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

May 25, 2007

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

PSF No.:06OD-001

Oahu

Final Approval of the Acquisition of Private Lands and Set Aside to Department of Land and Natural Resources, Division of State Parks for State Park Reserve, Pupukea-Paumalu, Koolauloa, Oahu, Tax Map Keys:(1) 5-9-05:38 & 82 and (1) 5-9-06:01, 18 & portion 24

APPLICANT AGENCY:

Department of Land and Natural Resources, Division of State Parks

PRIVATE LANDOWNER:

Current private owner of the above referenced property is Obayashi Corporation, a foreign corporation, whose mailing address is 725 Kapiolani Boulevard, Honolulu, Hawaii 96813.

The Trust for Public Land (TPL), a California nonprofit corporation, whose mailing address is 116 New Montgomery Street 4th Floor, San Francisco, California 94105, has entered into a purchase and sale agreement to acquire 1,129.49 acres from Obayashi Corporation with the intent to convey a 1,103.56-acre portion of those lands to the State of Hawaii and convey the remaining 25.93-acre portion of the land to the City and County of Honolulu.

LEGAL REFERENCE:

Sections 107-10, 171-11 and 171-30, Hawaii Revised Statutes, as amended.

LOCATION:

Privately-owned lands situated at Pupukea-Paumalu, Koolauloa, Oahu, identified by Tax Map Keys: (1) 5-9-05:38 & 82 and (1) 5-9-06:01, 18 & portion 24 as shown on the attached tax maps labeled Exhibits A-1 and A-2.

AREA:

TMK	Est. Land Area
(1) 5-9-05:38	518.84 ac.
:82	.52 ac.
(1) 5-9-06:01	13.95 ac.
:18	107.98 ac
:24 por.*	±462.27 ac.
Total	±1,103.56 ac.

*Pursuant to subdivision approval dated March 16, 2007.

ZONING:

On March 16, 2007, the State Land Use Commission adopted an order approving the reclassification of the subject land to State Land Use Agricultural District. Subsequently, on March 30, 2007, the City Council of the City and County of Honolulu approved Ordinance 07-5, effectively rezoning subject lands to AG-2, General Agriculture.

CURRENT USE:

The site is primarily vacant. However, TMK 5-9-05:38 is improved with a 4,800-square foot warehouse structure being of steel frame construction with corrugated metal siding and roofing on a concrete slab. Completed in 1994 the structure appears to be in good condition with only minor items of deferred maintenance being observed.

CONSIDERATION:

One-time payment in the amount of: (1) Two Million Nine Hundred Seventy Eight Thousand Nine Hundred Fifty Five Dollars ($2,978,955.00); or (2) the fair market value as determined by an independent appraiser contracted by the State, pursuant to Section 171-30(e), HRS, whichever of the two amounts is least. Said appraisal shall be subject to review and approval by the Chairperson, Department of the Attorney General, and all organizations providing federal funding to the State for the proposed acquisition.

PURPOSE:

State Park Reserve

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board requires the use of federal and State funds to acquire property that is to be set aside to State Parks for control and management as a park reserve. Therefore, pursuant to Item 9, Exemption Class 1 of the Exemption List for the State of Hawaii, Department of Land and Natural Resources, Division of State Parks, as reviewed and concurred upon by the

Environmental Council (Docket 91-EX-1), dated December 4, 1991, which reads "*Acquisition, but not improvement, of property for park use, and minor subdivision and consolidation of parcels necessary for acquisition of property for park use*", this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

APPLICANT REQUIREMENTS:

State Parks shall be required to:

1) Pay for the appraisal cost to determine the value of the property to be acquired;

Trust for Public Land shall be required to:

1) Process and obtain subdivision approval at no cost to the State, subject to review and approval by the Department and the Department of the Attorney General;
2) Provide survey maps and descriptions for the privately-owned property according to State DAGS standards and at no cost to the State;
3) Obtain a title report for the privately-owned property at Applicant's own cost and subject to review and approval by the Department and the Department of the Attorney General;
4) 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 the State and to the satisfaction of the Department;
5) Address any/all concerns to the satisfaction of the Department and the Department of the Attorney General.

BACKGROUND:

At its meeting of January 12, 2007, under agenda item D-8, the Board of Land and Natural Resources ("BLNR") approved in principle the acquisition of 1,103.56 acres of private land situated primarily on the bluffs of Pupukea on Oahu's north shore and overlooking Sunset Beach. Sites proposed for acquisition are identified as Tax Map Keys (1) 5-9-05:38 & 82 and (1) 5-9-06:01, 18 and portion of 24, as shown on Exhibits A-1 and A-2.

The subject site is primarily located atop a 400-foot coastal bluff mauka of Kamehameha Highway, with narrow, steep intermittent stream gulches and small plateaus rising to nearly 850 feet above mean sea level, providing a scenic backdrop to

beach areas across Kamehameha Highway. Adjacent mauka land uses include residential subdivisions, State forest reserve, Boy and Girl Scouts camps, and the Army Kahuku Training Area. At the base of the bluff lies the Sunset Beach residential neighborhood and Elementary School.

Ironwood and eucalyptus forests dominate the subject site. However a nursery area established by the prior owner offers opportunity for on-site native plant restoration and other uses that may be consistent with federal grant funding conditions.

Numerous archaeological sites were found on the subject property or near its boundaries, six of which were determined to be culturally significant. None of these sites are listed on the State or National Registers of Historic Places or designated as historic landmarks.

The public purpose of this acquisition is to establish a State park reserve to provide passive recreational opportunities, effectively protect the bluff from further development to preserve scenic views from beaches below and help promote the rural character of Oahu's north shore. The proposed acquisition may also provide new opportunities for native plant restoration and preservation of cultural resources.

Subject to BLNR approval, immediately following the conveyance of land from TPL to the State, management and control of the subject will be delegated to State Parks through a management right of entry and concurrent processing of a recommendation to the Governor to issue an Executive Order. The right of entry shall remain in effect until the issuance of the Executive Order.

Moreover, State Parks requests TMK (1) 5-9-06:03 ("Parcel 3") and 07 ("Parcel 7") also be set aside to State Parks for inclusion into the proposed State Park Reserve. These two parcels, identified on Exhibit A-1, have been historically referred to as Water Reserve Parcels A and B, respectively. Parcels 3 and 7 were previously included in the Pupukea Forest Reserve.

Notwithstanding the above, research indicates Parcels 3 and 7 are currently unencumbered. Neither DLNR's Commission on Water Resource Management nor Division of Forestry and Wildlife objected to setting aside these lands to State Parks.

Although State Parks does not have the adequate resources to effectively manage the subject site by itself at this time, the North Shore Community Land Trust ("NSCLT"), which continues to provide invaluable support for the proposed acquisition, has expressed its interest in partnering with State Parks to establish a community based stewardship program aimed at reforestation with native plants, restoration of native ecosystems, and providing environmental and cultural education. However, as yet there have been no formal discussions or agreement between State Parks and NSCLT regarding such a program.

Whereas BLNR's approval in principle of this proposed acquisition was contingent on staff reporting the results and/or findings of all due diligence and negotiations, presented herein for your consideration are the summary results and comments based on the due diligence review completed to date.

1) Funding/Process: Previously, federal funding sources for the proposed State acquisition were anticipated to be provided by both the National Park Service's ("NPS") Land Water Conservation Fund ("LWCF") and the National Oceanic and Atmospheric Administration's ("NOAA") Coastal and Estuarine Land Conservation Program ("CELCP"). Additionally, $1,000,000 in State CIP funds has been appropriated to acquire the Property. Totaling $3,666,891, these combined funds were to be used as consideration for the conveyance of land from TPL to the State, subject to the fair market value of the site as determined by a State contracted independent appraisal.

   However, NPS subsequently notified staff that LWCF funds could not be used with other federal funding sources to help acquire the subject.

   Consequently, funding for the proposed conveyance of the subject 1,103.56 acres from TPL to the State may only include a $1,000,000 State CIP appropriation and a NOAA CELCP grant, anticipated being $1,978,955, subject to final grant approval by NOAA. Use of the CELCP grant is further conditioned on use restricting language being included in the deed from TPL to the State and any proposed uses and improvements being subject to NOAA approval. Violation of the grant terms may result in a fair share reimbursement to NOAA.

