

STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawai'i

April 8, 2016

Chairperson and Members
Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Land Board Members:

SUBJECT: ACCEPTANCE OF HEARING OFFICER'S REPORT ON A PUBLIC HEARING FOR ONE PROPOSED WITHDRAWAL AND FOUR PROPOSED ADDITIONS TO THE FOREST RESERVE SYSTEM ON THE ISLAND OF HAWAI'I.

APPROVAL AND RECOMMENDATION TO THE GOVERNOR ISSUANCE OF AN EXECUTIVE ORDER FOR WITHDRAWAL OF TAX MAP KEY (3) 4-6-011:040 COMPRISING APPROXIMATELY 238 ACRES, FROM HĀMĀKUA FOREST RESERVE, HĀMĀKUA, HAWAI'I.

APPROVAL AND RECOMMENDATION TO THE GOVERNOR ISSUANCE OF AN EXECUTIVE ORDER FOR ADDITION OF TAX MAP KEYS (3) 4-3-010:009 AND (3) 4-4-015:002, COMPRISING APPROXIMATELY 6887.577 ACRES, TO MAUNA KEA FOREST RESERVE, HĀMĀKUA, HAWAI'I.

APPROVAL AND RECOMMENDATION TO THE GOVERNOR ISSUANCE OF AN EXECUTIVE ORDER FOR ADDITION OF TAX MAP KEY (3) 7-5-001:022, COMPRISING APPROXIMATELY 17.490 ACRES, TO HONU'A'ULA FOREST RESERVE, NORTH KONA, HAWAI'I.

APPROVAL AND RECOMMENDATION TO THE GOVERNOR ISSUANCE OF EXECUTIVE ORDERS FOR THE REDESIGNATION OF TAX MAP KEYS (3) 3-9-001: PORTION OF 013 AND (3) 3-9-001:018, COMPRISING APPROXIMATELY 40.090 ACRES, FROM DEMONSTRATION FOREST PURPOSES, TO THE HUMU'ULA SECTION OF THE HILO FOREST RESERVE, NORTH HILO, HAWAI'I.

APPROVAL AND RECOMMENDATION TO THE GOVERNOR ISSUANCE OF EXECUTIVE ORDERS FOR THE REDESIGNATION OF TAX MAP KEYS (3) 4-9-001: PORTION OF 007, (3) 4-9-013: PORTION OF 001, (3) 4-9-014:001, 003, 004, 005, 008, 009, 010, 011, 013, 014, 017, 020, 021, AND 022, COMPRISING APPROXIMATELY 3,431.480 ACRES, FROM WAIMANU NATIONAL ESTUARINE RESEARCH RESERVE, TO THE KOHALA FOREST RESERVE, HĀMĀKUA, HAWAI'I.

SUMMARY:

This Board submittal requests acceptance of a Hearing Officer's Report for one proposed withdrawal and four proposed additions to the Forest Reserve System on the Island of Hawai'i, and approval and recommendation to the Governor, issuance of Executive Orders (EO) for withdrawal of land from Hāmākua Forest Reserve, and addition of lands to Mauna Kea, Honua'ula, Hilo and Kohala Forest Reserves. These actions represent effort by the Division of Forestry and Wildlife (DOFAW) to complete previously initiated processes and to formalize past action.

LEGAL REFERENCE:

Section 183-11, Hawai'i Revised Statutes (HRS), as amended.

LOCATION AND AREA:

See Exhibit A.

ZONING AND TRUST LAND STATUS:

See Exhibit A.

BACKGROUND

Proposed Withdrawal

Hāmākua Forest Reserve

Tax map key (TMK) (3) 4-6-011:040 which is approximately 238 acres (Exhibit B), was included in Governor's Proclamation dated December 22, 1928, that established Hāmākua Forest Reserve. On April 15, 1966, The State of Hawai'i issued The Boy Scouts of America (BSA) a long term general lease (GL-4102) for TMK (3) 4-6-011:040, which was developed into an educational and recreational area called Camp Honokaia.

In 2004, the parcel was the subject of a land exchange between the Department of Land and Natural Resources (DLNR) and the BSA involving private land in Waikele, O'ahu, for public lands located on the islands of O'ahu, Kaua'i, and Hawai'i. After review and approval by the Department of the Attorney General, a land exchange was executed by the Governor and all appropriate parties and recorded in the Bureau of Conveyances on April 8, 2004.

