

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

January 23, 2015

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

PSF No.: 06HD-173

Hawaii

Approval in Principle of a proposed acquisition of government (Crown) lands at Waiakea, South Hilo, Island of Hawaii, Tax Map Key: (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 SITE:

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**.

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.

CONSIDERATION:

One Dollar. The United States of America ("USA") is returning the Subject Site pursuant to the terms 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. However, the USA is agreeable to convey all improvements on the Subject Site provided the State accept the draft deed, attached as **Exhibit B**. UH plans to continue its use of the existing improvements, and has planned additional improvements to the Subject Site for expansion of the UH Hilo campus.

PURPOSE:

Subject to Board of Land and Natural Resources ("BLNR") approval in principle, UH intends to request control of the Subject Site and all improvements thereon for UH Hilo campus expansion purposes. A discussion and recommendation on UH's request will be presented to BLNR at a subsequent meeting.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board 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.

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).

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions for the privately-owned property, if necessary, according to State DAGS standards and at Applicant's own cost;
- 2) Obtain a title report for the subject property at Applicant's own cost and subject to review and approval by the Department; and
- 3) Pay for and conduct a Phase I environmental site assessment and, if this Phase I identifies the potential for hazardous materials release or the presence of hazardous materials, conduct a Phase II environmental sampling and analysis plan and perform any and all remediation, abatement and disposal as may be warranted and as satisfactory to the standards required by the Federal Environmental Protection Agency and/or the State Department of Health, all at no cost to and to the satisfaction of the Department.

BACKGROUND:

At its meeting of September 28, 1962, under agenda item F-16, the Board of Land and Natural Resources ("BLNR") approved conveying the Subject Site to the USA for an Army Reserve Training Center, provided however, that if the Subject Site was not utilized as training center or allied purposes for a period of three years, interest in the Subject Site would revert to the State of Hawaii. Based on the foregoing and other conditions, BLNR approved compensation for the Subject Site to be "one dollar (\$1.00) and other valuable consideration".

Pursuant to the above cited BLNR action, 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 "[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.¹ 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 the United States Department of Defense prepared and provided a Finding of Suitability to Transfer (FOST) report dated September 23, 2013, covering the Subject Property, a copy of the FOST without enclosures is attached as **Exhibit C**. In sum, the FOST concluded that the Subject Property qualifies as uncontaminated property under CERCLA §120(h)(4), and is transferable subject, however, to certain terms and conditions, including environmental protection and access provisions. Other findings reported in the FOST including other due diligence cited therein include:

- United States Army Corps of Engineers, Honolulu Engineer District together with the State of Hawaii Department of Health, Hazard Evaluation and Emergency Response Office ("HDOH-HEER") developed a soil sampling and remediation

¹ The 2005 Base Closure and Realignment Commission, the Secretary of the Army, and the USACE commonly refer to the Subject Property as the SFC Minoru Kunieda U.S. Army Reserve Center.

plan for the Subject Site. As a result HDOH-HEER reviewed the final soil sampling and remediation report for the Subject Property and concurred with the No Further Action recommendation for the Subject Site.²

- There are no current or former underground and/or above-ground petroleum storage tanks on the Subject Site. Although fuel supply trucks were located on the Subject Site, soil sampling results showed that soils impacted by petroleum constituents were below Hawaii DOH action levels and was de minimis in nature, and a No Further Action letter dated September 17, 2012 was issued.
- Existing records and available information indicate no evidence of munitions and explosives of concern present on the Subject Property.
- The Department of Defense Environmental Condition of the Property report (ECP) classifies the entire Subject Site as ECP Category 1, areas where no release or disposal of hazardous substances or petroleum products has occurred.
- Non-friable asbestos containing material ("ACM") was identified in interior flooring and expansion joint compounds within three existing buildings. However, it was determined that the ACM does not currently pose a threat to human health or the environment because all such friable asbestos has been removed or encapsulated.
- Five buildings contain or are presumed to contain lead-based paint.
- Several buildings were used for radiological activities, with low-level radioactive material present in sealed sources as part of components or end products (i.e., gun sights, wrist watches, compasses, night vision devices, etc.). However, a July 2012 radiological site assessment concluded that the Subject Property is suitable for unrestricted use from a radiological perspective and the Subject Property is free of radiological concerns.
- All buildings are currently connected to County sewer lines, and a former cesspool was closed to which the HDOH Wastewater Branch concurred that No Further Action is required.