   TPL anticipates combining the consideration paid by the State with an Army Compatible Use Buffer ("ACUB") program grant, NSCLT money, and consideration received for a conveyance of adjacent land to the City and County of Honolulu. These combined funds will be used by TPL to acquire approximately 1,129.49 acres of land from Obayashi. Immediately following the conveyance from Obayashi to TPL, fee title to 1,103.56 acres of the same land would then pass from TPL to the State.

   Whereas TPL will be receiving a grant from the Army Compatible Use Buffer program, deed language restricting use and granting Army limited access rights shall be included in the conveyance document from Obayashi to TPL, and will result in an encumbrance on title to the subject property. The ACUB encumbrance shall be subject to DLNR and Department of the Attorney General review and approval.

2) Access: Access to the site shall be provided at three points including the Kamehameha Highway flagstaff, private roads and a 50-foot government road. Discussion of these potential access points follows:

a. Kamehameha Highway Flagstaff: TMK 5-9-06:24 has been legally subdivided to provide the State with a 24-foot wide flagstaff connecting with the Kamehameha Highway as shown on the approved subdivision map attached (Exhibit B).

   Although the 24-foot wide flagstaff is believed to be inadequate for vehicular access and parking by itself, it may serve as pedestrian access and possible hiking trailhead leading to the upper park reserve.

b. Private Roads: Currently, access to the site is provided over private roads within the semi-gated community of Sunset Hills. During the January 12, 2007 BLNR meeting, staff raised concerns that frequent public use of these roads for access and parking may result in future objections from the Sunset Hills community. Moreover, a Road Maintenance Agreement ("RMA") associated with the entitlements over and across the private roads currently encumbers the subject property. This RMA would obligate the State to pay an undetermined pro-rata share of road maintenance fees.

   Whereas terms of the RMA are not acceptable to the State, the RMA will be removed as an encumbrance on title of the subject property. Moreover, access rights over the private roads to the subject property shall be retained.

c. Government Road: As initially reported, a 50-foot wide government road aligned through the Boy Scout camp provides legal access. Neither the DLNR nor the Boy Scouts consider this alignment ideal because of safety concerns due to anticipated vehicular traffic to the park when the Boy Scout camp is in use.

   Notwithstanding the above, State Parks does not have funds to realign the existing government road, costs of which are anticipated to exceed $100,000. However, TPL has agreed to provide a two-foot contour topographic map at no cost to the State. This map may be used for future realignment of the government road to a less intrusive location.

3) <u>Title Report</u>: TPL has provided several preliminary title reports prepared by Title Guaranty of Hawaii, the most recent being dated April 12, 2007. Based on a review of these title reports and appropriate Transfer Certificate of Titles ("TCT"), staff provides the following comments:

   a. As a result of entitlements obtained by Obayashi in 1994, the entire site was subjected to conditions and obligations imposed by the State Land Use Commission and the City and County of Honolulu. These conditions included substantial financial obligations that the State is unable to accept. Consequently, with DLNR's approval, TPL and Obayashi have successfully rezoned the property back to its pre-1994 land use classification and county zoning, effectively removing all obligations previously imposed.

b. TMK 5-9-06:18 ("Parcel 18") is encumbered by an access easement in favor of an adjacent privately-owned parcel identified as TMK 5-9-06:11 ("Parcel 11"). Whereas this easement is not delineated, the claim of access rights extends over the entire ±108-acre parcel (Exhibit A-1). Based on staff's objection to this encumbrance, TPL has attempted to have this encumbrance removed.

   Likewise, Parcel 11 is also encumbered by a similar easement in favor of Parcel 18. As such, staff met with the adjacent property owner and TPL to discuss a mutual cancellation of both encumbrances. However, as of the drafting of this submittal, the owner of Parcel 11 has not agreed to the mutual cancellation of easements.

   State Parks is aware of this encumbrance, which may have an adverse affect on their ability to effectively manage Parcel 18. Notwithstanding, considering the overall benefits the proposed project is anticipated to have, State Parks is agreeable to accepting Parcel 18 with this encumbrance.

c. Other encumbrances of record include various access and utility easements that do not appear to adversely impact effective management of the subject as a State Park reserve.

4) Phase I Environmental Site Assessment: TPL has provided a Phase I Environmental Site Assessment prepared by Tetra Tech EM Inc. ("Tetra Tech") and dated July 31, 2006. At that time Tetra Tech reported that no recognized environmental concerns on the subject property were identified.

   Notwithstanding, a site inspection confirmed numerous abandoned vehicles and other debris on the subject site. Subsequently, all vehicles and debris were purportedly removed, underlying soils tested, and all appropriate remediation performed. Tetra Tech thereafter provided a supplementary report dated March 9, 2007 documenting these activities and recommending no further action as being necessary for the subject site.

   Subsequently, TPL informed staff that an additional long abandoned vehicle was discovered on the site during a recent inspection. Accordingly, TPL has requested Tetra Tech to remove the additional vehicle so that appropriate inspections and testing can be performed. Again, this shall be done at no cost to the State.

5) Additional Due Diligence: Review of due diligence documents provided reveal that Obayashi developed two irrigation wells on the subject site between 1988 and 1989, both of which were subsequently capped temporarily. An inspection report dated February 20, 2007 prepared by Tom Nance Water Resource Engineering ("TNWRE"), documented an inspection of the two wells, which were found to be in poor condition and

recommended remediation procedures. Subsequently, both well sites are in the process of being capped pursuant to the recommended remediation procedures.

6) Rock Fall Hazard and Liability Considerations: Portions of the subject include steep cliff faces with privately-owned lands below being zoned General Agriculture (AG-2) or Country by the City & County of Honolulu. Although single-family dwellings are not permitted uses under the General Agriculture zoning classification, they are permitted under Country zoning classification. Moreover, several adjacent sites have been developed with homes. Consequently, staff previously raised concerns regarding potential rock fall hazards and the possible liability associated with the proposed acquisition. Attached for your review are Exhibits C and C-1, which depict topographic 20-foot contour lines over aerial photos of the subject and over county zoning codes.

To provide a preliminary assessment of slope conditions and potential rock fall hazards DLNR staff conducted a cursory inspection of the subject site. Salient details of the assessment are briefly discussed below.

a. At least one dwelling located on TMK 5-9-07:01 is located immediately adjacent to sloped areas, higher elevations of which are part of the subject site, and is believed to be in a high risk area where rockfalls are likely to impact the structure. Two other dwellings on the same parcel are considered to be in a moderate to moderately high-risk area.

b. A boulder estimated to be four to five feet in diameter fell from sloped areas and crashed into the side of the aforementioned dwelling located in the high risk area approximately five years ago. Additionally, evidence of past debris slides impacting the same parcel was also apparent. However, it is unclear from what elevation the boulder or debris slides originated from.

c. It is recommended that a more thorough investigation of the area be conducted to more accurately identify risk zones and to determine the probability of rockfall and debris slide occurrences.

Considering its possible liability, the State should be prepared to mitigate this potential hazard. It should also be considered that the investigative activities necessary for further evaluation of the slope or subsequent mitigation measures may themselves trigger rockfall events.

Based on the foregoing and subject to BLNR's approval of the proposed acquisition, following the conveyance of the subject site to the State, State Parks shall pursue funding to conduct a thorough rockfall assessment and appropriate mitigation

measures, which may include acquisition of additional private lands through negotiations or by eminent domain if necessary.

7) Comments: Comments regarding the proposed acquisition and set aside to State Parks were solicited from Department of Hawaiian Home Lands, DLNR Office of Conservation and Coastal Land, Historic Preservation Division, Office of Hawaiian Affairs ("OHA") and the City & County of Honolulu. No objections were received. OHA commented in strong support for the proposed project. A copy of OHA's comments is attached (Exhibit D).

8) Documents: The proposed conveyance will be via the draft warranty deed instrument attached for your review and approval (Exhibit E).

Staff requests that the hazardous materials testing provision paragraph from the State's standard warranty deed be amended as follows.

