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

October 24, 2008

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

PSF No.:04OD-155

Oahu

Resubmittal

Approval in Principle of Land Exchange between the State of Hawaii and Hawaii Baptist Academy for State-Owned Land at Nuuanu, Honolulu, Oahu, Tax Map Keys: (1) 2-2-22:02 & 19, and Privately-Owned Property Yet to be Identified.

APPLICANT:

Hawaii Baptist Academy, a Hawaii nonprofit corporation whose business and mailing address is 21 Bates Street, Honolulu, Hawaii 96817.

PRIVATE OWNER:

Prior to the proposed exchange involving the State, Hawaii Baptist Academy (HBA) will acquire property approved by the Board, for use in the proposed land exchange.

LEGAL REFERENCE:

Section 171-50, Hawaii Revised Statutes, as amended.

PUBLIC PURPOSE:

Pursuant to Section 171-50(a) "No exchange of public land for private land shall be made except for public purposes, including **but not limited to** (1) consolidation of holdings of public lands; (2) straightening of boundaries of public lands; (3) acquisition of adequate access for landlocked public lands which have development potential; or (4) acquisition of lands suitable for residential use." [Emphasis added.]

Revenues generated by the public land trust are used to fund various public purposes consistent with the Department's fiduciary obligations to protect, preserve and manage the State's natural resources, including open spaces, conservation and culturally significant lands, wildlife habitat, ocean recreation, aquatic resources, etc. Moreover, these funds are often used when emergency responses are required due to flooding, earthquakes, rock falls, or other natural disasters.

The purpose of the proposed exchange is to increase revenues to support the Department's public land trust and fiduciary duties.

FAIR MARKET VALUE AND CONSIDERATION IF ANY:

As required by Subsection 171-50(b), HRS:

"The public land exchange shall be of substantially equal value to that of the private land. In any exchange, the fair market value of the private land and the public land shall be separately determined by a disinterested qualified appraiser or appraisers and the cost shall be borne equally between the owner and the board. No payment by the State shall be required should the private land exceed the value of the public land, but any difference in value of the public land over the private land shall be paid to the State at the time of the exchange; provided no exchange shall be made should public land exceed 120 per cent of the value of the private land."

PROPERTIES TO BE EXCHANGED:

STATE OWNED PROPERTY:

Location: Portion of Government lands situated at Nuuanu, Honolulu, Oahu, identified by Tax Map Key: (1) 2-2-22:02 & 19, as shown on the attached tax map labeled Exhibit A. Additional property data is provided in the table below:

TMK	2-2-22:02	2-2-22:19
Land Area	7.787 ac.	4.971 ac.
SLU	Conservation	Urban
County Zoning	P-1, Preservation	R-10, Residential

Total Area: 12.758 acres, more or less.

Trust Status: Non-ceded, Section 5(a) lands of the Hawaii Admission Act, including "Real properties acquired by purchase or by condemnation by the Territory of Hawaii after August 12, 1898 and prior to August 21, 1959."

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ____ NO __XX__

Current Use: TMK (1) 2-2-22:19 (Parcel 19) is leased to Hawaii Baptist Academy (HBA) for a 55 year term ending October 31, 2058. Subject lease (GL 5687) was approved by the Board at its meeting of November 15, 2002, under agenda item D-11.

TMK (1) 2-2-22:02 (Parcel 02) is vacant and unencumbered. Site is landlocked and topography is steep sloping.

Comments: State-owned lands to be conveyed shall be subject to all exceptions, exclusions, reservations and easements of record.

