

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

September 9, 2016

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

Hawaii

Resubmittal: "Consent to Assignment of General Lease No. S-5542, Nicholas E. Muragin and Lisa K. Muragin, as Assignor, to Kelonukai Ranch, LLC, as Assignee, Ola'a, Puna, Hawaii, Tax Map Key: (3) 1-8-010:038, 043, 044 & 046," and Response to Board Request for Additional Information on Prior Board Submittal of June 24, 2016, Item D-3.

BACKGROUND:

At its meeting of June 24, 2016, agenda item D-3 (attached as Exhibit 1), the Board deferred action on a request for consent to assignment of lease. The Board members had a number of questions and concerns. Staff was asked to address these issues and return to the Board with the requested additional information. This submittal provides answers to the Board's questions and the requested additional information.

BOARD REQUESTED INFORMATION:

- A. How many acres are currently cleared for pasture, and how many acres will the new assignee clear, if any?

Answer: Sometime prior to the lease being issued, the entire property had been cleared of all growth and invasive brush and trees have taken over the area. The lessees have been clearing the invasive brush, mostly Psidium cattleianum (commonly known as Strawberry Guava or Waiawi), and cultivating pasture grasses. Currently, approximately 74 acres have been cleared. The Assignee is planning to clear an additional 66.7 acres in accordance with the conservation plan, after which the plan will be reevaluated and redrafted if necessary. (See attached Exhibit 2 for map).

- B. Want to see the conservation plan. If no conservation plan on file, isn't one required by the lease?

Answer: Conservation plan attached as Exhibit 3. Assignee will have the conservation plan transferred to it once assignment is complete.

- C. Want DOFAW to review submittal and lease to make sure they have no objections.

Answer: A request for comments, which included a copy of the Board submittal and lease, were sent to DOFAW on June 30, 2016. On August 15, 2016 we received their response which was "Please ensure that Kelonukai Ranch maintains a stock proof fence along the boundary of Ola'a Forest Reserve at all times" and "DOFAW would like to be able to access Ola'a Forest Reserve through the property if necessary, for management purposes. Access would be coordinated with the ranch so it does not impact ranch operations". Both of these concerns/conditions are required within the original lease document.

- D. Who is the assignee, Kelonukai Ranch, LLC. Want to know the names of the owners or members and experience in pasturing.

Answer: The manager and sole officer is Ernest M. Mattos. Mr. Mattos is a fifth generation cattle rancher on the Big Island. He began his own herd in 1981 and has been operating as Kelonukai Ranch, LLC. since 2008. He currently has about 700 head of cattle on over 2,500 acres.

- E. Want to make sure lessee/assignee is only clearing invasive species, and not allowed to clear native forests or native plants. What does the lease say about clearing trees, allow or disallow?

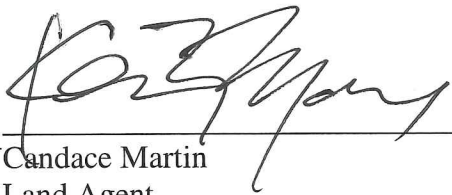
Answer: As stated earlier, the property has already been cleared and the lessee/assignee is clearing the invasive species which have dominated the area. The lease requires "full utilization" of the land. There are no restrictions, stated or implied, regarding clearing of trees or plants. See Exhibit 4 for photos of cleared and uncleared areas.

RECOMMENDATION: That the Board:

- A. That the Board consent to the assignment of General Lease No. S-5542 from Nicholas E. Muragin and Lisa K. Muragin, as Assignor, to Kelonukai Ranch, LLC, as Assignee, subject to the following:
- a. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time; and


- b. Review and approval by the Department of the Attorney General; and
- c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

DEFERRED

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

June 24, 2016

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

Hawaii

Consent to Assignment of General Lease No. S-5542, Nicholas E. Muragin and Lisa K. Muragin, as Assignor, to Kelonukai Ranch, LLC, as Assignee, Ola'a, Puna, Hawaii, Tax Map Key: (3) 1-8-010:038, 043, 044 & 046.

APPLICANT:

Nicholas E. Muragin and Lisa K. Muragin, divorced, as Assignor, to Kelonukai Ranch, LLC, a Hawaii limited liability corporation, as Assignee.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Ola'a, Puna, Hawaii, identified by Tax Map Key: (3) 1-8-010:038, 043, 044 & 046, as shown on the attached map labeled Exhibit A.

AREA:

227.74 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Pasture purposes.

~~APPROVED~~ ^{Deferred} BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
June 24, 2016 10.

EXHIBIT 1

D-3

June 24, 2016

TERM OF LEASE:

30 years, commencing on February 17, 1998 and expiring on February 16, 2028. Last rental reopening occurred on February 17, 2008; next rental reopening is scheduled for February 17, 2018.

ANNUAL RENTAL:

\$1,425.00.

CONSIDERATION:

\$ 30,000.00.

RECOMMENDED PREMIUM:

\$ 0.00. Refer to the assignment premium calculation attached as Exhibit B.

PERFORMANCE BOND:

The lease requires a performance bond in an amount equal to twice the annual rent of \$1,425.00, which is \$2,850.00.