> *AND, the ~~Grantor warrants that if any lender or governmental agency shall ever require testing to ascertain whether there has been any release of hazardous materials by Grantor on or adjacent to the Property, as determined by Grantee in its sole discretion, then the Grantor shall be responsible for the reasonable costs thereof. In addition,~~ Grantor shall execute affidavits, representations and the like from time to time at Grantee's request concerning Grantor's best knowledge and belief regarding the presence of hazardous materials on the Property placed or released by Grantor.*

This amendment has been previously approved by the BLNR for TPL in recent conveyances on a case-by-case basis. Accordingly, BLNR is again being asked to approve this amendment for this proposed conveyance.

In addition to the Draft Warranty Deed, TPL requires DLNR to enter into an Agreement of Sale ("AOS"). The proposed AOS has been reviewed by TPL, DLNR and the Department of the Attorney General and is attached as Exhibit F.

RECOMMENDATION: Considering the foregoing, State Parks requests that the Board:

1. Authorize the acquisition of the subject private lands under the terms and conditions cited above which are by this reference incorporated herein and subject further to the following:

   A. The terms and conditions of the attached Agreement of Sale document;

   B. The terms and conditions of the attached Warranty Deed document form, as may be amended from time to time;

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.

2. Authorize the issuance of a management right-of-entry permit to State Parks covering the subject area 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 right-of-entry permit form, as may be amended from time to time;

B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

3. Approve of and recommend to the Governor the issuance of an executive order setting aside described lands to the State Parks Division for a State Park Reserve 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 executive order form, as may be amended from time to time;

B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;

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:

Allan Smith, Interim Chairperson

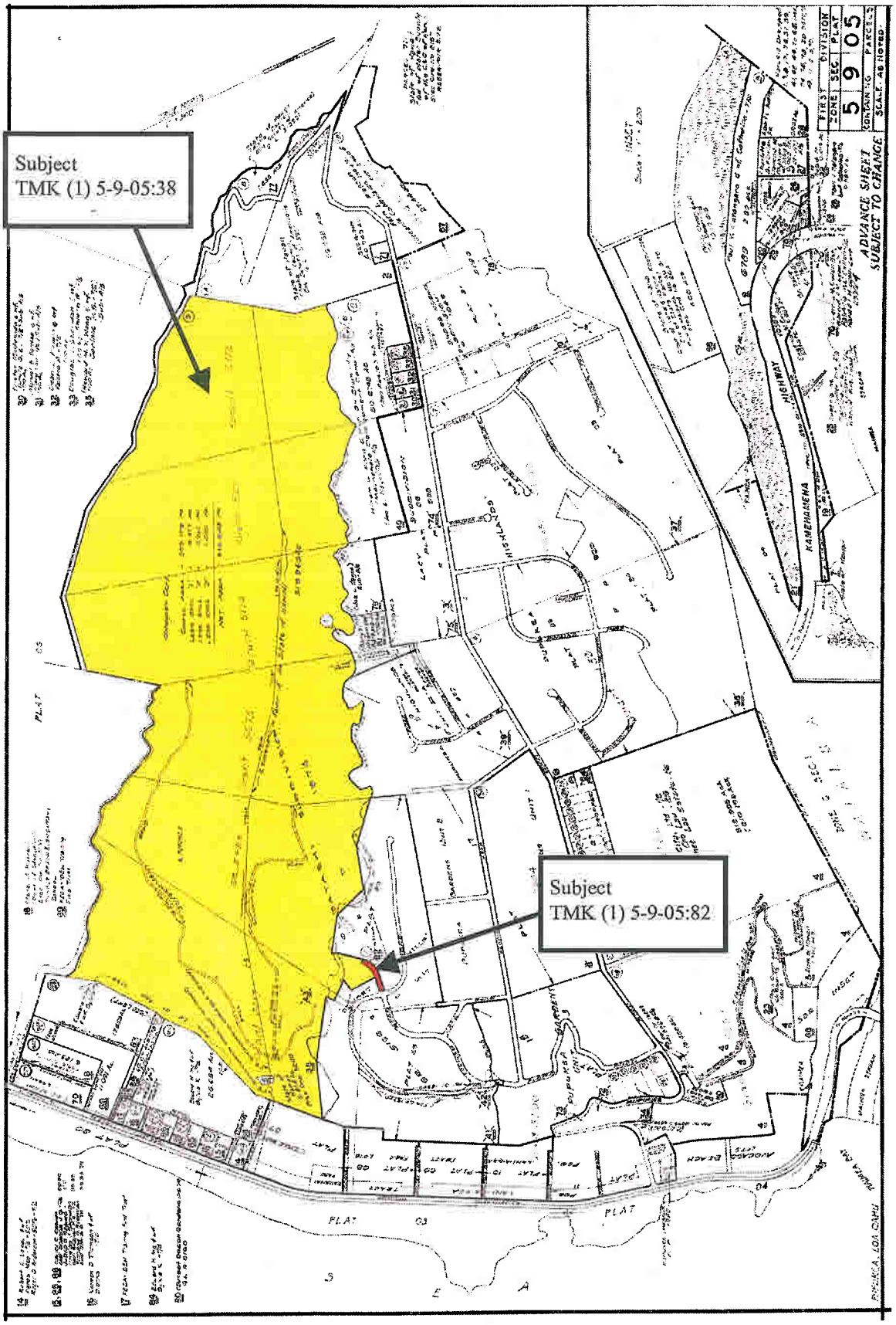

Subject
TMK (1) 5-9-05:38
Subject
TMK (1) 5-9-05:82
ADVANCE SHEET
SUBJECT TO CHANGE
FIRST DIVISION
ZONE SEC PLAT
5 9 05
KAMEHAMEHA
HIGHWAY
PLAT 03
PLAT 04