Given that the land exchange between the BSA and the State of Hawai'i has been completed, the Division seeks to formally withdraw TMK (3) 4-6-011:040 which is no longer State land, from the Hāmākua Forest Reserve. The BSA has no objections to this removal of lands from the Hāmākua Forest Reserve.

Proposed Additions

Mauna Kea Forest Reserve

Tax Map Keys (3) 4-3-010:009 and (3) 4-4-015:002, approximately 6,887.577 acres, are proposed for addition to Mauna Kea Forest Reserve (Exhibit C). The area in question was originally encumbered by leases issued by DLNR to multiple private entities for pasture purposes. At its meetings of December 14, 2001 (Item D-37), and November 15, 2002 (Item D-19), the Board of Land and Natural Resources (Board) approved, as amended, the grant of a ten year term, non-exclusive easement to the State Department of Transportation for the area in connection to the Saddle Road Improvement Project for Palila Critical Habitat (PCH) mitigation purposes. The area was fenced and domestic and feral ungulates were removed. Beginning in 2004, and continuing presently, the DOFAW has conducted a forest restoration program on the proposed addition for the purpose of providing long-term habitat for Palila at considerable effort and with significant progress.

By letter dated October 24, 2009, the Federal Highway Administration (FHWA) advised DLNR that consultation with the United States Fish and Wildlife Service (USFWS) had resulted in the issuance of a new Biological Opinion for the Saddle Road project on September 11, 2009 (BO). The BO committed the USFWS and FHWA to ensure the PCH Mitigation Easement area serve as long-term habitat for Palila Recovery. The FHWA letter explained that if the area was not added to the State Forest Reserve System or otherwise set-aside for a sufficient term, FHWA will likely be found in violation of the BO, which would result in the cessation of all activities on the Saddle Road project using federal funding.

To remedy the situation, at its meetings on September 9, 2010 (Item D-17), December 9, 2010 (Item D-2 & D-3), and February 25, 2011 (D-4), the Board approved the withdrawal of the PCH mitigation area from their respective pasture leases, and approved in concept the set-aside to the Mauna Kea Forest Reserve. At its meeting on May 22, 2015 (Item D-7), the Board approved in concept the set-aside of an additional 337.741 acres (portion of TMK (3) 4-4-015:002) that is adjacent to the PCH mitigation area. This area was encumbered by a pasture lease (GL-4471) which expired on February 28, 2016.

Honua'ula Forest Reserve

Tax Map Key (3) 7-5-001:022, approximately 17.49 acres, is proposed for addition to Honua'ula Forest Reserve (Exhibit D). The parcel was previously encumbered by a revocable permit (RP-6941) issued by DLNR Land Division for pasture purposes to a private individual. The permit was terminated by the Board on December 9, 2011 (Item D-5). DOFAW expressed interest in taking over management of this land because the transfer of this parcel could provide a potential access corridor to the forest reserve. As such, approval in concept for addition to Honua'ula Forest Reserve was also approved by the Board on December 09, 2011 (Item D-5).

Hilo Forest Reserve

On July 10, 1998, Item D-1, the Board approved setting aside TMKs (3) 3-9-001: por. 013 and 018 (Exhibit E) which are State lands as well as former cane lands, to the Division "for potential

demonstration forest projects.” On July 28, 2000, Item C-2, the Board approved a Master Cooperative Agreement between the Division of Forestry and Wildlife, the Laupahoehoe Train Museum, the North Hilo Community Council and the Laupahoehoe High School, to conduct services relating to the “Ookala Community Forest”, which was defined to be composed of TMKs (3) 3-9-001: por. 013 and 018. According to the Master Cooperative Agreement which was executed on September 26, 2000, the land in question would remain under DOFAW jurisdiction, and the community partners would mobilize resources needed to manage the land and implement projects that are mutually agreed to by the oversight committee. The State, in exchange, would allow the community continued access during the life of the agreement, which is still ongoing. On April 24, 2003, EO3992 was executed, officially setting aside both parcels to the Division of Forestry and Wildlife “FOR POTENTIAL DEMONSTRATION FOREST PROJECTS ALONG HAMAKUA COAST.”

In September 2002, the Laupahoehoe Train Museum was awarded a Forest Stewardship Grant for management activities at the “Ookala Community Forest” and entered into an agreement to implement management activities outlined in their Forest Stewardship management plan. They are no longer receiving cost share assistance from the State under the grant and are currently in the maintenance phase of their contract which terminates on June 30, 2030. In addition to the Forest Stewardship agreement, TMK (3) 3-9-001:013 is currently encumbered by two perpetual non-exclusive easements: Land Office Deed (LOD) 28504 with Verizon Wireless Inc. and LOD 28144 with Hawaii Electric Light Co. Inc.

