

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

May 12, 2017

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

Board Members:

SUBJECT: APPROVE GRANTS FROM AVAILABLE FUNDS IN THE LAND CONSERVATION FUND, AS REQUESTED IN APPLICATIONS TO THE FISCAL YEAR 2017 LEGACY LAND CONSERVATION PROGRAM, FOR:

- (1) THE PAYMENT OF \$1,500,000 IN DEBT SERVICE ON THE TURTLE BAY REIMBURSABLE GENERAL OBLIGATION BONDS, AND
- (2) THE ACQUISITION OF INTERESTS IN SPECIFIC PARCELS OF LAND FOR:
 - A. THE TRUST FOR PUBLIC LAND AND ALA KAHAKAI TRAIL ASSOCIATION, \$2,000,000 FOR THE ACQUISITION OF 2,209.307 ACRES AT KĀHILIPALI NUI AND KĀHILIPALI'IKI, KA'Ū, HAWAI'I (WAIKAPUNA);
 - B. DIVISION OF FORESTRY AND WILDLIFE, \$738,346 FOR THE ACQUISITION OF 4,469.585 ACRES AT KŪKA'IAU AND KOHOLĀLELE, HĀMĀKUA, HAWAI'I (ADDITION TO MAUNA KEA FOREST RESERVE, UPPER KŪKA'IAU RANCH ACQUISITION); AND
 - C. HAWAIIAN ISLANDS LAND TRUST, \$210,000 FOR THE ACQUISITION OF A CONSERVATION EASEMENT OVER 6.12 ACRES AT KE'ANAE, HANA, MAUI (KEPLER KE'ANAE LO'I EASEMENT)

AND:

DECLARE THAT EACH APPROVED AWARD OF FISCAL YEAR 2017 GRANT FUNDS FOR THE ACQUISITION OF INTERESTS IN SPECIFIC PARCELS OF LAND IS EXEMPT FROM THE PREPARATION OF AN ENVIRONMENTAL ASSESSMENT, PURSUANT TO SECTIONS 343-5 AND 343-6, HAWAI'I REVISED STATUTES AND SECTION 11-200-8, HAWAI'I ADMINISTRATIVE RULES.

ITEM C- 1

SUMMARY

The Division recommends that the Board approve Legacy Land Conservation Program grants, from available funds in the Land Conservation Fund, for: first, the reimbursement of debt service on the Turtle Bay reimbursable general obligation bonds; and second, the acquisition of specific parcels of land as requested in three applications that the Legacy Land Conservation Commission recommended for Fiscal Year 2017 (FY17) funding.

Due to unforeseen shortfalls in the availability of FY17 funding for land acquisition,¹ the full amounts requested in the applications for land acquisition cannot be accommodated within the remaining FY17 budget allotment. Therefore, the Division recommends that the Board, first, award the remaining FY17 funding that is available for land acquisition to the Division's ongoing and heavily-funded acquisition of Upper Kūka'iau Ranch, which already received two Board approvals for partial awards from the Land Conservation Fund. A final award of FY17 funds for this acquisition would enable the State to complete its purchase within the timeline required by federal and private sponsors of substantial matching funds that the Division has secured over the last two years. In contrast, awarding all available FY17 funding to the competing application for Waikapuna—which the Legacy Land Conservation Commission ranked higher than Upper Kūka'iau Ranch by an extremely narrow margin—would guarantee the failure of the Division's Upper Kūka'iau Ranch acquisition, and would still leave the Waikapuna acquisition in need of substantial additional funding that would take another year or more to secure from the Land Conservation Fund and other sources.

Under these circumstances, the Division believes that the purposes of the State's Legacy Land Conservation Program would be best served by timely completion of the Upper Kūka'iau Ranch acquisition.² We expect to operate with a healthier, historic level of funding in Fiscal Year 2018 (FY18) that would be sufficient to provide additional funds for new FY18 applications.

BACKGROUND

In 2012, the Board adopted regulations implementing the provisions of Chapter 173A, HRS, Acquisition of Resource Value Lands, that include a delegation of authority to the Division of Forestry and Wildlife (DOFAW) for the administration of the Legacy Land Conservation Program (LLCP). See Section 13-140-3, Hawai'i Administrative Rules (HAR). Subsection 173A-5(f), Hawai'i Revised Statutes (HRS), authorizes the Department to administer and manage the Land Conservation Fund (LCF). Under subsection 173A-5(h), HRS, the LCF "shall be used for:

¹ Factors affecting reductions in available funding for FY17 include (1) encumbering FY17 funds to honor awards of funds, as approved by the Board and the Governor for previous fiscal years (2015 and 2016), that lapsed at the close of Fiscal Year 2016 due to budgeting errors, and (2) the timing of real estate closings and payment of central service fees for awards funded in previous fiscal years.

² Under Chapter 173A, HRS, Acquisition of Resource Value Lands, the program purpose is to provide for the acquisition and management of lands that, though protected by the land use law, may require placement under public ownership and management in order that they can be made accessible to all of the people of the State. See Section 173A-1.

- (1) The acquisition of interests or rights in land having value as a resource to the State, whether in fee title or through the establishment of permanent conservation easements under chapter 198 or agricultural easements;
- (2) The payment of any debt service on state financial instruments relating to the acquisition of interests or rights in land having value as a resource to the State;
- (3) Annual administration costs for the fund, not to exceed five per cent of annual fund revenues of the previous year[; and]
- (4) Costs related to the operation, maintenance, and management of lands acquired by way of this fund that are necessary to protect, maintain, or restore resources at risk on these lands, or that provide for greater public access and enjoyment of these lands; provided that the costs related to the operation, maintenance, and management of lands acquired by way of this fund do not exceed five per cent of annual fund revenues of the previous year.”

Payment of Debt Service

Section 173A-13, HRS, requires that “[n]otwithstanding any laws to the contrary: (a) “Beginning July 1, 2015, a nonprofit land conservation organization shall file an application annually with the board requesting \$1,500,000 from the land conservation fund to be used for the reimbursement of debt service on the Turtle Bay reimbursable general obligation bonds until the bonds are fully amortized.”

In September 2016, The Trust for Public Land (TPL), a nonprofit land conservation organization, filed an application with the LLCPC requesting said amount for said purpose.

Acquisition of Interests or Rights in Land

Section 13-140-22, HAR, directs that “[a]pplicants for land acquisition grants shall submit requests for funding by the annual deadline, using the forms and instructions provided by the department as may be revised from time to time.” The Department processes the applications, makes recommendations, and grants awards in accordance with Section 13-140-6, HAR:

- (b) The department shall recommend to the board specific parcels of land to be acquired. The department shall consult with the senate president and the speaker of the house of representatives and may consult with the legacy land conservation commission prior to making recommendations.
- (c) Awards shall be subject to the approval of the governor.

Application and Consultation Process

In February 2016, the LLCPC initiated consultation with the Legacy Land Conservation Commission (LLCC) about the timeline, forms, and procedures for the FY17 grant cycle. The LLCPC posted the FY17 grant application forms and instructions on its website on July 12, 2016; notified partners via email on July 13, 2016; and received six timely applications before the deadline of September 30, 2016 (*see* dlnr.hawaii.gov/ecosystems/llcp/apply). As required by subsection 173A-5(i), paragraph (7), HRS, each application for land acquisition included the results of applicant consultation with the Department, the Department of Agriculture, and the Agribusiness Development Corporation “regarding the maximization of public benefits of the project, where practicable.” The request form for agency consultation explained that “[c]onsulting agencies may 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).” The results of applicant consultation with consulting agencies are summarized in the DISCUSSION section, below. In letters dated November 16, 2016, DOFAW notified each applicant that due to an unexpected funding shortfall for the FY15 award cycle, only \$771,750 in FY17 funding would remain available for FY17 land acquisition awards, and suggested that applicants consider this funding situation for project planning purposes.³

The LLCC reviewed and ranked five of the six grant applications that the LLCP received (one applicant withdrew its application during the review process), incorporating the results of agency consultations, field visits, and public testimony into the recommendation that the LLCC issued at a public meeting on December 13, 2016 (please see Attachment I, which includes maps and photos as submitted in the applications). In accordance with subsection 92-2.5(a), paragraph (1), HRS, concerning permitted interaction of members to investigate a matter relating to the official business of their board, the LLCC held a public meeting on October 21, 2016 (Meeting 52), during which it assigned six groups—composed of two to four commissioners each—as task forces to conduct field visits at each of the six locations proposed in the applications for funding, and appointed a lead commissioner for each group (Agenda Item 6). The LLCC held a second public meeting on December 12, 2016 (Meeting 53), during which five of the six groups assigned reported on the findings and recommendations of their respective field visits (one applicant withdrew its application, so the group assigned to that application cancelled its field visit) (Agenda Item 6). The LLCC held a third public meeting on December 12-13, 2016 (Meeting 54) that included discussion and the formulation of recommendations about the applications that were the subject of the field visits (Agenda Items 3 and 4). The LLCC approved the minutes of its December 2016 meetings (Meetings 53 and 54) at a public meeting held on May 08, 2017 (Meeting 55).

On January 5, 2017, the Department forwarded the LLCC recommendation to the Senate President and the Speaker of the House of Representatives, and requested to consult with them about the Department’s recommendation to the Board. On January 31, 2017, Joseph M. Souki, Speaker of the House, replied with “no concerns or objections to the five projects as proposed in your attachment” (please see Attachment II). On February 28, 2017, Ronald D. Kouchi, President of the Senate, replied that he did “not have any concerns or objections at this time as it related to the five . . . projects listed . . .” (please see Attachment III).

Legacy Land Conservation Commission Recommendation and Division of Forestry and Wildlife Alternative Recommendation

As indicated in Attachment I, the LLCC recommended that the Board approve four awards from available funds in the Land Conservation Fund: first, for the payment of debt service on the Turtle Bay reimbursable general obligation bonds (\$1.5 million), and thereafter for full funding of the top three proposed land acquisition projects, in the order ranked by the LLCC. Given the funding available for the FY17 Legacy Land Conservation Program (LLCP), currently estimated at \$ 2,338,346, Board approval of the LLCC recommendation, as is, would result in awards of:

³ As explained in footnote 1, above, factors affecting reductions in available funding for FY17 include (1) encumbering FY17 funds to honor awards of funds for previous fiscal years (2015 and 2016), that lapsed at the close of Fiscal Year 2016 due to budgeting errors, and (2) the timing of real estate closings and payment of central service fees for awards funded in previous fiscal years.

- (1) \$1,500,000 for the reimbursement of debt service on the Turtle Bay reimbursable general obligation bonds, and
- (2) \$838,346 to Ala Kahakai Trail Association (AKTA) for the acquisition of 2,209.307 acres at Kāhilipali Nui and Kāhilipali‘iki, Ka‘ū, Hawai‘i (Waikapuna, partial award).

AKTA’s application to the LLCP requested \$2 million towards a total estimated cost of \$6.261 million, of which \$61,000 in matching funds is already secured. Even with a partial award of FY17 funds from the LLCP, AKTA needs well over \$5 million from other sources to complete the acquisition.

Contrary to part (2) of the LLCC recommendation, DOFAW recommends, instead, that the Board approve awards of:

- (2) \$738,346 to DOFAW for the acquisition of 4,469.585 acres at Kūka‘iau and Koholālele, Hāmākua, Hawai‘i (Addition to Mauna Kea Forest Reserve, Upper Kūka‘iau Ranch Acquisition), and
- (3) \$100,000 to Ala Kahakai Trail Association (AKTA) for the acquisition of 2,209.307 acres at Kāhilipali Nui and Kāhilipali‘iki, Ka‘ū, Hawai‘i (Waikapuna, partial award).

These awards would provide sufficient funding to complete DOFAW’s acquisition of Upper Kūka‘iau Ranch, and a substantial partial award that would help AKTA to leverage additional funding for Waikapuna. DOFAW has already secured over \$2.3 million in matching funds from federal and private partners and from two previous Board approvals for partial funding from the LLCP. If DOFAW does not receive this FY17 award from the LLCP, then it is unlikely that DOFAW could raise additional funds to complete the acquisition before the secured matching funds expire.

In order to provide for greater flexibility in the awards program, DOFAW also recommends that the Board:

- (4) Approve—as a contingency in the event that an awardee is unable to accept its awarded funds—the Commission’s recommendation to award remaining, available FY17 funds from the Land Conservation Fund, up to the amounts originally requested in the applications, to: first, the Ala Kahakai Trail Association, as an alternate, for the acquisition of 2,209.307 acres at Kāhilipali Nui and Kāhilipali‘iki, Ka‘ū, Hawai‘i; and second, the Hawaiian Islands Land Trust, as an alternate, for the acquisition of a conservation easement over 6.12 acres at Ke‘anae, Hana, Maui; and
- (5) Delegate authority to the Chair to redirect funding for a discontinued FY17 award to other FY17 applications that the Legacy Land Conservation Commission recommended for funding, so as to accomplish full funding for each approved award in the order ranked by the Commission.

At a public meeting held on May 8, 2017, LLCP staff presented a budget update to the LLCC (please see Attachment VII) and explained the rationale supporting DOFAW’s alternative recommendation. LLCP staff is available today to report the results of the ensuing LLCC discussion to the Board and to talk about the Board’s options for approving grants from available funds in the

Land Conservation Fund as requested in applications to the Fiscal Year 2017 Legacy Land Conservation Program (please see Attachment VIII).

DISCUSSION

1. Turtle Bay Makai – Kahuku Kawela Forever: The Trust for Public Land and DOFAW applied for \$1,500,000 to pay for debt service on the Turtle Bay reimbursable general obligation bonds. The State issued the Turtle Bay reimbursable general obligation bonds to fund its acquisition of 52+ acres, plus a conservation easement over 568+ acres, at Ko‘olauloa, O‘ahu (Turtle Bay Resort), as authorized by Act 121 (Session Laws of Hawaii, 2015) and the Board (September 25, 2015, Item D-18). Act 121 includes a legislative finding that “the Turtle Bay conservation easement and other real property interests [to be acquired] by the department of land and natural resources ... is land having value as a resource to the State.” The State leased back the fee-simple land that it acquired to the Turtle Bay Resort for 65 years, under lease terms that mirror the terms of the conservation easement for the adjacent lands. DOFAW holds and monitors the conservation easement in partnership with the North Shore Community Land Trust.

The application included a letter of support from Kevin M. Kelly (President, North Shore Economic Vitality Partnership). The applicant “did not adapt its proposal in response to agency consultation” (Application, Section K). The following table summarizes the agency responses and comments:

Agency	Response	Comments
DLNR	Comments are attached.	“the same comments [as last year] and no additional comments.” Last year: “A portion of [parcel] (1) 5-6-003:041 is in the General Subzone of the Conservation District” and “may have existing Conservation District Use Permits for varying uses”
Department of Agriculture	We have no comments.	
Agribusiness Dev. Corp.	We have no objections.	

2. Waikapuna: The Trust for Public Land (TPL) and Ala Kahakai Trail Association (ATA) applied for \$2,000,000 to acquire 2,209.307 acres at Kāhilipali Nui and Kāhilipali‘iki, Ka‘ū, Hawai‘i for eight of the nine Legacy Land resource preservation purposes established in subsection 173A-5(g), HRS (see Application, Section D):

- watershed protection (bay and ocean waters);
- coastal areas, beaches, and ocean access (three sections of distinct and significant native vegetation);
- habitat protection (native wildlife in sea caves, sea cliffs, intertidal pool complex, nearshore ocean, costal land, pasture land);
- cultural and historic sites (heiau, burials, lava tubes, house foundations, ahu, habitation caves, petroglyphs, papamū, salt gathering ponds, agricultural terraces, canoe sheds, stone-lined spring, kāmala wind shelters, footpath of the Ala Kahakai or ala loa);
- recreational and public hunting areas (to be addressed in management plan);

- natural areas (lava flows, lava tubes, and caves; remnant lowland dry forest; cliff with coastal plant strand; freshwater spring; native coastal plants; lagoon and intertidal pool complex; sea caves; sand dunes);
- agricultural production (remains of native agricultural complex; ranching); and
- open spaces or scenic resources (hills, sea cliffs, bay).