EXHIBIT A

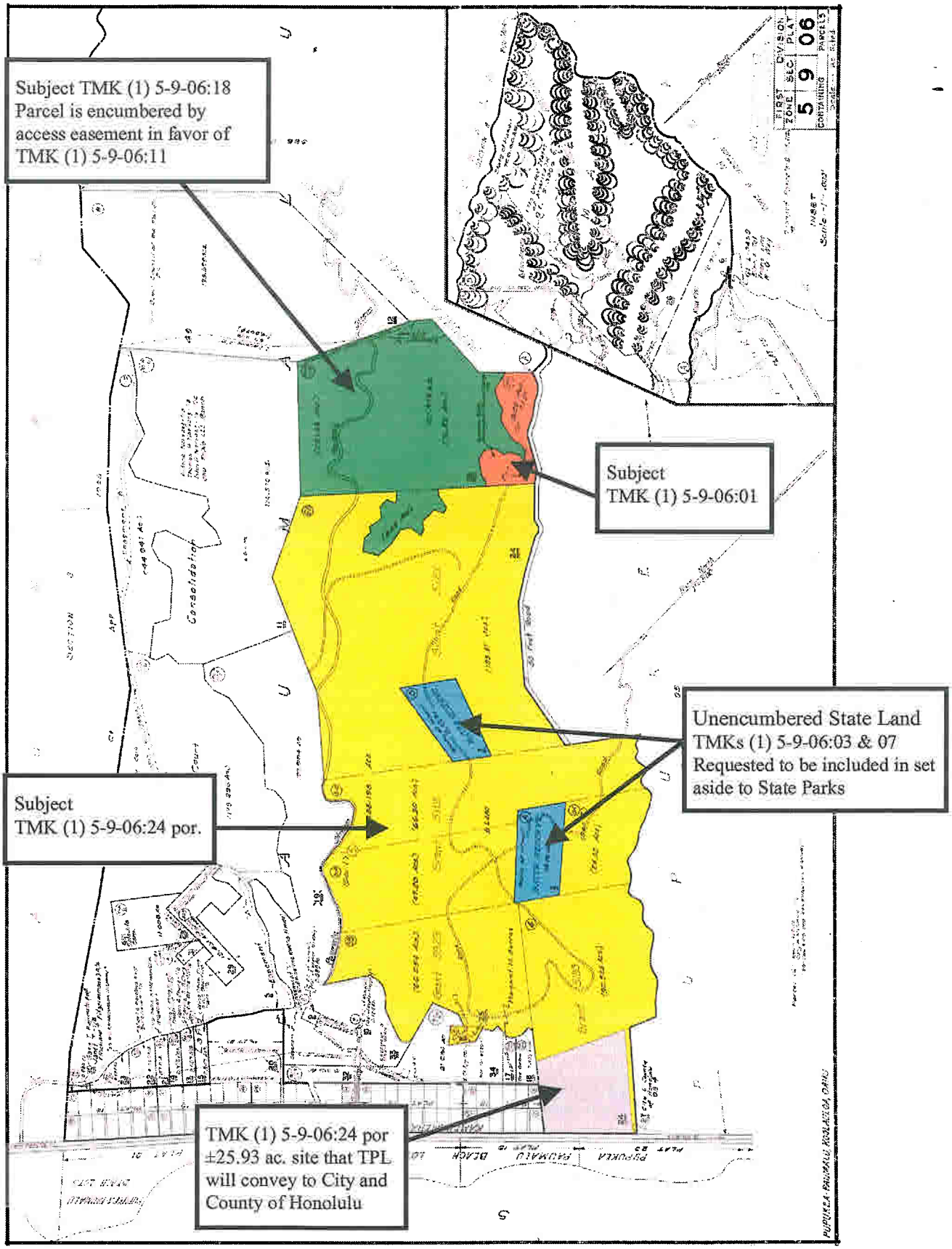

Subject TMK (1) 5-9-06:18 Parcel is encumbered by access easement in favor of TMK (1) 5-9-06:11
Subject TMK (1) 5-9-06:01
Unencumbered State Land TMKs (1) 5-9-06:03 & 07 Requested to be included in set aside to State Parks
Subject TMK (1) 5-9-06:24 por.
TMK (1) 5-9-06:24 por ±25.93 ac. site that TPL will convey to City and County of Honolulu

EXHIBIT A-1

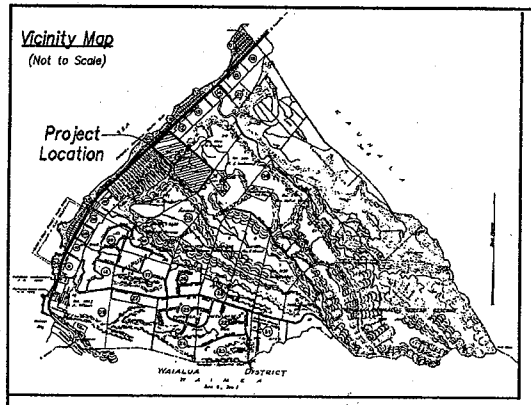
SUBDIVISION OF LOT 4 BEING ALL OF GRANT 5193 TO BERTHA E. TORGERSEN INTO LOTS 4-A AND 4-B

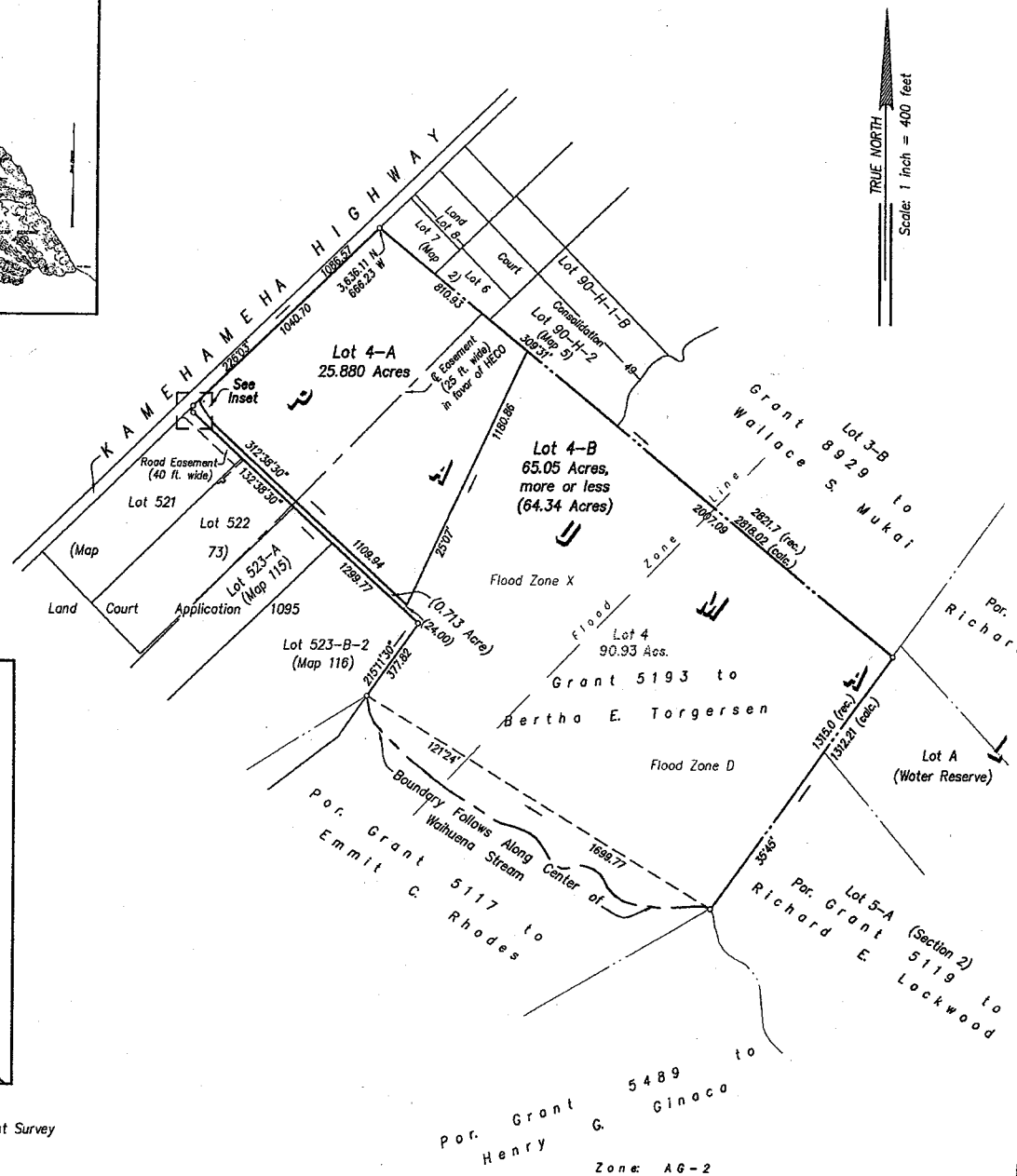
At Paumalu, Koolauloa, Oahu, Hawaii
Tax Map Key: (1)5-9-06: por. 24

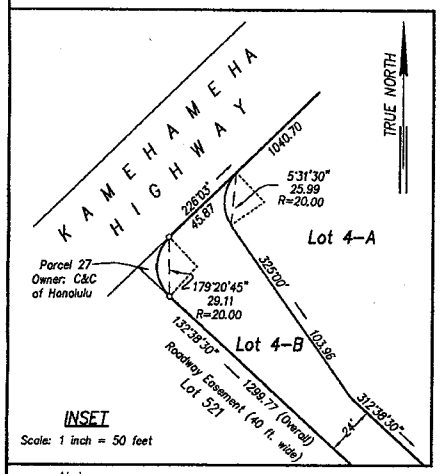
Owner: Obayashi Corporation
725 Kapiolani Boulevard, 4th Floor
Honolulu, Hawaii 96813

2007150810
APPROVED
DEPARTMENT OF PLANNING AND PERMITTING
City and County of Honolulu
Date MAR 16 2007
For

EXHIBIT "B"







Notes:

Azimuths and coordinates are referred to Government Survey Triangulation Station "Pupukea" △.

County Zoning (LUO): Country, AG-2 and R-5

Flood Zone D and Flood Zone X, as shown on F.I.R.M. Number 15003C0020E, effective date, November 20, 2000

RUSSELL FIGUEIROA
LICENSED PROFESSIONAL LAND SURVEYOR
No. 4729
HAWAII, U.S.A.

