

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

August 13, 2021

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

Land Board Members:

SUBJECT: REQUEST FOR APPROVAL OF SETTLEMENT BETWEEN  
DEPARTMENT OF LAND AND NATURAL RESOURCES AND KONA  
HILLS LLC., REGARDING TRESPASS OF CONSERVATION  
EASEMENT ON THE KEALAKEKUA MOUNTAIN RESERVE  
PROPERTY, TAX MAP KEY (3) 8-2-012:001, KEALAKEKUA, SOUTH  
KONA, HAWAII

DELEGATION OF AUTHORITY TO THE CHAIRPERSON TO  
NEGOTIATE AND SIGN A MEMORANDUM OF AGREEMENT  
BETWEEN THE STATE OF HAWAII DEPARTMENT OF LAND AND  
NATURAL RESOURCES AND THE KEALAKEKUA MOUNTAIN  
RESERVE

SUMMARY:

The Division of Forestry and Wildlife (Division) is requesting approval of a settlement with Kona Hills LLC regarding a trespass of the State's conservation easement on the Kealakekua Mountain Reserve (KMR) property, Tax Map Key (TMK) (3) 8-2-012:001, Kealakekua, South Kona, Hawaii. Damage to the easement occurred during encroachment and road construction (improvement of an existing road) by Kona Hills LLC in 2019. Kona Hills LLC has agreed to the Division's proposal to provide funding totaling \$6,284 for the restoration of 1.77 acres of KMR land to repair the damages and resolve the conservation easement trespass.

The Division is also requesting that the Board authorize the Chairperson to negotiate and sign a Memorandum of Agreement (MOA) with KMR that describes specific activities and the timeframe for KMR to restore the damage to the conservation easement using the settlement funding provided by Kona Hills LLC.

LOCATION:

Lands situated in Kealakekua, South Kona, Hawai'i, identified by TMK (3) 8-2-012:001.

## DISCUSSION:

The State holds a conservation easement (**Exhibit A**) over portions of the KMR property, approved by the Board at its meeting on April 21, 2011 under agenda item D-4. Once a former ranch, this easement now protects a variety of native forest types and species. KMR is conducting native forest management and restoration including sustainable harvesting of koa and sandalwood in the easement area, consistent with the 10-year management plan completed on August 7, 2013 and approved by the Division. KMR anticipates updating its management plan in the next few years.

The Division was notified of a possible trespass on the conservation easement on May 31, 2019 by KMR landowner representatives and followed up with a visit to the KMR property on June 18, 2019. At that time, Division staff observed encroachment by Kona Hills LLC during road construction (improvement of existing road) and the resulting damage to the conservation values protected by the terms and conditions of the conservation easement over portions of the KMR property. The Division sent a cease and desist letter to Kona Hills LLC dated July 1, 2019, and the Division met with Kona Hills LLC on August 28, 2019 to discuss the subject violation. KMR contracted a survey to document the extent of the encroachment, and Division staff also documented the damage to the easement area through measurements and photos, which were detailed in a letter to Kona Hills LLC dated November 22, 2019 with survey maps and photographs (**Exhibit B**).

The conservation easement restricts activities on the KMR property in order to protect conservation values including native forest ecosystems, forest resources (trees), scenic open space, and recreational, research and educational values.

The following conservation easement provisions were impacted by Kona Hills LLC:

- (1) The road construction encroaches over the KMR property boundary and into the conservation easement area. Survey maps, attached as **Exhibit B**, calculate the encroachment area as 1.77 acres of the KMR property. Road construction is restricted by the conservation easement and requires consultation and/or authorization by the Division (Easement Section 3 (f)(iv)).
- (2) The road construction has altered the surface of the KMR property with grading and grubbing. Section 4(c) of the conservation easement limits "alteration of the surface of the [KMR property], including, without limitation, the excavation or removal of soil, sand, gravel, rock, lava ...". The photos attached as **Exhibit B** show numerous instances on the encroachment altering the surface of the KMR property.
- (3) The road construction created numerous water drainage channels on the KMR property which will cause soil erosion in violation of Section 4(d) of the conservation easement.
- (4) Mature native ohia trees on the KMR property were damaged during the road construction process. Injuries to the roots of the trees and piling excavated material next to the trees is likely to cause these trees to die, which negatively impacts the conservation values protected by the conservation easement.

To resolve the conservation easement trespass, Kona Hills LLC has agreed to the Division's proposal to provide funding totaling \$6,284 to settle all claims in the conservation easement trespass. The Division will be seeking approval from the Attorney General to settle all claims. This settlement is not an admission of any kind by Kona Hills LLC. Funds will be deposited with the landowner, KMR, who will use the amount to restore the 1.77 acres damaged by the encroachment. Restoration with native species will mitigate damage to the KMR property including reduction of soil erosion and restoration of native trees damaged by construction and rehabilitation of graded and grubbed sites. In consultation with KMR, Kona Hills LLC installed boundary fencing along the road following road construction, which will be beneficial to the overall management of feral ungulates in the conservation easement. Restoration costs for this settlement are based on costs/acre for other state and federal reforestation programs in the vicinity of the property and include site preparation, native trees and shrubs and tree planting and maintenance.

The Division is also requesting delegation of authority to the Chairperson to negotiate and sign a MOA between the Department of Land and Natural Resources and KMR to outline the restoration activities the landowner will complete on the conservation easement using the subject funds provided by Kona Hills LLC, subject to approval as to form by the Department of Attorney General (**Exhibit C**). The activities included in this restoration project for 1.77 acres will also be included in KMR's updated management plan, subject to approval by the Division. KMR will consult with the Division during the planning of the restoration activities and the Division will monitor this restoration project annually as part of the annual monitoring conducted for the existing conservation easement.

The funding for restoration provided by Kona Hills LLC to the landowner and the Division's MOA with the landowner will fully settle all claims by the State with respect to this matter, subject to approval by the Department of the Attorney General ("Attorney General") and the BLNR.

#### CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

The Division's activities to be conducted under the terms of this MOA are considered a minor alteration in the conditions of land, water, or vegetation and are exempt from the requirement to prepare an environmental assessment in accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources, approved by the Environmental Council on November 10, 2020 pursuant to Exemption Class 4, Part 1, No. 5. "Establish temporary or permanent vegetative cover including trees, shrubs, grasses, and sod for landscaping, reforestation, soil stabilization, watershed protection, native wildlife habitat, native ecosystem restoration, and rare plant preservation; provided, however, that this exemption shall not apply to vegetation that is likely to be invasive or for tree plantings for which harvesting is planned or is reasonably foreseeable."

RECOMMENDATION:

That the Board:

1. Delegate authority to the Chairperson to negotiate and sign a MOA with the KMR, subject to review and approval of the Attorney General and such other terms and conditions as the Chairperson may approve.
2. Approve a settlement with Kona Hills LLC subject to the following terms:
  - a. Payment of \$6,284 from Kona Hills LLC to KMR to fully settle all of the State's trespass claims;
  - b. Review and approval of all settlement documents by the Department of Attorney General; and
  - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.

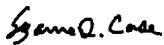
Respectfully submitted,



---

DAVID G. SMITH, Administrator  
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



---

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

**Attachments:**

- Exhibit A.** Kealahkekua Mountain Reserve Conservation Easement  
**Exhibit B.** Violation Documentation Letter to Kona Hills LLC  
**Exhibit C.** DRAFT Memorandum of Agreement with KMR



# RECORDER'S MEMO

## Document Text NOT Legible For Digital Imaging



R-31

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

JUN 27, 2011 08:01 AM

Doc No(s) 2011-100084



Is/ NICKI ANN THOMPSON  
REGISTRAR

38 1/4 Z2

LAND COURT SYSTEMReturn by Mail ( ) Pickup ☒ To:REGULAR SYSTEM

TG : 201121998-S

TGE : TI-301-3425

JANET LUM WONG

DEPT. OF LAND AND NATURAL RESOURCES

LAND DIVISION

RS

Tax Map Key No.: (3)8-2-012:001

Total No. of Pages: 38**DEED OF CONSERVATION EASEMENT AND RESTRICTION OF DEVELOPMENT RIGHTS**

THIS DEED OF CONSERVATION EASEMENT AND RESTRICTION OF DEVELOPMENT RIGHTS ("Easement") is made this \_\_\_\_ day of \_\_\_\_\_, 2011, by KEALAKEKUA HERITAGE RANCH, LLC, a Hawaii limited liability company, having the physical address of 81-6580 Mamalahoa Highway, Kealahou, HI 96750 ("Grantor"), in favor of THE STATE OF HAWAII by its BOARD OF LAND AND NATURAL RESOURCES ("Grantee").

