



STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
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Issuance of Cert(s)



59 3/6 DML
B-32174190

/s/ NICKI ANN THOMPSON
ASSISTANT REGISTRAR

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (X) Pickup () To:

CITY AND COUNTY OF HONOLULU
ATTN MR DOUGLAS S CHIN
530 SOUTH KING STREET, ROOM 306
HONOLULU HI 96813

TGOH: 201205100 -5
TGES: T2-101-0241
BARBARA PAULO

3

TMKS: (1) 7-1-001:008, -025 and -026

Total No. of Pages: 59

**GRANT OF CONSERVATION EASEMENT
(For Agricultural Preservation)**

This Grant of Conservation Easement (For Agricultural Preservation) ("Easement") is made by and between the following parties and relates to the Property described herein.

Grantor:	The Trust for Public Land ("Grantor"), a California nonprofit public benefit corporation
Grantee:	City and County of Honolulu ("Grantee"), a Hawai'i municipal corporation
Affected Land:	Those certain parcels of land in the City and County of Honolulu, Island of Oahu, Hawai'i, bearing TMKS: (1) 7-1-001:026, 025, and 008 (the "Property")

RECITALS

I. STRUCTURE OF THIS CONSERVATION EASEMENT AND INITIAL DEFINITIONS

- A. This Easement includes three main subdivisions: (1) The *Recitals* provide a general description of the Property, the surrounding area, the existing zoning and other land use rights and restrictions affecting the Property, and the Agricultural Values (defined in the Glossary and in the Recitals) to

be protected by this Easement. (2) The *Covenants and Restrictions* describe the rights and obligations of the Grantor and the Grantee, (3) The *Exhibits* identify the Property and the Baseline Documents, defined in the Glossary.

- B. The Grantor is referred to in this Easement as "*the Grantor*". The Grantee is referred to in this Easement as "*the Grantee*".
- C. Other capitalized terms used in this Easement are either defined when they first appear in this Easement or may be found in the Glossary, located in Section XI of the Covenants and Restrictions.

II. IDENTIFICATION OF THE PROPERTY AND ITS AGRICULTURAL VALUES

- A. General Property Location and Description. The Property affected by this Easement consists of approximately 511 acres, is located in Central O'ahu, and is described and identified in **Exhibit A**, and incorporated herein by reference. Property improvements within the Property are described in attached **Exhibit A-1**. The Property excludes the approximately 4.415-acre parcel surrounding Lot 1-B-1-B upon which the Kūkaniloko birthing stones are located, which parcel was condemned by the State of Hawai'i in 1992, and is more fully described on **Exhibit A-2** attached hereto (collectively, the "Kūkaniloko Buffer Property").
- B. Importance of Property for Agricultural Preservation. The U.S. Department of Agriculture's Natural Resources Conservation Service's Web Soil Survey (WSS), which provides soil data and information produced by the National Cooperative Soil Survey, identifies the Property as Unique Farmland (if irrigated).
- C. Cultural Significance of the Property. The Property surrounds the Kūkaniloko birthing stones, one of the most important cultural sites in Hawai'i, listed in the State and National Registers of Historic Places. The overall significance of Kūkaniloko extends beyond the immediate location of the birthing stones; the Property is located at the midway point between the highest peak of the Waianae range and the highest point of the Ko'olau range on the central plain of O'ahu and in ancient times was used, in part, as a royal center that included kauhale for chiefs and commoners, agricultural fields and associated features.
- D. Army Mission Activities. The U.S. Department of the Army (the "Army") has a third party contingent interest in the conservation of the Agricultural Values, and has determined that this Easement will serve a public purpose. The Army has determined that the preservation of Agricultural Values will minimize the likelihood of land use and development of the Property that could adversely impact the training, testing and operations at the nearby U.S. Army Garrison Hawai'i (collectively, the "Military Mission")

and that the perpetual protection and enforcement of these values will support the Military Mission.

III. DESCRIPTION OF THE PROPERTY AND SURROUNDINGS

History of Land Uses on the Property and Surrounding Areas. The Property has been used for pineapple cultivation by the Estate of George Galbraith ("Seller") or Seller's predecessors or their respective lessees since at least 1944, if not earlier. Prior to that, the Property was used for other agricultural purposes, including grazing. From ancient times through the end of the 18th century, the Property and the surrounding area was renowned as a royal center, including Kūkaniloko, the birthing place of many notable and high ranking chiefs. The town of Wahiawā borders the Property's southern boundary and experienced significant residential suburban growth in the 20th century. The Property's northern, eastern, and western boundaries are located adjacent to other land associated with Seller, with a similar property use history. The Property's southwestern corner lies near the U.S. Army Garrison Hawai'i, which has also grown rapidly in the 20th century.

IV. CURRENT LAND USE LAWS.

As of the date hereof:

- A. Hawai'i State Land Use District. All of the approximately 511 acres of the Property are located in the "Agricultural" State Land Use District, as defined by Hawai'i Revised Statutes ("HRS") Chapter 205.
- B. Hawai'i Coastal Zone Management Act. The Property is not located within the Special Management Area, as defined by the Hawai'i Coastal Zone Management Act ("CZMA"), HRS Chapter 205A.
- C. Community Plans. The Property lies within the Central O'ahu Sustainable Community Development Plan area (December 2002) (the "Plan").
- D. County Zoning. The Property is zoned "AG-1" ("restricted") under the Honolulu Land Use Ordinance ("LUO").

V. FUNDING SOURCES FOR PURCHASE OF THIS EASEMENT

Funding for the purchase of this Easement comes, in part, from the Clean Water Natural Lands Fund ("CWNLF"), established by City and County of Honolulu Ordinance 07-18. The purpose of CWNLF includes acquiring real estate interests for land conservation in the City and County of Honolulu for, among other purposes, the preservation of agricultural lands and the preservation of historic or culturally important land areas and sites. Grantee is providing to Grantor TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) from CWNLF funds in connection with the acquisition of the Easement. Funding for the purchase of the Property and this Easement also comes from the Army through Cooperative Agreement (W911SR-05-2-001), between Grantor and the Army (the "Cooperative Agreement"), in accordance with the authorities codified at 10 U.S.C. §2684a which authorizes the Army to enter into agreements to protect the

Military Mission of the U.S. Army Garrison Hawai'i from encroachment by incompatible development and to conserve property for agricultural purposes. The parties intend the Army to be a third party beneficiary to this Easement. The parties do not intend, by reference in this Recital, to incorporate in this Easement the specific terms of the Cooperative Agreement, which are binding only between Grantor and the Army.

VI. INTENT TO PROTECT AGRICULTURAL VALUES OF PROPERTY FOR AGRICULTURAL PRODUCTION

- A.** The Property possesses significant values worthy of being conserved, specifically the preservation and protection of agricultural resources, arable soils and productive agricultural lands, which have been identified as Unique Farmland and have not been lost to development; and which may (at Grantor's option) be utilized in a culturally sensitive manner for agricultural production (collectively, the "Agricultural Values"). Agriculture is a land use that is generally more compatible with the Military Mission than other forms of development in the location of the Property.
- B.** Grantor believes that with the intelligent and careful use of a conservation easement, the Agricultural Values of the Property can be protected in a manner that promotes agricultural production and also permits Grantor's continuing ownership, use and enjoyment of the Property, including without limitation, the stewardship and preservation of the cultural significance of the Property.
- C.** Grantor intends to convey to Grantee an easement to take actions to preserve and protect the Agricultural Values of the Property as set forth herein.
- D.** Grantee represents that HRS Chapter 198 provides that public bodies, such as Grantee, may acquire and hold conservation easements by purchase, agreement, donation, devise or bequest.
- E.** Grantor and Grantee (i) recognize the Agricultural Values of the Property, and (ii) concur in taking actions to preserve and protect in perpetuity the Agricultural Values of the Property through the use of restrictions on the Property, including, without limitation, the transfer from Grantor to Grantee of certain rights for the preservation and protection of the Agricultural Values of the Property as fully set forth below.

NOW, THEREFORE, in consideration of TEN AND NO/100 DOLLARS and other good and valuable consideration, the covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Grantor, and the above and mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Hawai'i, including HRS Chapter 198, Grantor hereby voluntarily grants and conveys to Grantee and its successors and permitted assignees this Easement in perpetuity over the Property in accordance with the terms and conditions set forth below. Grantor declares that the

Property shall be held, mortgaged, encumbered, transferred, sold, conveyed, used, and occupied subject to the covenants, conditions, restrictions, and easements set forth below, which covenants, conditions, restrictions, and easements shall be deemed to run with the land in perpetuity.

COVENANTS AND RESTRICTIONS

I. PURPOSE

The "Purpose" of this Easement is to preserve and protect in perpetuity the Agricultural Values identified in Section VI.A of the Recitals. The parties hereto acknowledge and agree that to the extent Grantor shall engage in activities on the Property, no activity which significantly impairs the Agricultural Values will be permitted.

II. RIGHTS OF GRANTOR

Except as prohibited or restricted by the provisions in Section IV of the Covenants and Restrictions of this Easement or by applicable law, Grantor reserves all the following customary rights and privileges of ownership not granted to Grantee, provided such rights and privileges are not inconsistent with the Purpose of this Easement and are exercised in a manner and intensity that does not significantly impair the Agricultural Values, including, but not limited to:

- A. Alienation and Use. The right to (i) sell, lease, license, encumber and devise the Property and to lease or license less than all of the Property, so long as such lease of less than all of the Property constitutes an Agriculture Land Lease/License or Agriculture Facilities Lease/License, and provided that this Easement shall be referenced in every lease as burdening the Property or portion of the Property covered by the lease/license; (ii) construct, maintain, renovate, use, demolish or remove any other structures as permitted by this Easement; (iii) maintain and use the unimproved portions of the Property existing at the time of this Easement; (iv) complete the recordation of the subdivision of the Kūkaniloko Buffer Property and conveyances and transfers to and/or from the State of Hawai'i and/ or its designee; and (v) all other incidents of ownership of real property that are not inconsistent with the Purpose of this Easement.
- B. Privacy and Quiet Enjoyment. The right of privacy and the right to deny access to other persons, except where expressly permitted to Grantee under the terms of this Easement, as well as the right to all manner of access to and personal use and enjoyment of the Property, including, without limitation, the right to undertake activities reasonably necessary to carry out the rights reserved to Grantor. Such rights shall include the ability to secure the Property and/or any portion thereof, including, without limitation, by installing security devices, erecting fencing and deploying guard animals, all in accordance with applicable law.