DCCA VERIFICATION:

Nicholas E. Muragin and Lisa K. Muragin are individuals, and as such are not required to register with the DCCA.

Kelonukai Ranch, LLC

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Good standing confirmed:	YES

REMARKS:

General Lease No. S-5542 was sold to Donald W. Hughes and Muriel M. Hughes at public auction on December 17, 1997 for the upset price of \$650.00 per annum. The effective date of the lease was February 17, 1998 for a period of 30 years ending on February 16, 2028.

The Hughes made significant improvements to the property including; the clearing of a 20-acre paddock, installation of perimeter and paddock fencing and gates, construction of a 900,000-gallon reservoir and accompanying irrigation system to various areas of the properties and the creation of an octagonal corral for passive round up of cattle.

June 24, 2016

At its meeting of January 13, 2012, agenda item D-8, the Board consented to an assignment of lease to Nicholas E. Muragin and Lisa K. Muragin. Due to declining health, the Hughes could no longer maintain pasture operations.

The Muragins intended to run a cow/calf operation and expand the pasture areas by clearing invasive plants and overgrowth. However, for personal reasons, the Muragins are requesting consent to assign the lease to Kelonukai Ranch, LLC.

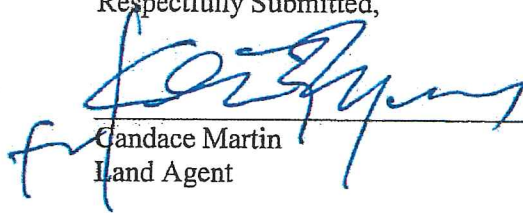
Kelonukai Ranch, LLC has been in business since 2008 as a cow/calf operation specializing in premium genetics and embryo transfer. It plans to expand its operation utilizing the existing pasture and finish the clearing of invasive overgrowth to increase the area of grazable land.

Kelonukai Ranch, LLC has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

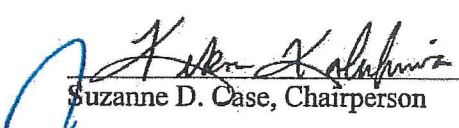
RECOMMENDATION:

- A. That the Board consent to the assignment of General Lease No. S-5542 from Nicholas E. Muragin and Lisa K. Muragin, as Assignor, to Kelonukai Ranch, LLC, as Assignee, subject to the following:
1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
 2. Review and approval by the Department of the Attorney General; and
 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson

Land Board Meeting: June 24, 2016; D-3: Deferred.²

Deferred.² See attached page.

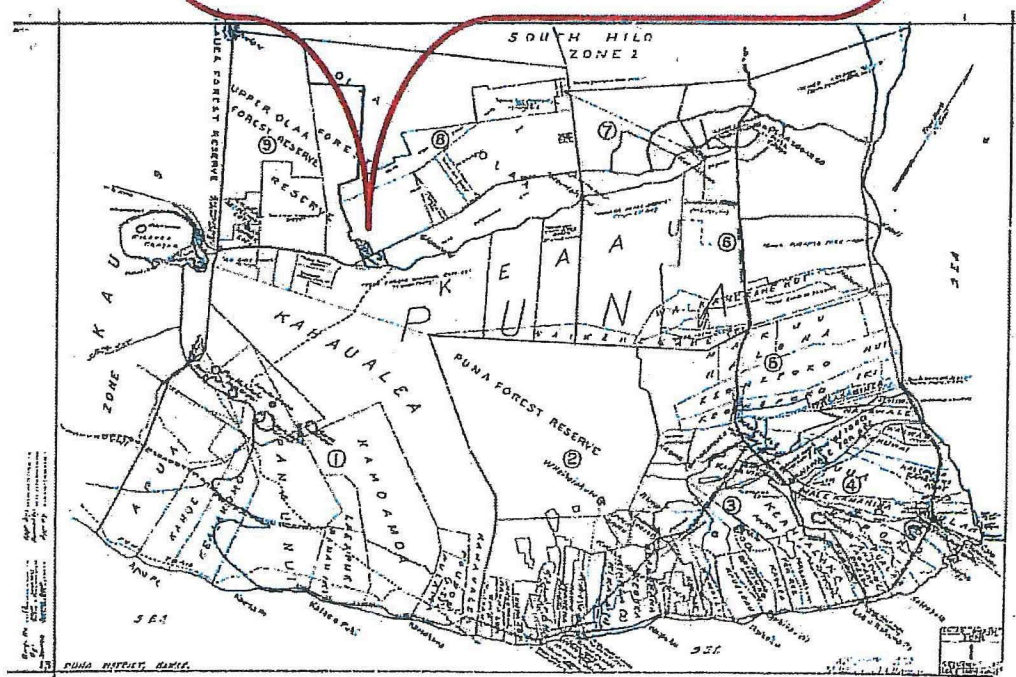
Land Board Meeting: June 24, 2016; D-3: Deferred.²

Deferred.²

² The Board members had a number of questions, concerns or desires. Staff is asked to address the following issues and redo the submittal and bring back to the Board:

- a. How many acres are currently cleared for pasture, and how many much acres will the new assignee clear, if any?
- b. Want to see the conservation plan. If no conservation plan on file, isn't one required by the lease?
- c. Want DOFAW to review submittal and lease to make sure they have no objections.
- d. Who is the assignee, Kelonukai Ranch, LLC. Want to know the names of the owners or members and experience in pasturing.
- e. Want to make sure lessee/assignee is only clearing invasive species, and not allowed to clear native forests or native plants. What does the lease say about clearing trees, allow or disallow?

