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

December 13, 2013

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

Oahu

PSF No.: 040D-155

- 1. Final approval of an exchange between the State of Hawaii and Hawaii Baptist Academy involving state land in Nuuanu, Honolulu, Oahu, Tax Map Key: (1) 2-2-22:19; and privately-owned property located in the Waipahu Industrial Park, Hoaeae, Ewa, Oahu, Tax Map Key: (1) 9-4-49:62;
- 2. Approve the mutual cancelation of GL 5687 issued to Hawaii Baptist Academy, a Hawaii non-profit corporation, over state land in Nuuanu, Honolulu, Oahu, Tax Map Key: (1) 2-2-22:19;
- 3. Designation of the Waipahu industrial property as an income-generating asset and authorize the issuance of revocable permits for spaces in the industrial property located in the Waipahu Industrial Park, Hoaeae, Ewa, Oahu, Tax Map Key: (1) 9-4-49:62;
- 4. Authorization for the Chairperson to enter into a contract for property management and related services, as may be needed; and delegate authority to the Chairperson, as may be necessary, to determine and approve the process, terms and conditions, for the disposition of a long-term master lease for the property as improved, and to ultimately issue a master lease for the property located in the Waipahu Industrial Park, Hoaeae, Ewa, Oahu, Tax Map Key: (1) 9-4-49:62

APPLICANT:

Hawaii Baptist Academy, a Hawaii nonprofit corporation whose business and mailing address is 420 Wyllie Street, Honolulu, Hawaii 96817 ("HBA");

PRIVATE OWNER:

Elum Two, LLC, a Hawaii Limited Liability Company whose business and mailing address is 750 Amana Street, Room 212, Honolulu, Hawaii 96814.

Prior to the exchange, HBA shall acquire the private property from Elum Two, LLC

LEGAL REFERENCE:

Sections 171-50, -55, and other applicable sections of Chapter 171 and 103D, Hawaii Revised Statutes, as amended ("HRS")

Hawaii Baptist Academy

Senate Concurrent Resolution 20, 2013 (Adopted) House Concurrent Resolution 25, 2013 (Adopted)

PROPERTIES TO BE EXCHANGED:

State-Owned Property:

Location: Government land in Nuuanu, Honolulu, Oahu,

identified by Tax Map Keys: (1)2-2-22:19 as

shown on Exhibit A

Land Area: 4.971 acres, more or less

State Land Use: Urban

County Zoning: R-10, Residential

Trust Status: Whereas the subject state land was acquired

by the Territory of Hawaii by Final Order of Condemnation dated September 24, 1958, the state land is non-ceded, Section 5(a) lands of the Hawaii Admission Act, including "Real properties acquired by purchase or by condemnation by the Territory of Hawaii after August 12, 1898 and prior to August 21,

1959."

Moreover, the State's interest is not subject to the 30% DHHL entitlement pursuant to the

to the son binin entitlement pursuant to the

Hawaii State Constitution.

Current Use: Currently leased to HBA for a 55-year term

ending October 31, 2058 (GL 5687).

Private Property:

Location: Private lands and improvements thereon

located in the Waipahu Industrial Park, Hoaeae, Ewa, Oahu, identified by Tax Map Key:

(1) 9-4-49:62 as shown on **Exhibit B**.

Land Area: 0.410 acres, more or less

Zoning: State Land Use: Urban

County: I-2, Intensive Industrial

Improvements: 2-story, 12,850 square foot, concrete block

structure, built in 1975. Interior areas are partitioned into nine units, five ground floor units and four second floor spaces. Floor plans and photos of the building improvements are attached as **Exhibits C-1** and

C-2, respectively.

Current Use: Industrial

PUBLIC PURPOSE OF EXCHANGE:

Increase public land trust revenues to support the public land trust and the Department's fiduciary duties.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board is for the final approval of an exchange of public lands for private property. At its meeting on August 10, 2012, under agenda item D-9, after considering the potential effects of the proposed exchange as provided by Chapter 343, HRS, and Chapter 11-200, HAR, the Board affirmed that the proposed exchange will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment at this time. However, any future changes in the use of the then State-owned lands, if any, shall remain subject to the compliance with the provisions of Chapter 343, HRS, as amended.