Under the current set aside, the demonstration forest designation threatens to jeopardize effective management, planning and related enforcement activities due to a lack of applicable rules and statutes. Changing the designation of these parcels to forest reserve would place the area under broad forest reserve management guidelines and afford it the protection of the statutes and administrative rules that exist for the Forest Reserve System.

The utility easements LOD 28504 and 28144 will not be affected by the change in designation. Additionally, DOFAW currently has management jurisdiction of these lands, and would retain jurisdiction with their transfer to the Forest Reserve System. DOFAW will develop an appropriate land use agreement with the Laupahoehoe Train Museum to allow continued management and maintenance of the “Ookala Community Forest” as established in the Forest Stewardship Agreement. As such, management objectives for the area would not change with this transfer.

Therefore, DOFAW seeks the cancellation of EO 3992, to be replaced by a new EO setting aside TMKs (3) 3-9-001: por.013 and 018 (approximately 40.090 acres) as part of the Humu‘ula Section of the Hilo Forest Reserve.

Kohala Forest Reserve

In 1972, the United States Congress enacted the Coastal Zone Management Act (CZMA) to address the continued growth that was occurring in the coastal zone nationwide. The CZMA also created the National Estuarine Research Reserve System, which is administered by the National Oceanic and Atmospheric Administration (NOAA). The reserve system is a

partnership between NOAA and coastal States for long-term research, water quality monitoring, education and coastal stewardship.

A National Estuarine Research Reserve (NERR) was established at Waimanu Valley on the Kohala Coast of the island of Hawai'i in 1978. At its April 11, 1975, meeting under agenda Item F-9, the Board approved the acquisition of various privately owned parcels of land in Waimanu Valley for the estuarine sanctuary. On April 12, 1990, the Board approved the withdrawal of public lands from the Kohala Forest Reserve for inclusion into the NERR, and in the same board action set-aside both the public and private lands (13 parcels were acquired by the State) as the Waimanu NERR. Subsequently, EO3548 was issued withdrawing TMKs (3) 4-9-001: por. 007, (3) 4-9-013: por. 001 and (3) 4-9-014:010, comprising approximately 3381.35 acres from the Kohala Forest Reserve, and EO3555 was issued setting aside TMKs (3) 4-9-001: por. 007, (3) 4-9-013: por. 001 and (3) 4-9-014:001, 003, 004, 005, 008, 009, 010, 011, 013, 014, 017, 020, 021, and 022 comprising approximately 3543.48 acres, which includes a "Portion of the submerged area of Waimanu Bay" to DOFAW as the Waimanu NERR.

In 1996, Waimanu Valley was officially withdrawn by NOAA from the NERR System due to budget related issues that affected the State's ability to comply with the requirements and regulations governing the program.

Since the withdrawal of Waimanu Valley from the NERR System by NOAA, staff has been unable to locate documentation cancelling EO3555 which established the NERR. Under the current set aside, the NERR designation threatens to jeopardize effective management, planning and related enforcement activities due to a lack of applicable rules and statutes. Changing the designation of these parcels to forest reserve would place the area under broad forest reserve management guidelines and afford it the protection of the statutes and administrative rules that exist for the Forest Reserve System.

Therefore, the Division seeks the cancellation of EO3555, to be replaced by a new EO incorporating TMKs (3) 4-9-001: por. 007, (3) 4-9-013: por. 001 and (3) 4-9-014:001, 003, 004, 005, 008, 009, 010, 011, 013, 014, 017, 020, 021 and 022, comprising approximately 3431.480 acres (Exhibit F), excluding the portion of submerged area of Waimanu Bay, into the Forest Reserve System as part of the Kohala Forest Reserve.

DISCUSSION

Approval to hold a public hearing on the subject proposed forest reserve additions and withdrawal were obtained from the Board on September 9, 2010, December 9, 2010, February 25, 2011, December 9, 2011, April 25, 2014, and May 22, 2015. Approval to hold the public hearing and to appoint Jay Hatayama, the Division's Hawai'i Forestry Management Supervisor II, as the Hearing Officer was obtained from the Chairperson on January 6, 2016.

On January 24, 2016, a Notice of Public Hearing was published in the Sunday editions of the Garden Island, Honolulu Star-Advertiser, Maui News, West Hawaii Today, and Hawaii Tribune-Herald newspapers, for a public hearing that was held on February 12, 2016, to receive public input on the subject items.

