

STATE OF HAWAII

DEPARTMENT OF HAWAIIAN HOME LANDS

October 20, 2009

TO: Chairman and Members, Hawaiian Homes Commission

THROUGH: Anita S. Wong, Deputy to the Chairman *Anita S. Wong*

FROM: Darrell Yagodich, Planning Program Manager
Planning Office *Darrell Yagodich*

SUBJECT: Memorandum of Agreement between the Department of
Hawaiian Home Lands and the City and County of
Honolulu Regarding the Mutual Sale or Exchange of
Certain Lands

RECOMMENDED MOTION/ACTION

That the Hawaiian Homes Commission (Commission) approves the proposed Memorandum of Agreement (MOA) between the Department of Hawaiian Home Lands (Department) and the City and County of Honolulu (City) to convey certain lands in Waiawa and Kapolei through either the mutual sale or exchange to achieve their respective land use and management objectives (See attached Exhibit A) and authorizes the Chairman to execute the MOA.

DISCUSSION

Proposed Sale or Exchange

At its regular meeting on May 23, 2006, the Commission approved and authorized the Chairman to carry out necessary actions to complete a land exchange with the City, exchanging the Department's Ewa Drum site totaling approximately 55.876 acres for the City's Varona Village site totaling approximately 52.717 acres (See Exhibit B). The City's planned use for the Ewa Drum site is for a transit corporation yard that is an essential element for their planned Honolulu rail transit system (Honolulu High-Capacity Transit Corridor Project). The City plans to break ground for the rail transit system in late 2009. The Varona Village site is located adjacent to the Department's master planned community of East Kapolei and would expand the Department's land holdings in that community for future development.

In May 2009, during the exchange negotiations with the City, the City requested the Department to consider the sale of the Ewa Drum site to the City and in return the City would sell the Varona Village site to the Department. The City informed the Department that they have federal funds available that can only be used to purchase land for transit purposes and would prefer to use these funds to purchase the Ewa Drum site.

Hawaiian Home Lands Recovery Act

The Ewa Drum site was one of several federal properties that the Department acquired pursuant to the Hawaiian Home Lands Recovery Act of 1995 (HHLRA), P.L. 104-42. HHLRA represents the settlement for compensation to the Department for past use by the federal government of the Department's lands. The State Attorney General opined that the Department is authorized pursuant to HHLRA to sell the Ewa Drum site provided the Chairman of the Commission grants his approval to designate Ewa Drum site to be sold.

Section 203(3) of the HHLRA authorizes the Chairman to sell lands designated as compensation for "lost use" of Hawaiian home lands. The term "lost use" is defined in the HHLRA, Section 202(7) as the value of the use of the land during the period when the Hawaiian Homes Commission was unable to use lands because of the use of such lands by the federal government after August 21, 1959. Our independent appraisers have valued the "lost use" compensation as \$20 million as of 1993.

Beneficiary Consultation

The subject sale or exchange of these land parcels were part of a Beneficiary Consultation on July 20, 2009. See Exhibit "C" for the consultation notice to lessees and applicants in the region and relevant portions of the power-point presentation. 45 people signed in.

Questions were raised as to how the HHLRA authorizes the sale of Hawaiian home lands when the Hawaiian Homes Commission Act of 1920, as amended, prohibits land sales. Comments were received about the Department's major investments in the East Kapolei area and the need for more land there. There was no opposition to the acquisition of Varona Village for the Ewa Drum Site.

On July 9, 2009, the Chairman granted his approval to designate the Ewa Drum site to be sold to the City as authorized under the HHLRA (See Exhibit D). In addition, in a letter dated August

19, 2009 the Chairman notified the Secretary of the U.S. Department of the Interior that he designed the Ewa Drum site for sale as authorized under the HHLRA (See Exhibit E).

Summary

The approved sale of the Ewa Drum site gives the Department a negotiating alternate to an exchange. To formalize the intentions of the Department and the City the proposed MOA was drafted to guide and govern all actions necessary to accomplish the transfer of title to each respective land from each Party to the other by either sale or exchange.

The major provisions of the MOA include:

- The parties agreed to either sell or exchange their respective properties after the City receives the Record of Decision from the Federal Transit Administration for the Honolulu High-Capacity Transit Corridor Project. (The City expects to receive the ROD in December 2009.)
- The value of the properties in either a sale or exchange shall be based on appraisals of fair market values.
- In the event that the parties agree to the sale of the properties, the parties shall enter into a purchase and sale agreement, which shall be mutually agreed upon by the parties.
- In the event that the parties agree to the exchange of the properties. The parties shall enter into an exchange agreement, which shall be mutually agreed upon by the parties and subject to approval by the U.S. Secretary of the Interior.
- Upon execution of the MOA, the parties shall execute a License Agreement for their respective properties giving the other party access to their respective properties and giving the party full rights of possession pending the transfer of title.

RECOMMENDATION

The Commission's approval of the recommended motion is respectfully requested.

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (MOA) is entered into on this _____ of _____, 2009, by and between the Department of Hawaiian Home Lands, State of Hawaii ("DHHL") and the City and County of Honolulu, a municipal corporation of the State of Hawaii ("City").

PURPOSE

WHEREAS, DHHL and the City have identified an opportunity to achieve their respective land use and management objectives through the conveyance of certain lands in Waiawa and Kapolei, Oahu, Hawaii, through either mutual fee simple sale or an equal-value exchange; and

WHEREAS, DHHL and the City have agreed to sell or exchange these parcels of land when the City receives the Record of Decision from the Federal Transit Administration ("FTA") for the Honolulu High-Capacity Transit Corridor Project, a FTA New Starts project; and

WHEREAS, DHHL and the City have agreed that pending the sale or exchange of properties between DHHL and the City, the Parties shall grant each other the necessary property interests in each other's property so that each may take possession of the other's property at the earliest possible moment; and

WHEREAS, the purpose of this MOA is to guide and govern all actions necessary to accomplish the transfer of title to each respective property from each Party to the other by sale or exchange,

NOW THEREFORE, the Parties mutually acknowledge that the consideration for the execution hereof are their respective mutual covenants and their respective benefits inuring herefrom, and hereby agree to sell or exchange their respective properties according to the following terms, covenants, conditions, and provisions:

EXCHANGE or SALE PROPERTIES

EXHIBIT A
ITEM NO. E-1

DHHL is the fee owner of the Ewa Facility Drum site suitable for conveyance to the City by sale or exchange. The property is identified as Tax Map Key numbers (1) 9-4-08: 010 and (1) 9-6-03: 044; consisting of approximately 55.842 acres; described in detail in Exhibit A and made a part hereof ("DHHL Property").

The City is the fee owner of certain properties situated in Ewa, Oahu, suitable for conveyance to DHHL by sale or exchange. These properties consist of first, a portion of Tax Map Key: (1) 9-1-17-69, which consists of approximately 33.253 acres, and the second, a portion of Tax Map Key: (1) 9-1-17:075, which consists of approximately 18.808 acres, both of which are shown more fully on the map attached hereto as Exhibit B and made part hereof ("City Property").

