

State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawai'i 96813

September 9, 2016

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

Board Members:

SUBJECT: REQUEST APPROVAL TO AMEND THE PROJECT DESCRIPTION FOR LEGACY LAND CONSERVATION PROGRAM PROJECT 12-04, KŪKA'IAU RANCH FOREST LEGACY CONSERVATION EASEMENT, AND TO REDIRECT PROJECT FUNDS TO LEGACY LAND CONSERVATION PROGRAM PROJECT 16-05, UPPER KŪKA'IAU RANCH ACQUISITION, AT KŪKA'IAU AND KOHOLĀLELE, HĀMĀKUA, HAWAI'I

SUMMARY:

The Division (DOFAW) requests approvals that will enable a viable land acquisition at Upper Kūka'iau Ranch (fee title, Legacy Land Conservation Program Project 16-05) to utilize FY12 funding that was encumbered for a land acquisition at lower Kūka'iau Ranch which later became non-viable (Forest Legacy Conservation Easement, Legacy Land Conservation Program Project 12-04). If DOFAW does not secure approval to redirect the encumbered FY12 funding from the non-viable land acquisition to its only viable alternative, then \$600,000 will lapse back into the State Land Conservation Fund.

BACKGROUND:

DOFAW Justification

In 2012, the Board approved funding for the Kūka'iau Ranch Forest Legacy Conservation Easement (KR-CE). DOFAW cannot complete this acquisition because the landowner is no longer willing to sell a conservation easement to DOFAW. Therefore, DOFAW requests that the Board grant approvals that will redirect \$600,000 of Legacy Land Conservation Program (LLCP) funds from the non-viable KR-CE acquisition to the acquisition of fee title at Upper Kūka'iau Ranch (UKR-Fee). Redirected LLCP funds from the non-viable KR-CE acquisition would contribute over 20% of the estimated cost of the UKR-Fee acquisition and provide additional benefits for DOFAW land acquisition, LLCP operations, and DOFAW programs, including:

- (1) a 50% reduction in DOFAW's FY17 LLCP funding request for the UKR-Fee acquisition;
- (2) reduced competition for FY17 LLCP funding;
- (3) the expenditure of money that is already encumbered in the State's Land Conservation Fund for DOFAW LLCP acquisitions but is unlikely accessible for spending on other LLCP acquisitions, by DOFAW or others;
- (4) increased DOFAW leverage to secure additional matching funds for the UKR-Fee acquisition; and
- (5) an opportunity for DOFAW to accomplish the main objective of the KR-CE acquisition, sustainable forestry operations, on adjacent lands.

LLCP Awards and Acquisition History

On May 11, 2012, under Agenda Item C-4, the Board approved LLCP funding awards for two acquisitions at Kūka'iau Ranch, covering two adjacent sections of land that span the northeastern slopes of Mauna Kea at Kūka'iau and Koholālele, Hāmākua, Hawai'i (Exhibit A):

- 1)c. Kūka'iau Ranch Forest Legacy Conservation Easement Project; DLNR, DOFAW at \$600,000 to fund the acquisition of a conservation easement over 3,688 acres . . . to restrict operations on a portion of the property to sustainable forestry practices [KR-CE].
- 2)c. Kūka'iau Acquisition & Palila Habitat Restoration; The Nature Conservancy (TNC) at \$1,000,000 for the purchase of 4,469 acres . . . for the protection of watershed and endangered Palila bird habitat [UKR-Fee; note that TNC holds a conservation easement over the UKR property that restricts development and management activities].

Over the next two years, DOFAW secured U.S Forest Service funding for the KR-CE acquisition; TNC and DOFAW secured U.S. Fish and Wildlife Service (USFWS) funding for the UKR-Fee acquisition (\$1,217,114 subgrant from DOFAW to TNC); and TNC secured National Fish and Wildlife Foundation (NFWF) funding for the UKR-Fee acquisition (\$500,000).

Thereafter, the landowner decided not to sell a conservation easement to DOFAW (KR-CE) and TNC decided that it would not proceed with the UKR-Fee acquisition. During the past year, DOFAW decided to retain its USFWS funding award for the UKR-Fee acquisition; re-secured TNC's initial funding from NFWF for the UKR-Fee (Exhibit B); and received a \$25,000 FY16 LLCP funding award for the UKR-Fee, including a newly-added 0.25 acre parcel (Exhibit C). The Board-approved submittal for FY16 LLCP funding notes that "If any of the fully-funded projects were to fail prior to closing, the funding would be redirected to this [UKR-Fee] project" (Exhibit C, page 6, Discussion item 5).

DISCUSSION:

Relationship between the KR-CE Acquisition and the UKR-Fee Acquisition

The KR-CE acquisition and the UKR-Fee acquisition are closely related to each other and were intentionally conceived and pursued as complementary land conservation projects. The LLC Board submittal for the FY12 KR-CE acquisition indicated that the landowner's lessee intended to expand its leased lands and tree planting area on the property by 2,600 acres, "with the primary management objective of restoring a biologically and economically viable forest system that can serve as a model for forest restoration throughout the State" (Exhibit A, page 5). Since that time, the landowner decided that it would not sell a conservation easement to DOFAW, and instead began selling agricultural lots on the open market.

Therefore, it now appears that the landowner no longer intends to expand the area under lease for tree planting at lower Kūka'iau Ranch. However, if DOFAW acquires the adjacent UKR-Fee, DOFAW will be able to dedicate similar acreage at UKR for tree planting and forest system restoration within the limitations imposed by the existing conservation easement. The existing conservation easement on UKR allows "for the production of food and fiber" in three of the four established management zones, yet does not explicitly require reforestation by the landowner, and could allow for animal grazing over much of the UKR acreage that DOFAW would otherwise dedicate for tree planting and forest system restoration.

The management objectives presently identified in the UKR Multi-Resource Management Plan (MRMP), which is incorporated by reference into the existing conservation easement "to control the conservation and reforestation efforts on the Property," include:

- Protect and restore forest cover in Zone 1 (1,050-acre Ecological Conservation Area) and Zone 2 (845 acres)
- Increase native forest cover in Zone 3 (1,343 acres)
- Improve range conditions for grazing livestock in Zone 4 (1,231 acres)

However, under the terms of the conservation easement, the MRMP may be modified subject to approval by TNC and the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS, as the current "Review Organization"). Also, the MRMP provides that it may be periodically supplemented by one or more addendums to allow for specific activities that are not currently addressed, subject to approval by Kukaiau Ranch, LLC; TNC; and NRCS.

Utilization of the Land Conservation Fund

In FY15, the cash balance in the Land Conservation Fund (LCF), minus outstanding encumbrances, was \$10,861,494, and payments to the LCF were \$7,975,148, derived primarily from ten percent of conveyance tax revenues (2016 Report to the Legislature). For FY 2016 and beyond, the State Legislature capped payments to the LCF at "10% of the taxes collected each fiscal year, or \$6,800,000, whichever is less." Haw. Rev. Stat. § 247-7. However, DOFAW's ceiling for annual spending from the LCF is \$5,100,000, which means that \$1,700,000 of each

annual payment to the LCF (when annual payment is capped at \$6,800,000) is above the ceiling and is not available for LLCSP spending each year. DOFAW's annual spending below the ceiling includes \$1,500,000 to support the payment of debt service for the Turtle Bay Conservation Easement Special Fund, *see* Haw. Rev. Stat. § 173A-13, and about \$600,000 for LLCSP administration (primarily central service charges on LCF revenues and expenditures, plus salary support for two staff positions), leaving only \$3,000,000 available each year for other LLCSP acquisitions.

The recent reduction in LLCSP funding levels heightens the competition for LLCSP funding awards and lowers the capacity of DOFAW and other state agencies for leveraging LLCSP funds to secure additional matching funds for state land acquisition. If DOFAW does not spend the \$600,000 of FY12 LLCSP funds that is encumbered for the KR-CE acquisition, then that money will lapse back into the LCF, and—due to the LLCSP spending ceiling—will not be available for LLCSP program purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

On January 22, 2016, under Agenda Item C-3, the Board approved DOFAW's acceptance of a \$500,000 grant from the National Fish and Wildlife Foundation to complete DOFAW's "Conservation and Restoration Initiative at Upper Kūka'iau Ranch, Hawai'i Island," which provides matching funds for the UKR-Fee acquisition. The Board-approved submittal indicates that:

The proposed acquisition of land at Upper Kūka'iau Ranch is a minor action that will probably have minimal or no significant effects on the environment and is exempt from the requirement to prepare an environmental assessment in accordance with Chapter 343, HRS, and Chapter 11-200-8, Hawaii Administrative Rules, under the Department's Exemption Class 1, Exemption 45 (Exemption List for the Department of Land and Natural Resources, Reviewed and Concurred Upon by the Environmental Council on June 05, 2015):

Exemption Class 1: Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing.

45. Acquisition of land or interests in land.

The Board-approved submittal also acknowledges that "In accordance with the Board's action at its meeting of November 13, 2015, under Item C-6, the Chairperson or the Chairperson's authorized representative is authorized to declare the exemptions."

Existing use at UKR conforms with permissible uses in the State Agricultural Land Use District and identified land uses in the Resource Subzone of the State Conservation Land Use District that require no permit from the department or Board. No anticipated expansion of existing use is contemplated at this time. However, DOFAW acknowledges that future expansion or change of use may trigger requirements for environmental review under Chapter 343. After the State secures management authority over the land at UKR, DOFAW would address the potential environmental impact of any such future expansion or change of use in

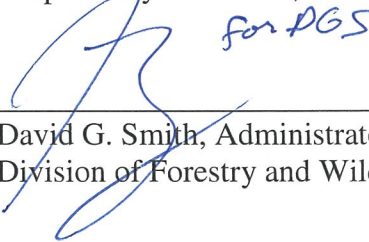
several decision making arenas, including Board consideration of a set-aside to DOFAW; DOFAW proposals to modify and supplement the UKR Multi-Resource Management Plan; DOFAW funding requests to federal sponsors; and DOFAW initiation of actions that trigger department requirements for a Conservation District Use Permit or statutory requirements for county special use permit, or that would otherwise result in material, physical alteration of the landscape or a substantial increase in on-site human activity.