One member of the public attended this meeting, the proceedings of which are summarized in the attached Hearing Officer's report (Exhibit G). No verbal testimony was received regarding these items. No written testimonies were received by mail after the meeting. Based on these results, staff recommends final processing of the proposed transfers.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

This action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action does not trigger the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as the Chapter 343, HRS, environmental requirements apply to the Applicants use of the lands, the Applicants shall be responsible for compliance with Chapter 343, HRS, as amended.

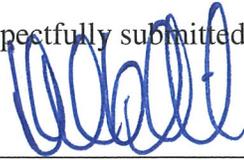
RECOMMENDATION:

That the Board:

- 1) Accept and approve the Hearing Officer's report and minutes for the public hearing held on February 12, 2016, for one proposed withdrawal and four proposed additions to the Forest Reserve System on the island of Hawai'i.
- 2) Approve of and recommend to the Governor issuance of an executive order to withdraw Tax Map Key (3) 4-6-011:040, comprising approximately 238 acres, from Hāmākua Forest Reserve, Hāmākua, Hawai'i.
- 3) Approve of and recommend to the Governor issuance of an executive order setting aside Tax Map Keys (3) 4-3-010:009 and (3) 4-4-015:002, comprising approximately 6887.577 acres, to Mauna Kea Forest Reserve, Hāmākua, Hawai'i.
- 4) Approve of and recommend to the Governor issuance of an executive order setting aside Tax Map Key (3) 7-5-001:022, comprising approximately 17.490 acres, to Honua'ula Forest Reserve, North Kona, Hawai'i.
- 5) Approve of and recommend to the Governor issuance of an executive order to cancel EO3992, and issuance of an executive order to set-aside Tax Map Key (3) 3-9-001: portion of 013 and (3) 3-9-001:018, comprising approximately 40.090 acres to the Humu'ula Section of the Hilo Forest Reserve, North Hilo, Hawai'i.
- 6) Approve of and recommend to the Governor issuance of an executive order to cancel EO3555, and issuance of an executive order to set-aside Tax Map Keys (3) 4-9-001: portion of 007, (3) 4-9-013: portion of 001, (3) 4-9-014:001, 003, 004, 005, 008, 009, 010, 011, 013, 014, 017, 020, 021, and 022, comprising approximately 3,431.480 acres, to the Kohala Forest Reserve, Hāmākua, Hawai'i.

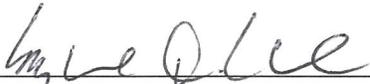
- 7) Recommendation Nos. 2 through 6 are further made subject to the following:
- a. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - b. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - c. Review and approval by the Department of the Attorney General; and
 - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



DAVID G. SMITH, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:

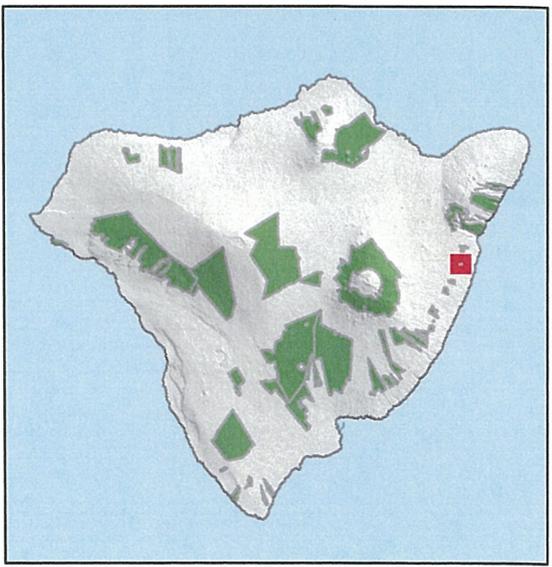
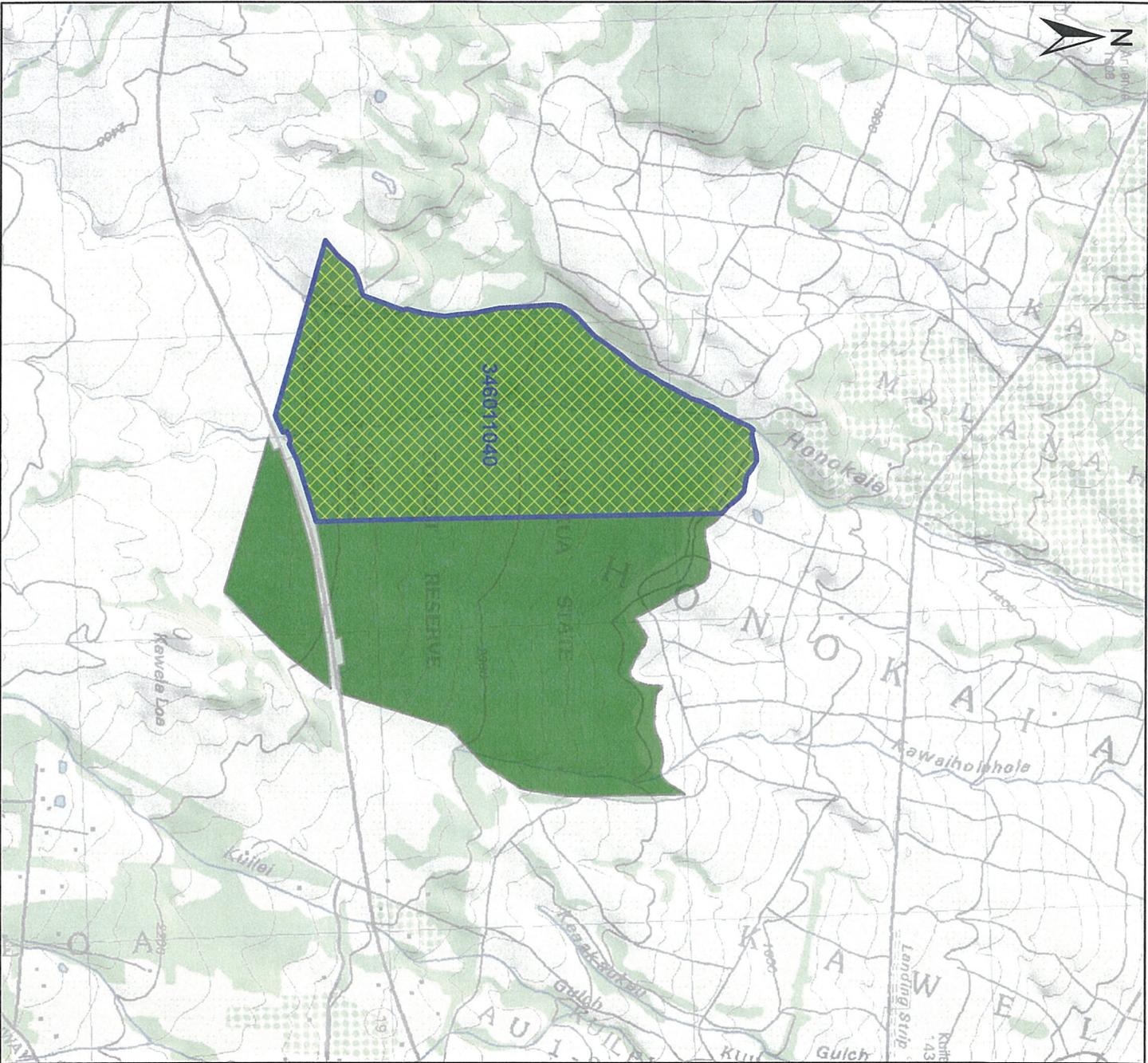


