PUBLIC LAND POLICY IN HAWAII: LAND EXCHANGES

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FOREWORD

This is one of a number of preliminary reports or "working papers" stemming from a program of research on Hawaii's public lands. This research has been undertaken in response to a request by Hawaii's State Legislature that the Legislative Reference Bureau prepare a historical survey of public land management and policies of the federal government, state governments and Hawaii, with particular emphasis on a review and analysis of Hawaii's public land policies during the period 1893 to the present.

The first portion of the Legislature's request was met through publication of L.R.B. Report Number 5, a summary history of Public Land Policies of the United States and the Mainland States. Additional working papers already published or in preparation are designed to present a historical survey and analysis of Hawaii's public land policies, with a view to identifying the major objectives of land management, assessing their success or failure, and weighing them against the requirements and circumstances of contemporary Hawaii. These studies are based on the premise that public land policy is properly understood as long-range policy. The public land statutes now in force will materially affect Hawaii's future--just as the public land laws of the past have contributed importantly in shaping contemporary Hawaii. The present research program is designed to assist the many individuals and agencies, both public and private, concerned with and responsible for the formation and implementation of Hawaii's public land policies.

The execution of this study would not have been possible without the assistance of many individuals and agencies especially James Ferry, Paul Tajima, Mrs. Peggy R. Spencer, and Mrs. Laverne Tirrell of the Department of Land and Natural Resources; James Dunn, Miss Agnes Conrad and Tom Uyesugi of the Department of Accounting and General Services; and Mrs. Audrey Hawley of the Office of the Attorney General. Mrs. Hilda Jaffe of the Bureau of Social and Political Research, Michigan State University, edited the manuscript; and Thomas Tjerandsen assisted by checking and coding the source data. We are indebted to Russell Apple for permission to quote from his University of Hawaii thesis, "A History of Land Acquisition for Hawaii National Park." Many readers of the manuscript and numerous others assisted in ways too numerous to enumerate here, but none the less appreciated. Staff and financial assistance was provided by the All-University Research Committee of Michigan State University and by the Rockefeller Foundation. To those individuals and organizations here enumerated and the many others who have assisted us in the preparation of this study, we express our sincere appreciation.

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Tom Dinell
Director

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Chapter I

THE MONARCHY

Exchanges of publicly-owned land for privately-owned land, here generally termed "exchanges," have long constituted a significant element of Hawaii's public land policy.[1] Exchange practices have engendered considerable controversy, both within the legislature and the community, where questions have been posed regarding their soundness. These questions have given rise to occasional policy changes, with major amendments having been made over the years to the statutory sections governing exchanges.[2] This controversy has continued to the present time with amendments to the exchange provisions of Act 32 of 1962[3] having been introduced in every session of the state legislature during recent years.

The important place occupied by exchanges in Hawaii stands in marked contrast to their role in the public land policy of mainland states.[4] Yet this should occasion little surprise, for Hawaii's public land laws and practices differ in many important respects from those of the mainland states. These differences may be traced in part to historical considerations, for Hawaii was a monarchy until 1893--just 5 years before the Islands were annexed by the United States. An adequate understanding of exchanges is, then, impossible without at least a summary account of the historical background within which exchanges developed.

The Early Monarchy

Ownership of all of Hawaii's lands was vested in its monarchs until the mid-nineteenth century. It was not until the reign of Kamehameha III (1825-1854) that the pattern of quasi-feudal land holding was replaced by fee-simple land tenure. Kamehameha III made sweeping changes in the ancient practices of the regime, including that fundamental modification of the land-tenure system termed the Great Mahele (division). Under this division some 1,600,000 acres, or about two-fifths of the entire land area of the Islands, were distributed to the Hawaiian chiefs. The remainder was divided into "crown lands" (nearly a million acres) for the support of the royal family, public lands (approximately one and a half million acres) to support the operations of the government, and small grants (totaling some 30,000 acres) for the support of the commoners of the Kingdom.[5]

Inasmuch as the Mahele designated more than a third of Hawaii's land area as public lands, it was incumbent upon the government to make provision for the administration of this bountiful domain. This need was met initially by an Act of 1846 charging the Minister of the Interior with power to dispose of the public lands with the agreement of the privy council and "under sanction of the King."[6]

A considerable amount of public land was sold under this Act, and disposition was made in a variety of other ways, including exchanges. Unfortunately, inadequate records were kept of these early exchanges, but some understanding of their character may be gained by considering even these scanty materials. For example, a deed dated January 17, 1857 records the conveyance of a small but extremely valuable parcel of land situated near the site of the royal residence in Honolulu in exchange for one-half of the entire ahupuaa[7] of Pohakulua on the Island of Hawaii.[8] Other early exchanges resulted in the government securing land required for such purposes as street widening and other public improvements.

These illustrations suffice to indicate the general character of very early exchanges. Hawaii's monarchic government was free to engage in them as it pleased, unguided by specific statutory provisions, aside from the requirement that the Minister of the Interior secure prior approval of the King and privy council. Since land values outside of the city of Honolulu were generally very low, the acquisition through exchange of even small areas in the capitol city generally required the granting of extremely large areas elsewhere. These early exchanges appear to have been made in a rather casual fashion. There is no evidence of any effort on the part of the government to secure detailed appraisals of the parcels transferred, but neither is there reason to believe that either party was unduly benefited thereby.

The Late Monarchy

The period of the late monarchy, as defined in this study, extended for 23 years, concluding with the reigns of King Kalakaua and Queen Liliuokalani. During this period 29 exchanges were officially recorded.[9] One or two exchanges a year on the average were scattered through the first 20 years of this period, with the number rising to 5 exchanges a year in 1890 and 1891.

It is difficult to generalize about the specific purposes of these 29 exchanges, since the official records are incomplete on this score. On the basis of such information as is available, it appears that the government's most common objective in these exchanges was to secure land for the construction of new roads (6 exchanges), to improve existing roads (5 exchanges), and to provide school sites (4 exchanges). Other exchanges were negotiated to secure land for public buildings and to improve the water supply system.

The objectives of these exchanges come as no surprise, since Hawaii underwent its first sustained period of urban and commercial development during the closing period of the monarchy. The sugar industry had by then been established as the Islands' most important economic enterprise, and this contributed to the development of Honolulu in particular as a shipping, financial and commercial center. As the city grew, new roads were needed and many old ones required extensions and broadening. The relatively small bits of land required for the road improvement program were frequently acquired through exchanges with owners of adjoining property. Typically, these owners gave up a fraction of an acre in exchange for a like amount elsewhere. An attractive feature of exchanges for a land-rich but money-poor monarchy was that they required virtually no cash outlays. Only $54 was paid in cash by the government for the consummation of 29 exchanges in which 481 acres of land were given up to private parties. In return, the government received 503 acres of land and $5 in cash. Public works were thereby carried out with a minimal cash outlay for land acquisition.

These conclusions about exchanges during this era are reinforced by an examination of the nature of the land areas involved. In 19 instances parcels of urban land were exchanged; in 10 instances rural lands were swapped. There were no exchanges of urban for rural land recorded in this period. Inasmuch as land of comparable character was being swapped, and acreage was sharply limited, valuation was relatively easy. Hence, rigorous techniques of appraisal were probably unnecessary; in any event, there is almost no indication that detailed appraisals were made, nor is there any particular reason for thinking that either the government or private parties suffered as a result.

One other aspect of exchanges during this period should be noted in passing. It was during these last decades of the Hawaiian monarchy that foundations were laid for many of the important landowning

corporations, family-held estates and trusts, and landholding eleemosynary institutions which have continued to play an important part in land management in Hawaii to this day. For a better understanding of one aspect of their role in land management, the exchange transactions involving these groups have been tabulated and are presented in the discussion of each major period considered in this study.

During the latter period of the monarchy the single largest exchange, some 269 acres for 247 acres, was consummated between the government and W. G. Irwin & Company, Ltd. on the Big Island.[10] The only other exchange recorded for a corporation was a small one, as was a single exchange between the Bishop Estate and the government. There were 4 other exchanges involving other estates or eleemosynary institutions during this period.

On the basis of available data it may be concluded that exchanges were used in a basically sound and equitable manner for the advancement of necessary programs of public works during the last 23 years of the monarchy. The chief significance of the monarchic power to engage in exchanges was that it served to firmly establish the precedent for a practice which was to become an extremely significant element in Hawaii's public land policy shortly after the abrogation of the monarchy. The short-lived Republic of Hawaii enacted statutory provisions authorizing exchanges as part of the new public land code and similar statutes have remained on the books ever since.

Chapter II

THE REPUBLIC

Hawaii's monarchy was abrogated by the revolution of 1893, and a republic was established under the presidency of Sanford Dole. The new republic acquired title to all of the Islands' public lands, to which were added former crown lands which had been set aside for the support of the royal family by the Great Mahele.[1] President Dole realized that this huge public domain offered vast possibilities for development. He had long advocated land reform in Hawaii and under his direction a comprehensive program of land legislation was enacted by the Republic, including express provision for exchanges. Section 169 of the Civil Code of Hawaii, 1897, placed in the Minister of the Interior the

> . . . power to lease, sell or otherwise dispose of the public lands, and other property, in such manner as he may deem best for the protection of agriculture, and the general welfare of the Republic, subject, however, to such restrictions as may, from time to time, be expressly provided by law.

Section 201 provided that "Land Patents may be issued in exchange for deeds of private lands or by way of compromise upon the recommendation of the Commissioners [of public lands] and with the approval of the Executive Council without an auction sale. . . ." There was no precise indication in the Civil Code of the extent of the power of the Minister to engage in exchanges, or of any limitations upon it.

No exchanges took place during the first year of the Republic, but 3 were made in 1894, and the rate of exchanges accelerated rapidly thereafter. Nine exchanges were made in 1895, 20 in 1896, 33 in 1897, and 11 in 1898, the year when Hawaii was annexed by the United States.

As the number of exchanges increased, there was some broadening of the purposes for which the government entered into these transactions. The road building and improvement program continued to be the chief reason for exchanges on both Oahu and the Neighbor Islands: a total of 58 of the 76 exchanges were made for that purpose. Two exchanges were made to secure boundary settlements, and 1 apiece for the acquisition of a school site, a park site, and for water control or distribution. The continued emphasis on road building reflects Honolulu's continued growth during this period and the rapid development of plantation agriculture throughout the Island chain.

Fifty-five of the exchanges during this period took place on Oahu, 19 on the Big Island, and 1 on Kauai. The remaining transaction involved a swap of land on Oahu for land on a Neighbor Island, a harbinger of a type of exchange which was to become very common a few years later.

There were a number of important differences in the character of exchanges under the Republic, as contrasted to the monarchy. This is suggested by the following summary data on exchanges authorized by the Republic.

	Received by Government	Received by Private Parties
Acres	87	168
Cash Payments	$2,439	$5,158

While totals of acreage and cash payments received by the government were each approximately half of the amounts received by private parties, there is no necessary implication that the public therefore fared badly in these exchanges, and the reader is expressly warned against drawing any such inference. The public purposes served by these exchanges may have fully justified this imbalance. Whether this was the case and whether any particular exchanges were sound can be determined only by careful examination of all aspects of each transaction. A few of the largest exchanges have been scrutinized in such a fashion in this study, but it would have been impossible to have done so with 1,400 transactions, nor would any useful purpose have been served thereby. For purposes of this study, namely, general exchange policy, it has been sufficient to analyze and present findings in general categories.

A shift in exchange policy took place under the Republic. The average size increased somewhat and contributed to the difficulty of keeping exchanges equal in acreage and value. Thus, in the 57 exchanges of urban land, the government acquired some 60 acres and cash payments totaling $2,437, while granting 27 acres and making cash payments of $4,729. The 10 swaps of rural land were nearly equal in these respects, but the single exchange of urban for rural land secured a mere one-tenth of an acre of urban land for the government for 93 acres of rural land. Another development in this period was the exchange of urban land for land of marginal utility,

a type of exchange which quickly led to questionable practices and ultimately to the critical reexamination of exchange policy. Although 8 such exchanges took place under the Republic, they were not of great size, nor is sufficient information available on them at this time to permit detailed examination.

Exchanges involving corporations and estates played no larger role during the Republic than they did in the latter period of the monarchy. The government undertook 4 exchanges with corporations which involved a total of about 7 acres on both sides. The Bishop Estate concluded 2 exchanges comprising less than an acre all told, while an additional 2 exchanges with other estates involved only 2 acres apiece.

To conclude, while the frequency of exchanges increased sharply under Hawaii's short-lived Republic, the practice continued reasonable and moderate, apparently benefiting both the government and the private parties. There is no evidence that the use of exchanges during this period was critically questioned or that it gave rise to controversy regarding its soundness as an instrument of public land policy.

Chapter III

THE TRANSITION PERIOD FROM REPUBLIC TO TERRITORY

The Republic of Hawaii relinquished its sovereignty on July 7, 1898, and was annexed to the United States under the terms of a joint resolution of Congress.[1] Included in the annexation agreement were many important provisions pertaining to the ownership and control of Hawaii's public lands. Under the terms of this joint resolution of annexation, Hawaii ceded and transferred to the United States "the absolute fee and ownership of all public, government or crown lands, public buildings . . . and all other public property of every kind and description belonging to the Government of the Hawaiian Islands. . . ." In return for this princely heritage of public lands, the United States departed from its traditional land policies and authorized the new Territory to continue to exercise administrative control over the public lands. Specifically, the joint resolution of annexation provided 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; Provided, That all revenue from or proceeds of the same, except as regards such part thereof as may be used or occupied for the civil, military, or naval purposes of the United States, or may be assigned for the use of the local government, shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes.[2]

One effect of these provisions of July 7, 1898, was to suspend the operation of at least some portion of the statutes by which the Islands' public lands had been managed until such time as Congress enacted "special laws for their management and disposition," as noted in the joint resolution. This was not done for over a year. As a consequence, the legality of certain public land transactions, including exchanges, which took place during this interim period were questioned. Congress took cognizance of this problem by explicitly providing in section 73 of the Organic Act that:

> . . . subject to the approval of the President, all sales, grants, leases and other dispositions [including exchanges] of the public domain and agreements concerning the same . . . 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 ninety-nine, are hereby ratified and confirmed.

The most noteworthy aspects of exchanges in this transition period is that they were few in number and markedly limited in extent.[3] Data on the 16 exchanges approved during this period may be summarized as follows:

	Received by Government	Received by Private Parties
Acres	19.9	12.8
Cash Payments	$510	$162

While these figures are in notable contrast to the high frequency of exchanges during the final years of the Republic, a sharp decline might reasonably have been expected. Public land transactions were surrounded by an aura of uncertainty, and were also subject to the closest scrutiny by the United States Department of the Interior. This scrutiny appears to have been designed to insure, among other things, that each proposed exchange would directly serve an immediate public purpose.

Chapter IV

THE TERRITORIAL PERIOD

The Organic Act for the governance of Hawaii became effective on June 14, 1900, and within two years a remarkable change in Hawaii's land exchange practices had taken place. It has been observed that the rate of exchanges increased rapidly under the Republic and, after a lull during the transition period, began again to climb sharply during the early Territorial period. From 6 exchanges recorded in 1900, the number rose to 9 in 1901, 33 in 1902, and 22 in 1903. During the first 11 years of the Territorial period there were 169 exchanges, an average of over 15 exchanges a year, as contrasted to approximately 10 per year during the period 1887-1899 and only 3 per year during the period 1911-1916.

The Early Territorial Period

The chief purpose served by exchanges during the early Territorial period continued to be that of providing land for road construction. There were 111 exchanges made for this purpose through which the government secured about 100 acres. Twenty-two exchanges secured 44 acres required for school sites, with 2 exchanges made to secure sites for other public buildings. Four exchanges secured 16 acres of quarries, reflecting the need for the special stone used extensively in those days for street curbs and building foundations. There were 2 exchanges for water supply purposes, and single exchanges for acquisition of a cemetery site, harbor development and boundary settlement. A single, major exchange extended the forest reserve and watershed area on Oahu.[1] In addition, 18 exchanges were made without any indication of the public purposes, if any, which they were designed to serve.

The striking increases in the amounts of land required for public purposes, especially on Oahu, testify to Hawaii's rapid development in the era following annexation. The swift growth characteristic of this period has been succinctly summed up in a history of one of the great sugar factors which contributed so importantly to the development of the Islands' economy:

> Assured of a stable government, capital was less timid, and an opportunity for advancement and growth was afforded. . . .
>
> In 1898, as a result of the Spanish-American War, a period of prosperity for business and the sugar industry set in. Cuban sugars were temporarily eliminated from the market, to the benefit of Hawaii. . . . These good times caused additional planting and the starting of new plantations. . . .
>
> In addition to high sugar prices, annexation stabilized Hawaiian investments. Large sums of money were sent from the mainland for investment in Hawaiian corporations, particularly sugar plantations.[2]

This period of economic prosperity and the booming expansion of the sugar industry also encouraged the rapid growth of such subsidiary industries as railroading, shipping, mill machinery manufacture, fertilizer production, and still others. As always, it was the political, financial and shipping capital of Honolulu whose development received the greatest impetus. The immediate post-annexation period invites comparison with the post-statehood period in its effects on Honolulu, for then, as now, the city began to burst at the seams. In every quarter there was feverish construction: commercial, residential and civic. As traffic increased and street railways were installed, the old roads and lanes had to be considerably widened and improved and frequently extended into formerly unsettled areas.

These developments generated considerable demand for exchanges, pressure which was increased by the fact that the financial resources of the new Territorial government were sorely taxed during this period. Furthermore, the borrowing power of the Territory was severely limited by the Organic Act.[3] These factors, along with the presence of relatively abundant public lands, pointed to exchanges as the most convenient instrument for acquiring privately-owned areas required for public purposes.

Analysis of the minutes of Governor Dole's Executive Council for the period 1901-1903, reveals that exchanges were among the most frequent items of business. At many meetings it was necessary to consider 2 or 3 exchanges, some of them involving extensive acreages of considerable value. Inasmuch as the minutes of these meetings were sketchy, it is impossible to determine how thoroughly the proposed exchanges were considered, but the impression is that discussion was generally perfunctory, and that Governor Dole and the Council depended primarily on others to determine the suitability of the terms of most of them. It is quite evident that many of the proposed exchanges comprised considerable areas or multiple parcels, without

necessary reference to the public purposes designed to be served. Since this represented a significant departure in exchange policy, the principles at work must be illustrated by at least one example.

The Esplanade Exchange and Its Significance

At the Executive Council meeting of September 2, 1902, the Commissioner of Public Lands,

> Mr. J. Boyd brought up the proposition of exchange with Mr. J. A. McCandless for lots on the Esplanade [the waterfront area] and submitted the following for the exchange: Club stables property $15,000; Love lot $5,000; Mendonca property $6,000; Cartwright lot $1,000; Kaumakapili Church property $1,000; opening Kuakini Street $2,000; in all $30,000. These to be exchanged for four lots on the Esplanade valued at $30,000. It was moved that the proposition as set forth above by Mr. Boyd for an exchange between Mr. McCandless and the Govt. be authorized. Carried.[4]

Except for the mention of the proposed opening of Kuakini Street it does not appear that any of these parcels were immediately required for public purposes, nor is further information on this score provided by the minutes of the meeting authorizing the exchange. This did not matter in any event, since it turned out that Mr. McCandless did not own the properties he was offering in exchange for the government's valuable Esplanade lots. It was his expectation, it appears, to acquire the promised parcels solely for the purpose of making an exchange, but he was unable to do so. Thus, at the meeting of the Executive Council on February 3, 1903, some 5 months after the exchange had been approved, we find the Superintendent of Public Works explaining the difficulty in which Mr. McCandless found himself:

> Mr. Cooper brought up a patent which had been made out to Mr. J. A. McCandless for 4 lots on the Esplanade valued at $30,000 for an exchange arranged by Mr. Boyd and on record in the minutes of the meeting of Sept. 2nd, 1902. Mr. Cooper stated that if the matter was agreeable to the meeting he would make out a new exchange to cover this this patent. It was moved that Mr. Cooper be authorized to bring in a new proposition for exchange with Mr. McCandless for these lots on the Esplanade, the former deal having fallen through as the lands agreed upon could not be obtained. Carried.

It is interesting that Mr. McCandless received a land patent to government land before he delivered title to the properties which the government was avowedly seeking for public purposes. But if the government were unperturbed by this singular situation, there was little reason for Mr. McCandless to be upset. Undaunted, he proceeded to put together a new package, and at the Executive Council meeting of February 25, 1903, "Mr. Cooper reported a new basis for the exchange of the lots on the Esplanade with J. A. McCandless. . . ." The new arrangement consisted of another package of 5 properties for which Mr. McCandless had evidently succeeded in securing purchase options. Of the 5, only 1 had been included in his original proposition, but the total value was estimated at $29,755. "This met with the approval of the members of the meeting and it was moved that the report of the Superintendent of Public Works . . . be adopted."

Leaving aside the extraordinarily casual way in which this public business was conducted, two of its aspects require discussion. In the first place, this type of exchange was a major departure from the former practice of securing a specific piece of private land directly from its owner for a specific public need. McCandless, as discussed above, did not at the time of the exchange own any of the private properties which he was offering to the government. Nor was there any indication at any point in the discussions of the Executive Council of the public purpose intended to be served by the exchange.

