

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

April 26, 2019

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 2018-2019 LEGACY LAND CONSERVATION PROGRAM, FOR THE ACQUISITION OF INTERESTS AND RIGHTS IN SPECIFIC PARCELS OF LAND FOR:

- A. DIVISION OF FORESTRY AND WILDLIFE, \$66,500, FOR THE ACQUISITION OF APPROXIMATELY 300 ACRES AT KONA, O'AHU (PIA VALLEY), TAX MAP KEY NUMBER (1) 3-7-003:003;
- B. COUNTY OF HAWAI'I, \$1,452,000, FOR THE ACQUISITION OF APPROXIMATELY 83.1 ACRES AT NORTH KOHALA, HAWAI'I (KAPANAI), TAX MAP KEY NUMBERS (3) 5-2-007:004 AND (3) 5-2-007:027;
- C. KE AO HALI'I (SAVE THE HANA COAST), \$2,225,625, FOR THE ACQUISITION OF APPROXIMATELY 26.98 ACRES AT HANA, MAUI (MOKAE-MAKA'ALAE LANDS), TAX MAP KEY NUMBER (2) 1-4-010:004;
- D. DIVISION OF FORESTRY AND WILDLIFE, \$700,000, FOR THE ACQUISITION OF APPROXIMATELY 948.2 ACRES AT KO'OLAUPOKO, O'AHU (KĀNE'OHE PALI TO LO'I), TAX MAP KEY NUMBERS (1) 4-5-025:008, (1) 4-5-041:001, (1) 4-5-041:004, AND (1) 4-5-042:018;
- E. THE NATURE CONSERVANCY, \$400,000 FOR THE ACQUISITION OF A CONSERVATION EASEMENT OVER APPROXIMATELY 229 ACRES AT KONA, HAWAI'I (HO'OMAU FOREST AND RANCH), TAX MAP KEY NUMBER (3) 8-9-001:023 (POR.);

- F. DIVISION OF FORESTRY AND WILDLIFE, \$100,000 FOR THE ACQUISITION OF A CONSERVATION EASEMENT OVER APPROXIMATELY 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;
- G. WAIPĀ FOUNDATION, \$650,000, FOR THE ACQUISITION OF APPROXIMATELY 0.25 ACRES AT HALELE'A, KAUA'I (HALULU FISHPOND ACCESS), TAX MAP KEY NUMBER (4) 5-6-004:017;
- H. DIVISION OF FORESTRY AND WILDLIFE, \$1,000,000 FOR THE ACQUISITION OF A CONSERVATION EASEMENT OVER APPROXIMATELY 2,780 ACRES AT KONA, HAWAI'I (HĀLOA 'ĀINA – ROYAL HAWAIIAN SANDALWOOD), TAX MAP KEY NUMBERS (3) 7-9-001:013, (3) 7-9-001:014, AND (3) 7-9-001:015; AND
- I. HAWAIIAN ISLANDS LAND TRUST, \$900,000 FOR THE ACQUISITION OF A CONSERVATION EASEMENT OVER APPROXIMATELY 17.1 ACRES AT KO'OLAUPOKO, O'AHU (WAIKALUA LOKO I'A), TAX MAP KEY NUMBER (1) 4-5-030:001 (POR)

AND

DECLARE THAT APPROVED AWARDS OF GRANT FUNDS FOR THE ACQUISITION OF INTERESTS AND RIGHTS IN SPECIFIC PARCELS OF LAND IDENTIFIED AS ITEMS B, C, AND D ABOVE (KAPANAI, MOKAE TO MAKA'ALAE LANDS, AND KĀNE'OHE PALI TO LO'I) ARE EXEMPT FROM THE REQUIREMENT TO PREPARE 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 up to \$4,500,000 in Legacy Land Conservation Program grants, from available funds in the Land Conservation Fund, for the acquisition of interests and rights in specific parcels of land having value as a resource to the State, as requested in nine applications that the Legacy Land Conservation Commission recently recommended for funding.

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. *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.”

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 2018, the Legacy Land Conservation Program (LLCP) initiated consultation with the Legacy Land Conservation Commission (LLCC) about the timeline, forms, and procedures for the 2018-2019 grant cycle. After the Department approved the timeline and forms, the LLCP posted the application materials and instructions on its website; announced application details in a Department news release (*see* <http://dlnr.hawaii.gov/blog/2018/07/30/nr-156/>); and notified interested parties directly via email.

Throughout the application process, the LLCP advised applicants that approximately \$4,500,000 in FY19 funding would be available for land acquisition awards, and suggested that applicants consider this funding situation for project planning purposes. The LLCP received nine timely applications for land acquisition awards before the deadline of September 24, 2018, with funding requests that ranged from \$66,500 to \$2,225,625 and totaled \$7,494,125. 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 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 10 and 11, 2018 (Meeting 63, please see Attachment 1, 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 12, 2018 (Meeting 61), during which it assigned eight groups—composed of two to four commissioners each—as task forces to conduct a field visit at each location proposed in the applications for funding, and appointed a lead commissioner for each group (Agenda Item 4). The LLCC held a second public meeting on December 10, 2018 (Meeting 62), during which each assigned group reported on the findings and recommendations of its respective field visit (Agenda Item 4). The LLCC held a third public meeting on December 10-11, 2018 (Meeting 63) that included discussion and the formulation of recommendations about the applications that were the subject of the field visits (Agenda Items 4, 6, and 7).

On December 14, 2018, the Department forwarded the LLCC recommendation to the Senate President and the Speaker of the House of Representatives, along with the Department’s request for consultation. On December 20, 2018, the Senate President and the Speaker of the House of Representatives held a consultation meeting with the Department Chair and LLCP staff, followed by written replies dated December 27, 2018 (Senate President) and January 2, 2019, 2018 (House Speaker) that stated “no concerns or objections” about the nine applications reviewed, ranked, and recommended for funding by the LLCC (please see Attachment 2).

Legacy Land Conservation Commission Recommendation

As indicated in Attachment 1, the LLCC recommended that the Board approve full funding, from available funds in the Land Conservation Fund, for the top four proposed land acquisition projects, in the order ranked by the LLCC (up to a total of \$4,414,125 from the budget for Fiscal Year 2019). Given the funding currently available for grants from the Land Conservation Fund, Board approval of the LLCC recommendation would result in awards of:

- (1) \$66,500 to the Division of Forestry and Wildlife for the acquisition of approximately 300 acres at Kona, O’ahu (Pia Valley Natural Area Reserve);
- (2) \$1,452,000 to the County of Hawai‘i for the acquisition of approximately 83.1 acres at North Kohala, Hawai‘i (Kapanaiia);

- (3) \$2,225,625 to Ke Ao Hali‘i (Save the Hana Coast) for the acquisition of approximately 26.98 acres at Hana, Maui (Mokae to Maka‘alaie Lands); and
- (4) \$700,000 to the Division of Forestry and Wildlife for the acquisition of approximately 948.2 acres at Ko‘olaupoko, O‘ahu (Kāne‘ohe Pali to Lo‘i).

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

- (5) 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 and The Nature Conservancy as joint alternates, for the acquisition of two conservation easements over a total area of approximately 993 acres at Kona, Hawai‘i (Ho‘omau Forest and Ranch); second, Waipā Foundation, as an alternate, for the acquisition of approximately 0.25 acres at Halele‘a, Kaua‘i (Halulu Fishpond Access); third, the Division of Forestry and Wildlife, as an alternate, for the acquisition of a conservation easement over approximately 2,780 acres at Kona, Hawai‘i (Hāloa ‘Āina – Royal Hawaiian Sandalwood); and fourth, Hawaiian Islands Land Trust, as an alternate, for the acquisition of a conservation easement over approximately 17.1 acres at Ko‘olaupoko, O‘ahu (Waikalua Loko I‘a).
- (6) Delegate authority to the Chair to redirect funding for a discontinued 2018-2019 award to other 2018-2019 applications that the Legacy Land Conservation Commission recommended for funding, so as to accomplish full or partial funding for each approved award, in the order ranked by the Commission, up to a total of \$4,500,000 from the budget for Fiscal Year 2019.

DISCUSSION

1. Pia Valley Natural Area Reserve: The Division of Forestry and Wildlife applied for \$66,500 to acquire approximately 300 acres in Kona, O‘ahu for five of the nine Legacy Land resource preservation purposes established in Haw. Rev. Stat. § 173A-5(g) (Application, Section D):

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

The proposed acquisition contains unique lowland mesic (moist) ‘ōhi‘a and uluhe-dominated forest ecosystems in the leeward Ko‘olau mountains, providing habitat for extremely rare plants and animals, some found nowhere else in the world. The Plant Extinction Program actively conserves fourteen species in Pia; the Division’s O‘ahu Botanist collects genetic material from five rare plant species; and the Snail Extinction Prevention Program conserves two endangered snail species that occur only in Pia, including the last known wild individual of *Achatinella*

bulimoides (Application, Section 16). Pia is a biodiversity hotspot that harbors federally-designated critical habitat for 17 species, borders other State and private protected areas, and is valuable as a location to study critically endangered species and monitor species conservation efforts (Application, Section 17.c).

The property contains watershed forests designated by the Department as Priority 1, where groundwater recharge services water supply for east O‘ahu. State ownership and management will contribute to implementation of the State’s 30x30 Watershed Forests Target Plan and the Department’s Rain Follows the Forest Plan, and fencing to remove feral pigs and facilitate native ecosystem, restoration would help to enhance watershed health and protect receiving waters from polluted runoff (Application, Section 17.a). As public land, this area would continue to benefit the community through the Department’s Nā Ala Hele Program that manages the adjacent Hawai‘i Loa Trail. At its meeting of July 30, 2015 under agenda item 2, the Department’s Natural Area Reserves System Commission recommended that the Pia valley parcel be designated as a Natural Area Reserve.

At Meeting 63 of the Legacy Land Conservation Commission (December 10-11, 2018), Ms. Emma Yuen, Division of Forestry and Wildlife, presented the application, and disclosed that the owner and willing seller is the parent of a Division employee. Courtney O’Connor, Hawaiian Islands Land Trust, testified in support of the application.

The applicant expects that matching funds estimated at secured at \$368,000 (85% of total project costs, pending) would be provided as a land value donation from the seller and, if necessary, from federal grants. The applicant considered and incorporated responses from consulting State agencies as summarized in the following table (Application, Section K):

Agency	Agency Response	Agency Comments
Department of Land and Natural Resources	We do not object to the proposed project. Comments attached.	If water from a stream diversion or well is needed to support the planned uses of the land, check in advance with the Commission on Water Resource Management as to any permits and approvals required under the State Water Code. [<i>Applicant “does not anticipate any need for water”</i>] The subject parcel is located entirely within the Conservation District, Resource Subzone. Land uses within the Conservation District require review by the Office of Conservation and Coastal Lands for compliance with Hawaii Administrative Rules 13-5. [<i>All anticipated land uses by Applicant “are anticipated to be consistent with the Conservation District”</i>]
Department of Agriculture	We do not wish to comment on the proposed project. We do not have an opinion about the propriety of the proposed exemption [HRS343].	
Agribusiness Dev. Corp.	We do not object to the proposed project. We advise that the proposed exemption [HRS 343] is proper.	

2. Kapanaia: The County of Hawai‘i applied for \$1,452,000 to acquire 83.1 acres at North Kohala, Hawai‘i, for one of the nine Legacy Land resource preservation purposes established in Haw. Rev. Stat. § 173A-5(g) (see Application, Section D):

(3) Habitat Protection

The applicant’s Project Description explained that Kapanaia, in North Kohala, was protected from mechanized activities while surrounding lands took part in sugar cultivation. Vegetation within 500 feet from the cliff was primarily hala trees and naupaka which overhung the cliff’s edge providing habitat for a variety of sea birds by anchoring soil to the rocks. Koai‘a, tropic birds, petrels, and terns make their nests in the cliff area and kōlea (golden plovers) and i‘o (hawks) are also present. Many generations utilize the stream for fishing ‘o‘opu (goby) and ‘ōpae (freshwater shrimp). Endangered Hawaiian monk seals have been seen ashore. In addition, the area carries huge historical significance for Hawaiian communities, and a County purchase of the land would enhance access to the recreational and cultural/historic landscape. The area is heavily laden with historic remnants of early kula gulch settlements and the Kamehameha era. The County of Hawai‘i and the community of Kohala pursue this acquisition to make valuable biological and cultural resources available for educational programs by Hawaiian scholars and schools; fishing; hiking; maintenance and restoration projects for the trail and heiau; agriculture; and removal of trash and invasive species.

At Meeting 63 of the Legacy Land Conservation Commission (December 10-11, 2018), presenters for the applicant included Mr. Hamana Ventura (County of Hawai‘i), Ms. Beth Robinson (Hawai‘i Life Real Estate), and community members Mr. Fred Cachola, Dr. Kehau Abad, and Ms. Toni Willington from Kohala Lihikai. Mr. Kawika Burgess (Hawaiian Islands Land Trust) testified in support of the application.

The applicant expects that matching funds estimated at \$1,484,800 (51% of total project costs, pending) would be provided as cash from the County of Hawai‘i Public Access, Open Space and Natural Resources Preservation fund. The applicant considered and incorporated 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. Comments attached. We advise that the proposed exemption [HRS 343] is proper.	Please see Attachment 3, DLNR Comments, from Commission on Water Resource Management (permits and approvals required under the State Water Code); Office of Conservation and Coastal and Lands (archaeological resources and public access); and Division of Aquatic Resources (stream habitat and connectivity; shoreline fishing grounds).
Department of Agriculture	We do not wish to comment on the proposed project. We do not have an opinion about the propriety of the proposed exemption [HRS 343].	
Agribusiness Dev. Corp.	We do not object to the proposed project. We advise that the proposed exemption [HRS 343] is proper.	

3. Mokae - Maka'ala'e Lands: Ke Ao Hali'i (Save the Hana Coast) applied for \$2,225,625 to acquire approximately 26.98 acres at Hana, Maui for eight of the nine Legacy Land resource preservation purposes established in Haw. Rev. Stat. § 173A-5(g) (see Application, Section D):

- (1) Watershed protection;
- (2) Coastal areas, beaches, and ocean access;
- (3) Habitat protection;
- (4) Cultural and historical sites;
- (5) Recreational and public hunting areas;
- (7) Natural areas;
- (8) Agricultural production; and
- (9) Open spaces and scenic resources.

The applicant's Project Description explained that the property is ocean-front pasture land that slopes to the sea with numerous platforms, unique rock formations, and old growth hala, indicating an ancient settlement area. The Mokae area and surrounding ocean resources are affected by the flooding and erosion that occur directly mauka of the parcel, and efforts to improve and control runoff are of interest to the applicant. The property provides access to the shoreline, which is of utmost importance to community members who fish, gather marine resources, and use the area recreationally. In addition, one section of the beach is eroding away and frequently exposes human remains and soil stratifications with li'ili'i (small round stones) that are meaningful to the archaeological history of the area. Previous archaeological surveys and investigations indicate three nearby heiaus and other sensitive areas such as disturbed human burials. The applicant has funding support to organize aerial investigations and use non-invasive tools to further map the archaeology of the Mokae parcel. Though decades of sugarcane and ranching degraded most of the native vegetation, an old grove of hala is present and scientists see potential for re-introduction of native vegetation and seabirds. The applicant plans to restore native habitats in conjunction with strategic cattle grazing by working with Hana Ranch to determine the best use of the land. The project area contains 3.2 miles of undeveloped, oceanfront pasturelands, rare to Hawai'i and in keeping with Hana's idyllic nature of verdant pastures and stunning ocean and mountain vistas.

At Meeting 63 of the Legacy Land Conservation Commission (December 10-11, 2018), presenters for the applicant included Ms. Robin Rayner, Mr. Scott Crawford, and Mr. Irish O'Hara of Ke Ao Hali'i, and Mr. Kawika Burgess of Hawaiian Islands Land Trust. The Commission received letters of support from:

Terry L. Hunt, Dean, Robert D. Clark Honors College, and Professor of Anthropology,
University of Oregon
Duane J. Lammers, Hana Ranch Manager
Maui Nui Seabird Recovery Project
J. Kalani English, Senate District 7
Robert Carroll, Maui County Council, East Maui
Robin Newbold, Chair, Maui Nui Marine Resource Council
Legaro Eharis, President, Nā Mamo O Mū'olea
Emily J. Fielding, Maui Marine Program Manager, The Nature Conservancy
Kelson 'Mac' Poepoe, Chair, and Karin Osuga, Coordinator, Maui Nui Makai Network

The applicant expects that matching funds estimated at \$741,875 (25% of total project costs, pending) would be provided through a grant from the Maui County Open Space Fund. The applicant considered and incorporated 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. Comments attached. We advise that the proposed exemption [HRS 343] is proper.	Please see Attachment 3, DLNR Comments, from Commission on Water Resource Management (permits and approvals required under the State Water Code); Office of Coastal and Conservation Lands (Conservation District, Limited Subzone; cultural and historical significance; coastal erosion); and Division of Aquatic Resources (importance of coastal land acquisition to maintain coastal access and natural coastal processes).
Department of Agriculture	Comments attached. We do not have an opinion about the propriety of the proposed exemption [HRS 343].	"HDOA requests the Applicant to clarify whether the lands are planned to have a conservation or agricultural easement placed on it, and if so, who would own those easements." The applicant "appears to be a recently incorporated nonprofit. HDOA requests that more information be provided about Ka Ao Hali'i, including their current and past land management experience."
Agribusiness Dev. Corp.	Applicant indicated that it did not receive a response from ADC.	

4. Kāne'ōhe Pali to Lo'i: The Division of Forestry and Wildlife applied for \$700,000 to acquire approximately 948.2 acres at Ko'olaupoko, O'ahu for seven 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;
- (4) Cultural and historical sites
- (5) Recreational and public hunting areas;
- (7) Natural areas;
- (8) Agricultural production; and
- (9) Open spaces and scenic resources.

The applicant's Project Description explained that the property extends from the Pali Highway and Lookout to the Ha'ikū boundary of the Kāne'ōhe Forest Reserve, and intersecting with the Honolulu Forest Reserve at the Ko'olau summit. The property is a key freshwater source, where several freshwater springs and perennial streams coexist with water development tunnels, pumping stations, and storage reservoirs. Erosion rates are high due to heavy rainfall over sheer cliffs and steep terrain, magnified by the shallow root systems of invasive plants and uprooting of the understory by feral pigs. The property includes areas of federally designated critical habitat for over 45 endangered species including 'elepaio, damselflies, Hawaiian hoary bat, and numerous endemic plant species.

The property has many documented and undocumented cultural sites including heiau, ahu, lo'i terraces, and 'auwai, contributing to its cultural landscape value. Future management plans include increasing cultural site protection with active community care of the existing features, as

well as facilitating a strong community interest in resuming historic agricultural practices for crops such as kalo, pineapple, rice, and banana. The privately-owned nature of the property prevents authorized hunting and allows little recreational activity, but the applicant would work with community partners to increase recreational access, restore hiking trails, and manage access for hunting and cultural practice.

At Meeting 63 of the Legacy Land Conservation Commission (December 10-11, 2018), presenters for the applicant included Ms. Laura Ka‘akua from the Trust for Public Land, Ms. Marigold Zoll from DOFAW, Ms. Mahealani Cypher from the Ko‘olau Foundation, Ms. Rocky Kaluhiwa from the Ko‘olaupoko Hawaiian Civic Club, and Mr. Mark Paikuli Stride from Luluku Farms. Mr. Herb Lee (Waikalua Loko Fishpond Preservation Society and the Pacific American Foundation) and Mr. Kawika Burgess (Hawaiian Islands Land Trust) testified in support of the application.

The applicant expects that matching funds estimated at \$278,000 (28% of total project costs, pending) would be provided through federal grants from the U.S. Fish and Wildlife Service, and perhaps from an acquisition of interests by the City and County of Honolulu through its Clean Water and Natural Lands Fund. The applicant considered and incorporated 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. Comments attached. We advise that the proposed exemption [HRS 343] is proper.	Please see Attachment 3, DLNR Comments, from Commission on Water Resource Management (permits and approvals required under the State Water Code); Office of Coastal and Conservation Lands (parcels lie within the General Resource and Protective subzone of the Conservation District; landscape features and historic uses; existing permits; cultural resources; existing utility infrastructure and easements):
Department of Agriculture	We do not wish to comment on the proposed project. We do not have an opinion about the propriety of the proposed exemption [HRS 343].	
Agribusiness Dev. Corp.	We do not object to the proposed project. We advise that the proposed exemption is proper.	

