

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

August 24, 2012

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 11od-204

OAHU

Approval in Concept for the Conveyance of the Fee Simple Interest to Hawaii Community Development Authority, Authorize the Chairperson to Enter into a Memorandum of Agreement; Issuance of Management Right-of-Entry for Site Management Purposes, Kakaako, Honolulu, Oahu; TMK (1) 2-1-051:041

APPLICANT:

Hawaii Community Development Authority (HCDA).

LEGAL REFERENCE:

Sections 171-6, 55, 95(a)(1), Hawaii Revised Statutes, as amended.

SUBJECT PROPERTY:

Location: Portion of Government lands situated at Honolulu, Oahu, identified by TMK: (1) 2-1-051:041, as shown on the attached map labeled Exhibit A.

Area: 94,423 square feet, more or less. ("SUBJECT PROPERTY")
Consists of: 15,000 square feet ("FEE PORTION")
79,423 square feet ("LEASE PORTION")

Note: FEE PORTION and LEASE PORTION are defined here for the purpose of discussion, while the exact location and area of such portions over the entire SUBJECT PROPERTY are yet to be determined.

Zoning: State Land Use District: Urban
County LUO: Kakaako Commercial Development District

TRUST LAND STATUS:

Section 5(a) lands of the Hawaii Admission Act, i.e. non-ceded. See Exhibit B.

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Vacant and unencumbered.

CONSIDERATION:

. See Remarks Section for discussion on compensations.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation." See Exhibit C.

APPLICANT REQUIREMENTS:

HCDA shall execute a Memorandum of Agreement ("MOA") with the Department of Land and Natural Resources ("DLNR") regarding the compensation, responsibilities, time frame and other pertinent issues relating to the development of the SUBJECT PROPERTY monitored by HCDA. See Remarks Section for details of the MOA.

REMARKS:

Background: Section 171-95(a)(1) authorizes the Board to sell public lands to other governmental agencies at such terms and conditions the Board deems proper.

HCDA recently announced its plans to develop a mixed-use high-rise project on the SUBJECT PROPERTY. The proposed project is part of HCDA's overall plan to redevelop a 3.41-acre block of State lands, which plan calls for market-priced residential units, affordable residential units, commercial units, and parking on the SUBJECT PROPERTY, and affordable rental units on the adjacent parcels (see Exhibit A).¹

HCDA's plans for the SUBJECT PROPERTY provide for the construction of two residential towers, commercial spaces, and parking. Units on one of the towers will be sold as market-priced fee simple properties while the other tower comprising of affordable units, commercial spaces, and parking will be leasehold.

¹ The affordable rental units are being developed by the Hawaii Housing Finance and Development Corporation (HHFDC) on the adjacent parcels 42 & 43, which have been set aside to HHFDC for such purposes under Governor's Executive Order No. 4345.

The development will be undertaken by the developer selected by HCDA pursuant to a request for proposals (RFP), which was issued in January 2012 with the deadline for the developers to submit proposals on August 31, 2012.

HCDA intends to confine the footprint of the market-priced tower to about 15,000 square feet. HCDA will consider the relaxing the height restrictions to help expanding the building envelope. HCDA indicated that an essential part of its proposal involves selling the fee simple interest of the FEE PORTION plus any expanded air rights to the developer who will be allowed to sell the fee simple interest in the individual residential units.

Conveyance and Reversion

HCDA requests the fee simple interest conveyance of the entire SUBJECT PROPERTY ((consist of both the FEE PORTION and LEASE PORTION as mentioned above) to facilitate its negotiation with any prospective developer. Upon completion of the development or other triggering events provided in the MOA as described below, HCDA will reconvey the LEASE PORTION to the Board at no cost.

Executive Order and Lease

It is contemplated that upon the reversion over the LEASE PORTION as mentioned above, the Board will recommend to the Governor for the issuance of an executive order setting aside the LEASE PORTION to HCDA. A lease will be entered by HCDA and the developer over the LEASE PORTION for the purposes of affordable residential unit, commercial spaces, and parking stalls. The Board will consider granting consent to such lease, subject to compensation payable to DLNR according to the terms and conditions of the MOA.

Compensation to DLNR

HCDA advises that the revenues generating from the entire project will be shared with the Department. HCDA and/or its developer shall use the compensation to purchase annuities with the principal and interest solely for the benefit of DLNR. Compensation will come from the sale of the fee simple interest of the FEE PORTION by HCDA to the developer, and any other recurring revenues receivable from the LEASE PORTION. At prior meetings, HCDA had indicated that it would start negotiating with the prospective developer at a value below fair market value, subject to a minimum value that DLNR would accept. However, HCDA estimated that the revenue generated from the development could amount to \$20 million. For Board's information, the minimum value will be inserted in the MOA.