RECOMMENDATIONS:

DOFAW recommends that the Board:

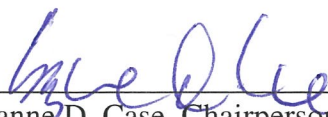
1. Approve the amendment of the project description for Legacy Land Conservation Program Project 12-04, Kūka‘iau Ranch Forest Legacy Conservation Easement, to read “Kūka‘iau Ranch Forest Conservation; DLNR, DOFAW at \$600,000 to fund the acquisition of fee title over 4,469 acres in Hamakua, Island of Hawai‘i, to restrict operations on portions of the property to sustainable forestry practices, and for the protection of watershed and endangered Palila bird habitat.”
2. Approve the redirection of \$600,000 of Legacy Land Conservation Program Funds from the Kūka‘iau Ranch Forest Legacy Conservation Easement (Project 12-04) to the Upper Kūka‘iau Ranch Acquisition (Project 16-05) at Kūka‘iau and Koholālele, Hāmākua, Hawai‘i, subject to covenants in the Executive Order to DOFAW that restrict operations on portions of the property to sustainable forestry practices.

Respectfully submitted,

 for DGS

David G. Smith, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson
Board of Land and Natural Resources

- Exhibit A: DOFAW Submittal to BLNR, Agenda Item C-4, May 11, 2012 (with selected pages from Attachment I, only)
- Exhibit B: DOFAW Submittal to BLNR, Agenda Item C-3, January 22, 2016 (without exhibits)
- Exhibit C: DOFAW Submittal to BLNR, Agenda Item C-3, April 8, 2016 (with selected pages from Attachment I, only)

EXHIBIT A, AGENDA ITEM C-1
September 09, 2016

State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawai'i 96813

May 11, 2012

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

Board Members:

SUBJECT: REVIEW AND APPROVAL OF PROJECT RECOMMENDATIONS FOR FUNDING FROM THE FISCAL YEAR 2012 LEGACY LAND CONSERVATION PROGRAM (LAND CONSERVATION FUND)

SUMMARY:

Pursuant to H.R.S., section 173A-2.5, the Legacy Land Conservation Commission (the Commission) has produced recommendations to the Board of Land and Natural Resources on project selection for Fiscal Year 2012 (FY12) funding from the Legacy Land Conservation Program (LLCP). Pursuant to H.R.S., section 173A-5, the Department has sought and received the consultation of the Senate President and Speaker of the House of Representatives. This submittal summarizes these recommendations for the Board's review and requests approval for projects to receive FY12 LLCP funding.

BACKGROUND:

Legacy Land Conservation Commission Recommendations:

In July, 2011, the LLCP announced available FY12 funding from the Land Conservation Fund (LCF) for projects proposing the purchase of lands having value as a resource to the State. Nonprofit land conservation organizations, county agencies, and State agencies applied for funding for nine separate resource land acquisition projects for the September 16, 2011, application deadline. On December 14, 2011, at a public meeting, the Commission ranked eight projects and recommended that they be funded in the order ranked, to the extent that funds are available (see Attachment 1). The Department finds that funding is available in the amount of \$4,600,000. This amount will fund the ranked projects one through six at the requested amounts, provide a partial award of \$621,245 to the seventh project (Kahuku Coastal Property), and provide no funding to the remaining project on the list.

The Commission's recommendation results in the following awards:

1. **Kalauao Valley**; DLNR, DOFAW, at \$192,750 for purchase 635.00 acres of in Honolulu, Island of O'ahu, for the protection of forested watershed and critical habitat.

2. **Maunawila Heiau; Hawaiian Islands Land Trust (HILT)** at \$650,000 for acquisition of 9.08 acres in Ko'olauloa, Island of O'ahu, for the protection of Maunawila Heiau.
3. **Ka'ena Point Natural Area Reserve Cove Extension; DLNR, DOFAW**, at \$86,450 for purchase of 0.75 acre in Waialua, Island of O'ahu, for protection of a sand dune ecosystem and intertidal flora and fauna adjacent to the Ka'ena Point Natural Area Reserve.
4. **Kuka'iau Ranch Forest Legacy Conservation Easement Project; The Nature Conservancy and DLNR, DOFAW**, at \$600,000 to fund the acquisition (by DOFAW) of a conservation easement over 3,688.00 acres in Hamakua, Island of Hawai'i, to restrict operations on portions of the property to sustainable forestry practices.
5. **Kaiholea South; the Ala Kahakai Trail Association (AKTA)** at \$1,449,555 for purchase of 34.63 acres in North Kohala, Island of Hawai'i, for protection of coastal lands, cultural resources and a portion of the Ala Kahakai National Historic Trail.
6. **Kuka'iau Acquisition & Palila Habitat Restoration; The Nature Conservancy (TNC)** at \$1,000,000 for the purchase of 4,469.00 acres in Hamakua, Island of Hawai'i, for the protection of watershed and endangered Palila bird habitat.
7. **Kahuku Coastal Property; County of Hawai'i** at \$621,245 to purchase 3,127.95 acres in Ka'u, Island of Hawai'i, for the protection of shoreline, coastal access, and natural area adjacent to Manuka Natural Area.

In summary, the Commission recommended funding eight projects, in the order ranked (see Attachment 1) to the extent that funds are available. The Department finds that funding is available in the amount of \$4,600,000, which will fund the above-listed projects one through six at the requested amounts, and provide a partial award of \$621,245 to the seventh project. Details on each project are included in the discussion.

Legislative Consultation

Following the Commission meeting, the Department and the Commission Chair sought the consultation of Senate President Shan Tsutsui and the Speaker of the House of Representatives Calvin Say regarding the Commission's recommendations, pursuant to H.R.S. Chapter 173A. The legislators advised that the projects be funded as recommended by the Commission. The Senate President and Speaker of the House of Representatives confirmed this advice in follow-up letters dated February 9, 2012, and February 29, 2012, respectively (Attachments II and III).

DISCUSSION:

The following discussion describes the details surrounding each of the Legacy Land Conservation Commission's recommended projects.

Kalauao Valley

DLNR, DOFAW, applied for \$192,750 in grant funding to purchase 635.00 acres of forested watershed in Honolulu, Island of O‘ahu. The land is mauka of Aiea and Keaiwa Heiau and contains parts of the Aiea Loop Trail and Aiea Ridge Trail and is within the Ko‘olau Mountains Watershed Partnership management area. The forest is dominated by Koa and ‘Ohia and has been designated as Critical Habitat for ten species of plants and the endangered O‘ahu ‘Elepaio.

DOFAW is seeking matching funding from the Forest Legacy program, the federal Recovery Land Acquisition program, and the City and County of Honolulu’s Clean Water Natural Lands Fund. In the short term, DOFAW intends to add the currently unmanaged Kalauao Valley into DOFAW’s inventory of managed lands. Longer term goals include converting the parcel into a Natural Area Reserve or a Forest Reserve under DOFAW and managing the area for native species and ecosystem protection, research, public education, and recreation.

Maunawila Heiau

The Hawaiian Islands Land Trust (HILT) applied for \$650,000 to fund the acquisition of 9.08 acres containing Maunawila Heiau in Ko‘olauloa, Island of O‘ahu. The Maunawila Heiau is one of the remaining relatively intact heiau in the Ko‘olauloa region. The current landowner has agreed to allow the Ko‘olauloa Hawaiian Civic Club to begin clearing overgrowth from the heiau with the supervision of an archeologist. HILT is seeking matching funds from the landowner (in the form of a reduction in price from the appraised value) and the City and County of Honolulu’s Clean Water and Natural Lands Fund.

HILT intends to hold the property in perpetuity and work with community organizations to clear and steward the heiau and to allow access to the cultural sites. Initial plans include conducting an archeological survey and then working with community organizations to draft a management plan. HILT is a local nonprofit organization, tax-exempt under 501(c)(3) of the Internal Revenue Code (IRC). HILT’s mission is to protect the lands that sustain us for current and future generations.

Ka‘ena Point Natural Area Reserve Cove Extension

DLNR, DOFAW, applied for \$86,450 in grant funding to purchase 0.75 acre near Ka‘ena Point in Waialua, Island of O‘ahu. This shoreline parcel, which is adjacent to the Ka‘ena Point Natural Area Reserve and the Ka‘ena Point State Park, is a sand dune ecosystem contains naupaka and intertidal flora and fauna. Currently erosion from nearby off-road driving drains out in the parcel. The beach is a resting area for the Hawaiian monk seal.

The area has been recommended by the NARS Commission for inclusion in the Natural Area Reserve System. After acquisition, DOFAW NARS staff will manage the parcel under its mandate to preserve in perpetuity specific land and water areas which support communities, as relatively unmodified as possible, of the natural flora and fauna, as well as geological sites, of Hawaii. The land would also be included within the Department’s action plan for the larger Ka‘ena Point Stewardship Area.

Kuka'iau Ranch Forest Legacy Conservation Easement Project

The Nature Conservancy and DLNR, DOFAW, applied for \$600,000 to fund the acquisition of a conservation easement over 3,688.00 acres in Hamakua, Island of Hawai'i. The land is watershed on the northern flank of Mauna Kea and is currently used for ranching, forestry, and agriculture. It contains remnant stands of old growth 'ohi'a, cultural sites, including sites and caves. DOFAW is seeking federal Forest Legacy funding as match.

