

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

July 10, 2015

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

PSF No.:06HD-173

Hawaii

Final approval of the acquisition of government (crown) lands and issuance of a right-of-entry permit to University of Hawaii for lands at Waiakea, South Hilo, island of Hawaii, Tax Map Keys: (3) 2-4-56:16

APPLICANT AGENCY:

University of Hawaii

LANDOWNER:

United States of America

LEGAL REFERENCE:

Sections 107-10, 171-30, and 171-95 Hawaii Revised Statutes, as amended.

SUBJECT PROPERTY:

Location: Government (crown) lands of Waiakea, situated at Waiakea, South Hilo, island of Hawaii, identified by Tax Map Key: (3) 2-4-56:16 ("Subject Site"), as shown on the attached map labeled **Exhibit A**.

Land Area: 3.700 acres, more or less

Zoning: State Land Use District Urban
County of Hawaii General Plan Low Density Urban
County of Hawaii CZO RS-10; Residential

Current Use/Improvements: The Subject Site currently is improved with six structures, five of which were built and used by the U.S. Army Reserve. The sixth building was built in 2012 by University of Hawaii ("UH") as was approved by the United States of Army Corps of Engineers. All improvements are currently used by UH for its Hilo campus on a month-to-month agreement with the United States Secretary of the Army.

PURPOSE:

The public purpose for this proposed acquisition is for the expansion of the existing University of Hawaii Hilo campus. Subject to the Board of Land and Natural Resources' ("BLNR") final approval of this acquisition, UH's request for the Subject Site is being presented to the BLNR in a separate request.

CONSIDERATION:

The United States of America ("USA") is returning the Subject Site pursuant to a reversionary provision of that certain Deed dated October 23, 1962, hereinafter referred to as "LOD 19642". Pursuant to LOD 19642, USA has the right to "remove any and all improvements constructed or placed on" the Subject Site. The USA is agreeable to convey all improvements on the Subject Site provided the State accept the deed form attached hereto as **Exhibit B**.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the BLNR involves the acquisition of land and improvements that does not require the use of State funds, and accordingly is exempt from the provisions of Chapter 343, HRS.

As far as the intended use of the Subject Property, the Final Environmental Assessment for the Disposition of State Land for Expansion of UH-Hilo, TMKs (3) 2-4-01:24, 2-4-56:14 and 2-4-56:16 was prepared for the University of Hawaii and was published in the OEQC's Environmental Notice on January 8, 2014 with a finding of no significant impact (FONSI).

BACKGROUND:

Pursuant to the BLNR action on September 28, 1962, under agenda item F-16, the State of Hawaii quitclaimed its interest in the Subject Site by a deed document dated October 23, 1962, hereinafter referred to as "LOD 19642". LOD 19642 provided if the Subject Site was not used for the training of "Reserve Components of the Armed Forces", then the Subject Site "shall revert to the State of Hawaii" and the "[s]urrender of the title and possessory rights of the United States of America in and to the property shall subsequently be evidenced by the execution and delivery of a quitclaim deed."

As a result of the Defense Base Closure and Realignment Act of 1990 and pursuant to recommendations of the 2005 Base Closure and Realignment Commission, the Secretary of the Army identified the Subject Site together with all improvements thereon (hereinafter the "Subject Property") as surplus property. Accordingly, Army Reserve Training Center ceased operations at the Subject Site and the Subject Property was leased to UH for a one year term beginning October 17, 2011. Despite the expiration of said lease, UH continues to occupy the Subject Property.

In preparation to transfer the Subject Property to the State pursuant to the terms and

conditions of LOD 19642, the United States Department of Defense prepared and provided to DLNR a Finding of Suitability to Transfer (“FOST”) report dated September 23, 2013. Based on reviews of numerous environmental reports cited therein, including but not limited to Environmental Condition of Property (“ECP”) report dated May 2007 and updated in 2012 and 2013; a Physical Assessment of Asbestos Containing Building Materials dated February 2013; and Radiological Survey Assessment Report dated July 2012, the FOST ultimately concluded that the Subject Property qualifies as uncontaminated property under CERCLA §120(h)(4), and is transferable subject to certain terms and conditions, including environmental protection and access provisions.