² Final Report Soil Sampling and Remediation at SFC Minoru Kunieda U.S. Army Reserve Center, Hilo, Island of Hawaii, Element Environmental LLC, dated August 2012. Results of the soil sampling and remediation plan found (1) soil sample results contained total arsenic at concentrations exceeding HDOH environmental action levels ("EALs"), however, bio-accessible arsenic was not detected in any of the soil samples above laboratory detection limits. Accordingly the soils at the Subject Site were classified as "Category B" soils (soils that have been minimally impacted, but are suitable for unrestricted use); and (2) surface and shallow subsurface soil within the former military parking areas did not contain petroleum related contaminants above HDOH EALs.

The results of the environmental studies and the Department of Army's conclusion that the Subject Property qualifies as uncontaminated property under CERCLA §120(h)(4) were submitted to HDOH-HEER for review, to which the HDOH-HEER has concurred.

REMARKS:

This request before the Board of Land and Natural Resources ("BLNR") is for an approval in principle to accept the return of 3.700 acres of former crown lands, together with all improvements thereon. The subject site is located at 470 West Lanikaula Street, Waiakea, South Hilo, island of Hawaii ("Subject Site"). Abutting land uses include a YMCA to the east and a church/preschool to the west. The University of Hawaii Hilo ("UHH") campus is located directly across West Lanikaula Street from the Subject Site.

Whereas the Subject Site has not been used as an Army Reserve Training Center or allied purposes since 2011, the proposed return of the Subject Site to the State is consistent with the terms and conditions of LOD 19642. Based on the results of FOST and other due diligence reports provided thus far, a draft deed form attached as hereto as **Exhibit B** was negotiated and is being proposed as the conveyance document, hereinafter referred to as the "Proposed Deed".

Whereas the FOST concluded that the Subject Property qualifies as uncontaminated property under CERCLA §120(h)(4) and is transferable subject to certain terms and conditions, the Proposed Deed is purportedly consistent with CERCLA §120(h)(4) and the terms and conditions required by the FOST. Additionally, Paragraph 10 of the Proposed Deed provides that the terms and conditions therein may be subject to the limitations imposed by the Hawaii Constitution. The Proposed Deed has been reviewed by and is acceptable to the Department of the Attorney General. Staff recommends BLNR approve the Proposed Deed form as the conveyance document provided, however, further due diligence findings remain consistent with the FOST and other environmental reports' findings as described above.

Following BLNR's approval in principle staff will complete its review of due diligence that shall be provided by UH. Prior to the documentation of the proposed conveyance, Land Division will present all updated due diligence findings to BLNR for consideration and request final approval of the proposed conveyance.

Subject to the BLNR final approval of the proposed acquisition UH intends to request a disposition of the Subject Property for

university related purposes. Staff has no objections to UH's request at this time. However, a discussion of UH's request regarding management of the Subject Property will be presented to BLNR for consideration at a subsequent meeting, together with all due diligence results and staff's final recommendations on the proposed acquisition.

RECOMMENDATION: That BLNR approve in principle the above-described land acquisition under the terms and conditions cited above which are by this reference incorporated herein and subject to the following;

- A. Details of the proposed acquisition shall be submitted to the Board for final approval prior to documentation;
- B. The terms and conditions of the proposed deed document form attached hereto as **Exhibit B**;
- C. Review and approval by the Department of the Attorney General;
- 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:



Carty S. Chang, Acting Chairperson



QUITCLAIM DEED
SFC Minoru Kunieda, USARC INSTALLATION
HAWAII COUNTY, HAWAII
TRACT NO./Tax Map Key: (3) 2-4-056-016

This QUITCLAIM DEED, made this _____ day of _____, 2014, between the UNITED STATES OF AMERICA (hereinafter the "GRANTOR"), acting by and through the Real Estate Contracting Officer, Headquarters, U.S. Army Corps of Engineers, pursuant to delegations of authority from the SECRETARY OF THE ARMY (hereinafter the "ARMY"), under and pursuant to the powers and authority contained in the Defense Base Closure and Realignment Act 1990, as amended (10 U.S.C. § 2687) and delegations and regulations promulgated thereunder, whose mailing address is U. S. Army Corps of Engineers, Honolulu District, ATTN: CEPOH-PP-R Real Estate Branch, Building 230, Fort Shafter, HI 96858-5440; and the STATE OF HAWAII (hereinafter called the "GRANTEE"), acting by and through its Board of Land and Natural Resources, whose principal place of business and mailing address are 1151 Punchbowl Street, Honolulu, HI 96813.