**RECITALS**

A. Grantor is the sole owner in fee simple of that certain real property situate at Kealahou, District of South Kona, County of Hawaii, State of Hawaii, consisting of 2 contiguous parcels totaling 11,470 acres, more or less, and bearing tax map key ("TMK") number: (3)8-2-012:001 all as more particularly described in Exhibit A (the "Protected Property") and shown on Exhibit B (site maps), which are attached to and incorporated into this Easement by this reference.

B. The Protected Property. The Protected Property is 9,017.97 acres of the approximately 11,470 acre parcel owned by Grantor located on the western slope of Mauna Loa in the South Kona District, County of Hawaii. Grantor's 11,470 acres (the "Larger Parcel") constitutes the mauka portion of the Kealahou ahupua'a beginning at approximately the 2,200 foot elevation to approximately the 6,100 foot elevation. The terrain is undulating and contains many different forest types including mixed open forest, closed 'ohi'a lehua mesic forest, open

koa forest with mamane, and open koa forest. The Larger Parcel also contains acres of forestland that were converted many decades ago to pastureland.

The following land use designations relate to the Protected Property:

1. State District Boundary. The Protected Property is classified as "Agriculture," as defined by Hawaii Revised Statutes (HRS) Chapter 205. Use of the Protected Property is limited as set forth in HRS Chapter 205.

2. County Zoning. The Protected Property is zoned "Agriculture," as defined by Chapter 25-5-70 of the Hawaii County Code, and is limited to the uses prescribed therein.

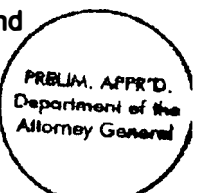
C. Development. The above land designations permit subdivision of the Protected Property and construction of dwellings or other structures. The locations for possible future structures shall be approved in writing by Grantee. No permanent dwellings shall be permitted on the Protected Property.

D. Conservation Values. The Protected Property possesses important forest ecosystems, forest resources and products including, but not limited to, commercial forest product values and pharmacopeia, as well as open space, recreational, and research/educational values collectively, the "Conservation Values". These specific Conservation Values are of interest for protection through this Easement:

1. Forest Ecosystems – The Protected Property contains ecologically significant forest ecosystem values including, but not limited to, overall watershed health, forest health protection, and biodiversity. The Protected Property contributes to the overall watershed health of Kealahou ahupua'a/watershed and larger Kona region through contribution to groundwater and aquifers recharge that supply the island with fresh water, capture of cloud drip and condensation by vegetative cover, more specifically canopy trees and shrubs, and reduction of soil loss due to erosion. Continued management focusing on water quality and quantity improvement and coral reef protection through forest health protection and corresponding reductions in soil erosion are essential to the overall health of the property and the State. Forest health protection by means of suppression of invasive vegetation and feral animals is further described in the required multi-Resource Forest Management Plan or Forest Stewardship Plan (the "Plan"). The Protected Property contains and contributes to Hawaii's overall biodiversity including threatened and endangered plant and animal species.

2. Forest Resources and Products – The Protected Property is comprised of a significant amount of forest resources and products including, but limited to carbon (woody biomass, trees, shrubs, grass, and soil carbon), timber resources (living, dead and dying trees), cultural gathering material, pharmacopeia, as well as other forest products. The parties agree that commercial and non-commercial vegetative management can also promote forest health. Preservation of the Protected Property's forest resources and products is not only important to conserve natural characteristics of the region, but also for management and to continue to promote Hawaiian industries and cultural practices. The preservation of the Protected Property as a working forest enables the Property to continue to provide the public and society with a wide-range of goods and services (i.e., high-quality jobs, local/sustainable industry, a diversity of forest based commercial goods, pharmacopeia, etc.).

3. Open Space – Preservation of the Protected Property's conservation and



agricultural values including the property's forests and timberland resources contribute to the scenic and greenbelt qualities of the larger Kona region. Preservation of these scenic qualities provides a significant public benefit and will preserve the Protected Property's scenic value and existing natural resources including, but not limited to, native species populations; ohia, koa, mamane, sandalwood and mamaki and various other mixed forest types; ecosystem habitat for threatened and endangered species; as well as important geological features found on the property. Removal of development rights from the Protected Property preserves the open space values including reducing potential congestion on local roads and highways that would result from residential development of the property.

4. Recreational, Research and Educational Values – The Protected Property's recreational and research values contribute to the overall access to recreational opportunities in the State and to the availability of locations and land types needed to expand the knowledge base on Hawaiian ecosystems, geologic features, historic ranching practices and restoration practices. The Protected Property's roads and trails, camping areas, archeological and culturally important features, and unique research opportunities, including, but not limited to human, animal and ecosystem perspectives are an important public benefit for the State and the Protected Property. The parties recognize that access to the Protected Property for these values is best achieved through facilitated and controlled means, in order to facilitate the protection of the other Conservation Values.

The Conservation Values of the Protected Property are further documented in an inventory of relevant features of the Protected Property "Baseline Documentation." The Baseline Documentation, which has been reviewed and accepted by Grantor and Grantee, consists of reports, maps, photographs, and other documentation that collectively provide an accurate representation of the Protected Property at the time of the execution of this Easement and which is intended to serve as an objective informational baseline for monitoring compliance with the terms of this Easement.

E. Furthermore, the clearly delineated open space conservation goals and objectives as stated in the Forest Legacy Program pursuant to Section 1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 U.S.C. § 2103C), which was created "to protect environmentally important private forest lands threatened with conversion to non-forest uses" are represented by the Conservation Values and Purpose (as defined in Section 1 below) protected by this Easement. This project ranked high in the national selection process for the Forest Legacy Program when it was funded by the U.S. Forest Service. Given that this Easement and its purpose represent the advancement of the goals, objectives and purposes of the Hawaii Forest Legacy Program, that Program has awarded a grant for the partial purchase of this Easement through the U.S. Forest Service Forest Legacy Program. The grant was made available in two phases, the first phase including 3,882.79 acres, the second phase including 5,135.18 acres. For convenience in future monitoring and simplicity of documentation, the parties have chosen to incorporate both phases in this single easement.

HRS Chapter 198 provides that any public body and any organization which qualifies for and holds an income tax exemption under section 501(c)(3) of the Federal Internal Revenue Code of 1986, as amended, and whose organizational purposes are designed to facilitate the purposes of HRS Chapter 198, may acquire and hold conservation easements by purchase, agreement, donation, devise, or bequest.

F. Grantee is a public body qualified to hold a conservation easement under HRS chapter 198.

G. Grantor desires that the Conservation Values of the Protected Property be preserved and maintained in perpetuity by permitting only those uses of the Protected Property that do not significantly impair or interfere with the Conservation Values. And Grantee desires to accept this Easement to preserve and protect in perpetuity the Conservation Values of the Protected Property for the benefit of this generation, and the generations to come.

NOW THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions contained in this Easement, Grantor hereby voluntarily grants, conveys and warrants to Grantee a conservation easement in perpetuity over the Protected Property, as defined in this Easement, subject only to the mutual covenants, terms, conditions and restrictions contained in this Easement and title matters of record as of the date of this Easement.

### **COVENANTS AND RESTRICTIONS**

1. **Purpose.** The purpose of this Easement is to preserve the traditional forest values of the Protected Property (defined as the Conservation Values), subject to the limited use rights set forth herein (the "Purpose"), which Conservation Values include, but are not limited to, the capacity of the Protected Property to sustainably produce commercial wood products and other agricultural or agroforestry products consistent with the establishment and maintenance of a productive and healthy forestland provided by, or anticipated to be restored on the Protected Property; and (to the extent it is consistent with the sustainable resource production values of the Protected Property), the relatively natural habitat provided by the Protected Property, the historically and culturally sensitive features of the Protected Property, and the open space characteristics of the Protected Property.

