

**Notice of Meeting
UNIVERSITY OF HAWAI'I**

BOARD OF REGENTS COMMITTEE ON PLANNING AND FACILITIES

Members: Regent Stanford Yuen (Chair), Ben Kudo (Vice Chair), and Regents Moore, Putnam, Shinsato, Wilson

Date: Thursday, March 8, 2018
Time: 1:30 p.m.
Place: University of Hawai'i at Mānoa
Information Technology Building
1st Floor Conference Room 105A/B
2520 Correa Road
Honolulu, Hawai'i 96822

AGENDA

I. Call Meeting to Order

II. Approval of Minutes of February 7, 2018 Meeting

III. Public Comment Period for Agenda Items: All written testimony on agenda items received after posting of this agenda and up to 24 hours in advance of the meeting will be distributed to the board. Late testimony on agenda items will be distributed to the board within 24 hours of receipt. Written testimony may be submitted via US mail, email at bor@hawaii.edu, or facsimile at 956-5156. Individuals submitting written testimony are not automatically signed up for oral testimony. Registration for oral testimony on agenda items will be provided at the meeting location 15 minutes prior to the meeting and closed once the meeting begins. Oral testimony is limited to three (3) minutes. All written testimony submitted are public documents. Therefore, any testimony that is submitted verbally or in writing, electronically or in person, for use in the public meeting process is public information.

IV. Agenda Items

A. For Approval

1. Conveyance of UH Mānoa College of Tropical Agriculture and Human Resources Waialeale Research Station Property to the State Agribusiness Development Corporation situated at Waialeale, Koolauloa, Oahu, City and County of Honolulu, and designated as tax map key nos. (1) 5-8-001:013, (1) 5-8-001:055, (1) 5-8-001:007, and (1) 5-8-001:006

V. Adjournment



UNIVERSITY OF HAWAII
 of HAWAII
 MĀNOA
 18 MAR -2 P2:17

18736 revised
 College of Tropical Agriculture and Human Resources
 Founding College of the University of Hawai'i
 Office of the Dean and Director for Research and Cooperative Extension

RECEIVED

March 2, 2018

TO: Jan N. Sullivan
 Chair, Board of Regents
 University of Hawai'i

'18 MAR -2 P2:08

Stanford Yuen
 Chair, Planning and Facilities Committee
 Board of Regents
 University of Hawai'i

UNIVERSITY OF HAWAII
 PRESIDENT'S OFFICE

VIA: David Lassner
 President
 University of Hawai'i

David Lassner

VIA: Kalbert K. Young
 Vice President for Budget and Finance/Chief Financial Officer
 University of Hawai'i

Kalbert K. Young

VIA: Jan S. Gouveia
 Vice President for Administration
 University of Hawai'i

Jan S. Gouveia

VIA: David Lassner
 Interim Chancellor
 University of Hawai'i at Mānoa

David Lassner

FROM: Nicholas Comerford
 Dean, College of Tropical Agriculture and Human Resources
 University of Hawai'i at Manoa

Nicholas Comerford

SUBJECT: Conveyance of UH Mānoa College of Tropical Agriculture and Human Resources
 Waialeale Research Station Property to the State Agribusiness Development Corporation
 situated at Waialeale, Koolauloa, Oahu, City and County of Honolulu, and designated as
 tax map key nos. (1) 5-8-001:013, (1) 5-8-001:055, (1) 5-8-001:007, and (1) 5-8-001:006

SPECIFIC ACTION REQUESTED:

As provided in Board of Regents Policy RP 10.201 (Interests in Real Property), the Board of Regents is requested to approve the University's conveyance to Agribusiness Development Corporation ("ADC") of its fee simple interest in the property comprising the Waialeale research station, consisting of approximately 131.72 acres, designated as Tax Map Key Nos. (1) 5-8-001:013 (Parcel A - 12.54 acres), (1) 5-8-001:055 (Parcel B - 30.88 acres), (1) 5-8-001:007 (Parcel C - 87.20 acres), and (1) 5-8-001:006 (1.1 acres) (collectively the "Property"), and shown on the attached map. Since acquiring ownership of the Property, the University of Hawai'i at Mānoa College of Tropical Agriculture and Human Resources

("CTAHR") has managed and operated an experimental farm and agriculture operation within the Property.

