

ENVIRONMENTAL ASSESSMENT

Disposal of the Lualualei Buffer Parcel
Naval Magazine Pearl Harbor, Lualualei Branch

O'ahu, Hawai'i

Commander, Navy Region Hawaii
March 2005

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DEPARTMENT OF DEFENSE
DEPARTMENT OF THE NAVY

**FINDING OF NO SIGNIFICANT IMPACT (FONSI) FOR ENVIRONMENTAL
ASSESSMENT (EA) FOR THE DISPOSAL OF THE LUALUALEI BUFFER PARCEL
AT THE NAVAL MAGAZINE PEARL HARBOR, LUALUALEI BRANCH, O'AHU,
HAWAI'I.**

Pursuant to the Council on Environmental Quality Regulations (40 Code of Federal Regulations Parts 1500-1508) implementing the National Environmental Policy Act, and the Office of the Chief of Naval Operations Instruction 5090.1B, the Department of the Navy (Navy) gives notice that an EA has been prepared and an Environmental Impact Statement is not required for the Disposal of the Lualualei Buffer Parcel at the Naval Magazine Pearl Harbor, Lualualei Branch O'ahu, Hawai'i. (NAVMAG Lualualei)

Proposed Action: Commander, Navy Region Hawaii (CNRH) proposes to dispose of the approximately 27-acre (10.9 hectares) Lualualei Buffer Parcel at NAVMAG Lualualei. The property is to be disposed of in accordance with the Memorandum of Agreement (MOA) dated August 31, 1998, between the United States of America and State of Hawai'i represented by the Governor of the State of Hawai'i and by the Department of Hawaiian Home Lands (DHHL). The MOA was executed pursuant to the Hawaiian Home Lands Recovery Act of 1995, Public Law 104-42, 109 Stat. DHHL plans to reuse the property consistent with the City and County of Honolulu's AG-1 Restricted Agricultural District development standards. The Proposed Action assumes the property is developed by DHHL as an agricultural subdivision including up to five farm dwellings consistent with the AG-1 Restricted Agricultural District development standards.

Existing Conditions: The parcel is vacant land surrounded by rural and low-density residential uses. Site vegetation consists predominately of open grassland with non-native kiawe trees. No species listed or proposed for listing under the Endangered Species Act occur within the property. There are no sites identified as eligible for inclusion in the National Register of Historic Places.

Alternatives Analyzed: Alternatives considered included development at a greater density (up to 25 farm dwellings) and No Action.

DEPARTMENT OF DEFENSE
DEPARTMENT OF THE NAVY

FINDING OF NO SIGNIFICANT IMPACT (FONSI) FOR ENVIRONMENTAL
ASSESSMENT (EA) FOR THE DISPOSAL OF THE LUALUALEI BUFFER PARCEL
AT THE NAVAL MAGAZINE PEARL HARBOR, LUALUALEI BRANCH, O'AHU,
HAWAII.

Environmental Effects: Although the Proposed Action would represent a change in land use and intensity, it would be compatible with surrounding uses. CNRH has complied with the National Historic Preservation Act, Section 106 by consulting with the State Historic Preservation Officer (SHPO) and, affording other consulting parties the opportunity to comment.

The SHPO has concurred with CNRH's finding of no historic properties affected. The Proposed Action would not result in significant impacts on the following resource areas: soils, topography, drainage, ground and surface water, air quality, noise, flora and fauna, traffic, public infrastructure, hazardous and regulated materials, flood hazard, and socio-economic factors. The Proposed Action would not create environmental health and safety risks that may disproportionately affect children and minority or disadvantaged populations. CNRH has determined that the Proposed Action would not have reasonably foreseeable direct or indirect effects on any coastal use or resource of the State's coastal zone.

Finding: Based on information gathered during preparation of the EA, the Navy finds that the Disposal of the Lualualei Buffer Parcel will not significantly impact human health or the environment.

The EA prepared by the Navy addressing this Proposed Action is on file and interested parties may obtain a copy from: Naval Facilities Engineering Command, Hawaii, 258 Makalapa Drive, Suite 100, Pearl Harbor, Hawaii 96860-3134 (Attention: Mr. Andrew Huang, EV3AH), telephone (808) 474-3300. A limited number of copies on compact disk are available to fill single copy requests.

MAY 06 2005

Date



C. E. WEAVER

Rear Admiral, U.S. Navy

Commander, Navy Installations Command

ENVIRONMENTAL ASSESSMENT

Disposal of the Lualualei Buffer Parcel
Naval Magazine Pearl Harbor, Lualualei Branch

O'ahu, Hawai'i

Commander, Navy Region Hawaii
March 2005

Cover Sheet

Proposed Action To dispose of the Lualualei Buffer Parcel located at Naval Magazine Pearl Harbor, Lualualei Branch, O'ahu, Hawai'i to the State of Hawai'i Department of Hawaiian Home Lands (DHHL).

Type of Document Environmental Assessment

Lead Agency Commander, Navy Region Hawaii

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Summary

This Environmental Assessment was prepared in accordance with the National Environmental Policy Act of 1969 (42 United States Code, §4321, *et seq.*), as implemented by the Council on Environmental Quality regulations (40 Code of Federal Regulations Parts 1500-1508) and the Office of the Chief of Naval Operations Instruction 5090.1B Change-4, Environmental and Natural Resources Program Manual of June 4, 2003.

Commander, Navy Region Hawaii (CNRH) proposes to dispose of the approximately 27-acre (10.9 hectares) Lualualei Buffer Parcel at the Naval Magazine Pearl Harbor, Lualualei Branch, O'ahu, Hawai'i (NAVMAG Lualualei). The parcel is located outside of the NAVMAG Lualualei explosive safety quantity distance arc. The parcel is vacant land surrounded by rural and low-density residential uses. Site vegetation consists predominately of dryland grasses with non-native kiawe trees and is devoid of any threatened or endangered species. There are no sites on the parcel identified for inclusion in the National Register of Historic Places.

The parcel is to be disposed of in accordance with the Memorandum of Agreement (MOA) dated August 31, 1998, between the United States of America and the State of Hawai'i represented by the Governor of the State of Hawai'i and by DHHL. The MOA was executed pursuant to the Hawaiian Home Lands Recovery Act of 1995, Public Law 104-42, 109 Stat. 357. DHHL forecasts its reuse of the parcel will be consistent with the City and County of Honolulu's AG-1 Restricted Agricultural District development standards. The Proposed Action assumes the parcel is developed by DHHL as an agricultural subdivision including up to five farm dwellings. Alternatives considered included development at a greater density (up to 25 farm dwellings) and No Action (no disposal).

Although the Proposed Action would represent a potential change in land use and intensity, it would be compatible with surrounding uses. CNRH has complied with the National Historic Preservation Act, Section 106 by consulting with the State Historic Preservation Officer (SHPO) and affording other consulting parties the opportunity to comment. The SHPO has concurred with CNRH's finding of no historic properties affected. The Proposed Action would not result in significant impacts on the following resource areas: soils, topography, drainage, ground and surface water, air quality, noise, biological resources, traffic, public infrastructure, hazardous and regulated materials, flood hazard, and socio-economic factors. The Proposed Action would not create environmental health and safety risks that may disproportionately affect children and minority or disadvantaged populations. CNRH has determined that the Proposed Action would not have reasonably foreseeable direct or indirect effects on any coastal use or resource of the State's coastal zone.

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- C Correspondence Between the Navy and DHHL
- D Section 106 Correspondence

LIST OF ACRONYMS AND ABBREVIATIONS

BWS	Honolulu Board of Water Supply
C&C	City and County of Honolulu
CFR	Code of Federal Regulations
CNRH	Commander, Navy Region Hawaii
CZMA	Coastal Zone Management Act
DHHL	Department of Hawaiian Home Lands
EA	environmental assessment
ESA	Endangered Species Act
ESQD	Explosives Safety Quantity Distance
gpd	gallons per day
ha	hectare(s)
HHCA	Hawaiian Homes Commission Act of 1921
HHLRA	Hawaiian Home Lands Recovery Act
HMLUMP	Hawaii Military Land Use Master Plan
INRMP	Integrated Natural Resources Management Plan
km	kilometer(s)
lpd	liters per day
LUO	Land Use Ordinance
m	meter(s)
MOA	Memorandum of Agreement
NAVFAC PACIFIC	Naval Facilities Engineering Command, Pacific
NAVMAG Lualualei	Naval Magazine Pearl Harbor, Lualualei Branch
NCTAMS PAC RTF	Naval Computer Telecommunication Area Master Station, Pacific, Radio Transmitting Facility
NHPA	National Historic Preservation Act
No.	number
NRHP	National Register of Historic Places
SHPO	State Historic Preservation Officer
USC	United States Code
WSCP	Wai'anae Sustainable Communities Plan

1.0 PURPOSE OF AND NEED FOR ACTION

1.1 Summary of Proposed Action

Commander, Navy Region Hawaii (CNRH) proposes to dispose of the Lualualei Buffer Parcel (Tax Map Key No. 8-6-03:022 (portion)) as agreed in the Memorandum of Agreement (MOA) between the United States of America and the State of Hawai'i (Department of Hawaiian Home Lands (DHHL)). The MOA was executed pursuant to the Hawaiian Home Lands Recovery Act of 1995 (HHLRA), Public Law 104-42, 109 Stat. 357. Foreseeable development of the parcel under the Proposed Action includes the use of the parcel by DHHL for farm dwellings with associated farming and livestock grazing. The HHLRA is attached as Appendix A. The MOA is attached as Appendix B.

While this Environmental Assessment (EA) analyzes the potential impacts of the foreseeable development of the project area, preparation of this EA does not preclude the need for DHHL to prepare any required environmental documentation prior to development of the Lualualei Buffer Parcel.

1.2 Purpose and Need

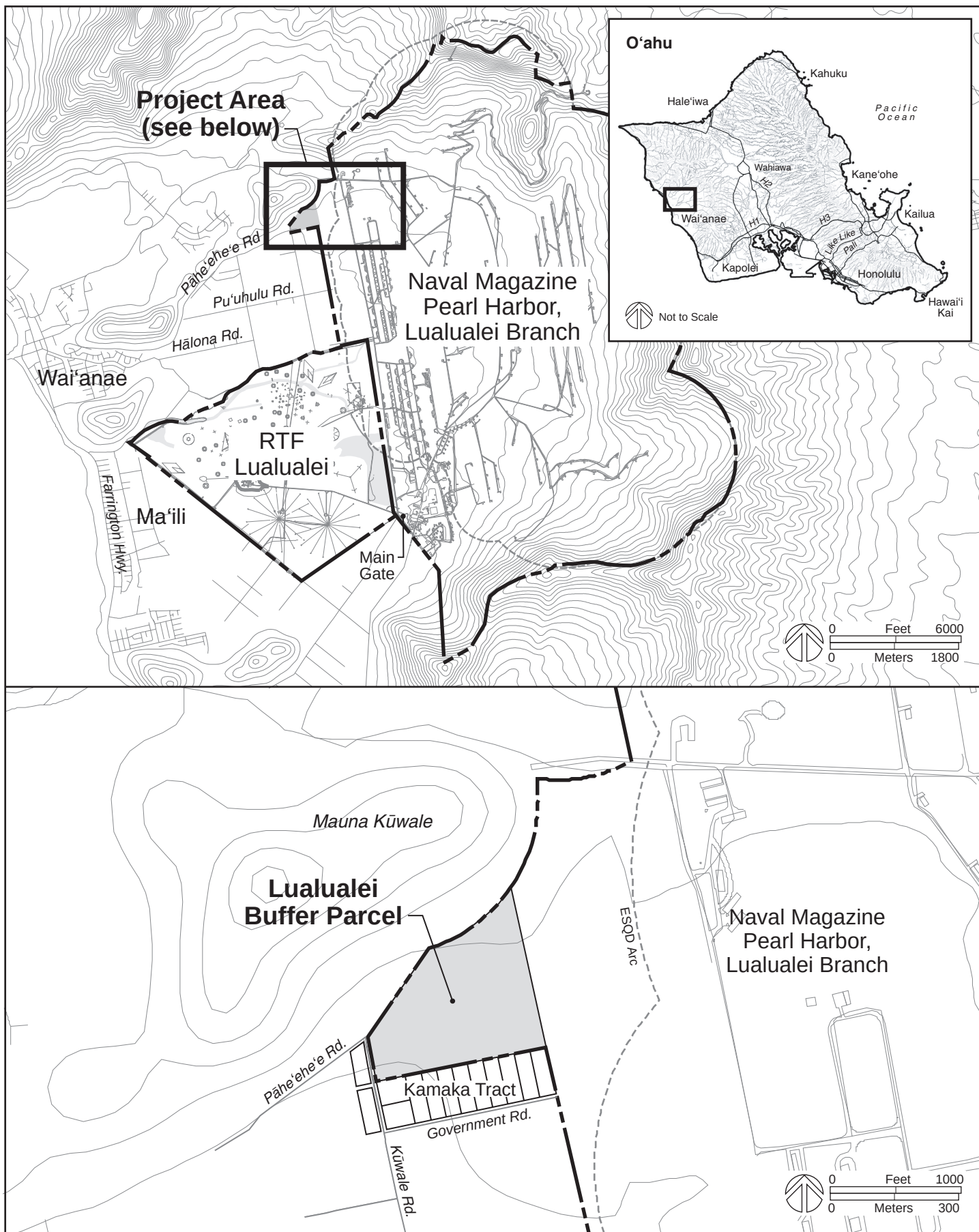
The purpose of and need for the project is to dispose of the Lualualei Buffer Parcel (project area) to comply with the MOA that was executed pursuant to the HHLRA.