AGREEMENT

1. Value of Sale/Exchange Properties. DHHL and the City agree that the value of the sale/exchange properties shall be based on appraisals of fair market values for the sale/exchange properties. The appraisals will be based on the "Uniform Standard of Professional Appraisal Practice" and/or the "Uniform Appraisal Standards for Federal Land Acquisitions."
2. Sale or Exchange of Properties.
 - a. Sale of Properties. In the event that the parties agree to the sale of the properties, DHHL and the City are obligated to the following:
 - (1) DHHL agrees to sell and convey to the City and the City agrees to purchase, the DHHL Property, subject to and in accordance with the terms and conditions set forth in a purchase and sale agreement, the form and content of which shall be mutually agreed upon by the parties for a sale by quitclaim deed on an "as is", "where is" basis.
 - (2) City agrees to sell and convey to DHHL and DHHL agrees to purchase, the City Property, subject to and in accordance with the terms and conditions set forth in a purchase and sale

agreement, the form and content of which shall be mutually agreed upon by the parties for a sale by quitclaim deed on an "as is", "where is" basis, and subject further that the City Property is properly subdivided for conveyance.

- b. Exchange of Properties. In the event that the parties agree to the exchange of the properties, the parties shall execute a Land Exchange Agreement, the form and content of which shall be mutually agreed upon by the parties for an exchange on an "as is", "where is" basis. Furthermore, in the event of an exchange of properties, DHHL and the City are obligated to the following:

- (1) DHHL shall convey and the City shall accept title to the DHHL property by duly executed and acknowledged quitclaim deeds.
- (2) The City shall convey and DHHL shall accept title to the City property by duly executed and acknowledged quitclaim deeds, subject to the City Property being properly subdivided for conveyance.

3. Approval or Review of Governmental Authorities.

- a. In the event of a sale of the properties described herein, such sale shall be subject to DHHL obtaining the approval of the Hawaiian Homes Commission. In the event of an exchange of the properties described herein, such exchange shall be subject to DHHL obtaining the approval of the Hawaiian Homes Commission and the United States of America, acting by and through its Secretary of the Interior.
- b. This MOA, the sale or exchange and any license for the use of the properties described herein shall be subject to the approval of the City Council.

4. Right of Entry and License Agreement: The Parties recognize that each Party will need control and use of the other Party's property prior to the closing of the sale or exchange of the subject properties ("Closing"). Upon the execution of this MOA,

subject to any applicable governmental approvals, and prior to the effective date of the Closing:

- a. DHHL shall execute a License Agreement for the DHHL Property allowing the City and its agents to have access to the property and giving the City full rights of possession of the DHHL Property pending the transfer of title in accordance with the terms and conditions set forth in the License Agreement. The City shall be responsible for all claims, demands, liabilities, costs and expenses arising out of or in connection with DHHL's provision of the License Agreement to the City.
- b. The City shall execute a License Agreement for the City property allowing the DHHL and its agents to have access to the property and giving the DHHL full rights of possession pending the transfer of title in accordance with the terms and conditions set forth in the License Agreement. DHHL shall be responsible for all claims, demands, liabilities, costs and expenses arising out of or in connection with the City's provision of the License Agreement to DHHL.
- c. During the period from the execution of this MOA to the Closing, neither Party shall allow liens or other encumbrances to attach to any part of the other Party's Property.
- d. In the event the City Council, the Hawaiian Homes Commission or the United States Secretary of the Interior, as applicable, disapproves this MOA, any License Agreements shall terminate immediately; provided, however, that the City shall be allowed on the DHHL property to remove any improvements made thereon by the City and DHHL shall be allowed access to the City property to remove any improvements made thereon by DHHL. Each Party shall be solely responsible for the cost and expense for the removal of improvements.

5. Environmental Analyses and Assessments.

- a. The Parties will comply with an environmental analysis and related studies as required by the National

Environmental Policy Act (NEPA) for their respective properties. In the event of an exchange of properties, the environmental analyses shall be reviewed by the United States Department of the Interior.

- b. Both Parties will comply with a Phase 1 Environmental Site Assessment report for their respective property and in the event of an exchange of properties such assessments shall be subject to review by the United States Department of the Interior.
 - c. Both Parties will comply with environmental assessments for their respective properties as required under Chapter 343, Hawaii Revised Statutes.
6. Inspection. The Parties' representatives are authorized to enter upon the Sale/Exchange Properties for the purpose of completing due diligence inspections, including environmental audits, and for any other purpose required or permitted by this MOA.
7. Warranties. Except as otherwise provided in this MOA, the Parties agree to accept the Sale/Exchange Properties "as is" and "where is". Neither party has made any warranties, express nor implied, concerning the condition of the Sale/Exchange Properties (other than title, as provided herein) or their fitness for any intended use.
8. Encumbrances. The Parties agree not to sell, convey, or further encumber the Sale/Exchange Properties prior to Closing. Each Party shall convey its Sale/Exchange Property by means of a quitclaim deed free of any mortgages, liens, or other encumbrances.
9. Closing and Related Costs. All closing costs incurred at the time of the Closing shall be shared equally between the parties. Closing shall occur upon the recordation in the Bureau of Conveyances and filing in the Land Court of the State of Hawaii, as applicable, of both DHHL's deed for the DHHL Property and the City's deed to DHHL for the City Property. The Parties shall coordinate their efforts to ensure that the deeds are simultaneously submitted for recordation and filing.

10. Construction. The Parties have contributed equally to the drafting of this document, which shall not be construed in favor of either. This MOA shall be construed in accordance with the laws of the State of Hawaii.
11. Term. This MOA shall be in force and effect until the land exchange or sale has been completed to the mutual satisfaction of the Parties.
12. Modification. This MOA may be modified by written consent of both Parties to cover any questions that may arise subsequent to the date of this MOA. The MOA may be renewed for an additional term upon written consent of both Parties.
13. Authority. The Parties hereto represent and warrant that this MOA and all instruments, documents and agreements to be executed in connection herewith are or when delivered will be duly authorized, executed and delivered by the Parties hereto and will be valid, binding and enforceable obligations of the parties charged. Each individual executing this MOA on behalf of DHHL or the City represents and warrants to each other that he or she is duly authorized to do so.
14. Legal Descriptions. The Parties acknowledge that legal descriptions suitable for conveyance of title may not be available for all properties identified in Exhibits A and B. Prior to conveyance of any properties identified in Exhibits A and B, in consultation with the other party, each Party shall prepare a legal description, suitable for recordation, for each property.
15. Termination. This MOA will terminate when all conveyances have been completed and approved in writing by both Parties.
16. Assignment. No transfer or assignment of this MOA, or any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first approved in writing by both Parties.