2. **Rights Conveyed to Grantee.** To accomplish the Purpose of this Easement the following rights are conveyed to Grantee:

(a) **Protection:** Grantee has the right to enforce the provisions of this Easement so as to: (i) preserve and protect the Protected Property in perpetuity; (ii) prevent any use of or activity on the Protected Property that will significantly impair or interfere with the Conservation Values; and (iii) enhance the Conservation Values of the Protected Property.

(b) **Access:** Grantee has the right to reasonable access to the Protected Property to carry out the Purpose of this Easement as described below:

(i) To enter the Protected Property at least annually, at a reasonable time and upon prior written notice to Grantor, for the purpose of making inspections to monitor compliance with this Easement or to make a determination regarding the appropriateness of a requested use or activity.

(ii) To enter the Protected Property at such other times as are necessary if Grantee, in its sole discretion, has reason to believe a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of this Easement. Such entry shall be upon prior reasonable notice to Grantor of not less than 24 hours, and Grantee shall not in any case unreasonably interfere with Grantor's allowed uses and quiet enjoyment of the Protected Property.

(c) **Enforcement:** Grantee has the right to enforce this Easement and the covenants and restrictions herein, including, but not limited to, the right to enjoin any use of, or activity on, the Protected Property that is inconsistent with the terms and Purpose of this

Easement, and to require the restoration of such areas or features of the Protected Property as may be damaged by uses or activities inconsistent with the provisions of this Easement.

3. Grantor's Reserved Uses and Activities Consistent With the Purpose of the Easement. Grantor reserves for itself all rights accruing from ownership of the Protected Property that are not expressly prohibited by this Easement and are not inconsistent with the Purpose of this Easement. Grantor expressly and specifically reserves the following rights:

(a) Forest Management: Forest management and timber harvesting is permitted on the Protected Property for commercial purposes in accordance with applicable Federal, State, and local laws and regulations and the provisions of the Plan (as may be amended from time to time); prepared by Grantor and approved in writing by Grantee. This Plan shall be consistent with the provisions of section 5(f) of the Cooperative Forestry Assistance Act of 1978, as amended, 16 U.S. C. 2103a (f), and shall be subject to revision in order to incorporate forest management practices that are prescribed under federal or state law. Any amendment or material modification of the Plan must be approved by Grantee in accordance with Section 6, below. Approval shall not be unreasonably withheld by Grantee and proposed forest management activities presented in the Plan will be permitted unless they are expressly prohibited by this Easement or inconsistent with the Purpose of this Easement or the provisions of applicable federal or state law. In the event of any inconsistency or conflict between the provisions of this Easement and the Plan, terms of this Easement shall prevail. Grantee acknowledges that the Plan may, at Grantor's discretion, provide for commercial forest management and agrees that commercial management when conducted sustainably and pursuant to the terms of the approved Plan furthers the Purpose of this Easement. The parties agree that the annual removal of 250,000 board feet or less of live timber (as measured in International ¼ Inch Rule board foot volume or similar system) and the salvage of dead trees is considered to be de minimus commercial management and shall be permitted, if included in the Plan, without restriction unless it is directly inconsistent with express restrictions contained within this Easement or the provisions of applicable federal or state law. Any anticipated annual live tree harvest amount exceeding 250,000 board feet shall be subject to the following requirements and restrictions according to Professional Forestry standards:

(i) Prior to the first annual live tree harvest exceeding 250,000 board feet following the execution of this Easement, Grantor shall conduct a timber cruise of the merchantable forest inventory (which shall be defined to include trees greater than or equal to eight inches (8") diameter at breast height (dbh) or greater) on the Protected Property. The timber cruise volume estimates shall have a sampling error objective of ten percent (10%) at a ninety percent (90%) level of confidence unless otherwise approved in writing and in advance by Grantee. Grantor shall provide the timber cruise to Grantee within sixty (60) days following completion. Additionally, Grantor shall conduct an inventory of the Protected Property no later than every ten (10) years following the initial cruise, and every ten (10) year period thereafter. Grantor shall provide each inventory to Grantee within sixty (60) days following completion.

(ii) The Plan shall contain a description of each forest stand or forest type with a relatively uniform and similar forest conditions. Forest stand and associated forest type maps shall be provided at a level of detail necessary to support professional forest planning and forest type timber operations pursuant to this Easement and shall include, at a minimum, tree numbers and stand volume by species (i.e. stand tables). Additionally, the Plan shall specify silvicultural harvest methods, schedules and equipment.

(iii) Timber harvests will not remove more than twenty-five (25) percent of the net merchantable inventory on the Protected Property in any ten (10) year period.

(iv) Grantor is permitted to use any silvicultural harvest method provided that forest openings created through timber harvest may not exceed five (5) acres in size. For purposes of this Easement, an Opening is an area in which post-harvest stand stocking levels are less than an average of twenty (20) trees (greater than or equal to eight (8) inches dbh), per acre and/or an equivalent volume within the area where actual tree harvesting occurred.

(b) Agriculture. Agricultural activities that comply with federal, state and local regulations and do not significantly impact or degrade the Conservation Values, including, but not limited to, the raising and managing of livestock, are permitted. Notwithstanding the foregoing, under no circumstances shall there be permitted any activity that imports raw material(s) (commodities or livestock not produced as a result of the harvest of forage or agricultural crops on the Property) onto the Protected Property for the purpose of fattening livestock for commercial slaughter (i.e., a feed lot) unless otherwise permitted through consultation and written approval of Grantee. Areas throughout the Protected Property undergoing native forest restoration, as detailed in the Plan, shall exclude managed livestock through the use of livestock proof fencing, until such time the planted vegetation is not susceptible to grazing pressure.

(c) Hunting. Grantor may use the Protected Property for hunting of game animals and for management purposes.

(d) Public and Private Access. This Easement allows Grantor to authorize public and/or private access to any part or all of the Protected Property for permitted uses, on such terms and conditions as Grantor deems appropriate in its sole discretion. In the event that public access is authorized, that access shall be subject to terms and conditions established by Grantor, after consultation with Grantee, that are intended to limit the extent and intensity of the permitted use, in a manner consistent with preservation and protection of the Conservation Values on the Protected Property.

(e) Recreational Uses. This Easement allows Grantor to authorize low impact, passive recreational uses including, but not limited to, horseback riding, bird watching, hiking, camping, photography, mountain biking, picnicking, and hunting, within the Protected Property. In the event that any broader recreational use is contemplated, that use shall be subject to terms and conditions established by Grantor, after consultation and written approval by Grantee, that are intended to limit the extent and intensity of the permitted use, in a manner consistent with preservation and protection of the Conservation Values on the Protected Property, and in no event shall recreational uses that significantly impact or degrade the Conservation Values be allowed.

(f) Construction of Improvements. The construction or reconstruction of any improvement within the Protected Property is permitted only as authorized in or pursuant to this Easement, provided that the improvement does not impair the Conservation Values and then only on the condition that Grantor obtains all required permits and approvals from the state and county. No permanent residences shall be permitted on the Protected Property.

(i) Maintenance or Replacement. Grantor may maintain, repair, remodel, and make limited additions to any existing or subsequently constructed structures, and

improvements expressly permitted by this Easement. In the event of removal or destruction of any or all of said structures and improvements, or future structures and improvements (as permitted by herein), to replace them with structures and improvements of a similar function and use, in the same general locations. Additions to existing structures shall not exceed more than ten percent (10%) of its footprint at the time this easement is executed or, if it is constructed subsequent to the execution of this easement, its original footprint.

(ii) Educational or Recreational Improvements. Grantor may construct, maintain, repair, enlarge, and replace a reasonable number of nonpermanent enclosed or unenclosed recreational improvements (such as trails, campgrounds, monitoring stations, or other research facilities), as part of a plan to provide educational access, recreational access or facilitated public access within the Protected Property, provided, however, that Grantor shall consult with and obtain Grantee's written approval before constructing any such improvements.