- C. Guests and Invitees. The right to permit or invite others to engage in any use of, or activity on, the Property permitted by this Easement and not inconsistent with the Purpose of this Easement.
- D. Agricultural Use. The right to use the Property for agricultural activities and uses that comply with federal, state and local laws and regulations and that do not significantly impair the Agricultural Values of the Property, including, but not limited to, the following:
1. Cultivation. Cultivation, harvesting and rotation of crops, including but not limited to silviculture, floriculture, horticulture, forestry and other types of agricultural crop cultivation;
 2. Animal Husbandry. Propagation of, raising of, and grazing, each for agricultural purposes, of livestock, including but not limited to cattle, dairy cows, sheep, goats, game, poultry, bees, fish, or other animal or aquatic life raised primarily for its food value;
 3. Farm Product Storage and Preparation. The preparation, storing, processing and curing of agricultural products for off-site sales using raw farm products, including the construction of structures supporting such activities;
 4. Fences, Drainage and Irrigation Systems. The right to construct and maintain fences and drainage and irrigation transmission systems, including pipes, filtration systems, and related irrigation and drainage components necessary or desirable to support the Agricultural Values of the Property. The right to construct, install, maintain and reconstruct wells, reservoirs, ponds, ditches, catchment systems, water tanks, or water transmission lines and systems necessary or desirable to support the Agricultural Values of the Property;
 5. Agricultural Facilities. The right to construct, repair, remodel, maintain, and use agricultural facilities and structures that are in furtherance of, and reasonably necessary in connection with, the agricultural activities on the Property including, but not limited to: barns; facilities associated with animal husbandry; paddocks; slaughterhouses; vehicle, tool and equipment storage areas; workshops; greenhouses; hothouses; shadehouses; mills; agricultural employee parking; agricultural employee bathroom facilities and security or guard facilities; and
 6. Accessory Structures and Improvements. The right to construct, repair, remodel, maintain, and use accessory structures and improvements that are customarily appurtenant to farm structures on the Island of O'ahu, including, but not limited to, septic tanks and

leach fields, utilities and alternative energy devices that provide power to the agricultural structures or activities on the Property.

- E. Utility Services and Septic Systems. Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services to the improvements permitted herein may be installed, maintained, repaired, removed, relocated and replaced, and Grantor may grant easements over and under the Property for such purposes. Septic or other underground sanitary systems serving the improvements permitted by this Easement may be installed, maintained, repaired or improved.
- F. Educational or Interpretive Structures and Signs. As otherwise permitted by law, the right to construct and maintain educational or interpretive signs and structures regarding agricultural or cultural resources on the Property.
- G. Native Hawaiian Cultural Activities and Practices. The right to conduct cultural activities and practices including, but not limited to, experiential and activity-based education and training in resource stewardship and community economic development.
- H. Motorized Vehicles and Equipment. The right to use motorized vehicles and equipment for access, land management, agricultural activities, and/or other activities permitted under this Easement.
- I. Waste. To the extent permitted by law, the right to compost, burn, or store vegetative waste generated by permitted activities and uses and the right to store for removal at reasonable intervals normal and customary waste generated on the Property by permitted activities and uses.
- J. Signs. The right to post all or a portion of the Property against trespassing and hunting and erect identification and warning signs.
- K. Access to Farming and Cultural Sites. The right to establish reasonable rights-of-way, including providing roadway, pedestrian and utility access, to permitted structures and facilities, crops or growing areas on the Property, areas to be used by cultural practitioners and to culturally significant sites, and to cut trees, grass, and other vegetation to provide such access and rights-of-way. Access made under the provisions of this provision shall be done in a manner so as to create the least possible disturbance to the Agricultural Values of the Property (for example, by creating access along unpaved roads), and in no event shall such improvements exceed legal restrictions or governmental consents.
- L. Emergencies. The right to take any emergency action Grantor reasonably believes necessary to protect human, animal or plant life, cultural or historic resources, or improvements permitted by this Easement on the Property.

- M. Use and Maintenance of Water Sources. The right to use and maintain water sources, water courses and water bodies within the Property.
- N. No Restoration Obligation. Unless otherwise specified below, nothing in this Easement shall require Grantor to take any action to restore the condition of the Property after any act of God or other event over which Grantor had no actual control or no ability to foresee.
- O. Chemical Applications. Subject to compliance with all applicable requirements and laws, agricultural chemicals may be applied to the Property for bona fide agricultural purposes provided that the application of such chemicals does not significantly impair the Agricultural Values of the Property.

III. GOOD FAITH NEGOTIATIONS

Promptly upon the execution of this Agreement, the Grantor and the Grantee agree to negotiate in good faith, and with the concurrence of the Army (which shall not be unreasonably withheld to the extent that the requested activity, structure or use is not inconsistent with the Military Mission), over terms and conditions that may be added to this Agreement by amendment relating to (a) the possible construction of farm dwellings and related infrastructure for use by farming tenants dwelling on the Property, and (b) certain commercial and recreational activities that may be permitted on the Property.

IV. PROHIBITIONS AND OTHER RESTRICTIONS OF OR ON THE PROPERTY

The following activities and uses are prohibited or restricted without the prior consent of Grantee pursuant to Section VI.A of the Covenants and Restrictions and the concurrence of the Army, which shall not be unreasonably withheld to the extent that the requested activity or use is not inconsistent with the Military Mission, unless an exception is expressly provided:

- A. Impervious Surfaces. The aggregate Impervious Surfaces on the Property shall not exceed six percent (6%) of the total area of the Property.
- B. Subdivision. The legal division, subdivision or partitioning of any of the Property (including condominium regime) for a purpose that is inconsistent with the Purpose of this Easement; except that, Grantor may enter into Agricultural Land Leases/Licenses and Agricultural Facilities Leases/Licenses and take any and all actions necessary to effectuate such Agriculture Land Leases/Licenses or Agriculture Facilities Leases/Licenses (including subdivision), and may subdivide or allow the subdivision of the Property as may be necessary to convey the Kūkaniloko Buffer Property to the State or its designee pursuant to the 1982 condemnation order relating to the Kūkaniloko Property.
- C. Dwellings. The construction of any type of dwelling or use of a structure as a dwelling not expressly agreed upon by the parties pursuant to Section III of the Covenants and Restrictions.

- D. Structures and Facilities.** The construction of any structure or facility not expressly permitted by Section II of the Covenants and Restrictions or not expressly agreed upon by the parties pursuant to Section III of the Covenants and Restrictions.
- E. Commercial/Retail Activities.** Conducting any commercial or retail activities on the Property, other than the operation of commercial agricultural enterprises and other commercial or retail activities expressly agreed upon by the parties pursuant to Section III of the Covenants and Restrictions, is prohibited. Agricultural tours, farms stands and other commercial or retail activities on the Property which may be accessory to commercial agricultural enterprises are also prohibited unless expressly agreed upon by the parties pursuant to Section III of the Covenants and Restrictions. Notwithstanding the foregoing, it shall not be deemed a commercial or retail activity for Grantor to charge fees to the public for use of any educational or interpretive facilities it may develop pursuant to the terms of this Easement.
- F. Height Restrictions.** Grantor may not build or install any kind of structure exceeding 100 feet in height anywhere on the Property.
- G. Uses and Activities Inconsistent with the Purpose of the Easement.** Any use of, or activity on, the Property inconsistent with the Purpose of this Easement is prohibited except as otherwise allowed by this Easement, and Grantor acknowledges and agrees that it will not conduct, engage in, or permit any such use or activity without the prior consent of Grantee. Without limiting the generality of the foregoing, the following uses of, or activities on, the Property, though not an exhaustive list of inconsistent uses or activities, are inconsistent with the purposes of this Easement and shall be prohibited, except where expressly reserved as unconditional or conditional rights of Grantor as established in Section II of the Covenants and Restrictions of this Easement:
- 1. Alteration of Land.** The excavation or removal from the Property of soil, sand, gravel, rock, peat, or sod, except for the alteration of land necessary in connection with uses and activities permitted by this Easement including, without limitation, the construction and maintenance of permitted structures or improvements associated with the uses and activities permitted by this Easement;
 - 2. Erosion or Water Pollution.** Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters except to the extent permitted by law;
 - 3. Waste Disposal.** The disposal or permanent storage of rubbish, garbage, debris, unregistered vehicles, abandoned equipment or

parts thereof or, except as may be done in connection with uses and activities permitted under this Easement and in compliance with applicable law, Hazardous Material on the Property;

4. Mining. The exploration for, or development and extraction of, minerals, hydrocarbons and geothermal resources on, below or through the surface of the Property; and
5. Water Rights. Grantor shall not transfer, encumber, sell or lease any Water Rights separately from the Property, or otherwise separate any Water Rights from the Property without the approval of Grantee pursuant to Section VI of the Covenants and Restrictions; provided, however, that no approval of Grantee shall be required under this paragraph for (i) Grantor's transfer, sale or lease of Water Rights to lessees, tenants, licensees and other users of the Property or any portions thereof; (ii) the use of Water Rights between any portions of the Property; or (iii) Grantor's obtaining water and Water Rights from other sources.

H. Hazardous Materials. The Release of Hazardous Materials onto the Property in violation of applicable law.

V. AFFIRMATIVE RIGHTS CONVEYED TO GRANTEE

To accomplish the Purpose of this Easement the following rights are conveyed to Grantee. These rights are to be carried out by Grantee as the primary party charged with the responsibility to monitor and enforce this Easement, and any separate or independent action by the Army is expressly limited by the restrictions set forth in Section V.I. of the Covenants and restrictions of this Easement.

- A. Intentionally Deleted.
- B. Access and Reporting. Subject to the limitations set forth below, Grantee or its agents have the right to enter the Property for the purpose of monitoring compliance with this Easement and for enforcement:
 1. Annual Monitoring. Upon fifteen (15) days prior Notice to Grantor (in the manner set forth set forth in Section VI.D), and without unreasonably interfering with the use of or access to the Property by Grantor or anyone claiming by or through Grantor (including, without limitation, a tenant, licensee, or invitee), Grantee has the right to enter upon the Property, but not including building interiors, at reasonable times and in a reasonable manner in order to monitor Grantor's compliance with, and otherwise enforce the terms of, this Easement; provided that in the absence of evidence which gives Grantee a reasonable basis to believe there has been a violation of the provisions of this Easement (which evidence shall be made available to Grantor at the time of such Notice and request to enter

the Property), such entry shall not occur more often than once per year. Grantee shall be solely responsible for any damage, injury or loss, including, without limitation, injury to person (including death) and damage to real or personal property, resulting from, and to the extent caused by, Grantee's entry onto the Property and activities thereon at Grantee's expense. Without limiting the foregoing, Grantee shall promptly restore any property damaged by its entry and activities hereunder to its pre-damaged condition at Grantee's sole expense.

2. *Reporting.* On or before the 20th day of the seventh month of each year, the Grantor shall use best efforts to deliver a report to Grantee containing the following information within its possession covering the previous calendar year:
 - i. Number of on-going and new leases.
 - ii. Number of acres leased and cultivated.
 - iii. General description of crops and animals raised on the land.
 - iv. Average number of hired farm workers per farm.
 - v. Gross farm sales per farm as of 12/31.
3. *Emergency Entry.* Where Grantee has a reasonable belief that there is a significant and imminent threat to any of the Agricultural Values, Grantee has the right to enter the Property, but not including building interiors, to monitor the Property in accordance with the terms of Section V.B.1 above. Where time permits, Grantee shall make good faith efforts to provide at least twenty-four hours' Notice to Grantor (and if twenty-four hours' Notice is not possible, then the maximum of amount of Notice possible under the circumstances) in the manner set forth in Section VI.D of the Covenants and Restrictions for emergencies and shall, in all events, notify Grantor as soon as reasonably possible after any entry onto the Property for an imminent threat.