BACKGROUND:

At its meeting on October 20, 2008, under agenda item D-13, the Board of Land and Natural Resources ("BLNR") approved in principle an exchange involving two State-owned parcels of land located along the Pali Highway corridor in Honolulu, Oahu, being further identified as TMK (1) 2-2-22:02 & 19 (respectively "Parcel 02" and "Parcel 19"). The public purpose for the exchange was to increase revenues to help support DLNR programs critical to the protection, management and preservation of Hawaii's natural, cultural and historic resources. Although private property for the exchange was not identified at the time, BLNR approved preliminary criteria meant to identify private lands that BLNR considered appropriate for the proposed exchange.¹

At its meeting of August 10, 2012, under agenda item D-9, the BLNR amended its prior action by approving in principle the selection of the privately-owned property identified above for conveyance to DLNR as part of the exchange, hereinafter the "Waipahu Property". BLNR also amended its prior action by eliminating Parcel 02 from the proposed exchange, thus limiting the State land involved in the exchange to Parcel 19.²

BLNR's approval in principle required certain requirements to be

BLNR approved criteria included (i) only fee simple or leased fee interests in properties; (ii) locations in State Land Use Urban districts with County zoning for commercial or industrial uses; (iii) priority given to locations in built-up urban areas, or areas in which large development projects are underway or being planned; (iv) preferences given to sites with land areas of a half-acre or more; (v) preferences given to improved properties, however, no residential improvements would be permitted.

 $^{^{2}}$ At its meeting on May 10, 2013, under agenda item D-12, BLNR approved the sale of Parcel 02 as a remnant.

satisfied and due diligence results on the Waipahu Property be presented to BLNR for review and consideration of a final approval prior to finalizing the proposed exchange.

STATUS REPORT AND DUE DILIGENCE:

The results of due diligence conducted on the Waipahu Property that will be conveyed to the State at the time of exchange is summarized herein for BLNR's consideration.

1. Independent Appraisals/Consideration: As previously reported to BLNR, independent appraisal reports were contracted for by the DLNR. The State-owned Parcel 19 had an appraised value, fee simple as though vacant and unencumbered by the existing lease, of \$2,080,000 effective February 28, 2012. The Waipahu Property, including all improvements thereon, had an appraised value of \$1,825,000, effective February 10, 2012.

Accordingly, the fair market value of the Waipahu Property as compared with the fair market value of the state owned land complies with §170-50, HRS. Moreover, at the time of exchange, pursuant to §171-50(b), HRS, HBA shall pay to DLNR Two Hundred Fifty Five Dollars (\$255,000), the difference that the appraised value of the public property exceeds the appraised value in the Waipahu Property.

- 2. Public Notice: Pursuant to §171-50 and §171-16(d), a public notice was published in the Honolulu Star Advertiser on June 20, 2013. An affidavit confirming the publication is retained in the project file. An electronic copy of the public notice was also posted on Land Division's web page.
- 3. Title Report: Title Guaranty of Hawaii, Incorporated prepared a preliminary title report dated May 1, 2013. The title report identified ELUM TWO, LLC as the owner of the undivided interest in the Waipahu Property, identified therein as TMK (1) 9-4-49:62. Prior to the proposed exchange, HBA shall acquire the Waipahu Property from ELUM TWO, LLC.

At the time of conveyance, the only encumbrance of record shall be the existing grant of a perpetual easement to Hawaiian Electric Company, Inc. for easement and utility purposes.

4. Survey: HBA provided an updated Alta Survey dated January 18, 2013, which showed a CMU wall encroaching into the Leokane

The independent appraisal for the Waipahu property confirmed that based on correspondence from the State Department of Health ("DOH") and DLNR's continued use of the property as improved; the results of the environmental studies would not have a material impact on the estimated fair market value for the Waipahu Property. Results of the environmental studies and DOH's correspondence are discussed in a subsequent section.