These considerations point to the second and more radical departure which had been made from established exchange policy. The available evidence forces one to conclude that exchanges had come to be used as an instrument of land speculation for private parties, while the government had come to utilize exchanges in place of soundly established modes of land disposition. This new policy lent itself to manipulation, "inside deals," and other forms of favoritism. In the case of the valuable Esplanade lands, for example, there is no indication why they were not offered for sale or lease to all interested parties at public auction, as the law required. By disposing of this property through an exchange, the government effectively restricted the opportunities of other interested parties. Whatever the reason for the Executive Council's extraordinary action, its approval of exchange transactions such as this constituted a dangerous departure from traditional exchange policy.

The Esplanade exchange has been emphasized because it documents the ominous changes in exchange practices which soon gave rise to widespread misgivings about the soundness of exchanges as a part of

public land policy. These suspicions have persisted, thereby coloring the discussion of public land policy over the years. They have led Hawaii's Territorial and State Legislatures to limit the scope of exchanges severely. These limits may have been too harsh, and it is possible that they should be modified. It is, therefore, all the more essential to closely examine the most questionable applications of exchange policy. Consideration of these excesses may assist contemporary policy-makers by "clearing the air," thus helping them and others in the community to comprehend the background of the long-standing distrust of exchanges. In the light of such an examination it may be possible objectively to determine whether such fears remain justified.

The History of the Lanai Exchange

The most notorious exchange which took place during the early Territorial period, and which contributed most to the widespread distrust of exchange policy, was one which--at a single stroke--disposed of some 48,000 acres of government land on the Island of Lanai in 1907. Its background can be traced to the bankruptcy of the Manalei Sugar Company which had failed in its attempt to raise sugar cane on Lanai. Its lands were put up for bid at a foreclosure sale. The successful bidder was Charles Gay, who envisioned the development of a ranch encompassing the entire island. An investment of roughly $160,000 secured for Gay all the fee-simple lands of the island as well as a leasehold interest in the rich government lands on which were located the only major sources of fresh water. Having secured control of about half of Lanai, Gay made limited investments in improvements and initiated large-scale ranching operations. But he did not prosper. Hardly had he launched his enterprise, when Lanai was afflicted by one of its periodic droughts.[5] Gay's sheep died by the thousands, and he found it difficult to borrow additional capital under the circumstances. Confronted by these problems, Gay approached the Governor of the Territory, Sanford Dole, and, as recounted in his own words:

> I asked him if there was not some way that could be gone about for my getting the Government lands [of Lanai]. I showed him on the map how the Government lands and the private lands were dividing each other . . . and that it was very hard for me to do anything. With the leases running out, I did not feel it was a safe investment to put a lot of money into Government lands laying pipes, etc., when I was not sure of getting them again; somebody might step in and take my improvements. After speaking to Governor Dole several times, he agreed to come up and see Lanai, and . . . I took him over the lands and showed him all the lands and how they were sub-divided, and he agreed--he said before he would

> give any decision he thought there ought to be a survey of the island made. . . . Before the survey was completed, Governor Dole resigned, and Governor Carter became Governor . . . and I went to see him about it . . . and he promised to come up and see.[6]

Gay's persistent efforts finally brought results. He was informed by the Commissioner of Public Lands that the Territory had been considering the possibility of acquiring the Bishop Wharves. Although these wharves were owned by the Bishop Estate, the possibility of an exchange patterned after the McCandless Esplanade transaction was suggested. This would have required Gay to purchase from the Bishop Estate the wharf property, which he would then have offered to the government in exchange for the Lanai lands. This line of negotiations was pursued, but it was abandoned after Gay "made inquiries" and learned from the Bishop Estate that "the lowest figure they would take would be about $135,000, which I thought was too large for the Lanai lands. I dropped it"[7]--but not for long. Seeking to develop an alternative proposition, Gay again approached the Commissioner of Public Lands, James W. Pratt, through his attorney, H. E. Cooper. Cooper discovered that the Land Commissioner "was still holding on to his old price of $130,000.00. That was out of the question so far as my client was concerned."[8]

Shortly thereafter, the government had its Lanai lands reappraised, and the Land Commissioner then asked the Superintendent of Public Schools, W. H. Babbitt, to draw up a list of lands which would be suitable for school sites and would have a total value of about $100,000.00--the reduced valuation which the government had established on its Lanai lands.[9]

When Gay's attorney was informed of these further developments, he once again formally approached the Land Commissioner, and asked him

> . . . if there were any lands which might be required by the Government that might be acceptable in exchange for Lanai. . . . He handed me . . . [a] letter of Mr. Babbitt, together with the maps, descriptions of the land, assessed values. . . . I saw Babbitt and asked him what his first choice was, and he told me what he wanted, and then I asked Mr. Pratt if he would accept the land of Kalawahine, in exchange. . . .
>
> He said he could not make any promises as to what lands he would accept, but if I wished to get together a list of lands that we were willing to give, and would make a written offer, that might be considered. I secured a large number of options, because I wanted to have more than one string to my bow, or, more than one line to offer. . . .[10]

Among the options secured by Gay was one for the purchase of 293.5 acres of land on Tantalus at $54,000 plus others for the purchase of some 3 acres in Honolulu at $39,000. The Land Commissioner indicated his willingness to accept these lands in exchange for the government's Lanai holdings of nearly 48,000 acres. In addition, the government agreed to release Gay from further payments on the leases of the Lanai lands which he was to acquire through exchange. Finally, through this exchange, Gay was to gain sole and undisputed possession to the water rights which were essential to the development of a major ranching enterprise on Lanai.

This agreement finalized the exchange for all practical purposes, but before a deed to the land was executed, Governor Carter thought it prudent to call a meeting at his office to provide interested parties with an opportunity to express their opinions. The meeting was attended by about 20 people, including those who were parties to the exchange. A substantial part of the opinion recorded during the meeting consisted of strongly stated arguments in opposition to the exchange. Nevertheless, the Governor concluded that "the weight of Public opinion expressed at the meeting . . . appear to me to favor an exchange," and he therefore directed the Commissioner of Public Lands "to proceed with the next step in this matter, viz.: to ascertain whether any responsible party in the Territory will offer the upset price or a higher figure. . . ."[11] Such a notice was immediately published, specifying a period of 2 weeks during which the Commissioner indicated his willingness "to receive offers of other lands that are equal in value to those of Lanai. . . ."[12] The official notice failed to mention that Mr. Gay held leases on the government lands which were to be exchanged, a fact which effectively precluded bidding by other parties, even if they had been able to work up an alternative deal during the two-week period. No other bids being received, the government officially accepted Mr. Gay's proposition.

At this juncture one of the most vociferous critics of Governor Carter's land policies, Lincoln L. McCandless, secured an injunction from the Territorial Court for the First Circuit to prevent the exchange. The Commissioner of Public Lands responded by seeking to have the injunction dissolved on the grounds that the court was without jurisdiction to enforce an injunction which interfered with the office of the Governor. Judge J. T. DeBolt, relying on Castle v. Kapena[13] held that a taxpayer has the right to seek an injunction in order "to prevent a public officer from doing what is an injury to the public good."[14] Turning to the substantive issue, the judge found the Lanai exchange illegal in that it violated the "policy and

spirit" of the public land laws, which were designed to "limit the transfer of any land in parcels of over 1,000 acres. The same policy and spirit should pervade and control . . ."[15] land exchanges, he concluded. He therefore refused to dissolve the injunction.

On appeal to the Supreme Court,[16] the majority of the court in a 2 - 1 held that under the Organic Act, the power to exchange public for private lands was unlimited as to the land to be given in exchange.[17] Justice Wilder dissented on the grounds that the legislature had clearly intended to limit exchanges to a maximum size of 1,000 acres. He argued that if the Lanai exchange were upheld, then

> it is within the power of the commissioner of public lands and the governor to nullify the whole purpose and object of the land act of 1895 by exchanging all of the public domain under that act for, say, building sites in the city of Honolulu or other lands of equal or greater value, but unavailable and undesirable for the purposes of the act. If this exchange is permissible, any exchange is permissible.[18]

The injunction of the lower court was dissolved and the Lanai exchange concluded, despite the fact that McCandless attempted to carry an appeal "all the way to the Supreme Court of the United States."[19]

The Lanai Exchange and Public Land Policy

Opposition to the Lanai exchange was not confined to the courts. There was a barrage of criticism from critics of the administration and leaders of opposition political parties, who contended that the exchange was a giveaway of valuable lands and a blow to homesteading. In retrospect, it appears that portions of this criticism were well founded, but the concern here is not with the wisdom of particular exchanges, but rather the extent to which they illustrate basic problems inherent in the development of sound exchange policy. The major questions raised by the Lanai exchange were threefold.

In the first place, this exchange, like the Esplanade exchange, was a drastic departure from the traditional policy of using exchanges to secure land for specific public purposes. As has been observed, the Superintendent of Public Education had furnished a list of school sites required by the Territory in anticipation of the Lanai exchange,[20] but his recommendations were largely ignored.

This points to the second major consideration. The Lanai exchange served essentially as a guise for the sale of the government's acreage on that island. The Territorial government utilized this device during these years to escape the severe restrictions imposed on sales and leases of public lands by the Organic Act of 1900, which limited sales to 1,000 acres at public auction, and leases to a maximum of 5 years.[21] By radically broadening the use of exchanges, the Territorial government was partially able to evade these restrictions and to continue to dispose of choice public lands for large-scale agricultural enterprises. These innovations had the unexpected effect of permanently stigmatizing exchanges, which have since been viewed with suspicion by many people.

The use of exchanges as a surreptitious device for land disposition made it difficult for the government to obtain the best possible price for its holdings, since widespread bidding was not possible under these circumstances. Again, the Lanai exchange is revealing, for contemporary estimates of the value of the government's holdings range from a low of about $50,000[22] to a high of nearly $250,000,[23] the latter valuation having been made by Jared Smith, federal agent in charge of the United States Agricultural Station in Honolulu. Smith's valuation received substantial confirmation less than 3 years after the exchange, for in 1909 Gay conveyed this land to William Irwin who, in turn, sold it for $325,000 in 1910.[24] After discounting the value of the improvements made during the ensuing 3 years, the fact remains that there was more than a twofold increase in price.[25] This raises the question whether the $93,000 accepted by the government represented anything close to the market value of the Lanai lands in 1907. Inasmuch as direct sale through competitive bidding was not possible at that time under the terms of the Organic Act, this question must remain unanswered. But the government's action in alienating these lands through exchange was all the more questionable since there was no evident need to dispose of them.

In this respect, the Lanai exchange is revealing with regard to yet another aspect of Territorial land policy during this period: the policy of alienating public lands rather than leasing them. To be sure, the 5-year limitation on new leases imposed by the Organic Act was a serious detriment to the development of a sound leasehold policy, but the Lanai lands disposed of to Gay were all under valid government leases which had from 2 to 19 years to run.[26] By alienating these lands the government prevented the public from realizing both current income and from sharing in the potential capital increases in the value of these lands. This argument was strongly and repeatedly urged by witnesses at Governor Carter's meeting, as

well as during the subsequent legislative investigation of the exchange. It was argued that Lanai's lands had a variety of potential uses,[27] especially for pineapple culture. These opinions received some confirmation just 5 years after the exchange, when the then owners gave an option to Libby, McNeil and Libby for a lease of 2,000 to 5,000 acres of Lanai land at $5 an acre, with all improvements to be made by the pineapple company. There was abundant evidence in 1907 that it would have been sound public land policy to retain ownership of the Lanai lands, as well as other public lands which were being disposed of in large blocks. Such policy could have realized substantial current income from leasing, while preserving for the general public the possibilities inherent in their future development.[28]

Inasmuch as this issue of sale versus leasing of public lands continues extremely relevant to the present day, further comment is in order. Some proponents of the Lanai exchange contended that unless they were disposed of, the island would remain undeveloped and go to waste, the assumption being that private capital would not be willing to invest on a leasehold basis. Although this argument has been much reiterated, it appears to have little validity, especially in Hawaii. Many of Hawaii's major agricultural enterprises have been based on leaseholds of government or private lands from their very beginnings. For that matter, it may be argued that the leasehold system fostered their development, since the relatively low annual lease payments left available capital for mill construction and other improvements. In addition, leases could be used as a form of equity for raising capital, since lease rights could revert to a lender just as fee rights could.

The Lanai exchange invites examination of still another aspect of public land policy. Opposition to the exchange on the part of many stemmed from adherence to the principle that the Territory should concern itself with the encouragement of family farming throughout the Islands, particularly under the several forms of homesteading provided for by the public land laws of the Republic and reaffirmed by the U. S. Congress through the Organic Act.

Lanai, it is true, was relatively undeveloped in 1907, and any program to promote small-scale ranching and family farm agriculture would have required the investment of hundreds of thousands of dollars in water development, road construction, harbor improvements and the like. This would necessarily have been a long-term undertaking, with the government investing receipts from lease rentals in further improvements. While such a program might not have been

feasible in 1907, it would have been possible at a latter date, had the government retained title to its lands and water rights. The government might then have realized considerable, steady returns through leasing 5,000 to 10,000 acres of high quality pineapple lands, while developing additional tens of thousands of acres for ranching and perhaps diversified agriculture. The close cooperation of private and public enterprise has long been characteristic of Hawaii's agricultural economy in many spheres, and such a cooperative development of Lanai's potential would by no means have been a new departure in public policy.

That these are not merely ex post facto speculations based on hindsight is evidenced by testimony taken by the special committee of Hawaii's House of Representatives which investigated the Lanai exchange. Jared Smith, among others, developed these possibilities in considerable detail, contending that for ranching purposes alone the government lands of Lanai would be suitable for settlement by at least 40 families.[29] Generalizing his argument in support of using public lands for family farming, Smith argued at length against

> . . . the sale or exchange or barter of any large tract of land, whether it be Lanai or whether it be remnants so-called within the bodies of the plantations, whether it be agricultural land or grazing land.[30]

Smith's position was supported by Lincoln McCandless, who expressed himself as

> . . . opposed to turning this land over to one man. I do not think if we are going to build up an American . . . community, that we can do it with one man holding 49,000 acres of land and owning at present 40,000 acres. . . . Mr. Gay states there are 100 Natives on the Island. They principally exist on very small kuleanas. Now if there are 100 natives existing on Lanai . . . how many people could exist on the Island if it was cut up into holdings of three or four hundred acres. . . . If the people cannot live there [under present conditions], I think it is the duty of the Legislature to help them live there. That is what the United States Government is doing. I think it would pay the Government, rather than let that Island be depopulated, to spend a few thousand dollars so that it could be populated. We are all going to live in these Islands.[31]

The view that Lanai should be homesteaded received additional support from the organizer of that Island's former sugar plantation, who argued that

> . . . the Government should use every measure possible to open up land for settlement; and . . . that the Government should follow that scheme throughout the islands, that is, as rapidly as leases are expiring to

> these large plantations that they should not be renewed, that the Government should attempt by planting forests to conserve the water supply, and let the land out to settlement, so that we can build up a population that will be of ultimate benefit to the country and take out these large holdings. . . .
>
> I do not believe that the prosperity of this country will ever come until we have small land holders and contribute to the welfare of all.[32]

Other appeals were made for homesteading Lanai, one argument being based on the interesting observation that Territorial immigration policies were being modified to attract to the Islands people well suited to family farming and ranching. This position was presented by George Markam, leader of an opposition political party, and a vociferous critic of Governor Dole's and Carter's land policies. Said Markam:

> Little by little the public domain is going into the hands of the few. Now, as President Roosevelt has sent Commissioner Sargent here to bring in these Portuguese, why cannot we wait and not dispose of this land, but give it to those that are now coming in. . . . Hold on to the land for a few years, because when you dispose of it, you will never get it back. . . .[33]

These arguments for the retention by the government of its Lanai lands carried little weight. This was not surprising, for Hawaii's early Territorial period was characterized by the consolidation of landholdings by both individuals and corporations. Still, the Lanai exchange added to the increasingly effective protest against abuse of land exchanges. A special session of the Territorial Legislature convened by Governor Frear in 1909 was specifically concerned with revision of the Territory's public land laws, and special attention was devoted to limiting the size of land exchanges. The legislature recommended to the United States Congress that acreage and value of exchanges be sharply restricted. Congress enacted a new exchange statute in 1910 which provided that:

> No sale of land for other than homestead purposes except as herein provided, and no exchange by which the Territory shall convey lands exceeding either <u>forty acres in area</u> or <u>five thousand dollars in value</u> shall be made. . . . Provided further, that no exchange of government lands shall hereafter be made without the approval of <u>two-thirds of the members of [the board of public lands]</u> . . . and no such exchange shall be made except to acquire lands directly for public uses.[34]

To summarize: it is evident that exchange policy during the early Territorial period differed markedly from the policy of limited, sharply circumscribed exchanges characteristic of the late monarchy and the transition period following the monarchy prior to promulgation of the Organic Act. During the period 1900-1910, the government entered into 162 exchanges through which it received 1,790 acres and $17,181 in cash for 62,584 acres and $6,578 in cash. While exchanges were utilized extensively during this period for traditionally established and completely legitimate purposes, they were also used as a device to escape the Organic Act's limitations on sales and leases of public lands, thereby encouraging the spirit of land manipulation and speculation which was rampant at that time.

The Late Territorial Period

A major objective of the 1910 amendments to Hawaii's public land laws was to curb excesses in exchanges by reducing their size. The efficacy of the new exchange provisions in this respect is revealed by the following comparison. The 20 exchanges made in 1910 under the old statutes secured 63 acres for the Territory in exchange for 1,285 acres. By contrast, the 6 exchanges concluded in 1911 secured 5 acres for the Territory in exchange for 8 acres. The new public land laws also served to sharply reduce the number of exchanges. Only 1 was made in 1913 and 1 in 1914. Thereafter, exchanges took place with greater frequency, but acreages continued generally small, except for exchanges authorized by the U. S. Congress for the acquisition of Hawaii's national parks and other special purposes.

During the 52-year period, 1911-1962, nearly 1,200 exchanges were made, an average of about 23 a year. The purposes served by these exchanges are summarized in the following tabulation:

Purpose of Exchange	Number
Construction of new roads	341
Road extension, widening and related improvements	324
Road realignment and relocation	131
School sites	108
Parks	71
Boundary settlements	35
Public building sites	32
Flood control	26
Reclamation and development	15

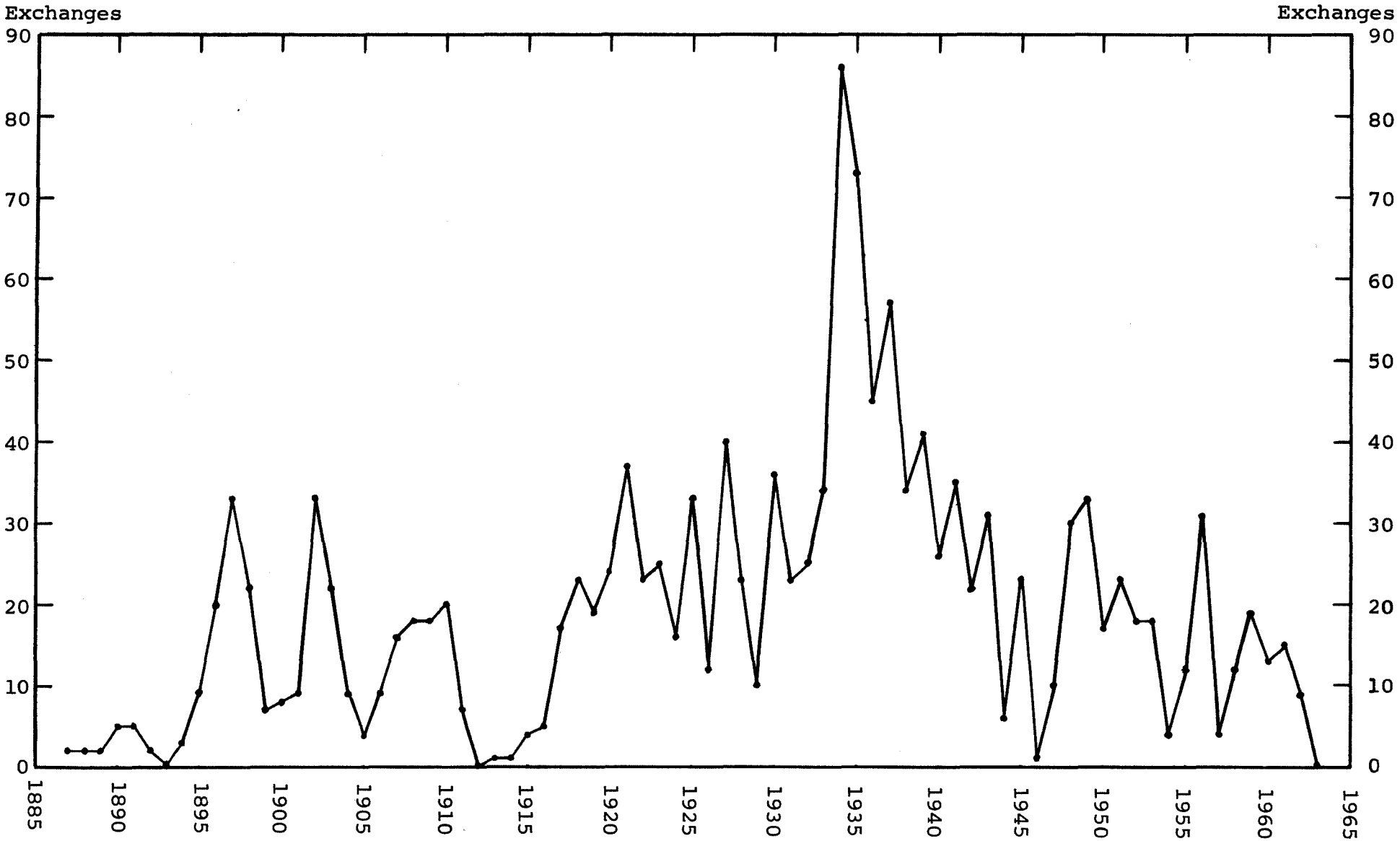
Forest reserves	11
Airports	10
Harbors	9
Cemeteries	7
Defense	7
Railroads	2
Quarries	2
Purpose unstated in official records	65
GRAND TOTAL	1,196

In contrasting the purposes served by exchanges during the early and late Territorial periods, it is evident that road construction and improvement programs were paramount in both eras. Approximately three-fourths of all exchanges made during the late Territorial period were for this purpose. Next in order during both periods was the acquisition of sites for schools and for other public buildings. During the late Territorial period much greater use was made of exchanges for the acquisition of park sites, forest reserves, flood control, and reclamation projects. Exchanges were also utilized extensively during the latter period for boundary settlement and defense installations. It was only in the late Territorial period, of course, that exchanges were used to secure land for airport development.