1.3 Background

The Lualualei Buffer Parcel is located in Wai'anae, O'ahu, Hawai'i, as shown on Figure 1. The parcel is approximately 27 acres (10.9 hectares (ha)) and is within and on the western boundary of the larger Naval Magazine Pearl Harbor, Lualualei Branch (NAVMAG Lualualei) and located north of the Naval Computer and Telecommunication Area Master Station, Pacific, Radio Transmitting Facility (NCTAMS PAC RTF) Lualualei. The parcel lies completely outside of the NAVMAG Lualualei explosive safety quantity distance (ESQD) arc. The parcel, currently fenced and retained in its existing vacant state, is maintained by the Navy and is adjacent to the "Kamaka Tract", a number of one-acre parcels with single family homes. The area between NCTAMS PAC RTF Lualualei and the Kamaka Tract is generally comprised of agricultural home sites.

Section 203 of the HHLRA provides that the US Secretary of the Interior may convey certain Federal lands to DHHL in exchange for full settlement and release of all legal, equitable or moral claims, actions, and liabilities arising from or relating to the United States' ownership and continued use of real property identified as "available lands" for native Hawaiians under the Hawaiian Homes Commission Act of 1921, 42 Stat. 108.

Pursuant to the MOA, the Lualualei Buffer Parcel was included in the approximately 960 acres (388.5 ha) identified for disposition to DHHL by the Navy. The MOA also stipulates that the delivery of the parcel not occur until such time as DHHL has erected an appropriate security barrier between the parcel and the adjacent NAVMAG Lualualei, which is acceptable to the Navy.



Project Location Map

Figure 1

DHHL forecasts that the project area would be used for purposes consistent with the City and County of Honolulu's (C&C) AG-1 Restricted Agricultural District (AG-1 District).¹ Land designated for AG-1 District use is defined by the C&C's Land Use Ordinance (LUO) as "intended to conserve and protect important agricultural lands for the performance of agricultural functions."

1.4 Regulatory Overview

The following is a discussion of the Federal laws and consultations that may be relevant to implementing the Proposed Action.

1.4.1 National Environmental Policy Act

This EA was prepared in compliance with the National Environmental Policy Act of 1969, 42 United States Code (USC) 4321 to 4370f, as implemented by the Council on Environmental Quality regulations, Title 40, Code of Federal Regulations (CFR) Parts 1500-1508 and the Office of the Chief of Naval Operations Instruction 5090.1B Change-4, of June 4, 2003. This EA analyzes the potential impacts of the Proposed Action and reasonable alternatives and is intended to provide sufficient evidence and analysis for determining whether to prepare an Environmental Impact Statement or a Finding of No Significant Impact.

1.4.2 Section 106, National Historic Preservation Act

The National Historic Preservation Act (NHPA) of 1966 (as amended) (16 USC §470) recognizes the Nation's historic heritage and establishes a national policy for the preservation of historic properties as well the National Register of Historic Places (NRHP). Section 106 of the NHPA requires Federal agencies to take into account the effects of Federal undertakings on historic properties and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on such undertakings. The Section 106 process, as defined in 36 CFR §800, provides for the identification and evaluation of historic properties for determining the effects of Federal undertakings on such properties, and for developing ways to resolve adverse effects through the process of consultation.

1.4.3 Coastal Zone Management Act

The purpose of the Coastal Zone Management Act (CZMA) is to encourage coastal states to manage and conserve coastal areas as a unique, irreplaceable resource. Federal activities that affect any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of federally-approved State Coastal Zone management program. The CZMA states that land subject solely to the discretion of the Federal government, such as federally owned or leased property, is excluded from the State's coastal zone. The proponent of the Federal action must determine whether the action would affect any coastal use or resource in a coastal State.

1.4.4 Section 7, Endangered Species Act

The Endangered Species Act (ESA) (16 USC §1531 *et seq.*) establishes a process for identifying and listing species. It requires all Federal agencies to carry out programs for the

¹ Correspondence between Naval Facilities Engineering Command, Pacific and DHHL is included in Appendix C

conservation of Federally listed endangered and threatened plants and wildlife, and prohibits actions by Federal agencies that may adversely affect endangered or threatened species, or critical habitat. Section 7 of the ESA requires consultations with Federal wildlife management agencies on actions that may jeopardize such species or habitat. Section 9 of the ESA prohibits the "taking" of endangered species by causing harm or harassment.

1.4.5 Hawaiian Home Lands Recovery Act (HHLRA)

The HHLRA (Public Law 104-42, 109 Stat. 357) was signed into law on November 2, 1995. The HHLRA provides for the settlement of disputed land transfers by establishing a mechanism for valuing lands that were initially designated as available lands under section 203 of the Hawaiian Homes Commission Act of 1921 (HHCA) (42 Stat. 108) and were nevertheless transferred to or otherwise acquired by the Federal Government, and authorizing an exchange of land based upon the determination of value. It authorizes the US Secretary of the Interior to convey Federal lands to DHHL. Such conveyances are in exchange for the continued use of real property identified as "available land" for native Hawaiians under the HHCA retained by the Federal Government as well as in compensation for lost use of such lands. The full text of the HHLRA is attached in Appendix A.

1.4.6 HHLRA Memorandum of Agreement

The MOA dated August 31, 1998, between the United States of America (Secretary of the US Department of Interior) and the DHHL was executed pursuant to the HHLRA. The MOA identified nine separate parcels, including the Lualualei Buffer Parcel, totaling 960 acres (388.5 ha) for conveyance to the State of Hawai'i in exchange for release of claims or actions related to the United States' continued or past use of the "available lands" under the HHCA. The MOA also stipulated that the delivery of the Lualualei Buffer Parcel not occur until such time as DHHL has erected an appropriate security barrier between the parcel and the adjacent NAVMAG Lualualei, which is acceptable to the Navy. The full text of the MOA is attached in Appendix A.

2.0 PROPOSED ACTION AND ALTERNATIVES

2.1 Introduction

This chapter provides a discussion of the Proposed Action and alternatives, and presents a summary of their potential environmental effects.

2.2 Description of Alternatives

The following alternatives were considered for the Lualualei Buffer Parcel:

- Proposed Action: Disposal to DHHL based on DHHL's forecasted AG-1 District use consisting of 5 five-acre (2-ha) farm lots, each lot including a farm dwelling
- Reasonable Alternative: Disposal to DHHL for possible Country District Use consisting of 25 one-acre (0.4-ha) residential lots
- No Action

A comparison of the environmental impacts of the Proposed Action and other alternatives is presented at the end of this chapter in Table 1.

In accordance with the MOA, the conveyance to DHHL shall not be completed until such time as DHHL has erected an appropriate security barrier between the parcel and the adjacent NAVMAG Lualualei, which is acceptable to the Navy. The installation of the security barrier is therefore common to both the Proposed Action and Reasonable Alternative.

2.2.1 Proposed Action: AG-1 District Use

CNRH proposes to dispose of the approximately 27-acre (10.9-ha) project area to DHHL, which forecasts to use the area for development consistent with the C&C's standards for the AG-1 District (Section 3.50 of the LUO).

For purposes of environmental analyses, development of 5 five-acre (2-ha) residential farm lots consistent with the AG-1 District was considered as the most appropriate use to evaluate given DHHL's forecasted use and that it represents the maximum land use intensity achievable in the AG-1 District. Potential development at the site would include the following:

- Construction of up to 5 farm dwelling units;
- Construction of road easement/access to farm properties;
- Use of land for agricultural activities, including crop production and livestock; and
- Construction and upgrade of infrastructure.

Based on a comparison of average household size of other AG-1 District lands within the immediate area, development of the project area would likely support an estimated residential population of about 20 persons at 3.9 persons per household.

2.2.2 Reasonable Alternative: Country District Use

Although DHHL has indicated that the use of the area is forecasted to remain consistent with AG-1 District regulations, DHHL may decide, in the future, on an alternate use for the parcel. A reasonable alternative is to apply the C&C's regulations for the Country District zoning to the

parcel. The purpose of the Country District is “to recognize and provide for areas with limited potential for agricultural activities but for which the open space or rural quality of agricultural lands is desired. The district is intended to provide for some agricultural uses, low density residential development and some supporting services and uses.” (Sec. 21-3.60(a) C&C LUO).

The following guidelines are used by the C&C to determine the applicability of the Country District status:

- 1) Lands within the state-designated urban district and designated either agricultural or residential by adopted city land use policies.
- 2) Lands not predominately classified as prime, unique or other under the agricultural lands of importance to the State of Hawai'i system.
- 3) Lands where a substantial number of existing parcels are less than two acres (0.81 ha) in size.
- 4) Lands where existing public facility capacities preclude more intense development.

Although the project area does not meet all of these guidelines, the existence of a number of Country District developments within one mile (1.6 kilometers (km)) of the project location makes this a reasonable alternative. This includes the adjacent 10.8-acre (4.4-ha) Kamaka Tract which has been rezoned to the Country District and has been developed into one-acre house lots, and two Country District one-acre house lots located to the west of the project area.

The maximum residential density in a Country District should not exceed one dwelling unit per acre (Sec. 21-3.60-2 C&C LUO). Based on these standards, the Reasonable Alternative proposes that the project area could be utilized for up to 25 one-acre (0.4-ha) (Country District) residential dwelling units with approximately two acres (0.81-ha) utilized for associated access roads and drainage control areas. Potential activities within the project area would include the following:

- Construction of up to 25 residential dwelling units,
- Construction of road easement/access to residential properties, and
- Construction and upgrade of infrastructure.

By comparing household size in nearby and adjacent developed areas with a significant Country District component, a similar level of development on the project area would likely support an estimated residential population of about 108 persons at 4.3 persons per household.

2.2.3 No Action

The No Action Alternative preserves the status quo. There would be no transfer of property to DHHL. The Navy would retain ownership of the project area in caretaker status with no functional, operational or strategic value. There would be no development of the project area.

The No Action Alternative would not achieve the purpose of the project but was carried forward in the analysis as a benchmark against which to compare the magnitude of environmental effects of the alternatives including the Proposed Action.

2.3 Environmental Effects of the Proposed Action and Alternatives

The environmental effects of the Proposed Action and alternatives are summarized in Table 1, based on information from Chapter 4, Environmental Consequences.

Table 1: Summary of Environmental Effects of the Proposed Action and Alternatives

Resource Issue	Proposed Action (AG-1 District)	Reasonable Alternative (Country District)	No Action Alternative
Topography, Soils, and Drainage; Flora & Fauna; Cultural Resources; Air Quality; Noise; Hazardous/Regulated Materials; Ground and Surface Water Resources; Traffic; Visual Resources; Public Infrastructure and Services; Socioeconomic Environment	No significant impact associated with the proposed development for dwellings and agricultural uses.	Same as Proposed Action.	No impact.
Land Use	Change in land use and intensity but compatible with surrounding uses	Same as Proposed Action.	No impact.

