

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

January 25, 2019

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

Board Members:

SUBJECT: REQUEST TO AMEND A GRANT FROM THE LEGACY LAND CONSERVATION PROGRAM TO ALA KAHAKAI TRAIL ASSOCIATION (CONTRACT NO. 66886) BY REMOVING, FROM THE AREA TO BE COVERED BY A CONSERVATION EASEMENT, A FOOTPRINT OF APPROXIMATELY 25 ACRES FOR POSSIBLE FUTURE SITING AND OPERATION OF A COUNTY WASTERWATER TREATMENT AND DISPOSAL FACILITY, KA'Ū, HAWAI'I, TAX MAP KEY NUMBER (3) 9-5-007:016,

AND

ENTER INTO AN AGREEMENT WITH THE COUNTY OF HAWAI'I TO PROVIDE FOR IMPLEMENTATION OF LAND CONSERVATION FUND REVENUE SHARING REQUIREMENTS IN THE EVENT OF COUNTY CONDEMNATION OF THE FOOTPRINT AREA FOR PUBLIC PURPOSES.

SUMMARY

Through the Legacy Land Conservation Program, the Board of Land and Natural Resources awarded funds to Ala Kahakai Trail Association, a nonprofit land conservation organization, for the acquisition of 2,209+ acres of land in Ka'ū, Island of Hawai'i, for eight of the nine Legacy Land resource preservation purposes established by statute, and including a requirement that the Awardee convey, to one of two government entities, a conservation easement that covers the entire property. In order to facilitate the receipt of matching funds from the County of Hawai'i, the Awardee seeks to amend the grant by removing, from the area to be covered by the conservation easement, a footprint of approximately 25 acres for possible future siting, construction, and operation of a County wastewater treatment and disposal facility. In order to protect the State's interests if the County later condemns the footprint area for public purposes, the Legacy Land Conservation Program seeks an agreement with the County to provide for implementation of Land Conservation Fund revenue sharing requirements under a condemnation scenario. The Legacy Land Conservation Commission reviewed this matter on December 10, 2018, and supported the Awardee's proposed grant amendment and an associated agreement between the State and the County.

BACKGROUND

Existing Grant Agreement

On December 13, 2016, the Legacy Land Conservation Commission ranked this acquisition as the highest priority for the FY17 application cycle (LLCP 17-01, Waikapuna). On May 26, 2017, under agenda item C-1, the Board approved the Division's recommendations to (1) authorize the Chairperson to enter into agreements and encumber \$100,000 in Fiscal Year 2017 (FY17) funds with Ala Kahakai Trail Association for purchase of 2,209+ acres in Ka'ū, Island of Hawai'i, subject to standard conditions, including "such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State," and (2) authorize the Department to "proceed with all due diligence and negotiations that may be necessary to carry out the FY17 Legacy Land Conservation Program grants and acquisitions approved by the Board and the Governor."

The Division's submittal to the Board indicated that:

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

The draft minutes of LLCC Meeting 54 (December 12-13, 2016) include the transcribed testimony of L. La'akea Sūganuma, recounting the relationship between the Waikapuna lands and the 'ohana of Mary Kawena Pūku'i. The application also included letters of support from [six named individuals, with their affiliations].

After Board approval, Ala Kahakai Trail Association accepted the Department's offer of \$100,000 from the Land Conservation Fund for the approved acquisition, conditioned upon approval from the Governor to release the grant funding, which occurred on June 21, 2017. Based on the approvals and acceptance, the Division blanket encumbered the \$100,000 in grant funds before June 30, 2017 (the close of FY17). On July 28, 2017, after Fiscal Year 2018 (FY18) funds became available, the Board approved the Division's recommendation to authorize the Chairperson to encumber \$1,900,000 in FY18 grant funds with Ala Kahakai Trail Association to complete the acquisition, and on October 13, 2017, the Governor approved the Department's State and Ala Kahakai Trail Association entered into a contract that encumbered a total of \$2 million (from FY7 and FY18 funds) for the Waikapuna acquisition (Attachment 1).

The County of Hawai'i, under a new administration, is now re-evaluating its process for using the County Public Access, Open Space, and Natural Resources Preservation Fund (PONC) as a source of matching funds for the Legacy Land grant to Ala Kahakai Trail Association for the Waikapuna acquisition. In conjunction with closing, Ala Kahakai Trail Association will deed a conservation easement across the property to the County of Hawai'i, which would be the County's first-ever use of its PONC Fund to acquire interests in a conservation easement. However, County funding for the acquisition now appears to be contingent on assuring that

about 25 acres of the property acquired can be used in the future as the site of a County wastewater treatment and disposal facility.

Proposed Amendment to Existing Grant Agreement

In order to comply with federal regulations and an administrative consent order that mandate the elimination of large capacity cesspools (LCCs), the County of Hawai‘i intends to construct a sewage collection, treatment, and disposal system to replace LCCs located in Nā‘ālehu. On October 31, 2018, the County of Hawai‘i Department of Environmental Management issued a news release about the availability of a Preliminary Engineering Report (PER) for its proposed Nā‘ālehu Wastewater Treatment Facility (Attachment 2). The PER is available online at <http://www.hawaiicounty.gov/dem-wastewater-division>.

On December 10, 2018—under agenda item 2 for Meeting 62 of the Legacy Land Conservation Commission—representatives from the County of Hawai‘i, its consultant (Brown and Caldwell), Ala Kahakai Trail Association, and The Trust for Public Land briefed the Commission and its constituents about the proposed siting, construction, and operation of the new wastewater treatment facility on a small portion (about 1.1%) of the Waikapuna property (*see* map of entire property in Attachment 3, and map of sewer system full buildout condition in Attachment 4). Key points of discussion included the urgency of completing the acquisition of the property in order to forestall a sale to another party or a subdivision of the property; treatment and disposal method at the proposed new facility (aerated lagoons/constructed wetland/land application, *see* Attachment 5); the limited areas of available and suitable land that have satisfactory soil conditions for land application of treated effluent (Attachment 6); the types of plants that would be irrigated with treated effluent (native trees, *see* PER pages 4-17 to 4-18); the low risk of disturbing historic properties (Attachment 7); the capacity to accommodate modifications within the proposed site for additional expansion of the service area in the future (*see* PER page 2-1); site behavior and management under extreme runoff conditions (*see* PER pages 4-22 to 4-27); and possible alternative land acquisitions and boundary alignments to provide greater public benefits for public access and historic preservation. Based on this discussion, the Commission recommended approval of the proposed grant amendment, and of the Division’s proposal to craft a new agreement with the County of Hawai‘i to protect the State’s interests in revenue sharing requirements for the Land Conservation Fund.