EXHIBIT A





STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

75 Aupuni Street, Room 204
Hilo, Hawaii 96720
PHONE: (808) 961-9590
FAX: (808) 961-9599

June 1, 2016

MEMORANDUM

TO: Suzanne D. Case, Chairperson

THROUGH: Russell Y. Tsuji, Division Administrator

FROM: Candace Martin, Land Agent

SUBJECT: In-House Recommendation – Assignment of Lease Calculation

GL No.:	S-5542
Lessee/Assignor:	Nicholas E. Muragin and Lisa K. Muragin
Assignee:	Kelonukai Ranch, LLC
Location:	Ola'a, Puna, Hawaii
Land Area:	227.74 acres more or less
Tax Map Key:	(3) 1-8-010:038, 043, 044 & 046
Character of Use:	Pasture purposes

We have been asked to provide an in-house evaluation/recommendation of the assignment premium due to the State for an assignment of GL S-5542 resulting from the sale of assets from Nicholas E. Muragin and Lisa K. Muragin to Keloukai Ranch, LLC. The lease documents and information provided by lessee were analyzed and staff applied the formula approved by the Land Board on December 15, 1989, agenda item F-10, comprising the Assignment of Lease Evaluation Policy.

General Lease No. S-5542 was sold at public auction on December 17, 1997 with a lease commencement date of the February 17, 1998. The lease has a term of 30 years ending on February 16, 2028. In 2012, the lease was assigned to the current lessee for a consideration of \$25,000. Due to divorce, neither Lessee is able to continue the cow/calf operation and therefore are seeking to sell off the assets.

The terms and conditions of the lease allow the Board to condition its consent on payment by the Lessee of a premium based on the amount of considerations that exceeds the Adjusted Depreciated Cost of Improvements as calculated in accordance with the Assignment of Lease Evaluation Policy.

The total consideration of the sale of lease is \$30,000. The initial cost of the lease was \$25,000 and cost of fencing improvements were \$16,700. An inventory of 20 head of cattle, valued at \$13,300 is included in total consideration.

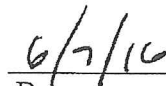
ASSIGNMENT PREMIUM CALCULATION: GL No. S-5642

Total Consideration		\$ 30,000
Actual & Initial Improvement Cost (2012)	\$ 41,700	
Adjusted Improvement Cost (2016)	\$ 43,817	
Less Depreciation (30 year lifespan)	<u>(\$26,290)</u>	
Adjusted Depreciated Cost of Improvements	\$ 17,257	(\$17,257)
Less Value of Inventory		<u>(\$13,300)</u>
Excess		(\$ 557)
Premium Percentage (16-20 years lapsed)		35%
Premium		(\$ - 0 -)