The conservation easement will restrict operations on portions of the property to sustainable forestry practices. The landowner's current lessee, Hawaiian Legacy Hardwoods, intends to increase its leased lands from 1,000 to 3,600 acres. A Forest Stewardship Management Plan is being completed for the area, with the primary management objective of restoring a biologically and economically viable forest system that can serve as a model for forest restoration through the State.

Kaiholena South

The Ala Kahakai Trail Association (AKTA) applied for \$1,449,555 in grant funding for the purchase of 34.63 acres in North Kohala, Island of Hawai'i. The coastal parcel is within the ahupua'a of Kaiholena, adjacent to land being purchased by the County of Hawaii for open space protection, and contains coastal access trails and a portion of the Ala Kahakai National Historic Trail. The land also contains cultural sites and is within view of the Lapakahi State Historical Park. AKTA will use a combination of private, nonprofit, and National Park Service funding to complete the acquisition.

AKTA plans to support the existing partnerships of local community organizations and public agencies to manage and care for the land. Stewardship work is guided by the NPS Ala Kahakai Trail Management Plan and informed by the North Kohala community. AKTA is a local nonprofit organization, tax-exempt under 501(c)(3) of the IRC. The AKTA's mission is to support and guide a community-managed trail that honors those who came before and perpetuates for those to follow – with protocols and respect for Hawaii's past, present and future.

Kuka'iau Acquisition & Palila Habitat Restoration

The Nature Conservancy (TNC) applied for \$1,000,000 in grant funding to purchase 4,469.00 acres in Hamakua, Island of Hawai'i. The upper portion of the property is within federally-designated Palila bird habitat, forested with māmane. The land is within the Mauna Kea Watershed Partnership and contains the headwaters of many streams that run to the ocean. TNC has secured match from Acres for America and is seeking funding from the Army Compatible Use Buffer program.

The land is currently protected by a conservation easement; however, the underlying fee owner is selling this restricted interest. A portion of the property is fenced and managed by the State of Hawaii for Palila. TNC is seeking to acquire the land for intensive management, in order to increase māmane stands that support the Palila population. TNC plans, in the long term, to transfer the property to public ownership after reforestation. TNC is a local nonprofit

organization, tax-exempt under 501(c)(3) of the IRC; its mission is to conserve the lands and waters on which all life depends.

Kahuku Coastal Property

The County of Hawai'i applied for \$1,214,000 (of which \$621,245 is being recommended for award) in grant funding to purchase 3,127.95 acres of coastal land in Ka'ū, Island of Hawai'i. The property is adjacent to the southern portion of the Manuka Natural Area Reserve (NAR), and is currently used for NAR access, fishing, diving, camping, and related activities. There is over a mile of ocean frontage and an anchialine pond complex situated in a volcanic crack within the property. Part of the shore is accessible for fishing/gathering, part contains an accessible black sand beach. There is a known Hawksbill Turtle nesting ground and the endangered Hawaiian monk seal has been observed on the shoreline of this property as well.

The acquisition will provide a permanent legal public access to the as well as southern portion of Manuka NAR. At this time, access to the property is used by the public, however; the public has no legal rights to this access. The County plans to allow continued access to the shoreline for fishing, hiking, and recreational and cultural purposes. In the long term, the County will work with the local community and federal and state agencies to plan for future uses and management of the area.

In summary, in its recommendations below, DOFAW advises the Board to approve the projects selected by the Commission and approved by the legislators, amounting to a total of \$4,600,000 in awarded funding from the Land Conservation Fund. This amount will fund projects one through six fully and provide a partial award (an award of \$621,245 of the requested \$1,214,000) to the seventh project, the Kahuku Coastal Property.

Conservation easements and deed restrictions

Current 2012 legislation, if passed, may require that nonprofit recipients of Legacy Land Conservation Program grants provide conservation easements over lands being acquired, and that full or partial ownership of these conservation easements be given to the Board of Land and Natural Resources. While the Board currently possesses the optional authority to impose such conservation easements under previous legislation, the Division recommends waiting until the passage of the current legislation and the implementation of the Fiscal Year 2013 grant cycle to impose these restrictions. The addition of a conservation easement to a project is a substantive change to the project that affects whether it is submitted by the applicant, how it is supported by the public, and how it is reviewed by the Legacy Land Conservation Commission. If this requirement is made clear at the beginning of the grant process, applicants to the program will be able to prepare appropriately for a substantial change to the projects that they are submitting, and members of the public and the Commission will be able to review the project in its entirety.

Chapter 343, Hawaii Revised Statutes: Environmental Assessment

Class 1, Exemption 15, on the June 12, 2008, Division of Forestry and Wildlife Exemption List, states, "The award of grants under H.R.S., Chapter 173A, for the acquisition of interests in land, provided that the acquisition does not cause any material change of use of land or resources beyond

that previously existing.” DOFAW advises declaring awards exempt from the preparation of an environmental assessment pursuant to this exemption.

RECOMMENDATIONS:

That the Board:

1) Approve the acquisition of the following parcels and authorize the Chairperson to execute a letter of offer to the landowner and encumber funds, under the FY12 LLCP ceiling, from the LCF for the following State projects:

- a. **Kalauao Valley;** DLNR, DOFAW, at \$192,750 for purchase 635.00 acres of in Honolulu, Island of O‘ahu, for the protection of forested watershed and critical habitat.
- b. **Ka‘ena Point Natural Area Reserve Cove Extension;** DLNR, DOFAW, at \$86,450 for purchase of 0.75 acre in Waialua, Island of O‘ahu, for protection of a sand dune ecosystem and intertidal flora and fauna adjacent to the Ka‘ena Point Natural Area Reserve.
- c. **Kuka‘iau Ranch Forest Legacy Conservation Easement Project;** DLNR, DOFAW, at \$600,000 to fund the acquisition of a conservation easement over 3,688.00 acres in Hamakua, Island of Hawai‘i, to restrict operations on portions of the property to sustainable forestry practices.

Using a total of **\$879,200** from the LCF, subject to compliance with H.R.S., Chapter 173A, and the normal process and procedures for the acquisition of lands by the State.

2) Authorize the Chairperson to enter into agreements and encumber FY12 funds with the listed grant recipients for the following grants to nonprofit land conservation organizations and counties:

- a. **Maunawila Heiau;** Hawaiian Islands Land Trust (HILT) at \$650,000 for acquisition of 9.08 acres in Ko‘olauloa, Island of O‘ahu, for the protection of Maunawila Heiau.
- b. **Kaiholena South;** the Ala Kahakai Trail Association (AKTA) at \$1,449,555 for purchase of 34.63 acres in North Kohala, Island of Hawai‘i, for protection of coastal lands, cultural resources and a portion of the Ala Kahakai National Historic Trail.
- c. **Kuka‘iau Acquisition & Palila Habitat Restoration;** The Nature Conservancy (TNC) at \$1,000,000 for the purchase of 4,469.00 acres in Hamakua, Island of Hawai‘i, for the protection of watershed and endangered Palila bird habitat.
- d. **Kahuku Coastal Property;** County of Hawai‘i at \$621,245 to purchase 3,127.95 acres in Ka‘ū, Island of Hawai‘i, for the protection of shoreline, coastal access, and natural area adjacent to Manuka Natural Area.

using a total of **\$3,720,800** from the LCF, subject to:

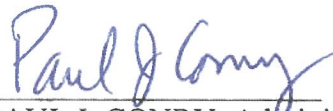
- a. compliance with H.R.S., Chapter 173A;
- b. compliance with H.R.S., Chapter 343;

- c. execution of a Grant Agreement with the BLNR;
- d. certification of an appraisal for each project by the Department;
- e. insertion of Legacy Land Conservation Program restrictions into the deed as a condition of contractual agreements with the grant recipients;
- f. approval of the Grant Agreement and of the Deed by the Attorney General's office;
- g. the availability of funds;
- h. the approval of the Governor; and
- i. such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

3) Declare these awards of funds exempt in accordance with Class 1, Exemption 15, on the June 12, 2008, Division of Forestry and Wildlife Exemption List.

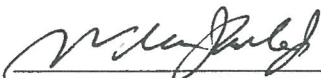
4) Authorize the Department to proceed with all due diligence and negotiations that may be necessary to carry out the grants and acquisitions mentioned above.

