

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

April 27, 2018

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  
2017-2018 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 AND RIGHTS IN SPECIFIC  
PARCELS OF LAND FOR:
  - A. WAI'ANAE COMMUNITY REDEVELOPMENT CORPORATION,  
\$750,000 FOR THE ACQUISITION OF 21.1 ACRES AT WAI'ANAE,  
O'AHU (MA'O ORGANIC FARMS PALIKEA EXPANSION - PHASE  
ONE), TAX MAP KEY NUMBER (1) 8-7-010:006;
  - B. FRIENDS OF AMY B.H. GREENWELL ETHNOBOTANICAL  
GARDEN, \$750,000 FOR THE ACQUISITION OF 13.6 ACRES AT  
KONA, HAWAI'I (AMY B.H. GREENWELL ETHNOBOTANICAL  
GARDEN), TAX MAP KEY NUMBERS (3) 8-2-013-002, (3) 8-2-013-  
003, (3) 8-2-013-014, (3) 8-2-014-043, and (3) 8-2-015-059;
  - C. DIVISION OF FORESTRY AND WILDLIFE, \$1,500,000 FOR THE  
ACQUISITION OF 3,277 ACRES AT KULA, MAUI (KAMEHAMENUI  
FOREST), TAX MAP KEY NUMBERS (2) 2-3-005:002 and (2) 2-3-  
005:014;
  - D. THE NATURE CONSERVANCY, \$400,000 FOR THE ACQUISITION  
OF A CONSERVATION EASEMENT OVER 229 ACRES AT KONA,  
HAWAI'I (HO'OMAU FOREST AND RANCH), TAX MAP KEY  
NUMBER (3) 8-9-001:023 (por.); AND
  - E. DIVISION OF FORESTRY AND WILDLIFE, \$100,000 FOR THE  
ACQUISITION OF A CONSERVATION EASEMENT OVER 764  
ACRES AT KONA, HAWAI'I (HO'OMAU FOREST AND RANCH)

TAX MAP KEY NUMBERS (3) 8-8-001:022, (3) 8-8-001:032, AND (3) 8-8-001:033

AND:

DECLARE THAT EACH APPROVED AWARD OF GRANT FUNDS FOR THE ACQUISITION OF INTERESTS AND RIGHTS 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.

### SUMMARY

The Division recommends that the Board approve \$3,000,000 in Legacy Land Conservation Program grants, from available funds in the Land Conservation Fund, for: first, the reimbursement of debt service on the State's Turtle Bay reimbursable general obligation bonds (total payment \$1,500,000); and second, the acquisition of interests and rights in specific parcels of land having value as a resource to the State, as requested in five applications that the Legacy Land Conservation Commission recently recommended for funding (total payment up to \$1,500,000).

### BACKGROUND

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

- (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

Haw. Rev. Stat. § 173A-13 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 2017, The Trust for Public Land, a nonprofit land conservation organization, filed an application in partnership with the Department, requesting said amount for said purpose.

### Acquisition of Interests or Rights in Land

Haw. Admin. R. § 13-140-22 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 § 13-140-6:

- (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 May 2017, the LLCP initiated consultation with the Legacy Land Conservation Commission (LLCC) about the timeline, forms, and procedures for the 2017-2018 grant cycle. After the Department approved the timeline and forms, the LLCP posted the application materials and instructions on its website on August 4, 2017; the Department issued a related news release on August 9, 2017 (*see* <http://dlnr.hawaii.gov/blog/2017/08/10/nr17-0126>); and the LLCP notified partners directly via email.

Throughout the application process, the LLCP advised applicants that only about \$500,000 in FY18 funding would remain available for land acquisition awards, and suggested that applicants consider this funding situation for project planning purposes. Nonetheless, the LLCP received eight timely applications for land acquisition awards before the deadline of September 25, 2017, with funding requests that ranged from \$100,000 to \$3,000,000 and totaled \$10,330,000. As required by Haw. Rev. Stat. §173A-5(i)(7), 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,” and included an option for advising about the propriety of exempting each award of an LLCP grant from the requirement to prepare an environmental assessment under Haw. Rev. Stat. § 343. The results of applicant consultation with consulting agencies are summarized in the DISCUSSION section, below.

The LLCC reviewed and ranked each of the nine grant applications that the LLCP received, incorporating the results of agency consultations, field visits, and public testimony into the recommendation that the LLCC issued at a public meeting on December 8, 2017 (Meeting 58, please see Attachment I, Table of recommended awards, that includes maps and photos as submitted in the applications). In accordance with Haw. Rev. Stat. § 92-2.5(a)(1), 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 5, 2017 (Meeting 56), during which it assigned eight groups—composed of two to four commissioners each—as task forces to conduct a field visit at each of the nine locations proposed in the applications for funding, and appointed a lead commissioner for each group (Agenda Item 9). The LLCC held a second public meeting on December 7, 2017 (Meeting 57), during which each assigned group reported on the findings and recommendations of its respective field visit (Agenda Item 6). The LLCC held a third public meeting on December 7-8, 2017 (Meeting 58) that included discussion and the formulation of recommendations about the applications that were the subject of the field visits (Agenda Items 4, 5, and 6).

On January 11, 2018, 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 February 15, 2018, the Senate President and the Speaker of the House of Representatives held a consultation meeting with LLCP staff, followed by formal replies dated March 19, 2018 (Senate President, “no concerns or objections at this time as it relates to . . . Turtle Bay Makai . . . MA‘O Organic Farms . . . and Amy B.H. Greenwell Ethnobotanical Garden”) and March 16, 2018 (House Speaker, “no concerns or objections to the recommendations as proposed”) (please see Attachments I and II).

#### Legacy Land Conservation Commission Recommendation

As indicated in Attachment I, the LLCC recommended that the Board approve five 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 four proposed land acquisition projects, in the order ranked by the LLCC (up to a total of \$1.5 million from the biennium budget for Fiscal Years 2018 and 2019). Given the funding currently available for grants from the Land Conservation Fund, estimated at \$6.5 million, Board approval of the LLCC recommendation would result in awards of:

- (1) \$1,500,000 for the reimbursement of debt service on the Turtle Bay reimbursable general obligation bonds;
- (2) \$750,000 to Wai‘anae Community Redevelopment Corporation (WCRC) for the acquisition of 21 acres at Wai‘anae, O‘ahu (MA‘O Organic Farms Palikea Expansion – Phase One); and
- (3) \$750,000 to Friends of Amy B.H. Greenwell Ethnobotanical Garden (Friends) for the acquisition of 13.6 acres at Kona, Hawai‘i (Amy B.H. Greenwell Ethnobotanical Garden),



with approximately \$3.5 million remaining available for grants in the 2018-2019 LLCP. In order to provide for greater flexibility in the awards program, the Division also recommends that the Board:

- (4) Approve—as a contingency in the event that an awardee is unable to accept its awarded funds— the LLCC recommendation to award remaining, available funds from the Land Conservation Fund, up to the amounts originally requested in the applications, to: first, the Division of Forestry and Wildlife (DOFAW), as an alternate, for the acquisition of 3,277 acres at Kula, Maui (Kamehamehū Forest); and second, The Nature Conservancy (TNC) and DOFAW, as joint alternates, for the acquisition of two conservation easements over a total area of 993 acres at Kona, Hawai‘i (Ho‘omaui Forest and Ranch); and
- (5) Delegate authority to the Chair to redirect funding for a discontinued 2017-2018 award to other 2017-2018 applications that the Legacy Land Conservation Commission recommended for funding, so as to accomplish partial or full funding for each approved award in the order ranked by the Commission, up to a total of \$1,500,000 from the biennium budget for Fiscal Years 2018 and 2019.

## DISCUSSION

1. Turtle Bay Makai – Kahuku Kawela Forever: The Trust for Public Land partnered with the Division of Forestry and Wildlife (DOFAW) to file an application 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‘olaupua, O‘ahu (Turtle Bay Resort), as authorized by Act 121 (Session Laws of Hawai‘i, 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 LLCC received written testimony in support from State Senator Gil Riviere (District 23), State Representative Sean Quinlan (District 47), G. Scott McCormack (Turtle Bay Resort), and Doug Cole (North Shore Community Land Trust). The applicant considered and incorporated responses from consulting State agencies (Application, Section K) as summarized in the following table:



Agency	Agency Response	Application Section K
Department of Land and Natural Resources	We do not object to the proposed grant. Comments attached. “The project is a move in a positive direction towards defining the balance of use and conservation [of] Hawaii’s aquatic resources. To further this effort, the Division suggests development of a more comprehensive understanding of the marine, fresh-water, and brackish-water aquatic resources in the conservation easement area from Kawela Bay to Kahuku Point.” (Division of Aquatic Resources) “The project area contains numerous wells, some of which are active and operating under water use permits. Monthly groundwater use for several of these wells has not been reported since May 2017. There are also numerous surface water bodies and a swamp/marsh.” (Commission on Water Resource Management)	The landowner was notified of the apparent omission of groundwater monitoring reports and is following up.
Department of Agriculture	We do not wish to comment on the proposed grant.	
Agribusiness Dev. Corp.	We do not object to the proposed grant.	

2. MA‘O Farms: The Wai‘anae Community Redevelopment Corporation (WCRC) partnered with The Trust for Public Land to apply for \$750,000 to acquire 21 acres at Wai‘anae, O‘ahu for two of the nine Legacy Land resource preservation purposes established in Haw. Rev. Stat. § 173A-5(g) (see Application, Section D):

- (8) Agricultural production, and
- (9) Open spaces and scenic resources.

The applicant’s Project Description (Application, Sections G-I) explained that the Palikea parcel likely became part of the McCandless Cattle Ranch during the nineteenth century, and that Ryoei Higa started farming the property in 1978, growing vegetables with no chemical inputs. A former landowner evicted him in 1988 to pursue rezoning for a golf course, and Mr. Higa became famous for the slogan “NO CAN EAT GOLF BALLS.” Suitable land for agriculture is increasingly difficult to find because of competition from development interests and speculators, and that the primary threat to the Palikea property is that it is listed for sale and could be acquired for development. The property is flat and has access to utilities and water, and “[e]nsuring land of this quality is put into agricultural production is of paramount importance both for food security and for maintaining the agricultural character of Lualualei Valley.” With the addition of the Palikea property, MA‘O expects to increase its organic food production capacity and youth empowerment impact by 75 percent.

Matching funds estimated at 42.3% of the total project cost would be provided as cash from private sources (pending), and the application indicates that the Trust for Public Land is willing to hold a conservation easement over the property.

During the application and review process, the LLCC received letters of support from twenty-seven individuals and organizations including State Senator Maile S.L. Shimabukuro (District 21); State Representative Cedric Gates (District 44); City Councilmember Kymberly Marcos Pine (District 1) and Chancellor Maenette K.P. Ah Nee-Benham (University of Hawai‘i – West O‘ahu). The LLCC heard spoken testimony in support at Meeting 58 (December 7-8, 2017) from current and former MA‘O interns and employees Manny Miles, Joshua Fukumoto, Tiele Doudt, and Derrick Parker, and from Doug Cole (North Shore Community Land Trust).

The applicant did not explicitly consider and incorporate responses from consulting State agencies (Application, Section K) as summarized in the following table:

Agency	Agency Response	Agency Comments
Department of Land and Natural Resources	We do not object to the proposed project.	
Department of Agriculture	Comments attached.	The Department notes that the subject property appears to be within the Agricultural District in the 2012 Waianae Sustainable Communities Plan, and that the proposed rezoning from P-2 to AG-2 would be in conformance with the Plan. HDOA supports the acquisition of interest or rights in agricultural land that has value as a resource to the State.
Agribusiness Dev. Corp.	We do not wish to comment on the proposed project.	