At its meeting on January 23, 2015, under agenda item D-2, the BLNR approved in principle of the proposed acquisition of the Subject Property subject to the terms and conditions of the proposed deed document attached thereto, which was negotiated and mutually acceptable based on the results and requirements of the FOST. The BLNR’s approval in principle required DLNR to be provided with a current survey map and description, title report, and Phase I environmental site assessment, the findings of which were to be presented to BLNR for final approval of prior to documentation of the proposed conveyance.

DUE DILIGENCE REVIEW:

Pursuant to the requirements approved by BLNR at its meeting on January 23, 2015, under agenda item D-2, DLNR was provided with a current survey map and description, title report, and Phase I environmental site assessment, all covering the Subject Site. Accordingly, presented herein for your consideration are a summary of results of the due diligence review.

- **Survey Map and Description.** A review of a current survey for the Subject Site, together with a review of existing surveys of lands abutting the Subject Site, revealed an error in the metes and bounds description contained in LOD 19642. The identified error was further incorporated into the metes and bounds description cited in the current title report covering the Subject Site. Notwithstanding the above, the proposed conveyance is intended to be a reversion of any interest quitclaimed by the State to the USA under LOD 19642 pursuant to the terms therein. Accordingly, the metes and bounds description of the Subject Site cited in the current title report shall be included in the proposed deed document in lieu of a current survey description.¹
- **Title Report.** A title report dated January 13, 2014, confirms the USA as the fee owner of the Subject Site. The title report further indicates the USA holds perpetual non-exclusive easements and rights-of-way over two parcels together with its interest in the Subject Site. The two non-exclusive easements were acquired by the USA from the County of Hawaii on March 18, 1964, for walkway and driveway purposes. The USA has agreed to quitclaim any interest it may have in said easements together with the

¹ The south coordinate for the triangulation station cited in the current survey of the Subject Site differs from the south coordinate cited in both LOD 19642 and the current title report covering the Subject Site. A review of historic and current survey records confirms the south coordinate originally cited in LOD 19642 is erroneous.

Subject Site. Accordingly, references to these two easements are included in the proposed deed document.²

- **Phase I environmental site assessment.** UH contracted Myounghee Noh & Associates (“MNA”) to prepare a Phase I ESA report. A Phase I ESA dated June 3, 2015 covering the Subject Property (the “Phase I”) was provided to DLNR for review. Findings cited in Phase I include, but are not limited to the following:
 - One Federal Comprehensive Environmental Response, Compensation, and Liability Information No Further Remedial Action Planned (“CERCLIS NFRAP”) site was identified about a ½ mile east of the Subject Property.³ However, the site was assessed as not qualifying for the NPL and a No Further Action (“NFA”) letter was issued by the State Department of Health (“DOH”) for Unrestricted Residential use in 1986.
 - Four leaking underground storage tanks were identified within a ½ mile of the Subject Property. However, all four sites have completed remediation resulting in NFA letters being issued. Moreover, no records were found of any registered underground storage tanks on the Subject Property.
 - Pad-mounted transformers observed on the Subject Property were confirmed to be PCB-free and is not considered to be a *recognized environmental condition* (“REC”).
 - The 2013 FOST identified several site conditions that required investigation and actions, which were completed and resulted in the DOH issuing NFA letters. Although these conditions constitute historical RECs, the Phase I concluded these historical RECs do not represent current RECs.
 - 15 State Hazardous Waste Sites (“SHWS”) were identified within one mile of the Subject Property, including one site located on the Subject Property. However, none of the 15 identified SHWS were considered RECs because they were either remediated resulting in NFA letters being issued, or are located in a distance and direction that would not likely affect the Subject Property.

