chinese laborer, whether he shall hold such certificate or not, shall be allowed to enter any State, Territory, or District of the United States from the Hawaiian Islands.

SEC. 102. That the laws of Hawaii relating to the establishment and conduct of any postal savings bank or institution are hereby abolished. And the Secretary of the Treasury, in the execution of the agreement of the United States as expressed in an Act entitled "Joint Resolution to provide for annexing the Hawaiian Islands to the United States," approved July seventh, eighteen hundred and ninety-eight, shall pay the amounts on deposit in the Hawaiian Postal Savings Bank to the persons entitled thereto, according to their respective rights, and he shall make all needful orders, rules, and regulations for paying such persons and for notifying such persons to present their demands for payment. So much money as is necessary to pay said demands is hereby appropriated out of any money in the Treasury not otherwise appropriated, to be available on and after the first day of July, nineteen hundred, when such payments shall begin, and none of said demands shall bear interest after said date, and no deposit shall be made in said bank after said date. Said demands of such persons shall be certified to by the chief executive of Hawaii as being genuine and due to the persons presenting the same, and his certificate shall be sealed with the official seal of the Territory, and countersigned by his secretary, and shall be approved by the Secretary of the Interior, who shall draw his
warrant for the amount due upon the Treasurer of the United States, and when the same are so paid no further liabilities shall exist in respect of the same against the governments of the United States or of Hawaii.

Sec. 103. That any money of the Hawaiian Postal Savings Bank that shall remain unpaid to the persons entitled thereto on the first day of July, nineteen hundred and one, and any assets of said bank shall be turned over by the government of Hawaii to the Treasurer of the United States, and the Secretary of the Treasury shall cause an account to be stated, as of said date, between such government of Hawaii and the United States in respect to said Hawaiian Postal Savings Bank.

Sec. 104. This Act shall take effect forty-five days from and after the date of the approval thereof, excepting only as to section fifty-two, relating to appropriations, which shall take effect upon such approval.

Approved, April 30, 1900.

CHAP. 340.—An Act To authorize the construction of a bridge across Tallahatchie River, in Tallahatchie County, Mississippi.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the board of supervisors of Tallahatchie County, in the State of Mississippi, be, and is hereby, authorized to construct and maintain a bridge and approaches thereto across the Tallahatchie River at or within one mile above or below Swan Lake, in the State of Mississippi. Said bridge shall be constructed to provide for the passage of wagons and vehicles of all kinds, animals, foot passengers, and for all road travel, for such reasonable rates of toll and under such reasonable rules and regulations as may be prescribed by said board of supervisors and approved by the Secretary of War.

Sec. 2. That any bridge built under this Act and subject to its limitations shall be a lawful structure, and shall be recognized and known as a post route, upon which no charge shall be made for the transmission over the same of the mails, the troops, and munitions of war of the United States; and equal privileges in the use of said bridge shall be granted to all telegraph and telephone companies; and the United States shall have the right of way across said bridge and its approaches for postal-telegraph purposes.

Sec. 3. That the said bridge shall be constructed as a wagon bridge, and shall contain a drawspan giving a clear opening of a width to be determined by the Secretary of War, which drawspan shall be maintained over the main channel of the river at an accessible and navigable point; and said bridge other than the drawspan shall be at right angles to the current of the river at high water: Provided, That the said draw shall be opened promptly, upon reasonable signal, for the passage of boats and rafts; and said board of supervisors shall maintain, at its own expense, from sunset to sunrise, such lights or other signals on said bridge as the Light-House Board shall prescribe. No bridge shall be erected or maintained under the authority of this Act which shall at any time unreasonably obstruct the free navigation of said river; and if any bridge erected under such authority shall, in the opinion of the Secretary of War, unreasonably obstruct navigation, he is hereby authorized to cause the entire removal thereof or such changes or alterations of said bridge to be made as will obviate such obstruction; and all such alterations shall be made and all such obstructions shall be removed at the expense of the owner or owners of said bridge; and in case of any litigation arising from any obstruction or alleged obstruction to the free navigation of said river, caused or alleged to be caused by said bridge, the case may be brought in the district court of the United States of the State of Mississippi, in whose
Dear Mr. Speaker:

The Alaska Native Claims Settlement Act of December 18, 1971, (85 Stat. 683), directs the Secretary, under Section 23, to submit to the Congress annual reports on the implementation of the Act.

I am pleased to submit the attached report covering actions taken to implement the Act during the period between December 18, 1971, and June 30, 1973.

This first report covers an 18 month period. Following reports will be on an annual fiscal year basis. The next report will cover the period from July 1, 1973, through June 30, 1974.

Sincerely yours,

[Signature]

Secretary of the Interior

Honorable Carl Albert
Speaker of the
House of Representatives
Washington, D.C. 20515

Attachment

Identical letter to: Honorable Spiro T. Agnew
President of the Senate
Washington, D.C. 20510

CC: Asst. Secys: FWP, LWR, EM, PD&B; C&PA
FNP, FSF, BOR, LLM, IA, USGS, SOL
FS-USDA
FSLUPC
ALASKA NATIVE CLAIMS SETTLEMENT ACT