Privately-Owned Property:

HBA does not own property that would be acceptable to DLNR for exchange purposes. Alternatively, HBA requested staff to identify properties that DLNR may consider desirable. Alternatively, staff has established preliminary criteria acceptable to DLNR and that HBA may consider acquiring for exchange purposes. Selection criteria are discussed in a subsequent section.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board represents a use of State lands to acquire improved property and is not exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. Following the approval of private lands to be acquired by the State, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

HBA REQUIREMENTS:

HBA shall be required to:

1) Pay for the appraisal costs to determine the value of the properties to be exchanged;
2) Pay for the costs of public notice pursuant to section 171-16;
3) Provide survey maps and descriptions for the privately-owned property according to State DAGS standards and at no cost to the State;
4) Obtain a title report(s) for the privately-owned property(ies) at no cost to the State and subject to review and approval by the Department;
5) Pay for and conduct a Phase I environmental site assessment(s) and, if this Phase I identifies the potential for hazardous materials release or the presence of hazardous materials, conduct a Phase II environmental sampling and analysis plan and perform any and all remediation, abatement and disposal as may be warranted and as satisfactory to the standards required by the Federal Environmental Protection Agency and/or the State Department of Health, all at no cost to the State and to the satisfaction of the Department.

REMARKS:

At its meeting of October 10, 2008, under Agenda Item D-8, the Board of Land and Natural Resources differed this request to provide Applicant's representative an opportunity to attend and provide testimony.

Hawaii Baptist Academy (HBA) along with Department of Land and Natural Resources, Land Division requests the Board of Land and Natural Resources (BLNR) approve in principle, an exchange whereby the State would convey its interest in approximately 12.758 acres of land (State Land) for property with greater income producing potential, subject to review and approval by the Department and the Department of the Attorney General.

The State-owned lands are located along the Pali Highway corridor in Honolulu, Oahu, further identified as TMKs (1) 2-2-22:02 (7.787 ac.) and 19 (4.971 ac.), hereinafter referred to individually as Parcel 02 and Parcel 19, respectively.

Parcel 02 has a steep up-sloping topography, is located in the State's Conservation District and has no legal access. Parcel 19 is down gradient to Parcel 02 and slopes moderately upward from its street frontage toward Parcel 02. Parcel 02 is located in the State's Urban District.

The following information is based on a cursory review of past files and correspondence. This summary is provided as general background on the subject State land.

- By Final Order of Condemnation dated September 24, 1958, the Territory of Hawaii (ToH) acquired 16.348 acres of land in Nuuanu for construction of a Nuuanu Highway project referred to as Federal Aid Project No. BU-06-1(7). Consideration paid for the 16.348 acres of land and improvements thereon was $360,000. The subject 12.758-acre site was a portion of the land acquired.
- Between October 1958 and August 1963, ToH Department of Public Works, Territorial Highway, or its successor State Department of Transportation (DOT), sent various correspondence to the ToH Commissioner of Public Lands, or its successor DLNR. Correspondence indicates the subject lands were surplus to highway needs and requested disposition of these lands.
- At its meeting of August 13, 1982, under agenda item F-1-h, the BLNR approved the issuance of a Revocable Permit (RP) over the subject property to HBA. Notwithstanding its approval, the BLNR recommended that DOT concurrence be requested for the proposed RP. Pursuant to BLNR's recommendation, DLNR solicited comments from DOT. DOT responded with no objections.
- At its meeting of June 27, 1986, under agenda item F-11, BLNR approved to (1) terminate the RP to HBA; (2) authorize subdivision of the subject site; and (3) authorize the issuance of a 25-year direct lease to HBA for school parking and recreational purposes. Pursuant to BLNR's action, the subdivision of the subject site was approved on October 2, 1986, and GL 5173 was issued to HBA effective July 1, 1986.
- Notwithstanding the issuance of GL 5173, at its meeting of

November 15, 2002, under agenda item D-22, BLNR approved the cancellation of GL 5173 and issuance of a new lease to HBA for school and related purposes, for a term of 55 years. Accordingly GL 5687 was issued effective November 1, 2003. GL 5687 prohibited the construction of improvements without prior BLNR Chairperson approval. Current lease rent for the 4.971 acres of land (Parcel 19) is $23,400 per annum.

HBA has continually expressed interest in acquiring the fee interest in Parcel 19. In 2004 HBA proposed a land exchange that contemplated HBA's acquisition of private land that the State Department of Transportation (DOT) had purportedly indicated an interest in. However, in a memorandum dated September 8, 2004 to DLNR, DOT indicated they were not interested in the site identified. DOT did not identify alternative private lands they would consider for the proposed exchange.