Based on an assessment done in conformance with appropriate federal standards, including a review of the FOST and ECP report on the Subject Property, the Phase I concluded that no evidence of current RECs were found. Accordingly, the Phase I findings appear consistent with the 2013 FOST and other environmental studies previously provided.

As previously discussed in agenda item D-2 of the BLNR meeting of January 23, 2015, prior inspections of existing buildings reported non-friable asbestos containing materials

² Inquiries with the USA and County of Hawaii have not resulted in any additional information regarding these two easements.

³ The CERCLIS NFRAP list is maintained by the Environmental Protection Agency and contains designated CERCLA sites that, to the best of EPA’s knowledge, an assessment has been completed and has determined that no further steps will be taken to list the sites on the NPL.

within three existing buildings, and five buildings that contain or were presumed to contain lead-based paint. Despite these and other findings previously cited, UH currently occupies the Subject Property, and a request for the Subject Property to be included in a direct lease is being presented to BLNR under a separate agenda item.

REMARKS:

Based on a review of survey maps and descriptions, the current title report, and Phase I, the final version of the proposed deed document is attached hereto as **Exhibit B**. The final version of the deed document incorporates staff's comments above, into the draft deed form that was previously approved by BLNR at its meeting of January 23, 2015, under agenda item D-2. No other substantive changes to the previously approved draft deed form were incorporated into the attached final version.

The final version of the proposed deed document has been reviewed and mutually agreed to by the USA, the Department of the Attorney General, and Land Division staff. Based on the foregoing, staff recommends BLNR approve the acquisition of the Subject Property, subject to the terms and conditions of the final deed document, attached hereto as Exhibit B.

Subject to BLNR's approval of the proposed acquisition, a request for the issuance of a direct lease to UH for the Subject Property and other abutting lands will be presented to the BLNR under a separate agenda item. In the interim, staff recommends the issuance of a right-of-entry permit ("ROE") be issued to UH for education, housing, and related purposes. The ROE will commence on the date the Subject Property is conveyed from the USA to the State of Hawaii, and shall automatically terminate upon the issuance of a direct lease to UH or one year from the commencement of the ROE, whichever is sooner.

RECOMMENDATION: That the Board:

1. Authorize the acquisition of the subject private lands under the terms and conditions cited above which are by this reference incorporated herein and subject further to the following:
 - A. The terms and conditions of the deed document attached hereto as Exhibit B, subject to the review and approval by the Department of the Attorney General; and
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Approve the issuance of a ROE to UH for management purposes under the terms and conditions cited above which are by this reference incorporated herein.
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Gavin Chun
Project Development Specialist