SUZANNE D. CASE, Acting Chairperson
Board of Land and Natural Resources

Exhibit A

TMK	Location	Acres, more or less	State Land Use	County Zoning	DHHL Entitlement	Trust Land Status
Hämākua Forest Reserve						
(3) 4-6-011:040	Hämākua	238	Conservation	Conservation	No	5(b)
Mauna Kea Forest Reserve						
(3) 4-3-010:009	Hämākua	5140.645	Agriculture	A-40a	No	5(b)
(3) 4-4-015:002	Hämākua	1746.932	Agriculture	A-40a	No	5(b)
Honua'ula Forest Reserve						
(3) 7-5-001:022	North Kona	17.49	Agriculture	A-5a	No	5(b)
Hilo Forest Reserve						
(3) 3-9-001: por. 013	North Hilo	35.08	Agriculture	A-20a	Yes	5(b)
(3) 3-9-001:018	North Hilo	5.01	Conservation	A-20a	Yes	5(b)
Kohala Forest Reserve						
(3) 4-9-001: por. 007	Hämākua	545	Conservation	Conservation	No	5(b)
(3) 4-9-013: por. 001	Hämākua	2836.05	Conservation	Conservation	No	5(b)
(3) 4-9-014:001	Hämākua	0.53	Conservation	Conservation	No	Acquired after 59
(3) 4-9-014:003	Hämākua	0.75	Conservation	Conservation	No	Acquired after 59
(3) 4-9-014:004	Hämākua	0.96	Conservation	Conservation	No	Acquired after 59
(3) 4-9-014:005	Hämākua	1.22	Conservation	Conservation	No	Acquired after 59
(3) 4-9-014:008	Hämākua	1.38	Conservation	Conservation	No	Acquired after 59
(3) 4-9-014:009	Hämākua	3.85	Conservation	Conservation	No	Acquired after 59
(3) 4-9-014:010	Hämākua	0.3	Conservation	Conservation	No	5(b)
(3) 4-9-014:011	Hämākua	7.7	Conservation	Conservation	No	Acquired after 59
(3) 4-9-014:013	Hämākua	3	Conservation	Conservation	No	Acquired after 59
(3) 4-9-014:014	Hämākua	8.14	Conservation	Conservation	No	Acquired after 59
(3) 4-9-014:017	Hämākua	8.35	Conservation	Conservation	No	Acquired after 59
(3) 4-9-014:020	Hämākua	6	Conservation	Conservation	No	Acquired after 59
(3) 4-9-014:021	Hämākua	5.25	Conservation	Conservation	No	Acquired after 59
(3) 4-9-014:022	Hämākua	3	Conservation	Conservation	No	Acquired after 59

Exhibit B - Proposed Withdrawal from Hāmākua Forest Reserve



Legend

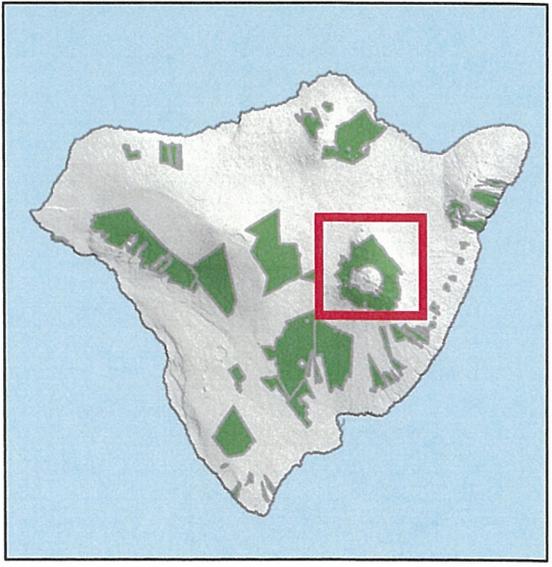
-  Proposed Withdrawal (238 acres)
-  Forest Reserve
-  Tax Map Key



Department of Land and Natural Resources
 Division of Forestry and Wildlife
 September 2015



Exhibit C - Proposed Addition to Mauna Kea Forest Reserve



Legend

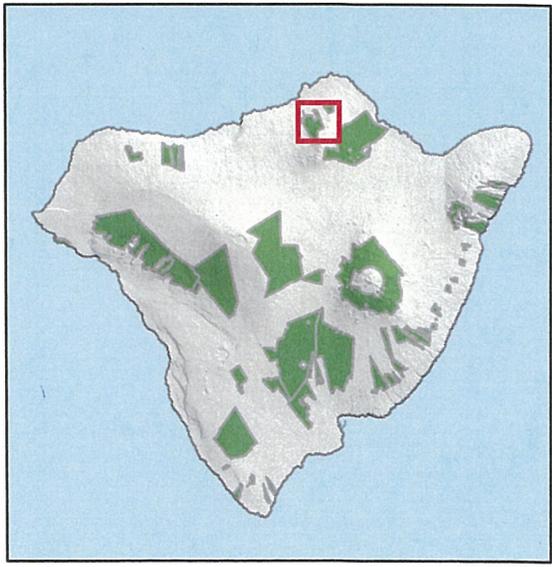
-  Tax Map Key
-  Proposed Addition (6887.577 acres)
-  Forest Reserve



Department of Land and Natural Resources
Division of Forestry and Wildlife
September 2015