The applicants' Project Description (Application, Section G.1) explains that “[a] longstanding goal of the Ka‘ū community is to permanently preserve its beloved coast to honor Ka‘ū’s ancestors and allow all current and future generations to be nourished by these coastal lands” and that “[a]cquisition would not only protect Waikapuna and the rest of Kāhilipali Nui and Kāhilipali‘iki’s immense biocultural resources, it would also conserve a critical piece of the Ka‘ū coast conservation puzzle.” According to the application (Section G.2), “[t]he Waikapuna property has 22 lots of records, and the landowner will move forward with a subdivision plan if not purchased for conservation.”

Matching funds totaling 68% of the total project cost would be provided through grants or loans totaling \$3,200,000 (from new market tax credits or alternative funding source, pending), landowner’s donation of land value (\$1 million, pending) and smaller cash contributions from the landowner (\$11,500, secured) and TPL (\$49,500, secured).

The application indicates that “Ala Kahakai Trail Association intends to grant a conservation easement to the Ala Kahakai National Historic Trail, a unit under the National Park Service” (Section J). In its letter of support for the application, the County of Hawai‘i Finance Department indicated that “in the event that TPL and ATA moves forward with the acquisition, the County of Hawai‘i intends to hold a conservation easement over the . . . property subject to the criteria set forth in Section 2-241.1(c) of the Hawai‘i County Code as it relates to the Public Access, Open Space & Natural Resources Preservation Fund.”

The approved minutes of LLCC Meeting 54 (December 12-13, 2016) include the transcribed testimony of L. La‘akea Sukanuma, recounting the relationship between the Waikapuna lands and the ‘ohana of Mary Kawena Pūku‘i. The application also included letters of support from:

- L. La‘akea Sukanuma (President/Director, The Mary Kawena Pūku‘i Cultural Preservation Society)
- William Keoni Fox (Keanu ‘Ohana of Ka‘ū)
- Walter Andrade (MJ Ranch)
- Michelle Galimba (Kuahiwi Ranch)
- Shalan Crysdale (Director, Hawai‘i Island Program, The Nature Conservancy of Hawai‘i)
- William G. Gilmartin (President, Hawai‘i Wildlife Fund)

The applicants “did not adapt the project proposal in response to the agency consultation responses. However, we did provide additional information as a result of the agency comments and questions, and are continuing that dialogue to ensure that each agency has the information it requested” (Application, Section K). The following table summarizes the agency responses and comments:

Agency	Response	Comments
DLNR	We have no objections. Comments are attached.	<p>Site visit with DOFAW conducted at Waikapuna. Coastal strand vegetation is valuable. Kamilo section, Ka'ū Forest Reserve, lies to the west. Archaeological sites worth protecting are throughout the property. Could provide some hunting opportunities for goats. Would provide access for the public to the ocean and coastline. Wildfire will be a big issue if the area is not continued as pasture.</p> <p>If the Waikapuna parcel was subdivided to allow DOFAW to manage the coastal area with legal access, we could have further discussions.</p>
Department of Agriculture	Comments are attached.	<p>Acres currently leased to pasture? Lessees of the pasture lands? Number of cattle?</p> <p>Term of the leases?</p> <p>Management plan for the ranch and how it will operate in conjunction with the preservation of cultural, native vegetation, and habitat resources?</p>
Agribusiness Dev. Corp.	We have no comments.	

3. Addition to Mauna Kea Forest Reserve, Upper Kūka'iau Ranch Acquisition: The Division of Forestry and Wildlife (DOFAW) applied for \$738,346 to acquire 4,469.585 acres at Kūka'iau and Koholālele, Hāmākua, Hawai'i, for seven of the nine Legacy Land resource preservation purposes established in subsection 173A-5(g), HRS (see Application, Section D):

- watershed protection (surface runoff, streamflow, groundwater recharge, subsurface moisture, water vapor);
- habitat protection (palila critical habitat; rare native and endemic plants; other native birds);
- cultural and historic sites (Hawaiian burials and other cultural features; historic structures associated with ranching activities);
- recreational and public hunting areas (access to Mauna Kea Forest Reserve and other public hunting areas; potential use for OHV, horseback riding, hiking, biking, camping, as appropriate);
- natural areas (cinder cones, mamane-koa forest, stream networks);
- agricultural production (cattle grazing; forestry); and
- open spaces/scenic resources (visible from the air and along Mana Road; on-site viewplanes extend from the summit of Mauna Kea to Maui).

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 federally designated critical habitat for the endangered palila bird (*Loxioides bailleui*). Matching funds totaling 56% of the total project cost would be provided through the U.S. Fish and Wildlife Service (Recovery Land Acquisition grant, \$1,217,114, secured), the National Fish and Wildlife Foundation (WalMart Acres for America grant, \$500,000, secured), and smaller cash and in-kind contributions from the landowner, The Nature Conservancy, DOFAW's Forest Legacy Program, and DOFAW staff time. In addition to the funds

now requested from the LLCP—which are needed to complete the acquisition before the grant periods end for the matching funds—the Board previously approved \$625,000 in LLCP funds for this acquisition (April 08, 2016, Item C-3 for \$25,000 and September 09, 2016, Item C-1 for \$600,000).

The Nature Conservancy (TNC) currently holds a Conservation Easement that restricts development and management activities on the property. Discussions with TNC, the U.S. Fish and Wildlife Service, and the County of Hawaii about transferring the easement from TNC to a non-DLNR government agency are ongoing. A Multi-Resource Management Plan (MRMP) has been completed, which DOFAW may update, after acquisition, to better align with the general purposes of Forest Reserve System and specific strategies for palila habitat restoration. The Mauna Kea Watershed Alliance —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.

DOFAW intends to include the Upper Kūka‘iau Ranch property in the State Forest Reserve System as an addition to the Mauna Kea Forest Reserve. The Division of Forestry and Wildlife, Hawai‘i District, will be responsible for the day-to-day management of the area.

The application included a letter of support from Leon No‘eau Peralto (genealogical descendant of the lands of Kūka‘iau and Koholālele, Hāmākua, Hawai‘i, and President of Hui Mālama i ke Ala ‘Ūlili). DOFAW notes that its previously-approved FY16 application for this acquisition included letters of support from:

- Eric C. Schwab (Vice President of Conservation Programs, National Fish and Wildlife Foundation)
- Jody Kaulukui (Director of Land Preservation, The Nature Conservancy of Hawai‘i)
- Janet R. Britt (Acquisitions Specialist/Hawaii Island Director, Hawaiian Islands Land Trust)
- George E. Wallace, PhD and Chris Farmer PhD (respectively, Vice President, Oceans & Islands Division, and Hawaii Program Director, American Bird Conservancy)
- Cheyenne Hiapo Perry (Coordinator, Mauna Kea Watershed Alliance)
- Leon No‘eau Peralto (as above)
- Jeffrey A. Dunster (Executive Director, Hawaiian Legacy Reforestation Initiative)

DOFAW “adapted the project proposal in response to consultation provided by the Department of Agriculture about ranching activities and ranch management . . . and by DLNR,” including a reply letter to the Department of Agriculture (Application, Section K). The following table summarizes the agency responses and comments:

Agency	Response	Comments
DLNR	We have no objections. Comments are attached.	<i>Please see Attachment IV to this submittal.</i>
Department of Agriculture	Comments are attached.	
Agribusiness Dev. Corp.	We have no comments.	

4. Kepler Ke‘anae Lo‘i Easement: The Hawaiian Islands Land Trust (HILT) applied for \$210,000 to acquire and hold a conservation easement over 6.12 acres at Ke‘anae, Hana, Maui (but excluding the area of an existing home) for seven of the nine Legacy Land resource preservation purposes established in subsection 173A-5(g), HRS (see Application, Section D):

- watershed protection (reduce erosion and prevent catastrophic flooding, and runoff);
- habitat protection (lo‘i kalo, endangered native waterbirds, and native seabirds);
- cultural and historic sites (perpetuate taro cultivation to maintain cultural landscape);
- parks (proximity to State Seabird Sanctuary);
- natural areas (surface water);
- agricultural production (a lessee farms 26 of 36 historic fields); and
- open spaces/scenic resources (view shed from the Ke‘anae road along Hana Highway).

According to the application, “[t]he property includes the small lo‘i originally belonging to the chief Ke‘anae, from which it is reported that the entire ahupua‘a took its name” (Section G, Project Description, citation omitted). Matching funds totaling 59% of the total project cost would be provided through private funds raised by HILT (\$220,537, pending) and private funds and land value donation from the landowner (\$86,080, secured).

The application indicates that the easement, if acquired, “will prohibit further residential development and will protect the unique soils that are present on the Property” (Section G, Project Description) and “will protect the agricultural use of the land in perpetuity” (Section H, Stewardship and Management), and that “the management plan for the parcel after the conservation easement is placed on the property is to actively farm the lo‘i kalo” (Section D, Preservation Purposes). However, although the application states that “[t]he . . . ancient kalo lo‘i at Ke‘anae will be permanently conserved because conservation easement will prevent uses incompatible with agricultural production,” it also indicates that “[t]he easement requires only that the land remain in agricultural production, but does not specify the crop grown” (Section H, Stewardship and Management).

The application did not include letters of support, except for communication from the landowner and the applicant. In response to agency consultations, the applicant deleted a 0.18 acre parcel from the application (Application, Section K). The following table summarizes the agency responses and comments:

Agency	Response	Comments
DLNR	<i>Application did not include response form.</i>	Parcel (2) 1-1-003:065 lies entirely within the Resource Subzone of the Conservation District. Due to its coastal location, not very much could be done on this parcel and the easement is to keep the area as is.
Department of Agriculture	Comments are attached.	Approximately half of the eastern portion of the larger parcel is classified as “Unique” under the Agricultural Lands of importance to the State of Hawaii system. Request information explaining why the smaller parcel is included within the application, as it is in the State Conservation District and does not seem to be in agricultural use.
Agribusiness Dev. Corp.	We have no comments.	

Conservation Easements, Agricultural Easements, Deed Restrictions, and Covenants

Under subsections 173A-4(c) and (d), HRS, a recipient of funds from the LLCP must:

provide a conservation easement under chapter 198, or an agricultural easement or deed restriction or covenant to the department of land and natural resources; the department of agriculture; the agribusiness development corporation; an appropriate land conservation organization; or a county, state, or federal natural resource conservation agency, that shall run with the land and be recorded with the land to ensure the long-term protection of land having value as a resource to the State and preserve the interests of the State . . . [and t]he board shall require as a condition of the receipt of funds that it be an owner of a conservation easement.

However, subsection 173A-4(d) provides that “[t]he board or an appropriate land conservation organization or county, state, or federal agency required to be provided an easement pursuant to this section may grant an exemption for any easement required pursuant to this section.”

Historically, the Department has required that each recipient of LLCP funding record a deed of conveyance that includes restrictions and covenants that meet the requirements of Section 173A-4. Similar to many federal land acquisition programs, the LLCP restrictions for deeds to county and nonprofit grantees reference the grant agreement that is executed between the Board and the grantee, and all deeds must recite the State’s statutory restrictions on the sale, lease, or other disposition of the land. These statutory restrictions (1) include a requirement that the Board approve disposition of the land (Sections 173A-4 and 173A-9, HRS) and (2) establish post-disposition payback provisions (Section 173A-10, HRS). Per the grant agreement, deed restrictions also require that an owner manage the land in a manner consistent with the protection of the resources as described in the original grant application.

The Board is authorized to impose conservation easements on lands acquired by LLCP grant recipients, and to grant exemptions from the easement requirements. The Department advises that the deed restrictions that the LLCP customarily imposes on grant recipients—as bolstered by statutory and contractual provisions—are sufficient to ensure the long-term protection of land having value as a resource to the State and preserve the interests of the State for the recommended FY17 grant awards, and recommends that the Board exempt the awardees from additional easement requirements. The Department notes that of the four grant applications recommended for FY17 funding, one is for a payment of debt service tied to the completed acquisition of lands that are already protected by easements; one is for a fee acquisition to be held by the State, which is already protected by a conservation easement; one is a for a fee acquisition to be held by a nonprofit land conservation organization, with a conservation easement to be provided to a county government and/or another nonprofit land conservation organization; and one is for a conservation easement to be held by a nonprofit land conservation organization.

Chapter 343, Hawai‘i Revised Statutes, Environmental Review

1. Payment of Debt Service, Turtle Bay Makai – Kahuku Kawela Forever: In 2015, the legislature found that the acquisition of the Turtle Bay conservation easement and other real property interests by the department of land and natural resources is for the purpose of supporting, encouraging, and enhancing the natural beauty of Oahu’s north shore, and is land having value as a resource to the State (Act 121). Thereafter, at its meeting of September 15, 2015, under Agenda Item D-18, the Board (1) determined that because the lands acquired in fee were “unimproved real

property,” an environmental assessment was not required for that acquisition (*see* subsection 343-5(a), paragraph 1, HRS), and (2) declared that the acquisition of the conservation easement was exempt from the preparation of an environmental assessment pursuant to DLNR Exemption Class No. 1, Item No. 45 (DLNR Exemption List dated June 5, 2015) for "Acquisition of land or interests in land" (please see approved Exemption Notification, Attachment V). The Department believes that (1) in general, its payment of debt service on state financial instruments relating to the acquisition of interests or rights in land does not trigger environmental review requirements under Chapter 343, HRS, and (2) if the payment of debt service on state financial instruments relating to the acquisition of interests or rights in land does trigger environmental review requirements under Chapter 343, HRS, then in this case the Department of Accounting and General Services is responsible for fulfilling those requirements, because the payment of debt service to lenders is made from the state general fund, not from the department's special fund, which merely reimburses the general fund for the payments made to lenders.

2. Land Acquisition Grants: Subsection 343-5(a), HRS, provides, in part, that an environmental assessment is not required for an action that proposes the use of state funds for the acquisition of unimproved real property. Chapter 343, HRS does not define “unimproved real property.” Regardless of this definitional uncertainty, DOFAW concludes that each of the three properties recommended for acquisition by the LLCC is “improved” to some degree.

Subsection 343-6(a), paragraph (2), HRS, provides for “procedures whereby specific types of actions, because they will probably have minimal or no significant effects on the environment, are declared exempt from the preparation of an environmental assessment.” In accordance with the procedures established by subsection 11-200-8(d), HAR, the Department developed a consolidated, department-wide Exemption List, reviewed and concurred on by the Environmental Council on June 5, 2015 (DLNR Exemption List). This list of specific types of actions that fall within the exempt classes include Exemption Class 1, Action Type 45, “[a]cquisition of land or interests in land,” and Exemption Class 1, Action Type 49, “[t]he award of grants under Haw. Rev. Stat. Chapter 173A provided that the grant does not fund **an activity that causes any material change of use of land or resources beyond that previously existing**” (emphasis added).