Memorandum of Agreement

DLNR met with HCDA who requested to bring this matter to the Board for consideration and approval but subject to a memorandum of agreement to specify the details of the transaction being agreed upon by HCDA and DLNR regarding some pertinent issues of the conveyance.

Following are the basic terms for the proposed MOA. Further, staff recommends the Board authorize the Chairperson negotiate with HCDA regarding the MOA.

1. HCDA shall be responsible for obtaining the maps and legal descriptions, subdivision approvals, legal documentation, recordation, Legislature

concurrence², and other permits or authorizations as may be required for the development of the project.

2. HCDA use its best efforts to negotiate the best deal possible for the State including the compensation to be paid to the State and DLNR for the fee simple interest of the FEE PORTION to be occupied by the market-priced residential tower and the air rights, the leasehold interest of the LEASE PORTION to be occupied by the affordable residential units, commercial spaces, and parkings³.
3. HCDA shall provide an appraisal for the values for the respective interest (fee and leasehold) mentioned in paragraph 2 above, provided that any final approval of compensation for the respective interest (fee and leasehold) be brought back to the Board for blessing.
4. In the event any of the negotiated values mentioned in paragraph 2 above is less than 80% of the fair market value as determined by such appraisal, HCDA shall bring this matter back to the Board for further consideration and/or reevaluation.
5. HCDA shall obtain the Board's concurrence to the terms and conditions of the lease over the LEASE PORTION to be executed between HCDA and the selected developer.
6. HCDA and/or its developer shall use compensation payable to DLNR to buy annuities with the principal and interest solely for the benefit of DLNR.
7. In the event HCDA cannot reach an agreement with the developer selected pursuant to the Request for Proposal within two (2) years from the date of MOA, the MOA shall deem to be terminated without any further action from both HCDA and DLNR. Upon the termination of this MOA, all interests over the SUBJECT PROPERTY that have been conveyed to HCDA shall be reverted to the Board at no cost to the Board. This reservation shall appear in the conveyance document for the SUBJECT PROPERTY.

Further, staff recommends the Board authorize the issuance of an immediate management right-of-entry for the SUBJECT PROPERTY to HCDA to facilitate the forthcoming RFP process.

Staff did not solicit comments from other government agencies at this stage. Staff understands any solicitation for comments from the general public and agencies will be performed during the forthcoming environmental assessment compliance process to be undertaken by the selected developer.

RECOMMENDATION: That the Board

1. Authorize the Chairperson negotiate and execute a memorandum of agreement with Hawaii Community Development Authority regarding the conveyance of fee simple

² HCDA's plan of selling the FEE PORTION to the selected developer requires the concurrence from the Legislature pursuant to Section 171-64.7, HRS.

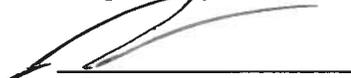
³ The compensation receivable by DLNR over the LEASE PORTION shall include any revenue/rent over any area, or its undivided interests, not sold in fee simple interest.

interest of the SUBJECT PROPERTY.

2. Approval in Concept for the conveyance of the fee simple interest of the SUBJECT PROPERTY to Hawaii Community Development Authority under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current deed form, as may be amended from time to time;
 - b. Execution of the Memorandum of Agreement as described above in the Remarks Section;
 - c. Review and approval by the Department of the Attorney General; and
 - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

3. Issue an immediate management right-of-entry to Hawaii Community Development Authority covering the SUBJECT PROPERTY for site management purposes subject to the following:
 - a. The standard terms and conditions of the most current right-of-entry permit, as may be amended from time to time; and
 - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