Street right-of-way by 2 to 3 inches. The City confirmed by letter dated October 16, 2012 that a variance from the City Department of Planning and Permitting is not required; and the encroachment is covered by the De Minimus Structure Position Discrepancies established under State of Hawaii Act 131 to amend Hawaii Revised Statutes Chapter 669, Quieting Title.

The Alta survey also confirmed the location of a perpetual easement to Hawaiian Electric Company, Inc. cited in the title report, which does not appear to significantly impact building functionality. No other encroachments were identified by the Alta Survey.⁴

5. Environmental Studies: Based on the findings of a 2012 Phase I covering the Waipahu Property, HBA had limited site screening and soil testing completed in October 2013. Results of soil testing detected a concentration of heptachlor epoxide DOH exceeding unrestricted and commercial/industrial environmental action levels ("EALs") in depths up to six inches. 5 Soil samples taken from depths below six inches did not detect concentrations of heptachlor epoxide exceeding DOH unrestricted EALs. No other tested contaminants were found above DOH EALs for unrestricted use. Based on the foregoing, an Environmental Hazard Management Plan ("EHMP") recommended regular monitoring and proper maintenance of the existing concrete cover to be required.

Based on the soil testing results, together with the EHMP and the current industrial site use, DOH issued a No Further Action ("NFA") letter dated October 9, 2013. The NFA letter concurs with the EHMP that only monitoring and maintenance of the existing concrete cover is required at this time; and requires DOH notification if there is a change in land use in the future. With the exception of these two requirements, the DOH indicated no further action is required at this time. A copy of DOH's NFA Letter is attached as **Exhibit D**.

After considering all environmental studies conducted and DOH's subsequent NFA determination, a Phase I dated October 2013 reported that no evidence of recognized environmental conditions was revealed in connection with the Waipahu Property.

The Alta Survey dated February 15, 2012, identified a portion of a chain-link fence encroaching up to 18-inches onto the adjacent private property. However, the January 18, 2013 updated Alta Survey confirmed that the fence has been relocated and no longer encroaches onto the adjacent private property.

⁵ Environmental studies indicate that heptachlor epoxide results from the breakdown of chlordane, a termiticide that was commonly used in the past; and heptachlor epoxide is commonly present in the top 1 to 2 feet of soil. Environmental reports also indicate that prior to the construction of the existing improvements a commercial company was hired by the property owner to apply termiticides to the site.

- 6. Building Improvements/Condition: As previously reported to BLNR, HBA provided a Facility Assessment Report, prepared by Group 70 International and dated February 6, 2012 ("Assessment Report") to DLNR. In sum, the Assessment Report concluded the existing subject building is generally in good structural condition. Notwithstanding the above, the Assessment report recommended repairs to address certain architectural (e.g. ADA accessibility, painting, reroofing, etc.), mechanical (e.g. plumbing and ventilation), and other deficiencies and deferred maintenance (e.g. repairs to parking area and exterior light fixtures) identified therein. The owner has maintained the property in a similar condition and has not completed any major repairs since the completion of the Assessment Report.
- 7. Legislation: Pursuant to §171-50(c), HRS, DLNR submitted for introduction resolutions to the legislature for review of the proposed exchange, with copies of all draft resolutions being submitted to the Office of Hawaiian Affairs on August 31, 2012. As a result House Concurrent Resolution 25, and Senate Concurrent Resolution 20, both titled "Concurrent Resolution Submitting to the Legislature of the State of Hawaii for Review of Action taken by the Board of Land and Natural Resources on a Land Exchange" were adopted by the Twenty-Seventh State Legislature of the State of Hawaii, Regular Session of 2013.
- 8. Current Tenancy: Of the nine spaces in the privately-owned property seven tenants are on a month-to-month tenancy; one space is currently under a 3-year lease that began on October 1, 2013 and ends on September 30, 2016; and one space is occupied by the current property owner. The current rent roll for the privately-owned property is summarized in the table attached as Exhibit E.

REMARKS:

The public purpose for the proposed exchange is to increase revenues to support the Department's public land trust and fiduciary duties. The State land considered in this proposed exchange is currently leased and generated \$23,400 per year for the 10-year period that ended October 31, 2013. Rent for the 10-year period beginning November 1, 2013 has not been resolved.

