

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.

COPY

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 ~~\$15.9~~ ^{\$16.9m} 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. *N. J. Berry*

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.

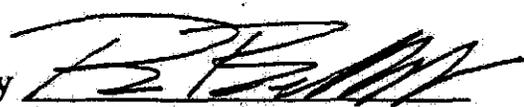
8. Legal Descriptions. The parties acknowledge that legal descriptions suitable for conveyance of title may not be available for all properties identified in Exhibit A. Prior to conveyance of any property identified in Exhibit A, in consultation with the State, the United States shall prepare a legal 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.

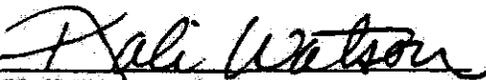
STATE OF HAWAII

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
Hawaiian Homes Commission

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.