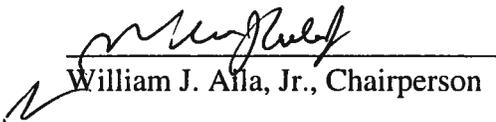
Respectfully Submitted,



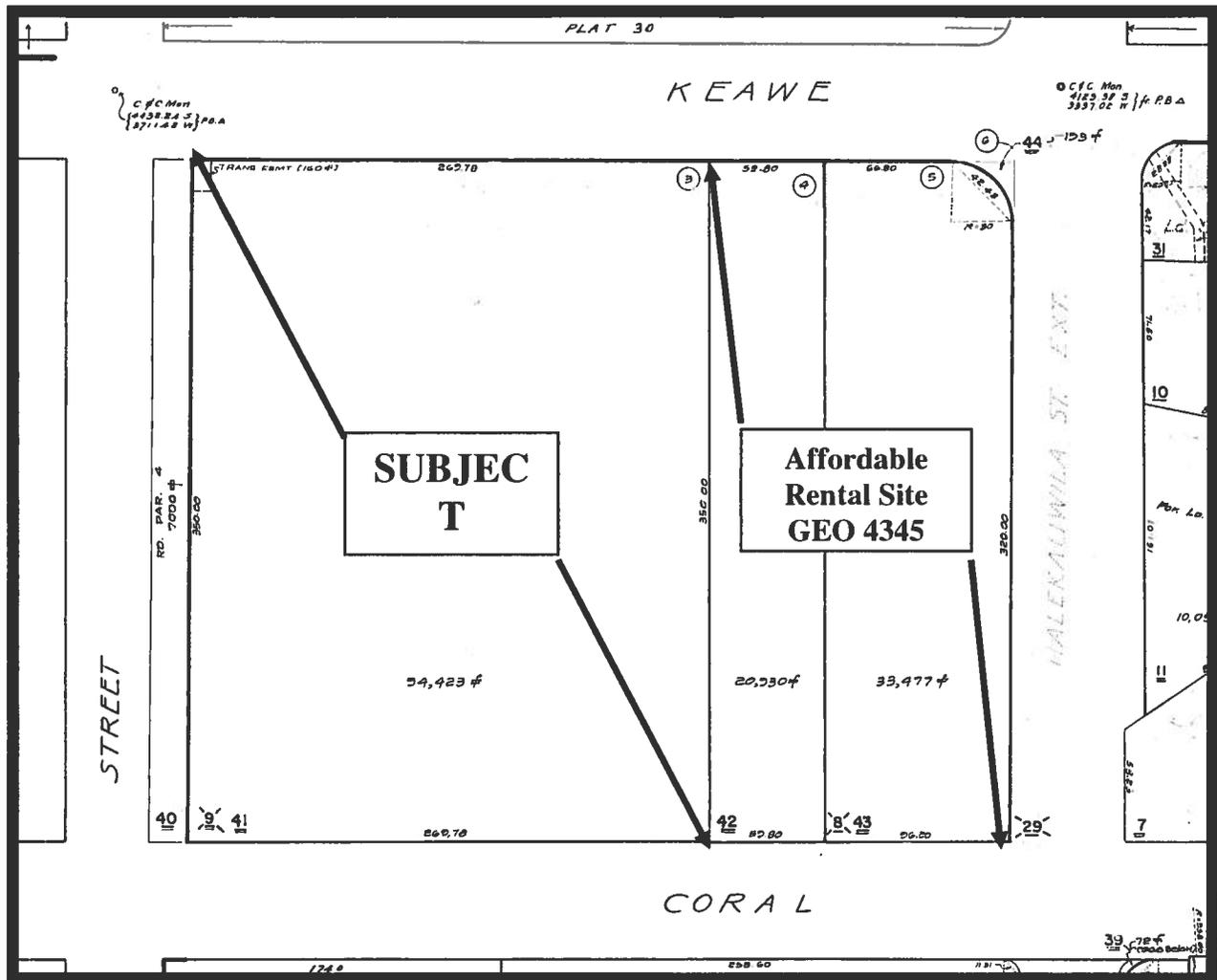
Barry Cheung
District Land Agent



APPROVED FOR SUBMITTAL:



William J. Alla, Jr., Chairperson



TMK (1) 2-1-051:041

EXHIBIT A



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

January 5, 2012

10457(O)

MEMORANDUM

TO: Barry W. Cheung, Oahu District Land Agent

THROUGH: Russell Y. Tsuji, Administrator

FROM: E. Mahoe Collins, State Abstractor

SUBJECT: Ceded-Trust Status of Tax Map Key Parcel: (1) 2-1-051:041.

We have been requested to determine the ceded-trust status of the subject property identified as TMK (1) 2-1-051:041 ("Parcel 041"), and delineated as shown on the map attached hereto as Exhibit A.

As shown thereon, "Parcel 041", containing 94,423 Square Feet, as situated, lying and being portions of the Lele of Puunui at Kaakaukui, was awarded under Land Commission Award 7712, Apana 6, Part 1, Royal Patent 4483 to M. Kekuanaoa for V. Kamamalu.