Proposed New Agreement with County of Hawai‘i

The governing statute for the Land Conservation Fund provides that “[a]ny land acquired by any nonprofit land conservation organization under this chapter may be sold, leased, or otherwise disposed of with the prior written approval of the board (Section 173A-9, Hawai‘i revised Statutes) and requires that “[w]henver any such land is sold by any state agency, county, or nonprofit land conservation organization, that portion of the net proceeds (sale price less actual expenses of sale) of such sale equal to the proportion that the grant by the State bears to the original cost of the land or other property shall be paid to the State” (Section 173A-10). As a question of first impression for the Legacy Land Conservation Program, the Division seeks to clarify whether or not a disposition of Waikapuna land via County condemnation would require written Board approval. More importantly, the Division is concerned about protecting the State’s interests against the possibilities that (1) County condemnation would not necessarily constitute a “sale” of the land by Ala Kahakai Trail Association, and (2) related authorities

governing eminent domain (e.g. Chapters 101 and 46, Hawai‘i Revised Statutes, and Sections 12-10 and 12-21, Hawai‘i County Code) would conflict with authorities governing revenue sharing with the Land Conservation Fund, and with the contractual agreement between the State and Ala Kahakai Trail Association, such that the State would have to expend additional effort to calculate and secure its fair share of the net proceeds from condemnation. The Division believes that crafting a new agreement with the County of Hawai‘i, that spells out a process for revenue sharing in the context of County eminent domain proceedings, would be the most efficient way to preserve and protect the State’s interests in this matter.

DISCUSSION

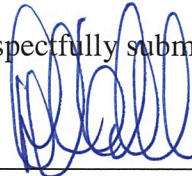
The Division supports the proposed grant amendment and seeks to process it as quickly as possible given the possibilities for a sale to another party or a subdivision of the property. Section 173A-11, Hawai‘i Revised Statutes, provides that “[i]n carrying out its functions under this chapter the board may do all things necessary, useful, and convenient in connection with the acquisition, administration, maintenance, and management of lands having value as a resource to the State, subject to all applicable laws, and may provide any necessary assistance to any county in the acquisition of land having value as a resource to the State.” Based on these general powers, along with the previous delegations of Board authority for the subject land acquisition (see Existing Grant Agreement, above), the Division recommends that the Board delegate authority to the Chairperson to approve and implement the proposed amendment to the grant agreement and to negotiate a separate agreement with the County of Hawai‘i that would govern revenue sharing in the event of County condemnation of a portion of the acquired property.

RECOMMENDATIONS

That the Board:

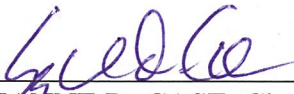
- 1) Delegate authority to the Chairperson to enter into amendments to the Legacy Land Conservation Program Grant Agreement with Ala Kahakai Trail Association for land acquisition at Ka'ū, Hawai'i, Tax Map Key Number (3) 5-6-004:010 (Contract No. 66886), subject to review and approval as to form by the Department of the Attorney General.
- 2) Delegate authority to the Chairperson to enter into an agreement with the County of Hawai'i, to provide for the implementation of Land Conservation Fund revenue sharing requirements in the event of County condemnation of a portion of the land acquired through the Legacy Land Conservation Program grant agreement with Ala Kahakai Trail Association (Contract No. 66886), subject to review and approval as to form by the Department of the Attorney General.

Respectfully submitted,



DAVID G. SMITH, Administrator

APPROVED FOR SUBMITTAL:



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

ATTACHMENTS:

- Attachment 1: Legacy Land Conservation Program Grant Agreement with Ala Kahakai Trail Association (without attachments)
- Attachment 2: County of Hawai'i News Release
- Attachment 3: Map of Waikapuna property to be acquired (from grant application)
- Attachment 4: Map of full buildout condition for proposed Nā'ālehu Wastewater Treatment Plant (from Preliminary Engineering Report)
- Attachment 5: Preliminary site plan for proposed Nā'ālehu Wastewater Treatment Plant (from Preliminary Engineering Report)
- Attachment 6: Soil map for proposed Nā'ālehu Wastewater Treatment Plant (from Preliminary Engineering Report)
- Attachment 7: Preliminary map of archaeological features (from grant application)

STATE OF HAWAII
CONTRACT INPUT

ATTACHMENT 1
 January 25, 2019

CONTRACT NUMBER XXXXXXX 60980	DATE OF DOCUMENT MM/DD/YY 061818	CONTRACTOR NAME Ala Kahakai Trail Association DEPT. OF LAND AND NATURAL RESOURCES - DOFAW					REFERENCE DOCUMENT NUMBER XXXXXXX 2065		SFX XX
REQUESTED BY NAME David G. Smith		EXPEND AGENCY C	CONTACT AGENCY C	CONTRACT AMOUNTS BASIC 2,000,000 00		EXTRA	RET %	CONTRACTOR (VENDOR) CODE XXXXXXXXXX 326644	XX 00
CONTRACT DATES BEGIN MM/DD/YY			EXP. COMPLETION MM/DD/YY			DESCRIPTION Legacy Land Conservation Program - land acquisition of 2,209.307 acres at Kahilipalini and Kahilipaliki, Kau, Hawaii including the transfer of a conservation easement to the County of Hawaii			

SFX XX	TC XXX	F X	YR XX	APP XXX	D XX	OBJECT XXXX	COST CENTER XXXX	PROJECT		DEPT ACT XXX	AMOUNT		M X	R X	E X	V X	OPTIONAL DEPARTMENTAL DATA X (22)
								NUMBER XXXXXX	PH XX								
01	631	S	17	317	C	6500	0410	000000	00	514	100,000	00					EA1705-01
CLAIMS TO CONTRACT																	
02	631	S	18	317	C	6500	0410	000000	00	514	1,900,000	00					

RECEIVED
 ADMIN SVCS OFFICE
 2018 JUL 22 P 12:36
 DEPT OF LAND &
 NATURAL RESOURCES

DATE: 06/12/18

AUTHORIZED SIGNATURE: *[Signature]*
 Vickie (X70345)

**STATE OF HAWAII
LEGACY LAND CONSERVATION PROGRAM
GRANT AGREEMENT**

This Agreement, entered into on May 10, 2018, by and between the BOARD OF LAND AND NATURAL RESOURCES, STATE OF HAWAII ("STATE"), by its Chairperson, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, and the Ala Kahakai Trail Association ("AWARDEE"), a nonprofit corporation under the laws of the State of Hawaii, whose business address and federal and state taxpayer identification numbers are as follows: Post Office Box 2338, Kamuela, HI 96743; 27-1398470; GE-161-551-5648-01.

EXHIBITS

- Exhibit A Project Application
 - Exhibit B Checklist for Legacy Land Conservation Program Projects
- Exhibits A and B are hereby made a part of this Agreement.