Respectfully submitted,



PAUL J. CONRY, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



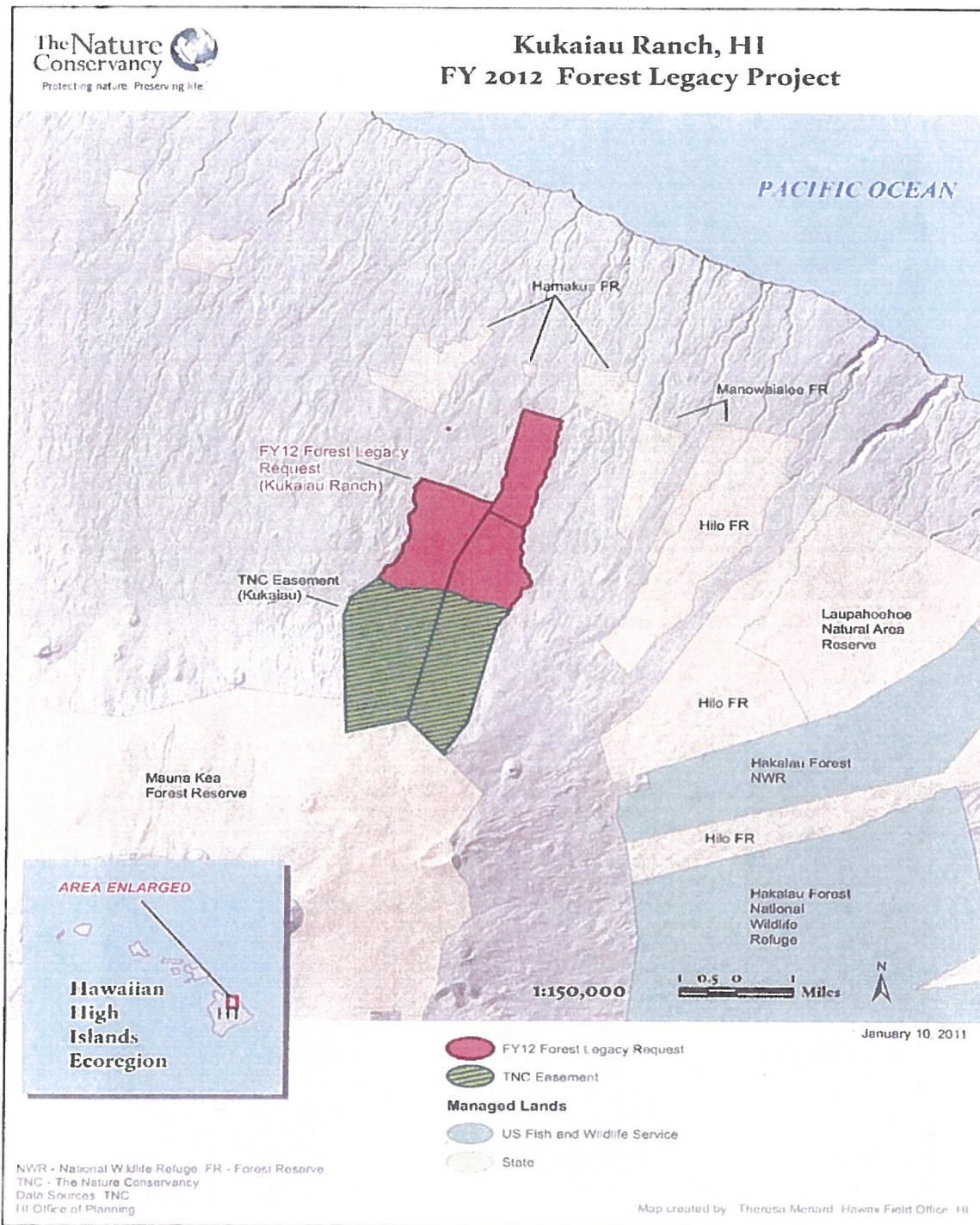
WILLIAM J. AILA, JR., Chairperson
Board of Land and Natural Resources

ATTACHMENTS:

- Attachment I: Table of recommended awards for the Fiscal Year 2012 Legacy Land Conservation Program with individual project information attached
- Attachment II: February 9, 2012, letter from the Senate President

Exhibit A, Attachment I: Selected Individual Project Information

Kuka'iau Ranch Forest Legacy CE Project – The Nature Conservancy & DLNR/DOFAW (Maps)



Kuka'iau Ranch Forest Legacy CE Project – The Nature Conservancy & DLNR/DOFAW (Photos)

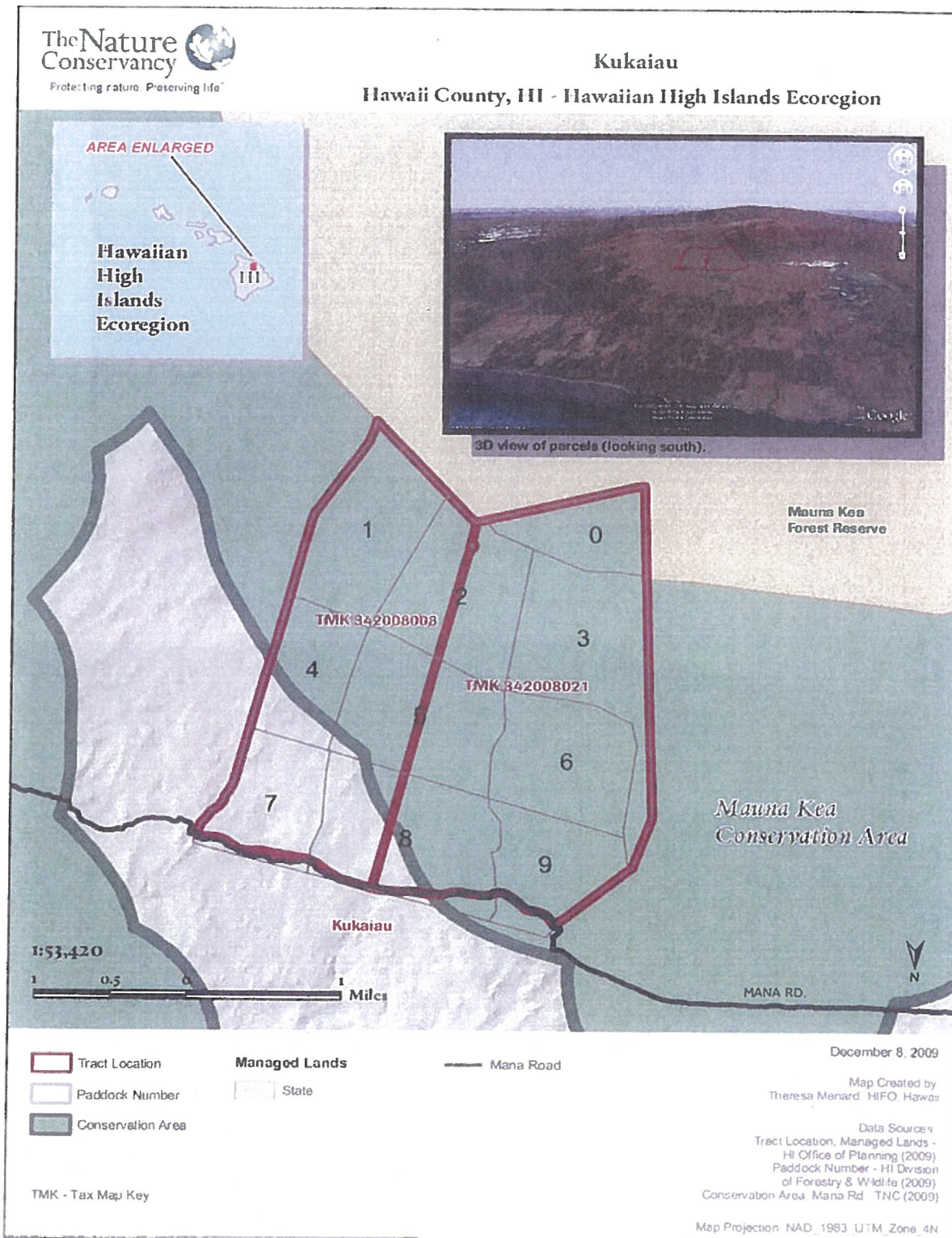


Blessing at the edge of the Koa Forest. Photo by Hawaiian Legacy Hardwoods



Koa replanting crew at Kūka'iau Property. Photo by: Hawaiian Legacy Hardwoods

Kuka'iau Acquisition & Palila Habitat Restoration – The Nature Conservancy (Maps)



Kuka'iau Acquisition & Palila Habitat Restoration – The Nature Conservancy (Photos)



Figure 1. Kūka'iau Forest



Aerial view of Kūka'iau Ranch Property.

EXHIBIT B, AGENDA ITEM C-1
September 09, 2016

State of Hawai‘i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawai‘i 96813

January 22, 2016

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

Board Members:

SUBJECT: REQUEST FOR APPROVAL TO ENTER INTO A GRANT AGREEMENT BETWEEN THE NATIONAL FISH AND WILDLIFE FOUNDATION AND THE DIVISION OF FORESTRY AND WILDLIFE FOR \$500,000 IN PRIVATE FUNDS TO COMPLETE THE LAND ACQUISITION AND MANAGEMENT PROJECT ENTITLED “CONSERVATION AND RESTORATION INITIATIVE AT UPPER KŪKA‘IAU RANCH, HAWAI‘I ISLAND,” TAX MAP KEY NUMBERS (3) 4-2-008:021 AND (3) 4-2-008:008.

SUMMARY:

The National Fish and Wildlife Foundation (NFWF) offered to award a \$500,000 grant to the Division of Forestry and Wildlife (DOFAW) to protect and improve palila critical habitat for sustained recovery efforts. DOFAW would receive the grant as a subrecipient of funds that NFWF received from Walmart Stores, Inc., Acres for America Program. The NFWF grant would contribute about 15% of the cost of DOFAW’s proposed land acquisition at Upper Kūka‘iau Ranch, Kūka‘iau and Koholālele, Hāmākua, Hawai‘i. This property spans 4,469 acres on the northwestern slopes of Mauna Kea.

BACKGROUND:

DOFAW’s proposed land acquisition at Upper Kūka‘iau Ranch (UKR) is an outgrowth of efforts by The Nature Conservancy (TNC) to acquire fee title to the property, over which TNC holds a conservation easement that restricts development thereupon. During 2012-2013, TNC secured funding commitments for the acquisition from DOFAW’s Legacy Land Conservation Program (LLCP),¹ the U.S. Fish and Wildlife Service Recovery Land Acquisition (RLA) grant

¹ On May 11, 2012, the Board of Land and Natural Resources authorized full funding (\$1,000,000) of TNC’s application to LLCP “for the protection of watershed and endangered Palila bird habitat.”

program (through a subgrant from DOFAW),² and NFWF.³ In October 2014, TNC decided that it would not proceed with the acquisition. Thereafter, DOFAW decided to retain its RLA award and seek additional funding from LLCP,⁴ NFWF, and other sources to acquire the property for the State.