Exhibit D - Proposed Addition to Honua'ula Forest Reserve



Legend

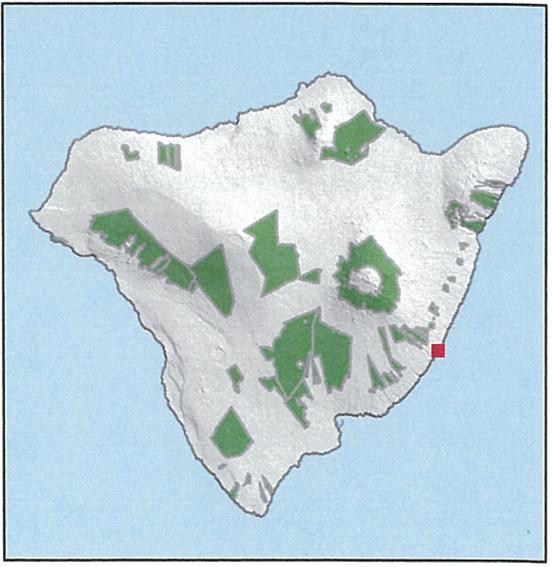
- Proposed Addition (17,490 acres)
- Forest Reserve
- Tax Map Key



Department of Land and Natural Resources
Division of Forestry and Wildlife
December 2015



Exhibit E - Proposed Addition to Hilo Forest Reserve



Legend

- Proposed Addition (40.090 acres)
- Forest Reserve
- Tax Map Key



Department of Land and Natural Resources
 Division of Forestry and Wildlife
 September 2015

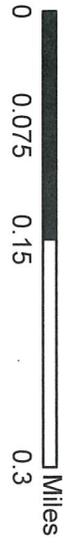
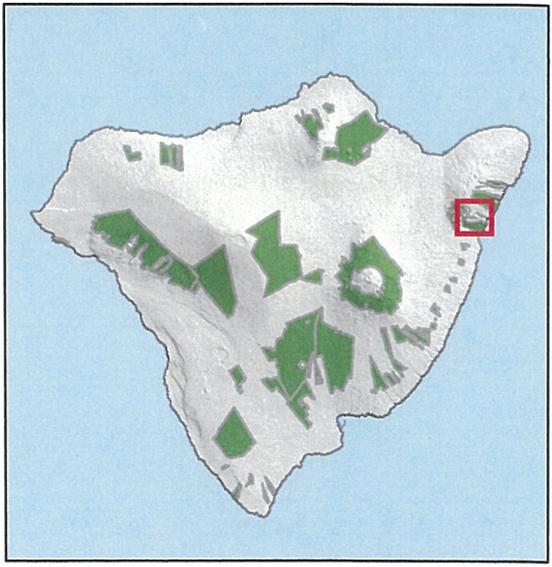
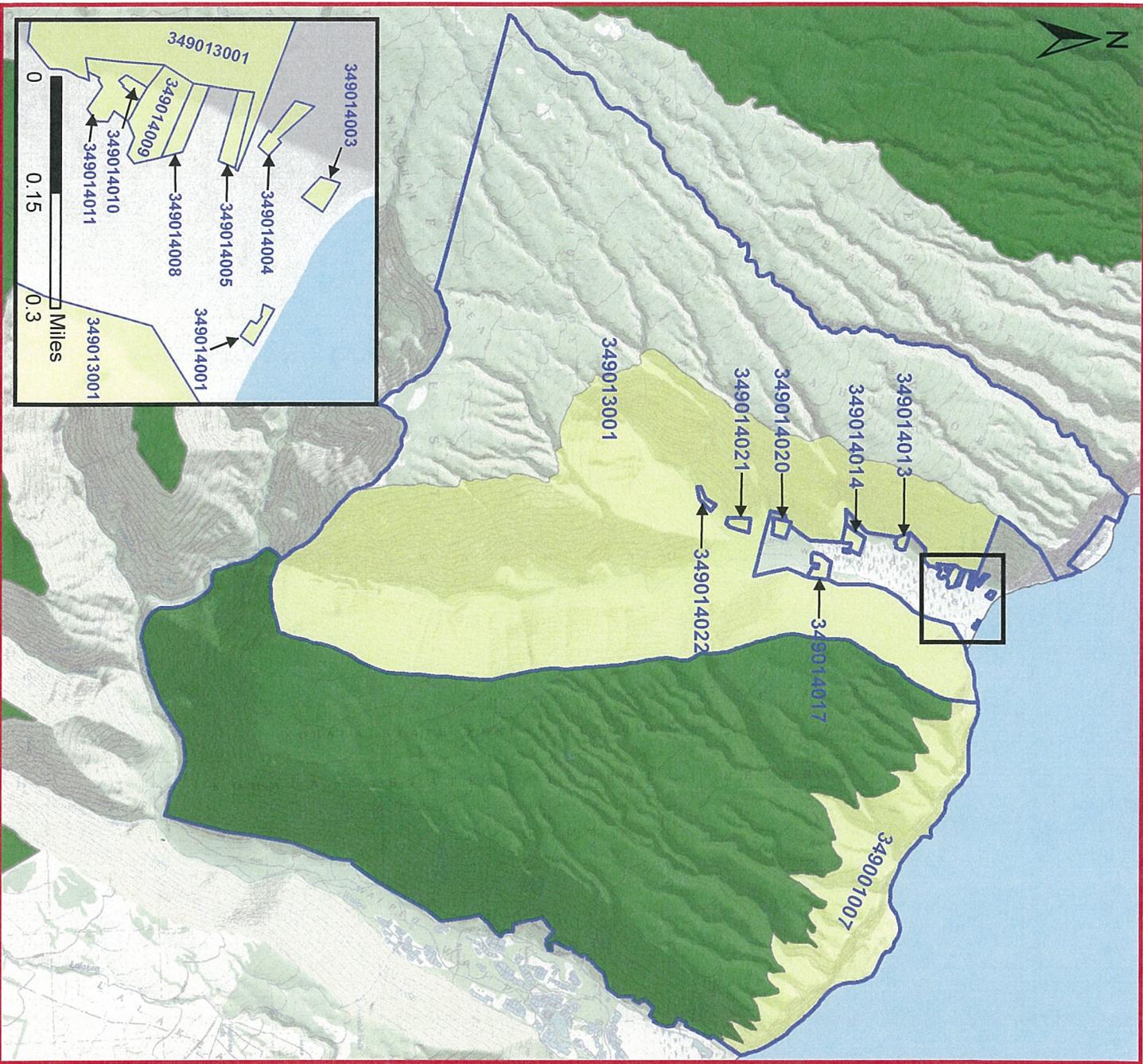


