

Approval to Execute a Covenant of Purpose, Use and Ownership with the United States Department of Commerce, Economic Development Administration (EDA) for the construction of a Business Recovery Center within the interior of the existing Hawaii Emergency Management Agency (HI-EMA), Building B303, located at the Diamond Head State Monument TMK (1) 3-1-042-006.

**LEGAL REFERENCE:**

Section 171-11 and 55, Hawai'i Revised Statutes.

**APPLICANT / MORTGAGOR**

The State of Hawai'i Department of Defense, Hawaii Emergency Management Agency, whose principal place of business is 3949 Diamond Head Road, Honolulu, Hawai'i 96816-4495.

**LOCATION AND TAX MAP KEY:**

HI-EMA Building B303, Diamond Head State Monument, Honolulu, Oahu, identified by Tax Map Key: (1) 3-1-042-006.

**AREA:**

Area of Use (see attached plan):

- (1) The physical location of the proposed 2,000 square foot Business Recovery Center will be within the interior of the existing building 303 warehouse section. The BRC will be constructed as a portable modular in-plant office building. The building will consist of a Business Emergency Operations Center (BEOC) and training room, meeting rooms, offices, telecommunications room, and equipment storage rooms.
- (2) The BRC will be constructed within a 4,225 square foot section of the warehouse and users will have access to existing restrooms located within the warehouse section and administrative section.
- (3) Parking: Spaces within the existing B303 paved parking lot located in the front of the administrative section and adjacent to the warehouse section will be allocated for BRC use.

**ZONING:**

State Land Use District:	Conservation
City & County of Honolulu:	Preservation Restricted/General
FEMA Flood Designation	X
Tsunami Evacuation Zone	No

**TRUST LAND STATUS:**

Section 5(b) lands of the Hawai'i Admissions Act.  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: Yes

**CURRENT USE STATUS:**

Land presently encumbered by Governor's Executive Order No. 3688 dated April 30, 1996, setting aside the land to the Division of State Parks, Department of Land and Natural Resources, concurrently and jointly with the "Diamond Head Reservation" as managed and under the jurisdiction of the Department of Defense (DOD) for the Diamond Head Reservation. Building B303 is currently assigned and used by the Hawaii Emergency Management Agency (HI-EMA).

**CHARACTER OF USE:**

General administrative offices, media center, computer room, incident overflow offices, and general purpose warehouse and staging area. BRC operations will be normal workdays unless emergency activation to 24-hour operations.

**TERM:**

Fifteen (15) year term.

**COMMENCEMENT DATE:**

July 1, 2016

**RENT:**

Not applicable

**CHAPTER 343, HRS – ENVIRONMENTAL ASSESSMENT:**

No Environmental Assessment and Finding is currently available for Building B303. As a requirement of the EDA Grant a project Environmental Narrative was produced that indicated no significant impacts from the project would be encountered. This project is entirely within Building B303 and consists of interior renovations to the existing warehouse space.


**REMARKS:**

The EDA requirement for the Covenant of Purpose, Use and Ownership is to provide a security that the grant recipient, HI-EMA, will continue to use the investment for the purposes intended for the term of the agreement (15-years). The effect of this agreement is to commit the State of Hawai'i to employ that portion of building 303 proposed for the Business Recovery Center. This agreement is a requirement to receive the Federal matching share of \$1,312,000.

RECOMMENDATION: That the Board:

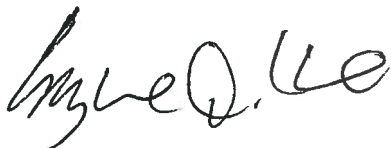
- A. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
- B. Consent to the execution of a Covenant of Purpose, Use and Ownership between the United States Department of Commerce, Economic Development Agency, and the State of Hawaii Department of Defense, Hawaii Emergency Management Agency, and the Department of Land and Natural Resources, Division of State Parks, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following:
  - 1. Review and approval by the Department of the Attorney General; and
  - 2. Such other terms and conditions as be prescribed by the Director of HI-EMA to best serve the interest of the State.

Respectfully submitted,

  
FOR ARTHUR J. LOGAN  
Director  
Hawai'i Emergency Management Agency

APPROVED FOR SUBMITTAL:

SUZANNE CASE  
Chairperson and Member



PROJECT SITE

DESCRIPTION

State of Hawai'i, Hawai'i Emergency Management Agency  
State of Hawaii Business Recover Center  
Project

