

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

April 26, 2013

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

PSF No. 110D-123

OAHU

Amend Prior Board Action of September 24, 2004, D-14: Conveyance of State-owned Land to the Department of Hawaiian Home Lands, East Kapolei, Honouliuli, Ewa, Oahu, TMK: (1) 9-1-17: 71 and 88. Amendment Request: Change the Conservation Easement to a 20-year Abutilon Menziesii Preservation Easement to be Issued in Favor of the Department of Transportation.

BACKGROUND:

At its April 8, 2004, meeting, the Board approved the State Department of Transportation's (DOT) Habitat Conservation Plan (HCP) for the Abutilon Menziesii plant. More commonly known as "red ilima," Abutilon Menziesii is of the Mallow Family. It is protected under the Federal Endangered Species Act of 1973, as amended, and Chapter 195D, Hawaii Revised Statutes, as amended.

Then at its September 24, 2004, meeting, under item D-14 (attached), the Board approved of an 18-acre, more or less, conservation easement around the largest cluster of 61 plants. Other smaller clusters of the plant are scattered throughout the 1,300 acres of land owned by the State at East Kapolei in 2004. Pursuant to the HCP, these plants, outside of the easement, will be relocated to 3 designated offsite locations.

Subsequently, on March 18, 2005, the Board approved an Incidental Take License (Take License) to DOT for the entire Abutilon Menziesii population at East Kapolei. The License includes a Certificate of Inclusion that permits other cooperating agencies to adopt DOT's HCP allowing them to develop their projects at East Kapolei.

The preparation of the HCP began in 1996 and was completed in March of 2004. As the sole sponsor of the HCP the DOT assumes the mitigation responsibility for the entire Abutilon Menziesii population at East Kapolei as described in an April 16, 2004, Memorandum of Agreement (MOA) between the Department and DOT. The term of the 20-year easement established by the HCP is specified in the MOA as being from August 1, 2001, to July 31, 2021, or until all success criteria of the HCP has been accomplished. Early success in meeting the criteria would, on the other hand, shorten the easement's term.

REMARKS:

In agenda item D-14 of the Board's September 24, 2004, meeting, the

easement protecting the largest cluster of *Abutilon Menziesii* was referred to as a conservation easement to be issued by DHHL to the Department's Division of Forestry and Wildlife (DOFAW). To avoid confusing the *Abutilon Menziesii* conservation easement with a conservation easement pursuant to Section 198-2, HRS, as amended, which requires the easement to be perpetual in duration; the *Abutilon Menziesii* conservation easement referenced in agenda item D-14 should be changed to an *Abutilon Menziesii* preservation easement. Also, instead of DOFAW, the easement should be in favor of DOT, the holder of the Take License and the agency responsible for mitigation efforts covering the plants scattered over the 1,300 acres of State land at East Kapolei.

DOFAW's role is to manage the daily activity required to maintain the existing population of *Abutilon Menziesii* located within the preservation easement. It also relocates the plants growing outside of the preservation easement to the designated relocation areas.

RECOMMENDATION:

That the Board amend its prior action of September 24, 2004, under agenda item D-14 as follows:

1. Delete Recommendation 1.b. and replace with:

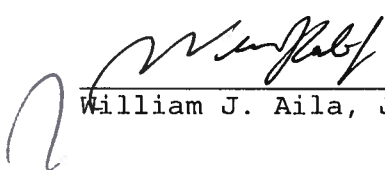
Upon the transfer of the fee simple title of the 30.066-acre parcel at East Kapolei to DHHL from the State, by its Board of Land and Natural Resources, DHHL shall issue DOT an *Abutilon Menziesii* preservation easement in accordance with the *Abutilon Menziesii* HCP covering 18 acres, more or less, of the 30.066-acre parcel.

2. Delete Recommendation 1.c. as the Hawaii Housing Finance and Development Corporation recently confirmed that DHHL has paid, in full, its share of the cost of the Kapolei Interceptor Sewer system.
3. Except as amended herein all other terms and conditions listed in agenda item D-14 of the Board's September 24, 2004, meeting to remain the same.

Respectfully Submitted,


Gary Martin, Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson

D-14

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

September 24, 2004

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

PSF No. 04OD-251

OAHU

Conveyance of State-Owned Land to the Department of Hawaiian Home Lands
Located at East Kapolei, Honouliuli, Ewa, Oahu, Tax Map Key: 9-1-17: 71 and 88

APPLICANT:

Department of Hawaiian Home Lands (DHHL)

LEGAL REFERENCE:

Section 171-95(a)(1), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Lot 10079, Map 765 of Land Court Application No. 1069, situate at Honouliuli, Ewa, Oahu, identified by Tax Map Key: 9-1-17: Portion 71 and 88 as shown on the attached map labeled Exhibit A.