Based on the tenant rent roll, the Waipahu Property currently generates revenues totaling \$80,907 year while operating with an effective vacancy rate of about 21% due to the owner-occupied space. Other than a recently executed 3-year lease, tenant rents have remained unchanged since 2012, which the independent appraisal report indicated was below then market rents. The appraisal report

It is noted that the 3-year lease that began in October 2013 is based on a monthly rent \$0.80 per square foot, while all other rents are based on a monthly

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also indicated that leasing activities of building space presents a potential annual net operating income exceeding \$100,000.

Subject to BLNR approval of the recommendations herein, concurrent with the execution of the exchange, the existing lease to HBA (GL 5687) shall be mutually canceled pursuant to paragraph 41, therein. Moreover, the Waipahu Property will be designated as a DLNR income-generating asset, revenues from which will be reserved to help support programs essential to the protection, preservation and management of the State's cultural, historic, and natural resources. This designation is consistent with the public purpose for the proposed exchange.

Accordingly, as provided for by Section 171-55, HRS, Land Division will make available Revocable Permits ("RPs") to all month-to-month tenants currently renting space in the Waipahu Property. RPs will also be offered and directly negotiated for vacant spaces, including the space currently occupied by the landowner or any other space that may be subsequently vacated. Permitted uses shall be limited to uses that may be allowed under the Waipahu Property's industrial zoning land classification.

The issuance of directly negotiated RPs for individual units gives Land Division the opportunity to address future vacancies in the Waipahu Property in manner reflective and competitive with other industrial properties in Waipahu. Whereas the Waipahu Property's nine units are each separately metered for electricity, the issuance of RPs for individual units is not expected to be overly burdensome to daily asset management operations.

Considering the nature of the existing improvements, however, management and emergency maintenance issues are likely to arise from time to time. To effectively address these issues, Land Division may need to procure property management and other related services pursuant to Chapter 103D, HRS.

Land Division's alternative long-term management plan for the Waipahu Property, if needed, involves the issuance of a long-term master lease for the entire property as currently improved. such disposition shall be by a public auction, request for proposals, or any other process authorized under Chapter 171, HRS.

Accordingly, Land Division is also requesting BLNR authorize the Chairperson to enter into a contract for property management and related services, as may be needed; and delegate authority to the Chairperson, as may be necessary, to determine and approve the

unit rent of \$0.65 to \$0.70 per square foot.

⁷ On February 4, 2004, DLNR issued a 65-year ground lease (GL 5687) covering Parcel 19 to Hawaii Baptist Academy for school and related purposes. HBA is not in breach of any condition of GL 5687.

process, terms and conditions, for the disposition of a long-term master lease, and ultimately issue a master lease provided, however, that the process, terms and conditions determined and approved by the Chairperson shall comply with the provisions of HRS, such as Chapter 171 or 103D, HRS.

The requested authorization and delegation of authority to Chairperson will allow DLNR to respond to dynamic market conditions in the industrial rental market more effectively and in the best interest of the Department and the public land trust. The requested delegation of authority, however, shall be limited to the issuance of a master-lease for continued operations of the existing industrial building. Any future disposition that considers any redevelopment of the Waipahu Property shall remain subject to prior BLNR approval at an open public meeting and all statutory requirements, including but not limited to compliance with Chapter 343, HRS.

RECOMMENDATION: That the Board:

- 1. Grant its final approval to the above-described exchange between the State of Hawaii and Hawaii Baptist Academy, 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 exchange deed form and land patent grant or deed form, as may be applicable and as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- 2. Approve the mutual cancelation of GL 5687 issued to Hawaii Baptist Academy, a Hawaii non-profit corporation, 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 condition of the most current Cancellation of General Lease form, as may be applicable and as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

- 3. Designate the Waipahu Property as income-generating asset for the Department and authorize the issuance of revocable permits for individual spaces in the Waipahu Property 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 revocable permit form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- 4. Authorize the Chairperson to enter into a contract for property management and related services; and delegate authority to the Chairperson, as may be necessary, to determine and approve the process, terms and conditions, for the disposition of a long-term master lease, and ultimately issue a master lease under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The process, terms and conditions determined and approved by the Chairperson shall comply with the provisions of HRS, such as Chapter 171 or 103D, HRS, and;
 - B. The standard terms and conditions of the most current lease document form, as may be amended from time to time;
 - 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.