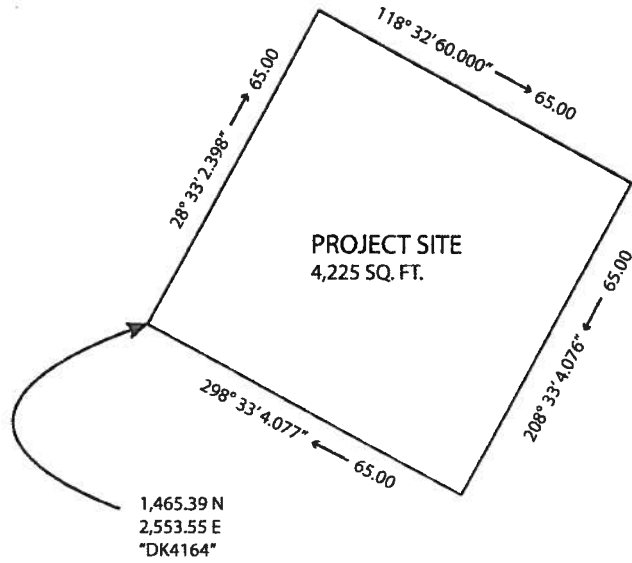
A portion of a certain parcel of land described in and covered by Land Patent Number 8165, Part B, Land Commission Award Number 8559-B, Apana 32 to William C. Lunalilo) situate, lying and being at Kapahulu, City and County of Honolulu, Island of Oahu, State of Hawaii, bearing Tax Key designation (1) 3-1-042-006, and containing an area of 4,225 square feet, more or less, contained entirely within the existing Hawaii Emergency Management Agency Harding Warehouse (B303).

Beginning at the west corner of this parcel of land, the coordinates of said point of beginning referred to National Geodetic Survey Station "Diamond Head 2 Reset DK4164" being 1,465.39 feet north and 2,553.55 feet east running by azimuths measured clockwise from True North:

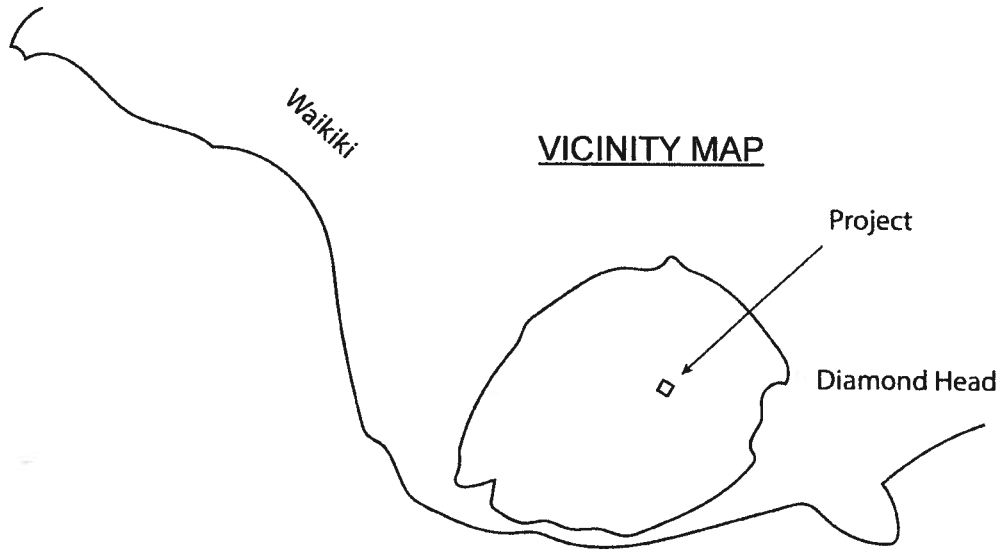
1. 28° 33' 2.398" 65.00 feet;
2. 118° 32' 60.000" 65.00 feet;
3. 208° 33' 4.076" 65.00 feet;
4. 298° 33' 4.077" 65.00 feet.

The above described parcel of land lies entirely within the TMK (1) 3-1-042-006.

True North  
Scale 1" = 25'



True North  
Scale 1" = 2,100'



**PROJECT SITE**

State of Hawaii, Hawaii Emergency Management Agency  
Business Recovery Center  
Installation Project  
Harding Warehouse

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Number 8165, Part B, Land Commission Award Number 8559-B, Apana 32 to William C. Lunalilo) situate, lying and being at Kapahulu, City and County of Honolulu, Island of Oahu, State of Hawaii, bearing Tax Key designation (1) 3-1-042-006, and containing an area of 303.190 acres, more or less.

**EXHIBIT "A"**

## COVENANT OF PURPOSE, USE AND OWNERSHIP

THIS COVENANT OF PURPOSE, USE AND OWNERSHIP dated this 13th day of June, 2016, by and between The State of Hawaii Hawaii Emergency Management Agency

whose address is 3949 Diamond Head Road, Honolulu, Hawaii 96816

(hereinafter with its successors and assigns called "Recipient"); and the ECONOMIC DEVELOPMENT ADMINISTRATION, UNITED STATES OF AMERICA, whose address is Main Commerce Building, Washington, D.C. 20230 (hereinafter with its successors and assigns called "EDA");