Section 23

ANNUAL REPORT ON IMPLEMENTATION OF THE ACT
Key to Status of Implementation

I. Planning Stage
II. Program Presently Underway
III. Action Completed
<table>
<thead>
<tr>
<th>Sec.</th>
<th>Sub-sec.</th>
<th>Title &amp; Description of Action</th>
<th>Status of Implementation</th>
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</thead>
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<td></td>
<td></td>
<td>DECLARATION OF POLICY</td>
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<td></td>
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<td>Study of all Federal programs</td>
<td>Office of the Assistant</td>
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<td>primarily designed to benefit</td>
<td>to the Secretary of the</td>
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<td>Native People (report due</td>
<td>Interior for Indian</td>
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<td>December 1974).</td>
<td>Affairs is reviewing</td>
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<td>and personnel.</td>
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<td>DEFINITIONS</td>
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<td>Definition of public lands.</td>
<td>In February 1972 solicited</td>
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<td>Identify &quot;smallest practicable</td>
<td>an inventory from Federal</td>
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<td>tract&quot; enclosing land actually</td>
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<td>used in connection with the</td>
<td>of smallest practical tract.</td>
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<td>administration of any Federal</td>
<td>Presently reviewing these</td>
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<td>tract. Requires the review of</td>
<td>agency submissions to</td>
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<td>all Federal land withdrawals</td>
<td>determine if any land is</td>
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<td>DECLARATION OF SETTLEMENT</td>
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<td>Extinguishment of aboriginal</td>
<td>No challenges have been</td>
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<td>claims.</td>
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<td>Identify smallest practicable tracts.</td>
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<td>ENROLLMENT</td>
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<td>(a)</td>
<td>Enrollment of Resident Natives</td>
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<td>(b)</td>
<td>Enrollment of Nonresident Natives</td>
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<td>Election for 13th Corporation</td>
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<td>Applications filed:</td>
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<td>Target date of completion of determinations is June 30, 1973 and for final action on appeals is October 30. Roll must be completed and ready for Secretary's signature by December 17, 1973 (statutory deadline).</td>
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<td>Election is shown on application form. Computer program for extracting vote is being written. Will be tested and ready by the time enrollment decisions are complete.</td>
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<td>Sub-Sec.</td>
<td>Title &amp; Description of Action</td>
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<td><strong>ALASKA NATIVE FUND</strong></td>
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<td></td>
<td>(c)</td>
<td>Distribution of Funds</td>
<td>II BIA The Bureau of Indian Affairs prevailed over objections raised by the Treasury Department, in having the Comptroller General of the United States rule that the ANF is a tribal trust fund and is entitled to earn interest at the rate of 4% under 25 U.S.C. 161A and available for investment under the provisions of 25 U.S.C. 162A. As of March 31, 1973, total available funds of $57,258,184.77 are invested at a composite rate of 6.39% Accrued earnings to March 31, 1973 amount to $2,049,500. Investments are made to mature on or before December 18, 1973. Approximately $7,000,000 has been advanced to Regional Corporations. The advance was determined to be necessary for Region Corporate and Village Corporate organization purposes, to identify land for corporation selection and to repay loans and other obligations incurred.</td>
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<td>Sec.</td>
<td>Sub-sec.</td>
<td>TITLE &amp; DESCRIPTION OF ACTION</td>
<td>STATUS OF IMPLEMENTATION</td>
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<td>REGIONAL CORPORATIONS</td>
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<td></td>
<td>(a)</td>
<td>Establish Regional Boundaries. The Secretary is required to divide the State into 12 geographical regions that shall approximate the areas covered by the Native Associations.</td>
<td>II BLM The Secretary established regional boundaries in accordance with Sec. 7(a) on December 11, 1972, and provided a 90-day arbitration period for disputed boundaries. Four boundaries have been changed and two are still before the courts.</td>
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<td>Regional Mergers</td>
<td>II SOL Several regions have indicated their intent to merge. No official action to date.</td>
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<td>(c)</td>
<td>Establish Thirteenth Region</td>
<td>BIA See Section 5(c).</td>
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<td></td>
<td>(d)</td>
<td>Incorporation</td>
<td>III SOL/L&amp;WR Twelve Regional Corporations have been established and are in operation.</td>
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<td></td>
<td>(e)</td>
<td>a. Articles of Incorporation and By Laws.</td>
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<td></td>
<td>b. Approval of Amendments</td>
<td>II SOL/L&amp;WR Amendments are being approved where appropriate.</td>
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<td>9</td>
<td></td>
<td>REVENUE SHARING</td>
<td></td>
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<td>Sec.</td>
<td>Sub-sec.</td>
<td>Title &amp; Description of Action</td>
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<tr>
<td>9 (d)</td>
<td>Federal Revenue Sharing from Disposition of Minerals. Deposit into the Alaska Native Fund (1) a royalty of 2% upon gross value of minerals produced and (2) 2% of all rentals and bonuses.</td>
<td>II BLM</td>
<td>Deposits made to the Alaska Native Fund semi-annually, $844,971.97 deposited for December 18, 1971 through December 31, 1972. January 1, 1973 - June 30, 1973 +$400,000 estimated.</td>
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<td>STATUTE OF LIMITATIONS</td>
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<td>(a)</td>
<td>Filing of complaint.</td>
<td>III BLM</td>
<td>Provided a one-year limitation on filing suits to challenge the legality of ANCSA. No suits have been filed and none are now pending.</td>
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<tr>
<td>11</td>
<td>WITHDRAWAL OF PUBLIC LANDS</td>
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<td>(a)</td>
<td>Withdrawal of 25 townships for village and regional corporations. The Act itself withdrew the 25 township blocks surrounding some 200 villages for Native selections.</td>
<td>III BLM</td>
<td>Approximately 59 million acres have been withdrawn from all forms of appropriation and all public land status records have been noted thereby protecting the land for Native selection.</td>
</tr>
<tr>
<td>(a)</td>
<td>Withdrawal for village and regional deficiency land selections.</td>
<td>II BLM</td>
<td>Approximately 44 million have been withdrawn from all forms of appropriation for deficiency selection by qualified Village and Regional Corporations. All public land status records have been noted. Further review is being made of the adequacy of the deficiency withdrawals to assure that the Native selection rights can be met. This makes a total of about 103 million acres, from which the Natives will choose 38 million acres for their village and regional corporations.</td>
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<td>Sec.</td>
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<td>11</td>
<td>(b)</td>
<td>Review of Village Eligibility</td>
<td>I</td>
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<td>(3)</td>
<td>Unlisted Villages: Withdrawal of land for Native selection pending determination of eligibility of the Native community.</td>
<td>II</td>
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<td>BLM</td>
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<td>Approximately .5 million acres have been withdrawn from all forms of appropriation, for 3 Native communities to protect the land pending determination of their eligibility to make land selections. Other communities are being studied as to eligibility. (March 30)</td>
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<td>12</td>
<td>(a)</td>
<td>Native Land Selections</td>
<td>III</td>
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<td>SURVEYS</td>
<td>BLM</td>
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<td>Survey of lands to be conveyed. Cadastral surveys.</td>
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<td>BLM</td>
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<td>Because no selection of lands under the Native Claims Act have been or in most probability will not be made until close to the deadline (Dec. 1974), actual surveys conducted have been concentrated on backlog of state selections and Native allotments. Alaska Native Selection Regulations (published May 30, 1973) provide survey requirements for land conveyances. On-the-job training for new recruits took place in Alaska during the work season and is in full swing this summer (work season for 1973).</td>
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<td>Sec.</td>
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<tr>
<td>13</td>
<td>(a)</td>
<td>Protraction Diagrams</td>
<td>(Continued)</td>
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<td>Cadastral Surveys - Protraction</td>
<td>In a joint training course sponsored by BIA and BLM for 25 Natives who participated in course, eight remained for survey program. Negotiations currently on-going with University of Alaska for establishment of permanent courses, at university level for special cadastral training geared particularly for and in Alaska. Every village is now covered with large-scale aerial photography enabling identification of churches, schools and other buildings in planning for survey work. 1,200,000 acres of field surveys on state selections will have been completed in FY 1973. Specification and other preparatory work being developed for a sizeable portion of the survey work to be conducted by contract.</td>
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<td>13</td>
<td>(b)</td>
<td>Protraction Diagns</td>
<td>III BLM</td>
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<td></td>
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<td>Cadastral Surveys - Protraction</td>
<td>Twelve protraction diagrams prepared and approved covering unsurveyed and unprotracted areas in Alaska.</td>
</tr>
<tr>
<td>14</td>
<td>(h)</td>
<td>Primary Place of Residence. Provides for conveyance of up to 160 acres occupied by a Native as a primary place of residence.</td>
<td>II BLM</td>
</tr>
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<td>Sec.</td>
<td>Sub-Sec.</td>
<td>TITLE &amp; DESCRIPTION OF ACTION</td>
<td>STATUS OF IMPLEMENTATION</td>
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<tr>
<td>14</td>
<td>(h) (1)</td>
<td>Convey existing cemetery sites and historical places to Regional Corporations.</td>
<td>II NPS A position in Community Relations has been established to assist Natives in identification and preserving their cultural and historical sites and in planning for recreational and tourist facilities - three additional positions were established to provide technical help in site development. In cooperation with BIA, a Management Intern Program was instigated. The objective is to provide Natives training in how to manage historical and recreational facilities. One intern is currently enrolled - two additional interns will be added during the coming year.</td>
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<td>Sec.</td>
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<td>Title &amp; Description of Action</td>
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<tr>
<td>14</td>
<td>(h)</td>
<td>CONVEYANCE OF LANDS</td>
<td></td>
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<td></td>
<td>(6)</td>
<td>Native Allotments</td>
<td>II Field examinations have been completed on the approximately 250 sites for which allotment applications have been filed on National Forest land.</td>
</tr>
<tr>
<td>15</td>
<td></td>
<td>TIMBER SALE CONTRACTS</td>
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<tr>
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<td></td>
<td>Timber Sale Contracts</td>
<td>II Timber sales affecting likely selections, particularly in primary townships have been identified and where possible, cutting plans modified.</td>
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<td>Sec.</td>
<td>Sub-Sec.</td>
<td>Title &amp; Description of Action</td>
<td>Status of Implementation</td>
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<tr>
<td>14</td>
<td>(h)</td>
<td>At the option of the Native applicant, applications filed under the 1887, 1910 or 1906 Act (Ref. Sec. 18).</td>
<td>II BLM All Native allotment applicants (8,000 plus) pending before the Department have been sent notification of their option to continue with their allotment application or select land under the Claims Act for their primary place of residence. BLM is proceeding to process pending applications under the 1906 Native Allotment Act, having completed the field examination of 800 cases.</td>
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<tr>
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<td>(6)</td>
<td></td>
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<tr>
<td>16</td>
<td></td>
<td><strong>THE TLINGIT-Haida SETTLEMENT</strong></td>
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<tr>
<td></td>
<td>(a)</td>
<td>Withdrawal of Lands</td>
<td>III BLM All public lands in each township that enclosed all or part of the villages listed were statutorily withdrawn and noted on the BLM land status records. The ANCSA regulations (43 CFR 2650) provide for village eligibility requirements and land selection within the 3 years allowed by Section 16(b) of ANCSA.</td>
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<td>17</td>
<td></td>
<td><strong>JOINT FEDERAL-STATE LUPC</strong></td>
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<tr>
<td></td>
<td>(a)</td>
<td>Secretary appoints four members LUPC.</td>
<td>III Sec. Commission has been established and is in operation.</td>
</tr>
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<td>Sec.</td>
<td>Sub-sec.</td>
<td>Title &amp; Description of Action</td>
<td>Status of Implementation</td>
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<tr>
<td>17</td>
<td>(a)</td>
<td>Reports on recommendations regarding Section 17(d)(2) Withdrawals.</td>
<td>III BSFW NPS Reports submitted to the Joint Land Use Planning Commission August 1972.</td>
</tr>
<tr>
<td>17</td>
<td>(a)</td>
<td>Recommendations on d-2 lands.</td>
<td>III BSFW NPS Presented reports on general land use policies and proposals for the three systems of these agencies to the Joint Land Use Planning Commission. Presentation outlined land use policies and options, objectives of the systems and general nature of proposals (17(d)(2)) as they had been developed at the time of the report.</td>
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<td>Sec.</td>
<td>Sub-sec.</td>
<td>Title &amp; Description of Action</td>
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</tr>
<tr>
<td>17</td>
<td>(b) (3)</td>
<td>Identify Public Easements</td>
<td>II FS</td>
</tr>
<tr>
<td>17</td>
<td>(d) (2)</td>
<td>Studies of areas deemed suitable for addition to the National Forest System.</td>
<td>II FS</td>
</tr>
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<td>Sec.</td>
<td>Sub-sec.</td>
<td>Title &amp; Description of Action</td>
<td>Status of Implementation</td>
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<tr>
<td>17</td>
<td>(b)</td>
<td>Identification and reservation of public easements.</td>
<td>I BLM A memorandum of understanding with the Joint Federal-State Land Use Planning Commission is being prepared concerning operational procedures for identification and description of easements. BLM field personnel, in the course of field land examination work, are identifying existing roads and trails, and needed access routes. Such information is made a part of the land status records to assist in suitable reservations if the lands are transferred out of Federal ownership.</td>
</tr>
<tr>
<td></td>
<td>(3)</td>
<td>Reservation of public easements in patents to Village and Regional Corporations. The Secretary shall reserve such public easements as he determines necessary after consulting the Joint Federal-State Land Use Planning Commission and the State of Alaska.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c)</td>
<td>Utility corridor withdrawal. Withdrawal of public land for a utility and transportation corridor.</td>
<td>III BLM Corridors from Prudhoe Bay to Valdez and from Prudhoe Bay along the southern edge of the Arctic Game Range to the Canadian border were withdrawn for utility and transportation purposes. These corridors include about 6.5 million acres.</td>
</tr>
<tr>
<td></td>
<td>(d)</td>
<td>Statutory withdrawal of all unreserved public lands for 90 days for purpose of Secretarial review and withdrawal of Public Interest Areas.</td>
<td>III BLM Lands were noted on records as withdrawn for 90 days. Lands were then reviewed by Secretary and in March and September 1972 a total of 47 million acres were withdrawn under existing authority (E.O. 10355).</td>
</tr>
<tr>
<td></td>
<td>(1)</td>
<td>General withdrawal to protect public interest.</td>
<td>III BLM Approximately 45 million acres were withdrawn from all forms of appropriation except metalliciferous mineral location under the public interest provision of Sec. 17, for study to determine proper classification and to ascertain the public values which need protection.</td>
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<tr>
<td>Sec.</td>
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<td>Title &amp; Description of Action</td>
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<tr>
<td>17</td>
<td>(d)</td>
<td>Withdrawal of lands to aid the State of Alaska in making selections under the Statehood Act.</td>
<td>III BLM Approximately 35 million acres that were identified by the State of Alaska were made available to satisfy part of its land selection.</td>
</tr>
<tr>
<td></td>
<td>(1)</td>
<td>Withdrawal of 80 million acres of National Interest Areas.</td>
<td>III BLM Approximately 80 million acres were withdrawn from all forms of appropriation for study for possible inclusion as addition to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems.</td>
</tr>
<tr>
<td></td>
<td>(d)</td>
<td>Conflict between State Selections and National Interest Areas.</td>
<td>III BLM There was a considerable overlap between lands identified for selection by the State of Alaska and land preliminarily withdrawn for possible inclusion in the &quot;four national systems.&quot; In September 1972, an agreement was reached with the State of Alaska, and a revised request for land was made under terms of the Alaska Statehood Act, that eliminated this overlap.</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>Studies of areas deemed suitable for addition to National Park System.</td>
<td>II NPS National Park Service set up an Alaska Task Force in Anchorage in June 1972 to make detailed studies of 12 outstanding scenic, scientific, historical and archeological areas in Alaska. Reports containing draft environmental impact statements and preliminary master plan areas have been completed and are undergoing review in the Washington Office.</td>
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<td>(A)</td>
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<td>(d)</td>
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<tr>
<td></td>
<td>(2)</td>
<td>Studies of areas deemed suitable for addition to National Wildlife Refuge System.</td>
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<td></td>
<td>(c)</td>
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<td></td>
</tr>
<tr>
<td></td>
<td>(d)</td>
<td>Studies of areas deemed suitable for addition to National Wild &amp; Scenic Rivers System.</td>
<td>II SP&amp;W FWS set up an Alaska Study team in Anchorage June 1972, to undertake studies of 10 key sites in Alaska containing significant wildlife potentials. Draft Environmental Impact Statements, preliminary master plans and evaluation reports have been completed and are being reviewed in the Washington Office.</td>
</tr>
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<td>(2)</td>
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<tr>
<td></td>
<td>(c)</td>
<td>Studies of areas deemed suitable for addition to National Wildlife Refuge System.</td>
<td>II SF&amp;W FWS set up an Alaska Study team in Anchorage June 1972, to undertake studies of 12 key sites in Alaska containing significant wildlife potentials. Draft Environmental Impact Statements, preliminary master plans and evaluation reports have been completed for two areas and are being reviewed in the Washington Office. Similar documentation on the remaining ten areas will be forwarded to the Washington Office by May 15.</td>
</tr>
<tr>
<td></td>
<td>(d) (2)</td>
<td>Studies of areas deemed suitable for addition to National Wild &amp; Scenic Rivers System.</td>
<td>II BOR BOR opened an office in Anchorage in May 1972 to evaluate potential river areas and select a number for study - (1) federal management proposals and (2) state or native management proposals. Forty rivers, 31 federal and nine non-federal, were selected. Detailed studies of the 31 federal river areas are underway and reports are being prepared. Reports on rivers physically within other bureaus' proposed park or refuge areas will be submitted as supportive material and reports on the eight rivers outside such areas as legislative proposals together with EIS's and necessary supporting documentation. The nine non-Federal river areas will not receive detailed study unless requested by state or native authorities. No such request has yet been received. All work is on schedule.</td>
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<td>SEC.</td>
<td>TITLE &amp; DESCRIPTION OF ACTION</td>
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<td>7</td>
<td>(d)</td>
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<td>(B)</td>
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<td>Analysis of mineral potential and preparation with the Bureau of Mines of recommendations for conversion of lands from 17(d)(2) to 17(d)(1) status and from 17(d)(1) to 17(d)(2) status.</td>
<td>III Recommendations submitted to Secretary of GS Interior.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Preparation with the Bureau of Mines of updated recommendations based on mineral potential, for changes in land status.</td>
<td>II Recommendations to be prepared by May 14, GS 1973.</td>
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<tr>
<td>SEC.</td>
<td>SUB-SEC.</td>
<td>TITLE &amp; DESCRIPTION OF ACTION</td>
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<tr>
<td>(B)</td>
<td>(d)(2)</td>
<td>Preparation by contract with University of Alaska, 1:250,000-scale overlays for Series E map, showing occurrences of all mining claims by mineral commodity.</td>
<td>III Completed for Interagency Task Force for Alaska and Federal-State Land Use Planning Commission.</td>
</tr>
<tr>
<td>(d)(1)</td>
<td></td>
<td>Analysis of mineral potential and preparation with the Geological Survey of recommendations for conversion from 17(d)(1) to 17(d)(2) status and from 17(d)(2) to 17(d)(1) status.</td>
<td>III Recommendations submitted to Secretary of the Interior.</td>
</tr>
<tr>
<td>(d)(2)</td>
<td></td>
<td>Supplementation analysis and recommendations on conversion from 17(d)(1) to 17(d)(2) status and from 17(d)(2) to 17(d)(1) status relative to new mineral resource information.</td>
<td>III Recommendations submitted to Secretary of the Interior.</td>
</tr>
<tr>
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<td>Meetings of Bureau of Mines Alaska Field Operation Center mining and petroleum engineers with native associations advising them on mineral potential of lands being selected.</td>
<td>II This is an ongoing advisory service of Mines Bureau's Juneau office.</td>
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<td>Sec. Sub-Sec.</td>
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<td>Detail preparation of 153 overlays of each Alaska 1:250,000-scale topographic quadrangle by University of Alaska under Bureau of Mines contract numerically listing known mineral occurrences by commodity.</td>
<td>III Submitted to Federal-State Land Use Planning Commission.</td>
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<td>Title &amp; Description of Action</td>
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<td>17</td>
<td>(a) (6)</td>
<td>Plots on 34 1:250,000-scale quadrangle overlays locations of all existing exploratory oil and gas wells and oil and gas fields.</td>
<td>III Overlays in use by Resource Planning Team, Mines Federal-State Land Use Planning Commission.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Tabulation of Alaska's total mineral production from 1870 through 1970 by major mineral commodities according to the 153 1:250,000-scale quadrangle areas.</td>
<td>II Information will be submitted to Federal-State Land Use Planning Commission by June 3 1973.</td>
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<td>17</td>
<td>(a)</td>
<td>Evaluation of coal in northwest Alaska by exploratory drilling and analytical testing for potential native development and use. Tests could subsequently affect native selections.</td>
<td>II</td>
</tr>
<tr>
<td></td>
<td>(6)</td>
<td>Analysis and report, <em>Estimated Costs to Produce Copper at Kennicott, Alaska,</em> to determine future mining potential for this area containing important deposits of copper as they may be affected by pending land decisions.</td>
<td>II</td>
</tr>
<tr>
<td></td>
<td>(B)</td>
<td>Analyses and reports, <em>Factors Affecting Cost of Mining in Alaska and Cost of Exploration for Metallic Minerals in Alaska,</em> to provide up-to-date information on mineral exploration and mining for use in land decisions involving potential mineral withdrawal.</td>
<td>II</td>
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<td>Mineral resource counselling to wild and scenic river investigation teams.</td>
<td>II</td>
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<td>Compilation and submission for all available mineral resource information on Alaska to Interiors Interagency Library, Anchorage, for access by Resource Planning Team, Federal-State Land Use Planning Commission, State agencies and native associations.</td>
<td>II</td>
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<tr>
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<td>17</td>
<td>(a)</td>
<td>Research studies by University of Alaska under contract of Bureau of Mines: 1) Behavior of Mine Tailings in Arctic and Subarctic Environment, and 2) Mining in Alaska--Environmental Impact and Pollution Control. These reports will enable decision makers to evaluate the impacts of mineral development in Alaska and hopefully will figure into land decisions pertaining to mineral withdrawals.</td>
<td>II These studies will get underway shortly.</td>
</tr>
<tr>
<td>17</td>
<td>(d)(1)</td>
<td>Land Classification Regulations.</td>
<td>II A rewrite of 43 CFR 2400 (land classification regulations) has been made and is presently pending review in the Solicitor's Office. These regulations provide for land classification actions for BLM administered lands in Alaska.</td>
</tr>
<tr>
<td>18</td>
<td>(a)(b)</td>
<td>Adjudicate pending allotment applications. Native allotments.</td>
<td>II Option form delivered to each Native allotment applicant to make election whether to continue with allotment application, or to ask for primary place of residence under Sec. 14(h)(5) of ANCSA. Action now being taken as rapidly as practicable on allotment applications to approve or reject.</td>
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<td>Sec.</td>
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<tr>
<td></td>
<td></td>
<td>Revocation of Reservations</td>
<td>III BLM</td>
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<tr>
<td>19</td>
<td>(a)</td>
<td>Revocation of Reservations</td>
<td>All lands in former reservations set aside by legislation, executive and secretarial orders for Native affairs, including those created under the Act of May 31, 1938, 52 Stat. 503, which were revoked by Section 19(a) of ANCSA, were withdrawn by Public Land Order No. 5156 of February 4, 1972, in furtherance of the right of any Native Village Corporation or Corporations to elect to take the lands in the previous reserves or elect to take other land under the provisions of ANCSA pursuant to Section 19(b) of the Act. PLO #5156 amended by PLO #5188 of March 15, 1972, to provide a 17(a)(1) overriding withdrawal.</td>
</tr>
<tr>
<td></td>
<td>(b)</td>
<td>Selection within Revoked Reserves.</td>
<td>II BIA will supervise or observe elections if requested to do so.</td>
</tr>
<tr>
<td>21</td>
<td>(e)</td>
<td>Fire protection of land to be conveyed to the Natives.</td>
<td>II BLM All Native withdrawn areas have been placed in the highest fire protection class.</td>
</tr>
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<td>Title &amp; Description of Action</td>
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<td>22</td>
<td></td>
<td><strong>MISCELLANEOUS</strong></td>
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<td></td>
<td></td>
<td>Narrative</td>
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<td></td>
<td>(b)</td>
<td>Lawful Entry. The Secretary shall promptly issue patents to all persons who have made a lawful entry on public lands and who have fulfilled all requirements of the law.</td>
<td>II BLM is proceeding with processing the backlog of land applications including Native allotments, State selections, mineral conflicts, individual land claims for homesteads, trade and manufacturing sites, and homesites. Issued patent to the State for 260,000 acres not in conflict with Native Claims.</td>
</tr>
<tr>
<td></td>
<td>(e)</td>
<td>Mitigation of Wildlife Refuges</td>
<td>III SF&amp;W Approximately 1.84 million acres of lands were withdrawn in March 1972, (PLO 5181) for eventual replacement of village selections within existing units of the NWRS. Twenty-eight villages are eligible to select lands within the NWRS.</td>
</tr>
<tr>
<td></td>
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<td>Withdrawal of lands for replacement of NWRS lands selected by Village Corporations.</td>
<td>II SF&amp;W Studies and planning are proceeding to effectuate integration of replacement lands with the existing units as necessary and to insure necessary protection of refuge resources while providing for village needs on those lands selected within the NWRS.</td>
</tr>
<tr>
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<td>Plans for actions under Sec. 22(e) replacing lands selected within NWRS by Village Corporations.</td>
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<td>22</td>
<td>(i)</td>
<td>Continued administration of withdrawn lands.</td>
<td>Guidelines for interim administration by the Secretary of the Interior have been issued to the field offices. The views of the concerned regions and villages shall be obtained and considered for administrative actions to make contracts and to issue leases, permits, rights-of-way, or easements, except for lands covered under section 19 of the Act, in which case the consent of the Natives living on those lands shall be obtained.</td>
</tr>
</tbody>
</table>

**REVIEW BY CONGRESS**

Annual report on implementation of the Act.

**APPROPRIATIONS**

FY 1972 - 12.5 Million
FY 1973 - 50.0 Million
FY 1974 - 70.0 Million (Estimated)

(See next page.)

**PUBLICATIONS**

Issue and publish such regulations as may be necessary to carry out the purposes of the Act.
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<tr>
<td>25</td>
<td></td>
<td><strong>PUBLICATIONS (Cont)</strong></td>
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<td></td>
<td></td>
<td>Alaska Native Selections Regulation</td>
<td>III Proposed regulations were published on September 12, 1972. Following review of comments, revised proposed regulations were published March 9, 1973. Meetings with Alaska Native groups and regional corporation to discuss the proposed regulations were held in Alaska March 27-29. Following expiration of comment period on April 16, 1973, comments received, analyzed and regulations revised, where necessary. Publication of final regulations May 30, 1973, effective date July 2, 1973. (43 CFR 2650)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Regulations covering use of National Wildlife Refuge lands.</td>
<td>BSFW Alaska Area Office of BSFW now in process of working with village groups, especially in the area of the Yukon Delta (Clarence Rhode NWR) to formulate agreements which will govern the use of lands selected from within existing refuge tracts. Native groups have indicated willingness to participate fully in the formulation of these agreements. (see Section 22 (g))</td>
</tr>
</tbody>
</table>
TO: The Honorable
Daniel Inouye
Attn: Dick Rust

FROM: Government and General Research Division
Charles W. Harris, Division Chief

Research by - Richard S. Jones


In response to your request of May 2, 1973, for further background information regarding the subject of possible legislation to effect a Hawaiian native land claims settlement, we are forwarding the following information in the form of a collation of amendments to the Hawaii Organic Act of 1900 (31 Stat. 154), which established a Territorial government in Hawaii. This includes the Hawaiian Homes Commission Act of 1921 (42 Stat. 116), which in turn was subsequently amended numerous times (and which amendments are included herein). The material presented here should be helpful to you in determining the description of public lands in Hawaii made available under the Homes Commission Act, the authority for determining which lands were to be made available thereunder, and the locus of responsibility for administration of such lands. This, and other, information, is indicated below insofar as it is indicated by the material.
As indicated in our conferences of May 2 and subsequently, we have not attempted to determine whether any amendments have been made to the Hawaii Homes Commission Act by the government of the State of Hawaii subsequent to Statehood. As you recall, the Hawaii Homes Commission Act was written into the Hawaii State Constitution by sec. 4 of the Hawaii Statehood Act (73 Stat. 4, 1959), with the proviso that it could be amended, within certain limitations, by the State. Should you wish us to pursue this matter as it evolved after Statehood, we will refer such portion of your request to the appropriate research area of CRS at such time as you desire.

Following are the pertinent Acts of Congress:

34 Stat. 204. May 26, 1906. An Act to provide for the disposition of personal and movable property ceded and transferred to the U.S. by the Republic of Hawaii under the joint resolution of annexation (July 7, 1898) (30 Stat. 750).

35 Stat. 56. April 2, 1908. An Act to amend the Organic Act (sec. 73) regarding the lease of agricultural land by the Territory of Hawaii.