3.0 AFFECTED ENVIRONMENT

This chapter describes the environmental setting and baseline conditions of the environmental resources affected by the Proposed Action and the Reasonable Alternative.

3.1 Overview

The 27-acre (10.9 ha) parcel is located within the Wai'anae region of O'ahu. It is part of and located in the northwestern corner of NAVMAG Lualualei, which occupies approximately 7,500 acres (3,036 ha) in a large coastal valley (Lualualei Valley) on the southwestern shore of O'ahu (Figure 1). NAVMAG Lualualei is contiguous to NCTAMS PAC RTF Lualualei, which occupies an additional 1,700 acres (688 ha) of the valley.

Topography, Soils, and Drainage. The topography of the 27-acre (10.9 ha) parcel generally slopes south and west towards the Lualualei Reservoir and Ma'ili. Ground elevations range from about 200 feet (61 meters (m)) above sea level to about 100 feet (30.5 m) above sea level. There are two different types of soils found within the parcel. The majority of the site is comprised of Lualualei extremely stony clay, 3 percent to 35 percent slopes, along with a small inclusion of Lualualei stony clay, 0 percent to 2 percent slopes in the southwest corner.

The Lualualei extremely stony clay is found on talus slopes and contains many stones both on the surface and in its soil profile. The soil is used for pasture and is generally considered impractical to cultivate, unless the stones are removed. Runoff is medium to rapid, and the erosion hazard is moderate to severe.

The Lualualei stony clay is found on alluvial fans, indicating the presence of erosion and possibly a wetter environment at one time. Permeability and runoff are slow and the erosion hazard is slight. The soil can be used for crops, pasture, urban development, and other uses; however, the nature of its clay makes cultivation difficult and practical only within a narrow range of moisture content. The soil has a high shrink-swell potential, necessitating that considerable care be used when locating buildings on it.

Two intermittent drainageways were observed with a limited amount of standing water during a site inspection in April 2003. A leak in the water line running along Pāhe'ehe'e Road adjacent to the northern parcel border is most likely responsible for water in one of the drainageways. Runoff from the project area eventually finds its way to the Mai'li'i Channel, the central municipal drainage channel for Lualualei Valley. There are no wetlands within the parcel.

Biological Resources. The *Integrated Natural Resources Management Plan (INRMP)*, *Naval Magazine Pearl Harbor* (November 2001) reports that 23 birds, 14 snails, 637 arthropod species, and up to seven species of mammals have been observed in several surveys from 1986 to 1997 at NAVMAG Lualualei. Seventeen endangered plants and two endangered animals have been identified at NAVMAG Lualualei, however these are found predominantly throughout the forested valleys and ridges within the ESQD arcs. The Navy has established four Management Areas to protect these endangered species. Typical fauna likely to frequent the project area include feral pig (*Sus scrofa*), Indian mongoose (*Herpestes auropunctatus*), roof rat (*Rattus rattus*), feral cat (*Felis catus*) and house mouse (*Mus musculus*).

NAVFAC PACIFIC biologists surveyed the project area in April 2003. The vegetation identified consists predominately of dryland grasses with non-native kiawe (*Prosopis pallida*) trees. Koa-

haole (*Leucaena leucocephala*), native Ilima (*Sida fallax*), and ihi (*Portulaca lutea*) can be found interspersed among the *Miscanthus* grass, along with some cactus. Figure 2 shows photographs of the vegetation typically found at the project area. Figure 2 presents an aerial view of the site and adjacent lands.

No species of animals that are proposed for listing or are listed as threatened or endangered species under the ESA have been observed, or would be expected to occur, on this parcel given the existing habitat conditions. The US Fish and Wildlife Service has designated critical habitats in the upper slopes of the Waianae Range (above 500-foot (152 m) elevation). The closest critical habit is Unit 11 located on a ridgeline approximately 3,000 feet (194 m) north of the project area (not shown). The Unit was established to protect the endangered 'akoko plant (*Chamaesyce kuwaleana*).

Cultural Resources. The NHPA defines historic property as “any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the National Register...” (16 USC 470w). For the purposes of this EA, the terms “historic properties” and “cultural resources” are used synonymously.

The Lualualei Valley is thought to have been settled sometime after AD 1600 (Haun *et al.* 1991), and contains a variety of prehistoric features including *heiau*,² housing and archaeological complexes, and an apparent lithic production site (McAllister 1933; Haun *et al.* 1991; Kolb *et al.* 1995, Dixon *et al.* 2002). Archaeological investigations were conducted by Haun *et al.* (1991), Kolb *et al.* (1995), Ogden Environmental and Energy Services (2000-2001), and Dixon *et al.* (2002).

Prehistoric, historic, and modern day uses have had a noticeable impact on all pre-existing archaeological features in the area; a process first remarked upon in the earliest identified historical accounts. In 1991, Haun *et al.* described the Lualualei Buffer parcel as highly disturbed due to the effects of the dumping of refuse, bulldozer cuts and cleared areas, grazing impacts from livestock and fence construction, and probable historic field agriculture such as sugarcane. Following Western contact, the valley was heavily employed for cattle ranching purposes and sugarcane cultivation. Haun *et al.* did not identify any archaeological sites within the Lualualei Buffer parcel; however, the survey did identify five sites near the parcel, which it recommended for eligibility to the NRHP as historic ranching or agricultural sites.

NAVFAC Pacific conducted an archaeological survey of the Lualualei Buffer Parcel in 2003 as part of the proposed land transfer undertaking. Recorded features within the parcel include a rectangular stone enclosure, a circular stone enclosure, and a circular retaining wall incorporating a possible chimney hole, all scattered with debris from recent history and an L-shaped stone wall, a rectangular area paved with stones, and a boulder alignment. Historic debris consisted of glass fragments, sheet metal, metal wire, and a metal hoe. Some of the stone features were also held together with cement. In addition, two old cars were found within the parcel. Subsurface testing of two of the sites produced only several small fragments of glass and thin black plastic. It was concluded that the features found within the Lualualei Buffer Parcel date to the earlier cattle ranching period.

² Hawaiian temple used as a place of worship, offering, and/or sacrifice.



Source: NAVFAC EFD PACIFIC (1986).

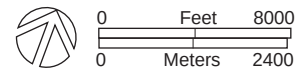


Photo of vegetation in project area looking south from Pāhe'ehe'e Road.



Photo of vegetation in project area taken from Pāhe'ehe'e Road looking east. Lush grass in foreground is the result of a leak in the existing water line.

Photos of Project Area

Figure 2

Air Quality and Noise. The air quality on Oahu is relatively clean and low in pollutants. Based on air quality data collected and published by the Hawai'i Department of Health, Hawai'i is considered an attainment area, not subject to the Clean Air Act's General Conformity Rule. Hawai'i's air quality is within the National and the State Ambient Air Quality Standards for carbon monoxide, nitrogen dioxide, sulfur dioxide, ozone, particulate matter, and lead. Noise levels at the project area are typical of rural, predominantly agricultural areas.

Hazardous/Regulated Materials. The parcel is located outside of the NAVMAG Lualualei ESQD arcs. A recent survey revealed the presence of potentially hazardous substances (e.g., an above ground tank and empty rusted drums) on the southern boundary of the parcel, which would be removed prior to the land transfer.

Ground and Surface Water Resources. The project area is not located over groundwater that is considered a drinking water source. Additionally, there are no perennial streams crossing the site. Surface water resources are limited to the intermittent drainage-ways mentioned above.

Traffic. The project area is located at the northern terminus of Kūwale Road, a two-lane rural road servicing predominantly agricultural and some residential properties in the immediate vicinity. Traffic in the vicinity of the project area is considered light.

Visual Resources. Located on a gentle slope on the northern side of the Lualualei Valley, the project area offers scenic views of the Wai'anae Mountain Range and Kolekole Pass and south across Lualualei Valley/NAVMAG Lualualei. Views to the north and immediate west are blocked by the 855-foot (261 m) Mauna Kūwale and Pāhe'ehe'e Ridge. South of the site are small farms and residences. Any development at the project area would be visible primarily from higher elevations in the area, which are not currently developed.

Public Infrastructure and Services. Public infrastructure is not currently provided directly to the project area, although the site is adjacent to residential lots that receive services.

Water lines along Pāhe'ehe'e Road and Kūwale Road intersect near the northwest corner of the parcel and service residential households and farms in the area. A leaking water line upslope and adjacent to Pāhe'ehe'e Road was also observed during a field visit.

The *Waianae Sustainable Community Plan* (WSCP) is the Wai'anae community's vision for the area and the C&C's adopted policy on development in the region. According to the WSCP, the Honolulu Board of Water Supply (BWS) projections for the year 2020 indicate that the Wai'anae District will consume 12.28 million gallons per day (gpd) (46.48 million liters per day (lpd)) of potable water. These projections are based on a resident population of 48,155 people, a visitor population of 3,127 people and a per capita demand of 240 gpd (909 lpd).

The project area is not served by a public sewer system. The nearest public sewer lines serve DHHL's subdivision located approximately 0.5 miles (0.8 km) west of the project area. Because the parcel is not located in the BWS's "No Pass" zone, individual wastewater treatment systems are permitted.

The WSCP reports that the Wai'anae District is adequately served in terms of electrical power and telephone and cable television systems. The WSCP indicates that these should be sufficient to accommodate the additional growth expected through at least 2020.

The project area is located within the Waiʻanae public school district. Leihoku Elementary School is the nearest elementary school (approximately 2 miles (3.2 km) away). Waiʻanae Intermediate School and Waiʻanae High School are located approximately 2.5 miles (4 km) and 3 miles (4.8 km) away, respectively.

Police protection is provided by District 8-Waiʻanae/Kapolei, with the District 8 Substation in Waiʻanae town (approximately 2.5 miles (4 km) away) providing the base of operations. Fire protection, including Emergency Medical Services, is provided primarily by units working out of Waiʻanae Fire Station No. 26 (approximately 2.5 miles (4 km) away).

Numerous park and recreational facilities exist in the Waiʻanae area. The parks closest to the project area include Lualualei and Pokai Bay Beach Parks (approximately 2.5 miles (4 km) away) and the Kaupuni Neighborhood Park (approximately one-mile (1.6 km) away). Other recreational facilities within three miles (4.8 km) of the parcel include Waiʻanae District Park, Waiʻanae Park, Waiʻanae Regional Recreation Center, and Waiʻanae Piliʻau Field.

Socioeconomic Factors. Factors considered in determining whether the project could have a significant impact on the socioeconomic environment included:

- Induced net change in island population or employment levels that adversely affects public services and facilities such as regional public schools and recreational facilities;
- Adverse effects to response time for emergency services; and
- Relocation of any residence and the disruption of established communities.

The Waiʻanae area is undergoing a transition from a stable rural community to a suburbanizing urban fringe community (WSCP). From 1990 to 2000, Waiʻanae's population increased from 37,411 to 42,259, a 13 percent increase. It is expected to increase to between 50,000 and 60,000 residents by 2020 (WSCP).

3.2 Land Use

The following sections discuss existing and surrounding land uses and associated land use constraints. Typically, after a Federal property has been conveyed to non-Federal entities, the property is subject to local land use regulations, including zoning and subdivision regulations, and building codes. In general, C&C would regulate land use on the individual parcels through its zoning districts. DHHL, however, as a State agency, is not required to follow the C&C LUO and its standards.

3.2.1 Existing and Surrounding Land Uses

The project area is currently vacant land that is bordered by a barbed wire fence in various stages of disrepair, making it easily penetrable. The parcel is bordered by Pāheʻeheʻe Road on the north and northwest, Kūwale Road on the west and the Kamaka Tract development on the south. Homes within the Kamaka Tract are accessible by an unnamed government road, along the south side of the tract. Mauna Kūwale lies to the immediate northwest of the project area. To the east is the larger, contiguous NAVMAG Lualualei installation. The parcel is located over 1,000 feet (305 m) outside the ESQD arcs associated with NAVMAG Lualualei magazines.

