

# Exhibit 1-B

## **ITEM C-4 For Information Only – Update on Ewa Drum/Varona Village Land Exchange**

### RECOMMENDED MOTION/ACTION

None. For Information Only, Russell Ka'upu, a Property Development Agent, presented the following:

R. Kaupu provided an update on a longstanding property exchange transaction involving Hawaiian Home Lands. The exchange pertained to the Ewa Drum site and Verona Village, spanning several years and administrations. The Ewa Drum site consists of two adjacent parcels acquired by the Department of Hawaiian Home Lands (DHHL) in 2006 as part of the Hawaiian Home Lands Recovery Act. The site, named after military oil and waste drums previously stored there, is now used as the location for a rail maintenance facility for Honolulu's rail system. Negotiations for the exchange began in 2010 under Chair Kaulana Park. The Verona Village parcels, referred to internally as Verona 1 and Verona 2, are located near the Kamakana Ali'i Shopping Center. These parcels were identified as the properties to be acquired by DHHL in exchange for the Ewa Drum site. The parcels hold potential for commercial development but are currently licensed to DHHL.

### Key Details of the Property Exchange Agreement

1. A **Memorandum of Agreement (MOA)** was established in 2010 and amended in 2022 to reflect updated property appraisals. The Ewa Drum site was valued at \$330,000 more than the Verona properties. The City and County of Honolulu agreed to pay this difference as an equalization payment.
2. Both properties have been under license agreements, allowing reciprocal use pending the completion of the exchange. The rail maintenance facility is fully operational on the Ewa Drum site.

### Challenges and Delays in the Process

1. **Federal Approval Requirement:** The exchange requires consent from the U.S. Department of the Interior (DOI), which involves coordination with the Office of Native Hawaiian Relations.
2. **Appraisal Updates:** Both properties required federally compliant "yellow book" appraisals, completed with adjustments for inflation.
3. **Environmental Assessments and Title Reports:** Updated environmental assessments and title reports were necessary due to the transaction's prolonged timeline.



4. **Beneficiary Consultations:** DOI requested additional consultations with beneficiaries, particularly after the city council approved appraisal numbers and payment differences.
5. **Federal Administration Changes:** A change in the federal administration has delayed progress until mid-2025, as the new DOI leadership requires time to review the transaction.

Initially, DHHL planned to use Verona 1 for commercial development adjacent to the shopping center. However, to avoid triggering federal NEPA requirements, DHHL is now certifying the intent to use the property for future residential development, consistent with prior city use.

DHHL and the City of Honolulu are ready to close the exchange but must wait for DOI to complete its processes. Final steps include:

- Certification of Verona 1 for residential use.
- Completion of updated title reports.
- Ongoing beneficiary consultation facilitated by DOI.

The transaction, spanning over three administrations and involving complex federal and local processes, is expected to close in 2025. DHHL remains committed to completing the exchange and proceeding with development plans for the Verona Village parcels.

Commissioner Neves inquired whether Verona 2 was the residential portion of the property or if that applied to Verona 1. R. Kaupu clarified that both Verona 1 and Verona 2 were designated for residential use, as the Department of the Interior (DOI) required certification that DHHL's intent was to use both properties for residential purposes. Commissioner Neves confirmed that DOI requested certification for both parcels. R. Kaupu explained that while earlier discussions with the commission, including a permitted interaction group, focused solely on Verona 1 for potential commercial development, the DOI's certification requirement applies to both Verona 1 and Verona 2 as a whole.

Commissioner Neves asked about soil remediation requirements for residential use mentioned in the environmental investigation on page 2. R. Kaupu explained that a phase 2 environmental investigation revealed elevated levels of certain substances exceeding residential use standards. While commercial development could proceed with specific steps, residential use would require remediation across the entire property, even though the elevated substance levels were found in a specific area adjacent to the shopping center. This requirement also applies to the site above the Parkway.

Commissioner Neves inquired whether the environmental report findings applied to both Verona 1 and Verona 2. R. Kaupu clarified that the elevated levels unsuitable for residential development were found only in a specific location directly adjacent to the shopping center, which is within Verona 1. However, R. Kaupu noted that the environmental consultant advised that state regulations require remediation of the entire property, encompassing both Verona 1 and Verona 2, even though the issue was isolated to a single location within Verona 1.

R. Kaupu explained that according to the memorandum of agreement, the property exchange was structured as an "as-is" transaction. This determination was based on due diligence conducted in 2008 and 2010, during which the Verona properties were deemed acceptable for exchange with the Ewa Drum site.

R. Kaupu emphasized that, despite reporting on the transaction's status, the department was already effectively committed to the property exchange due to the binding memorandum of agreement with the City and County of Honolulu. He clarified that this agreement was entered into and approved by a prior commission, leaving no option to withdraw from the transaction at this stage. The environmental issues could still be addressed within the framework of the agreement.

Commissioner Neves raised concerns about DOI approval if the Verona parcels couldn't be used for residential purposes. R. Kaupu confirmed DOI's requirement for residential use to maintain the NEPA



exemption and acknowledged the need for remediation. Commissioner Neves stressed the importance of estimating remediation costs for transparency and aligning them with the \$330,000 equalization payment, emphasizing the need to address these financial issues as the transaction proceeds.

Commissioner Kalepa asked if the remediation costs would be shared between parties. R. Kaupu clarified that shared costs were limited to customary closing expenses, such as title reports and escrow fees. He explained that each party was responsible for their respective environmental actions and noted that the city likely underwent more extensive remediation for its project than DHHL would need. DHHL would request the consultant to provide an estimate of the potential remediation costs for the entire property to prepare it for residential use.