17. Dispute Resolution. The Parties agree to employ a process of negotiation, mediation, or other means of Alternative Dispute Resolution other than binding arbitration to resolve any disagreements that may arise under this MOA, provided however, that each party reserves the right to litigate any dispute that remains unresolved after good faith attempts at Alternative Dispute Resolution.

IN WITNESS WHEREOF, the parties have executed this MOA as of the day and year first written above.

DEPARTMENT OF HAWAIIAN HOME LANDS

By _____
Kaulana H.R. Park
Chairperson of the Hawaiian Homes Commission

CITY AND COUNTY OF HONOLULU

By _____
Mufi Hannemann
Mayor

APPROVED AS TO FORM AND LEGALITY

By _____
Deputy Attorney General
State of Hawaii

APPROVED AS TO FORM AND LEGALITY

By _____
Deputy Corporation Counsel
City and County of Honolulu

EXHIBIT A

<u>Properties</u>	<u>Acres</u>	<u>Location</u>	<u>TMK</u>
Ewa Drum Facility	56	Waiawa, Oahu	

Acreage amounts are approximate. Precise figures will be obtained and inserted in actual transfer documents.

EXHIBIT B

Varona Village	53	Kapolei, Oahu	(1) 9-1-017:069
			(1) 9-1-017:075

Acreage amounts are approximate. Precise figures will be obtained and inserted in actual transfer documents.

Hawaiian Homes Commission Minutes, 2006
Kamuela, Hawaii

Item No. D-1

residential use is better than receiving ten dollars a year for 65 years from The Salvation Army.

ACTION

Motion carried unanimously.

ITEM NO: D-2

SUBJECT: Proposed Land Exchange With the City and County of Honolulu

MOTION

Moved by T. Morikawa, seconded by B. Baclig.

DISCUSSION:

City and County of Honolulu wishes approval and authorization to effectuate a trade of two parcels of land consisting of 55 acres of land called Ewa Drum located in Waiawa, Oahu area and 1.89 acres (former Bowling Alley) situated on Isenberg St. for 52 acres known as Varona Village in East Kapolei. Development within the Varona Village area would create an opportunity to expand the Hawaiian homes residential and commercial properties in Kapolei.

What happened to the revenue planned for the Isenberg property inquired Q. Kawanakoa. As the County requested to expand the adjacent Stadium Park, and with limited infrastructure constraints placed on the Department for this parcel, it was advisable to include this property for a trade explained Linda Chinn. Limited residential development on O'ahu is the Department's enigma. Less than 4% of all Hawaiian home lands are available on O'ahu.

An inquiry to whether there is an island plan in place for O'ahu was asked by Kaipo Kincaid. She shared her mana'o that we poll applicants where they want to live. The Department's Planning Division has been working on a regional plan for several years commented Chairman Kane, but he liked the idea of polling the applicants.

ACTION

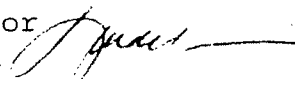
Motion carried unanimously.

EXHIBIT B
ITEM NO. E-1

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

May 23, 2006

TO: Chairman and Members, Hawaiian Homes Commission

FROM: Linda Chinn, Administrator
Land Management Division 

SUBJECT: Proposed Land Exchange with the City & County of
Honolulu

RECOMMENDED MOTION/ACTION

That the Hawaiian Homes Commission grant the following:

1. Approve and authorize the Chairman to carry out necessary actions to complete a land exchange with the City and County of Honolulu, exchanging two (2) parcels of Hawaiian home lands located at Ewa and Moiliili, Oahu, totaling approximately 57.732 acres for approximately 52.717 acres of county owned lands identified as Varona Village Expansion property, Kapolei, Oahu; and

2. Authorize the Chairman to include additional Hawaiian home lands property, not limited to the 10-acre parcel in Kapolei general leased to The Salvation Army for its KROC Community Center facility, in order to effectuate the land exchange should there be a shortfall in the appraised value.

The proposed land exchange is subject to the Hawaiian Homes Commission Act and the following conditions:

- (a) Approval of all documents by the Attorney General.
- (b) Completion of exchange agreement, draft exchange deed, appraisals and such negotiation as is needed to structure a value-for-value transaction.
- (c) Approval of the U.S. Secretary of the Interior.

EXHIBIT B
ITEM NO. E-1

ITEM NO. D-2

DISCUSSION

Exchanges of Hawaiian home lands for other lands are governed by Section 204(a)(3) of the Hawaiian Homes Commission Act of 1920, as amended. The approval of the U.S. Secretary of the Interior is required for all exchanges, and Interior Department (USDOl) procedures are outlined in an October 10, 1985 letter to the Department of Hawaiian Home Lands (DHHL). USDOl has identified types of information that should be submitted for review, including a discussion of any environmental, social, economic or other relevant implications of the proposed uses. Federal decisions on land exchanges require compliance with the National Environmental Policy Act (NEPA).

Exchange Properties

Ewa Drum Site

Pursuant to the Hawaiian Home Lands Recovery Act (HHLRA), the Department selected the Ewa Drum site as one of the Federal surplus properties to be transferred to the Department in payment for Federal possession of Hawaiian home lands. The general location of this parcel is shown in Exhibit "A". The parcel was selected for industrial use as a potential income property.

The Ewa Drum site is located in Waiawa, Oahu. It is identified as Tax Map Key (1) 9-4-03:44 and 9-4-08:10. This 55.842-acre parcel is irregular-shaped with sloping topography along the easterly side of the property. The usable area of the Ewa Drum property is estimated to be about 39.433 acres because about 12.028 acres are encumbered by access and roadway easement and about 4.381 acres are estate to be in steep slope.

The property is adjacent to the Leeward Community College to the east and Waipahu High School to the west. The Waipahu neighborhood to the west and southwest of the property is an older residential neighborhood with small commercial development along Kamehameha Highway in Pearl City. There is a multi-family residential development on the adjacent property southwest of the subject property

Access to the property is from Ala Ike Road, a paved, two-laned access road in good condition that services the adjacent Leeward Community College. Additional access to the property is via Waiawa Road from along the south property line and from a

single access point along Farrington Highway at its northw4esterly boundary.

The property is served by overhead electric and telephone services. There is a 12-inch water main on Ala Ike Street, and a 10-inch sewer lateral at its southern boundary.

The vacant site has two underground storage tanks, a drum filling plant, a drum storage area and a tank truck loading rack. The property may be contaminated with hazardous substance. The Federal government is completing the necessary clean up of the site prior to deeding the property to DHHL.

The highest and best use of the site is determined to be multi-family residential development.

Isenberg Street Parcel

The Isenberg property was selected by DHHL as one of the properties to make up the 16,518 acres of state land owed to the Department of Hawaiian Home Lands. The general location of this parcel is shown in Exhibit "B". This parcel was also selected as a potential income property.

The Isenberg Street property is located at 820 Isenberg Street, Honolulu, Island of Oahu. It is identified by TMK No. (1) 2-7-08:18 & 20. The property is situated in that part of metropolitan Honolulu commonly known as the McCully/Moiliili area. The property is irregular in shape and contains a gross land area of 82,493 square feet.