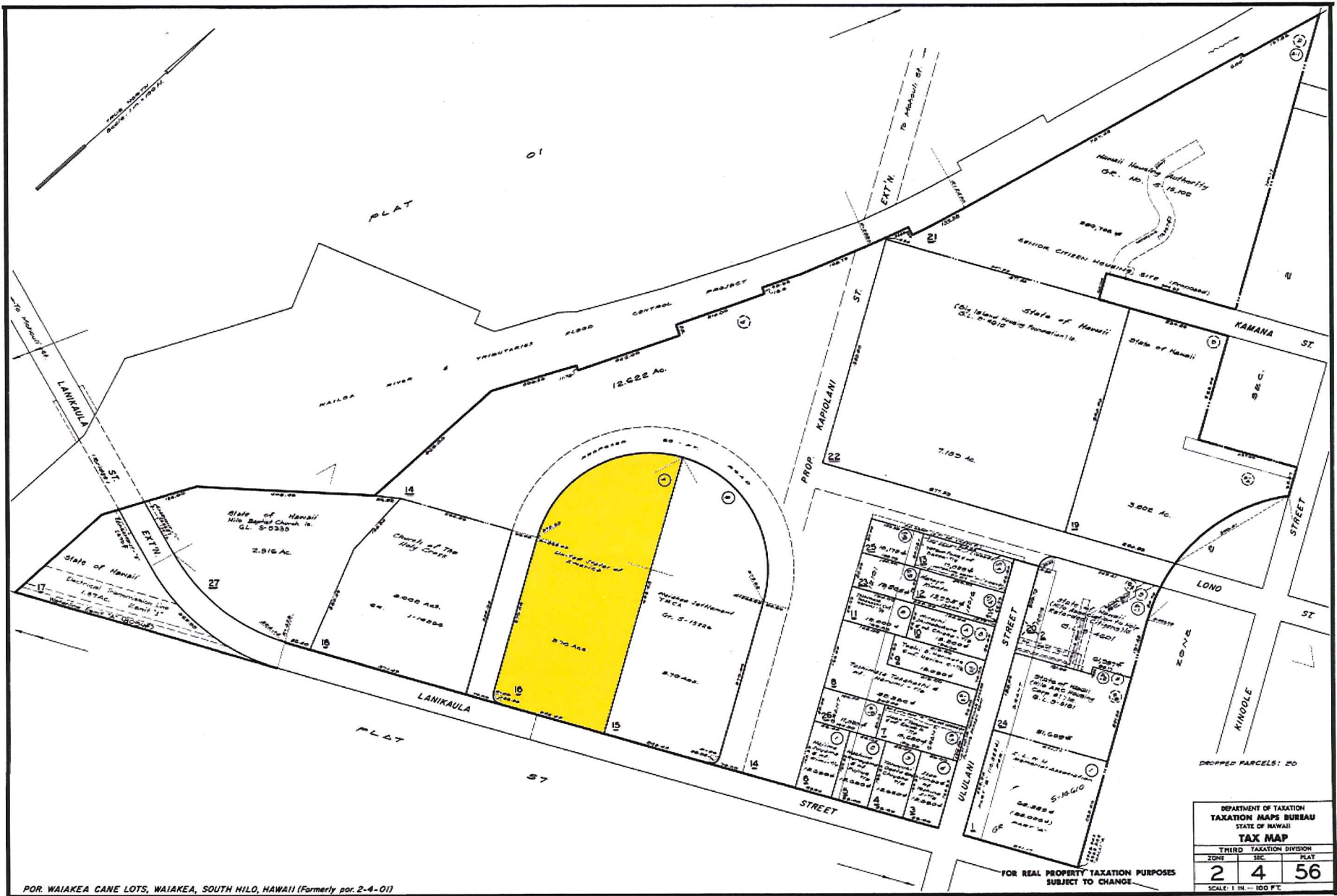
APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



EXHIBIT A



POR. WAIAKEA CANE LOTS, WAIAKEA, SOUTH HILO, HAWAII (Formerly por. 2-4-01)

FOR REAL PROPERTY TAXATION PURPOSES
SUBJECT TO CHANGE

DEPARTMENT OF TAXATION		
TAXATION MAPS BUREAU		
STATE OF HAWAII		
TAX MAP		
THIRD TAXATION DIVISION		
ZONE	SEC.	PLAT
2	4	56
SCALE: 1 IN. = 100 FT.		

remise, release, and quitclaim unto the United States of America, its successors and assigns, all rights, title, interest in the Property herein described; and

WHEREAS, the aforesaid Deed dated October 23, 1962 contained a reverter clause stating, in pertinent part: "PROVIDED, HOWEVER, that in the event said property shall not be used by the Government for a period in excess of three (3) consecutive years for the training of Reserve Components of the Armed Forces, ... then, and in that event, title, right of possession, and all other rights transferred by this instrument shall revert to the State of Hawaii; Surrender of the title and possessory rights of the United States of America in and to the property shall subsequently be evidenced by the execution and delivery of a quitclaim deed"; and

WHEREAS, the United States of America vacated the Property and has not used the same for the training of Reserve Components of the Armed Forces for a period in excess of three (3) consecutive years (having relocated its Reserve Components training facility pursuant to the Defense Base Closure and Realignment Act of 1990), and the parties hereto acknowledge and agree that the aforesaid reverter clauses have thus been triggered.