RECITALS

WHEREAS, Chapter 173A, Hawaii Revised Statutes ("HRS"), establishes standards for disbursing public funds to state agencies, counties, and nonprofit land conservation organizations to fulfill public purposes;

WHEREAS, the AWARDEE has requested funding from the STATE for the project described in Exhibit A and Attachment 1 of this Agreement;

WHEREAS, the STATE finds that the AWARDEE's performance as described in Attachment 1 of this Agreement will fulfill the public purpose set forth therein;

WHEREAS, the STATE desires to contract with the AWARDEE to fulfill the specified public purpose, and the AWARDEE is agreeable to performing under this Agreement;

WHEREAS, money is available to fund this Agreement pursuant to: Chapter 173A, HRS, LNR 101 (S-17-317-514 and S-18-317-514) in the following maximum amounts: One Hundred Thousand and No/100 Dollars (\$100,000) from S-17-317-514 and One Million, Nine Hundred Thousand and No/100 Dollars (\$1,900,000) from S-18-317-514, totaling Two Million and No/100 Dollars (\$2,000,000);

NOW, THEREFORE, in consideration of the promises contained in this Agreement, the STATE and the AWARDEE agree as follows:

A. SCOPE OF PERFORMANCE

The AWARDEE shall perform, in a proper and satisfactory manner as determined by the STATE, the project described in the "Scope of Performance" set forth in Attachment 1, which is hereby made a part of this Agreement.

B. TIME OF PERFORMANCE

The performance required of the AWARDEE under this Agreement shall be completed in accordance with the "Time Schedule" set forth in Attachment 2, which is hereby made a part of this Agreement.

C. COMPENSATION

Subject to the availability of funds, the AWARDEE shall be compensated for performance of the project under this Agreement according to the "Compensation and Payment Schedule," set forth in Attachment 3, which is hereby made a part of this Agreement.

D. STANDARDS OF CONDUCT DECLARATION


The "Standards of Conduct Declaration" by AWARDEE, set forth in Attachment 4, is hereby made a part of this Agreement.

E. OTHER TERMS AND CONDITIONS

The "General Conditions for Legacy Land Conservation Program Grant Agreements," set forth in Attachment 5, is hereby made a part of this Agreement.

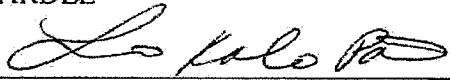
IN WITNESS WHEREOF, the STATE and the AWARDEE have executed this Agreement effective as of the date first above written.

STATE



Chairperson
Board of Land and Natural Resources


AWARDEE

By 

Its Secretary *
(Title)

*Evidence of authority of the AWARDEE's representative(s) to sign this Agreement for the AWARDEE must be attached.

APPROVED AS TO FORM:



Deputy Attorney General

AWARDEE'S ACKNOWLEDGMENT

STATE OF HAWAII)
)
City COUNTY OF Honolulu) SS.

On this 1st day of May, 2018, before me personally appeared Linda Kaleo Daik, to me personally known, who being by me duly sworn, did say that he/she is the Secretary of the Ala Kahakai Trail Association, the AWARDEE named in the foregoing instrument, and that he/she is authorized to sign said instrument on behalf of the AWARDEE, and acknowledges that he/she executes said instrument as the free act and deed of the AWARDEE.

[Signature]
Notary Public, State of Hawaii

My commission expires: 8-5-2020

Notary Seal Affixed:



NOTARY CERTIFICATION

Doc. Date: undated

Pages: 126

Notary Name: Leah Laramee

1st Circuit

Doc. Description: State of Hawaii Legacy Land Conservation Program Grant Agreement

[Signature]

Notary Signature



SCOPE OF PERFORMANCE

Project Description

The AWARDEE shall use funds from the Legacy Land Conservation Program ("LLCP") for land acquisition of: 2,209.307 acres at Kāhilipalinui and Kāhilipali'iki, Ka'ū, Hawai'i (Waikapuna), including the transfer of a conservation easement to the County of Hawaii or the National Park Service ("Property") for the protection of resource values stated in Sections "C," "D," "G," "H," and "I" of the Project Application attached hereto as Exhibit A. Property acquired with LLCP funding from the Land Conservation Fund shall be held and managed in a manner designed to protect the Property's resource values.

Performance

The AWARDEE is required to do the following:

1. Submit a request for payment containing all documentation required in Attachment 3 ("Compensation and Payment Schedule") to the satisfaction of the STATE.
2. Complete acquisition of the Property and record a document of conveyance of the Property to the Ala Kahakai Trail Association and record a document of conveyance of a conservation easement to the County of Hawaii or to the National Park Service.
3. The document of conveyance to the Ala Kahakai Trail Association shall include the following paragraphs:

"The Property (1) has been acquired with funds from a grant by the State of Hawaii, Department of Land and Natural Resources, Legacy Land Conservation Program ("LLCP") through grant agreement number _____, dated May 10, 2018; (2) is subject to all of the terms and conditions of the grant agreement; and (3) shall be managed consistently with the purposes for which it was awarded a LLCP grant and Chapter 173A, Hawaii Revised Statutes. Title of the Property conveyed by this deed shall vest in the Ala Kahakai Trail Association, subject to disposition instructions from the State of Hawaii, Department of Land and Natural Resources ("DLNR"), or its successor agencies.

The Ala Kahakai Trail Association, for itself, its successors and assigns, and in consideration of the LLCP grant, does hereby covenant that it shall not dispose of, encumber its title or other interests in, or convert the use of this property without the written approval of the DLNR or its successor agencies. Upon notice from the Ala Kahakai Trail Association, that it intends to dispose of, encumber the title or other interests in, or convert the use of the property, the DLNR may:

1. Require the Ala Kahakai Trail Association, to place on the property, a deed restriction or covenant to protect the resource values for which the Ala Kahakai Trail Association was awarded a LLCP grant, to an appropriate land conservation organization or county, state, or federal resource conservation agency. The deed restriction or covenant shall run with the land and be recorded with the appropriate state agency.
2. Require to be placed on the property, a conservation easement or agricultural easement under Chapter 198, Hawaii Revised Statutes, to an appropriate land conservation organization or county, state, or federal resource conservation agency, that shall run with the land and be recorded with the appropriate state agency.
3. Require subsequent landowners to enter into a contract with the DLNR for the protection of the resource values consistent with the purposes for which the LLCP grant was awarded.

The Ala Kahakai Trail Association further covenants that (a) whenever the Property is sold by the Ala Kahakai Trail Association, that portion of the net proceeds (sale price less actual expenses of sale) of such sale, equal to the proportion that the state grant bears to the original cost of the property, shall be paid to the State of Hawaii, and (b) if the Property is leased, rented, or otherwise disposed of by the Ala Kahakai Trail Association, other than by sale, that portion of the gross proceeds of such disposition, equal to the proportion that the state grant bears to the original cost of the Property, shall be paid to the State of Hawaii."