5. Ho‘omau Forest and Ranch: 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 approximately 993 acres at Kona, Hawai‘i for five of the nine Legacy Land resource preservation purposes established in Haw. Rev. Stat. § 173A-5(g) (Application, Section D):

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

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 \$1,568,000 (76% of total project costs) 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 the Board approves both grants from the Land Conservation Fund. 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 explained that the proposed conservation easements would protect 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 mehemehame (*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.

At Meeting 63 of the Legacy Land Conservation Commission (December 10-11, 2018), presenters for the applicant included Ms. Tanya Rubenstein (Division of Forestry and Wildlife), Mr. Mark Fox (The Nature Conservancy), and Ms. Kamaile Rafaelovich, landowner (Ho‘omau Ranch Conservatory). Ms. Courtney O’Connor (Hawaiian Islands Land Trust) testified in support. The Commission received letters of support from:

Benjamin A. Reed, Assistant Director for Field Operations, USDA Natural Resources
Conservation Service, Kealahou Service Center
Joan M. Yoshioka, Statewide Manager, Plant Extinction Prevention Program

The applicants considered and incorporated 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. Comments attached. We advise that the proposed exemption [HRS 343] is proper.	Commission on Water Resource Management (permits and approvals required under the State Water Code); Office of Coastal and Conservation Lands (lands within the Conservation District Resource subzone; trails, place names, and other cultural and natural features).
Department of Agriculture	Comments attached. We do not have an opinion about the propriety of the proposed exemption [HRS 343].	HDOA notes a ranch in existence listed under "Resources to be Protected" and requested more information be provided to the Legacy Land Conservation Program on the ranch operation, management plan for the ranch, and how it will operate in conjunction with proposed uses such as habitat and forestry preservation. HDOA requested the applicant should also address the agricultural tourism activities listed on their website and whether they are within the proposed conservation easement and if so, consistent with the easement.
Agribusiness Dev. Corp.	We do not object to the proposed project. We advise that the proposed exemption [HRS 343] is proper.	

6. Halulu Fishpond Access: Waipā Foundation applied for \$650,000 to acquire approximately 0.25 acres at Halele‘a, Kaua‘i for seven of the nine Legacy Land resource preservation purposes established in Haw. Rev. Stat. § 173A-5(g) (Application, Section D):

- (1) Watershed protection;
- (2) Coastal areas, beaches, and ocean access;
- (3) Habitat protection;
- (4) Cultural and historical sites;
- (7) Natural areas;
- (8) Agricultural production; and
- (9) Open spaces and scenic resources.

Halulu Fishpond Access sits within the coastal plain of Waipā ahupua‘a and includes a portion of Halulu Fishpond fed by Wai‘oli Stream and emptying into Hanalei Bay, with important estuarine habitat for many native fish such as ‘ama‘ama and āholehole. The land is currently vacant and overgrown with tall non-native trees, although Waipā Foundation uses the land for access to its management activities at Halulu Fishpond and Hanalei Bay. The area surrounding Halulu provides valuable ecosystem services and community spaces for festivals, gatherings, and educational programs (Application Section C). Waipā Foundation already manages a majority of the Waipā ahupua‘a, so acquiring the access would connect the landscapes promoting contiguous and integrated watershed management. The property also demonstrates cultural and land tenure history, being previously awarded as a kuleana lot. If the Halulu Fishpond Access property is not protected and acquired by Waipā Foundation, it would likely be purchased for residential development and use. A real threat is the local community

losing shoreline access, provoking community conflict (Application, Section G). Waipā Foundation would incorporate Halulu Fishpond Access into its Master Site Plan and Strategic Plan (Application, Section H), and public benefits would include safeguarding community access to Halulu Fishpond and Hanalei Bay—to protect against harm to resources and culturally inappropriate uses—and managing access for public use during community festivals and educational, recreational, and youth programs (Application, Section K).

At Meeting 63 of the Legacy Land Conservation Commission (December 10-11, 2018), presenters for the applicant included Ms. Laura Ka‘akua (The Trust for Public Land) and Ms. Stacy Sproat-Beck (Waipā Foundation). Mr. Billy Kinney, who grew up in Hanalei and participated in Waipā Foundation programs, testified in support, and the LLCC received a letter of support from Katie Champlin, Interim Director, Limahuli Garden & Preserve for the National Tropical Botanical Garden.

The applicant expects that matching funds estimated at \$611,500 (49% of total project costs, pending) would be provided as a grant from the County of Kaua‘i Open Space Fund, along with a landowner donation and cash from private donors. However, because the applicant has an existing contract with the State to fund the acquisition of a nearby property from the same landowner (LLCP 15-01, Kaluanono), both the landowner and the County prefer that the two properties be conveyed in a single transaction.

The applicant considered and incorporated 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. Comments attached. We advise that the proposed exemption [HRS 343] is proper.	Commission on Water Resource Management (permits and approvals required under the State Water Code); Office of Coastal and Conservation Lands (confirmed that the property is not in the Conservation District).
Department of Agriculture	We do not wish to comment on the proposed project. We do not have an opinion about the propriety of the proposed exemption [HRS 343].	
Agribusiness Dev. Corp.	We do not object to the proposed project. We advise that the proposed exemption [HRS 343] is proper.	

7. Hāloa ‘Āina – Royal Hawaiian Sandalwood: The Division of Forestry and Wildlife applied for \$1,000,000 to acquire a conservation easement over approximately 2,780 acres at Kona, Hawai‘i, for seven of the nine Legacy Land resource preservation purposes established in Haw. Rev. Stat. § 173A-5(g) (Application, Section D):

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

Hāloa ‘Āina, a family owned native Hawaiian company, is utilizing innovative, sustainable forest management to yield the most abundant regeneration of native sandalwood in the state (application, Section G). Dry forest here connects to the Hawaii Volcanoes National Park through Kamehameha Schools land, and is adjacent to two properties conserved with easements held by DLNR through the Forest Legacy Program (Application, Section I). However, Hāloa ‘Āina is at high risk for conversion with high land value speculation, active subdivision, and sales in adjacent areas (Application, Section G). Acquisition of this conservation easement would forfeit the right of the landowner to subdivide, protecting the property from development in perpetuity, and would require the implementation of a long-term forest management plan (Application, Section J). Public benefits would include enhancing existing restoration efforts that increase fog water capture and groundwater recharge and that regenerate cultural resources for future generations. This provides a good example of forest restoration to influence neighboring landowners, and facilitates continued visits, access, and educational and volunteer opportunities for local community organizations, partners, students, researchers, youth groups, and cultural groups (Application, Section K).

At Meeting 63 of the Legacy Land Conservation Commission (December 10-11, 2018), presenters for the applicant included Ms. Malia Nanbara (Division of Forestry and Wildlife) and Mr. Tawn Speetjens, Mr. Justin Lee, and Mr. Wade Lee of Hāloa ‘Āina. The Commission received twelve form letters from community members in support, and other letters of support from:

Colleen Cole, Coordinator, Three Mountain Alliance
Kamakani Dancil, Land Asset Manager, Kamehameha Schools (CE&R, Hawai‘i Island)
Cynthia L. Orlando, Superintendent, Hawai‘i Volcanoes National Park
Michelle Bogardus, Island Team Leader, Maui Nui and Hawai‘i Island, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service
Mark Nakashima, State Representative, District 1
Nicole Lowen, State Representative, District 6
Kristen and Joe Souza, Reforest Hawai‘i
Dianne Higgins, Participant, Conservation Reserve Enhancement Program (CREP)
Constance Fay, Managing Member, Co-Evolution LLC

The applicant expects that matching funds estimated at \$3,335,650 (77% of project costs, secured and pending) would be provided through the federal Forest Legacy Program (secured) and a FY20 State Capital Improvement Project (from above the spending ceiling of the Land Conservation Fund,

pending). The applicant considered and incorporated 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. Comments attached. We advise that the proposed exemption [HRS 343] is proper.	Commission on Water Resource Management (permits and approvals may be required under the State Water Code); Office of Coastal and Conservation Lands (confirmed that the property is not in the Conservation District); Division of Aquatic Resources (No comments).
Department of Agriculture	The applicant and the Division do not have a record of a response from HDOA.	
Agribusiness Dev. Corp.	We do not object to the proposed project. We advise that the proposed exemption [HRS 343] is proper.	

8. Waikalua Loko I'a: Hawaiian Islands Land Trust applied for \$900,000 to acquire a conservation easement over approximately 17.1 acres at Ko'olaupoko, O'ahu for eight of the nine Legacy Land resource preservation purposes established in Haw. Rev. Stat. § 173A-5(g) (Application, Section D):

- (1) Watershed protection;
- (2) Coastal areas, beaches, and ocean access;
- (3) Habitat protection;
- (4) Cultural and historical sites;
- (5) Recreational areas;
- (7) Natural areas;
- (8) Agricultural production; and
- (9) Open spaces and scenic resources.

Waikalua Loko is one of the few remaining traditional Hawaiian fishponds on O'ahu, a testament to the ingenuity of traditional Hawaiian society (Application, Section C). The number one threat to the property is privatization, subdivision, and urban development (Application, Section G). The proposed conservation easement would prohibit subdivision of the property; construction of additional buildings, structures, and vehicular roads; and excavating and removal of top soil, sand, gravel or rock from the property, while keeping the land in educational and cultural uses, including ecological restoration (Application, Sections G and J). Public benefits would include access to Kāne'ōhe Bay and its shoreline for recreation, fishing, and other traditional practices, and continuation of cultural and educational activities conducted by the Pacific American Foundation (Application, Section K).

At Meeting 63 of the Legacy Land Conservation Commission (December 10-11, 2018), presenters for the applicant included Mr. Kawika Burgess (Hawaiian Islands Land Trust) and Mr. Herb Lee, Jr. (Waikalua Loko Fishpond Preservation Society and Pacific American Foundation), with testimony in support from:

Mr. Ned Bush (Kāne‘ohe Business Group and Rotary Club of Kāne‘ohe)
 Mr. Dave Krupp (Windward Community College)
 Mr. Floyd McCoy (University of Hawai‘i)
 Mr. Keale (Pacific American Foundation)
 Mr. Kevin Chang (Kua ‘Āina Ulu ‘Auamo)
 Ms. Brenda Ascunsion (Kua ‘Āina Ulu ‘Auamo)

The LLCC also received nineteen letters of support from various individuals and organizations (please see Attachment 4, Letters of Support)

The applicant expects that matching funds estimated at \$925,000 (51% of project costs, pending) would be provided by the . The applicant considered and incorporated 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. Comments attached. We advise that the proposed exemption [HRS 343] is proper.	Please see Attachment 3, DLNR Comments, from Division of Aquatic Resources (educational and restoration benefits; propagation of native species). Commission on Water Resource Management (permits and approvals required under the State Water Code); Office of Coastal and Conservation Lands (Conservation District Subzone and historical alignments).
Department of Agriculture	We do not wish to comment on the proposed project. We do not have an opinion about the propriety of the proposed exemption [HRS 343].	
Agribusiness Dev. Corp.	We do not object to the proposed project. We advise that the proposed exemption [HRS 343] is proper.	

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.

The Division advises that additional easement requirements should not apply to the four 2018-2019 grant applications that propose the acquisition of a conservation easement, only. Of the remaining five applications recommended for funding, the Division recommends that the Board exempt the two State grants and the one county grant from the easement requirement:

Division of Forestry and Wildlife – Pia Valley Natural Area Reserve: This grant is for lands that would be held and managed by the Department. If federal matching funds are used, then it is likely that the deed of conveyance to the State would include restrictions mandated by a federal natural resource agency.

County of Hawai'i – Kapanai'a: This grant is for lands that would be held and managed by the County. It is likely that the deed of conveyance to the County would include restrictions mandated by the County.

Division of Forestry and Wildlife – Kāne'ōhe Pali to Lo'i: This grant is for lands that would be held and managed by the Department. If federal or local matching funds are used, then it is likely that the deed of conveyance to the State would include restrictions mandated by a federal natural resource agency, or that the property would be encumbered with a conservation easement held by the City and County of Honolulu.

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:

Ke Ao Hali'i (Save the Hana Coast) – Mokae to Maka'ala'e Lands: This grant is for the acquisition of fee title by a nonprofit land conservation organization. It is likely that the deed of conveyance would include restrictions mandated by the County of Maui. The application included a letter indicating that Hawaiian Islands Land Trust (HILT) is willing to hold a conservation easement over the property, as reconfirmed by HILT at the Legacy Land

Conservation Commission meeting in December 2018. HILT already holds easements over other properties nearby.

Waipā Foundation – Halulu Fishpond Access: This grant is for the acquisition of fee title by a nonprofit land conservation organization. The application included a letter indicating that the County of Kaua‘i is willing to hold a conservation easement over the property.

Chapter 343, Hawai‘i Revised Statutes, Environmental Review

1. Statutory Exemptions

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, the Division concludes that the results of the application process indicate that just one of the properties that the LLCC recommended for acquisition is “unimproved” (Pia Valley Natural Area Reserve).

Two of the properties that the LLCC recommended for acquisition involve the proposed use of a Hawaiian fishpond (Halulu Fishpond Access and Waikalua Loko I‘a conservation easement). Under Haw. Rev. Stat. § 183B-2:

[t]he proposed reconstruction, restoration, repair, or use of any Hawaiian fishpond shall be exempt from the requirements of chapter 343; provided that it will comply with the following conditions:

- (1) The fishpond is not adjacent to a sandy beach;
- (2) The fishpond stocks only native aquatic organisms;
- (3) The fishpond does not operate as an intensive culture system in which cultured organisms require frequent or periodic artificial feeding, artificial aeration of water, or artificial pumping of water through the fishponds for their growth and survival;
- (4) Bulk chemicals are not added to the water for the control of pathogens or parasites;
- (5) Coastal access is allowed to any person mauka of the fishpond and makai of walls;
- (6) The fishpond and its operations do not harm any threatened or endangered species; and
- (7) The fishpond is not used for water recreational purposes except those recreational activities customarily and traditionally practiced in Hawaiian fishponds prior to 1778.

Based on the results of the application process, the Division concludes that the proposed acquisitions of Halulu Fishpond Access and Waikalua Loko I‘a conservation easement are exempt from the requirements of chapter 343.

2. Administrative Exemptions

For the remaining properties, Haw. Rev. Stat. § 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).

Three remaining acquisitions of land proposed by a county or a nonprofit land conservation organization (Kapanāia, Mokaē-Maka‘ālae, and Ho‘ōmau-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 (1) that 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) that 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.

The Division believes that its proposed acquisitions of land at Kāne‘ohe Pali to Lo‘i, Ho‘ōmau Forest and Ranch, and Hāloa ‘Āina 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.

2.1 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 63 (December 10-11, 2018); and, for the four top-ranked applications, (3) outside agencies 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 6). Please note that for two of the back-up applications (Ho‘ōmau Forest and Ranch, which are repeat applications from the Division and The Nature Conservancy from the 2017-2018 application cycle), the Division completed the administrative exemption process during the previous grant cycle, ending with Board action that declared the applications exempt from the requirement to prepare an

environmental assessment (Item C-1, Recommendation 6, April 27, 2018). In all cases, an agency from which the Division requested advice 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 a 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 Legacy Land Conservation Program grant agreement.

Therefore, the Division recommends that Board declare that the acquisition of land by the Department using FY19 funds awarded through the Legacy Land Conservation Program for Kāne‘ohe Pali to Lo‘i, and the awards of FY19 Legacy Land Conservation Program grants to counties and nonprofit land conservation organizations under Haw. Rev. Stat. Chapter 173A for the acquisition of interests in land at Kapanāia (County of Hawai‘i) and Mokae to Maka‘alaie (Ka Ao Hali‘i), 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 of these proposed acquisitions and awards is attached (Attachment 6; please see Attachment 1 for additional maps and photos).

The Division notes that it did not yet pursue outside advice for one proposed acquisition (Hāloa ‘Āina – Royal Hawaiian Sandalwood), and will do so if and when this acquisition moves out of its back-up position. The Division also notes that the proposed repeal of Haw. Admin. R. § 11-200 and the proposed adoption of Haw. Admin. R. § 11-200.1 (new rule cited below) would establish a new process that could eliminate the need for the Department to prepare Exemption Notices for land acquisition:

§11-200.1-16 Exemption lists. (a) Each agency, through time and experience, may develop its own exemption list consistent with both the letter and intent expressed in this subchapter and in chapter 343, HRS, of: (1) Routine activities and ordinary functions within the jurisdiction or expertise of the agency that by their [de minimis] nature do not have the potential to individually or cumulatively adversely affect the environment more than negligibly and that the agency considers to not rise to the level of requiring chapter 343, HRS, environmental review

(b) An agency may use part one of its exemption list, developed pursuant to subsection (a)(1), to exempt a specific activity from preparation of an EA and the requirements of section 11-200.1-17 [Exemption Notices] because the agency considers the specific activity to be de minimis.

RECOMMENDATIONS

That the Board:

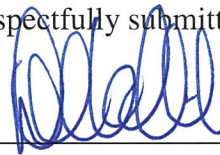
- 1) Approve two awards from the Land Conservation Fund, using a total of \$766,500 from under the FY19 spending ceiling for the Legacy Land Conservation Program, to the Division of Forestry and Wildlife, and authorize the Chairperson to execute a letter of offer to the landowner and encumber funds from the Land Conservation Fund, for (a) \$66,500 for the acquisition of approximately 300 acres at Kona, O‘ahu (Pia Valley Natural Area Reserve), and (b) \$700,000 for the acquisition of approximately 948.2 acres at Ko‘olaupoko, O‘ahu (Kāne‘ohe Pali to Lo‘i), subject to the availability of funds, the approval of the Governor, compliance with Chapter 173A, HRS, and the normal process and procedures for the acquisition of lands by the State.

- 2) Authorize the Chairperson to enter into agreements and encumber FY19 funds from the Land Conservation Fund with (a) County of Hawai‘i for \$1,452,000 for the acquisition of approximately 83.1 acres at North Kohala, Hawai‘i, and (b) Ke Ao Hali‘i (Save the Hana Coast) for \$2,225,625 for the acquisition of approximately 26.98 acres at Hana, Maui with a conservation easement held by Hawaiian Islands Land Trust, or other suitable entity, using a total of \$3,677,625 from under the FY19 spending ceiling for the Legacy Land Conservation Program, 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 \$4,500,000 from under the FY19 spending ceiling for the Legacy Land Conservation Program, to: first, The Nature Conservancy and the Division of Forestry and Wildlife, as joint alternates, for the acquisition of two conservation easements over a total area of approximately 993 acres at Kona, Hawai‘i (Ho‘omau Forest and Ranch); second, the Waipā Foundation, as an alternate, for the acquisition of approximately 0.25 acres at Halele‘a, Kaua‘i (Halulu Fishpond Access), with a conservation easement held by the County of Kaua‘i, or other suitable entity ; third, the Division of Forestry and Wildlife, as an alternate, for the acquisition of a conservation easement over approximately 2,780 acres at Kona, Hawai‘i (Hāloa ‘Āina – Royal Hawaiian Sandalwood); and (4) Hawaiian Islands Land Trust, as an alternate, for the acquisition of a conservation easement over approximately 17.1 acres at Ko‘olaupoko, O‘ahu (Waikalua Loko I‘a).

