

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

June 8, 2018

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

Land Board Members:

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

APPROVAL AND RECOMMENDATION TO THE GOVERNOR ISSUANCE OF AN EXECUTIVE ORDER FOR ADDITION OF TAX MAP KEY (4) 2-4-003:001 COMPRISING APPROXIMATELY 163.842 ACRES, TO LĪHU'E-KŌLOA FOREST RESERVE, KŌLOA, KAUA'I

APPROVAL AND RECOMMENDATION TO THE GOVERNOR ISSUANCE OF AN EXECUTIVE ORDER FOR WITHDRAWAL OF TAX MAP KEY (4) 3-9-002: PORTION OF 001, COMPRISING APPROXIMATELY 1467 SQUARE FEET, FROM LĪHU'E-KŌLOA FOREST RESERVE, LĪHU'E, KAUA'I.

APPROVAL AND RECOMMENDATION TO THE GOVERNOR ISSUANCE OF AN EXECUTIVE ORDER SETTING ASIDE TO AGRIBUSINESS DEVELOPMENT CORPORATION FOR AGRICULTURAL AND RELATED PURPOSES, TAX MAP KEY (4) 3-9-002: PORTION OF 001, COMPRISING APPROXIMATELY 1467 SQUARE FEET, LĪHU'E, KAUA'I.

SUMMARY:

This Board submittal requests acceptance of a Hearing Officer's Report for one proposed addition and one proposed withdrawal to the Forest Reserve System on the Island of Kaua'i. Additionally, the Division is requesting approval and recommendation to the Governor, issuance of Executive Orders (EO) for the addition and withdrawal of land from Līhu'e-Kōloa Forest Reserve (LKFR), and for a set-aside to Agribusiness Development Corporation. These actions represent interest by the Division of Forestry and Wildlife (DOFAW) to secure public access to land-locked forest reserve and to complete previously initiated processes.

LEGAL REFERENCE:

Section 183-11, Hawai'i Revised Statutes (HRS), as amended.  
Section 171-11, HRS, as amended

LOCATION:

Portion of Government lands situated at Kōloa and Līhu‘e, Kaua‘i, identified by Tax Map Key (TMK): (4) 2-4-003:001 and (4) 3-9-002: portion of 001, as shown on attached maps labeled as **Exhibits 1A and 1B.**

AREA:

(4) 2-4-003:001	163.842 acres
(4) 3-9-002: portion of 001	1467 square feet

ZONING:

State Land Use District:        Agricultural  
County of Kaua‘i CZO:

(4) 2-4-003:001 - Agriculture / Open  
(4) 3-9-002:001 - Agriculture / Open / Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL entitlement lands pursuant to the Hawaii State Constitution:

(4) 2-4-003:001:	YES _____	NO <u>  X  </u>
(4) 3-9-002:001:	YES <u>  X  </u>	NO _____

CURRENT USE STATUS:

(4) 2-4-003:001: Vacant and unencumbered

(4) 3-9-002:001: Governor’s Executive Order No. 3804 to the Division of Forestry and Wildlife for Addition to the LKFR (203.0 acres), and Governor’s Executive Order No. 4328 to the Agribusiness Development Corporation for Agricultural and Related Purposes (5870.511 acres).

BACKGROUND:

*Proposed Addition*

At its meeting on March 24, 2017, under agenda item D-2, the Board of Land and Natural Resources (Board) approved the mutual cancellation of General Lease No. S-5823 to Jonathan Akita, for pasture purposes over TMK (4) 2-4-003:001. This parcel (163.842 acres) is currently unencumbered state land that is located directly south of, and adjacent to LKFR. Currently, this portion of LKFR is landlocked with no established legal access. Access for any public or DOFAW management activities must occur across private land and/or other state lands outside of DOFAW jurisdiction. There is an existing dirt road on TMK (4) 2-4-003:001 that is accessible

from a public county roadway that traverses much of the parcel, and ends very close to the existing forest reserve boundary. The addition of this parcel into the Forest Reserve System would ensure legal public and management access to this isolated portion of LKFR. Therefore, DOFAW is seeking approval for the proposed addition of TMK (4) 2-4-003:001, approximately 163.842 acres to the LKFR (**Exhibit 1A**). The Department of Land and Natural Resources Kaua'i District Land Division was contacted and they have no objections to this proposed addition.