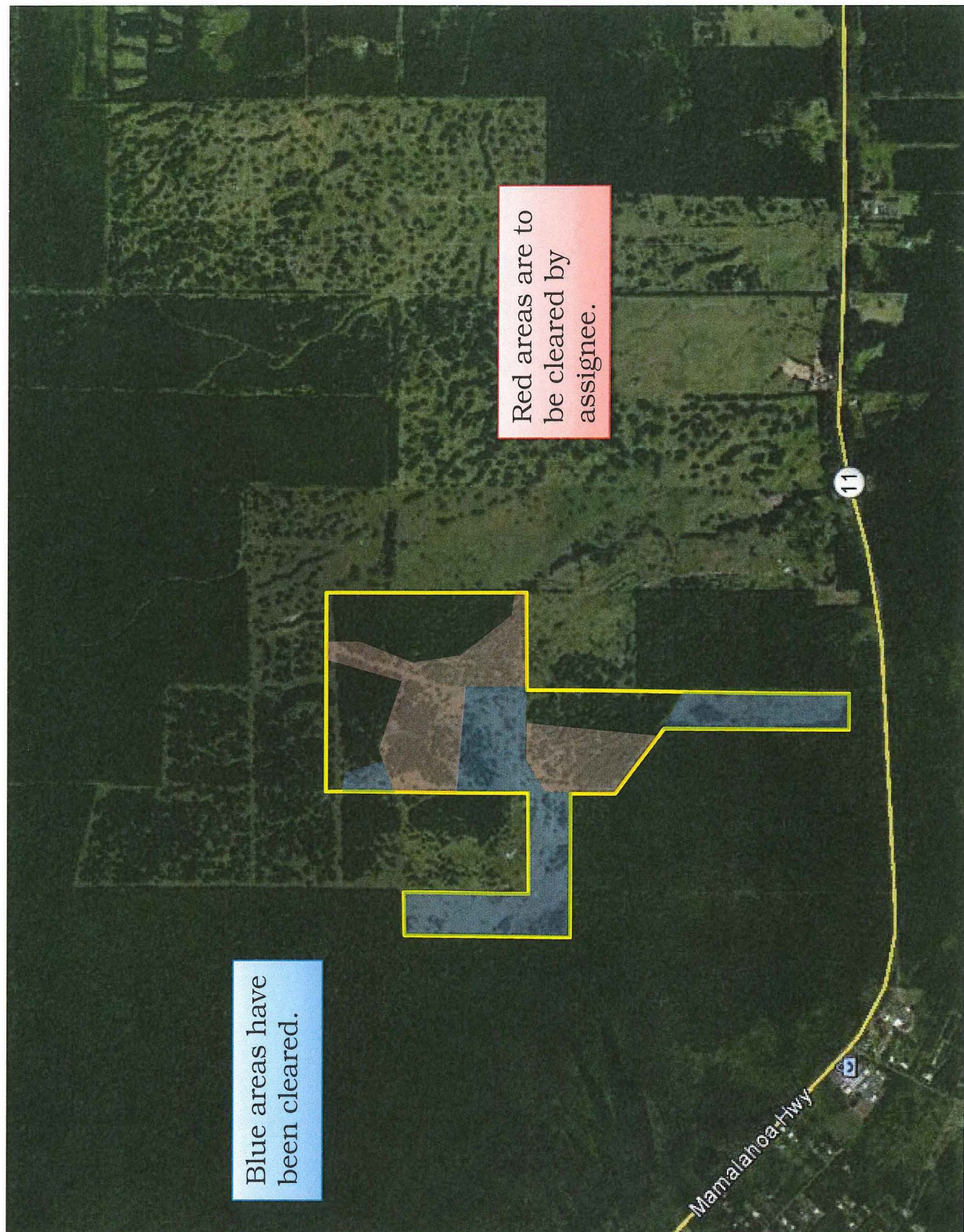
Based on these calculations resulting in a negative excess consideration, there is no premium due to the State on this assignment.

Approved/Disapproved:


Suzanne D. Case, Chairperson


Date

Cc: District Files



Blue areas have
been cleared.

Red areas are to
be cleared by
assignee.