4. Cooperate with the STATE in all efforts to document the condition and status of the resource values for which the grant funds were provided.
5. Any substantive changes to the Project Application must be agreed to by the AWARDEE and the Chairperson of the Board of Land and Natural Resources in writing.
6. The AWARDEE shall maintain the same proportion of matching funds to awarded funds as set forth in Section F. of the Project Application, attached hereto as Exhibit A.
7. The document of conveyance to the County of Hawaii or to the National Park Service of the conservation easement ("Holder") shall include the following paragraphs:

"The fee interest that this conservation easement encumbers has been acquired with funds from a grant by the State of Hawaii, Department of Land and Natural Resources, Legacy Land Conservation Program ("LLCP") through grant agreement number _____, dated May 10, 2018, and is subject to all of the terms and conditions of the grant agreement.

The Holder of the conservation easement shall also be subject to the terms and conditions of the grant agreement to the extent applicable under the holder's rights and responsibilities under the conservation easement.

The Grantor covenants that the property shall be managed consistently with the purposes for which it was awarded a LLCP grant and Chapter 173A, Hawaii Revised Statutes.

The Holder, for itself, its successors and assigns, and in consideration of the LLCP grant, does hereby covenant that it shall not dispose of, encumber its title or other interests in, or convert the use of this conservation easement without the written approval of the DLNR or its successor agencies.

The Holder further covenants that whenever this conservation easement is sold by the Holder, that portion of the net proceeds (sale price less actual expenses of sale) of such sale, equal to the proportion that the state grant bears to the original cost of the property, shall be paid to the State of Hawaii."

TIME SCHEDULE

This Agreement shall be in effect beginning May 10, 2018. AWARDDEE shall complete acquisition of the Property and record the conveyance no later than May 10, 2020. If any of the performances required in the Scope of Performance are not completed within the time stated, AWARDDEE may be required to return all funds previously received by it pursuant to this Agreement. The Chairperson of the Board of Land and Natural Resources may extend the time for performance of any requirement. Requests for extension must be submitted by AWARDDEE in writing 90 days prior to May 10, 2020, or they will not be considered.

COMPENSATION AND PAYMENT SCHEDULE

In full consideration of the services to be performed under this Agreement, from Chapter 173A, Hawaii Revised Statutes, and LNR 101 (S-17-317-514 and S-18-317-514), the STATE and the AWARDEE agree to the following:

- a) AWARDEE's requests for payment, in the form of either a single invoice or multiple invoices, shall be delivered personally or sent by United States first class mail, postage prepaid to:

Legacy Land Conservation Program
Division of Forestry and Wildlife
Department of Land and Natural Resources
1151 Punchbowl Street, Room 325
Honolulu, Hawaii 96813

The STATE may withhold any portion of the payment until all commitments are verified as complete to the satisfaction of the STATE.

Reimbursement will be the method for all costs except for grant funds used to purchase land. All requests for payment must be received by the LLCP by April 24, 2020. A single payment or multiple payments, not exceeding the total amount of Two Million and No/100 Dollars (\$2,000,000), shall be made upon:

- i. AWARDEE's completion of the Checklist for Legacy Land Conservation Program Projects attached hereto as Exhibit B to the satisfaction of the STATE;
- ii. AWARDEE's compliance with all LLCP policies and practices;
- iii. the STATE's receipt of an original invoice and copies of all bills, invoices, and receipts; and
- iv. the STATE's receipt of AWARDEE's tax clearances from the Hawaii State Department of Taxation and the Internal Revenue Service and of AWARDEE's Certificate of Compliance from the Hawaii State Department of Labor and Industrial Relations (DLIR).

The STATE may accept from AWARDEE a current Certificate of Vendor Compliance from Hawaii Compliance Express (HCE) as a substitute for the Hawaii State Department of Taxation and the Internal Revenue Service tax clearances and DLIR Certificate of Compliance.

All invoices should:

- o Identify costs,
- o Reference the contract number, and

- Have a line that states “this is an original invoice” with a signature (in a pen color other than black) to certify this statement.
- The final invoice should be marked as “Final” when submitted and should be accompanied by a Certification of Compliance for Final Payment.
- b) Within thirty (30) days of acquiring the Property, but no later than June 9 2020, AWARDEE shall submit to the STATE a copy of the recorded conveyance document transferring ownership of the 2,209.307 acres at Kāhilipalinui and Kāhilipali‘iki, Ka‘ū, Hawai‘i (Waikapuna), including the transfer of a conservation easement to the County of Hawaii or the National Park Service, to AWARDEE. AWARDEE shall also submit any other documentation of the transaction that is requested by the STATE.
 - c) The total amount awarded under this Agreement will be dependent upon the project being completed with no substantive changes to the Project Application. The amount of the award shall not be increased, but the STATE may reduce the award if the project changes in any way that the STATE deems substantial. For example, a reduction in acreage, purchase price, or fair market value may be deemed substantial and sufficient justification for a reduction in the award. The AWARDEE shall maintain the same proportion of matching funds to awarded funds as set forth in Section F. of the Project Application, attached hereto as Exhibit A.
 - d) All payments under this Agreement are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Furthermore, all payments shall be made in accordance with and subject to chapter 40, HRS.

The AWARDEE acknowledges and agrees that the availability of funds from the Land Conservation Fund established under the laws of the State of Hawaii shall be subject to the approval and release of the budgeted funds by the Governor of the State of Hawaii. If insufficient funds are released or otherwise made available to the STATE to pay the AWARDEE, the STATE may, without liability to the STATE, reduce or eliminate the amount of compensation to the AWARDEE, upon written notification by the STATE to the AWARDEE.

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

“Agency” means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

“Controlling interest” means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

“Employee” means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

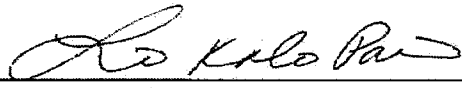
On behalf of Ala Kahakai Trail Association, AWARDEE, the undersigned does declare as follows:

1. AWARDEE is is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. AWARDEE has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Agreement within the preceding two years and who participated while so employed in the matter with which the Agreement is directly concerned. (Section 84-15(b), HRS).
3. AWARDEE has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Agreement, if the legislator or employee has been involved in the development or award of the Agreement. (Section 84-14(d), HRS).
4. AWARDEE has not been represented on matters related to this Agreement, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Agreement. (Sections 84-18(b) and (c), HRS).

AWARDEE understands that the Agreement to which this document is attached is voidable on behalf of the STATE if this Agreement was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source for the declarations above.

Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

AWARDEE:

By 
(Signature)

Print Name Linda Kateo Paik

Print Title Secretary

Name of AWARDEE Ala Kahakai

Trail Association

Date 5/1/2018

**GENERAL CONDITIONS FOR LEGACY LAND
CONSERVATION PROGRAM GRANT AGREEMENTS**

1. Awardee's Qualifying Standards.
 - a. The AWARDDEE is a state agency, county, or a nonprofit land conservation organization.
 - b. If the AWARDDEE is a non-profit land conservation organization, the AWARDDEE has been determined by the Internal Revenue Service to be a non-profit organization, and AWARDDEE has a governing board whose members have no material conflict of interest and serve without compensation.
2. Recordkeeping Requirements. The AWARDDEE shall, in accordance with generally accepted accounting practices, maintain fiscal records and supporting documents and related files, papers, receipts, reports, and other evidence that sufficiently and properly reflect all direct and indirect expenditures and management and fiscal practices related to the AWARDDEE's performance under this Agreement. The AWARDDEE shall retain all records related to the AWARDDEE's performance under this Agreement for at least three (3) years after the date of submission of the AWARDDEE's Final Project Report.
3. Audit of AWARDDEE. The AWARDDEE shall allow the STATE full access to records, reports, files, and other related documents and information for purposes of monitoring, measuring the effectiveness, and assuring the proper expenditure of the grant. This right of access shall last as long as the records and other related documents are retained. The AWARDDEE shall respond to any requests from the STATE for information regarding monitoring, measuring the effectiveness, and assuring the proper expenditure of the grant within 60 days.
4. Nondiscrimination. No person performing work under this Agreement, including any employee or agent of the AWARDDEE, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
5. Inspection of Property. The AWARDDEE shall permit the STATE and its agents and representatives, at all reasonable times, the right to enter and examine the Property to ensure compliance with chapter 173A, Hawaii Revised Statutes, and the terms of this Agreement. The STATE shall provide either written or verbal notice to the AWARDDEE forty-eight hours prior to entering the Property.
6. Conflicts of Interest. The AWARDDEE represents that neither the AWARDDEE, nor any employee or agent of the AWARDDEE, presently has any interest. and

promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the AWARDDEE's performance under this Agreement.

7. Compliance with Laws. The AWARDDEE shall comply with chapter 173A, Hawaii Revised Statutes, chapter 343, Hawaii Revised Statutes, and all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the AWARDDEE's performance under this Agreement.
8. Indemnification and Defense. The AWARDDEE shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, and cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or in resulting from the acts or omissions of the AWARDDEE or AWARDDEE's employees, officers, or agents under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.
9. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the AWARDDEE in connection with this Agreement, the AWARDDEE shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
10. Title insurance. AWARDDEE must obtain title insurance in the full amount of the purchase price, insuring that the title to the Property is vested in the AWARDDEE.
11. Relationship of Parties; Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of this Agreement, the AWARDDEE is an "independent contractor," with the authority and responsibility to control and direct the performance required under this Agreement; however, the STATE shall have a general right of inspection to determine whether, in the STATE's opinion, the AWARDDEE is in compliance with this Agreement.
 - b. The AWARDDEE and the AWARDDEE's employees and agents are not by reason of this Agreement, agents or employees of the STATE for any purpose, and the AWARDDEE, and the AWARDDEE's employees and agents shall not be entitled to claim or receive from the STATE any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The AWARDDEE shall be responsible for the accuracy, completeness, and adequacy of AWARDDEE's performance under this Agreement. Furthermore, the AWARDDEE intentionally, voluntarily, and knowingly

assumes the sole and entire liability to the AWARDDEE's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the AWARDDEE, or the AWARDDEE's employees or agents, in the course of their employment.

- d. The AWARDDEE shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the AWARDDEE by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, (iii) general excise taxes, (iv) real property taxes, and (v) conveyance taxes. The AWARDDEE is also responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
- e. The AWARDDEE shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, Hawaii Revised Statutes, and shall comply with all requirements thereof. The AWARDDEE shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the AWARDDEE have been paid and submit the same to the STATE prior to commencing any performance under this Agreement. The AWARDDEE shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, Hawaii Revised Statutes.
- f. The AWARDDEE shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, Hawaii Revised Statutes, and section 3-122-112, Hawaii Administrative Rules, that is current within six months of the date of issuance.
- g. In lieu of the above-certificates from the Department of Taxation and the Department of Labor and Industrial Relations, the AWARDDEE may submit proof of compliance through the State Procurement Office's designated certification process.
- h. The AWARDDEE is responsible for securing all employee-related insurance coverage for the AWARDDEE and the AWARDDEE's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

12. Payment Procedures: Tax Clearance. All payments under this Agreement shall be

made only upon submission by AWARDDEE of (i) original invoices specifying the amount due and certifying that it has completed performance in accordance with the Agreement, and (ii) tax clearances from the Hawaii State Department of Taxation and the Internal Revenue Service. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, Hawaii Revised Statutes. Further, all payments shall be made in accordance with and subject to chapter 40, Hawaii Revised Statutes.

13. Publicity.

- a. The STATE Legacy Land Conservation Program shall be credited as a sponsor on all advertising and promotional materials and activities wherever and whenever possible. The AWARDDEE shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, in any of the AWARDDEE's brochures, advertisements, or other publicity of the AWARDDEE without consultation and written permission from the Public Information Office of the State of Hawaii, Department of Land and Natural Resources.
- b. The AWARDDEE consents to the STATE's use of AWARDDEE and the Property's name, photograph, image, or likeness in brochures, advertisements, or other publicity relating to the Legacy Land Conservation Program. The STATE shall have complete ownership of all material which is developed, prepared, assembled, or conceived for brochures, advertisements, or other publicity relating to the Legacy Land Conservation Program.

14. Confidentiality of Material.

- a. All material given to or made available to the AWARDDEE by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the AWARDDEE and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- b. All information, data, or other material provided by the AWARDDEE to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, Hawaii Revised Statutes.

15. Suspension and Termination of Agreement.

- a. The STATE reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to the AWARDDEE. Upon receipt of said notice, the AWARDDEE shall immediately comply with said notice and suspend all performance under this Agreement at the time stated.