The property is located between Kapiolani Boulevard and King Street, two of metropolitan Honolulu's major thoroughfares. The property has approximately 206 lineal feet of frontage along Isenberg Street, a six-lane two-way secondary roadway. The property is bounded on the north and west by Stadium Park, a city and county operated and maintained county park, and on the south by a residential high-rise condominium. The property is approximately 1 mile from the University of Hawaii, 1.5 miles from Waikiki and 3 miles from downtown Honolulu.

DHHL obtained title to this property on June 1, 1995. The existing improvement was built circa 1955 and was operated as a bowling alley until May 2004. Currently, there is a month-to-month tenant on site using the parking area to store towed vehicles.

Public utilities available include water, sewer, gas, electricity, and telephone services.

Varona Village Expansion Property

The Varona Village Expansion property is owned by the City and County of Honolulu. The general location of this parcel is shown in Exhibit "C".

The property consists of two proposed parcels. One is 19.464 acres, identified as TMK (1) 9-1-17:portion of Parcel 75. The other parcel, identified as TMK (1) 9-1-17 portion of parcel 69, comprises 33.253 acres. The property is classified Agricultural District by the State of Hawaii and zoned Ag-1 Restricted. The parcels are also encumbered by Air Installations Compatible Use Zone (AICUZ) easement affecting other East Kapolei lands. The proposed Kapolei Parkway Extension separates the two parcels. The property is adjacent to DHHL East Kapolei land. The land is fairly level with nearby access to infrastructure.

Preliminary Valuation

Based on most recent county assessment, the following is the estimated value of the properties proposed for this land exchange:

DHHL:	1.89 acres at Isenberg	\$ 9M	
	55.842 acres at Ewa Drum	<u>\$26M</u>	\$35.0M
	(usable 39.433 acres)		
City:	52.717 acres at Varona Village		\$34.5M

These preliminary valuations are for initial discussion purposes only and are subject to confirmation from an independent appraisal report. Should there be any shortfall in the final appraised value, the 10-acre parcel for the KROC center, estimated value of \$2.5M, could be included in the land exchange package.

Justification for Land Exchange

Residential development on Oahu is the Department's highest priority, with 7,410 people on the Oahu residential waiting list as of January 2004. However, less than 4% of all Hawaiian home lands are located on Oahu.

The mission of DHHL is "to manage the Hawaiian Home Lands trust effectively and to develop and deliver land to native Hawaiians." To meet this mission, DHHL will "within five years, provide every qualified native Hawaiian beneficiaries on the waiting list an opportunity to homeownership or land stewardship on homestead lands."

The Varona Village Expansion property is fairly level and close to necessary infrastructure. Also because the land is close to our East Kapolei parcels, the infrastructure costs could be shared in developing the two projects.

The City & County of Honolulu wishes to expand the Old Stadium Park, which is essentially a small, passive park located in a very densely populated area. A larger parcel would allow the city to potentially add areas for more active recreation use. The Ewa Drum site is desirable by the City as a transit facility for the proposed new Honolulu High-Capacity Transit Corridor Project.

Actions to Effect Land Exchange

There will be a number of actions necessary to complete the land exchange after this Commission action. Subsequent actions include, but are not limited to, the following:

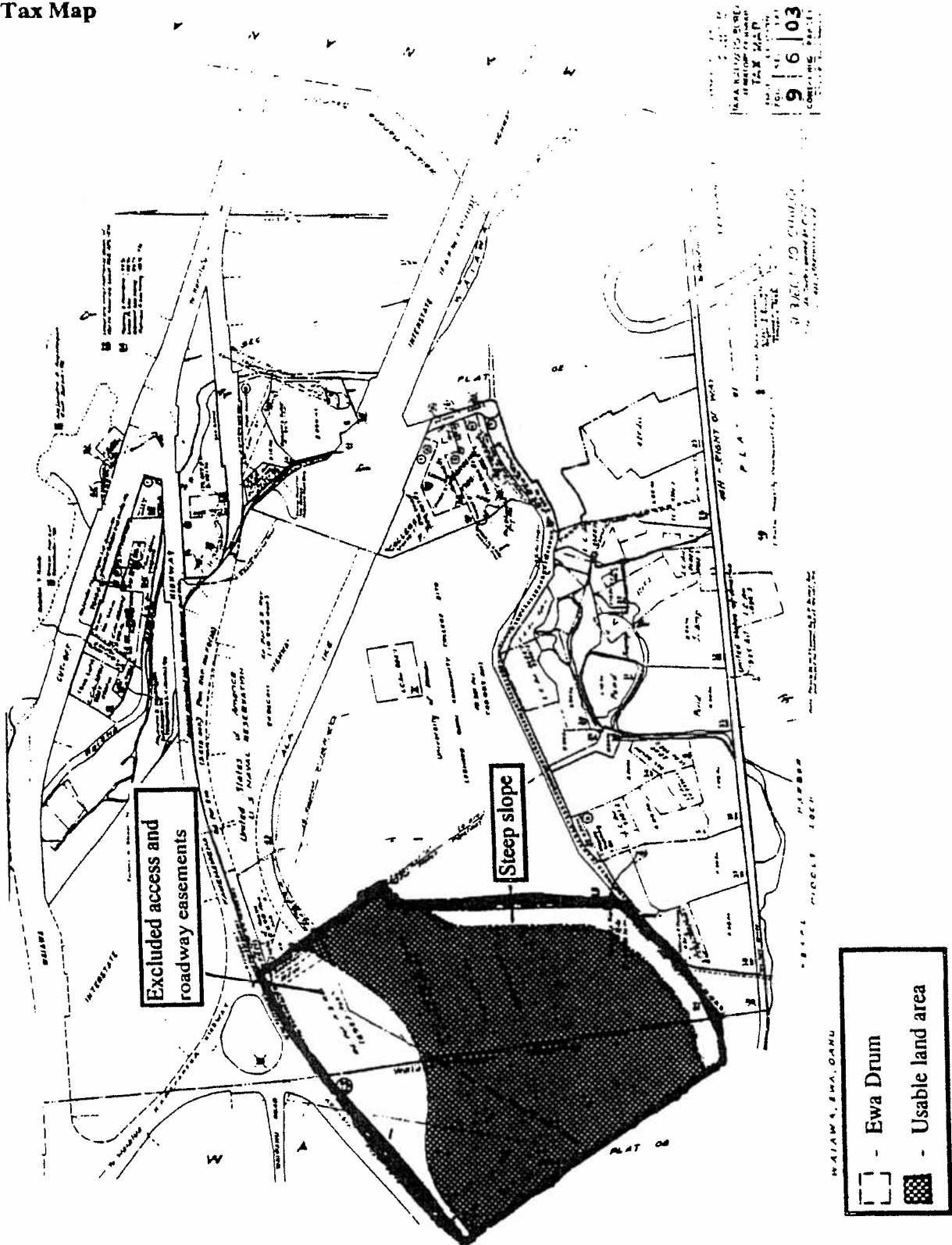
- DHHL and City & County of Honolulu will finalize and execute an exchange agreement identifying the responsibilities of the parties.
- An exchange will be structured following completion of appraisals for the three properties. Additional consideration may be required to ensure a value-for-value transaction.
- A draft exchange deed will be prepared.
- An information package will be submitted to USDOl.
- USDOl will review the information package and prepare a document for Federal environmental review. In addition to impact on the Hawaiian home lands trust and beneficiaries, it is likely that the document will have to address impacts of the exchange on agricultural use in Central Oahu, infrastructure and future planning of the area.