In conclusion, it can be said that the 1910 amendments to the public land laws were largely effective in preventing many of the kinds of abuses to which exchanges were subject during the early Territorial period. There was, however, a continuation of policies of dubious soundness, such as the practice of disposing of extensive acreages on the Neighbor Islands in exchange for small tracts on Oahu. This practice presents but one aspect of the problem inherent in the exchange of land areas whose characteristics differ importantly. These problems may be better appreciated by considering the overall characteristics of all land exchanges effected during the entire period, 1900-1964, as presented in the following chapter.

FIGURE 1

LAND EXCHANGES PER YEAR: 1887-1963



Chapter V

THE OVERALL CHARACTER OF EXCHANGES: 1900-1962[1]

An overview of the leading characteristics of exchanges is necessary to provide relevant criteria for the evaluation of the part exchanges have played in Hawaii's public land policy. This overview must necessarily include consideration of such characteristics as the purposes for which exchanges have been made, types of land which have been swapped and other related factors which will be dealt with in this chapter.

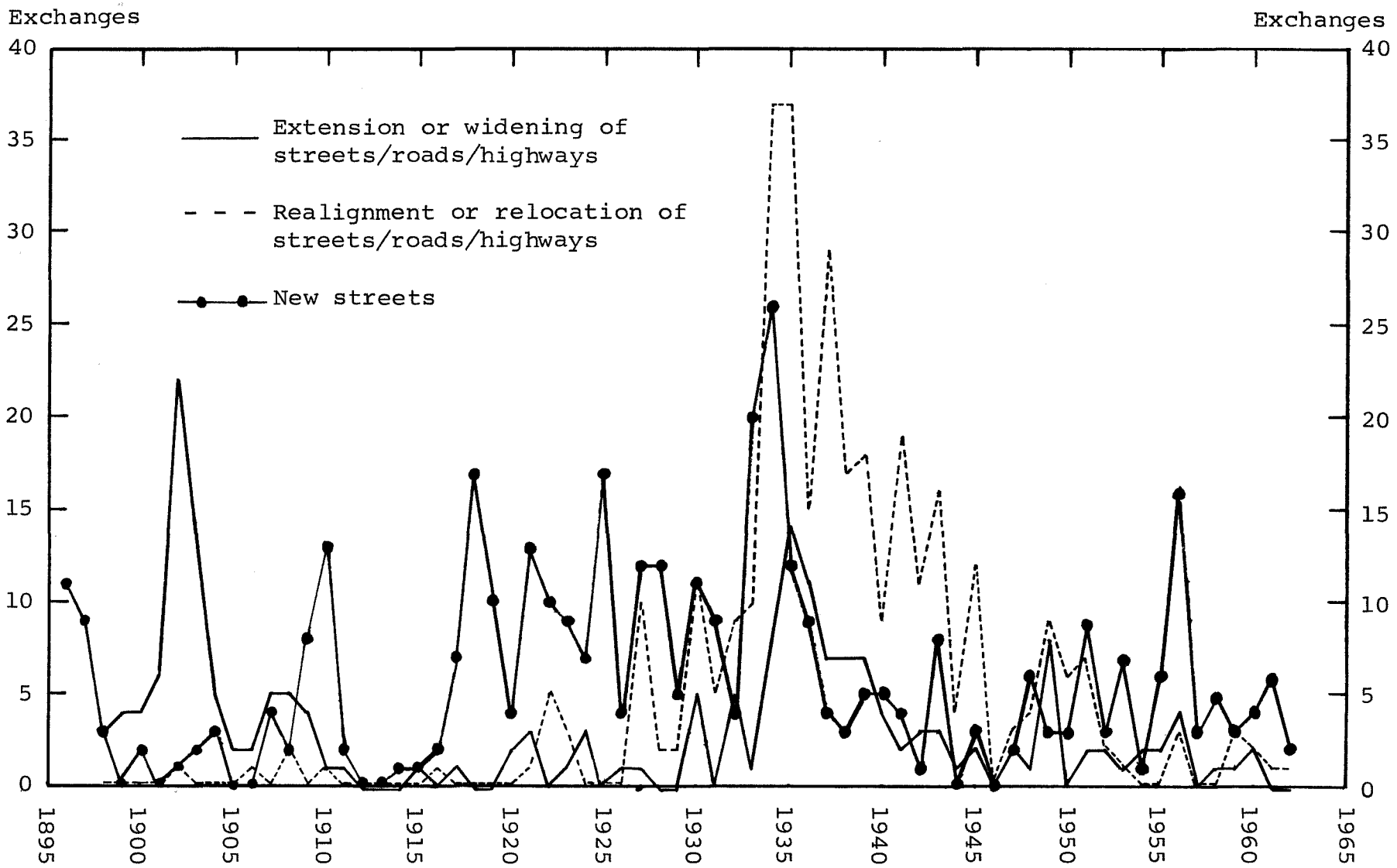
Purposes for Which the Government Acquired Land Through Exchange

Exchanges have ranged from a high of 86 concluded in 1934 to a low of 0 in 1963 and 1964, as the data in Figure 1 reveal. These wide variations may be better understood through consideration of Figure 2 (p. 26), which depicts the number of exchanges made annually for all types of street and highway improvements. As noted earlier, a major road construction program was undertaken during the early Territorial period. These improvements served to satisfy the Territory's transportation needs until the rapid increase in the use of automobiles and trucks, beginning in the 1920's, necessitated new construction programs. Hawaii's unique role during the Second World War forced a continuation of these programs even under wartime conditions. After the war there was another upsurge in road building as the Islands' railroad systems gave way to commercial trucking.

The use of exchanges for the acquisition of school sites and other public building sites also shows marked fluctuations, as is revealed by Figure 3 (p. 28). There was a peak of activity during the early Territorial period, as with road construction programs, but the 1910 amendments to the public land laws virtually ended the use of exchanges for these purposes until the First World War. Thereafter exchanges were used very extensively until the mid-1920's. They were again widely used during the New Deal period, when federal programs encouraged and facilitated such construction. Subsequently, exchanges were used only sporadically, a phenomenon which is explained in part by increasing adherence to the view that condemnation procedures should be used to acquire land for such purposes.

FIGURE 2

NUMBER OF EXCHANGES ANNUALLY FOR NEW STREETS, STREET EXTENSIONS, STREET RELOCATION: 1898-1962



The overall purposes for which exchanges were made during the period 1900-1962 is depicted in Figures 4 and 5 (pp. 30 & 32). The first of these pie charts depicts the percentage of the total number of all exchanges entered into by the government during this period for each of 17 public purposes as well as for unstated purposes. This pie chart emphasizes the fact that over 65 per cent of all exchanges were entered into by the government for road improvement. Exchanges for the acquisition of school sites constitute nearly 10 per cent of the total, and exchanges for park areas over 5 per cent. None of the exchanges for other single purposes constitutes more than 3 per cent of the total.

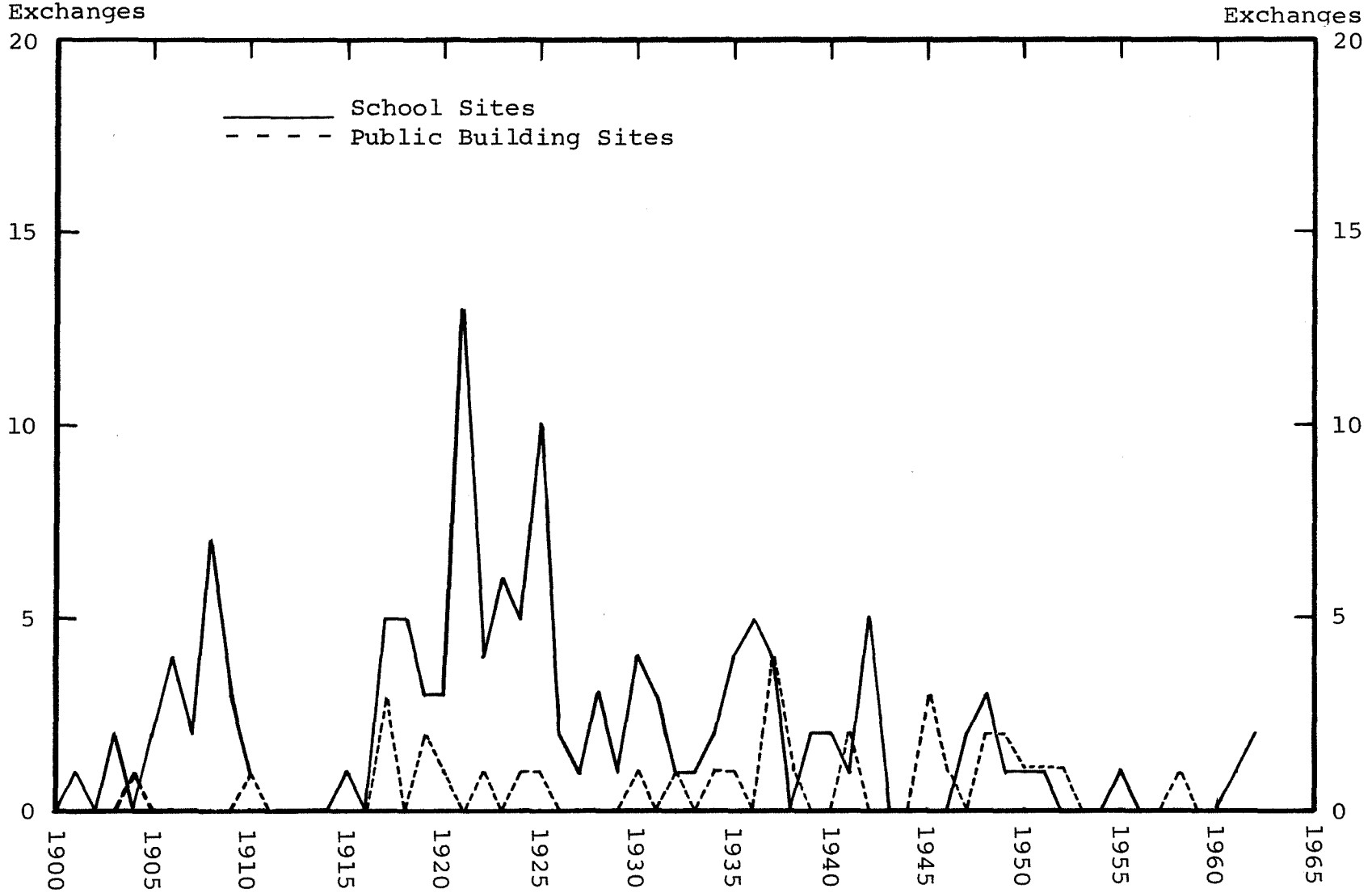
Figure 5 depicts the percentage allocation of acreage for each of the listed purposes as a percentage of the total of all land secured by the government through exchanges from 1900-1962. The information presented in this pie chart should be compared with that of Figure 4. For example, nearly 60 per cent of the total acreage acquired by the government through exchanges was for parks, even though such exchanges constituted only 5 per cent of the total number of exchanges. Approximately 25 per cent of the total land acquired was for road construction and improvement, and 7 per cent for boundary settlements. The amount of land acquired for each of the other single purposes constitutes less than 3 per cent of the total.

Types of Land Transferred Through Exchanges

The types or character of land acquired by the government for public purposes through exchanges has given rise to relatively little controversy. Unfortunately, this cannot be said about the disposition of public land deeded to private parties through these exchanges. The character of this disposition has been criticized on many grounds, including those noted in the preceding chapter. In evaluating these criticisms it may be helpful to consider the new results of 1,351 exchanges of 6 types, as revealed by the following figures.

FIGURE 3

NUMBER OF EXCHANGES ANNUALLY FOR SCHOOL SITES AND PUBLIC BUILDING SITES: 1900-1962



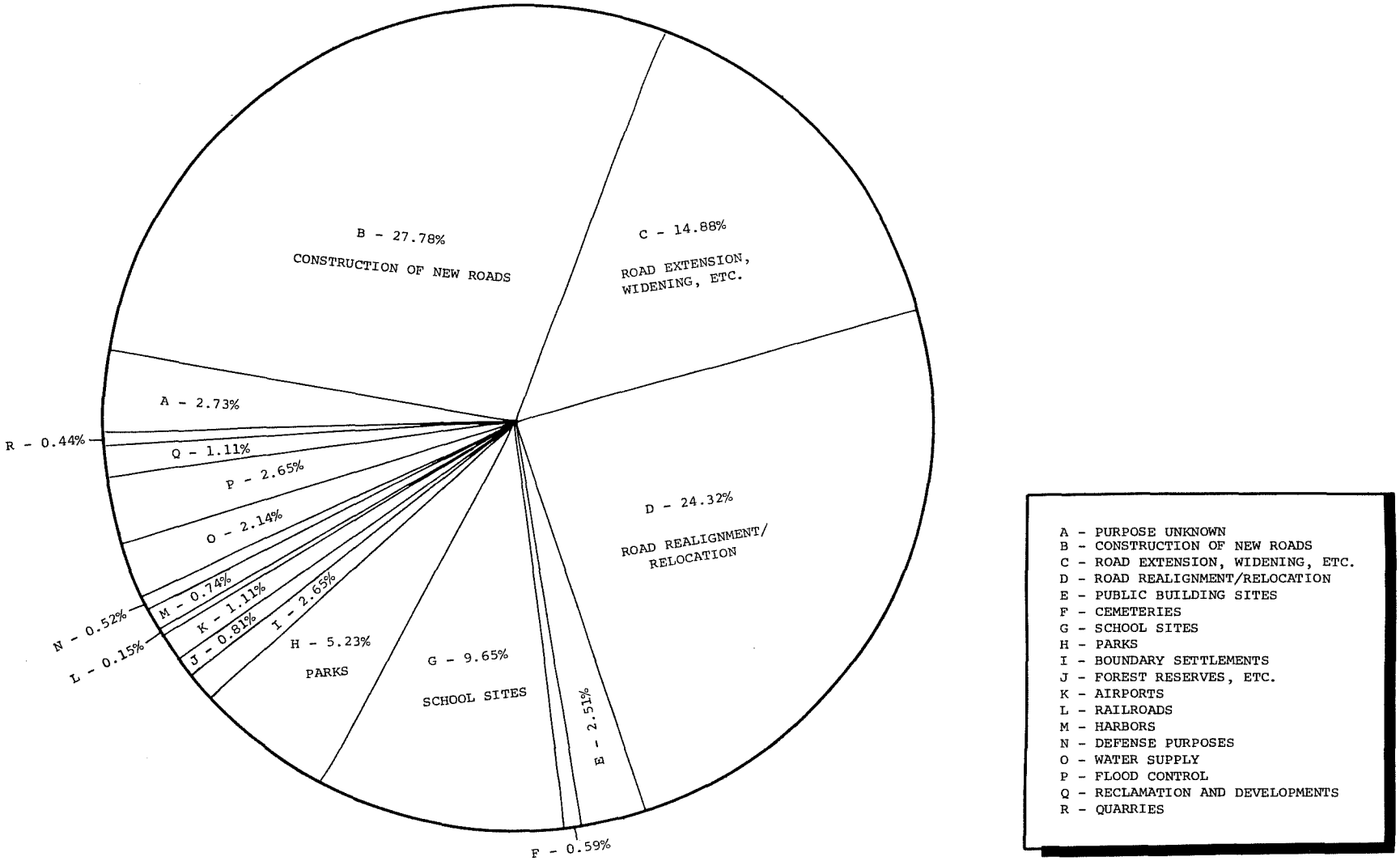
TYPE I: Exchanges through which the government received URBAN land for RURAL land.

	Received by Government	Received by Private Parties
Acres	3,076	59,086
Cash Payments	$3,962	$4,875

The enormous acreage disparity which resulted from exchanges of this type is largely explained by the government's former policy of swapping extensive acreages of public land located in rural areas for small urban parcels. Through the 62 exchanges of this type the government received approximately 3,000 acres with the private parties receiving nearly 60,000--an acreage ratio of 1 to 20, with cash payments being almost equal. These figures do not necessarily support any inference that this acreage disparity was inevitably accompanied by a disparity in values. There is no necessary connection between the two, and comparative monetary valuations could be established only through actual appraisal of all of the parcels exchanged--a procedure which at this late date is neither practical nor necessary. The critical issue with respect to exchanges of this type was well understood and neatly stated by Justice Wilder of the Territorial Supreme Court in his dissenting opinion in the McCandless case, when he concluded that such exchanges could result in "exchanging all of the public domain . . . for, say, building sites in the city of Honolulu. . . ."[2] Unless one is of the persuasion that the government should dispose of all parts of the public domain suitable for private development, it follows that this type of exchange should be avoided.

FIGURE 4

PERCENTAGE OF TOTAL NUMBER OF EXCHANGES, 1900-1962, ENTERED INTO BY THE GOVERNMENT FOR DESIGNATED PUBLIC PURPOSES



TYPE II: Exchanges through which the government received RURAL land for URBAN land.

	Received by Government	Received by Private Parties
Acres	10,699	1,215
Cash Payments	$9,387	$486

The 13 exchanges of this type secured over 10,000 acres of privately-owned rural lands in exchange for some 1,200 acres of publicly-owned urban lands. The land ratio of approximately 9 - 1 is approximately half of that observed in the converse situation discussed in Type I above.

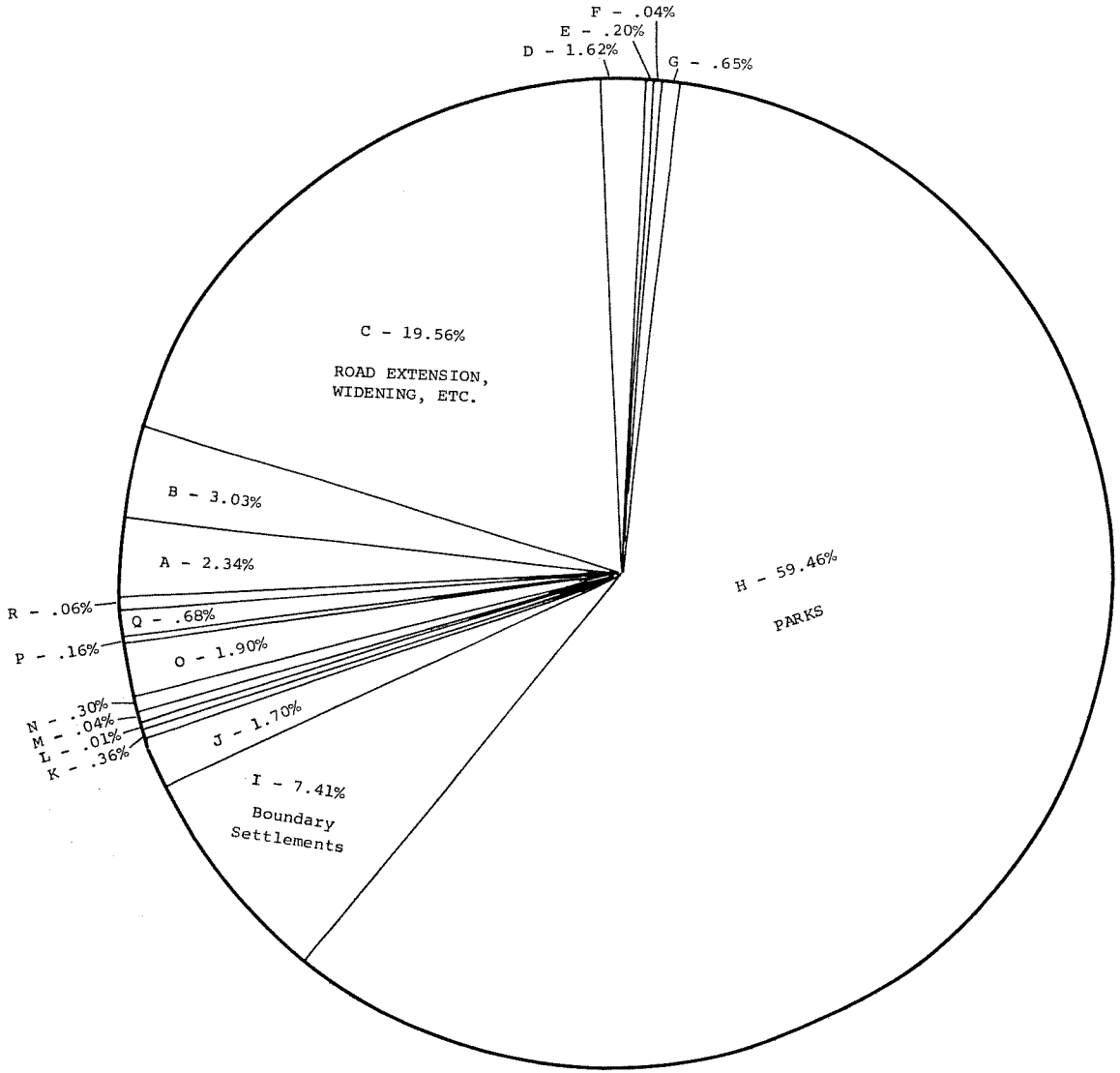
TYPE III: Exchanges through which the government received RURAL land for RURAL land.