- b. If, for any cause, the AWARDDEE breaches this Agreement by failing to satisfactorily fulfill in a timely or proper manner the AWARDDEE's obligations under this Agreement or by failing to perform any of the promises, terms, or conditions of this Agreement, and having been given reasonable notice of and opportunity to cure such default, fails to take satisfactory corrective action within the time specified by the STATE, the STATE shall have the right to terminate this Agreement by giving written notice to the AWARDDEE of such termination at least seven (7) calendar days before the effective date of such termination. Furthermore, the STATE may terminate this Agreement without statement of cause at any time by giving written notice to the AWARDDEE of such termination at least thirty (30) calendar days before the effective date of such termination.
 - c. Upon termination of the Agreement, the AWARDDEE, within thirty (30) calendar days of the effective date of such termination, shall compile and submit in an orderly manner to the STATE an accounting of the work performed up to the date of termination. In such event, the AWARDDEE shall be paid for the actual cost of the services rendered, if any, but in no event more than the total compensation payable to the AWARDDEE under this Agreement.
 - d. If this Agreement is terminated for cause, the AWARDDEE shall not be relieved of liability to the STATE for damages sustained because of any breach by the AWARDDEE of this Agreement. In such event, the STATE may retain any amounts which may be due and owing to the AWARDDEE until such time as the exact amount of damages due to the STATE from the AWARDDEE has been determined. The STATE may also set off any damages so determined against the amounts retained.
16. Disputes. No dispute arising under this Agreement may be sued upon by the AWARDDEE until after the AWARDDEE's written request to the Chairperson of the Board of Land and Natural Resources ("CHAIRPERSON") to informally resolve the dispute is rejected, or until ninety (90) calendar days after the CHAIRPERSON's receipt of the AWARDDEE's written request whichever comes first. While the CHAIRPERSON considers the AWARDDEE's written request, the AWARDDEE agrees to proceed diligently with the performance necessary to complete the Project unless otherwise instructed in writing by the CHAIRPERSON.
17. State Remedies. The AWARDDEE understands that in the event that it no longer meets all of the standards set forth in paragraph 1 of these General Conditions, or in the event that AWARDDEE fails to comply with any of the other requirements, provisions, or conditions set forth in this Agreement, that the STATE may refuse to make further payments to AWARDDEE or may seek reimbursement for

payments made to AWARDDEE under this Agreement. In addition to the remedies set forth above, the STATE shall be entitled to pursue any other remedy available at law or in equity.

18. Modifications of Agreement. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement permitted by this Agreement shall be made by written amendment to this Agreement, signed by the AWARDDEE and the STATE.
19. Notices. Any written notice required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to the CHAIRPERSON at the CHAIRPERSON's office in Honolulu, Hawaii or to the AWARDDEE at the AWARDDEE's address as indicated in the Agreement. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The AWARDDEE is responsible for notifying the CHAIRPERSON in writing of any change of address.
20. Waiver. Prior to the disbursement of funds, the CHAIRPERSON, in his or her discretion, may waive certain conditions set forth in this Agreement. No waiver shall be effective unless in writing executed by the CHAIRPERSON. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE's right to enforce the same in accordance with this Agreement. The fact that the STATE specifically refers to one section of the Hawaii Revised Statutes, and does not include other statutory sections in this Agreement shall not constitute a waiver or relinquishment of the STATE's rights or the AWARDDEE's obligations under the statutes.
21. Severability. In the event that any provision of this Agreement is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.
22. Governing Law. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
23. Survival. AWARDDEE's obligations and the STATE's remedies shall survive the funding of the grant and the acquisition of this Property by AWARDDEE.
24. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the AWARDDEE relative to this Agreement. This Agreement supersedes all prior agreements, conditions, understandings, promises, warranties, and

representations, which shall no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the AWARDEE other than as set forth or as referred to herein.

25. Counterparts. Furthermore, the parties agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signature to the original or the same counterparts. For all purposes, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

26. Suspension. Upon a breach of this Agreement, the STATE may impose sanctions against AWARDEE, including, but not limited to: suspension of all grant payments; and suspension of the AWARDEE's participation in STATE grant programs; until such time as all breaches are cured to the STATE's satisfaction. Sanctions may also include repayment of all state funds expended and any sanctions included as provisions herein.

Harry Kim
Mayor

Wilfred M. Okabe
Managing Director



William A. Kucharski
Director

Diane A. Noda
Deputy Director

County of Hawai'i

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

345 Kekūanāo'a Street, Suite 41 · Hilo, Hawai'i 96720

Ph: (808) 961-8083 · Fax: (808) 961-8086

cohdem@co.hawaii.hi.us

<http://www.hawaiicounty.gov/environmental-management/>

October 31, 2018

NEWS RELEASE

AVAILABILITY OF THE PRELIMINARY ENGINEERING REPORT (PER) FOR THE PROPOSED NĀ'ĀLEHU WASTEWATER TREATMENT PLANT

A Preliminary Engineering Report (PER) for the proposed Nā'ālehu Wastewater Treatment Facility was submitted to the United States Environmental Protection Agency (USEPA) on October 25, 2018, as required by the Administrative Order on Consent (AOC) signed by the County of Hawai'i (COH) and finalized on June 22, 2017.

In 1998, the USEPA promulgated regulations—40 Code of Federal Regulations (CFR) 144.14—which required the elimination of Large Capacity Cesspools (LCCs). As a result, the County of Hawai'i will close the existing LCCs in Nā'ālehu and construct a new sewer collection system located primarily within public right-of-way (ROW) and replace the existing LCCs with a wastewater treatment plant (WWTP) to address the wastewater treatment and disposal needs of the community.

The Nā'ālehu PER:

- Summarizes the evaluations carried out to design and locate a proposed WWTP in Nā'ālehu, which will be constructed to treat and dispose of the wastewater flow that is currently discharged untreated to the LCCs, plus accommodate additional sewer connections in support of the Ka'ū Community Development Plan (CDP);
- Recommends a collection, treatment, and disposal system in compliance with the State of Hawai'i Department of Health and EPA requirements for the replacement of the three LCCs and deteriorating collection system in Nā'ālehu;
- Studied technology options for the proposed wastewater treatment system in Nā'ālehu; and
- Recommends a preferred site and conceptual layout for the new facility.