36 Stat. 443. May 27, 1910. An Act to amend the Organic Act. Of particular relevance here is sec. 5 (at 446) creating the Board of Public Lands, and detailing authority and functions of the Commissioner of Public Lands. The opening of agricultural lands to homestead entry upon the petition of 25 or more persons is also authorized herein (at 446).

42 Stat. 108. July 9, 1921. This is the "Hawaiian Homes Commission Act," mentioned on page 1. Of particular relevance are the following sections:

#203, which defines those lands designated as Hawaiian home lands;

#204, which places these lands under the control of the Hawaiian Homes Commission;

#205-223, which outline the functions and conditions of land disposal authorized to the Commission;

#301-310, amending the public land use policy established in the Organic Act. Sec. 304 amends sec. 73 of the Organic Act to specifically define which lands are to be considered "public lands" and distinguishes these from "home lands." (at 116).


46 Stat. 789. June 19, 1930. Act to amend sec. 91 of the Organic Act: "Provided, That when any such public property so taken for the uses and purposes of the United States, if, instead of being used for public purposes, is thereafter by the United States leased, rented, or granted upon revocable permits to private parties, the rentals or consideration shall be covered into the treasury of the Territory of Hawaii for the use and benefit of the purposes named in this section."


55 Stat. 658. August 21, 1941. An Act to amend sec. 73 of the Organic Act, as amended. Regarding the powers of the Commissioner of Public Lands. Further: "Nothing in this Act shall apply to any lands which are... under... the jurisdiction of the Hawaiian Homes Commission."


60 Stat. 871. August 7, 1946. An Act to amend the Hawaii Organic Act (sec. 73), as amended. Concerning the sale of lands used by the U.S. under license or lease.


62 Stat. 295. June 3, 1948. An Act to ratify sections 1 and 2 of Joint Resolution 7 enacted by the Legislature of the Territory of Hawaii in its regular session of 1947, concerning the rate of interest chargeable upon the sale of public lands for homestead, residence, or other purposes. (Public Law 582).


64 Stat. 572. September 1, 1950. An Act to approve Joint Resolution 12 enacted by the Legislature of the Territory of Hawaii in the regular session of 1949, relating to the granting of land patents in fee simple to certain leases under homestead leases.


68 Stat. 263. June 18, 1954. An Act to amend sections 201(a) and 207(a) of the Hawaiian Homes Commission Act. Describes limitations and regulations regarding leases. (Public Law 417).


72 Stat. 709. August 21, 1958. An Act to amend the Hawaii Organic Act, as amended, relating to the transfer by the President of title to ceded land to political subdivisions of the Territory (see sec. 7, 36 Stat. 443, Act of May 27, 1910.


73 Stat. 4. March 18, 1959. Hawaiian Statehood Act. Sec. 4 provides for adoption of the Hawaiian Homes Commission Act, as amended, as a provisions of the State Constitution, subject to amendment or repeal only with the approval of the United States, with the provision that certain specified parts of the Act may be amended by the State.

Thus, it would seem, from reading the above statutes, that the determination of Hawaiian home lands, available for leasing under provisions of the Hawaiian Homes Commission Act, and administered by the Hawaiian Homes Commission, is by Congressional authority, the available lands being specifically delineated by the Congress in the relevant public laws.

A further discussion of this and related issues, according to your request, will be presented in a memorandum to follow.
TO: The Honorable
Daniel Inouye
Attn: Dick Rust

FROM: Government and General Research Division;
Charles W. Harris, Division

Research by — Richard S. Jones

Subject — Intent of Congress Regarding the Hawaiian Organic

In further response to your request of May 2 regarding the Hawaiian
Organic Act of 1900 and amendments there to (Cf. memorandum of May 17,
1973), we are providing reference to the following documents concerned

Discussions in the Congressional Record, as follows, of the Senate
report from committee (v. 190, p. 643, January 4, 1900) of S. 222,
which became the Organic Act; of the first conference report on S. 222
(v. 190, p. 4357 ff., April 18, 1900); and on the second conference report
on this bill (v. 190, p. 4648 ff., April 25, 1900). Other references to
these reports are also enclosed. Apparently, since no report numbers are
cited, no printed reports were issued other than those appearing in the Record
(supra). Also attached is the brief Senate Report No. 549, to accompany
S. 222, March 7, 1900).
The House report to accompany the companion to S. 222, H.R. 2972, is of some length and is attached herewith. (H.R. Report No. 305, February 12, 1900.)

A third memorandum in this series, containing all Congressional Record discussions of the Organic Act and Hearings thereon, will follow shortly. However, it is believed that the House Report No. 305 (supra) should be most helpful in clarifying the intent of Congress in enacting the Hawaiian Organic Act.

Please call if you have any questions. It is understood that Mr. Shaw, of the Environmental Policy Division, has complied with your request regarding the distribution of Federal and State lands in Hawaii, and for Congressional Record discussions and Congressional reports regarding land policy as established by enactment of the Hawaiian Homes Commission Act in 1921.
DEADLINE FOR APPLYING FOR ALASKA NATIVE ENROLLMENT

"It is urgent that all persons of Alaska Native descent be reminded that completed enrollment applications must be received in the Anchorage, Alaska, Enrollment Office no later than March 30, 1973," Secretary of the Interior Rogers C. B. Morton said today.

Secretary Morton emphasized that filing an enrollment application is extremely important, as only enrolled Alaska Natives will receive benefits from the Alaska Native Claims Settlement Act. The benefits include a share of the nearly one billion dollars and forty million acres of land provided by the Act.

Any U. S. citizen born before and living on December 18, 1971, who is one-quarter or more degree Alaska Indian, Aleut or Eskimo blood is eligible to be enrolled if they apply before the deadline. Those who have not filled out the application forms are urged to do so immediately.

The forms and assistance in filling them out are available at the nearest Bureau of Indian Affairs Office. Completed applications must be sent to the Anchorage Enrollment Office, Pouch 7-1971, Anchorage, Alaska 99510, before the deadline, March 30, 1973.
Nathaniel P. Reed, Assistant Secretary of the Interior for Fish and Wildlife and Parks, today announced that Theodor R. Swem, an Assistant Director of the National Park Service, has been appointed chairman of an inter-Bureau Alaska Planning Group within the U.S. Department of the Interior. The Bureaus involved are the National Park Service, Bureau of Outdoor Recreation, and Fish and Wildlife Service.

At the same time, Ronald H. Walker, Director of the National Park Service, announced that Swem will also serve as his personal adviser on environmental matters affecting the National Park Service in addition to continuing to head the Service's land review as provided by the Alaska Native Claims Settlement Act.

Appointed with Swem to this inter-Bureau group are Lynn A. Greenwalt, Chief of the Division of Wildlife Refuges for the Fish and Wildlife Service, and Robert L. Eastman, Assistant Director for Federal Programs of the Bureau of Outdoor Recreation.

Secretary Reed said the group "will be responsible for the planning and coordination of efforts among these three Bureaus in response to the Alaska Native Claims Settlement Act."

Under terms of the Native Claims Settlement Act, studies are being conducted of approximately 80 million acres in Alaska set aside for possible additions to the National Park, Forest, Wildlife Refuge, and Scenic Rivers Systems. The extent of these "four systems" lands is comparable in size to the six New England States, plus New York and New Jersey.

In announcing the set-asides in September 1972, Secretary of the Interior Rogers C.B. Morton stated: "This could result, after study and favorable Congressional action, in doubling the lands now contained in the National Park and Wildlife Refuge Systems."

(over)
"Ted Swem has been intimately involved in the Alaska land review program since its inception," Reed said, "and is a logical choice to coordinate this inter-Bureau effort. Further, his knowledge and expertise in environmental matters affecting the National Park Service will be extremely valuable to me in his capacity as Director Walker's personal adviser in this important field."

Swem, a 27-year veteran of the Interior Department, joined the National Park Service in 1957 after 11 years with the Bureau of Reclamation. A graduate of Iowa State University, he is a member and officer of several national and international conservation organizations.
DEPARTMENT of the INTERIOR

BUREAU OF LAND MANAGEMENT

For Release March 9, 1973

INTERIOR PROPOSES PROCEDURES FOR LAND SELECTIONS BY ALASKA NATIVES

Revised regulations that set forth the proposed procedures under which the various Native people in Alaska can select the public lands granted to them under the Alaska Native Claims Settlement Act were announced today by the Department of the Interior.

Enacted in December 1971, this Act gives the various Native groups the right to select a total of 40 million acres of public land in settlement of claims that date back to the time the United States purchased Alaska from Russia.

Proposed regulations were initially published by the Department in the Federal Register on September 21, 1972. These proposed regulations have since been substantially revised to reflect comments and suggestions received from interested parties.

The new regulations would implement the provisions of the Act and spell out the way individual Natives, Village Corporations, and Regional Corporations can apply for specific tracts of public land. The regulations also call for interim management by the Federal Government of all lands until final patents have been issued. The proposed regulations will be published in the Federal Register.

The public is invited to comment on the revised proposal, and comments will be received until April 16, 1973. Written comments should be addressed to the Director (210), Bureau of Land Management, U.S. Department of the Interior, Washington, D. C. 20240.
What do Marjorie Littletree and Kathy Phillips have in common?

A Share In Nearly A Billion Dollars.

And, they both like to dance. Marjorie portrays the legends of her people, the Tlingit Indians of Alaska, through the traditional tribal dances taught to her by her parents. She is a full-blooded Tlingit Indian, which entitles her to a share in the land claims settlement recently enacted by the Federal Government.

Across the United States in Tennessee, Kathy grooves to the sound of her favorite rock group. Kathy’s mother is also a Tlingit Indian, who left her Alaskan home to live in Tennessee with her soldier-husband during World War II. That means that Kathy, who is half-Tlingit, and her mother are both eligible for a share in the claims settlement.

If you, or anyone you know, are at least one-quarter Alaskan Eskimo, Indian, or Aleut, you may be eligible to share in nearly one billion dollars, too. The cutoff date for registration is March 30, 1973, so contact the Alaskan Native Enrollment Office now. Write ALASKA NATIVE ENROLLMENT, Pouch 7-1971(A), Anchorage, Alaska, 99510.

Presented as a Public Service Message by this Publication.
Smokers of the best-selling regular size cigarette:

**CUT YOUR 'TAR' IN HALF**

LUCKY TEN

Largest selling dozen cigarettes yield 20.3 mg. 'tar' on the average ('tar' range: 17 mg. to 27 mg.)
Lucky Ten—less than 10 mg. 'tar'.

Lucky Ten .................. "tar" 10 mg., nicotine, 0.7 mg.
Best-selling Regular Size ...... "tar" 25 mg., nicotine, 1.6 mg.
Of all brands, lowest .......... "tar" 1 mg., nicotine, 0.2 mg.


10 mg. "tar" 0.7 mg. nicotine av. per cigarette, FTC Report AUGUST '72.
the same as those generally enjoyed by the Indians residing in the United States, viz: the right of use and occupancy with the fee in the United States (50 L.D. 315 [1924]). However, the recognition and protection thus accorded these rights of occupancy was construed as not constituting necessarily a recognition of title..." (Cf. Tee-\-Hit-Ton Indians v. United States [348 U.S. 272 (1955)].)

Legislation protecting the Alaska natives in their use and occupation of lands was embodied in the Alaska Organic Act of 1884 (23 Stat. 24). Sec. 8 of the Organic Act declared that:

".... the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress." [Emphasis added.]

The Alaska Native Claims Act of 1971 therefore embodies the "terms under which [the Alaska natives] may acquire title to such lands," and is thus the "future legislation" reserved to Congress by sec. 8 of the 1884 Alaska Organic Act. As noted above, numerous laws enacted by Congress between 1884 and 1971 protected the natives' right to "use and occupancy." The Act of March 3, 1891 (26 Stat. 1095), to repeal timber-culture laws, and for other purposes; the Act of May 14, 1893 (30 Stat. 409), extending the homestead laws to Alaska; and the Act of June 6, 1900 (31 Stat. 321), making further provision for civil government in Alaska, all contained clauses protecting native use and occupancy of land.
Congressional protection of native use and occupancy was repeatedly upheld by Alaska courts. Among the most important such decisions were United States v. Berrigan (2 Alaska Reports, 448) (1905); United States v. Cadzo (5 Alaska Reports 131) (1914); and United States v. Lynch (7 Alaska Reports 573) (1927).

Thus, ever since 1884, Congress and the courts had upheld the right of the Alaska natives, in varying degrees, to "use and occupancy" of the land where they lived. This did not constitute, however, a recognition of aboriginal title.

The case of U.S. v. Alcoa Band of Tillamooks et. al (329 U.S. 40) (1946) was therefore a landmark in that it recognized the claim of aboriginal title for certain Oregon Indians (the Tillamooks) as a judicable issue: i.e., the Court held that "tribes which successfully identify themselves as entitled to sue... prove their original Indian title to designated lands, and demonstrate that their interest in such lands was taken without their consent and without compensation, are entitled to recover compensation therefore without showing that the original Indian title ever was formally recognized by the United States" (329 U.S. 40). This case prefigures two cases involving Alaska Indians and thus is pertinent to the presentation of Alaska native claims as a judicable issue.

The right of the Tillamooks to sue was based on a 1935 Act of Congress (49 Stat. 364) granting authority to the Court of Claims to hear the designated claims of certain Indian tribes or bands described
in certain unratiﬁed treaties negotiated with Indian tribes in the State of Oregon. Eleven Indian tribes sued the United States under authority of this Act and four of eleven tribes (the Tillamooks included) were held by the Court of Claims to have successfully identiﬁed themselves as entitled to sue under the Act, to have proved their original Indian title to designated lands, and to have demonstrated "an involuntary and uncompensated taking of such lands." The Court of Claims thus held that original Indian title was an interest the taking of which without the consent of the Indian tribes entitled them to compensation (59 F. Supp. 934) (1945).

The Supreme Court afﬁrmed the Court of Claims decision.

Results similar to those obtained by the Tillamooks were sought by the Tee Hit Tons, a group of 60 to 70 Alaska Indians who brought suit before the Court of Claims to obtain compensation for the taking of forest timber from lands which they claimed to own in the Tongass National Forest (Tee Hit Tons v. United States, 120 F. Supp. 202) (1954).

In this suit, the natives claimed title to 350,000 acres of land and 150 square miles of water in the Tongass National Forest area. They maintained that timber taken from that area had been sold to a private company by the Department of Agriculture pursuant to the Joint Resolution of August 8, 1947 (61 Stat. 920). This, the natives claimed, amounted to a taking of their "'full proprietary ownership' of the land; or, in the alternative, at least [of their] 'recognized' right to unrestricted possession, occupation and use" (348 U.S. 277); and thus warranted compensation.
The Court of Claims had refused to address itself to the petitioner's questions dealing with the problem of aboriginal title. The Court of Claims did conclude, however, that "there is nothing in the legislation referred to which constitutes a recognition by Congress of any legal rights in the plaintiff tribe to the lands here in question." (120 F. Supp. 202, 208). (1954).

In reviewing this case the Supreme Court (348 U.S. 272) (1955) noted that "the compensation claimed does not arise from any statutory direction to pay. Payment, if it can be compelled, must be based upon a constitutional right of the Indians to recover." The Court concluded that since the Congress had never specifically recognized the Indians' title to the land in question, the Indians did not possess title thereto, and thus were not entitled to compensation as a constitutional right (under the Fifth Amendment). Accordingly, "Indian occupancy, not specifically recognized as ownership by action authorized by Congress, may be extinguished by the government without compensation."

The Court explicitly distinguished between the case of the Tee Hit Tons and that of the Tillamooks:

"The recovery in the United States v. Tillamooks... was based upon statutory direction to pay for the aboriginal title in the special jurisdictional act to equalize the Tillamooks with the neighboring tribes, rather than upon a holding that there had been a compensable taking under the Fifth Amendment." (348 U.S. 272) 2/

The dissenting justices in this case said that the Organic Act of Alaska (1884) had recognized the claims of the natives in sec. 8:
"the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress..."

The dissenters concluded, in effect, that in 1884 Congress had recognized the claim of these natives to title to their lands, leaving the specification of the "metes and bounds" of such lands and the terms of the acquisition of title for future legislation to determine.

A third case, that of the Tlingit and Haida Indians, finally settled in 1968, bears directly upon provisions of the Alaska Native Claims Settlement Act.

The Tlingits and Haidas had been authorized by Congress in 1935 to bring suit in the Court of Claims for the adjudication and judgment "upon any and all claims which said Indians may have, or claim to have, against the United States" (49 Stat. 388) (1935). Of particular concern was the provision in Sec. 2 which provided that:

"the loss to said Indians of their right, title, or interest arising from occupancy and use, in lands or other tribal or community property, without just compensation therefore, shall be held sufficient ground for relief hereunder..."

Congress did not directly confront the issue of aboriginal title, as it required only that the Tlingits and Haidas prove "use and occupancy" to establish claim to the lands for which compensation could be made. The Court of Claims found that the Tlingits and Haidas had used and occupied the land area in question and had thus established "Indian title" thereto (p. 468), and that the United States had taken such land, thus entitling these Indians to compensation under the 1935
Act (177 F. Supp. 452) (1959). The Court held that use and occupancy title of the Tlingit and Haida Indians to the land in question was not extinguished by the Treaty of 1867.