This map was prepared by me or under my direct supervision

Russell Figueiroa Exp.: 4/30/08
Licensed Professional Land Surveyor
Certificate Number 4729

RMTC Ref. No.: 1-20854-0-S
F.N.: Pupukea Lot 4.dwg

R. M. TOWILL CORPORATION
SINCE 1930

420 Waiakamilo Road, Suite 411
Honolulu, Hawaii 96817
Rev. March 6, 2007; January 2, 2007

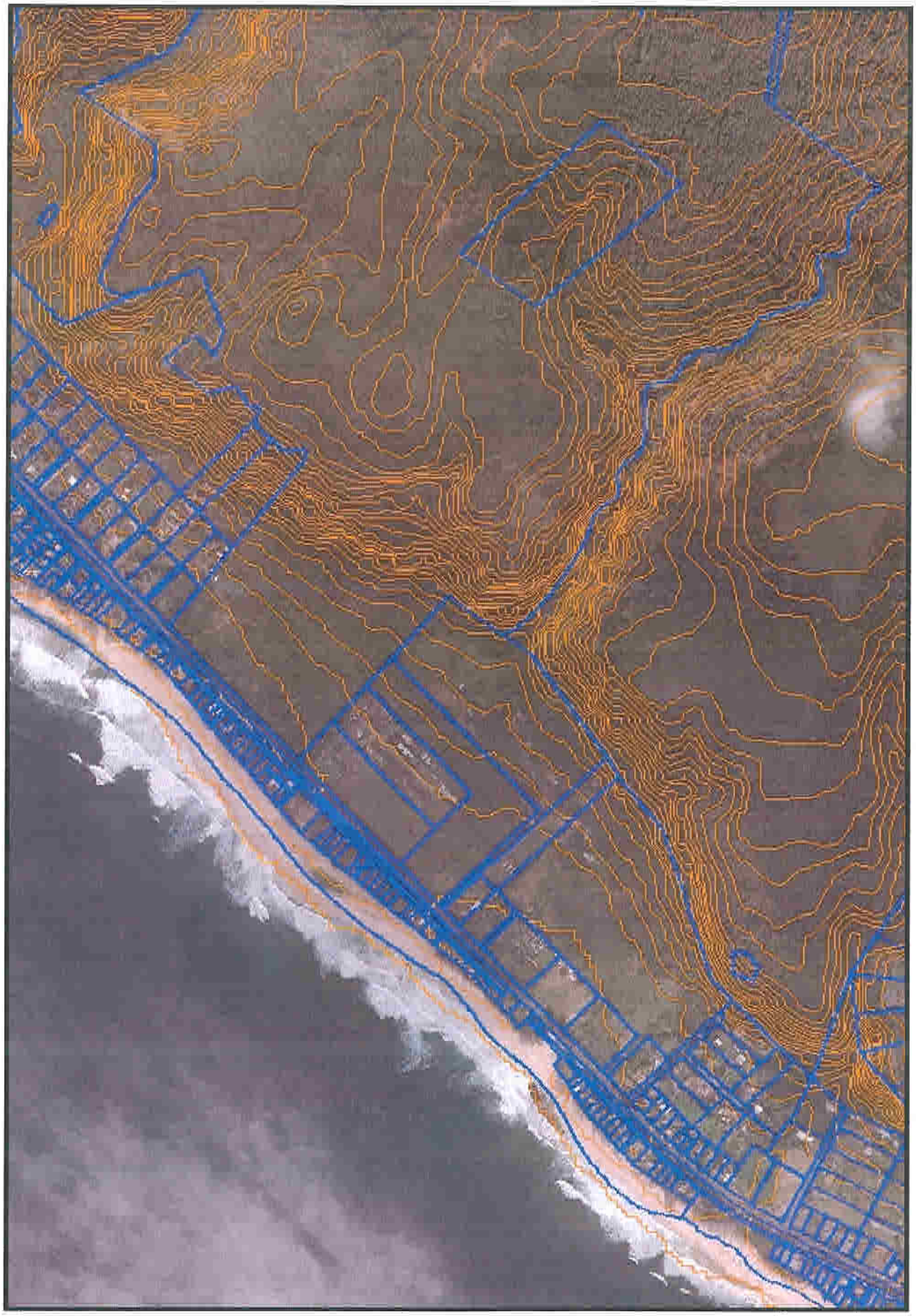


EXHIBIT C

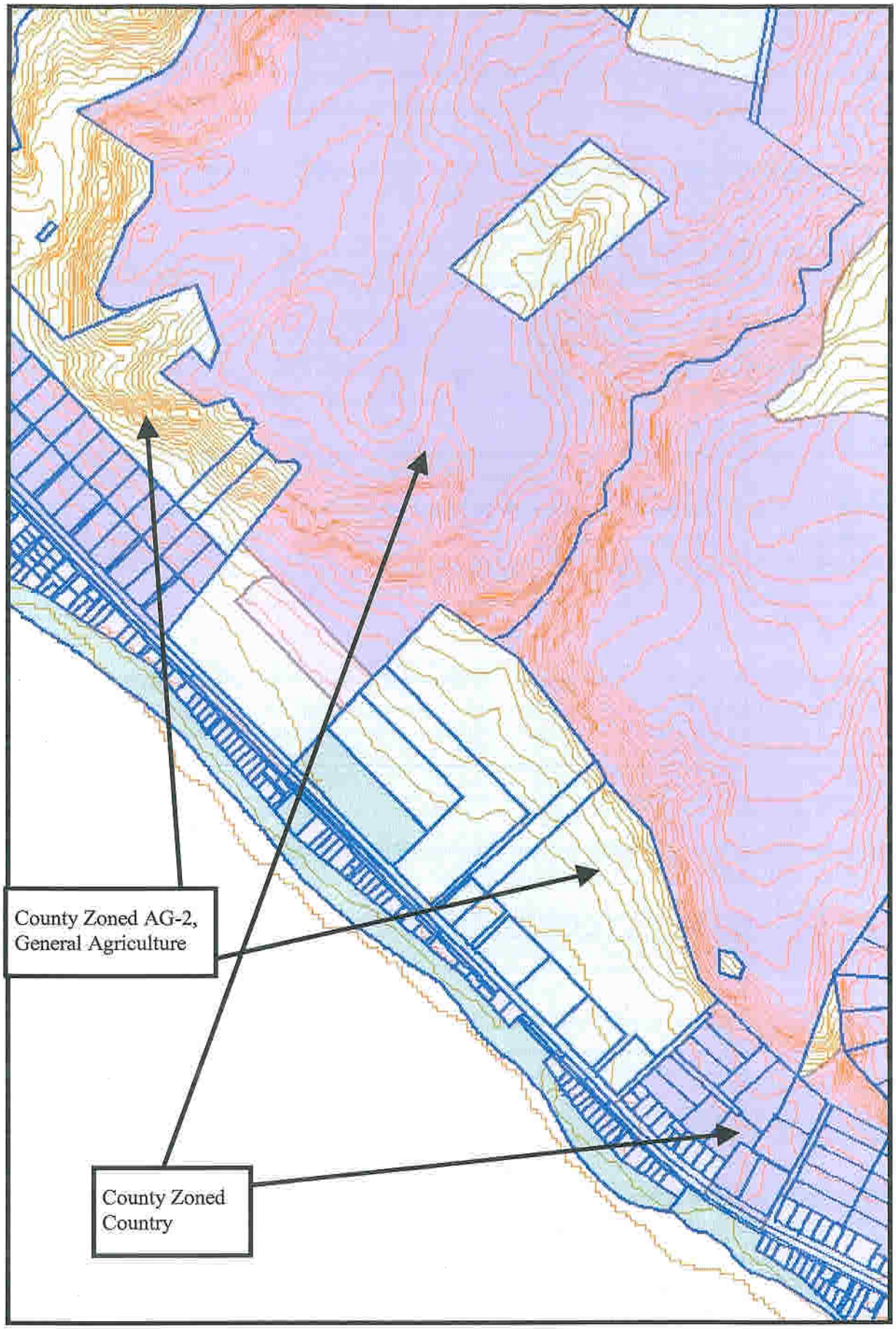

County Zoned AG-2, General Agriculture
County Zoned Country

EXHIBIT C-1

PHONE (808) 594-1888

FAX (808) 594-1865

STATE OF HAWAI'I
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAI'I 96813

RECEIVED
LAND DIVISION

2007 APR 27 A 7:53

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

HRD07/2948

April 24, 2007

Gavin Chun
Project Development Specialist
Department of Land and Natural Resources
Land Division
P.O. Box 621
Honolulu, HI 96809

RE: Request for comment for a proposed land acquisition and set aside to the Department of Land and Natural Resources (DLNR) – State Parks, for Park Preserve purposes, Pupukea-Paumalu, O'ahu; TMKs: 5-9-005:038 and 082; and 5-9-006:001, 003, 007, 018, and portion of 024

Dear Gavin Chun,

The Office of Hawaiian Affairs (OHA) is in receipt of your March 29, 2007, request for comments on the above project, which would allow DLNR – State Parks to acquire approximately 1,103.56 acres of privately owned land. OHA apologizes for the delayed response and seeks to register its strong support for this initiative, which will bring into the public trust and preserve a precious tract of land and resources for future generations.