### RECITALS:

WHEREAS, Recipient submitted an application, designated as EDA Project No. 07-79-06902, for financial assistance pursuant to the Public Works and Economic Development Act of 1965 (Pub. L. 108-373, 42 U.S.C. 3121, et seq.), (hereinafter the "Act"); and

WHEREAS, by offer of Award, dated 9/27/2012 as amended 4/26/2016, EDA offered to Recipient a financial assistance award in the amount of \$ 1,312,000.00 (hereinafter called "Award Amount") to assist in financing The State of Hawaii Business Recover Center (hereinafter called "Project"); and

WHEREAS, said Project included acquisition of and/or specifically improving the real property described in Exhibit "A" attached hereto and incorporated herein (hereinafter with all improvements thereon called "Property"); and

WHEREAS, on May 12, 2016, Recipient accepted the Offer of Award (hereinafter called "Award Agreement") subject to certain terms and conditions, pursuant to which Recipient covenanted and agreed to comply with the applicable requirements of 13 Code of Federal Regulations, Part 314; and

WHEREAS, the Award Agreement provides the purposes for which the Award Amount may be used and provides, inter alia, that Recipient will not sell, lease, mortgage, or otherwise alienate any right to or interest in the Property, or use the Property for purposes other than, and different from, those purposes set forth in the Award Agreement and the application made by Recipient therefore (hereinafter called "Project Purposes"), such alienation and use being prohibited by 13 CFR Part 314 and 15 CFR Part 24, and 15 CFR Part 14; and

WHEREAS, under the authority of the Act, EDA is not authorized to permit Recipient to use the Property for purposes other than the Project Purposes or to lease, transfer, convey, mortgage or hypothecate the Project to any party without prior approval from EDA, unless EDA is repaid its share of the market value of the Project, as set forth below;

WHEREAS, Recipient, as owner of all or part of the real property described in Exhibit "A", attached hereto, agreed to record this Covenant in the appropriate office for the recording of public records affecting real property so as to constitute notice to all persons of any and all restrictions on title to and use of the Project and all or part of the real property described in Exhibit "A" attached hereto; and

WHEREAS, the State Bureau of Conveyances  
located at 1151 Punchbowl Street, Room 121, Honolulu, Hawaii 96813  
is the proper office to record this Covenant;

NOW THEREFORE, in consideration of financial assistance rendered and/or to be rendered by EDA and of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and to assure that the benefits of the Project will accrue to the public and be used as intended by both EDA and Recipient, Recipient hereby covenants and agrees as follows:

1. The estimated useful life of the Project is 15 years as determined by Special Award Condition 16. (d).
2. Recipient agrees that for the estimated useful life set forth above, Recipient will not sell, transfer, convey, or mortgage any interest in the real property acquired or improved in whole or in part with the funds made available through this Award, nor shall Recipient use the Property for purposes other than the Project Purposes without the prior written approval of the Assistant Secretary, Economic Development Administration or his/her designee or successor. Such approval may be withheld until such time as Recipient first pays to EDA the amount of the award funds disbursed or, at the option of the EDA, the federal government's fair share of the Property as provided in the Code of Federal Regulations, Title 13, Part 314. The federal government's fair share of the Property shall be the amount computed by multiplying the percentage of the federal participation in the total cost of the grant program to the fair market value of the Property at the time of the unauthorized use or conveyance of the Property.
3. Recipient further covenants that in the event the Property is used for purposes other than the Project Purposes, or is sold, leased, transferred, conveyed or mortgaged without the prior written approval of the Assistant Secretary, Recipient will compensate the federal government in the amount of the grant funds disbursed or at the option of the federal government, the federal

government's fair share of the Property as described above.

4. Pursuant to 13 CFR 314, Recipient further agrees that, as a prerequisite to accepting the disbursement of any award funds by EDA, Recipient shall execute and place on record against the property acquired or improved in whole or in part with the funds made available through this Award, this Covenant of Purpose, Use and Ownership. Recipient further agrees that whenever the Property is sold, leased or otherwise conveyed pursuant to the Code of Federal Regulations, Title 13, Part 314, Recipient or the transferor shall add to the document conveying such interest a Covenant of Purpose, Use and Ownership. EDA will in its sole discretion determine whether the Covenant is satisfactory. EDA may require an opinion of counsel for Recipient that the Covenant is valid and enforceable according to its terms and has been properly recorded.

5. It is stipulated and agreed that the terms hereof constitute a reasonable restraint on alienation of use, control, and possession of or title to the Property given the federal interest expressed herein.

6. This Covenant shall run with the land.

IN WITNESS WHEREOF, the Recipient has hereunto set their hand as of the day and year first above written by their duly authorized officer. A completed duly recorded copy of this Covenant shall be forwarded to EDA. (The appropriate acknowledgment must be included for recording in Recipient's jurisdiction).

\_\_\_\_\_  
Recipient

By Vern T. Miyagi  
Title Director  
Hawaii Emergency Management Agency

ATTEST:

By \_\_\_\_\_

Title \_\_\_\_\_