(iii) Hunting and Recreational Structures. After consultation with and written approval of Grantee with regard to location and design, Grantor may construct, maintain, repair, enlarge, and replace one (1) hunting structure and one (1) recreational structure within the Protected Property. These structures may not exceed two thousand five hundred (2,500) square feet of floor area each. Reasonable accessory structures, including but not limited to restrooms, may also be constructed to be used in conjunction with the hunting and recreational structures. The area associated with a structure shall not exceed one (1) acre (or a total area for both structures less than .0002% of the Protected Property). No permanent residences shall be permitted on the Protected Property.

(iv) Roads. Existing roads within the Protected Property are identified in the Baseline Documentation to the best of Grantor's knowledge. Grantor may repair or maintain existing roads. After consultation with Grantee, Grantor may: (A) relocate existing roads for the purpose of improving or protecting habitat, accessing or repairing fences for management purposes, reducing soil erosion or improving the driving surface and conditions or (B) construct unimproved roads necessary or appropriate for property management and sustainable resource production as permitted in this Easement. Construction of any new improved road for any purpose requires Grantee's written approval.

(v) Utilities. Grantor may repair, modernize and replace such utilities as may exist on the Protected Property. After consultation with and written approval of Grantee, Grantor may also install new utilities within the Protected Property to serve authorized improvements and uses in the Protected Property and/or to establish a water supply for such improvements or uses. Limited utilities may be installed for development on the Larger Parcel provided that alternative placement is not feasible or possible within excluded envelopes. Grantor must consult with and obtain written approval of Grantee for plans for utilities within the Protected Property prior to construction of the utility. The term "utilities" includes, without limitation, electric power lines and facilities, sanitary facilities (provided that any such facility is connected to a wastewater collection and disposal system which does not entail any discharge within the Protected Property or utilizes a no-discharge waste system (e.g. self-composting toilets)), storm sewer facilities as required by local or state government, telephone and communications cable systems, and their respective appurtenant facilities. Any utility lines installed in the Protected Property shall be installed underground and any utility shall be designed to minimize its visual impact.

(vi) Fences. Grantor may repair and replace or remove existing fences and, after consultation with Grantee, may build new fences anywhere on the Protected

Property for purposes of reasonable and customary management not inconsistent with the preservation and protection of the Conservation Values. The use of fences may also be utilized in conjunction with the establishment of introduced vegetation as detailed in the Plan.

(vii) Water Resources. Grantor may maintain, enhance and develop water resources on the Property in accordance with applicable state and federal regulations, for permitted agricultural uses, fish and wildlife uses, domestic needs, educational and recreational uses. Permitted uses include the following: the right to restore, enhance and develop water resources, including ponds; to locate, construct, repair, and maintain irrigation systems; to develop wells, water storage and delivery systems including, but not limited to water pipelines, and to develop stock watering capture and delivery facilities. Grantor agrees that water uses are for the Larger Parcel and that exportation of water is not permitted except with written approval of Grantee.

(viii) Cultural, Historical and Archaeological Sites. Grantor may maintain, preserve and protect, and may establish appropriate buffers and walls around, any cultural, historical or archaeological sites located within the Protected Property provided that all work is conducted in accordance with federal, state, and county laws and regulations.

(g) Access by Native Hawaiians. Nothing herein shall prevent the exercise of any rights of Native Hawaiians for traditional and customary practices as may be required by Hawaii law.

4. Uses and Activities Inconsistent With the Purpose of the Easement. Any use of, or activity on, the Protected Property not authorized under Section 3 or inconsistent with the Purpose of this Easement is prohibited ("Prohibited Activity"), and Grantor acknowledges and agrees that it will not conduct, engage in or permit any such use or activity. Without limiting the generality of the foregoing, the following uses of, or activities on, the Protected Property are inconsistent with the Purpose of this Easement and shall be prohibited, except as expressly provided in Section 3 above:

(a) Subdivision. The legal or "de facto" division, subdivision or partitioning of the Protected Property.

(b) Structures. The placement or construction on the Protected Property of any permanent or temporary buildings, structures, or other improvements of any kind including, without limitation, buildings, barns, dwellings, sheds, roads, parking lots, antennas, and satellite dishes.

(c) Alteration of Land. The alteration of the surface of the Protected Property, including, without limitation, the excavation or removal of soil, sand, gravel, rock, lava, peat, or sod.

(d) Erosion or Water Pollution. Any use or activity of or on the Protected Property that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters.

(e) Alteration of Water Courses. The draining, filling, dredging, ditching, or diking of wetland areas, the alteration or manipulation of ponds and water courses, or the creation of new wetlands, water impoundments, or water courses on the Protected Property.

PRELIM. APPR'D.  
Department of the  
Attorney General



(f) Waste Disposal. The disposal or storage on the Protected Property of rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or hazardous waste or material.

(g) Utilities. The installation on the Protected Property of new utility systems or extensions of existing utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities.

(h) Signs. The placement of commercial signs, billboards, or other advertising material on the Protected Property.

(i) Mining. The exploration for, or development and extraction of, minerals and hydrocarbons on or below the surface of the Protected Property.

(j) Introduced Vegetation. Grantor will not introduce or release nonnative invasive species (as listed in the State of Hawaii's Weed Risk Assessment list) or non-naturalized plant or animal species, with the exception of species as described in the Plan or as needed to maintain Conservation Values, and approved by Grantee. Desirable nonnative plant species needed to improve and stabilize soils or improve habitat for native birds may be introduced, but should comply with recommendations in the Plan and must be approved by Grantee.

(k) Environmental Laws. The violation of, knowing allowance, or knowing continuation of any violation of any applicable federal, state, or local law, regulation, or requirement relating to protection of the air, water, or soil, human health and the environment ("Environmental Law") by Grantor, Grantor's agents, employees, or third party whom Grantor has the right and ability to reasonably control.

5. Invasive Non-Native Species. Grantor agrees to implement methods of controlling invasive non-native species on the Protected Property, and to encourage the establishment of appropriate native species on the Protected Property as described in the Plan.

6. Notice and Approval.

(a) Notice. To afford Grantee an opportunity to ensure that any use or activity proposed by Grantor is designed and carried out in a manner consistent with the terms and Purpose of this Easement, Grantor shall notify Grantee and receive Grantee's written approval prior to undertaking certain activities permitted only after prior approval by Grantee as identified in this Easement, in Section 3 and Section 4. Grantor shall notify Grantee in writing not less than seventy-five (75) days prior to the date Grantor intends to undertake the use or activity for which approval is required. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the terms and Purpose of this Easement.

(b) Approval. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantor's written request for approval. If at any time during the sixty (60) day period Grantee reasonably requests additional specified information regarding the requested use or activity, Grantor shall provide such information to Grantee within five (5) days. Grantor's failure to timely provide the additional reasonably requested information shall be deemed sufficient reason for Grantee to withhold its

approval. If Grantee reasonably requires more than sixty (60) days to respond to the notice, Grantee may so notify Grantor in writing during the sixty (60) day period and will have an additional sixty (60) days to respond. Grantee may also withhold approval based upon its reasonable determination that the action as proposed would be inconsistent with the terms of this Easement. If Grantee's approval is withheld, Grantee shall provide Grantor with its reason(s) for such disapproval, and, if possible, what changes or additions to Grantor's request that would enable Grantor to receive Grantee's approval. Grantee's approval may include reasonable conditions, which must be satisfied in undertaking the proposed use or activity.

A request by Grantor shall be conclusively deemed approved upon Grantee's failure to grant or deny approval within the time periods prescribed above.

If Grantor must undertake emergency action to protect health or safety on the Protected Property or must act by and subject to the requirement of any governmental agency, Grantor may proceed with such action without Grantee's approval provided, that Grantor shall first make a reasonable attempt under the circumstances to give verbal/telephone notice to Grantee of the proposed action.

(c) Addresses for Notices and Responses. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall, except as otherwise provided herein, be in writing either served personally or sent by certified mail, return receipt requested, postage prepaid, addressed as follows:

To Grantors: Kealakekua Heritage Ranch, LLC.  
Post Office Box 2240  
Kealakekua, Hawaii 96750

To Grantee: State of Hawaii, Board of Land and Natural Resources  
Post Office Box 621  
Honolulu, Hawaii 96809

or to such other address as either party from time to time shall designate by written notices to the other.