- The Varona Village parcel may require final subdivision approval from the City and County of Honolulu.
- Recordation of the exchange deed would follow approval by the U.S. Secretary of the Interior.

CONCLUSIONS

Land Management Division recommends that a land exchange be carried out based on these conclusions:

- (1) The Commission has the authority to exchange Hawaiian home lands for other lands, under subsection 204(3) of the Hawaiian Homes Commission Act, "in order... to better effectuate the purposes of this Act...."
- (2) The lands to be received by the Department are more suitable for the Act's primary focus of homestead development, than the Hawaiian home lands to be exchanged are for their intended (income) use.
- (3) A properly-structured value for value land exchange would better effectuate the purposes of the Hawaiian Homes Commission Act.



Abstract

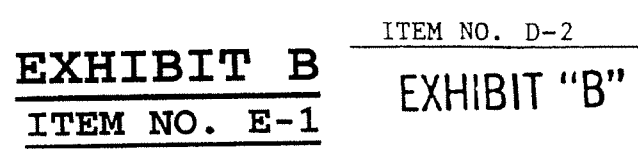


EXHIBIT "B"

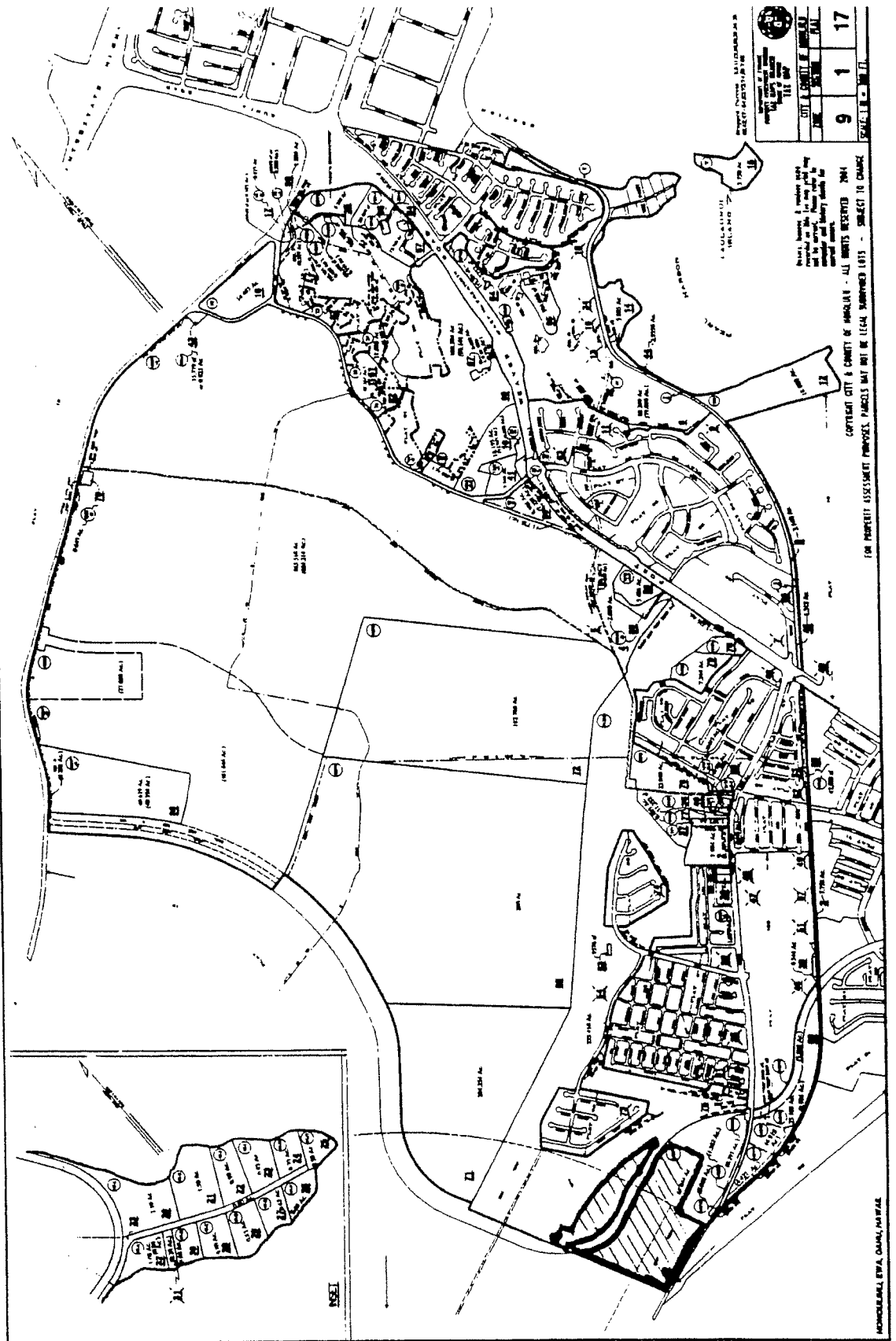


EXHIBIT B
ITEM NO. E-1

ITEM NO. D-2
EXHIBIT "C"