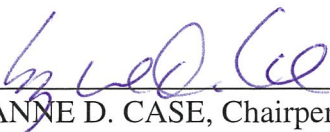
- 4) Delegate authority to the Chair to redirect funding for a discontinued 2018-2019 award to other 2018-2019 applications that the Legacy Land Conservation Commission recommended for funding, so as to accomplish partial or full funding for each approved award in the order ranked by the Commission, up to a total of \$4,500,000 from the budget for Fiscal Year 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 2018-2019 grant funds from the Legacy Land Conservation Program to the Division of Forestry and Wildlife for its Kāne'ōhe Pali to Lo'i land acquisition 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 approved awards of 2018-2019 grant funds from the Legacy Land Conservation Program to the County of Hawai'i (Kapanāia) and to Ke Ao Hali'i (Mokae to Maka'ālae Lands) for land acquisition will probably have minimal or no significant effects on the environment; are actions for the award of grants under Haw. Rev. Stat. Chapter 173A that do not fund an activity that causes any material change of use of land or resources beyond that previously existing; and are 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 2018-2019 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 1: Table of recommended awards for the 2018-2019 Legacy Land Conservation Program, with project maps and photos attached
- Attachment 2: Letters from the President of the Senate (March 19, 2019) and the Speaker of the House of Representatives (March 16, 2019)
- Attachment 3: DLNR Comments for applications from:
County of Hawai'i (Kapanāia)
Ke Ao Hali'i (Mokae to Maka'alaē Lands)
Division of Forestry and Wildlife (Kāne'ohē Pali to Lo'i)
Hawaiian Islands Land Trust (Waikalua Loko I'a)
- Attachment 4: Letters of Support (list of supporters) for Hawaiian Islands Land Trust (Waikalua Loko I'a)
- Attachment 5: DLNR Exemption Notifications and Declarations of Exemption for the award of grants under Haw. Rev. Stat. Chapter 173A (for Kapanāia, Mokae to Maka'alaē Lands, and Kāne'ohē Lo'i to Pali)

Land Conservation Fund Grant Application Summary, 2018-2019 Legacy Land Conservation Commission Recommendation, Meeting 63, Item 4

PART 2 CONTINGENT FUNDING FOR ALTERNATE APPLICATIONS

April 26, 2019
Attachment 1: Recommended Awards
2018-2019 Legacy Land Conservation Program Grants

RANK	Item	Application	Applicant	District, Island	Type	Description	Acres	State Land Use District	County Zoning	Matching \$ Match %	LLCP \$	TOTAL \$
5* tie	4.E.1.	Ho'omau Forest and Ranch	The Nature Conservancy (TNC)	Kona, Hawai'i	Easement	The project area encompasses a portion of the 1,593 acre Ranch in South Kona that sits along the western (leeward) flank of Mauna Loa volcano, north of the volcano's southwest rift zone upslope from the Hawai'i Belt Road. Applicants/Partners intend that the two applications be considered as a single project because they will not be able to proceed without each other. TNC would acquire a conservation easement of 229 acres on a portion of one parcel ("Martin Forest Paddock") to be managed as a preserve/conservation forest. DOFAW would acquire a conservation easement of 764 acres across three contiguous parcels to be managed as a working forest and ranch. The two areas are divided by a portion of the separately owned 1926 Ho'opuloa lava flow. TNC TMK: (3) 8-9-001:023 (por), 229 acres	993	Agricultural	A-5a	X ----- 1,568,000	\$400,000	\$2,068,000
									\$1,568,000 76%			
7*	4.E.2.	Ho'omau Forest and Ranch	State DLNR Division of Forestry and Wildlife	Kona, Hawai'i	Easement	Estimated match is \$2,007,500 from federal Forest Legacy Program (\$2,000,000, secured) and the landowner. Final amounts awarded to each application (TNC/DOFAW), and match, may need to be adjusted depending on the appraised value of the parcels. DLNR TMKs: (3) 8-8-001:022, :032, :033, 765 acres		Agricultural	A-5a	Y ----- 1,568,000	\$100,000	
5* tie	4.H.	Halulu Fishpond Access	Waipā Foundation	Halele'a, Kaua'i	Fee + Easement (County of Kaua'i)	The parcel includes part of Halulu Fishpond—within the Waipā ahupua'a, in the Halele'a moku on Kaua'i's north shore—which connects to Wai'oli Stream and Hanalei Bay, and also includes a portion of the community path that to the fishpond and bay. The property's high visibility on the makai side of the highway provides a unique opportunity to create a visible local presence rooted in Hawaiian practices and values. The land was historically farmed has potential to return to farming, in stark contrast to the development trend on other private parcels in the area. While Waipā Foundation manages the majority of Halulu Fishpond, this purchase would allow it to manage the entire fishpond, and continue its restoration work for habitat and cultural practice. Access for the steward of Waipā ahupua'a is critical in managing all of Waipā's resources in a comprehensive and community-minded manner. TMK: (4) 5-6-004:017	0.25	Agricultural	Agricultural	\$611,500 49%	\$650,000	\$1,261,500
8	4.B.	Hāloa 'Āina – Royal Hawaiian Sandalwood	State DLNR, Division of Forestry and Wildlife	Kona, Hawai'i	Easement	Dry montane forest (4500 to 5500 elevation) in North Kona at the top of Hōkūkano watershed. Surrounded by private lands including Kamehameha Schools, and the existing Kealakekua Heritage Ranch Forest Legacy conservation easement. The property can be subdivided into 150 potential house lots, and the landowner has received multiple purchase offers from housing development speculators and plantation-crop interests. A conservation easement would ensure that subdivision by subsequent generations is not possible. Hāloa 'Āina's vision is to restore the native Hawaiian dryland forest and to create an economic opportunity is sustainable management of Hawaiian sandalwood. TMKs: (3) 7-9-001:013, :014, :015	2,780	Agricultural	Ag20 ----- Extensive agriculture	\$3,335,650 77%	\$1,000,000	\$4,335,650
9	4.D.	Waikalua Loko I'a	Hawaiian Islands Land Trust	Ko'olaupoko, O'ahu	Easement	The Waikalua Loko I'a is one of the few remaining traditional Hawaiian fishponds on the island of Oahu. The property is an important access point to the shoreline along Kaneohe Bay for traditional and customary purposes, as well as current recreational users and fishermen. Currently used as an educational and cultural learning center, the fishpond also serves as a critical sediment basin to slow down and reduce pollutants from entering Kaneohe Bay. TMK: (1) 4-5-030:001 (por)	17	Conservation (Resource)	Preservation	\$925,000 51%	\$900,000	\$1,825,000
*	<p>In the Commission's ranking of applications, application 4.E.1 tied with application 4.H for fifth place, and application 4.E.2 ranked slightly behind, in seventh place.</p> <p>The Commission's recommendation to fund applications 4.E.1 and 4.E.2 as a combined alternate, before funding application 4.H, is based on the Commission's recognition and concern that applications 4.E.1 and 4.E.2, combined, form a single State, federal, and private forest conservation partnership project that has already secured sufficient federal matching funds that may be in danger of lapsing before additional State funds can be secured to complete the conservation transaction.</p>						3,790 acres	TOTALS		\$6,440,150 68%	\$3,050,000	\$9,490,150

Land Conservation Fund Grant Application Summary, 2018-2019 Legacy Land Conservation Commission Recommendation, Meeting 63, Item 4

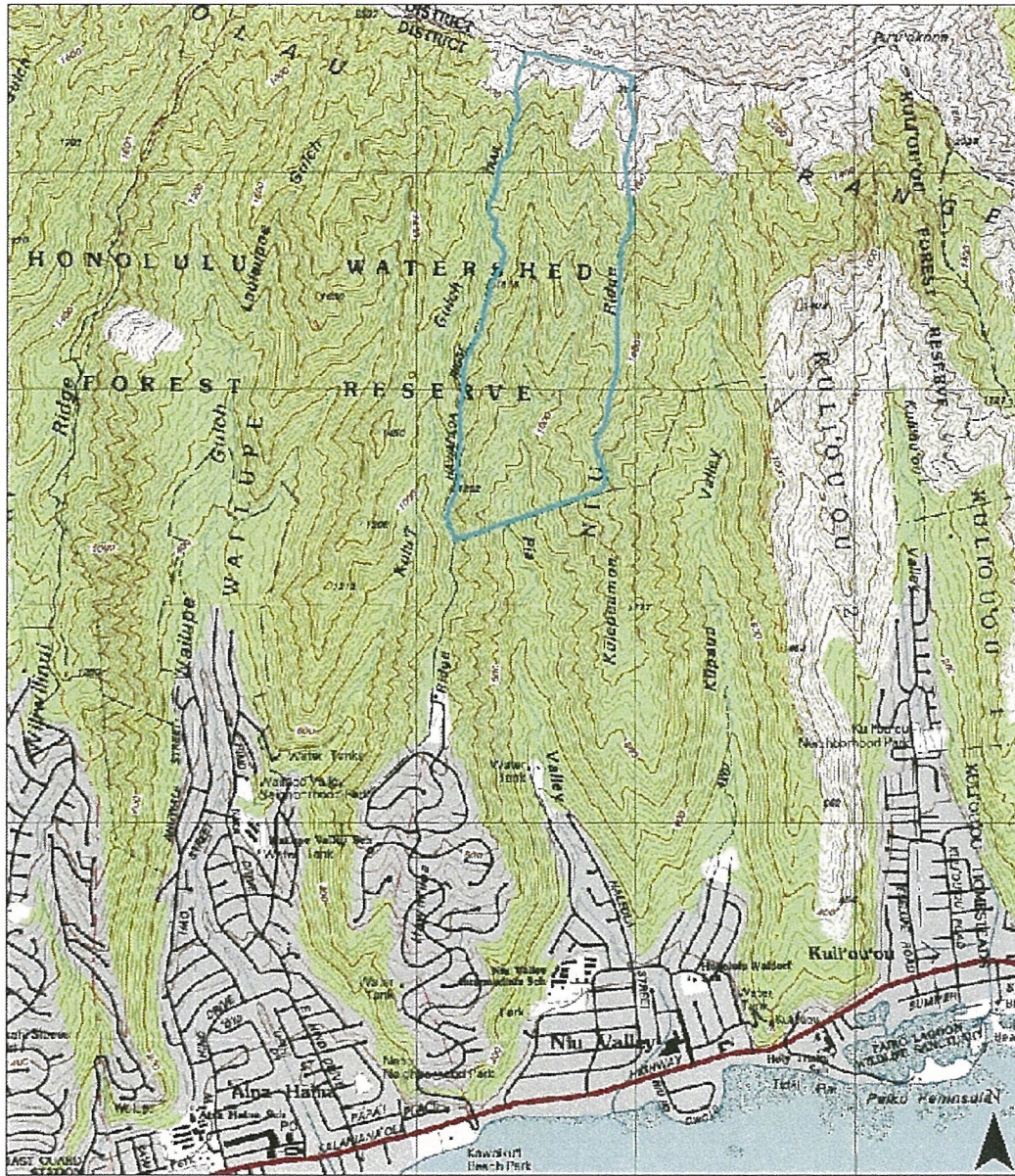
PART 1 FULL FUNDING AS FUNDS ARE AVAILABLE

April 26, 2019
Attachment 1: Recommended Awards
2018-2019 Legacy Land Conservation Program Grants

RANK	Item	Application	Applicant	District, Island	Type	Description	Acres	State Land Use District	County Zoning	Matching \$ Match %	LLCP \$	TOTAL \$
1	4.F.	Pia Valley Natural Area Reserve	State DLNR, Division of Forestry and Wildlife	Kona, O'ahu	Fee	Pia is a biodiversity hotspot that reaches the Ko'olau summit crest between Wailupe and Kūpaua, and falls within the federally designated critical habitat for 17 species. For the past two years, the DOFAW Snail Extinction Program has been working with two endangered snail species that occur exclusively in Pia and surveying for two other endangered snail species that are historically known from the area, including the last known wild individual of <i>Achatinella bulimoides</i> . A portion of Pia has a Priority 1 designation for the State Rain Follows the Forest Initiative and would serve as important watershed protection for the densely populated Maunaloa area. If designated as a Natural Area Reserve, the area would become part of the Ko'olau Mountains Watershed Partnership, and the public would be able to access the area from Hawai'i Loa Ridge trail and the back of Niu Valley. TMK: (1) 3-7-003:003	300	Conservation (Protective)	Preservation P-1	\$368,000 85%	\$66,500	\$434,500
	4.A.	Kapanaia	County of Hawai'i	Kohala, Hawai'i	Fee	Two parcels at 'A'amakāō, North Kohala are part of the Kulā Iwi o Kamehameha (Kamehameha's homeland) along a four-mile long stretch of coast. Three of nine privately owned parcels have been preserved to date. The land is a premier fishing and gathering area for Kohala and is subject to existing public access easements granted to County of Hawai'i. Noted features include Kapalama Heiau on Kaheo point; a canoe road created during Kamehameha's reign; agricultural complex; Mahukona to Niuli'i railroad right of way; sugarcane plantation remnants. TMKs: (3) 5-2-007:004, :027.	83	Conservation (Resource) Agricultural	A20A	\$1,484,800 51%	\$1,452,000	\$2,936,800
	4.G.	Mokae to Maka'alaie Lands	Ka A'o Ali'i (KAH-Save Hana Coast)	Hana, Maui	Fee + Easement (Hawaiian Islands Land Trust)	The seller has agreed to donate 10 parcels of land along Hana's "Gold Coast" if KAH can complete the purchase of 4 additional parcels, 3 of which are intended to be funded by the Maui Open Space Fund. This application is for the final fourth parcel, the 27 acre Mokae Lands, adjacent to Hāmoa beach, which can be legally subdivided into 7 lots. This oceanfront pasture land includes numerous level platforms and partially treed older growth Hala (ancient settlement area), and the whole area is a fishing/gathering place that remains a vital part of Hana's culture and identify for gather rights, spiritual connections to ancestors, and the inspirational beauty they provide. TMK: (2) 1-4-010:004	27	Conservation (Limited) Agricultural	AG	\$741,875 25%	\$2,225,625	\$2,967,500
	4.C.	Kaneohe Pali to Lo'i	State DLNR, Division of Forestry and Wildlife	Ko'olaupoko, O'ahu	Fee	Four parcels that include portions of ten 'ili within Kāne'ohe ahupua'a. The furthest mauka portions are sheer pali, intersecting with the Honolulu Forest Reserve at the summit. Federally designated critical habitat for numerous plant species, and two damselfly species extends from the top of the pali to mid-elevations. Freshwater springs feed some of the 11 streams/tributaries, along with famous waterfalls. Below the pali was once part of a vast lo'i kalo complex, including the renowned Luluku and Kuou terrace complexes, where native Hawaiians farmed since the 5 th century. Numerous cultural sites include those related to Kukuio Kane Heiau; Kekele Trail; Kekele hala grove; burials; 'auwai. Hi'ilaniwai spring, birthing stones, mountain peaks and other geological formations famed in Hawaiian mo'olelo, mele and lo'i. Managing access through educational and community programming will likely continue. TMKs: (1) 4-5-025:008; 4-5-041:001, :004; 4-5-042:018	948	Conservation	Preservation P-1	\$278,000 28%	\$700,000	\$978,000
<p>The Legacy Land Conservation Commission (LLCC) recommends that the Board of Land and Natural Resources (BLNR) approve four awards for grants from available funds in the Land Conservation Fund (FUND), for full funding of the top four 2018-2019 applications for land acquisition grants, in the order ranked by the LLCC. In order to provide for greater flexibility in the awards program, the LLCC also recommends that the BLNR:</p> <p>(1) Approve—as a contingency in the event that an awardee is unable to accept its awarded funds—awards of remaining, available funds from the LCF, up to the amounts requested in the final 2018-2019 applications, to: first, The Nature Conservancy and the Department of Land and Natural Resources (DLNR), as a combined alternate (applications 4.E.1 and 4.E.2), for the acquisition of two conservation easements over approximately 993 acres at Kona, Hawai'i; second, Waipā Foundation, as an alternate, for the acquisition of approximately 0.25 acres at Halele'a, Kaua'i; third, the DLNR, as an alternate, for the acquisition of a conservation easement over approximately 2,780.4 acres at Kona, Hawai'i; and fourth, Hawaiian Islands Land Trust, as an alternate, for the acquisition of a conservation easement over approximately 17.1 acres at Ko'olaupoko, O'ahu.</p> <p>(2) Delegate authority to the Chair to redirect funding for a discontinued 2018-2019 award to other 2018-2019 applications that the LLCC recommended for funding, so as to accomplish full funding for each approved award in the order ranked by the Commission.</p> <p>The Commission advises that the proposed exemption of each grant award that the Board approves for funding from the requirement to prepare an environmental assessment under subsection 343-5(a), Hawai'i Revised Statutes, is proper.</p>							1,358 acres	TOTALS		\$2,872,675 39% MATCH	\$4,444,125 LLCP \$	\$7,316,800 Estimated Cost

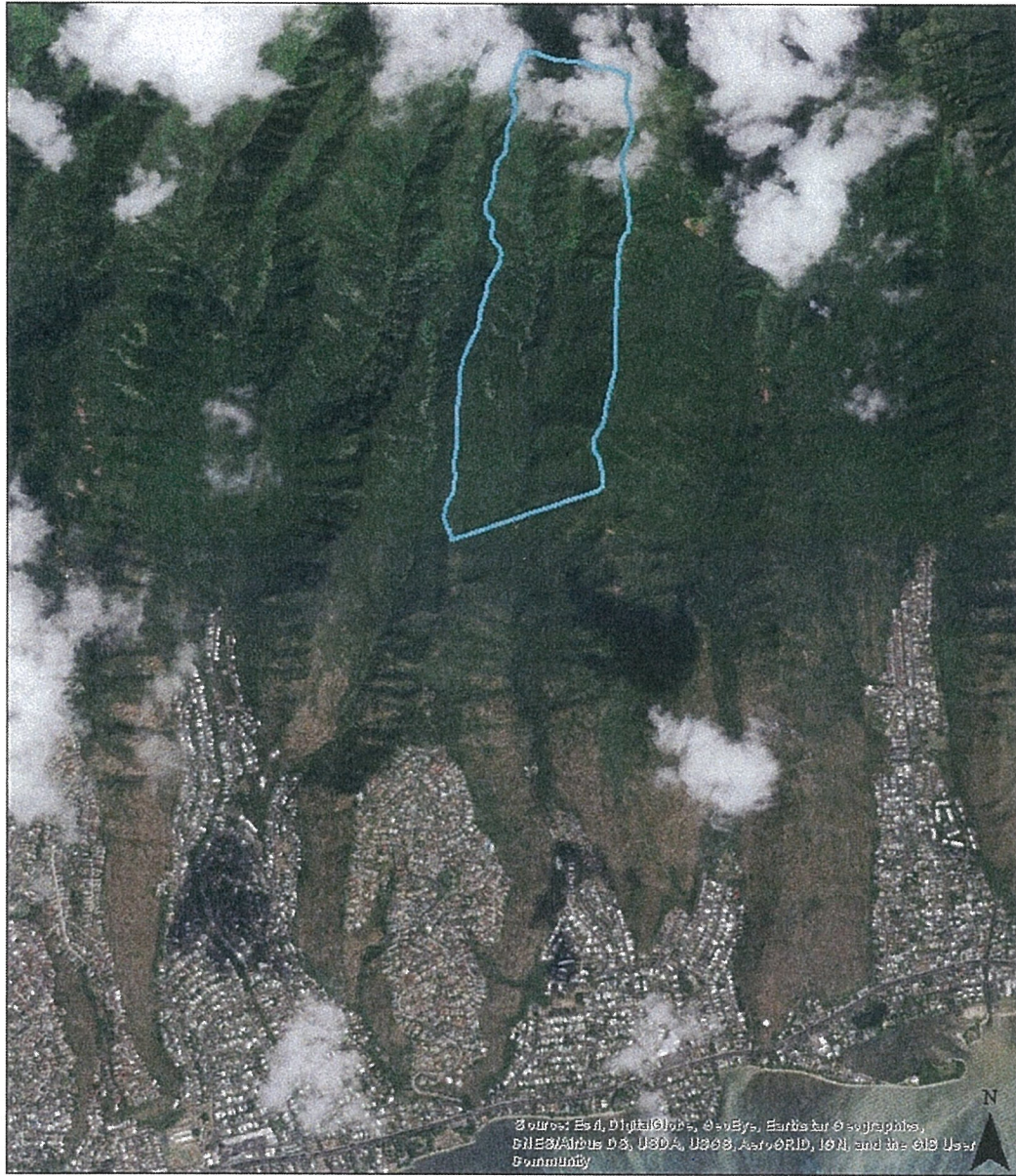
April 26, 2019
Attachment 1: Maps (3) and Photos (3)
LLCP 19-01
Pia Valley Natural Area Reserve
Kona, O'ahu
TMK: (1) 3-7-003:003