A separate determination of the amount of the liability was made and handed down on January 19, 1968 (Tlingit and Haida Indians of Alaska and Harry et al. Interveners v. United States (Ct. Cl. No. 479000, January 19, 1968.) Thus, while the Tlingit-Haida ruling would seem to constitute a limited recognition of the Tlingits' and the Haidas' claims to aboriginal title, it did not settle the larger issue of the claim of all Alaska natives to aboriginal title. Nevertheless, because the Tlingits and Haidas had been awarded some compensation for lands taken by the U.S., such compensation was recognized as an offset in the Native Claims Act (sec. 16) as follows:

"(c) The funds appropriated by the Act of July 9, 1968 (82 Stat. 307) to pay the judgment of the Court of Claims in the case of the Tlingit and Haida Indians of Alaska et al. against the United States, numbered 47.00, and distributed to the Tlingit and Haida Indians pursuant to the Act of July 13, 1970 (84 Stat. 431), are in lieu of the additional acreage to be conveyed to qualified villages listed in section 11."

This, then, is background to the Alaska Native Claims Settlement Act of 1971, signed into law on December 18, 1971, by President Nixon. The law was enacted by Congress to settle the claim of Alaska's native Indian Aleut and Eskimo population to aboriginal title to the land on which they have lived for generations. The natives' claim to aboriginal title is explained in House Report No. 92-523 as follows:
"When the United States acquired the Territory of Alaska by purchase from Russia, the treaty (proclaimed June 21, 1867, 15 Stat. 539) conveyed to the United States dominion over the territory, and it conveyed title to all public lands and vacant lands that were not individual property. The lands used by the 'uncivilized' tribes were not regarded as individual property, and the treaty provided that those tribes would be subject to such laws and regulations as the United States might from time to time adopt with respect to aboriginal tribes. Congress provided by the Act of May 17, 1884 (23 Stat. 24), that the Indians and other persons in the territory (now commonly called Natives) should not be disturbed in the possession of any lands actually in their use or occupation or then claimed by them, but that the terms under which such persons could acquire title to such lands were reserved for future legislation by Congress. Congress has not yet legislated on this subject, and that is the purpose of this bill.

"Aboriginal title is based on use and occupancy by aboriginal peoples. It is not a compensable title protected by the due process clause of the Constitution, but is a title held subject to the will of the sovereign. The sovereign has the authority to convert the aboriginal title into a full fee title, in whole or in part, or to extinguish the aboriginal title either with or without monetary or other consideration.

"It has been the consistent policy of the United States Government in its dealings with Indian Tribes to grant to them title to a portion of the lands which they occupied, to extinguish the aboriginal title to the remainder of the lands by placing such lands in the public domain, and to pay the fair value of the titles extinguished. This procedure was initiated by treaties in the earlier part of our history, and was completed by the enactment of the Indian Claims Commission Act of 1946. That Act permitted the Indian Tribes to recover from the United States the fair value of the aboriginal titles to lands taken by the United States (by cession or otherwise) if the full value had not previously been paid.

"The Indian Claims Commission has not been available to the Natives in Alaska, in a practical sense, because the great bulk of the aboriginal titles claimed by the Natives have not been taken or extinguished by the United States. The United States has simply not acted."
"The extent to which the Natives in Alaska could prove their claims of aboriginal title is not known. Native leaders asserted that the Natives have in the past used and occupied most of Alaska. Use and occupancy patterns have changed over the years, however, and lands used and occupied in the past may not be used and occupied now. Moreover, with development of the State, many Natives no longer get their subsistence from the land.

The pending bill does not purport to determine the number of acres to which the Natives might be able to prove an aboriginal title. If the tests developed in the courts with respect to Indian Tribes were applied in Alaska, the probability is that the acreage would be large — but how large no one knows. A settlement on this basis, by means of litigation if a judicial forum were to be provided, would take many years, would involve great administrative expense, and would involve a Federal liability of an undeterminable amount.

It is the consensus of the Executive Branch, the Natives, and the Committee on Interior and Insular Affairs of the House that a legislative rather than a judicial settlement is the only practical course to follow. The enactment of H.R. 10367 would provide this legislative settlement.

The Committee found no principle in law or history, or in simple fairness, which provides clear guidance as to where the line should be drawn, for the purpose of confirming or denying title to public lands in Alaska to the Alaskan Natives. The lands are public lands of the United States. The Natives have a claim to some of the lands. They ask that their claim be settled by conveying to them title to some of the lands, and by paying them for the extinguishment of their claim to the balance."

This, in effect, is what PL 92-203 achieves: it settles the natives' claims by conveying to them title to 40 million acres of land and paying a cash award as compensation for extinguishment of their claim to the balance.
B. DETERMINATION AND DISPOSITION OF NATIVE PROPERTY RIGHTS IN HAWAII: HISTORY

The relevant question here is to what degree, and in what ways, the history of the determination and disposition of native property rights in Hawaii is similar to the history of native property rights in Alaska. Is there any basis for proposing a native land claims settlement for Hawaii in light of the precedent set by the Alaska settlement?

First it is necessary to set forth a general background history of land tenure in Hawaii, which, at the time of the Annexation, was based on a system of individual patents in fee awarded by the Hawaiian government.

The modern land history of Hawaii began in 1795 with the conquest of the islands by Kamehameha I, the chief who conquered and unified the entire group of islands. The system of land tenure existing before this time is not clearly known, though it was in many ways similar to the feudal system of medieval England. It had been the custom, before Kamehameha I, to redivide the land every time a king died. The lands were then redistributed to the favorites of the new king. Thus when Kamehameha I unified all the islands under his rule, the lands were, according to custom, claimed by the conqueror and reapportioned among his chiefs and favorites.

Nonetheless, there had been instances in these periods of redistribution, both before and during the reign of Kamehameha, that indicate the recognition of hereditary land rights in a few families. Apart
from certain exceptions, however, the chiefs and favorites received from Kamehameha the conquered lands according to the new king's division, and these chiefs and favorites apportioned their holdings in tune to the second rank of chiefs. These likewise divided the lands in successively similar areas among their dependents — a method of land division similar to that established in England by William the Conqueror.

No suggestion of ownership in the land itself was implied in passing tenure from rank to rank by the various persons who divided and subdivided it or to the tenant farmer to whom it was finally allotted. Beginning with the obligation assumed by the first-ranking chiefs in accepting stewardship of their allotted lands from the king, those who received it owed allegiance to his superior. This descending chain of authority thus comprised the system by which the king bound himself to the whole body of people on whom he was dependent for support. The same rights, therefore, which the king possessed over the superior landlords and all under them were possessed by the various grades of landlords over their inferiors. The king owned the allodial, or absolute, title, and those beneath him, in whose hands he placed the lands, held it in a kind of trust. When a chief died, his lands reverted, not to his family, but to the king, to be used by him as part of his personal holdings or to be given to another chief. When a chief was dispossessed of his lands, however, it was not the custom to divest the direct cultivators of the soil of the land which they
occupied. In this, therefore, the tenant farmers, or makaainana, enjoyed some measure of economic stability, even though they did not possess title to their lands and dispossession for various reasons did occur. Neither, however, were tenants bound to the land by law, nor were they bound to render military service.

** This ancient land system came to an end with the celebrated land reform, or "Great Mahele," which was executed in 1848 by King Kamehameha III, son of the Conqueror. In this reform, the King abolished the old system and replaced it with a new one based on fee simple ownership.

To effect this reform, the King divided the lands between himself, and chiefs, and the government. The king retained title to those lands he kept for himself; the chiefs were allowed to claim and gain title to those lands allotted as their portion; and the government received the balance, parts of which were then placed open to purchase by individuals. After 1850, the tenants who lived on their chiefs' lands were enabled to claim the plots they cultivated (kuleanas) and to obtain fee simple title thereto.

The antecedents of land reform are to be found as early as 1825, however, when Kamehameha III ascended the throne. Since the newly-chosen king was only 12 years old, a National council of chiefs was held to confirm the new king and establish policy. In order to deal with the growing chaos arising out of the old policy of redistributing the lands at each king's death, the council formally adopted the following recommendations:
1) That the lands belonging to the chiefs should descend to their legitimate children;

2) That the chiefs should assign their lands to the people to cultivate in order that they might maintain themselves from such cultivation;

3) That the people should be free and not bound to one chief, and

4) That a tax should be paid to the king.

Since, during his reign, the new king's predecessor, Kamehameha II, had made few changes in the distribution of lands, the lands as apportioned under the first Kasehaneba were left essentially unchanged upon the accession of Kamehameha III. Passage of the "Law of 1825", as the Council's recommendations became known, thus effected the permanent abandonment of the redistribution custom and the adoption of the Western practice of inheritance.

The result of the "Law of 1825" was a greater sense of security in the occupancy of land and for the first time in the history of the kingdom, land began to be thought of as a commodity with a monetary value. A tenant could still be dispossessed by a king or a chief, and permission from the king was still necessary to mortgage, lease or transact any business pertaining to land. Nevertheless, while land still lay in the king's ultimate possession, security in the occupancy of the land by chiefs and tenants was greatly increased.

The promulgation of a new Constitution in 1840, therefore, was a significant milestone in that it declared the chiefs and people to be joint owners of the land: "Kamehameha I was the founder of the kingdom," declared the Constitution, "and to him belonged all the land from one
end of the islands to the other, although it was not his own private property. It belonged to the chiefs and the people in common of whom Kamehameha I was the head and had the management of the landed property..."

The significance of this statement is summarized thus:

"While adding the force of written law to the feudal right of the king to control land transfers, this paragraph, acknowledging the right of the people and the chiefs in and to the land itself with the king as executive head of the kingdom rather than the sole owner of its lands, is in actuality, the basis of Hawaii's modern land system. The right of these three, the people, the chiefs, and the king, to ownership of land was therein stated in law for the first time." 8/

Other innovations contained in the Constitution of 1840 included creation of a "representative body" of legislators elected by the people, and creation of a supreme court, to consist of the king, the kuhina nui, and four other judges appointed by the Hawaiian house representatives. 9/

The Law of 1825 and the Constitution of 1840 prepared the way for the actual land reform initiated by the work of the Land Commission created in 1845 and culminating in the "Great Mahele" of 1848. The Commission to Quiet Land Titles was created by an act of December 10, 1845, and thus preceded the Mahele by three years. The Commission was to decide the rights and interests of all persons claiming title to land in cases brought before it, judging the validity of all titles and claims arising prior to creation of the Commission, including those of foreigners (aliens were not allowed to acquire fee simple title until 1850).
The Commission was to consist of five members and to exist for two years. The Commissioners organized on February 11, 1846, but their powers were repeatedly extended, so that the Board was not finally dissolved until March 31, 1855. 10 /

Full powers were conferred upon the Board as a court of record to investigate, confirm, or reject all claims to land arising prior to December 10, 1845. All persons were required to file their land claims with this Board, or be forever barred of all recovery rights in the courts. The Commission was not authorized to grant patents for land. Its duty was to ascertain the nature and extent of each claimant's rights in land, and to issue an award for the same which was prima facie evidence of title. The holder of a Land Commission award was thus entitled to receive a royal patent in fee simple from the Minister of the Interior, on payment of a commutation to be set by the King in privy counsel. Appeals of the Board's decisions were to be made to the supreme court, and such appeals had to be filed within 90 days of the decision. 11 /

During the first two years of its existence the Land Commission was faced with the problem of deciding what constituted "a just and fair distribution where there existed evidence of overlapping rights, interests, and privileges growing out of the old system of landlordship. Another was the inability of many of the people to understand the new plan. Generations of living under the old system had not been conducive to the development of individualistic ideas concerning ownership of real property by the landlords and tenants. Consequently, many of them failed to make application for
title to their land, while others, who actually secured title, coming suddenly and for the first time into possession of something of marketable value, soon dissipated their holdings without recognizing the privileges or the responsibilities of land ownership." 12/

Therefore, on December 11, 1847, the matter was brought up for final decision before the King and chiefs in the Privy Council, and on December 18, 1847, the following set of rules for the division of lands was adopted:

"Whereas it has become necessary to the prosperity of our Kingdom and the proper physical, mental and moral improvement of our people that the undivided rights at present existing in the lands of our Kingdom, shall be separated, and distinctly defined:

"Therefore, We, Kamehameha III, King of the Hawaiian Islands and His Chiefs, in Privy Council assembled, do solemnly resolve that we will be guided in such division by the following rules:

"1. His Majesty, our Most Gracious Lord and King, shall in accordance with the Constitution and Laws of the Land, retain all his private lands, as his own individual property, subject only to the rights of the Tenants, to have and to hold to him, his heirs and successors forever.

"2. One-third of the remaining lands of the Kingdom shall be set aside, as the property of the Hawaii Government subject to the direction and control of His Majesty, as pointed out by the Constitution and Laws, one-third to the Chiefs and Konohikis in proportion to their possessions, to have and to hold, to them, their heirs and successors forever, and the remaining third to the Tenants, the actual possessors and cultivators of the soil, to have and to hold, to them, their heirs and successors forever.

"3. The division between the Chiefs or the Konohikis and their Tenants, prescribed by Rule 2d shall take place, whenever any Chief, Konohiki or Tenant shall desire such division, subject only to confirmation by the King in Privy Council.

"4. The Tenants of His Majesty's private lands, shall be entitled to a fee simple title to one-third of the lands possessed and cultivated by them, which shall be set off to the said Tenants in fee simple, whenever His Majesty or any of said Tenants shall desire such division."
"5. The division prescribed in the foregoing rules, shall in no wise interfere with any lands that may have been granted by His Majesty or His Predecessors in fee simple, to any Hawaiian subject or foreigner, nor in any way operate to the injury of the holders of unexpired leases.

"6. It shall be optional with any Chief or Konohiki, holding lands in which the Government has a share, in the place of setting aside one-third of the said lands as Government property, to pay into the Treasury one-third of the unimproved value of said lands, which payment shall operate as a total extinguishment of the Government right in said lands." 

These rules resulted in the official "Mahele" or land division, which took place between January 27, and March 7, 1848. By that action the King officially divided all of the lands with his chiefs. The book in which this division was recorded was called the "Mahele Book," and contained the releases or quit claim deeds signed by the King and the chiefs to the lands which they respectively surrendered to each other. Following the Mahele between the King and his chiefs, the King proceeded to set aside the larger part of his share of the lands for the Hawaiian government, "reserving to himself what he deemed a reasonable amount of land as his own estate. On June 7, 1848, the Legislative Council passed an act "relating to the lands of His Majesty the King and of the Government," which confirmed and ratified the divisions between King and chiefs and between King and government. The lands retained by the King were designated as "Crown Lands," while those apportioned to the government were termed "Government Lands."

A second division took place in 1850, whereby the chiefs ceded a third of their lands to the government as a "comutation." (A tax amounting to one-third of the unimproved value of the land could be
paid in lieu of the land cession (as provided by the sixth rule adopted by the Council in 1847)). The Privy Council accepted this division between chiefs and government on August 27, 1850. Thus, by either ceding one-third of their allotment to the government, or by paying a commutation tax, the chiefs became eligible to receive full (allodial) title to all valid claims upon the remaining share of lands they received in the Kaahelae.

The last step in implementing the land reform was recognition of fee simple title to the lands occupied by the tenants. The Act of August 6, 1850, confirmed a resolution passed by the Privy Council on December 21, 1849, granting fee simple title free of all commutation to native tenants for their cultivated lands (kuleanas) and house lots (except house lots in the towns of Honolulu, Lahaina and Hilo). It was assumed that the commutation on tenants' lands had already been paid by the chiefs, since the tenants' kuleanas had to be carved out of lands already apportioned to the chiefs.

Until its dissolution on March 31, 1855, the land Commission issued thousands of awards to the native tenants for their kuleanas. However, there were many native tenants who failed to receive awards for the lands they had occupied and improved. Some failed to file their claims with the Land Commission and others, after filing their claims, failed to appear before the Land Commission to support their claims. Many in the latter group, after filing their claims, relinquished such claims to the chiefs of the lands in which their cultivated plots were situated.
Whereas over 1,500,000 acres of land were set aside for the chiefs in The Great Mahele of 1848, and approximately 1,000,000 acres were reserved by Kamehameha III as "Crown Lands," and 1,500,000 acres were given by the king to the "government and people," less than 30,000 acres of land were awarded to the native tenants. 17/

Although the Land Commission was disbanded in 1855, certain claims could be presented (by statutory extension of the deadline) until June 1862 — after which time those who failed to present their claims were declared to be "forever barred and their rights under the Mahele Book to have reverted to the Government." 18/

The Crown Lands were rendered inalienable by the Act of January 3, which decreed that such crown lands "shall descend to the heirs and successors of the Hawaiian crown forever." After the Revolution, the Constitution of the Republic (proclaimed July 4, 1894) stated (in Article 95) that "that portion of the public domain heretofore known as Crown Land is hereby declared to have been heretofore, and now to be, the property of Hawaiian Government.... It shall be subject to alienation and other uses as may be provided by law." 19/

With the Annexation of Hawaii by the United States in 1898, the Republic of Hawaii ceded the "absolute fee and ownership" of all government lands to the United States. The Newlands Resolution of the U.S. Congress (30 Stat. 750) (July 7, 1898), providing for the Annexation declared, in addition to the cession of government lands, that "the existing laws of the United States relative to public lands shall not
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apply to such lands in the Hawaiian Islands; but the Congress of the United States shall enact special laws for their management and disposition."