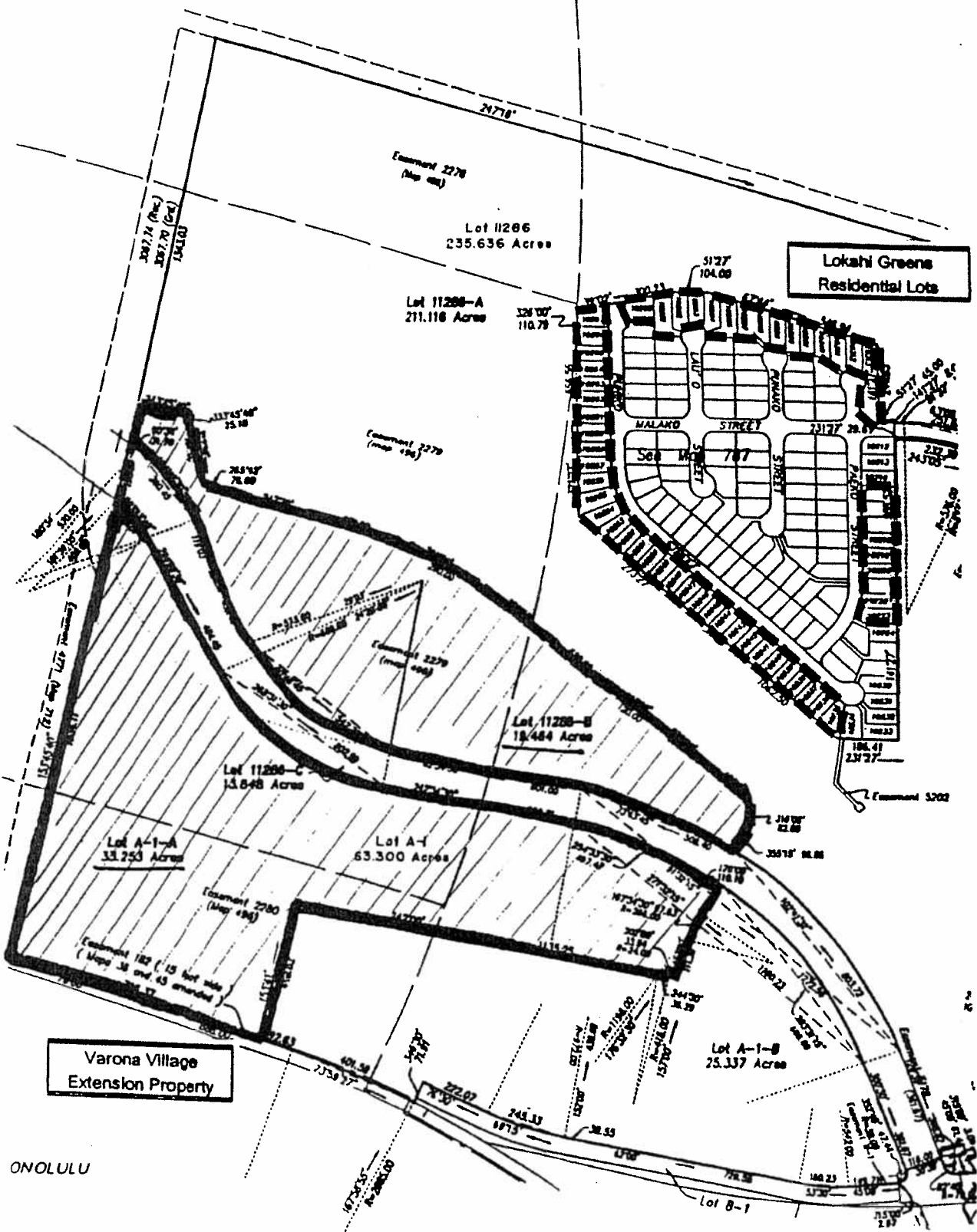


EXHIBIT B
ITEM NO. E-1

EXHIBIT "C"
ITEM NO. D-2



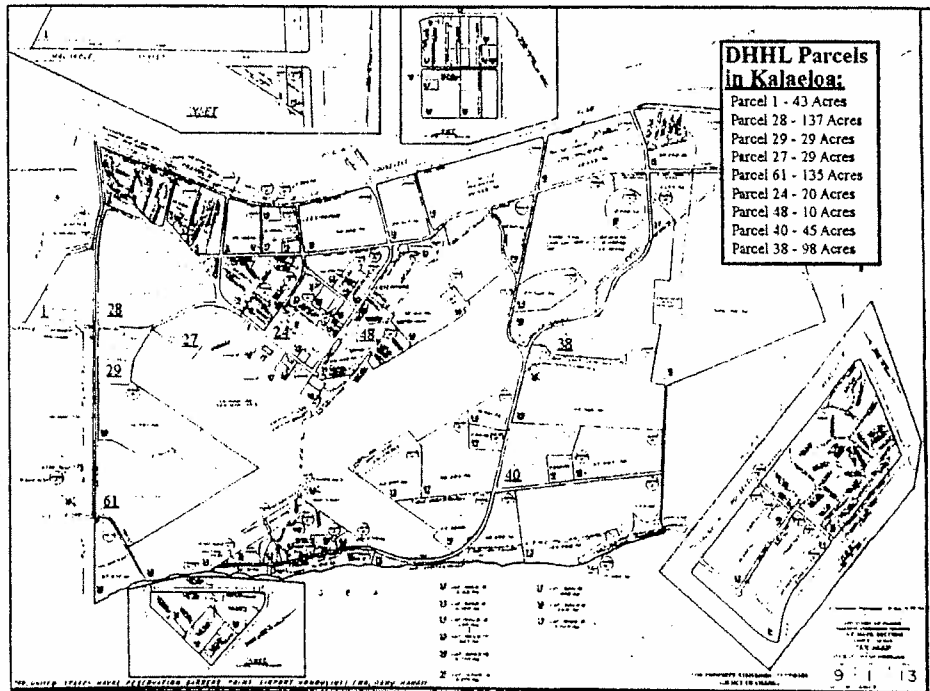
DEPARTMENT OF HAWAIIAN HOME LANDS
BENEFICIARY CONSULTATION

Kapolei Area Beneficiary Consultation
Revenue-Generating Land Uses

Wednesday, July 29, 2009
Kapolei Middle School Cafeteria
6:00 p.m. to 8:00 p.m.

AGENDA

- I. Introductions
- II. Purpose of Meeting
- III. Revenue-Generating Land Uses
- IV. Kapolei Revenue-Generating Projects
 - HECO Photovoltaic Energy Demonstration Project
 - East Kapolei I Commercial Sites
 - Kalaeloa Renewable Solar Energy Development
 - General Land Use for Kalaeloa Lands
 - Varona Land Acquisition
- V. Discussion



Hawaiian Home Lands Recovery Act

HAWAIIAN HOME LANDS RECOVERY ACT OF 1995 PUBLIC LAW 104-42

* * * *

Settlement of Claims Federal Use of Hawaiian Home Lands

Hawaiian Home Lands Recovery Act

VALUE OF CLAIMS

\$ 50.5 m	Replacement Value
20.2 m	Rent (After 1959)
<u>6.9 m</u>	Rent (1921-1959)
\$ 77.6 m	