EXHIBIT 2

Conservation Plan

Date: 3/3/2014

FY 14

Customer(s): NICHOLAS E MURAGIN

District: PUNA SOIL & WATER CONSERVATION DISTRICT

Approximate Acres: 223.6

Legal Description: TMK:(3)1-8-010:038, 043, 044, 046

Farm#: 1921 Tract#: 1864

Field Office: HILO SERVICE CENTER

Agency: USDA, NRCS

Assisted By: SPENCER NAGATA

State and County: HI, Hawaii

Land Units: Tract: 1864 Field: 1

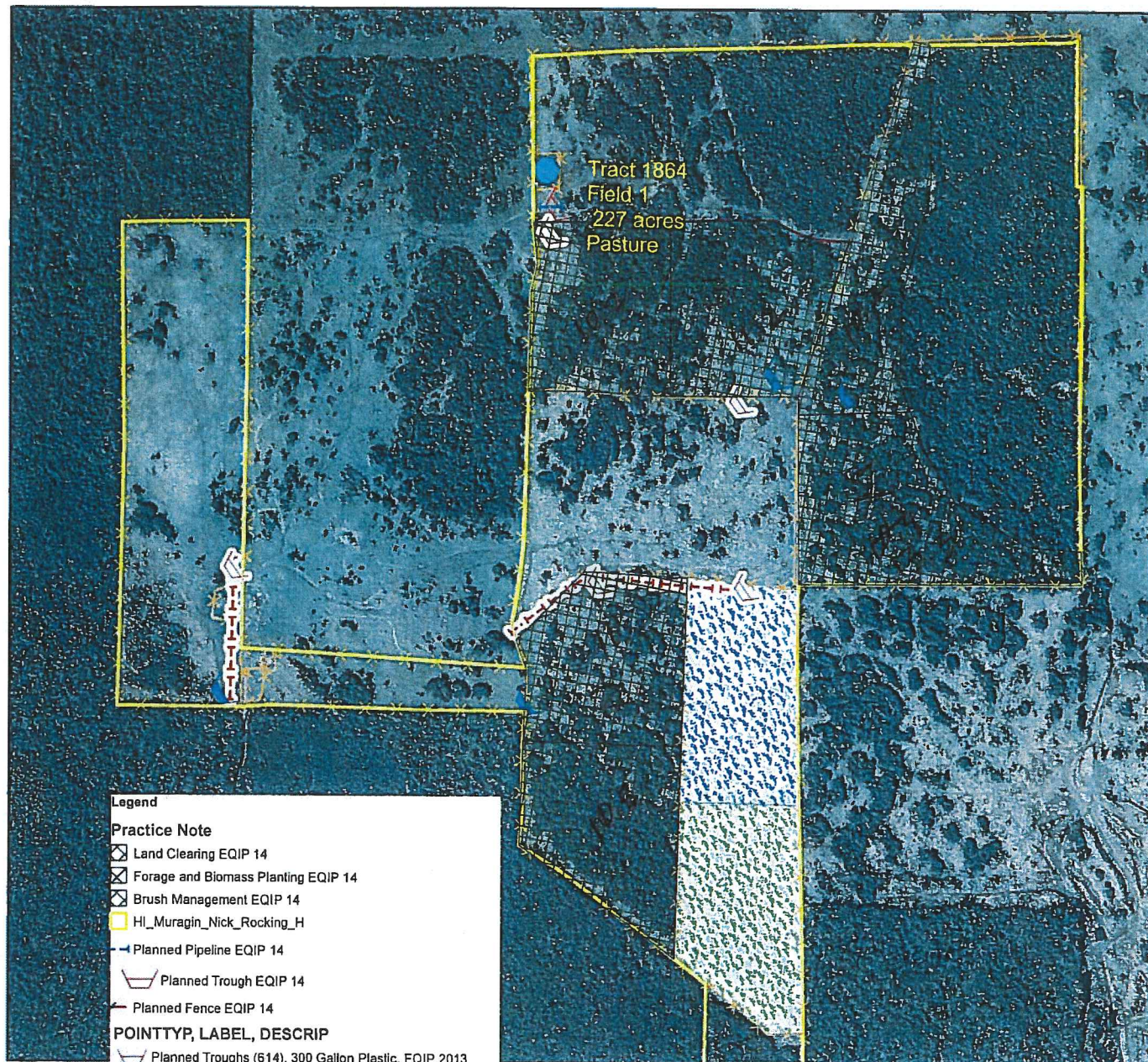


EXHIBIT 3



400 0 400 800 1,200 1,600 Feet



Conservation Plan

Date: 3/3/2014

Customer(s): NICHOLAS E MURAGIN

District: PUNA SOIL & WATER CONSERVATION DISTRICT

Approximate Acres: 202

Legal Description: TMK:(3)1-8-010:038, 043, 044, 046

Farm#: 1921 Tract#: 1864

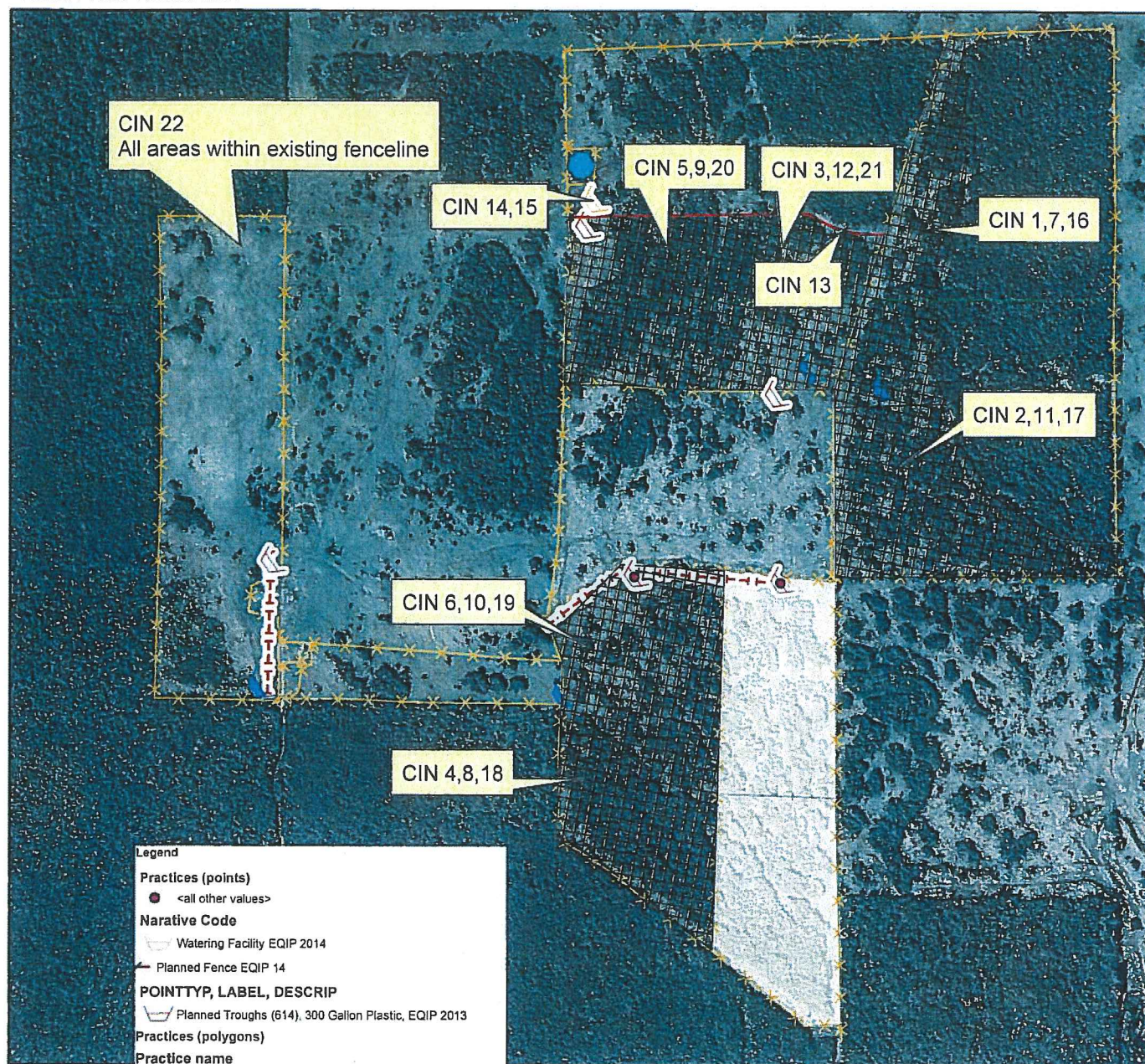
Field Office: HILO SERVICE CENTER

Agency: USDA, NRCS

Assisted By: SPENCER NAGATA

State and County: HI, Hawaii

Land Units: Tract: 1864 Field: 1



Location Map

Date: 12/17/2013

Customer(s): NICHOLAS E MURAGIN

District: PUNA SOIL & WATER CONSERVATION DISTRICT

Approximate Acres: 224

Legal Description: TMK:(3)1-8-010:038, 043, 044, 046

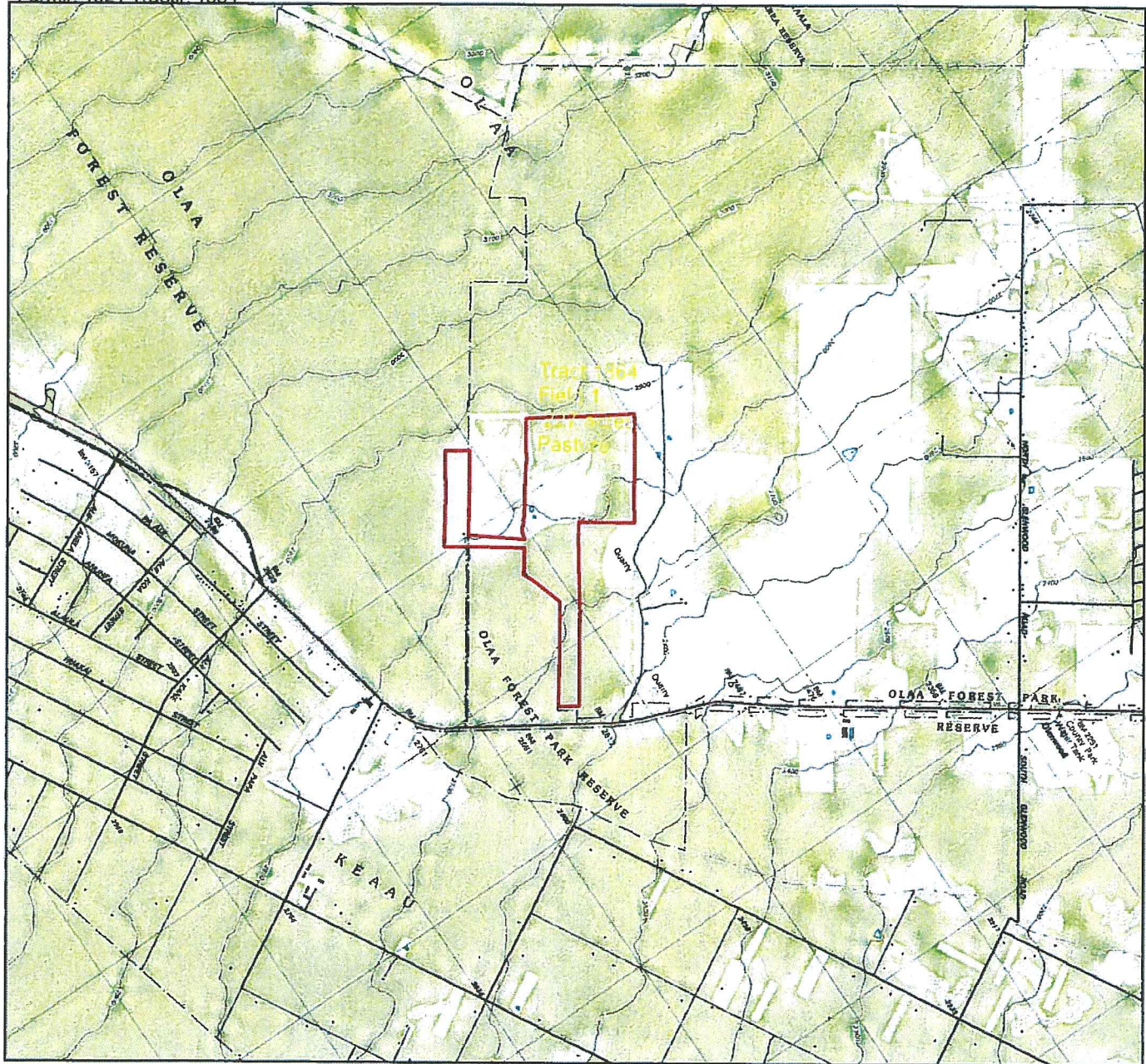
Farm#: 1921 Tract#: 1864

Field Office: HILO SERVICE CENTER

Agency: USDA, NRCS

Assisted By: SPENCER NAGATA

State and County: HI, HAWAII



Legend



HI_Muragin_Nick_Rocking_H

2,000 0 2,000 4,000 6,000 8,000 Feet





HILO SERVICE CENTER
154 WAIANUENUE AVE, RM 203
HILO, HI 96720-2452
8089338381 ext. 3

KORI HISASHIMA
DISTRICT CONSERVATIONIST

Conservation Plan

NICHOLAS E MURAGIN

KAMUELA, HI 96743

OBJECTIVE(S)