AREA:

404 acres less 56 acres for set aside to the Department of Transportation (DOT), Highways Division (drainage channel and retention basin) and less 30 acres for future set aside to the Department of Education for an elementary school site (12 acres) and a middle school site (18 acres) leaving 318 acres, more or less, for conveyance to DHHL, subject to confirmation by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Urban
City and County of Honolulu: A-1, Restricted Agriculture

TRUST LAND STATUS:

Non-ceded. Government land acquired after statehood from the Estate of James Campbell, Deceased (Campbell Estate), by Final Order of Condemnation, dated August 22, 1994, under Civil No. 90-1704-06 filed in the Circuit Court of the First Circuit.

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

as amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
September 24, 2004

ITEM D-14

CURRENT USE STATUS:

Parcel 88 of TMK: 9-1-17 is encumbered month-to-month under Revocable Permit No. 7152 issued to Aloun Farms, Inc. for agriculture purposes.

Parcel 71 of TMK: 9-1-17 is vacant and unencumbered.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

This request before the Board to transfer the ownership of State land is an administrative action and does not constitute a use of State land or State funds, and therefore, is exempt from the provisions of Chapter 343, Hawaii Revised Statutes (HRS), as amended. Inasmuch as the Chapter 343 environmental requirements apply to the Applicant's use of the land, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

REMARKS:

The subject 318 acres of State land requested by DHHL is a portion of the 1,100 acres, located on the Ewa Plain, acquired by the State at a cost of \$31.7 million, or \$28,819/acre, from the Campbell Estate by condemnation. The prorated cost to the State of the subject 318 acres is \$9.16 million. The 1,100 acres, plus another 200 acres obtained from the Campbell Estate through a land exchange, serve as a State land bank site at East Kapolei for future development as a part of Oahu's master planned second city.

Campbell Estate's Ewa Plain consists of approximately 32,000 acres most of which were leased to the Ewa Plantation Company, beginning in 1929, for the cultivation of sugarcane. The lease was subsequently assigned to the Oahu Sugar Company, Ltd. (OSC). OSC ceased its sugar operations in April 1995. Its last sugarcane fields to become fallow were in an area known as the Golden Triangle because of its high crop yields. The State land bank at East Kapolei comprises a portion of the Golden Triangle.

Subsequent to the closure of the OSC the Campbell Estate, in October 1997, completed its Kapolei Area Long Range Master Plan. The Plan proposed the development of the City of Kapolei as well as its surrounding areas for commercial, recreational, resort, industrial and residential uses.

The Final Order of Condemnation, dated August 22, 1994 restricts the use of the 1,100 acres transferred to the State to agriculture, housing, public facilities, State or municipal golf courses and neighborhood convenience commercial. Accordingly, the East Kapolei Master Plan Development Project, completed in April 1998, for the Housing and Community Development Corporation of Hawaii (HCDCH), is a mix of commercial, single and multi-family housing with supporting public facilities that include school sites, parks, open space and recreational uses. It master planned the East Kapolei land bank primarily as a residential community with the commercial, parks and school sites sized in response to community needs. It is consistent with the intent of the Campbell Estate's Kapolei Area Long Range Master Plan.

HCDCH's East Kapolei Master Plan projected between 4,300 to 5,800 single-family residential units and 2,100 to 2,600 multi-family residential units would be developed on the 1300-acre East Kapolei land bank based on a 20-year absorption period. However, these totals will be reduced significantly due to the conveyance of 500 acres, from the East Kapolei land bank, to the University of Hawaii (University) for its West Oahu campus. The 500 acres were master planned by HCDCH for single-family and multi-family developments less 24 acres for two elementary school sites and a 3-

3-acre park site. The University is considering residential development on about 140 to 150 acres with the balance of 323 to 333 acres devoted to campus operations.

The subject site abuts a 56-acre drainage channel/retention basin along the entire length of its western boundary. The drainage channel/retention basin is a portion of the North/South Road reserve that will be set aside to DOT, Highways Division by Governor's Executive Order. The basin's purpose is ground infiltration of the increased storm water runoff caused by the additional impermeable surfaces such as roadways, parking areas and buildings that will result when the land is developed. DOT, Highways Division will maintain the retention basin as a grassed open space area.

Botanical surveys, conducted in 1996 on the East Kapolei land bank site, discovered four clusters containing a total of 86 *Abutilon Menziesii* plants scattered over the site. The *Abutilon Menziesii*, more commonly known as "red ilima", is of the Mallow Family and a federally listed endangered species since 1986. It is protected under the federal Endangered Species Act of 1973, as amended, and Chapter 195D, Hawaii Revised Statutes, as amended.