7. Dispute Resolution. If a dispute arises between the parties concerning the rights or obligations of either party under this Easement, the parties shall, within thirty (30) days of discovery of the dispute and delivery of notice thereof, arrange a face-to-face meeting of representatives of the parties and each make good faith efforts to resolve the dispute. If such a meeting is unsuccessful in resolving the dispute by sixty (60) days after the date that the initial request to meet was made, then either party may pursue all available equitable and legal remedies.

8. Grantee's Remedies.

(a) Default, Notice of Violation, Grantee's Right to Cure. If Grantee determines that the Grantor is in violation of the terms of this Easement, or that a violation is threatened, Grantee shall give written notice to Grantor of such violation or threat of violation, and demand corrective action sufficient to cure or prevent the violation and, where the violation

involves injury to the Protected Property resulting from any use or activity inconsistent with the terms and Purpose of this Easement, to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Grantee.

(b) Grantor's Failure to Respond. Grantee may bring an action as provided in Section 8 if Grantor:

(i) Fails to cure or prevent the violation within thirty (30) days after receipt of notice thereof from Grantee; or

(ii) Under circumstances where the violation cannot reasonably be cured within the thirty (30) day period, fails to begin curing such violation within the thirty (30) day period or fails to continue diligently to cure such violation until finally cured.

(c) Injunctive Relief. Grantee shall be entitled to pursue and enforce any and all remedies as may be available at law or pursuant to this Easement, including damages pursuant to HRS Section 198-5. Grantee's rights under this Section apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to injunctive and other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

(d) Damages. Grantee shall be entitled to recover money damages for any injury to the Conservation Values protected by this Easement or for the violation of the terms of this Easement. In assessing such damages, there may be taken into account, in addition to the cost of restoration, the loss of scenic, aesthetic, or environmental value to the Protected Property, and other damages.

(e) No Bond Required. Any action for injunctive relief or damages may be taken without Grantee being required to post bond or provide other security. Grantor is barred from using this provision regarding damages as an affirmative defense against Grantee's rights to injunctive relief.

(f) Emergency Enforcement. If Grantee, in its sole discretion, determines that a violation of this Easement has created circumstances requiring immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire; provided, that Grantee shall first make a reasonable attempt under the circumstances to give verbal/telephone notice to Grantor of the violation and proposed action.

(g) Costs of Enforcement. In the event Grantee must enforce the terms of this Easement, the costs of restoration necessitated by acts or omissions of Grantor or anyone under Grantor's control or authority or anyone in contractual privity with Grantor, in violation of the terms of this Easement, and Grantee's reasonable enforcement expenses, including attorney's fees, shall be borne by Grantor. In the event that Grantee secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of such restoration and Grantee's reasonable expenses shall be borne by Grantor. If Grantor ultimately

prevails in any judicial proceeding initiated by Grantee to enforce the terms of this Easement, each party shall bear its own attorneys' fees and costs.

(h) Grantee's Forbearance. Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor, its agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Grantee of such term or any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

(i) Waiver of Certain Defenses. Grantor acknowledges that it has carefully reviewed this Easement and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Grantor hereby waives any claim or defense it may have against Grantee under or pertaining to this Easement based upon waiver, laches, estoppel, or prescription.

(j) Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to obligate Grantor (or to entitle Grantee to bring any action against Grantor) to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or for acts of trespassers, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. Reasonable restoration of significant acts of destruction (more than 5 acres) to vegetation on the Protected Property that are incurred by ecotourism ventures, recreation hale activities, by guests or residents will be an obligation of the Grantor and must be conducted in consultation with and written approval of the Grantee.

(k) Estoppel Certificates. Grantee shall, within thirty (30) days of a request by Grantor, execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, that certifies, to the best of Grantee's knowledge, Grantor's compliance or lack thereof with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Protected Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within thirty (30) days of receipt of Grantor's written request.

9. Costs, Liabilities and Insurance, Taxes, Environmental Compliance and Indemnification.

(a) Costs, Legal Requirements, Liabilities and Insurance. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of any insurance coverage desired by Grantor. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Easement, and any such activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Protected Property free and clear of any contractual liens or encumbrances that may be senior to the terms and conditions of this Easement.

(b) Taxes. Grantor shall pay before delinquency all taxes, assessments

fees, and charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "Taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. If Grantor fails to pay any Taxes when due, Grantee is authorized, but in no event obligated, to make or advance such payment of Taxes upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the Taxes or the accuracy of the bill, statement or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the maximum rate allowed by law.

(c) Representations and Warranties. Grantor represents and warrants that to the best of Grantor's knowledge:

(i) There are no apparent or latent defects in or on the Protected Property, other than lava tubes;

(ii) Grantor and the Protected Property are in compliance with all federal, state, and local laws, regulations and requirements applicable to the Protected Property and its use;

(iii) Except as has been disclosed to Grantee by Grantor through the Environmental Site Assessments, Phase I dated April 23, 2010 and Phase II dated November 10, 2010, conducted on the property by Grantee and Grantor respectively, there has been no release, dumping, burying or abandonment on the Protected Property by Grantor or any other person, or migration from any source off site, on or to the Protected Property, of any substances, materials, or wastes which are defined as hazardous, toxic, dangerous, or harmful and/or as a pollutant by any federal, state or local law, regulation, statute, or ordinance. The Grantor shall seek a determination from the Hawaii Department of Health of no further action for sites disclosed through the Environmental Site Assessment, Phase I dated April 23, 2010;

(iv) There is no pending or threatened litigation affecting the Protected Property or any portion of the Protected Property that will materially impair the Conservation Values of any portion of the Protected Property. No civil or criminal proceedings have been instigated or are pending against the Grantor or its predecessors by government agencies or third parties arising out the alleged violations of environmental laws, and neither Grantor nor its predecessors in interest have received any notices of violation, penalties, claims, demand letters, or other notification relating to a breach of environmental laws.

(d) Remediation. If at any time, there occurs, or has occurred, a release in, on, or about the Protected Property of any substance now or hereafter defined, listed, or otherwise classified, pursuant to any federal, state, or local law, regulation, or requirement as, toxic or dangerous to the air, water, or soil, or in any other way harmful or threatening to human health or environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required.

(e) Control. Grantor shall not itself perform or knowingly permit any Prohibited Activity to be performed by Grantor, its agents or employees, or those within Grantor's ability reasonably control. Grantor will take reasonable steps to prevent, halt and/or enjoin any Prohibited Activity by a third party but shall not be liable for any Prohibited Activity performed or engaged in by any third party over whom Grantor has no ability to reasonably control. Nothing in this Easement shall be construed as giving rise to any right or ability in

Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability of Grantee to become an "operator" with respect to the Protected Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, or the environmental laws of the State of Hawaii.

(f) Indemnification. Grantor agrees to release and hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the personal representatives, heirs, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with:

(i) Grantor's failure to perform the obligations and covenants set forth in this Easement;

(ii) Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties acting within the scope of their authority; and

(iii) The obligations, covenants, representations and warranties in subsections (a) through (e) of this Section 9.

10. Subsequent Transfer or Extinguishment.

(a) Extinguishment. A court with jurisdiction may, if it determines that conditions upon or surrounding the Protected Property have changed so much that it becomes impossible or impracticable to fulfill the Purpose of the Easement, extinguish or modify this Easement in accordance with applicable State law, at the joint request of both Grantor and Grantee. If this Easement is extinguished by judicial proceeding, Grantee shall be entitled to the value of the Easement calculated in accordance with Section 10(b) below.

(b) Valuation. This Easement constitutes a real property interest immediately vested in Grantee. Easement Value Ratio shall mean the ratio of the value of this Easement on the effective date of the Easement, to the value of the Protected Property unencumbered by this Easement on the effective date of the Easement. The values shall be those values determined in Grantee's 2010 appraisal of the Protected Property. The Easement Value Ratio shall remain constant. If this Easement is extinguished as described in subsection (a) above, Grantor agrees to pay to Grantee the fair market value of the Easement, which the parties stipulate is the value of the Protected Property unencumbered by this Easement on the date of its extinguishment, multiplied by the Easement Value Ratio. The value of the Protected Property unencumbered by this Easement on the date of its extinguishment shall be determined by an appraisal by Grantee.