3. Greenwell Garden: The Friends of Amy B.H. Greenwell Ethnobotanical Garden (Friends) applied for \$750,000 to acquire 13.6 acres at Kona, Hawai‘i, for seven of the nine Legacy Land resource preservation purposes established in Haw. Rev. Stat. § 173A-5(g) (see Application, Section D):

- (3) Habitat protection;
- (4) Cultural and historic sites;
- (5) Recreational and public hunting areas;
- (6) Parks;
- (7) Natural areas;
- (8) Agricultural production; and
- (9) Open spaces or scenic resources.

The applicant’s Project Description (Application, Sections G-I) explained that the Amy B.H. Greenwell Ethnobotanical Garden (Greenwell Garden), located in the heart of Captain Cook, Hawai‘i, consists of one separate small parcel that holds Pa‘ikapahu Heiau and four contiguous parcels, set amongst remnants of the Kona Field System of traditional Hawaiian agriculture, that contain over 250 native plant species, many of which are rare and endangered. The applicant expressed that “[t]he major threat to the Garden is the sale of it by Bishop Museum to an entity who will not follow the terms of the restricted warranty deeds.” The Friends hope to re-open the garden to visitors and reinstate successful programs such as plant sales, tours, educational and research opportunities, and use for special events and celebrations.

Matching funds estimated at 55.3% of the total project cost would be provided through acquisition of a conservation easement by Hawai‘i County (pending) and cash from donations (pending and secured).

The Friends compiled forty-seven letters of support from individuals and organizations—including Hawaii County Council members Maile David (District 6) and Karen Eoff (District 8); State Representative Nicole Lowen (District 6); State Senator Joshua Green (District 8); Kona Soil and Water Conservation District Board of Directors; and Chipper Wichman (National Tropical Botanical Garden)—that it submitted as written testimony to the LLCC (see Attachment IV, and note that six of these letters were from Friends Board members and one was a duplicate of the Bishop Museum Willing Seller letter). The LLCC also received written testimony in



support from Bobby Camara. Friends Board members Maile Melrose, Meg Greenwell, Janet Britt, Pat Todd, and Jim Todd delivered spoken testimony in support.

The applicant did not consider and incorporate responses from consulting State agencies (Application, Section K) because the agencies did not comment on the application, as summarized in the following table:

Agency	Agency Response
Department of Land and Natural Resources	We do not object to the proposed project
Department of Agriculture	We do not wish to comment on the proposed project.
Agribusiness Development Corporation	We do not wish to comment on the proposed project

4. Kamehamehenui: The Division of Forestry and Wildlife (DOFAW) applied for \$2,330,000 to acquire 3,277 acres at Kula, Maui for six of the nine Legacy Land resource preservation purposes established in Haw. Rev. Stat. § 173A-5(g) (see Application, Section D):

- (1) Watershed protection;
- (3) Habitat protection;
- (5) Recreational and public hunting areas;
- (7) Natural areas;
- (8) Agricultural production; and
- (9) Open spaces and scenic resources.

The applicant's Project Description (Application, Sections G-I) explained that the property is the site of the Von Tempsky's Erewhon Ranch founded in 1875. It is surrounded by the Kula Forest Reserve to the south, Haleakalā national park to the east, and Haleakalā Ranch to the north. Keeping the property undeveloped would preserve the majestic view plane of Kula, ensure continued corridors for Hawaiian petrels between Haleakalā National Park and the ocean and thus prevent groundings; help other endangered and endemic species endure in the face of climate change; contribute to the recharge of the Mākāwao aquifer; re-connect the lands of Leeward Haleakalā Watershed Partnership; and provide much needed opportunities for recreation, native forest restoration, and sustainable forestry.

Matching funds estimated at 76% of the total project cost would be provided through federal grants and County and private funds (pending).

The applicant considered and incorporated responses from consulting State agencies (Application, Section K) as summarized in the following table:



Agency	Agency Response	Application Section K
Department of Land and Natural Resources	We do not object to the proposed project. Comments attached. “The Kula Pipeline runs through the property near its western boundary. Two unnamed intermittent streams follow the northern and southern boundaries.” (Commission on Water Resource Management)	Per comments, available information on the historic and current land use, including grazing; and DOFAW’s intended use of the property is included in the application, as appropriate. The State DOA has expressed legitimate concerns regarding ranching activities on the property. The property has been intermittently ranched by various lease tenants under the stewardship of the current and previous owners. Having state management over the property, which will still provide grazing opportunities in the shorter term and opportunities to graze fire breaks in the longer term, is an optimal use of this historically forested watershed land.
Department of Agriculture	Comments attached. “The Department is concerned that the Applicant did not mention existing ranching activities as a resource to be protected in its Application, as pasture appears to be an existing use for at least half of the subject property. HDOA requests the following information be provided to the LLCP: current ranching activities on the subject property, including acres grazed; the total number of cattle; and, the number of years the land has been used for pasture. HDOA also requests information on the management plan for the existing ranching uses and whether the applicant intends to continue the existing level of ranching on the subject property in conjunction with its proposed critical habitat and forest preservation.”	
Agribusiness Dev. Corp.	We do not wish to comment on the proposed project.	

5. Ho‘omau: The Nature Conservancy (TNC) and the Division of Forestry and Wildlife (DOFAW) applied for \$500,000 to acquire two conservation easements over a total area of 993 acres at Kona, Hawai‘i. One easement would be held by TNC and one would be held by DOFAW. The area covered by the easements is within a single federal Forest Legacy Tract; federal Forest Legacy Funds (secured) would provide an estimated match of 76% for grants from the Land Conservation Fund (one grant to TNC and one to DOFAW); and two grants from the Land Conservation Fund, combined, would provide required match for federal Forest Legacy funds. The Ho‘omau Forest Legacy Project (Project) can succeed only if both grants from the Land Conservation Fund are approved. The Land Conservation Fund component of the Project must be split into two grants (one to TNC and one to DOFAW) because:

- (a) “[t]he entity that will hold title to the interest in land must be the applicant and supply all required documentation for application” (two interests held, one by each applicant), Haw. Admin. R. § 13-140-17(b);
- (b) “[w]here the awardee of a land acquisition grant is a county agency or nonprofit land conservation organization, the board shall require additional matching funds of at least twenty-five per cent of the total project costs” (matching funds not required for state agency awardee), Haw. Admin. R. § 13-140-20(a); and
- (c) “[c]ounty and nonprofit applicants that have been awarded land acquisition grant funds by the board and will hold title to the interest in land being acquired, must enter into a grant agreement with the board” (grant agreement not required for state agency awardee), Haw. Admin. R. § 13-140-23(a).

The applicants’ Project Description (Application, Sections G-I) explained that the proposed conservation easements will conserve 993 acres of mesic forest that has a rare, diverse assemblage of native trees, including some of the largest individuals of certain tree species, such

as the critically endangered mehamehame (*Flueggea neowawraea*). The property provides essential breeding habitat and a seed bank for native biota, and links State forest reserves and private forest preserves with Hawai'i Volcanoes National Park, connecting over 400,000 acres. Ho'omau is zoned for agricultural use and is faced with threats of subdivision, native forest conversion, and an accelerating invasion of alien tree species.

Maile Rafaelovich, landowner, testified and answered questions from the LLCC. The applicants considered and incorporated responses from consulting State agencies (Application, Section K) as summarized in the following table:

Agency	Agency Response	Application Section K
Department of Land and Natural Resources	<p>We do not object to the proposed project. Comments attached.</p> <p>"The Division [Forestry &amp; Wildlife] requests that the final application address questions about public access, management access, and management responsibilities. Specifically, would the Division have access to these parcels for seed collection, endangered species management, ecosystem management, and other Division functions? Would there be public access opportunities? If so, how would the access be managed for the Division and for the public? What responsibilities, if any, would the Division's Hawaii District have for managing these easements?"</p> <p>"We [Commission on Water Resource Management] . . . do not find any water delivery infrastructure or improvements nor any significant water features that may provide a public benefit."</p>	<p>Per their comments, information on the historical land use, including ranching; the proposed compatible agricultural activities; management responsibilities; details on the eco-tour/public access; and existing seed collection of endangered species on the property are detailed in this application. Specific to DLNR's comment, TNC and DOFAW will both be responsible for monitoring their respective CEs once acquire. DOFAW will monitor its CE in conjunction with other Forest Legacy projects, which is the responsibility of the statewide Cooperative Resource Management Forester and Hawaii District Service Forester.</p>
Department of Agriculture	<p>Comments attached.</p> <p>"HDOA notes that there is an existing ranch, and is listed under 'Resources to be Protected.' HDOA requests more information be provided to the Legacy Land Conservation Program on the ranch operation, including acres grazed, number of cattle, and number of years the ranch has been in operation. HDOA also requests information on the management plan for the ranch and other agricultural activities and how they will operate in conjunction with the other proposed uses such as habitat and forestry preservation." "The Applicant should provide additional information on whether the[se] agricultural tourism activities listed on the ranch's website are conducted on the lands within the proposed conservation easement, and if so, whether these uses are consistent with the easement."</p>	
Agribusiness Dev. Corp.	We do not wish to comment.	



## Conservation Easements, Agricultural Easements, Deed Restrictions, and Covenants

Under Haw. Rev. Stat. §§ 173A-4(c) and (d), 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, § 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 § 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 acquired interests and rights in land. These statutory restrictions include (1) a requirement that the Board approve disposition of the land (§§ 173A-4 and 173A-9) and (2) post-disposition payback provisions (§ 173A-10). 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 a conservation easement on land 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 generally sufficient to ensure the long-term protection of land having value as a resource to the State and to preserve the interests of the State, and the Department frequently recommends that the Board exempt an awardee from additional easement requirements. For the six 2017-2018 grant applications recommended for funding, the Department recommends that the Board exempt four of the awardees from additional easement requirements:

### Department of Land and Natural Resources, Turtle Bay Makai – Kahuku Kawela Forever:

This grant is for a payment of debt service tied to the completed acquisition of (1) a conservation easement held by the Board and (2) lands that are held by the Board and leased back to a private party under terms that mirror those of the conservation easement.

Division of Forestry and Wildlife – Kamehamenui Forest: This grant is for lands that would be held and managed by the Department as an addition to its Kula Forest Reserve. It is likely that the deed of conveyance to the State would include restrictions mandated by a federal natural resource agency.



Division of Forestry and Wildlife – Ho‘omau Forest and Ranch: This grant is for the acquisition of a conservation easement that would be held by the Board. The deed of conveyance would include restrictions mandated by a federal natural resource agency.

The Nature Conservancy – Ho‘omau Forest and Ranch: This grant is for the acquisition of a conservation easement that would be held by an appropriate land conservation organization. The deed of conveyance would include restrictions mandated by a federal natural resource agency.

The Department recommends that the Board require that two of the awardees provide a conservation easement to an appropriate land conservation organization or a county, state, or federal natural resource conservation agency:

Waianae Community Redevelopment Corporation – MAO: This grant is for the acquisition of fee title. The application included a letter indicating that the Trust for Public Land is willing to hold a conservation easement over the property. Testimony at the LLCC meeting indicated that the Hawaiian Islands Land Trust may be willing to hold a conservation easement over the property.

Friends of Amy B.H. Greenwell Ethnobotanical Garden - Amy B.H. Greenwell Ethnobotanical Garden: This grant is for the acquisition of fee title. The application included a letter indicating that the County of Hawai‘i is willing to hold a conservation easement over the property.