Thank you for the opportunity to comment. If you have any further questions or concerns, please contact Heidi Guth at (808) 594-1962 or e-mail her at heidig@oha.org.

Sincerely,

Clyde W. Nāmu'o
Administrator

EXHIBIT "2"

LAND COURT SYSTEM	REGULAR SYSTEM

Return by Mail ( ) Pickup ( ) To:

Total Number of Pages:

LOD No. Tax Map Key Nos. (1)5-9-005:038 & 82, 5-9-006:001, 018 & portion 024

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

THAT, effective as of the ____ day of _____, 20____, THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation, whose address is 116 New Montgomery, 3rd Floor, San Francisco, California 94105, hereinafter referred to as the "Grantor," for and in consideration of the sum of TWO MILLION NINE HUNDRED SEVENTY EIGHT THOUSAND NINE HUNDRED FIFTY FIVE AND NO/100 DOLLARS ($2,978,955.00), paid by the STATE OF HAWAII, by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, hereinafter referred to as the "Grantee," the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, the Grantee's successors and assigns, those certain parcels of land situate at Pupukea, Paumalu, Oahu, Hawaii, designated as "_____," containing an area of 1,103.56 acres, more or less, more particularly described in Exhibit "A" and delineated on Exhibit "B," both attached hereto and made parts hereof, said

EXHIBIT "E"

exhibits being, respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, designated as C.S.F. No. _____ _____ and dated _____.

AND the reversions, remainders, rents, income and profits thereof, and all of the estate, right, title, and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or in anyways appertaining or held and enjoyed therewith in fee simple unto said Grantee, the Grantee's successors and assigns, forever, free and clear of all liens and encumbrances except as described in Exhibit "C" attached hereto and made part hereof.

The Grantor, for itself, its successors and assigns, does hereby covenant with the Grantee, its successors and assigns, that the Grantor is lawfully seised in fee simple and possessed of the above-described land and premises, that it has a good and lawful right to convey the same as aforesaid, that the same is free and clear of all liens and encumbrances, except as described in Exhibit "C" attached hereto and made part hereof and that it will and its successors and assigns, shall WARRANT AND DEFEND the same unto the Grantee, its successors and assigns, forever, against the claims and demands of all persons whomsoever.

The Grantor shall be responsible for payment of all rollback or retroactive property taxes and their associated costs, and property taxes up to the date of recordation of this Warranty Deed.

AND, the Grantee covenants that this purchase of real property has had prior approval by the Attorney General pursuant to section 26-7 and section 107-10, Hawaii Revised Statutes as to legality and form, exceptions, and reservations.

AND, Grantor shall execute affidavits, representations and the like from time to time at Grantee's request concerning Grantor's best knowledge and belief regarding the presence of hazardous materials on the Property placed or released by Grantor.

The Grantor agrees to indemnify, defend, and hold Grantee harmless, from any damages and claims resulting from the

release of hazardous materials on or about the Property occurring to the extent Grantor was in possession of the Property, between the effective date of the Purchase and Sale Agreement and Joint Escrow Instructions between Grantor and Obayashi Corporation, a Japan corporation, and the Close of Escrow as defined in paragraph 7 of the Agreement of Sale, or any time occurring if caused by Grantor or persons acting through or under Grantor.

For the purpose of this deed "hazardous material" shall mean any pollutant, contaminant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, as all of the above are defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, Chapter 128D, Hawaii Revised Statutes, or any other federal, state, or local law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

AND, Grantor shall conduct a Phase I environmental site assessment no later than thirty days before the effective date of this deed, and then conduct any and all abatement and disposal, as warranted by that Phase I environmental site assessment, all as satisfactory to the standards required by the Federal Environmental Protection Agency, and the Department of Health, as determined by Grantee in its sole discretion.

The Property has been acquired with funds from a federal financial assistance award. Title of the Property conveyed by this deed shall vest in the State of Hawaii, by its Board of Land and Natural Resources, subject to disposition instructions from National Oceanic and Atmospheric Administration ("NOAA") or its successor agencies. The Property shall be managed for conservation purposes and consistent with the purposes for which it was entered into the Coastal Estuarine Land Conservation Program. The State of Hawaii, by its Board of Land and Natural Resources, shall not dispose of, encumber its title or other interests in, or convert the use of this Property without the approval of NOAA or its successor agencies. _____

IN WITNESS WHEREOF, the parties have executed this instrument as of _____ day of _____, 20____, effective as of the day, month, and year first above written.

THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation

Approved by the Board of Land and Natural Resources at its meeting held on May 25, 2007.

By _____

_____

Its_____

And By _____

_____

Its_____

GRANTOR

APPROVED AS TO LEGALITY AND FORM:

STATE OF HAWAII

_____

Deputy Attorney General

Dated:_____

By_____

Chairperson
Board of Land and
Natural Resources

GRANTEE

ACKNOWLEDGEMENT

State of California)
)ss.
County of San Francisco)

On this ___ day of _____, 2007, before me, **Hsiao-Wen Shih**, a notary public, personally appeared _____ and _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public _____

My commission expires _____

Exhibit A

Legal Description of Property

Exhibit B

Map of Property

Exhibit C

List of Property Information

AGREEMENT OF SALE
(Pupukea Paumalu Property
City and County of Honolulu, Hawaii)

This is an Agreement of Sale ("Agreement") dated _____, 2007, between **The Trust for Public Land,** a California nonprofit public benefit corporation, whose address is 116 New Montgomery, 3rd Floor, San Francisco, California, 94105 ("Seller"), and the **State of Hawaii,** by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii, 96813 ("Buyer").

RECITALS

A. The address and telephone numbers of the parties to this Agreement are as follows: Telephone numbers are included for information only:

SELLER:

The Trust for Public Land
116 New Montgomery, 3rd Floor
San Francisco, CA 94105
Attn: Brian R. Kirchoff
Tel: (415) 495-5660
FAX: (415) 495-0541

BUYER:

State of Hawaii
Board of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809-0621
Attn: Peter Young, Chairperson
Tel: (808) 808-587-0405
FAX: (808) 808-587-0390

Copies of any notices to Seller should also be sent to:

The Trust for Public Land
212 Merchant Street, Suite 320
Honolulu, Hawaii 96813
Attn: Lea Hong
Tel: (808) 524-8563
FAX: (808) 566-0005

Copies of any notices to Buyer should also be sent to:

State of Hawaii
Dept. of Land and Natural Resources
Land Division
1151 Punchbowl Street, Room 220
Honolulu, Hawaii 96813
Attn: Gavin Chun
Tel: (808) 808-587-0385
FAX: (808) 808-587-0455

B. Prior to the Close of Escrow, Seller will be the owner of certain real property situate at Pupukea Paumalu, Island of Oahu, Hawaii, Tax Map Key Nos. (1) 5-9-5-38 and 82, (1) 5-9-6-1, 18 and portion 24, described in Exhibit A and delineated in Exhibit B both attached to this Agreement and incorporated herein by this reference, together with Seller's interest in all improvements, fixtures, timber, water, oil, gas and mineral and metallic mines of every kind or description, if any, and all rights appurtenant to the Property, including but not limited to timber

EXHIBIT "F"

rights, water rights, grazing rights, access rights, and geothermal rights, if any will be referred to in this Agreement as the "Property."