C. Enforcement. Grantee has the right to enforce this Easement and the covenants and restrictions herein, including, but not limited to, the right to enjoin any use of, or activity on, the Property that is in violation of the terms of this Easement, and to require the restoration of such areas or features of the Property as may be damaged by uses or activities inconsistent with the provisions of this Easement.

1. Disputes. Grantor and Grantee agree that they shall endeavor to resolve all disputes arising under or with respect to this Easement first through mediation by a single neutral mediator administered by

Dispute Prevention & Resolution, Inc. ("DPR") or similar neutral professional dispute resolution organization acceptable to the parties; provided, however, that the foregoing shall not preclude a party from seeking temporary or preliminary injunctive relief in the First Circuit Court of the State of Hawai'i without mediation should circumstances require. The mediation shall take place in Honolulu, Hawai'i. If mediation does not resolve the dispute(s), the parties agree that the dispute(s) shall be resolved by the First Circuit Court of the State of Hawai'i.

2. Notice of Violation, Corrective Action, Opportunity to Cure. If Grantee determines that the Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written Notice to Grantor (in the manner set forth in Section VI.D of the Covenants and Restrictions) of such violation or threatened violation. In the case of an actual violation, Grantee may demand corrective action sufficient to cure the violation (within the permitted time periods set forth in Section V.C.3 of the Covenants and Restrictions) and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee. In the case of a threatened violation, Grantee's sole right shall be to provide a Notice with reasonable detail as to the threatened violation and a demand that such threatened violation be avoided.
 3. Grantor's Failure to Cure. Grantee may commence an action, or mediation, as appropriate, pursuant to this Section V of the Covenants and Restrictions with respect to actual violations as provided in this Section V.C if Grantor:
 - i. Fails to cure a violation of Section V.B.2 of the Covenants and Restrictions within one hundred twenty (120) days after receipt of Notice thereof from Grantee;
 - ii. Fails to cure any other violation within sixty (60) days after receipt of Notice thereof from Grantee; or
 - iii. Under circumstances where the violation cannot reasonably be cured within the sixty-day (60) period, fails to begin curing such violation within the sixty (60) day period and fails to continue diligently to cure such violation until finally cured.
- D. Remedies; Damages. Grantee's rights and remedies identified in this Section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

1. If Grantee and Grantor are not able to resolve Grantee's claim of a violation of this Agreement through mediation, Grantee may bring an action at law or in equity to enforce the terms of this Easement:
 - i. To enjoin the violation by an award of temporary, preliminary or permanent injunctive relief; and
 - ii. To require the restoration of the Property to the condition that existed prior to any such injury.
 2. Damages. Grantee shall be entitled to recover actual damages for violation of the terms of this Easement or injury to any Agricultural Values protected by this Easement to the extent such damages may be ascertained with reasonable certainty. Without limiting or enlarging Grantor's liability in any way, Grantee may, in its sole discretion, apply any damages recovered to the cost of undertaking corrective or restoration action on the Property. In no event shall Grantee be entitled to consequential or punitive damages as a result of a violation of this Easement.
 3. No Bond Required. Any action for injunctive relief or damages may be taken without Grantee being required to post bond or provide other security except as otherwise required by applicable law.
- E. Grantee's Forbearance. Failure by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of any other terms of this Easement or of any of Grantee's other rights under this Easement. No delay or omission by Grantees in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
- F. Acts Beyond Grantor's Control; Emergency Conditions. Nothing contained in this Easement shall be construed to entitle Grantee to assert a claim against Grantor to abate, correct, or restore any condition on the Property or to recover damages for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or for acts of trespassers or other third parties beyond Grantor's reasonable control, governmental regulation, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes or to protect bona fide public health or safety in an emergency situation.
- G. Rights of the U.S. Army. If the Grantee fails to enforce any term of this Easement or permits the Property to be used or developed in a manner inconsistent with the Purpose, then:

1. The Secretary of Army shall give the Grantor and Grantee written notice that the Grantee has failed to enforce a term of this Easement or has permitted the Property to be used or developed in a manner inconsistent with the Purpose and shall demand the Grantee to commence remediating action within a reasonable period of time.
2. If Grantee does not commence remediating action within a reasonable period of time, the Secretary of the Army, through his or her authorized representative, and as a third party beneficiary of the Easement, shall have the right to enforce the Easement using the procedures set forth in Sections V.C. and V.D of the Covenants and Restrictions.
3. If the Army is unable to enforce the Easement using the procedures set forth in Sections V.C. and V.D of the Covenants and Restrictions, it shall have the right to cause the Grantee to transfer its right and interest in and to this Easement either to an entity approved by the Army, which approval shall not be unreasonably withheld, or to the United States, at the sole discretion of the Army. Under 10 U.S.C. §2684a(d)(5) the Secretary is required to limit such transfer request to the minimum property or interests necessary to ensure that the Property concerned is developed and used in a manner appropriate for the purposes of 10 U.S.C. §2684a.

In the event the United States Government ceases to own or control the real property on which U.S. Garrison Hawai'i is located and the Military Mission completely ceases, the Army's rights under this Easement shall terminate.

VI. APPROVAL; BREACH; COMPLIANCE CERTIFICATES

- A. Approval by Grantee. In the event that Grantor desires or requires Grantee's approval under this Easement for activities and/or uses at the Property, Grantor shall follow the procedures set forth in this Section VI.A.
 1. Approval Procedures. Grantor shall request approval from Grantee in writing. The request for approval shall describe in detail the nature, scope, location, timetable, its conformity with this Easement, and, when applicable, evidence of conformity with existing land use regulations, and any other material aspect of the proposed activity. Delivery of the request shall conform to the service methods set forth in Section VI.D. Grantee shall have thirty days (30) from receipt of the request in which to approve, disapprove, or approve subject to modification, the request. In the case of withholding of approval, Grantee shall notify Grantor in writing with reasonable specificity of the reasons for withholding of approval, and the conditions, if any, on which approval might

otherwise be given. If Grantor does not receive a written response from Grantee for any approval requested, other than a request for approval of an activity, structure or use expressly prohibited under Section IV of the Covenants and Restrictions (each, a "Section 4 Request"), within thirty (30) days of its request, Grantee shall be deemed to have unconditionally approved Grantor's request, provided that the Grantor and Grantee have the option to waive the thirty (30) day deadline to further discuss the requested approval. With respect to a Section 4 Request, if Grantee fails to respond within such 30-day period, Grantor shall have the right to further request a response from Grantee by telephone conference. If Grantor does not receive a written response from Grantee for the Section 4 Request within fifteen (15) days after such telephone request, Grantee shall be deemed in default under this Easement.

2. *Standard of Approval; Prohibited Activities, Structures, Uses.* Grantee may withhold approval for any activity, structure or use, set forth in Section IV of the Covenants and Restrictions in its sole discretion; provided, however that the foregoing shall in no way diminish or limit the Grantee's obligations to negotiate in good faith with respect to the matters set forth in Section III of the Covenants and Restrictions.
3. *Standard of Approval; Other Activates, Structures, Uses.* Grantee shall not unreasonably withhold approval of a proposed use or activity requiring approval under this Easement. It shall be reasonable for Grantee to withhold approval where the proposed activity or use will significantly impair the Agricultural Values or the proposed activity or use is not consistent with the Purpose of this Easement, among other reasons.

B. Breach of Approval Provisions. Engaging in any activity for which approval is required by this Section VI and its subsections but is not obtained shall be a material breach of this Easement and shall entitle Grantee to such rights or remedies as may be available under Section V of the Covenants and Restrictions. Notwithstanding the foregoing, Grantee may, at its sole option, permit Grantor to cure the breach by showing despite lack of conformity with this Easement or the laws, that the action was justified because of an emergency.

C. Compliance Certificates. Grantee, or its successor, as the primary enforcer of this Easement shall, within thirty (30) days of a request by Grantor, execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, that certifies Grantor's compliance or lack thereof with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement. Such certificate shall be binding upon Grantee. Such

certification shall be limited to the condition of the Property as of the most recent monitoring visit carried out by Grantee and its successors and permitted assignors. If Grantor requests more current documentation, Grantee shall conduct a monitoring visit in accordance with Section V.B.1 of the Covenants and Restrictions, at Grantor's expense, within thirty (30) days of receipt of Grantor's written request.

- D. Notices and Responses. Any notice, demand, request, consent, approval, or communication (collectively "Notice") that either party desires or is required to give to the other shall be in accordance with the following procedures:
1. In ordinary circumstances, the Notice shall be in writing and either delivered personally or sent by certified mail, return receipt requested, postage prepaid, addressed to the appropriate party, at the appropriate address set forth below in this Section. Where Notice is served by certified mail, the receipt of Notice shall be considered to have occurred upon the elapse of three (3) days after mailing. The serving party may also attempt to, in addition, serve Notice pursuant to the "emergency circumstances" provisions set forth immediately below.
 2. In emergency circumstances (where Notice needs to occur in 48 hours or less), the party shall make best efforts to deliver the Notice in writing and either deliver it personally, or by email or by facsimile transmission. Where Notice is served by email or fax, the party serving the Notice shall, in addition, make concurrent attempts to notify the other party by telephone of the Notice, and attempt to receive oral or written confirmation from the party or the party's attorney that the Notice has been received.
 3. Notices may also be served by any other method mutually agreed to between the parties.
 4. Notices shall be served at the following addresses or to such other address as any of the parties from time to time shall designate by written notices to the other:

To Grantor: The Trust for Public Land
101 Montgomery Street
9th Floor
San Francisco, CA 94104
Attn: Tily Shue
Tel: (415) 495-5660
Email: tily.shue@tpl.org

To Grantee: City and County of Honolulu

Office of the Managing Director
Attn: Managing Director
530 South King Street, Room 306
Honolulu, HI 96813
Tel.: (808) 768-6634
Fax: (808) 768-4242

With a copy to: Office of the Corporation Counsel
Attn: Corporation Counsel
530 South King Street, Room 110
Honolulu, HI 96813
Tel: (808) 768-5193
Fax: (808) 768-5105
E-mail: cor@honolulu.gov

- E. Army Concurrence. In the event that Grantor requires the Army's concurrence with respect to the matters described in Section III above or the activities and uses restricted under Section IV above, Grantor shall follow the procedures set forth in this Section VI.E.
1. Procedure. Grantor shall request concurrence from Army in writing. The request for concurrence shall describe in detail the nature, scope, location, timetable, its conformity with this Easement, and when applicable, evidence of conformity with existing land use regulations, and any other material aspect of the proposed activity. Delivery of the request shall be made to the Office of the Staff Judge Advocate at the U.S. Army Garrison Hawai'i. The Army shall have thirty days (30) from receipt of the request in which to concur, non-concur, or concur subject to modification, the request. In the case of non-concurrence, the Army shall notify Grantor in writing with reasonable specificity of the reasons for non-concurrence, and the conditions, if any, on which concurrence might otherwise be given. If Grantor does not receive a written response from the Army for any request, other than a request for concurrence to an activity or use that is reasonably foreseeable as inconsistent with the Military Mission (each a "Mission Sensitive Request"), within thirty (30) days of its request, the Army shall be deemed to have unconditionally approved Grantor's request, provided that the Grantor and the Army have the option to waive the thirty (30) day deadline to further discuss the request. With respect to a Mission Sensitive Request, if the Army fails to respond within such 30-day period, Grantor shall have the right to further request a response from the Army by telephone conference. If Grantor does not receive a written response from the Army for the Mission Sensitive Request within fifteen (15) days after such telephone request, the Army shall be deemed in default under this Easement.