Pia Valley



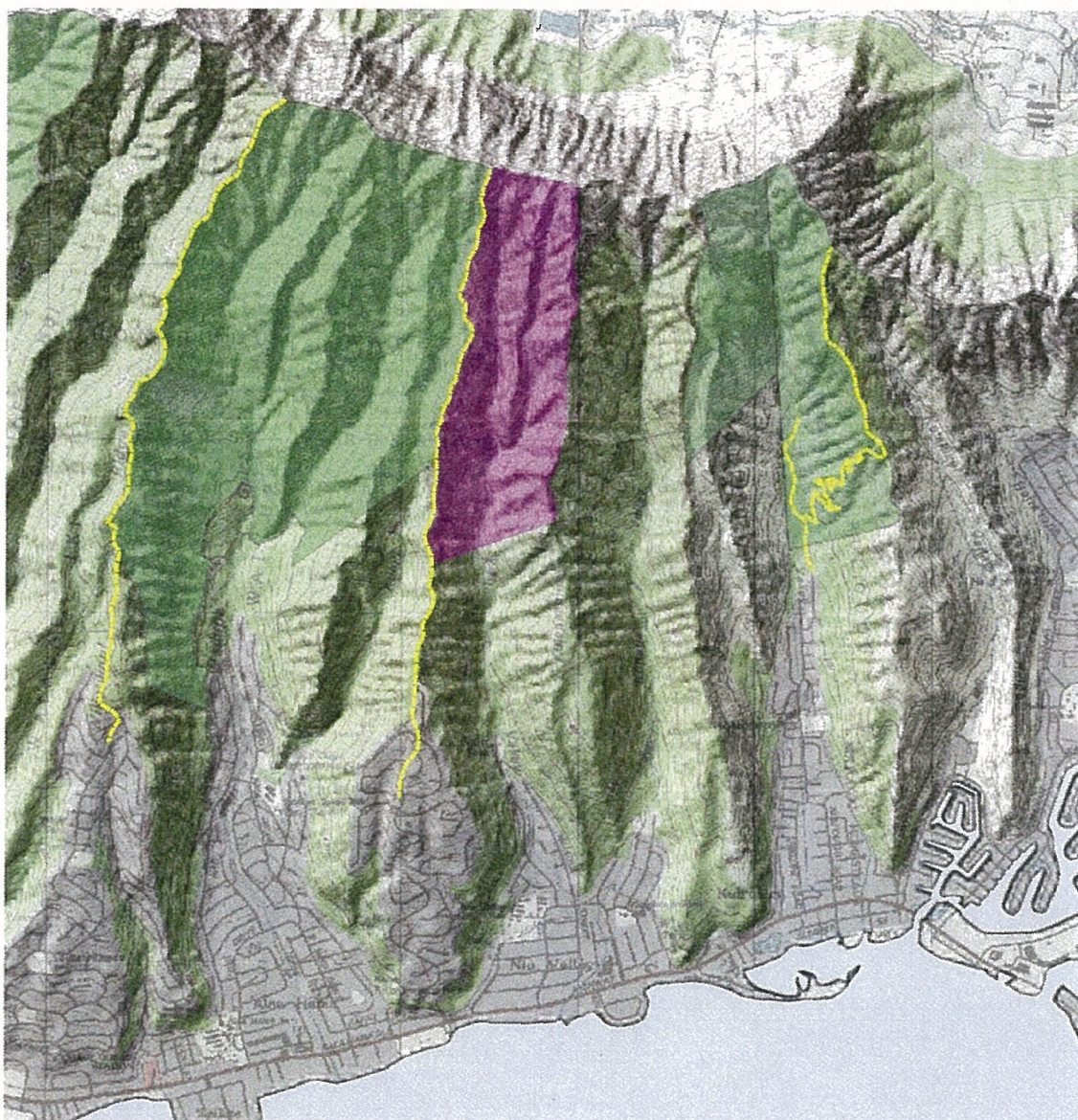
DOFAW (808) 587-4170. September 2018. Features approximate and subject to change.

Pia Valley - Imagery Map






DOFAW (808) 587-4170. September 2018. Features approximate and subject to change.

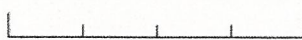
Proposed Pia Natural Area Reserve



Legend

-  Na Ala Hele Trails
-  TMK (1) 3-7-003-003
-  Forest Reserve

0 0.5 1 Miles



Area of Interest:
Pia Valley, Oahu Island





'Ōhi'a and uluhe-dominated vegetation at the proposed Pia Natural Area Reserve.



View into the proposed Pia Natural Area Reserve from the Hawai'i Loa trail.



Figure 4: Achatinella fulgens (Endangered)

Client: Pacific Plans L C o Charles B. Hendricks uire
Pro ert Address Akoni Pule H
City Kapaau

File No.: HB010B002B4
Case No.: Makai Lots 8 & 9
State: HI Zip: 96755

April 26, 2019
Attachment 1: Maps (2) and Photos (3)
LLCP 19-02
Kapanaiia
Kohala, Hawai'i
TMKs: (3) 5-2-007:004, :027

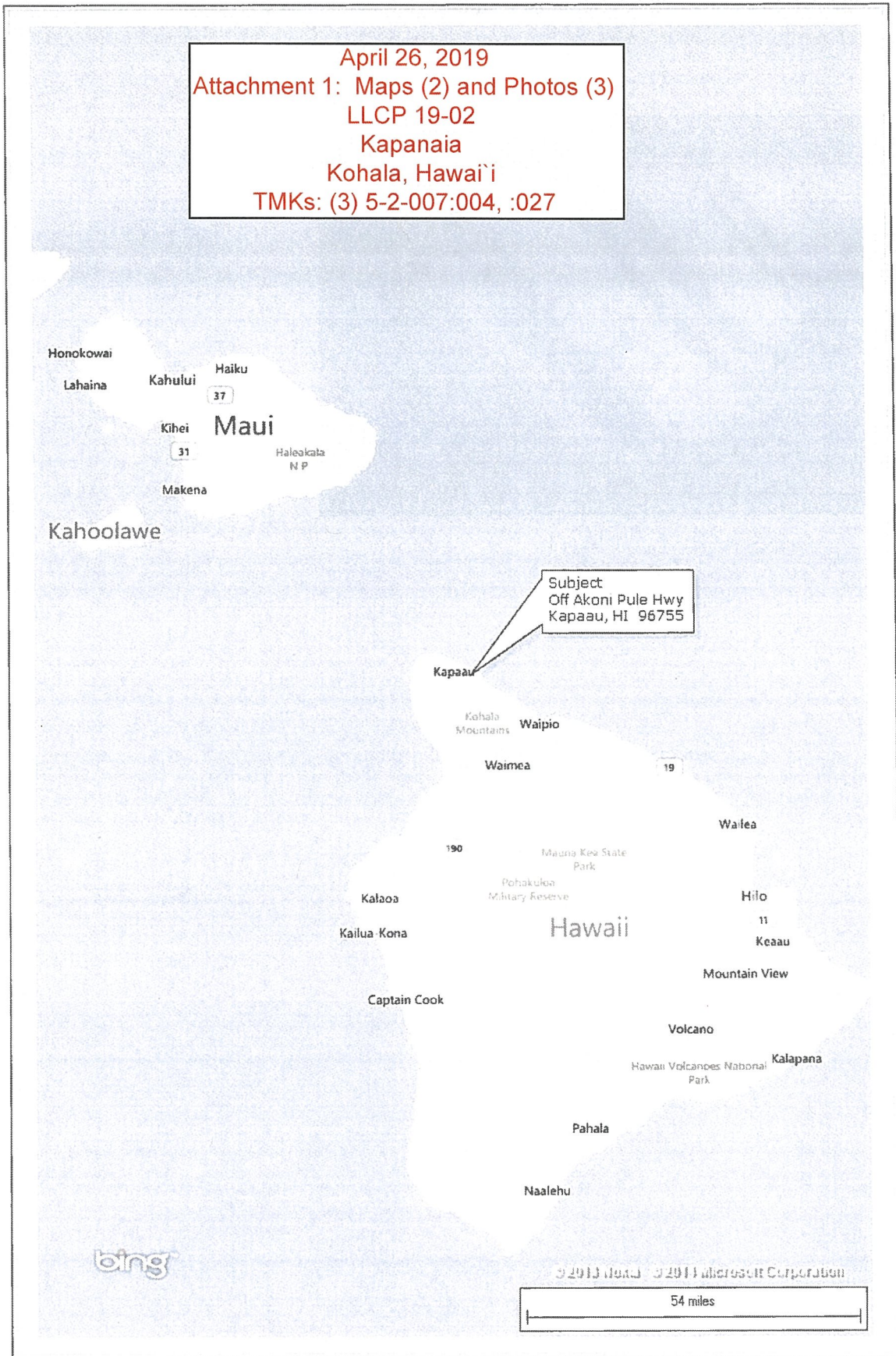




Photo #1 Kapalama Heiau



Photo #2 Trestle Foundation



Photo #4 Boulder Mortar

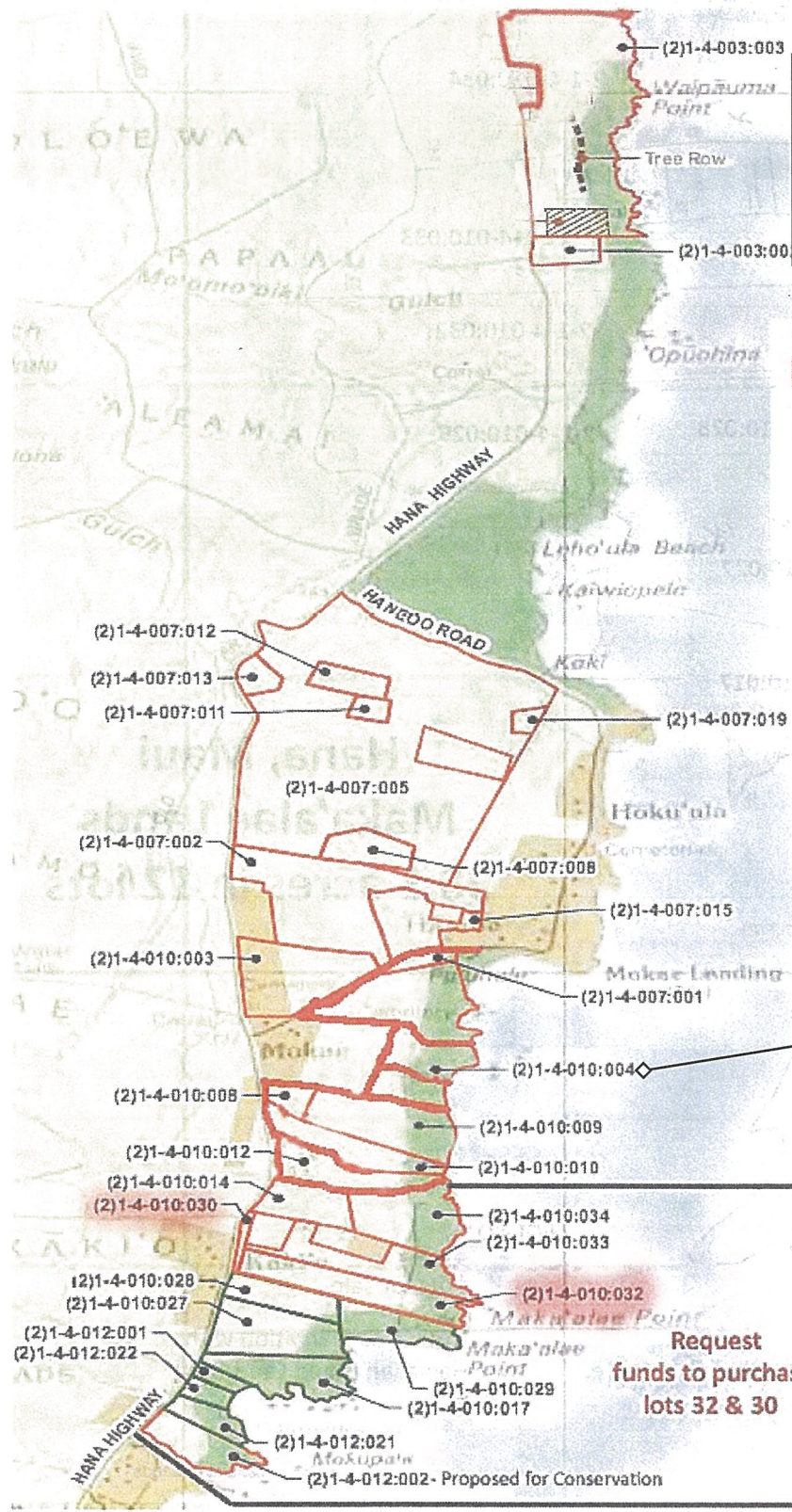
NOTE: Application did not include "Photo #3"

Hana, Maui

400 acres Coastal Pasture Lands Under Threat of Development

Location map

April 26, 2019
 Attachment 1: Maps (2) and Photos (3 Views)
 LLCP 19-03
 Mokae to Maka'ale Lands
 Hana, Maui
 TMK: (2) 1-4-010:004



LEGEND

- Parcels for sale
- Parcels with Conservation Easement

State Land Use District

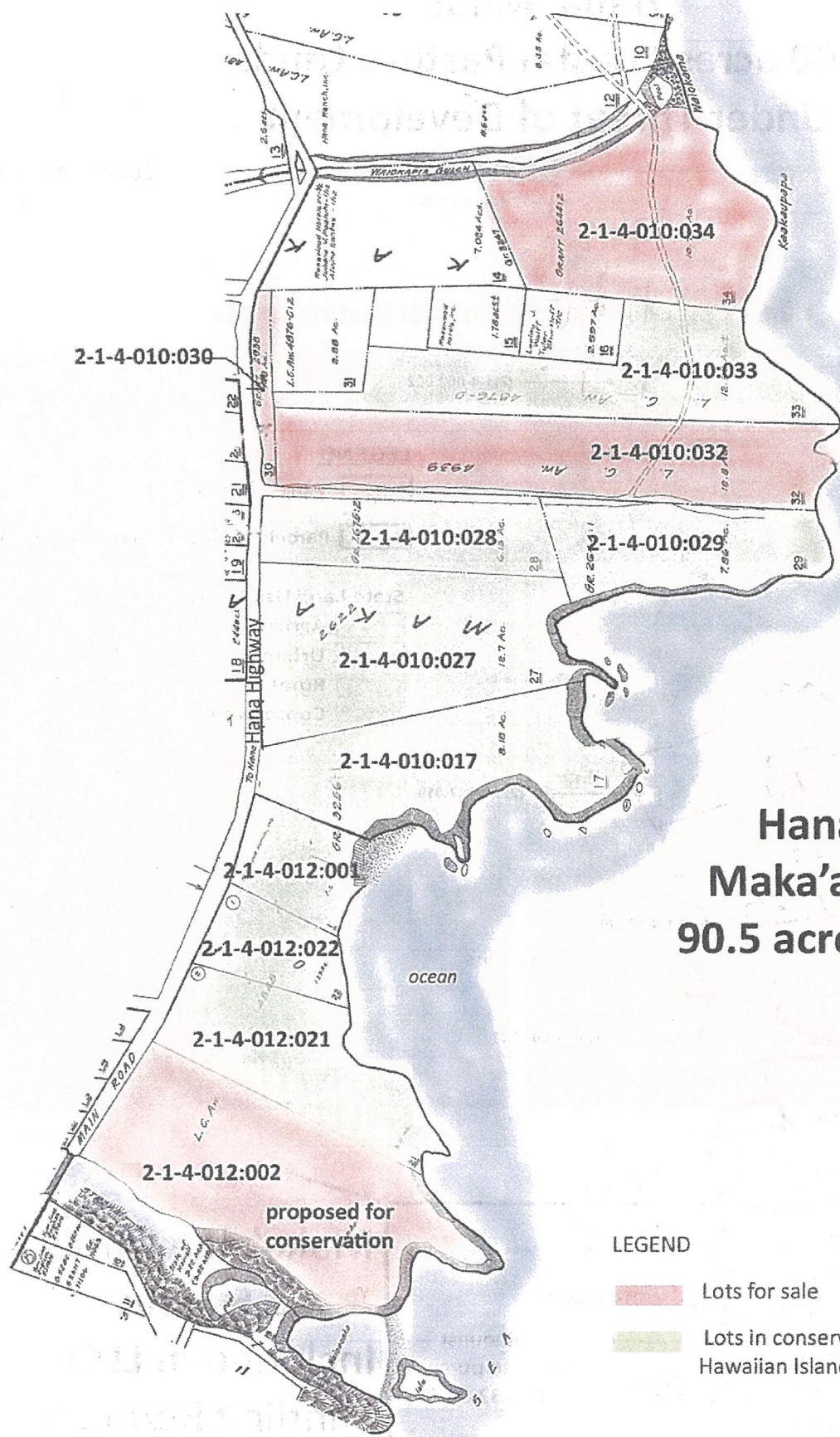
- Agricultural
- Urban
- Rural
- Conservation

Note: Request amended to lot 4, 26.98 acres

Maka'alee Lands
90.5 acres
Included in LLCP
Funding Request
 Maka'alee Lands

Request funds to purchase lots 32 & 30

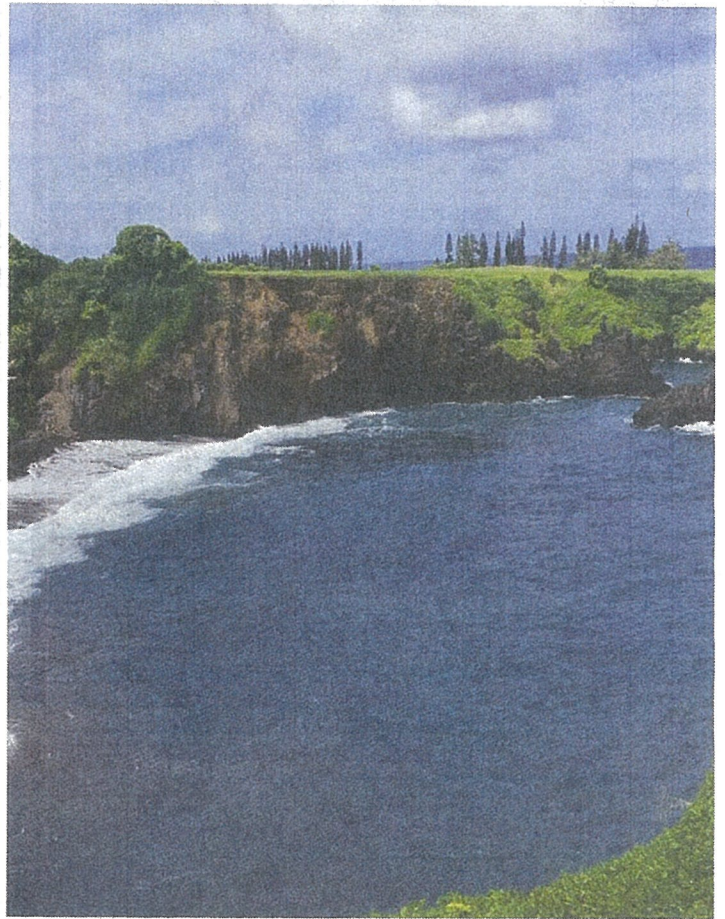
(2)1-4-012:002 - Proposed for Conservation



Hana, Maui Maka'ala'e Lands 90.5 acres in 12 lots

- LEGEND**
- Lots for sale
 - Lots in conservation with Hawaiian Island Land Trust