DOFAW and NFWF, aided by the Deputy Attorney General, recently agreed to terms for redirecting TNC's initial NFWF grant to DOFAW, and DOFAW now seeks BLNR approval to accept a \$500,000 grant from NFWF for the acquisition of Upper Kūka'iau Ranch, agreement attached (Exhibit A).

DISCUSSION:

Securing a funding commitment from NFWF for the acquisition of Upper Kūka'iau Ranch will enhance DOFAW's opportunities to obtain matching funds from other sources, such as the Army Compatible Use Buffer Program, private donors, and the State Land Conservation Fund.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The proposed acquisition of land at Upper Kūka'iau Ranch is a minor action that will probably have minimal or no significant effects on the environment and is exempt from the requirement to prepare an environmental assessment in accordance with Chapter 343, HRS, and Chapter 11-200-8, Hawaii Administrative Rules, under the Department's Exemption Class 1, Exemption 45 (Exemption List for the Department of Land and Natural Resources, Reviewed and Concurred Upon by the Environmental Council on June 05, 2015):

- Exemption Class 1: Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing.
- 45. Acquisition of land or interests in land.

² The U.S. Fish and Wildlife Service awarded \$1,217,114 to DOFAW and TNC for "Kūka'iau Acquisition and Palila Habitat Restoration." The award performance period is July 31, 2012 to June 30, 2016.

³ On September 26, 2013, TNC entered into a grant agreement with NFWF for \$500,000 "to protect and improve palila critical habitat for sustained recovery efforts."

⁴ At its meeting of December 03, 2015, the Legacy Land Conservation Commission (LLCC) ranked DOFAW's FY2016 application for Upper Kūka'iau Ranch acquisition fifth out of five, and recommended that the Board of Land and Natural Resources authorize \$25,000 in funding, to be supplemented by additional Legacy Land funds—up to DOFAW's total request of \$1,363,346—from other FY2016 awards that do not use all of their funding.

DOFAW activities to be conducted under the terms of the grant agreement include fencing 250 acres of palila critical habitat and planting 500 māmane trees on the newly-acquired State land. These are minor actions that will probably have minimal or no significant effects on the environment and are exempt from the requirement to prepare an environmental assessment in accordance with Chapter 343, HRS, and Chapter 11-200-8, Hawai‘i Administrative Rules, under the Department’s following exemption classes (Exemption List for the Department of Land and Natural Resources, Reviewed and Concurred Upon by the Environmental Council on June 05, 2015):

Exemption Class 1: Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing.

Exemption Class 2: Replacement or reconstruction of existing structure and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced.

Exemption Class 3: Construction and location of single, new, small facilities or structures and the alteration and modification of same and installation of new, small equipment and facilities and the alteration and modification of same [].

Exemption Class 4: Minor alteration in the conditions of land, water, or vegetation.

Exemption Class 5: Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource.

Exemption Class 6: Construction or placement of minor structures accessory to existing facilities.

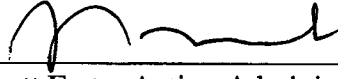
In accordance with the Board’s action at its meeting of November 13, 2015, under Item C-6, the Chairperson or the Chairperson’s authorized representative is authorized to declare the exemptions.

RECOMMENDATIONS:

DOFAW recommends that the Board:

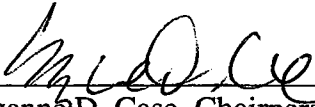
1. Approve DOFAW’s acceptance of a \$500,000 grant from the National Fish and Wildlife Foundation for DOFAW’s “Conservation and Restoration Initiative at Upper Kūka‘iau Ranch, Hawai‘i Island” (proposed agreement attached as Exhibit A), subject to approval by the Attorney General.

Respectfully submitted,



Scott Fretz, Acting Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



Suzann D. Case, Chairperson
Board of Land and Natural Resources

Exhibit A: National Fish and Wildlife Foundation Grant Agreement

EXHIBIT C, AGENDA ITEM C-1
September 09, 2016

State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawai'i 96813

April 8, 2016

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

Board Members:

SUBJECT: REVIEW OF PROJECT RECOMMENDATIONS FOR FUNDING FROM THE FISCAL YEAR 2016 LEGACY LAND CONSERVATION PROGRAM (LAND CONSERVATION FUND) AND APPROVAL OF THE FOLLOWING GRANTS:

PU'UKUA; HI'IPAKA LLC AND THE TRUST FOR PUBLIC LAND, AT \$175,000 FOR ACQUISITION OF 3.75 ACRES IN WAIMEA VALLEY, ISLAND OF O'AHU

KANEWAI SPRING; MAUNALUA FISHPOND HERITAGE CENTER AND THE TRUST FOR PUBLIC LAND, AT \$1,300,000 FOR ACQUISITION OF 0.77 ACRES IN KULI'OU'OU, KO'OLAUPOKO, ISLAND OF O'AHU

HELEMANO WILDERNESS RECREATION AREA; THE TRUST FOR PUBLIC LAND AND THE DIVISION OF FORESTRY AND WILDLIFE, AT \$1,500,000 FOR ACQUISITION OF 3,027 ACRES, ISLAND OF O'AHU

TURTLE BAY MAKAI – KAHUKU KAWELA FOREVER; THE TRUST FOR PUBLIC LAND AND THE DIVISION OF FORESTRY AND WILDLIFE, AT \$1,500,000 FOR ACQUISITION OF 53 ACRES, AND ACQUISITION OF A CONSERVATION EASEMENT OVER 605.996 ACRES, KO'OLAULOA, NORTH SHORE, ISLAND OF O'AHU

ADDITION TO MAUNA KEA FOREST RESERVE, UPPER KŪKA'IAU RANCH ACQUISITION; THE DIVISION OF FORESTRY AND WILDLIFE, AT \$25,000 FOR ACQUISITION OF 4,469.585 ACRES IN HĀMĀKUA, ISLAND OF HAWAI'I

SUMMARY:

Pursuant to H.R.S., section 173A-2.5, the Legacy Land Conservation Commission (the Commission) has produced recommendations to the Board of Land and Natural Resources on project selection for Fiscal Year 2016 (FY16) funding from the Legacy Land Conservation Program (LLCP). Pursuant to H.R.S., section 173A-5, the Department has sought and received the consultation of the Senate President and Speaker of the House of Representatives. This submittal summarizes these

recommendations for the Board's review and requests approval for projects to receive FY16 LLCP funding.

BACKGROUND:

Legacy Land Conservation Commission Recommendations:

In June, 2015, the LLCP announced available FY16 funding from the Land Conservation Fund (LCF) for projects proposing the purchase of lands having value as a resource to the State. Nonprofit land conservation organizations, county agencies, and State agencies applied for funding for six separate resource land acquisition projects for the September 15, 2015, application deadline. One of these projects, 'Preserving Moanalua Gardens for Future Generations', removed its application, leaving a total of five projects. On December 3, 2015, at a public meeting, the Commission ranked the projects and recommended that they be funded in the order ranked, to the extent that funds are available.

The result of this recommendation would be full awards to the first four projects listed below, and a partial award of \$25,000 to the fifth project listed.

1. Pu'ukua; Hi'ipaka LLC and the Trust for Public Land, at \$175,000 for acquisition of 3.75 acres in Waimea Valley, Island of O'ahu, for the protection of cultural resources, aesthetic resources, and potential agricultural resources (among others).
2. Kanewai Spring; Maunalua Fishpond Heritage Center and the Trust for Public Land, at \$1,300,000 for acquisition of 0.77 acres in Kuli'ou'ou, Ko'olaupoko, Island of O'ahu, for the protection of aquatic habitat for threatened or endangered species and cultural resources (among others).
3. Helemano Wilderness Recreation Area; The Trust for Public Land and the Division of Forestry and Wildlife, at \$1,500,000 for acquisition of 3,027 acres, Island of O'ahu, for the protection of watersheds, parks, recreational areas and natural areas and habitat (among others).
4. Turtle Bay Makai – Kahuku Kawela Forever; The Trust for Public Land and the Division of Forestry and Wildlife, at \$1,500,000 for acquisition of 53 acres, and acquisition of a conservation easement over 605.996 acres, Ko'olaupoko, North Shore, Island of O'ahu, for the protection of parks, coastal areas, and natural areas and habitat (among others).
5. Addition to Mauka Kea Forest Reserve, Upper Kūka'iau Ranch Acquisition, The Division of Forestry and Wildlife, at \$25,000 for acquisition of 4,469.585 acres in Hāmākua, Island of Hawai'i, for the protection of watersheds, habitat and natural areas, agricultural production and open spaces and scenic resources (among others).

Details on each project are included in the discussion, maps and photos are attached as part of Attachment I.

Legislative Consultation

Following the Commission meeting, the Department and the Commission Chair sought the consultation of Senate President Ronald Kouchi and the Speaker of the House of Representatives

Joseph Souki regarding the Commission's recommendations, pursuant to H.R.S. Chapter 173A. The Speaker of the House of Representatives and Senate President offered no objections or comments to the projects listed as recommended by the Commission in letters dated February 1, 2016, and February 24, 2016, respectively (Attachments II and III).

DISCUSSION:

The following discussion describes the details surrounding each of the Legacy Land Conservation Commission's recommended projects.