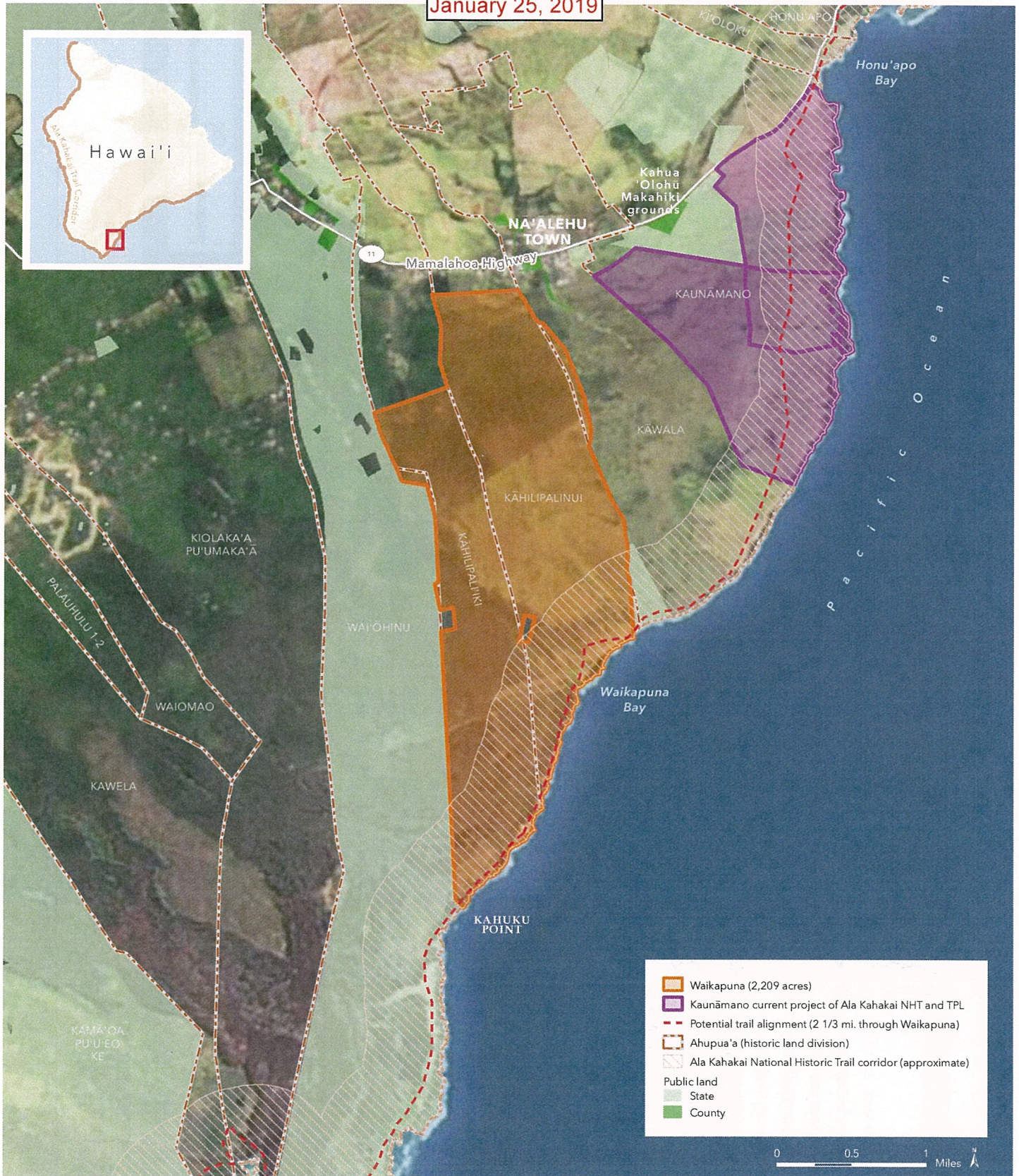
News Release
October 31, 2018
Page 2

The next step is preparation of a Draft Environmental Assessment (DEA) in accordance with Chapter 343, Hawai'i Revised Statutes. The PER will be part of the DEA framework. The DEA is targeted for completion by the end of May 2019. Public comment on the DEA will be solicited.

A new preferred site for the Nā'ālehu wastewater treatment plant is described in detail in the October 2018 PER. Siting was and is a critical factor for the community, and the PER considered community input. A total of 32 sites were evaluated in Nā'ālehu. The sites were each ranked based on 21 physical, cultural and social factors, including, but not limited to, soil type, locations of subsurface and surface water resources, archaeological and cultural resources, and social implications, such as land ownership and proximity to public uses.

For further information, please call the Department of Environmental Management at 808-961-8083 or view and/or download the PER at the County website:

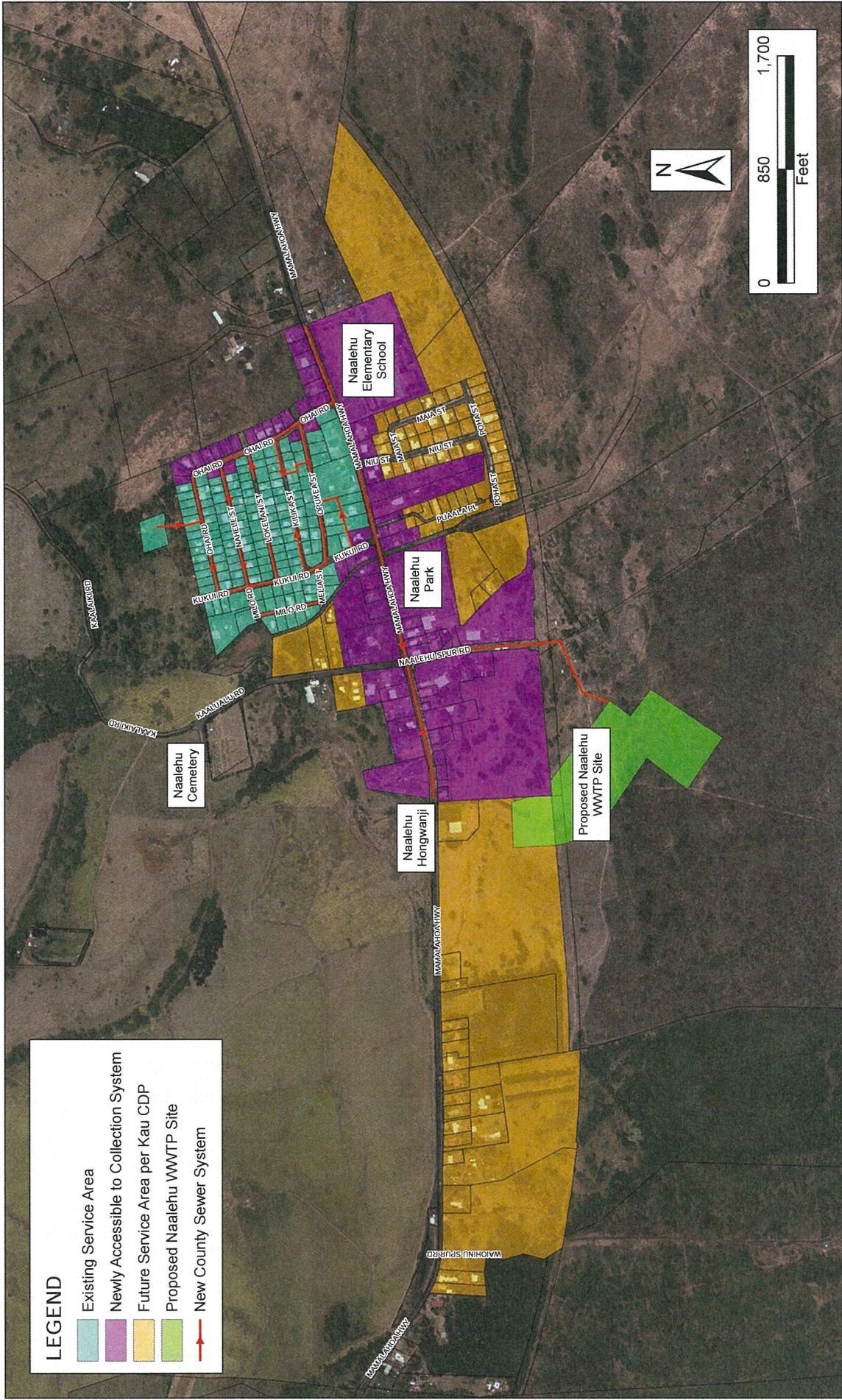
<http://www.hawaiicounty.gov/dem-wastewater-division>