2. Standard. The Army shall not unreasonably withhold concurrence of a proposed use or activity requiring its concurrence under this Easement to the extent that the requested activity or use is not inconsistent with the Military Mission.

VII. LIABILITIES, LEGAL AND ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION.

- A. Waiver of Recovery; Compliance with Laws. Grantor and Grantee waive their right to recover for loss or damage to the extent that the loss or damage is covered by proceeds of the injured party's insurance. This waiver applies whether or not the loss is due to the negligent acts or omissions of Grantor or Grantee. Grantor remains solely responsible for obtaining any applicable governmental permits and approval for any activity or use permitted by this Easement, and any such activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantee shall comply with all applicable federal, state and local laws, regulations and requirements with regard to its entry onto and activities on the Property provided for in this Easement.
- B. Intentionally Deleted.
- C. Environmental Warranty and Remediation.
 1. Grantor warrants that Grantor shall remain in compliance with all applicable Environmental Laws with respect to the Property. Grantor warrants that it has not received any written notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property. Except as set forth in the Baseline Documentation, Grantor warrants that it has no actual knowledge of a release or threatened release of any Hazardous Materials or, at, beneath or from the Property exceeding regulatory limits.
 2. If at any time, there occurs a Release in or on the Property of a Hazardous Material, Grantor agrees to take all steps necessary to assure its containment and remediation, or to require any entity causing such release to take all necessary steps, including any cleanup that may be required, unless the Release was caused by Grantee or the Army.
- D. Control. Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, of any of Grantor's activities on the Property, or otherwise to become an "operator" with respect to the

Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA") or the Environmental Laws of the State.

- E. Grantor's Indemnification. To the extent permitted by law, Grantor shall be responsible for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and causes of action or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which Grantee may be subject or incur which arise from Grantor's breach of its representations, warranties, covenants and agreements contained in this Easement (collectively, "Losses"); provided, however, that Grantor shall pay for Losses provided that funds are appropriated and allotted to Grantor by the Hawai'i State Legislature for that purpose (to the extent applicable to Grantor or its successors as a body corporate and agency of the State of Hawai'i).
- F. Grantee's Indemnification. To the extent permitted by law, Grantee shall be responsible for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and causes of action or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which Grantor may be subject or incur which arise from Grantee's breach of its covenants and agreements contained in this Easement.

VIII. TRANSFER; AMENDMENT; EXTINGUISHMENT; CONDEMNATION

- A. Transfer of Property. This Easement shall be filed in the Office of the Assistant Registrar of the Land Court and shall be referenced in any deed or other legal instrument by which Grantor transfers any interest in all or a portion of the Property, including, without limitation, Agricultural Land Leases/Licenses and Agricultural Facilities Leases/Licenses.
- B. Limitations on Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may by written agreement jointly amend this Easement. Any such amendment shall be recorded in the State of Hawai'i Bureau of Conveyances (if Regular System) or with the Assistant Registrar of the Land Court of the State of Hawai'i (if Land Court System). Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment of this Easement.

- C. **Extinguishment.** A court with jurisdiction under this Easement may, if it determines that conditions upon or surrounding the Property, or relating to Grantor or its successors or assigns, have changed so much that it becomes impossible or impractical to fulfill the Purpose of this Easement, extinguish or modify this Easement in accordance with applicable State law. If this Easement is extinguished by judicial proceeding, from and after the judicial proceeding, the Property shall no longer be subject to the terms of this Easement and Grantor may record the judgment or from the judicial proceeding (or notice thereof) with the Bureau of Conveyances or Land Court (as applicable); provided, however, this Easement shall not be released of record until such time as Grantor shall have paid to Grantee the portion of the proceeds from the sale or other disposition of the Property following the judicial proceeding equal to the fair market value of the Easement. The foregoing shall in no way limit a party's right to contest such an action or determination.
- D. **Condemnation.** If all or any part of the Property is proposed to be taken under the power of eminent domain and such taking results in a cancellation of this Easement as to all or a portion of the Property, Grantor shall have the right to join in appropriate proceedings at the time of such proposed taking to recover the full value of its interests in the Property subject to the taking and all damages resulting from the taking. In the event of any such taking, Grantee shall have the right to pursue an award for its interest under this Easement. Each party pursuing a condemnation award shall be responsible for all of the costs and expenses it incurs in connection with such pursuit.

IX. **ASSIGNMENT AND SUCCESSION**

- A. **Assignment.** Subject to the following conditions and with the advance written approval of the Army and the Grantor, Grantee may assign its rights and obligations under this Easement to a qualified organization, as described below:
1. Grantee may assign this Easement only to an organization that is at the time of the assignment authorized to acquire and hold conservation easements under HRS Chapter 198;
 2. The assignment shall be subject to the terms of succession referenced in Section IX.B below;
 3. Grantee assigning its rights shall require the assignee to exercise its rights under the assignment consistent with the Purpose of this Easement and to assume all of Grantee's obligations under this Easement; and

4. Grantee assigning its rights shall obtain Grantor's advance approval of the assignee organization, which approval shall not be unreasonably withheld by Grantor.

B. Succession. If at any time it becomes impossible for Grantee to ensure compliance with the covenants, terms, conditions and restrictions contained in this Easement and Grantee at issue has not named a successor organization, or if Grantee shall cease to exist or to be authorized to acquire and hold conservation easements under HRS Chapter 198, then Grantee's rights and obligations under this Easement shall vest in such organization as a court having jurisdiction under this Easement shall direct, pursuant to the applicable Hawai'i law, and with due regard to the purposes of this Easement and subject to the prior approval of Grantor.

X. GENERAL PROVISIONS

A. Reasonableness Standard. Grantor and Grantee shall follow a reasonableness standard, unless otherwise expressly stated herein, and shall use their best efforts to make any determinations that are necessary or are contemplated to be made by them (either separately or jointly) under this Easement in a timely manner and shall cooperate with one another and shall take all other reasonable action suitable to that end.

B. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Hawai'i.

C. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed to fulfill the Purpose of this Easement and the policy and purpose of HRS Chapter 198. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

D. Severability. If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.

E. No Waiver of City Law, Ordinance, Rules or Regulations. Grantor acknowledges that the execution of this Easement by the City and County of Honolulu does not constitute a waiver by the Grantee of any law, ordinance, rule or regulation enacted and enforced by the Grantee.

F. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Property and supersedes all prior discussions,

negotiations, understandings, or agreements between Grantor and Grantee relating to the Property, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section VIII.B of the Covenants and Restrictions.

- G. Successors and Assigns; Runs with Land. The covenants, terms, rights, conditions and restrictions of this Easement shall be binding upon, and *inure to the benefit of*, the parties to this Easement and their respective successors and assigns.
- H. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer unless expressly assumed by the transferee.
- I. Counterparts. The parties may execute this instrument in two or more counterparts. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- J. Effective Date. Grantor and Grantee intend that the restrictions arising hereunder shall take effect on the date of this Easement being recorded in the State of Hawai'i Bureau of Conveyances (if Regular System) or with the Assistant Registrar of the Land Court of the State of Hawai'i (if Land Court System) after all required signatures have been affixed hereto, and after closing of the transaction contemplated in this Easement.
- K. No Merger. Grantee agrees to take whatever steps are necessary to ensure that merger of the fee and Easement estates does not occur in order to ensure the continued viability of this Easement.

XI. GLOSSARY

The definitions below shall have the same meaning as the reference source, where provided, and in all other cases, shall be given their natural, commonly accepted definitions. Some definitions for other terms used in this Easement are set forth in other parts of the Easement and not included here.

- A. "Agriculture Facilities Lease/License" means a lease or license for agriculture-related activities of a structure or a portion of a structure located within the Property under lease or license.
- B. "Agriculture Land Lease/License" means a lease or license of a portion of the Property where the principal use of the land under lease or license is agriculture.

- C. *"Agricultural Values"* means the significant values worthy of being conserved, specifically the preservation and protection of agricultural resources, arable soils and productive agricultural lands, which have been identified as Unique Farmland and have not been lost to development; and which may (at Grantor's option) be utilized in a culturally sensitive manner for agricultural production.
- D. *"Approval by Grantee"* means the approval required prior to some Grantor actions, as identified in this Easement, subject to the procedures set forth in Section VI.A of the Covenants and Restrictions.
- E. *"Baseline Documents"* means the description of the existing condition and use of the Property set forth in the Baseline Report for OHA Parcels prepared by Townscape, Inc. dated November, 2012, attached as **Exhibit B** and the documents attached thereto and referenced therein, including title report, maps, photographs and assessments of the agricultural resources, which documents provide an accurate description of the condition of the Property and its agricultural and cultural resources on the effective date of this Easement, a copy of which documents are on file with the Grantee and with Grantor.
- F. *"CFR"* means the Code of Federal Regulations, as now enacted or hereinafter amended.
- G. *"County"* means the City and County of Honolulu.
- H. *"Effective Date"* is defined in Section X.J of the Covenants and Restrictions.
- I. *"Environmental Law" or "Environmental Laws"* means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, hazard communication, noise, radioactive material, resource protection and inland wetlands and watercourses, as may now or at any time hereafter be in effect.
- J. *"Grantee,"* and any pronouns used in its place, means the Grantee or Grantees of this Easement.
- K. *"Grantor,"* and any pronouns used in its place, means the person(s) or entity(ies) who hold legal title to the Property.
- L. *"Hazardous Materials"* means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic

chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

- M. "*HRS*" means the Hawai'i Revised Statutes, as now enacted or hereinafter amended.
- N. "*HRS Chapter 198*" means the Hawai'i law governing conservation easements in Hawai'i, currently codified at Chapter 198 of the HRS, or as hereinafter amended, or any successor provision(s) hereinafter applicable.
- O. "*Impervious Surface*" means permanent, non-seasonal roof tops, concrete or asphalt surfaces, including farm dwellings, agricultural buildings (with or without flooring), and other paved areas but specifically excluding paved areas used for drainage, irrigation systems and water storage infrastructure and covered facilities used for agricultural that are not paved beneath the covered areas, such as greenhouses, nurseries and livestock holding pens.
- P. "*LUO*" means the Land Use Ordinance for the City and County of Honolulu in effect on the Effective Date of this Easement, as the same may be amended from time to time.
- Q. "*Notice*" means providing notification by one party to this Easement to another party to this Easement in the manner set forth in Section VI.D of the Covenants and Restrictions.
- R. "*Purpose*" means the purpose of this Easement as defined in Section I of the Covenants and Restrictions.
- S. "*State*" means the State of Hawai'i.
- T. "*Unique Farmland*" means land other than prime farmland that is used for the production of specific high-value food and fiber crops. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. 7 CFR § 1491.3.
- U. "*Water Rights*" means and includes any and all water and water rights, ditches and ditch rights, springs and spring rights, reservoir and storage rights, wells and groundwater rights, and other rights in and to the use of water historically used on or otherwise appurtenant to the Property.

