

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

September 11, 2020

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF NO.:19OD-118

Oahu

Acquisition of Private Land, Issuance of Immediate
Management Right of Entry, and Set Aside to the Division of
Forestry and Wildlife for Natural Area Reserve Purposes, at
Niu, Honolulu, Oahu, Tax Map Key: (1) 3-7-003:003.

APPLICANT AGENCY:

Division of Forestry and Wildlife (DOFAW).

PRIVATE LANDOWNER:

Apoalewa, LLC, a Hawaii limited liability company (Seller).

LEGAL REFERENCE:

Sections 107-10, 171-11 and 171-30, Hawaii Revised
Statutes, as amended.

LOCATION:

Privately-owned lands situated at Niu, Honolulu, Oahu,
identified by Tax Map Key: (1) 3-7-003:003 as shown on the
attached map labeled **Exhibit A**.

AREA:

Approximately 300 acres, more or less.

ZONING:

State Land Use District: Conservation
County of Honolulu: Preservation

CURRENT USE:

Vacant and unencumbered.

CONSIDERATION:

Gratis, property offered to the State as a donation.

PURPOSE:

Natural Area Reserve purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Pursuant to Section 343-5(a) (1), HRS, an environmental assessment (EA) is not required where State or County funds are being used for the acquisition of unimproved real property. As the subject lands are unimproved, an EA is not required. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

APPLICANT REQUIREMENTS:

Applicant or Landowner shall be required to:

- 1) Provide survey maps and descriptions for the privately-owned property according to State DAGS standards and at Applicant's own cost;
- 2) Obtain a title report for the privately-owned property at Applicant's own cost and subject to review and approval by the Department; and
- 3) Pay for and conduct a Phase I environmental site assessment and, if this Phase I identifies the potential for hazardous materials release or the presence of hazardous materials, conduct a Phase II environmental sampling and analysis plan and perform any and all remediation, abatement and disposal as may be warranted and as satisfactory to the standards required by the Federal Environmental Protection Agency and/or the State Department of Health, all at no cost to the State and to the satisfaction of the Department.

BACKGROUND:

Pia Valley is a biodiversity hotspot of endangered species, some found nowhere else in the world. There are records of 29 rare species found in this area and the upland portions contain some of the most intact 'ohi'a and uluhe dominated forests in the southern Ko'olau mountain range making this an important conservation acquisition project.

Pending State acquisition, the Natural Area Reserves Commission has proposed this area to be included into the Natural Area Reserve System (NARS). This would allow DOFAW a high level of planning and management to restore the native ecosystems. As part of its conservation efforts, DOFAW would be able to plan for boundary fences to prevent feral pigs from access and control invasive plants and other animals. Designating this parcel as a Natural Area Reserve (NAR) would protect rare plants and endangered species, and create a contiguous band of conservation land from Wiliwilinui Ridge to Kuli'ou'ou Ridge.

Acquisition of this parcel would also provide educational opportunities while protecting threatened and endangered plants and animals. The area is also used for recreational use, namely hiking, and ownership will allow DOFAW to regulate and manage public use of this area.

Through the cooperation of the previous landowner, DOFAW has surveyed and managed for rare plants and snails. This area also serves as an important nesting habitat for the 'elepaio. Additionally, the area is federally designated as a critical habitat for 17 species where monitoring of the conservation efforts has been carried out. The property has a Priority 1 designation by DOFAW for the Rain Follows the Forest Initiative which protects the densely populated Maunaloa area where groundwater recharge services water supply for East Oahu.

REMARKS:

In 2014, DOFAW sought an agreement with the previous landowner, Niu Conservation Group, LLC, to accept the land as a donation. Before the acquisition could be completed, the property was seized due to delinquent taxes, and subsequently placed up for auction. The current owner, Apoalewa, LLC, bid and successfully secured the land in May, 2018. The landowner is the mother of an employee of the Division of Forestry and Wildlife. DOFAW discussed this transaction with a staff attorney from the Hawaii State

Ethics Commission who advised that this relationship should be disclosed. DOFAW is also implementing Ethics Commission advice to not involve the employee in any aspect of this project.