RECOMMENDED EFFECTIVE DATE:

Upon approval of the Board of Regents and the ADC Board of Directors.

BACKGROUND:

The University acquired ownership of the Property in 1958 when the State of Hawai'i set aside the Property to the University by Governor's Executive Order No.1848 issued on May 16, 1958 ("EO") after approval by the State Board of Land and Natural Resources ("BLNR"). The BLNR subsequently approved the cancellation of the EO and the transfer of fee simple title to the Property to the University at BLNR's meeting held on February 11, 1994. This approved transaction was not implemented or completed. Nevertheless, the University's position has been that lands set aside to the University are owned in fee simple by the University.

University use of the Property

Since the EO was issued, CTAHR has operated an experimental farming and agricultural operation within the Property. The University constructed a number of buildings and structures, including a swine nursery, poultry nursery, and animal husbandry complexes. The University installed utility lines and facilities serving the Property, including establishing a well and constructing water transmission and irrigation lines. The University also established a number of agricultural plots upon which different crop varieties were grown and tested.

More recently, due in part to budget constraints, CTAHR has scaled back agricultural and livestock raising operations. The University also explored returning the Property to the BLNR but the State Department of Land and Natural Resources ("DLNR") would only accept a return of the Property if the University demolished and removed all buildings and structures and cleaned up and remediated any and all hazardous material conditions within the Property. Without sufficient funding to complete these tasks, the University evaluated other alternatives for Property use, including leasing it to third parties for eco-tourism purposes and use as a construction baseyard.

Use of the Property by others

Within the past four to five years, the University has become aware of several unauthorized occupiers of the former swine nursery complex. Portions of the Property consist of kuleana lands and certain individuals have claimed kuleana rights to use and/or occupy such lands. There is an individual, Vernon Lindsay, who claims to have paid \$75,000 to the McCandless Land and Cattle Company to acquire rights to kuleana lands within the Property and upon which a portion of the former swine nursery complex is located. Some of the unauthorized occupiers have been claiming that V. Lindsay has given them permission to occupy his kuleana lands. V. Lindsay himself has been in contact with CTAHR seeking University recognition of his ownership of kuleana rights within the Property and asking that CTAHR not proceed with plans to demolish the former swine nursery complex, a very small portion of which is purportedly situated within his claimed kuleana parcel. The University has not recognized or determined who might rightfully own this claimed kuleana parcel or the kuleana rights relating thereto. Having received title from the State of Hawai'i ("State") through the EO setting aside the Property to the University, the University has consistently maintained that the University owns the fee simple title to all such kuleana parcels situated within the Property. As such, CTAHR has been in contact with V. Lindsay

but has been careful not to take any action or respond in a way that can or could be interpreted as University recognition of any rights V. Lindsay might allege or claim in or to the Property.

There have been an increasing number of complaints alleging that illegal activities posing a danger to the surrounding community have been taking place within the former swine nursery complex. It has also been alleged that the number of seemingly abandoned vehicles being brought onto and stored within the Property are increasing, large dogs kept within the Property have been allowed to roam in the adjacent community attacking neighbors and causing damage, and alleged meth or other drug labs are being operated within the Property.

The University has been in contact with the Honolulu Police Department and the State Department of Public Safety and more recently, has been working with Scott Morishige, the State's homeless coordinator, discussing the feasibility, logistics, and costs of possibly performing a sweep of the former swine nursery complex within the Property. Our understanding is that the authorities are not willing at this time to treat this as a homeless issue but rather as a property ownership dispute. This means that such authorities will or may respond only if it can be established that criminal or illegal activity is taking place within the former swine nursery complex and is posing a danger or threat to the nearby and surrounding communities.

It is anticipated that any legal action (either or both a quiet title and trespass actions) will take a long period of time and require the University to expend significant funds and resources to clear the Property, particularly the former swine nursery complex. Despite the presence of the unauthorized occupiers, ADC appears willing to accept conveyance of the Property subject to being responsible for handling and addressing the issues relating to the unauthorized occupiers.