#### 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 IV). 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:** Haw. Rev. Stat. § 343-5(a) 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. However, Chapter 343 does not define “unimproved real property.” Regardless of this definitional uncertainty, DOFAW concludes that each of the five properties recommended for acquisition by the LLCC is “improved” to some degree.

§ 343-6(a)(2) 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 Haw. Admin. R. § 11-200-8(d), 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).

Each of the three recommended acquisitions of land by a nonprofit land conservation organization (MA‘O, Greenwell, and Ho‘omau-TNC) may be declared exempt from the preparation of an environmental assessment under DLNR’s Exemption Class 1, Action Type 49. However, the governing authorities for Action Type 49 (Chapter 343, 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, subsequent to and independent of the acquisition, if applicable at that time to that action.

DOFAW believes that its acquisitions of land at Kamehamenui Forest and Ho‘omau are Department actions that are exempt from the preparation of an environmental assessment under DLNR’s Exemption Class 1, Action Type 45, acquisition of land.

### **3. Outside Advice**

Haw. Admin. R. § 11-200-8(a), 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:

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, the Division requested the advice of (1) Department programs, the Department of Agriculture, and the Agribusiness Development Corporation during the agency consultation phase of the application process; (2) the Legacy Land Conservation Commission during its Meeting 58 (December 7-8, 2017); and (3) requesting agencies and numerous other outside agencies and entities having jurisdiction and expertise as to the propriety of the proposed exemptions, during the period following the Legacy Land Conservation Commission's review and recommendation (please see Attachment VI). Each agency and entity either did not advise within the timeframe specified for a response, advised that the proposed exemption is proper, or advised that it did not have an opinion about the propriety of the proposed exemption. The Division did not receive advice that the proposed exemption is not proper.

Based on the applications, presentations, and public comments received by the Division 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, the Division 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 Haw. Admin. R. § 13-140-24(a)(8)—the Division may require awardees to meet any requirements of Chapter 343 prior to disbursing funds for land acquisition grants. Internally, the Department'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 LLCP grant agreement.

Therefore, the Division recommends that Board declare that the acquisition of land by the Department using FY18 and FY19 funds awarded by the Legacy Land Conservation Program, and the awards of FY18 and FY19 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 FY18 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) Authorize the Chairperson to enter into a agreements and encumber FY18 and FY19 funds with (a) Wai'anāe Community Redevelopment Corporation for \$750,000 for the acquisition

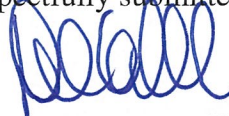


of 21 acres at Wai‘anae, O‘ahu, with a conservation easement held by The Trust for Public Land, Hawaiian Islands Land Trust, or other suitable entity; and (b) Friends of Amy B.H. Greenwell Ethnobotanical Garden for \$750,000 for the acquisition of 13.6 acres at Kona, Hawai‘i, with a conservation easement held by the County of Hawai‘i or other suitable entity, using a total of \$1,500,000 from the Land Conservation Fund, subject to:

- a. compliance with Chapter 173A, Hawai‘i Revised Statutes;
  - b. compliance with Chapter 343, Hawai‘i Revised Statutes;
  - c. execution of a Grant Agreement with the Board;
  - 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.
- 3) Approve—as a contingency in the event that an awardee is unable to accept its awarded funds—the Legacy Land Conservation Commission recommendation to award remaining, available funds from the Land Conservation Fund, up to the amounts originally requested in the applications, but not to exceed \$1,500,000, to: first, the Division of Forestry and Wildlife (DOFAW), as an alternate, for the acquisition of 3,277 acres at Kula, Maui (Kamehamehū Forest); and second, The Nature Conservancy (TNC) and DOFAW, as joint alternates, for the acquisition of two conservation easements over a total area of 993 acres at Kona, Hawai‘i (Ho‘omaui Forest and Ranch); and
- 4) Delegate authority to the Chair to redirect funding for a discontinued 2017-2018 award to other 2017-2018 applications that the Legacy Land Conservation Commission recommended for funding, so as to accomplish partial or full funding for each approved award in the order ranked by the Commission, up to a total of \$1,500,000 from the biennium budget for Fiscal Years 2018 and 2019.
- 5) 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, Hawai‘i Revised Statutes.
- 6) Declare that an approved award of 2017-2018 grant funds from the Legacy Land Conservation Program to the Division of Forestry and Wildlife 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, Hawai‘i Revised Statutes; Section 11-200-8, Hawai‘i Administrative Rules; and Exemption Class 1, Action Types 45 and 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.

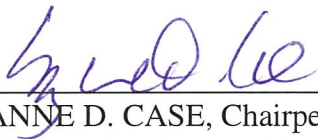
- 7) Declare that each approved 2017-2018 award of grant funds from the Legacy Land Conservation Program to a nonprofit land conservation organization for land acquisition will probably have minimal or no significant effects on the environment; is an action for the award of grants under Haw. Rev. Stat. 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, Hawai'i Revised Statutes; Section 11-200-8, Hawai'i Administrative Rules; 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.
- 8) Authorize the Department to proceed with all due diligence and negotiations that may be necessary to carry out the 2017-2018 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 2017-2018 Legacy Land Conservation Program with project maps and photos attached   |
| Attachment II:  | Letters from the President of the Senate (March 19, 2018) and the Speaker of the House of Representatives (March 16, 2018)   |
| Attachment III: | List of individuals and organizations providing written testimony and letters of support for MA'O Farms application  |
| Attachment IV:  | List of individuals and organizations providing "Support Letters for Amy B.H. Greenwell Ethnobotanical Garden Application to Legacy Land Commission, December, 2017" |
| 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  |



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

April 27, 2018

**Attachment I: Table of recommended awards for the 2017-2018 Legacy Land Conservation Program with project maps and photos attached**



Land Conservation Fund Grant Application Ranking and Recommendation Summary, 2017-2018

Legacy Land Conservation Commission

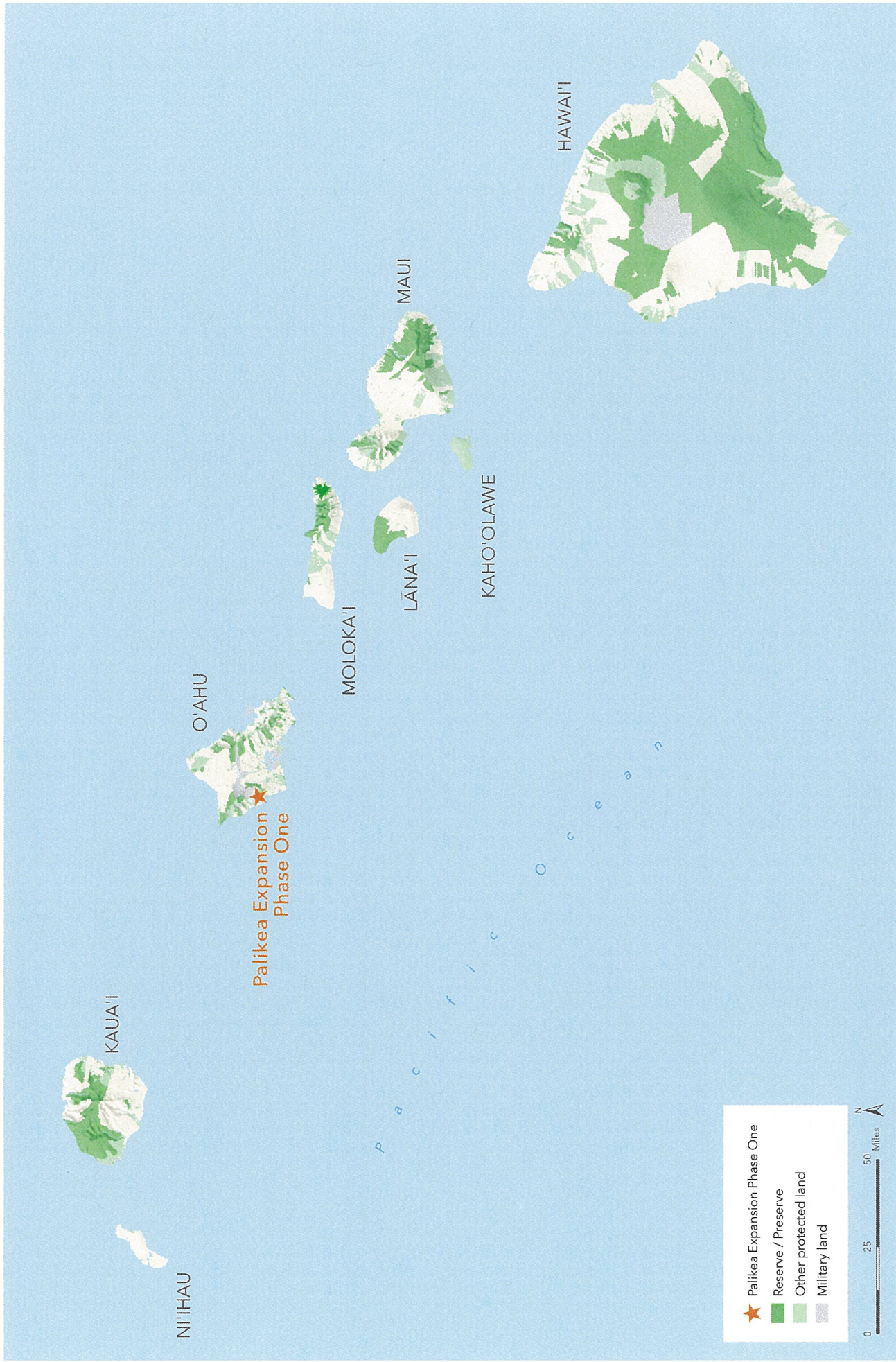
**Bold type** indicates a 2017-2018 application that the Commission recommends for full funding with available funds from the FY18-FY19 biennium budget, in the order ranked/presented.

*Italic type* indicates a 2017-2018 application that the Commission recommends for contingent funding with available funds, in the order ranked/presented, up to the full amount requested but not to exceed \$1,500,000, in the event that a higher-ranked application does not proceed with its funding award. Total funding from the FY18-FY19 biennium budget for all 2017-2018 applications that the Commission recommends for funding shall not exceed \$1,500,000.