Chair Watson asked if the remediation requirements would lower the appraisal value of the property. R. Kaupu explained that the valuation process considered phase one environmental reports but did not include the findings from the phase two report, which was completed later. He noted that the appraisal for the department's property in the exchange also accounted for its condition. R. Kaupu expressed that reopening and re-evaluating the appraisals for both properties was not a step they intended to take at this point.

**Public Testimony – Homelani Schaedel** – testified about discussions surrounding the Verona parcels dating back to 2009 when Darrell Ing presented the project. She recalled that remediation for the contaminated parcel involved covering it with asphalt, as it had been used during the sugar plantation era to mix chemicals. H. Schaedel highlighted community input from the 2010 Kapolei Regional Plan, which envisioned the land being used as a place of worship, a place of rest, and a columbarium for the homestead community. She also noted that *kupuna* (elder) housing was a priority for the other parcel, proposing single-story residential complexes for elders. She reminded Commissioners about the importance of community priorities.

**Public Testimony – Dana Newman** – raised concerns about the lack of consultation with beneficiaries over the past 14 years regarding land use decisions, emphasizing that the understanding and needs of the community evolve over time. He questioned how transferring land might impact access to certain areas, particularly parcels near Wai or Kai, and stressed that restricted access could hinder cultural practices. Newman urged the department to follow the Department of the Interior's guidance and re-engage in consultations with beneficiaries to ensure their voices are considered before making decisions that could permanently alter access and usage of the land.

D. Newman emphasized that the commission's primary responsibility is to safeguard the rights of beneficiaries and make decisions that prioritize their welfare rather than focusing on financial gains. He highlighted that *āina* is not viewed by Hawaiians as a monetary asset but as an ancestor (*kupuna*), and maintaining access to the land is crucial for preserving the *‘ike* (knowledge) connected to it.

Chair Watson affirmed that caring for *kupuna* was a priority for the current administration, highlighting efforts to initiate *kupuna* projects across the state. He emphasized the importance of this focus.

#### **ITEM C-5 For Information Only – National Telecommunications and Information Administration Tribal Broadband Connectivity Program Update**

##### **RECOMMENDED MOTION/ACTION**

None. For Information Only. Broadband Grants Coordinator Jaren Tengan presented the following:

J. Tengan presented an update on the department's NTIA Tribal Broadband Connectivity Projects (phases 1 and 2) and referred to an accompanying presentation. He proceeded to provide an overview of the funding sources allocated for telecommunications within the Department of Hawaiian Homelands:



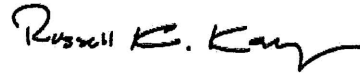
STATE OF HAWAII

DEPARTMENT OF HAWAIIAN HOME LANDS

December 17, 2024

TO: Members, Hawaiian Homes Commission

FROM: Russell K. Kaupu,  
Property Development Agent  
Office of the Chairman



SUBJECT: Update on Ewa Drum/Varona Village Exchange; Request for Approval  
of Amended and Restated Memorandum of Agreement with the City  
and County of Honolulu

RECOMMENDED MOTION/ACTION

None – for information only

BACKGROUND

The Department of Hawaiian Home Lands (“DHHL”) and the City and County of Honolulu (“City”) were parties to a Memorandum of Agreement dated March 10, 2010 (“MOA”), that documented their mutual intent to exchange DHHL property then referred to as the “Ewa Drum Facility” in Waiawa, Oahu (see map and info. in Exhibit A hereto) for City property then referred to as “Varona Village” in Kapolei, Oahu (see map and info. in Exhibit B hereto). Although the parties, pursuant to the express provisions of the MOA, promptly executed reciprocal License Agreements to each allow the other use of their respective property pending closing of the transaction and consummation of the exchange, such closing and consummation never occurred.

By Resolution 22-131 adopted on June 1, 2022, the City Council of the City and County of Honolulu approved entering into an Amended and Restated Memorandum of Agreement with DHHL that only substantively differs from the original MOA by stating the appraised values determined for the Ewa Drum site (\$4,990,000) and the Varona Village site (\$4,660,000) and the resulting \$415,323 “Equalization Payment” to be made by City to DHHL, “which represents the \$330,000 difference in appraised values with an adjustment based on the consumer price index since 2008.” A copy of the fully executed Amended and Restated Memorandum of Agreement is attached hereto as Exhibit C.



## DISCUSSION

A summary of actions taken by DHHL with respect to the “Ewa Drum Site Land Exchange” is attached hereto as Exhibit D. This summary, which is posted on the DHHL website, provides a chronology of events, starting with the May 2006 Hawaiian Homes Commission authorization of the exchange transaction and running over multiple years up to the June 2022 resolution of the City Council approving the respective appraisals conducted and the resulting “Equalization Payment” to be made by the City.

DHHL is required by Section 204(a)(3) of the Hawaiian Homes Commission Act of 1920, as amended, to get the approval of the Secretary of the Interior to all land exchanges. Over the years, meetings have been held with, and varied documentation has been submitted to, the Office of Native Hawaiian Relations of the U.S. Department of Interior (“ONHR”). The chart below itemizes ONHR requests over the past year. We believe we are on the “final strokes” in this process.