Primary land uses in the vicinity of the Lualualei Buffer Parcel include agriculture (primarily truck crops, nurseries, flower cultivation), habitation, and naval magazine activities. Immediately south of the project area is a residential development known as the Kamaka Tract, which consists of 12, mostly one-acre (0.4-ha) lots on 10.97 acres (4.4 ha) that have been zoned "Country District," according to the C&C LUO. Additional Country District, AG-1 District-zoned lots, and AG-2 General Agricultural District-zoned lots dominate the area to the south and west of the project area. A number of other properties in the general vicinity are under the jurisdiction of DHHL, including a large residential development west of Pāhe'ehe'e Ridge. Figure 3 presents the C&C LUO Zoning Districts in the vicinity of the project area.

3.2.2 Land Use Regulations

The project area is currently zoned F-1 Military and Federal (Figure 3). DHHL's forecasted use would be consistent with the AG-1 District.

The intent of the C&C's AG-1 District is to conserve and protect important agricultural lands for the performance of agricultural functions by permitting only those uses which perpetuate the retention of these lands in the production of food, feed, forage, fiber crops and horticultural plants (Sec. 21-3.50 (b) C&C LUO). Pursuant to the site standards for the AG-1 District, the maximum number of farm dwellings should not exceed one unit per five acres (Sec. 21-3.50-2 C&C LUO). Within the AG-1 District, detached, duplex and multi-family farm dwellings are permitted, however each dwelling and ancillary structures must be contained within a 5,000 square foot (465 square meter) footprint.

The WSCP indicates that the project area is located in an area designated for agricultural land uses. The intent of this land use category is that agricultural land uses within these areas, including commercial farms, family farms, and family gardens, should be preserved and encouraged, and land uses within these areas should be limited to agriculture and other uses that are compatible with a rural landscape and country lifestyle.



Land Use Zoning Map

Figure 3

Disposal of the Lualualei Buffer Parcel EA
 Environmental Assessment
 O'ahu, Hawai'i

4.0 ENVIRONMENTAL CONSEQUENCES

4.1 Overview

This chapter evaluates the probable direct, indirect, short term, long term, and cumulative impacts of the Proposed Action, Reasonable Alternative, and No Action Alternative on relevant environmental resources.

Topography, Soils, and Drainage. The Proposed Action and Reasonable Alternative would not have any impacts on topography, soils, and drainage.

Biological Resources. The Proposed Action and Reasonable Alternative are not anticipated to have any impacts on biological resources. No species of animals or plants that are proposed for listing or are listed as threatened or endangered species under ESA have been observed, or would be expected to occur, within the project area given the existing habitat conditions.

Cultural Resources. Factors considered in determining a significant impact to cultural resources include the extent or degree to which an alternative results in a change in the characteristics that qualify a historic property for listing on the NRHP. Since none of the identified sites in the project area meet any of the criteria defined in the National Register Bulletin 15 (1991), none of them were recommended for eligibility to the NRHP.

Transfer of the Lualualei Buffer Parcel and development under either the Proposed Action or the Reasonable Alternative scenarios would have no effect on cultural resources. No historic buildings or structures are in the vicinity of the parcel. Furthermore, no significant surface archaeological resources have been identified within the area. It is not likely that subsurface remains exist, as inferred by subsurface testing of the parcel.

During CNRH consultations with the State Historic Preservation Office (SHPO), the O'ahu Council of Hawaiian Civic Clubs, and the Office of Hawaiian Affairs, no concerns about the Proposed Action were raised. Upon conclusion of the NHPA Section 106 consultations, the SHPO concurred with the Navy's determination of "no historic properties affected." The Section 106 consultation correspondence is attached as Appendix D.

Air Quality and Noise. The Proposed Action and Reasonable Alternative are not likely to affect or be affected by air quality and noise, although some temporary short-term impacts would be likely during construction associated with development on the parcel.

Hazardous/Regulated Materials. The Proposed Action and Reasonable Alternative are not likely to affect or be affected by hazardous and regulated materials. Soil samples are being analyzed for the potential presence of residual hazardous substances. If required, CNRH will take clean-up and remedial actions in accordance with Federal and State Department of Health regulations prior to the land transfer. The United States will be responsible for compliance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as required per paragraph 6, page 3 of the MOA.

Ground and Surface Water Resources. The Proposed Action and Reasonable Alternative would have no impact on ground and surface water resources.

Traffic. The Proposed Action would not significantly change the volume of traffic in this area either during construction or post-construction. The Reasonable Alternative could have a somewhat greater impact on traffic in the immediate vicinity of the project area during construction and post-construction periods. Construction period impacts would depend on the magnitude and timing of development activities, but are expected to be minimal given the project area's location and current levels of traffic in the area.

Visual Resources. Neither the Proposed Action nor the Reasonable Alternative is expected to have significant impacts on visual resources.

Public Infrastructure and Services. Development of the site would not be expected to increase projected de facto population growth in the Waianae District or O'ahu. Planned improvements to public infrastructure and services would be adequate to accommodate foreseeable development of the parcel. Offsite infrastructure improvements such as potable water lines and storage facilities, and other utility improvements may be required to support development of the site. These improvements (if any) would be identified by DHHL in a subsequent planning and design phase, in consultation with utility providers. Neither the Proposed Action or Reasonable Alternative would be expected to tie into the public sewer system, therefore they would not impact public wastewater systems. The No Action Alternative would have no impact on public infrastructure and services.

Socioeconomic Factors. The Proposed Action and Reasonable Alternative would not have significant impacts to O'ahu's population and employment levels. Development of the site would not be expected to increase projected de facto population growth in the Waianae District or O'ahu. Native Hawaiian beneficiaries of DHHL (persons with at least 50 percent Hawaiian ancestry) would be eligible for lots within the project area once the parcel has been subdivided. No relocation of existing residences or community disruption is anticipated. Therefore, no significant adverse social or economic impacts are expected from the Proposed Action or Reasonable Alternative. The No Action Alternative would have no impact on socioeconomic factors.

4.2 Land Use

This section discusses the change in land use and land use compatibility of the Proposed Action and Reasonable Alternative.

The primary factors considered in concluding whether the Proposed Action or Reasonable Alternative has a significant impact on land use include:

- Change in land use type or intensity,
- Compatibility with surrounding land uses,
- Compliance with existing land use policies and,
- Potential impacts to the area's natural resources.

Construction of an appropriate security barrier between the parcel and the adjacent NAVMAG Lualualei, as stipulated in the HHLRA MOA, would not have an adverse effect.

4.2.1 Proposed Action: AG-1 District Use

The land use may change in both type and intensity—from undeveloped vacant land to developed farm lots with up to five farm dwellings (0.2 dwellings per acre density), ancillary structures and improvements. This density and land use pattern is equal to or less intense than most of the surrounding lands (in the F-1, AG-1, AG-2 and Country Zoning Districts).

Accordingly, no significant direct, indirect, short-term, or long-term land use impacts are anticipated from the Proposed Action. The Proposed Action would be compatible with the rural character of the Waiʻanae District, the Waiʻanae community's long-range vision as embodied in the WSCP, and with existing land uses found on nearby properties.

4.2.2 Reasonable Alternative: Country District Development

Land use would change in both type and intensity—from undeveloped vacant land to developed farm lots with up to twenty-five farm dwellings (i.e., one-dwelling per acre density), ancillary structures and improvements. The project area is situated in an area where the majority of parcels (with the exception of the Kamaka Tract) are in the AG-1 and AG-2 Zoning Districts (0.2-0.5 dwellings per acre density). However, given the number of other Country District developments located nearby, implementation of this alternative would be considered consistent and compatible with the general character of the neighborhood. Therefore, while development of the Country District Alternative would result in minor direct, indirect, short term, and long term land use impacts, these impacts are not considered significant in the context of adversely affecting the overall character of the immediate area or the Waiʻanae District.

The Country District Alternative is not, however, consistent with the WSCP designation for the underlying Agricultural land use zone (“...subdivisions with lot sizes less than two acres... should generally not be permitted in the Agricultural area” (WSCP p. 3-29)). Although the WSCP's Agricultural land use zone encompasses existing Country District subdivisions, the WSCP's policy towards future Country District subdivisions is that they should not be permitted in the Agricultural land use zone.

4.2.3 No Action Alternative

No land use impacts are anticipated under the No Action Alternative.

4.3 Cumulative Impacts

Cumulative impacts to environmental resources result from the incremental effects of development and other actions when evaluated in conjunction with other government and private, past, present, and “reasonably foreseeable actions.” Cumulative impacts can result from individually minor, but collectively significant, actions taking place over a period of time. The analysis of cumulative impacts was done on a qualitative basis, and includes known land use changes in the vicinity, as well as future actions within the area, such as the Disposal of other Navy lands at Lualualei.

There are no known plans for changes to existing land uses in the vicinity of the parcel, except for the potential long-range transfer of the NAVMAG Lualualei installation to the State of Hawai'i discussed in the Hawaii Military Land Use Master Plan (see Section 4.5.1), should magazine facilities be replaced at the Naval Magazine Pearl Harbor, West Loch Branch. Although the Proposed Action represents a potential change in use and intensity from the existing, vacant

status, it has little potential to contribute to a cumulative effect as it would still be compatible with the existing character and reasonably foreseeable uses in the area. Although the Reasonable Alternative represents a more intensive use of the parcel than the Proposed Action, it would also still be compatible with the existing character and reasonably foreseeable uses in the area. Therefore, the Reasonable Alternative also has little potential to contribute to a cumulative effect. The No Action Alternative would create no new effects.

4.4 Compliance with Executive Orders

This section describes how the Proposed Action and alternatives comply with relevant Executive Orders.

4.4.1 Executive Order 12898, Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (11 February 1994), and the Secretary of the Navy Notice 5090 (27 May 1994), require the Navy required to identify and address the potential for disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations.

There are no known significant or adverse environmental impacts, including human health, economic or social effects that would disproportionately affect minority or low-income communities resulting from the Proposed Action, Reasonable Alternative or the No Action Alternative. The Proposed Action and Reasonable Alternative would provide benefits to minority populations and low-income populations in that they would provide additional housing opportunities for Native Hawaiians.

4.4.2 Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 (21 April 1997) requires Federal agencies to make it a high priority to identify and assess environmental health and safety risks that may disproportionately affect children; and ensure that its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health or safety risks.

The Proposed Action would not create environmental health and safety risks that may disproportionately affect children. The project area is located in a predominantly agricultural area in the Wai'anae District. Children, with the exception of those living in the immediate area, do not frequent the project area. Because no significant impacts to environmental resources are expected from the Proposed Action or Reasonable Alternative, they would not increase any health and safety risks to children. Similarly, the No Action alternative would not disproportionately impact children.

4.5 Possible Conflicts Between the Proposed Action and the Objectives of Federal Land Use Policies, Plans and Controls

4.5.1 Hawaii Military Land Use Master Plan (1995)

The Hawaii Military Land Use Master Plan (HMLUMP) evaluated the military's strategic land use requirements in Hawaii into the 21st Century, and identified several landholding reduction or acquisition proposals statewide. It found that NAVMAG Lualualei could become excess to the needs of the Navy if the facilities were replaced at the West Loch Branch. The Lualualei Buffer Parcel is part of the lands identified as potentially excess. Implementation of the Proposed Action is consistent with the recommendations of the HMLUMP in that it would dispose of about 27 acres of excess lands at NAVMAG Lualualei.

4.5.2 Commander, Navy Region Hawaii Regional Shore Infrastructure Plan Overview (2002)

The CNRH Regional Shore Infrastructure Plan Overview (2002) is intended to direct future planning and management decisions. Guiding principles of the plan emphasize:

- Protection of operational capabilities and mission readiness.
- Reduction of shore infrastructure costs and the reuse, divestiture or demolition of underutilized facilities.
- Optimized land use/facility locations.

The Overview Plan supports the HMLUMP finding that the Lualualei Buffer parcel be identified as potentially excess. The Proposed Action is also consistent with the Overview Plan's guiding principles for divestiture of underutilized facilities.