C. Buyer wishes to purchase the Property from Seller and Seller wishes to sell the Property to Buyer on the terms and conditions set forth in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. **Purchase and Sale**. Seller agrees to sell to Buyer and Buyer agrees to buy from Seller the Property on the terms and conditions set forth herein.

2. **Purchase Terms**.

(a) Price. The purchase price for the Property shall be: (1) Two Million Nine Hundred Seventy Eight Thousand Nine Hundred Fifty Five Dollars ($2,978,955.00); or (2) the fair market value as determined by an independent appraiser contracted by the Buyer pursuant HRS §171-30(e), whichever of the two amounts is least (the "Purchase Price").

(b) Method of Payment. The Purchase Price shall be payable on Close of Escrow, as defined in Section 7.

(c) Effective Date. This Agreement shall be effective on the date that it is signed by both parties hereto and approved as to form and legality by the Attorney General ("Effective Date").

3. **Conditions Precedent to Closing**. The parties' respective obligations to close the purchase and sale of the Property shall be conditioned upon all of the following happening prior to the Close of Escrow or June 27, 2007, whichever is sooner:

(a) Seller receives approval of the transaction which is the subject of this Agreement by the Seller's Board of Directors which approval is subject to said Board's sole discretion;

(b) Buyer's approval of the title, physical, structural and environmental condition of the Property not later than the Close of Escrow or June 27, 2007, whichever is sooner (the "Review Deadline");

(c) Seller's prior acquisition of the Property;

(d) Buyer's confirmation of approval and the receipt of a grant from the Coastal and Estuarine Land Conservation Program (CELCP) administered by the National Oceanic and Atmospheric Administration (NOAA), in the amount of One Million Nine Hundred Seventy Eight Thousand Nine Hundred Fifty Five Dollars ($1,978,955.00) and Buyer's receipt of authorization to expend said amount, which funds are to be used for acquisition of the Property;

(e) The Governor of the State of Hawaii releases One Million Dollars ($1,000,000.00) in CIP funds appropriated for the acquisition of the Property as authorized by Act 200, SLH 2003, as amended by Act 41, SLH 2004, Item K-9.04, and said funds have not lapsed;

(f) Buyer receives approval by the State of Hawaii, Board of Land and Natural Resources to enter into this Agreement and to acquire the Property, which approval is subject to the Board's sole discretion;

(g) Seller shall resolve to Buyer's satisfaction, land partition issues between the City and County of Honolulu and Buyer for subdivision of the existing 5 parcels a portion of which comprises the Property such that a 25 acre parcel, more or less, mauka of the highway and below the upper portion of the Property minus a flag lot is designated for conveyance to the City & County;

(h) Seller shall, at its own cost, remove all abandoned vehicles and trash from the Property to Buyer's satisfaction;

(i) Seller has provided Buyer with a Phase I environmental site assessment and Seller shall conduct a Phase II environmental sampling and analysis plan, provide Buyer with the report, 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 the State Department of Health, all at no cost to Buyer and to Buyer's satisfaction;

(j) Seller shall, at its own cost, have the conditions which were placed on the Property by the State of Hawaii Land Use Commission in its Findings of Fact, Conclusions of Law and Order filed October 26, 1994, deleted or removed; and Seller, at its own cost, shall cause the Notice of Imposition of Conditions by the Land Use Commission recorded in the Bureau of Conveyances on November 2, 1994 as Document No. 94-180084 and the Declaration of Conditions recorded in the Bureau of Conveyances on December 22, 1994 as Document No. 94-210086 to be released and removed from the Title Report;

(k) Seller shall, at its own cost, have the conditions which were placed on the Property by the City and County of Honolulu by the Unilateral Agreement and Declaration for Conditional Zoning recorded in the Bureau of Conveyances on May 22, 1995 as Document No. 95-067571 and in Land Court on May 22, 1995 as Document No. 2238490 on Certificates 194,057 and 194,058 deleted or removed; and Seller, at its own cost, shall cause the Unilateral Agreement and Declaration for Conditional Zoning recorded in the Bureau of Conveyances on May 22, 1995 as Document No. 95-067571 and in Land Court on May 22, 1995 as Document No. 2238490 on Certificates 194,057 and 194,058 to be released and removed from the Title Report;

(l) Buyer receives confirmation from all sources of grant funding that they are compatible with each other and may be used together to purchase the Property;

(m) As to an undivided 1/280th interest in and to Lots 74, 75, and 76 (Roadways) as shown on file Plan Number 1017 (being the premises acquired by Deed and Agreement Regarding Easements Liber 19966/Page 456), Seller shall, at its own cost, sever this interest as an appurtenance to the Property and remove the same from the Title Report;

(n) Seller shall, at its own cost, provide Buyer and the general public with legal access to the Property via Wilinau Road, which access shall be included in the Title Report and in the title insurance policy provided to Buyer;

(o) Seller shall, at its own cost, extinguish and remove from the Title Report, Option Agreement dated September 26, 1972, Liber 8640, Page 1, by and between Hiram L. Fong, whose wife is Ellyn L. Fong, and Mun On Chun, whose wife is Patsy S. Chun, Sellers, and GTE Satellite Corporation, a Delaware corporation;

(p) Seller shall, at its own cost, extinguish and remove from the Title Report, the Road Maintenance Agreement with Sunset Hill Community Association dated February 23, 1987, Liber 20413, Page 174;

(q) Seller has provided Buyer with copies of the Property Information. To the best of Seller's knowledge the Property Information contains all encumbrances, restrictions, and obligations, both recorded and unrecorded, pertaining to the Property;

(r) Satisfaction of all obligations stated herein by both Buyer and Seller, within the time periods provided in this Agreement (if any); and

(s) If any condition precedent is not satisfied or waived by both parties, Seller or Buyer may terminate this Agreement by written notice to the other party; in which event the Parties shall have no further obligation to each other under this Agreement and no damages shall be accountable to Buyer.

4. **Other Closing Obligations.**

The following obligations of Seller may be satisfied either before or after the Close of Escrow. Any obligation not satisfied prior to the Close of Escrow shall survive the Close of Escrow:

(a) Seller shall contract for and cause to be prepared a topographic survey of the portion of the adjacent Boy Scouts of America property identified by the parties showing contour lines every two (2) feet to assist Buyer in the development of an additional means of public access to the Property through the adjacent Boy Scouts' property;

(b) As to the Reservation(s) over TMK 5-9-6:18 identified in Deed dated September 7, 1956, filed as Land Court Document No. 195021, Seller shall assist Buyer in extinguishing the reservation or converting the reservation to a surveyed easement acceptable to Buyer; and Seller shall pay all of Buyer's costs associated with the extinguishment or realignment including but not limited to survey and Land Court costs. This obligation shall automatically terminate five years following the Close of Escrow.

(c) Seller agrees to assist Buyer in negotiating an agreement with the Boy Scouts of America to provide public access to the Property through the adjacent Boy Scouts' property. This provision shall automatically terminate five years following the Close of Escrow.

5. **Condition of the Property**.

(a) Buyer and Seller agree that, prior to the Review Deadline, as defined in Section 3(b):

i. Buyer shall have had the opportunity to study all aspects or circumstances of the Property which Buyer deems material or relevant;

ii. Buyer shall have received from Seller the documents described in Exhibit C attached hereto and incorporated by this reference, which sets forth Property related information (the "Property Information");

iii. Buyer shall have had access to the Property; and

iv. Buyer shall have had the opportunity to make all inspections and verifications which Buyer deems necessary for the completion of Buyer's due diligence review for the transaction covered by this Agreement.

(b) Seller agrees to indemnify, defend, and hold Buyer harmless, from any damages and claims resulting from the release of hazardous materials on the Property occurring to the extent Seller was in possession of the Property, between the effective date of the Purchase and Sale Agreement and Joint Escrow Instructions between Seller and Obayashi Corporation, a Japan corporation, and the Close of Escrow as defined in Section 7, or any time occurring if caused by Seller or persons acting through or under Seller.