This was followed by the Organic Act of 1900, (31 Stat. 141), which established a Territorial government in Hawaii. Sec. 73 of this Act provided that "the laws of Hawaii relating to public lands, the settlement of boundaries, and the issuance of patents on land-commission awards, except as changed by this Act, shall continue in force until Congress shall otherwise provide. (Em. p. 141 for changes)."

Sec. 91 declared the lands ceded by provision of the Annexation Resolution (30 Stat. 750) should "remain in the possession, use, and control of the government of the Territory of Hawaii... until otherwise provided for by Congress, or taken for the uses and purposes of the United States by direction of the President or of the governor of Hawaii." [Emphasis added] Sec. 99 added the once "Crown Lands" to the "property of the Hawaiian government."

When Hawaii became a State, the Hawaii Statehood Act (PL 86-3) (73 Stat. 4) (March 18, 1959) granted to the State of Hawaii title to all public lands and other public property within the boundaries of the State, to which the United States held title immediately prior to the admission of Hawaii into the Union. This was with the exception of lands which were, at the time of Hawaii's admission into the Union, set aside for use by the United States government. (Sec. 5(b)). *

* Sec. 5(a) of PL 86-3 provided that (except as indicated elsewhere) the State of Hawaii would also succeed to the title of the Territory of Hawaii in those lands in which the Territory held title at the time the Statehood Act was passed.
In 1971 there were still 396,000 acres of land in Hawaii, title to, or use of which, remained with the Federal Government. Of these, approximately 218,000 acres was assigned to the National Park Service, 106,500 to the Army, 62,500 to the Navy, 6,000 to the Air Force, and the rest to other agencies. The total land area of the State of Hawaii comprises 4,105,600 acres. 19a/

Most of the historic lands of the Hawaiian people are not owned by native Hawaiians today. After the Great Mahele, "a large percentage of the natives, naive in matters of real estate value, sold their lands soon after purchasing them. As a result, white speculators and planters acquired great tracts, making it possible later for large corporations to control all but small segments of the arable land." 20/ As has already been indicated (p.18 above), many tenants failed to claim the lands (kuleanas) they occupied and to which they were entitled during the tenure of the Land Commission.

Contemporaneously with the Kuleana grant, the government lands were made available for purchase or lease, and it was made possible for those Hawaiians who did not have kuleanas to buy small plots of land from the government at a low price. Some took advantage of this opportunity. In course of time, however, many of these early home-steads passed out of the hands of the Hawaiians "by direct sale, by mortgages which the native owners were unable to pay off, or by failure of heirs. During the third quarter of the nineteenth century, as the population declined and the sugar industry developed, many kuleanas and other small holdings were absorbed into plantations, and large tracts of government land
and crown land were sold or leased for long period to plantation companies, cattle ranches, or the like. During this period and later, the trend was away from individual homesteads (small farms) and toward large-scale agricultural enterprises." 21/

A 1967 report of the Legislative Reference Bureau, University of Hawaii, stated that

"As plantation agriculture flourished in Hawaii, concentration of land ownership and control increased. Records of land sales reveal that plantations purchased considerable quantities of public land, while securing long-term leases on other portions of public land and crown land. The plantations also obtained title to many of the small land holdings received by native Hawaiians during the mahele. The census of 1890 revealed something of the degree of concentration of land ownership as well as the extent to which title to land had been secured by the Islands' American-European residents. This census, the last taken before the overthrow of Hawaii's monarchy, reported that, of a total population of approximately 90,000 fewer than 5,000 people actually owned any land. The relatively small number of Westerners reportedly owned over one million acres, or approximately 56 percent of all privately owned land in the islands." 22/

In 1884, therefore, a law was enacted "to facilitate the acquiring and settling of homesteads." In accordance with this law, portions of available government lands were laid out in lots of not more than twenty acres and offered for sale as homesteads. Homesteaders were allowed five years to obtain fee simple titles. Under this law nearly 600 homestead lots were taken, most of them by Hawaiians and Portuguese; but less than half were finally patented. The generally poor response to the 1884 law led to passage of a new homestead law, the comprehensive Land Act of 1895, which provided for the sale or lease of government lands according to several plans. General leases for not more than 21
years and cash sales at auction (limited to 1000 acres in one piece) were methods usually applied to sugar cane and grazing land in large tracts, while smaller areas could be acquired in three ways: (1) the "homestead lease" (inalienable, for a term of 999 years); (2) the "right-of-purchase lease" (for 21 years, with option to purchase after three years); and (3) the "cash freehold" agreement, an installment purchase extending over a period of three years. The "homestead lease" was devised for native Hawaiians and was used almost exclusively by them. 23/

Passage of the Hawaiian Homes Commission Act by the U.S. Congress in 1921 (42 Stat. 108) inaugurated a new plan of homesteading in Hawaii. The purpose of this law was to get the Hawaiian and part-Hawaiian people out of the congested city areas in which many of them were living, and to put them back on the land as homesteaders, and thereby better their condition and in time develop among them a class of independent citizen farmers.

The project was placed under control of a commission; it was financed mainly by a revolving fund of one million dollars (later increased to two million) built up from rentals of public lands and water licenses. There was made available to the commission about 200,000 acres of government land, which did not include any sugar cane land; from this available land, portions were laid out in homestead lots of different sizes, which were to be leased for 99 years at a nominal rental to people of not less than one-half Hawaiian blood.
Financial and technical assistance was to be provided to the homesteaders by the Commission. 24/

The effectiveness of the Hawaiian Homes Commission "rehabilitation scheme" is assessed by R. S. Vuykendall and A. C. Day (1961):

"Operations were at first confined to a small area of Molokai but have been gradually extended to other islands. The main agricultural homestead settlement developed by the Hawaiian Homes Commission is located at Hoolehua, Molokai. It was originally intended to be a diversified farming area, but has been given over to the production of pineapples under agreements with three pineapple companies. Diversified crops failed in this place because of the lack of water for irrigation. It is generally agreed that pineapples saved the Hoolehua homesteaders, but did so without making independent farmers of them. One of the most useful features of the rehabilitation scheme has been the opening of numerous small residential and subsistence homesteads in the vicinity of Honolulu and other towns where many of the Hawaiians have employment. At the end of 1956 there were more than 10,000 Hawaiians living in the various homestead communities, farm and residential, on the islands of Molokai, Hawaii, and Oahu. Since that date, a new homestead settlement has been established at Anahola on Kauai." 25/

In a contrary vein, it is the opinion of the Land Laws Revision Commission, created by the Legislature in 1943, that homesteading under the 1884 and 1895 Acts was generally unsuccessful in providing homesteads to native Hawaiians:

"In its final report (December 31, 1946) the commission asserted that "the majority of homesteaders have proved themselves to be mere speculators or investors," and it said that the "only legitimate present demands for public lands are for pastoral lands... and for lots for homesteads convenient to occupational locale." It recommended, among other things, 'that all sales of public lands be discontinued except for residential purposes,' and 'that the public lands... not suitable for residential purposes be conserved and disposed of only upon lease.'" 26

These authors conclude:
"In recent years there has been much talk about land monopoly in Hawaii. Attention has been focused upon this subject by the rapid growth of population and the acute housing shortage which developed during and after World War II. The complaint is not new. As far back as 1890, W. R. Castle said, 'One of the crying evils of Hawaii is its land ownership. Two immense estates are said to own over one third of the kingdom.' Today, in 1960, the cry is still against a few estates which keep a tight hold on huge areas of land." 27/

Or, as the University of Hawaii Legislative Reform Bureau states the matter:

"Land ownership in the State of Hawaii remains, as it has been since the time of Kamehameha I, highly concentrated. The largest single owner is the state government, which owns a total of 1,590,532 acres, or 38.74 percent of the total land area of Hawaii. The federal government owns 255,717.34 acres in fee simple and another 145,764.97 acres of ceded land for a total of 401,482.31 acres or 9.78 percent of the total area of the State. The greatest percentage of land, however, is owned by the 72 major private landowners who own more than 1,000 acres each in fee simple. These major private landowners own 1,923,182.56 acres, or 47 percent of the total land area of the State. Taken together, the state and federal governments and the 72 major private landowners own a total of 3,915,196.87 acres, which is 95.36 percent of the total land area of the State. Therefore, the remaining private landowners own less than 5 percent of the lands of the State of Hawaii." 28/

It is relevant at this point to suggest, on the basis of the foregoing history, the ways in which the Hawaiian land situation is comparable to the land system which pertained in Alaska before the 1971 settlement. Is there a basis for proposing a Hawaiian land claims settlement in light of the Alaska precedent? In what ways is the argument for a settlement of Hawaiian native claims similar, and in what ways is it dissimilar, to the Alaska precedent?
C. SIMILARITIES BETWEEN HAWAIIAN AND ALASKAN NATIVE CLAIMS ARGUMENTS

The similarities between the land situation in Alaska and Hawaii, which might serve as arguments in support of providing a Hawaiian native claims settlement like that in Alaska, are as follows:

1. HAWAII BECAME AN AMERICAN TERRITORY UNDER FOREIGN INFLUENCE AND WITHOUT THE CONSENT OF THE NATIVE HAWAIIAN PEOPLE

The U.S. acquired Alaska from Russia without the consent of the Alaska natives who lived there. Thus the assumption of title to public domain in Alaska by the U.S. Government left the natives without compensation for any of Alaska's 365 million acres, which they had used and occupied for centuries, and to which, on the basis of use and occupancy, they claimed aboriginal title. The Alaska settlement vested title in the natives to 40 million acres and provided a cash settlement totaling nearly one billion dollars as payment for extinguishment of aboriginal title to the rest of the land.

It has been argued ever since the 1893 Revolution in Hawaii that Annexation to the U.S. was not the will of most of Hawaii's native population.

President Grover Cleveland appointed a special commissioner to Hawaii, James R. Blount, who investigated the circumstances relating to the overthrow of the Hawaiian monarchy in January 1893 and flatly concluded that the revolution was the result of a conspiracy between the U.S. Minister to Hawaii, John L. Stevens, and revolutionary leaders in Hawaii. 29/
President Cleveland's Secretary of State, Walter Q. Gresham,

wrote the President in October of 1893:

"Mr. Blount states that while at Honolulu he did not meet a single annexationist who expressed willingness to submit the question to a vote of the people, nor did he talk with one on that subject who did not insist that if the Islands were annexed suffrage should be so restricted as to give complete control to foreigners or whites. Representative annexationists have repeatedly made similar statements to the undersigned." 30/

It was the President's conclusion, based on the reports, that

"The lawful Government of Hawaii was overthrown without the drawing of a sword or the firing of a shot by a process every step of which, it may safely be asserted, is directly traceable to and dependent for its success upon the agency of the United States acting through its diplomatic and naval representatives.

"But for the notorious predilections of the United States Minister for Annexation, the Committee of Safety, which should be called the Committee of Annexation, would never have existed.

"But for the landing of the United States forces upon false pretenses respecting the danger to life and property the committee would never have exposed themselves to the pains and penalties of treason by undertaking the subversion of the Queen's Government.

"But for the presence of the United States forces in the immediate vicinity and in position to afford all needed protection and support the committee would not have proclaimed the provisional government from the steps of the Government building.

"And finally, but for the lawless occupation of Honolulu under false pretenses by the United States forces, and but for Minister Steven's recognition of the provisional government when the United States forces were its sole support and constituted its only military strength, the Queen and her Government would never have yielded to the provisional government, even for a time and for the sole purpose of submitting her case to the enlightened justice of the United States." 31/
On the basis of these conclusions, President Cleveland refused to resubmit to the Senate a Treaty of Annexation which had been drawn up in 1893.

The Republic which governed Hawaii between 1894 and 1898 served as a kind of "interim government" between the Monarchy and Annexation, and, in the opinion of many scholars, did not truly represent the Hawaiian people:

"The new government was considerably more 'republican' than democratic. The president was to be elected by the legislature for a single term of six years, although (the first and only President, Sanford B. Dole) was named by the Constitution as president until the end of the year 1900. Property qualifications were imposed upon members of the two-house legislature, as well as on voters eligible to elect senators...." 32/

The President, Sanford B. Dole, was a white man.

Thus it can be argued that the Annexation treaty, approved by the Hawaiian Senate and signed by President Dole on September 10, 1897, was sanctioned by a legislature and government that arose from an act that, in the opinion of the President's special emissary, was contrary to the will of the Hawaiian people (Cf. p. 27 above)

It could thus be argued that when Hawaii joined the U.S. and ceded the government and crown lands of the Hawaiian people to the U.S., (30 Stat. 750), it did so without consent (and possibly against the will) of the native population, who, as in Alaska, found themselves without title to the ancestral lands on which they had lived and which they had used from time immemorial. Although the Statehood Act retroceded these lands to the State of Hawaii (Cf. p.20 above), nearly
400,000 acres of what was originally Hawaiian government lands are still owned by the U.S. government. While it would not seem feasible to redistribute this land to the people (the bulk being either assigned to the Interior Department, as part of the National Park System or the military), a cash compensation for extinguishment of aboriginal title, similar to that provided in the Alaska settlement, would seem to be justified in light of the Alaska precedent.

This leads us to point two.

2. FEDERALLY OWNED OR USED LANDS IN HAWAI'I AT THE PRESENT TIME WERE NEVER COMPENSATED FOR BY THE UNITED STATES GOVERNMENT: THE PEOPLE OF HAWAI'I HAVE A LEGITIMATE CLAIM TO THESE LANDS OR COMPENSATION THEREFOR

A close similarity with the land situation (before settlement) in Alaska thus is to be found in the Federal lands which have been set aside for use by the Federal Government in Hawaii, and for which the United States has not compensated the Hawaiian people. (See p. 28 above)

In Alaska some 353 million acres of the State's 365 million acres were in the public domain at the time of the settlement. The Alaska natives' claim to aboriginal title to Alaska was settled by granting title to 40 million acres to the natives and paying them for extinguishment of the balance. As noted above, the 1971 Bureau of Land Management report (Dept. of the Interior) entitled "Public Land Statistics," shows that 396,000 acres of land in Hawaii are still owned by the Federal government. The Hawaiian people have not been compensated by the U.S. for the taking of this land, and thereby find themselves
in a situation comparable to that of the Alaska natives before the 1971 settlement. If compensable aboriginal title in Alaska means lands the Alaska natives have "used and occupied" from "time immemorial," then the same definition can be applied to lands used and occupied by Hawaii natives for centuries, which are now owned and used by the U.S. government.

The Alaska precedent was accomplished in the context of the precedent set by establishment of the Indian Claims Commission in 1946; and the Indian Claims Commission precedent is directly relevant to the Hawaii situation in that the Claims Commission was established to hear the claims of Indian tribes to compensation for an uncompensated or inadequately compensated taking by the U.S. government of lands to which they held (and must prove) aboriginal title or recognized title (granted by Congress). A case might be established for creating a Hawaiian Claims Commission to study possible compensation to Hawaiian natives for the lands which were ceded to the U.S. in 1898.

An explanation by the Indian Claims Commission of its purpose is pertinent at this point: "..... Indian land cessions to the United States constitute the prime source of the alleged wrongs for which today's Indian claimants seek redress. Their chief complaint is that because of their ancestors' illiterate condition, the United States was able to acquire much of its valuable land for an unfair price."
The jurisdiction of the Commission includes "all claims which would arise if treaties, contracts, or agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration mutual or unilateral mistake or other equitable consideration [emphasis added]. Finally, the Commission's jurisdiction extends to all claims based upon 'fair and honorable dealings that are not recognized by any existing rule of law or equity.'" 35

Aboriginal title, based on use and occupancy, could possibly be claimed by Hawaii natives. The taking by the U.S. government of lands to which the natives claimed such title could possibly be shown to have been without payment and hence compensable.

3. IN BOTH ALASKA AND HAWAII ORGANIC ACTS CONGRESS LEFT OPEN THE POSSIBILITY OF A FUTURE SETTLEMENT OF LAND CLAIMS

As has already been noted, the Hawaii Organic Act of 1900 provided in Sec. 73 that the (then) present land laws of Hawaii should remain in effect "until Congress shall otherwise provide." [emphasis added] More specifically, the Alaska Organic Act of 1884 provided (in Sec. 8) that "the terms under which [natives] may acquire title to such lands [actually in their use or occupation now claimed by them] is reserved for future legislation by Congress." [emphasis added] The Congressional provision for future settlement of the Alaska native land claims herein cited is explicit, whereas any such provision as is contained in Sec. 73 of the Hawaii Organic Act is merely implied in the
phrase "until Congress shall otherwise provide." However, it is possible to argue that by suggesting that Congress might enact new land laws to replace those then applicable in Hawaii, Congress provided the basis for the enactment of future land laws which could, in light of the Alaska settlement, provide for settlement of Hawaiian native land claims.