Through mesne probates the title and interest of V. Kamamalu in and to the said Lele of Puunui, including the subject "Parcel 041", was devised to the Trustees under the Will and of the Estate of Bernice Pauahi Bishop, Deceased.

By Deed dated May 20, 1910 and recorded in Liber 326, Page 459 (L.O.D. 1227) the Territory of Hawaii acquired "Parcel 041", and other lands, from the Trustees of the Estate of Bernice Pauahi Bishop.

Pursuant to § 5(a) of the Admissions Act of March 18, 1959 (Pub L 86-3, 73 Stat 4), the State of Hawaii succeeded to the title and interest of the Territory of Hawaii in and to said "Parcel 041" and other lands.

In conclusion we find that the subject property, "Parcel 041", is non-ceded.

If you have any questions, please feel free to call me at 587-0458.

Enclosure

EXHIBIT "B"

Draw No. 202 Appr. by _____
 By: R. D. A. Revised by _____
 Source: 706 Maps Bureau Appr. by _____

CORRECTED
 SEP 30 1988
 NOV 9 1988
 DEC 16 1988
 JAN 13 1989
 FEB 10 1989
 MAR 10 1989
 APR 10 1989
 MAY 10 1989
 JUN 10 1989
 JUL 10 1989
 AUG 10 1989
 SEP 10 1989
 OCT 10 1989
 NOV 10 1989
 DEC 10 1989