NOW, THEREFORE, the GRANTOR, for and in consideration of One Dollar \$1.00, cash in hand paid, the receipt of all of which is hereby acknowledged, does hereby REMISE, RELEASE AND FOREVER QUITCLAIM unto the GRANTEE, its successors and assigns, all its right, title, and interest in the property situated, including all improvements, being described as and hereinafter referred to as the "Property":

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Government (Crown) Land of Waiakea) situate, lying and being at Waiakea, District of South Hilo, Island and County of Hawaii, State of Hawaii, being LOT A, and thus bounded and described:

Beginning at the east corner of this lot, the south corner of Lot B, and on the northwest side of Lanikaula Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HALAI" being 1524.85 feet south and 5598.62 feet east, as shown on Government Survey Registered Map 4103, thence running by azimuths measured clockwise from true South:

1. 58° 10' 248.43 feet along the northwest side of Lanikaula Street;

Thence along the northeast side of Road Reserve, 50.00 feet wide, on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being

2. 103° 10' 28.28 feet;

3. 148° 10' 370.00 feet along the northeast side of Road Reserve, 50.00 feet wide;

Thence along the easterly side of Road Reserve, 50.00 feet wide, on a curve to the right with a radius of 268.43 feet, the chord azimuth and distance being

4. 193° 10' 379.62 feet;
5. 328° 10' 658.43 feet along Lot B, to the point of beginning and containing an area of 3.700 acres, more or less.

Together with a perpetual non-exclusive easement and right-of-way over and across two (2) parcels of land, said parcels indicated as Parcels "A" and "B", and amended together with the right to construct and forever use and maintain a walkway over and across Parcel "A" and pavement for driveway purpose over and across Parcel "B", as shown on the map attached thereto, as granted by instrument dated March 18, 1964, recorded in Liber [4714](#) at Page [112](#); and subject to the terms and provisions contained therein.

SUBJECT TO all valid and existing restrictions, reservations, covenants, conditions, and easements, including but not limited to rights-of-way for highways, pipelines, and public utilities, if any.

TO HAVE AND TO HOLD the Property granted herein to the GRANTEE and its successors and assigns, together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, or claim whatsoever of the GRANTOR, either in law or in equity and subject to the terms, reservations, restrictions, covenants, and conditions set forth in this Deed.

AND IT IS AGREED AND UNDERSTOOD by and between the parties hereto that the GRANTEE, by its acceptance of this Deed, agrees that, as part of the consideration for this Deed, the GRANTEE covenants and agrees for itself, its successors and assigns, forever, that this Deed is made and accepted upon each of the following covenants, which covenants shall be binding upon and enforceable against the GRANTEE, its successors and assigns, in perpetuity by the United States and other interested parties as allowed by federal, state or local law; that any NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS set forth here are a binding servitude on the Property herein conveyed and shall be deemed to run with the land in perpetuity; and that the failure to include the NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS in subsequent conveyances does not abrogate the status of these restrictions as binding upon the parties, their successors and assigns.

1. NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS

A. CERCLA PROVISIONS

(1) Covenant Pursuant to Section 120(h)(4)(D)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(4)(D)(i)):

Pursuant to section 120(h)(4)(D)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(4)(D)(i)), the United States warrants that any response action or corrective action found to be necessary after the date of this deed for contamination existing on the Property prior to the date of this deed shall be conducted by the United States.