	Received by Government	Received by Private Parties
Acres	39,529	24,814
Cash Payments	$10,443	$63,755

The 695 exchanges of this type reveal an acreage disparity of significant proportions on the side of the government. This disparity may be largely explained by the special exchanges authorized by the United States Congress through which land was acquired for Hawaii Volcanoes National Park. Typically, these exchanges secured extensive tracts of lava or forest land in exchange for considerably smaller areas of agricultural or grazing land. In other exchanges of rural for rural land, the greater acreage received by the government was offset by cash payments to the private parties, who received

FIGURE 5

PERCENTAGE OF TOTAL ACREAGE RECEIVED BY THE GOVERNMENT FROM ALL LAND EXCHANGES, 1900-1962, FOR DESIGNATED PUBLIC PURPOSES



A - PURPOSE UNKNOWN
B - CONSTRUCTION OF NEW ROADS
C - ROAD EXTENSION, WIDENING, ETC.
D - ROAD REALIGNMENT/RELOCATION
E - PUBLIC BUILDING SITES
F - CEMETERIES
G - SCHOOL SITES
H - PARKS
I - BOUNDARY SETTLEMENTS
J - FOREST RESERVES, ETC.
K - AIRPORTS
L - RAILROADS
M - HARBORS
N - DEFENSE PURPOSES
O - WATER SUPPLY
P - FLOOD CONTROL
Q - RECLAMATION AND DEVELOPMENTS
R - QUARRIES

more than $60,000 as opposed to the government's receipts of about $10,000.

TYPE IV: Exchanges through which the government received URBAN land for URBAN land.

	Received by Government	Received by Private Parties
Acres	522	1,388
Cash Payments	$24,769	$105,880

The 527 exchanges of this type reveal significant disparities in both acreage and cash receipts, with the government receiving about one-third the acreage and one-fourth the cash payments received by private parties. A possible explanation of these disparities is that in these exchanges the government was generally seeking small parcels of extremely expensive land for such purposes as street widening, public building sites and the like. Under these circumstances it was usually necessary to grant private parties tracts of urban land larger than those received in order to effectuate exchanges. A related consideration which may be suggested is that, except for the early Territorial period, exchange negotiations were usually initiated by the government. Accordingly, the private parties were free to accept or to reject the government's proposals. Presumably, they would have entered into exchange agreements only when some advantage was anticipated.

TYPE V: Exchanges through which the government acquired URBAN land of marginal utility for valuable URBAN land.

	Received by Government	Received by Private Parties
Acres	164	44
Cash Payments	$2,635	0

TYPE VI: Exchanges through which the government acquired valuable URBAN land for URBAN land of marginal utility.

	Received by Government	Received by Private Parties
Acres	78	263
Cash Payments	$2,004	$41,440

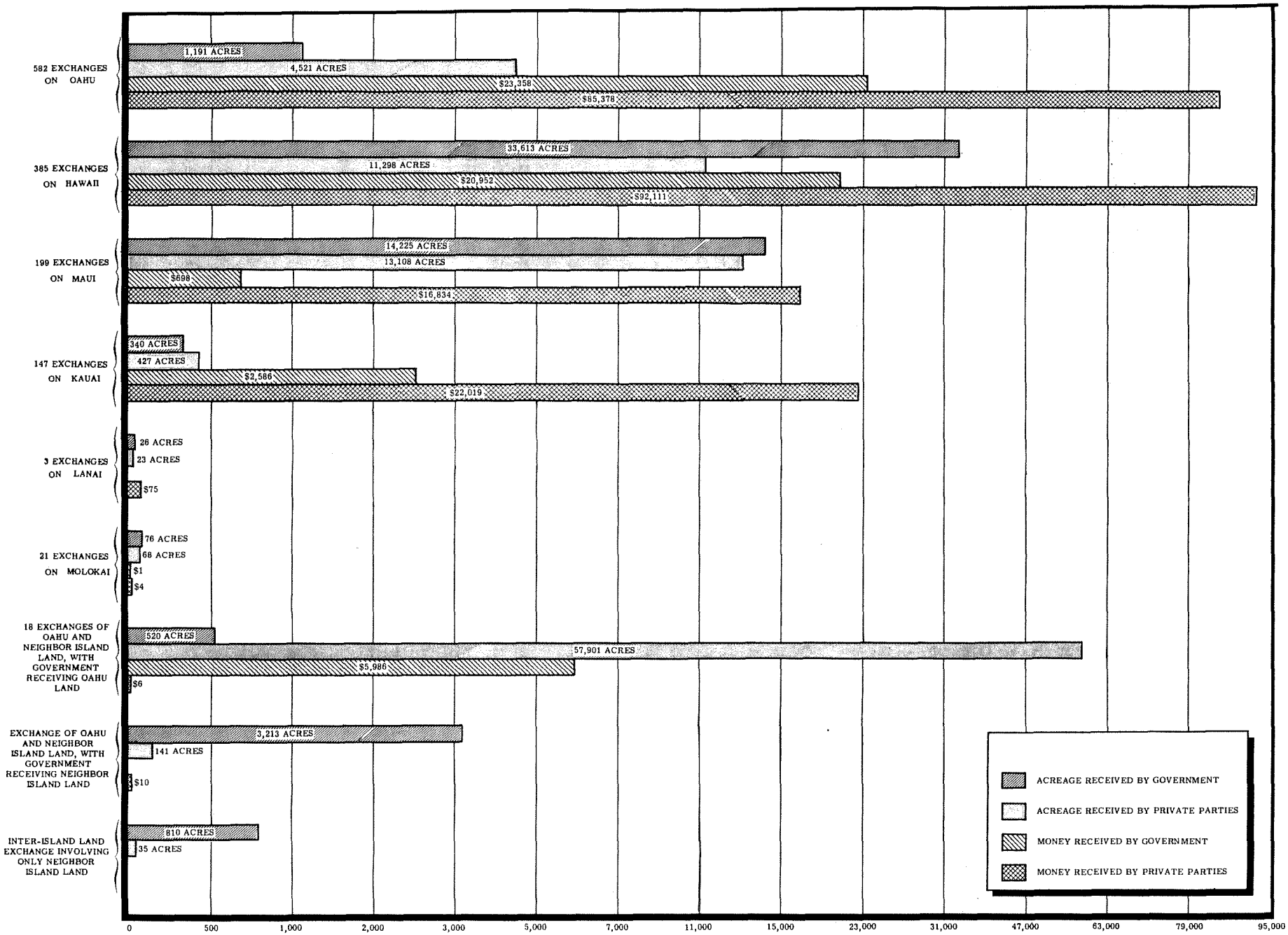
Exchanges of Types V and VI require little comment, except to note that the striking differences in cash payments were undoubtedly required to rectify the great differences in the quality of the lands involved in these exchanges. It may be further added that some of the transactions which contributed to these cash and acreage totals in exchanges of Types V and VI were quasi-exchanges. Under them, the government or private parties frequently acquired small amounts of very valuable urban land by making large cash payments, with the inclusion of land parcels of little value as a subordinate consideration. The bulk of these transactions took place during the early Territorial period prior to the development of a legal doctrine by the attorney general designed to prevent exchanges of this character.

The Effect of Exchanges on Public Landholdings by Islands

Figure 6 depicts the total acreage and monetary payments received by the government and private parties on each of Hawaii's major islands during the period 1900-1962. In this period, the government secured 1,191 acres in exchange for 4,521 acres on Oahu--i. e., almost 4 acres were given to private parties for each acre acquired from them. This pronounced imbalance resulted in part from the character of the lands exchanged; in many instances the government acquired urban land in return for land in rural Oahu. Of the 1,157 acres acquired, 690 were for road construction and improvement, 76 were for public building sites and 72 for school sites, of which most was located in urban areas.

FIGURE 6

TOTAL ACREAGE AND MONEY INVOLVED IN LAND EXCHANGES ON EACH ISLAND AND IN INTER-ISLAND EXCHANGES: 1900-1962



Exchanges on the Island of Hawaii present a rather different picture. There the government secured 33,613 acres in exchange for 11,298, or 3 acres for each disposed of. This surprising difference is largely accounted for by the previously described National Park acquisitions, plus 2 exchanges made in 1947 and 1949 with William Hill for the same purposes. These transactions secured some 13,000 acres for the Kalapana extension of Hawaii Volcanoes National Park for some 38,000 square feet of public land located in the city of Hilo. Other major land acquisitions on Hawaii were for the construction of new roads (280 acres) and the realignment or relocation of existing roads (305 acres). One hundred and seventy-eight acres were acquired for school sites, 608 acres in reaching boundary settlement, 818 acres for water development and 308 acres for reclamation projects and related developments.

The totals of land acquired and disposed of through exchange on the Island of Maui are almost equal: here the government acquired 14,225 acres in exchange for 13,108. As with the Big Island, the chief single purpose of land acquisition through exchange has been for park development (11,530 acres) and for road improvement (1,053 acres). Eighty-seven acres were acquired for an airport, 155 acres for defense sites, 139 acres for water development and 28 acres for school sites. Over 1,200 acres on Maui were acquired for unstated purposes, the only major instance in which records on exchanges have been deficient on this score in recent decades.

Land exchanges have played a relatively small part in public land policy on Kauai, where the government has acquired only 340 acres in exchange for 427. The chief purpose of exchanges has been for road development, a total of 193 acres. Sixty-three acres were acquired for an airport, 33 acres for school sites and 16 acres for water development.

Land exchanges on Molokai have been even more limited, the government acquiring 76 acres while disposing of 68 through exchanges. The bulk of the land acquired, 63 acres, has been for road development; while 5 acres were for school sites.

Land exchanges on Lanai have necessarily been limited since 1907, when the government disposed of virtually its entire acreage through a single exchange. The only other exchanges of land on Lanai amount to 21 acres secured for school sites and 5 acres for road development, a total of 26 acres secured by the government in exchange for 23 acres.

The famous Lanai exchange with Charles Gay must, of course, be taken into account in the totals for exchanges through which the government secured land on Oahu for land on the Neighbor Islands. Through these exchanges the government secured 520 acres for some 58,000. The chief purpose for which the government acquired these Oahu lands was forest reserves and boundary settlements. Four acres were acquired for school sites, 6 acres for quarries, 2 acres for road improvements and 341 acres for unstated purposes.

Little more detailed information can be furnished on the converse type of transaction by which the government acquired land on the Neighbor Islands in exchange for public lands on Oahu. A total of 3,213 acres were secured on the Neighbor Islands in exchange for 141 acres on Oahu. However, the question is whether this exchange served any clear-cut public need, since the only purpose the records reveal is that of boundary settlements. This raises the question of whether exchanges provided the proper mode for settling such problems, or if the government sacrificed valuable urban land on Oahu for land of little or no immediate public use.

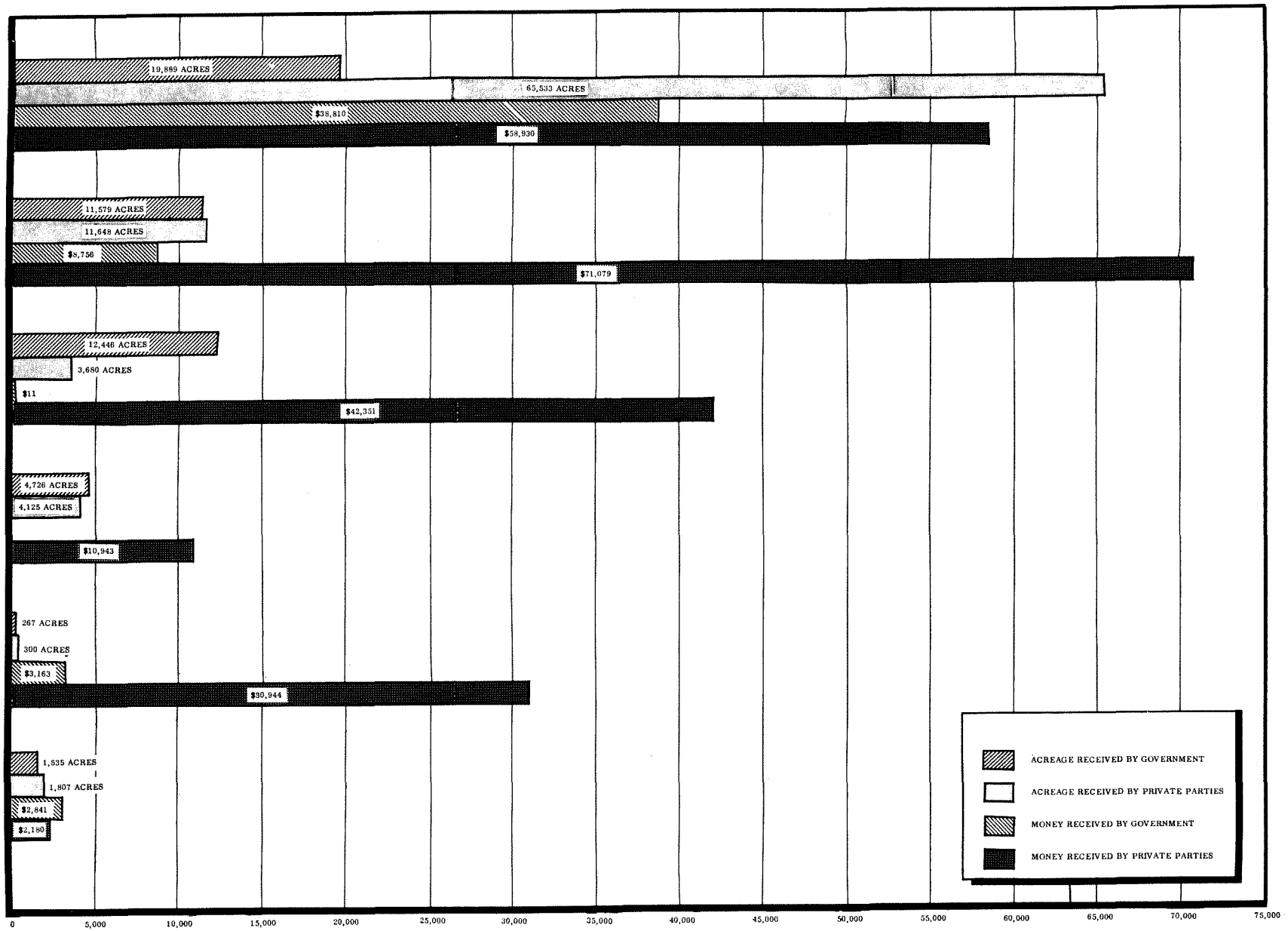
Finally, the government acquired 810 acres of land on various Neighbor Islands in exchange for 35 acres of land on other Neighbor Islands. These exchanges were made solely for the purpose of acquiring forest reserves.

Exchanges with Corporations, Estates and Other Institutions

Figure 7 presents data gathered on exchanges with large agricultural corporations and estates for the entire period, 1900-1962, in view of the commonly held opinion that the government has fared least well in such exchanges. The data reveal that at least in one major dimension this popular myth lacks validity. On balance, the corporations and estates gave up about the same amount of land as they received, and hence their overall holdings were not directly enlarged to any significant extent by exchanges. On the other hand, exchanges have given these large owners legitimate opportunities to consolidate holdings and thereby to increase their value generally. There is a related dimension to this question to which the data do not provide access. It was not feasible to specifically identify exchanges made with individuals who subsequently created large landholding estates, such as, for example, Lincoln McCandless, Samuel Damon and William Irwin, business and real estate pioneer who were

FIGURE 7

TOTAL ACREAGE AND MONEY INVOLVED IN LAND EXCHANGES BETWEEN THE GOVERNMENT AND PRIVATE INDIVIDUALS AND OTHER MAJOR CATEGORIES OF GRANTEES: 1900-1962



direct or indirect participants in exchanges which significantly increased the size of landholdings in the estates which ultimately bore their names.[3] The foregoing caveat must be kept in mind in interpreting the data presented in Figure 7.

A total of 780 exchanges between the government and individuals are recorded through which the government received 19,889 acres and $38,810 in cash payments, while deeding 65,533 acres and $58,930, an imbalance of 45,644 acres and $12,120.

In 370 exchanges with corporations, including all large agricultural corporations with the exception of the Parker Ranch, the government secured 11,579 acres and $8,756 in cash payments, for 11,648 acres and $71,079 in cash payments. The large imbalance in cash payments may have resulted from the fact that the government typically required land in or near urban areas for such purposes as school sites and other public building sites. Even though the privately-owned parcels may have been under cultivation right up to the time of the exchange, they were often appraised in terms of their intended public use. Thus the valuation placed on them was generally much higher than their valuation as agricultural lands. At the same time, the public lands deeded by exchange to the agricultural corporations were typically intended for ranching, cane growing or other agricultural use, and therefore received a relatively lower valuation.

This point deserves some emphasis in view of the rather common feeling that such exchanges have not been in the public interest since they require either sizeable cash payments to the corporations or the alienation of rather large amounts of public land in exchange for relatively small sites. The surest way for the government to avoid this issue is to acquire needed public building sites by exercising the power of eminent domain rather than through exchanges, a matter which will be considered in the concluding chapter.

The largest, nongovernmental landowner in Hawaii is the Bishop Estate: over the years its trustees have had frequent occasion to enter into land exchanges. A total of 60 was recorded for the period under consideration. These exchanges brought the government 12,446 acres and $11 in cash payments in return for 3,680 acres, much of which was cane land in the Kau district,[4] and $42,351 in cash payments. Given the fact that the Bishop Estate has entered into such a large number of exchanges over the years, the available records for exchanges with counties were also examined. They indicate that the Estate participated in 8 exchanges with county governments,

receiving 125 acres and $11,992 in cash payments in return for 75 acres. The Estate was also party to at least 2 small exchanges during the period of Hawaii's Republic, and has, on occasion, negotiated directly with the United States Government for such purposes.[5]

A total of 18 exchanges is recorded between the government and the Estate of James Campbell. Through these exchanges the government received 4,726 acres in return for 4,125 deeded to the Estate, along with cash payments of $10,943. The government received no cash payments in these exchanges. The only 2 exchanges exceeding 100 acres on either side were for additions to Hawaii Volcanoes National Park, 1 entailing an equal swap of 2,526 acres each and the other securing 1,984 acres for the Park while deeding 1,408 acres to the Estate.

Ninety-eight exchanges between the government and other estates and churches have been recorded. Through them the government received 267 acres and $3,163 in cash payments, while deeding 300 acres and paying $30,944. Most of these exchanges involved less than an acre on either side, the largest of them being less than 30 acres.

Finally, the government has made 28 exchanges with the Parker Ranch on the Island of Hawaii. Through these exchanges the government has received 1,535 acres and cash payments of $2,841, with the Parker Ranch receiving 1,807 acres and cash payments of $2,180. Inasmuch as these exchanges consisted generally of ranch lands, acreages tended to be high, exceeding an average of 60 acres per exchange on the part of the government and 50 acres on the average from the Ranch. A year-by-year breakdown of figures on acreage and cash payments received by the government and all categories of private parties to exchanges appears in Appendix B of this report.

Chapter VI

THE LEGAL DOCTRINE OF EXCHANGES

The controversies engendered by land exchanges during Hawaii's Territorial period necessarily led to the development of a body of legal doctrine governing them. This doctrine continues to be significant today and requires extended consideration, especially in view of the continuing debate on exchange policy in the State Legislature.

Prior to Hawaii's annexation by the United States, exchanges were effected under the authority granted by Article I, Chapter VII of the Civil Code of 1859 and its subsequent amendments, which were definitively set forth in Chapter 15 of the Civil Laws of 1897. The Organic Act of 1900 retained these provisions, which sufficed as long as exchanges were limited in number and size. However, during the early Territorial period, when exchanges became a major factor in public land policy, the inadequacies of these statutory provisions became apparent. Some of them are discussed in the opinions of the Territorial attorneys general and need to be considered at this point.

A persistent question during the early Territorial period was which governmental officials were empowered to make binding exchange agreements. Minutes of the meetings of Governors Dole's and Carter's informal Executive Council indicate that various officials in their administrations enjoyed considerable latitude in arranging exchanges, as is illustrated by the McCandless and Gay negotiations described above.[1] Objections were properly raised against the practice of permitting several department heads virtually to conclude exchanges, and an Attorney General's opinion (0.84, 1907) restricted this practice by finding that exchange agreements were binding only when attested to by the governor's signature on a deed. This opinion supported an earlier finding (0.29, 1904), which took the position that the written statement of the Superintendent of Public Works could not bind the government to make an exchange.

Acreage, Value, Cash Payment Limitations

The central legal issue as to whether the Organic Act placed any limitation on the size of exchanges was not so easily settled.