IN WITNESS WHEREOF, the Grantor and Grantee have hereby executed this Easement as of the date first written above, intending to be bound hereby.

GRANTOR:

GRANTEE:

THE TRUST FOR PUBLIC LAND

CITY AND COUNTY OF HONOLULU

By: *Tily Shue*
Name: **TILY SHUE**
Its: **SR. COUNSEL**

By: _____
Name: _____
Its: _____

APPROVED AS TO FORM AND LEGALITY:

Corporation Counsel, City and County of Honolulu

IN WITNESS WHEREOF, the Grantor and Grantee have hereby executed this Easement as of the date first written above, intending to be bound hereby.

GRANTOR:

GRANTEE:

THE TRUST FOR PUBLIC LAND

CITY AND COUNTY OF HONOLULU

By: _____
Name:
Its:

By: Peter B. Curiale
Name: Peter B. Curiale
Its: Mayor

APPROVED AS TO FORM AND LEGALITY:

[Signature]
Corporation Counsel, City and County of Honolulu
Kasha Inoué, Deputy Corporation Counsel

ACKNOWLEDGMENT

State of California
County of San Francisco

On December 3, 2012 before me, Hsiao-Wen Shih,
Notary Public, personally appeared Tily Shue, who
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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

[Handwritten Signature]



(Seal)

NOTARY

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

CSE
(N.P.)

On this 4th day of December, 2012, before me personally appeared Peter B. Carlisle and _____, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that such persons executed such instrument as the free act and deed of such persons and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Signature: Sharon T. Emoto



(or Seal)

Print Name: Sharon T. Emoto
Notary Public, State of Hawai'i
My commission expires: 3/26/15

NOTARIAL CERTIFICATION STATEMENT

Document Identification or Description: Grant of Conservation Easement (For Agricultural Purposes)

Doc. Date: undated

No. of Pages: 60 Jurisdiction: 1st Circuit
(in which notarial act is performed)

Signature of Notary Sharon T. Emoto Date of Notarization and Certification Statement 12/4/12

Printed Name of Notary Sharon T. Emoto



NOTARY

EXHIBIT A

Legal Description of the Property

All of those certain parcels of land situate at Wahiawa, City and County of Honolulu, State of Hawaii, described as follows:

LOTS:	AREA:
LOT 23	4.074 acres, more or less, as shown on Map <u>39</u> ;
LOT 25	0.630 acres, more or less, as shown on Map <u>39</u> ;

-Note:- Lot 23 and 25 are covered by Tax Map Key (1) 7-1-001- portion 025.

LOT 22	263.3016 acres, more or less, as shown on Map <u>39</u> ;
LOT 1-H-1-A-2	57.3739 acres, more or less, as shown on Map <u>14</u> ;

-Note:- Lot 22 and Lot 1-H-1-A-2 are covered by Tax Map Key (1) 7-1-001- portion 008.

LOT 21	186.160 acres, more or less, as shown on Map <u>39</u> ;
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-Note:- Lot 21 is covered by Tax Map Key (1) 7-1-001- portion 026.

filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 262 of Hawaiian Trust Company, Limited, Trustee under the Will and of the Estate of George Galbraith, deceased.

Doc T-8379210
CT 1052192
December 10, 2012 8:01 AM

Being the land(s) described in Transfer Certificate of Title No. _____ issued to The Trust for Public Land, a California nonprofit public benefit corporation.

SUBJECT, HOWEVER, TO THE FOLLOWING:

1. Mineral and water rights of any nature in favor of the State of Hawaii.
2. -AS TO LOTS 25, 22, 1-H-1-A-2 AND 21:-

Easements of right-of-way in favor of HAWAIIAN ELECTRIC COMPANY, INC., for utility

EXHIBIT A

purposes, being easement for guy wires and anchors, and for wire lines (25 feet wide), as set forth by FINAL ORDER OF CONDEMNATION (Civil No. 4410), dated January 13, 1959, filed as Land Court Document No. 252179, and also shown on Right-of-Ways Maps 58-127A and 1006-665A attached thereto.

3. -AS TO LOT 23 AND 25:-

Rights of others who may have easement or access rights in said Lot.

4. -AS TO LOT 25:-

A. DESIGNATION OF EASEMENT "V"

PURPOSE : access
SHOWN : on Map 39, as set forth by Land Court Order No. T-8228309 filed on July 12, 2012.

B. Access Rights over Easement "V", in favor of Lot 24 as set forth by Land Court Order No. T-8228309 filed on July 12, 2012.

5. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

6. Any matters which an archaeological study would disclose.

7. Utility Poles and encroachments, if any, located along Kamehameha Highway, Kaukonahua Road, Kamananui Road, Whitmore Avenue and Wilikina Drive which an ALTA Survey would disclose.

8. Terms and conditions contained in Warranty Deed dated December 10, 2012, in favor of The Trust for Public Land filed in the Office of the Registrar of the Land Court of the State of Hawaii as Document No.

Doc T-8379210
CT 1052192
December 10, 2012 8:01 AM

EXHIBIT A.

EXHIBIT A-1

Property Improvements

None

EXHIBIT A-1

EXHIBIT A-2

Kūkaniloko Buffer Property

All of those certain parcels of land situate at Wahiawa, City and County of Honolulu, State of Hawaii, described as follows:

LOT:	AREA:
LOT 24	5,000 acres, more or less, as shown on Map <u>39</u>

filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 262 of Hawaiian Trust Company, Limited, Trustee under the Will and of the Estate of George Galbraith, deceased.

Being a portion of the land(s) described in:

1. Transfer Certificate of Title No. 36,479 issued to BANK OF HAWAII, a Hawaii corporation, as Trustee under the Will and of the Estate of George Galbraith, deceased.

SUBJECT, HOWEVER, TO THE FOLLOWING:

1. Mineral and water rights of any nature in favor of the State of Hawaii.
2. FINAL ORDER OF CONDEMNATION (Civil No. 91-2040-06) dated January 15, 1992, filed as Land Court Document No. 1887053, in favor of the STATE OF HAWAII, by its Attorney General, condemned for public purposes and use, preservation and maintenance of an historically significant site, the Kukaniloko Birthstone Site, being more particularly described as follows:

PROPOSED KUKANILOKO BIRTHSTONE SITE
 PARCEL A
 AND PERPETUAL NON-EXCLUSIVE ACCESS ROAD EASEMENT
 Wahiawa, Oahu, Hawaii

PROPOSED KUKANILOKO BIRTHSTONE

PARCEL A

Comprising the following:

- A. All of Lots 1-B-1-B as shown on Map 13 of Land Court Application 262;

EXHIBIT A-2

- B. Portion of Lot 1-B-1-A-1 as shown on Map 28 of Land Court Application 262;
- C. Portion of Lot 1-E-1 as shown on Map 4 of Land Court Application 262;
- D. Portion of Lot 1-H-1-A-1 as shown on Map 14 of Land Court Application 262;

Beginning at the southeast corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station, "MAILI" running by azimuths measured clockwise from true South:

- | | | |
|-------------|--------|---|
| 1. 67° 31' | 605.00 | feet along the remainder of Lot 1-H-1-A-1 as shown on Map <u>14</u> of Land Court Application 262; |
| 2. 157° 31' | 360.00 | feet along the remainders of Lot 1-H-1-A-1 as shown on Map <u>14</u> , Lot 1-E-1 as shown on Map <u>4</u> and Lot 1-B-1-A-1 as shown on Map <u>28</u> of Land Court Application 262; |
| 3. 247° 31' | 605.00 | feet along the remainder of Lot 1-B-1-A-1 as shown on Map <u>28</u> of Land Court Application 262; |
| 4. 337° 31' | 360.00 | feet along the remainders of Lot 1-B-1-A-1 as shown on Map <u>14</u> , Lot 1-E-1 as shown on Map <u>4</u> and Lot 1-H-1-A-1 as shown on Map <u>28</u> of Land Court Application 262 to the point of beginning and containing an area of 5.00 acres, more or less. |

PERPETUAL NON-EXCLUSIVE ACCESS ROAD EASEMENT

Being a portion of Lot 1-E-1 as shown on Map 4 of Land Court Application 262.

Beginning at the northeast corner of this easement and on the southwest side of Kamehameha Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MAILI" being 5,847.70 feet south and 20,287.15 feet east, thence running by azimuths measured clockwise from true South:

EXHIBIT A-2

- | | | |
|-------------|--------|--|
| 1. 312° 39' | 42.60 | feet along the southwest side of Kamehameha Highway; |
| 2. 62° 47' | 695.00 | feet along Lot 1-H-1-A-1 as shown on Map 14 of Land Court Application 262; |
| 3. 157° 31' | 40.14 | feet along Parcel A of the Proposed Kukaniloko Birthstone Site; |
| 4. 242° 47' | 677.03 | feet along Lot 1-B-1-A-1 as shown on Map 28 of Land Court Application 262 to the point of beginning and containing an area of 0.630 acres, more or less. |

-NOTE:- Land Court Order T-8228309 filed on July 12, 2012, sets forth the consolidation and resubdivision of the land pursuant to the above Final Order of Condemnation. The order makes reference to presentation of proper deeds of transfer to the Assistant Registrar to complete the condemnation. Title Guaranty of Hawaii, Inc. is unable to locate recordation of said deeds.

3. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
4. Any matters which an archaeological study would disclose.
5. Utility Poles and encroachments, if any, located along Kamehameha Highway, Kaukonahua Road, Kamananui Road, Whitmore Avenue and Wilikina Drive which an ALTA Survey would disclose.
6. Terms and conditions contained in Warranty Deed dated December 10, 2012, in favor of The Trust for Public Land filed in the Office of the Registrar of the Land Court of the State of Hawaii as Document No. Doc T-8378210
CT 1052182
December 10, 2012 8:01 AM

EXHIBIT A-2

Exhibit B

*Galbraith Estate
Trust Lands*

Baseline Report for OHA Parcels

Tax Map Key Parcels: 1-7-1-001:008 por
 1-7-1-001:025
 1-7-1-001:026 por

Prepared For:
The Trust for Public Land
Hawaiian Islands Office

Prepared By:
Townscape, Inc.