This 202 acre parcel includes: TMK (3)1-8-010; 043; 044; 046. Farm #: 1921 Tract #: 1864 is located in the area of the Puna Soil and Water Conservation District. The elevation is approximately at 2650 - 2900 feet and it receives 163-237 inches of rainfall annually. The soil's that occupy this parcel are 651 & 652. Mr. Nicholas Muragin's objectives are to refurbish this overgrown invasive weed pasture through recommended conservation land practices. The plan is for a cow-calf operation, the planned areas will provide rotational grazing benefits for his pastures. This conservation plan will be a progressive plan that will address each paddock year by year. To achieve his goal he will incorporate conservation practices such as Land Clearing and Brush Management through mechanical and chemical applications to remove invasive and noxious growth. Fencing will be used to create manageable rotational paddocks. Pipeline & Watering Facilities will be used to deliver water in a timely and efficient way for cattle. Forage and Bio-Mass plantings will be used to replace existing noxious and unpalatable growth with favored pasture feed and forage. Prescribed grazing will be administered once improvements and establishment of pasture renovations are complete. Mr. Muragin will be using this Conservation Plan to be in compliance with the County of Hawaii Grading and Grubbing Ordinance and utilize the USDA Environmental Quality Incentives Program.

Forest

Tract: 1864

Brush Management

314. Any regrowth of invasive and noxious plants will be sprayed with hebicide, to achieve the desired plant community.

Field	Planned Amount	Month	Year	Applied Amount	Date
1	10.2 ac	8	2016		
1	13.3 ac	8	2016		
1	11 ac	8	2017		
1	11.2 ac	8	2017		
1	10.2 ac	8	2017		
1	10.8 ac	8	2017		
Total:	66.7 ac				

Fence

382. A 5 strand Barb-wire fence will be installed according to NRCS standards and specification for better management of livestock and/or wildlife.