4.5.3 Coastal Zone Management Act

CNRH has conducted an effects test and concluded that the Proposed Action would not have reasonably foreseeable direct or indirect effects on any coastal use or resource of the State's coastal zone; therefore, no documentation is required to be sent to the Hawaii Coastal Zone Management Program Office. However, prior to development activity, DHHL would need to make its own determination if development would have any foreseeable direct or indirect effect on the State's coastal use or resources and consult, as necessary, with the Hawai'i Coastal Zone Management Program Office.

4.5.4 HHLRA Memorandum of Agreement

Implementation of the Proposed Action would satisfy a Navy obligation under the HHLRA MOA with regard to the Lualualei Buffer parcel.

4.6 Relationship of Short-Term Uses and Long-Term Productivity

This section lists the trade-offs between short- and long-term gains and losses due to the Proposed Action. "Short-term" refers to the immediate disposal action; "long-term" refers to reasonably foreseeable development of the land in accordance with the MOA. The Proposed Action would have the following short- and long-term gains and losses:

- Short-term gain to the Navy by reducing costs incurred to secure and maintain the parcel.
- Long-term gain to DHHL beneficiaries that would have the opportunity to make the parcel agriculturally productive.
- Long-term loss of operational flexibility to the Navy by reducing the available acreage of NAVMAG Lualualei.

The No Action Alternative would result in a continued long-term loss to the Navy associated with costs to secure and maintain the parcel that could be reallocated to more productive uses.

4.7 Irreversible and Irretrievable Commitments of Resources

Resources that are committed irreversibly or irretrievably are those that cannot be recovered if the Proposed Action and alternatives are implemented. The Proposed Action and Reasonable Alternative would involve conveying the parcel for development purposes. It would commit land resources irreversibly or irretrievably from Federal control to DHHL for whatever use it determines to be in its best interest. The No Action Alternative would not irreversibly or irretrievably commit resources except as needed for the continued surveillance of the parcel.

5.0 LIST OF AGENCIES CONSULTED

State of Hawai'i

Department of Education

Department of Land and Natural Resources, State Historic Preservation Officer

Department of Hawaiian Home Lands

Office of Hawaiian Affairs

City and County of Honolulu

Honolulu Board of Water Supply

City and County of Honolulu, Department of Planning and Permitting

Non-Governmental Organization

Oahu Council of Hawaiian Civic Clubs

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APPENDIX A

Hawaiian Home Lands Recovery Act

by virtue of acquiring title from the State of Alaska or from the United States.

SEC. 109. DEFINITION OF REVENUES.

(a) Section 7(i) of the Alaska Native Claims Settlement Act, Public Law 92-203 (43 U.S.C. 1606(i)), is amended—

(1) by inserting "(1)" after "(i)"; and

(2) by adding at the end the following new paragraph:

"(2) For purposes of this subsection, the term 'revenues' does not include any benefit received or realized for the use of losses incurred or credits earned by a Regional Corporation."

(b) This amendment shall be effective as of the date of enactment of the Alaska Native Claims Settlement Act, Public Law 92-203 (43 U.S.C. 1601, et seq.).

TITLE II—HAWAIIAN HOME LANDS

SEC. 201. SHORT TITLE

This title may be cited as the "Hawaiian Home Lands Recovery Act".

SEC. 202. DEFINITIONS.

As used in this title:

(1) AGENCY.—The term "agency" includes—

(A) any instrumentality of the United States;

(B) any element of an agency; and

(C) any wholly owned or mixed-owned corporation of the United States Government.

(2) BENEFICIARY.—The term "beneficiary" has the same meaning as is given the term "native Hawaiian" under section 201(7) of the Hawaiian Homes Commission Act.

(3) CHAIRMAN.—The term "Chairman" means the Chairman of the Hawaiian Homes Commission of the State of Hawaii.

(4) COMMISSION.—The term "Commission" means the Hawaiian Homes Commission established by section 202 of the Hawaiian Homes Commission Act.

(5) HAWAIIAN HOMES COMMISSION ACT.—The term "Hawaiian Homes Commission Act" means the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et. seq., chapter 42).

(6) HAWAII STATE ADMISSION ACT.—The term "Hawaii State Admission Act" means the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (73 Stat. 4, chapter 339; 48 U.S.C. note prec. 491).

(7) LOST USE.—The term "lost use" means the value of the use of the land during the period when beneficiaries or the Hawaiian Homes Commission have been unable to use lands as authorized by the Hawaiian Homes Commission Act because of the use of such lands by the Federal Government after August 21, 1959.

(8) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 203. SETTLEMENT OF FEDERAL CLAIMS.

(a) DETERMINATION.—

(1) The Secretary shall determine the value of the following:

(A) Lands under the control of the Federal Government that—

(i) were initially designated as available lands under section 203 of the Hawaiian Homes Commission Act (as in effect on the date of enactment of such Act); and

(ii) were nevertheless transferred to or otherwise acquired by the Federal Government.

(B) The lost use of lands described in subparagraph

(A).

(2)(A) Except as provided in subparagraph (B), the determinations of value made under this subsection shall be made not later than 1 year after the date of enactment of this Act. In carrying out this subsection, the Secretary shall use a method of determining value that—

(i) is acceptable to the Chairman; and

(ii) is in the best interest of the beneficiaries.

(B) The Secretary and the Chairman may mutually agree to extend the deadline for making determinations under this subparagraph beyond the date specified in subparagraph (A).

(3) The Secretary and the Chairman may mutually agree, with respect to the determinations of value described in subparagraphs (A) and (B) of paragraph (1), to provide—

(A) for making any portion of the determinations of value pursuant to subparagraphs (A) and (B) of paragraph (1); and

(B) for making the remainder of the determinations with respect to which the Secretary and the Chairman do not exercise the option described in subparagraph (A), pursuant to an appraisal conducted under paragraph (4).

(4)(A) Except as provided in subparagraph (C), if the Secretary and the Chairman do not agree on the determinations of value made by the Secretary under subparagraphs (A) and (B) of paragraph (1), or, pursuant to paragraph (3), mutually agree to determine the value of certain lands pursuant to this subparagraph, such values shall be determined by an appraisal. An appraisal conducted under this subparagraph shall be conducted in accordance with appraisal standards that are mutually agreeable to the Secretary and the Chairman.

(B) If an appraisal is conducted pursuant to this subparagraph, during the appraisal process—

(i) the Chairman shall have the opportunity to present evidence of value to the Secretary;

(ii) the Secretary shall provide the Chairman a preliminary copy of the appraisal;

(iii) the Chairman shall have a reasonable and sufficient opportunity to comment on the preliminary copy of the appraisal; and

(iv) the Secretary shall give consideration to the comments and evidence of value submitted by the Chairman under this subparagraph.

(C) The Chairman shall have the right to dispute the determinations of values made by an appraisal conducted under this subparagraph. If the Chairman disputes the appraisal, the Secretary and the Chairman may mutually agree to employ a process of bargaining, mediation, or other means of dispute

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resolution to make the determinations of values described in subparagraphs (A) and (B) of paragraph (1).

(b) AUTHORIZATION.—

(1) EXCHANGE.—Subject to paragraphs (2) and (5), the Secretary may convey Federal lands described in paragraph (5) to the Department of Hawaiian Home Lands in exchange for the continued retention by the Federal Government of lands described in subsection (a)(1)(A).

(2) VALUE OF LANDS.—(A) The value of any lands conveyed to the Department of Hawaiian Home Lands by the Federal Government in accordance with an exchange made under paragraph (1) may not be less than the value of the lands retained by the Federal Government pursuant to such exchange.

(B) For the purposes of this subsection, the value of any lands exchanged pursuant to paragraph (1) shall be determined as of the date the exchange is carried out, or any other date determined by the Secretary, with the concurrence of the Chairman.

(3) LOST USE.—Subject to paragraphs (4) and (5), the Secretary may convey Federal lands described in paragraph (5) to the Department of Hawaiian Home Lands as compensation for the lost use of lands determined under subsection (a)(1)(B).

(4) VALUE OF LOST USE.—(A) the value of any lands conveyed to the Department of Hawaiian Home Lands by the Federal Government as compensation under paragraph (3) may not be less than the value of the lost use of lands determined under subsection (a)(1)(B).

(B) For the purposes of this subparagraph, the value of any lands conveyed pursuant to paragraph (3) shall be determined as of the date that the conveyance occurs, or any other date determined by the Secretary, with the concurrence of the Chairman.

(5) FEDERAL LANDS FOR EXCHANGE.—(A) Subject to subparagraphs (B) and (C), Federal lands located in Hawaii that are under the control of an agency (other than lands within the National Park System or the National Wildlife Refuge System) may be conveyed to the Department of Hawaiian Home Lands under paragraphs (1) and (3). To assist the Secretary in carrying out this Act, the head of an agency may transfer to the Department of the Interior, without reimbursement, jurisdiction and control over any lands and any structures that the Secretary determines to be suitable for conveyance to the Department of Hawaiian Home Lands pursuant to an exchange conducted under this section.

(B) No Federal lands that the Federal Government is required to convey to the State of Hawaii under section 5 of the Hawaii State Admission Act may be conveyed under paragraph (1) or (3).

(C) No Federal lands that generate income (or would be expected to generate income) for the Federal Government may be conveyed pursuant to an exchange made under this paragraph to the Department of Hawaiian Home Lands.

(c) AVAILABLE LANDS.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), the Secretary shall require that lands conveyed to the Department of Hawaiian Home Lands under this Act shall have the status of available lands under the Hawaiian Homes Commission Act.

(2) SUBSEQUENT EXCHANGE OF LANDS.—Notwithstanding any other provision of law, lands conveyed to the Department of Hawaiian Home Lands under this paragraph may subsequently be exchanged pursuant to section 204(3) of the Hawaiian Home Commission Act.

(3) SALE OF CERTAIN LANDS.—Notwithstanding any other provision of law, the Chairman may, at the time that lands are conveyed to the Department of Hawaiian Home Lands as compensation for lost use under this Act, designate lands to be sold. The Chairman is authorized to sell such land under terms and conditions that are in the best interest of the beneficiaries. The proceeds of such a sale may only be used for the purposes described in section 207(a) of the Hawaiian Homes Commission Act.

(d) CONSULTATION.—In carrying out their respective responsibilities under this section, the Secretary and the Chairman shall—

(1) consult with the beneficiaries and organizations representing the beneficiaries; and

(2) report to such organizations on a regular basis concerning the progress made to meet the requirements of this section.

(e) HOLD HARMLESS.—Notwithstanding any other provision of law, the United States shall defend and hold harmless the Department of Hawaiian Home Lands, the employees of the Department, and the beneficiaries with respect to any claim arising from the ownership of any land or structure that is conveyed to the Department pursuant to an exchange made under this section prior to the conveyance to the Department of such land or structure.

(f) SCREENING.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Defense and the Administrator of General Services shall, at the same time as notice is provided to Federal agencies that excess real property is being screened pursuant to applicable Federal laws (including regulations) for possible transfer to such agencies, notify the Chairman of any such screening of real property that is located within the State of Hawaii.

(2) RESPONSE TO NOTIFICATION.—Notwithstanding any other provision of law, not later than 90 days after receiving a notice under paragraph (1), the Chairman may select for appraisal real property, or at the election of the Chairman, portions of real property, that is the subject of a screening.

(3) SELECTION.—Notwithstanding any other provision of law, with respect to any real property located in the State of Hawaii that, as of the date of enactment of this Act, is being screened pursuant to applicable Federal laws for possible transfer (as described in paragraph (1)) or has been screened for such purpose, but has not been transferred or declared to be surplus real property, the Chairman may select all, or any portion of, such real property to be appraised pursuant to paragraph (4).

(4) APPRAISAL.—Notwithstanding any other provision of law, the Secretary of Defense or the Administrator of General Services shall appraise the real property or portions of real property selected by the Chairman using the Uniform Standards for Federal Land Acquisition developed by the Interagency Land Acquisition Conference, or such other standard as the Chairman agrees to.