Rank	Title	Applicant	District & Island	Fee/ Easement/ DebtServ	Entity that will hold	Location	Acres	State Land Use District(s) (Subzones)	County Zoning ----- General/Community Plan	Match \$	Legacy Land \$	Total \$
00	Turtle Bay Makai - Kahuku Kawela Forever	State DLNR	Ko'olauloa, O'ahu	DebtServ	Existing holders are:  State of Hawai'i (Fee and Easement)  City and County of Honolulu (Fee)	Ahupua'a of 'Opana (1&2), Kawela, Hanaka'oe, 'O'io (1&2), 'Ulupehupehu, Punalau, & Kahuku (west to east), Ko'olauloa District, North Shore of O'ahu, makai of Kamehameha Highway around existing Resort (Total 16 parcels +1 por.)  52.575 acres (State Fee) 531.452 acres (State Conservation Easement) 37.412 acres (Lot 17/P-2) interim state CE until possible future conveyance in fee to County	621.439	Urban Agricultural	Resort P-2 (General Preservation) B-1 (Neighborhood Business) Ag-2 ----- Resort Major Parks Golf Courses	38,163,356  (includes \$3,000,000 from Legacy Land FY16&17)	\$1,500,000	\$39,663,356
01a tie	MA'O Organic Farms Palikea Expansion - Phase One	Wai'anae Community Re- Development Corporation	Wai'anae, O'ahu	Fee	Wai'anae Community Re-Development Corporation	Wai'anae moku, ahupua'a of Lualualei, in southern Lualualei Valley between Hakimo Road and Lualualei Naval Rd, and below the Wai'anae mountain range.	21.1	Agricultural	Preservation	\$550,000	first \$750,000 of available funds	\$1,300,000
01b tie	Amy B.H. Greenwell Ethnobotanical Garden	Friends of Amy B.H. Greenwell Ethnobotanic al Garden	Kona, Hawai'i	Fee	Friends of Amy B.H. Greenwell Ethnobotanical Garden	The Amy B.H. Greenwell Ethnobotanical Garden is a very well-known ethnobotanical garden in Captain Cook, in the ahupua'a of Kealakekua, less than one mile west of the Kealakekua Bay (five discontinuous parcels)	13.6	Urban Agricultural	Commercial Residential Agricultural	\$926,951	second \$750,000 of available funds	\$1,676,951
03	Kamehamenui Forest	State DLNR Division of Forestry and Wildlife	Kula, Maui	Fee	State DLNR, Division of Forestry and Wildlife	On the northwest slopes of Haleakalā in the ahupua'a of Kamehamenui, Kula/Upcountry District, Maui County connecting to and mauka of Kekaulike Ave. (two contiguous parcels)	3,277	Agricultural Conservation (Resource Subzone)	Agriculture Agriculture/open Conservation	\$7,510,000	\$2,330,000	\$9,840,000
04 tie	Ho'omau Forest and Ranch	The Nature Conservancy	Kona, Hawai'i	Easement	The Nature Conservancy	South Kona District, Island of Hawai'i, along the western (leeward) flank of Mauna Loa volcano, north of the volcano's southwest rift zone upslope from the Hawai'i Belt Road. The properties to be conserved encompass a portion of the 1,593 acre Ranch and consist of three contiguous parcels (DOFAW easement) plus another nearby parcel (TNC easement), separated by a portion of the 1926 Ho'opuloa lava flow. TNC's proposed easement is over an area of lowland mixed mesic forest known as "Martin Forest Paddock." DOFAW's proposed easement is over 'ōhi'a lowland wet forest (Gagne and Cuddihy, 1999). THE TWO APPLICATIONS TOGETHER PROVIDE NON-FEDERAL MATCH FOR A FEDERAL GRANT.	993	Agricultural	A-5a	\$1,575,000 Secured from U.S.	\$400,000	\$2,075,000
04 tie	Ho'omau Forest and Ranch	State DLNR Division of Forestry and Wildlife	Kona, Hawai'i	Easement	State DLNR, Division of Forestry and Wildlife			Agricultural	A-5a	Forest Service, Forest Legacy Award  \$100,000		
05	Hāloa 'Āina – Royal Hawaiian Sandalwood	State DLNR, Division of Forestry and Wildlife	Kona, Hawai'i	Easement	State DLNR, Division of Forestry and Wildlife	Western flank of Mauna Loa on the border between the North Kona and South Kona, and upslope of Māmalahoa highway near Captain Cook. (three contiguous parcels)	2,780	Agricultural	Ag20 ----- Extensive agriculture	\$3,335,650	\$1,000,000	\$4,335,650
06	Hana Forest Reserve Addition – Roman Catholic Church	State DLNR Division of Forestry and Wildlife	Kīpahulu, Maui	Fee	State DLNR, Division of Forestry and Wildlife	Along and on either side of the Hana Highway in Hana, Maui. On the makai side the property connects to the shoreline and ocean; on the mauka portion the property runs up the mountain connecting with the Hana Forest Reserve that reaches the summit. (two contiguous parcels)	291	Agricultural Conservation (Resource Subzone)	Agriculture Open Space	\$500,000	\$2,000,000	\$2,500,000
07	Ho'oulu 'Āina, Growing Futures for All	The Living Pono Project	Wailuku, Maui	Fee	The Living Pono Project	Nā Wai 'Ehā, Waiehu Ahupua'a	240.087	Agricultural Rural Urban	Agriculture/Urban ----- Rural	\$893,971	\$2,681,913	\$3,575,884

Grey shading above indicates an application that the Commission did not recommend for funding from the FY18-FY19 biennium budget.





# MA'O Farms - Palikea Expansion Phase One

ISLAND OF O'AHU, HAWAII

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MAILI LANDS; WAIANA E, OAHU.

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NOTE: For easements in MAIL CHANNEL  
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*Journal of Management Education*

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Source: Tax Maps Bureau & Id. Ch. -  
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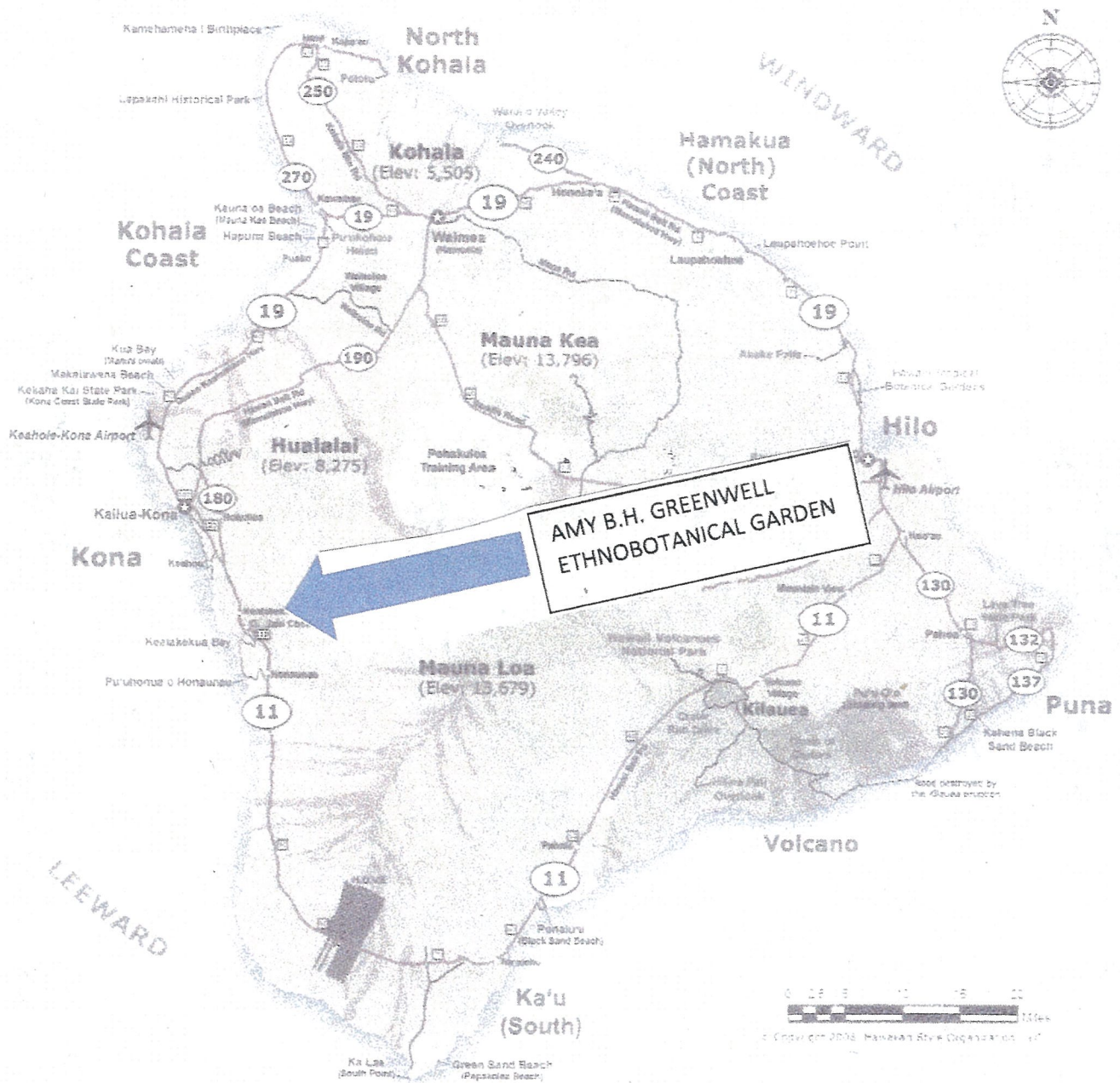