(2) Access Rights. Pursuant to Section 120(h)(4)(D)(ii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(4)(D)(ii)):

The United States retains and reserves a perpetual and assignable easement and right of access on, over, and through the Property, to enter upon the Property in any case in which an environmental response or corrective action is found to be necessary on the part of the United States, without regard to whether such environmental response or corrective action is on the Property or on adjoining or nearby lands. Such easement and right of access includes, without limitation, the right to perform any environmental investigation, survey, monitoring, sampling, testing, drilling, boring, coring, testpitting, installing monitoring or pumping wells or other treatment facilities, response action, corrective action, or any other action necessary for the United States to meet its responsibilities under applicable laws and as provided for in this instrument. Such easement and right of access shall be binding on the GRANTEE and its successors and assigns and shall run with the land.

In exercising such easement and right of access, the United States shall provide the GRANTEE or its successors or assigns, as the case may be, with reasonable notice of its intent to enter upon the Property and exercise its rights under this clause, which notice may be severely curtailed or even eliminated in emergency situations. The United States shall use reasonable means to avoid and to minimize interference with the GRANTEE's and the GRANTEE's successors' and assigns' quiet enjoyment of the Property. At the completion of work, the work site shall be reasonably restored. Such easement and right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the Property at a reasonable charge to the United States. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the grantee, nor its successors and assigns, for the exercise of the easement and right of access hereby retained and reserved by the United States.

In exercising such easement and right of access, neither the GRANTEE nor its

successors and assigns, as the case may be, shall have any claim at law or equity against the United States or any officer, employee, agent, contractor of any tier, or servant of the United States based on actions taken by the United States or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this clause: Provided, however, that nothing in this paragraph shall be considered as a waiver by the GRANTEE and its successors and assigns of any remedy available to them under the Federal Tort Claims Act.

2. "AS IS"

A. The GRANTEE acknowledges that it has inspected or has had the opportunity to inspect the Property and accepts the condition and state of repair of the subject Property. The GRANTEE understands and agrees that the Property and any part thereof is offered "AS IS" without any representation, warranty, or guaranty by the GRANTOR as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose(s) intended by the GRANTEE, and no claim for allowance or deduction upon such grounds will be considered.

B. No warranties, either express or implied, are given with regard to the condition of the Property, including, without limitation, whether the Property does or does not contain asbestos or lead based paint. The GRANTEE shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any asbestos and lead-based paint. The failure of the GRANTEE to inspect or to exercise due diligence to be fully informed as to the condition of all or any portion of the Property offered, will not constitute grounds for any claim or demand against the United States.

C. Nothing in this "AS IS" provision will be construed to modify or negate the GRANTOR's obligation under the CERCLA Covenant in Paragraph 1 above or any other statutory obligations.

3. HOLD HARMLESS

A. To the extent authorized by law, the GRANTEE, its successors and assigns, covenant and agree to and hold harmless the GRANTOR, its officers, agents, and employees from (1) any and all claims, damages, judgments, losses, and costs, including fines and penalties, arising out of the violation of the NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS in this Deed by the GRANTEE, its successors and assigns, and (2) any and all claims, damages, and judgments arising out of, or in any manner predicated upon, exposure to asbestos, lead-based paint, or other condition on any portion of the Property after the date of conveyance.

B. The GRANTEE, its successors and assigns, covenant and agree that the GRANTOR shall not be responsible for any costs associated with modification or termination of the NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS in this Deed, including without limitation, any costs associated with

additional investigation or remediation of asbestos or lead-based paint.

C. Nothing in this Hold Harmless provision will be construed to modify or negate the GRANTOR's obligation under the CERCLA Covenant in Paragraph 1 above or any other statutory obligations.

4. POST-TRANSFER DISCOVERY OF CONTAMINATION

A. If an actual or threatened release of a hazardous substance or petroleum product is discovered on the Property after the date of conveyance, GRANTEE, its successors or assigns, shall be responsible for such release or newly discovered substance unless GRANTEE is able to demonstrate that such release or such newly discovered substance was due to GRANTOR's activities, use, or ownership of the Property. If the GRANTEE, its successors or assigns believe the discovered hazardous substance is due to GRANTOR's activities, use or ownership of the Property, GRANTEE will immediately secure the site and notify the GRANTOR of the existence of the hazardous substances, and GRANTEE will not further disturb such hazardous substances without the written permission of the GRANTOR.