<b>DOI/ONHR Request</b>	<b>Reason</b>	<b>Status</b>
1. Conduct Phase 2 environmental investigation on Varona parcels	Phase 1 report showed prior industrial use	Phase 2 report obtained and provided in 2024 - Soil remediation required for residential use
2. Update title reports on Varona parcels	Reports obtained in 2019 are “stale”	City requesting updated reports from the title company
3. DHHL to certify intent regarding use of Varona parcels	If change in use intended, then NEPA exemption not applicable	DHHL to certify same use as City – land bank for future residential development
4. Do more beneficiary consultation around valuations obtained and Equalization Payment	Although DHHL has already conducted its BC, DOI has its own BC requirements	DHHL is doing this update and will reasonably cooperate and facilitate future DOI BC





Overview



Legend

-  Roads
-  Parcels

Parcel ID	940080100000	Situs/Physical Address	WAIPIO POINT ACCESS	Assessed Land Value	\$7,217,800	Last 2 Sales			
				Assessed Building Value	\$0	Date	Price	Reason	Qual
Acreage	23.665			Total Property Assessed Value	\$7,217,800	n/a	0	n/a	n/a
Class	RESIDENTIAL			Total Property Exemptions	\$7,217,800	n/a	0	n/a	n/a
				Total Net Taxable Value	\$0				

**Brief Tax Description** LOT 3236 4.683 AC & LOT 3237 18.982 AC MAP 292 LCAPP 1000  
(Note: Not to be used on legal documents)

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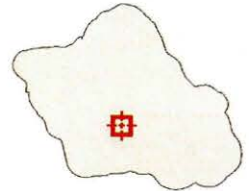
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#### Overview



#### Legend

- Roads
- Parcels

Parcel ID	960030440000	Situs/Physical Address	WAIAWA RD	Assessed Land Value	\$18,351,200	Last 2 Sales			
Acreage	32.177			Assessed Building Value	\$0	Date	Price	Reason	Qual
Class	RESIDENTIAL			Total Property Assessed Value	\$18,351,200	n/a	0	n/a	n/a
				Total Property Exemptions	\$18,351,200	n/a	0	n/a	n/a
				Total Net Taxable Value	\$0				

**Brief Tax Description** POR RP 1142 LCAW 7713:46 & POR AREAS A & B IN US CIVIL NO. 490 ON 5/19/1943 & CIVIL NO 531 32.211 AC DES (DOC AREA)  
(Note: Not to be used on legal documents)

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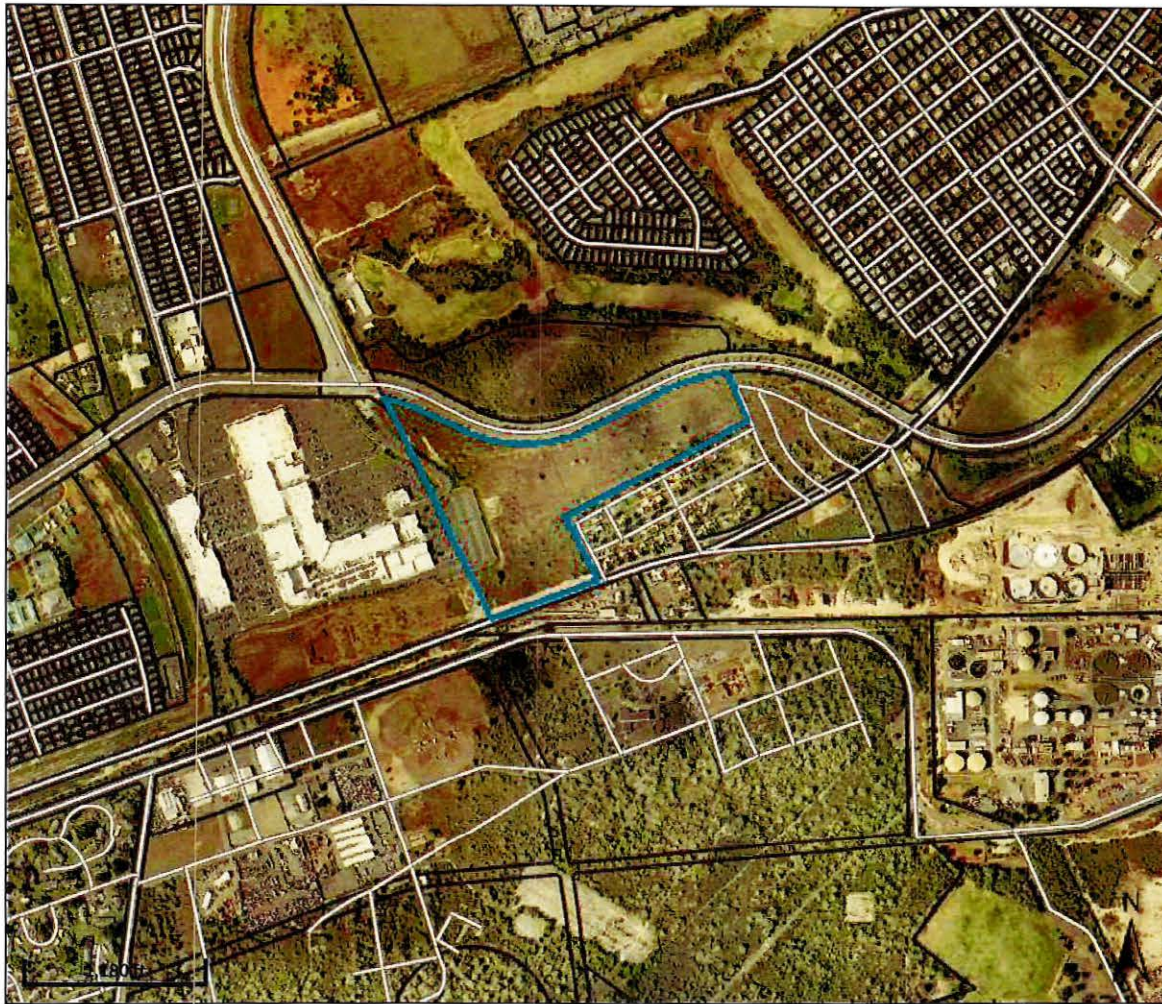
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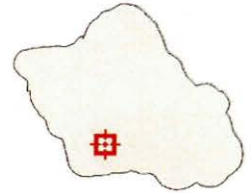
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## Overview