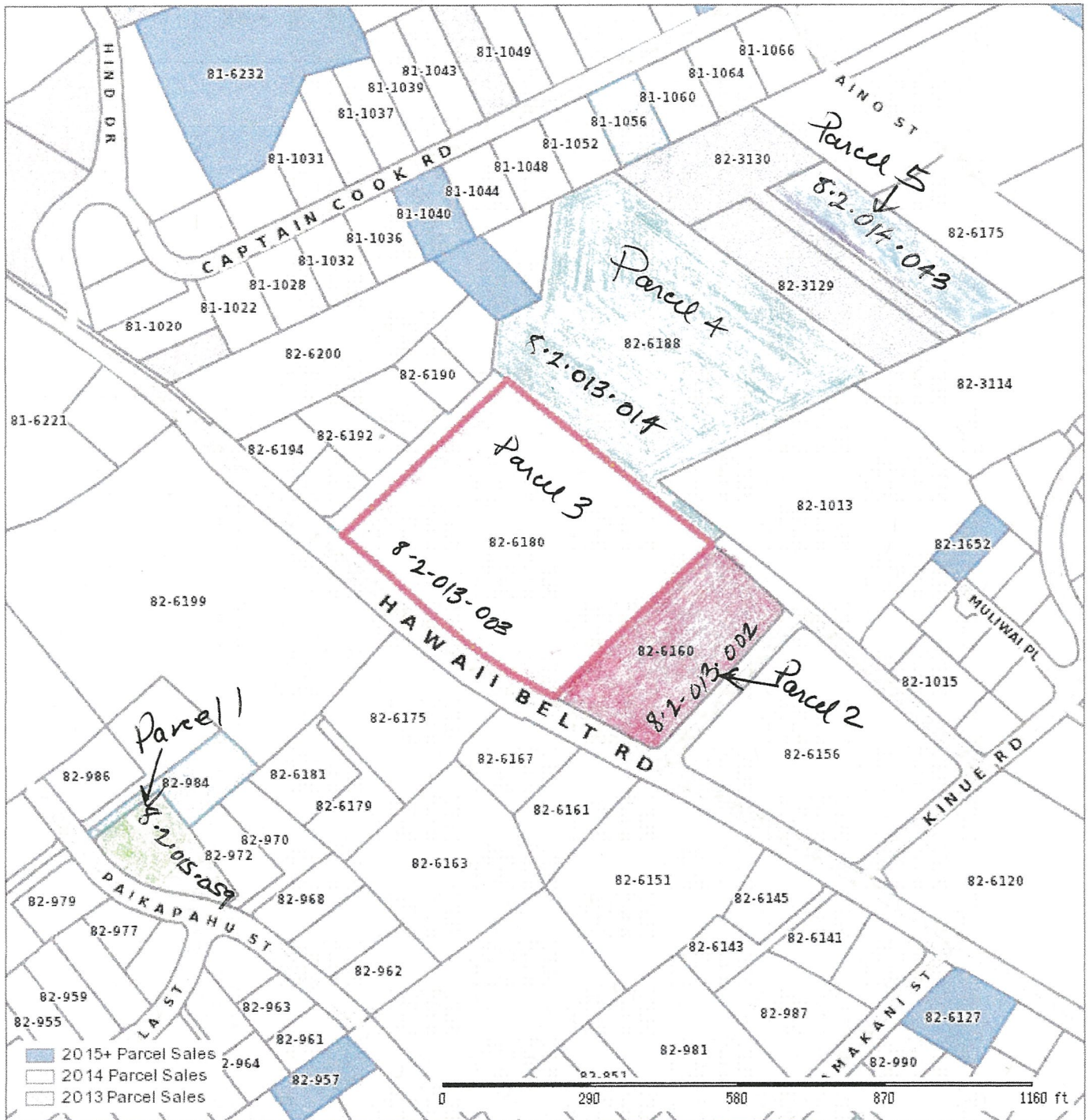






AMY B. H. GREENWELL  
ETHNOBOTANICAL  
GARDENS

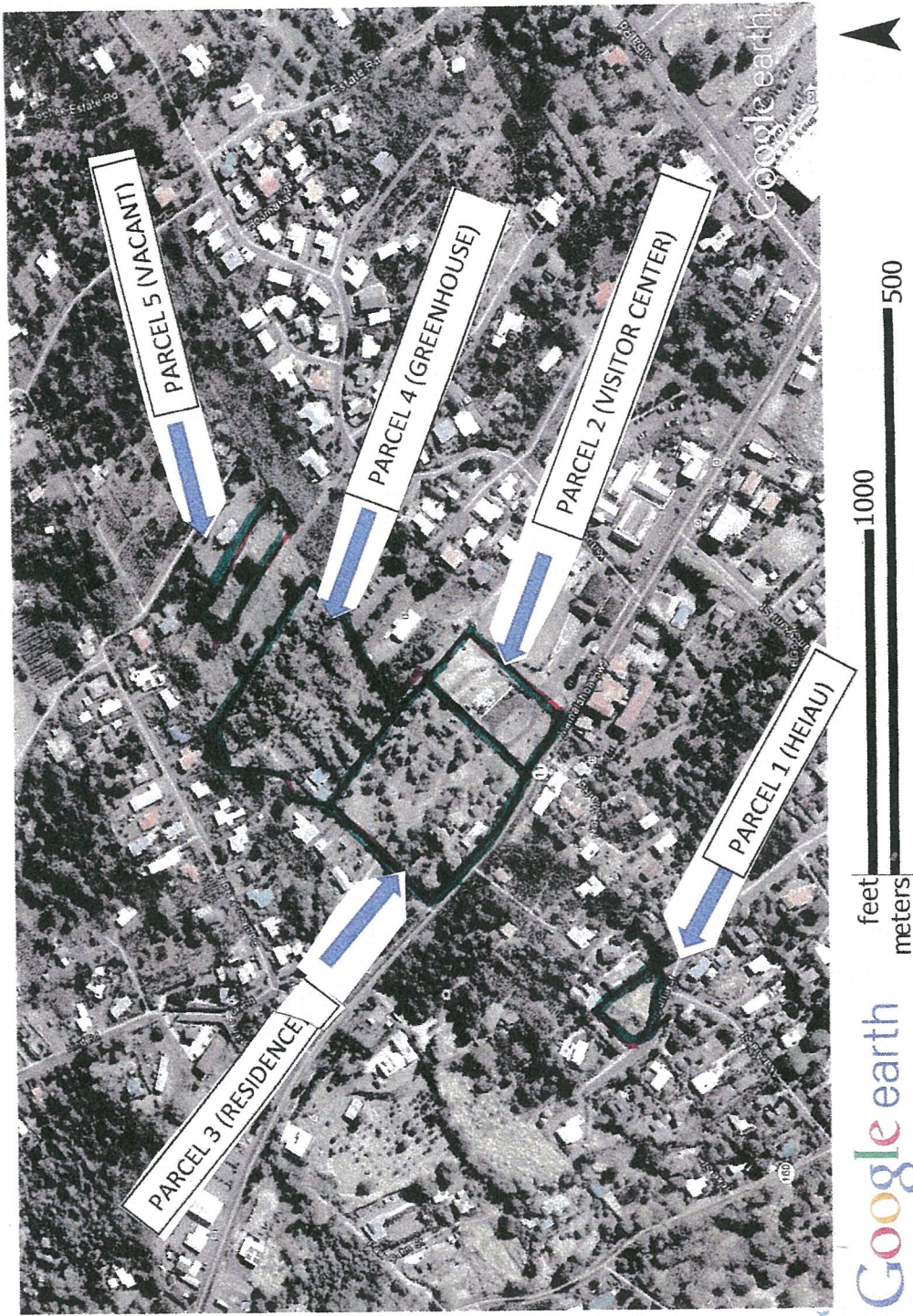




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Name:	B P BISHOP MUSEUM	Land Value	254100
Site:	82-6180 HAWAII BELT ROAD	Land Exemption	254100
Sale:		Taxable Land Value	0
Mail:	1525 BERNICE ST HONOLULU, HI 96817-2704	Building Value	118200
		Building Exemption	118200
		Taxable Bldg. Value	0
		Total Taxable Value	0

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AMY B. H. GREENWELL  
ETHNOBOTANICAL  
GARDENS