Hawaiian Home Lands Recovery Act

PAYMENT IN NON- CEDED SURPLUS LAND 913 ACRES

Kalaeloa	Upolu
LCC Ewa Drum	Manana
Haiku Valley	Halawa
\$16.9 m Credit	Lualualei

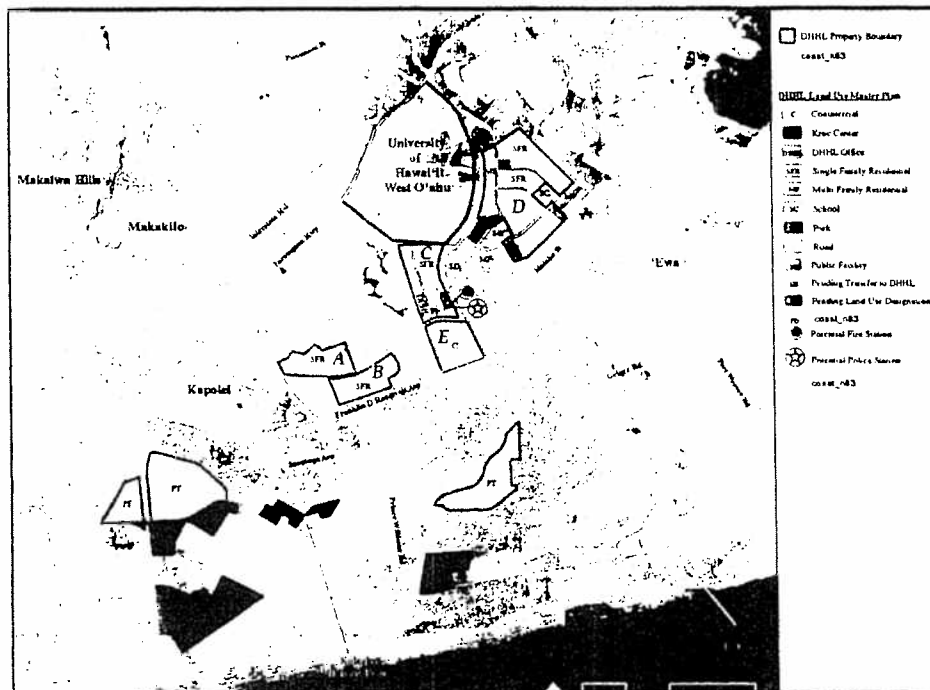
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Varona Land Acquisition

**Land Sale/Purchase
Or
Land Exchange**

**DHHL: LCC Ewa Drum Site
C&C: Vacant Varona Site**

C&C: Vacant Varona Site



Questions/Discussion

Planning Office
Department of Hawaiian Home Lands

July 7, 2009

To: Micah A. Kane, Chairman
Hawaiian Homes Commission

Through: Kaulana Park, Deputy to the Chairman

From: Darrell Yagodich, Planning Program Manager

Subject: DESIGNATION OF EWA DRUM SITE FOR SALE

RECOMMENDATION

As authorized under P.L. 104-42, the Hawaiian Home Lands Recovery Act of 1995, the Chairman of the Hawaiian Homes Commission:

- (1) Grants his approval to designate the Ewa Drum site (TMK Nos. 9-4-03:44 and 9-4-08:10) to be sold to the City and County of Honolulu; and
- (2) Authorizes sales proceeds to be deposited in the Hawaiian Homes Trust Fund to be used for purposes described in section 207(a) of the Hawaiian Homes Commission Act.

DISCUSSION

At its regular meeting on May 23, 2006, the Hawaiian Homes Commission approved and authorized the Chairman to carry out necessary actions to complete a land exchange with the City and County of Honolulu, exchanging the department's Ewa Drum site totaling 55.876 acres (surveyed) for the City's Varona Village site totaling approximately 52.717 acres. Necessary actions to complete the exchange include: finalize and execute an exchange agreement, complete appraisals for the exchange properties, determine additional consideration that may be required to ensure a value-for-value transaction, prepare an information package to be submitted to the U.S. Department of Interior, subdivide the Varona Village site, and record the exchange deed following approval by the U.S. Secretary of the Interior.

EXHIBIT I
ITEM NO. E-1

According to Patrick Kubota, the department entered into a contract with John Child & Company in May 2008 to complete the appraisals of both properties. The City verbally agreed to pay one-half the cost of the appraisals when the exchange is completed. In April 2009, John Child & Company substantially completed the appraisals and in May 2009, verbally communicated to the department that Ewa Drum site was appraised between a market value range of \$14.40 to \$15.55 million and Varona Village was appraised between a market value range of \$13.54 to \$15.10 million. John Child & Company will complete the market value appraisals and issue their report after the department and City completes their negotiations to establish the values of each property.

In May 2009, during the exchange negotiations with the City, the City requested the department to consider the sale of the Ewa Drum site to the City and in return the City would sell the Varona Village site to the department. The City informed the department that they have federal funds available that can only be used to purchase land for transit purposes and would prefer to use these funds to purchase the Ewa Drum site. The City's planned use for the Ewa Drum site is for a transit corporation yard that is an essential element for their planned Honolulu rail transit system (Honolulu High-Capacity Transit Corridor Project). The City plans to break ground for the rail transit system in late 2009.

HHLRA CRITERIA MET

In May 2009, the State Attorney General's Office was requested to opine on whether the department could sell the Ewa Drum site to the City. On June 1, 2009, Clayton Lee Crowell of the State Attorney General's Office reported that he:

"remains of the opinion that DHHL is authorized under the Hawaiian Home Lands Recovery Act of 1995 to sell the Ewa Drum site to the City. Sale of Ewa Drum/purchase of Varona is worth pursuing because it is a straight-forward transaction that can be completed much quicker than the more cumbersome requirements to exchange Ewa Drum/Varona."

Criteria: Section 203(3) of the Hawaiian Home Lands Recovery Act of 1995, P.L. 104-42 (HHLRA), authorizes the department to sell lands designated as compensation for "lost use" of Hawaiian home lands. The term "lost use" is defined in the HHLRA, Section

202.(7), page 21, lines 10-16, as the value of the use of the land during the period when the Hawaiian Homes Commission was unable to use lands because of the use of such lands by the Federal Government after August 21, 1959.

Comment: The value of "lost use" of Hawaiian home lands after August 21, 1959 was determined to be about \$20 million as of 1998. See enclosed "DHHL - HHLRA Claims vs. Federal Lands", by John Child & Company, June 25, 1998. This amount of "lost use" value has increased between 1998 and 2009. Hence, the department is well within the threshold and can designate lands for sale up to \$20 million in value.

Criteria: HHLRA, Section 203(c)(3), page 27, lines 12-21, grants the Chairman of the Hawaiian Homes Commission with the authority to designate lands to be sold at the time that lands are conveyed to the Department of Hawaiian Home Lands as compensation for lost use under this Act.

Comment: The enclosed letter to Secretary of the Interior Salazar would accomplish this designation requirement.

Criteria: The Chairman is authorized to sell such land under terms and conditions that are in the best interest of the beneficiaries.

DHHL has been supportive of the rail transit project because it will provide mass transit services to over 500 acres of Hawaiian home lands in Kapolei with significant homestead (900 existing and 1,000 planned housing units), community, and commercial developments with the larger Kapolei region and island of Oahu. Regional amenities include shopping areas in Kapolei and Ewa, resort destinations at Ko Olina and Ewa Marina, and jobs at Campbell Industrial Park. A sale to the City is workable because federal rail transit funds are available now.

Criteria: The proceeds of such a sale may only be used for purposes described in section 207(a) of the Hawaiian Homes Commission Act."