ADC involvement

For several years, CTAHR and the University have had discussions with ADC regarding the conveyance of the Property, including preparing and forwarding to ADC a draft quitclaim deed that contains the terms and conditions of the proposed conveyance of the Property to ADC. ADC desires the Property in order to help implement its statutory mandate to advance diversified agriculture in the State. The University believes that this objective is very consistent with the purposes of CTAHR and the EO by which the University was originally provided this property. One condition is that ADC acknowledges and accepts responsibility for handling and addressing the unauthorized occupiers and releases the University from any further responsibility.

A major term sheet containing the significant terms and conditions contained within the quitclaim deed is attached ("Major Term Sheet"). ADC has retained consultants to assist ADC in preparing an environmental assessment and due diligence report pertaining to the condition of the Property. It is anticipated that the results of the assessment and due diligence report will be submitted to the ADC Board, along with the terms and conditions of the quitclaim deed.

The University has checked with DLNR and confirmed that DLNR will not require the University or ADC to seek any BLNR approval for the University's conveyance of the fee simple ownership interest in the Property to ADC. By this confirmation, DLNR is acknowledging that the Governor's executive order setting aside the Property to the University was sufficient to convey the State's fee simple ownership interest in the Property to the University.

CTAHR appropriation

The Legislature has exhibited support for this transfer. Act 049 (2017), the state budget, appropriated \$6 million for CTAHR capital projects. However, that appropriation includes a proviso: "Provided that the college of tropical agriculture and human resources does not receive the funding until parcels on O'ahu, further identified by tax map keys (1) 5-8-01-:007, (1) 5-8-01: 013, and (1) 5-8-01: 055 are transferred over to the agribusiness development corporation..." While the University is not necessarily legally bound to implement this transfer, the University is willing convey its ownership interest in the Property to ADC. CTAHR does not currently have substantial business use or plans for the Property, having substantially scaled back its on-site research activities over time, partly due to budgetary limitations. In addition, ADC has indicated that it plans to keep the Property in active agriculture use, which would be consistent with the EO purpose, advance ADC's mandate to advance diversified agriculture, and potentially help provide better security for the Property and nearby community.

Board of Regents Policy RP 10.201

Board of Regents Policy RP 10.201 (Interests in Real Property) requires that the Board of Regents approve the conveyance of ownership of or the fee simple interest in any University lands.

Evaluation criteria

According to the policy, the Board's intent is that the University's policy, practices, and decision-making regarding real property and interests in real estate shall: (1) promote and support the mission and goals of the University in education, research, service and economic development, (2) advance principles and practices of sound environmental stewardship and sustainability, (3) ensure that alternative actions are considered, investigated, and analyzed, (4) be fairly priced in the context of applicable fair market values and other relevant factors, (5) generate revenue from real property not critical to long range plans for the university to support the university's core mission, and (6) be consistent with and support long range plans that have been approved by the Board.

Historically, the Property has been used as for research and experimental farm purposes consistent with the EO purpose. CTAHR at one time used much of the Property for research and farm purposes, including the raising of livestock, such as cattle, swine, sheep, and poultry. Farm operations were active and robust from about 1961 through the mid-1980s. Sufficient income was being generated during that time through the sale of eggs, chickens, swine, and cattle so that the operation was generally self-sustaining. Crop research continued for quite some time within the Property until the early 2000s.

Innovative green technology alternatives were tested at the Property, including the installation and operation of bioreactors, which are vessels in which a chemical process is carried out involving organisms or biochemically active substances derived from such organisms. This process was intended to break down animal and agricultural waste into products such biofuels and fertilizer. CTAHR also developed an on-site slaughterhouse but was not able place it into operation due to regulatory constraints. Up until recently, CTAHR also conducted on-site classes such as animal anatomy.