B. GRANTEE, its successors and assigns, as consideration for the conveyance of the Property, agree to release GRANTOR from any liability or responsibility for any claims arising solely out of the release of any hazardous substance or petroleum product on the Property occurring after the date of the delivery and acceptance of this Deed. This paragraph shall not affect the GRANTOR's responsibilities to conduct response actions or corrective actions that are required by applicable laws, rules and regulations, or the GRANTOR's indemnification obligations under applicable laws.

5. ENVIRONMENTAL PROTECTION PROVISIONS

The Environmental Protection Provisions are at Exhibit A, which is attached hereto and made a part hereof. The GRANTEE shall neither transfer the Property, lease the Property, nor grant any interest, privilege, or license whatsoever in connection with the Property without the inclusion of the Environmental Protection Provisions contained herein, and shall require the inclusion of the Environmental Protection Provisions in all further deeds, easements, transfers, leases, or grant of any interest, privilege, or license.

6. NON-DISCRIMINATION

The GRANTEE covenants for itself, its successors and assigns and every successor in interest to the Property hereby conveyed, or any part thereof, that the said GRANTEE and such successors and assigns shall not discriminate upon the basis of race, color, religion, age, gender, or national origin in the use, occupancy, sale, or lease of the Property, or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of

this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

7. HOLD HARMLESS

The GRANTEE does hereby release, save, defend, and hold harmless the United States Government, its officers, agents, and employees, for and from any and all liabilities, losses, claims, expenses, suits, fines, penalties, judgments, demands or actions, and costs (including but not limited to consulting, engineering, clean-up, disposal or restoration costs, investigator's fees, attorney fees) and damages (including but not limited to personal injury, death, and property damage) directly or indirectly arising out of, caused by, related to, resulting from or in any way predicated upon, in whole or in part, the possession, use or occupancy by the GRANTEE (including the employees, tenants, customers, or tenant customers, third persons, or invitees) of the Property, both real and personal, transferred by this Deed, or attributable or incident to the condition or state of repair of the Property transferred by this Deed, or any activities conducted or services furnished in connection with or pursuant to the Property transferred by this Deed.

8. ANTI-DEFICIENCY ACT

The GRANTOR's obligation to pay or reimburse any money under this Deed is subject to the availability of funds appropriated for this purpose to the Department of the Army, and nothing in this Deed shall be interpreted to require obligations or payments by the GRANTOR in violation of the Anti-Deficiency Act, 31 U.S.C. §1341.

9. NO WAIVER

The failure of the GRANTOR to insist in any one or more instances upon complete performance of any of the said notices, covenants, conditions, restrictions, or reservations shall not be construed as a waiver or a relinquishment of the future performance of any such covenants, conditions, restrictions, or reservations, but the obligations of the GRANTEE, its successors and assigns, with respect to such future performance shall continue in full force and effect.

10. STATE CONSTITUTION

Grantor agrees and acknowledges that Grantee's compliance with the NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS in this Deed may be subject to the limitations imposed by the Hawaii Constitution.

This Deed is not subject to 10 U.S.C. § 2662.

EXHIBITS

A –Environmental Protection Provisions

[CONTINUED ON NEXT PAGE]

IN WITNESS WHEREOF, the GRANTOR has caused this Deed to be executed in its name by the Real Estate Contracting Officer of the U.S. Army Corps of Engineers, this _____ day of _____ 20____ .

UNITED STATES OF AMERICA

By: _____

Brenda M. Johnson-Turner
Director of Real Estate
U.S. Army Corps of Engineers

This deed was reviewed for legal sufficiency on behalf of the GRANTOR by Steven J. Proctor, Assistant District Counsel, U.S. Army Corps of Engineers, Honolulu District.

Approved by the Board of
Land and Natural Resources
at its meeting(s) held on
_____.