Hāna, Maui - Maka'ala'e Coastal Pasture Lands



Maka'ala'e Lands

Hāna, Maui - Maka'alaē Coastal Pasture Lands

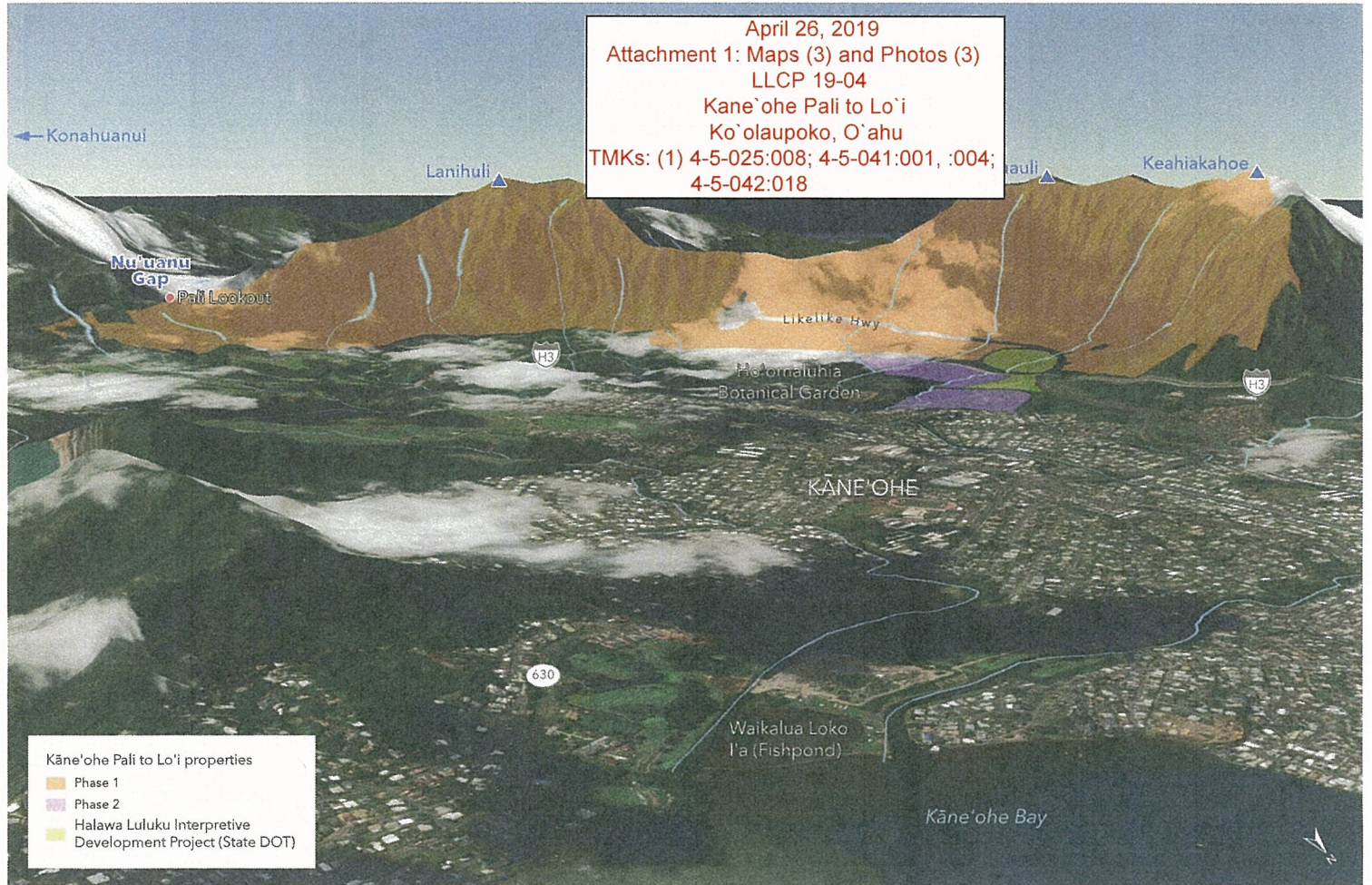


Maka'alaē Lands

Hāna Maui - Maka'ālae Coastal Pasture Lands



Maka'ālae Lands

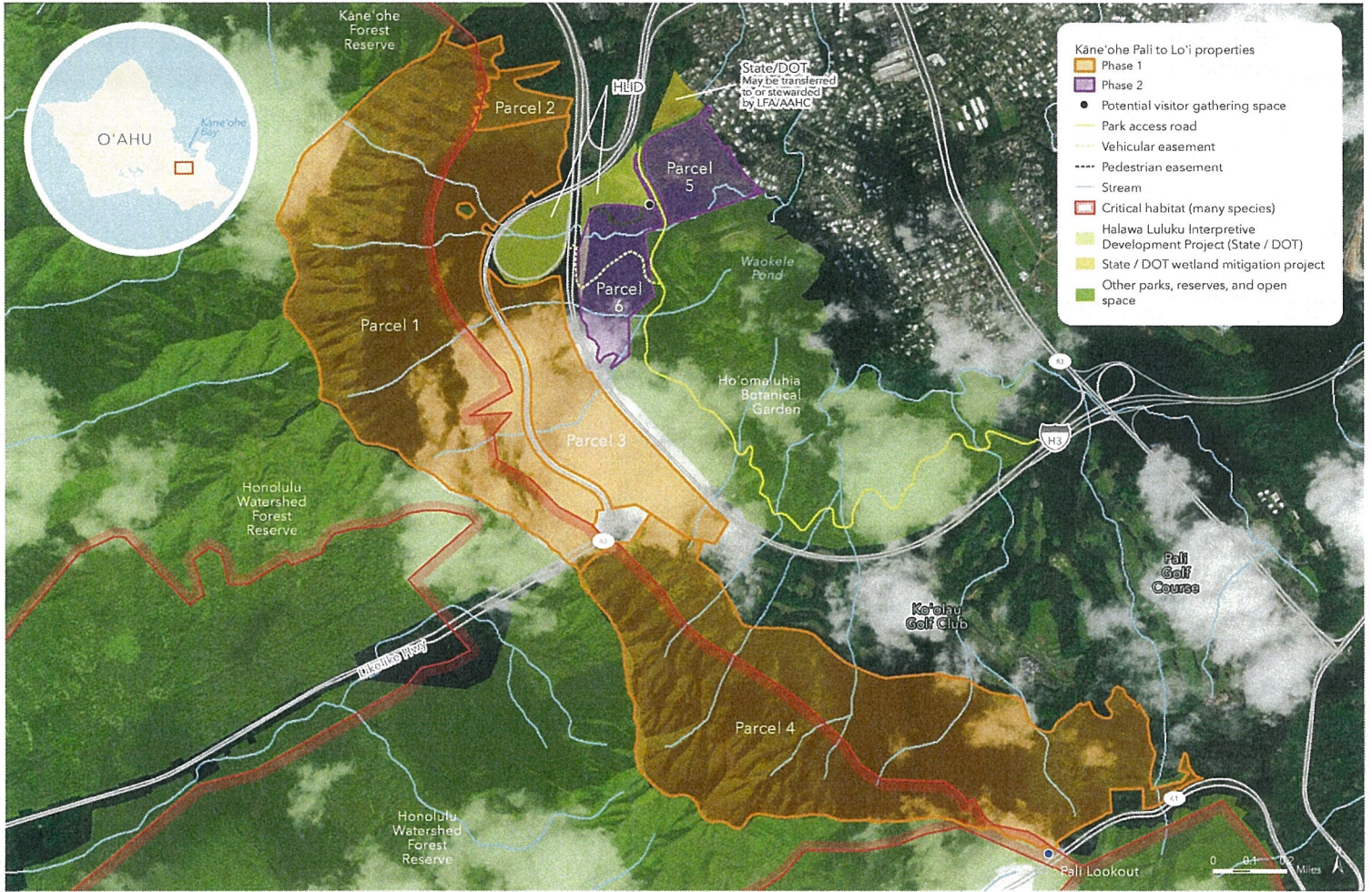


Kāne'ohe Pali to Lo'i

ISLAND OF O'AHU, HAWAII

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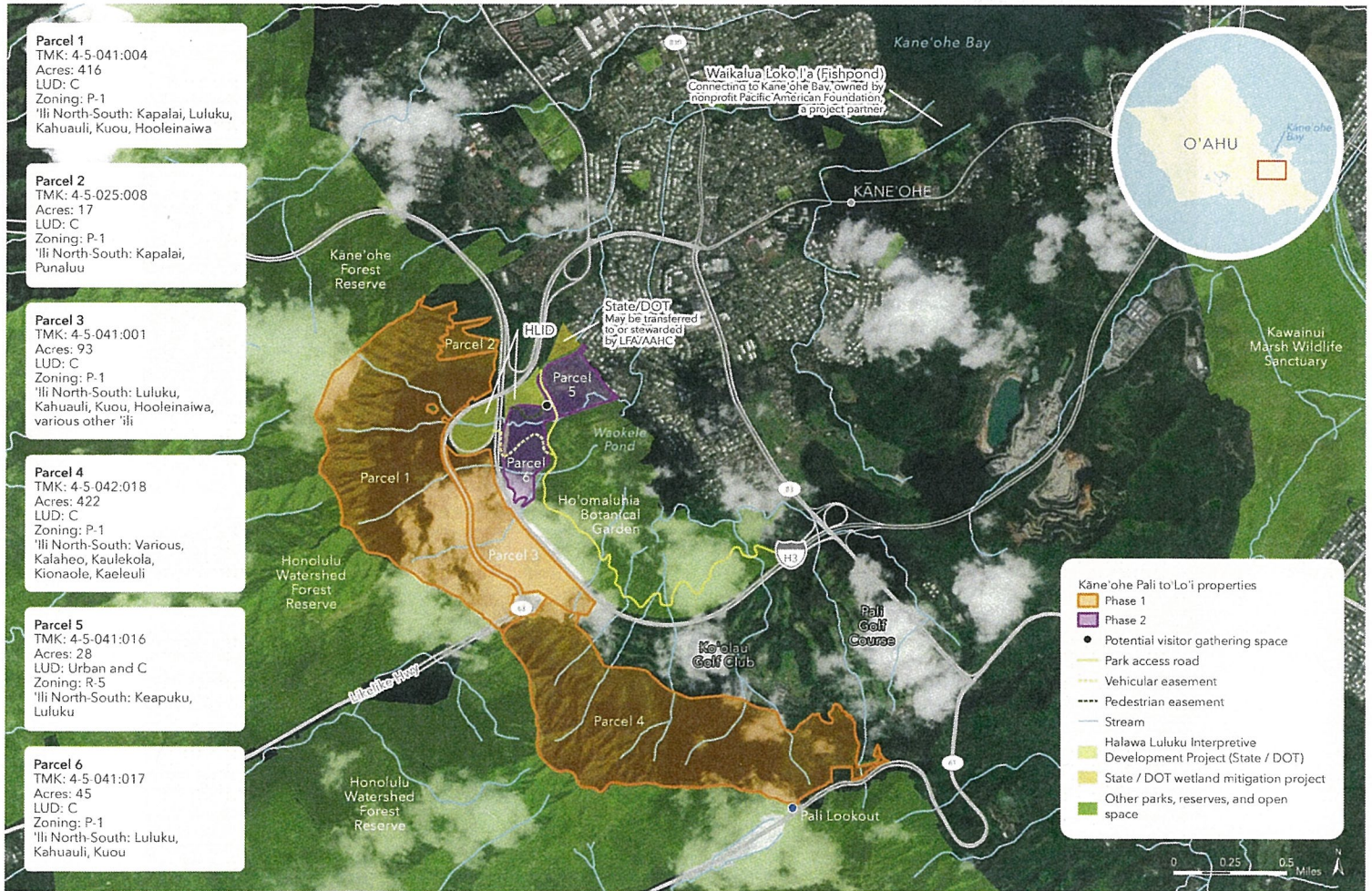


Kāne'ohe Pali to Lo'i

ISLAND OF O'AHU, HAWAII

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Kāne'ohe Pali to Lo'i

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Kāne'ōhe Pali to Lo'i -- Photographs from the Land



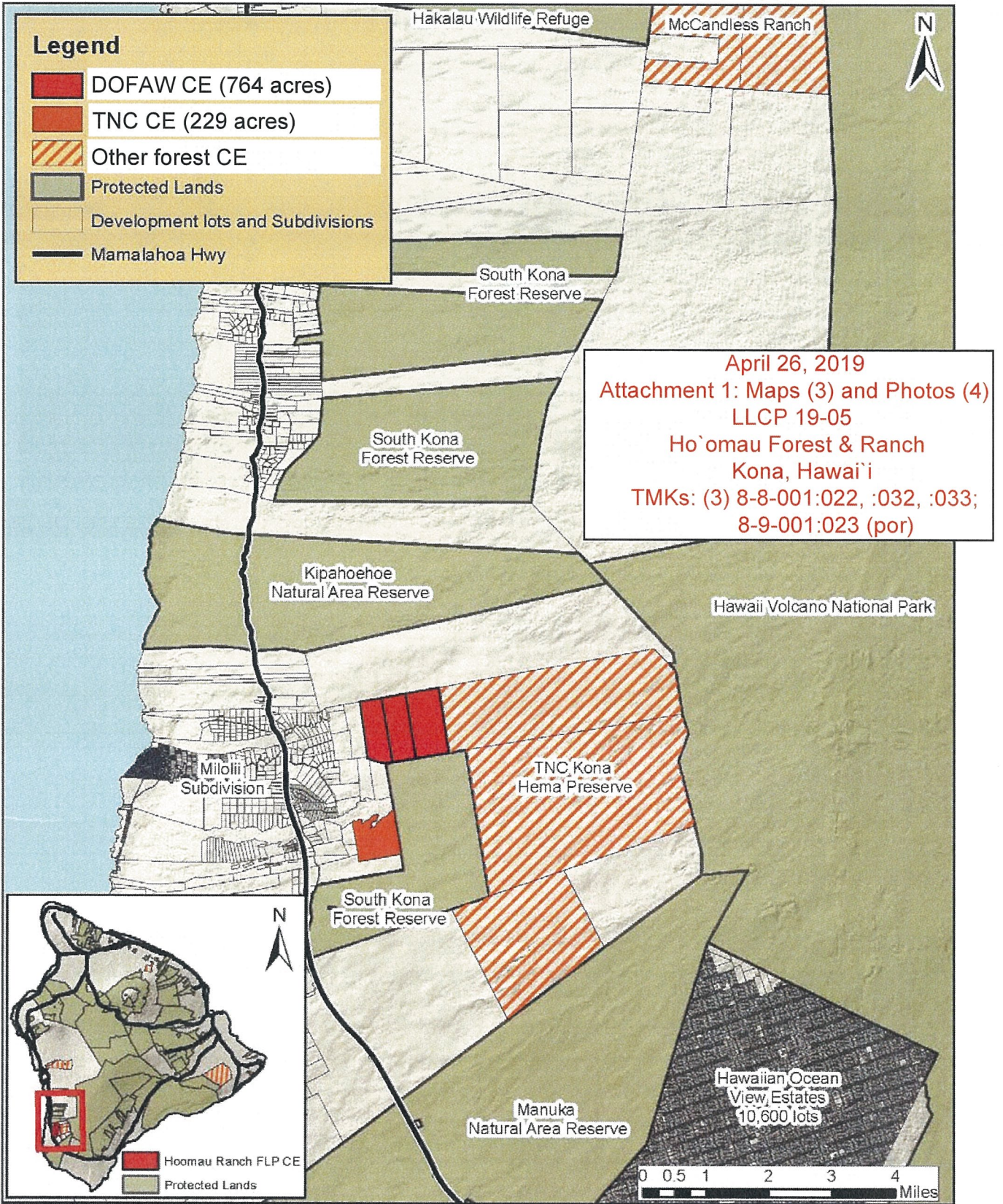
Views from Parcel 1's lo'i kalo terraces looking to top of Parcel 1 (peaks of Ko'olau Mountains)

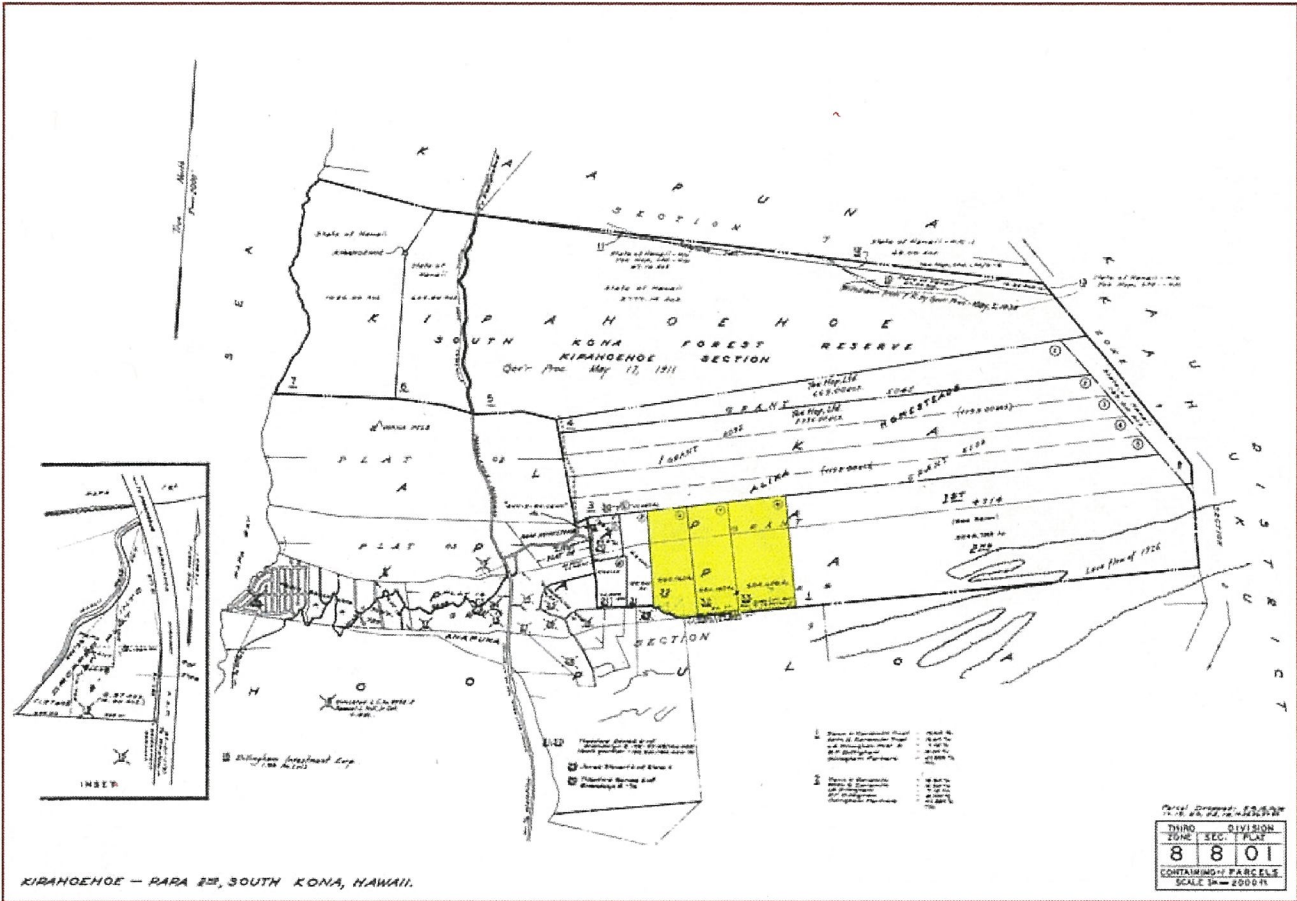




View from Ho'omaluhia Botanical Garden looking over Parcels 3 and to the top of Parcel 4 (Ko'olau Mountain peaks)

Ho'omau Forest & Ranch Conservation Easement Project





KIPAHOU - PARA 205, SOUTH KONA, HAWAII.



PORTIONS OF ANAPUKA-HONOMALINO (MALIKA), S. KONA, HAWAII

HONOLULU MAPS, INC.
 HONOLULU, HAWAII
 TERRITORY DIVISION
 JONC. SEC. PLAT
 8 9 01
 CONTAINING PARCELS
 SCALE 1/4" = 1000'



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



Ho'omau diverse mixed-mesic forest.