Governors Dole and Carter chose to ignore this question, though it was argued by some that the 1,000-acre limitation set forth in section 55 of the Organic Act applied to exchanges.[2] Five exchanges of from 1,000 to 4,000 acres were made in the years 1902-1903, but the question was not adjudicated until 1907 when the Lanai exchange brought it to a head. A 1910 amendment to the Organic Act restricted exchanges to a maximum of 40 acres and $5,000 in value. The acreage restriction has been continued, except when the U. S. Congress authorized the Territorial government to exceed acreage and value limitations for a specific purpose, as with exchanges effected to secure land for Hawaii's national parks, exchanges to acquire land for military purposes as designated by the Secretary of War,[3] and exchanges for special projects such as acquisition of school sites[4] and for the relief of disaster victims.[5] The dollar limitation on exchanges remained at $5,000 from 1910 to 1958, when it was raised to $15,000. It was increased to $25,000 in 1962.[6]

Closely related to the problem of acreage and value limitations has been the troublesome question of the size of the cash payment which may properly be included in an exchange to equalize the two sides of the transaction when the lands are of unequal value. The earliest available Attorney General's opinion on this matter succinctly states both the issue and the initial position on this question as follows:

> A transaction in which the Territory conveys land to an individual in consideration of a conveyance of other land by him to the Territory together with a payment of money is a sale and not an exchange.[7]

The extreme position regarding cash payments likely resulted from the inclusion of substantial monetary consideration (frequently thousands of dollars on either side) in many exchanges during the early Territorial period. The presence of such large cash payments confirm the conjecture that exchanges were used as a device to escape the restrictions imposed on the sale of public lands by the Organic Act. By and large, the government accepted the position of the Attorney General and cash payments beyond the legal token of $1.00 were infrequent for some years after publication of this opinion. Still, the problem of equalizing values in exchanges persisted, and a near-absolute prohibition against cash payments was neither sound nor necessary. Opinions by a succession of attorneys general gradually modified the doctrine. The initial step in this development came in 1916 with the argument that as long as

> . . . the primary consideration moving from each party to an exchange is the property transferred by him to the other party. . . . The mere fact that one of the exchangers pays a sum of money in addition to the property transferred to him does not necessarily prevent the transaction from being an exchange.[8]

This opinion was further elucidated by Attorney General Stainback relying on the court's decision in Wilcox v. Randall (7 Barb. N. Y. 633), when he refused to approve a

> . . . land patent purporting to be an exchange. . . . The consideration for the land conveyed by the Territory was about one-fourth other land and three-fourths money. . . . If the money consideration be proportionately very large, as for example, equal to or greater than the value of the property consideration the transaction will be a sale instead of an exchange.[9]

The point was further refined 3 years later in an opinion that the 20 per cent cash consideration proposed in a land exchange "is a fairly large proportion, and may be considered near the limit which could be received in an exchange."[10]

The Commissioner of Public Lands put this doctrine to the test shortly thereafter by proposing to approve an exchange under which the private party would receive government land valued at $5,000 for a right-of-way valued at $2,000 plus $3,000 in cash. The Attorney General, Harry Irwin, considered this proposal "in effect a cash sale with an exchange of land as an incident thereto."[11] He admonished the land commissioner that the principles laid down on this matter by Stainback in 1917 were "sound in theory and should be followed by your department."[12]

Stainback's formula was generally followed throughout the remainder of the Territorial period. A transaction proposed in 1947 under which 30 per cent of the consideration was to be in cash was considered to have too large a cash component to be defined as an exchange. The doctrine was reinforced and Stainback's opinion was cited by Deputy Attorney General Frank Hustace in 1950 when he refused to approve an exchange in which 41 per cent of the consideration was to be paid in cash.

The Meaning of "Public Purposes"

The widespread abuses in exchange practices during the early Territorial period required the Attorney General's office to define the "public purposes" for which exchanges could be undertaken by

the government. The statutory section of the Civil Law of 1897 authorizing land exchanges had failed to specify that they should be made only for public purposes, with the results already described. The 1910 statute provided specifically that no exchange could be made "except to acquire lands directly for public uses." This new requirement gave rise to a series of attorney general's opinion beginning in 1910, when Attorney General Alexander Lindsay, Jr., refused to approve a proposed exchange under which

> . . . a person on one of the other Islands owns a tract of land adjoining government lands. Said person also owns two or three small lots in the middle of the government land. It would be advantageous to both parties if an exchange could be effected whereby the government would acquire the two or three small lots and the private individual would receive a small strip adjoining his present holding. . . .
>
> Although in the present instance it might be convenient for the Territory to consolidate its holdings through the proposed exchange, yet there is no way by which such exchange can legally be made in the fact of the language of the Organic Act as amended, which prohibits exchanges of public land except "directly for public uses." In my opinion, the "public uses" contemplated mean "that actual use, occupation and possession of real estate, rendered necessary for the proper discharge of the administration or other functions of the government, through its appropriate officers." . . .[13]

This doctrine was broadened by Attorney General Stainback in a 1916 opinion finding that the exchange of public lands for the acquisition of lands intended for sale to private individuals as residential lots did not meet the test of direct public use or purpose. He was of the opinion that the phrase

> . . . "public use" implies possession, occupation and enjoyment by the public at large or by public agencies or quasi-public agencies. Furthermore, in the present statute the word "directly" indicates that lands may be exchanged not merely to acquire lands that will promote general prosperity by means that the land to be acquired is to be used directly by the Government or a governmental agency. . . .[14]

A subsequent series of opinions positively defined various public uses for which exchanges might legitimately be undertaken by the government. Among these were the acquisition of land for parkways[15] and acquisition of water-ditch right-of-ways, even when most of the water to be transmitted through such a ditch was to be provided to a private corporation located on government lands under lease. The rather broad interpretation of the meaning of "public use" was supported by Attorney General Lymer on the grounds that Hawaii's legislature has traditionally enacted considerable legislation to promote

the welfare of the agricultural industry. This and other opinions in a similar vein suggest that land exchanges may be made for an extremely broad array of public purposes if the legislature takes the precaution of defining the public interest to be served.

Appraisals

Still another area of dispute and misunderstanding over land exchange practices stemming from the excesses of the early Territorial period is appraisals. As has been shown,[16] many of the exchanges of the 1900-1910 period were remarkably casual, having been initiated by the Superintendent of Public Works, the Commissioner of Public Lands, the Governor, or others. The general terms of these exchanges were thus outlined by individuals who might--or might not--be very acute appraisers of land values. To be sure, each proposed exchange was intended to be the subject of at least perfunctory discussion at one or more meetings of the governor's Executive Council. There were occasional disagreements over the merits of particular exchanges, and the governor sometimes requested that the proposition be reconsidered. At best, however, this was a haphazard procedure for conducting real estate transactions of this magnitude. The many difficulties in this mode of handling governmental affairs were increased by the thorny problem of making accurate, up-to-date property appraisals during this period of spiraling land prices and feverish speculation.

The 1910 amendments to the public land laws sought to improve appraisal practices through the requirement that proposed exchanges be approved by at least a two-thirds majority of the members of the land board. This meant that a proposed exchange would be scrutinized by a panel of men presumed to have more than a passing knowledge of land values. The records of exchanges after 1910 show that certain exchanges at least were made only after evaluation by land appraisers of some experience. But this practice was far from general, even when large amounts of land were at stake. The Land Commissioner had an insufficient appropriation, and his staff was not adequate in either size or training to conduct field appraisals for all exchanges. Nor were funds made available to hire professional appraisers for this purpose. It is true that most exchanges after 1910 concerned relatively small parcels of generally comparable characteristics. For such exchanges, elaborately detailed appraisals may have been unnecessary. On the other hand, a number of major exchanges were made without benefit of thorough and disinterested appraisal where they were clearly required. This consideration is of critical importance, since some of the misgivings which continue to make it

difficult to develop public policy on land exchanges stem from a conviction that appraisal techniques do not unfailingly protect the public interest.

In the absence of a statutory requirement that professionally conducted appraisals be a part of any exchange negotiations, there has been no effective barrier to questionable practices. To be sure, a succession of attorneys general admonished Territorial officials to make certain that fair value was received in land exchanges, but they could not look behind the terms of proposed exchanges to determine values. By the 1930's, the land board adopted the practice of securing appraisals on the same basis required for public lands being offered for sale. By 1938 this practice was sufficiently formalized to lead Attorney General Kempt to adopt the policy that when such an appraisal had been secured by the land board, the land commissioner was not free to raise the appraisal, but only to approve or disapprove a proposed exchange on the basis of the appraisal figures.[17]

In the following year, Deputy Attorney General Sylva asserted that the provisions of section 1578, Revised Laws of Hawaii 1935, requiring that the value of public land offered for sale be "fixed by three disinterested persons acting as appraisers" applied to exchanges, although in his opinion this would not preclude appointment of "a special board of appraisers" if the governor preferred.[18]

The view that appraisal must be made before an exchange could be effected was further reiterated by Deputy Attorney General Lewis in 1950. In an opinion returning exchange documents for further work, she said:

> I note that the exchange was approved by the Board of Public Lands. Apparently, however, no appraisal has been made. It seems to have been generally assumed that an appraisal is necessary upon an exchange, as well as upon a sale or cash purchase. See Letter Opinion of June 16, 1948; L.F. 37, No. 428 . . .[19]

This position has been reinforced over the years and may now be regarded as one aspect of the legal doctrine of exchanges which safeguards the interests of both the public and private parties to exchanges.[20] Still, it is important to insure that any subsequent amendments to statutes dealing with exchanges include carefully drawn appraisal provisions or, alternatively, that the general appraisal sections of the public land statutes are applicable to exchanges.

It is unnecessary to discuss the opinions of the attorneys general on the less fundamental aspects of exchanges, but their

existence should at least be mentioned. In conclusion, the opinions of the Territorial and State attorneys general have served to reduce earlier irregularities in exchange practice and to supplement the statutory provisions with a carefully articulated body of doctrine.

Chapter VII

PROBLEMS OF APPRAISAL

One of the most persistent and difficult problems presented throughout Hawaii's experience with exchanges has been that of securing adequate appraisals. Land appraisal is a complex matter under the best of circumstances, but it has been especially difficult with respect to Hawaii's public lands, in part because neither the Territorial Land Department nor its successor agency has had a permanent staff of professional appraisers. Lacking such staff, appraisals have been carried out by men possessing varying degrees of expertise in this demanding field.

The disadvantages under which semi-professional appraisers work are accentuated in the case of exchanges. Exchanges encompassing land suitable for diverse purposes require appraisers to weigh a variety of factors, to evaluate potential as well as present uses, and to place dollar valuations on intangible as well as tangible aspects of the public interest in land, for example, potential recreational or aesthetic values.[1] These difficulties are compounded in the case of large exchanges, which may require appraisers to strike a balance between diverse and even incomparable factors. These generalizations were illustrated in the discussion of the Lanai exchange, in which appraisals of the government's holdings ranged from a low of about $50,000 to a high of nearly $250,000.[2]

On occasion, the government has simply avoided the difficulties inherent in securing adequate appraisals by permitting the private parties to exchanges to appraise both their own and the government's lands. Ths most revealing instances of such abdication of responsibility were the 2 exchanges through which large areas were acquired for Hawaii Volcanoes National Park in 1920-1921. These exchanges merit extended treatment inasmuch as they serve also to illustrate other questionable aspects of exchange practice which require consideration today.

The background of the national park exchanges is covered in Russell Apple's detailed study of land acquisition for Hawaii Volcanoes National Park. Apple, in describing the acquisition of the sizeable Kilauea section of the park writes that

> The Bishop Estate holdings . . . included hotel sites on the windward side of the crater, the best forests in the Park, and most of the crater itself. . . . The 1916 evaluation of the Bishop Estate property in the Kilauea section was $125,570.00 and . . . all but 650 acres of it had been offered to the Territory in 1917 for $52,820. The 650 acres not offered embraced the Volcano House area in the Park.[3]

For unstated reason, the Territorial government did not avail itself of the opportunity to purchase the park acreage for this moderate sum, but decided instead to secure it through an exchange, even though this required a special act of Congress, given the statutory limitations established in 1910 on acreage and value.[4] Neither is it known, according to Apple,

> . . . who first proposed that certain land under sugar cane cultivation in the Kau district of Hawaii be offered to the Bishop Estate in exchange for a major portion of their land in the Park's Kilauea Section. But, by September 1919, A. F. Judd, one of the Bishop Estate trustees, was investigating this "cane land." . . . In 1919, the Bishop Estate was also evaluating its own lands at Kilauea. . . .[5]

In short, the representative of the Bishop Estate made the evaluations for <u>both</u> parties to the exchange, selecting for the Estate some 575 acres of cane land, 222 acres of pasture land and 115 acres of forest land in the process.

The same appraisal technique was utilized in 1921 in another exchange with the Bishop Estate which secured an additional 170 acres for Hawaii National Park. Included in this exchange was the site of the Kilauea Volcano House which was under lease. The bulk of the 170 acres was undeveloped at the time of the exchange, but plans had been made for a small subdivision of vacation homes along the Hilo-Volcano road. The Estate placed a valuation of $154,225 on this forested land, including the improvements which would revert to it in 1927 upon the expiration of the Volcano House lease.

As in the earlier transaction, the Estate appraised the public lands which it was willing to accept in exchange for these 170 acres. The trustees suggested that a fair exchange would require 4,459 acres of public land in the Kau district. Some 2,000 acres of this land was planted in sugar cane and under lease to a plantation. As an additional condition, the trustees asked that 2 of its claims to land elsewhere which had been contested by the government be settled in favor of the Estate.[6] The correspondence between the Bishop Estate and the Territorial Commissioner of Public Lands nowhere indicates

any attempt on the part of the government to secure an independent appraisal of either its own lands or those offered by the Estate.

Comment on the limitations inherent in this approach to appraisal would be superfluous. It can be argued, however, that even had the government secured the services of professional appraisers major problems would have been encountered in establishing sound valuations for the areas comprised by these exchanges. For example, on what basis can comparable values be established for productive sugar lands as opposed to enormous expanses of lava flows or economically unproductive forests? What criteria can be established to balance prospective monetary returns on the one hand, as compared to aesthetic and recreational values of park lands on the other?

Applying these considerations to the National Park exchanges in particular, it appears that the inherently difficult appraisal problem might have been avoided and the public interest better served had the Estate's offer to sell its land for cash been accepted. Or, had the Estate withdrawn its offer, the power of eminent domain could have been used to acquire the park acreage.

The more general problem to which these considerations point is whether monetary measurements unfailingly provide an adequate common denominator to which heterogeneous values may be reduced. To be sure, private owners of large land areas establish both objective and subjective criteria (e. g., dollar amounts and psychic satisfactions) which serve to measure the economic and other benefits accruing to them from alternative uses of their land. The presence of these criteria facilitates land appraisal, difficult though it may be in any particular case. But are the criteria of evaluation appropriate for privately-owned landholdings adequate for appraising public lands? "The public" in which title to the public lands is vested encompasses the entire populace, both contemporary and prospective. Alternative uses of these lands may provide various segments of this public with diverse benefits: economic, recreational, aesthetic and others.[7] Thus, the rational appraisal for exchanges of large areas of public land potentially useful in satisfying a variety of justifiable public purposes would be extraordinarily difficult even if Hawaii possessed a fully formulated public land policy with clear objectives and priorities. Such a fully articulated program of public land management would provide standards for the measurement of current and potential returns from public land. It can be argued that without such standards of measurement rational appraisal is impossible. Unfortunately, Hawaii has not yet developed a comprehensive policy for public land management. Given these virtually

insuperable problems of appraisal, as well as other problems discussed in the following chapter, the exchange of large areas of public lands should be avoided and the power of eminent domain utilized instead.

Chapter VIII

RETROSPECT – AND PROSPECT

By way of concluding, it is appropriate to summarize and to further analyze certain of the most important aspects of Hawaii's experience with land exchanges and, in the light of these considerations, to make recommendations regarding exchange policy.

Exchanges Considered in Retrospect

Exchange policy in Hawaii has, by and large, reflected overall public land policy; one cannot be understood apart from the other. It follows that exchanges were extremely limited in size and number during those periods when a major objective of public land policy was to restrict disposition of the public domain, for example, during the transition period immediately following annexation or, more recently, after enactment of Act 32 in 1962. Conversely, during those periods when the government has actively sought to dispose of public lands, as during the early Territorial period, exchanges were widely used to implement this policy and to escape restrictions on disposition imposed by Congress under the Organic Act.

These considerations point to a related factor which must be taken into account in comprehending exchange policy during the first half of the twentieth century. It is important to recall that during this period public land policy was not shaped primarily by policy-makers in Hawaii, for the Territorial government did not enjoy ultimate authority in managing its public domain. From annexation until 1959 Hawaii's governor was appointed by the President, and it was the United States Congress, not the Territorial legislature, which was empowered to amend Hawaii's public land laws and to exercise final control over her public domain. Congress was therefore in a position to authorize exceptions to the Territory's land laws, an authority which was exercised rather freely with respect to exchanges. Even though the 1910 amendments to the public land laws limited exchanges to a maximum of 40 acres with a maximum valuation of $5,000, Congress authorized a large number of special exchanges. Some of these comprised thousands of acres, with valuations exceeding a hundred thousand dollars.[1]

The open-handed disposition of public lands through exchanges during the early Territorial period, along with the special exchanges

authorized by Congress, contributed to the alienation of significant portions of Hawaii's public domain. To be sure, the Territorial government achieved short-term savings through the extensive use of exchanges for land acquisition, but only at considerable long-term cost. This conclusion is emphasized, not by way of criticizing public officials of yesteryear or to impugn in any way their motives, but rather to draw attention to some of the questionable consequences of exchanges, especially large ones, and to assist in making judgments regarding the proper place of exchanges in the future.

The many and serious difficulties inherent in securing adequate appraisals of land included in exchange transactions have already been dealt with at length. The discussion of this problem points to a related difficulty which requires consideration at this point, viz., the rather personalized character of exchange transactions.[2] Exchanges must be negotiated individually, since every exchange is necessarily a special arrangement--unlike most governmental transactions. This is not to imply that exchanges have frequently been the product of improper manipulation or "deals," though this has occasionally been the case, to be sure. Still, this danger cannot be entirely eliminated, given the nature of exchanges, and this consideration has been cited frequently over the years by those who favor the utilization of devices other than exchanges for land acquisition.

These critical comments should be balanced by acknowledging that exchanges undoubtedly facilitated the development of many public building projects and other programs, especially during the Territorial period, when the combination of inadequate tax receipts, plus the limits imposed by the Organic Act on Hawaii's borrowing power, made it difficult to finance needed improvements. The power to acquire land through exchanges also enabled the Territorial governors to proceed with development programs without the necessity of securing appropriations from the legislature for land acquisition. It is probable that many significant developments, such as Hawaii Volcanoes National Park, would have been materially delayed had not exchanges been used to secure land needed for these public purposes.

It may be added that Hawaii's private landowners have frequently benefited, and properly so, when the government has utilized exchanges rather than eminent domain proceedings to secure possession of land required for public purposes. Exchanges have provided two major benefits for private parties. First, the receipt of land instead of cash has facilitated the continuation of those private uses which might have been endangered through diminution of land areas. Second, exchanges have provided relief from capital gains taxes which

are assessed against the profits realized from land sales--even when such sales are involuntary as in condemnation proceedings.[3]

On balance, it may be concluded that while exchanges have clearly made a significant contribution to Hawaii's economic development, this contribution must be discounted to the extent that exchanges have proven to be costly in the long run than alternative modes of land acquisition.

An Exchange Policy for the Future

Turning to the question of future exchange policy, the central issue which confronts Hawaii's policy-makers at this time is whether exchanges should be retained as an instrument of public land policy and, if so, under what terms. It is evident that exchanges must never again be subject to past abuses, but still, it must be determined whether exchanges can make a positive contribution to an improved program of land management designed to achieve for Hawaii's citizenry the maximum, long-term benefits available from the public lands. This statement of the objective of land policy is based on the aforementioned premise that Hawaii's public lands constitute a resource which should be utilized for the welfare of the entire populace. Even though this goal be accepted, it must be recognized, of course, that there may be conflicting opinions as to the specific policies which will lead to its realization. Indeed, it is the variety of these divergent opinions and the conviction with which they are held that has characteristically made the development of land policy one of the most interesting and controversial aspects of public policy formation in Hawaii.

There are citizens, on the one hand, who favor a liberal exchange policy as part of a continuing program for disposing of the state's remaining public lands. The premise, stated or unstated, underlying this position is generally that these lands would be better managed and more productive under private ownership and that their disposition would therefore make a greater contribution to the economic well-being of the state. A different premise, one which underlies the recommendations which follow in the remainder of this chapter, is that Hawaii's public lands should be viewed as a valuable inheritance which has been transmitted to successive generations. It is a heritage in which every citizen shares and to which every member of future generations is entitled. The extent to which this inheritance of public lands and other natural resources can contribute to meeting the state's present needs has been determined in some measure

by the manner in which preceding generations exercised foresight in preserving and developing this common possession. Insofar as sound conservation and development policies have been practiced, these resources have contributed maximally to the general welfare, while short-sighted or selfish policies have made it more difficult for the State to meet present and future needs.[4] Given this premise, the following policy recommendations may be made for future exchange policy.

Basic Policy Recommendations

(1) The State should pay cash for land required for public purposes, rather than alienate large areas of the public domain through exchanges.