### *Proposed Withdrawal*

At its meeting on February 23, 2001, under agenda item D-11, the Board approved a set-aside to DOFAW of approximately 52 acres for addition to LKFR for the establishment of a public shoot range at Hanahanapuni Crater. Later, at its meeting on April 25, 2008, item D-1, the Board approved a set-aside of approximately 5,963.972 acres to the Agribusiness Development Corporation (ADC) for agricultural purposes, which included the aforementioned 52 acres. On August 24, 2010, the Governor signed Executive Order (EO) 4328, finalizing this land transfer to ADC. At this time, the set-aside to DOFAW adding 52 acres to LKFR had not been completed, as it was pending the completion of a survey and subdivision approval by the County. An agreement was reached between DOFAW and ADC, that once the survey and subdivision was completed, the area in question would be withdrawn from EO 4328 and added to LKFR.

On October 27, 2015, the Kaua'i County Planning Commission approved the subdivision and reconsolidation that was necessary to complete the transfer of land to DOFAW. The subdivision survey data was sent to the Department of Accounting and General Services (DAGS) Land Survey Office to generate maps for the EOs. After analysis of the data, DAGS Survey identified a minor discrepancy in the subdivision that resulted in the unintentional inclusion of 1467 square feet of LKFR into TMK (4) 3-9-002:001, which is to remain under the jurisdiction of ADC.

DOFAW was advised by DAGS Survey that the best course of action to adjust for this discrepancy would be to withdraw the 1467 square feet from LKFR, followed by a subsequent set-aside to ADC. All other alternatives would require additional surveys and subdivision approval, which is a more expensive and less efficient outcome. Therefore, DOFAW is seeking approval to withdraw a portion of TMK (4) 3-9-002:001, approximately 1457 square feet from LKFR (**Exhibit 1B**), and a subsequent set-aside to the ADC for agricultural and related purposes.

### DISCUSSION

Approval to hold a public hearing for the proposed forest reserve addition and withdrawal was obtained from the Board on December 8, 2017. Approval to set the date, location and time of the public hearing, and to appoint Patrick T. Porter, the Kaua'i Forestry Management Supervisor I, as the Hearing Officer was obtained from the Chairperson on January 19, 2018.

On February 11, 2018, a Notice of Public Hearing was published in the Sunday editions of the Garden Island, Honolulu Star-Advertiser, Maui News, West Hawaii Today, and Hawaii Tribune-Herald newspapers, for a public hearing that was held on February 28, 2018, to receive public input on the proposed forest reserve system changes. Twelve members of the public attended this

meeting, the proceedings of which are summarized in the attached Hearing Officer's report (**Exhibit 2**).

Seven oral testimonies and one written testimony were received for the proposed addition of Tax Map Key (4) 2-4-003:001 to LKFR. Three were in support of the proposed addition, three were opposed and two neither supported or opposed the proposed addition. The reasoning presented by those that opposed the proposed withdrawal included the belief that the State of Hawai'i does not have legal title to the subject lands; that DOFAW would put up gates and block access to the area; that the trees would be cut down; and, water would be diverted. Reasoning for those that supported the proposed addition included increased access to this area and protection from future development.

Seven oral testimonies and one written testimony were received for the proposed withdrawal of Tax Map Key (4) 3-9-002: portion of 001 from Lihue-Kōloa FR. One was in support of the proposed withdrawal, five opposed and two neither supported or opposed the proposed withdrawal. The reasoning presented by those that opposed the proposed withdrawal included the belief that the State of Hawai'i does not have legal title to the subject lands; public consultation regarding the proposed changes was inadequate; and, the land should be left the way it is and the state should pay for additional survey maps and descriptions. The letter received in support of the proposed withdrawal stated that the area was small and not of good value to the forest reserve, and not worth the additional expense to keep it in the forest reserve.

Considering all of the comments received during the public hearing process, the Divisions still believes that the proposed changes to the Forest Reserve System will result in a cumulative positive benefit to the communities on Kaua'i. The proposed addition will provide an option for public access to a landlocked portion of forest reserve. Likewise, the proposed withdrawal is the most efficient and cost-effective solutions, to resolve long-standing Lihue-Koloa FR boundary issues. Additionally, the withdrawn land would be set-aside to ADC, an agency attached to the Hawaii Department of Agriculture that supports the development of diversified agriculture. As such, staff recommends final processing of the proposed forest reserve addition and withdrawal.

#### CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:


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

RECOMMENDATION:

That the Board:

- 1) Accept and approve the Hearing Officer's report and minutes for the public hearing held on February 28, 2018, for one proposed addition to, and one proposed withdrawal from the Forest Reserve System on the island of Kaua'i.
- 2) Approve of and recommend to the Governor issuance of an executive order setting aside Tax Map Key (4) 2-4-003:001, comprising approximately 163.842 acres to Līhu'e-Kōloa Forest Reserve, Kōloa, Kaua'i.
- 3) Approve of and recommend to the Governor issuance of an executive order to withdraw Tax Map Key (4) 3-9-002: portion of 001 comprising approximately 1467 square feet from Līhu'e-Kōloa Forest Reserve, Līhu'e, Kaua'i.
- 4) Approve of and recommend to the Governor issuance of an executive order setting aside Tax Map Key (4) 3-9-002: portion of 001 comprising approximately 1467 square feet to Agribusiness Development Corporation for Agricultural and Related Purposes.
- 5) Recommendation Nos. 2 through 4 are further made subject to the following:
  - a. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - b. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
  - c. Review and approval by the Department of the Attorney General; and
  - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,

  
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DAVID G. SMITH, Administrator  
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:

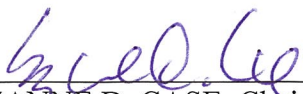
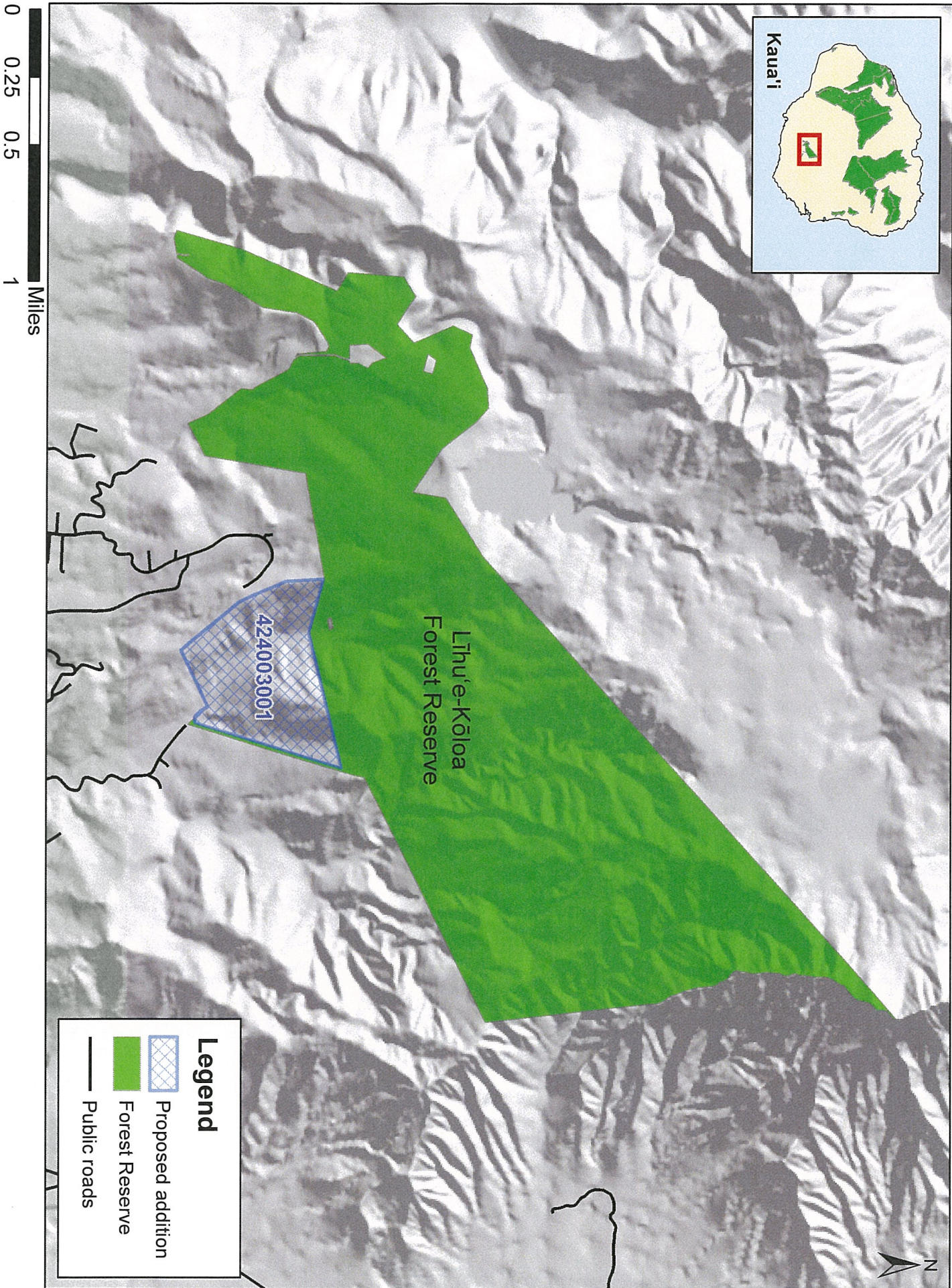
  