1. Pu'ukua

Waimea Valley has a rich history of native Hawaiian inhabitants and traditional religious leaders. Despite the many changes, Waimea is still respected today as a sacred and powerful valley filled with history. Now that the vast majority of Waimea has been returned to, and is thriving under, Hawaiian stewardship, it is hoped that the general area believed to contain Hewahewa's final resting place can be protected and cared for from mauka to makai. Apart from cultural resources, Pu'ukua likely functions as a buffer zone and filter to decrease any runoff from the adjacent parking lots from entering Waimea River, which is home to almost a dozen of the few hundred endangered 'alaie 'ula (Hawaiian moorhen) left.

Matching funds to cover 60% of the estimated cost of acquisition are being sought, with a total of 18% from Hi'ipaka LLC and The Trust for Public Land secured, 40% recommended to be sought from the City and County of Honolulu Clean Water and Natural Lands Fund and 2% pending from the landowner.

Hi'ipaka, LLC and The Trust for Public Land have had an initial conversation with the City Administration regarding the City holding or co-holding the conservation easement. The City is currently evaluating the most efficient way to run its Clean Water and Natural Lands Program, and what role it would like to play in future Clean Water and Natural Lands funded projects. One viable option is for the City and the North Shore Community Land Trust to co-hold the conservation easement.

Hi'ipaka, LLC and The Trust for Public Land's priority short term goal is to protect Pu'ukua's cultural sites, and ensure that they are under the care of a culturally knowledgeable and respectful entity that has trust and relationships with the Native Hawaiian community, and ancestral descendants. Hi'ipaka, LLC's longterm goal is to achieve the permanent protection of the cultural sites, maintain and strengthen relationships with Hewahewa's descendants, find and build positive and trusting relationships with Pu'ukua's descendants, create the right ano (feeling or environment) at Pu'ukua so that it is a respite for Hawaiian spirituality and traditions as the greater Waimea Valley is.

Hi'ipaka LLC is a nonprofit, limited liability company created to nurture and care for Waimea Valley; its mission is to Preserve and perpetuate the human, cultural and natural resources of Waimea for generations through education and stewardship.

2. Kānewai Spring

Kānewai Spring is one of the last remaining freshwater springs in Honolulu. The mixing of fresh and salt water between Kānewai Spring and Kānewai Fishpond provides the fertile estuary that is the source of life for a wide variety of native species, including rare freshwater limpets pipiwai and hapawai, native shrimp 'opae 'oeha'a and 'opae huna, native goby fish 'o'opu 'akupa, and 'ama'ama and 'aholehole which feed on the treasured limu 'ele'ele many of which are rarely seen today. It is the source of abundant freshwater and marine life.

The health of Kānewai Spring directly affects the health of the waters into which it flows: Kānewai Fishpond, Paikō Wildlife Sanctuary, and Maunalua Bay. Archaeological and cultural sites surround the spring, the acquisition of which is a rare opportunity to protect a healthy natural spring. Ownership and stewardship of Kānewai Spring by Maunalua Fishpond Heritage Center will not only safeguard the health and function of this precious freshwater source, but will provide opportunities for educational access for schools, community groups and the public. Convenient access to a spring and fishpond in Honolulu opens the door for more field trips, placebased education, regular scientific monitoring, and various Hawaiian cultural practices.

Matching funds totaling 42% of the estimated cost of acquisition are being sought, with approximately 1% from The Trust for Public Land and the landowner secured, and approximately 41% recommended to be sought from the City and County of Honolulu Clean Water and Natural Lands Fund.

It is anticipated that the City & County of Honolulu will hold or co-hold the conservation easement. However, the City & County is currently re-evaluating the structure of its Clean Water and Natural Lands Program to make it more efficient for the City, and it is possible that it may choose to have another entity hold the conservation easement.

Although the property protected by this project is small in acreage, an entire ecosystem will be enhanced. The property will be owned and stewarded by Maunalua Fishpond Heritage Center (MFHC). MFHC is a proven steward that has brought community, life and health back to Kānewai Spring in just five years. When MFHC received permission to enter and clean the property in 2010, invasive species had overtaken Kānewai Spring, the mākāhā, kū'ula stone (fishing shrine), and coconut grove. MFHC's management plan for Kānewai Spring centers around the protection and health of the Spring. MFHC will continue to educate school children and community about all of Kānewai Spring Complex's resources through mālama 'āina actions.

Maunalua Fishpond Heritage Center is a 501(c)(3) nonprofit organization; its mission is to preserve and mālama Honolulu's last fishponds for community education.

3. Helemano Wilderness Recreation Area

The Trust for Public Land and Hawaii's Division of Forestry and Wildlife are working to protect approximately 3,027 acres of Dole Food Company lands for the public to enjoy, to secure critical watersheds and native species habitat, and to create a hub for local forestry products that will supply artisans and cultural practitioners with much-needed materials.

Despite substantial demand, there are only two public camping areas in the mountains of O'ahu. Access for hunters and hikers is often blocked by private ownership of lands or access routes to public lands. Access to the Poamoho Ridge Trail, a premier route to summit the Ko'olau Mountains, has been blocked – sometimes for years – by private ownership. After acquisition, these 3,027 acres of land will be secured in perpetuity for daily public use by hunters, hikers, and other outdoor enthusiasts. Access will also be secured to the Poamoho Ridge Trail and an additional 4,600 acres of the 'Ewa Forest Reserve. The project's central location will provide opportunities for schools and students to easily access the mountains to learn about watersheds, native species, and sustainable forestry. This project will also secure critical portions of the Paukauila and Ki'iki'i Watersheds, the largest drainage basin on O'ahu and supply of fresh drinking water.

Matching funds totaling 90% of the estimated cost of acquisition are being sought, with approximately 0.2% from The Trust for Public Land and the landowner secured, 1.7% awarded during the FY14 Legacy Land process and an estimated 57.3% pending from USFS Forest Legacy, US Navy REPI, Wal-Mart Acres, and City and County of Honolulu. The remaining funds will be requested from additional grants in FY16 and 17.

The Hawai'i Department of Land and Natural Resources intends to include the Helemano Wilderness Recreation Area in the State Forest Reserve System as an addition to the Poamoho section of 'Ewa Forest Reserve. DLNR plans to designate a Timber Management Area, a Public Hunting Area, and roads and trails that will be added to the Na Ala Hele Trail and Access System. The Division of Forestry and Wildlife, O'ahu District will be responsible for the day-to-day management of the area.

Short-term goals are to provide continued public access to the Poamoho Ridge Trail, open up areas for hunting, and initiate planning for picnic grounds and the creation of campsites and multi-use recreation areas.

Longer-term goals are to establish camping areas (including providing ADA accessible sites), and sustainable trails for mountain bike and ATV use, reducing pressures on more sensitive coastal areas like Ka'ena Point.

4. Turtle Bay Makai – Kahuku Kawela Forever

The property is highly significant and important to residents of and visitors to the North Shore of O'ahu. The property includes approximately five miles of undeveloped shoreline that is treasured and beloved for its natural beauty, its habitat for native species, its recreational value, and its rich cultural history. Community members have fought since the 1970/80s to limit the resort development in the area. This ground-breaking and innovative project is part of a broader State, City, community, and non-profit effort to work out a voluntary negotiated solution with the landowner to conserve the most sensitive conservation areas and the most beloved and used recreation areas of this undeveloped shoreline.

\$2,500,000 in matching funds has been secured from Army Buffer / The Trust for Public Land funds. The State General Obligation Bond has secured \$35 million as a debt service to be paid by \$1.5 million of Legacy Land funding and \$1.5 million of transient accommodation tax

every year. Various other funding relating to acquisition costs has also been secured from sources including the state, Trust for Public Land and the Landowner.

The approximately 53 acres of fee-simple land acquired by the State at Kawela Bay will be leased back to the Turtle Bay Resort for 65-years. Under the lease, the Resort will be responsible for managing the land for public access and recreation, but will be allowed to continue existing commercial activities such as horseback riding, disc golf, parking/staging for surf lessons, picnics, jogging, hiking, and other outdoor activities. The land under the conservation easement will be permanently restricted from further development, but existing commercial uses (e.g., golf course, golf clubhouse and restaurant) would be allowed to continue. The Resort has been managing this land for over four decades since the Turtle Bay Resort was built. The Resort has all required permits to conduct all commercial activities on the land. The State of Hawai'i Department of Land and Natural Resources, Division of Forestry and Wildlife (DLNR/DOFAW) will own/hold and monitor the conservation easement in partnership with the North Shore Community Land Trust.

5. Addition to Mauka Kea Forest Reserve, Upper Kūka'iau Ranch Acquisition

Upper Kūka'iau Ranch is an iconic property that holds deep cultural and historical significance and hosts a wide and valuable array of natural resources, including critical habitat for the endangered palila bird. DOFAW's proposed acquisition of the property is strongly supported by the U.S. Fish and Wildlife Service through its Endangered Species Recovery Land Acquisition Program; the National Fish and Wildlife Foundation through its WalMart Acres for America program; and The Nature Conservancy, which created the Conservation Easement that it purchased from the landowner. The property also holds great potential for expanding public access to adjacent public hunting areas and for enhancing on-site and off-site outdoor recreation opportunities.

Matching funds to cover the remaining 57% of the estimated cost of acquisition are being sought from the U.S. Fish and Wildlife Service Recovery Land Acquisition grant, The Nature Conservancy, DLNR Forest Legacy funding (secured) and Walmart Acres for America, landowner donation and state staff time (pending).

The Nature Conservancy currently holds a Conservation Easement that restricts development and management activities; it is planned to be transferred to the Division of Forestry and Wildlife.

A Multi-Resource Management Plan (MRMP) has been completed, which DOFAW may seek to change after acquisition. The Mauna Kea Watershed Alliance (MKWA)—created to foster and coordinate management to reduce the threats posed by introduced ungulates, fire, and weeds—participates in DOFAW's Watershed Partnership Program, and is interested in making an agreement with the landowner to provide management services in accordance with the MRMP. A public/private partnership to reforest substantial acreage with koa and other native forest trees has also been proposed.