APPROVED AS TO LEGALITY,
FORM, EXCEPTIONS, AND
RESERVATIONS:

STATE OF HAWAII

Julie H. China
Deputy Attorney General

By _____
SUZANNE D. CASE
Chairperson
Board of Land and
Natural Resources

Dated: _____

GRANTEE

ACKNOWLEDGMENT & CERTIFICATION

DISTRICT OF COLUMBIA) SS.

I, _____, a Notary Public in and for the District of Columbia, do hereby certify that this the ____ day of _____, 2015, Brenda M. Johnson-Turner, Director or Real Estate, U.S. Army Corps of Engineers, known to me or proven through satisfactory evidence of identity to be the person whose name is subscribed to the foregoing document (consisting of a Quit Claim Deed for SFC Minoru Kunieda USARC INSTALLATION dated _____, 2015, comprised of _____ pages, including exhibits), appeared in person and acknowledged before me that the signature on the document was voluntarily affixed by her for the purpose herein stated and that she had due authority to sign the document in the capacity therein stated.

IN WITNESS WHEREOF, I hereunto set my hand and notarial seal the day and year written above.

Notary Public (SEAL)

My commission expires the ____ day of _____, 20____.

EXHIBIT A
ENVIRONMENTAL PROTECTION PROVISIONS

The following conditions, restrictions, and notifications will be attached, in a substantially similar form, as an exhibit to the deed and be incorporated therein by reference in order to ensure protection of human health and the environment.

I. NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT

A. The Grantee is hereby informed and does acknowledge that non-friable asbestos or asbestos-containing material ("ACM") has been found on the Property. The Property may contain improvements, such as buildings, facilities, equipment, and pipelines, above and below the ground, that contain non-friable asbestos or ACM. The Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency have determined that such unprotected or unregulated exposure to airborne asbestos fibers increases the risk of asbestos-related diseases, including certain cancers that can result in disability or death.

B. The Grantee covenants and agrees that its use and occupancy of the Property will be in compliance with all applicable laws relating to asbestos. The Grantee agrees to be responsible for any remediation or abatement of asbestos found to be necessary on the Property to include ACM in or on buried pipelines that may be required under applicable law or regulation.

C. The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property as to its asbestos and ACM condition and any hazardous or environmental conditions relating thereto. The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any asbestos or ACM hazards or concerns.

2. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT (LBP) AND COVENANT AGAINST THE USE OF THE PROPERTY FOR RESIDENTIAL PURPOSE

A. The Grantee is hereby informed and does acknowledge that all buildings on the Property, which were constructed or rehabilitated prior to 1978, are presumed to contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Every purchaser of any interest in Residential Real Property on which a residential dwelling was built prior to 1978 is notified that there is a risk of exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning.

B. The Grantee covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on the Property as Residential Property, as defined under 24 Code of Federal Regulations Part 35, without complying with this section and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards. Prior to permitting the occupancy of the Property where its use subsequent to sale is intended for residential habitation, the Grantee specifically agrees to perform, at its sole expense, the Army's abatement requirements under Title X of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazard Reduction Act of 1992).

C. The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property as to its lead-based paint content and condition and any hazardous or environmental conditions relating thereto. The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any lead-based paint hazards or concerns.

3. PESTICIDE NOTIFICATION

The Grantee is hereby notified and acknowledges that registered pesticides have been applied to the property conveyed herein and may continue to be present thereon. The Grantee further acknowledges that where a pesticide was applied by the Grantor or at the Grantor's direction, the pesticide was applied in accordance with its intended purpose and consistently with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. § 136, et seq.) and other applicable laws and regulations.

The Grantee covenants and agrees that if the Grantee takes any action with regard to the property, including demolition of structures or any disturbance or removal of soil that may expose, or cause a release of, a threatened release of, or an exposure to, any such pesticide, Grantee assumes all responsibility and liability therefore.