DOFAW believes that its acquisition of land at Upper Kūka‘iau Ranch is a DLNR action that is exempt from the preparation of an environmental assessment under DLNR’s Exemption Class 1, Action Type 45, acquisition of land. Each of the two recommended acquisitions of land by a nonprofit land conservation organization (Waikapuna and Kepler Ke‘anae Lo‘i Easement) may be declared exempt from the preparation of an environmental assessment under DLNR’s Exemption Class 1, Action Type 49. However, for Action Type 49, the governing authorities (Chapter 343, HRS, Section 11-200-8, HAR, and the DLNR Exemption List) do not define “material change of use,” and the Board and the state courts have not addressed the interpretation and application of this exemption. DOFAW believes that (1) the “activity” of land acquisition funded by a grant from the Legacy Land Conservation Program merely enables the possibility of—rather than “causes” with certainty—a future “change of use” action by an awardee that takes ownership of a property, and (2) such land acquisition is thus exempt from the preparation of an environmental assessment. Importantly, a post-acquisition “change of use” action would be subject to environmental review requirements under Chapter 343, HRS, subsequent to and independent of the acquisition, if applicable at that time for that action.

3. Outside Advice

Subsection 11-200-8(a), HAR, Exempt classes of action, continues to be a subject of confusion, debate, and inconsistent application among agencies and applicants that are involved with the environmental review process under Chapter 343, HRS:

Chapter 343, HRS, states that a list of classes of actions shall be drawn up which, because they will probably have minimal or no significant effect on the environment, may be declared exempt by the proposing agency or approving agency from the preparation of an environmental assessment provided that agencies declaring an action exempt under this section shall obtain the advice of other outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption.

Applying a conservative interpretation of the rule, DOFAW requested the advice of numerous outside agencies and entities having jurisdiction and expertise as to the propriety of the three proposed exemptions for land acquisition, including discussion with the Legacy Land Conservation Commission (LLCC) at its meetings in December 2016 and May 2017. DOFAW’s latest requests for advice, dated April 19, 2017, included maps and pictures of the lands to be acquired, and tables—shown below—that summarize (1) the existing use of land or resources at each of the two properties recommended for acquisition by a nonprofit land conservation organization, and (2) the state land use district (LUD); county zoning, land use ordinance (LUO), and plans; and other encumbrances that limit existing and future use of each of those two properties:

Existing use of land and resources at properties recommended for FY17 LLCP land acquisition grants to nonprofit land conservation organizations

Application	State LUD	County LUO	existing use	change of use (aspirational, not “caused” by grant award)	encumbrances
Waikapuna	Agriculture Conservation (Resource Subzone)	A-20a SMA (Special + Shoreline)	agriculture (pasture) conservation cultural practice coastal access telcom towers	sewage treatment facility (possible County initiative)	conservation easement deed restrictions LLCP grant agreement pasture leases/licenses telcom licenses roadway/utility easements
Kepler Ke‘anae Lo‘i	Agriculture	Ag (2 acre minimum lot size)	agriculture (one lessee, taro production in 26 of 36 existing fields)	expand agriculture (two lessees, taro production in 36 of 36 existing fields)	conservation easement that includes LLCP deed restrictions; LLCP grant agreement

Based on the applications, presentations, and public comments received by DOFAW during the grant application process, and the advice obtained from outside agencies and entities having jurisdiction and expertise as to the propriety of the exemptions (please see Attachment VI), DOFAW concludes that the mere acquisition of interests in land funded by each grant to a nonprofit land conservation organization, in and of itself, is not an activity that causes any material change of use of land or resources beyond that previously existing. Moreover—as authorized under subsection 13-140-24(a), paragraph (8), HAR—DOFAW may require awardees to meet any requirements of Chapter 343, HRS, prior to disbursing funds for land acquisition grants. Internally, DLNR’s Land Division

imposes the same requirement on land acquisition by a state agency. In any case, it is important to distinguish that post-acquisition management activity described in an application is aspirational, not obligatory, and does not represent an irrevocable commitment that would be enforceable under a LLCPC grant agreement.

Therefore, DOFAW recommends that Board declare that the acquisition of land by DLNR using FY17 funds awarded by the Legacy Land Conservation Program, and the awards of FY17 Legacy Land Conservation Program grants to nonprofit land conservation organizations under Haw. Rev. Stat. Chapter 173A for the acquisition of interests in land, will probably have minimal or no significant negative effects on the environment, and that each acquisition and award is exempt from the preparation of an environmental assessment. A Declaration of Exemption for each proposed acquisition and award is attached (Attachment VI; please see Attachment 1 for maps and photos).

RECOMMENDATIONS

That the Board:

- 1) Approve an award of \$1,500,000 from the Land Conservation Fund, under the FY17 spending ceiling for the Legacy Land Conservation Program, to the Division of Forestry and Wildlife, to be deposited into the Turtle Bay conservation easement special fund for the payment of debt service on the Turtle Bay reimbursable general obligation bonds (Turtle Bay Makai – Kahuku Kawela Forever), subject to the availability of funds and the approval of the Governor.
- 2) Approve an award of \$738,346 from the Land Conservation Fund, under the FY17 spending ceiling for the Legacy Land Conservation Program, to the Division of Forestry and Wildlife, and authorize the Chairperson to execute a letter of offer to the landowner and encumber funds from the Land Conservation Fund, for the acquisition of 4,469.585 acres at Kūka‘iau and Koholālele, Hāmākua, Hawai‘i (Addition to Mauna Kea Forest Reserve, Upper Kūka‘iau Ranch Acquisition), subject to the availability of funds, the approval of the Governor, compliance with Chapter 173A, HRS, and the normal process and procedures for the acquisition of lands by the State.
- 3) Authorize the Chairperson to enter into an agreement and encumber FY17 funds with the Ala Kahakai Trail Association, for the acquisition of 2,209.307 acres at Kāhilipali Nui and Kāhilipali‘iki, Ka‘ū, Hawai‘i,

using a total of \$100,000 from the Land Conservation Fund, subject to:

- a. compliance with Chapter 173A, HRS;
- b. compliance with Chapter 343, HRS;
- c. execution of a Grant Agreement with the BLNR;
- d. certification of an appraisal by the Department;
- e. insertion of Legacy Land Conservation Program restrictions and covenants into the deeds as a condition of contractual agreements with the grant recipients;
- f. approval of the Grant Agreement and of the Deeds 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.

- 4) Approve—as a contingency in the event that an awardee is unable to accept its awarded funds—the Commission’s recommendation to award funds to, and authorize the Chairperson to encumber FY17 funds from the Land Conservation Fund and to enter into a grant agreement with: first, the Ala Kahakai Trail Association, as an alternate, for the acquisition of 2,209.307 acres at Kāhilipali Nui and Kāhilipali‘iki, Ka‘ū, Hawai‘i; and second, the Hawaiian Islands Land Trust, as an alternate, for the acquisition of a conservation easement over 6.12 acres at Ke‘anae, Hana, Maui

using remaining, available FY17 funds from the Land Conservation Fund, up to the amounts originally requested in the applications, subject to:

- j. compliance with Chapter 173A, HRS;
- k. compliance with Chapter 343, HRS;
- l. execution of a Grant Agreement with the BLNR;
- m. certification of an appraisal by the Department;
- n. insertion of Legacy Land Conservation Program restrictions and covenants into the deeds as a condition of contractual agreements with the grant recipients;
- o. approval of the Grant Agreement and of the Deeds by the Attorney General’s office;
- p. the availability of funds;
- q. the approval of the Governor; and
- r. such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

- 5) Authorize the Chairperson—in the event that the Department or its awardee discontinues an approved FY17 award for the acquisition of interests in land, prior to conveyance—to redirect the encumbered funding from the discontinued award to other FY17 awards, up to the amounts requested, in the order ranked by the Legacy Land Conservation Commission.

- 6) Require the imposition of Legacy Land Conservation Program restrictions and covenants into the deeds for each completed acquisition of land or interests in land as a condition of contractual agreements with the grant recipients, and exempt each acquisition from any additional conservation easements that may be required under Section 173A-4, HRS.

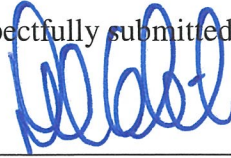
- 7) Declare that an approved award of FY17 grant funds from the Legacy Land Conservation Program to DOFAW will probably have minimal or no significant effects on the environment; is an action for the acquisition of land or interests in land; and is exempt from the preparation of an environmental assessment in accordance with Sections 343-5 and 343-6, HRS; Section 11-200-8, HAR; and Exemption Class 1, Action Type 45 on the Exemption List for the Department of Land and Natural Resources, reviewed and concurred on by the Environmental Council on June 5, 2015.

- 8) Declare that each approved award of FY17 grant funds from the Legacy Land Conservation Program to a nonprofit land conservation organization for land acquisition will probably have minimal or no significant effects on the environment; is an action for the award of grants under Haw. Rev. Stat. Chapter 173A that does not fund an activity that causes any material change of use of land or resources beyond that previously existing; and is exempt from the preparation of an environmental assessment in accordance with Sections 343-5 and 343-6, HRS; Section 11-200-8, HAR; and

Exemption Class 1, Action Type 49 on the Exemption List for the Department of Land and Natural Resources, reviewed and concurred on by the Environmental Council on June 5, 2015.

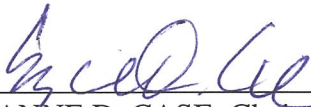
9) Authorize the Department to proceed with all due diligence and negotiations that may be necessary to carry out the FY17 Legacy Land Conservation Program grants and acquisitions approved by the Board and the Governor.

Respectfully submitted,



DAVID G. SMITH, Administrator

APPROVED FOR SUBMITTAL:



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

ATTACHMENTS:

- Attachment I: Table of recommended awards for the Fiscal Year 2017 Legacy Land Conservation Program with project maps and photos attached
- Attachment II: Letter from the Speaker of the House of Representatives, dated January 31, 2017
- Attachment III: Letter from the President of the Senate, dated February 28, 2017
- Attachment IV: Agency consultation correspondence for DOFAW application, Addition to Mauna Kea Forest Reserve, Upper Kūka‘iau Ranch Acquisition
- Attachment V: DLNR Exemption Notification, Acquisition of private land and conservation easement from Turtle Bay Resort, LLC, dated September 25, 2015
- Attachment VI: DLNR Exemption Notifications and Declarations of Exemption for the award of grants under Haw. Rev. Stat. Chapter 173A
- Attachment VII: Budget Update, Legacy Land Conservation Program
- Attachment VIII: Decision Matrix for the Approval of Grants, Legacy Land Conservation Program

Legacy Land Conservation Commission, Recommendations and Rankings, December 13, 2016

At its meeting on December 16, 2016, the Legacy Land Conservation Commission recommended that the Board of Land and Natural Resources grant four awards from available funds in the Land Conservation Fund: first, for the payment of debt service on the Turtle Bay reimbursable general obligation bonds (\$1.5 million), and thereafter for full funding of the top three proposed land acquisition projects, in the order ranked by the Commission, as described below. The total amount that applicants requested for these four awards was \$ 4,448,346 (sum of the **bold** figures in the column labeled “Legacy Land \$”). At present, the estimated funding available for grants in Fiscal Year 2017 is limited to \$ 2,234,309.

Implementing the Commission’s recommendations under this limitation would result in:

- (1) an award of the requested amount for the payment of debt service on the Turtle Bay reimbursable general obligation bonds (\$1.5 million), and
- (2) a partial award of \$ 734,309 for land acquisition at Waikapuna, Ka’ū, Hawai’i.

The Commission explained that it based its recommendations on an assumption that approximately \$4.5 million—the historical level of annual funding available for grants—would be made available for the four awards described below by restoring, in FY18, \$ 2,228,250 of FY15 funds that lapsed in FY16 during a prolonged period of multiple staff vacancies in the Division of Forestry and Wildlife.

Rank	Project Title	Applicant(s)	District & Island	Fee/ Easement/ DebtServ	Entity that will hold	Acres	Match \$	Legacy Land \$	Total Cost \$
	Turtle Bay Makai - Kahuku Kawela Forever	The Trust for Public Land +Hawaii DLNR	Ko’olaupua, North Shore of O’ahu	DebtServ	State of Hawaii (Fee and Easement) City and County of Honolulu (Fee)	621.439	\$36,663,356 (includes \$1.5 million from FY16 Legacy Land)	\$1,500,000	\$38,163,356
1	Waikapuna	Ala Kahakai Trail Association + The Trust for Public Land	Ka’ū, Hawaii	Fee	Ala Kahakai Trail Association (Fee) Ala Kahakai National Historic Trail (Easement)	2,209.307	\$4,261,000	\$2,000,000	\$6,261,000
2	Addition to Mauna Kea Forest Reserve, Upper Kūka’iau Ranch Acquisition	Hawaii DLNR, Division of Forestry and Wildlife	Hāmākua, Hawaii	Fee	Hawaii DLNR (The Nature Conservancy holds an existing easement over the two largest parcels)	4,469.585	\$2,393,988	\$738,346	\$3,132,334
3	Kepler Ke’anae Lo’i	Hawaiian Islands Land Trust	Hana, Maui	Easement	Hawaiian Islands Land Trust	6.120	\$306,617	\$210,000	\$516,617

Legacy Land Conservation Commission, Recommendations and Rankings, December 13, 2016

Rank	Project Title	Applicant(s)	District & Island	Fee/ Easement/ Debt/Serv	Entity that will hold	Acres	Match \$	Legacy Land \$	Total Cost \$
4	Hāloa 'Āina – Royal Hawaiian Sandalwood	Hawai'i DLNR, Division of Forestry and Wildlife	South Kona, Hawai'i	Easement	Hawai'i DLNR	2,780.000	\$3,334,000	\$1,000,000	\$4,344,000
5	Ho'oulu 'Āina, Growing Futures for All	The Living Pono Project	Waiehu, Maui	Fee	The Living Pono Project	240.090	\$883,830	\$2,648,514	\$3,531,352

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

May 12, 2017

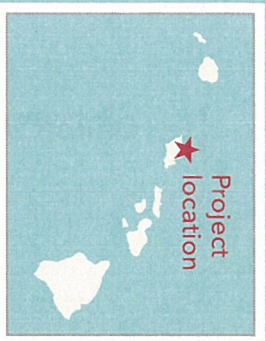
ATTACHMENT I
AGENDA ITEM C-__

MAPS AND PHOTOS SUBMITTED WITH APPLICATIONS FOR FY17 GRANTS,
LEGACY LAND CONSERVATION PROGRAM, IN THE ORDER LISTED IN THE
LEGACY LAND CONSERVATION COMMISSION RECOMMENDATIONS AND
RANKINGS, DECEMBER 13, 2016