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SUZANNE D. CASE, Chairperson  
Board of Land and Natural Resources



Exhibit 1A: Proposed Addition to Līhu'e-Kōloa Forest Reserve





**HEARING OFFICER'S REPORT AND MINUTES OF:**

**Public Hearing for two (2) Proposed Changes Affecting the Area of  
Government Forest Reserve Lands on the Island of Kaua'i**

Līhu'e State Office Building  
2<sup>nd</sup> Floor Conference Room A, B and C  
3060 Eiwa Street  
Līhu'e, Hawai'i 96766

6:00 pm

February 28, 2018

**SUMMARY OF TESTIMONIES RECEIVED**

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

*Seven oral testimonies were received for Agenda Item #1, the proposed addition of Tax Map Key (4) 2-4-003:001, comprising approximately 163.842 acres to Līhu'e-Kōloa Forest Reserve, Kōloa, Kaua'i.*

Cecelia Napohaku Hoffman – She was born on the west side of Kaua'i and is a current resident of Kalāheo. She is concerned about water diversion, water rights and development of homes if this area is opened to public access. She stated that what happens up mauka affects makai. She would love to preserve what we have for our children and grandchildren. As a child she used to see the ancestors with their flames come down the hill. Since moving back home, the landscape has changed so much in 20 years she cannot see it anymore. With the forest being turned over to the forestry industry, she knows that trees will be cut. Where will the birds and creatures go? Disease is taking over. It will be a domino effect for the whole island.

Lance Kamuela Gomes – Identified himself as the konohiki of Wahiawa, Kona, Kaua'i. He is concerned that DOFAW will put up gates to block access. According to Mr. Gomes it is in law that any fee-simple property is allodial lands. All lands are allodial lands, therefore the roadways and waterways are supposed to be free and clear. He believes the State's jurisdiction is invalid and the State does not have the proper authority to transfer the lands. Despite this belief he is here to work together in good faith. They choose to be kanaka maoli and not citizens of the State of Hawai'i, and he claims this automatically puts them under the State Constitution as a federal subject. They are protected on a federal level under section 106. A federal jurisdiction is above the State's jurisdiction. Mr. Gomes claims that they have the proper jurisdiction (through bloodline) over the DLNR. They want DLNR to honor what they want to do, which is to restore their "kūpunas places". Nobody owns the mineral rights or water rights, it belongs to the people. Even as konohiki and federal subjects which are above the state's authority, they

want to work in good faith together, because we all live here and are family. He opposes the transfer of land because of the illegal standing of title.

Noah Mau-Esperito – Mr. Mau-Esperito identified himself as a representative of the people and the chiefs of the Hawaiian Kingdom. He is a part of a NHO (Native Hawaiian Organization), registered with the Department of Interior, “Na Mookupuna O Wailua”. He claims that the proposed action is in on crown lands in the ahupua‘a of Wailua and Kalāheo which is private property to him and his family. He demanded that the State show respect and stop what it’s doing, come to the table and consult on a civil level to work things out. Mr. Mau-Esperito claims that these lands were made inalienable by Kamehameha V. The Kalāheo and Wailua ahupua‘a are private property to Kamehameha III and his heirs and successors, subject to tenant rights of use. He claims that they are konohiki, and they represent the landlords. He also claims that the State does not have the mineral rights. He opposes the transfer. He’s not here to oppose the hunters. He believes the hunters do not need this addition to access these lands.