November 2012

Galbraith Estate Trust Lands Baseline Documentation – OHA Parcels
November 2012

Property Summary

Property Owner: George Galbraith Trust

Intended Property Owner: Office of Hawaiian Affairs

Lots, Parcels, and Land Area:¹

Land Court Lot No.	Tax Map Key	Acres
1-E-1	*1-7-1-001:025	4.7050
1-H-1-A-1	*1-7-1-001:008 por	263.3026
1-H-1-A-2	1-7-1-001:008 por	57.3739
1-B-1-A-1	*1-7-1-001:026	185.573
	TOTAL	510.9545

NOTE: the property to be conveyed to OHA excludes Lot 1-B-1-B, an approximately 0.585 acre lot which is a portion of the 5.0 acre parcel that was condemned by the State of Hawai'i pursuant to the Final Order of Condemnation (Civil No. 91-2040-06) dated January 15, 1992, filed as Land Court Document No. 1887053, in favor of the State of Hawaii, by its Attorney General (the "Condemnation Order"). The rest of the 5.0 acre parcel condemned under the Condemnation Order (the "Kūkaniloko Buffer Area") is excluded from the property subject to the easement.

*Areas noted on land court maps have been reduced by the areas associated with the condemnation for the Kūkaniloko Birthing Stones site.

Ahupua'a & Moku: Kamananui, Waialua

City Planning District(s): Central O'ahu Development Plan Area

Most Recent Land Use: Agriculture – pineapple (currently fallow)
 Cultural Use – Access to and buffer for the Kūkaniloko Birthing Stones State Historic Site

¹ John Child & Company Appraisers and Consultants. January 25, 2012. Report to Trust for Public Land Covering the George Galbraith Trust Lands Wahiawa and Waialua, Oahu, Hawaii. p. 2.

Galbraith Estate Trust Lands Baseline Documentation - OHA Parcels

November 2012

Property Summary (continued)

State Land Use Classification: Agriculture

City Zoning: Ag-1 Restricted Agriculture

Structures: None

Cultural Uses: Cultural Use – Access to and buffer for the Kūkaniloko
Birthing Stones State Historic Site

Note: Lot 1-B-1-B is not subject to this baseline
documentation as such Lot 1-B-1-B is not being conveyed
to OHA.

Galbraith Estate Trust Lands Baseline Documentation – OHA Parcels
November 2012

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Appendix A Waypoint GPS Log from Site Visit on August 28, 2012
 Photos taken on Site Visit on August 28, 2012

Galbraith Estate Trust Lands Baseline Documentation – OHA Parcels

November 2012

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Acronyms

ADC	Agribusiness Development Corporation
City	City and County of Honolulu
DP	Development Plan
GPS	Global Positioning System
OHA	Office of Hawaiian Affairs, State of Hawai'i
NAD83	North American Datum of 1983
REC	Recognized Environmental Condition
SCP	Sustainable Communities Plan
TPL	Trust for Public Land
UTM	Universal Transverse Mercator

Galbraith Estate Trust Lands Baseline Documentation – OHA Parcels

November 2012

1. Introduction

A baseline documentation is intended to record the current condition of a property and document important uses of the property that the Office of Hawaiian Affairs (OHA) intends to preserve and protect in connection with its proposed acquisition of the property. The intent of OHA's purchase of a portion of the Galbraith Estate Trust Lands is to preserve lands for agriculture and to protect cultural values. This *baseline documentation* records the general condition of the property and specific man-made features as of the date hereof.

2. Process

OHA intends to acquire the Property from The Trust for Public Land (TPL) immediately after its acquisition of the Property from the Galbraith Estate Trust. A Conservation Easement is intended to be granted by TPL to the City prior to the conveyance to OHA.

The previous studies and reports on the property listed in the References section below were reviewed to gain a general understanding of the site and to identify any characteristics of the property that might be of interest to TPL, OHA, and the City, as they relate to a planned conservation easement over the property from TPL to the City.

A total of ten Tax Map Key parcels are being purchased from the Galbraith Estate Trust; three are intended to be conveyed to OHA and seven to ADC. One site visit of all ten (10) parcels was conducted by Townscape on August 28, 2012 to confirm report findings of property use and structures present.

Locations were recorded using a Garmin GPSMAP 76CS model recreational grade global positioning system (GPS) unit. This GPS unit has an accuracy of less than 15 meters (49 feet). Therefore, data points (also called "waypoints") should not be substituted for survey metes and bounds. Data are recorded in the North American Datum of 1983 (NAD83),² Universal Transverse Mercator (UTM) projection.³

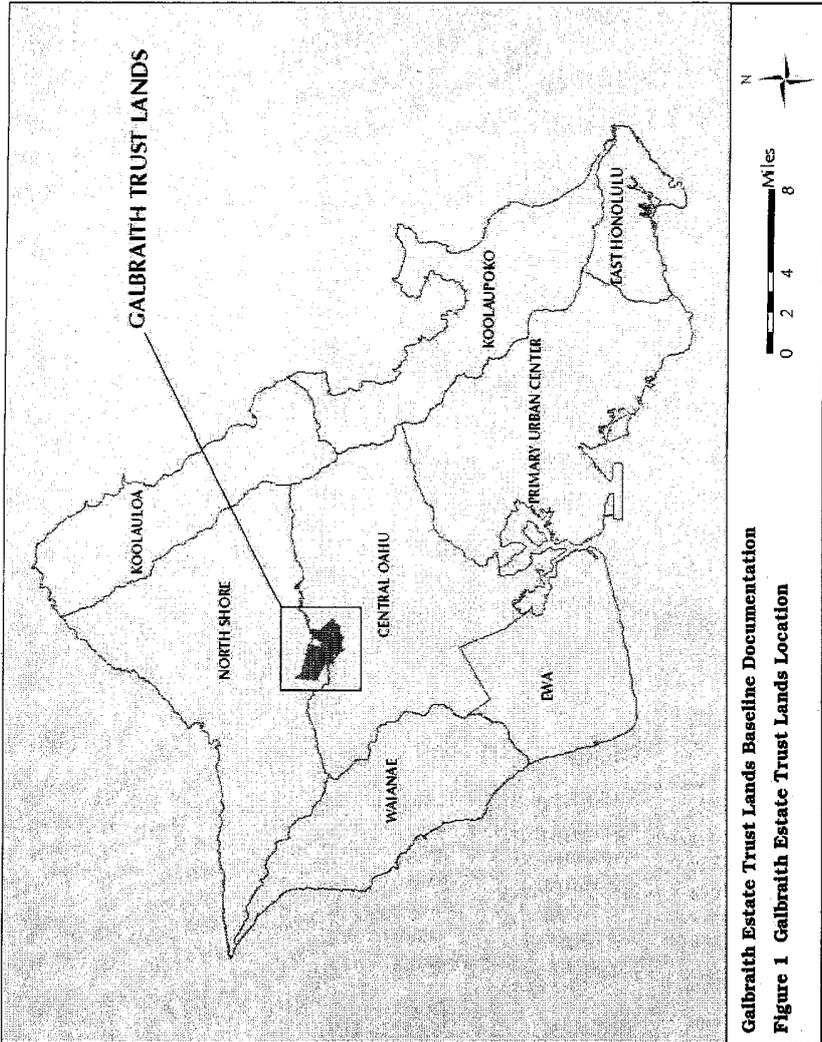
Photos were taken on-site using a Canon Rebel T3i 18 mega-pixel digital SLR camera. One photo point was established at the Kūkaniloko Birth Stones State Historic Site located on a parcel surrounded by the property that will potentially be acquired by OHA. This waypoint was mapped using the GPS and logged in Appendix A. The photos taken at are also located in Appendix A.

² Geodetic systems are used to translate locations taken by equipment such as global positioning system (GPS) units into their real position on Earth. A datum is a set of values used to define a specific geodetic system. The map datum that was used to define the points taken in the field is the North American Datum of 1983 (NAD83).

³ A map projection is a method of representing the surface of the Earth (a three-dimensional object) in two-dimensions as a map. A coordinate system enables every location on Earth to be defined by a set of numbers and/or letters. The coordinate system used was the Universal Transverse Mercator (UTM).

Galbraith Estate Trust Lands Baseline Documentation - OHA Parcels

November 2012



**Galbraith Estate Trust Lands Baseline Documentation
Figure 1 Galbraith Estate Trust Lands Location**

Galbraith Estate Trust Lands Baseline Documentation – OHA Parcels**November 2012****3. Site Description**

TPL has contracted with the Galbraith Estate Trust to acquire, for itself or its assignee(s), ten tax map key parcels and fourteen (14) land court lots, totaling 1,743.3195 acres. TPL, in turn, is under contract with (1) ADC to cause Galbraith Estate Trust to convey seven tax map key parcels to ADC and (2) OHA to cause Galbraith Estate Trust to convey three tax map key parcels to OHA (Table 1). Specifically excluded from the conveyance to OHA and therefore from this report is Lot 1-B-1-B. Lot 1-B-1-B is contained within a 5-acre parcel that was condemned by the State of Hawai'i pursuant to the Condemnation Order in 1992, the subdivision of which from the rest of the property is in the process of being finalized in Land Court.

Table 1 Tax Map Keys and Land Court Lot Numbers⁴

	Land Court Lot No.	ADC		OHA		Planning District
		TMK	Acres	TMK	Acres	
1	1-E-1			*1-7-1-001:025	4.7050	Central O'ahu DP
2	1-F-1	Portion of Wilikina Road	8.719			Central O'ahu DP and North Shore SCP (road)
3	1-D-1-D	1-7-1-001:005 <i>por</i>	0.062			Central O'ahu DP
4	2-C	1-7-1-001:005 <i>por</i>	0.001			Central O'ahu DP
5	1-A-3-C-1-A	1-6-5-002:010	456.001			North Shore SCP
6	1-A-3-C-1-A	1-7-1-001:003				Central O'ahu DP
7	1-H-1-A-1			*1-7-1-001:008 <i>por</i>	263.3026	Central O'ahu DP
8	1-H-1-A-2			1-7-1-001:008 <i>por</i>	57.3739	Central O'ahu DP
9	1-A-1-A-1-B-1	1-7-1-001:012	31.081			Central O'ahu DP
10	10	1-7-1-001:005 <i>por</i>	236.167			Central O'ahu DP
11	1-A-1-B-1	1-7-1-001:028	1.139			Central O'ahu DP
12	1-B-1-A-1			*1-7-1-001:026	185.573	Central O'ahu DP
13	1-B-3-A	1-6-5-002:025	494.195			North Shore SCP
14	1-B-3-A	1-7-1-001:002				Central O'ahu DP
TOTAL			1,227.365		510.9545	
Less Lot 1-F-1		Portion of Wilikina Road	(8.7190)			
Less NCTAMS access road condemnation			(11.1530)			
		NET ACRES	1,207.4930			

*NOTE: Areas noted on land court maps have been reduced by the areas associated with the condemnation for the Kūkaniloko Birth Stones site.