This recommendation is forcefully illustrated by the Lanai and Hawaii Volcanoes National Park exchanges through which tens of thousands of acres of public lands were alienated by way of saving the Territory cash outlays of about $150,000. Had cash been paid for the privately-held land, with the Territory having retained title to its public lands, the lease income from the latter would by now have reimbursed the Territory many times over. The government should desist completely from exchanging large tracts of public lands possessing possibilities for multiple use. Again the Lanai exchange is illustrative. By that exchange the government foreclosed the possibility of its bringing about ranching, forestry, recreational and other uses on Lanai in addition to the commercial cultivation of pineapple.

(2) Exchanges should be avoided which fragment public lands or reduce their total acreage in such a way as to considerably lower the value or usefulness of the remaining area.

This principle is well illustrated by reference to the scattered state lands remaining on Leeward Oahu, for example, the Lualualei Homestead area. Some 7,000 acres in this area were designated for homesteading under the Land Act of 1895. Approximately half the area had been homesteaded when the government entered into two exchanges which disposed of the remaining 3,000 acres.[5] These ill-advised exchanges made it more difficult for the government to develop other lands for homesteading in the vicinity, for it was denied overall control of the area with the accompanying flexibility of action. The demand for further homesteading and related uses of these lands was foreseeable, and these objectives could have been better met if the entire area had been retained under public ownership.

The importance of avoiding needless fragmentation of the state's landholdings cannot be emphasized too strongly in view of Hawaii's limited land area, ever-mounting population pressures and the rapidly changing character of today's technology. Hawaii's large private landowners are sometimes unable or unwilling to make land available to meet new demands and needs. This makes it all the more imperative that the state's remaining public lands be held and managed in a fashion designed to mitigate some of the deleterious economic and social consequences stemming from Hawaii's quasi-monopolistic pattern of landholdings.

An application of this principle of non-fragmentation to exchange policy was provided during the special session of the State Legislature in 1960. Several measures were enacted in relief of those who suffered extensive property and other damage from the tidal wave which devastated the city of Hilo. It was agreed that sound policy required relocation of homes and business establishments at a considerable distance from the inundated area. An exchange was proposed through which some 400 acres for urban redevelopment were to be secured from one of the state's largest private landowners for 3,000 acres of public land. Congressional authorization was secured, but state policy-makers determined that such an exchange would constitute bad public policy, in part because it would fragment the state's holdings of public lands around Hilo, thereby limiting possibilities for long-range, planned development.[6]

(3) Exchanges should comprise lands which, as far as possible, are comparable in size, value, use and other characteristics.

This principle is based on the premise that the exchange of lands of comparable characteristics is less likely to result in unfair gain for either party than the exchange of unlike lands. Obviously, the application of this principle must be subject to considerable administrative latitude, for otherwise it would make exchanges impossible. If sensibly applied, this principle would prevent "windfalls" to either the State or private parties, and would contribute to the acceptance of exchanges as a useful and fair part of public land policy.

In point of fact, many past exchanges have comprised roughly comparable lands. For example, many exchanges undertaken for the relocation and extension of roads in rural areas have required private owners to give up agricultural or grazing land which has been replaced by comparable state-owned land. Application of this principle is, however, more difficult in urban areas. If, for example, 1 or 2 acres of privately-owned urban land are required for a school

site, and there is no comparable public land available for exchange, the government should not, as it has frequently done in the past, offer 40 or more acres of agricultural land in exchange. Rather, the land needed for public purposes should be secured through eminent domain.

The sensible application of this principle may help private landowners who are required to give up some of their holdings for public purposes to maintain "economic units." That is to say, the government should endeavor to provide at least the minimum amount of land required for a continuation of the use to which the area was being put prior to the taking of land for public purposes.

(4) Exchanges should be made only for clearly specified public purposes and not, as has sometimes been the case, as an accommodation to private parties desirous of acquiring specific parcels of public land.

(5) All proposed exchanges should be subject to professional appraisal. They should also meet the criteria developed by Hawaii's attorneys general in addition to statutory requirements.

The validity of these principles appears to be substantially confirmed by consideration of the results of Hawaii's extended experience with land exchanges. It may be hoped that if these recommendations are sound they will be generally followed. At the same time, it is recognized that the development of exchange policy at any point in time is but one of a number of important problems which confront the state's policy-makers. Concessions must sometimes be made in one area in order to deal effectively with related problems.

Meeting Existing Needs

Policy-makers may find it necessary to consider compromises in formulating exchange policy in order to meet other, no less pressing, needs in formulating the state's public land policies as a whole. The difficulties experienced during recent sessions of the state legislature in reaching agreement on exchange policy emphasize this point.

Two of the most urgent factors complicating the formulation of exchange policy today are: (1) the extremely small amount of public land remaining on Oahu, and (2) the postwar economic boom on Oahu as compared with the hard-pressed economics and decreasing populations of the other islands. These factors weigh especially heavily in the

thinking of representatives from the Neighbor Islands. Given the importance of these factors in reaching agreement on exchange policy, it may be useful to consider a series of alternative policy formulations, which--to a greater or smaller extent--embrace the principles set forth above.

Possibility 1: Oahu for Neighbor Island Lands. Private lands required for public purposes on Oahu could be acquired through inter-island exchanges, with private parties receiving public land on the Neighbor Islands in exchange for their Oahu land. If this method were used to acquire any substantial amounts of land on Oahu, it would almost certainly be necessary to raise the maximum acreage and value limits established by Act 32, since land prices on Oahu are so high that the present statutory limit of $25,000 would secure less than an acre in almost any urbanized section of Oahu. Such exchanges would lead to the alienation of extensive acreages of public lands on the Neighbor Islands. If exchanges of this type were practiced extensively, they would quickly reduce the amount and value of the state's remaining public lands.

The findings of this study suggest that this kind of disposition of public lands in the past was not in the public interest. Furthermore, the very nature of such exchanges--in which large areas are swapped for very small ones--makes them very difficult to administer without violating the principles of sound land management designed to achieve the maximum, long-term benefits from Hawaii's public land resources. It follows that, unless effective safeguards were devised, it would not be sound policy to raise the acreage and dollar limits of existing exchange legislation to facilitate Oahu-Neighbor Island exchanges.

Possibility 2: Acquiring Land on the Neighbor Islands. If policy-makers determine that large-scale alienation of the state's remaining public lands should be avoided, exchanges must then be restricted to the acquisition of small amounts of land for public purposes on the Neighbor Islands. Exchanges could then continue to provide a useful though limited device for meeting some of the land needs of the Neighbor Islands. This possibility could be implemented in 2 ways, each of which must be considered:

(2-a) Exchanges might be consummated on the Neighbor Islands to secure small amounts of land through the exchange of considerably large acreages of public land. Such exchanges should be avoided for the very reasons which militate against the exchange of large tracts of public lands on the Neighbor Islands to acquire land needed for public purposes on Oahu, as outlined under Possibility 1.

(2-b) There might be exchanges on the Neighbor Islands to secure small areas for public purposes through swapping to private parties small amounts of public lands of comparable character. A considerable demand exists for such exchanges to consolidate holdings, both public and private, and for boundary settlements, among other things.

Among the arguments advanced by the proponents of such exchanges is the view that lagging economic development on the Neighbor Islands is a matter of vital concern to the State as a whole, and that any assistance rendered to the treasuries of county governments on these islands saves the state treasury equivalent amounts. In support of their position, Neighbor Island representatives point out that exchanges constitute a perfectly legitimate use of the state's public lands which, after all, should be used for "public" purposes.

This argument has some weight, but it demands further examination, since the word "public," as used here, has two somewhat different references. It is true, for example, that a school or fire station constructed anywhere in Hawaii serves "the public," but any particular school or fire station serves a relatively small portion of the entire populace. On the other hand, when one speaks of the state's "public lands," the word "public" has a more comprehensive meaning--with the connotation that these lands should benefit <u>all</u> the citizenry: directly, as in the case of a state building, or indirectly, as with revenues received from leases of public lands, the income from which goes into the general fund. Any proposed exchange should be examined to determine whether it will benefit only the residents of a restricted local area or a broader public.

Those opposed to using exchanges in even the rather restricted fashion outlined in Possibility (2-b) make two major arguments against providing economic assistance to the counties in this fashion. They argue that exchanges transfer an important element of fiscal control from the legislature to the Department of Land and Natural Resources, inasmuch as exchanges are administered by that Department. They argue further that economic assistance to the counties in the form of exchanges increases the share of the Capital Improvements Budget received by the county receiving land through exchange, thereby upsetting the established formula for C.I.P. benefits. The applicability of these arguments is presently limited, since Act 32 requires that all proposed exchanges be approved individually by the legislature. In principle this would permit the Legislature to apportion the benefits of exchanges among the various Neighbor Islands. In practice, however, the exchange provisions of Act 32 have had the effect of eliminating all exchanges. Of the

dozen or so exchanges submitted to the 1963 Legislature, none was approved. Many of these proposals were resubmitted to the 1964 Budget Session of the Legislature--with similar results.

Amending the Exchange Provisions of Act 32. This desire on the part of some legislators to retain the equivalent of administrative discretion in approving or disapproving proposed exchanges is quite understandable in view of past abuses. This arrangement is, however, subject to criticism. It combines the administrative and legislative functions in a confusing and inefficient manner. Under present circumstances, the Department of Land and Natural Resources is unable to proceed with any assurance in carrying out exchanges as authorized by Act 32. Its efforts and those of private parties in preparing proposed exchanges for submission to the legislature are simply wasted if the legislature rejects all exchanges. Inasmuch as the Legislature meets for only 2 to 3 months each year, considerable time may elapse before the proposed exchange is even considered. Further time is lost if, while waiting for legislative action on a proposed exchange, the State has refrained from initiating eminent domain proceedings or in undertaking to acquire needed land in some other fashion. Nor is this state of affairs conducive to the development of efficiency, decisiveness or high morale in the Department of Land and Natural Resources, one of the state's most important administrative agencies.

If the legislature lacks confidence in the capacity of the administration to conduct exchanges properly within the confines of a tightly written statute, or if exchanges are no longer deemed an appropriate vehicle of public land policy, then the exchange provisions of Act 32 should be eliminated. Alternatively, if exchanges are to be retained and utilized, Act 32 should be amended to permit the Department of Land and Natural Resources to execute such policy within precisely and narrowly defined limits. The legislature retains, in any event, full responsibility for evaluating the manner in which exchange policy is executed and the power to amend or to repeal the exchanges statutes, if it deems this necessary. It is these broad powers of supervision and legislation which the legislative branch is best equipped to exercise. Through such arrangements the public interest would be fully safeguarded, for the legislature could exercise more effective control by holding administrative officers accountable for exchanges under these terms than by making each transaction the subject of legislative scrutiny and consent.

FOOTNOTES

CHAPTER I

1. Minimal treatment has been afforded exchanges between individuals as well as between the various county governments of Hawaii. Considerable data on the latter were gathered, but no analysis has been presented, inasmuch as these exchanges have played a negligible role in public land policy. Furthermore, many of these land transactions cannot legally be classified as exchanges, since they frequently include cash payments by one or the other party of more than 20 per cent of the total valuation. See Chapter VI, "The Legal Doctrine of Land Exchanges" on this point.

   Presented below is a listing of major exchanges between the Territory or State of Hawaii and the Hawaiian Homes Commission. Hawaiian home lands are not classified as "public lands," and therefore exchanges of these lands must be differentiated from transfers between other governmental agencies. More importantly, exchanges provide the Hawaiian Homes Commission with a potentially useful instrument in its current drive to strengthen and broaden its program. See Tom Dinell and others, The Hawaiian Homes Program: 1920-1963; A Concluding Report (University of Hawaii, Legislative Reference Bureau, 1964, Rept. No. 1), pp. 21-42.

Date	Hawaiian Homes Commission Releases to State	State Releases to Hawaiian Homes Commission
12/17/56	43.610 acres Kawaihae	121.399 acres Waimanalo
	3,183.000 acres Waimanalo	19.952 acres Kekaha, Hawaii
1/8/62	192.691 acres Keaukaha	192.691 acres Panaewa
4/9/62	1.515 acres Keaukaha	1.515 acres Panaewa
1/8/62	10.088 acres Waimanalo	23.707 acres Waimanalo
	911.000 sq. ft. Auwaiolimu	61.040 acres Paukukalo
	6,677.000 sq. ft. Auwaiolimu	84.747 Total acres
	118.000 acres Waimanalo	
	2.766 acres Kapaakea, Molokai	
	.826 acres Kamiloloa, Molokai	
	10.000 acres Panaewa, Hawaii	
	2.008 acres Kamoku, Hawaii	
	165.812 Total acres	
5/21/62	1,045 acres Palaau, Molokai	243.260 acres Waianae

2. See Robert H. Horwitz and Marylyn M. Vause, Hawaii's Public Land Laws: 1897-1963, A Statutory Compilation (University of Hawaii, Legislative Reference Bureau, Public Land Study Preliminary Rept. 1, 1963). See especially the sections on "Public Land Statutes Enacted Prior to 1897," "Civil Laws of 1897," and "Revised Laws of Hawaii, 1905, 1915, and 1955."

3. A comprehensive statute enacted by the First State Legislature of Hawaii in 1962 regulating the "Management and Disposition of Public Lands."

4. See Appendix "E," which considers the exchange statutes of all mainland states in which state-owned land constitutes 5 per cent or more of the total land area.

5. For the most adequate account of the work of the Great Mahele, see Indices of Awards made by the Board of Commissioners to Quiet Land Titles in the Hawaiian Islands (Honolulu: Hawaii, Office of the Commissioner of Public Lands, 1929).

6. An Act to Organize the Executive Departments of the Hawaiian Islands, Part I, Chapter 7, Article II, Sections I-XIII, April 27, 1846. Article II, Section 1, provides for the disposition of Government Lands.

7. The land division termed "ahupuaa" typically consisted of a strip of land extending from the sea to the mountains, thereby providing the inhabitants of the area with a fishery, a stretch of kula or open cultivatable land and forest resources. Ahupuaas were unsurveyed, but were delimited by natural features such as gulches, ridges and streams. Each was given a distinctive name, as were smaller land divisions.

8. Deed Number 25 from E. Kekela to the Hawaiian Government, represented by John Young, Minister of the Interior. The record indicates that the parcel received by the government consisted of 1,825 square feet on Richards Street. The ahupuaa of Pohakulua is listed among the lands set apart for the government under the Mahele, but no acreage is designated.

9. Other land exchanges may have taken place during this period, but, if so, they were not properly recorded and no records of them could be found.

10. William G. Irwin & Company, Ltd. was one of the major sugar factors by the end of the 19th century, representing the following important plantation companies: Hutchinson, Paauhau, Hakalau, Kilauea, Olowalu, Waimanalo, Honolulu and Hilo. It owned or controlled a considerable amount of land. W. G. Irwin & Company was consolidated with C. Brewer & Company in 1910. See Josephine Sullivan, A History of C. Brewer & Company, Limited; One Hundred Years in the Hawaiian Islands, 1826-1926, edited by K. C. Leebrick (Boston: 1926), pp. 170 ff.

CHAPTER II

1. The Constitution of the Republic provided explicitly that "the portion of the public domain heretofore known as Crown land is hereby declared to have been heretofore, and now to be, the property of the Hawaiian Government. . . ." Robert C. Lydecker, Roster, Legislatures of Hawaii, 1841-1918, Constitutions of Monarchy and Republic, Speeches of Sovereigns and President (Honolulu: Board of Commissioners of Public Archives, Publication No. 1, 1918), p. 222.

CHAPTER III

1. 30 Stat. 750 (1898). Recourse was had to the use of a joint resolution in view of the anticipated difficulty in securing the requisite two-thirds majority vote for a treaty of annexation in the U. S. Senate. As the hearings on the Newlands Resolution indicate, misgivings over annexation of Hawaii centered around Hawaii's unique land system. See U. S., Congressional Record, 56th Cong., 1st Sess., 1899-1900, XXXIII, Pts. 1-8.

2. 30 Stat. 750 (1898).

3. The public records of exchanges during this period are more complete and detailed than in any period before or afterwards. The State Archives have a certified listing of the 16 exchanges approved by President William McKinley.

CHAPTER IV

1. Hawaii's forest lands were subject to virtually uncontrolled depredation during the 19th century. Cattle, sheep and goats, which had been introduced on most of the islands, were permitted to graze freely. They multiplied rapidly and denuded enormous areas. As a consequence, soil erosion was severe, water sources were polluted and the recharging of the water tables endangered. Leaders of the sugar industry gradually became concerned with this problem, and legislation was passed in 1903 providing for the establishment of forest reservations. See Rev. Laws of Hawaii, Sec. 379 (1905).

2. Josephine Sullivan, A History of C. Brewer & Company, Limited; One Hundred Years in the Hawaiian Islands, 1826-1926, edited by K. C. Leebrick (Boston: 1926), pp. 162-63.

3. Section 55 of the Organic Act provided that the Territorial legislature might authorize loans "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 . . . and the total indebtedness for the Territory shall not at any time be extended beyond 7 per centum of such assessed value . . . nor shall any such loan be made upon the credit of the public domain or any part thereof. . . ."

4. The minutes of Governor Dole's Executive Council are available at the State Archives. Pagination is incomplete and undependable and references to these minutes are therefore made by meeting dates.

5. The Lanai land file at the Land Court reveals the existence of a promissory note dated August 28, 1902 in the amount of $145,000 payable within 5 years to William G. Irwin. Gay's initial purchases of Lanai lands cost $162,000.

6. Hawaii, Journal of the Territorial House of Representatives, 1907, "Lanai Investigation," pp. 1669-70, hereafter cited as House Journal, 1907. Gay's attorney, H. E. Cooper, summarized the situation somewhat more succinctly: "Mr. Gay is up against the wall. He either has to abandon what he is doing there, or else secure the ownership, so that he may successfully go on with his enterprise." Ibid., pp. 1526-27.

7. Ibid., p. 1671.

8. Ibid., pp. 1644-45.

9. Ibid., pp. 1551-53.

10. Ibid., p. 1645.

11. Ibid., p. 1573.

12. Ibid., pp. 1573-74.

13. Castle v. Kapena, 5 H. 27 (1883).

14. House Journal, 1907, p. 1577.

15. Ibid., p. 1581.

16. L. L. McCandless v. George R. Carter et al., 8 H. 221 (1907).

17. House Journal, 1907, p. 1586.

18. Ibid., pp. 1597-98, or see 8 H. 221, 239.

19. See Petition No. 109, Supreme Court of the United States, October Term, 1908. The legal status of the exchange was so uncertain during this period of judicial determination that William Irwin, who took a mortgage on the Lanai lands secured by the exchange, included the following provision in the mortgage: " . . . in case it should be lawfully decided that the exchange of land . . . is invalid, and the . . . Mortgagor, his heirs or assigns are required to surrender the same to the said Territory of Hawaii, then and in such case the Mortgagee, his executors, administrators or assigns, will release the same lands mentioned or described in Land Patent No. 5911 from the lien of these presents, in consideration of the payment of the sum of $93,000. . . ." See Land Court Records, Lanai file, 1907.

   William Irwin's interests were further protected by that fact that the Territory executed the exchange deed to W. M. Giffard, second vice president of William G. Irwin and Company, rather than to Gay. On April 10, 1907, Giffard sold the exchanged lands to Gay, and on the same day Gay mortgaged them to W. G. Irwin for $192,279. The exchange was probably made with Gay rather than with Giffard or Irwin in view of the Organic Act's prohibition against the acquisition of more than 1,000 acres by corporations. A proposed exchange between the Territory and the McBryde

Sugar Company had been rejected by the U. S. Interior Department just a few years earlier in the light of this provision. The propriety of the Lanai exchange was especially questionable in view of the fact that it was well understood that Gay's Lanai ventures were being capitalized by Irwin and supervised by Giffard, and in the event that Gay was unable to meet the demanding terms of the mortgages, Irwin would take possession of Lanai. This is precisely what happened.

20. House Journal, 1907, p. 1552. Several points should be noted about the Oahu lands secured by the government through the exchange. Only 2 of the parcels were among those included in the list of nearly 20 parcels requested by the Superintendent of Public Schools. These 2 parcels had been offered to the government by their owners prior to the exchange for a total price of $35,000 cash (the Hooper and Mehrten's properties). A third parcel received by the government consisted of land adjoining the Royal School grounds, and was evaluated at $7,413. The acreage received by the government in Kalawahine consisted largely of forest reserve land on which the government had earlier undertaken a program of tree planting. Its average price of about $185 an acre suggests that it was largely marginal land at the time. Such parts of this area as might have been required for forest reserve or other purposes could have been secured by the government through condemnation. The Territory, in short, parted with nearly 50,000 acres in exchange for 2 school sites, an addition to another school site--all of which could have been acquired by a cash outlay of less than $40,000, plus some forest reserves.

21. Section 55 of the Organic Act provided that "no corporation, domestic or foreign, shall acquire and hold real estate in Hawaii in excess of 1,000 acres; and all real estate acquired or held by such corporation or association contrary hereto shall be forfeited and escheated to the United States, but existing vested rights in real estate shall not be impaired." The terms of leases on public lands were similarly restricted by section 73, which provided that "no lease of agricultural land shall be granted, sold, or renewed by the government of the Territory of Hawaii for a longer period than 5 years until Congress shall otherwise direct."

22. House Journal, 1907, p. 1535. See also the interesting exchange of correspondence between F. H. Hayselden, who had been in partnership with one of the principals in the Lanai exchange, and Governor Carter. Hayselden supported the Governor's action, while placing an extremely low valuation on the land. (Land File, 1907, State Archives.)