For purposes of this Agreement "hazardous material" shall mean any pollutant, contaminant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, as all of the above are defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, Chapter 128D, Hawaii Revised Statutes, or any other federal, state, or local law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

(c) Except as otherwise expressly provided herein or in the warranty deed, Buyer hereby acknowledges and agrees that the sale of the Property hereunder is and will be made on an "as is, where is" basis and that neither Seller, nor any attorney, representative, agent or employee of Seller has made, or will make, and except for Seller's representations and express warranties set forth in this Agreement or in the warranty deed, Seller specifically negates and disclaims, any representations, warranties or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present, future or otherwise, of, as to, concerning or with respect to the Property.

6. **Due Diligence**. Buyer shall have the opportunity to investigate and review the Title Report, the Property Information, and the physical condition of the Property, which investigation and review must be completed on or before the Review Deadline, as defined in Section 3(b). If Buyer determines that it is dissatisfied with the condition of the Property, then Buyer may terminate this Agreement by delivering written notice to Seller on or before the Close of Escrow. If Buyer fails to deliver any such written termination notice to Seller on or before the Close of Escrow, then Buyer shall be deemed to have elected to proceed to close escrow and acquire the Property.

7. **Escrow**. Seller has opened an escrow with Title Guaranty of Hawaii, Inc., 235 Queen Street, Honolulu, Hawaii, 96813 Attn: Barbara Paulo (the "Escrow Holder") for the purpose of closing the purchase and sale of the Property. Escrow instructions will be approved by both Buyer and Seller. All escrow fees shall be paid for by Seller. Escrow shall close on or before June 27, 2007 (the "Close of Escrow").

8. **Title**. Seller shall convey to Buyer by warranty deed (the "Warranty Deed") a fee simple interest in the Property, free and clear of all monetary liens and encumbrances, except as shown in Exhibit D, and Seller shall pay all property taxes up to the date of recordation of the Warranty Deed.

9. **Title Insurance.** Seller will provide a Hawaii standard coverage, owner's policy of title insurance in the full amount of the Purchase Price, insuring that title to the Property is vested in Buyer upon Close of Escrow subject only to the exceptions noted in Section 8. The cost of such title insurance shall be paid for by Seller.

10. **Seller's Promise not to Further Encumber.** Seller shall not, without the prior written consent of the Buyer make or allow to be made any leases, contracts, options or agreements whatsoever affecting the Property which would in any manner impede Seller's ability to perform hereunder and deliver title as agreed herein.

11. **Seller's Representations**. Seller represents and warrants that:

(a) Seller will prior to the Close of Escrow own and will have the power to sell, transfer and convey all right, title and interest in and to the Property;

(b) To Seller's actual knowledge, there is no action, suit, litigation, arbitration or other proceeding pending or threatened, which in any manner affects the Property;

(c) Seller has full power and authority to execute and deliver this Agreement and to consummate the transactions provided herein. The persons signing this Agreement for Seller have full power and authority to sign for Seller and to bind it to this Agreement;

(d) Seller has no actual knowledge of any violations of any law, order, ordinance or regulation or policy of insurance affecting the Property;

(e) Seller has not received notice and has no knowledge of, any pending or threatened condemnation of all or part of the Property;

(f) This Agreement and the other documents to be executed by Seller hereunder, upon execution and delivery thereof by Seller, will have been duly entered into by Seller, and will constitute legal, valid and binding obligations of Seller, subject to the conditions precedent set forth in Section 3 and the Seller's other closing obligations set forth in Section 4. Neither this Agreement nor anything provided to be done under this Agreement violates or shall violate any contract, document, understanding, agreement or instrument to which Seller is a party or by which it is bound;

(g) Seller has no actual knowledge of any unrecorded agreements affecting the Property other than as described in Section 8;

(h) Seller represents and warrants that it is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code. Seller's United States Taxpayer Identification Number is 23-7222333;

(i) Seller represents and warrants that it is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California;

(j) Seller represents and warrants, to Seller's actual knowledge, without further inquiry, that the Property is not subject to any investigation by any governmental authority or any judicial or administrative proceedings alleging the material violation of or liability under any hazardous materials law, or any outstanding written order or agreement with any governmental authority or private party relating to any hazardous materials laws or hazardous materials claims;

(k) Seller agrees to disclose to Buyer all material findings in respect to the condition of the Property that Seller may discover which findings are not contained in the Title Report delivered to Buyer.

12. **Buyer's Representation**. Buyer represents and warrants that subject to approval by the Board of Land and Natural Resources which approval is at the Board's sole discretion, Buyer has all the requisite power and authority to enter into this Agreement and to consummate the transactions contemplated hereby.

13. **Risk of Loss**. All risk of loss shall remain with Seller until Close of Escrow. In the event the Property is destroyed or damaged after the Effective Date of this Agreement and prior to Close of Escrow, Buyer or Seller may, at their option elect to terminate this Agreement with no damages accountable to Buyer.

14. **Closing Expenses and Fees**. Seller shall pay all escrow fees. Any documentary tax or real property transfer tax arising out of the conveyance of the Property shall be borne by Seller, if applicable. Any other closing expenses, fees and charges shall be paid for by Seller.

15. **Notices**. All notices pertaining to this Agreement shall be in writing delivered to the parties hereto by facsimile transmission, personally by hand, courier service or Express Mail, or by first class mail, postage prepared, at the addresses set forth in Recital A. All notices shall be deemed given: (a) if sent by mail, when deposited in the mail, first class postage prepared, addressed to the party to be notified; (b) if delivered by hand, courier service or Express Mail, when delivered; or (c) if transmitted by facsimile, when transmitted. The parties may, by notice as provided above, designate a different address to which notice shall be given.

16. **Remedies Upon Default**. In the event Buyer or Seller defaults in the performance of any of their respective obligations under this Agreement, Seller or Buyer shall, in addition to any and all other remedies provided in this Agreement or by law or equity have the right of specific performance against the defaulting party.

17. **No Broker's Commission**. Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. Each party further represents that it has not and will not pay or receive a broker's commission or finders' fee for this transaction. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party on account of whose conduct the claim is asserted will hold the other party harmless from said claim.

18. **Time of the Essence; Dates**. Time is of the essence to this Agreement. In the event that any date specified in this Agreement falls on Saturday, Sunday or a public holiday, such date shall be deemed to be the succeeding day on which the public agencies and major banks are open for business.

19. **Binding on Successors**. Subject to approval by the Board of Land and Natural Resources which approval is at the Board's sole discretion, this Agreement shall be binding not only upon the parties but also upon their heirs, personal representatives, assigns and other successors in interest.

20. **Additional Documents**. Seller and Buyer agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

21. **Additional Documents to be Provided by Seller to Buyer**. Seller agrees to provide the following documents to Buyer prior to the Close of Escrow.

(a) Resolution. A certified resolution of the Board of Directors of Seller authorizing the transaction contemplated by this Agreement, the execution, delivery, and performance of this Agreement, any other obligation of Seller contemplated by this Agreement, and authorizing the person who will sign this Agreement to do so on behalf of Seller.

(b) Certificate of Good Standing. A certificate of good standing of Seller certified by the proper governmental authority in the State of California.

22. **Assignment**. Buyer may not assign its interests under this Agreement without the written consent of Seller.

23. **Entire Agreement; Modification; Waiver**. This Agreement constitutes the entire agreement between Buyer and Seller pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver and agreeable to both parties.

24. **Counterparts**. This Agreement may be executed in counterparts; each of which shall be deemed an original and which together shall constitute one and the same agreement.

25. **Severability**. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

26. **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of Hawaii.

27. **Survival of Close of Escrow**. All representations, warranties, covenants, conditions, agreements and other obligations set forth in this Agreement shall survive the Close of Escrow and the recordation of the Warranty Deed and shall not merge therein unless specifically stated otherwise in this Agreement.

IN WITNESS of the foregoing provisions the parties have signed this Agreement below:

SELLER:	BUYER:
THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation By: _____ _____ Title: _____ Date: _____, 2007	**STATE OF HAWAII** By: _____ Chairperson Board of Land and Natural Resources Date: _____, 2007
APPROVED AS TO FORM: _____ Deputy Attorney General Date: _____, 2007	

Exhibit A

Legal Description of Property

Exhibit B

Map of Property

Exhibit C

List of Property Information

Exhibit D

Form of Warranty Deed