## Legend

- Roads
- Parcels

Parcel ID	911820100000	Situs/Physical Address	PARK ROW	Assessed Land Value	\$1,943,300	Last 2 Sales			
Acreage	31.858			Assessed Building Value	\$0	Date	Price	Reason	Qual
Class	AGRICULTURAL			Total Property Assessed Value	\$1,943,300	n/a	0	n/a	n/a
				Total Property Exemptions	\$1,943,300	n/a	0	n/a	n/a
				Total Net Taxable Value	\$0				

**Brief Tax Description** LOT 18280-A MAP 1537 LCAPP 1069 31.858 AC. TOG/E  
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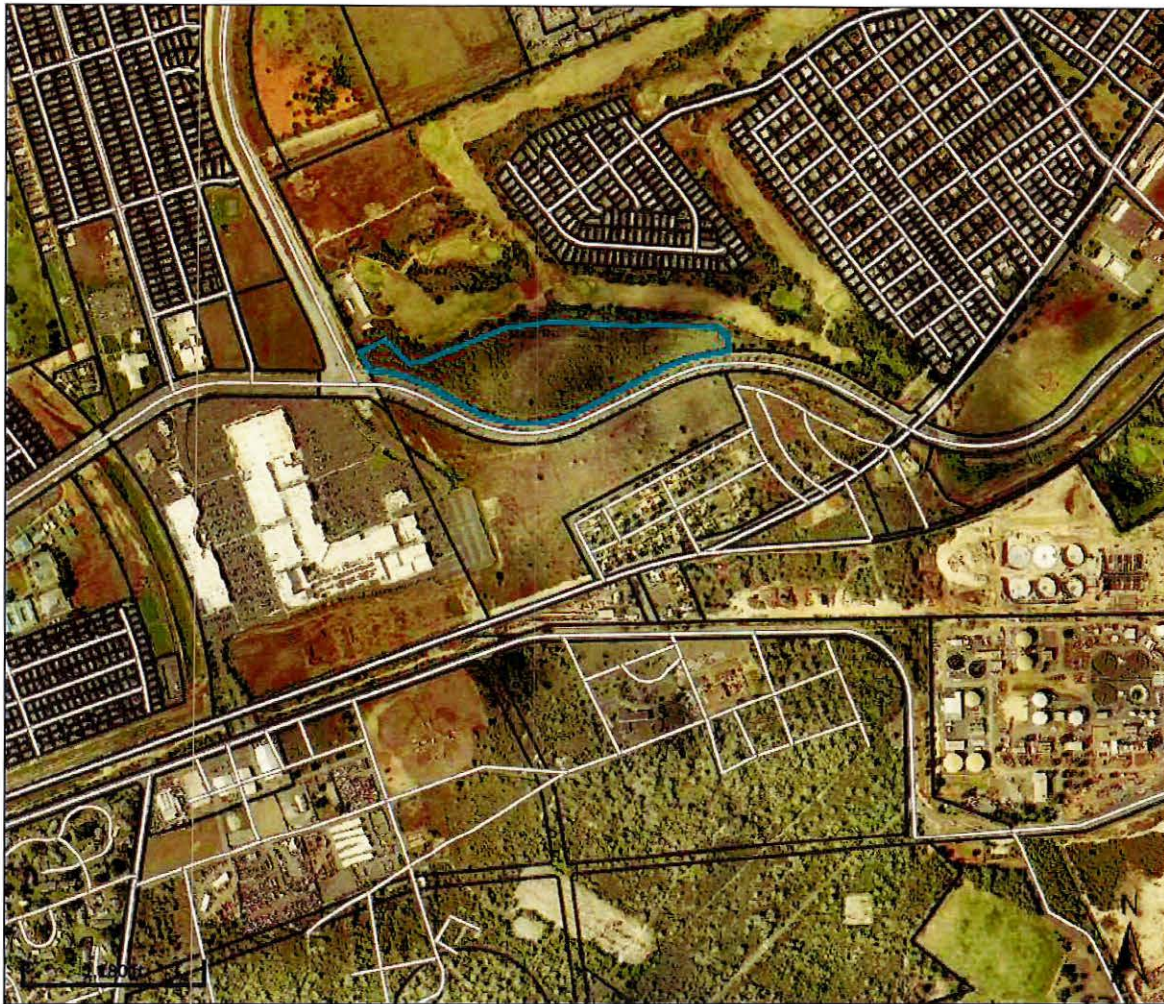
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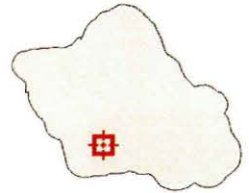
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#### Overview



#### Legend

- Roads
- Parcels

Parcel ID	911820070000	Situs/Physical Address	PARK ROW	Assessed Land Value	\$2,813,700	Last 2 Sales			
Acreage	18.808			Assessed Building Value	\$0	Date	Price	Reason	Qual
Class	AGRICULTURAL			Total Property Assessed Value	\$2,813,700	n/a	0	n/a	n/a
				Total Property Exemptions	\$2,813,700	n/a	0	n/a	n/a
				Total Net Taxable Value	\$0				

**Brief Tax Description** LOT 18278 MAP 1442 LCAPP 1069 18.808 AC TOG/E  
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AMENDED AND RESTATED MEMORANDUM OF AGREEMENT

This Amended and Restated Memorandum of Agreement ("Amended and Restated MOA") is entered into on this 24 of June, 2022, by and between the Department of Hawaiian Home Lands, State of Hawai'i ("DHHL") and the City and County of Honolulu, a municipal corporation of the State of Hawai'i ("City").