⁴ John Child & Company Appraisers and Consultants. January 25, 2012. Report to Trust for Public Land Covering the George Galbraith Trust Lands Wahiawa and Waialua, Oahu, Hawaii. p. 2.

Galbraith Estate Trust Lands Baseline Documentation – OHA Parcels**November 2012**

This document covers the three tax map key parcels that will be conveyed to OHA. All of these parcels are located in the *ahupua'a* of Kamananui in the moku of *Waialua*, on the island of O'ahu, and are located in the Central O'ahu Development Plan area (see Figure 2). All of the Galbraith Estate lands to be conveyed to ADC and OHA are nestled between Poamoho Stream to the north and Kaukonahua Stream to the south. The land to be conveyed to OHA are to the south, abutting the north fork of Kaukonahua Stream.



Easement providing access to the Kūkaniloko Birth Stones State Historic Site from Kamehameha Highway.

Most of the property is gently sloping between the 840 foot elevation near Wahiawā Reservoir and the 980 foot elevation north of Kamehameha Highway. Average annual rainfall is 44.4 inches and the mean temperature is 71.7 °F.

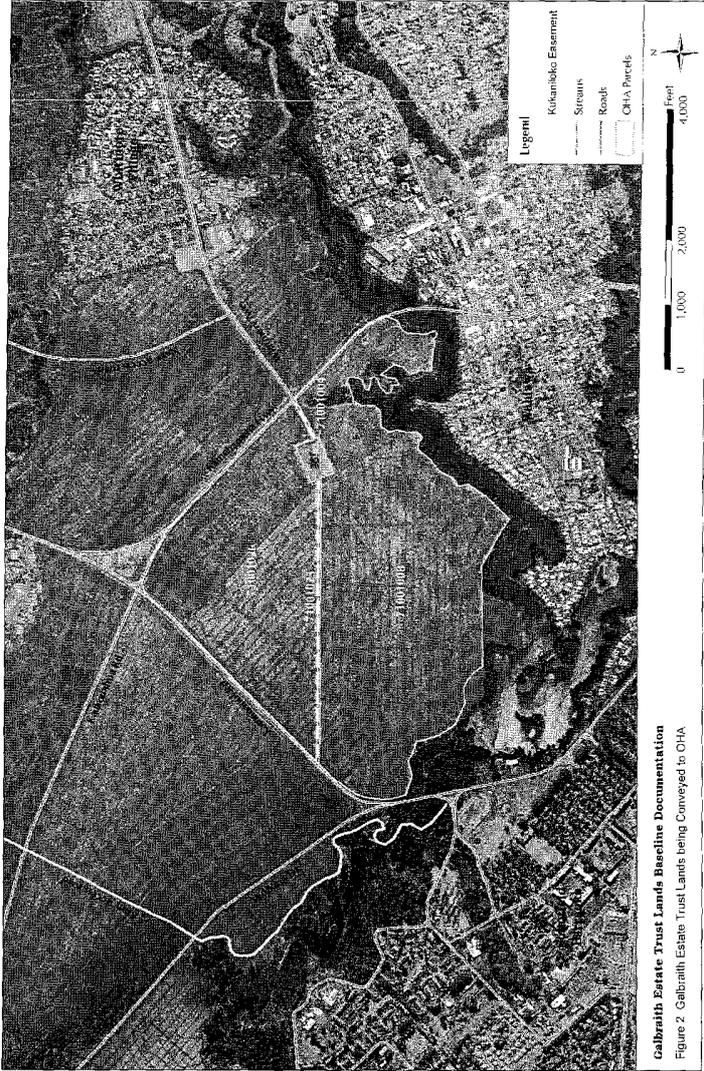
a. Easements

The property is encumbered by the following easements for access and electrical utilities, which are more particularly described in that certain preliminary title report dated August 13, 2012 prepared by Title Guaranty of Hawaii: easement in favor of Hawaiian Electric Company for utility purposes and perpetual non-exclusive access road easement set forth in the Condemnation Order. Locations and descriptions of these easements may be found in the January 25, 2012 *Report to Trust for Public Land Covering the George Galbraith Trust Lands Wahiawa and Waialua, Oahu, Hawaii* by John Child & Company Appraisers and Consultants.

b. Access

The property is accessed by Kamananui Road which runs along the northwestern border of TMK 1-7-1-001:026 and Kamehameha Highway, which borders the northeastern boundaries of TMK parcels 1-7-1-001:026 and 1-7-1-001:008 (Figure 2).

Public access is currently allowed across the property through a perpetual non-exclusive access roadway easement set forth in the Condemnation Order to the Kūkaniloko Birth Stones State Historic Site located adjacent to the property. An access road from to the birth stones site is chained and locked near its intersection with Kamehameha Highway, but pedestrian access is allowed.



Gabraith Estate Trust Lands Baseline Documentation
Figure 2. Gabraith Estate Trust Lands being Conveyed to OHA

Callbreath Estate Trust Lands Baseline Documentation - OHA Parents
November 2012

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Galbraith Estate Trust Lands Baseline Documentation – OHA Parcels

November 2012

c. Historic and Current Land Use

The property was previously cultivated for large-scale pineapple cultivation but is currently fallow. For the most part, the property is covered with tall grasses and trees, such as African Tulip (*Spathodea campanulata*). A fire break plan map identifies fire breaks around the 5-acre Kūkaniloko Birth Stones State Historic Site and along the access roadway easement set forth in the Condemnation Order (Figure 3).⁵ Fire breaks were observed around the Kūkaniloko Birth Stones Historic site, but were not walked or mapped.

d. Adjacent land uses and protected areas

Surrounding land uses include agriculture; military facilities at Schofield Barracks, Wheeler Army Air Field and the Navy NCTAMS; and residential/urban uses at Wahiawā and Whitmore Village. The nearest town is Wahiawā (including Schofield Barracks) located to the south and separated from the property by Kaukonahua Stream. Nearby protected areas include the 'Ewa Forest Reserve, about four miles to the east, and the Mokuē'ia Forest Reserve, about four miles to the west.

e. Views

Views are mostly limited by the tall vegetation, but the Wai'anae Mountains can be readily seen when facing west, as well as portions of the Ko'olau Mountains when facing east.

f. Impervious Surfaces

No impervious surfaces were observed.

g. Structures

No structures were found on the property. All stones and other structures associated with Kūkaniloko are located on Lot 1-B-1-B.

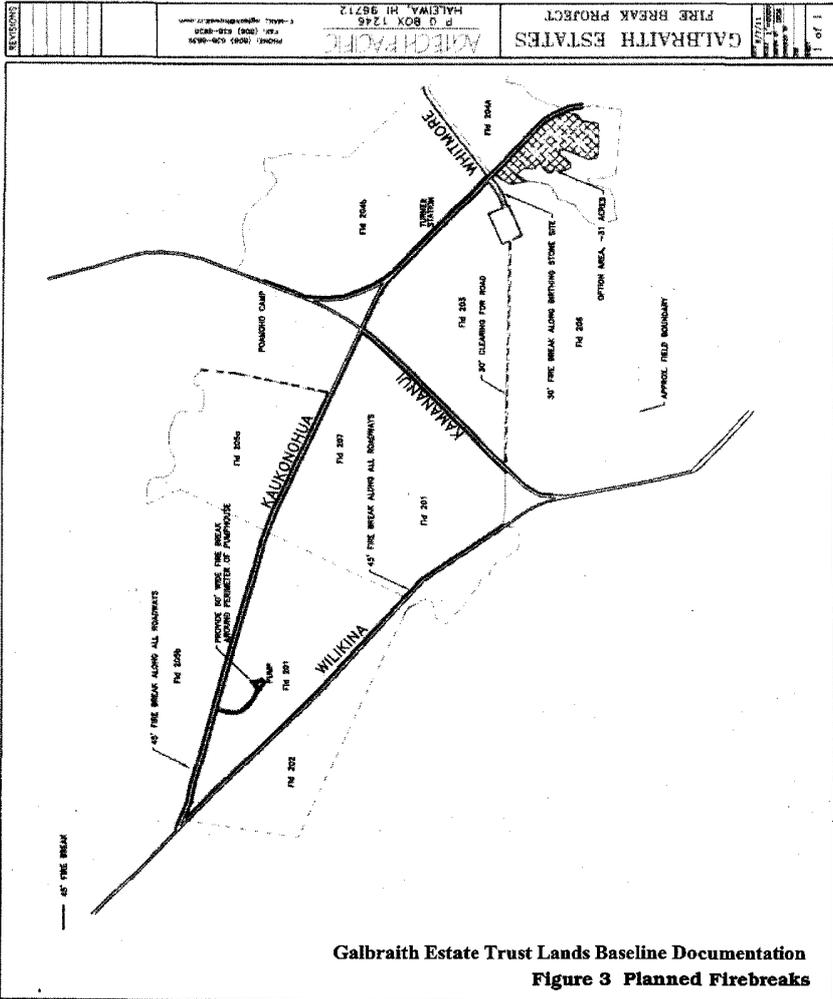


Modern stone structure located within the Kūkaniloko Birth Stones State Historic Site.

⁵ Agitech Pacific. August 7, 2011. Galbraith Estates Fire Break Project.

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Galbraith Estate Trust Lands Baseline Documentation - OHA Parcels
November 2012



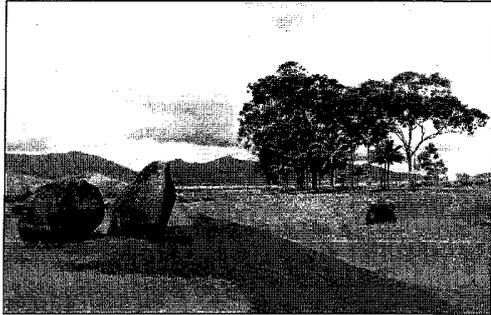
Galbraith Estate Trust Lands Baseline Documentation – OHA Parcels***November 2012*****h. Utilities**

The January 25, 2012 *Report to Trust for Public Land Covering the George Galbraith Trust Lands Wahiawa and Waialua, Oahu, Hawaii* identified a 12-inch water line extending from the Bott Well through TMKs 7-1-001:026 and 7-1-001:008. Overhead telephone and electrical lines run along Kamehameha Highway and Kamananui Road. There are no wastewater utilities servicing the property.

i. Cultural Sites

The Property surrounds the Kūkaniloko birthing stones, one of the most important cultural sites in Hawai'i, listed in the State and National Registers of Historic Places. The overall significance of Kūkaniloko extends beyond the immediate location of the birthing stones; the Property is located at the midway point between the highest peak of the Wai'anae range and the highest point of the Ko'olau range on the central plain of O'ahu and in ancient times was used, in part, as a royal center that included *kauhale* for chiefs and commoners, agricultural fields and associated features. The five-acre Historic Site is currently under the jurisdiction of the State Department of Land and Natural Resources Division of State Parks.