DOFAW obtained a title report for the property, dated October 28, 2019. Upon review of the title report, the report still indicates the title holder as Niu Conservation Group, LLC. Upon discussion with the title company, it was explained that the title report cannot confirm the current owner as the title holder because the title company could not validate the tax sale followed appropriate foreclosure procedures. However, a review of the City & County of Honolulu, Real Property Assessment Division records identifies the Fee Owner/Grantor as Apoalewa, LLC.

After consultation with the Attorney General, staff recommends that the Board approve the transaction despite the discrepancy. As this is a donation to the State, the Board is requested to approve acquisition of the property via a quitclaim deed instead of the standard warranty deed normally required. As no federal or state funding (other than Legacy Land Conservation Program funds which were used to complete due diligence) will be used to acquire the property, DOFAW is agreeable to the quitclaim deed. The Attorney General has prepared a draft quitclaim deed for the Board's review and approval, attached as **Exhibit B**.

A Phase I Environmental Site Assessment (ESA) was completed in May, 2020. The report concluded that there has not been any development, dumping or other activities on the parcel that would be cause for environmental concern even though the entire property was not inspected due to the terrain and dense vegetation. The report also concluded that there was no evidence of Recognized Environmental Conditions (RECs) that could impact the property.

Additionally, the report noted that no building or structures have been erected on the property (no building permits on record with the City & County Dept of Permitting/Planning), nor was the property listed in any of the databases listed in the Environmental Database Resources (EDR) search. The report did reveal another property as a Formerly Used Defense Site (FUDS) in Wailupe, which is about 1 mile from the southernmost part of the property, was used by the U.S. Army Corp of Engineers. However, the report noted that this is not an environmental

concern due to the higher elevation gradient of the property relative to the FUDS site. There are no records on file with the Department of Health related to hazardous waste or storage on the property or adjacent properties. Site inspection confirmed that there was no evidence of disposed drums or other containers that could contain hazardous materials or contaminants. No vapor encroachment, which is caused by contaminated soil or groundwater, was found on record or onsite.

A Rockfall Hazard Assessment Report was conducted in 2015. The report concluded that there was minimal rockfall risk to adjacent properties or human life mainly due to the fact that the parcels are undeveloped and unlikely to be developed for residential use because of their preservation designation and topography (steep valley ridges and lack of level valley floor). The south boundary has exposed soil due to erosion and rock cliffs that may have a high potential for rockfall. In the event of any redevelopment activity up the valley near this property line, the recommendation is to establish a 500-foot no-development buffer zone to mitigate the rockfall risk. The potentially impacted area would extend a few hundred feet into the adjacent property. As the adjacent property is privately owned, the Department cannot impose the 500-foot buffer zone as recommended in the report. DOFAW acknowledges the potential risk and desires to proceed with the acquisition.

Based on the ESA findings, the area is used for recreational purposes such as hiking. The report does not indicate if there may be a threat/danger to hikers. The Hawaiiiloa ridge trail and the unofficial Ko'olau summit trail and Kulepeamoia trail roughly follow the west, north, and east boundaries of the property, respectively. These trails follow the crests of ridges so are less prone to rockfalls. DOFAW is not aware of any trails located in the impacted area. However, like all hiking trails, some rock fall hazards exist, particularly in steeper sections of those trails. DOFAW will consider rockfall risks, particularly within the impacted area, in their planning and management of the property.

In addition to the approving the acquisition and set aside, the Board is requested to approve an immediate management right of entry to DOFAW. This will allow DOFAW to assume management of the property upon acquisition, rather than waiting until completion of the set aside.