Farm operations began to decline in the late 1980s with poultry being the first phase out, followed by the phase out of swine, and eventually cattle with the collapse of the local beef industry. At present, CTAHR's operations are limited to raising a small herd of sheep. There were a number of factors that contributed to the decline, including: (a) the retirement or loss of many of the primary research faculty that had been conducting long term on-site research, (b) the increasing number of regulatory requirements

(such as animal care standards, environmental regulations, and land use approval conditions), (c) the decline of related agricultural industries (such as the virtual collapse of the local beef and dairy industries), (d) decline in CTAHR student enrollment, particularly after the closing or scaling back of the local livestock industries, and (e) the increasing operational costs, including animal feed, veterinary care, and the maintenance and upkeep of the farm facilities such as the cottages within the Property serving as accommodations for farm personnel.

In addition, as part of the scaling back of its farm operations due primarily to budgetary limitations, CTAHR has over the years significantly reduced its active use of many of the structures and facilities within the Property. In fact, CTAHR has recently demolished some of poultry structures and facilities and had planned to demolish most of the others as well. ADC appears willing to accept the Property with the remaining structures and facilities, thereby saving the University the cost of continued demolition.

Consideration of alternatives

While CTAHR's farm operations at the Property were once vibrant and robust, it is no longer so. CTAHR has explored various alternatives, including short term uses such as arrangements with: (i) local agricultural concerns to raise livestock and selected crops, (ii) potential operators to conduct limited agrotourism related activities, (iii) renewable energy firm to evaluate the use of the mauka parcel and other marginal use areas (steep slopes) for windfarm purposes, (iv) equestrian ranchers to use portions of the Property for grazing and the raising of horses, (v) various interests in producing value-added bio-products and bio-fuels, (vi) State government agencies for agriculturally related uses, and (vii) the contractor for a nearby government water pipeline project to rent/use a portion of the Property for a temporary construction baseyard. On a longer term basis, CTAHR has assessed the feasibility of obtaining and directing more grant funded research to the Property and engaged in discussions with DLNR about returning all or portions of the Property to the State. DLNR was not receptive to the return of all or portions of the Property.

Promote and support the University's mission and goals

None of these alternatives appear feasible at this time. With CTAHR's scaling back of farm operations at the Property, CTAHR's use of the Property does not promote or support the mission and goals of the University in education, research, service, or economic development as effectively or efficiently as it previously did. The dramatic increase in the commute time between the UH Mānoa campus and the Property has made it effectively impractical to use the Property as an active instructional, hands-on experience venue for animal science majors or pre-vet students.

Advance sound stewardship and sustainability principles and practices

In its Waialeale farm operations, CTAHR has strived to advance the principles and practices of sound environmental stewardship and sustainability. In fact, CTAHR conducted research on some innovative green technology processes such as installing and operating bioreactors to convert animal and agricultural waste into biofuel and/or fertilizer. It is much more difficult to maintain such principles and practices of stewardship and sustainability given the reduced scale of CTAHR's farm operations at the Property.

Fairly priced in context of applicable fair market values

It is difficult to accurately assess the fair market value of the Property given its use restrictions, condition of facilities, and title issues, including the EO purpose, the ceded lands obligation, the broken chains of title, the potential kuleana rights claims, the possible hazmat conditions within some of the facilities, and the presence of unauthorized occupiers. Based on the limited EO purpose alone, the highest and best use of the Property may be some type of agricultural use.

Generate revenue from real property not critical to University long range plans

While not conceding that the Property lacks importance to or in the University's long range plans, CTAHR has not been able to implement any Property uses that have the potential of generating revenue. CTAHR has been evaluating the feasibility of the above described alternatives and others but has not yet found any with promising revenue generating potential.

Consistent with and support Board approved long range plans

CTAHR had plans to relocate its livestock raising operations to an expanded area within CTAHR's Waimānalo research station. From a longer term perspective, CTAHR does not have any near term plans for active farm operations within the Property.

Property Appraisal

The policy also contemplates that an appraisal of the value of the subject property be prepared for the Board's consideration. The University acquired the Property subject to the EO restriction that it be used only for "experimental farm purposes" and the University was not required to pay the State any monies as part of the University's acquisition. ADC has informed the University that it plans to keep the Property in active agricultural use consistent with ADC's mission. With the use restrictions applicable to the Property, it appears that an appraisal may be of limited use. The administration did review county real property tax assessments just for information; the 2018 property tax assessed value (land and building) for all parcels totals approximately \$8,338,500.00

If, however, the Board wishes that an appraisal be done prior to making its decision regarding this conveyance, such an appraisal can be completed.