The largest cluster, containing 61 plants, is located on the subject site near its southwest boundary impacting both the subject site and the North/South Road. At its April 8, 2004 meeting the Board approved the Division of Forestry and Wildlife's (DOFAW) Habitat Conservation Plan (HCP) that provides for the protection and preservation of the *Abutilon Menziesii*.

Several plants, found growing in the North/South Road reserve, threatened to delay the start of the road's construction. The Board's approval of the HCP allows the construction of the North/South Road to commence, as scheduled, at the end of this year.

The HCP establishes an 18-acre, more or less, conservation easement around the largest cluster of the plants located on the subject site. The 61 plants, protected by the easement, will remain undisturbed. The remaining 25 plants, scattered in clusters over the land bank site, will be relocated to a minimum of three offsite wild plant locations on Oahu. Except for the location of the conservation easement on the subject site, development plans for the other locations where the plants were formerly located will not be delayed.

The HCP duration period is about 20 years and is tied to the accomplishment of the measurable goals of the Plan that include establishment of self-sustaining offsite populations at three locations and re-establishment of the species in the developed open spaces of the East Kapolei land bank site. The early success of the offsite populations would shorten the Plan's duration period. When the HCP duration period ends, the conservation easement affecting the subject site would be extinguished.

Near the subject site's Northern boundary about two-thirds the distance in the direction of the subject's Eastern boundary was the location of OSC's pesticide mixing plant. At this location pesticides were mixed to control the insects detrimental to sugarcane cultivation. An initial environmental assessment by the Department of Health found the grounds in the immediate proximity and close proximity of the pesticide plant to be contaminated. The area of the contamination was fenced to prevent the employees of Aloun Farms, Inc. and others from entering onto the contaminated area. Currently, AMEC Earth and Environmental Co. is conducting more extensive tests to determine the chemical composition and level of the contamination and the required mitigation action. The Department will be conveying the property as is.

The Department of Education (DOE) recently requested three school sites of 12 acres, 18 acres and 50 acres be reserved at the East Kapolei land bank site for a future elementary, middle and high school.

HCDCH's East Kapolei Master Plan includes a 12-acre elementary school site and 18-acre middle school site for the subject area requested by DHHL. DHHL is familiar with the master plan and aware of the school sites located within the subject area and have no objection to their location.

Regarding DOE's requested 50-acre high school site, staff recommends that it be located within the 145 acres of the land bank site between Farrington Highway and the H-1 Freeway for the following reasons:

1. The new high school is intended to ease the over crowding at the existing Mililani High School as well as the existing Kapolei and Campbell High Schools. Being bounded by the H-1 Freeway to the North and the University's 500-acre site across Farrington Highway to the South the recommended site will not route the Mililani and Waipio traffic into the residential areas of East Kapolei.
2. DHHL has far more applicants on Oahu than land to accommodate them on with residences. Accordingly, obtaining additional land on Oahu is a high priority for DHHL in accomplishing its objective of providing every qualified applicant on its waiting list an opportunity to accept a residential lease award.
3. The 145 acres are currently unencumbered.

RECOMMENDATION: That the Board

1. Authorize the conveyance of the subject 318 acres at East Kapolei, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - a. The standard terms and conditions of the most current quitclaim deed form, as may be amended from time to time.
 - b. DHHL shall provide a conservation easement in accordance with the Abutilon Menziesii Habitat Conservation Plan in favor of the Division of Forestry and Wildlife and include said easement when subdividing the subject area.
 - c. DHHL shall pay HCDCH \$181,413, which sum represents the prorated cost of the Kapolei Interceptor Sewer Line for the subject area (318 acres of 600 acres is 53% times \$342,288)
 - d. The subject 318 shall be conveyed as is.
 - e. DHHL shall be responsible for any and all costs of mitigating the contamination caused by pesticides at the location of the former pesticide plant and any subsequent claim or demand for loss or liability, including claims for bodily injury or wrongful death resulting from its failure to maintain the property in a safe condition.
 - f. Review and approval by the Department of the Attorney General.

- g. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the application of the subject 318 acres as an acre for acre reduction of the 1,170 acres remaining to be conveyed to DHHL in satisfaction of a Settlement Agreement between DLNR and DHHL to bring DHHL's land trust up to the 203,500 acres designated by the Hawaiian Homes Commission Act.