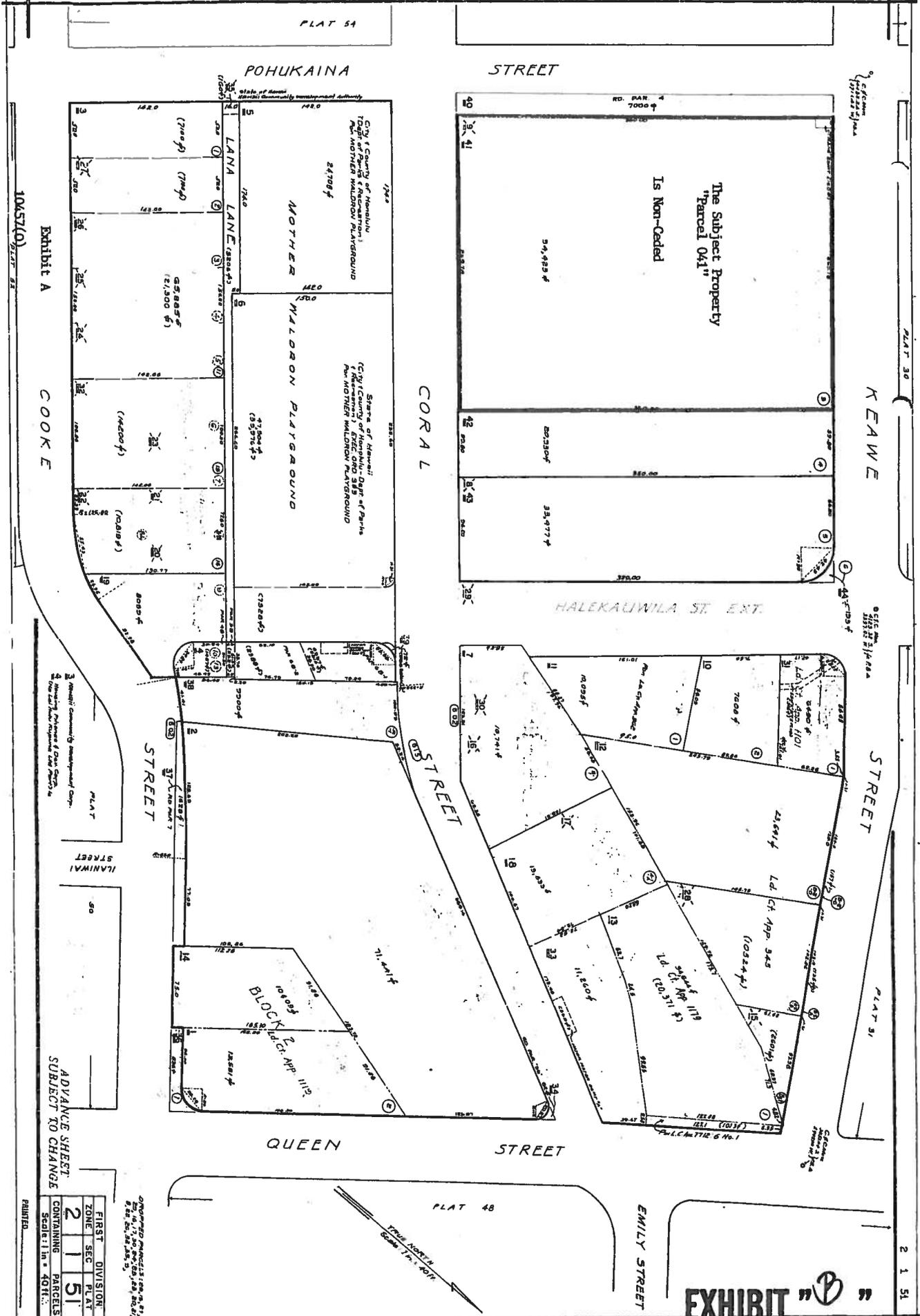


Exhibit A
 COOKE

ADVANCE SHEET
 SUBJECT TO CHANGE

FIRST	DIVISION	2
ZONE	SEC.	1
	PLAT	51
CONTAINING PARCELS		
Scale: 1 in = 40 ft.		

EXHIBIT "B"

10457(10)

10457(10)

PLAT

LANIWA

50

PLATED

DRAWING PARCELS: 100, 9, 8, 7, 6, 5, 4, 3, 2, 1, 0
 B. M. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

PLAT 48

PLAT 31

PLAT 30

PLAT 29

PLAT 28

PLAT 27

PLAT 26

PLAT 25

PLAT 24

PLAT 23

PLAT 22

PLAT 21

PLAT 20

PLAT 19

PLAT 18

PLAT 17

PLAT 16

PLAT 15

PLAT 14

PLAT 13

PLAT 12

PLAT 11

PLAT 10

PLAT 9

PLAT 8

PLAT 7

PLAT 6

PLAT 5

PLAT 4

PLAT 3

PLAT 2

PLAT 1

PLAT 0

PLAT -1

PLAT -2

PLAT -3

PLAT -4

PLAT -5

PLAT -6

PLAT -7

PLAT -8

PLAT -9

PLAT -10

PLAT -11

PLAT -12

PLAT -13

PLAT -14

PLAT -15

PLAT -16

PLAT -17

PLAT -18

PLAT -19

PLAT -20

PLAT -21

PLAT -22

PLAT -23

PLAT -24

PLAT -25

PLAT -26

PLAT -27

PLAT -28

PLAT -29

PLAT -30

PLAT -31

PLAT -32

PLAT -33

PLAT -34

PLAT -35

PLAT -36

PLAT -37

PLAT -38

PLAT -39

PLAT -40

PLAT -41

PLAT -42

PLAT -43

PLAT -44

PLAT -45

PLAT -46

PLAT -47

PLAT -48

PLAT -49

PLAT -50

PLAT -51

PLAT -52

PLAT -53

PLAT -54

PLAT -55

PLAT -56

PLAT -57

PLAT -58

PLAT -59

PLAT -60

PLAT -61

PLAT -62

PLAT -63

PLAT -64

PLAT -65

PLAT -66

PLAT -67

PLAT -68

PLAT -69

PLAT -70

PLAT -71

PLAT -72

PLAT -73

PLAT -74

PLAT -75

PLAT -76

PLAT -77

PLAT -78

PLAT -79

PLAT -80

PLAT -81

PLAT -82

PLAT -83

PLAT -84

PLAT -85

PLAT -86

PLAT -87

PLAT -88

PLAT -89

PLAT -90

PLAT -91

PLAT -92

PLAT -93

PLAT -94

PLAT -95

PLAT -96

PLAT -97

PLAT -98

PLAT -99

PLAT -100

EXEMPTION NOTIFICATION

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: 690 Pohukaina Street Development

Project / Reference No.: PSF 110d-204

Project Location: Kakaako, Honolulu, Oahu Tax Map Key: (1) 2-1-051:041

Project Description: Fee conveyance and issuance of management right-of-entry

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

The request pertains to the transfer of fee title to Hawaii Community Development Authority (HCDA). Upon finalization of the request for proposal and the selection of a developer for the proposed development of the SUBJECT PROPERTY, the compliance process for environmental assessment will begin. During the interim, HCDA does not plan to change the use of the SUBJECT PROPERTY and will continue to maintain the property. Therefore, staff does not expect there will be major alteration in the conditions of the land, water or vegetation at the location.

Consulted Parties Not applicable

Recommendation: That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



William J. Aila, Jr., Chairperson
Date:

EXHIBIT C