(c) Condemnation. If all or any of the Protected Property shall be taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interest in the Protected Property subject to the taking or in lieu purchase and all direct or incidental damages resulting

from the taking or in lieu purchase. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Except as provided by applicable law, Grantor and Grantee agree that Grantee's share of the balance of the amount recovered shall be an amount determined by multiplying the amount recovered by the Easement Value Ratio.

(d) Application of Proceeds. The Grantee's portion of the proceeds shall be used to further the purposes of the United States Forest Service Forest Legacy Program.

(e) Subsequent Transfers. Grantor agrees to:

(i) Incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including without limitation, a leasehold interest;

(ii) Describe this Easement in any executory contract for the transfer of any interest in the Protected Property;

(iii) Give written notice to the Grantee of the transfer of any interest in all or a portion of the Protected Property no later than fifteen (15) days before the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the transferee or the transferee's representative.

The failure of the Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

11. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that shall affect the qualification of this Easement or the status of Grantee under any applicable laws, including HRS Chapter 198, Section 170(h) of the Internal Revenue Code of 1986, and the Forest Legacy Program (P.L. 101-624; 104 Stat. 3359), as amended (or any successor provisions(s) then applicable). Any such amendment shall be consistent with the Purpose of this Easement, shall not affect its perpetual duration, shall be in accordance with the Assignment and Succession referred to in Section 12 below and shall be recorded in the State of Hawai'i Bureau of Conveyances.

12. Assignment and Succession.

(a) Assignment. This Easement is transferable, but Grantee's rights and obligations under this Easement may be assigned only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under HRS Chapter 198 (or any successor provision(s) then applicable) and in accordance with the provisions of the Assignment of Rights referenced in subsection (b) below. As a condition of such transfer, the successor shall agree to exercise its rights under the assignment consistent with the terms and Purpose of this Easement.

(b) Succession. If at any time it becomes impossible for Grantee to ensure compliance with the covenants, terms, conditions and restrictions contained in this Easement, or

Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable) or to be authorized to acquire and hold conservation easements under HRS Chapter 198 (or any successor provision(s) then applicable), then Grantee's rights and obligations under this Easement shall be transferred to a successor approved by Grantor and Grantee or, failing such joint approval, shall vest in such organization as a court having jurisdiction shall direct, pursuant to the applicable Hawaii law and the Internal Revenue Code of 1986, as amended (or any successor provision(s) then applicable), and with due regard to the terms and Purpose of this Easement.

13. Recordation. Grantee or Grantor shall record this instrument in a timely fashion in the official records of the Bureau of Conveyances, DLNR, State of Hawaii, and in any other appropriate jurisdictions, and Grantee may re-record it at any time as may be required to preserve its rights in this Easement.

14. Reversionary Clause. Notwithstanding any other provision to the contrary, the Grantee acknowledges that this Easement was acquired with Federal funds under the Forest Legacy Program (P.L. 101-624; 104 Stat. 3359) and that the interest acquired cannot be sold, exchanged, or otherwise disposed, except as provided in Section 12, unless the United States is reimbursed the market value of the interest in land at the time of disposal as calculated in accordance with Section 10(b). Provided however, the Secretary of Agriculture may exercise discretion to consent to such sale or extinguishment upon the State's tender of equal valued consideration acceptable to the Secretary.

15. General Provisions.

(a) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Hawaii.

(b) Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the terms and Purpose of this Easement and the policy and purpose of Hawaii Revised Statutes Chapter 198. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the terms and Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements between Grantor and Grantee relating to the Protected Property, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 11.

(e) No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Grantor's title in any respect.





(f) "Grantor" - "Grantee". The terms "Grantor" and "Grantee," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include, respectively the above-named Grantor, and its personal representatives, heirs, successors, and assigns, and the above-named Grantee, its personal representatives, successors and assigns.

(g) Successors and Assigns. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.

(h) Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(i) Counterparts. The parties may execute this instrument in two or more counterparts, which shall be signed by both parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

(j) Headings and Captions. The headings, subheadings and captions used in this Easement are for convenience of reference only and are not to be used to construe, interpret, define, or limit the sections to which they may pertain.

(k) Conservation Easement. The conveyance of this Easement is a conveyance of an interest in real property and constitutes a "conservation easement" as defined in HRS Section 198-1.

(l) Easement Runs With Protected Property. This Easement runs with the land and shall be binding upon Grantor's personal representatives, heirs, successors, and assigns in perpetuity.

16. Schedule of Exhibits. The following Exhibits are attached to and incorporated into this Easement by this reference:

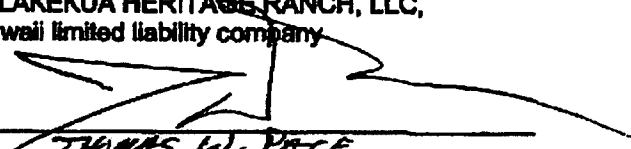
- (a) Legal Description and Survey of Protected Property Subject to Easement
- (b) Site Maps

Executed and effective the day and year first above written.

IN WITNESS WHEREOF, the STATE OF HAWAII, by it Board of Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

Approved by the Board  
of Land and Natural  
Resources at its meeting  
held on April 21, 2011.

KEALAKEKUA HERITAGE RANCH, LLC,  
a Hawaii limited liability company

By:   
Its: THOMAS W. PRICE  
MANAGER

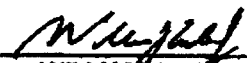
"Grantor"

APPROVED AS TO FORM:

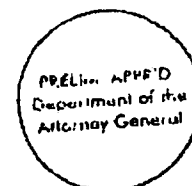
  
JULIE H. CHINA  
Deputy Attorney General

Dated: June 3, 2011

THE STATE OF HAWAII

By:   
WILLIAM J. AILA, JR.  
Chairperson  
Board of Land and Natural Resources

"Grantee"



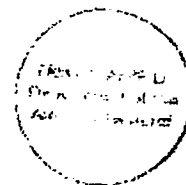
STATE OF HAWAII                    )  
  )  
COUNTY OF HAWAII                )                SS.

On this 3 day of June, 2011, before me personally appeared Thomas W. Pace, 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 capacities shown, having been duly authorized to execute such instrument in such capacities.



*Suzette Kalan*  
Notary Public, State of Hawaii  
Printed Name: *Suzette Kalan*  
My Commission Expires: *8/24/2012*

Doc. Date: undated # Pages: 38  
Name: Sydele Kalan 3rd Circuit  
Doc. Description: Deed of  
conservation Easement  
Sydele Kalan 4/03/11  
Signature \_\_\_\_\_ Date \_\_\_\_\_  
NOTARY CERTIFICATION





STATE OF HAWAII  
SURVEY DIVISION  
DEPT. OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU

C.S.F. No. 25,081  
H.S.S. Plat 221

May 26, 2011

CONSERVATION EASEMENT

Kalama and Kealakekua, South Kona, Island of Hawaii, Hawaii

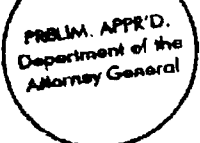
Comprising the following:

- A. Portion of Royal Patents 3607 and 7533, Land Commission Award 8452, Apana 9 to A. Keohokalole.
- B. Portion of Grant 5206 to Francisco Deniz.