D. WAYS IN WHICH THE HAWAII LAND SITUATION DIFFERS FROM THAT IN ALASKA PRIOR TO THE SETTLEMENT

1. THE SYSTEM OF LAND TENURE IN HAWAII PRIOR TO ANNEXATION WAS DIFFERENT FROM THE SYSTEM IN ALASKA (AS IT AFFECTED NATIVES) PRIOR TO THE 1867 CESSION

The Alaska natives under Russian administration did not have the opportunity to obtain title to the lands they occupied, since individual ownership of land by natives was not regulated by the Russian government. Neither the 1844 Russian Charter nor the 1867 Treaty of Cession was specific in delineating native property rights. "Settled" tribes — those within the economic sphere of influence of the Russian American Company — were considered Russian subjects and were guaranteed "property rights" by the 1844 Charter; but these were primarily personal property rights and did not include the right to land-holding, which at that time was virtually unknown among Russian peasants and consequently unregulated in the colonies.

On the contrary, at the time of Annexation (1898), there was a highly developed system of fee simple land ownership in Hawaii which had been instituted by the Hawaiian King Kamehameha III in the Great Mahele. The 1900 Organic Act for Hawaii specifically left intact
the land laws of Hawaii which had been in force at the time of Annexation (Sec. 73), and which included existing land titles. Moreover, land allotments awarded under the Mahele were alienable and thus could be sold without restriction. The Crown Lands were also alienable until the Act of January 3, 1865, rendered them "henceforth inalienable" and descending to the "heirs and successors of the Hawaiian crown forever."

Thus there was no legal prohibition to the alienation of Hawaiian government lands or of chiefs' and tenants' lands under the monarchy, nor of the former Crown Lands, after establishment of the Republic. Such lands as were alienated from native ownership were sold by the natives according to the laws of the Kingdom, Republic, or Territory of Hawaii.

This situation is not analogous with that in Alaska, where the natives did not have legal title to their lands before U.S. acquisition, and thus could not sell what they did not own. Furthermore, the U.S. Congress enacted legislation specifically protecting the Alaska natives' rights in such property and promising future legislation to provide the means by which the natives should secure title. Congress thus indicated the U.S. had assumed responsibility for the natives' land rights in Alaska and had guaranteed some kind of future settlement:

* Although, as has been demonstrated above (p. 32), Sec. 73 did specify that the existing laws should remain in force only "until Congress shall otherwise provide."
"... the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them, but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress." [Emphasis added] (23 Stat. 24) (Sec. 6).

No such guarantee to Hawaii natives is contained in the Hawaii Organic Act.

2. MORE FEDERALLY-OWNED LAND IN ALASKA UNASSIGNED THAN IN HAWAII, WHERE ALL FEDERAL LAND IS ASSIGNED

The vast majority of acreage in Alaska came into the public domain when the U.S. purchased the territory, and at the time of the settlement (1971) most of this remained unassigned. Contrariwise, the Hawaii Organic Act granted to the Territory of Hawaii "possession, use and control" of all government lands ceded by Hawaii to the U.S., except those taken for use of the U.S. Government by Congress, the President or the Governor of Hawaii (Sec. 91). The former Crown Lands were also declared by the Organic Act to be the "property of the Hawaiian government." (Sec. 99). Of the land Hawaii ceded to the U.S. at the time of Annexation (1898), therefore, only 396,000 acres are now owned by the Federal government, and all of this appears to be assigned.

Moreover, it is clear that the amount of Federally-owned land is vastly smaller in Hawaii than in Alaska, while the number of natives (or part-natives) is larger in Hawaii. As has already been noted, the Federal government owns approximately 396,000 acres in Hawaii, all of

* This argument may be countered by the thesis set forth on page 31 of this report; i.e., that Sec. 73 of the Hawaii Organic Act also leaves open the possibility that a basis for a Hawaiian settlement is established therein.
which appears to be assigned. 38/ This would have to be shared by
71,000 natives in the event of a settlement involving land redistribution (1970 Census Bureau figures). In Alaska at the time of
the settlement, there were some 353,000,000 acres in the public
domain, much of which was unassigned. Forty million acres was granted
to some 54,000 natives. Thus a settlement in Hawaii involving land
title awards would not seem to be feasible, as it was in Alaska.
Rather, the option in Hawaii would seem to be for cash settlement in
payment for an uncompensated taking of Hawaiian government lands.

3. NO DISTINCTION WAS MADE BY THE HAWAII STATEHOOD ACT BETWEEN
THE RIGHT OF THE HAWAIIAN PEOPLE TO TITLE TO PUBLIC LANDS
IN THE STATE, AND THE RIGHT OF THE STATE TO SUCH LANDS;
SUCH A DISTINCTION WAS MADE IN ALASKA

The State of Alaska was expressly prohibited by the Statehood
Act of 1958 (85 Stat. 508) (Sec. 4) from claiming any right and title
to land to which the natives claimed right and title. On the other
hand, no such distinction between the rights of natives and the rights
of the State was made in the Hawaii Statehood Act (73 Stat. 4) of 1959:
title to all public lands in Hawaii to which the United States held
title immediately prior to the Statehood Act were (with specified
exceptions) granted to the State of Hawaii (Sec. 5(b)). No special
consideration of the natives was made. In short, the Hawaii Statehood
Act did not distinguish the right of the Hawaii natives to title to
public lands from the right of the State to such lands.
The fact that this difference exists could, however, be used to support an argument that such a distinction should have been made in Hawaii, and that because it was not, the natives were deprived of their land rights, and thus are eligible for (monetary) compensation in settlement of those rights. This action (compensation) might be supported by the declaration in the Constitution of 1840 that "all the land from one end of the islands to the other" belonged to the chiefs and the people in common ...." (Cf. p. 14 above).
FOOTNOTES


2/ Four years earlier, the Supreme Court had unanimously found that compensation granted to the Tillamooks by the Court of Claims (87 F. Supp. 938) (1950) pursuant to the Supreme Court decision of 1946 (329 U.S. 40; Cf. p.24 above) was not based upon a taking under the Fifth Amendment. On the basis of this finding the Court denied the payment of interest which had been awarded by the Court of Claims (Cf. 341, U.S. 48) (1951).


8/ Hobbs, p. 29.


12/ Hobbs, p. 42.
13/ Hobbs, p. 45.


15/ Ibid.


19/ Hobbs, pp. 70, 110.


21/ Kuykendall, p. 204.

22/ Horwitz, pp. 3-4.

23/ Kuykendall, p. 206.

24/ Kuykendall, p. 208.

25/ Kuykendall, p. 209.

26/ Ibid.

27/ Kuykendall, p. 210

28/ Horwitz, p. 13.

29/ Kuykendall, p. 179.


32/ Tansill, p. 15.


35/ Ibid.


37/ Ibid.


Richard S. Jones
Analyst in History and Public Affairs
Government and General Research Division
April 20, 1973
compensation should be solely based on money. I am responsible for the research upon which the claim is to be presented to the Crown representatives. The majority of the research is finished, and now I am just polishing up the loose ends.

Aunty Nell gave us a subscription to Honolulu Magazine, and the first copy we received just happened to be December 1988 which contains an article on "The Native Hawaiian Nation" by John Heckathorn which talks about the issue of Hawaiian Sovereignty. It was there that I read Senator Inouye had taken the Senate Select Committee on Indian Affairs to Hawaii to discuss reparations. I hadn’t realized that the Senator was so involved. At any rate, I was wondering if there are any documents/information available to the public through the Senator’s office which I might be able to receive. I am collecting copies of articles and books, etc... dealing with historical perspectives, but also with paralleled perspectives such as what is happening in Hawaii at the moment. We’ve received alot of Canadian Indian, American Indian, Aleut, and Aborigine materials. This has been possible because our research staff have been made Research Associates of the Centre for Maori Research and Study at the University of Waikato in Hamilton. The Director of the Centre is also our boss— he is also one of the members of the Trust Board. Therefore when ever he or one of the other professors go overseas for conferences, they network with some of the other native groups and return with alot of relevant information.

If there is really a large amount of material, and it will be costly, perhaps you could give me a bibliography of the information and the cost of copying and mailing. If we can’t get some of the things through our library here perhaps we could get it through you. Any legislation which may have been passed in regards to the claim would be helpful, too. If you think that I should put the request in through the Senator, just advise me and it will be arranged. That is the bit of business I was wanting to discuss.

How is Uncle Jet? I’m sure you’ve both been attending all the Redskins football games. How did they do this year? We don’t really get american football scores here. Did they get to the playoffs and to superbowl? Is Phyliss still with the Senator? Who else is still on staff? How is Sally? Please give everyone my love. I think of you all often, and wish I could come back for a visit. If I am lucky, this job of mine may just allow for that to happen.

Well, best close for now. Take care, lots of love to you all,
For Immediate Release February 20, 1974

PERIOD FOR PUBLIC COMMENTS EXTENDED 120 DAYS ON DRAFT STATEMENTS COVERING INTERIOR'S PROPOSALS FOR "FOUR SYSTEMS" LANDS IN ALASKA

Secretary of the Interior Rogers C. B. Morton announced today a 120-day extension of the time for public comments on the 28 Draft Environmental Impact Statements issued last December on 83.5 million acres of public lands in Alaska.

The extension, he emphasized, is intended primarily to give the State of Alaska, the Alaska Native Corporations, and other interested parties more time to make a thorough analysis of the environmental impacts of the Secretary's proposals.

As directed by the Alaska Native Claims Settlement Act of 1971, Secretary Morton on December 18, 1973 forwarded to Congress his proposals on Federally-owned lands he considered suitable for inclusion in four national systems—the National Parks, Forests, Wildlife Refuges and Wild and Scenic Rivers.

His proposals would double the size of the present National Park and National Wildlife Refuge Systems by adding more than 30 million acres of Alaska lands to each system; add 18.8 million acres to the National Forests, administered by the U. S. Department of Agriculture; and add 20 new units to the National Wild and Scenic Rivers System.

Along with the legislative proposals went Draft Environmental Impact Statements. Ordinarily the Department of the Interior, in accordance with guidelines set up by the Council on Environmental Quality, asks that public comments on such draft statements be submitted within 45 days after their issuance. Because of the large number of statements and the remoteness of the areas involved, however, the Department went beyond that time span and allowed approximately 60 days for comment on seven of the statements and approximately 90 days on the remaining 21 statements.

"We thought that would be adequate, but it now appears that the other pressures on the State and the Native organizations make it difficult for them to respond adequately in the time allowed, so we are adding another 120 days for review and comment by all interested parties," Secretary Morton said.

Both the Native groups and the State are entitled to select large acreages from present Federal landholdings in Alaska under existing law. The Native Villages must make their land selections by December 18, 1974.
"Our own Alaska Planning Group intends to have the Final Environmental Statements, which will be based in large part on the comments received, completed and in the mail by the beginning of November 1974," Morton said. "This would enable the Native Villages to review the documents for about a month prior to making their land selections and we feel that these statements should help the Natives in their difficult decisions this autumn.

"Cooperative land management systems are important to Alaska. We want to contribute whatever data we have that will help in development of such systems for the benefit of all. Public review will be particularly helpful to us in assuring the accuracy of these impact statements."

Secretary Morton said it was important to make a distinction between commenting on the Draft Environmental Impact Statements and commenting on the legislative proposals forwarded to Congress.

The current public review period is primarily to get comments on the adequacy of the Draft Environmental Statements, and whether they accurately assess the impacts and the alternatives that are open. This review in no way forecloses full options of Native organizations, the State, and the public to take subsequent positions on the proposals themselves, either before the Secretary or the Congress.

There will be ample time later on for public expression on whether the legislative proposals are desirable or need to be modified. These questions will be examined fully by Congress. Most of the 83.5 million acres involved will remain under "d-2" land withdrawal until December 1978 while Congress considers the Morton proposals. Under Section 17(d)(2) of the Alaska Native Claims Settlement Act, this means that the lands withdrawn cannot be selected by the State or the Natives and cannot be opened to mining or mineral leasing, or to entry under the public land laws, until that time.

"Our study teams have made extensive surveys and rather detailed analyses of the d-1 and d-2 lands, alternative management options, and needs of the concerned parties," Morton said. "We believe such information can measurably assist the State of Alaska, the Native Corporations, and the Joint Federal-State Land Use Planning Commission for Alaska in their respective tasks.

"A substantial amount of raw data was provided by these groups for our consideration. We are trying to integrate all relevant data in the Final Environmental Impact Statements to be completed this fall so that these organizations, as well as the Congress, will have valuable tools to help them in their deliberations and land selection decisions," Morton concluded.

The 120-day extension sets the following new dates for providing written comments to the Chairman, Alaska Planning Group, U. S. Department of the Interior, Washington, D.C. 20240:

1. For the seven statements formerly set for review ending on February 20, the review period will now close on June 24, 1974. (These statements cover the proposed Aniakchak Caldera National Monument, Kobuk Valley National Monument, Alaska Coastal Wildlife Refuge, Selawik National Wildlife Refuge, Chugach National Forest, and Birch Creek and Beaver Creek National Wild Rivers).

2. For the remaining 21 statements formerly set for review ending on March 20, the review period will now close on July 22, 1974.
FEDERAL COMMUNICATIONS COMMISSION
[47 CFR Part 73]
[Docket No. 19692]

SAMPLING SYSTEMS FOR ANTENNA MONITORS

Extension of Time

In the matter of amendment of part 73 of the Commission's rules and regulations to establish standards for the design and installation of sampling systems for antenna monitors in standard broadcast stations with directional antennas.

1. As extended, the deadlines for filing comments and reply comments in this proceeding were set as October 30, 1973, and November 30, 1973, respectively.

2. On February 19, 1974, A. Earl Cullum and Associates submitted comments, accompanied by a petition requesting that they be accepted and considered in reaching a final decision in this matter. The petitioner states that while the firm had devoted considerable time and expended considerable expense in an effort to complete timely comments, a series of unforeseen exigencies involving its clients frustrated this effort.

3. These comments, of course, are extremely late, and, as a matter of right, would not be entitled to any consideration. However, we have examined the proffered document, and believe that it represents a substantial contribution on the matters with which this proceeding is concerned. Its acceptance at this time would not substantially delay our further action in the instant proceeding which, in any event, has been slowed by the pressure of other work.

4. Accordingly, it is ordered, that Cullum's petition is granted, and his comments are accepted for consideration in this docket. However, fairness to the other parties involved herein requires that we afford a reasonable period of time within which they may file reply comments, should they desire to do so.

5. It is further ordered, that pursuant to the applicable procedures set forth in §1.419 of the Commission's rules interested parties may file comments directed to the matters discussed in the comments of A. Earl Cullum and Associates on or before March 15, 1974.

6. In accordance with the provisions of §1.419 of the rules, an original and 14 copies of all reply comments shall be furnished the Commission. Copies of all pleadings filed in this proceeding are available for public inspection in the Public Reference Room at the Commission's headquarters in Washington, D.C. (1919 M St. NW).


Released: February 26, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
[Seal]
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.74-5242 Filed 3-6-74;8:45 am]

PROPOSED RULES

SECURITIES AND EXCHANGE COMMISSION
[17 CFR Part 270]
[Release No. IC-6245, File No. SR-578]

CERTAIN SERVICE AGREEMENTS WITH INVESTMENT COMPANIES

Proposed Exemption for Affiliated Persons

Notice is hereby given that the Securities and Exchange Commission has under consideration the amendment of Rule 17d-1 (17 CFR 270.17d-1) under the Investment Company Act of 1940 ("Act") (15 U.S.C. 80a-1 et seq), as amended, in order to permit affiliated persons or principal underwriters, or affiliated persons thereof, of registered investment companies to enter into service agreements with such companies which meet specified standards. The proposed amendment would be adopted pursuant to section 17 of the Act (17(d), and 38(a) of the Act (15 U.S.C. 80a-6(c), 80a-17(d), or 38(a) of the Act (15 U.S.C. 80a-6(c), 80a-17(d), or 38(a)).

A number of registered investment companies have entered into service agreements with affiliated persons or principal underwriters of such persons or principal underwriters pursuant to which the affiliates provide the investment companies with services other than those of acting (a) as investment adviser as provided for in section 17 of the Act (15 U.S.C. 80a-15, Sec. 8. P.L. 91-547, 84 Stat. 1428), or (b) as an underwriter or broker within the meaning of section 17(e) (1) of the Act (15 U.S.C. 80a-17(e) (1)). Representatives of various investment companies have brought to the Commission's attention the need for clarification of the applicability of section 17(d) of the Act and Rule 17d-1 thereunder to such arrangements (referred to herein as "service agreements").

As here pertinent, section 17(d) and Rule 17d-1 prohibit an affiliated person or principal underwriter of a registered investment company, or any affiliated person of such person or principal underwriter, from acting as principal in

1Section 17(d) and rule 17d-1(a) and section 17(e) of the Act contain language which removes from their coverage most of the underwriting and brokerage activities performed by affiliates. Rule 17d-1(c) presently excludes an investment advisory contract subject to Section 15 of the Act from the protections offered by section 17(d) and rule 17d-1 thereunder. The provisions of investment advisory contracts subject to section 15, however, include only those which deal with the investment advice, portfolio management, and correlative matters such as the compensation for or duration and termination, if any, of such services. The proposed amendment would add to the list of contracts which, if performed by the parties, would be required to make under the proposed rule. Also, the directors would be expected to make findings in this context only after a thorough examination of all relevant facts.