PURPOSE

WHEREAS, DHHL and the City ("Parties") have identified an opportunity to achieve their respective land use and management objectives through the conveyance of certain lands in Waiawa and Kapolei, Oahu, Hawai'i, through either mutual fee simple sale or an equal-value exchange; and

WHEREAS, the Parties have agreed to sell or exchange these parcels of land when the City receives the Record of Decision from the Federal Transit Administration ("FTA") for the Honolulu High-Capacity Transit Corridor Project, a FTA New Starts project; and

WHEREAS, the Parties have agreed that pending the sale or exchange of properties between the Parties, the Parties shall grant each other the necessary property interests in each other's property so that each may take possession of the other's property at the earliest possible moment; and

WHEREAS, the purpose of this Amended and Restated MOA is to guide and govern all actions necessary to accomplish the transfer of title to each respective property from each Party to the other by sale or exchange,

WHEREAS, the Parties entered into that certain Memorandum of Agreement dated March 3, 2010 and wish to amend and restate the agreement in its entirety in this Amended and Restated MOA

NOW THEREFORE, the Parties mutually acknowledge that the consideration for the execution hereof are their respective mutual covenants and their respective benefits inuring herefro and hereby agree to sell or exchange their respective properties according to the following terms, covenants, conditions, and provisions:



## EXCHANGE or SALE PROPERTIES

DHHL is the fee owner of the Ewa Facility Drum site, which is suitable for conveyance to the City by sale or exchange. The property is identified as Tax Map Key numbers (1) 9-4-008: 010 and (1) 9-6-003: 044; collectively consisting of approximately 55.842 acres; described in detail in Exhibit A and made a part hereof ("DHHL Property").

The City is the fee owner of certain properties situated in Ewa, O'ahu, which is suitable for conveyance to DHHL by sale or exchange. These properties consist of first, a portion of Tax Map Key: (1) 9-1-182:010, which consists of approximately 31.8580 acres, and the second, a portion of Tax Map Key: (1) 9-1-182:007, which consists of approximately 18.808 acres, both of which are shown more fully on the map attached hereto as Exhibit B and made part hereof ("City Property"). The DHHL Property and the City Property are referred to as the "Exchange Properties."

The Ewa Facility Drum site was one of several federal properties that DHHL acquired pursuant to the Hawaiian Home Lands Recovery Act of 1995 ("HHLRA"), P.L. 104-42. The HHLRA represents the settlement for compensation to DHHL for past use by the federal government of DHHL's lands. Section 203(3) of the HHLRA authorizes the Chairman of the Hawaiian Homes Commission to sell lands designated as compensation for "lost use" of Hawaiian Home Lands. The term "lost use" is defined in the HHLRA, Section 202(7) as the value of the use of the land during the period when the Hawaiian Homes Commission was unable to use the lands because of the use of such lands by the federal government after August 21, 1959. DHHL's independent appraisers valued the "lost use" compensation as \$20,000,000 as of 1998.

Section 203(c)(3) of the HHLRA grants the Chairman of the Hawaiian Homes Commission ("Chairman") with the authority to designate lands to be sold at the time that lands are conveyed to DHHL as compensation for lost use under the HHLRA. The Chairman is authorized to sell such lands under the terms and conditions that are in the best interest of the beneficiaries. The proceeds of such a sale may only be used for purposes described in section 207(a) of the Hawaiian Homes Commission Act, 1920, as amended ("HHCA").

On May 23, 2006, the Hawaiian Homes Commission approved and authorized the Chairman to carry out the necessary actions to complete a land exchange with the City to exchange the DHHL Property for the City Property. At the time, necessary actions to complete the exchange included: finalization and execution of exchange agreements, completion of appraisals for the exchange



properties, determination of additional consideration that may be required to ensure a value-for-value transaction, preparation of an information package to be submitted to the United States Department of Interior, subdivision of the Varona Village site identified in Exhibit B, and recording the exchange deed following approval by the United States Secretary of the Interior.

On June 29, 2009, in accordance with the HHLRA, the federal government conveyed the Ewa Facility Drum site to DHHL on June 29, 2009. On July 7, 2009, the Hawaiian Homes Commission authorized the Chairman to grant his approval to designate the Ewa Facility Drum site to be sold to the City and authorized sale proceeds to be deposited in the Hawaiian Homes Trust Fund to be used for purposes described in section 207(a) of the HHCA. In addition, in a letter dated August 19, 2009, the Chairman of the Hawaiian Homes Commission notified the Secretary of the United States Department of the Interior that he designated the Ewa Drum site for sale as authorized under the HHLRA.