The property serves as buffer to the Kūkaniloko Birth Stones State Historic Site. Public access to the site from Kamehameha Highway is available during daylight hours.



Kūkaniloko Birth Stones State Historic Site.



Stones within the Kūkaniloko Birth Stones State Historic Site.

Galbraith Estate Trust Lands Baseline Documentation – OHA Parcels
November 2012

j. Alteration of Land

The property was previously cultivated for pineapple and have thus been tilled in support of agriculture. Unimproved agricultural roads previously provided access to the various fields, but have since been overgrown by grasses.

k. Waste Disposal

The Phase I Environmental Site Assessment prepared by Bureau Veritas North America, Inc. and dated September 30, 2011 (the "Phase I") found roofing materials near Kaukonahua Stream. No other dumping was observed on the property, although tall grass restricted access for in-depth investigations.

l. Hazardous Materials

The Phase I identified the following recognized environmental condition (REC):

- Buried dumpsites – a buried dumpsite located in the new Navy road right-of-way was identified as an REC because it contained car parts. While this REC is located off-site, it was discussed in the report because it raises the potential for additional similar dump sites on-property.

Additionally, there is the potential for hazardous materials associated with the following earlier land uses:

- Pesticide and herbicide application on agricultural lands
- Abandoned vehicles, vehicle parts, and other waste items

m. Uses and Activities Inconsistent with the Purpose of the Acquisition

The purpose of acquiring these Galbraith Estate Trust Lands is to protect cultural values, to preserve the lands for agriculture, and to provide a buffer for military activities in adjacent areas. No land uses or activities inconsistent with these purposes were observed.

Galbraith Estate Trust Lands Baseline Documentation – OHA Parcels

November 2012

References

Bureau Veritas North America, Inc. September 30, 2011, *Phase I Environmental Site Assessment, The Galbraith state Property Wahiawa, Oahu, Hawaii*. Project No. 17011-011113.00.

John Child & Company Appraisers and Consultants. January 25, 2012. *Report to Trust for Public Land Covering the George Galbraith Trust Lands Wahiawa and Waialua, Oahu, Hawaii*.

Sam O. Hirota, Inc. Revised Sept. 25, 2009. *Bank of Hawaii Trustee Under the Will and of the Estate of George Galbraith Land Court Application 262*.

Galbraith Estate Trust Lands Baseline Documentation - OHA Parcels
November 2012

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*Galbraith Estate
Trust Lands*

Baseline Report for OHA Parcels

Appendix A

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Galbraith Estate Trust Lands Baseline Documentation - OHA Parcels**October 2012****Photo Documentation of the Property**

This baseline documentation of the Galbraith Estate Trust Lands is intended to record the current condition of a property, as well as any important conservation values, particularly as they might relate to agriculture, cultural values, and as a buffer for military activities in the area.

A site visit was conducted on August 28, 2012 to record findings of property use and structures present. Locations were recorded using a Garmin GPSMAP 76CS model recreational grade global positioning system (GPS) unit. This GPS unit has an accuracy of less than 15 meters (49 feet). Therefore, data points (also called "waypoints") should not be substituted for survey metes and bounds. Data are recorded in North American Datum of 1983 (NAD83),¹ Universal Transverse Mercator (UTM) projection.²

Photos were taken on-site using a Canon Rebel T3i 18 mega-pixel digital SLR camera. Fourteen photo points were established at structures or other significant areas on the property however, only waypoint number 217 corresponds to property to be conveyed to the Office of Hawaiian Affairs (OHA). This waypoint and the photos taken at this point are provided below.

Table 1 Parcels Visited on August 28, 2012

Lot No.	Tax Map Key	Acres
1-E-1	*1-7-1-001:025	4.705
1-F-1	Portion of Wilikina Drive	8.719
1-A-3-C-1-A	1-6-5-002:010	456.001
1-A-3-C-1-A	1-7-1-001:003	
1-H-1-A-1	*1-7-1-001:008 <i>por</i>	263.3026
10	1-7-1-001:005 <i>por</i>	236.167
1-A-1-B-1	1-7-1-001:028	1.139
1-B-1-A-1	*1-7-1-001:026	185.573
1-B-3-A	1-6-5-002:025	494.195
1-B-3-A	1-7-1-001:002	
	**1-7-1-001:004	5.0

*NOTE: Areas noted on land court maps have been reduced by the areas associated with the condemnation for the Kūkaniloko Birth Stones site.

**This parcel consists of the Kūkaniloko Birth Stones Historic Site and is not a part of the lands to be conveyed to either ADC or OHA.

¹ Geodetic systems are used to translate locations taken by equipment such as global positioning system (GPS) units into their real position on Earth. A datum is a set of values used to define a specific geodetic system. The map datum that was used to define the points taken in the field is the North American Datum of 1983 (NAD83).

² A map projection is a method of representing the surface of the Earth (a three-dimensional object) in two-dimensions as a map. A coordinate system enables every location on Earth to be defined by a set of numbers and/or letters. The coordinate system used was the Universal Transverse Mercator (UTM).

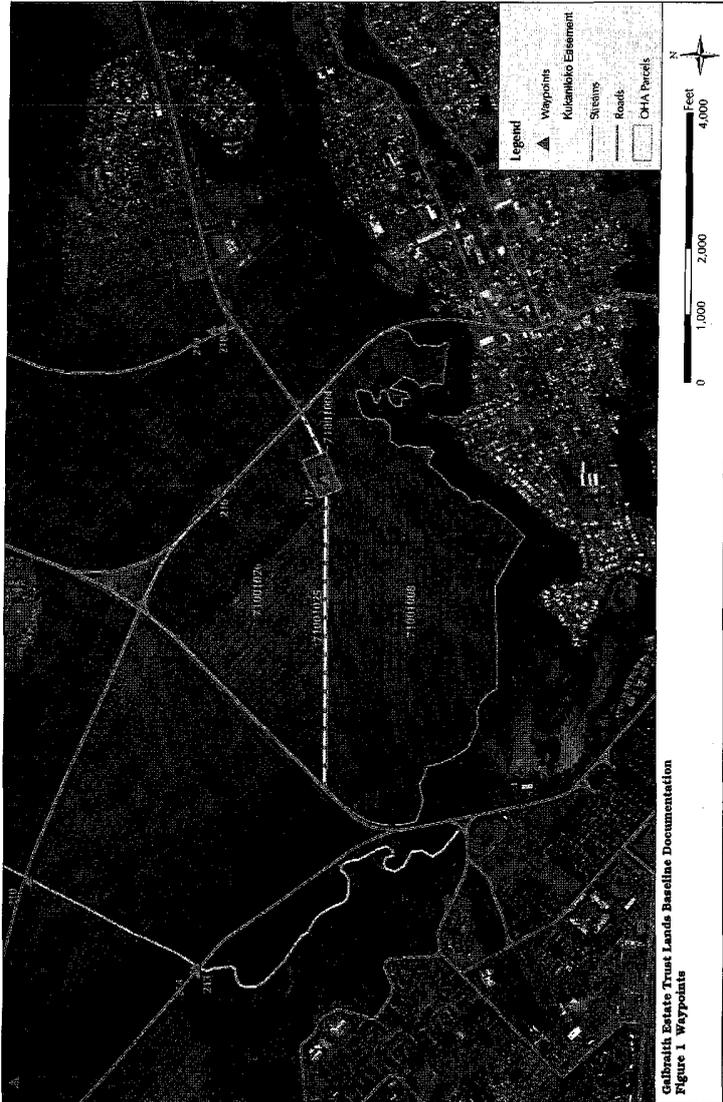
Galbraith Estate Trust Lands Baseline Documentation - OHA Parcels
 October 2012

Table 2 Waypoint GPS Log

Waypoint Number	Position	Altitude (Feet)	Date/Time	Comment
208	N21 31.091 W158 04.021	932	28-AUG-12 7:40:55AM	Well Access Road Gate at Kaukonahua Road. Provides access to Del Monte Corporation Well #5 (Bott Well) (TMK 6-5-002:025)
209	N21 31.029 W158 03.785	1004	28-AUG-12 7:48:42AM	DNC Well #5 (Bott Well) (TMK 6-5-002:025)
210	N21 30.996 W158 03.258	957	28-AUG-12 8:16:57AM	Army Access Road Gate on the north side of Kaukonahua Road (TMK 6-5-002:010)
211	N21 31.277 W158 02.839	850	28-AUG-12 8:55:01AM	Bridge over Poamoho Stream. Part of Army Access Road (TMK 6-5-002:010)
212	N21 31.266 W158 02.849	863	28-AUG-12 9:07:17AM	Base of hill with survey marker near the bridge over Poamoho Stream (TMK 6-5-002:010)
213	N21 30.590 W158 03.487	908	28-AUG-12 9:24:25AM	Army Access Road Gate on the north side of Wilikina Drive (TMK 6-5-002:025)
214	N21 30.590 W158 03.498	917	28-AUG-12 9:27:12AM	Drainage Culvert on the north side of Wilikina Drive (TMK 6-5-002:025)
215	N21 31.239 W158 04.243	970	28-AUG-12 9:44:19AM	Sterm Drain at intersection of Wilikina Drive and Kaukonahua Road (TMK 6-5-002:025)
216	N21 30.537 W158 02.227	990	28-AUG-12 9:57:09AM	Turner Station along Kamehameha Highway (TMK 7-1-001:005)
*217	N21 30.278 W158 02.193	966	28-AUG-12 10:17:33AM	Kōkaniloko Birth Stone State Historic Site (TMK 7-1-001:004)
218	N21 30.525 W158 01.792	994	28-AUG-12 10:29:23AM	Triple barrel culvert under Navy access road at remnant parcel (TMK 7-1-001:005)
219	N21 30.550 W158 01.796	999	28-AUG-12 10:38:17AM	Dump site where household, vehicular, and construction waste was found during site visit on August 28, 2012 (TMK 7-1-001:005)

*NOTE: Only Waypoint #217 was taken within the area to be conveyed to OHA.

Gulbreth Estate Trust Lands Baseline Documentation - OHA Parcels
October 2012



Gulbreth Estate Trust Lands Baseline Documentation
Figure 1. Waypoints

Appendix A - Page 3

Galbraith Estate Trust Lands Baseline Documentation - OHA Parcels
October 2012

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Appendix A - Page 4

Galbraith Estate Trust Lands Baseline Documentation - OHA Parcels
October 2012



Waypoint No. 217: Kūkaniloko Birth Stones State Historic Monument
View of the site from the entrance looking south toward the Wai'anae Mountains.



Waypoint No. 217: Kūkaniloko Birth Stones State Historic Monument
View of the site looking northwest.

Galbraith Estate Trust Lands Baseline Documentation - OHA Parcels
October 2012



Waypoint No. 217: Kūkaniloko Birth Stones State Historic Monument
Stones at the site.



Waypoint No. 217: Kūkaniloko Birth Stones State Historic Monument
Stones at the site.