The proposed amendment will not diminish in any way the fiduciary responsibilities of the person enumerated in that section, including directors who are not interested persons as defined in the Act. No agreement excepted from the provisions of rule 17d-1 in the language proposed would relate to services which could not otherwise properly be paid for by the investment company. When considering a

2The concept of usual and customary charge for service rendered is also found in the provisions of section 17(e)(2) of the Act.
service agreement involving affiliates, the directors should examine in particular not only the factors contained in the amendment proposed herein but also the extent to which the fee structure of such an arrangement provides for a reduction in payments resulting from economies of scale as well as whether it provides a reasonable rate of return on the capital invested by the persons performing the services. The directors should be furnished information adequate to make judgments on these and other relevant issues by the contracting party.

These considerations are not intended to preclude affiliates who perform services for investment companies from realizing reasonable profits necessary to afford economic incentives. They are intended, however, to assure that those who derive economic benefits from their fiduciary relationship with investment companies do not abuse that relationship. In light of this intent, a standard of reasonableness should be applied not only to the profits to be gained from the specific services, but those from the affiliate viewed as a whole.

Accordingly, the Securities and Exchange Commission, pursuant to authority given it in sections 6(c), 17(d) and 38(a) of the Investment Company Act of 1940, hereby proposes to amend 17 CFR 270.17d-1(c) to read as follows:

§ 270.17d-1 Applications regarding joint enterprises or arrangements and certain profit-sharing plans.

(c) "Joint enterprise or other joint arrangement or profit-sharing plan" as used in this rule shall mean any written plan, oral or written contract, authorization or arrangement, or any practice or understanding concerning an enterprise or arrangements ancillary thereto which is intended to assure that those who derive economic benefits from their relationship with investment companies do not abuse that relationship. See testimony of then Chairman Budge on the 1970 Act Amendments to the Act before the Subcommittee on Commerce, 91st Cong., 2d Sess., Pt. 1 (1969) pp. 177-178.

§ 270.17d-1(c) provided that a majority of the directors of the investment company who are not interested persons determine that:

(i) such contract is in the best interest of the company and its shareholders;

(ii) the services to be performed pursuant to the contract are services required for the operation of the company;

(iii) the affiliated person or principal underwriter can provide services in nature and quality of which are at least equal to those provided by others offering the same or similar services; and

(iv) the fees for such services are fair and reasonable in light of the usual and customary charges made by others for services of the same nature and quality.

All interested persons are invited to submit views and comments with respect to the proposals, in writing, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, on or before April 30, 1974. All comments submitted on this subject should refer to File No. S7-515. Such communications will be available for public inspection.

§ 270.17d-1(c)(4) a "Joint enterprise or other joint arrangement or profit-sharing plan" as used in this rule shall mean any written or oral plan, contract, authorization or arrangement, or any practice or understanding concerning an enterprise or arrangements ancillary thereto which is intended to assure that those who derive economic benefits from their relationship with investment companies do not abuse that relationship. See testimony of then Chairman Budge on the 1970 Act Amendments to the Act before the Subcommittee on Commerce, 91st Cong., 2d Sess., Pt. 1 (1969) pp. 177-178.

[17 CFR Part 270]

[Release No. IC-2651 (Extract), 87-514]

ALASKA NATIVE CLAIMS SETTLEMENT ACT CORPORATIONS

Proposed Permanent Rule

Notice is hereby given that the Securities and Exchange Commission hereby adopts temporary rule 6c-2(T) [17 CFR 270.6c-2(T)] and proposes to adopt Rule 6c-2 [17 CFR 270.6c-2], both under the Investment Company Act of 1940 (15 U.S.C. 80a-6(c), 80a-17(d), 80a-37(a)).

It appears that, without compliance with the Act or exemptive relief by the Commission, questions may be raised whether many ANCSA Corporations may engage in interstate commerce or buy securities in interstate commerce. Several ANCSA Corporations have filed applications for orders of the Commission pursuant to section 3(b)(2) (15 U.S.C. 80a-3(b)(2)) of the Act, each claiming...
PROPOSED RULES

in effect, that the applicant is primarily engaged in a business other than that of being an investment company. In view of the facts and matters of ANCSA O of the Act and to propose that such relief be made permanent.

Rule 6c-2(T) temporarily removes all ANCSA Corporations from the burden of complying with various requirements of the Act. Such corporations will be obliged to comply with only those provisions which provide essential protection for the substantial pools of liquid capital they hold in trust for the Alaska Natives. Accordingly, rule 6c-2(T) provides that the ANCSA Corporations shall be exempt from any provisions of the Act except sections 8(a), 9, 17, 36, and 37 provided, however, that such corporations must comply with certain reporting and other requirements set forth in the rule. Rule 6c-2 would provide exactly the same relief on a permanent basis, if adopted.

Section 8(a) of the Act requires the ANCSA Corporations to register with the Commission by filing a Form N—8A disclosing basic information such as the name and address of the corporation, the names of its officers, directors, and adviser and the identity of other companies substantial amounts of the securities of which are held by the registrant. The more detailed Form N—8B—1 registration statement will not be required.

Section 9 of the Act prohibits a person convicted of certain crimes or enjoined from certain specified activities, governing activities and activities involving securities transactions and the functions of underwriters, brokers, dealers and financial institutions, from serving as an officer, director, member of an advisory board, investment adviser, or director of a registered investment company. Section 9 also provides procedures for the removal of this prohibition under appropriate circumstances.

Section 17 of the Act, generally speaking, requires Commission approval before the ANCSA Corporations may engage in certain transactions with affiliated persons.

Section 36 of the Act authorizes the Commission or a shareholder to bring a civil action against officers, directors, members of advisory boards, investment advisers, or underwriters of registered companies for breach of fiduciary duty involving personal misconduct. It further provides that an investment adviser is deemed to have a fiduciary duty with respect to the receipt of compensation for services rendered and the furnishing of a material nature paid by the investment company.

Section 37 of the Act makes it a crime under the Act to steal or embezzle the property of an investment company.

The exemptions granted by the rules may be claimed only by ANCSA Corporations which meet conditions requiring them to file annually with the Commission copies of reports required by section 7(o) (43 U.S.C. 1606(o)) of the Settlement Act, and to maintain the records used in the examination by the Commission.

Rule 6(c)–2(T) is hereby adopted pursuant to sections 6(c), 38(a), and 39 of the Act. Proposed rule 6(c)–2 would be adopted pursuant to the same provisions. Section 6(c) of the Act provides that the Commission by rule, regulation, or order may conditionally or unconditionally exempt any person, security, or transaction or any class of persons, securities, or transactions from any provision or provisions of the Act if such exemption is necessary or appropriate in the public interest and for the protection of investors and the purposes intended by the policy and provisions of the Act. The Commission further finds, in accordance with the purposes intended by the policy and provisions of the Act, that the Commission shall have the authority from time to time to make, issue and amend such rules and regulations as are necessary or appropriate to the exercise of the powers conferred upon the Commission elsewhere in the Act. Section 39 states in part, subject to the Federal Register Act, rules and regulations of the Commission under the Act shall be effective upon publication in the manner prescribed by the Commission.

The Commission finds that the adoption of Rule 6c-2(T) is appropriate in the public interest and is consistent with the protection of investors and the purposes intended by the policy and provisions of the Act. The Commission further finds, in accordance with the requirements of the Administrative Procedure Act, notice of rule 6c-2(T) prior to its adoption and public procedure thereon are impracticable and unnecessary since the rule will be temporary in its effect and will not exempt any ANCSA Corporations from those provisions of the Act needed to provide essential protections for the assets being held for the Alaska Natives and since any delay in the adoption of the rule would cause great inconvenience to many ANCSA Corporations and prevent them from seeking a return on such assets for the benefit of the Alaska Natives until such time as the rule is adopted. Accordingly, Rule 6c-2(T) became effective on February 26, 1974, retroactive to December 19, 1971, the date of enactment of the Settlement Act.

Commission action. Pursuant to the authority in sections 6(c), 38(a) and 39 of the Investment Company Act of 1940, the Securities and Exchange Commission proposes to amend § 270.6c-2 of Chapter II of Title 17 of the Code of Federal Regulations by changing the present temporary regulation thereunder to a permanent regulation to read as follows:

§ 270.6c–2 Exemption for Corporations Organized pursuant to the Alaska Native Claims Settlement Act of 1971.

(a) Any corporation organized pursuant to the Alaska Native Claims Settlement Act of 1971 ("Settlement Act") ("ANCSA Corporation") shall be exempt from all provisions of the Act except sections 8(a), 9, 17, 36, and 37 subject to the following conditions:

(b) Any company claiming exemptions pursuant to this rule shall file annually with the Commission copies of the reports required by section 7(o) of the Settlement Act and shall maintain and keep current the accounts, books, and other documents relating to its business which constitute the record forming the basis for such information and of the auditor's certifications thereto. All such accounts, books, and other documents shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe. Such company shall furnish to the Commission, within such time as the Commission may prescribe, copies of or extracts from such records which may be prepared without undue effort, expense, or delay as the Commission may by order require.

(Sections 6(o), 38(a), 39, 54, Stat. 800, 841, 842, 15 U.S.C. 80a–6(c), 80a–37(a), 80a–38)

All interested persons are invited to submit views and comments with respect to proposed Rule 6c–2, in writing, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, on or before April 10, 1974. All communications with respect to this matter should refer to File No. S7–514. Such communications will be available for public inspection. Information on the Commission's adoption of temporary Rule 6c–2(T) is found elsewhere in this issue of the Federal Register.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.
FEBRUARY 26, 1974.

[FR Doc.74–8279 Filed 3–6–74; 8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service
[7 CFR Part 956]

TOMATOES GROWN IN FLORIDA

Proposed Increase in Expenses

Consideration is being given to the approval of an amended budget of $157,000 for the Florida Tomato Committee for its fiscal period ending July 31, 1974. The committee was established under Mar-
PROPOSED RULES

Notices is hereby given of a public hearing to be held at the O'Hare Inn, 6000 North Mannheim Rd., Des Plaines, Illinois, beginning at 9 a.m., local time, on March 12, 1974 with respect to proposed amendments to the tentative marketing agreements and to the orders, regulating the handling of milk in the aforesaid specified marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, heretofore set forth, and any appropriate modifications thereof to the tentative marketing agreements and to the orders.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR Part 900.12(d)) with respect to proposals No. 1 and 2.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

Proposal No. 1—Proposed by Certain Interested Producer Cooperative Associations in Each of the Aforementioned Marketing Areas

Amend any or all of the orders for the aforementioned marketing areas to provide during any or all of the period April through July 1974 that the price of milk used to produce butter and nonfat dry milk shall not exceed an amount computed as follows:

(1) Multiply the Chicago butter price by 4.2;

(2) Multiply by 8.2 the weighted average of carlot prices per pound of spray process nonfat dry milk for human consumption, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department; and

(3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph subtract 48 cents, and round to the nearest cent.

Proposal No. 2—Proposed by the Dairy Division, Agricultural Marketing Service:

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator of each of the aforesaid specified marketing areas or from the Hearing Clerk, Room 112-A, Administration Building, United States Department of Agriculture, Washington, D.C. 20250 or may be there inspected.

Signed at Washington, D.C., on March 6, 1974.

John C. Blum,
Deputy Administrator, Regulatory Programs.

Animal and Plant Health Inspection Service

STANDARDS FOR ACCREDITED VETERINARIANS

Proposed Revisions


The Department of Agriculture accredits veterinarians to perform certain functions under the regulations of the Department relating to the cooperative control and eradication of livestock and poultry diseases, the interstate transportation of certain animals and poultry, and the exportation and importation of certain animals, poultry and products (9 CFR Chapter I, Subchapter A, and Subchapters B, C, and D, Part 111). Copies of the standards of conduct required are
INTRODUCTION:

Under the United States Housing Act of 1937, as amended, the Department of Housing and Urban Development is authorized to make loans and pay annual contributions to local housing authorities to assist in developing and acquiring low-rent public housing projects and achieving and maintaining the low-rent character of such projects. Local housing authorities, typically, are corporate bodies authorized to function in a locality, pursuant to State law, for the purpose of developing, owning, and managing low-rent public housing projects.

Where an American Indian tribe, under its Constitution and Bylaws has an established governing body with police power for its reservation (that is, the legislative power to promote peace, health, safety, and morals on the reservation), the governing body of the tribe can perform the legal functions, for purposes of promoting public housing projects, that are otherwise performed by the State legislature and local government. Specifically, such tribal governing body is legally competent to enact an ordinance creating a housing authority with the necessary local cooperation. In the states of Oklahoma, Texas, and Maine where the tribes do not have such police power, the state legislatures have enacted statutes to provide for the establishment of tribal housing authorities.

There are a number of ways in which low-rent public housing may be provided for American Indian families under the public housing program. These methods include: conventional low-rent public housing; mutual-help housing; the Turnkey method of constructing public housing; and the Turnkey mutual-help method.

CONVENTIONAL METHOD:

The conventional low-rent public housing program for American Indians is essentially similar to the low-rent public housing program for non-Indians in which the housing is constructed by a building contractor, acquired or leased by the authority, and is thereafter operated as rental housing by the local housing authority. For permanent financing of the development costs of the projects, the local authority sells its 40-year bonds to private investors. HUD agrees to pay annual contributions in an amount sufficient to assure payment of the annual debt service (principal and interest), and these federal contributions are pledged as security for the local housing authority bonds, thereby enabling them to be sold at unusually low interest costs.
The dwelling units are rented by the housing authority to low income families at rents based on their incomes. The rents must be sufficient in total to pay the housing authority's operating expenses, except that in the case of elderly (including disabled and handicapped) families and families displaced by an urban renewal or other low-rent housing projects, an additional annual contribution of up to $120 per unit can be paid by HUD under certain conditions. Recent amendments to the Housing Act of 1937, have placed a ceiling of one-fourth of income on the individual rents charged by the local housing authorities and have added additional operating subsidies.

**MUTUAL-HELP METHOD:**

The mutual-help program was established by HUD in cooperation with the Bureau of Indian Affairs to meet the needs of very low income American Indians on reservations who cannot afford even the modest rents necessary under the conventional low-rent public housing program. The basis of the mutual-help method is to provide an opportunity for home ownership which will be a strong incentive for participants to build and maintain their own homes. Under the plan, a group of participating American Indians contribute their labor in the physical construction of the houses. In addition, the participants, or the tribe, contribute the building site and, where feasible, local building materials.

Under this method, the participants are given a lease-purchase type of option and receive equity credit, in amounts approved by HUD, towards the purchase of their homes in lieu of cash for their contributions. An incentive for the participants to make as great a contribution as possible exists because the greater the portion of the development cost represented by the equity credit received, the shorter is the period of time before they become home owners.

HUD contracts to pay annual contributions at the highest authorized annual rate to help repay the funds borrowed by the housing authority in the development of the mutual-help housing. Should the participants contributions (i.e., their initial equity) constitute 20% of the development cost of the housing, HUD's annual contributions could retire the borrowings (and the participants achieve home ownership) in about 17 years.

After the homes are built, each participant is responsible for the maintenance and utility costs for his home and will pay a fee for the operation and administration of the tribal housing authority.

On the basis of income, participants will be required to make additional payments which will increase their equity toward home ownership. Should a participant fail to maintain his house, the authority will have the necessary work done and pay for it out of funds obtained by deducting from the equity payments and mutual-help contribution made by the participant. Such deductions would reduce the participant's equity toward home
ownership. Since the participant's rent must cover the operating and administrative expenses of the authority, an incentive for on-the-spot policing of the overhead costs of the authority is provided because of the self-interest of the participants to keep their rental charges at a minimum.

A major element in the mutual-help program is the assistance provided by the Bureau of Indian Affairs on reservations. The BIA provides the tribal housing authorities with administrative guidance and assistance as well as with construction supervision for the participants and the professional help employed by the housing authorities. The BIA and builder will assist the tribal housing authority with scheduling participant's mutual-help labor, however, the authority alone is responsible for making certain that all individual participant's efforts are substantially equal.

TURNKEY METHOD:

Another method of providing housing on American Indian reservations, is the Turnkey method of construction. Using this method, a developer or builder may approach a housing authority, or respond to an advertised invitation published by the authority, with a proposal to develop and build a low-rent housing project of good quality and design at a stated price. In either case, the housing authority will publish an advertisement soliciting proposals in order to ensure that all interested developers will have an equal opportunity to participate in the development of the proposed housing project. Proposals are evaluated by the local authority on the basis of: site(s); design; and the reasonableness of total cost. In addition, however, the tribal housing authority may specify preference for minority contractors, utilization of local subcontractors and materials, and the establishment of employment and training programs for indigenous residents as additional selection criteria. If the developer's proposal is acceptable to the local authority and is approved by HUD, the authority enters into a Contract of Sale with the developer in which they agree to purchase the completed project when finished according to local authority and HUD approved plans and specifications. The local authority, in its contractual agreements with HUD, recognizes its responsibility to employ competent professionals to ensure that the low-rent public housing is constructed according to HUD regulations and the requirements of the Contract of Sale. The local authority must approve the construction of the completed dwelling units before they are accepted for occupancy. Turnkey procedures are described in detail in the 74.20.1, Low-Rent Public Housing Turnkey Handbook, available on request from HUD.