(5) REQUIREMENT OF PROVISION OF COMPLETION OF CONVEYANCE

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SEC. 204. PROCEDURE FOR THE SALE OF REAL PROPERTY

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(5) REQUEST FOR CONVEYANCE.—Notwithstanding any other provision of law, not later than 30 days after the date of completion of such appraisal, the Chairman may request the conveyance to the Department of Hawaiian Home Lands of—

(A) the appraised property; or

(B) a portion of the appraised property, to the Department of Hawaiian Home Lands.

(6) CONVEYANCE.—Notwithstanding any other provision of law, upon receipt of a request from the Chairman, the Secretary of Defense or the Administrator of the General Services Administration shall convey, without reimbursement, the real property that is the subject of the request to the Department of Hawaiian Home Lands as compensation for lands identified under subsection (a)(1)(A) or lost use identified under subsection (a)(1)(B).

(7) REAL PROPERTY NOT SUBJECT TO RECOUPMENT.—Notwithstanding any other provision of law, any real property conveyed pursuant to paragraph (6) shall not be subject to recoupment based upon the sale or lease of the land by the Chairman.

(8) VALUATION.—Notwithstanding any other provision of law, the Secretary shall reduce the value identified under subparagraph (A) or (B) of subsection (a)(1), as determined pursuant to such subsection, by an amount equal to the appraised value of any excess lands conveyed pursuant to paragraph (6).

(9) LIMITATION.—No Federal lands that generate income (or would be expected to generate income) for the Federal Government may be conveyed pursuant to this subsection to the Department of Hawaiian Home Lands.

SEC. 204. PROCEDURE FOR APPROVAL OF AMENDMENTS TO HAWAIIAN HOMES COMMISSION ACT.

(a) NOTICE TO THE SECRETARY.—Not later than 120 days after a proposed amendment to the Hawaiian Homes Commission Act is approved in the manner provided in section 4 of the Hawaii State Admission Act, the Chairman shall submit to the Secretary—

(1) a copy of the proposed amendment;

(2) the nature of the change proposed to be made by the amendment; and

(3) an opinion regarding whether the proposed amendment requires the approval of Congress under section 4 of the Hawaii State Admission Act.

(b) DETERMINATION BY SECRETARY.—Not later than 60 days after receiving the materials required to be submitted by the Chairman pursuant to subsection (a), the Secretary shall determine whether the proposed amendment requires the approval of Congress under section 4 of the Hawaii State Admission Act, and shall notify the Chairman and Congress of the determination of the Secretary.

(c) CONGRESSIONAL APPROVAL REQUIRED.—If, pursuant to subsection (b), the Secretary determines that the proposed amendment requires the approval of Congress, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives—

(1) a draft joint resolution approving the amendment;

(2) a description of the change made by the proposed amendment and an explanation of how the amendment advances the interests of the beneficiaries;

(3) a comparison of the existing law (as of the date of submission of the proposed amendment) that is the subject of the amendment with the proposed amendment;

(4) a recommendation concerning the advisability of approving the proposed amendment; and

(5) any documentation concerning the amendments received from the Chairman.

SEC. 205. LAND EXCHANGES.

(a) NOTICE TO THE SECRETARY.—If the Chairman recommends for approval an exchange of Hawaiian Home Lands, the Chairman shall submit a report to the Secretary on the proposed exchange. The report shall contain—

(1) a description of the acreage and fair market value of the lands involved in the exchange;

(2) surveys and appraisals prepared by the Department of Hawaiian Home Lands, if any; and

(3) an identification of the benefits to the parties of the proposed exchange.

(b) APPROVAL OR DISAPPROVAL.—

(1) IN GENERAL.—Not later than 120 days after receiving the information required to be submitted by the Chairman pursuant to subsection (a), the Secretary shall approve or disapprove the proposed exchange.

(2) NOTIFICATION.—The Secretary shall notify the Chairman, the Committee on Energy and Natural Resources of the Senate, and the Committee on Resources of the House of Representatives of the reasons for the approval or disapproval of the proposed exchange.

(c) EXCHANGES INITIATED BY SECRETARY.—

(1) IN GENERAL.—The Secretary may recommend to the Chairman an exchange of Hawaiian Home Lands for Federal lands described in section 203(b)(5), other than lands described in subparagraphs (B) and (C) of such section. If the Secretary initiates a recommendation for such an exchange, the Secretary shall submit a report to the Chairman on the proposed exchange that meets the requirements of a report described in subsection (a).

(2) APPROVAL BY CHAIRMAN.—Not later than 120 days after receiving a recommendation for an exchange from the Secretary under paragraph (1), the Chairman shall provide written notification to the Secretary of the approval or disapproval of a proposed exchange. If the Chairman approves the proposed exchange, upon receipt of the written notification, the Secretary shall notify the Committee on Energy and Natural Resources of the Senate, and the Committee on Resources of the House of Representatives of the approval of the Chairman of the proposed exchange.

(3) EXCHANGE.—Upon providing notification pursuant to paragraph (2) of a proposed exchange that has been approved by the Chairman pursuant to this section, the Secretary may carry out the exchange.

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(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may—

(A) select real property that is the subject of screening activities conducted by the Secretary of Defense or the Administrator of General Services pursuant to applicable Federal laws (including regulations) for possible transfer to Federal agencies; and

(B) make recommendations to the Chairman concerning making an exchange under subsection (c) that includes such real property.

(2) TRANSFER.—Notwithstanding any other provision of law, if the Chairman approves an exchange proposed by the Secretary under paragraph (1)—

(A) the Secretary of Defense or the Administrator of General Services shall transfer the real property described in paragraph (1)(A) that is the subject of the exchange to the Secretary without reimbursement; and

(B) the Secretary shall carry out the exchange.

(3) LIMITATION.—No Federal lands that generate income (or would be expected to generate income) for the Federal Government may be conveyed pursuant to this subsection to the Department of Hawaiian Home Lands.

(e) SURVEYS AND APPRAISALS.—

(1) REQUIREMENT.—The Secretary shall conduct a survey of all Hawaiian Home Lands based on the report entitled "Survey Needs for the Hawaiian Home Lands", issued by the Bureau of Land Management of the Department of the Interior, and dated July 1991.

(2) OTHER SURVEYS.—The Secretary is authorized to conduct such other surveys and appraisals as may be necessary to make an informed decision regarding approval or disapproval of a proposed exchange.

SEC. 206. ADMINISTRATION OF ACTS BY UNITED STATES.

(a) DESIGNATION.—

(1) IN GENERAL.—Not later than 120 days after the date of enactment of this Act, the Secretary shall designate an individual from within the Department of the Interior to administer the responsibilities of the United States under this title and the Hawaiian Homes Commission Act.

(2) DEFAULT.—If the Secretary fails to make an appointment by the date specified in paragraph (1), or if the position is vacant at any time thereafter, the Assistant Secretary for Policy, Budget, and Administration of the Department of the Interior shall exercise the responsibilities for the Department in accordance with subsection (b).

(b) RESPONSIBILITIES.—The individual designated pursuant to subsection (a) shall, in administering the laws referred to in such subsection—

(1) advance the interests of the beneficiaries; and

(2) assist the beneficiaries and the Department of Hawaiian Home Lands in obtaining assistance from programs of the Department of the Interior and other Federal agencies that will promote homesteading opportunities, economic self-sufficiency, and social well-being of the beneficiaries.

SEC. 207. ADJUSTMENT.

The Act of July 1, 1932 (47 Stat. 564, chapter 369; 25 U.S.C. 386a) is amended by striking the period at the end and adding the following: "*Provided further*, That the Secretary shall adjust or eliminate charges, defer collection of construction costs, and make no assessment on behalf of such charges for beneficiaries that hold leases on Hawaiian home lands, to the same extent as is permitted for individual Indians or tribes of Indians under this section."

SEC. 208. REPORT.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Chairman shall report to the Secretary concerning any claims that—

(1) involve the transfer of lands designated as available lands under section 203 of the Hawaiian Homes Commission Act (as in effect on the date of enactment of such Act); and
(2) are not otherwise covered under this title.

(b) REVIEW.—Not later than 180 days after receiving the report submitted under subsection (a), the Secretary shall make a determination with respect to each claim referred to in subsection (a), whether, on the basis of legal and equitable considerations, compensation should be granted to the Department of Hawaiian Home Lands.

(c) COMPENSATION.—If the Secretary makes a determination under subsection (b) that compensation should be granted to the Department of Hawaiian Home Lands, the Secretary shall determine the value of the lands and lost use in accordance with the process established under section 203(a), and increase the determination of value made under subparagraphs (A) and (B) of section 203(a)(1) by the value determined under this subsection.

SEC. 209. AUTHORIZATION.

There are authorized to be appropriated such sums as may be necessary for compensation to the Department of Hawaiian Home Lands for the value of the lost use of lands determined under section 203. Compensation received by the Department of Hawaiian Home Lands from funds made available pursuant to this section may only be used for the purposes described in section 207(a) of the Hawaiian Homes Commission Act. To the extent

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that amounts are made available by appropriations pursuant to this section for compensation paid to the Department of Hawaiian Home Lands for lost use, the Secretary shall reduce the determination of value established under section 203(a)(1)(B) by such amount.

Approved November 2, 1995.

APPENDIX B

Hawaiian Home Lands Recovery Act Memorandum of Agreement

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (MOA) is entered into as of August 31, 1998, by and among the UNITED STATES OF AMERICA (the "United States"), as represented by the Secretary of the United States Department of Interior (the "Secretary"), and the STATE OF HAWAII ("State"), represented by the Governor of the State of Hawaii, and by the Department of Hawaiian Home Lands ("DHHL") through its Director, who is also the Chairman of the Hawaiian Homes Commission ("Chairman").

RECITALS

- A. The purpose of this MOA is to implement the Hawaiian Home Lands Recovery Act of 1995, Public Law 104-42, 109 Stat. 357 (the "Act").
- B. In connection with this MOA, the Secretary has consulted with the Department of Defense ("DOD") and the General Services Administration ("GSA").
- C. The Act authorizes the United States to convey certain real property to the DHHL, an agency of the State, in exchange for full settlement and release of all legal, equitable or moral claims, actions, and liabilities arising from or relating to the United States' ownership and continued use of real property identified as "available lands" for native Hawaiians under the Hawaiian Homes Commission Act of 1921, 42 Stat. 108 ("HHCA").
- D. Pursuant to Section 203(a) and 208 of the Act, the parties have identified and valued lands and "lost use" (as defined in the Act) of certain lands that initially had the status of "available lands" under the HHCA.
- E. The parties desire to effect the conveyance of that certain real property described on Exhibit A as provided by the Act and provide for the release of the claims arising from the United States' use of the "available lands."
- F. The parties further desire, by entering into this MOA, to provide for the release of any present or future claims identified in the Act to certain real property that may have been identified as "available lands" in the HHCA and not identified in this MOA and the delivery of any deeds or other documents necessary to effectuate such release.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. Conveyance of Property. The United States shall convey and the State, through the DHHL, shall accept the real property described on Exhibit A by duly executed and acknowledged quitclaim deeds.
2. Delivery of Quitclaim Deeds. The United States, acting through the GSA, shall as soon after the execution hereof as is reasonably possible, prepare and deliver to the State the quitclaim deeds in order to convey the real property described on Exhibit A. The State acknowledges that portions of the real property identified in Exhibit A are currently in use by the United States and are not currently available for conveyance. Upon notification that such parcels are considered excess by the current federal land holding agency, GSA will convey such parcels to the State as soon as is reasonably possible after such notification, provided, however:
 - (a). Waipahu FCC Monitoring Station.
 - i. Credit. Should the parcel described on Exhibit A as the Waipahu FCC Monitoring Site ("Waipahu Station") not become available for conveyance within two years from the date of this MOA, or such other time as may be mutually agreed in writing by the parties hereto, there shall be established a credit to the benefit of the State in the amount of \$16.9 million ("Credit") and the Secretary and the Chairman shall sign a letter agreement acknowledging the existence of the Credit. Upon the execution of such letter agreement, all of the State's rights, interest and title to the Waipahu Station shall terminate and be of no further force and effect.
 - ii. Conveyances Against Credit. When the State and the Secretary agree that a particular parcel of Federal surplus property is appropriate for conveyance to the State pursuant to Section 203 (f) of the Act, the Secretary shall reduce the amount of the Credit by the appraised value of such Federal surplus property. For purpose of such conveyances, the appraised value of such Federal surplus properties shall be as of the date of this MOA.
 - (b). Lualualei Buffer. The State further acknowledges that the quitclaim deed for the parcel described in Exhibit A as the Lualualei Buffer shall not be delivered until the State has erected an appropriate security barrier between that parcel and the Naval Magazine Lualualei Headquarters Branch adjacent thereto, which is acceptable to the United States Department of the Navy.