April 26, 2019
 Attachment 1: Maps (2) and Photos (3)
 LLCP 19-06
 Halulu Fishpond Access
 Halele'a, Kaua'i
 TMK: (4) 5-6-004:017



Waipā Kuleana

WAIPĀ, HALELE'A, KAUA'I, HAWAII

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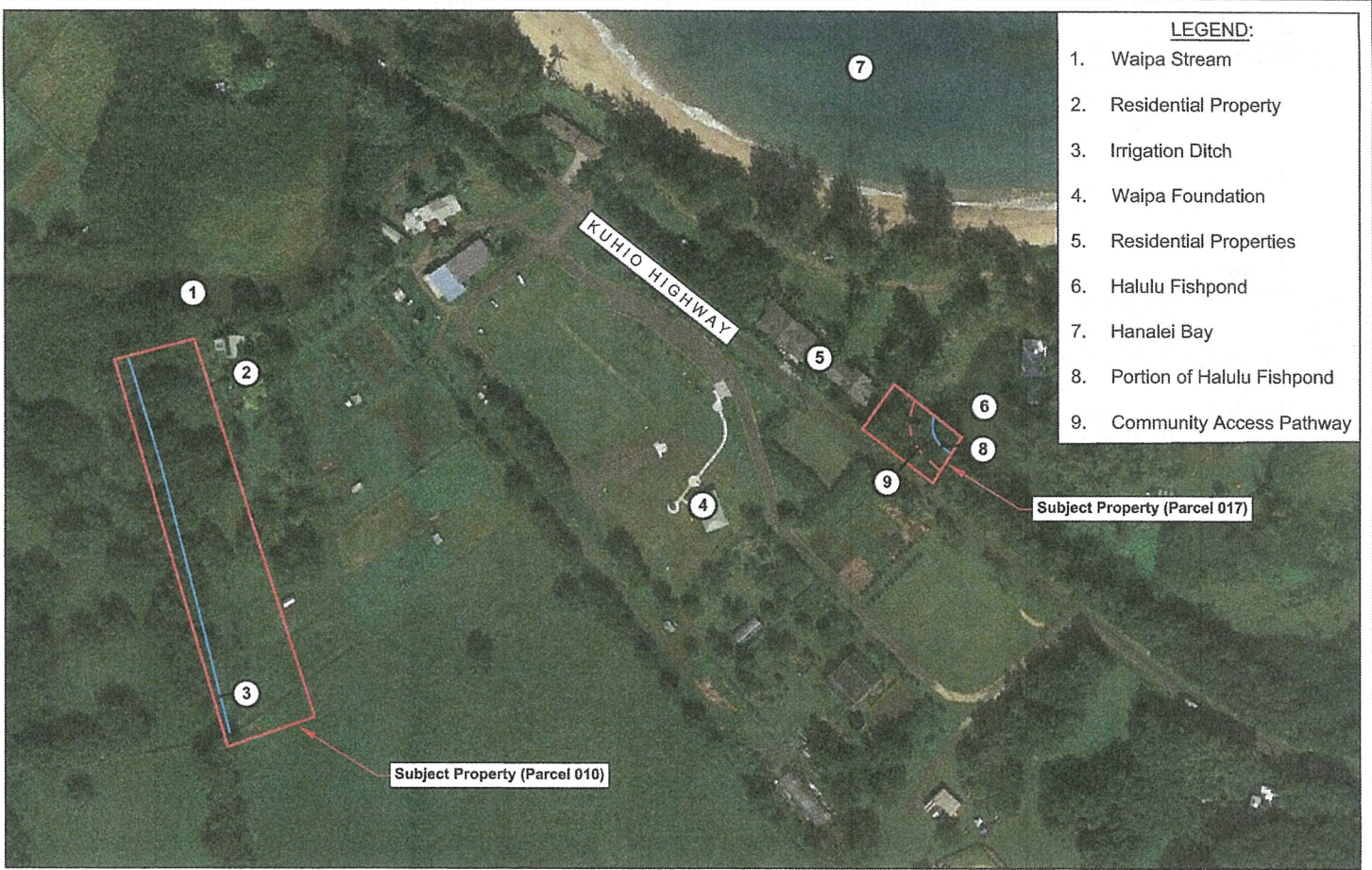
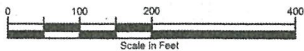


Image Source: Google Earth 2013



FORD & ASSOCIATES, INC.	
ENVIRONMENTAL SCIENTISTS & ENGINEERS	
Job Number: 18-1312	Created by: JRC
Date: 4/4/18	Reviewed By: TS

Subject Property Vicinity Map

Two Waipa Kuleana Properties
 (TMK No.: [4] 5-6-004: Parcels 010 and 017)
 Waipa, Kauai, Hawaii

The Trust For Public Land

Figure
2

Halulu Fishpond Access Photographs



On the Halulu Fishpond Access property with tall trees on the mauka side of the property, community path through the property, and Halulu Fishpond on and extending beyond the makai side of the property.



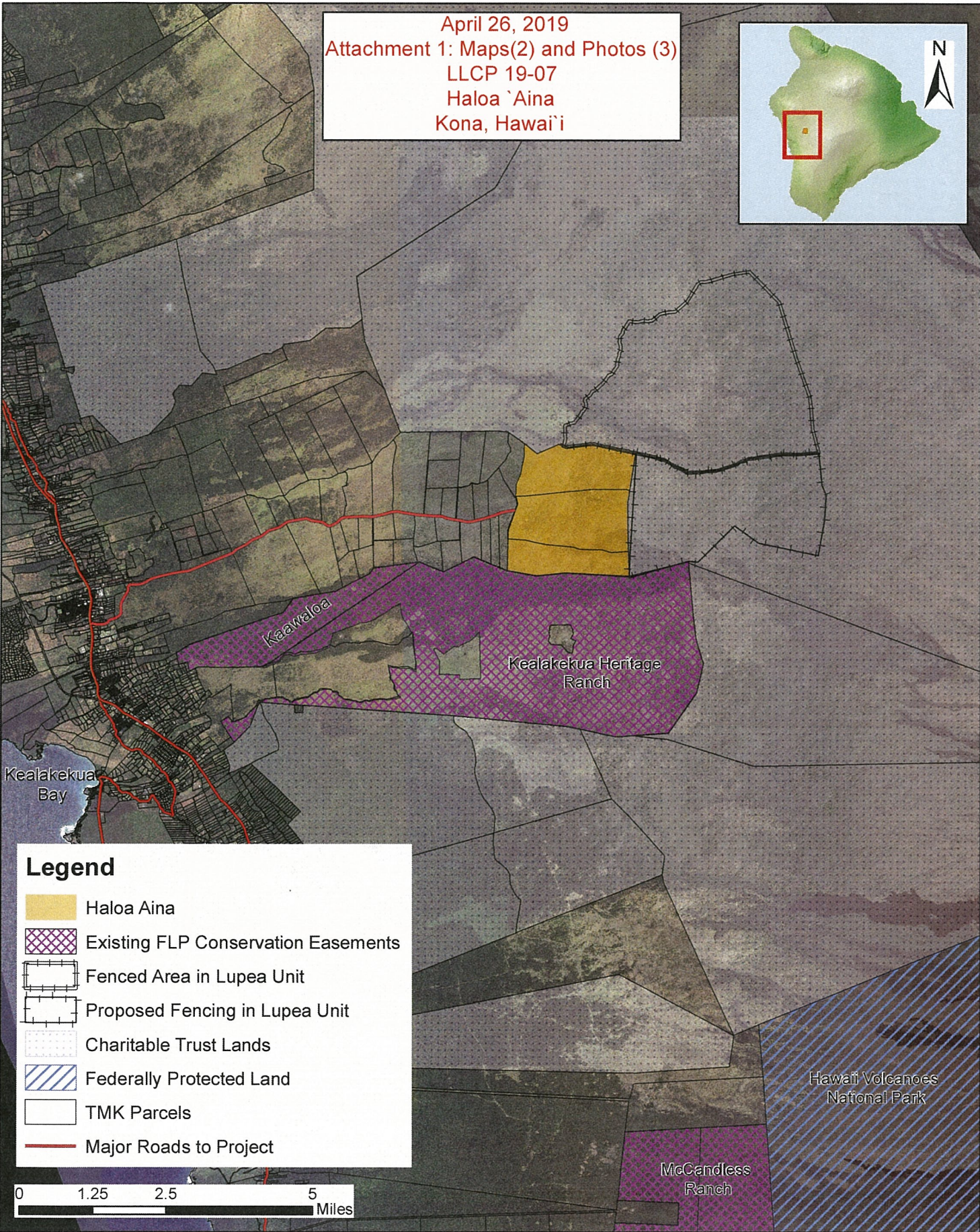
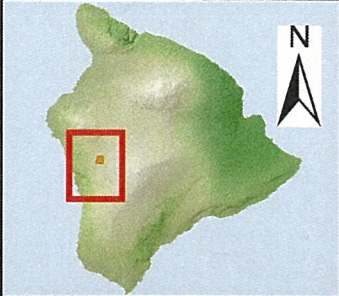
Looking at the Halulu Fishpond Access property from the makai side of Halulu Fishpond. Kids walking on the community access path through the property.











Halulu Fishpond Access property from Kuhio Highway. The parcel is a stark contrast from other makai lots along the highway, which are now mansions.

Haloa Aina - General Location Map

April 26, 2019
Attachment 1: Maps(2) and Photos (3)
LLCP 19-07
Haloa `Aina
Kona, Hawai'i

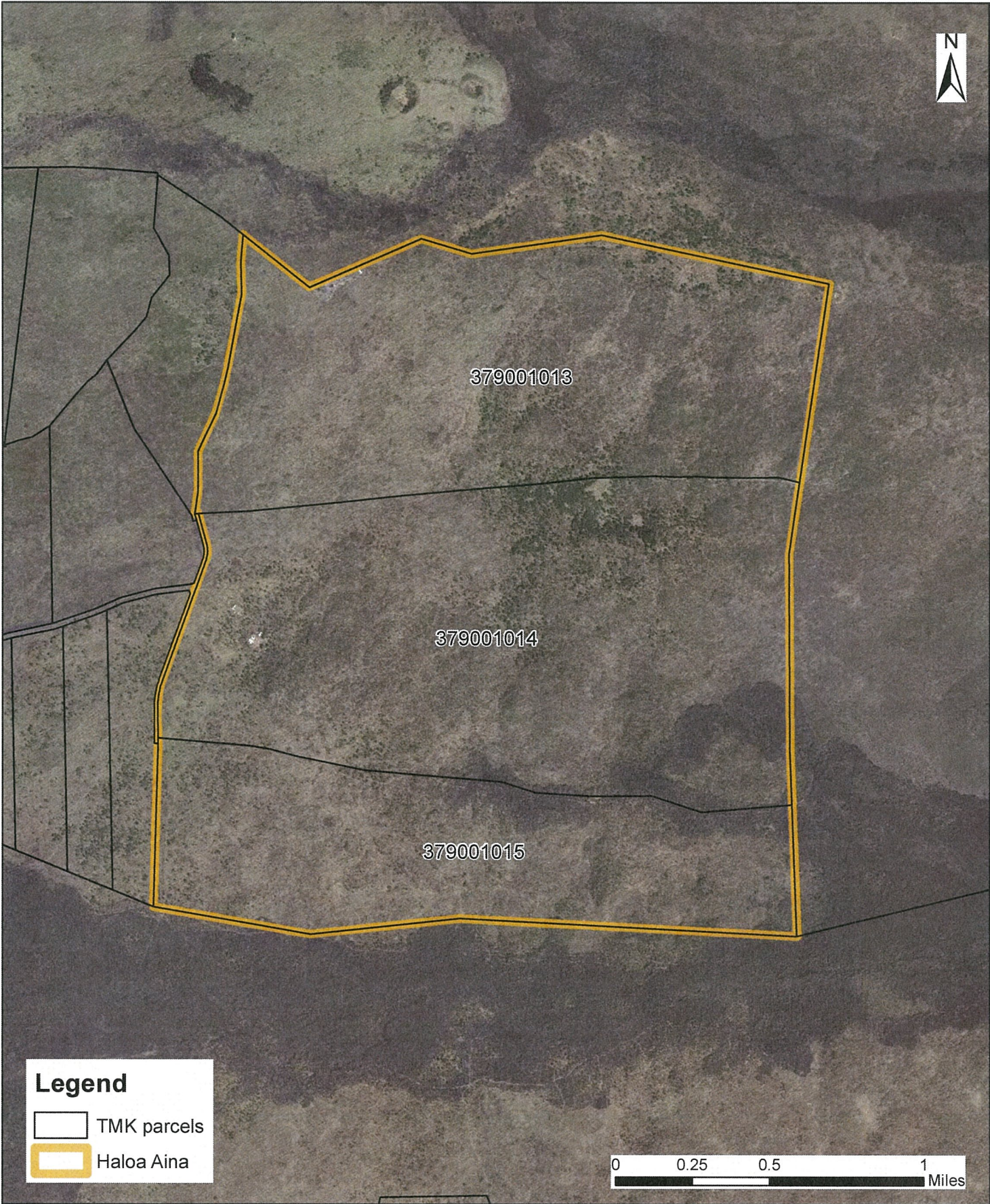


Legend

-  Haloa Aina
-  Existing FLP Conservation Easements
-  Fenced Area in Lupea Unit
-  Proposed Fencing in Lupea Unit
-  Charitable Trust Lands
-  Federally Protected Land
-  TMK Parcels
-  Major Roads to Project

0 1.25 2.5 5 Miles

Haloa Aina - Parcel Map





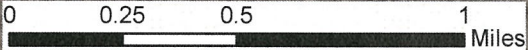
379001013

379001014

379001015

Legend

-  TMK parcels
-  Haloa Aina



Imagery



Figure 1. Aerial imagery of the northern border of property taken in 2010. The visible boundary is a rock wall separating the Haloa Aina property (left) from Kamehameha School Lupea Forest Preserve (left).



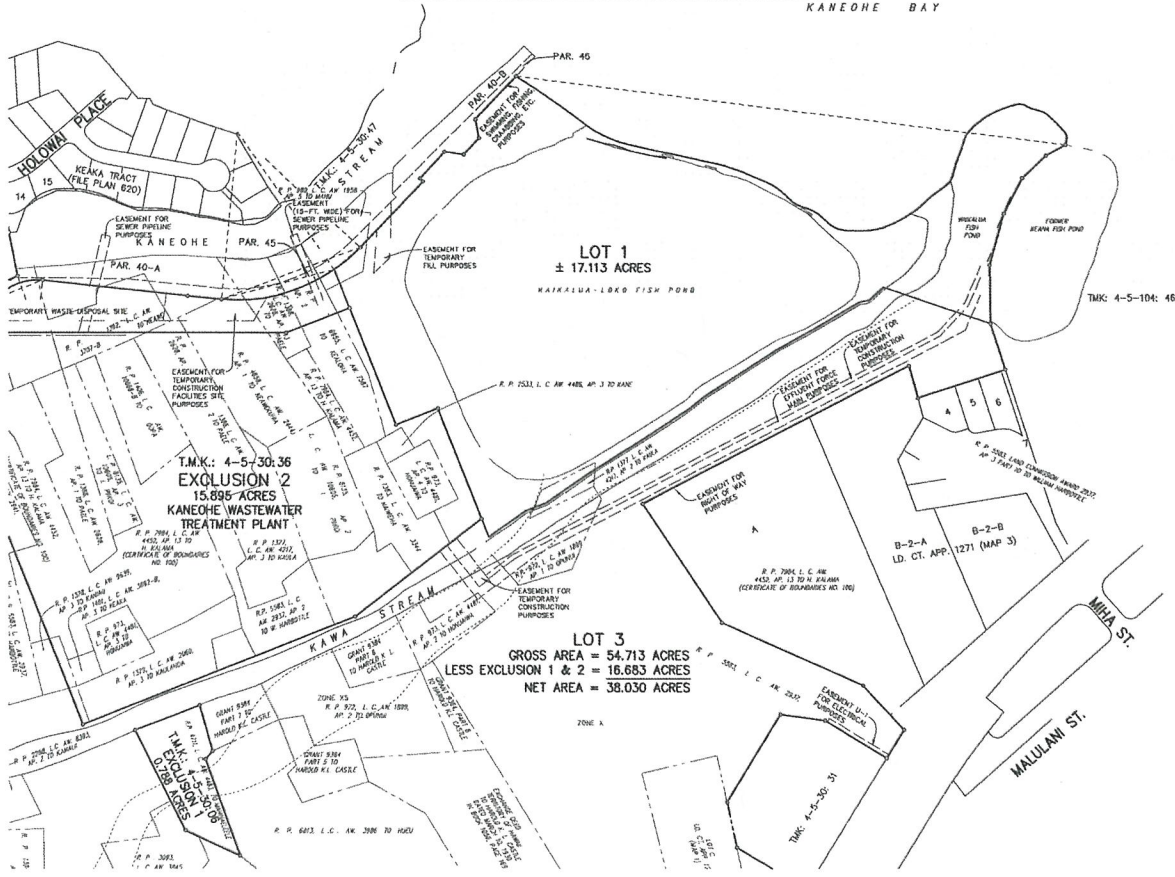
Figure 2. Three-year-old *Santalum paniculatum* regeneration from root sprouts following salvage harvest of senescent trees.



Figure 3. Extensive *S. paniculatum* regeneration 13 months after salvage harvesting. Native species including māmane and nāio thrive in this setting, and at the same time suppress the non-native kikuyu grass groundcover.

April 26, 2019
 Attachment 1: Maps (1) and Photos (3)
 LLCP 19-08
 Waikalua Loko I'a
 Ko'olaupoko, O'ahu

KANEHOE BAY





HAWAIIAN ISLANDS LAND TRUST

Waikalua Loko Ia Photos:



126 Queen St. Suite 306, Honolulu, HI 96813 (808) 791-0729
www.hilt.org



126 Queen St. Suite 306, Honolulu, HI 96813 (808) 791-0729
www.hilt.org



The Senate

STATE CAPITOL
HONOLULU, HAWAII 96813

December 27, 2018

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

Re: Projects for the Fiscal Year 2019 Legacy Land Conservation Program

Dear Chair Case:

I am in receipt of your letter dated December 14, 2018 regarding the Legacy Land Conservation Commission's recommendations for the funding of projects for the Fiscal Year 2019 Legacy Land Conservation Program.

This is to confirm that I have no concerns or objections at this time as it relates to the nine projects listed in the aforementioned letter and discussed at the meeting on December 20, 2018 with Speaker Scott K. Saiki and myself.

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

Sincerely,

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

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

cc: Speaker Scott K. Saiki
David G. Smith, Administrator of the Division of Forestry and Wildlife

SCOTT K. SAIKI
Speaker

Attachment 2
April 26, 2019



Phone No.: (808) 586-6100
FAX No.: (808) 586-6101

HOUSE OF REPRESENTATIVES

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

January 2, 2019

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

Dear Chair Case:

Thank you for your letter dated December 14, 2018, regarding the Legacy Land Conservation Commission's recommendations for the funding of projects for the Fiscal Year 2019 Legacy Land Conservation Program.

As discussed at our meeting on December 20, 2018 with Senate President Ronald D. Kouchi, I have no concerns or objections relating to the nine projects recommended by the Legacy Land Conservation Commission.

If you have any questions or need further assistance, please feel free to contact me at 586-6100.

Sincerely,

Scott K. Saiki
Speaker of the House

cc: Senate President Ronald D. Kouchi
David G. Smith, Administrator of the Division of Forestry and Wildlife

DAVID Y. IGE
GOVERNOR OF
HAWAII



April 26, 2019
Attachment 3:
DLNR Comments
Kapanai'a (3 pages)



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 IMPROVEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

County of Hawai'i
25 Aupuni Street, Suite 1101
Hilo, HI 96720
VIA EMAIL TO: maxine.cutler@hawaiicounty.gov

SUBJECT: 2018-2019 Agency Consultation for Land Acquisition, Legacy Land
Conservation Program

Thank you for consulting with the Department about your Land Conservation Fund Grant Application for Land Acquisition for "Kapanai'a." The Department received the following comments from its divisions and offices:

Commission on Water Resource Management (CWRM) - If water from a stream diversion or well is needed to support the planned uses of the land, the applicant should check in advance with the Commission as to any permits and approvals that may be required under the State Water Code.

Division of Aquatic Resources (DAR) – Comments attached.


Office of Coastal and Conservation Lands (OCCL) – Parcel 027 is almost entirely within the Conservation District and is noted as an Archaeological Lot 9 that will not be developed and will be maintained as a preservation lot; and parcel 004 is also in the Conservation District along the coast. Both are within the Resource subzone.

From CDUP HA-3650 in 2013 for Consolidation/Subdivision:

Kapanai'a Bay has been used for ocean recreational activities, subsistence gathering, and reflection. The proposed land use will not impact upon any of these traditional uses. An Archaeological Inventory Survey (AIS) for the property was prepared by Haun & Associates and approved by the State Historic Preservation Division on May 15, 2012. The AIS identified 26 sites with 176 features within the entire (Conservation and Agricultural Districts) project area. Noted features within the Conservation District include the Kapalama Heiau, a canoe road created during Kamehameha's reign, Agricultural complex, former railroad and sugarcane plantation remnants.