23. Ibid., pp. 1728-32.

24. See Land Court Records, Lanai file, 1910.

25. The records of the Lanai Ranch Company have been considered in this connection. It does not appear that the total improvements made by Gay on all of his Lanai holdings were as much as $100,000.

26. Gay was paying the government $1,600 annually under terms of these leases at the time of the exchange. These leases had been executed under the monarchy, and the Commissioner of Public Lands himself estimated that on their expiration the government should have been able to realize as much as $4,000 annual lease rent.

27. House Journal, 1907. Among other crops which had been grown in commercial quantities on Lanai and for which ample land was available were sweet potatoes, peanuts, corn and melons. Experiments had been conducted with sisal and other crops. Hawaiians who had lived on Lanai on their small landholdings, or kuleanas, had marketed these and other crops in Lahaina in some quantities.

28. Letter from William Giffard to William Irwin, October 21, 1912 in the Lanai file, State Archives. This offer by Libby presaged the ultimate use of Lanai. It was only 10 years after the Libby offer that the Hawaiian Pineapple Company purchased Lanai for over a million dollars and established there one of the world's most productive pineapple plantations. Other major pineapple producers were engaged in keen competition for choice lands during this period, and were quite willing to undertake developments under long-term leases, as on the somewhat less fertile Island of Molokai.

29. House Journal, 1907, p. 1548.

30. Ibid., p. 1728.

31. Ibid., p. 1563. Islanders then, as now, expressed considerable concern over the possibility of wealthy outsiders investing excessively in Hawaii's land. McCandless illustrated the foregoing argument by asking: "Suppose a man like Rockefeller should come here and purchase the Island, purchase all the property and tell us to get out of the country. Here, the Island of Oahu would be turned over to one individual, and everybody could be driven off."

32. Ibid., pp. 1752-53. A. V. Gear further contended, though perhaps mistakenly, that the potential water resources of Lanai were sufficient to support diversified agriculture, and that his Lanai plantation had planned to drill water tunnels into the mountains. This was subsequently done. His explanation of the failure of Lanai's only major sugar plantation reveals an interesting facet of Hawaii's history. "We had a great many Chinese stockholders--the majority of the stockholders were Chinese. . . . But the Plague came on, and the Government in its wisdom saw fit to burn down Chinatown. The result was that our Chinese stockholders could not come up to their assessments." It was the foreclosure of the mortgages against Gear's plantation which enabled Gay to make his initial large purchase of Lanai lands.

33. Ibid., pp. 1572-73.

34. 36 Stat. 444 (1910). Rev. Laws of Hawaii sec. 73(1) (1910) and also Session Laws of Hawaii 1910, emphasis supplied.

CHAPTER V

1. Hawaii achieved statehood in 1959, but the Territorial public land laws continued in force until passage of Act 32 by Hawaii's First State Legislature in 1962. Inasmuch as all exchanges during the first few years of statehood were made under the old Territorial statutes, it is appropriate to consider the period as a whole.

2. 8 H. 221, 239.

3. It is evident that substantial amounts of land secured by individuals through exchanges were, upon their death, incorporated into estates, trusts or corporations. For example, William Irwin's Lanai holdings were incorporated into the William J. Irwin Estate Company, passing thereafter into the ownership of the Baldwin family and the firm of Alexander and Baldwin, which sold them to the Hawaiian Pineapple Company. Today, Lanai is owned almost exclusively by one of Hawaii's largest private landholders, the firm of Castle & Cooke. Similarly, the lands secured through exchange by such individuals as Sam Damon and L. L. McCandless became part of landed estates.

4. See Chapter VII, for a discussion of other aspects of these exchanges.

5. See the Land files for the period 1900-1903 in the State Archives for correspondence between the Bishop Estate and officials of the U. S. Government regarding proposed exchanges.

CHAPTER VI

1. See Chapter IV.

2. See the arguments of Judge DeBolt and Justice Wilder in the case of McCandless v. Carter, as discussed in Chapter IV.

3. Pub. L. No. 135, 67th Cong., 2d Sess. (January 31, 1922). This Act authorized the President of the United States to make such exchanges. Its effective date was extended by Pub. L. No. 552, 68th Cong., 2d Sess. (April 2, 1925), and was again extended to January 31, 1929,by Pub. L. No. 146, 69th Cong., 1st Sess. (April 24, 1926).

4. Pub. L. No. 416, 83rd Cong., 2d Sess. (June 18, 1954). This Act specifically authorized exchanges for the sites of the Waialae High School and the Koko Head and Kahala Elementary Schools. The then Land Commissioner, Miss Marguerite Ashford, objected in the strongest possible terms to the proposed exchange, on grounds elaborated in footnote 1, Chapter VIII.

5. Pub. L. No. 834, 85th Cong., 2d Sess. (August 28, 1958), authorized exchanges exceeding the statutory limitations for the relief of those "who have suffered a substantial loss of real property by reason of the tidal wave of March 9, 1957," permitting an exchange of "public lands for such damaged lands of such persons." . . . Section 99D-11, Rev. Laws of Hawaii 1955, as amended (1961), provided that "in connection with reclaimed lands or the reclamation of lands beneath tidal waters . . . the land board" might "settle the rights (littoral or otherwise), if any, of an abutting owner, or . . . consolidate the holdings of public lands in the vicinity or provide public ways or access to the public lands . . . [and] may with the approval of the governor and two-thirds of the members of the land board sell, lease or transfer by way of an exchange, to such abutting owner or an owner whose land is needed for such consolidation of public holdings, access or ways. . . ."

6. See Robert H. Horwitz and Norman Meller, Land and Politics in Hawaii (2d ed.; East Lansing: Michigan State University, Bureau of Social and Political Research, 1962), pp. 35, 52 for an account of the extended discussion of this matter by the First State Legislature. Dispute over these and other provisions of exchange policy contributed to the long delay in passage of Act 32, the new public land laws. For an interesting discussion of the question of maximum size and values permitted in exchanges, see Letter Opinion 37, July, 1939, of Hawaii's Attorney General.

7. Opinion No. 84, June 3, 1908.

8. Opinion No. 529, June 26, 1916.

9. Opinion No. 529, June 26, 1916.

10. Opinion No. 628, January 27, 1919.

11. Opinion No. 761, November 18, 1918.

12. Ibid.

13. Opinion No. 188, August 10, 1910.

14. Opinion No. 601, October 18, 1916. This opinion was presaged by Opinion No. 496, March 16, 1916, in which Stainback refused to approve a proposed exchange until the intended use of the lands to be received by the government was clarified.

15. With attendant use of adjoining land for beautification, even though there "be no pressing necessity for the acquisition of" land for this purpose. Opinion No. 896, October 18, 1919.

16. See Chapter IV, pages 11-14.

17. Opinion No. 37, June 16, 1938.

18. Opinion No. 37, September 15, 1939.

19. Opinion No. 37, December 9, 1949 (1737).

20. Other Attorney General's opinions dealing with this aspect of land exchanges are: Letter Opinion 1346, September 15, 1939, opining that appraisals may be made by a special board of 3 appraisers under sec. 4521, Rev. Laws of Hawaii 1945 and Letter Opinion 1252, September 23, 1942, opining that the provisions of sec. 1578, Rev. Laws of Hawaii 1935, apply to exchanges and require disinterested appraisers. Also pertinent to the general problem of appraisals are the opinions, cited below, that the value of improvements on private lands received by the government through a land exchange should be paid for in cash, and not through the addition of more government land to balance the account. This holding should be borne in mind if, for example, the State were to attempt to acquire a property such as La Pietra through exchange, as was suggested during March and April, 1964. The value of the land which could be acquired through such

an exchange is perhaps one-third to one-half of the value of the improvements. See Letter Opinion 121, February 5, 1942. See also Rhoda Lewis' letter of July 2, 1947: 1047:37, in which she opines that this doctrine held even when the U. S. Congress, under Pub. L. No. 632, 79th Cong., 2d Sess. (August 7, 1946), waived the forty-acre and five-thousand-dollar limitation in order to make possible large land exchanges in the vicinity of Hilo after the destructive tidal wave.

CHAPTER VII

1. It has been pointed out by professional appraisers that sound appraisal practice should distinguish between compensable and non-compensable interests in land, whether or not the appraisal is for exchange, purchase or eminent domain proceedings. The basis of value is the same, viz., market value. Value to the owner or to the taker is not a pertinent consideration.

   The difficulties inherent in appraisal for exchange purposes is emphasized by leading authorities in land economics. Thus, Clawson and Held write that ". . . land exchanges are a particularly difficult form of barter, and barter is always more complicated than sale and purchase of property for money. A land exchange requires that each party to it should be better off after the exchange than before, yet each will seek equal value in the land he wants for the land he gives. There are situations when each party will consider he has benefitted by an exchange of tracts, but such situations are rare. . . ." Marian Clawson and Burnell Held, The Federal Lands, Their Use and Management (Baltimore: Johns Hopkins University Press, 1957), p. 32.

2. See Chapter IV, pp. 14-23, especially p. 18.

3. Russell Anderson Apple, "A History of the Land Acquisition for Hawaii National Park to December 31, 1950," (unpublished Master of Arts thesis, University of Hawaii, 1954), p. 58.

4. 41 Stat. 452 (1920), 16 U.S.C. Sec. 392. This Congressional Act placed responsibility for land acquisition for Hawaii National Park (now Hawaii Volcanoes National Park) on the Governor of Hawaii, an appointed official. The pertinent sections of the Act read as follows: "Be it enacted . . . That the governor of the Territory of Hawaii is hereby authorized to acquire, at the expense of the Territory of Hawaii, by exchange or otherwise, all privately-owned lands lying within the boundaries of the Hawaii National Park . . ."

   In this instance, as well as the other national park exchanges, the governor and the Territorial government were authorized to enter into arrangements they deemed advisable to secure needed land areas, but federal funds were not made available for land acquisition. Given these circumstances, the governor's decision to utilize exchanges for the acquisition of park lands was understandable. One may conjecture that the governor found it difficult--even impossible--to secure from the Territorial legislature the appropriations required for acquisition of park land. At the same time, he may well have been under considerable pressure to move ahead with this program. Land exchanges probably provided the path of least resistance under the circumstances, one of the many instances in which exchanges have satisfied an immediate need at the cost of considerable long-term losses of revenue to the public treasury.

5. Apple, pp. 58-60.

6. See Apple, p. 62 for a very interesting account of the details of this exchange, especially his conversations with Geoffrey Podmore, a former Assistant Superintendent of the Bernice Pauahi Bishop Estate. Also see the files on this exchange at the Department of Land and Natural Resources. The two claims to other land areas which the Estate sought to realize were for land in Pauoa Park in Honolulu and to 175 acres of mountain land near Lahaina "on which stood the Lahainaluna Seminary," see Apple, p. 79.

7. Rev. Laws of Hawaii, sec. 103A-47 (Supp. 1963).

CHAPTER VIII

1. A complete file of Congressional statutes authorizing the Territorial government to make special land exchanges is maintained by the Department of Land and Natural Resources. The Land Commissioner most outspokenly opposed to exchanges was Miss Marguerite Ashford, as noted in footnote 4, Chapter VI. Commissioner Ashford generalized her opposition to exchanges at a public meeting in the following fashion, as reported in the press. She expressed herself as opposed to land exchanges in principle, and as being "definitely opposed to exchanges of Territorial land with big landowners. The great drawback to the development of Hawaii has been too much land owned by too few people. In the past the Territory has traded away choice lands and later had to buy them back at exorbitant prices. The Territory has always gotten the short end of the stick." Honolulu Star-Bulletin, November 10, 1954.

2. The minutes of Governor Dole's and Carter's Executive Council are replete with illustrations of the personalized character of exchange negotiations. The restrictions on exchanges written into the public land laws in 1910 had the effect of reducing the total number and size of exchanges, but their personalized character persisted. For example, a letter from the Commissioner of Public Lands addressed to the members of the Board of Public Lands, dated October 13, 1911 reads in part:

   "I beg to submit herewith, for your consideration, application . . . for the acquisition by exchange with the Government of the land and fish ponds at Keaukaha, Hilo, Hawaii.

   "Upon receipt of the first application for 79.40 acres [the applicant] was informed that under the amendments to the Organic Act an exchange could not be made for an area exceeding 40 acres. The second application . . . includes 39.67 acres, and . . . 39.73 acres.

"It would appear that the scheme for applying for the whole tract, under two applications, is simply a means of getting around the law, since, if secured in this manner, the land would doubtless be consolidated. . . . It is, however, the desire of these gentlemen to secure the land . . . for a worthy purpose, and for an enterprise which I should like to see encouraged, and in view of this and out of consideration to [the applicants] I would respectfully ask you to consider the matter and offer any suggestions which you may wish to make.

"If you approve of the exchange of the land in two parts, it will first have to be appraised and be surrendered from the lease of the Waiakea Mill Company. . . ."

3. See Int. Rev. Code of 1954, sec. 1031. It may be noted that federal tax policy affords relief to private parties subject to capital gains on property sales, whether voluntary or involuntary--as under condemnation proceedings. Tax relief on profits realized from such sales can be granted to the extent that receipts are reinvested in real property within a period of one year from December of the year in which the sale was made. Large landowners in Hawaii in particular occasionally find it difficult to avail themselves of this provision of the law in view of the concentration of land ownership prevailing in the state. The combination of concentrated ownership plus the general reluctance of large owners to sell oftentimes leads to a severely restricted market characterized by a high price level. See Clinton T. Tanimura and Robert M. Kamins, A Study of Large Land Owners in Hawaii (University of Hawaii, Legislative Reference Bureau, 1957, Rept. No. 2), University of Hawaii, Legislative Reference Bureau, Major Landholdings in Hawaii; Data on Land Ownership and Land Use (Honolulu: 1961).

4. This premise is supported by an analysis of general leases of public lands. State lease policy will be considered in a forthcoming section of the Legislative Reference Bureau's public land study. There is considerable evidence that the bulk of Hawaii's arable public lands suitable for commercial agriculture have been as fully devoted for those purposes as comparable land areas held in private ownership.

5. Leland H. Parkhurst, "Homesteading in Lualualei, A Study in Land Utilization" (unpublished Master's thesis, University of Hawaii, 1940). See especially p. 65, where Parkhurst describes the initial development of the area for homesteading: "two additional areas of fifteen hundred acres each were given to individuals in a land exchange thereby taking up all of the seven thousand acres of land opened to the public by the first series of Lualualei homestead." See also the early Territorial Land files in the State Archives which describe the extended struggle between Lincoln McCandless and Dowsett to secure lands in this area through exchange.

6. Note the map depicting state-owned land on the Island of Hawaii which appears on the inside front cover of this study. It will be observed that the city of Hilo is bordered by state-owned lands on the south, while a substantial portion of the total area in the vicinity of the city is also owned by the State. It is evident that future development of Hilo and its environs will be decisively affected by public land policy.

APPENDIX A

METHODOLOGY

The paucity of reliable information on the subject of land exchanges and the presence of sharply conflicting attitudes concerning exchange policy, made necessary a thorough analysis of primary data in meeting the terms of the Legislature's request in this part of the public lands study. Accordingly, an analytical-historical approach was adopted which included inspection of each of nearly fourteen hundred exchange documents on file in the vaults of the Department of Land and Natural Resources. The information secured from these documents was coded and entered on I.B.M. data processing cards, after which the Statistical and Computing Center of the University of Hawaii and the Inter-University Research Consortium of the University of Michigan made I.B.M. runs designed to investigate the relevance of the major variables.

While data processing was underway, a statutory record on exchange policy was compiled, an analysis made of the opinions of Hawaii's Attorneys General dealing with exchanges, and a check made of House and Senate Journals by way of exploring the historical dimensions of exchange policy. Interviews were conducted with many legislators serving on the House and Senate Lands Committees, with governmental officials, both active and retired, with the land department managers of most of Hawaii's leading agricultural corporations and estates and with numerous other members of the community who might be expected to have some concern with exchange policy.

Following completion of a preliminary draft of this study in May, 1964, copies were circulated to a sizeable number of interested readers, including most of those previously interviewed. Their thoughtful reponses were extensively utilized in redrafting the study in its present form.

APPENDIX B

NET DIFFERENCES IN ACREAGE AND MONETARY PAYMENTS RECEIVED BY THE GOVERNMENT AND BY PRIVATE PARTIES FROM LAND EXCHANGES: 1893-1962

EXCHANGES DURING THE LATE MONARCHY

Year of Exchange	Acreage Received by Government	Acreage Received by Private Parties	Net Gain or (Loss) of Acreage to the Government	Money Received by the Government	Money Received by the Private Parties	Net Gain or (Loss) of Money by the Government
1870	.20	.00	.02	$ 0	$ 1	-($ 1)
1871	.01	.02	-(.01)	0	40	-(40)
1873	.60	.80	-(.02)	0	0	0
1877	.07	.16	-(.09)	0	1	-(1)
1878	.02	.02	.00	0	1	-(1)
1879	.25	.25	.00	0	2	-(2)
1882	1.50	1.50	.00	0	0	0
1883	2.60	2.10	.50	1	2	-(1)
1887	216.50	216.20	.30	1	1	0
1888	269.10	247.20	21.90	0	1	-(1)
1889	.10	.03	.07	0	1	-(1)
1890	6.00	6.40	-(.40)	1	0	1
1891	8.50	9.00	-(.50)	2	2	0
1892	1.80	1.80	.00	0	2	-(2)
TOTAL	507.25	485.48		$ 5	$ 54	

EXCHANGES DURING THE REPUBLIC

Year of Exchange	Acreage Received by Government	Acreage Received by Private Parties	Net Gain or (Loss) of Acreage to the Government	Money Received by the Government	Money Received by the Private Parties	Net Gain or (Loss) of Money by the Government
1894	15.1	5.1	10.0	$ 0	$ 2	-($ 2)
1895	3.2	2.7	.5	1	704	-(703)
1896	33.9	21.9	12.0	4	224	-(220)
1897	25.8	132.3	-(106.5)	2,429	3,573	-(1,144)
1898	8.9	5.7	3.2	5	655	-(650)
TOTAL	86.9	167.7		$2,439	$5,158	

EXCHANGES DURING THE PERIOD JULY, 1898-1900

Year of Exchange	Acreage Received by Government	Acreage Received by Private Parties	Net Gain or (Loss) of Acreage to the Government	Money Received by the Government	Money Received by the Private Parties	Net Gain or (Loss) of Money by the Government
1898	7.7	5.0	2.7	$ 504	$ 156	-($ 348)
1899	10.2	7.8	2.4	6	6	0
TOTAL	17.9	12.8		$ 510	$ 162	

EXCHANGES DURING THE EARLY TERRITORIAL PERIOD

Year of Exchange	Acreage Received by Government	Acreage Received by Private Parties	Net Gain or (Loss) of Acreage to the Government	Money Received by the Government	Money Received by the Private Parties	Net Gain or (Loss) of Money by the Government
1900	2.7	63.2	-(60.5)	$ 6	$ 6	$ 0
1901	10.4	7.7	2.7	6,852	502	6,350
1902	31.6	2,891.2	-(2,859.6)	1,676	577	1,099
1903	19.0	7,957.0	-(7,938.0)	1,407	18	1,389
1904	4.8	107.6	-(102.8)	40	2,950	2,910
1905	4.4	3.3	1.1	2	2	0
1906	14.2	12.6	1.6	456	2,503	-(2,047)
1907	344.4	49,293.9	-(48,949.5)	755	6	749
1908	49.3	41.6	7.7	7	10	-(3)
1909	1,246.5	920.6	325.9	1	2	-(1)
1910	63.2	1,285.5	-(1,222.3)	5,979	2	5,977
TOTAL	1,790.5	62,584.2		$17,181	$6,678	

EXCHANGES DURING THE LATE TERRITORIAL PERIOD

Year of Exchange	Acreage Received by Government	Acreage Received by Private Parties	Net Gain or (Loss) of Acreage to the Government	Money Received by the Government	Money Received by the Private Parties	Net Gain or (Loss) of Money by the Government
1911	6.2	8.8	-(2.6)	$ 1	$ 1	$ 0
1912	--	--	--	--	--	--
1913	.3	.2	.1	0	0	0
1914	.2	3.2	-(3.0)	0	0	0
1915	3.0	12.6	-(9.6)	0	0	0
1916	3.6	4.9	-(1.3)	220	0	220
1917	98.2	114.3	-(16.1)	0	0	0
1918	58.6	84.8	-(26.2)	0	40	-(40)
1919	4.0	52.6	-(48.6)	0	578	-(578)
1920	12,104.2	1,036.2	11,068.0	0	300	-(300)

EXCHANGES DURING THE LATE TERRITORIAL PERIOD (continued)

Year of Exchange	Acreage Received by Government	Acreage Received by Private Parties	Net Gain or (Loss) of Acreage to the Government	Money Received by the Government	Money Received by the Private Parties	Net Gain or (Loss) of Money by the Government
1921	239.7	2,720.3	-(2,480.6)	$ 0	$ 734	-($ 734)
1922	105.0	99.6	5.4	0	0	0
1923	80.7	104.3	-(23.6)	0	877	-(877)
1924	23.6	31.9	-(8.3)	0	1,117	-(1,117)
1925	107.8	63.1	44.7	0	3,614	-(3,614)
1926	3,366.7	1,877.3	1,487.4	0	795	-(795)
1927	14,207.4	13,576.0	631.4	1,419	2,558	-(1,139)
1928	915.9	133.0	782.9	1,383	320	-(1,063)
1929	26.1	12.7	13.4	1,120	341	779
1930	153.6	63.0	90.6	100	5,959	-(5,859)
1931	35.8	29.1	6.7	13	74	-(61)
1932	71.1	72.8	-(1.7)	385	2,276	-(1,891)
1933	114.6	45.1	369.5	440	1,464	-(1,024)
1934	100.2	190.5	-(90.3)	660	5,321	-(4,661)
1935	307.8	247.0	60.8	1,324	5,201	-(3,877)
1936	53.8	49.6	4.2	438	8,797	-(8,359)
1937	314.5	233.8	80.7	3,039	7,466	-(4,427)
1938	129.0	181.3	-(52.3)	1,403	2,486	-(1,083)
1939	134.9	195.7	-(60.8)	646	283	363
1940	107.8	133.7	-(25.9)	1,617	318	1,299
1941	78.3	57.3	21.0	411	5,936	-(5,525)
1942	124.4	154.4	-(30.0)	758	5,292	-(4,534)
1943	21.3	10.4	10.9	42	1,350	-(1,308)
1944	1.0	.8	.2	95	416	-(321)
1945	116.6	25.4	91.2	255	294	-(39)
1946	42.2	5.1	37.1	0	587	-(587)
1947	10,516.4	43.4	10,473.0	3,361	0	3,361
1948	41.3	65.0	-(23.7)	4,449	12,717	-(8,268)
1949	2,513.3	64.5	2,448.8	1,676	18,575	-(16,899)
1950	71.5	82.5	-(11.0)	689	36,572	-(35,883)
1951	92.7	66.8	25.9	1,763	12,976	-(11,203)
1952	63.5	77.1	-(13.6)	877	13,809	-(12,932)
1953	16.5	103.8	-(87.3)	1,884	3,797	-(1,913)
1954	8.7	2.0	6.7	349	175	174
1955	62.7	20.2	42.5	6	8,449	-(8,443)
1956	4,950.0	2,255.0	2,695.0	74	10,405	-(10,331)
1957	10.4	42.8	-(32.4)	32	0	32
1958	46.1	77.1	-(21.0)	610	0	610
1959	143.4	53.6	89.8	3,270	2,955	315
1960	8.6	2.6	6.0	404	22,494	-(22,090)
1961	23.1	14.0	9.1	772	1,758	-(98)
1962	384.2	317.9	66.3	0	0	0
TOTAL	52,210.5	24,919.1		$35,985	$209,477	
GRAND TOTAL	54,613.05	88,169.28		$56,120	$221,529	

APPENDIX C

PUBLIC PURPOSES SERVED BY MAJOR TYPES OF EXCHANGES

This appendix presents detailed information regarding the public purposes for which the government has secured land analyzed in terms of the 6 major types of exchanges as discussed in Chapter V, pp. 22-34. Each of these 17 purposes is designated by a letter, as indicated in the following key, to correspond with the designations used in Figures 4 and 5, Chapter V, pp. 30, 32.