Conclusion

The University, ADC, and the Hawai'i State Legislature desire that the University transfer the Property to ADC. Given the Property's use restrictions, CTAHR's reduced on-site operations, ADC's willingness to accept the Property, and the Legislature's support, the Administration is recommending that the ownership transfer of the Property to ADC be approved.

ACTION RECOMMENDED:

It is recommended that the Board of Regents take the following actions:

1. Approval. Approve the conveyance of the fee simple ownership interest in the Property to ADC, subject to and consistent with the terms and conditions contained in the attached Major Term Sheet.

2. Authorization. Authorize the President and/or the Vice President for Budget and Finance/Chief Financial Officer to negotiate, finalize, and execute the quitclaim deed or other document conveying the fee simple ownership in the Property to ADC, consistent with the terms contained in the attached Major Term Sheet, and execute such other documents and take any further action as they deem necessary to consummate the transaction to convey the fee simple ownership interest in the Property to ADC.

Attachments:

1. Major Term Sheet.
 2. Maps of the Property and potential kuleana lots within the Property.
- c: Kendra Oishi, Executive Administrator and Secretary to the Board of Regents

MAJOR TERM SHEET

FEE SIMPLE OWNERSHIP CONVEYANCE
CTAHR WAIALEE RESEARCH STATION PROPERTY

UNIVERSITY OF HAWAI'I
(for the benefit of the University of Hawai'i at Mānoa and CTAHR)

to

AGRIBUSINESS DEVELOPMENT CORPORATION, STATE OF HAWAI'I

CTAHR Waialeale Research Station Property
Waialeale, District of Koolauapoko, City and County of Honolulu, State of Hawai'i

1. Parties.
 - a. Grantor: University of Hawai'i ("University") for the benefit of its University of Hawaii at Mānoa College of Tropical Agriculture and Human Resources ("CTAHR").
 - b. Grantee: State of Hawai'i Agribusiness Development Corporation ("ADC").
2. Property. Approximate 131.72 acre parcel of land situated in Waialeale, District of Koolauapoko, City and County of Honolulu, State of Hawai'i, designated as tax map key number key nos. (1) 5-8-001:013 (Parcel A - 12.54 acres), (1) 5-8-001:055 (Parcel B – 30.88 acres), (1) 5-8-001:007 (Parcel C - 87.20 acres), and (1) 5-8-001:006 (1.1 acres) and comprising CTAHR's Waialeale research station and experimental farm, all as shown on the map attached as Exhibit A ("Property").
3. No payment required. Under the proposed transaction, the University is not requiring ADC to make any monetary payments to the University. The University, however, is requiring ADC to assume responsibility for complying with a number of obligations and conditions applicable to the Property.
4. Title to Property. The predecessor to the State Board of Land and Natural Resources ("BLNR") approved the set aside of the Property to the University and the Governor issued Governor's Executive Order No. 1848 dated May 16, 1958 ("EO") setting aside the Property to the University for purposes of establishing and operating the Waialeale experimental farm.
5. Condition of Property. ADC is accepting the Property in an "as is" and "where is" condition without any representation, warranty or guarantee of any kind from the University, including, without limitation, any representation, warranty or guarantee: (a) as to quantity, quality, character, condition, size, or kind, or that the same is in any particular condition or fit to be used for any particular purpose or (b) concerning the condition or state of repair of the Property,

including the state of repair, use, or occupancy of any improvements, buildings, structures, and facilities situated on or within the Property (hereafter the "Improvements").