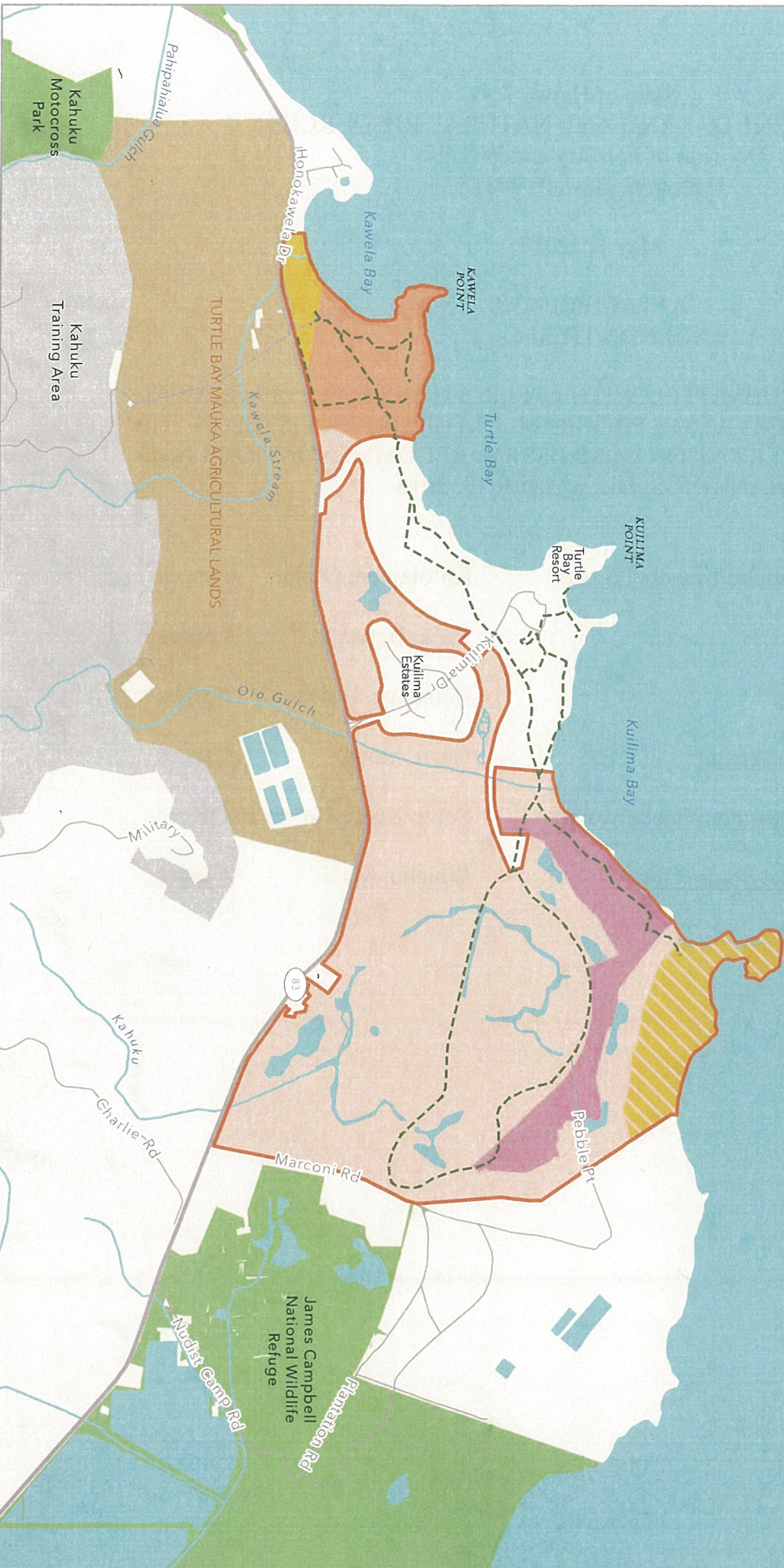
	<u>Turtle Bay Makai – Kahuku Kawela Forever:</u>	Ko'olauloa, O'ahu	6 pages
1.	<u>Waikapuna:</u>	Ka'ū, Hawai'i	4 pages
2.	<u>Upper Kūka'iau Ranch:</u>	Hāmākua, Hawai'i	7 pages
3.	<u>Kepler Ke'anae Lo'i Easement:</u>	Hana, Maui	3 pages
4.	<u>Hāloa 'Āina – Royal Hawaiian Sandalwood:</u>	South Kona, Hawai'i	4 pages
5.	<u>Ho'oulu 'Āina, Growing Futures for All:</u>	Waiehu, Maui	2 pages

KAHUKU KAWELA FOREVER









ISLAND OF O'AHU, HAWAII

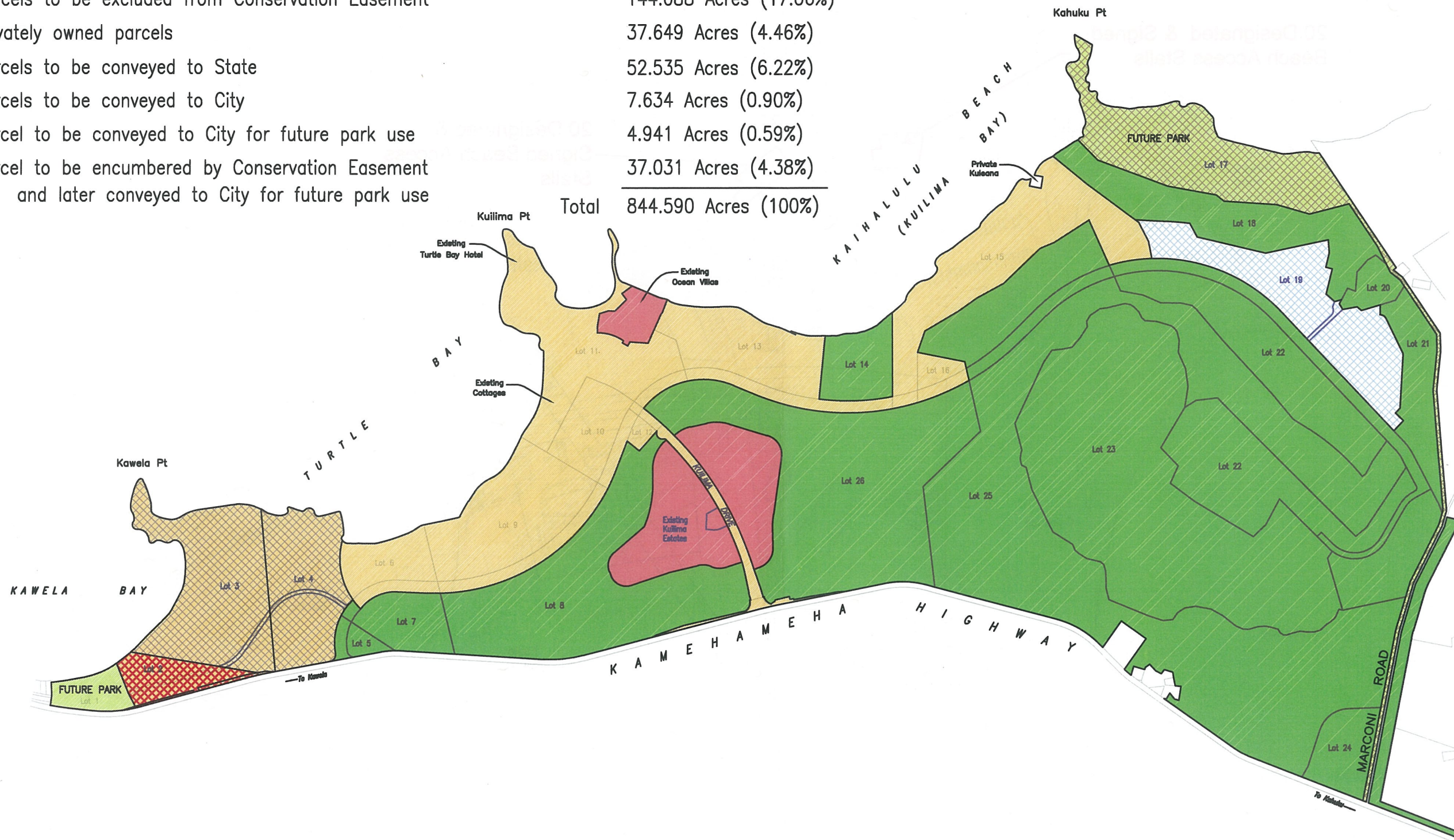


- Project location
- Kahuku Kawela Project
- Overall boundary
- State fee purchase
- State conservation easement purchase
- City fee purchase and future park lands
- Interim conservation easement owned by State
- Excluded acreage
- Public access trail
- Soon to be conserved
- Parks, open space, and other protected land
- Military land

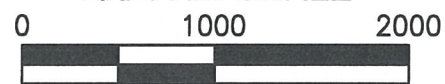


LEGEND

	Parcels to be encumbered by Conservation Easement	531.386 Acres (62.92%)
	Parcel to be encumbered by Phase II Conservation Easement	29.326 Acres (3.47%)
	Parcels to be excluded from Conservation Easement	144.088 Acres (17.06%)
	Privately owned parcels	37.649 Acres (4.46%)
	Parcels to be conveyed to State	52.535 Acres (6.22%)
	Parcels to be conveyed to City	7.634 Acres (0.90%)
	Parcel to be conveyed to City for future park use	4.941 Acres (0.59%)
	Parcel to be encumbered by Conservation Easement and later conveyed to City for future park use	37.031 Acres (4.38%)
Total		844.590 Acres (100%)



TRUE NORTH
GRAPHIC SCALE



1 INCH = 1000 FT.

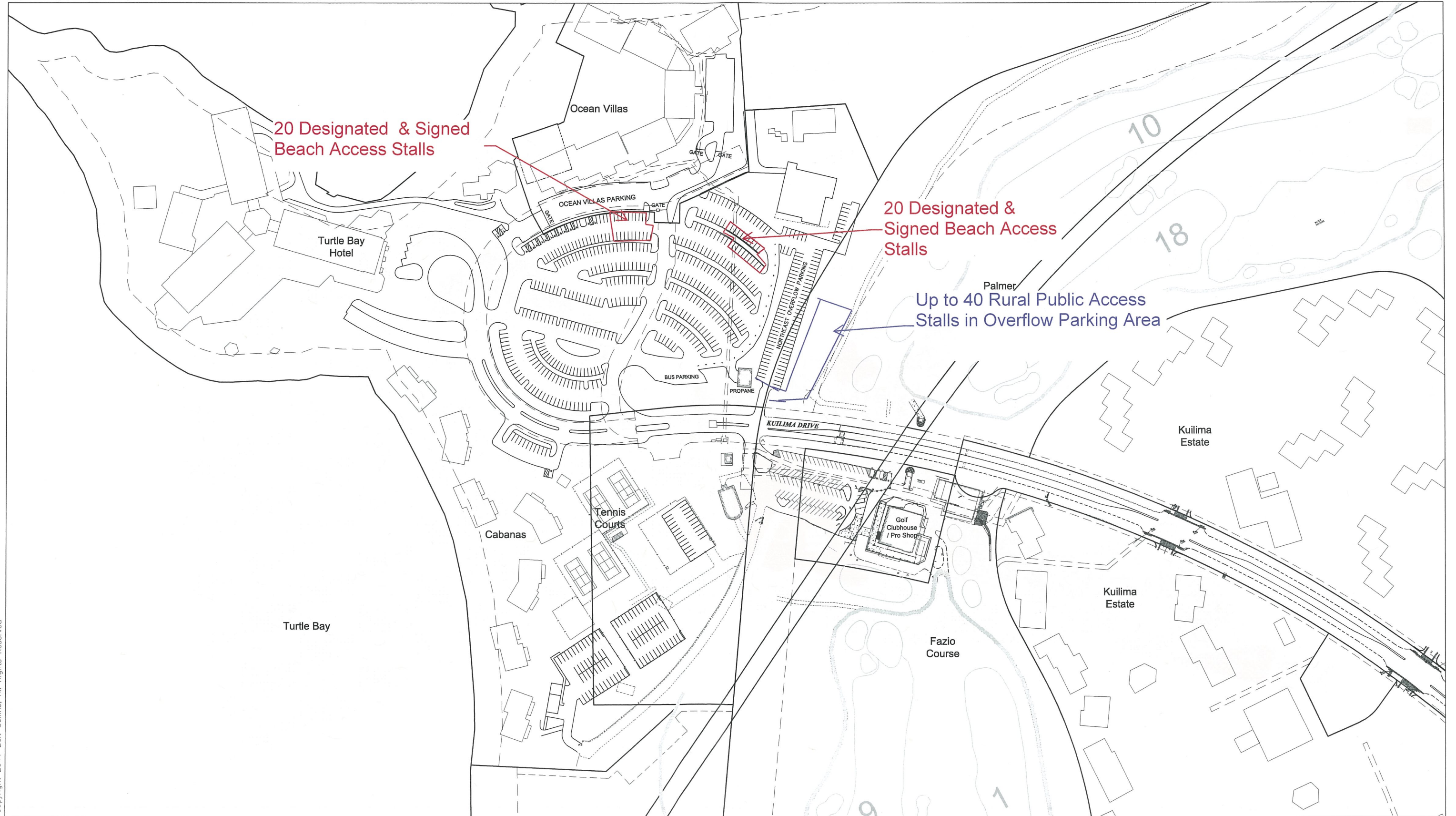
CONSERVATION EASEMENT

TAX MAP KEYS: 5-6-003, 5-7-001, 5-7-006 (VARIOUS)

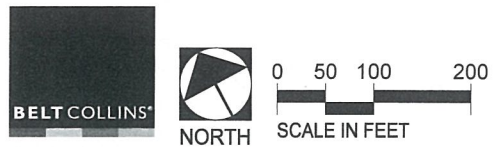
TURTLE BAY RESORT
JULY 2015

Turtle Bay Resort Public Access Stalls

Mon, 10 Aug 2015 - 1:46pm
M:\Turtle Bay\Shared Bases\Existing\Turtle Bay Hotel Parking Base\Parking Layout 20150810.dwg



©Copyright 2011 Belt Collins. All Rights Reserved



PARKING LAYOUT PLAN



Lei Ola and pup, Keiki Pool 2016 (courtesy of Nate Yuen)



Kawela Bay to Kahuku Point (courtesy of Sean Davey)

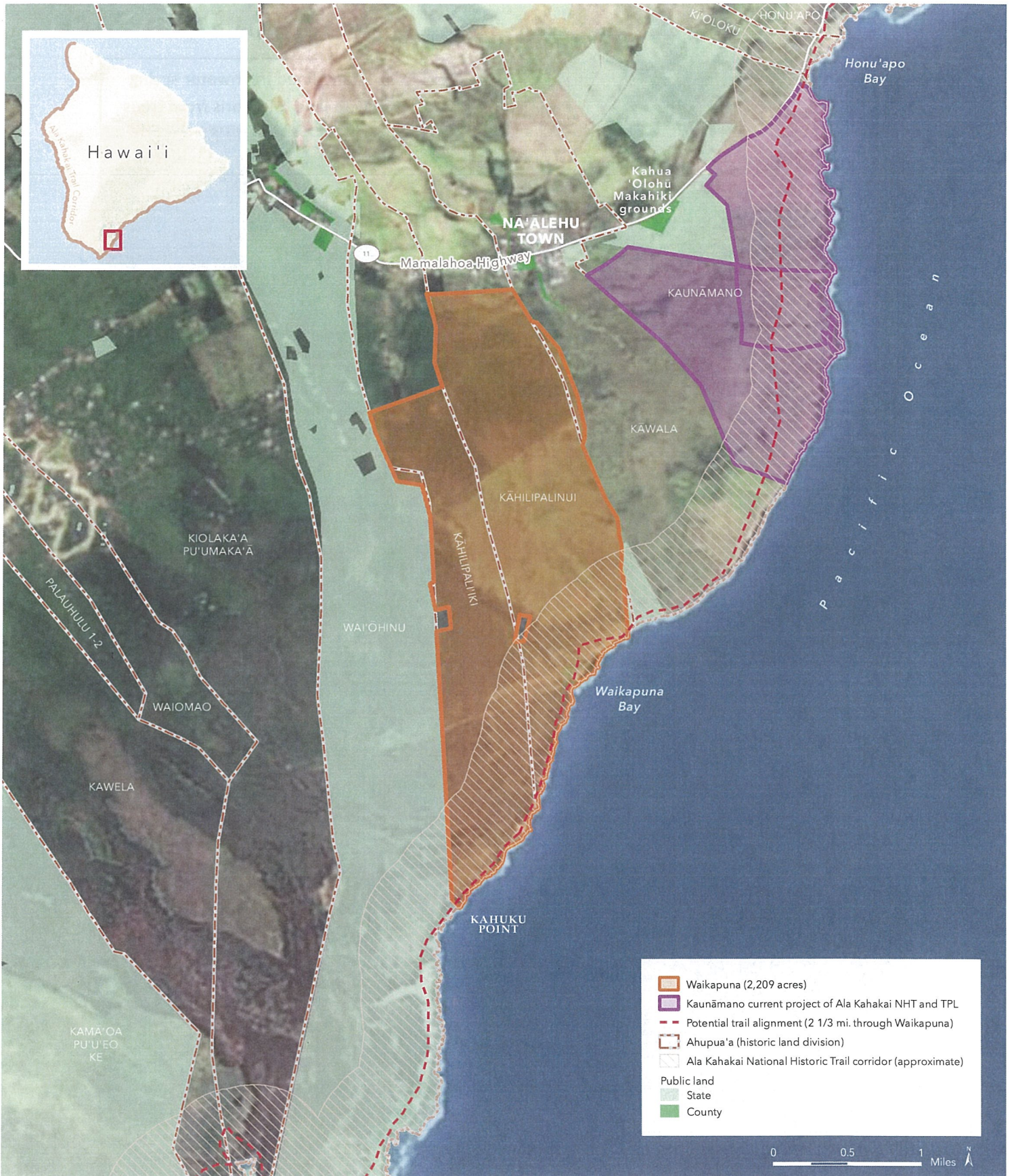


Endangered 'ohai (*Sesbania tomentosa*) near Kahuku Point (courtesy of North Shore Community Land Trust)