WITNESSETH THAT:

WHEREAS, by Deed dated October 23, 1962 and recorded October 24, 1962 in Liber 4389, Page 436, etc. of the Bureau of Conveyances, the State of Hawaii did 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, lying and being in the County of Hawaii, in the State of Hawaii,

containing approximately 3.7 acres as described and shown on Exhibit A, attached hereto and made a part hereof (herein referred to as the "Property").

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 B, 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 – Legal Description and Parcel Map
- B – 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
Real Estate Contracting Officer
Headquarters, 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
_____.

By _____
Its _____

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

STATE OF HAWAII

Deputy Attorney General

By _____

Dated: _____

Chairperson
Board of Land and
Natural Resources

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 _____, 2014, Brenda M. Johnson-Turner, Real Estate Contracting Officer, Headquarters, 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 dated _____, 2014, 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 B
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.

**FINDING OF SUITABILITY TO TRANSFER
(FOST)**

**SFC Minoru Kunieda U.S. Army Reserve Center (HI003)
470 West Lanikaula Street
Hilo, Hawaii 96720**

September 2013

**FINDING OF SUITABILITY TO TRANSFER
(FOST)
SFC Minoru Kunieda USAR Center (HI003)
Hilo, Hawaii**

JULY 2013

1. PURPOSE

The purpose of this Finding of Suitability to Transfer (FOST) is to document the environmental suitability of property at the SFC Minoru Kunieda United States Army Reserve (USAR) Center, located in Hilo, Hawaii, for reversion to the State of Hawaii consistent with Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 120(h) and Department of Defense (DOD) policy. In addition, the FOST includes the CERCLA Access Provision and other Deed Provisions and the Environmental Protection Provisions (EPPs) necessary to protect human health or the environment after such transfer.

2. PROPERTY DESCRIPTION

The property consists of approximately 3.7 acres, which includes five permanent buildings: an Administration Building, Assembly Hall, Vehicle Maintenance Shop, Vehicle Maintenance Garage, and a Vehicle Motor Pool Garage. The property was used by the Army Reserve for administrative, training and logistical purposes and vehicle and equipment maintenance. The property will revert to the State of Hawaii for reuse by the University of Hawaii for administrative offices and classrooms. A site map of the property is attached (Enclosure 1).

3. ENVIRONMENTAL DOCUMENTATION

A determination of the environmental condition of the property was made based upon the following documents:

- Asbestos Survey, Kunieda U.S. Army Reserve Center, Hilo, Hawaii, May 1994
- Environmental Condition of Property (ECP) Report, SFC Minoru Kunieda USAR Center, May 2007,
- Site Characterization Report, SFC Minoru Kunieda USAR Center, November 2010,
- Environmental Condition of Property Update Letter Report, SFC Minoru Kunieda USAR Center, October 2012,
- Environmental Condition of Property Update Report, SFC Minoru Kunieda USAR Center, January 2013,
- Radiological Survey Assessment Report, SFC Minoru Kunieda USAR Center, July 2012,
- Radiological Release Memorandum, July 2012, and
- Physical Assessment of Asbestos Containing Building Materials, Kunieda U.S. Army Reserve Center, 470 West Lanikaula Street, Hilo, Hawaii, February 2013

- Environmental Condition of Property (ECP) Update of Sergeant First Class (SFC) Minoru Kunieda USARC, Hilo, HI, April 2013
- Record of Environmental Consideration, Sergeant First Class (SFC) Minoru Kunieda USARC, Hilo, HI, July 2013

The information provided is a result of a search of agency files during the development of these environmental surveys. A list of documents providing information on environmental conditions of the property is attached (Enclosure 2).

4. ENVIRONMENTAL CONDITION OF PROPERTY

The DOD Environmental Condition of Property (ECP) categories for the property are as follows:

ECP Category 1: SFC Minoru Kunieda USAR Center (HI003); entire parcel.

A summary of the ECP categories is provided in Table 1 – Description of Property (Enclosure 3).

4.1. Environmental Remediation and/or Investigation Sites

There were six investigation sites located on the property. A list of the environmental investigation sites on the property is as follows:

- 1) Cesspool Closure,
- 2) Former Grease Rack,
- 3) Battery Release Area,
- 4) Former Wash Rack
- 5) Elevated Arsenic in Soil
- 6) Military Equipment Parking (MEP) Area

All environmental soil and/or groundwater investigation activities on the property have been completed or are in place and operating properly and successfully. See *Environmental Condition of Property Update Letter Report, SFC Minoru Kunieda USAR Center, October 2012* and other documents listed in § 3 for additional information.