Field	Planned Amount	Month	Year	Applied Amount	Date
1	1470 ft	8	2016		
Total:	1470 ft				

Forage and Biomass Planting

512. Establish forage species for grazing.

Field	Planned Amount	Month	Year	Applied Amount	Date
1	10.2 ac	8	2016		
1	13.3 ac	8	2016		
1	11.2 ac	8	2017		
1	10.2 ac	8	2017		
1	10.8 ac	8	2017		
1	11 ac	8	2017	11	2/15
Total:	66.7 ac				

Land Clearing

460. Removal of trees, stumps and other vegetation from pasture area with the use of a bulldozer.

Field	Planned Amount	Month	Year	Applied Amount	Date
1	10.2 ac	5	2015		
1	13.3 ac	5	2015		
1	11.2 ac	8	2016		
1	10.8 ac	8	2016	10.8 ac	8/15
1	10.2 ac	8	2016		
1	11 ac	8	2016	11 ac	4/15
Total:	66.7 ac				

Pipeline

516. High density polyethylene (HDPE) pipe will be installed as shown on the plan map. Pipeline will be designed and installed according to NRCS standards and specifications.

Field	Planned Amount	Month	Year	Applied Amount	Date
1	160 ft	8	2016		
Total:	160 ft				

Prescribed Grazing

528. Grazing will be managed according to a schedule that meets the needs of the soil, water, air, plant and animal resources and the objectives of the resource manager.

Field	Planned Amount	Month	Year	Applied Amount	Date
1	202 ac	8	2017		
Total:	202 ac				

Watering Facility

614. Plastic troughs will be installed according to NRCS standards and specifications at location on the conservation plan map to provide watering facilities for livestock. Troughs will have the capacity to meet the daily livestock requirements, including the storage volume necessary to carry over between periods of replenishment. See design for details on material, capacity and installation.