Respectfully Submitted,



Gary Martin
Land Agent

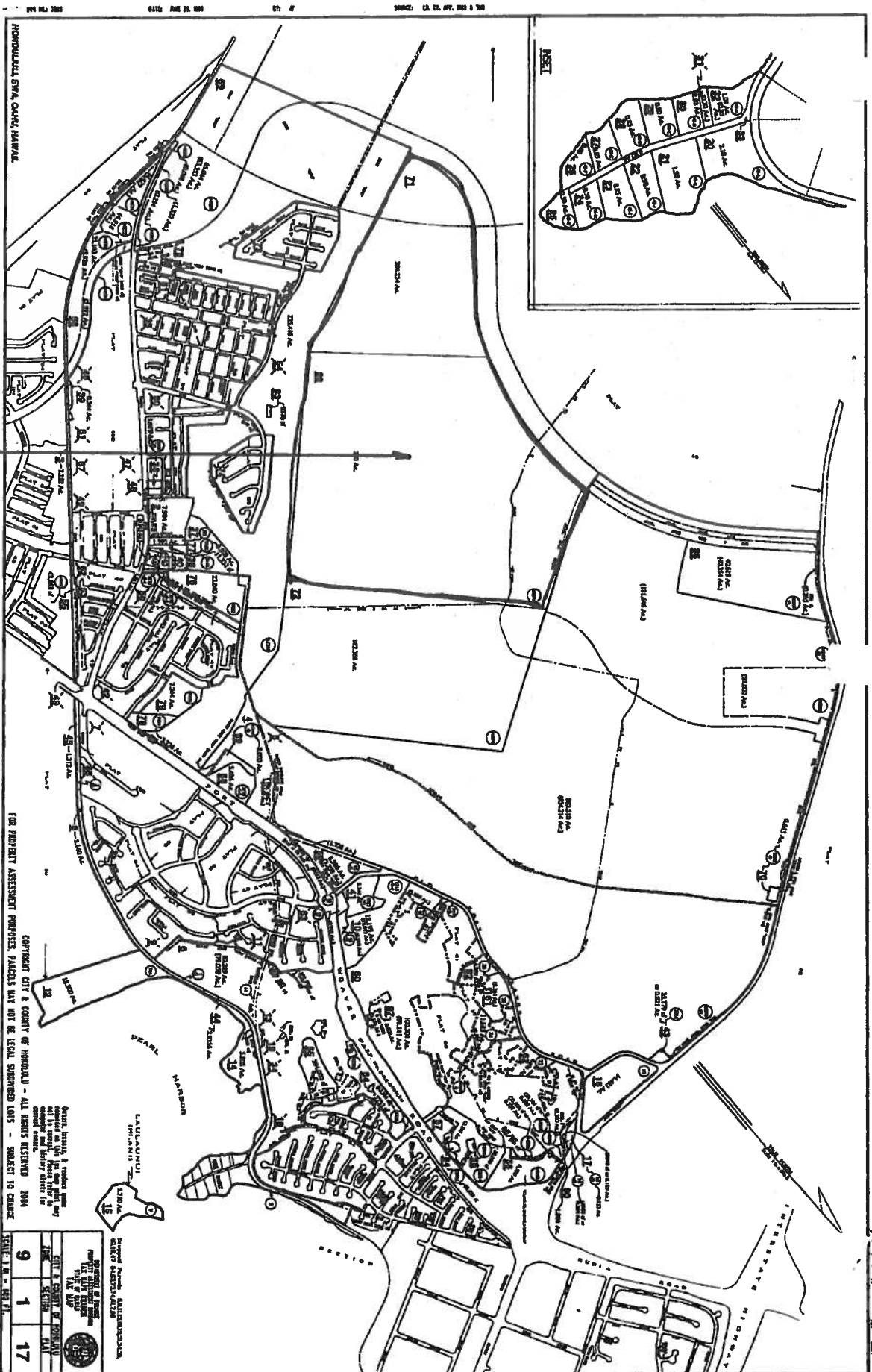
APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

Approved as amended. The Board amended the Recommendation Section by adding a new subparagraph 1.h. to read as follows:

"1.h. Access rights along the boundary between the subject properties and the properties comprising the North-South Road shall be reserved to the State Department of Transportation (DOT) provided that for the subject properties (designated as Tax Map Key Nos. 9-1-17:71 and 9-1-17:88), one access point to the North-South Road will be permitted at a location agreed to by the DOT and the DHHL."



Subject

FOR PAYMENT ASSESSMENT PURPOSES PARCELS MAY NOT BE LEGAL SURVEYED LOTS - SUBJECT TO CHANGE

OFFICE OF THE CITY CLERK
 CITY & COUNTY OF HONOLULU
 DEPARTMENT OF PUBLIC WORKS
 150 ALI'OLE DRIVE
 HONOLULU, HAWAII 96813

9	1	17
---	---	----

EXHIBIT A