Waikapuna General Location Map

Waikapuna, Kāhilipalinui and Kāhilipali'iki Ahupua'a, Ka'u, Hawai'i Island





Waikapuna, Kāhilipalinui and Kāhilipali'iki Ahupua'a

KA'Ū, HAWAII ISLAND





Stone-lined freshwater spring with layer of debris from trees

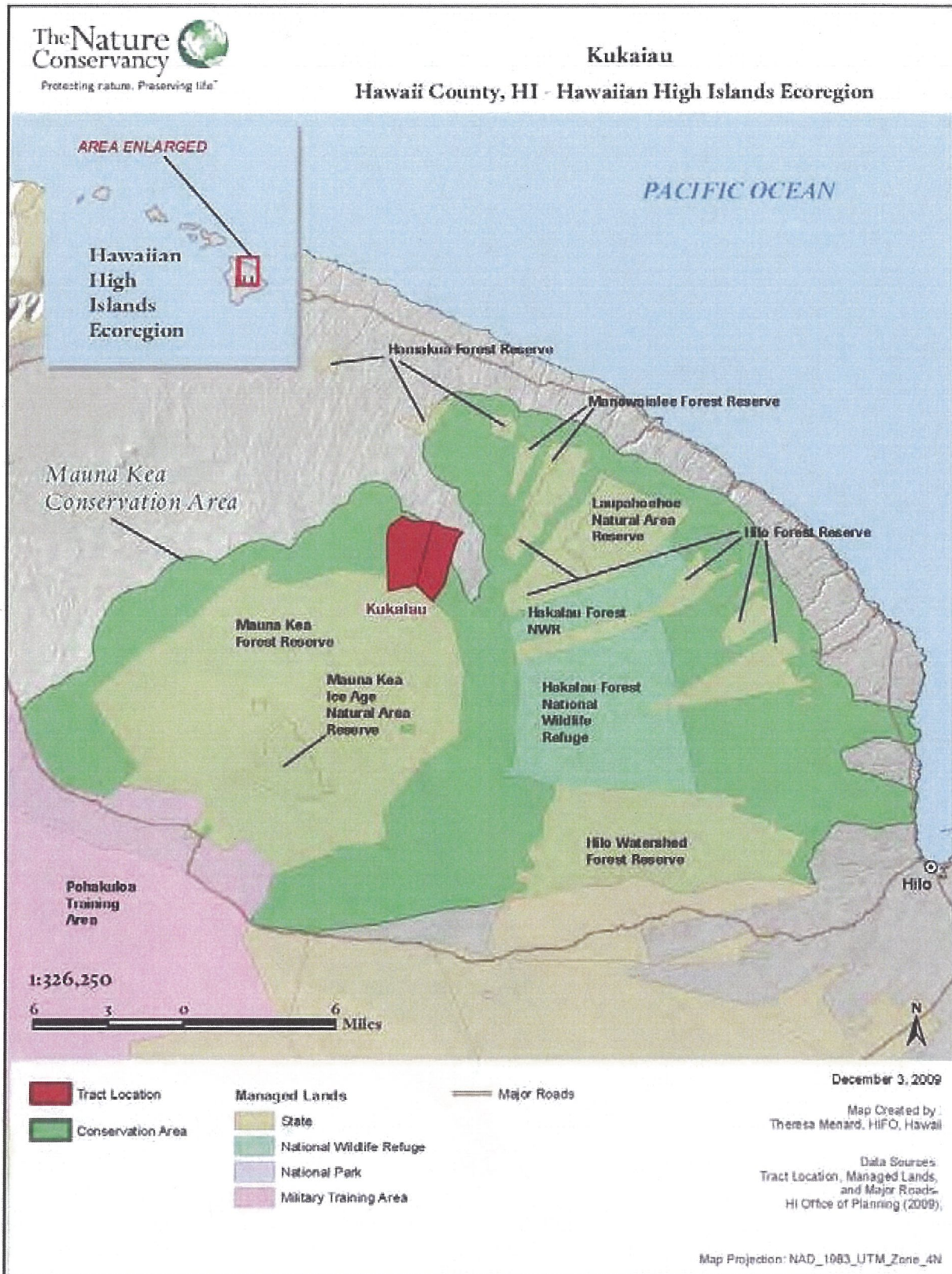


Waikapuna bay

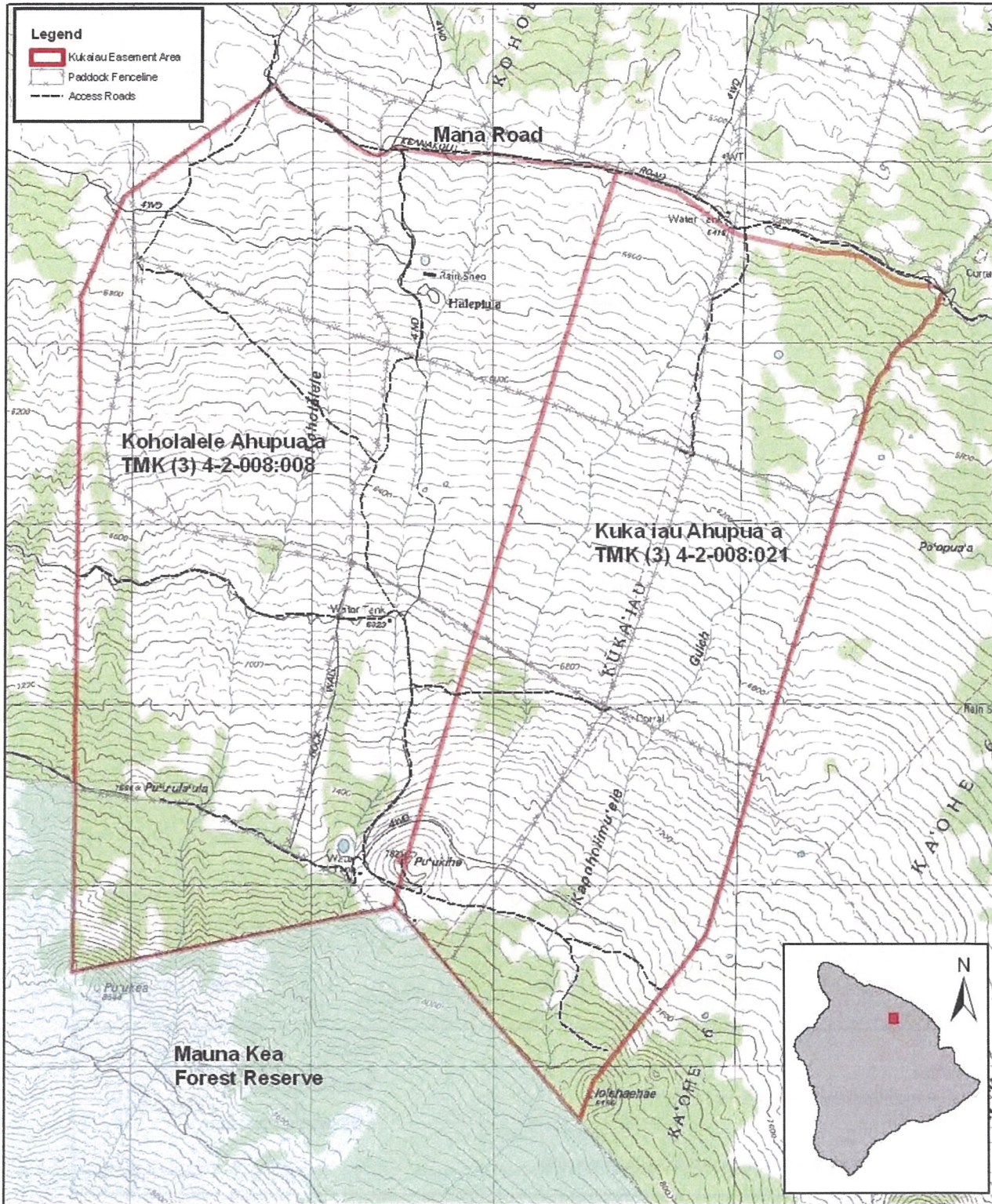


Volcanic glass found by old hearth with native coastal plants and ancient structures in background

General Location Map, Upper Kūka'iau



Parcel Map, Upper Kūka'iau



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



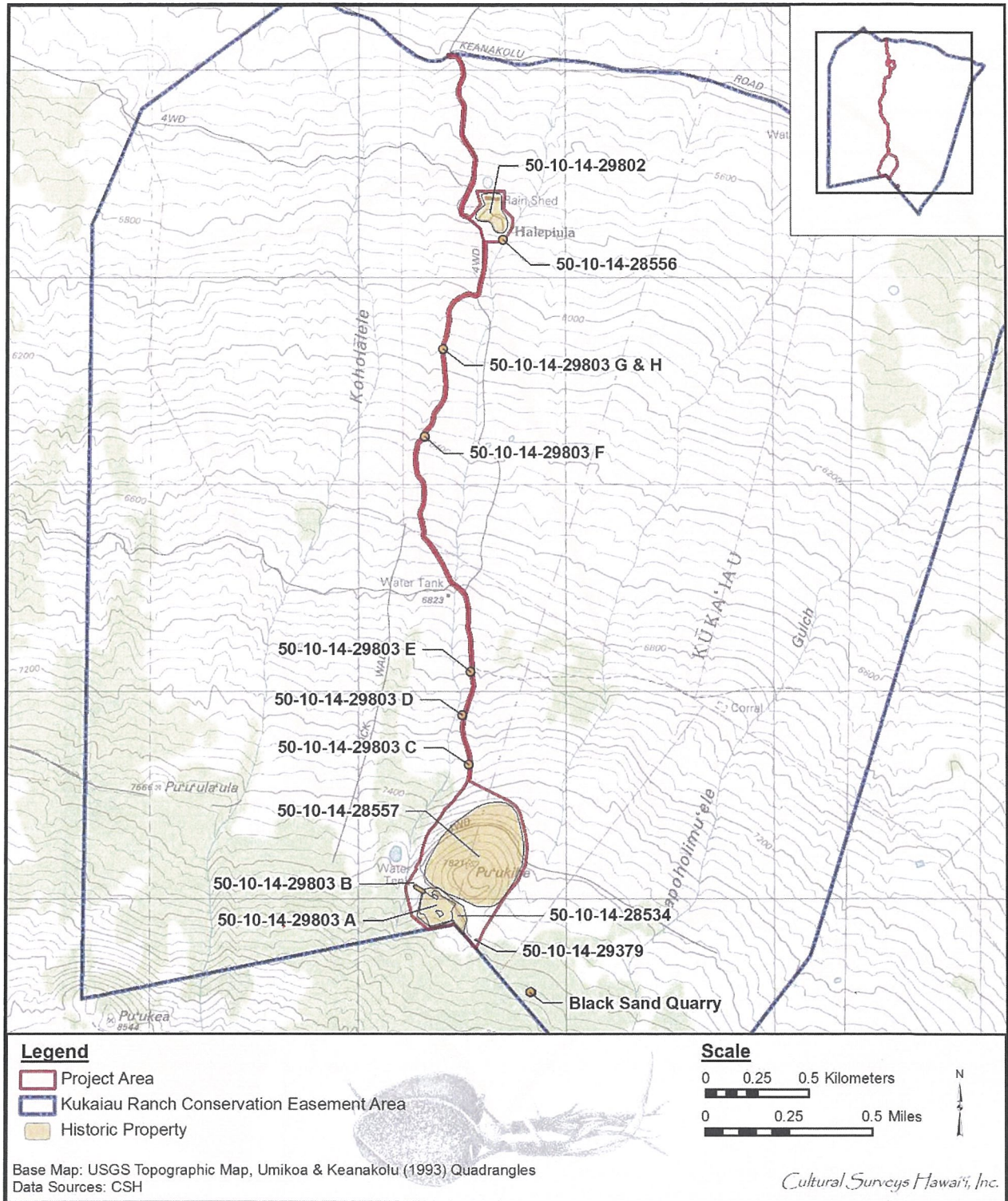
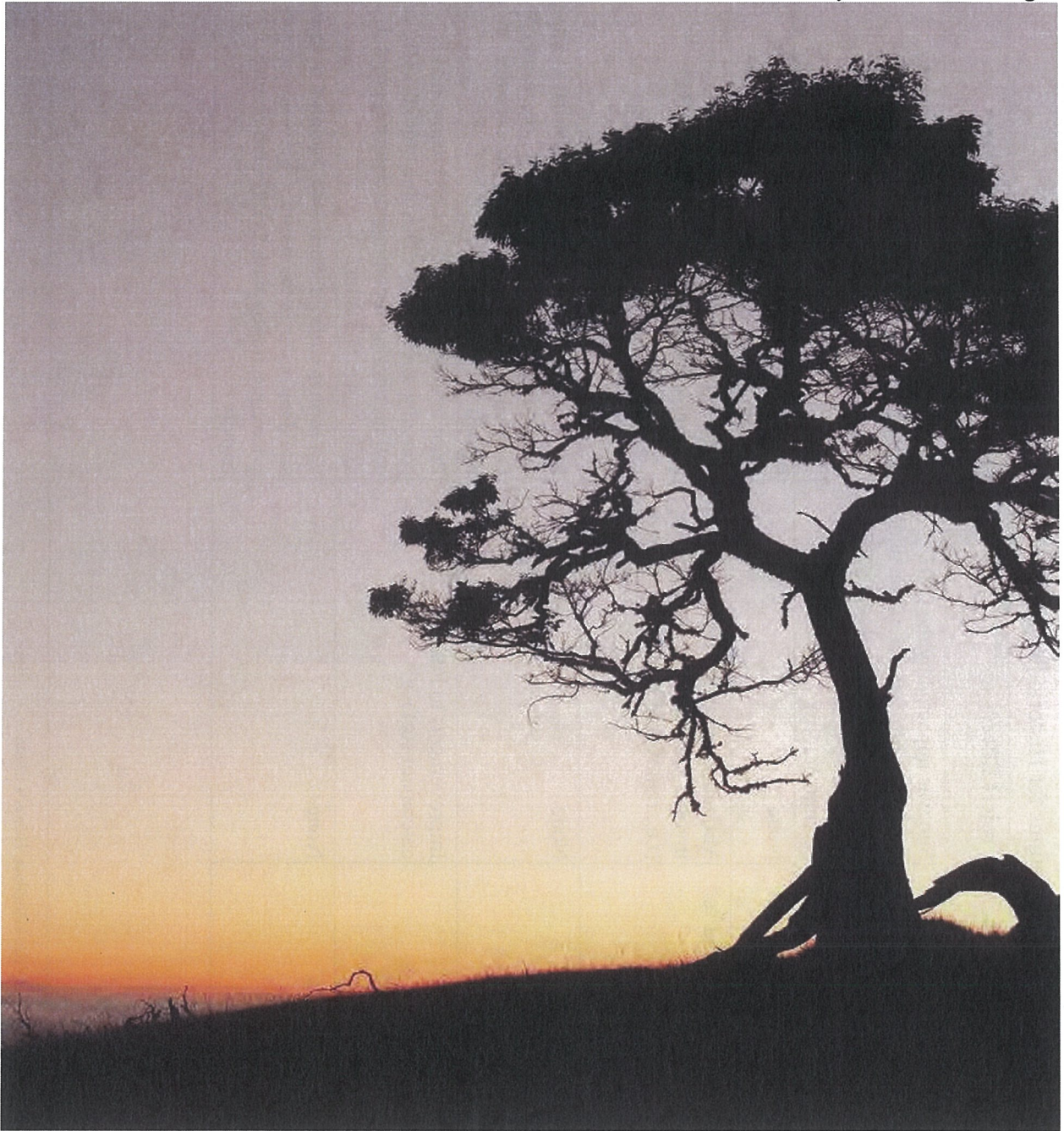