Key

A Purpose unknown
B Construction of new roads
C Road extension, widening, etc.
D Road realignment/relocation
E Public building sites
F Cemeteries
G School sites
H Parks
I Boundary settlements
J Forest reserves, etc.
K Airports
L Railroads
M Harbors
N Defense purposes
O Water supply
P Flood control
Q Reclamation & development
R Quarries

TYPE I: Exchanges through which the government received URBAN land for RURAL land.

Purpose of Exchange	Area Received by Government (in acres)	Area Received by Private Parties (in acres)	Money Received by Government	Money Received by Private Parties	Number of Exchanges
A	522.00	49,277.00	--	--	1
B	6.06	82.23	$ 677	$ 100	9
C	3.62	3,094.37	5	1,769	13
D	8.97	81.13	--	207	5
E	7.74	41.64	2,744	1,076	5
G	31.55	158.46	532	734	12
H	2,465.33	20.96	--	870	6
I	--	.82	1	--	1
K	.69	11.90	--	116	2
N	3.98	.68	--	--	1
O	19.27	.39	--	--	2
P	.02	.54	--	--	1
Q	.66	.42	--	--	1
R	6.77	6,316.00	3	3	3
TOTAL	3,076.59	59,086.54	$3,962	$4,875	62

TYPE II: Exchanges through which the government received RURAL land for URBAN land.

Purpose of Exchange	Area Received by Government (in acres)	Area Received by Private Parties (in acres)	Money Received by Government	Money Received by Private Parties	Number of Exchanges
A	16.43	1,185.75	$5,979	--	1
B	1.80	1.08	--	$ 51	2
C	10,492.00	.81	3,361	--	1
D	22.35	3.82	--	434	2
G	5.73	1.96	47	1	4
N	106.20	20.00	--	--	1
O	3.23	1.58	--	--	1
P	51.47	.07	--	--	1
TOTAL	10,699.21	1,215.06	$9,387	$486	13

TYPE III: Exchanges through which the government received RURAL land for RURAL land.

Purpose of Exchange	Area Received by Government (in acres)	Area Received by Private Parties (in acres)	Money Received by Government	Money Received by Private Parties	Number of Exchanges
A	1,217.51	886.59	--	$ 2,166	8
B	1,542.71	1,304.35	$ 2,015	14,320	223
C	21.65	13.49	170	503	20
D	644.83	501.89	1,781	28,996	242
E	89.82	118.13	934	888	17
F	17.32	37.82	--	--	6
G	228.07	423.52	23	5,202	72
H	29,564.28	18,917.48	48	1,338	21
I	3,995.88	727.85	2,648	2,086	29
J	858.30	61.98	--	2	6
K	132.06	120.69	585	7,145	7
L	1.63	1.48	--	--	2
M	8.73	49.45	713	130	7
N	44.97	62.38	19	--	3
O	838.09	1,287.20	1,503	842	13
P	1.26	18.94	3	124	15
Q	308.81	273.65	--	12	2
R	13.21	7.51	1	1	2
TOTAL	39,529.13	24,814.40	$10,443	$63,755	695

TYPE IV: Exchanges through which the government received URBAN land for URBAN land.

Purpose of Exchange	Area Received by Government (in acres)	Area Received by Private Parties (in acres)	Money Received by Government	Money Received by Private Parties	Number of Exchanges
A	14.31	16.52	$ 508	$ 13	24
B	80.37	49.67	2,182	45,254	134
C	39.83	890.85	14,070	13,014	155
D	82.66	62.31	2,079	1,848	75
E	4.72	4.87	1	10,469	11
F	1.66	1.04	1	1	2
G	43.98	47.79	451	6,280	38
H	53.27	149.29	4,909	12,283	31
I	1.66	2.34	--	897	6
J	47.02	39.50	500	8,115	4
K	57.79	45.40	15	318	6
M	1.63	.02	--	--	2
N	4.82	22.29	--	6,000	2
O	1.11	1.11	4	--	6
P	27.18	9.26	48	767	18
Q	50.77	33.77	--	620	12
R	9.46	12.84	1	1	1
TOTAL	522.24	1,388.87	$24,769	$105,880	527

TYPE V: Exchanges through which the government received URBAN land of marginal utility in exchange for valuable URBAN land.

Purpose of Exchange	Area Received by Government (in acres)	Area Received by Private Parties (in acres)	Money Received by Government	Money Received by Private Parties	Number of Exchanges
A	8.20	1.59	--		1
B	.85	.30	--		2
C	.38	.02	$ 779		2
D	1.06	.44	--		1
E	.42	.12	147		1
G	1.00	.30	237		1
H	.76	.17	722		1
J	6.68	.21	--		1
M	3.83	.85	--		1
O	140.90	40.50	750		3
TOTAL	164.08	44.52	$2,635		14

TYPE VI: Exchanges through which the government received valuable URBAN land for URBAN land of marginal utility.

Purpose of Exchange	Area Received by Government (in acres)	Area Received by Private Parties (in acres)	Money Received by Government	Money Received by Private Parties	Number of Exchanges
A	.75	.62	--	$ 1	2
B	1.61	23.41	--	124	6
C	1.53	31.18	$ 5	3,003	11
D	2.16	40.17	--	--	2
G	34.14	76.36	--	1,500	3
H	21.38	77.22	1,998	36,624	12
O	16.93	.22	1	1	3
P	.28	14.09	--	187	1
TOTAL	78.78	263.27	$2,004	$41,440	40

APPENDIX D

PUBLIC PURPOSES SERVED BY EXCHANGES ON EACH MAJOR ISLAND

This appendix presents detailed information regarding the public purposes for which the government has secured land through exchange on each major island as discussed in Chapter V, pp. 34-37. Each of these 17 purposes is designated by a letter, as indicated in the following key. These data complement those presented in Figure 6, Chapter V, p. 35.

Key

A Purpose unknown
B Construction of new roads
C Road extension, widening, etc.
D Road realignment/relocation
E Public building sites
F Cemeteries
G School sites
H Parks
I Boundary settlements
J Forest reserves, etc.
K Airports
L Railroads
M Harbors
N Defense purposes
O Water supply
P Flood control
Q Reclamation & developments
R Quarries

ISLAND OF OAHU

Purpose of Exchange	Area Received by Government (in acres)	Area Received by Private Parties (in acres)	Money Received by Government	Money Received by Private Parties	Number of Exchanges
A	27.59	20.96	$ 508	$ 2,180	28
B	335.78	262.17	1,992	39,921	161
C	32.82	3,590.90	11,129	10,916	136
D	322.16	243.79	2,799	16,027	110
E	76.55	97.34	3,256	1,664	20
F	1.58	.98	1	1	1
G	72.36	115.26	770	4,315	40
H	50.56	73.49	165	1,140	20
I	.85	.90	--	897	6
J	81.65	45.36	500	8,115	6
K	.50	1.10	15	--	1
M	1.63	.02	--	--	2
N	4.97	9.99	--	--	2
O	44.89	5.72	2,174	1	16
P	77.23	6.57	48	200	20
Q	51.18	33.95	--	--	12
R	9.46	12.84	1	1	1
TOTAL	1,191.76	4,521.34	$23,358	$85,378	582

ISLAND OF HAWAII

Purpose of Exchange	Area Received by Government (in acres)	Area Received by Private Parties (in acres)	Money Received by Government	Money Received by Private Parties	Number of Exchanges
A	5.83	5.76	--	--	2
B	280.51	377.42	$ 1,387	$11,277	100
C	10,505.56	26.98	7,254	6,863	44
D	305.52	166.89	1,106	1,558	87
E	9.59	17.96	570	10,768	6
F	5.00	24.30	--	--	2
G	178.25	395.21	519	9,401	57
H	20,514.81	8,125.84	7,512	48,809	40
I	608.80	497.25	1,920	1,875	18
J	19.88	19.86	--	--	3
K	38.98	42.28	--	116	5
M	8.53	49.34	600	130	6
O	818.29	1,259.45	83	841	8
P	1.65	16.79	--	472	5
Q	308.68	273.52	--	--	1
R	3.50	--	1	1	1
TOTAL	33,613.38	11,298.85	$20,952	$92,111	385

ISLAND OF MAUI

Purpose of Exchange	Area Received by Government (in acres)	Area Received by Private Parties (in acres)	Money Received by Government	Money Received by Private Parties	Number of Exchanges
A	1,201.10	873.49	--	--	2
B	906.17	725.70	$309	$ 6,510	70
C	4.20	40.46	--	383	6
D	143.18	204.99	131	2,791	80
E	5.26	3.47	--	--	3
F	9.59	10.66	--	--	3
G	28.93	65.41	1	1	15
H	11,530.63	10,962.25	--	1,137	6
K	87.87	77.60	125	--	3
M	4.03	.96	113	--	2
N	155.00	95.35	19	6,000	5
O	139.22	40.26	--	--	2
Q	.14	.13	--	12	1
R	9.71	7.51	--	--	1
TOTAL	14,225.03	13,108.24	$698	$16,834	199

ISLAND OF KAUAI

Purpose of Exchange	Area Received by Government (in acres)	Area Received by Private Parties (in acres)	Money Received by Government	Money Received by Private Parties	Number of Exchanges
A	3.99	3.08	--	--	1
B	60.57	80.95	$1,311	$ 2,066	40
C	14.41	7.49	4	124	11
D	118.95	113.61	80	11,110	47
E	8.61	42.73	--	--	3
F	2.82	2.92	--	--	2
G	33.65	65.73	--	--	8
H	6.90	1.56	--	29	4
I	8.21	5.96	728	201	9
K	63.20	57.01	460	7,463	6
L	1.63	1.48	--	--	2
O	16.14	24.97	--	--	2
P	1.33	19.54	3	406	11
Q	.25	.24	--	620	1
TOTAL	340.66	427.27	$2,586	$22,019	147

ISLAND OF LANAI

Purpose of Exchange	Area Received by Government (in acres)	Area Received by Private Parties (in acres)	Money Received by Government	Money Received by Private Parties	Number of Exchanges
B	5.39	2.72		$75	1
C	20.99	20.50		--	2
TOTAL	26.38	23.22		$75	3

ISLAND OF MOLOKAI

Purpose of Exchange	Area Received by Government (in acres)	Area Received by Private Parties (in acres)	Money Received by Government	Money Received by Private Parties	Number of Exchanges
A	1.04	1.04	--	--	1
B	47.48	14.57	--	--	5
C	.17	.18	--	--	1
D	15.30	10.26	--	--	6
E	2.69	3.28	--	$1	2
G	5.98	35.41	--	--	3
H	2.13	1.98	--	--	1
J	.47	.57	--	2	1
O	1.71	1.36	$1	1	1
TOTAL	76.97	68.65	$1	$4	21

INTERISLAND EXCHANGES IN WHICH THE GOVERNMENT RECEIVED LAND
ON OAHU IN EXCHANGE FOR LAND ON THE NEIGHBOR ISLANDS

Purpose of Exchange	Area Received by Government (in acres)	Area Received by Private Parties (in acres)	Money Received by Government	Money Received by Private Parties	Number of Exchanges
A	341.91	51,124.60	$5,979	--	3
C	1.86	364.72	3	$3	4
G	4.31	10.85	--	--	6
I	165.81	85.57	1	--	2
R	6.77	6,316.00	3	3	3
TOTAL	520.66	57,901.74	$5,986	$6	18

INTERISLAND EXCHANGES IN WHICH THE GOVERNMENT RECEIVED LAND
ON NEIGHBOR ISLANDS IN EXCHANGE FOR LAND ON OAHU

Purpose of Exchange	Area Received by Government (in acres)	Area Received by Private Parties (in acres)	Money Received by Government	Money Received by Private Parties	Number of Exchanges
I	3,213.89	141.34		$10	1

EXCHANGES IN WHICH THE GOVERNMENT
EXCHANGED NEIGHBOR ISLAND LAND

Purpose of Exchange	Area Received by Government (in acres)	Area Received by Private Parties (in acres)	Money Received by Government	Money Received by Private Parties	Number of Exchanges
J	810.00	35.90			1

APPENDIX E

EXCHANGE LEGISLATION IN SELECTED MAINLAND STATES

In response to the many questions raised by legislators regarding provisions for land exchanges in other states, the following summary of pertinent statutory provisions has been prepared. Only those states in which 5 per cent or more of the total land area is state-owned have been considered. Statutory provisions of these 15 states, excluding Hawaii, are presented in descending order in terms of percentage of state-owned land.

A number of these states have provided statutory provisions authorizing participation in the program of the Taylor Grazing Act, 48 Stat. 1269 (1934). This Act authorizes the Secretary of Interior to establish "grazing districts," consisting of lands judged valuable chiefly for grazing and raising forage. The Secretary may so designate only "vacant, unappropriated, and unreserved lands. . . ." These may be procured from the states by various methods, among them exchanges for lands of equal value (see section 8, 48 Stat. 1272, exchange section). This Act is presently administered by the Interior's Bureau of Land Management. Money collected from the use of these grazing lands is deposited in the U. S. Treasury, except: (1) 12.5 per cent of the fees, which is given to the state in which the pariicular land is located, to be used for the benefit of the particular county or counties which contain these districts; and (2) 75 per cent of the fees collected on lands leased or rented by the U. S. Government for these grazing districts--one-third to be set aside for construction, maintenance, building, etc. on this land, the other two-thirds to be used by the state in which the lands are located. Proportionate distribution is made for areas comprising more than one state or more than one county.

ALASKA

No provisions. (Alaska Comp. Laws Ann. 1949, 1957 Cum. Supp.)

NEW MEXICO: N. Mex. Stat. Ann. sec. 7-2-11 (1963 Supp.)

The Commissioner of Public Lands is authorized to exchange with the U. S. Government lands of equal value, reserving oil, gas and mineral rights. When special conditions are involved--chiefly in the case of exchanges for military purposes--exchanges can not be effected without consent of those holding leases from the State and until the U. S. Government acquires all rights of leases.

ARIZONA: Ariz. Rev. Stat. Ann. (1956)

sec.:	
37-721	The Taylor Grazing Act accepted, as well as all other U. S. laws concerned with public lands.
37-722	The Land Department and Selection Board are authorized to effect exchanges of state lands for federal lands, except timber lands.
37-601 to 37-603	Exchanges are authorized between governing bodies of any county, city, town or school district; however, lands exchanged must be within the same county and of equal value.

MICHIGAN: Mich. Stat. Ann. ch. 101 (1958)

sec.:	
13.761	The section authorizes exchanges of state lands for federal lands of approximately equal value or area; and also authorizes exchanges with private individuals.
13.762	The procedure for concluding exchanges with U. S. Government outlined.
13.763	The procedure for concluding exchanges with private individuals outlined.
13.764	The lands acquired by exchange become part of state lands, subject to state control. Individual applications for exchanges are to be considered in the order of submission.
13.765 to 13.772	Provision is made for exchanges of state lands by the state hospital commission for land owned by school districts.

MINESOTA

No provisions. (Minn. Stat. 1961, Laws of Minn. 1963 and 1961 extra sess.)

NEW YORK: N. Y. Gen. Mun. Code sec. 72-h (1954)

Municipal corporations are authorized to exchange lands with county, town and city governments.

PENNSYLVANIA: Pa. Laws 1963, act 363 (Purdon's Pa. Leg. Serv. 1963, No. 4 at 720)

The Act authorizes a specific exchange between the Department of Highway and the Department of Public Welfare.

WASHINGTON: Rev. Code tit. 76 (1952)

sec.:

76.12.050 to 76.12.060 — The sections authorize wide powers to all concerned to exchange lands in order to consolidate respective landholdings of any county, municipality, national or state forest.

79.08.090 — Exchange of lands to secure parks and playgrounds is authorized; lands are limited to tide and shore lands of equal value within the same county.

79.08.108 — Specific lands are listed which may be exchanged to secure state park lands.

79.08.180 — Exchanges of land of equal value to facilitate marketing of forest products or to consolidate state lands are authorized with the U. S. Government and agencies controlling other state lands, as well as with private owners.

79.08.190 — This section deals with the holding of and administration of these lands.

MONTANA: Rev. Codes (1947)

sec.:

81-304 — Exchanges with the U. S. Government and counties are authorized. Land sections within or adjoining a federal forest reserve can be exchanged for lands of equal or greater value, preferably other forest land; if such lands are not available then other lands are acceptable. Exchanges with counties of fee simple land for state-owned land of approximately the same area and value, though not higher, is authorized. These exchanges should be consummated for the purpose of consolidating state lands.

81-305 — Exchanges with the State Water Conservation Board is authorized for lands of approximately equal area and value in fee simple title.

81-306 — Exchanges are authorized with the U. S. Government for military purposes. Land exchanged is not to exceed 10,000 acres in Valley County for the U. S. Air Force; and should be of equal or greater value.

81-2201 to 81-2206 — The State Board of Land Commissioners may exchange state lands for lands timbered, cut, or burned over in fee simple title. Exchanges must benefit public interest, and should be between similar lands of equal value.

WYOMING: Wyo. Stat. Ann. (1957)

sec.:

36-4 — The section approves exchanges of land with the U. S. Government. It gives general authorization for exchanges of lands of equal area, and equal surface and mineral rights.

36-5 — Exchange provisions of the Taylor Grazing Act accepted.

36-6 — Exchanges authorized between the State and private owners.

36-7 — The Commissioner of Land is authorized to make exchanges with the approval of the Board and in compliance with the acts of Congress.

36-8 — The Board of Land Commissioners is authorized and empowered to make the rules and regulations relative to exchanges.

36-67 — Preference in granting leases on exchanged lands under the Taylor Grazing Act is given to holders of leases on state lands offered for exchanges.

UTAH: Utah Code Ann. sec. 65-1-70 (1953)

Exchanges of lands of equal value are authorized between the State and other proprietors for the purpose of compacting the landholdings of the State.

SOUTH DAKOTA: Sess. Laws 1961 ch. 126 at 148.

Authorization for exchange of specific land parcel with private owner.

IDAHO: Idaho Code sec. 58-138 (1963 Supp.)

The State Board of Land Commissioners may at its discretion conduct exchanges with the U. S. Government to consolidate state lands or aid the State in control, management or use of state lands. No exchanges are permitted involving leased lands without the consent of the lessee. The State prefers exchanges for absolute titles in fee simple without any reservations or restrictions.

SOUTH CAROLINA

No provisions. (S. C. Code of Laws 1962, 1963 Supp.)

CONNECTICUT

No provisions. (Gen. Stat. 1958, Public Acts 1963)