In summary, in its recommendations below, DOFAW advises the Board to approve the five projects selected by the Commission and approved by the legislators, amounting to a total of \$4,500,000 in awarded funding from the Land Conservation Fund. This amount will fund the first four listed

projects at the requested amounts, and provide a partial award of \$25,000 to the Addition to Mauka Kea Forest Reserve, Upper Kūka‘iau Ranch Acquisition. Although this amount is much smaller than this project’s initial request, it would still be helpful in terms of funding requests from other entities. If any of the fully-funded projects were to fail prior to closing, the funding would be redirected to this project.

Hawaii Revised Statutes, section 173A-4

Section 173A-4, HRS, sets forth two requirements for the Legacy Land grant process: it requires applicants to seek consultation of certain State agencies prior to submitting an application, and it sets forth in detail the framework for what type of deed restriction (including covenants, agricultural easements, conservation easements) may be required over properties being acquired with funds from the LLCP.

Agency Consultation Process

Section 173A-4, HRS, requires applicants to the LLCP to seek the consultation of this Department, the Department of Agriculture, and the Agribusiness Development Corporation with regard to the maximization of public benefits of each proposed land acquisition project. Consulting agencies can also provide input regarding other aspects of the project, including the level of legal protection on the land (e.g., whether a conservation easement is appropriate and what agency or organization ought to hold the conservation easement). Using forms supplied by the Department, FY16 applicants consulted these agencies prior to application deadline, and then included the results of this consultation to the LLCP along with the application form.

Conservation Easements, Agricultural Easements, Deed Restrictions, and Covenants

Section 173A-4, HRS, requires that organizations and agencies receiving funds under this chapter provide a conservation easement, agricultural easement, deed restriction, or covenant to the Department or another eligible agency. The law also provides that the Board shall be an owner of a conservation easement as a condition of the receipt of funding, and states that the Board or any agency or organization required to hold an easement may provide an exemption from that requirement.

To date, the Department has required all recipients of funds through this program to record restrictions in the deed of conveyance for the property. Similar to many federal programs, the Legacy Land restrictions for county and nonprofit grantees reference the grant agreement that is executed between the Board and the grantee, and also include the statutory restrictions on the transfer of the land provided within Chapter 173A, HRS. These statutory restrictions include payback provisions and mandatory Board approval for any subsequent transfer of the property. Per the restrictions, the owner must manage the land in a manner consistent with the protection of the resources as described in the original grant application.

While the Board currently possesses the optional authority to impose conservation easements on lands acquired by other entities, the Department advises that the deed restrictions imposed in previous years are more appropriate for the recommended Fiscal Year 2016 projects. Of the five projects being recommended, three are fee acquisitions to be held by the State (Turtle Bay Makai being both fee and conservation easement), one is a fee acquisition to be held by a county, and one is a fee acquisition to be co-held by a county and a nonprofit.

Chapter 343, Hawaii Revised Statutes: Environmental Assessment

Class 1, Exemption 15, on the June 12, 2008, Division of Forestry and Wildlife Exemption List, states, "The award of grants under H.R.S., Chapter 173A, for the acquisition of interests in land, provided that the acquisition does not cause any material change of use of land or resources beyond that previously existing." DOFAW advises declaring awards exempt from the preparation of an environmental assessment pursuant to this exemption.

RECOMMENDATIONS:

That the Board:

1) Approve the acquisition of the following parcels and authorize the Chairperson to execute a letter of offer to the landowner and encumber funds, under the FY16 LLCP ceiling, from the LCF for the following Department projects:

- a. Helemano Wilderness Recreation Area; The Trust for Public Land (holder Division of Forestry and Wildlife), at \$1,500,000 for acquisition of 3,027 acres, Island of O'ahu
- b. Turtle Bay Makai – Kahuku Kawela Forever; The Trust for Public Land (holder Division of Forestry and Wildlife), at \$1,500,000 for acquisition of 53 acres, and acquisition of a conservation easement over 605.996 acres, Ko'olauloa, North Shore, Island of O'ahu
- c. Addition to Mauka Kea Forest Reserve, Upper Kūka'iau Ranch Acquisition, Division of Forestry and Wildlife, at \$25,000 for acquisition of 4,469.585 acres in Hāmākua, Island of Hawai'i

Using a total of **\$3,025,000** from the LCF, subject to compliance with H.R.S., Chapter 173A, and the normal process and procedures for the acquisition of lands by the State.

2) Authorize the Chairperson to enter into agreements and encumber FY16 funds with the listed grant recipients for the following grants to nonprofit land conservation organizations and counties:

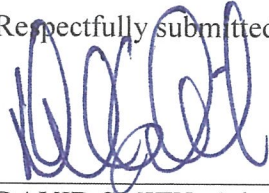
- a. Pu'ukua; Hi'ipaka LLC, at \$175,000 for acquisition of 3.75 acres in Waimea Valley, Island of O'ahu
- b. Kanewai Spring; Maunaloa Fishpond Heritage Center, at \$1,300,000 for acquisition of 0.77 acres in Kuli'ou'ou, Ko'olaupoko, Island of O'ahu

using a total of **\$1,475,000** from the LCF, subject to:

- a. compliance with H.R.S., Chapter 173A;
- b. compliance with H.R.S., Chapter 343;
- c. execution of a Grant Agreement with the BLNR;
- d. certification of an appraisal for each project by the Department;
- e. insertion of Legacy Land Conservation Program restrictions into the deed as a condition of contractual agreements with the grant recipients;
- f. approval of the Grant Agreement and of the Deed by the Attorney General's office;
- g. the availability of funds;

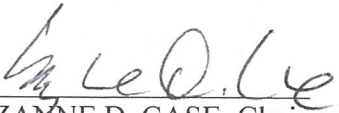
- h. the approval of the Governor; and
 - i. such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- 3) Require the imposition of Legacy Land Conservation Program restrictions into the deeds as a condition of contractual agreements with the grant recipients and exempt projects from any additional conservation easements that may be required under Section 173A-4, HRS.
- 4) Declare these awards of funds exempt in accordance with Class 1, Exemption 15, on the June 12, 2008, Division of Forestry and Wildlife Exemption List.
- 5) Authorize the Department to proceed with all due diligence and negotiations that may be necessary to carry out the grants and acquisitions mentioned above.

Respectfully submitted,



DAVID SMITH, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



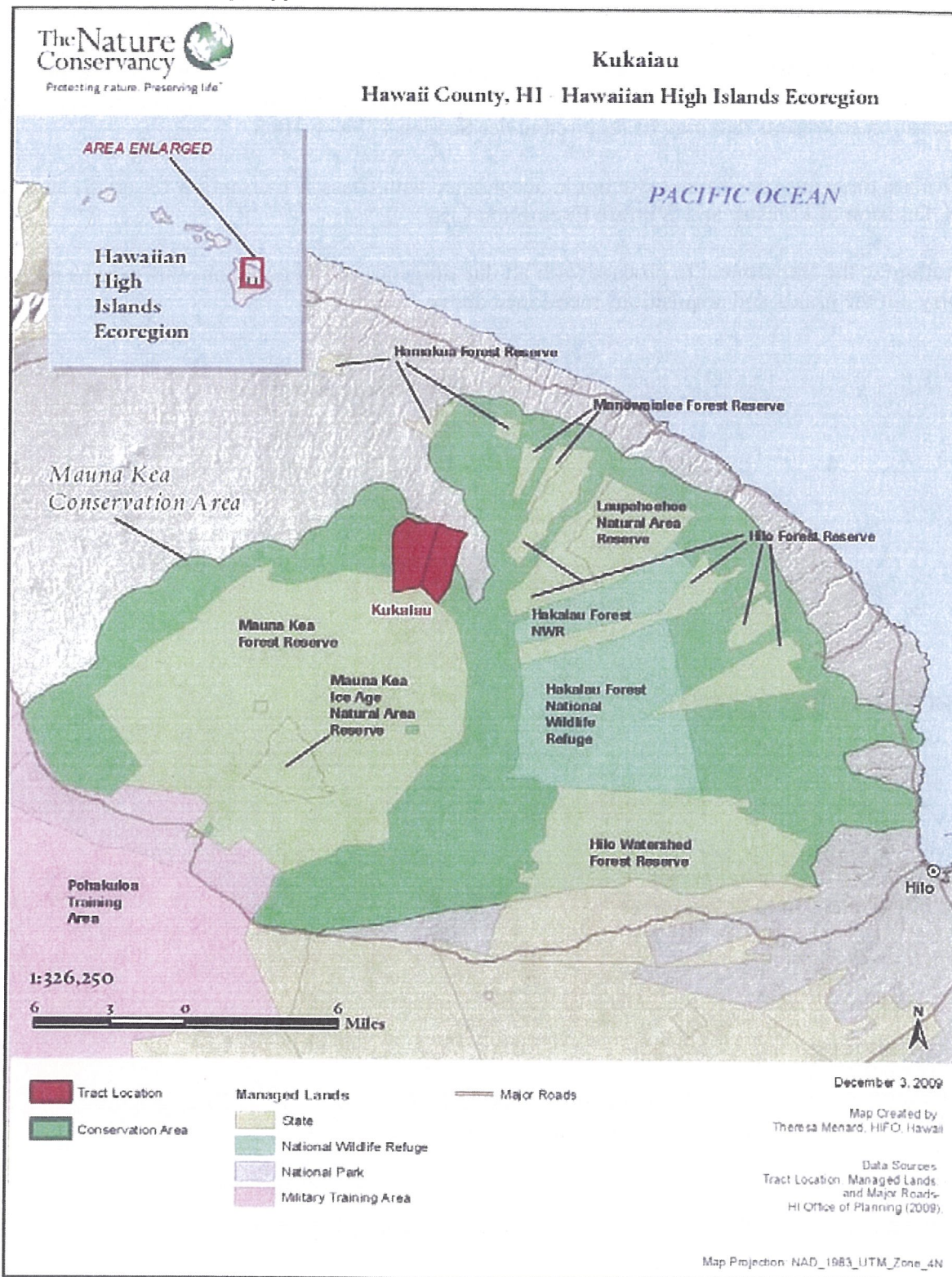
SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