Figure 15. Portion of the 1993 Keanakolu and Umikoa USGS (USGS) 7.5-Minute Series Topographic Quadrangles, showing the locations of the six historic properties documented during the present investigation

Table 8. Project Effect and Mitigation Recommendations for Historic Properties in the Project Area

SIHP #	Site Type	Function	Significance	Project Effects	Recommended Mitigation
28534	Complex	Burial	"d" and "e"	Site was impacted by the 2007 catchment project; mitigation under the BTP <i>may</i> involve future ground disturbance (i.e., removal of entire catchment tarp)	Preservation, with details to be determined through consultation and outlined in BTP
28556	Lava tube	Burial	"d" and "e"	None	Preservation, with details to be determined through consultation and outlined in BTP
28557	Complex	Burial, ceremonial, benchmarks, quarry, and hunting	"d" and "e"	Mitigation under the BTP <i>may</i> involve future ground disturbance (i.e., removal of HELCO Repeater)	Preservation, with details to be determined through consultation and outlined in BTP
29379	Complex	Temporary habitation	"d"	None	No further work; if work with potential to impact site does occur in the future, CSH recommends prior consultation with SHPD architecture branch
29802	Complex	Water control related to animal husbandry	"d"	Improvements to Feature A catchment surface	Prior to the start of work, CSH recommends consultation with SHPD architecture branch; on-call monitoring recommended during ground-disturbance at Feature A
29803	Complex	Water control related to animal husbandry	"d"	None	No further work; if work with potential to impact site does occur in the future, CSH recommends prior consultation with SHPD architecture branch

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.

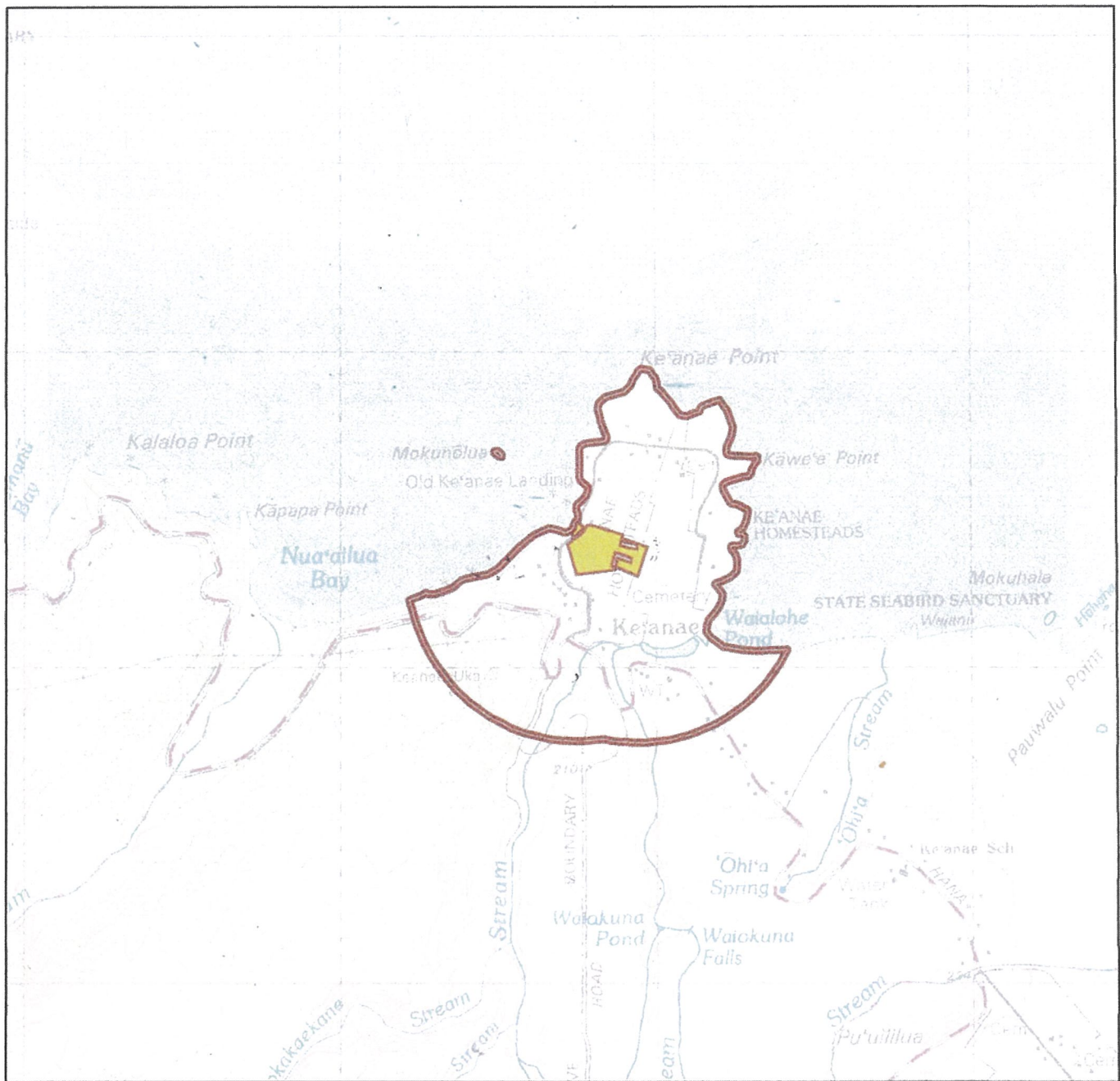
Caption: Kūka'iau Ranch:
 On the landscape of the Big Island forever



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



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





T&E Species Map for: *William Kepler : TMK 211003041*

T& E Species Occurrences; accurate to 0.3 miles

None in project area

Project Location

-  .33-mile project location buffer
-  Project Area

U.S. Fish & Wildlife Service Critical Habitat

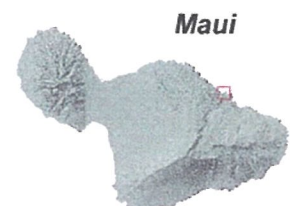
None in project area



1:18,500
UTM Zone 4, NAD83

Leo Smock-Randall
NRCS-HI
Kahului Field Office

Map prepared by
Island Geographic
January 18, 2009



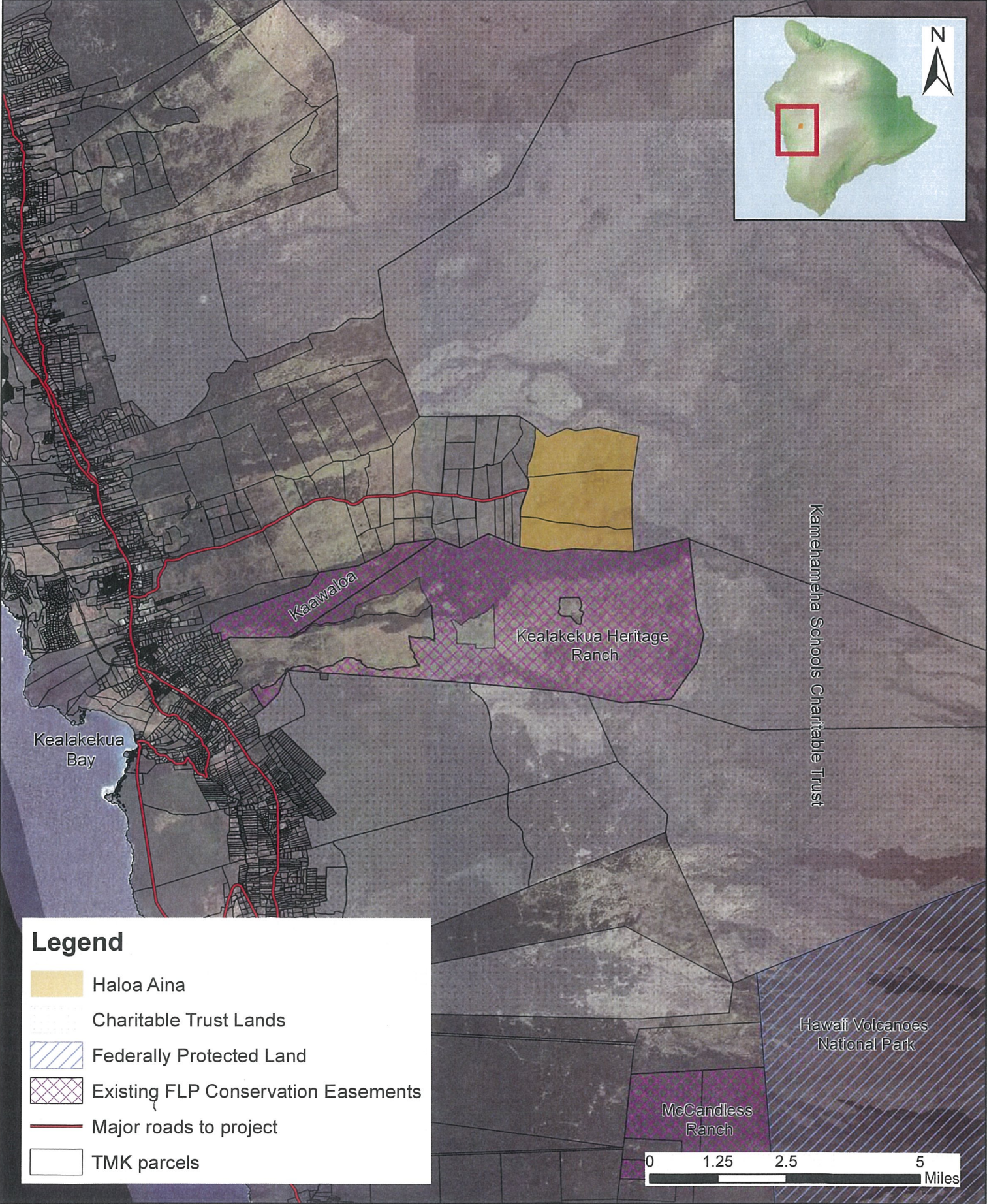


Another representative view of the Kepler family's taro patches on the Ke'anae Peninsula.



Kepler taro patches; the house on the property is on the left (note: the home itself is excluded from the easement).

Haloa Aina - General Location Map



Haloa Aina - Parcel Map





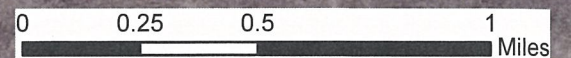
379001013

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Legend

-  TMK parcels
-  Haloa Aina



Photos



Figure 1. Three-year-old *Santalum paniculatum* regeneration from root sprouts following salvage harvest of senescent trees.



Figure 2. Extensive *S. paniculatum* regeneration 13 months after salvage harvesting. Native species including māmane and naio thrive in this setting, and at the same time suppress the non-native kikuyu grass groundcover.



Figure 3. Volunteer workers replanting the endemic Hawaiian tree species *Santalum paniculatum* and *Acacia koa*.

Pacific Ocean



Living Pono Project Proposed Property Photos



Ho'oulu 'Aina

ATTACHMENT II
May 12, 2017
ITEM C-

JOSEPH M. SOUKI
Speaker of the House

Phone: (808) 586-6100

Fax: (808) 586-6101



HOUSE OF REPRESENTATIVES

STATE OF HAWAII
STATE CAPITOL, ROOM 431
415 SOUTH BERETANIA STREET
HONOLULU, HAWAII 96813

January 31, 2017

Ms. Suzanne D. Case
Chairperson
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Dear Chair Case:

Thank you for your letter dated January 5, 2017 in which you submitted for my review, the recommendations from the Legacy Land Conservation Commission for grants from the Land Conservation Fund to preserve features, functions, and uses of land having value as a resource to the State.

Upon reviewing, I currently have no concerns or objections to the five projects as proposed in your attachment.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joseph M. Souki".

Joseph M. Souki
Speaker of the House

ATTACHMENT III
MAY 12, 2017
ITEM C-



The Senate

STATE CAPITOL
HONOLULU, HAWAII 96813

February 24, 2016

Ms. Suzanne D. Case
Chairperson
Department of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813

Re: Projects for the Fiscal Year 2016 Legacy Land Conservation Program

Dear Chair Case:

I am in receipt of your letter dated December 17, 2016 regarding the Legacy Land Conservation Commission's recommendations for the funding of projects for the Fiscal Year 2016 Legacy Land Conservation Program.

This is to confirm that I have no concerns or objections at this time as it relates to the five projects listed in the aforementioned letter.

Thank you and should you have any questions with regard to the foregoing, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald D. Kouchi", written over a horizontal line.

RONALD D. KOUCHI
Senate President
8th Senatorial District – Kauai and Niihau

cc: Speaker Joseph M. Souki

ATTACHMENT IV
MAY 12, 2017
ITEM C-

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

September 22, 2016


SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

TO: Division of Forestry and Wildlife

FROM:  Suzanne D. Case, Chairperson

SUBJECT: Comments regarding request for consultation on a summary for a proposal to the Legacy Land Conservation Program

The following comments were received from Divisions within the Department regarding the proposal summary for the Upper Kuka'iau Ranch Acquisition project:

Office of Conservation and Coastal Lands:

- (3) 4-2-008: 008; Small portion of TMK lies within the Resource subzone. Acquisition for Conservation Management. Proposed land uses within the Resource subzone portion of the parcel should be reviewed by the OCCL.
- Pursuant to Chapter 13-5, HAR "Land use" means:
 - (1) The placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs;
 - (2) The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;
 - (3) The subdivision of land; or
 - (4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.For purposes of this chapter, harvesting and removing does not include the taking of aquatic life or wildlife that is regulated by state fishing and hunting laws nor the gathering of natural resources for personal, non-commercial use or pursuant to Article 12, Section 7 of the Hawaii State Constitution or section 7-1, HRS, relating to certain traditional and customary Hawaiian practices.

Division of Forestry and Wildlife, Hawai'i Branch:

- *Burial Sites and Burial treatment plan:* This is a very important consideration. Will DeLuz be responsible for this or the new owner? This will be substantial. This is

Historic Preservation's area of expertise not DOFAW's. Will they manage this for DLNR?