Jesse Steele – Mr. Steele stated that he lives in the ahupua‘a of Wainiha on the north shore. He is the secretary under uncle Ed Kaiwi and the Konohiki of Hawai‘i. He is opposed to the pressure on our island from the growth, the economy, over-development, new infrastructure, and traffic. He claims that the County Planning Department has plans for new developments, and that they want to build up the island. As someone from the younger generation he feels this is scary. Where are our gardens, true agriculture, and sustainable economy? He feels it’s all about tourism and over-development. He does not want to see Kaua‘i steered in this direction. He is concerned that the proposed addition is being done so that more water can be diverted for over-development. He stated that the State does not own the mineral right and that it belongs to the native tenants and konohiki. They are getting more organized and meeting with all the ‘ohana on the island. They plan to establish konohiki in every ahupua‘a. Putting people in a position of power so the government is forced to work with the people, the konohiki. The konohiki were the land managers. He didn’t know if he should to oppose or support the proposed addition. We have MOU with the “interior, the DOD, and the ACHP”, in which they are supposed to enter into agreements and negotiations with native Hawaiians regarding our cultural and natural resources. He wants the ‘ohana and the konohiki at the “table” when decisions are being made. He claims that the State has to work with them on these matters because the State does not have title to these lands. He stated that they could take the State to court, but he would prefer to work together in good faith.

Kaimi Hermosura – Mr. Hermosura stated that he was from Halele‘a on the Hanalei side of the island. Presently, he is an active “THPO”, and a konohiki under the “NHPA” (Native Hawaiian Historic Preservation Act). He was sworn in since 2007, as a traditional religious cultural practitioner when he was the president of the Hui O Maka‘āinana in Hā‘ena. He has done a lot of work with DLNR and Forestry to try and establish programs. He is helping to organize customary oversight. According to Mr. Hermosura there a MOA that we have to comply with. He is an acting Konohiki for the Wailua case study MOU. He is here because of his concern for the families of Kaua‘i. His kuleana is to establish other THPO under oath. Each THPO will be awarded funding



every year to clean up ahupua'a. King Kamehameha III's revised statutes protects their families' mineral and konohiki rights. He supports consultation with native Hawaiian families. There are sacred places, heiau, and it is this is the type of information he is trying to share, and protect.

Randall Hoffman - Husband of Cecelia Napohaku Hoffman. Speaking on behalf of his children. He is a kanaka of Hawai'i. Not blood related kanaka. Hānai in through his wife and her family. He is concerned about development. If this transfer will deny future development in the area he is in favor of the change. He is also concerned that DLNR will require permits to hunt this area. Any kanaka should be able to hunt the area without a permit, because it is their natural born right.

Nicolai Barca – Identified himself as a hunter. He would be happy to see the area opened up so that people don't have to trespass to go there. It would no longer be restricted to the few people that have legal access through some arrangement with the owners of the neighboring properties. Believes it will be good for the community and would like to see more of this kind of thing happen.

*One written testimony was received for Agenda Item #1, the proposed addition of Tax Map Key (4) 2-4-003:001, comprising approximately 163.842 acres to Līhu'e-Kōloa Forest Reserve, Kōloa, Kaua'i.*

James Campbell – Written testimony was submitted on behalf of Garden Isle Resource Development and Conservation, Inc's Forestry Committee. They support the proposed addition because they believe it will provide better public access to an important resource and will also help to preserve the area for future generations to enjoy.

*Seven oral testimonies were received for Agenda Item #2, the proposed withdrawal of Tax Map Key (4) 3-9-002: portion of 001 comprising approximately 1467 square feet from Līhu'e-Kōloa Forest Reserve, Līhu'e, Kaua'i.*

Randall Hoffman – Opposes the proposed withdrawal. Feels the state should have additional surveys completed so that these lands are not transferred to ADC.

Cecelia Napohaku Hoffman – Opposes the proposed withdrawal. The land should be left the way it is.

Donna Kaliko Santos – She represents and is also the President of Nā Kuleana O Kanaka 'Ōiwi. She is also the po'o of Puna moku under the 'Aha Moku Advisory Committee under DLNR. She is all for process, but is hesitant about the ADC connection. One of her biggest concerns is the consultation process with the State. She would like the different voices in the Hawaiian community to be heard. Kaua'i is fortunate to have a kupuna council for native Hawaiian healers. There is a need to protect lā'au lapa'au cultural practices. They used to hike and access areas, but many plants have been transferred to their yards because they can't walk into the mountains as they get older. They don't come to public meetings. She wants to make sure these voices are heard. She is not sure

whether to support or oppose the proposed withdrawal. She feels that not enough consultation was done. There are community groups that have concerns about what happens to the water coming off of Waialeale, concerned about what happens to blue hole and the streams, and they are not here tonight. There are other voices that need to be heard, and putting the notice in the paper is not enough.