Comment: Section 207(a) of the HHCA deals with native Hawaiian homestead residential, agricultural, aquaculture, and pastoral leases. Therefore, proceeds from the sale of

the Ewa Drum site can only be used for these types of purposes. It is suggested that these proceeds be deposited into the Hawaiian Homes Trust Fund with the proviso that these funds be "used for purposes described in section 207(a) of the Hawaiian Homes Commission Act."

In accordance with HHLRA, the Federal Government conveyed Ewa Drum site to the department on June 29, 2009 and the deed will be recorded at the State Bureau of Conveyances shortly. Therefore, the Chairman may designate Ewa Drum site to be sold.

JUSTIFICATION TO DESIGNATE LANDS TO BE SOLD

There are several key points which justify the department's recommendation to sell the Ewa Drum site to the City:

- The sale of the Ewa Drum site is authorized under HHLRA and the proceeds from the sale will not exceed the \$20 million threshold.
- A proposed sale of the Ewa Drum site gives the department a negotiating alternate to an exchange. The sale of the Ewa Drum site will be subject to HHLRA requirements that proceeds be used for Section 207(a) HHCA purposes only.
- The separate sales of Ewa Drum (to the City) and Varona Village (to DHHL) are straight-forward transactions that can be completed much quicker than the cumbersome (and expensive) requirements to exchange properties.
- The department has testified in favor of the City's Honolulu Rail Transit System which will provide service to department lands in Kapolei with significant homestead, community, and commercial developments. Sale of the Ewa Drum Site to the City in a timely manner is essential to maintain its transit system financing plan.

RECOMMENDATION

We respectfully request that the Chairman of the Hawaiian Homes Commission grant his approval to designate the Ewa Drum site to be sold to the City and County of Honolulu as allowed under the Hawaiian Home Lands Recovery Act of 1995. A letter to that

Micah A. Kane, Chairman
July 7, 2009
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effect to the Secretary of the Interior is enclosed for your review and approval.

☐ APPROVE

☐ DISAPPROVE



Micah A. Kane, Chairman
Hawaiian Homes Commission

July 9, 2009

Date

Enclosures

c: Robert Hall, Executive Assistant
Linda Chinn, Administrator, Land Management Division
Patrick Kubota, Finance and Development Specialist, OCH

EXHIBIT D
ITEM NO. E-1

**COMPARISON OF MARKET VALUES
ASSUMING WAIVERS AND INFRASTRUCTURE**

Properties/claims	Value of HHLRA Claims		
	Low	Middle	High
Lualualei exchange value	\$49,200,000	\$49,200,000	\$49,200,000
Lualualei compensation	18,800,000	19,600,000	20,400,000
Section 208 compensation	5,140,000	6,935,000	8,730,000
Section 203 exchange value	1,210,000	1,380,000	1,550,000
Section 203 compensation	570,000	590,000	610,000
Total claims, rounded	<u>\$74,900,000</u>	<u>\$77,700,000</u>	<u>\$80,500,000</u>
BPNAS lands			
Reuse Commission inventory [1][2]	\$30,600,000	\$34,750,000	\$38,900,000
Headquarters (3 acres) [2]	1,430,000	1,545,000	1,660,000
Affordable Housing (60 acres)	1,800,000	2,070,000	2,340,000
Raceway Track expansion (16 acres)	160,000	240,000	320,000
Life Safety Academy & Park (9 acres) [2]	4,020,000	4,310,000	4,600,000
Subtotal BPNAS lands	38,010,000	42,915,000	47,820,000
Navy lands			
Ewa Drum site	14,600,000	15,600,000	16,600,000
Halawa Laundry site	1,720,000	1,815,000	1,910,000
Subtotal Navy lands	16,320,000	17,415,000	18,510,000
GSA lands			
Waipahu Monitoring site	15,900,000	16,800,000	17,700,000
Manana Marine Housing site	1,520,000	1,675,000	1,830,000
Upolu Point site	950,000	1,005,000	1,060,000
Omega site	3,200,000	4,200,000	5,200,000
Subtotal GSA lands	21,570,000	23,680,000	25,790,000
Total federal lands, rounded	<u>\$75,900,000</u>	<u>\$84,000,000</u>	<u>\$92,100,000</u>

[1] Assumes no disutility caused by potential aviation easements on the BPNAS parcels.

[2] Assumes the Navy permits use of existing infrastructure to downtown BPNAS properties.

Source: John Child & Company - June 25, 1998.

LINDA LINGLE
GOVERNOR
STATE OF HAWAII



MICAH A. KANE
CHAIRMAN
HAWAIIAN HOMES COMMISSION

KAULANA H. PARK
DEPUTY TO THE CHAIRMAN

ROBERT J. HALL
EXECUTIVE ASSISTANT

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P.O. BOX 1879
HONOLULU, HAWAII 96805

August 19, 2009

The Honorable Ken Salazar, Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington D.C. 20240

Dear Secretary Salazar:

I am the newly-appointed Chairman of the Hawaiian Homes Commission. My predecessor, Mr. Micah A. Kane, has resigned as Chairman to accept a position as trustee for the Kamehameha Schools.

The Department of Hawaiian Home Lands administers a homestead settlement program which was originally enacted into law by the U.S. Congress in 1921 for the benefit of native Hawaiians. Under certain statutes, such as P.L. 104-42, the Hawaiian Home Lands Recovery Act (HHLRA), the U.S. Department of the Interior maintains general oversight and approval powers also expressed in the Hawaii Statehood Admissions Act of 1959.

Section 203(3) of the HHLRA authorizes me as Chairman to sell lands designated as compensation for "lost use" of Hawaiian home lands. The term "lost use" is defined in the HHLRA, Section 202.(7), as the value of the use of the land during the period when the Hawaiian Homes Commission was unable to use lands because of the use of such lands by the Federal Government after August 21, 1959. Our independent appraisers have valued the "lost use" compensation as of 1993 as \$20 million.

I am writing to let you know that I have designated the Ewa Drum Site, TMK No. 9-4-03:44 and 9-4-08:10, a total of 55.876 acres, for sale as authorized by the HHLRA. The estimated fee value of the Ewa Drum Site is within the value of the "lost use" compensation. As required, proceeds from the sale will be deposited into a trust fund to be used for purposes described in

EXHIBIT E
ITEM NO. E-1

EXHIBIT "A"

The Honorable Ken Salazar, Secretary
August 19, 2009
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Section 207(a) of the Hawaiian Homes Commission Act of 1920, as amended.

Your cooperation is most appreciated. Please do not hesitate to call me at (808) 620-9501 if you want to discuss this further.

Aloha and mahalo,

/ SIGNED /

Kaulana Park, Chairman (Designated)
Hawaiian Homes Commission

cc: Kimo Kaloi, Office of Native Hawaiian Relations, DOI
Governor Linda A. Lingle
U.S. Senator Daniel K. Inouye
U.S. Senator Daniel K. Akaka
U.S. Representative Neal Abercrombie
U.S. Representative Mazie Hirono

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Page 2

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EXHIBIT E
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