- *Hunting:* There are some pigs and a herd of Mouflon Sheep on the property. Hunters have lost 89,350 acres of sheep hunting on Mauna Kea. Hunters have been told by DLNR for decades when we take high value conservation areas out of hunting, 'there are thousands of acres of pasture lands that we can turn in to hunting areas.' We have an opportunity here to acquire 'thousands of acres of pastureland' and provide hunting opportunities for mammals and birds. We can manage the sheep on this property with a tag system to sustain a level of sheep hunting. Pigs and game birds can be managed as well. By utilizing ranch cattle to maintain grass we can improve habitat for game bird hunting on portions of the lease. We can also improve habitat with mowing, water units and food plots.
- *Nēnē Habitat:* The above measures will also improve habitat for Nēnē on the island. All of the catchment ponds will provide habitat for Nēnē and Koloa.
- *Fire Control:* All of the water features will be maintained to assist with fire suppression on Mauna Kea where lack of water for firefighting has been an issue. Ranch is asking for access to the water system for a number of years as a condition of sale. If they have access to a percentage of the water they need to maintain the system at their expense. Cattle will be an important component of managing the fuel loads for many years. Similar to Pu'u wa'a wa'a, Honua'ula and Kapapala GMA.
- *Palila Habitat:* This parcel gives us an opportunity to move the fence makai to avoid the burial sites and protect and restore the mauka portion of the parcel that still has a few trees. We have learned from working at Pu'u Mali that reforestation of former ranch lands in a dry area is a long term endeavor.
- *Watershed enhancement:* We can utilize different tree species to restore tree cover to this parcel to increase water infiltration in to our aquifers. Potentially partner with an organization like Hawaiian Legacy Hardwoods to do reforestation for DLNR.
- *OHV:* There is OHV use of R1 on Mauna Kea and also on Mana Road. This would provide a way for these users to access Mana from R1 and vice versa. Many users stay at our Keanakolu cabins while they ride Mana road. We could use a portion of the parcel along Mana to make an OHV park similar to Waiākea but smaller.
- *Horseback riding, Hiking and Mountain Bikes:* Same uses and benefits as OHV.
- *Recreational Facility for Camping:* The upper portion of the parcel has a cabin we can use for staff as well as rent out to the public. The cabin will need improvements before it would be suitable for public use. This cabin provides a link to the long planned campsites circling Mauna Kea along R1.
- *Forest Products:* We could utilize a portion of the parcel to produce sandalwood and koa for future harvesting and income generation.
- This area provides an opportunity to meet the needs of all our user groups. We have our hands full trying to reforest Pu'u Mali(former ranch land) with limited success. To take on another large pasture to restore Palila habitat is beyond our present capabilities. We will need additional manpower, equipment and money to manage this property.

Thank you for the opportunity to provide consultation on this proposal.

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lt. Governor



SCOTT E. ENRIGHT
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

September 1, 2016

Mr. James Cogswell
Wildlife Program Manager
Department of Land and Natural Resources
1151 Punchbowl Street
Honolulu, HI 96813

Dear Mr. Cogswell:

**Subject: 2016 Legacy Land Conservation Program Application
Department of Land and Natural Resources/Division of Forestry
and Wildlife (DOFAW)
Fee Purchase of Upper Kukaiau Ranch
Acres: 4,469.59
TMK: 4-2-008:008 (2,523.98 acres); 4-2-008:13 (.23 acres);
4-2-008:21(1,945.38 acres)**

The Hawaii Department of Agriculture (HDOA) has reviewed the summary for this Legacy Land Conservation Program (LLCP) application for Kukaiau Ranch, which involves the fee purchase of the subject parcels totaling 4,469.59 acres. The application seeks to protect the habitat for endangered animals and plants and agricultural resources associated with historic ranching activities.

This application was submitted to the LLCP in 2015 (without TMK: 4-2-008:13). Our comments to the 2015 application are attached. The current application did not provide any of the information we requested in the 2015 application.

The majority of TMK 4-2-008:008 (2,523.98 acres) is within the Agricultural District, and the entirety of TMKs 4-2-008:021 (1,945.38 acres) & 4-2-008:013 (.23 acres) are within the Agricultural District. According to the Land Study Bureau, the majority of the land is rated either "D" or "E", with approximately 10 percent of the land rated "C". Review of the land by HDOA staff indicates that the "D" and "E" rated lands have a cattle carrying capacity of 5-10 acres and 10-30 acres per animal unit year (AU) respectively, and the "C" rated lands have a cattle carrying capacity of 2.5-5 acres per AU. The larger two parcels, TMKs 4-2-008:008 (2,523.98 acres) and 4-2-008:13 (1,945.38 acres), are under a conservation easement that is held by The Nature Conservancy since 2009.



Mr. James Cogswell
September 1, 2016
Page -2-

HDOA notes that listed under "Resources to be Protected" are agricultural resources associated with historic ranching activities. HDOA staff reviewed the 2015 Statewide Agricultural Land Use Baseline study (Baseline study), which identified most of the project site for pasture use (Hawaii Island Crop Summary, Baseline study, page 75). Data used to create the crop summary maps came from satellite imagery, verified by ground-truthing, meetings with agricultural stakeholders and landowners, county real property tax assessment and agricultural water use (Baseline study, page 96). The information presented in the Baseline study is not intended for any regulatory use, therefore we present this information in that spirit (Baseline study, page 95). HDOA, again, requests the following information be provided to the LLC: current ranching activities on the subject property, including acres grazed; the total number of cattle; and, the number of years the ranch has been in operation. HDOA also requests information on the management plan for the ranch and how the ranch will maintain its current level of agricultural productivity in conjunction with critical habitat and forest preservation.

This application includes TMK: 4-2-008:13 which is a .23-acre square parcel directly between the other larger parcels within the subject property. The County of Hawaii Real Property Tax Office's website shows that Hawaii Electric Light Company is the lessee of this .23-acre parcel, and satellite imagery from the website shows that there is an "electrical structure" on the parcel (attached). HDOA requests information be provided to the LLC on why this .23-acre parcel is included in the application, and which resources are contained on the parcel that the applicant seeks to protect.

Should you have any questions, please contact Earl Yamamoto at 973-9466, or email him at earl.j.yamamoto@hawaii.gov.

Sincerely,



Scott E. Enright, Chairperson
Board of Agriculture

Attachments:

LLCP – Consultation Request Form
HDOA 2015 comments on Kukaiau Ranch
Hawaii County Real Property Tax Office's satellite imagery of TMK: 4-2-008:013

c: LLC Program Coordinator

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lt. Governor



SCOTT E. ENRIGHT
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

August 12, 2015

Ms. Suzanne Case,
Chairperson, Board of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813

Attention: Mr. David Penn
Division of Forestry and Wildlife

Dear Chairperson Case:

Subject: 2015 Legacy Land Conservation Program Application
Department of Land and Natural Resources/Division of Forestry and
Wildlife (DOFAW)
Fee Purchase of Upper Kukaiau Ranch
Acres: 4,469
TMK: 4-2-008:008; 4-2-008:021

The Hawaii Department of Agriculture (HDOA) has reviewed the summary for the Legacy Land Conservation Program application for Kukaiau Ranch, which involves the purchase in fee of the subject parcels totaling 4,469 acres. The application seeks to purchase the subject property to protect the habitat for endangered animals and plants and agricultural resources associated with historic ranching activities.

The majority of TMK 4-2-008:008 is within the Agricultural District, and the entirety of TMK 4-2-008:021 is within the Agricultural District. According to the Land Study Bureau, the majority of the land is rated either "D" or "E", with approximately 10 percent of the land rated "C". Review of the land by HDOA staff indicates that the "D" and "E" rated lands have a cattle carrying capacity of 5-10 acres and 10-30 acres per animal unit year (AUY) respectively, and the "C" rated lands have a cattle carrying capacity of 2.5-5 acres per AUY. The entire project area is under a conservation easement that is held by the Nature Conservancy.

HDOA notes that listed under "Resources to be Protected" are agricultural resources associated with historic ranching activities. HDOA requests more information be provided to the Legacy Land Conservation Program on the ranching activities, including acres grazed, number of cattle, and number of years the ranch has been in operation.

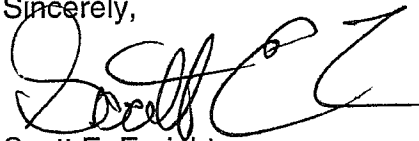


Ms. Suzanne Case
August 12, 2015
Page -2-

HDOA also requests more information on the management plan for the ranch and how it will operate in conjunction with habitat preservation.

Should you have any questions, please contact Earl Yamamoto at 973-9466, or email him at earl.j.yamamoto@hawaii.gov.

Sincerely,

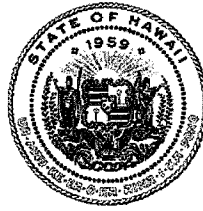
A handwritten signature in black ink, appearing to read "Scott E. Enright". The signature is stylized with a large initial "S" and a long horizontal stroke at the end.

Scott E. Enright
Chairperson, Board of Agriculture

Attachment (LLCP – Consultation Request Form)

c: Ms. Molly Schmidt, LLCP Program Coordinator
Legacy Land Oahu Kukaiau-DOFAW 2015

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL STREET, ROOM 325
HONOLULU, HAWAII 96813

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

September 29, 2016

Mr. Scott E. Enright, Chairperson
State of Hawai'i Board of Agriculture
1428 South King Street
Honolulu, HI 96814-2512

Dear Mr. Enright:

**SUBJECT: 2016 Legacy Land Conservation Program Application
Fee Purchase of Upper Kūka'iau Ranch, Hāmākua, Hawai'i**

The Division's Wildlife Program appreciates the careful review provided by the Hawai'i Department of Agriculture (HDOA), dated September 1, 2016, of the Legacy Land Conservation Program (LLCP) FY 2017 Agency Consultation form for the acquisition of fee title to Upper Kūka'iau Ranch (UKR). Please note that Section K (State Agency Consultation) of the Division's FY 2016 and FY 2017 LLCP applications indicates that the Division (DOFAW) "adapted the project proposal in response to consultation provided by the Department of Agriculture about ranching activities and ranch management (please see Sections D.9, G, and H) and by DOFAW itself (please see Sections D.6, G, and H)."

During the FY 2016 and FY 2017 LLCP application processes, DOFAW and UKR provided information about current ranching activities on the subject property (cattle grazing seasonally in lower paddocks only, approximately 1,357 acres grazed); the total number of cattle (about 136, based on UKR's estimate of 10 acres per AU); and the number of years the ranch has been in operation (about 130 years). In estimating carrying capacity for grazing, DOFAW and UKR are reluctant to give much weight to Land Study Bureau ratings, which for Hawai'i island were based on 1960s-era data, analysis, and interpretation.

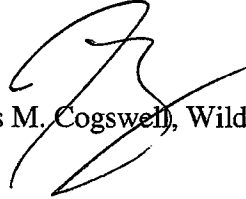
In response to HDOA's request for information about the management plan for the ranch, and how the ranch will maintain its current level of agricultural productivity in conjunction with critical habitat and forest preservation, please see the attached Multi-Resource Management Plan, which DOFAW appended to its FY 2016 and FY 2017 LLCP applications. The Plan provides for grazing in the middle/ upper paddocks to complement other conservation activities.

With regard to TMK: (3) 4-2-008:013, DOFAW added this 0.23 acre parcel to its FY 2016 LLCP application—prior to consideration by the Legacy Land Conservation Commission and the Board of Land and Natural Resources, but after the agency consultation period—because the landowner became willing to sell it during the FY 2016 LLCP application process. The added parcel is a pu'u that harbors significant cultural and natural resources that DOFAW seeks to

protect. According to a title report that DOFAW received last year, the lease agreement with Hawaii Electric Light Company (HELCO) ended on August 31, 2016, and indicated that HELCO "will remove any existing facilities" at the end of the lease term.

Thank you for commenting on the subject land acquisition. Please contact David Penn, Wildlife Access and Acquisitions Coordinator, at 587-4171 should you have any further questions.

Sincerely,

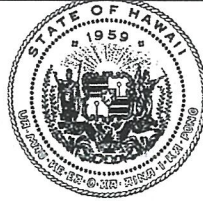
A handwritten signature in black ink, appearing to read 'J. Cogswell', written over the printed name.

James M. Cogswell, Wildlife Program Manager

Attachment: Multi-Resource Management Plan, Kūka'iau Ranch Conservation Easement Area

ATTACHMENT V
May 12, 2017
ITEM C-

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

September 25, 2015

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Approval for Acquisition of a Perpetual Conservation Easement over Private Lands of the Turtle Bay Resort and Set Aside to the Division of Forestry and Wildlife; and Approval of Acquisition of Private Lands, and Sixty-Five (65) Year Direct Lease and Right of Entry to Turtle Bay Resort, LLC, for the Acquired Private Lands

Project / Reference No.: PSF 13OD-098

Project Location: Kahuku, Koolauloa, Oahu, Tax Map Keys (1) 5-6-003:various; 5-7-001:various; 5-7-006:various

Project Description: Acquisition of private land and conservation easement, issuance of right of entry and direct lease.

Chap. 343 Trigger(s): Use of State Funds and State Land.

Exemption Class No.: In accordance with the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject requests are exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "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":

Acquisition of Conservation Easement:

Item No. 45: "Acquisition of land or interests in land".

Direct Lease:

Item No. 47: "Leases of state land involving negligible or no expansion or change of use beyond that previously existing".

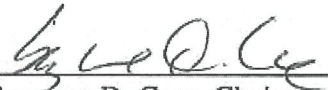
Right of Entry:

Item No. 51: "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing".

Recommendation:

It is recommended that the Board find that this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.





Suzanne D. Case, Chairperson
Date 9/16/15

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

May 12, 2017

ATTACHMENT VI
AGENDA ITEM C-__

DLNR Exemption Notifications and Declarations of Exemption
(without Attachments; instead please see Maps and Pictures in Attachment I)
for the award of grants under Haw. Rev. Stat. Chapter 173A,

1. Waikapuna: Ka'ū, Hawai'i
2. Upper Kūka'iau Ranch: Hāmākua, Hawai'i
3. Kepler Ke'anae Lo'i Easement: Hana, Maui

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL STREET, ROOM 325
HONOLULU, HAWAII 96813

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

April 19, 2017

MEMORANDUM

TO:

State agencies:

- DLNR, Land Division
- DLNR, Division of State Parks
- DLNR, Historic Preservation Division
- DLNR, Conservation and Coastal Lands
- DLNR, Water Resource Management
- DLNR, Division of Aquatic Resources
- DOH
- DHHL

Counties:

- County of Maui
- County of Hawaii
- County of Kauai
- C&C of Honolulu

Other:

- OHA

FROM: David G. Smith, Administrator *DGS*

SUBJECT: Propriety of the exemption of an action from the requirement to prepare an environmental assessment, Legacy Land Conservation Program grant to Ala Kahakai Trail Association, Chapter 343, HRS

LOCATION: Kāhilipali Nui and Kāhilipali'iki, Ka'ū, Island of Hawai'i, TMK: (3) 9-5-007:016

SUSPENSE DATE: May 3, 2017

Attached for your review is a copy of the Department's Draft Declaration of Exemption for a grant from the Land Conservation Fund to Ala Kahakai Trail Association for the acquisition 2,209+ acres of land in Ka'ū, Island of Hawai'i. The complete grant application and a draft staff submittal to the Board of Land and Natural Resources requesting approval of the award of grant funds are available upon request. Please mark the appropriate responses and sign off at the bottom of page two of this memo, and reply to the Department's Legacy Land Conservation Program before May 3, 2017, via phone, fax, email, interoffice mail, or postal mail.

If we do not receive a reply before May 3, 2017, our submittal to the Board of Land and Natural Resources will indicate "Did Not Advise." For additional information, and to reply, please contact David Penn at 586-0921 (phone), 587- 0160 (fax), or david.penn@hawaii.gov.