## PHOTOGRAPHS OF AMY B.H. GREENWELL ETHNOBOTANICAL GARDEN



**HALA (*Pandanus tectorius*) Screwpine**





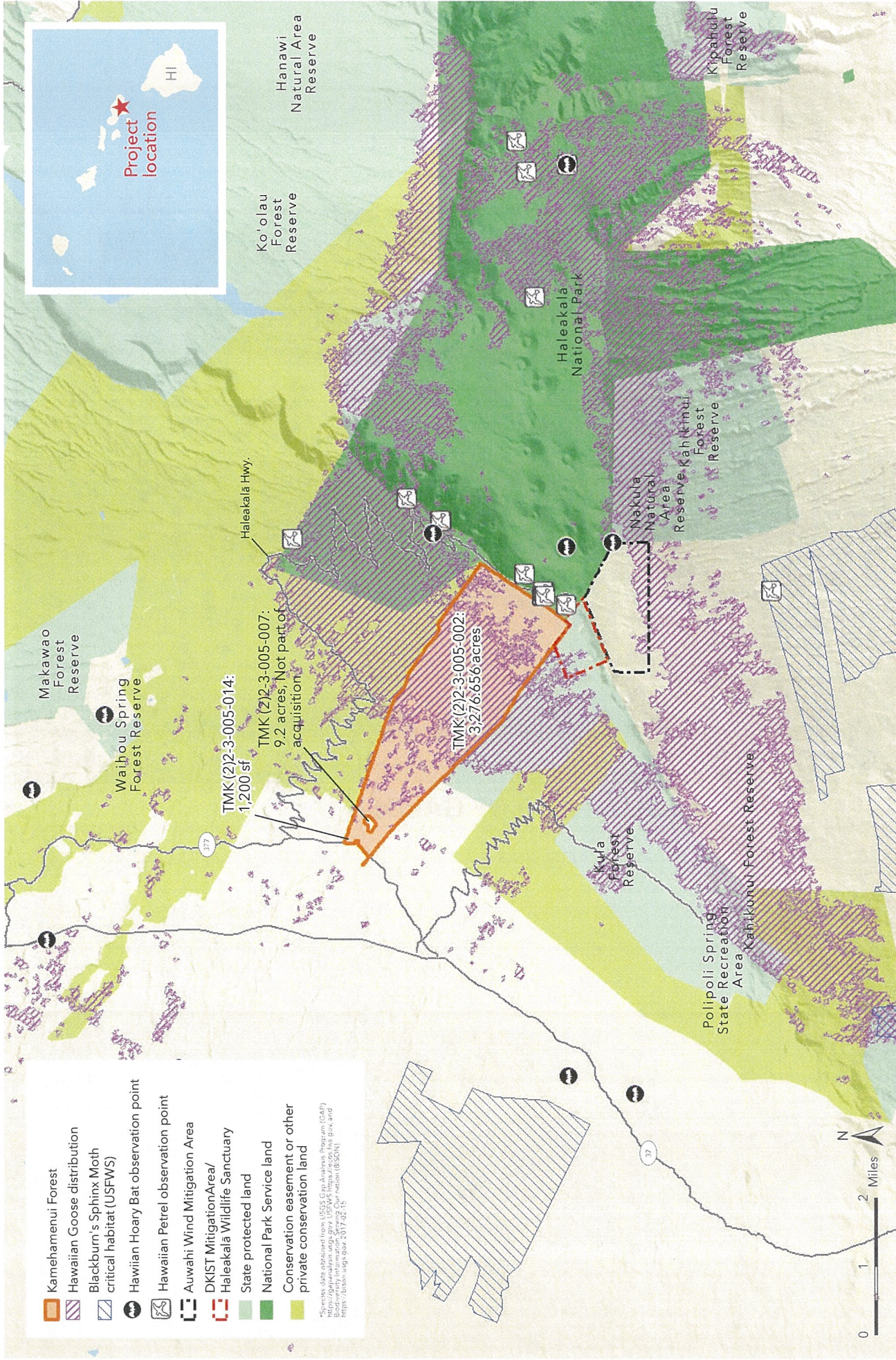
**70+ VARIETIES OF TARO**





**SOUTH END OF GARDEN**





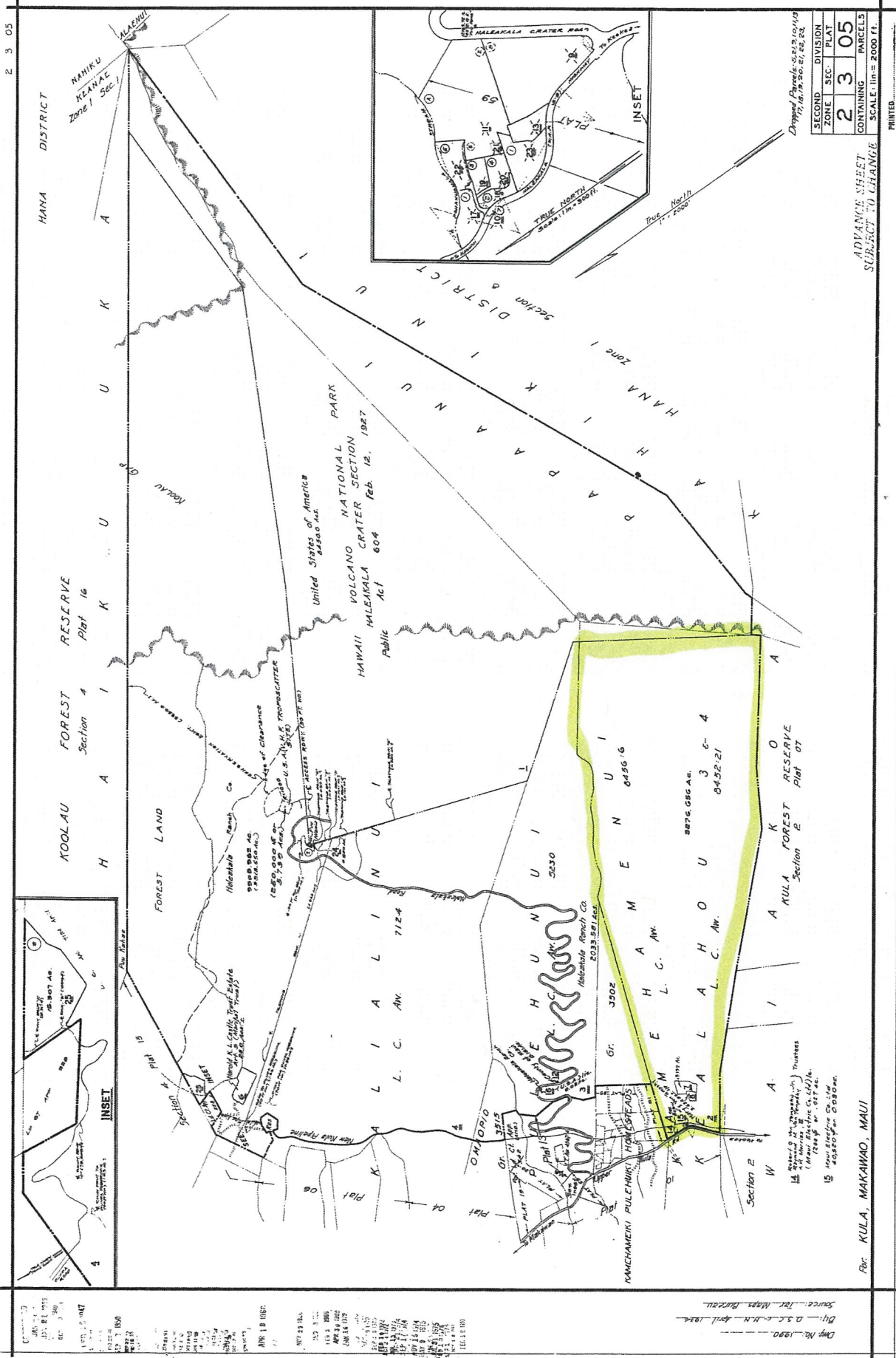
# Kamehameui Forest

## ISLAND OF MAUI

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For: KULA, MAKAWAO, MAUI

**ADVANCE SHEET  
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2	3	05

ipped Parcel/s: 5, 21, 9, 10, 11, 13  
17, 18, 19, 20, 21, 22, 23,



# Kamehamehame Forest Project

Kula, Island of Maui



*Kamehamehame Forest Project (Photo by Sakamoto Properties)*



*'Iliahi (Santalum haleakalae var. haleakalae) in Kula Forest Reserve. Nene (Branta sandwicensis)*

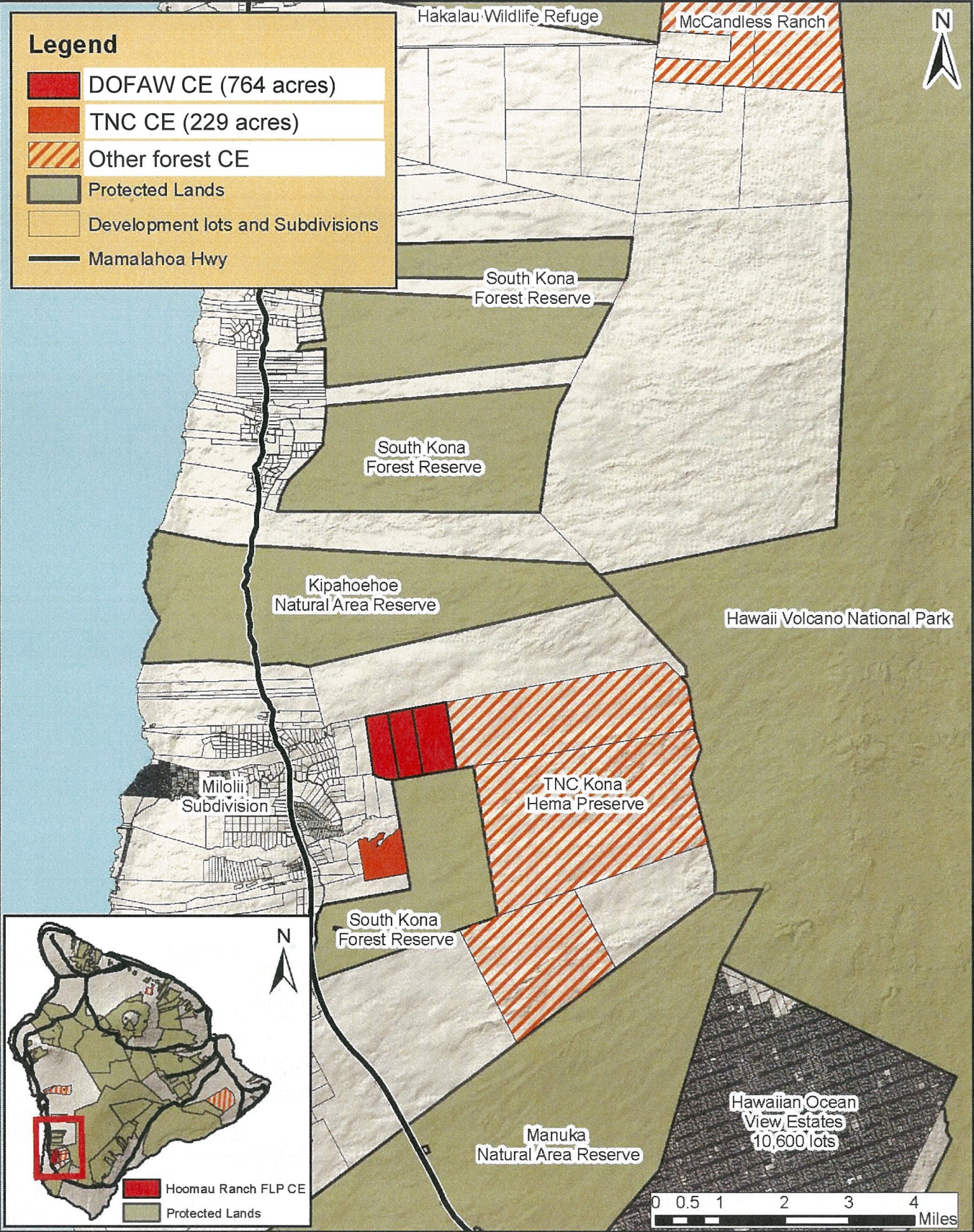




*Kamehamenui Forest Project subalpine native ecosystem*



# Ho'omau Forest & Ranch Conservation Easement Project









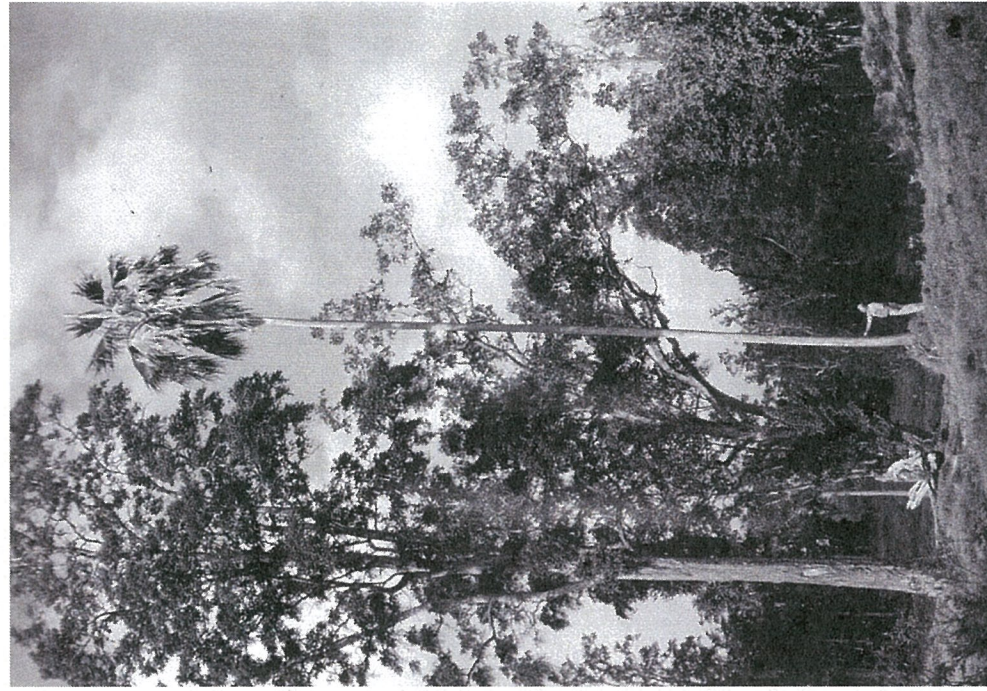






Ho'omaui diverse mixed-mesic forest.





One of the critically endangered loulu palms (*Pritchardia schattaueri*) at Hoomau in 1988 and 2014. Mehamehame tree (*Flueggea neowawraea*) at Ho'omau.



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

April 27, 2018

**Attachment II:        Letters from the President of the Senate (March 19, 2018) and  
the Speaker of the House of Representatives (March 16, 2018)**





**The Senate  
Office of the President**

STATE CAPITOL  
HONOLULU, HAWAII 96813

March 19, 2018

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

**RE: Projects for the Fiscal Year 2018 Legacy Land Conservation Program**

Dear Chair Case:

I am in receipt of your letter dated January 11, 2018 regarding the Legacy Land Conservation Commission's recommendation for the funding of projects for the Fiscal Year 2018 Legacy Land Program.

This is to confirm that I have no concerns or objections at this time as it relates to the three projects enumerated in the aforementioned letter: Turtle Bay Makai – Kahuku Kawela Forever; MA'O Organic Farms Palikea Expansion – Phase One; and Amy B.H. Greenwell Ethnobotanical Garden.

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

Sincerely,

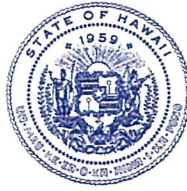
RONALD D. KOUCHI

Senate President

8<sup>th</sup> Senatorial District- Kauai and Niihau

Cc: Speaker Scott K. Saiki





**HOUSE OF REPRESENTATIVES**

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

March 16, 2018

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 11, 2018 in which you submitted for my review the recommendations from the Legacy Land Conservation Commission 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 recommendations as proposed in your attachment.

Sincerely,

Scott K. Saiki  
Speaker of the House



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

April 27, 2018

**Attachment III: List of individuals and organizations providing written testimony and letters of support for MA'O Farms application**

State Senator Maile S.L. Shimabukuro (District 21)  
State Representative Cedric Gates (District 44)  
City Councilmember Kymberly Marcos Pine (District 1)  
Chancellor Maenette K.P. Ah Nee-Benham, Dr. Manulani Aluli Meyer, and Albie Miles, Ph.D.  
(University of Hawai'i – West O'ahu)  
Jenai Sullivan Wall (Foodland)  
Jay Bost (University of Hawai'i, GoFarm Hawai'i)  
Brent N. Kakesako (Hawai'i Alliance for Community-Based Economic Development)  
Ah Ching Poe (Concerned Elders of Wai'anae)  
Rochelle Kawelo (Wai'anae Hawaiian Civic Club)  
Danny Wyatt (Leeward Community College Wai'anae Moku)  
Ron Fitzgerald (Wai'anae High School)  
Jewelynn Kirkland (Nānākuli High and Intermediate School)  
Dr. Jonathan L. Deenik (University of Hawai'i – Mānoa)  
Lauren Nahme (Kamehameha Schools)  
Natalie McKinney (Kōkua Hawai'i Foundation)  
John Morgan (Kualoa Ranch)  
Mary L. Spadaro (Slow Money Hawaii)  
Kyle Datta (Ulupono Initiative)  
Luann & Gary Casey (Tin Roof Ranch)

**Current and former MA'O employees and interns:**

Maisha S. Abbott  
Tiele-Lauren L. Doud  
Chelsie Onaga  
Kraig Goss  
Rachelle Carson  
Elsie Leimomi Dela Cruz-Talbert