Field	Planned Amount	Month	Year	Applied Amount	Date
1	1 no	8	2016		
Total:	1 no				

1. The cooperator is responsible to ensure all planned and installed practices are within legal property boundaries and appropriate setbacks.
2. The Natural Resources Conservation Service (NRCS) makes no representation on the existence or non-existence of any utilities and will not be liable for damage to utilities and damage resulting from disruption of service caused by construction activities.
3. The cooperator is responsible for obtaining all necessary permits (SMA, CDU, in stream activities, building, easements, right-of ways, water rights, etc.) as applicable, before starting work.
4. Cultural resources are protected by law. It is illegal to intentionally destroy or disturb historic and cultural sites (NHPA, 1966). Any inadvertent findings of cultural resources or artifacts of significance during land development activities should be reported to the State Historic Preservation Office (SHPO) before additional work is undertaken.
5. For agricultural operations, the Hawaii County Public Works Department may waive the permit requirements of Grading Ordinance when implementing the conservation practices contained in this plan, provided this plan is approved by a Soil and Water Conservation District (SWCD) Board, and the practices are installed according to an NRCS approved design, standards and specifications.
6. Modifications to this plan must be approved by a SWCD Board before work is started to keep the grading and grubbing ordinance exemption valid and this plan must be reviewed or updated by a SWCD Board every 5 years.
7. I understand that having a conservation plan does not automatically qualify me for financial assistance, and that I must apply for and receive written approval by the funding agency.

CERTIFICATION OF PARTICIPANTS

Nicholas E. Muragin 8-22-14
NICHOLAS E MURAGIN DATE

CERTIFICATION OF:

DISTRICT CONSERVATIONIST

Kori Hisashima 8/25/14
KORI HISASHIMA DATE

Kori Hisashima

CERTIFIED

CONSERVATION PLANNER

Pacific Islands Area

CONSERVATION DISTRICT

minor revision to schedule. Plan
PUNA SOIL & WATER CONSERV DATE
approved by puna SWCD 7/9/14

(see next page)

1. The cooperator is responsible to ensure all planned and installed practices are within legal property boundaries and appropriate setbacks.
2. The Natural Resources Conservation Service (NRCS) makes no representation on the existence or non-existence of any utilities and will not be liable for damage to utilities and damage resulting from disruption of service caused by construction activities.
3. The cooperator is responsible for obtaining all necessary permits (SMA, CDU, in stream activities, building, easements, right-of ways, water rights, etc.) as applicable, before starting work.
4. Cultural resources are protected by law. It is illegal to intentionally destroy or disturb historic and cultural sites (NHPA, 1966). Any inadvertent findings of cultural resources or artifacts of significance during land development activities should be reported to the State Historic Preservation Office (SHPO) before additional work is undertaken.
5. For agricultural operations, the Hawaii County Public Works Department may waive the permit requirements of Grading Ordinance when implementing the conservation practices contained in this plan, provided this plan is approved by a Soil and Water Conservation District (SWCD) Board, and the practices are installed according to an NRCS approved design, standards and specifications.
6. Modifications to this plan must be approved by a SWCD Board before work is started to keep the grading and grubbing ordinance exemption valid and this plan must be reviewed or updated by a SWCD Board every 5 years.
7. I understand that having a conservation plan does not automatically qualify me for financial assistance, and that I must apply for and receive written approval by the funding agency.

CERTIFICATION OF PARTICIPANTS

<u>Nicholas E Muragin</u>	<u>6-25-14</u>
NICHOLAS E MURAGIN	DATE

CERTIFICATION OF:

DISTRICT CONSERVATIONIST	
<u>Kori Hisashima</u>	<u>6/20/14</u>
KORI HISASHIMA	DATE

CONSERVATION DISTRICT	
<u>oe se</u>	<u>7-9-14</u>
PUNA SOIL & WATER CONSERV	DATE

Kori Hisashima

CERTIFIED

CONSERVATION PLANNER

Pacific Islands Area

PUBLIC BURDEN STATEMENT

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collections is 0578-0013. The time required to complete this information collection is estimated to average 45/0.75 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

PRIVACY ACT

The above statements are made in accordance with the Privacy Act of 1974 (5 U.S.C 522a). Furnishing this information is voluntary; however failure to furnish correct, complete information will result in the withholding or withdrawal of such technical or financial assistance. The information may be furnished to other USDA agencies, the Internal Revenue Service, the Department of Justice, or other state or federal law enforcement agencies, or in response to orders of a court, magistrate, or administrative tribunal.

USDA NON-DISCRIMINATION STATEMENT

The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers. If you believe you experienced discrimination when obtaining services from USDA, participating in a USDA program, or participating in a program that receives financial assistance from USDA, you may file a complaint with USDA. Information about how to file a discrimination complaint is available from the Office of the Assistant Secretary for Civil Rights. USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex (including gender identity and expression), marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) To file a complaint of discrimination, complete, sign, and mail a program discrimination complaint form, available at any USDA office location or online at www.ascr.usda.gov, or write to:

USDA Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW.
Washington, DC 20250-9410

Or call toll free at (866) 632-9992 (voice) to obtain additional information, the appropriate office or to request documents. Individuals who are deaf, hard of hearing, or have speech disabilities may contact USDA through the Federal Relay service at (800) 877-8339 or (800) 845-6136 (in Spanish). USDA is an equal opportunity provider, employer, and lender. Persons with disabilities who require alternative means for communication of program information (e.g., Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).



Cleared area.



Cleared area ready for herbicide treatment.

Note that Ohia and Hapuu remain after clearing.

EXHIBIT 4



Uncleared area.



Uncleared area on left with cleared fenceline on right.