A summary of these environmental investigation sites is provided in Table 1 – Description of Property (Enclosure 3).

4.2. Storage, Release, or Disposal of Hazardous Substances

There is no evidence that hazardous substances were stored on the property in excess of the 40 CFR Part 373 reportable quantities.

4.3. Petroleum and Petroleum Products

4.3.1. Underground and Above-Ground Storage Tanks (UST/AST)

- **Current UST/AST Sites** - There are no current underground and/or above-ground petroleum storage tanks (UST/AST) on the Property.
- **Former UST/AST Sites** – There were no underground or above-ground petroleum storage tanks (UST/AST) on the property. See Section 3.4 of the 2007 ECP Report for additional information.

4.3.2. Non-UST/AST Storage, Release, or Disposal of Petroleum Products

There are records of non-UST/AST storage of diesel in fuel supply trucks in the MEP Area. There was no evidence of petroleum releases in excess of 55 gallons as a result of these activities. The MEP Area was investigated to determine if spills less than 55 gallons had impacted subsurface conditions at the property. Soil sampling results showed that soils in the MEP Area were impacted by petroleum constituents, but not above Hawaii DOH action levels. Therefore, any release of petroleum to the environment is *de minimis* in nature. A No Further Action status was granted to the MEP Area in a letter dated September 17, 2012. Refer to 2012 ECP Update Report for additional information.

4.4. Polychlorinated Biphenyls (PCB)

There is no evidence that PCB-containing equipment is located or was previously located on the property.

4.5. Asbestos

There is known and presumed non-friable asbestos-containing material (ACM) in the following buildings: Administration Building, Assembly Hall, and Motor Pool. The non-friable ACM includes: 12" x 12" white floor tile and expansion joint compound. All identified non-friable ACMs were listed in good condition. See *Physical Assessment of Asbestos Containing Building Materials, Kunieda U.S. Army Reserve Center, 470 West Lanikaula Street, Hilo, Hawaii, February 2013* for additional information. The ACM does not currently pose a threat to human health or the environment because all friable asbestos that posed an unacceptable risk to human health has been removed or encapsulated. The deed will include an asbestos warning and covenant (Enclosure 6).

4.6. Lead-Based Paint (LBP)

The following buildings are known or presumed to contain lead-based paint (LBP): Administration Building, Assembly Hall, Vehicle Maintenance Shop, Vehicle Maintenance Garage, and a Vehicle Motor Pool Garage. See Section 6.7 of the 2007 ECP Report for additional information. The property was not used for residential purposes and the transferee does not intend to use the property for residential purposes in the future. The deed will include a lead-based paint warning and covenant (Enclosure 6).

4.7. Radiological Materials

The following buildings were used for radiological activities: Administration Building, Vehicle Maintenance Shop, and Vehicle Maintenance Garage. Low-level radioactive material was present in sealed sources incorporated as part of components or end products such as small arms gun sights, wrist watches, compasses, dials and gauges, RADIAC check sources, chemical agent monitors, chemical agent alarms, and night vision thermal imaging devices. There is no evidence of any release of radiological materials at these buildings.

In July 2012, the Army finalized a radiological site assessment (RSA) of the Property in compliance with the accepted federal government protocol (MARSSIM Class 3). The RSA Report concluded that the property is suitable for unrestricted use from a radiological perspective. On July 6, 2012, the U.S. Army Office of the Chief of Staff for Installation Management (OACSIM) determined the site to be free of radiological concerns. See the RSA Report, SFC Minoru Kunieda U.S. Army Reserve Center (HI003), July 2012; and the OACSIM Memorandum for Record, Subject: Results of the Radiological Survey at the SFC Minoru Kunieda U.S. Army Reserve Center in Hilo Hawaii, July 6, 2012, at Enclosure 8 for additional information.

4.8. Radon

There has not been a radon survey conducted on the property. The entire Island of Hawai'i is mapped as Zone 3, which has a predicted average indoor radon screening level of less than 2 pCi/L. While the map reflects an indoor radon screening level of less than the 4 pCi/L level of concern, this is not a guarantee that actual measured levels in the USARC will be less than the level of concern.