Public shoreline access is available to and along the shoreline in favor of the State and County of Hawaii for the general public. Registered Maps 959, 1077, 1706, indicate Lo'i fields in the gulch and Koheo Point [1885] or Kahe'e Point [1894] or Kaheo Pt. [TMKMap].

Sincerely,

 063

Suzanne D. Case, Chairperson

DAR# 5774-1

Comments

The DAR recognizes the proposed acquisition of land parcels in Kapanāia as an important step towards preserving the natural aquatic resources and native aquatic habitats in the area. In particular, A'amakao Gulch is considered a perennial stream that flows into Kapanāia Bay, and as such provides important habitat for native Hawaiian stream animals. Previous surveys conducted by DAR have confirmed the presence of all five native Hawaiian 'o'opu, as well as native aquatic invertebrates such as hihiwai and 'opae kala'ole. Therefore, maintaining and protecting fish and invertebrate passage into the A'amakao Gulch by preserving the natural habitat and stream connectivity to the ocean is critical for these native animals to thrive. Kapanāia Bay is also valued as shoreline fishing grounds by the community, providing areas to fish for popular sport fish such as papio and ulua, and other nearshore fishes that are prized as food. Acquiring these land parcels should allow for more and better resources to protect and preserve the natural and cultural resources in Kapanāia, in addition to improving the efficiency and streamlining of any conservation efforts.

DAVID Y. IGE
GOVERNOR OF
HAWAII



April 26, 2019
Attachment 3:
DLNR Comments
Mokae to Maka'alaie
Lands (2 pages)



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

Ke Ao Hali'i
P.O. Box 115
Hana, HI 96713
VIA EMAIL TO: contact@savehanacoast.org

SUBJECT: 2018-2019 Agency Consultation for Land Acquisition, Legacy Land
Conservation Program

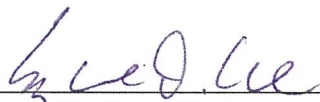
Thank you for consulting with the Department about your Land Conservation Fund Grant Application for Land Acquisition for "Maka'alaie Lands." The Department received the following comments from its divisions and offices:

Commission on Water Resource Management (CWRM) – If water from a stream diversion or well is needed to support the planned uses of the land, the applicant should check in advance with the Commission as to any permits and approvals that may be required under the State Water Code.

Division of Aquatic Resources (DAR) – Comments attached.

Office of Coastal and Conservation Lands (OCCL) – Each parcel is partially within the Conservation District, Limited Subzone. This area is known for stories of Pele and her sisters when they were human. Burials have been found along this coastline. Aerial views indicate the coastline is susceptible to coastal erosion. The Reciprocity Sugar Company was located in the vicinity.

Sincerely,



Suzanne D. Case, Chairperson

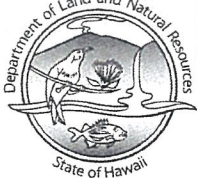
bas

DAR# 5774

Comments

We are very supportive of this effort and any other possible future uses of the legacy land fund to help acquire important coastal lands, maintain them in open space, and maintain continued access by the public for fishing, and other ocean related activities. It is also critically important that these types of coastal lands are managed to maintain natural coastal processes that will be adaptive to changing sea levels and increasing coastal erosion.

DAVID Y. IGE
GOVERNOR OF
HAWAII



April 26, 2019
Attachment 3: DLNR
Comments
Kane'ohē Pali to Lo'i
(2 pages)



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

Division of Forestry and Wildlife & The Trust for Public Land
The Trust for Public Land
1003 Bishop Street, Suite 740
Honolulu, HI 96813
VIA EMAIL TO: laura.kaakua@tpl.org

SUBJECT: 2018-2019 Agency Consultation for Land Acquisition, Legacy Land
Conservation Program

Thank you for consulting with the Department about your Land Conservation Fund Grant Application for Land Acquisition for "Kaneohe Pali to Lo'i." The Department received the following comments from its divisions and offices:

Commission on Water Resource Management (CWRM) – If water from a stream diversion or well is needed to support the planned uses of the land, the applicant should check in advance with the Commission as to any permits and approvals that may be required under the State Water Code.

Office of Coastal and Conservation Lands (OCCL) – Parcels lie within the General Resource and Protective subzone of the Conservation District. Peak of Luluku is Keahiakahoe. There were kuleanas along the stream and there is Luluku Spring and Hi'ilaniwai Waterfall.


(1) 4-5-041:018 – No such TMK.

TMK (1) 4-5-041:001 has CDUPs for HECO transmission lines on 1972 [CDUP OA-385]; and BWS facilities for exploratory well drilling and pipeline easement in 1986 [CDUP OA-1920]. The BWS CDUP indicates the area may be within the Luluku Discontinuous Archaeological District. TMKS (1) 4-5-041:004 & (1) 4-5-025:008 were included in CDUP OA-3605 in 2012 for consolidation and subdivision of land that included BWS property.

From CDUP OA-3605: The project area is a scenic vista of the Koolau ridge. According to the applicant, portions of the site have been previously graded to accommodate agricultural activities (banana farming) and the BWS facilities. BWS currently has two parcels that are not contiguous and one parcel is land locked [(1) 4-5-041:004, 013, and 014]. BWS parcels include an 8' x8' pump house, reservoir and fence. In addition, two existing lots are currently part of the largest parcel (004). The remainder of the land is mostly pali. Existing utilities

within the site is electrical power to the BWS facilities, HECO transmission lines and underground water transmission mains. Access to the area is via a private driveway servicing lots off Likelike Highway. A power easement for HECO crosses the subject parcels. An access easement is provided to BWS across the private lands. The consolidation/subdivision will aid the BWS in maintaining and effectively managing their facilities and creates one 'pali' parcel that may be later set aside as a conservation preserve.

Sincerely,



Suzanne D. Case, Chairperson

April 26, 2019
Attachment 3: DLNR Comments
Waikalua Loko I'a (1 page)

DAR# 5774-6

Comments

In general the Division of Aquatic Resources (DAR) supports fishponds and associated structures as it pertains to the propagation of native species. We believe that aquaculture in Hawaii can provide a relief on the take and pressure of our wild stocks. Additionally, we appreciate the role that fishponds contribute in developing concepts of stewardship for aquatic resources and the outreach and education effort that they often provide for community members.

However, DAR also recognizes the detriment of aquaculture activities that involve the propagation of introduced species. Therefore we would like to emphasize that the propagation of native species be adhered to, unless the appropriate review and permits have been secured.

While participating in a workshop, staff from our division have taken the time to visit Waikalua Loko I'a. During that visit we acknowledged that the benefits realized from the restoration efforts taken and planned at the pond may extend to the aquatic resources in adjacent waters. Additionally, Waikalua Loko I'a provides a valued opportunity for students and the community to interact and learn about aquatic resources.

April 26, 2019
Attachment 4: Letters of Support
Waikalua Loko I'a



December 10, 2018

Legacy Land Conservation Commission
Department of Land and Natural Resources
1151 Punchbowl Street Room 325
Honolulu, HI 96813

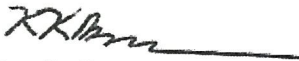
Re: Waikalua Loko Ia Conservation Easement

Dear Commissioners,

Attached are letters of support for the Waikalua Loko Ia Conservation Easement from the following individuals and organizations:

1. Elly Tepper, Castle-Kahuku Complex Area Induction Program Coordinator & Kahua-Koolau Program Coordinator
2. Hawaiian Islands Land Trust's Oahu Island Council
3. Kevin Chang, Executive Director, Kuaaina Ulu Auamo
4. Matthew Bauer, Chief Operating Officer, KUPU
5. Linda Furuto, Ph.D., University of Hawaii at Manoa Professor of Mathematics Education
6. Herb Lee, President and CEO, Pacific American Foundation
7. Denise Espania, School Director, Malama Honua Public Charter School
8. Patricia Halagao, Ph.D., Professor & Chair, Department of Curriculum Studies, College of Education, University of Hawaii at Manoa
9. Sandy Webb, Mililani High School Science Teacher
10. Sheila Cyboron, Retired Castle High School Science Teacher
11. Susie Chun Oakland, Retired State Senator
12. Clyde Tamaru, Ph.D.
13. Michael Nahoopii, Kahoolawe Island Reserve Commission
14. Ardis Eschenberg, Vice Chancellor for Academic Affairs, Windward Community College
15. Bradley Fox, Ph.D., Instructor, Sustainable Agriculture Program, Windward Community College
16. David Krupp, Ph.D., Professor, Marine and Biological Sciences & Faculty Coordinator, Pacific Center for Environmental Studies (PaCES), Windward Community College
17. Douglas Dykstra, Chancellor, Windward Community College
18. Ray Sanborn, President and CEO, Kamaaina Kids
19. Dr. Judith Lemus, Hawaii Institute of Marine Biology

Sincerely,



Kawika Burgess
CEO

DAVID Y. IGE
GOVERNOR OF HAWAII



April 26, 2019
Attachment 5: DLNR
Exemption Documents
HRS 343
Kapanaia (8 pages)



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

February 22, 2019

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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 Department of Health, Environmental Health Administration
 State Department of Health, Hawai'i District Health Office
 State Department of Hawaiian Home Lands, Planning Office
 Office of Hawaiian Affairs, Compliance Enforcement Program
 County of Hawai'i, Planning Department

FROM: David G. Smith, Administrator *DGS*

SUBJECT: Propriety of the exemption of an action from the requirement to prepare an environmental assessment, Legacy Land Conservation Program grant to County of Hawai'i, Chapter 343, HRS

LOCATION: Kohala, Island of Hawai'i, TMKs: (3) 5-2-007:004 and (3) 5-2-007:027

SUSPENSE DATE: March 29, 2019

Attached for your review is a copy of the Draft Declaration of Exemption for a grant from the Land Conservation Fund to the County of Hawai'i for the acquisition of 83.1 acres of land in Kohala, Island of Hawai'i. The complete grant application and a draft staff submittal to the Board of Land and Natural Resources requesting approval of the award of grant funds are available upon request. Please mark the appropriate responses and sign off at the bottom of page two of this memo, and reply to the Division's Legacy Land Conservation Program before March 30, 2019, via email (preferred method) or other delivery mode. A telephone response, without paperwork, is also acceptable.

If we do not receive a reply before March 30, 2019, our submittal to the Board of Land and Natural Resources will indicate "Did Not Advise." The Division takes notice of the Department of Health Standard Comments as provided online at <http://health.hawaii.gov/epo/landuse>, however the Division will not seek separate, specific advice from individual Department of Health divisions, branches, offices, and programs. For additional information, and to reply, please **contact David Penn at 586-0921 (phone), 587-0160 (fax), or 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, as presented in our staff submittal to the Board of Land and Natural Resources); and is exempt from the preparation of an environmental assessment in accordance with Sections 343-5 and 343-6, HRS; Section 11-200-8, HAR; and Exemption Class 1, Action Type 49 on the Exemption List for the Department of Land and Natural Resources, reviewed and concurred on by the Environmental Council on June 5, 2015 (“The award of grants under Haw. Rev. Stat. Chapter 173A provided that the grant does not fund an activity that causes any material change of use of land or resources beyond that previously existing”).

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

Existing use of land and resources for proposed FY19 LLCP land acquisition grant to County of Hawai‘i, Kohala, Hawai‘i
TMKs: (3) 5-2-007:004 and :027

Application	State LUD	County LUO	existing use	change of use (aspirational, not “caused” by grant award)	Encumbrances (existing and future)
Kapanaia	Conservation (Resource Subzone) Agricultural	A20A	Fishing, gathering, surfing, cultural practice, historic preservation	Preservation, restoration, research, education	<u>Existing:</u> Public Access Easement; Utility Easement. <u>Future:</u> LLCP statutory and contractual requirements, including deed restrictions and covenants; 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: _____

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

M. KALEO MANUEL
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 County of Hawai'i
(Fiscal Year 2019)
Location: Kohala, Hawai'i
TMKs: (3) 5-2-007:004 and (3) 5-2-007:027
Description: Grant of \$1,452,000 from the Land Conservation Fund
to the County of Hawai'i for the acquisition of 83.1 acres of land.

Pending approval by the Board of Land and Natural Resources (Board) and subsequent completion of the terms of the grant agreement, the County of Hawai'i (County) would receive \$1,452,000 through the Legacy Land Conservation Program for the acquisition of 83.1 acres of land.

The subject property consists of two contiguous oceanfront parcels. Parcel :027 is almost entirely within the Conservation District and Parcel 004 is in the Conservation District along the coast (Resource Subzone for each). In 2012, the State Historic Preservation Division accepted an Archaeological Inventory Survey (AIS) for a larger area that encompasses both parcels. The AIS identified and assessed 26 sites containing 178 component features, with sixteen sites that evidenced "prehistoric utilization" for agricultural, transportation, habitation, and ceremonial purposes. Existing uses and encumbrances include coastal trail, utility, drainage, pedestrian, and vehicle access.

The County intends to preserve the historic significance and cultural resources of the land (in accordance with an existing archaeological preservation plan), maintain existing easements for public access, and restore native plants and wildlife, subject to Legacy Land Conservation Program contractual and statutory requirements, including deed restrictions and covenants, and— if required by the Board—a conservation easement held by a suitable entity.

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 (three organizational units), County of Hawai'i, and five other State agencies (ADC, HDOA, HDOH, 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

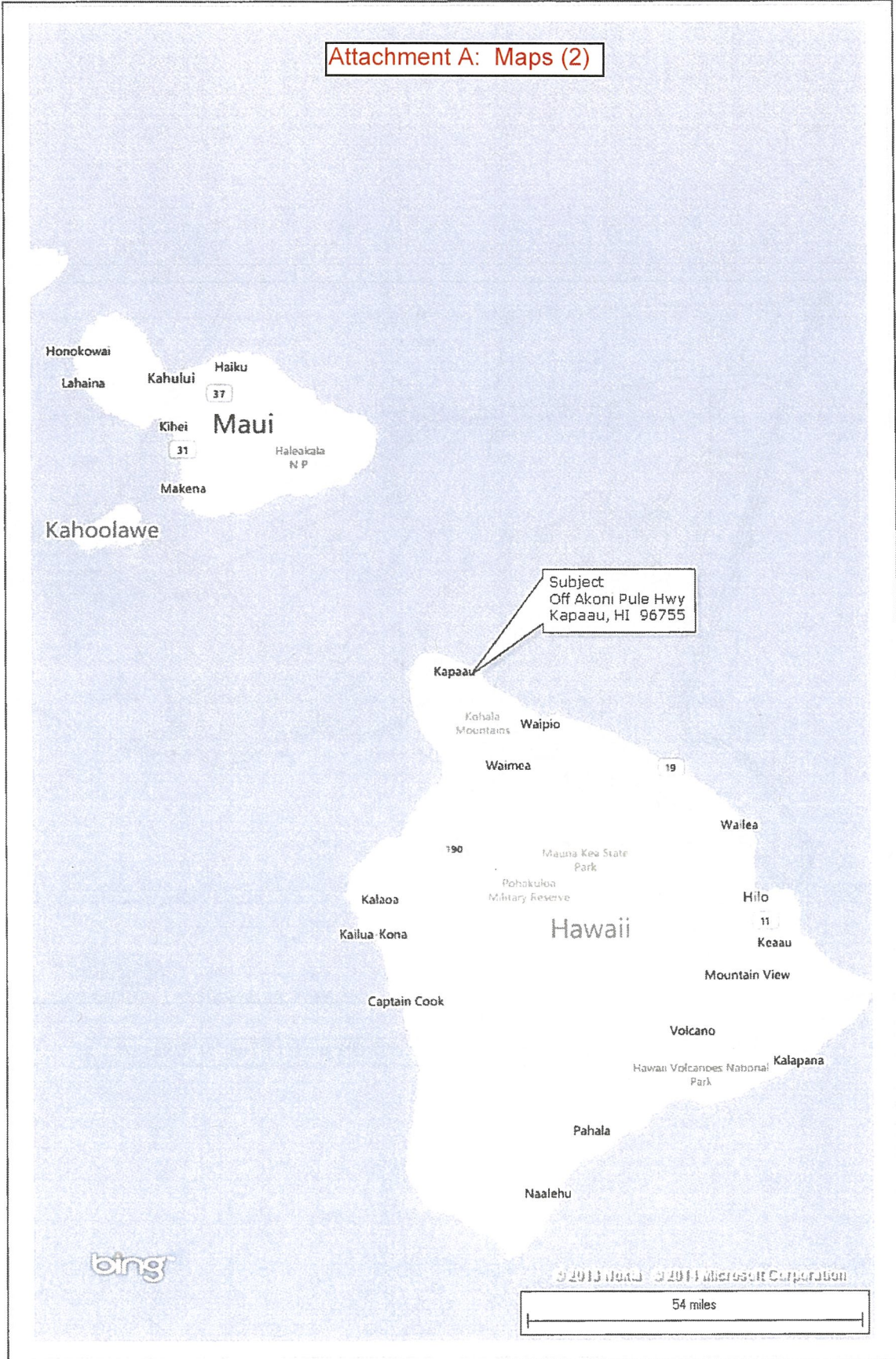
Attachment A: Maps (2)
Attachment B: Photos (3)

ISLAND MAP

Client: Pacific Plans L C o Charles B. Hendricks uire
Pro ert Address Akoni Pule H
City Kapaau

File No.: HB010B002B4
Case No.: Makai Lots 8 & 9
State: HI Zip: 96755

Attachment A: Maps (2)



Attachment B: Photos (3)



Photo #1 Kapalama Heiau



Photo #2 Trestle Foundation



Photo #4 Boulder Mortar

DAVID Y. IGE
GOVERNOR OF HAWAII



April 26, 2019
Attachment 5: DLNR
Exemption Documents
HRS 343
Mokae to Maka`akae
(13 pages)



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

February 22, 2019

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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 Department of Health, Environmental Health Administration
 State Department of Health, Maui District Health Office
 State Department of Hawaiian Home Lands, Planning Office
 Office of Hawaiian Affairs, Compliance Enforcement Program
 County of Maui, Planning Department

FROM: David G. Smith, Administrator *DGS*

SUBJECT: Propriety of the exemption of an action from the requirement to prepare an environmental assessment, Legacy Land Conservation Program grant to Ke Ao Hāli'i, Chapter 343, HRS

LOCATION: Hana, Island of Maui, TMK: (2) 1-1-010:004

SUSPENSE DATE: March 29, 2019

Attached for your review is a copy of the Draft Declaration of Exemption for a grant from the Land Conservation Fund to Ke Ao Hāli'i for the acquisition of 26.98 acres of land in Hana, Island of Maui. The complete grant application, and a draft staff submittal to the Board of Land and Natural Resources requesting approval of the award of grant funds, are available upon request. Please mark the appropriate responses and sign off at the bottom of page two of this memo, and reply to the Division's Legacy Land Conservation Program before March 30, 2019, via email (preferred method) or other delivery mode. A telephone response, without paperwork, is also acceptable.

If we do not receive a reply before March 30, 2019, our submittal to the Board of Land and Natural Resources will indicate "Did Not Advise." The Division takes notice of the Department of Health Standard Comments as provided online at <http://health.hawaii.gov/epo/landuse>, however the Division will not seek separate, specific advice from individual Department of Health divisions, branches, offices, and programs. For additional information, and to reply, please **contact David Penn at 586-0921 (phone), 587-0160 (fax), or 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, as presented in our staff submittal to the Board of Land and Natural Resources); and is exempt from the preparation of an environmental assessment in accordance

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

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

Existing use of land and resources for proposed FY19 LLCP land acquisition grant to Ke Ao Hāli‘i, Hana, Island of Maui
TMK: (2) 1-1-010:004

Application	State LUD	County LUO	existing use	change of use (aspirational, not “caused” by grant award)	Encumbrances (existing and future)
Mokae to Maka‘alaie Lands	Conservation (Limited Subzone) ----- Agriculture	Ag (2-acre minimum lot size)	Agriculture (grazing); fishing, gathering, cultural practice	Enhance historic preservation and community engagement; restore native biota	<u>Existing</u> : access and utility easements <u>Future</u> : LLCP statutory and contractual requirements, including deed restrictions and covenants; 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: _____

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

M. KALEO MANUEL
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AQUATIC RESOURCES
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CONSERVATION AND RESOURCES ENFORCEMENT
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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 Ke Ao Hāli'i
(Fiscal Year 2019)
Location: Hana, Maui
TMK: (2) 1-4-010:004
Description: Grant of \$2,225,625 from the Land Conservation Fund
to Ke Ao Hāli'i for the acquisition of 26.98 acres of land.