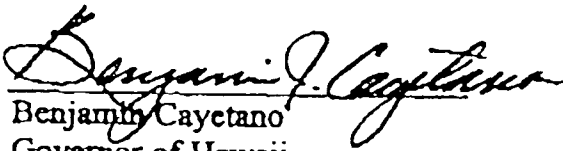
3. Settlement and Release. Subject to the conveyance by quitclaim deed of all the properties listed on Exhibit A (including full satisfaction of the Credit pursuant to paragraph (2)(c) above, if necessary), the State, its successors and assigns, hereby forever release, settle and discharge the United States from any and all claims, liabilities, damages, demands, actions and causes of actions, whether presently known or unknown, of any character, type or description (the "Claims") arising from or related to the United States continued or past use of the "available lands" as initially designated under Section 203 of the HHCA or the Act. All such lands subject to Claims shall, upon the conclusion of this agreement, henceforth have the status of lands acquired in fee by purchase by the United States. For purposes of this MOA, Claims shall include, without limitation, the following:
- (a). claims arising from or relating to the Naval Communications Area Master Station Pacific, and Naval Magazine Lualualei, Headquarters Branch; and
 - (b). claims arising from or relating to any real property used or retained by the United States whether identified herein or not that may have been identified as "available lands" under the HHCA.
4. Further Acts. The State agrees that it shall, upon request of the United States, execute and deliver duly acknowledged deeds in a form acceptable to the Administrator of the GSA, and do such other acts and things as are reasonably necessary and appropriate to effectuate State's release of claims to the real property identified in Paragraph 3 (a) and (b) as soon as is reasonably possible after such request.
5. Authority. The parties hereto represent and warrant that this MOA and all instruments, documents and agreements to be executed in connection herewith are or when delivered will be duly authorized, executed and delivered by the parties hereto and will be valid, binding and enforceable obligations of the parties charged. Each individual executing this MOA on behalf of the State or the United States represents and warrants to each other that he or she is duly authorized to do so.
6. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"). The United States, through DOD or GSA, shall comply with CERCLA as required for each of the parcels identified in Exhibit A.
7. Available Lands. The State agrees that all real property conveyed to the DHHL under this MOA shall have the status of available lands under Section 203(c)(1) of the Act, subject however, to the DHHL's right to use the lands as provided in Section 203(c)(2) and (3) of the Act.

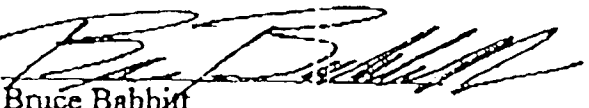
8. Legal Descriptions. The parties acknowledge that legal descriptions suitable for conveyance of title may not be available for all properties identified in Exhibit A. Prior to conveyance of any property identified in Exhibit A, in consultation with the State, the United States shall prepare a legal description, suitable for recordation, for such property.
9. Dispute Resolution. The parties agree to employ a process of negotiation, mediation, or other means of Alternative Dispute Resolution to resolve any disagreements that may arise under this MOA.

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

STATE OF HAWAII

UNITED STATES OF AMERICA

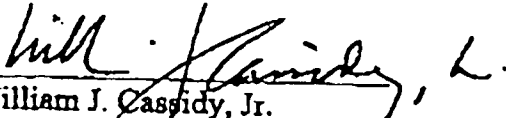
by 
Benjamin Cayetano
Governor of Hawaii

by 
Bruce Babbitt
Secretary of the Interior

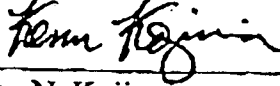
DEPARTMENT OF HAWAIIAN
HOME LANDS

by 
Kali Watson, its
Director and Chairman of the
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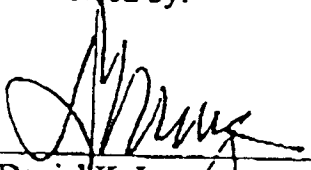
Witnessed by:


William J. Cassidy, Jr.
Deputy Assistant Secretary of
the Navy (Conversion
and Redevelopment)

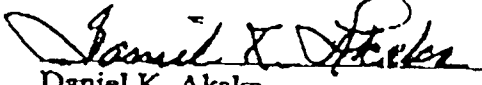
Witnessed by:


Kenn N. Kojima
Regional Administrator
General Services Administration

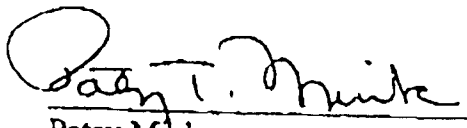
Witnessed by:


Daniel K. Inouye
U.S. Senator

Witnessed by:


Daniel K. Akaka
U.S. Senator

Witnessed by:


Patsy Mink
U.S. Representative

Witnessed by:


Neil Abercrombie
U.S. Representative

EXHIBIT A

<u>Federal Properties</u>	<u>Acres</u>	<u>Location</u>
Barbers Point*	586	Ewa, Oahu
Manana Housing*	20	Waiawa, Oahu
Upolu Point	38	North Kohala, Island of Hawaii
Omega Haiku*	167	Kaneohe, Oahu
Halawa Laundry*	3	Aiea, Oahu
Ewa Drum*	56	Waiawa, Oahu
Waipahu FCC Monitoring Site*	47	Waipahu, Oahu
BPNAS Raceway Expansion*	16	Ewa, Oahu
Lualaulei Buffer*	27	Waianae, Oahu

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

^{1/} Approximately 20 acre landfill area of Omega Haiku will be made available upon Coast Guard clean-up.

^{2/} Conveyance subject to Federal Communications Commission vacating this site.

^{3/} Conveyance subject to Army and Navy reaching an agreement regarding alternative disposition of Army waste that would otherwise have been disposed on this parcel and Army's withdrawal of its application for the parcel. Also, conveyance subject to DHHL installation of fencing, at its expense and as acceptable to the Navy, along the DHHL raceway parcel boundary which borders on the adjacent Navy retained parcel.

^{4/} Conveyance subject to DHHL building perimeter fencing, acceptable to Navy, at DHHL's expense.

APPENDIX C

Correspondence Between the Navy and DHHL

11011
Ser RE2414/ 618

1 APR 2003

Mr. Micah A. Kane, Chairman
Hawaiian Homes Commission
State of Hawaii
Department of Hawaiian Home Lands
P.O. Box 1879
Honolulu, HI 96805

Dear Mr. Kane:

This concerns the conveyance of three Navy parcels of land, known as Ewa Drum, Lualualei Buffer, and Halawa Laundry, to the Department of Hawaiian Home Lands, pursuant to the Hawaiian Home Lands Recovery Act of 1995, P.L. 104-42, 109 Stat. 357, and the Memorandum of Agreement dated August 31, 1998, between the State of Hawaii and the U.S. Department of the Interior.

Funding for the preparation of necessary environmental documentation for the conveyance of the Ewa Drum and Lualualei Buffer parcels has been received. To assist us in the preparation of this documentation, please provide information regarding the proposed use of these parcels, providing as much detail as possible. For example, if commercial use is proposed, please provide information regarding the type of commercial development, to include density, if possible. This will enable us to evaluate the impacts of the conveyances on the environment.

With respect to the Halawa Laundry parcel, cleanup efforts and coordination with the State of Hawaii-Department of Health (State DOH) and U.S. Environmental Protection Agency (EPA) are ongoing. At the present time, it is estimated that the removal actions and State DOH and EPA regulatory concurrence on the cleanup remedy will be completed in 2004.

If you have any questions regarding this matter, please contact Ms. Genie Wery at 472-1513.

Sincerely,

DENNIS PACT
Director
Operations Division
Real Estate Department

Blind copy to:
PLN23

W:\2414\DHHL\3 non-BARPT parcels\ltr to DHHL 3-27-03

R/S

LINDA LINGLE
GOVERNOR
STATE OF HAWAII



MICAH A. KANE
CHAIRMAN
HAWAIIAN HOME LANDS COMMISSION

BEN HENDERSON
DEPUTY TO THE CHAIRMAN

KAULANA IL PARK
HHL EXECUTIVE ASSISTANT

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P.O. BOX 1879
HONOLULU, HAWAII 96805

April 15, 2003

Mr. Dennis Pacht, Operations Director
Real Estate Department
Pacific Division
Naval Facilities Engineering Command
258 Makalapa Drive, Suite 100
Pearl Harbor, Hawaii 96860-3134

Attention: Ms. Genie Wery, Ser RE2414/618

Dear Mr. Pacht:

Thank you for informing us of the available funding for preparation of necessary environmental documentation to convey the Ewa Drum and Lualualei Buffer parcels pursuant to the Hawaiian Home Lands Recovery Act of 1995.

As requested, summarized below is information on the proposed uses of the parcels to be conveyed:

<u>Property</u>	<u>Location</u>	<u>Land Area (Acres)</u>		<u>Forecast Uses/Zoning</u>
		<u>Total</u>	<u>Usable</u>	
Ewa Drum TMK 9-4-08:p10 9-6-03:p44	Waiawa, Oahu	55.842	39.433	M-F Residential/ A-2 Apartment
Lualualei Buffer TMK 8-6-03:22	Waianae, Oahu	27.000	27.000	Agriculture/AG-1 Agriculture
Halawa Laundry TMK 9-5-05:05	Aiea, Oahu	3.179	3.179	M-F Residential/A-2 Apartment (2.679 ac.) Commercial/B-2 Commercial (0.5 ac.)

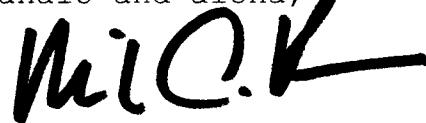
Mr. Dennis Pacht
April 15, 2003
Page 2

The above anticipated uses were utilized in appraising the properties, the resulting values providing the basis for the Memorandum of Agreement dated August 31, 1998, which we continue to implement.

We note that title transfer for the Lualualei Buffer shall not be delivered until the State erects an appropriate security barrier for the adjacent Naval Magazine property, which is acceptable to the Navy. Please provide us with design specifications or a contact person for initiating plans for this replacement fencing.

If you have any questions, please contact Joe Chu of our Planning Office at 587-6421.

Mahalo and aloha,

A handwritten signature in black ink, appearing to read "Micah A. Kane". The signature is stylized with a large, bold "M" and "K".

Micah A. Kane, Chairman
Hawaiian Homes Commission

c: U.S. Department of the Interior

APPENDIX D

Section 106 Correspondence



DEPARTMENT OF THE NAVY

COMMANDER
NAVY REGION HAWAII
850 TICONDEROGA ST STE 110
PEARL HARBOR HI 96860-5102

5750.2L

Ser N464/ 00333
19 DEC 2003

CERTIFIED MAIL NO. 7001 2510 0001 9471 4237

Mr. Peter Young
Chairperson & State Historic Preservation Officer
Department of Land & Natural Resources
State Historic Preservation Division
Kakuhihewa Building
601 Kamokila Boulevard Room 555
Kapolei HI 96707

Dear Mr. Young:

The Commander, Navy Region Hawaii (COMNAVREG Hawaii) is planning to convey a 27-acre land parcel, henceforth the Lualualei Buffer parcel (Tax Map Key No. 8-6-003:22 portion), to the State Department of Hawaiian Homelands (DHHL). Because this property will be transferred out of the Navy's control, we have determined that the proposed transfer is an *undertaking* as defined in 36 CFR § 800.16(y), with the potential to cause effects on historic properties.