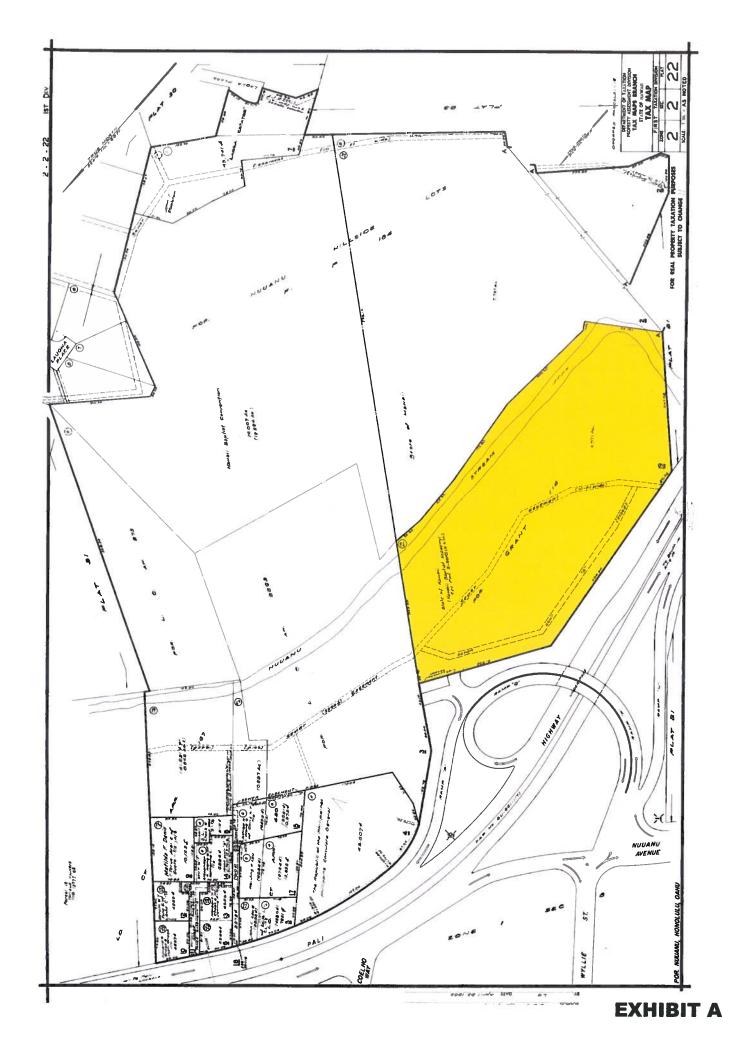
Respectfully Submitted,

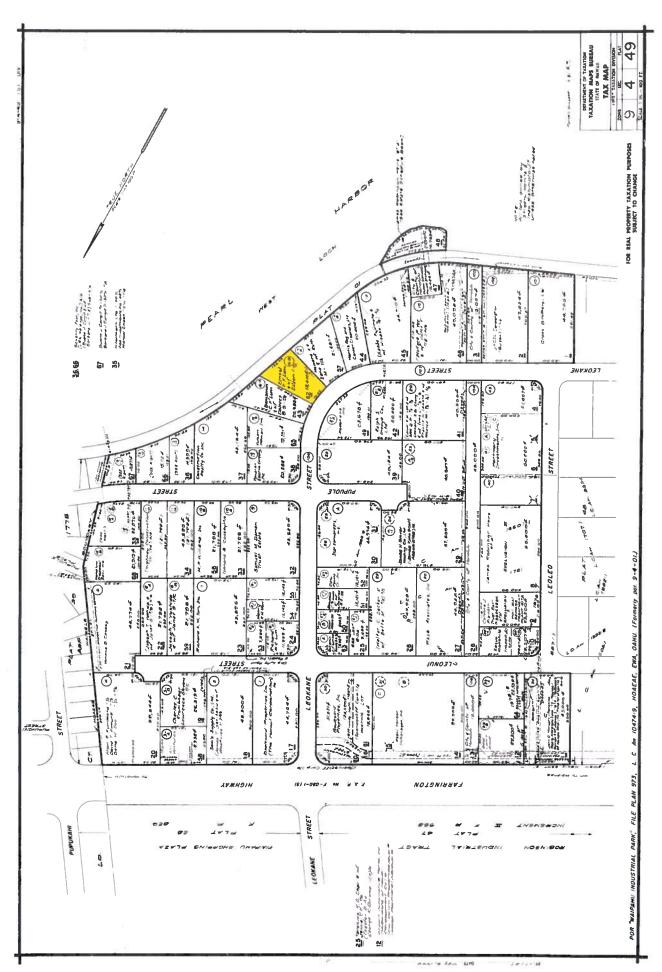
Gavin Chun

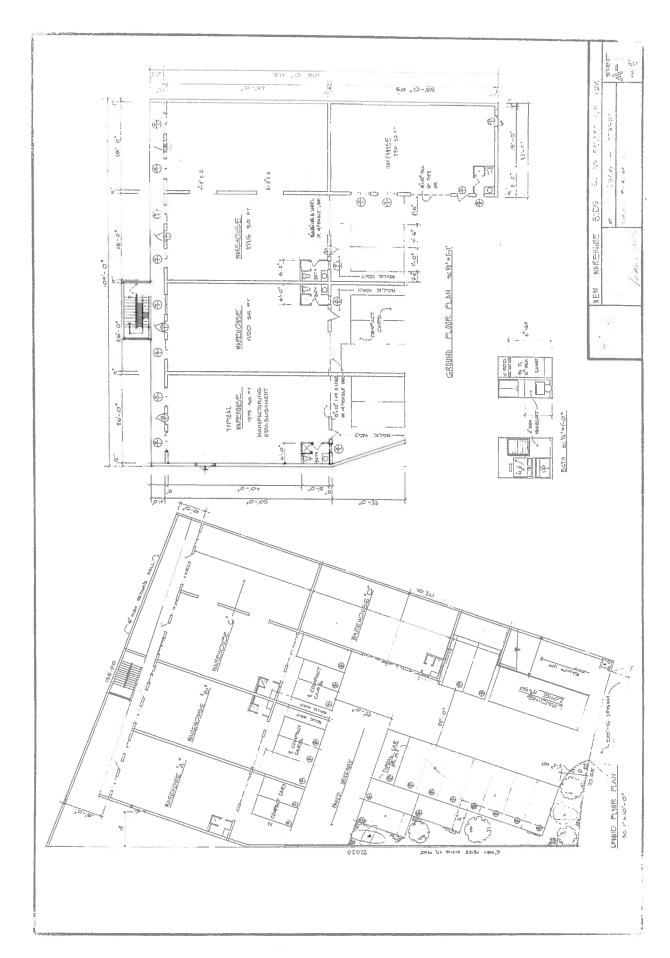
Project Development Specialist

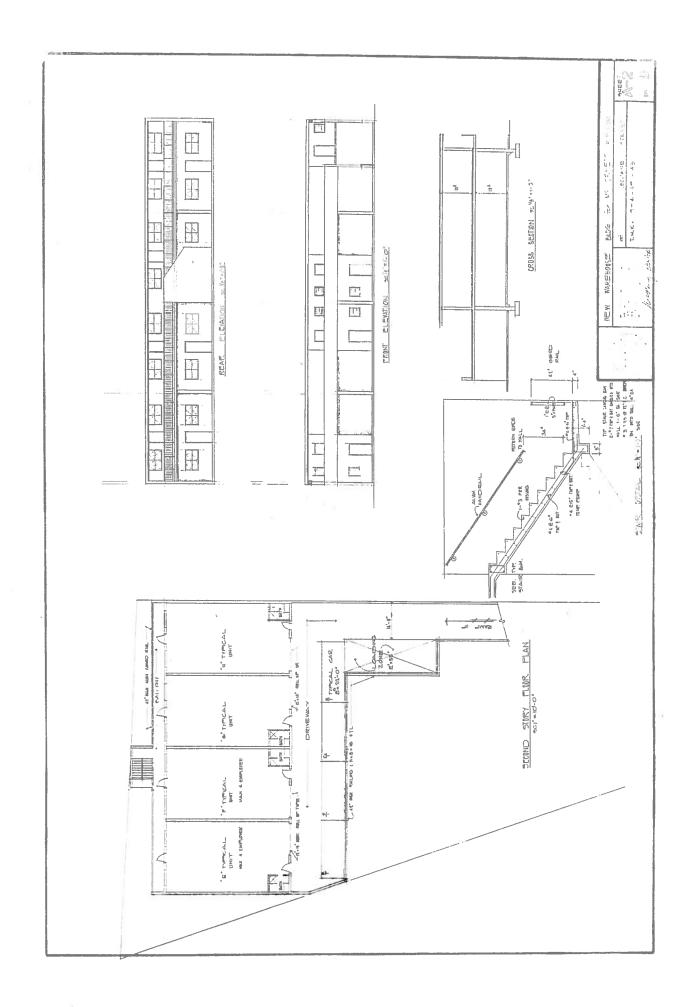
APPROVED FOR SUBMITTAL:

illiam J. Aila, Jr., Chairperson









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FRONT VIEW
OF
SUBJECT PROPERTY

ANOTHER FRONT VIEW OF SUBJECT PROPERTY





VIEW OF 2ND FLOOR

EXHIBIT C-2



ANOTHER VIEW OF 2ND FLOOR



INTERIOR VIEW OF UNIT 101



VIEW OF SIDE YARD OF UNIT 101



INTERIOR VIEW OF UNIT 102



INTERIOR VIEW OF UNIT 104



INTERIOR VIEW OF UNIT 105



INTERIOR VIEW OF UNIT 201



INTERIOR VIEW OF UNIT 202



INTERIOR VIEW OF UNIT 204



VIEW OF LANAI OUTSIDE UNIT 204



STREET SCENE - SUBJECT ON LEFT



STREET SCENE - SUBJECT ON RIGHT

Neil Abercrombie



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