On September 16, 2021, the assigned appraiser, Paul Cool, CRE, MAI completed the appraisals of both properties with a valuation date of June 25, 2008. These values were approved by the United States Department of Interior's Appraisal and Valuation Services Office ("AVSO") on September 29, 2021. The DHHL Property was appraised at \$4,990,000 and the City Property was appraised at \$4,660,000; thus, the appraisals concluded that the DHHL Property is worth \$330,000 more than the City Property.

DHHL has been supportive of Honolulu's High-Capacity Transit Corridor Project because it will provide mass transit services to over 500 acres of Hawaiian home lands in Kapolei with significant homestead (900 existing and 1,000 planned housing units), community, and commercial developments within the larger Kapolei region. The City's planned use for the Ewa Facility Drum site is for a transit corporation yard is an essential element for the Honolulu rail transit system.

#### AGREEMENT

1. Value of Exchange Properties. The Parties agree that the value of the Exchange Properties shall be based on appraisals of fair market values for the Exchange Properties. The appraisals will be based on the "Uniform Standard of Professional Appraisal Practice" and/or the "Uniform Appraisal Standards for Federal Land Acquisitions." Both Parties and the United States Department of the Interior agreed to use the process set forth in the Appraisal and Valuation Services Office Manual



under which the AVSO would administer the valuation process.

2. Sale or Exchange of Exchange Properties.

a. Sale of Properties. In the event that the Parties agree to the sale of the Exchange Properties, the Parties are obligated to the following:

- (1) DHHL agrees to sell and convey to the City and the City agrees to purchase, the DHHL Property, subject to and in accordance with the terms and conditions set forth in a purchase and sale agreement, the form and content of which shall be mutually agreed upon by the Parties for a sale by quitclaim deed on an "as is", "where is" basis.
- (2) City agrees to sell and convey to DHHL and DHHL agrees to purchase, the City Property, subject to and in accordance with the terms and conditions set forth in a purchase and sale agreement, the form and content of which shall be mutually agreed upon by the Parties for a sale by quitclaim deed on an "as is", "where is" basis, and subject further that the City Property is properly subdivided for conveyance.

b. Exchange of Properties. In the event that the Parties agree to the exchange of the Exchange Properties, the Parties shall execute a Land Exchange Agreement, the form and content of which shall be mutually agreed upon by the Parties for an exchange on an "as is", "where is" basis. Furthermore, in the event of an exchange of the Exchange Properties, the Parties are obligated to the following:

- (1) DHHL shall convey and the City shall accept title to the DHHL Property by duly executed and acknowledged quitclaim deeds.
- (2) The City shall convey and DHHL shall accept title to the City Property by duly executed and acknowledged quitclaim deeds, subject to the City Property being properly subdivided for conveyance.
- (3) In addition to the exchange of the Exchange Properties described above, the City shall make a



payment to DHHL equal to the difference in the appraised values ("Equalization Payment").

- (4) Equalization Payment. The Equalization Payment shall be \$415,323, which represents the \$330,000 difference in appraised values with an adjustment based on the consumer price index since 2008.

This Amended and Restated MOA shall constitute the Land Exchange Agreement referenced in this section.

3. Approval or Review of Governmental Authorities.

- a. In the event of a sale of the properties described herein, such sale shall be subject to DHHL obtaining the approval of the Hawaiian Homes Commission. In the event of an exchange of the properties described herein, such exchange shall be subject to DHHL obtaining the approval of the Hawaiian Homes Commission and the United States of America, acting by and through its Secretary of the Interior.
- b. This Amended and Restated MOA, the disposal by sale or exchange, and any license for the use of the properties described herein shall be subject to the approval of the City Council.

4. Right of Entry and License Agreement. The Parties recognize that each Party will need control and use of the other Party's property prior to the closing of the sale or exchange of the subject properties ("Closing"). Upon the execution of this Amended and Restated MOA, subject to any applicable governmental approvals, and prior to the effective date of the Closing:

- a. DHHL shall execute a License Agreement for the DHHL Property allowing the City and its agents to have access to the property and giving the City full rights of possession of the DHHL Property pending the transfer of title in accordance with the terms and conditions set forth in the License Agreement. The City shall be responsible for all claims, demands, liabilities, costs, and expenses arising out of or in connection with DHHL's provision of the License Agreement to the City.
- b. The City shall execute a License Agreement for the City Property allowing the DHHL and its agents to have access to the property and giving DHHL full rights



of possession pending the transfer of title in accordance with the terms and conditions set forth in the License Agreement. DHHL shall be responsible for all claims, demands, liabilities, costs, and expenses arising out of or in connection with the City's provision of the License Agreement to DHHL.

- c. During the period from the execution of this Amended and Restated MOA to the Closing, neither Party shall allow liens or other encumbrances to attach to any part of the other Party's property.
- d. In the event the City Council, the Hawaiian Homes Commission or the United States Secretary of the Interior, as applicable, disapproves this Amended and Restated MOA, any License Agreements shall terminate immediately; provided, however, that the City shall be allowed on the DHHL Property to remove any improvements made thereon by the City and DHHL shall be allowed access to the City Property to remove any improvements made thereon by DHHL. Each Party shall be solely responsible for the cost and expense for the removal of improvements.

5. Environmental Analyses and Assessments.

- a. The Parties will comply with an environmental analysis and related studies as required by the National Environmental Policy Act ("NEPA") for their respective properties. In the event of an exchange of properties, the environmental analyses shall be reviewed by the United States Department of the Interior.
- b. Both Parties will comply with a Phase 1 Environmental Site Assessment report for their respective property and in the event of an exchange of properties such assessments shall be subject to review by the United States Department of the Interior.
- c. A Phase 1 Environmental Site Assessment for the DHHL Property dated June 2005 was prepared by the U.S. Department of Defense, Department of the U.S. Navy. A Phase 1 Environmental Site Assessment for the City Property dated May 16, 2014 was prepared by Kimura International. The Parties understand the approval of the United States Department of the Interior will require approval of these reports.