Exhibit F - Proposed Addition to Kohala Forest Reserve



Legend

- Proposed Addition (3431.48 acres)
- Forest Reserve
- Tax Map Key



Department of Land and Natural Resources
 Division of Forestry and Wildlife
 September 2015



HEARING OFFICER'S REPORT AND MINUTES OF:
Public Hearing for Five (5) Proposed Changes Affecting the Area of
Government Forest Reserve Lands on the Island of Hawai'i

Kūhiō Hale
DHHL West Hawai'i District Office
64-756 Māmalahoa Hwy.
Kamuela, Hawai'i 96743

5:30 pm

February 12, 2016

SUMMARY OF TESTIMONIES RECEIVED

Written testimonies are kept on file in the Division of Forestry and Wildlife for public review.

No oral testimonies were received.

No written testimonies were received.

I. SUMMARY OF PUBLIC HEARING PROCEEDINGS

- A. The public hearing was called to order at 5:41 pm. In attendance were the following staff members from the Department of Land and Natural Resources:

Division of Forestry and Wildlife:

Jay Hatayama – Hearing Officer

Jan Pali – Recorder

Steven Bergfeld

Kanalu Sproat

Chauncey Kalā Lindsey-Asing

Joey Mello

Marissa Chee

Krista Lizardi

Leah Laramee

Forest Management Supervisor II

Forestry Watershed Planner

Forestry and Wildlife Manager

Acting Wildlife Biologist IV - West

Mauna Kea Forest Restoration Coordinator

Wildlife Biologist V - East

O'ahu Forestry Specialist

Forestry Admin Intern

Native Ecosystems Liaison

- B. One members of the public attended the meeting, but no written or oral testimony was provided in regards to the proposed Forest Reserve additions and withdrawal during the meeting. The information that the Division of Forestry and Wildlife had prepared regarding these items was presented as planned.
- C. The public hearing was adjourned at 5:59 pm.

II. APPROVALS AND NOTICES OF PUBLIC HEARING

- A. Approval to hold a public hearing on the proposed forest reserve additions and withdrawal was obtained from the Board of Land and Natural Resources on September 9, 2010, December 9, 2010, February 25, 2011, December 9, 2011, April 25, 2014, and May 22, 2015.
- B. Approval to hold the public hearing and to appoint Jay Hatayama, the Hawai'i Forest Management Supervisor II, as the Hearing Officer was obtained from the Chairperson on January 6, 2016.
- C. Notice of this Public Hearing was published in the Sunday editions of the Garden Island, Honolulu Star-Advertiser, Maui News, West Hawaii Today, and Hawaii Tribune-Herald newspapers on January 24, 2016.

Minutes prepared and respectfully submitted by Jay Hatayama.