6. Property subject to covenants. ADC is accepting the Property subject to certain covenants, restrictions, and conditions, which shall be deemed to run with the land, including the EO purpose, the non-discrimination covenant, electric transmission, water pipelines and access easements, mineral and water rights reservation in favor of the State, payment of applicable real property taxes, the boundary location and free flowage of Kaunala Stream, unrecorded leases, and a continuing agricultural use covenant.
7. Property subject to rights and encumbrances. ADC is acknowledging and accepting the Property with full disclosure, knowledge, and understanding of the following:
 - a. Kuleana Rights. Kuleana lands have been defined as those parcels of land granted to native Hawaiian tenant farmers between 1850 and 1855 and rights attaching to such kuleana lands include reasonable access, agricultural uses, gathering rights, rights to a single-family dwelling, water rights, and fishing rights. ADC is agreeing that: (1) purported conveyances and transfers of kuleana rights may have occurred prior to and during the time the State of Hawai'i and the University owned the Property, respectively, (2) the University is not making any representation or warranty with respect to the extent to which the kuleana rights may apply or not apply to any specific portion of the Property, (3) ADC is accepting and assuming title and ownership of the Property subject to any and all applicable kuleana rights, including any access rights, that may be and are legally recognized under Hawai'i law, and (4) the location of the parcels of land within the Property that may be affected or encumbered with kuleana rights are roughly shown on the map attached hereto as Exhibit B.
 - b. Public Land Trust. The Property is a part of the public land trust which is comprised of section 5(f), Admissions Act lands (collectively the "Ceded Lands"). Revenue or income generated from such Ceded Lands may be subject to an obligation to pay a portion to the Office of Hawaiian Affairs ("OHA"). The Grantee and the Grantor acknowledge that the lands comprising the public land trust are to be held for five primary purposes, including: (1) the betterment of native Hawaiians ("for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended"), (2) the "support of public schools and other public educational institutions," and (3) the "development of farm and home ownership on as widespread a basis as possible for the making of public improvements." Once ADC acquires the Property, ADC will assume the responsibility for making any Ceded Lands payments to OHA. ADC's obligation to make such payments may be impacted or qualified by ADC's plans to use the Property to develop farm ownership.
 - c. Broken Title. ADC is acknowledging and agreeing that: (1) there are breaks within the chains of title involving portions of the Property that have apparently occurred prior to the time the State of Hawai'i and the University owned the Property, respectively, (2) the University is making no warranties or representations as to the title and ownership of the Property, and (3) ADC is accepting and assuming title and ownership of the Property without any University representations or warranties and notwithstanding any breaks or discrepancies in the chains of title to the Property and/or any other title or ownership matters.

- d. Unauthorized occupants within the Property. ADC is acknowledging and agreeing that: (1) the University has disclosed that one or more groups of people are occupying portions of the Improvements within the Property without the University's authorization, (2) such unauthorized occupancy has continued for some time, and (3) notwithstanding such unauthorized occupancy, ADC will assume and accept title and ownership of the Property and the responsibility for addressing any issues arising from or related to such unauthorized or unpermitted occupancy.
 - e. Hazardous Materials. ADC is acknowledging that the University has disclosed past use of pesticides within the Property and the presence of lead based paint and asbestos containing materials in some of the Improvements. ADC is: (1) accepting the Property notwithstanding such disclosures, (2) acknowledging that ADC should rely on its own hazardous materials inspection of the Property, and (3) agreeing not to hold the University responsible or liable or assert any claims against the University for any clean up or remediation of hazardous materials within the Property.
8. Release. ADC is agreeing to release and waive any claims or actions ADC may have or acquire against the University with regard to: (a) the title or condition of the Property and the Improvements, (b) compliance with any covenants, applicable laws, or terms and conditions contained in the quitclaim deed, (c) the presence of any hazardous materials within the Property or the Improvements, (d) the presence of any occupants on or within the Property or the Improvements, and (e) the issuance of this quitclaim deed to ADC or any of its terms and conditions.