Two variations of the Turnkey method of developing low-rent public housing on American Indian reservations are possible. The tribal governing body itself may act as the Turnkey developer for a project and subcontract for the actual construction work to be done or, arrangements may be made with a private developer for the employment and training of local American Indians to do the construction work.
The Turnkey Mutual-Help method is an adaptation of the Turnkey method of housing production for use on American Indian reservations. As in the situation described above, a developer or other interested organization would make a proposal to the local authority to provide site(s) and improvements under the Turnkey method. However, the proposal would include a provision for the utilization of self-help labor contributed by the future occupants of the low-rent housing. The local authority would agree to purchase the dwelling units at an established price and would credit each participant's account with an equity interest in his house based on the value of his contribution. Self-help contributions may be as low as 15% of the total cost of the dwelling. Thereafter, as under the Mutual-Help method, HUD would provide an annual contributions subsidy, paid to the authority, which would make it possible for a participant to achieve home ownership within 20 years, so long as they continue to maintain the home and make equity and local authority operating and administrative monthly payments.

In addition, the United States Public Health Service has a program for providing water and sanitation facilities for American Indian homes in cooperation with HUD and the BIA.
Senator

From Eiler

Re: Alaskan natives land claims settlement.

Total funds distributed or voted to be distributed is $962 million. Of this amount $462 million is from the general treasury and $500 million is from mineral rights sales. Included is some 40 million acres of land.

Somewhat over 80,000 natives are thought to be eligible but they are still trying to locate many. To be eligible they must be 1/4 native although that 1/4 can include a combination of eskimo, alute and indian.

These funds are distributed through regional and village corporations. Each qualifying native gets 100 shares which cannot be sold for 20 years and his only income will therefore be from the dividends which that corporation will pay on earnings. Each of the 12 regional corporations have been given half a million in start-up money and some money --about $20,000 maximum-- has been going to village corporations from the Bureau of Indian Affairs to help some of the villages get started up.
TO: Senator
FROM: Linda
DATE: April 10, 1973
RE: Current Status Report on CRS Study on Hawaiian Land Claims

I have contacted Mr. Richard Jones of the CRS-Government Division concerning the requested study of Alaska/Hawaiian land claims legislation.

He is in the process of completing the first half of what he expects will be a 40-50 page study outlining similarities and differences between Alaska and Hawaii.

He expects to complete entirely by the end of April. However, he's offered to meet with you before then to verbally explain his findings and summarize the arguments pro and con.

In brief, basic distinctions exist viz. history and land tenure systems. The legal case for a Hawaiian claim seems weak. However, a moral argument can be pursued, utilizing not only Alaskan precedent, but also the American Indian Claims Commission—whereby a Hawaiian Commission could assess the fairness of previous compensation payments to Hawaiians.

Would you be interested in meeting with Jones?

Or would you only like a copy of whatever research he's thusfar finished?
June 15, 1972

CONGRESSIONAL RECORD — Extensions of Remarks

E 6259

Soviet divisions were required to maintain partial law.

On the 18th, the strikes spread to the East German uranium and coal mines. Sixteen people were killed, hundreds injured, and thousands arrested as a result of the state of siege in East Berlin on July 9. Martial law ended 3 days later.

As embarrassing as the uprising was to the tyrants in the Kremlin, even more humiliating to the Soviet leaders was the feeding of hungry East Germans by their fellow Germans in the American sections of Berlin, distributing food on July 14 and the American authorities followed suit on the 27th.

The Soviet Union was requested to permit the United States to deliver 15,000,000 worth of American food for free distribution in East Germany. When permission was refused, the food was made available in West Berlin. By August 3 a million of food had been distributed to hungry East Germans and the free world had won a tremendous propaganda victory through its humanitarian efforts.

Mr. Speaker, how ironic that the protest of June 17, 1953, was organized and carried out by the working classes, the very people for whom the Communists pretend to speak. How ironic that a great agricultural nation such as the Soviet Union was unable to feed the inhabitants of East Germany. How ironic that this is the form in which the Berlin Wall that now separates the two nations to resist tyranny in the massive world's two great powers a few steps closer to acknowledging the fact that restoring peace in the world.

THE DEFEATISTS ARE AT IT AGAIN

HON. BOB WILSON
OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 15, 1972

Mr. BOB WILSON. Mr. Speaker, I am pleased to join my House colleagues in a recent speech by Richard G. Capen, Jr., vice president, Copley Newspapers, La Jolla, Calif., before the District Convention, Lions International, San Diego, Calif. I heartily recommend this excellent commentary to the thoughtful review of the recent crop of new "converted" doves.

The speech follows:

The DEFEATISTS ARE AT IT AGAIN!

(By Richard G. Capen, Jr.)

Events of the past few days have moved the world's two great powers a few steps closer to the brink of World War III. The North Vietnamese have no intention of accepting responsibility for the consequences of such words. Nor would they be accountable for the loss of credibility for the nation's commitments around the globe should we desert South Vietnam at this, their most critical, moment.

Some critics have built their entire political career on platforms of obstructionism. They have placed their political interest first and their country's last. They have expressed moral indignation when it was convenient to do so. Now they generated the impression that there would be no war in the world if the United States were not in Viet Nam. They have conveniently forgotten since the last American soldier was out of Viet Nam, that there would be peace in the world. Do they really believe that settling the war in Viet Nam will settle the war in Ireland? Or the war in the Middle East? Or the confrontation in India and Pakistan? Or the dispute along the Chinese-Russian borders?

No, Catholics and Protestants, Arabs and Jews, Hindus and Moslems and Russians and Chinese have battled for hundreds of years. It's not likely to stop soon. This, of course, is regrettable, but I cannot really believe that restoring peace in Southeast Asia will restore peace in the world.

Because its a new ball game today in Viet Nam the President believes that settling the war in Viet Nam will settle the war in the world.

In the frantic search for expedient solutions, they have openly supported resolutions which would tie The President's hands as he withdraws from Viet Nam. Yet, several years ago they were giving full approval to decisions that got us into Viet Nam.

Today, they favor resolutions to condemn President Nixon for the enemy's aggression, but they direct not one single word of criticism against the enemy that started that aggression. It has gone so far as to believe enemy propaganda while deliberately refusing to accept statements by our own government.

Now these defeatists are seeking to cover up their own errors, and the mistakes of earlier administrations, by labeling this battle "Nixon's War." It's a simple matter for them to criticize their country's current administration. They have no responsibility for the consequences of such words. Nor would they be accountable for the loss of credibility for the nation's commitments around the globe.

In my opinion, President Nixon has shown incredible restraint in the face of irresponsible criticism by those who run away from their responsibility for past actions by seeking to saddle others with the consequences of these actions.

Today, from the privacy of Washington offices, a former Defense Secretary and a former Commander-in-Chief have had the answers for getting America out of Viet Nam—now. But, where were those ready solutions when these former officials were in positions to act? These were the people who got our country into a war they could neither win nor lose.

In the last two and one-half years, conditions have changed substantially under President Nixon's leadership and through his Vietnamization program. It was not President Nixon who sent 480,000 Americans to Viet Nam. He has brought 400,000 home.

It was not President Nixon who was in office when as many as 200 were being killed each week. Under his adminis-
tration, combat deaths have been reduced by nearly 50%. And I might add that those low levels have been maintained despite the current intensity of ground combat in South Viet Nam.

When the Nixon Administration took office, American troops were handling ground combat. In fact, there was no authorized plan for turning that combat over to our allies. Today, the South Vietnamese have that responsibility and they are doing admirably well. Sure, they are not winning every battle, but no one ever predicted they would.

For the past year, Vietnamization is working. We have provided the equipment. We have helped to train South Vietnamese forces, and we have satisfied with air and naval support as necessary. As a result, substantial numbers of Americans have been withdrawn. Do you realize that there are fewer Americans in Viet Nam today than there were Americans in Korea when President Nixon took office in 1969? It took 10 to 15 years for the Koreans to take over their own internal security responsibilities. But the South Vietnamese have been forced to assume that responsibility in less than three years. I think they have come a long way.

Three and one-half years ago, there was no comprehensive peace plan for ending the war. In Viet Nam, there, too, has been a change. Through secret initiatives and public talk, the President has sought a way for the current actions in Viet Nam. That, too, has all changed. It is being destroyed. It is being destroyed by the South Vietnamese have been forced to prove their sincerity to negotiate before such talks are resumed. In the meantime, their war-making capacity is being destroyed. It is being destroyed rapidly and effectively.

Today, not only has the President decided to stand up against the enemy's blatant aggression, he has offered every reasonable alternative to Hanoi. Even while negotiating—as frustrating as that was—he proceeded to withdraw thousands and thousands of Americans despite any visible progress in Paris.

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"Today, not only has the President decided to stand up against the enemy's blatant aggression, he has offered every reasonable alternative to Hanoi. Even while negotiating—as frustrating as that was—he proceeded to withdraw thousands and thousands of Americans despite any visible progress in Paris."
The Takabuki protest symbolizes the Hawaiians first battle cry to legitimize their ethnic identity. If they fail to gain it through this route, they have no choice but to express themselves through conflict-politically and militantly. "At heart, the Hawaiian movement is no different than the blacks" fight for ethnic identity.

The protest points up the myth of Hawaii's melting pot concept, which, in fact, is a highly compressed racial differences long denied legitimate airing. "The melting pot illusion simply must go. The damage it has done is to blur ethnic diversity and to allow the Anglo culture to dominate."

These are very interesting observations. Certainly they touch the sensitive vein of ethnic identity—so different from the accepted rhetoric of the "melting pot" of the Pacific. Yet, in some respect, this battle cry for ethnic identity comparable in intensity as the "black power" movement of the Negroes. Is this very potent illusion called Hawaiian similar to the black ghettos of Watts, Newark or Harlem? Are the Japanese situation the same? Or is it different? What is the symbol of Japanese blood made him different than one way, more than one right, more than one thing within the same society—or it conflicts with other groups aspiring for the same thing within the same society—or it vio­lates the precept of a democratically consti­tuted political structure that "men are created equal."

I guess this was our dilemma in this inci­dent. But can there be an accommodation of both concepts?

When does ethnic identity become a di­vergent force, and not a positive one within a society? This is not a question of ethnic groups to accept them as they are? But, then, what about the "golden man" of the Pacific?

Perhaps, however, an observation made by a friend in half-jest may be illuminating. In making an abstract evaluation of this controversy, he sort of brightened up, grinning somewhat impishly, and said: I raise these questions as possible basis for your own critical re-examination, and per­haps, the need for careful re-thinking, re­examination and re-ordering of your priori­ties, and values—and I suggest it may be a time for soul-searching for all of us, seeking, for perhaps, a new accommodation, or re­affirming the old concepts, or blending the new and the old, in trying to reconcile all the variables covering the whole spectrum of our society, including our ethnicity, our economic political cross-currents, and our individual and collective hopes for the future, and seeking somehow new definitions to create a better Hawaii for all of us.

I do not pretend to know the answers. And it is certainly not my purpose to try to tell you what should be done. You will have to de­cide what is your own way, what is your own right, and what is your own truth.

And in this difficult task that only you can decide, I wish you well.

Fellow Hawaiians, I've decided to step down as President of the Hawaiian Civic Clubs. I've made this decision because I feel
that it is the best thing I can do in serving the Hawaiian people. By stepping down, I will allow someone to replace me who can devote more time and energy to the important task of running the organization and thereby move the organization forward at a more rapid pace.

As a result of the new environment and the change. Big business and complex economics are only dreamed about. We were truly blessed with what should be the present definition of the word "Hawaiian." We seem to be able to live happily and comfortably without having to fight for food, shelter, or clothing. We learned to share with each other and really believe that all men should live as brothers. We welcomed most of the strangers who originally came to the Hawaiian Islands and the life style that we developed for ourselves was a lifestyle that most people only dreamed about. We were truly blessed with the most favorable climates in the world; and the flora and fauna of Hawaii flourish without much cultivation. All of our people were able to live happily and comfortably without having to fight for food, shelter, or clothing.

We lived in this happy state not really realizing we were working a change that the time of the old Hawaii was drawing to a close. Suddenly, at the turn of the 20th century, we were rudely awakened by a shock and a chilling sight. We witnessed the lowering of the Hawaiian flag at Iolani Palace and the raising of a new flag. The Hawaiian Kingdom had come to an end. Many of us did not realize then nor do some of us realize now that that was the most visible day when the old Hawaiian life style began to change. Big business and complex economics had changed our life style in that we developed for ourselves was a lifestyle that most people only dreamed about. We were truly blessed with the most favorable climates in the world; and the flora and fauna of Hawaii flourish without much cultivation. All of our people were able to live happily and comfortably without having to fight for food, shelter, or clothing.

As a result of the new environment and our reluctance to change our life style with the times, we find ourselves today with little. What we retain are a few benefits which we really believe we must preserve for our children and their children. One of these benefits is the Bishop Estate and its holdings of land. Every Hawaiian believes that he has a stake and interest in the Bishop Estate. He somehow feels that the land his ancestors once held and that it should be protected from all those who would take his inheritance. There is really nothing wrong with that feeling, but what is wrong is the feeling that all other races would rob us of our inheritance and therefore should be excluded from the Estate. While I think we are confusing racism with what should be the present definition of the word "Hawaiian." We seem to be saying that we are not a Hawaiian without the blood of those who originally came to the Hawaiian Islands is not a Hawaiian. Yet, look at all of us here. We have the blood of the races of today's Hawaii running through our veins—Chinese, Japanese, Korean, Filipino, Polynesian, Melanesian, Buginese, Haloe, and many others. In fact, our last names reflect the conglomerate of races—Chang, Akana, Truthajima, Lyman, Pagina-wan, Thompson, King, Galderia, and Trask. Are we less Hawaiian because we are not all purely Hawaiian? I believe we are not purely Hawaiian, pure that we think of the word "Hawaiian" as representing a person who really represents Hawaii, regardless of his color. So in a manner of speaking, there is a person who believes in his fellow man, who treats him with love, compassion and understanding. That is a Hawaiian, for it represents that which was the most beautiful part of the Hawaiian Islands and culture. I think Matsu Takabuki is such a man. Many of you may disagree with me and with his appointment to the Board of Trustees of the Bishop Estate. I believe that Matsu will add a new dimension to the Board for he is a man of wide business, legal and political experience which when devoted to the tasks of the Estate will provide all of us with what we want most—to preserve the Estate for the benefit of our children and their children.

The entire episode of Matsu's appointment was disheartening to me. I was disheartening because I witnessed an attempt by someone to close the hearts, minds and arms of some of us with his own greed and greed that he can be someone who, if anything, is a true son of Hawaii. Matsu was born in Hawaii; he went to school with us; he fought against our common enemies during a time of crisis; he served us as our representative in political office and has worked all of his life in Hawaii. If that does not make him a Hawaiian or a son of Hawaii, then I don't know what. What some of us have done to him and through him to others who live, understand and love Hawaii is beyond comprehension, for if we deny him and others like him of being Hawaiian, then we will have added another and valid part of our life style. If we do that, we will have been finally conquered by others, for we must have learned to hate others who look different from ourselves.

I believe that the most important gift that our ancestors gave us and which we must pass on to our children is the openness of heart, mind and arms—the love of our fellow man no matter what his color, or his looks. We must teach our children that they should not judge a man by his race, the color of his skin, the way he looks, or the way he says that he is a certain name; but rather that they should judge him by what he believes in, what he feels and by what he does. I am not saying that we can treat him with love, compassion and understanding then love him for he is a true Hawaiian and a son of Hawaii.
HAUN LAND CLAIMS

TALLY TAKEN 11-30-73 (ROR-AGI) (6-4)

FOR

11-19-73 EISLER (hand list)
11-20-73 MIDRIFF (Proposal)
11-24-73
ICHINOSE
11-26-73 SWINDLE
11-29-73 BROTHER ABE AKAKA
11-29-73 SAMUEL DAY (Oregon)

AGAINST

11-24-73 MORIN
11-24-73 THORNTON
11-26-73 T.G. FISHER
11-26-73 James Day
11-27-73 Hawaiian Stangers
11-30-73 m/m Robert & Chandler

11-26-73 Rollie Alderman
11-28-73 Mary Rolfe (bluff)

12-5-73 Daniel Lee (Huna)
Response to Opponents of Hawaiian Land Claims Proposal —

Thank you for your views — it is in the form of a proposal — I appreciate your sharing your thoughts on this matter.

12-10-73 Tally
Hawaii mail FOR

✓ 12-5-73 Sylvia Fine
✓ 12-4-73 Charles Kong
✓ 11-29-73 Antonia Kelley —
✓ 11-4-73 Paul Sandefur —
✓ 12-4-73 LAD S. Quiberg
✓ 12-1-73 Evelyn Cooper
✓ 12-5-73 Kenneth Bushley
✓ 12-3-73 Robert LaPointe
✓ 12-1-73 Patricia Martin
✓ 12-7-3 Katherine Burns
✓ 12-4-73 Bertie K. Peterson
✓ 12-8-73 Sr. M. Catherine

12/5/73 Ann K. Wellman
12/1/73 George E. Bushnell