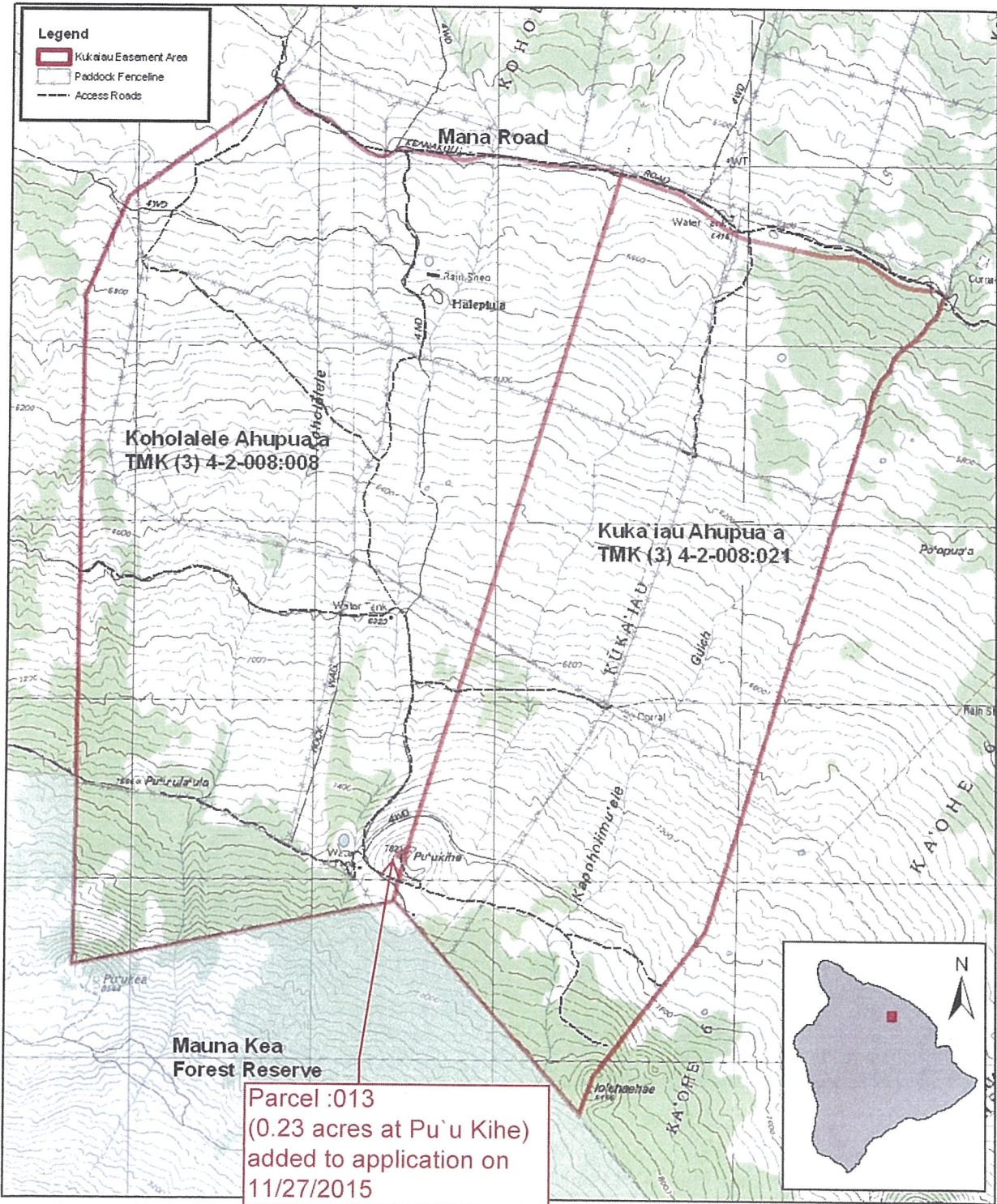
ATTACHMENTS:

- Attachment I: Table of recommended awards for the Fiscal Year 2016 Legacy Land Conservation Program with project maps and photos attached
- Attachment II: February 1, 2016, letter from the Speaker of the House of Representatives
- Attachment III: February 24, 2016, letter from the Senate President

EXHIBIT C, Attachment I: Selected Project Maps and Photos

General Location Map, Upper Kūka'iau

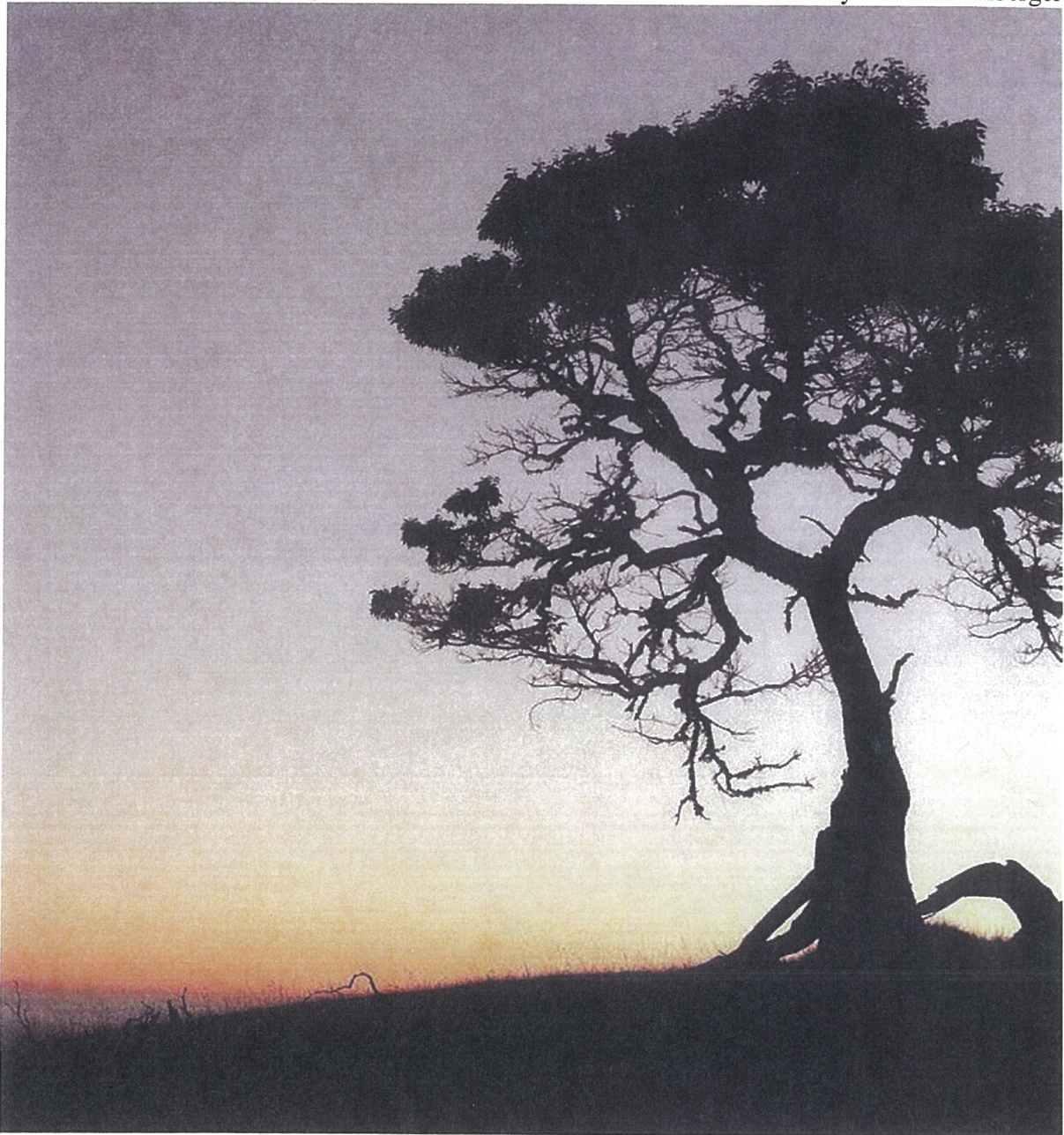




Map prepared by: Jon Giffin
For: The Nature Conservancy
Date: June 28, 2010
Data source: Hawtrnk, NRCS coordinates,
State of Hawaii GIS Program
File: Kukai'au_easement_location.mxd

0 0.2 0.4 0.8 1.2 1.6 Miles

Photo by Rob Shallenberger



Cover, The Nature Conservancy Hawai'i Membership Newsletter, Volume 34, Number 1, Spring 2010, *available at* http://www.nature.org/media/hawaii/spring_screen2.pdf.

Caption: Kūka'iau Ranch:
On the landscape of the Big Island forever



Photo by Cultural Surveys Hawai'i, Inc.
Figure 18 in Archaeological Inventory
Survey Report, taken from Pu`u Kihe.

Photo by Cultural Surveys Hawai'i, Inc.
Figure 33 in Archaeological Inventory Survey
Report.