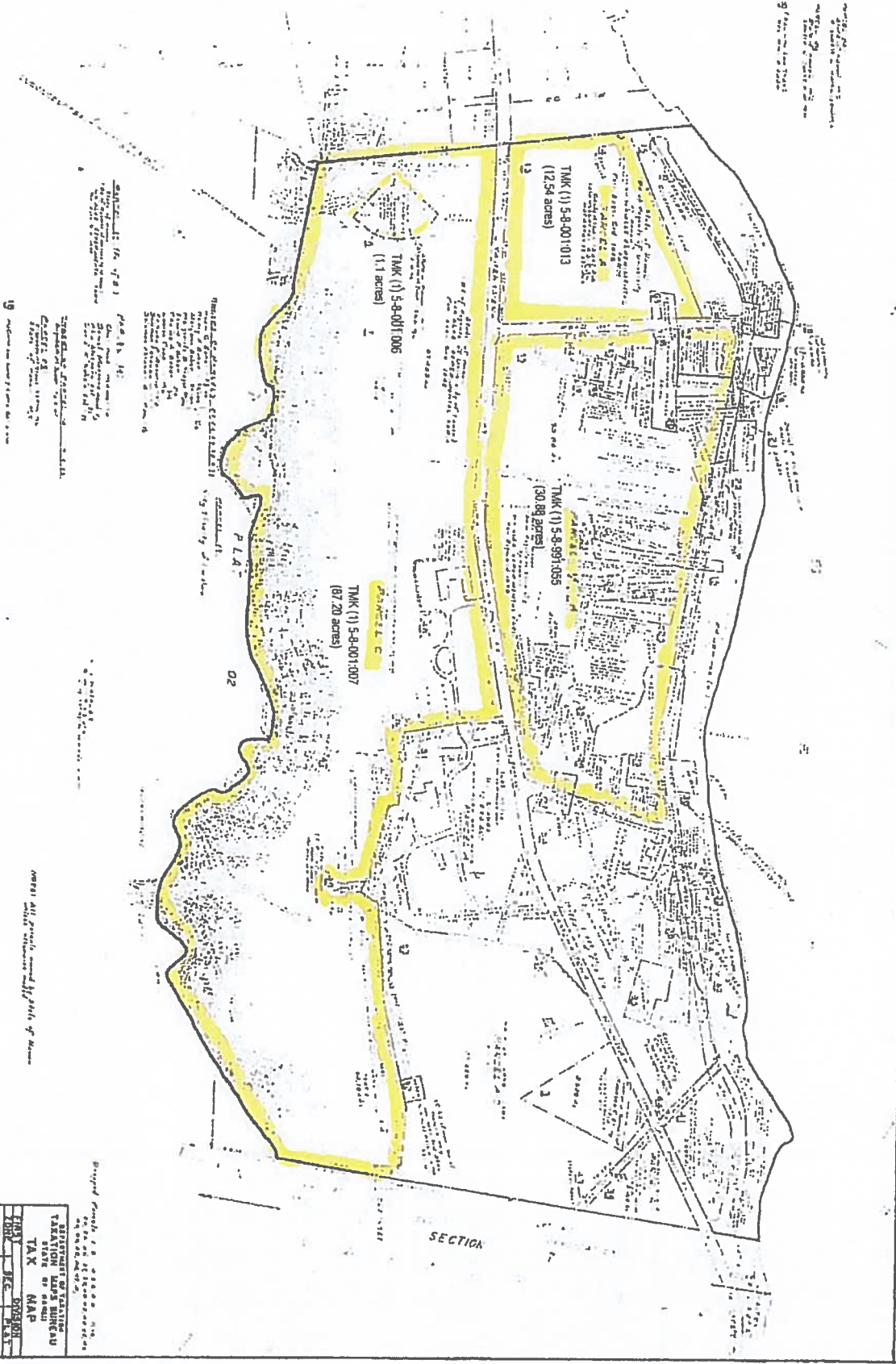
DWG. NO. 1325 (Revised)
 SOURCE: A-125-2-1
 BY: H-125-2-1