Waikapuna, Kāhilipalinui and Kāhilipali'iki Ahupua'a

KA'Ū, HAWAII ISLAND





LEGEND

- Existing Service Area
- Newly Accessible to Collection System
- Future Service Area per Kau CDP
- Proposed Naalehu WWTP Site
- New County Sewer System

NAALEHU WASTEWATER TREATMENT PLANT
Naalehu WWTP Full Buildout Condition

SCALE AS SHOWN
JOB NO.: 151494



FIGURE
2-2

ATTACHMENT 5
January 25, 2019



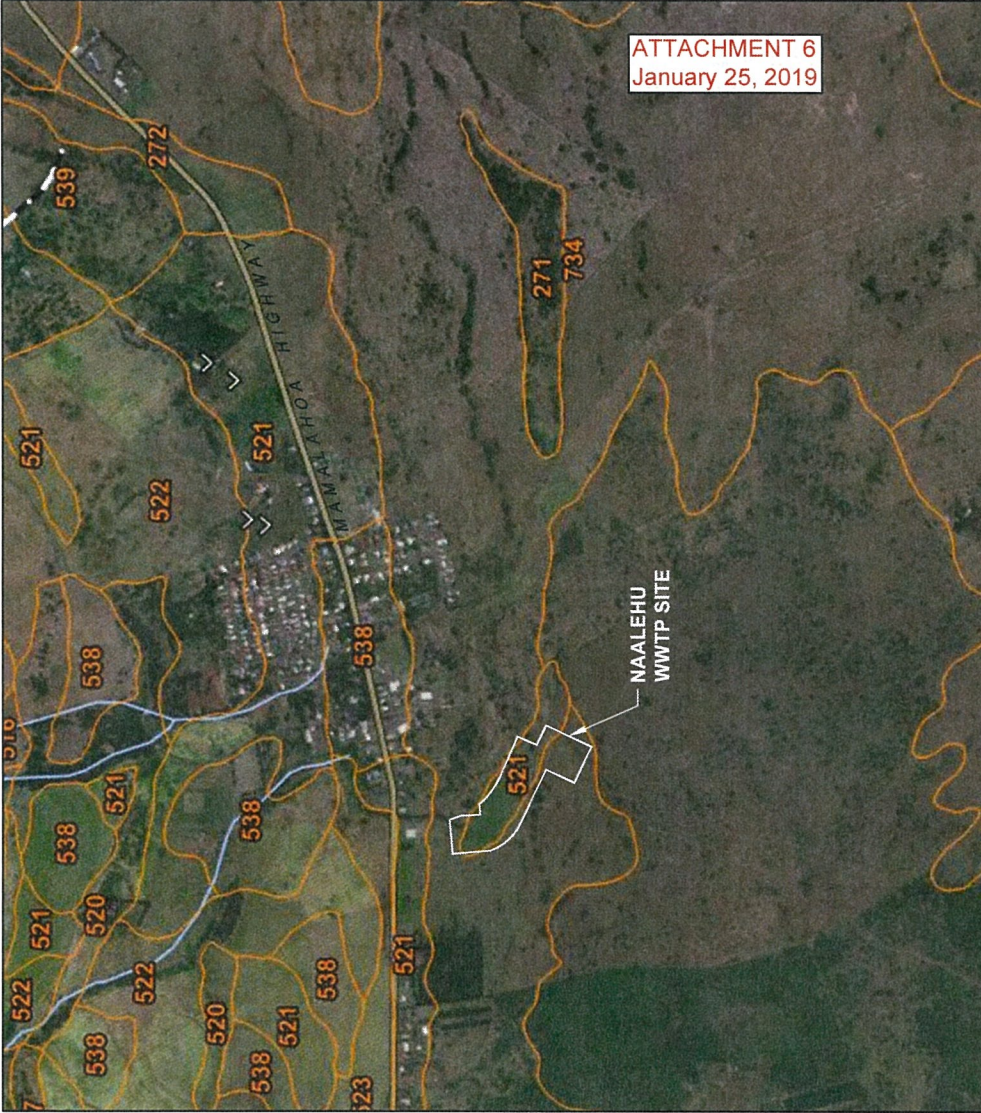
NAALEHU WASTEWATER TREATMENT PLANT
 PRELIMINARY SITE PLAN

SCALE: 1" = 200'
 151494
 DATE: October 22, 2018

FIGURE
5-1



ATTACHMENT 6
January 25, 2019



MAP UNIT SYMBOL	MAP UNIT NAME	SURFACE RUNOFF	HYDROLOGIC SOIL GROUP
271	LAVA FLOWS-KANOHINA COMPLEX, 2 TO 20 PERCENT SLOPES	Very High	D
521	NAALEHU MEDIAL SILTY CLAY LOAM, 3 TO 10 PERCENT SLOPES	Low	B
522	NAALEHU MEDIAL SILTY CLAY LOAM, 10 TO 20 PERCENT SLOPES	Low	B
523	NAALEHU MEDIAL SILTY CLAY LOAM, 20 TO 35 PERCENT SLOPES	Medium	B
538	NAALEHU MEDIAL SILT LOAM, 0 TO 3 PERCENT SLOPES	Very Low	B
734	KANOHINA-LAVA FLOWS COMPLEX, 2 TO 10 PERCENT SLOPES	Very High	C or D

SCALE: 1"=1500' JOB NUMBER: 151494 DATE: October 23, 2018	NAALEHU WASTEWATER TREATMENT PLANT NIRCS SOIL MAP	FIGURE 4-13
---	--	-----------------------





*Preliminary map of Archaeological Features
Identified on TMK: (3) 9-5-007:016,
Kāhīlupai Nui, Kāhīlupai Iki, Ka'ū, Hawai'i**

- LEGEND**
- Archaeological surface feature
 - Feature complex
 - Lava tube (non-burial)
 - Confirmed burial location
 - Trail
 - Petroglyphs/pāpamu
 - Heiau
 - Historic ranching infrastructure

*Map prepared by ASM Affiliates based on fieldwork conducted by Kechiman Consulting, LLC in 2007. Features shown on Google Earth base map with parcel boundaries imported from the Hawaii County Parcel Maps website.