Pending approval by the Board of Land and Natural Resources (Board) and subsequent completion of the terms of the grant agreement, Ke Ao Hāli'i (a nonprofit land conservation organization) would receive \$2,225,625 through the Legacy Land Conservation Program for the acquisition of 26.98 acres of land.

The subject property is an oceanfront parcel, used for fishing, gathering, cultural practices (including settlement and burial), and, intermittently, as pasture land, located within the Agricultural District and the Conservation District (Limited Subzone). Existing encumbrances include access and utility easements.

Ke Ao Hāli'i intends to preserve the historic significance and manage the cultural resources of the land, and restore native biota, while continuing the existing grazing use, subject to (1) Legacy Land Conservation Program contractual and statutory requirements, including deed restrictions and covenants, and (2) a conservation easement held by Hawaiian Islands Land Trust or other suitable entity.

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 (three organizational units), County of Maui, and four other State agencies (HDOA, HDOH, 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

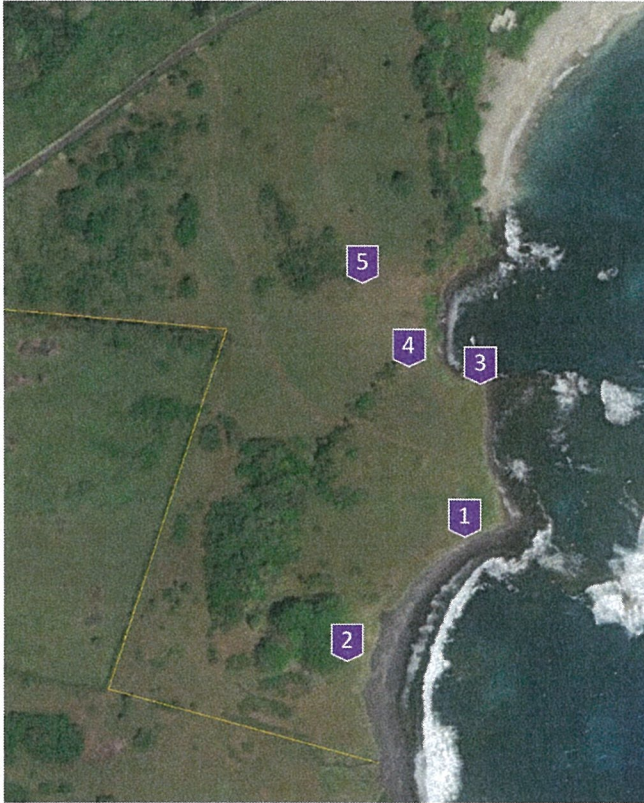
Attachment A: Maps (3)
Attachment B: Photos (10)

Attachment A: Maps (3)

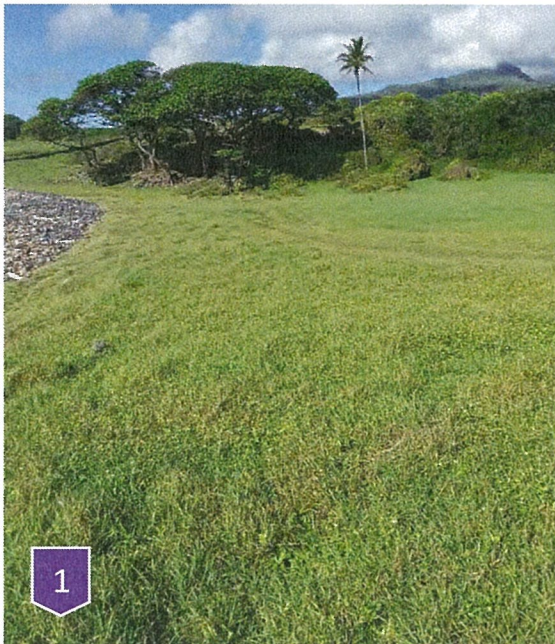


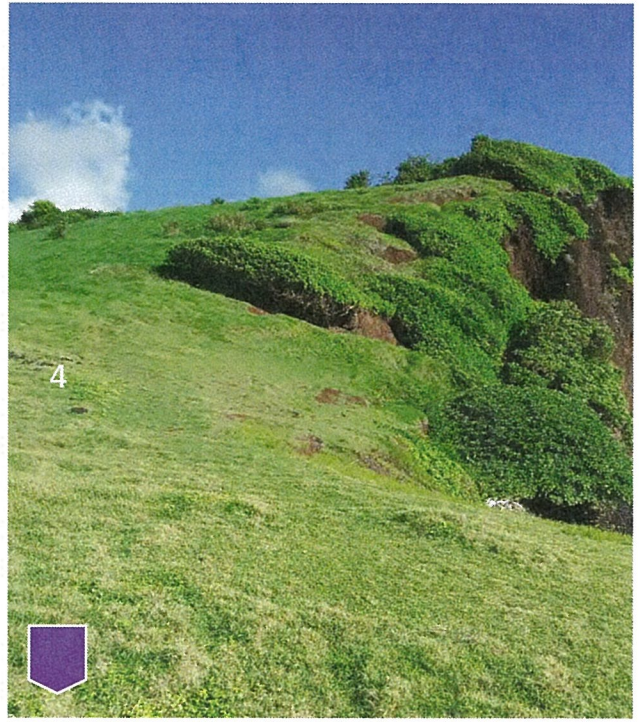
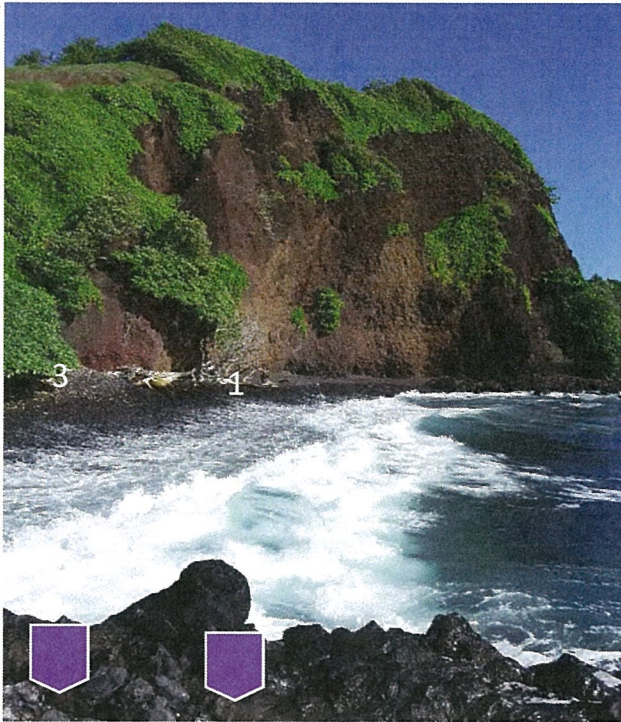


Attachment B: Photos (10)



Overview of the property with reference points for photos below.







Moka'e Cove,
Kaholaiki Burial Site
showing soil
stratification and li'ilii
stones.

Robin Rayner

Sept. 2018





View from Pu'u Hele South, trees/shrubs on right is settlement area

LLCP Grant to Ke Ao Hāli'i, Hana, Maui, TMK: (2) 1-4-010:004, page B:4



Mokae Shingle Beach looking North to Pu'u Hele, Hamoa and Alau Island

LLCP Grant to Ke Ao Hāli'i, Hana, Maui, TMK: (2) 1-4-010:004, page B:5



From Settlement area looking across to Hawai'i Island in on the horizon

LLCP Grant to Ke Ao Hāli'i, Hana, Maui, TMK: (2) 1-4-010:004, page B:6

DAVID Y. IGE
GOVERNOR OF HAWAII



April 26, 2019
Attachment 5: DLNR
Exemption Documents
HRS 343
Kane`ohe Pali to Lo`i
(8 pages)



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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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

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

February 22, 2019

MEMORANDUM

TO: State Department of Health, Environmental Health Administration
 State Department of Hawaiian Home Lands, Planning Office
 Office of Hawaiian Affairs, Compliance Enforcement Program
 City and County of Honolulu, Department of Planning and Permitting

FROM: David G. Smith, Administrator *DGS*

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

LOCATION: Ko'olaupoko, O'ahu, TMKs:
(1) 4-5-025:008
(1) 4-5-041:001
(1) 4-5-041:004
(1) 4-5-042:018

SUSPENSE DATE: March 29, 2019

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 948 acres of land in Ko'olaupoko, Island of O'ahu. The complete grant application and a draft staff submittal to the Board of Land and Natural Resources requesting approval of the award of grant funds are available upon request. Please mark the appropriate responses and sign off at the bottom of page two of this memo, and reply to the Division's Legacy Land Conservation Program before March 30, 2019, via email (preferred method) or other delivery method. A telephone response, without paperwork, is also acceptable.

If we do not receive a reply before March 30, 2019, our submittal to the Board of Land and Natural Resources will indicate "Did Not Advise." The Division takes notice of the Department of Health Standard Comments as provided online at <http://health.hawaii.gov/epo/landuse>, however the Division will not seek separate, specific advice from individual Department of Health divisions, branches, offices, and programs. For additional information, and to reply, please **contact David Penn at 586-0921 (phone), 587-0160 (fax), or 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, as presented in our staff submittal to the Board of Land and Natural Resources); and is exempt from the preparation of an environmental assessment in accordance with Sections 343-5 and 343-6, HRS; Section 11-200-8, HAR; and Exemption Class 1, Action 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 (“Acquisition of land or interests in land” and “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 FY19 LLCP land acquisition grant to Division of Forestry and Wildlife, Ko‘olaupoko, Island of O‘ahu
TMKs: (1) 4-5-025:008; 4-5-041:001 and :004; 4-5-042:018

Application	State LUD	County LUO	existing use	change of use (aspirational, (aspirational, not “caused” by grant award)	Encumbrances (existing and future)
Kāne‘ohe Pali to Lo‘i	Conservation (Protective, Resource, - and General Subzones)	Preservation P-1	Conservation <hr/> Traditional and Customary Cultural/ Agricultural Practices	Possible forest fencing; increase cultural practice	<u>Existing:</u> utility substation on TMK 4-5-041:004 <u>Future:</u> LLCP deed restrictions and statutory protections (HRS 173A); possible 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: _____

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
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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 Division of Forestry and Wildlife (Fiscal Year 2019)
Location: Ko'olaupoko, O'ahu
TMKs: (1) 4-5-025:008; (1) 4-5-041:001; (1) 4-5-041:004; (1) 4-5-042:018
Description: Grant of \$700,000 from the Land Conservation Fund to the Division of Forestry and Wildlife for the acquisition of 300 acres of land.

Pending approval by the Board of Land and Natural Resources (Board) and subsequent completion of standard Department land acquisition procedures, the Division of Forestry and Wildlife (DOFAW) would receive \$700,000 through the Legacy Land Conservation Program for the acquisition of 948 acres of land.

The subject property consists of four mountainous parcels within the Conservation District, including areas within the Protective, Resource, and General Subzones. Along with the presence of streams, springs, waterfalls, lo'i kalo, and other cultural resources, the property provides habitat for native species, including federally-designated critical habitat for endangered forest birds, insects, and plants. Existing encumbrances include access and utility easements.

DOFAW intends to manage these parcels for enhanced resource management, providing public access for recreation and cultural practice through educational and community programming.

DLNR Agency Exemption List: June 5, 2015
Exemption Class: 1
Action Types: 45 and 49
Descriptions: 45. Acquisition of land or interests in land.
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.
Advising: DLNR (two organizational units), City and County of Honolulu, and five other State agencies (ADC, HDOA, HDOH, 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.

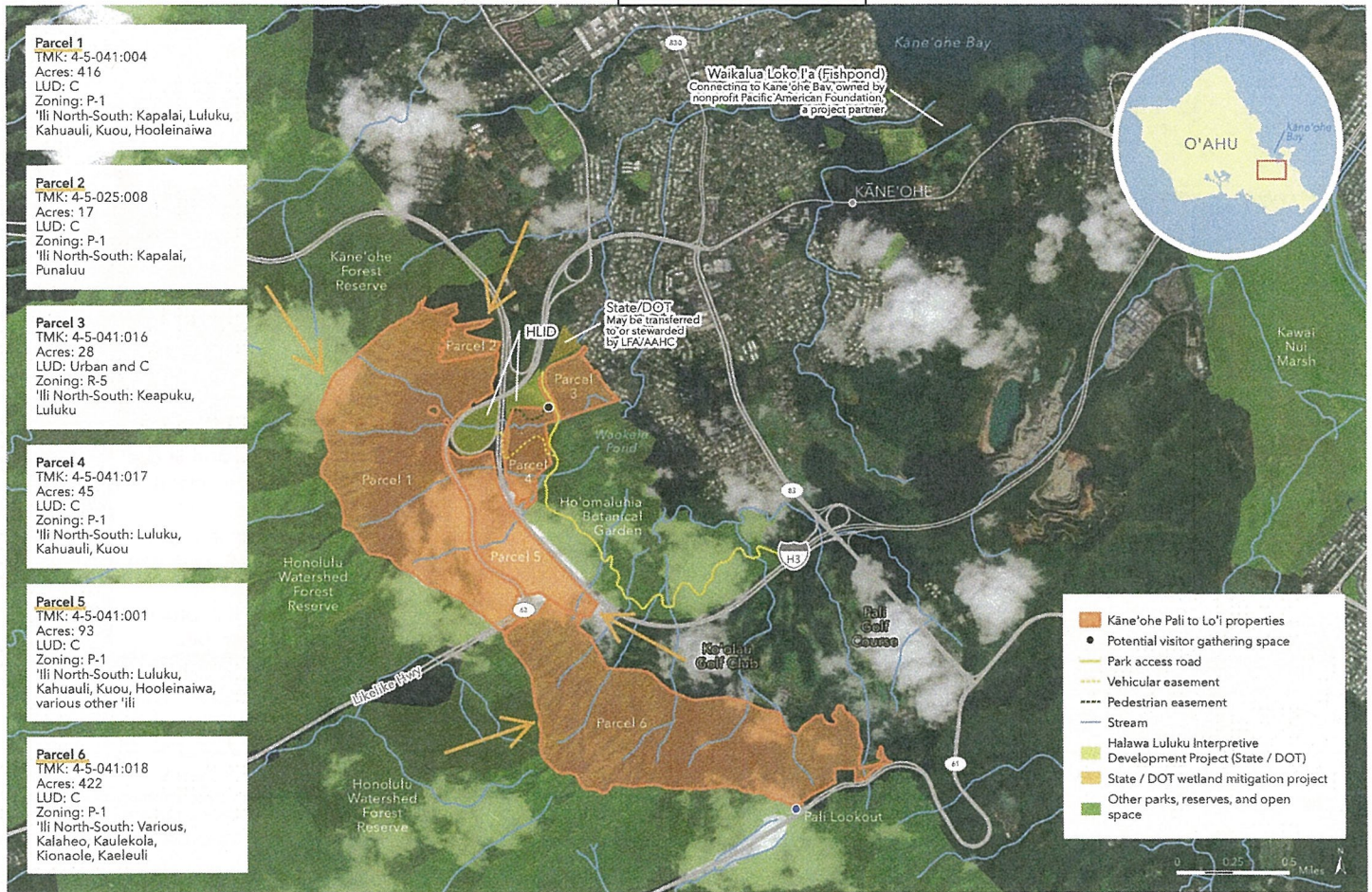
Suzanne D. Case, Chairperson

Date

Original: Agency file
Copy: Project file

Attachment A: Maps (2)
Attachment B: Photos (4)

Attachment A: Maps (2)



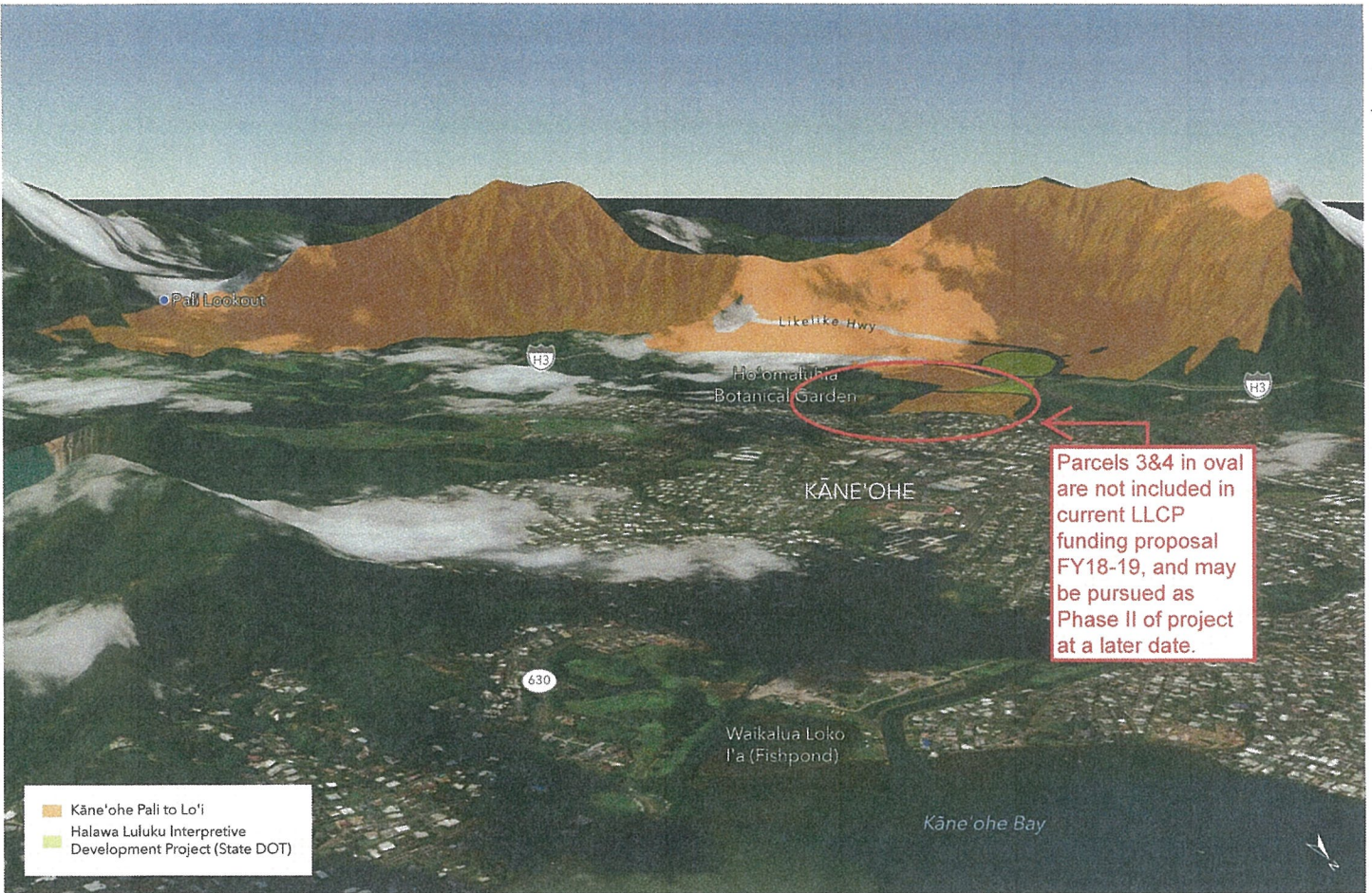
Kāne'ohe Pali to Lo'i

ISLAND OF O'AHU, HAWAII

LLCP Grant to Division of Forestry and Wildlife, Ko'olaupoko, O'ahu, TMKs: (1) 4-5-025:008; (1) 4-5-041:001; (1) 4-5-041:004; (1) 4-5-042:018, page A:1

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Kāne'ohe Pali to Lo'i

ISLAND OF O'AHU, HAWAII

LLCP Grant to Division of Forestry and Wildlife, Ko'olaupoko, O'ahu, TMKs: (1) 4-5-025:008; (1) 4-5-041:001; (1) 4-5-041:004; (1) 4-5-042:018, page A:2



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Kāneʻohe Pali to Loʻi Photographs



Remains of historic Lulukū banana patches, overgrown agricultural terracing, and pali



Former loʻi with pali in background



Active stream-fed lo'i kalo



One of the many mountain streams running through property