Subsequently HBA met with the Department of Education (DOE) in an attempt to identify private lands suitable for school purposes. Similar to HBA's offer to DOT, HBA considered acquiring lands suitable for DOE use for exchange purposes. However, DOE was not able to identify suitable lands and in a letter dated March 16, 2007, DOE informed HBA that they no longer wished to participate in a proposed land exchange.

Following DOE's decision, HBA requested DLNR to establish preliminary criteria to help identify desirable properties that HBA may consider acquiring for exchange purposes. The preliminary criteria are meant to identify lands that can generate revenue and provide future redevelopment opportunities for the benefit of the public land trust[1]. Established selection criteria include:

- Interest: Only fee simple or leased fee interests should be considered.
- Zoning: Sites should have Urban State Land Use designations and be zoned for commercial or industrial use by the county.
- Location: Properties statewide may be considered. Priority, however, should be given to properties located in built-up urban areas, or areas in which large development projects are either underway or are being planned.

[1] DLNR is charged with management of the State's natural resources including water resources, ocean waters, navigable streams, coastal areas, minerals, state parks, historical sites, forests, forest reserves, aquatic life & aquatic life sanctuaries, public fishing areas, boating & ocean recreation, coastal programs, wildlife & wildlife sanctuaries, game management & public hunting areas, natural area reserves, and other functions assigned by law. DLNR also manages over 1.3 million acres of public lands. DLNR utilizes a small percentage of these lands to generate revenues to support and fund DLNR's trust responsibilities and other related programs. This management philosophy is similar to those employed by other major land trusts, which utilize a portion of their lands for revenue generating purposes to support the missions and purposes of their respective trusts. Recent public programs funded in part by DLNR's lease rent revenues include rockfall mitigation and stream maintenance and flood prevention.

- Land Area: Sites with land areas of a half-acre or more should be given higher priority.
- Improvements/Current Use: Typically, improved properties are preferred over vacant lots. Moreover, no residential improvements are permitted.

Any property that HBA proposes to the State in exchange for the subject 12.758 acres shall comply with the foregoing criteria. However, DLNR reserves the right to review other properties that HBA may wish to propose. Whereas the final selection of any private property remains subject to review and approval, staff recommends the Board delegate authority to the Chairperson to approve the final selection of private property.

Once the private property is identified and approved, HBA will be able to begin necessary environmental assessments or environmental impact statements, as may be required under Chapter 343, Hawaii Revised Statutes. Moreover, additional due diligence will be conducted and presented to the BLNR for review and final approval.

Comments were solicited from the DLNR Divisions of Forestry & Wildlife (DOFAW), State Parks (SP), and Conservation & Coastal Lands (OCCL), Department of Transportation (DOT), and the Office of Hawaiian Affairs (OHA) and results of the solicitation are summarized below.

Agency	Comments
DOFAW	Did not respond
SP	No objections. At one time the HBA lease included a requirement to provide some parking for Kapena Falls. Staff is unclear whether that requirement is still in place.
OCCL	No objections
DOT	Did not respond
OHA	No comments at this time

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

2. Approve in principle the above-described land exchange between the State of Hawaii and the Applicant under the terms and conditions cited above which are by this reference incorporated herein, provided that the details of the proposed exchange shall be submitted to the Board for final approval prior to documentation.

3. Delegate to the Chairperson authority to approve the final

selection of private property to be conveyed to the State, subject to BLNR final approval of this exchange.

4. Authorize the Chairperson to prescribe other terms and conditions as may be necessary to carry out the intent of the Board and to best serve the interests of the State.