**SUPPORT LETTERS FOR AMY B.H. GREENWELL ETHNOBOTANICAL GARDEN  
APPLICATION TO LEGACY LAND COMMISSION, DECEMBER, 2017**

Anderson, Genevieve and R. Shane – Kailua Kona, HI  
Bauer, Nancy – Kailua Kona, HI  
Cyran, Alex – Volcano, HI  
David, Maile – Council District 6  
Dean, Angela, CEO, Comunidad Latina De Hawai'i  
Emory, Meris – niece of Kenneth P. Emory  
Eoff, Karen – Council District 8  
Farm, Linda Lee Kuuleilani (Cissy) – Bernice Pauahi Bishop Museum Letter  
Green, Senator Joshua – Senator, 3<sup>rd</sup> District  
Greenwell, Meg – Owner Kealakekua ranch Center and Garden Director, Niece of Amy  
Hill, David, - Captain Cook, HI  
Hill, Howard – Citizen  
Hopkins, Haunani – President, Hawaiian Lomilomi Association  
Judziewicz, Emmet J., Prof Biology, Univ. Wisconsin – Stevens Point  
Kasperski, Sandra - Citizen  
Kraus, Robert and Louise Hanna – Kailua-Kona, HI  
Krishnan, Sarada, Dir Horticulture/Center for Global Initiatives, Denver Botanical Garden  
Levin, Penny, Project Coordinator, Hawai'i Land Restoration Institute  
Lipman, Peter & Beverly – Captain Cook, HI  
Love, Ken – Hawaii tropical Fruit Growers  
Lowen, Nicole – Representative, District 6  
Makuakane-Jarrell, Joni Mae, Retired Chief of Interpretation – Hawaii Volcanoes National Park  
Manakū, R. Kealohapau'ole – Treasurer, Amy Greenwell Ethnobotanical Garden  
Melrose, Maile – President, Friends of Amy Greenwell Ethnobotanical Garden  
Metcalf, Mary – President Ka'ahahui 'O Ka Nahelehele  
Morin, Marie – Secretary, Friends of Amy Greenwell Ethnobotanical Garden  
Olson, Susan – Garden Volunteer, Student: Na Wai Iwi Ola  
Orr, David – Waimea Valley Botanical Collections Specialist  
Parsons, Elliot – Kailua –Kona, HI  
Prater, Joan Coan – Captain Cook, HI  
Rice, Sally – Agricon Hawaii Inc.  
Ripp, Robbe and Judy – Honaunau, HI  
Robblee, Mary – Citizen  
Salvo, Patricia - Switzerland  
Scott, Gwen – Greenwell Farms  
Scott, Stephan and Diana – Captain Cook Residents  
Seymour, Dot - Citizen



Simmons, Peter, Kamehameha Schools Land Assets Div.  
Soil & Water Conservation District, Kona; 5 signatories  
Spencer, Nikki - farmer  
Terry, Ron – Hilo, HI  
Todd, James – Garden Board Member  
Todd, Patricia – Garden Board Member  
Webb, Beth Anne “Ana” – KSBE Coffee Grower  
Wichman, Chipper – President/CEO, National Tropical Botanical Garden  
Winn, Louise – Honaunau, HI  
Yeh, Aileen - Hawaii



DEPARTMENT OF LAND AND NATURAL RESOURCES

April 27, 2018

Attachment V

DAVID Y. IGE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

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  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

September 25, 2015

**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:



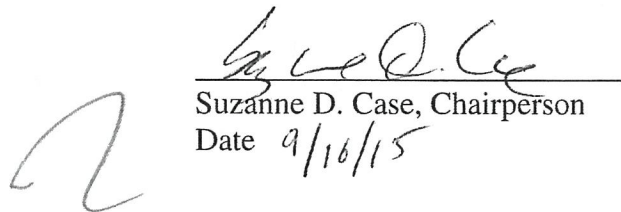
Item No. 47: "Leases of state land involving negligible or no expansion or change of use beyond that previously existing".

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

April 27, 2018

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

- |    |  |                  |
|----|--|------------------|
| 1. | <u>MA'O Farms:</u>                               | Wai'anale, O'ahu |
| 2. | <u>Amy B.H. Greenwell Ethnobotanical Garden:</u> | Kona, Hawai'i    |
| 3. | <u>Kamehamehame Forest:</u>                      | Kula, Maui       |
| 4. | <u>Ho'oma Forest and Ranch:</u>                  | Kona, Hawai'i    |





STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF FORESTRY AND WILDLIFE  
1151 PUNCHBOWL STREET, ROOM 325  
HONOLULU, HAWAII 96813

February 5, 2018

MEMORANDUM

TO:

State agencies:

- ☒ DOH, Environmental Planning Office
- ☒ DHHL, Planning Office
- ☒ Department of Agriculture, Chairperson
- ☒ OHA, Compliance Enforcement Program

Counties:

- ☒ C&C of Honolulu,  
Mayor's Office

FROM:

David G. Smith, Administrator *for mgz*

SUBJECT:

Propriety of the exemption of an action from the requirement to prepare an environmental assessment, Legacy Land Conservation Program grant to Wai'anae Community Redevelopment Corporation, Chapter 343, HRS

LOCATION: Wai'anae, O'ahu, TMK: (1) 8-7-010:006

SUSPENSE DATE: March 5, 2018

Attached for your review is the Draft Declaration of Exemption for a grant from the Land Conservation Fund to the Wai'anae Community Redevelopment Corporation for the acquisition of 21.1 acres of land in Wai'anae, Island of O'ahu. The complete grant application is available upon request. The Division requests that your authorized representative mark the appropriate responses on page two of this memo, sign off at the bottom of that page, and return both pages of this memo to the Division's Legacy Land Conservation Program no later than March 5, 2018, via phone, fax, email, interoffice mail, postal mail, or other delivery service.

If the Division does not receive a reply before March 6, 2018, then 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 [legacyland@hawaii.gov](mailto:legacyland@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, for presentation 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, Hawai‘i Revised Statutes (Haw. Rev. Stat.);
- Section 11-200-8, Hawai‘i Administrative Rules; 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 2017-2018 grant  
from the Land Conservation Fund to Wai‘anae Community Redevelopment Corporation  
for land acquisition at Wai‘anae, O‘ahu  
**TMK: (1) 8-7-010:006**

Application	State LUD	County LUO	existing use	change of use of land or resources (aspirational, not “caused” by grant award)	Future encumbrances
MA‘O Organic Farms Palikea Expansion	Agricultural	Preservation P-2	Vacant farmland	Change zoning to Ag-2 and put into production	LLCP statute and rules; LLCP deed restrictions; conservation easement if necessary.

- ☐ 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.

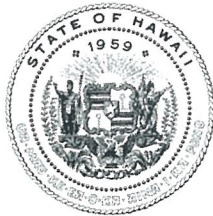
Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Name and Agency/Affiliation: \_\_\_\_\_

\_\_\_\_\_





**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

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

ROBERT K. MASUDA  
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

**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, Grant to Wai'anāe Community Re-development Corporation (Fiscal Biennium 2018-2019)  
Location: Wai'anāe, O'ahu  
TMK: TMK: (1) 8-7-010:006  
Description: Grant of \$750,000 from the Land Conservation Fund to Wai'anāe Community Redevelopment Corporation for the acquisition of 21.1 acres of land.

Pending approval by the Board of Land and Natural Resources and subsequent completion of the terms of the grant agreement, Wai'anāe Community Redevelopment Corporation (WCRC) would receive \$750,000 through the Legacy Land Conservation Program for the acquisition of 21.1 acres of land.

The subject property, TMK (1) 8-7-010:006, is vacant farmland. The WCRC will revive use of the property for agricultural purposes, subject to the Legacy Land Conservation Program deed restrictions and covenants and a conservation easement held by The Trust for Public Land, the Hawaiian Islands Land Trust, or another nonprofit land conservation organization, as necessary.

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, City and County of Honolulu, and four other State agencies and entities (DOA, DOH, DHHL, OHA)



**The proposed action is a stand-alone, one-time award of funds for land acquisition, only, 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 because the award of funds, in and of itself, does not cause changes to the environment.**

*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 Department of Land and Natural Resources 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 HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
DIVISION OF FORESTRY AND WILDLIFE  
1151 PUNCHBOWL STREET, ROOM 325  
HONOLULU, HAWAII 96813

February 2, 2018

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

ROBERT K. MASUDA  
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

**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
- ☒ DLNR, 'Aha Moku Advisory Committee
- ☒ DOH, Environmental Planning Office
- ☒ DHHL, Planning Office
- ☒ OHA, Compliance Enforcement Program

**Counties:**

- ☒ County of Hawai'i,  
Mayor's Office

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

**SUBJECT:** Propriety of the exemption of an action from the requirement to prepare an environmental assessment, Legacy Land Conservation Program grant to the Friends of Amy B.H. Greenwell Ethnobotanical Garden, Chapter 343, HRS

**LOCATION:** Kona, Island of Hawai'i, TMKs: (3) 8-2-013-002, (3) 8-2-013-003,  
(3) 8-2-013-014, 8-2-014-043, and (3) 8-2-015-059

**SUSPENSE DATE:** March 5, 2018

Attached for your review is a copy of the Draft Declaration of Exemption for a grant from the Land Conservation Fund to the Friends of Amy B.H. Greenwell Ethnobotanical Garden for the acquisition of 13.6 acres of land in Kona, Island of Hawai'i. The complete grant application is available upon request. The Division requests that your authorized representative mark the appropriate responses on page two of this memo, sign off at the bottom of that page, and return both pages of this memo to the Division's Legacy Land Conservation Program (LLCP) no later than March 5, 2018, via phone, fax, email, interoffice mail, or postal mail.

If the Division does not receive a reply before March 6, 2018, then 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 [legacyland@hawaii.gov](mailto:legacyland@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 (please see table below, for presentation 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, Hawai‘i Revised Statutes (Haw. Rev. Stat.);
- Section 11-200-8, Hawai‘i Administrative Rules; and
- the Exemption List for the Department of Land and Natural Resources, reviewed and concurred on by the Environmental Council on June 5, 2015, under:
  - Exemption Class 1, Action Type 49 (“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 2017-2018 grant  
from the Land Conservation Fund to the Friends of Amy B.H. Greenwell Ethnobotanical Garden  
for land acquisition at Kona, Island of Hawai‘i

**TMKs: (3) 8-2-013-002, (3) 8-2-013-003, (3) 8-2-013-014, (3) 8-2-014-043, and  
(3) 8-2-015-059**

Application	State LUD	County LUO	existing use	change of use of land and resources (aspirational, not “caused” by grant award)	future encumbrances
Amy B.H. Greenwell Ethnobotanical Garden	Urban Agricultural	Commercial Residential Ag	heiau; botanical garden with office, greenhouse, visitor center, residence; vacant land; deed restrictions	none	LLCP statute and rules; LLCP grant agreement; LLCP deed restrictions; Conservation easement

- ☐ 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/Affiliation: \_\_\_\_\_  
\_\_\_\_\_





STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

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, Grant to the Friends of Amy B.H. Greenwell Ethnobotanical Garden (Fiscal Biennium 2018-2019)  
Location: Kona, Hawai'i  
TMKs: (3) 8-2-013-002, (3) 8-2-013-003, (3) 8-2-013-014, 8-2-014-043, and (3) 8-2-015-059  
Description: Grant of \$ 750,000 from the Land Conservation Fund to the Friends of Amy B.H. Greenwell Ethnobotanical Garden for the acquisition of 21.1 acres of land.