Project Description

The Lualualei Buffer parcel is located adjacent to Naval Magazine (NAVMAG) Pearl Harbor, Lualualei Branch in the Lualualei *ahupua'a*, Waianae District, O'ahu, Hawai'i [enclosure (1)]. The proposed project complies with the Memorandum of Agreement (MOA) that was executed pursuant to the Hawaiian Home Lands Recovery Act (HHLRA) of 1995. The act authorized the United States to convey certain real property to the Department of Hawaiian Home Lands (DHHL), an agency of the State of Hawaii, in exchange for full settlement and release of all legal, equitable or moral claims, action and liabilities arising from or relating to the United States' ownership and continued use of real property identified as "available lands" for native Hawaiians under the Hawaiian Homes Commission Act (HHCA) of 1921. The MOA, dated August 31, 1998, between the U. S. Department of the Interior (DOI) and the State of Hawaii (State), identified several parcels of land, including the 27 acres of the Lualualei Buffer parcel, for conveyance to DHHL. A condition of the MOA is that title transfer of the parcel shall not be delivered to the State until the State has erected an appropriate security barrier between the proposed disposal parcel and the adjacent NAVMAG, which is acceptable to the U. S. Department of the Navy.

19 DEC 2003

The property is undeveloped, with several areas containing the remains of cattle ranching sites. A public roadway abuts the property along its western border. The land abutting the parcel to the west is currently owned by DHHL and used for residential and agricultural purposes, while the land to the east forms a part of NAVMAG Pearl Harbor, Lualualei Branch (formerly Naval Magazine Lualualei Headquarters Branch).

Area of Potential Effect

The area of potential effect (APE) includes the entire 27-acre Lualualei Buffer parcel [enclosure (1)].

Identification of Historic Properties

Although a previous survey of the parcel by Haun et al. in 1991 failed to identify any archaeological sites, a more recent effort by Pacific Division, Naval Facilities Engineering Command (NAVFAC EFD Pacific) archaeologists discovered several archaeological sites within the property, in 2003. Altogether four sites have been found, all associated with historic cattle ranching activities. None of these sites have been determined to meet the National Register of Historic Places (NRHP) eligibility criteria. These sites are described in detail in the report entitled *Draft Report: Phase I Archaeological Survey of Parcel Proposed for Transfer to State Department of Hawaiian Homelands (DHHL) Lualualei Ahupua'a Waianae District, O'ahu, Hawai'i* (NAVFAC EFD Pacific, October 2003). We have previously provided a draft copy of this report to your office for review. The final draft of the survey report is forthcoming, at present awaiting its last revisions, such as changing the temporary site numbers to State site numbers.

Determination of Effect

The proposed reuse of the property is residential and agricultural use for new Hawaiian homesteads. None of the sites identified within the parcel have been determined to be eligible for listing in the National Register of Historic Places. Moreover, a response consultation letter from the Office of Hawaiian Affairs (OHA) asserted that there are no Traditional Cultural Properties (TCPs) in the project area [enclosure (2)]. A consultation letter was also sent to the Oahu Council of Hawaiian Civic Clubs (OCHCC) requesting information on traditional cultural concerns they may have about the parcel, however, OCHCC did not respond within 30 days from the time the letter was received.

Consistent with your letter dated December 5, 2003 [enclosure (3)], all historic sites within the project area have been determined as non-eligible for listing in the NRHP. In addition, the OHA letter

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Ser N464/

00333
19 DEC 2003

[enclosure (2)], and no response from OCHCC, indicates that there are no traditional cultural concerns with the proposed parcel to be transferred. Therefore we have reached a finding of "no historic properties affected" for the proposed land transfer of the Lualualei Buffer parcel, as defined in 36 CFR § 800.4(d)(1), and are notifying

your office of this finding. We invite your views, if any, and will assume your agreement if we receive no response from your office within 30 days from receipt of this letter.

Should you have any questions regarding this undertaking, please contact Mr. Eric West, Archaeologist, NAVFAC EFD Pacific at (808) 474-4708, or via e-mail at Eric.West@navy.mil, or Mr. Randy Miyashiro, COMNAVREG Hawaii Cultural Resources Coordinator at (808) 471-1171, extension 233 or via e-mail at Miyashiorm@pwcpearl.navy.mil.

Sincerely,



G. P. JENNINGS

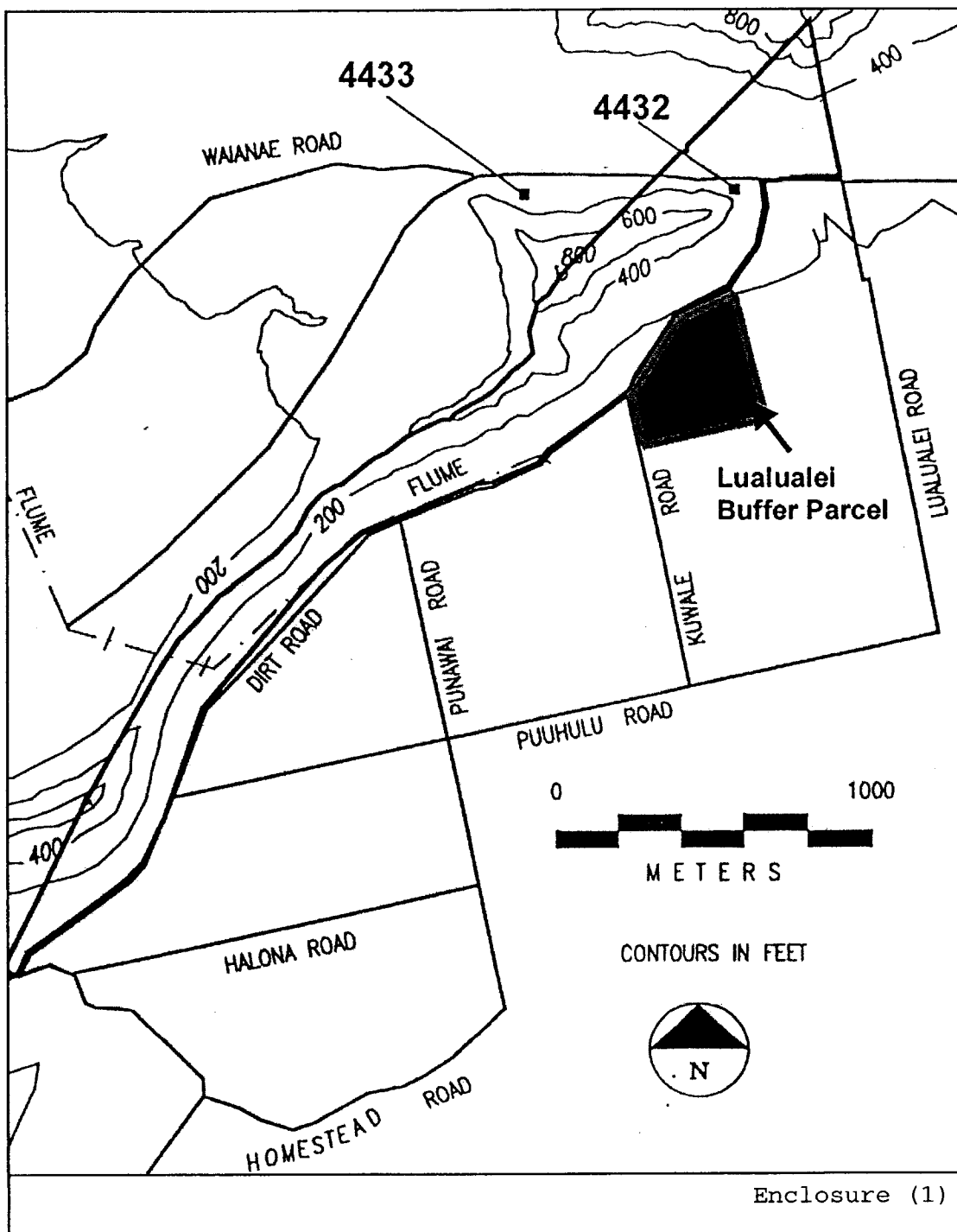
LTJG, CEC, USNR

Historic Preservation Program
Coordinator

By direction of

Commander, Navy Region Hawaii

- Enclosures:
1. Project Location
 2. Response to Consultation Letter, Office of Hawaiian Affairs
 3. Response to Consultation Letter, State Historic Preservation Office





STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAPOLANI BOULEVARD, SUITE 500
HONOLULU, HAWAII 96813

HRD #03-1164

November 26, 2003

Gregory P. Jennings
LTJG, CEC, USNR
Historic Preservation Program Coordinator
Commander, Navy Region Hawaii - N464g
517 Russell Avenue
Pearl Harbor, HI 96860-4884

SUBJECT: LUALUALEI BUFFER PARCEL (TMK 8-6-003:22 portion)

Dear Lt. Jennings,

OHA has reviewed the documentation sent with your request for 106 consultation on the above referenced project. We agree with your assessment that there are no native Hawaiian traditional or cultural places on this particular piece of property.

However, OHA would like to know the land status of the approximately 1100 acres of Lualualei valley that is currently used by the Navy. It was our belief that all of this land belonged to DHHL and that there are many unique historic sites in the back of the valley. Knowing the status of the rest of the land would help us better determine the effect of this land exchange.

Thank you for this opportunity to comment. Should you have further questions, please contact me at 594-1931 or by e-mail at paui@oha.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Pua Aiu", written over a horizontal line.

Pua Aiu
Policy Analyst
Native Rights and Culture

Enclosure (2)

LINDA LINSLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING, ROOM 555
801 KAMOKILA BOULEVARD
KAPOLEI, HAWAII 96707

114 12/5/03 49154
PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON
DEPUTY DIRECTOR - LAND

ERNEST Y.M. LAU
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAWAULAI ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DEC -5 2003

Department of the Navy
Commander
Navy Region Hawaii
850 Ticonderoga Street, Suite 110
Pearl Harbor, Hawaii 96860-5102

LOG NO: 2003.2432
DOC NO: 0311SC14

Dear LTJG Jennings:

**SUBJECT: National Historic Preservation Act, Section 106 Compliance –
Proposed Transfer of a 27-Acre Parcel of Land at Lualualei from
the US Navy to the State of Hawai'i Department of Hawaiian
Homelands (DHHL)
Lualualei, Wai'anae, O'ahu
TMK: (1)-8-6-003:022**

Thank you for the opportunity to review and comment on the proposed transfer of land (the "Lualualei Buffer Parcel") from the US Navy to DHHL, in accordance with a 1998 Memorandum of Agreement that identified the subject parcel, among several, for conveyance to DHHL. Our review is based on historic maps, aerial photographs, records, and reports maintained at the State Historic Preservation Division; no field inspection was made of the subject parcel. In addition, a draft copy of a recently completed report documenting an archaeological survey of the subject parcel was submitted as an attachment to your letter, received on November 3, 2003 (Griffin, West, et al. 2003. *Draft Report: Phase I Archaeological Survey of Parcel Proposed for Transfer to State Department of Hawaiian Homelands [DHHL] Lualualei Ahupua'a, Wai'anae District, O'ahu, Hawai'i TMK: 8-6-003:22*).

We believe that the draft report provides sufficient background information and clearly presents the results of field work. As documented in the draft report, the recent survey found four historic sites, all of them associated with the historic cattle ranching era in Wai'anae. Through application of the National Register of eligibility for the four sites, you have determined that none of the four ranching sites is eligible for listing on the National Register of Historic Places. Given this determination, you have recommended that no further archaeological work or treatment is needed for these sites. We concur with your determination and recommendation.

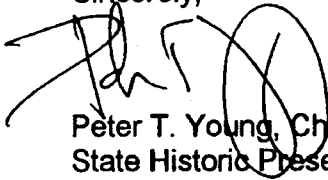
Enclosure (3)

Department of the Navy
Page Two

Given that the four sites are historic in age, we would only ask that State Inventory of Historic Places (SIHP) numbers be assigned to the sites for the final version of the report. When the land is transferred to DHHL, it will assist our record-keeping and make any subsequent site management issues easier to resolve if SIHP numbers are assigned to the four sites. You may contact Elaine Jourdane at 692-8027 or Sara Collins at 692-8026 for SIHP numbers.

Should you have any questions, please feel free to contact Sara Collins at 692-8026.

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter T. Young', is written over a large, circular, stylized mark that resembles a large 'O' or a loop.

Peter T. Young, Chairperson and
State Historic Preservation Officer

SC:jk