RECOMMENDATION: That the Board:

1. Authorize the acquisition of the subject private lands under the terms and conditions cited above which are by this reference incorporated herein and further subject to the following:
 - A. The terms and conditions of the attached quitclaim deed document, as may be amended;
 - B. Review and approval by the Department of the Attorney General;
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the issuance of a management right-of-entry permit to the Division of Forestry and Wildlife covering the subject area under the terms and conditions cited above, effective immediately upon acquisition by the State, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the Division of Forestry and Wildlife under the terms and conditions cited, which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the legislature by two-thirds vote of either the House of Representatives or the

Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;

- C. Review and approval by the Department of the Attorney General: and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted:

Van Matsushige

Van Matsushige
Project Development Specialist

Ian HL

Ian Hirokawa, Special Projects Coordinator

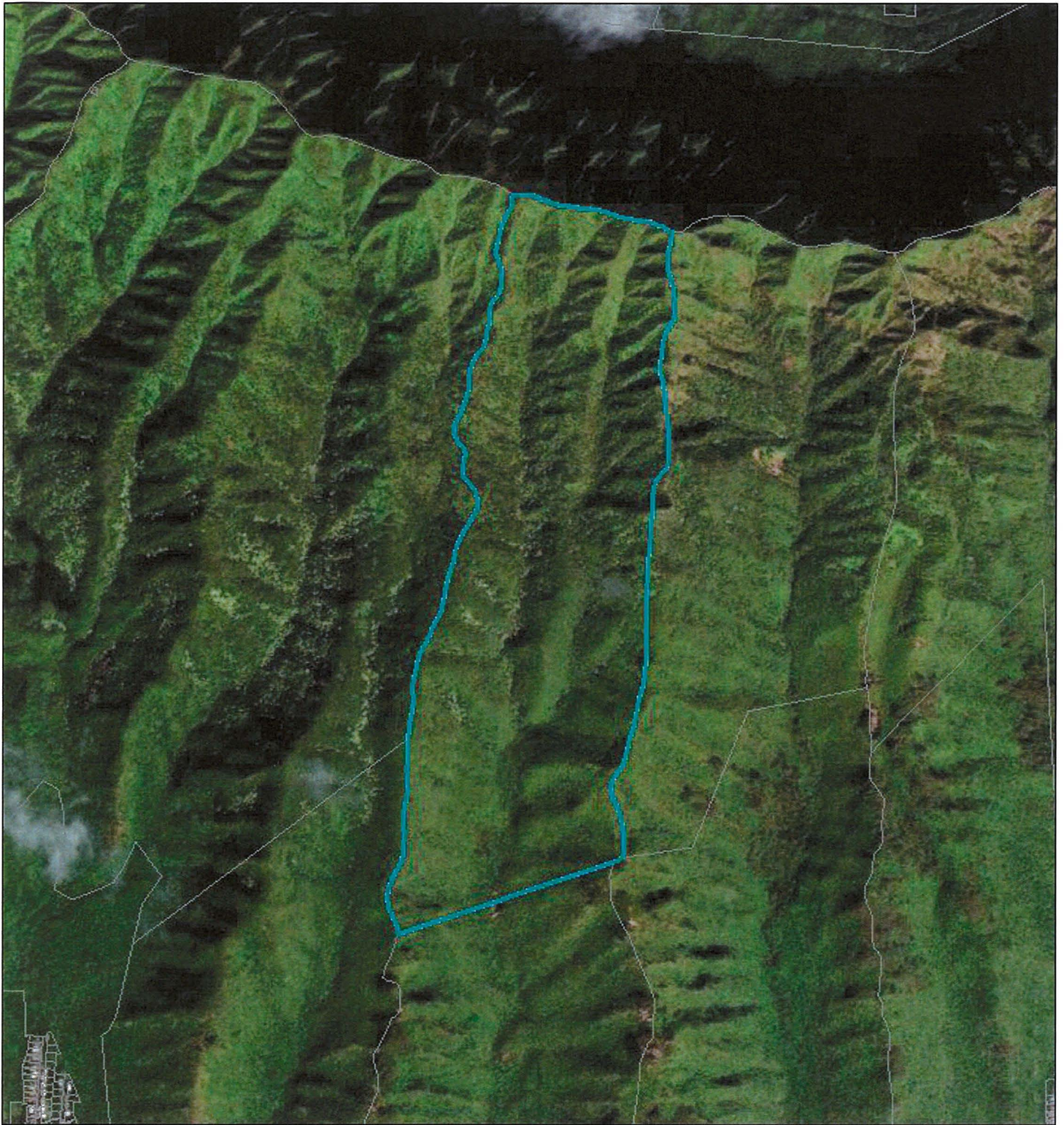
APPROVED FOR SUBMITTAL:

Suzanne D. Case

Suzanne D. Case, Chairperson

RT

Public Land Trust Information System



August 24, 2020

1:18,056

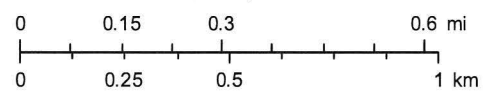


EXHIBIT A

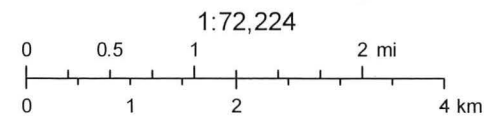
Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community
Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community

Public Land Trust Information System



August 27, 2020

EXHIBIT A



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Total Number of Pages:	
LOD No. S-	Tax Map Key No. (1) 3-7-003:003

KNOW ALL MEN BY THESE PRESENTS:

THAT, effective as of the _____ day of _____, 20_____, APOALEWA LLC, a Hawaii limited liability company, whose address is 4348 Waiialae Avenue #886, Honolulu, Hawaii 96816, hereinafter referred to as the "Grantor," for good and valuable consideration, paid to Grantor by the STATE OF HAWAII, by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, acting pursuant to Section 171-30, Hawaii Revised Statutes, hereinafter referred to as the "Grantee," the receipt whereof is hereby acknowledged, does hereby remise, release and forever quitclaim unto the Grantee, the Grantee's successors and assigns, all of its right, title, interest, claim and demand in and to that certain parcel of land situate at _____, Oahu, Hawaii, described as "_____, " containing an area of _____ acres, more or less, more particularly described in Exhibit "A" and delineated on Exhibit "B," both of which are attached hereto and made parts hereof, said exhibits being respectively, a survey description and survey map designated C.S.F. No. _____ and dated _____.

_____, prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, hereinafter the "Property."

SUBJECT TO rights of native tenants and regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including Chapter 6E, Hawaii Revised Statutes, over prehistoric or historic remains found in, on, or under the land.

TO HAVE AND TO HOLD the same together with all of the rights, easements, privileges and appurtenances thereunto belonging or in anywise appertaining or held and enjoyed therewith unto said Grantee, the Grantee's successors and assigns, forever.

NOTICE OF STATE PARTICIPATION

The Property shall be managed consistently with the purposes for which it was awarded a Legacy Land Conservation Program grant and Chapter 173A, Hawaii Revised Statutes. Whenever the Property is sold, that portion of the net proceeds (sale price less actual expenses of sale) of such sale, equal to the proportion that the grant by the State bears to the original cost of the Property, shall be paid to the State of Hawaii and redeposited in or credited to the Land Conservation Fund or its successor. In the event the Property is leased, rented, or otherwise disposed of, other than by sale, that portion of the gross proceeds of such disposition, equal to the proportion that the grant by the State bears to the original cost of the Property, shall be paid to the State of Hawaii and redeposited in or credited to the Land Conservation Fund or its successor.

IN WITNESS WHEREOF, the Grantor herein, has caused these presents to be executed this ____ day of _____, 20____, and the STATE OF HAWAII, the Grantee herein, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be duly executed this ____ day of _____, 20____, both effective as of the day, month, and year first above written.

APOALEWA LLC, , a Hawaii
limited liability company

By _____
Its _____

GRANTOR

STATE OF HAWAII

Approved by the Board
of Land and Natural
Resources at its
meeting held on

_____.

By _____
SUZANNE D. CASE
Chairperson
Board of Land and
Natural Resources

APPROVED AS TO LEGALITY,
FORM, EXCEPTIONS, AND
RESERVATIONS:

GRANTEE

JULIE H. CHINA
Deputy Attorney General

Dated: _____

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, 20_____,
before me personally appeared _____, to me personally
known, who, being by me duly sworn or affirmed, did say that such
person executed the foregoing instrument as the free act and deed
of such person, and if applicable in the capacity shown, having
been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawaii

My commission expires: _____