Respectfully Submitted,

Gavin Chun
Project Development Specialist

APPROVED FOR SUBMITTAL:

Laura H. Thielen, Chairperson

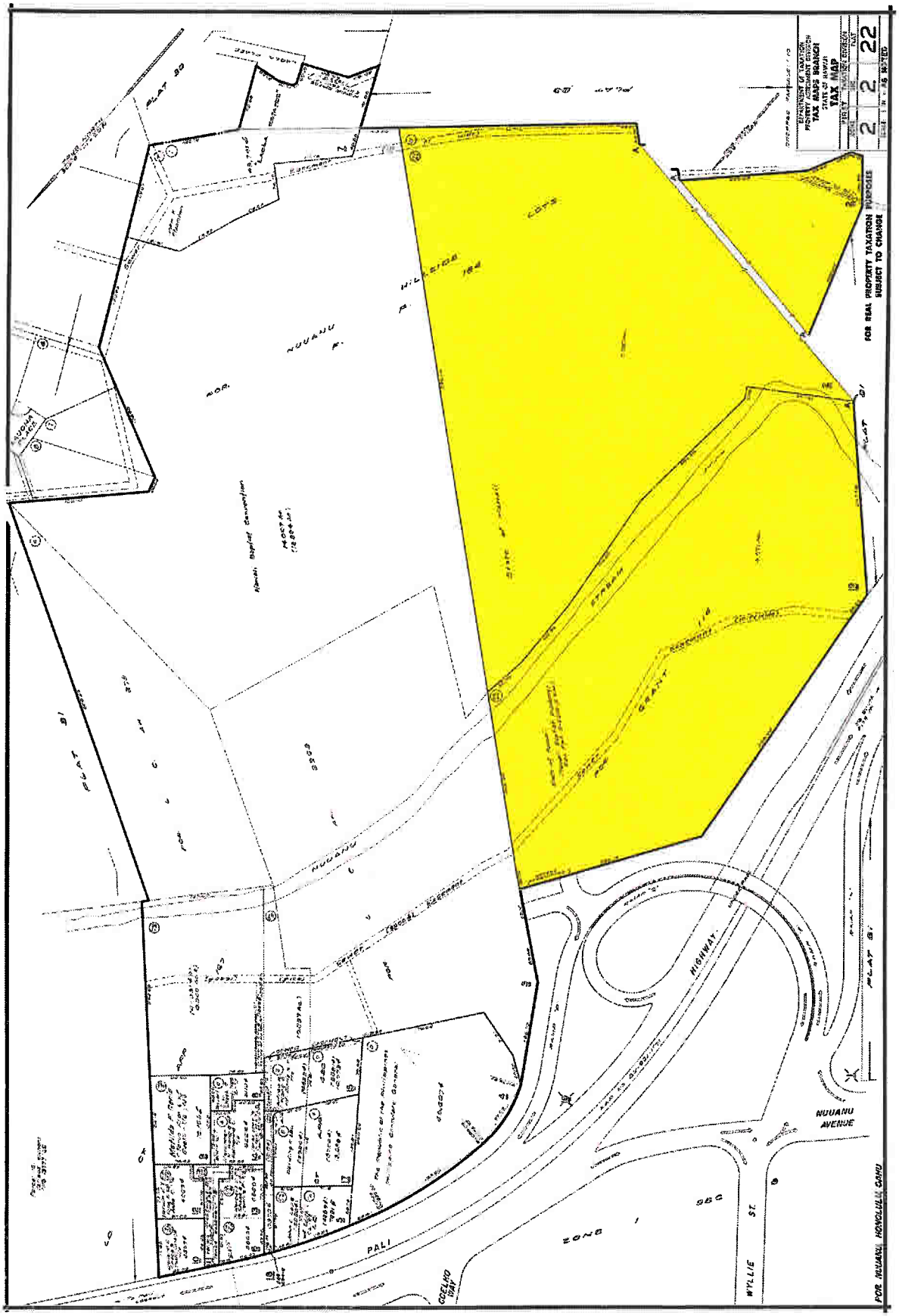
DEPARTMENT OF TAXATION
PROPERTY ASSESSMENT DIVISION
TAX MAPS BRANCH
STATE OF HAWAII
TAX MAP
2 2 22
FOR REAL PROPERTY TAXATION PURPOSES
SUBJECT TO CHANGE
NUUANU
HILLSIDE
LOTS
STABAM
GRANT
HIGHWAY
NUUANU AVENUE
PALI
ZONE 1
WYLLIE ST.
GOELHO WAY
PLAT 81
PLAT 80
FOR NUUANU, HONOLULU, OAHU

EXHIBIT A