LORETTA J. FUDDY, A.C.S.W., M.P.H. DIRECTOR OF HEALTH

In reply, please refer to: File: EHA/HEER Office 13-531-JN

October 9, 2013

Mr. Ron Shiira Hawaii Baptist Academy

Honolulu, Hawaii 96817

Facility/Site: 94-143 Leokane Street

Subject: No Furth

No Further Action with institutional controls determination for 94-143 Leokane

Street based upon review of the documents listed below.

Limited Site Screening Activities, 94-143 Leokane Street, Waipahu, Oahu, Hawaii, TMK
 (1)9-4-49:062 dated October 7, 2013 by EnviroServices & Training Center, LLC.

• Environmental Hazard Management Plan, 94-143 Leokane Street, Waipahu, Oahu, Hawaii, TMK (1)9-4-49:062 dated October 7, 2013 by EnviroServices & Training Center, LLC.

Dear Mr. Shiira

The Hawaii Department of Health (HDOH), Hazard Evaluation and Emergency Response (HEER) Office has reviewed the documents listed herein and determined that with the implementation of the controls listed (i.e. the specified institutional and engineering controls) in the Environmental Hazard Management Plan (EHMP), No Further Action (NFA) is required to address soil contamination within the areas at the Site defined above.

A summary of the HEER Office findings are as follows:

Limited Site Screening Activities

A February 2012 Phase I Environmental Assessment conducted by Enviroservices & Training Center, LLC (ETC) for the above mentioned site identified potential residual contaminants associated with historic sugarcane operations at the site to be a recognized environmental condition. Currently the site is paved over with concrete. A limited site investigation of the subsurface soils beneath the concrete pavement was conducted to determine if the historic operations had impacted the site.