- d. Both Parties will comply with environmental assessments for their respective properties as required under Chapter 343, Hawaii Revised Statutes.
6. Inspection. The Parties' representatives are authorized to enter upon the Sale/Exchange Properties for the purpose of completing due diligence inspections, including environmental audits, and for any other purpose required or permitted by this Amended and Restated MOA.
7. Warranties. Except as otherwise provided in this Amended and Restated MOA, the Parties agree to accept the Sale/Exchange Properties "as is" and "where is". Neither Party has made any warranties, express nor implied, concerning the condition of the Sale/Exchange Properties (other than title, as provided herein) or their fitness for any intended use. The Parties agree that each property will be conveyed by way of quitclaim deeds.
8. Encumbrances.
- a. The Parties agree not to sell, convey, or further encumber the Sale/Exchange Properties prior to Closing. Each Party shall convey its Sale/Exchange Property by means of a quitclaim deed free of any mortgages, liens, or other encumbrances.
- b. The Parties agree that the quitclaim deed shall be free of any mortgages, liens, or other encumbrances other than those identified on the two status reports from Title Guaranty of Hawaii, LLC dated November 25, 2019 for the DHHL Property and the two status reports from Title Guaranty of Hawaii, LLC dated June 14, 2022 for the City Property.
9. Closing and Related Costs. All Closing costs incurred at the time of the Closing, including without limitation, escrow fees, recording fees, and conveyance taxes shall be shared equally between the Parties. Each party shall be responsible for their own title insurance costs, if any. There shall be no prorations as of the Closing date. Closing shall occur upon the recordation in the Bureau of Conveyances and filing in the Land Court of the State of Hawai'i, as applicable, of both DHHL's deed for the DHHL Property and the City's deed to DHHL for the City Property. The Parties shall coordinate their efforts to ensure that the deeds are simultaneously submitted for recordation and filing.



10. Escrow. Upon submission of the exchange proposal package to the United States Department of the Interior and receipt of tentative approval, the Parties shall open escrow with Title Guaranty of Hawaii, LLC ("Escrow Agent").
11. Closing Date. The Closing Date shall be mutually agreed upon by the Parties, but shall be no later than thirty (30) days after the last approval is obtained. The Party obtaining the last approval shall promptly notify the other Party and the Escrow Agent of such approval.
12. Closing Documents. The Parties shall submit to Escrow Agent the following documents:
  - a. Three original counterparts of the quitclaim deed executed and notarized;
  - b. Conveyance tax certificate;
  - c. Closing statement;
  - d. A deposit of the Equalization Payment (City only); and
  - e. All other documents necessary to consummate the Closing contemplated by this Amended and Restated MOA.
13. Closing by Escrow Agent. Upon notification by the Parties of the Closing date and confirmation that the approvals have been obtained, Escrow Agent shall arrange for the following:
  - a. Recordation and filing of the two quitclaim deeds in the Bureau of Conveyances of the State of Hawai'i and the Land Court of the State of Hawaii;
  - b. Issuance of the respective title policies to the Parties as applicable;
  - c. Payment to DHHL of the sum of \$415,323; and
  - d. Delivery of a confirmed copy (showing all recording information thereon) of the two quitclaim deeds to each Party.
14. Construction. The Parties have contributed equally to the drafting of this document, which shall not be construed in favor of either. This Amended and Restated MOA shall be construed in accordance with the laws of the State of Hawai'i.



15. Term. This Amended and Restated MOA shall be in force and effect until the land exchange or sale has been completed to the mutual satisfaction of the Parties.
16. Modification. This Amended and Restated MOA may be modified by written consent of both Parties to cover any questions that may arise subsequent to the date of this Amended and Restated MOA. The Amended and Restated MOA may be renewed for an additional term upon written consent of both Parties.
17. Authority. The Parties hereto represent and warrant that this Amended and Restated MOA and all instruments, documents, and agreements to be executed in connection herewith are or when delivered will be duly authorized, executed and delivered by the Parties hereto and will be valid, binding, and enforceable obligations of the Parties charged. Each individual executing this Amended and Restated MOA on behalf of DHHL or the City represents and warrants to each other that he or she is duly authorized to do so.
18. Legal Descriptions. The Parties acknowledge that legal descriptions suitable for conveyance of title may not be available for all properties identified in Exhibits A and B. Prior to conveyance of any properties identified in Exhibits A and B, in consultation with the other Party, each Party shall prepare a legal description, suitable for recordation, for each property.
19. Termination. This Amended and Restated MOA will terminate upon closing by Escrow Agent as set forth in paragraph 13 herein.
20. Assignment. No transfer or assignment of this Amended and Restated MOA, or any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first approved in writing by both Parties.
21. Dispute Resolution. The Parties agree to employ a process of negotiation, mediation, or other means of Alternative Dispute Resolution other than binding arbitration to resolve any disagreements that may arise under this Amended and Restated MOA, provided however, that each party reserves the right to litigate any dispute that remains unresolved after good faith attempts at Alternative Dispute Resolution.



22. Counterparts. This Amended and Restated MOA may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, when taken together shall constitute one and the same instrument. This Amended and Restated MOA may be executed and delivered by the exchange of facsimile, .pdf or other electronic image file copies of the executed counterpart signature pages, which shall be considered the equivalent of ink signature pages for all purposes.