Pending approval by the Board of Land and Natural Resources and subsequent completion of the terms of the grant agreement, the Friends of Amy B.H. Greenwell Ethnobotanical Garden (Friends) would receive \$750,000 through the Legacy Land Conservation Program for the acquisition of 21.1 acres of land.

The subject property consists of three contiguous parcels and two separate parcels, one of which holds a heiau. Bishop Museum owns the property and operated the three contiguous parcels as an ethnobotanical garden that was open for public visits and education until about one year ago. The Friends will reopen the Garden under new leadership, subject to existing deed restrictions, Legacy Land Conservation Program deed restrictions and covenants, and a conservation easement held by Hawai'i County or a nonprofit land conservation organization, as necessary.

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 (seven organizational units), County of Hawai'i, and four other State agencies (DOA, 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 because the award of funds, in and of itself, does not cause changes to the environment.**

*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 Department of Land and Natural Resources Exemption Class 1, Action Type 49.*

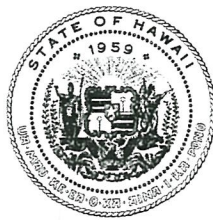
\_\_\_\_\_  
Suzanne D. Case, Chairperson

\_\_\_\_\_  
Date

Original: Agency file  
Copy: Project file

Attachment A: Map  
Attachment B: Pictures





**STATE OF 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  
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JEFFREY T. PEARSON, P.E.  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
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BUREAU OF CONVEYANCES  
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ENGINEERING  
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HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

February 2, 2018

**MEMORANDUM**

TO:

**State agencies:**

- ☒ DOH, Environmental Planning Office
- ☒ DHHL, Planning Office
- ☒ Department of Agriculture, Chairperson
- ☒ OHA, Compliance Enforcement Program

**Counties:**

- ☒ County of Maui,  
Mayor's Office

FROM: David G. Smith, Administrator *MS*

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: Kula, Island of Maui, TMKs: (2) 2-3-005:002 and (2) 2-3-005:014

SUSPENSE DATE: March 5, 2018

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 3,277 acres of land in Kula, Island of Maui. The complete grant application is available upon request. The Division requests that your authorized representative mark the appropriate responses on page two of this memo, sign off at the bottom of that page, and return both pages of this memo to the Division's Legacy Land Conservation Program (LLCP) no later than March 5, 2018, via phone, fax, email, interoffice mail, or postal mail.

If we do not receive a reply before March 6, then 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 [legacyland@hawaii.gov](mailto:legacyland@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, for presentation 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, Hawai'i Revised Statutes (Haw. Rev. Stat.);
- Section 11-200-8, Hawai'i Administrative Rules; and



- the Exemption List for the Department of Land and Natural Resources, reviewed and concurred on by the Environmental Council on June 5, 2015, under:
  - Exemption Class 1, Action Type 45 (“Acquisition of land or interests in land”), and
  - Exemption Class 1, Action Type 49 (“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 2017-2018 grant  
from the Land Conservation Fund to the Division of Forestry and Wildlife (DOFAW)  
for land acquisition grant at Kula, Island of Maui  
**TMKs: (2) 2-3-005:002 and (2) 2-3-005:014**

Application	State LUD	County LUO	existing use	change of use of land and resources (aspirational, not “caused” by grant award)	future encumbrances
Kamehamehenui Forest	Agricultural Conservation (R Subzone)	Ag Open	Cattle grazing	Forestry; Native Ecosystem Protection; Public Access	LLCP statute and rules; LLCP deed restrictions; DOFAW management authorities

- ☐ 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/Affiliation: \_\_\_\_\_

\_\_\_\_\_



DAVID Y. IGE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

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

ROBERT K. MASUDA  
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

**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, Grant to the Division of Forestry and Wildlife (Fiscal Biennium 2018-2019)  
Location: Kula, Maui  
TMKs: (2) 2-3-005:002 and (2) 2-3-005:014  
Description: Grant of \$ 1,500,000 or less from the Land Conservation Fund to the Division of Forestry and Wildlife for the acquisition of 3,277 acres of land.

Pending approval by the Board of Land and Natural Resources, the Division of Forestry and Wildlife (DOFAW) would receive up to \$1,500,000 through the Legacy Land Conservation Program for the acquisition of 3,277 acres of land.

The subject property consists of two contiguous parcels, TMKs: (2) 2-3-005:002 and (2) 2-3-005:014, that include a large area of historic ranching landscape that was carved out of the natural/native forested slope of leeward Haleakalā. DOFAW has identified these two parcels as an addition to its Kula Forest Reserve, subject to Legacy Land Conservation Program deed restrictions and covenants, and to federal requirements and restrictions associated with potential sources of matching funds.

DLNR Agency Exemption List: June 5, 2015  
Exemption Class: 1  
Action Types: 45 and 49  
Description: Acquisition of land or interests in land. (Action Type 45)  
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. (Action Type 49).  
Advising: DLNR (seven organizational units), County of Maui, and four other State agencies (DOA, 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 because the award of funds, in and of itself, does not cause changes to the environment.**

*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 Department of Land and Natural Resources Exemption Class 1, Action Types 45 and 49.*

\_\_\_\_\_  
Suzanne D. Case, Chairperson

\_\_\_\_\_  
Date

Original: Agency file  
Copy: Project file

Attachment A: Map  
Attachment B: Pictures





**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

ROBERT K. MASUDA  
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JEFFREY T. PEARSON, P.E.  
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AQUATIC RESOURCES  
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ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

February 2, 2018

**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
- ☒ DLNR, 'Aha Moku Advisory Committee
- ☒ DOH, Environmental Planning Office
- ☒ DHHL, Planning Office
- ☒ Department of Agriculture, Chairperson
- ☒ OHA, Compliance Program Manager

**Counties:**

- ☒ County of Hawai'i,  
Mayor's Office

FROM: David G. Smith, Administrator 

SUBJECT: Propriety of the exemption of two actions from the requirement to prepare an environmental assessment, Legacy Land Conservation Program grants to The Nature Conservancy and the Division of Forestry and Wildlife, Chapter 343, HRS

LOCATION: Kona, Island of Hawai'i, TMKs: (3) 8-8-001:022, (3) 8-8-001:032, (3) 8-8-001:033, and (3) 8-9-001:023 (por.)

SUSPENSE DATE: March 5, 2018

Attached for your review is a Draft Declaration of Exemption for each of two grants from the Land Conservation Fund to (1) The Nature Conservancy and (2) the Division of Forestry and Wildlife for the acquisition of two conservation easements over a combined 993 acres of land in Kona, Island of Hawai'i. The complete grant applications are available upon request. The Division requests that your authorized representative mark the appropriate responses on page three of this memo, sign off at the bottom of that page, and return all pages of this memo to the Division's Legacy Land Conservation Program (LLCP) no later than March 5, 2018, via phone, fax, email, interoffice mail, postal mail, or other delivery service.

If the Division does not receive a reply before March 6, 2018, then 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 [legacyland@hawaii.gov](mailto:legacyland@hawaii.gov)**.

The Division believes that the subject awards of grant funds for land acquisition will probably have minimal or no significant effects on the environment (please see table below, for presentation in our staff submittal to the Board of Land and Natural Resources), and are exempt from the preparation of an environmental assessment in accordance with:

- Sections 343-5 and 343-6, Hawai‘i Revised Statutes (Haw. Rev. Stat.);
- Section 11-200-8, Hawai‘i Administrative Rules; and
- the Exemption List for the Department of Land and Natural Resources, reviewed and concurred on by the Environmental Council on June 5, 2015, under:
  - Exemption Class 1, Action Type 45 (“Acquisition of land or interests in land”) for the conservation easement acquired by the Division of Forestry and Wildlife, and
  - Exemption Class 1, Action Type 49 (“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”) for each conservation easement acquired by the Nature Conservancy or the Division of Forestry and Wildlife.

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



Existing use of land and resources for proposed 2017-2018 grants from the Land Conservation Fund to The Nature Conservancy (TNC) and the Division of Forestry and Wildlife (DOFAW) for the acquisition of conservation easements over land at Kona, Island of Hawai'i

**TMKs: (3) 8-8-001:022, (3) 8-8-001:032, and (3) 8-8-001:033, DOFAW easement**

**TMK: (3) 8-9-001:023 (por.), TNC easement**

Application	State LUD	County LUO	existing use	change of use of land and resources (aspirational, not "caused" by grant award)	future encumbrances
Ho'omau Forest and Ranch	Agricultural	Ag	Cattle ranching, horse pasturing, macadamia nut production, eco/agro tourism, forestry, honey production, conservation	None (compatible agriculture and conservation)	LLLCP statute and rules; LLCP grant agreement; LLCP deed restrictions; conservation easements w/ USDA requirements; DOFAW management authorities

- ☐ We advise that the exemptions are proper.
- ☐ We advise that the exemptions are not proper.
- ☐ We do not have an opinion about the propriety of the exemptions.
- ☐ Comments attached.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Name and Agency/Affiliation: \_\_\_\_\_

\_\_\_\_\_

DAVID Y. IGE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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SUZANNE D. CASE  
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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, Grant to The Nature Conservancy  
(Fiscal Biennium 2018-2019)  
Location: Kona, Hawai'i  
TMKs: (3) 8-9-001:023 (por.)  
Description: Grant of \$ 400,000 from the Land Conservation Fund to The Nature  
Conservancy for the acquisition of a conservation easement over 275 acres  
of land.

Pending approval by the Board of Land and Natural Resources and subsequent completion of the terms of the grant agreement, The Nature Conservancy would receive \$400,000 through the Legacy Land Conservation Program for the acquisition of a conservation easement over 275 acres of land.

The subject property, TMK (3) 8-9-001:023 (por.) is part of a working ranch that contains valuable natural resources, including endangered species. The property would be subject to Legacy Land Conservation Program deed restrictions and covenants, and to the conservation easement requirements of the federal/state Forest Legacy Program.

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 (seven organizational units), County of Hawai'i, and four other State agencies and entities (DOA, 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 because the award of funds, in and of itself, does not cause changes to the environment.**

*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 Department of Land and Natural Resources 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



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**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, Grant to the Division of Forestry and Wildlife (Fiscal Biennium 2018-2019)  
Location: Kona, Hawai'i  
TMKs: (3) 8-8-001:022, (3) 8-8-001:032, and (3) 8-8-001:033  
Description: Grant of \$ 100,000 from the Land Conservation Fund to the Division of Forestry and Wildlife for the acquisition of a conservation easement over 764 acres of land.

Pending approval by the Board of Land and Natural Resources and subsequent completion of the terms of the grant agreement, the Division of Forestry and Wildlife would receive \$100,000 through the Legacy Land Conservation Program for the acquisition of a conservation easement over 764 acres of land.

The subject property, TMKs (3) 8-8-001:022, (3) 8-8-001:032, and (3) 8-8-001:033, is part of a working ranch that contains valuable natural resources, including endangered species. The property would be subject to Legacy Land Conservation Program deed restrictions and covenants, and to the conservation easement requirements of the federal/state Forest Legacy Program.

DLNR Agency Exemption List: June 5, 2015  
Exemption Class: 1  
Action Types: 45 and 49

Acquisition of land or interests in land. (Action Type 45)  
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. (Action Type 49)  
Advising: DLNR (seven organizational units), County of Hawai'i, and four other State agencies and entities (DOA, 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 because the award of funds, in and of itself, does not cause changes to the environment.**

*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 Department of Land and Natural Resources Exemption Class 1, Action Types 45 and 49.*

\_\_\_\_\_  
Suzanne D. Case, Chairperson

\_\_\_\_\_  
Date

Original: Agency file  
Copy: Project file

Attachment A: Map  
Attachment B: Pictures