To conduct the investigation, the site was broken up into three decision units (DU's). Multi-increment soil samples collected from each DU at 0 to 6 inches below pavement in DU-1, 0 to 2 feet below pavement in DU-2, and 2 to 4 feet below pavement in DU-3. The DU-1 sample were comprised of 30-increments, while the samples from DU-2 and DU-3 consisted of 20-increments rather than 30, due to limited access within the DU. The soil samples were analyzed for total arsenic and organochlorine pesticides.

Heptachlorepoxide was detected at a concentration of 0.211 milligrams per kilogram (mg/kg) in DU-1, exceeding HDOH unrestricted environmental action levels (EALs) (0.053 mg/kg) and

Mr. Ron Shiira October 9, 2013 Page 2 of 2

commercial/industrial EALs (0.19 mg/kg). No other analytes were detected at concentrations exceeding EALs. Hetachlorepoxide is the breakdown product of chlordane, a commonly used termiticide in the past. It is known to be persistent and is commonly present in the top 1 to 2 feet of soil below surface.

ETC's report cites a Mr. Lum stating that prior to the construction of the current building at the site, a commercial company was hired to apply termiticides. Currently, pavement in the area and throughout the site acts as a cap, limiting exposure to the impacted soil. According to Mr. Lum, this pavement is to remain in place for the foreseeable future and will be maintained to limit risk of exposure to subsurface soils.

Environmental Hazard Management Plan

The EHMP details procedures for handling of soil at the site should it be exposed or disturbed in the future. Since contaminated soil will remain on site below the pavement, the procedures outlined in the EHMP must be followed. This EHMP should be used to guide future actions on the site, and include the following key points:

Engineering Controls:

Proper maintenance and regular inspections of the cap is mandatory.

Institutional Controls

Property use is anticipated to remain commercial/industrial for the foreseeable future.
 Maintenance of the engineering controls may include land use/deed restrictions and a map of the impacted areas, the EHMP and any other investigation reports related to the site may be required to be attached to the deed for the site.

Based on the results of the site screening activities, EHMP and current site use, it has been determined that No Further Action is required at this time. Please be aware that if there are any future changes to the land use, zoning, or additional information reveal contaminant levels and exposure at the site become a threat to the public health, the environment, and natural resources, the HEER office must be notified and will reevaluate the site. This may require further action to be taken. Should you have any questions, please contact Mr. Jordan Nakayama of my staff at 586-4697 or at jordan.nakayama@doh.hawaii.gov. Thank you for your time and consideration in this matter.

Sincerely.

Fenix Grange
Site Discovery, Assessment, and Remediation Section

Hazard Evaluation and Emergency Response Office

C: Sharla Nakashima

EnviroServices & Training Center, LLC

		Tenant Rent	EXHIBIT E Tenant Rent Roll: 94-143 Leokane (as of 10/1/2013)	Street		
Space	Area (S.F.)	Tenant	Term	Mo. Rent*	Mo. Unit Rent(s.f.)	% Share
101	1,350	Leeward Auto Glass	5 yrs. beg. 3/1/05; Currently Mo-to-mo	\$ 877.50	\$0.65	11%
102	1,350	Vidal's Car Service	5 yrs. beg. 3/1/05; Currently Mo-to-mo	877.50	0.65	°/o
103	2,725	Owner/Landlord	N/A	N/A	N/A	21%
104	1,147	Gary Lucero Painting	5 yrs. beg. 3/1/05; Currently Mo-to-mo	745.55	0.65	o/ ₀
105	756	TLT Designs	1 yr. beg. 12/1/10; Currently Mo-to-mo	529.20	0.70	o/o W
201	1,350	Tachibana Painting LLC	3 yrs. beg. 10/1/13	1,080.00	0.80	L1 %
202	1,350	Warhorse Strength Camp, LLC	1 yr. beg. 6/23/11; Currently Mo-to-mo	877.50	0.65	 □ □
203	1,350	Kai Construction Hawaii	Mo-to-mo; beg. 3/1/05	877.50	0.65	
204	1,350	Jonathan Kaholokai Kamaka, Sr.	Mo-to-mo; beg. 9/1/12	877.50	0.65	11%
Totals	12,728			\$6,742.25		102%

Source: ELUM TWO, LLC

^{*} Reported base rent, not including collections for CAM or GET.