Lance Kamuela Gomes - Identified himself as the konohiki of Wahiawa, Kona, Kaua'i. He believes that the State is an illegal entity without any title. Therefore, any transfer of lands is invalid. The authority lies in the people. He opposes the proposed withdrawal. They respect what the division does and the purpose of the division is good. They asked for the same respect when they come for assistance, and when they come to inform the State of their actions and plans to shift the authority back to the people.

Noah Mau-Esperito – Identified himself as the konohiki of wailua ahupua'a and the representative of the people and the chiefs of this island. The ahupua'a of Wailua is crown lands, private property of Kamehameha III and his heirs and successors, subject to the rights of tenant use. As the konohiki he is responsible for the well-being of tenants, the waterways, and everything for the enjoyment of all tenants of the ahupua'a. He believes that civil and political rights are being violated. He stated that this is a title issue. The State needs to respect and consult with those who have true title to these lands. As Konohiki they claim ownership of these lands. He claims that the State must comply with the laws of Kamehameha III. He advised the State to discuss with him his plans for restoration and preservation of the ahupua'a. He claims that none of the families who own these lands were notified, just like when "LCAs" were illegally stolen from them. He demanded that the State of Hawai'i show their genealogy. If not the state needs to stop what it's doing. The State is supposed to be upholding and administering laws of "their" country. He stated that the State needs to contact them when doing anything with their lands. He claimed that the State only notified the people by publishing notices in big island newspapers. He represents his native Hawaiian organization Na Mo'o Kupuna O Wailua, created by himself, Liko Martin, and Charles Hepa.

Kaimi Hermosura – Identified himself as the konohiki of the Halele'a district. He stated that Wailua is registered as a National Historic Place. Native Hawai'i consultation is required under "section 106" if there is going to be any impacts. He supports the konohiki and customary oversight of the ahupua'a of Wailua.

Jesse Steele – He oppose the proposed withdrawal. He provided clarification that the National Historic Preservation Act Section 106 applies only to federal agencies. State and country agencies do not have to comply. He feels the state does not put effort into notifying the people about public hearings. Many times the room is empty and this is a problem because people don't get to have a say in the decisions being made. There needs to be changes in the consultation process. There should be a better faith effort to consult with native Hawaiian organization such as the Konohiki, OHA, and the Aha moku.

*One written testimony was received for Agenda Item #2, the proposed withdrawal of Tax Map Key (4) 3-9-002: portion of 001 comprising approximately 1467 square feet from Līhu'e-Kōloa Forest Reserve, Līhu'e, Kaua'i.*

Jeremy Campbell – Written testimony was submitted on behalf of Garden Isle Resource Development and Conservation, Inc's Forestry Committee. They support the proposed withdrawal because they believe this is a very small portion of the parcel, and would not be of good value to the forest reserve as a whole. It would not be a good investment to try and keep it as forest reserve by expending additional funds. The money saved could be used by DOFAW to continue their mission to preserve, protect and promote other more important forest reserve lands.

**I. SUMMARY OF PUBLIC HEARING PROCEEDINGS**

- A. The public hearing was called to order at 6:05 pm. In attendance were the following staff members from the Department of Land and Natural Resources:

Division of Forestry and Wildlife:

Patrick T. Porter – Hearing Officer

Jan N. Pali – Recorder

Dan K. Smith

Irene Sprecher

Sheri S. Mann

Forest Management Supervisor I

Forestry Watershed Planner

Trails and Access Specialist

Forest Program Manager

Kaua'i District Manager

Land Division:

Wesley Matsunaga

District Land Agent

- B. Twelve members of the public attended the meeting, eight of whom provided oral testimony was provided in regards to the proposed Forest Reserve addition and withdrawal during the meeting. The information that the Division of Forestry and Wildlife had prepared regarding these items was presented as planned.
- C. The public hearing was adjourned at 8:01 pm.

**II. APPROVALS AND NOTICES OF PUBLIC HEARING**

- A. Approval to hold this public hearing on the proposed forest reserve items was obtained from the Board of Land and Natural Resources on December 8, 2017.
- B. Approval to hold the public hearing and to appoint Patrick T. Porter, the Forest Management Supervisor I, as the Hearing Officer was obtained from the Chairperson on January 19, 2018.
- C. Notice of this public hearing was published on February 11, 2018, in the Sunday editions of the Garden Island, Honolulu Star-Advertiser, Maui News, West Hawai'i Today, and Hawai'i Tribune-Herald newspapers.

Minutes prepared and respectfully submitted by Patrick T. Porter.