4.9. Munitions and Explosives of Concern (MEC)

Based on a review of existing records and available information, there is no evidence that Munitions and Explosives of Concern (MEC) are present on the property. In addition the property has historically been used as an administrative and vehicle maintenance facility. The term "MEC" means military munitions that may pose unique explosives safety risks, including: (A) unexploded ordnance (UXO), as defined in 10 U.S.C. §101(e)(5); (B) discarded military munitions (DMM), as defined in 10 U.S.C. §2710(e)(2); or (C) munitions constituents (e.g., TNT, RDX), as defined in 10 U.S.C. §2710(e)(3), present in high enough concentrations to pose an explosive hazard.

4.10. Other Property Conditions

There are no other hazardous conditions on the property that present an unacceptable risk to human health and the environment.

The chain-of-title information, which dates back to 1940, provided in Appendix C of the *Final Environmental Condition of Property Report* shows that in 1943 the Territory of Hawai'i leased the property to the Waiakea Mill Company. This lease likely dated back to at least 1888

when the Territory of Hawaii leased 96,988 acres to the Waiakea Mill Company.¹ Because the property was leased to a sugar mill, it is highly likely that the property was in sugar cane production.

In the Hawai'i State Department of Health fact sheet titled *Arsenic in Hawaiian Soils: Questions and Answers on Health Concerns*, (September 2010), the State recognizes that

significantly elevated levels of arsenic have been identified in soils at former sugar cane fields [and] is believed to be related to the widespread use of sodium arsenite (an inorganic arsenic compound) or other arsenic-based herbicides/pesticides in and around the cane fields in the 1920s through 1940s.

Because the property was in sugar cane production and because there was no arsenic source during operation of the USARC, it must be concluded that the arsenic was already present in the soil when the property was transferred by the State of Hawai'i to the United States in 1962.

5. ADJACENT PROPERTY CONDITIONS

There are no conditions adjacent to the property that present an unacceptable risk to human health and the environment

6. ENVIRONMENTAL REMEDIATION AGREEMENTS

There are no environmental remediation orders or agreements applicable to the property being transferred. The deed will include a provision reserving the Army's right to conduct remediation activities if necessary in the future (Enclosure 5).

7. REGULATORY/PUBLIC COORDINATION

The State of Hawaii, Department of Health (DOH) and the public were notified of the initiation of this FOST. Regulatory/public comments received during the public comment period will be reviewed and incorporated, as appropriate. A copy of the regulatory/public comments and the Army Response will be included at Enclosure 9.


8. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE

The environmental impacts associated with the proposed transfer of the property have been analyzed in accordance with the National Environmental Policy Act (NEPA). The results of this analysis are documented in a REC dated July 2013. There were no encumbrances or conditions identified in the NEPA analysis as necessary to protect human health or the environment.

¹ Communication from Joshua D. Tucker, Commissioner of Public Lands, to Honorable H.L. Holstein, Speaker, House of Representatives, Territory of Hawaii, dated March 3, 1913, in *JOURNAL OF THE HOUSE OF REPRESENTATIVES OF THE SEVENTH LEGISLATURE OF THE TERRITORY OF HAWAII, REGULAR SESSION 1913*, at 204.

9. FINDING OF SUITABILITY TO TRANSFER

Based on the information above, I conclude that the Property qualifies as CERCLA §120(h)(4) uncontaminated property and is transferable under that section. In addition, all Department of Defense requirements to reach a finding of suitability to transfer have been met, subject to the terms and conditions in the Environmental Protection Provisions that shall be included in the deed for the property. The deed will include the CERCLA 120(h)(4) Covenant and Access Provisions and Other Deed Provisions. Whereas no hazardous substances or petroleum products were stored for one year or more, known to have been released, or disposed of on the parcel, a hazardous substance or petroleum notification is not required.


William J. O'Donnell, II
Chief, Reserves, Industrial
And Medical Branch

23 Sep 2013
Date

8 Enclosures

- Encl 1 -- Site Map of Property
- Encl 2 -- Environmental Documentation
- Encl 3 -- Table 1 -- Description of Property
- Encl 4 -- Table 2 -- Notification of Hazardous Substance Storage, Release, or Disposal
- Encl 5 -- CERCLA Notice, Covenant, Access Provision, and Other Deed Provisions
- Encl 6-- Environmental Protection Provisions
- Encl 7 -- Radiological Survey
- Encl 8 -- Asbestos Survey
- Encl 9 -- Regulatory/Public Comments and Army Response