IN WITNESS WHEREOF, the Parties have executed this Amended and Restated MOA as of the day and year first written above.

APPROVED AS TO FORM AND  
LEGALITY

DEPARTMENT OF HAWAIIAN HOME  
LANDS

By Alyssa-Maui Yukiko Kau  
Deputy Attorney General  
State of Hawai'i

By William J. Aila, Jr.  
Chairperson  
Hawaiian Homes Commission

APPROVED AS TO CONTENT

CITY AND COUNTY OF HONOLULU

By Robert P. Kanono  
Department of Budget and  
Fiscal Services  
City and County of Honolulu

By Rick Blangiardi  
RICK BLANGIARDI  
Mayor

APPROVED AS TO FORM AND  
LEGALITY

By AK Alij  
Deputy Corporation Counsel  
City and County of Honolulu



EXHIBIT A

<u>Properties</u>	<u>Acres</u>	<u>Location</u>	<u>TMK</u>
Ewa Drum Facility	56	Waiawa, Oahu	(1) 9-4-008:010 (1) 9-6-003:044

Acreage amounts are approximate. Precise figures will be obtained and inserted in actual transfer documents.



EXHIBIT B

<u>Properties</u>	<u>Acres</u>	<u>Location</u>	<u>TMK</u>
Varona Village	53	Kapolei, Oahu	(1) 9-1-0182:010 (1) 9-1-0182:007

Acreage amounts are approximate. Precise figures will be obtained and inserted in actual transfer documents.





Established by Prince Kūhū & the U.S. Congress

Department of Hawaiian Home Lands

*Ka 'Oihana 'Āina Ho'opulapula Hawai'i*

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## EWA DRUM SITE LAND EXCHANGE

### Ewa Drum Site Land Exchange

#### Background:

The Department of Hawaiian Home Lands acquired TMK Nos. [191182010](#) and [191182007](#) in Waiawa, Oahu in 2006 as part of the Federal Government's Hawaiian Home Lands Recovery Act (HHLRA).

The 1995 [Hawaiian Home Lands Recovery Act](#) provides, in part, for the settlement of claims against the United States through the exchange and transfer of Federal lands for the United States' continued retention of lands initially designated as available lands under the Hawaiian Homes Commission Act, 1920, as amended, and for the lost use of such lands.

Under the HHLRA, the Department can sell property up to that value that was deemed lands give to Hawaiian Home Lands to satisfy any potential income losses.

- May 23, 2006, the Hawaiian Homes Commission authorizes the Chairman to carry out necessary actions to complete a land exchange with the City & County of Honolulu for DHHL's 55-acre Ewa Drum site.
- January 27, 2009, the Hawaiian Homes Commission establishes a Beneficiary Consultation Policy.
- July 29, 2009, DHHL conducted a Beneficiary Consultation for a proposed land exchange with the City & County of Honolulu.
- October 20, 2009, the Hawaiian Homes Commission gave its approval of a Memorandum of Agreement (MOA) between DHHL and the City & County of Honolulu.
- December 16, 2009, the Honolulu City Council subsequently adopts CR-391 and Resolution 09-343, CD1 on the proposed land exchange.

Following these actions, Beneficiary Consultation meetings were conducted:

- January 13, 2010 in Kapolei
- January 14, 2010 at the Hawaii State Capitol



- January 14, 2010 in Wailuku, Maui
- January 15, 2010 in Hilo

**Status:**

The City and County of Honolulu has a license from DHHL for the use of the Ewa Drum site. DHHL has a license for the use of the Varona Village site. Neither party shall allow liens or other encumbrances to attach to any parts of the other agency's property and licenses will conclude upon the completion of the land exchange. The City and County of Honolulu and DHHL have agreed to use U.S. Department of the Interior's appraisal process. A final appraisal was established, presented, and unanimously adopted by the City & County of Honolulu City Council, at its June 1, 2022, regular meeting under CR-147 Resolution 22-131.

1	<b>Agency</b>	<b>Office of Hawaiian Relations, U.S. Department of the Interior</b>
2	<b>Proposed Action or Issue for Discussion</b>	<b>Acquisition of Vacant Varona and Parcels in exchange for Ewa Drum Site</b>
3	<b>Notification</b>	<a href="#"><u>DOI Consultation Notice</u></a>
4	<b>Presentation and Feedback</b>	<a href="#"><u>Consultation Ewa Drum and Strategic Plan Varona Ewa Drum Consultation</u></a>
5	<b>Background Information</b>	<ul style="list-style-type: none"> <li>• <a href="#"><u>Ewa Drum Varona HHC Action – October 20, 2009</u></a></li> <li>• <a href="#"><u>Ewa Drum HHC Action – July 7, 2009</u></a></li> <li>• <a href="#"><u>DOI Letter – August 19, 2009</u></a></li> <li>• <a href="#"><u>Background History Ewa Drum – May 23, 2006</u></a></li> </ul>
6	<b>Draft Report with Comments</b>	<ul style="list-style-type: none"> <li>• <a href="#"><u>Beneficiary Consultation Notes – January 13, 2010</u></a></li> </ul>
7	<b>HHC Minutes</b>	<ul style="list-style-type: none"> <li>• <a href="#"><u>Hawaiian Homes Commission Submittal – Oct. 2009</u></a></li> </ul>
8	<b>DHHL License</b>	<ul style="list-style-type: none"> <li>• <a href="#"><u>City &amp; County of Honolulu License</u></a></li> </ul>