P-WAIALEE, KOOLAULOA, OAHU

EXHIBIT A

SUBJECT TO CHANGE

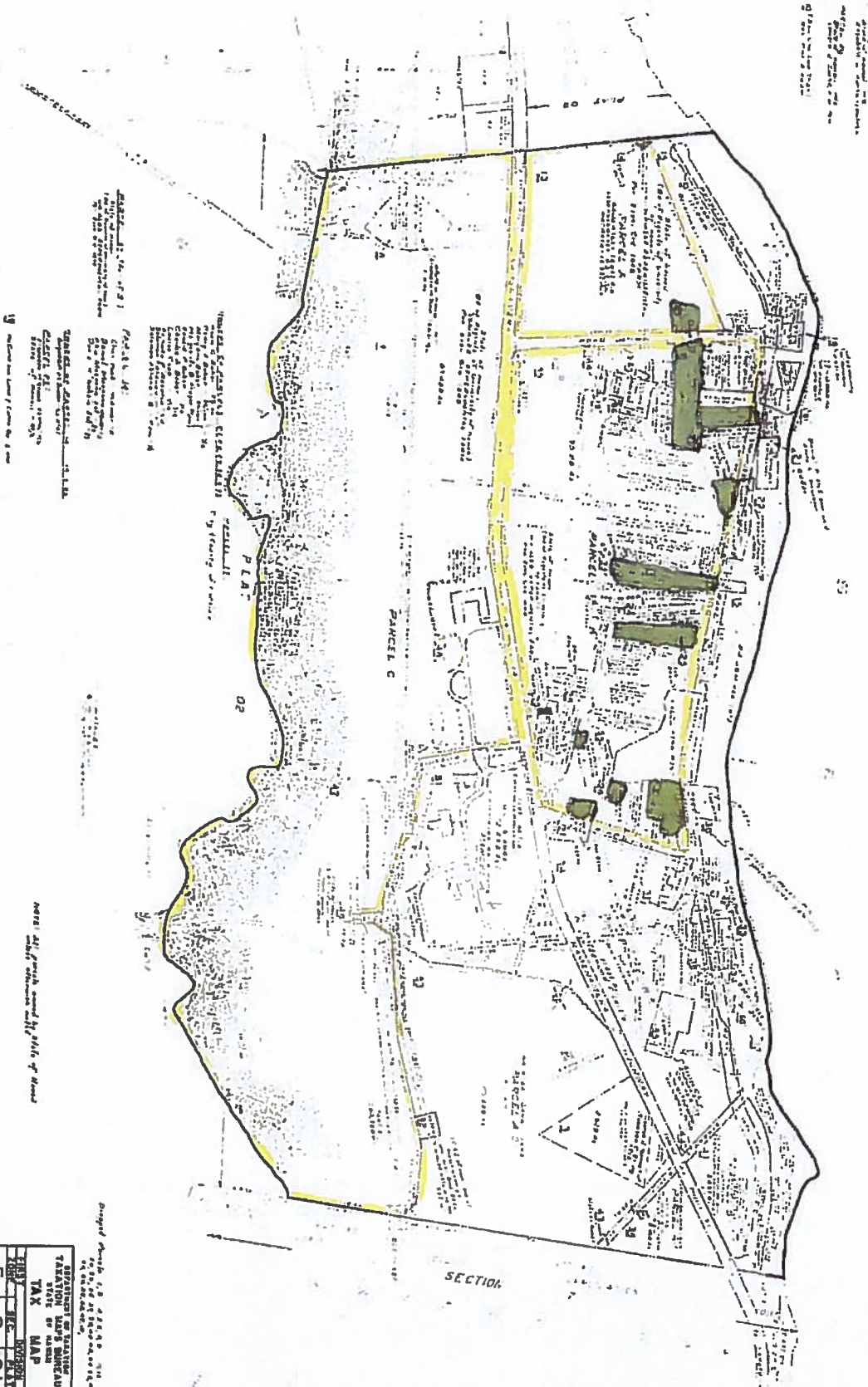
5	8	01
TAX MAP		
REPARTMENT OF TAXATION		
TERRITORY OF HAWAII		
HONOLULU, HAWAII		



2-8-01 FIRST UV

BWC, NO. 1925 (Amended)
 SOURCE: 1925
 BY: [illegible]

KAHALEE, KOOLAUPA, OAHU



APPROVED: 1925
 BY: [illegible]
 TITLE: [illegible]
 [illegible text]

EXHIBIT B

SUBJECT TO CHANGE

5	8	01
1925	SEC.	MAP
TAX MAP		
TERRITORY OF HAWAII		
DEPARTMENT OF LAND AND NATURAL RESOURCES		
HONOLULU, HAWAII		

B-8-UI FIRST DIV