The Division believes that the subject award of grant funds for land acquisition will probably have minimal or no significant negative effects on the environment; does not fund an activity that causes any material change of use of land or resources beyond that previously existing (please see table below, as presented in our staff submittal to the Board of Land and Natural

Resources); and is exempt from the preparation of an environmental assessment in accordance with Sections 343-5 and 343-6, HRS; Section 11-200-8, HAR; and Exemption Class 1, Action Type 49 on the Exemption List for the Department of Land and Natural Resources, reviewed and concurred on by the Environmental Council on June 5, 2015 (“The award of grants under Haw. Rev. Stat. Chapter 173A provided that the grant does not fund an activity that causes any material change of use of land or resources beyond that previously existing”).

The proposed action is a stand-alone, one-time award of funds for land acquisition (1) that does not involve planned, successive actions of the same kind, in the same place, over time, and (2) is not a normally insignificant action whose impact on the environment may be significant due to its occurrence in a particularly sensitive environment.

Existing use of land and resources for proposed FY17 LLCP land acquisition grant to Ala Kahakai Trail Association, Kāhilipali Nui and Kāhilipali‘iki, Ka‘ū, Island of Hawai‘i
TMK: (3) 9-5-007:016

Application	State LUD	County LUO	existing use	change of use (aspirational, (aspirational, not “caused” by grant award)	encumbrances
Waikapuna	Agriculture Conservation (Resource Subzone)	A-20a SMA (Special + Shoreline)	agriculture (pasture) conservation cultural practice coastal access telcom towers	sewage treatment facility (possible County initiative)	conservation easement deed restrictions LLCP grant agreement pasture leases/licenses telcom licenses roadway/utility easements

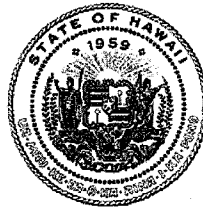
- We advise that the exemption is proper.
- We advise that the exemption is not proper.
- We do not have an opinion about the propriety of the exemption.
- Comments attached.

Signed: _____

Date: _____

Name and Agency: _____

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

May __, 2017

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DECLARATION OF EXEMPTION
from the requirement to prepare an environmental assessment
as authorized under Chapter 343, Hawai'i Revised Statutes
and Chapter 11-200, Hawai'i Administrative Rules

Proposed Action: Legacy Land Conservation Program, Fiscal Year 2017 Grant to Ala Kahakai Trail Association
Location: Ka'ū, Hawai'i
TMK: TMK: (3) 9-5-007:016
Description: Grant of \$_____ from the Land Conservation Fund to Ala Kahakai Trail Association for the acquisition of 2,209+ acres of land.

Pending approval by the Board of Land and Natural Resources and subsequent completion of the terms of the grant agreement, Ala Kahakai Trail Association (AKTA) would receive \$_____ through the Legacy Land Conservation Program for the acquisition of 2,209+ acres of land.

The subject property, TMK (3) 9-5-007:016, is used for agricultural (pasture license), conservation, cultural practice, coastal access, and telecommunication (ground lease) purposes. The AKTA will continue to use the property of these purposes, subject to the Legacy Land Conservation Program deed restrictions and covenants and a conservation easement provided by AKTA to the County of Hawai'i and/or another nonprofit land conservation organization.

DLNR Agency Exemption List: June 5, 2015
Exemption Class: 1
Action Type: 49
Description: The award of grants under Haw. Rev. Stat. Chapter 173A provided that the grant does not fund an activity that causes any material change of use of land or resources beyond that previously existing.
Advising: DLNR (six organizational units), Counties (Hawai'i), and three other State agencies and entities (DOH, DHHL, OHA)

The proposed action is a stand-alone, one-time award of funds for land acquisition that does not involve cumulative impacts from planned, successive actions of the same kind, in the same place, over time. Impacts of the proposed action, with respect to any particularly sensitive environment, will not be significant.

I have considered the potential effects of the above listed action as provided by Chapter 343, HRS and Chapter 11-200, HAR. I declare that this action will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment under the Division of Forestry and Wildlife Exemption Class 1, Action Type 49.

Suzanne D. Case, Chairperson

Date

Original: Agency file
Copy: Project file

Attachment A: Map
Attachment B: Pictures

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL STREET, ROOM 325
HONOLULU, HAWAII 96813

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIKOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

April 19, 2017

MEMORANDUM

TO:

State agencies:

- DLNR, Land Division
- DLNR, Division of State Parks
- DLNR, Historic Preservation Division
- DLNR, Conservation and Coastal Lands
- DLNR, Water Resource Management
- DLNR, Division of Aquatic Resources
- DOH, Environmental Planning Office
- DHHL, Planning Office

Counties:

- County of Maui
- County of Hawaii
- County of Kauai
- C&C of Honolulu

Other:

- OHA

FROM: David G. Smith, Administrator *DEJ*

SUBJECT: Propriety of the exemption of an action from the requirement to prepare an environmental assessment, Legacy Land Conservation Program grant to the Division of Forestry and Wildlife, Chapter 343, HRS

LOCATION: Kūka'iau and Koholālele, Hāmākua, Island of Hawai'i, TMKs: (3) 4-2-008:021, (3) 4-2-008:008, and (3) 4-2-008:013

SUSPENSE DATE: May 3, 2017

Attached for your review is a copy of the Draft Declaration of Exemption for a grant from the Land Conservation Fund to the Division of Forestry and Wildlife for the acquisition of 4,469+ acres of land in Hāmākua, Island of Hawai'i. The complete grant application and a draft staff submittal to the Board of Land and Natural Resources requesting approval of the award of grant funds are available upon request. Please mark the appropriate responses and sign off at the bottom of page two of this memo, and reply to the Division's Legacy Land Conservation Program before May 3, 2017, via phone, fax, email, interoffice mail, or postal mail.

If we do not receive a reply before May 3, 2017, our submittal to the Board of Land and Natural Resources will indicate "Did Not Advise." For additional information, and to reply, please contact David Penn at 586-0921 (phone), 587- 0160 (fax), or david.penn@hawaii.gov.

The Division believes that the subject award of grant funds for land acquisition will probably have minimal or no significant effects on the environment and is exempt from the preparation of an environmental assessment in accordance with Sections 343-5 and 343-6, HRS;

Section 11-200-8, HAR; and Exemption Class 1, Action Type 45 on the Exemption List for the Department of Land and Natural Resources, reviewed and concurred on by the Environmental Council on June 5, 2015 (“Acquisition of land or interests in land”).

The proposed action is a stand-alone, one-time award of funds for land acquisition (1) that does not involve planned, successive actions of the same kind, in the same place, over time, and (2) is not a normally insignificant action whose impact on the environment may be significant due to its occurrence in a particularly sensitive environment.

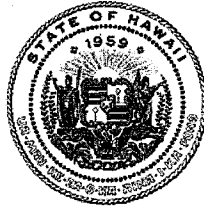
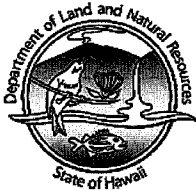
- We advise that the exemption is proper.
- We advise that the exemption is not proper.
- We do not have an opinion about the propriety of the exemption.
- Comments attached.

Signed: _____

Date: _____

Name and Agency: _____

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

May __, 2017

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKO A KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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CONSERVATION AND COASTAL LANDS
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ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DECLARATION OF EXEMPTION
from the requirement to prepare an environmental assessment
as authorized under Chapter 343, Hawai'i Revised Statutes
and Chapter 11-200, Hawai'i Administrative Rules

Proposed Action: Legacy Land Conservation Program, Fiscal Year 2017 Grant to the Division of Forestry and Wildlife
Location: Hāmākua, Hawai'i
TMKs: (3) 4-2-008:021
(3) 4-2-008:008
(3) 4-2-008:013
Description: Grant of \$ _____ from the Land Conservation Fund to the Division of Forestry and Wildlife for the acquisition of 4,469+ acres of land.

Pending approval by the Board of Land and Natural Resources and subsequent completion of the acquisition, the Division of Forestry and Wildlife (DOFAW) would receive \$ _____ through the Legacy Land Conservation Program for the acquisition of 4,469+ acres of land in Hāmākua, Hawai'i.

The subject property (three parcels) is used for agricultural, conservation, cultural practice, and telecommunication (license) purposes. DOFAW will continue to use the property for these purposes, subject to the Legacy Land Conservation Program deed restrictions and covenants and a conservation easement over most of the property, presently held by The Nature Conservancy.

DLNR Agency Exemption List: June 5, 2015
Exemption Class: 1
Action Type: 45
Description: Acquisition of land or interests in land.
Advising Parties: DLNR (six organizational units), Counties (Hawai'i), and three other State agencies and entities (DOH, DHHL, OHA)

The proposed action is a stand-alone, one-time award of funds for land acquisition that does not involve cumulative impacts from planned, successive actions of the same kind, in the same place, over time. Impacts of the proposed action, with respect to any particularly sensitive environment, will not be significant.

I have considered the potential effects of the above listed action as provided by Chapter 343, HRS and Chapter 11-200, HAR. I declare that this action will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment under the Division of Forestry and Wildlife Exemption Class 1, Action Type 49.

Suzanne D. Case, Chairperson

Date

Original: Agency file
Copy: Project file

Attachment A: Map
Attachment B: Pictures

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL STREET, ROOM 325
HONOLULU, HAWAII 96813

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

April 19, 2017

MEMORANDUM

TO:

State agencies:

- DLNR, Land Division
- DLNR, Division of State Parks
- DLNR, Historic Preservation Division
- DLNR, Conservation and Coastal Lands
- DLNR, Water Resource Management
- DLNR, Division of Aquatic Resources
- DOH, Environmental Planning Office
- DHHL, Planning Office

Counties:

- County of Maui
- ~~County of Hawaii~~
- ~~County of Kauai~~
- ~~C&C of Honolulu~~

Other:

- OHA

FROM: David G. Smith, Administrator **DGS**

SUBJECT: Propriety of the exemption of an action from the requirement to prepare an environmental assessment, Legacy Land Conservation Program grant to Hawaiian Islands Land Trust, Chapter 343, HRS

LOCATION: Ke'anae, Hana, Island of Maui, TMK: (2) 1-1-003:041

SUSPENSE DATE: May 3, 2017

Attached for your review is a copy of the Draft Declaration of Exemption for a grant from the Land Conservation Fund to the Hawaiian Islands Land Trust for the acquisition of a conservation easement over 6+ acres of land in Hana, Island of Maui. The complete grant application and a draft staff submittal to the Board of Land and Natural Resources requesting approval of the award of grant funds are available upon request. Please mark the appropriate responses and sign off at the bottom of page two of this memo, and reply to the Division's Legacy Land Conservation Program before May 3, 2017, via phone, fax, email, interoffice mail, or postal mail. If we do not receive a reply before May 3, 2017, our submittal to the Board of Land and Natural Resources will indicate "Did Not Advise." For additional information, and to reply, please contact **David Penn at 586-0921 (phone), 587- 0160 (fax), or david.penn@hawaii.gov.**

The Division believes that the subject award of grant funds for land acquisition will probably have minimal or no significant negative effects on the environment; does not fund an activity that causes any material change of use of land or resources beyond that previously existing (please see table below, as presented in our staff submittal to the Board of Land and Natural Resources); and is exempt from the preparation of an environmental assessment in accordance

with Sections 343-5 and 343-6, HRS; Section 11-200-8, HAR; and Exemption Class 1, Action Type 49 on the Exemption List for the Department of Land and Natural Resources, reviewed and concurred on by the Environmental Council on June 5, 2015 (“The award of grants under Haw. Rev. Stat. Chapter 173A provided that the grant does not fund an activity that causes any material change of use of land or resources beyond that previously existing”).

The proposed action is a stand-alone, one-time award of funds for land acquisition (1) that does not involve planned, successive actions of the same kind, in the same place, over time, and (2) is not a normally insignificant action whose impact on the environment may be significant due to its occurrence in a particularly sensitive environment.

Existing use of land and resources for proposed FY17 LLCP land acquisition grant to
Hawaiian Islands Land Trust, Ke‘anae, Hana, Island of Maui
TMK: (2) 1-1-003:041

Application	State LUD	County LUO	existing use	change of use (aspirational, (aspirational, not "caused" by grant award)	encumbrances
Kepler Ke‘anae Lo‘i	Agriculture	Ag (2 acre minimum lot size)	agriculture (one lessee, taro production in 26 of 36 existing fields)	expand agriculture (two lessees, taro production in 36 of 36 existing fields)	conservation easement that includes LLCP deed restrictions; LLCP grant agreement

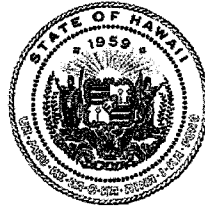
- We advise that the exemption is proper.
- We advise that the exemption is not proper.
- We do not have an opinion about the propriety of the exemption.
- Comments attached.

Signed: _____

Date: _____

Name and Agency: _____

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

May __, 2017

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DECLARATION OF EXEMPTION
from the requirement to prepare an environmental assessment
as authorized under Chapter 343, Hawai'i Revised Statutes
and Chapter 11-200, Hawai'i Administrative Rules

Proposed Action: Legacy Land Conservation Program, Fiscal Year 2017 Grant to Hawaiian Islands Land Trust
Location: Hana, Maui
TMK: (2) 1-1-003:041
Description: Grant of \$_____ from the Land Conservation Fund to Hawaiian Islands Land Trust for the acquisition of a conservation easement over 6+ acres of land.

Pending approval by the Board of Land and Natural Resources and subsequent completion of the terms of the grant agreement, Hawaiian Islands Land Trust would receive \$_____ through the Legacy Land Conservation Program for the acquisition of a conservation easement over 6+ acres of land.

The subject property, TMK (2) 1-1-003:041, contains 36 lo'i kalo, 26 of which are farmed by a lessee. The landowner will continue to lease the property for agricultural use, subject to the Legacy Land Conservation Program deed restrictions and covenants and the conservation easement acquired by Hawaiian Islands Land Trust.

DLNR Agency Exemption List: June 5, 2015
Exemption Class: 1
Action Type: 49
Description: The award of grants under Haw. Rev. Stat. Chapter 173A provided that the grant does not fund an activity that causes any material change of use of land or resources beyond that previously existing.
Advising Parties: DLNR (six organizational units), Counties (Maui), and three other State agencies and entities (DOH, DHHL, OHA)

The proposed action is a stand-alone, one-time award of funds for land acquisition that does not involve cumulative impacts from planned, successive actions of the same kind, in the same

place, over time. Impacts of the proposed action, with respect to any particularly sensitive environment, will not be significant.

I have considered the potential effects of the above listed action as provided by Chapter 343, HRS and Chapter 11-200, HAR. I declare that this action will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment under the Division of Forestry and Wildlife Exemption Class 1, Action Type 49.

Suzanne D. Case, Chairperson

Date

Original: Agency file
Copy: Project file

Attachment A: Map
Attachment B: Pictures

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

May 12, 2017

ATTACHMENT VIII
AGENDA ITEM C-__

DECISION MATRIX FOR THE APPROVAL OF GRANTS
FROM AVAILABLE FUNDS IN THE LAND CONSERVATION FUND,
AS REQUESTED IN APPLICATIONS
TO THE FISCAL YEAR 2017 LEGACY LAND CONSERVATION PROGRAM

Estimated FY17 funding available for grants program \$ 2,338,346

APPLICATION	Funding Order	REQUEST \$	\$ AWARDED			
			OPTION 1	OPTION 2	OPTION 3	OPTION 4
Turtle Bay Makai (State debt service)	1	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000
Waikapuna (Ala Kahakai Trail Association)		2,000,000	100,000	838,346	628,346	0
Upper Kūka'iau Ranch (DOFAW)		738,346	738,346	0	0	528,346
Kepler Ke'anae Lo'i (Hawaiian Islands Land Trust)		210,000	0	0	210,000	210,000