Beginning at the southwest corner of this easement and at the southeast corner of Grant 1613 to C.B. Kalaau, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU OHAU" being 10,684.07 feet South and 23,991.17 feet East, thence running by azimuths measured clockwise from True South:-

- 1. 149° 06' 50" 2288.90 feet along Grant 1613 to C.B. Kalaau;
- 2. 241° 28' 807.32 feet along the remainder of Grant 5206 to Francisco Deniz;
- 3. 339° 38' 42" 134.51 feet along the remainder of Grant 5206 to Francisco Deniz;
- 4. 311° 46' 03" 151.35 feet along the remainder of Grant 5206 to Francisco Deniz;
- 5. 326° 28' 51" 178.76 feet along the remainder of Grant 5206 to Francisco Deniz;

EXHIBIT "A"



C.S.F. No. 25,081

May 26, 2011

6. Thence along the remainder of Grant 5206 to Francisco Deniz on a curve to the left with a radius of 195.00 feet, the chord azimuth and distance being:  
290° 15' 32" 230.46 feet;
7. 254° 02' 13" 140.17 feet along the remainder of Grant 5206 to Francisco Deniz;
8. 238° 48' 21" 163.79 feet along the remainder of Grant 5206 to Francisco Deniz;
9. 259° 27' 29" 158.88 feet along the remainder of Grant 5206 to Francisco Deniz;
10. 254° 10' 18" 209.30 feet along the remainder of Grant 5206 to Francisco Deniz;
11. 245° 45' 13" 257.60 feet along the remainder of Grant 5206 to Francisco Deniz;
12. 242° 17' 44" 217.93 feet along the remainder of Grant 5206 to Francisco Deniz;
13. 228° 10' 58" 153.55 feet along the remainder of Grant 5206 to Francisco Deniz;
14. 213° 14' 52" 175.45 feet along the remainder of Grant 5206 to Francisco Deniz;
15. 221° 53' 49" 265.63 feet along the remainder of Grant 5206 to Francisco Deniz;
16. 240° 08' 27" 230.38 feet along the remainder of Grant 5206 to Francisco Deniz;
17. 222° 54' 20" 329.31 feet along the remainder of Grant 5206 to Francisco Deniz;
18. 234° 10' 43" 290.39 feet along the remainder of Grant 5206 to Francisco Deniz;
19. 223° 26' 29" 179.23 feet along the remainder of Grant 5206 to Francisco Deniz;



C.S.F. No. 25,081

May 26, 2011

- |                  |   |
|------------------|---|
| 20. 196° 32' 56" | 230.83 feet along the remainder of Grant 5206 to Francisco Deniz;   |
| 21. 229° 53' 26" | 129.08 feet along the remainder of Grant 5206 to Francisco Diaz and along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 22. 285° 19' 14" | 150.13 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;   |
| 23. 238° 43' 31" | 191.07 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;   |
| 24. 225° 56' 16" | 169.78 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;   |
| 25. 260° 26' 15" | 76.74 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;  |
| 26. 271° 45' 41" | 219.19 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;   |
| 27. 267° 28' 16" | 70.97 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;  |
| 28. 254° 54' 39" | 269.28 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;   |
| 29. 265° 06' 24" | 273.32 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;   |
| 30. 259° 31' 08" | 192.02 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;   |
| 31. 271° 08' 55" | 164.13 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;   |
| 32. 273° 03' 19" | 224.37 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;   |
| 33. 275° 36' 18" | 174.02 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;   |

PRELIM APPR'D.  
Department of the  
Attorney General

C.S.F. No. 25,081

May 26, 2011

34. Thence along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole on a curve to the right with a radius of 155.00 feet, the chord azimuth and distance being:  
297° 57' 22" 117.89 feet;
35. 320° 18' 26" 138.34 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
36. 289° 03' 36" 84.66 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
37. 275° 23' 17" 110.92 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
38. 296° 08' 40" 124.82 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
39. 326° 18' 17" 221.95 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
40. 274° 29' 27" 148.51 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
41. 238° 24' 46" 99.02 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
42. 244° 21' 40" 63.61 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
43. 227° 31' 57" 152.02 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
44. 246° 38' 32" 200.04 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
45. 257° 36' 57" 158.97 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
46. 252° 59' 42" 231.30 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
47. 252° 59' 42" 132.46 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;

PRELIM. APP'D.  
Department of the  
Attorney General

C.S.F. No. 25,081

May 26, 2011

48. 263° 34' 51" 144.06 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
49. 275° 17' 29" 126.50 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
50. 261° 13' 06" 262.59 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
51. Thence along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A.  
Keohokalole on a curve to the left with a radius  
of 145.00 feet, the chord azimuth and distance  
being:  
243° 43' 23.5" 87.18 feet;
52. 226° 13' 41" 183.72 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
53. 235° 13' 58" 225.67 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
54. 241° 20' 07" 334.38 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
55. 283° 47' 47" 70.47 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
56. Thence along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A.  
Keohokalole on a curve to the left with a radius  
of 165.00 feet, the chord azimuth and distance  
being:  
252° 47' 57.5" 169.95 feet;
57. 221° 48' 08" 104.00 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
58. 235° 36' 49" 130.11 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
59. 251° 35' 04" 259.00 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
60. 266° 27' 33" 107.20 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;

PRELIM. APPR'D.  
Department of the  
Attorney General



C.S.F. No. 25,081

May 26, 2011

61. 273° 22' 47" 244.49 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
62. 268° 00' 58" 166.02 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
63. 278° 33' 40" 159.03 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
64. 288° 58' 57" 115.47 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
65. 316° 40' 12" 264.25 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
66. 307° 00' 53" 52.44 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
67. 262° 06' 02" 183.66 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
68. 283° 46' 56" 108.03 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
69. 275° 57' 58" 152.32 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
70. Thence along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A.  
Keohokalole on a curve to the right with a  
radius of 25.00 feet, the chord azimuth and  
distance being:  
329° 51' 58.5" 40.40 feet;
71. 23° 45' 59" 91.73 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
72. 349° 36' 43" 85.34 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
73. 325° 13' 56" 120.76 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
74. 298° 16' 43" 71.86 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;

PRELIM. APPR'D.  
Department of the  
Attorney General

C.S.F. No. 25,081

May 26, 2011

- |                  |  |
|------------------|--|
| 75. 294° 50' 48" | 146.43 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 76. 313° 54'     | 308.40 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 77. 293° 23' 52" | 93.20 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole;  |
| 78. 276° 08' 16" | 192.86 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 79. 270° 39' 14" | 122.33 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 80. 286° 13' 16" | 437.40 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 81. 276° 49' 19" | 171.70 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 82. 290° 48' 12" | 188.80 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 83. 284° 26' 06" | 216.35 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 84. 278° 01' 17" | 139.31 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 85. 251° 36' 14" | 191.60 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 86. 238° 07' 34" | 144.20 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 87. 256° 18' 19" | 112.79 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 88. 279° 01' 56" | 106.59 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 89. 289° 46' 43" | 151.71 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |

PRELIM. APPR'D.  
Department of the  
Attorney General

C.S.F. No. 25,081

May 26, 2011

90. 275° 24' 41"	143.02 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
91. 257° 33' 37"	183.64 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
92. 244° 24' 31"	141.41 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
93. 262° 39' 10"	342.05 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
94. 258° 19' 02"	156.48 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
95. 261° 47' 27"	310.75 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
96. 280° 10' 17"	494.33 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
97. 266° 46' 06"	69.87 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
98. 260° 38' 54"	529.58 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
99. 265° 26' 39"	117.26 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
100. 250° 41' 53"	143.35 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
101. 268° 33' 38"	71.48 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
102. 254° 26' 53"	98.07 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
103. 254° 45' 57"	173.61 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
104. 164° 45' 57"	60.00 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;

C.S.F. No. 25,081

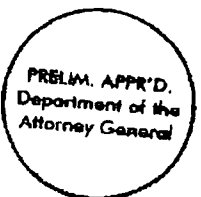
May 26, 2011

- |                   |  |
|-------------------|--|
| 105. 120° 17' 17" | 252.65 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 106. 168° 58' 55" | 351.31 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 107. 119° 18' 22" | 228.49 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 108. 184° 59' 42" | 440.67 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 109. 147° 46' 38" | 208.48 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 110. 151° 39' 08" | 261.47 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 111. 147° 48' 34" | 233.57 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 112. 177° 32' 13" | 414.25 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 113. 164° 11' 12" | 729.70 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 114. 278° 28' 39" | 686.97 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 115. 277° 30' 43" | 490.06 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 116. 267° 09' 37" | 643.72 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 117. 293° 19' 29" | 168.98 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 118. 297° 06' 11" | 632.33 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 119. 180° 45'     | 255.00 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |

C.S.F. No. 25,081

May 26, 2011

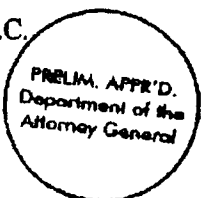
- |               |  |
|---------------|--|
| 120. 179° 15' | 625.00 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 121. 169° 30' | 403.00 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 122. 175° 40' | 300.00 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 123. 174° 20' | 205.00 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 124. 182° 30' | 310.00 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 125. 83° 00'  | 81.00 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole;  |
| 126. 179° 40' | 783.00 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 127. 177° 30' | 130.00 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 128. 176° 50' | 515.00 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 129. 60° 00'  | 60.00 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole;  |
| 130. 148° 00' | 591.00 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 131. 153° 00' | 590.00 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 132. 148° 00' | 500.00 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 133. 157° 00' | 290.00 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 134. 166° 00' | 240.00 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |



C.S.F. No. 25,081

May 26, 2011

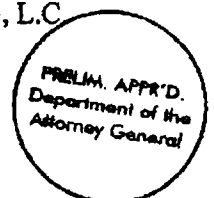
- |                  |   |
|------------------|---|
| 135. 170° 00'    | 315.00 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole;  |
| 136. 83° 45' 45" | 1125.65 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 137. 54° 45'     | 403.38 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole;  |
| 138. 63° 30'     | 625.00 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole;  |
| 139. 56° 00'     | 368.00 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole;  |
| 140. 59° 00'     | 212.00 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole;  |
| 141. 68° 00'     | 145.00 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole;  |
| 142. 74° 00'     | 595.00 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole;  |
| 143. 91° 20'     | 468.00 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole;  |
| 144. 62° 30'     | 240.00 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole;  |
| 145. 70° 05' 56" | 2421.57 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 146. 13° 48' 25" | 1275.75 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole; |
| 147. 67° 49' 27" | 388.53 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole;  |
| 148. 66° 16' 09" | 470.10 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole;  |
| 149. 72° 01' 21" | 312.25 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole;  |



C.S.F. No. 25,081

May 26, 2011

- |      |              |  |
|------|--------------|--|
| 150. | 80° 34' 48"  | 389.19 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole; |
| 151. | 75° 06' 07"  | 99.67 feet along the remainder of R.P.s 3607 and 7533,<br>L.C. Aw. 8452, Ap. 9 to A. Keohokalole;  |
| 152. | 81° 51' 14"  | 247.64 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole; |
| 153. | 91° 43' 46"  | 397.64 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole; |
| 154. | 83° 13' 09"  | 408.75 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole; |
| 155. | 77° 24' 28"  | 642.47 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole; |
| 156. | 110° 59' 54" | 137.37 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole; |
| 157. | 116° 59' 52" | 252.84 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole; |
| 158. | 85° 39' 27"  | 233.17 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole; |
| 159. | 67° 39' 28"  | 321.36 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole; |
| 160. | 46° 28' 07"  | 219.29 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole; |
| 161. | 32° 29' 46"  | 318.85 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole; |
| 162. | 50° 47' 01"  | 234.59 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole; |
| 163. | 64° 22' 55"  | 198.30 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole; |
| 164. | 74° 19' 37"  | 508.51 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole; |



C.S.F. No. 25,081

May 26, 2011

165. 63° 08' 30" 509.37 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
166. 76° 34' 47" 182.46 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
167. 110° 03' 59" 98.99 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
168. 242° 00' 256.51 feet along R.P.s 4386 and 7532, L.C. Aw. 8452, Ap. 10 to Keohokalole;
169. 236° 53' 50" 16,829.25 feet along R.P.s 4386 and 7532, L.C. Aw. 8452, Ap. 10 to Keohokalole;
170. 293° 30' 2376.00 feet along Grant 3155 to H.N. Greenwell;
171. 244° 30' 3082.83 feet along Grant 3155 to H.N. Greenwell;
172. 293° 30' 3286.45 feet along Grant 3155 to H.N. Greenwell;
173. 281° 10' 2739.00 feet along Grant 3155 to H.N. Greenwell;
174. 265° 00' 2574.00 feet along Grant 3155 to H.N. Greenwell;
175. 274° 08' 11" 5800.94 feet along Grant 3155 to H.N. Greenwell;
176. 256° 40' 5644.00 feet along R.P. 7844, L.C. Aw. 7715, Ap. 12 to Lota Kamehameha;
177. 357° 00' 2240.00 feet along R.P. 7844, L.C. Aw. 7715, Ap. 12 to Lota Kamehameha;
178. 355° 10' 4826.50 feet along R.P. 7844, L.C. Aw. 7715, Ap. 12 to Lota Kamehameha;
179. 344° 10' 2392.00 feet along R.P. 7844, L.C. Aw. 7715, Ap. 12 to Lota Kamehameha;
180. 13° 15' 2720.00 feet along R.P. 7844, L.C. Aw. 7715, Ap. 12 to Lota Kamehameha;
181. 36° 50' 4455.00 feet along R.P. 7844, L.C. Aw. 7715, Ap. 12 to Lota Kamehameha;



C.S.F. No. 25,081

May 26, 2011

182. 86° 30' 4818.00 feet along R.P. 7844, L.C. Aw. 7715, Ap. 12 to Lota Kamehameha;
183. 102° 45' 4462.50 feet along R.P. 7844, L.C. Aw. 7715, Ap. 12 to Lota Kamehameha;
184. 95° 29' 21" 28,060.00 feet along R.P. 4513, Mahele Aw. 32 to Kanele;
185. 21° 06' 40" 2468.20 feet along R.P. 4513, Mahele Aw. 32 to Kanele;
186. 47° 11' 40" 1980.70 feet along R.P. 4513, Mahele Aw. 32 to Kanele to the point of beginning and containing a GROSS AREA OF 9372.76 ACRES and a NET AREA of 9017.97 ACRES after excluding therefrom Lot 1-B (99.79 Acres) and Exclusive Parcel D (255.00 Acres) as shown on plan attached hereto and made a part hereof and more particularly described as follows:

LOT 1-B: Being a portion of Royal Patents 3607 and 7533, Land Commission Award 8452, Apana 9 to Keohokalole.

Beginning at the northeast corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU OHAU" being 448.93 feet South and 54,694.83 feet East, thence running by azimuths measured clockwise from True South:-

1. 340° 56' 30" 146.71 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
2. 333° 17' 254.31 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
3. 352° 03' 30" 286.65 feet along the remainder of R.P.s 3607 and 7533, L.C. Aw. 8452, Ap. 9 to A. Keohokalole;

C.S.F. No. 25,081

May 26, 2011

- |                  |  |
|------------------|--|
| 4. 350° 06' 30"  | 76.22 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole;  |
| 5. 343° 45'      | 43.75 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole;  |
| 6. 5° 09'        | 84.24 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole;  |
| 7. 21° 25'       | 173.19 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole; |
| 8. 25° 56' 30"   | 99.28 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole;  |
| 9. 46° 05'       | 164.77 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole; |
| 10. 344° 48' 30" | 7.21 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole;   |
| 11. 298° 53'     | 498.62 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole; |
| 12. 28° 14'      | 509.38 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole; |
| 13. 4° 09'       | 396.81 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole; |
| 14. 17° 08' 41"  | 291.54 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole; |
| 15. 104° 30' 30" | 368.02 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole; |
| 16. 137° 46'     | 907.94 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole; |
| 17. 94° 17'      | 515.57 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole; |
| 18. 88° 05'      | 87.99 feet along the remainder of R.P.s 3607 and 7533, L.C.<br>Aw. 8452, Ap. 9 to A. Keohokalole;  |

C.S.F. No. 25,081

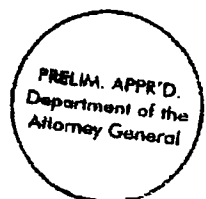
May 26, 2011

19. 101° 35' 339.50 feet along the remainder of R.P.s 3607 and 7533, L.C.  
Aw. 8452, Ap. 9 to A. Keohokalole;
20. 140° 41' 30" 360.62 feet along the remainder of R.P.s 3607 and 7533, L.C.  
Aw. 8452, Ap. 9 to A. Keohokalole;
21. 197° 36' 30" 320.14 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
22. 219° 37' 30" 131.36 feet along the remainder of R.P.s 3607 and 7533, L.C.  
Aw. 8452, Ap. 9 to A. Keohokalole;
23. 163° 29' 30" 204.08 feet along the remainder of R.P.s 3607 and 7533, L.C.  
Aw. 8452, Ap. 9 to A. Keohokalole;
24. 172° 55' 30" 318.78 feet along the remainder of R.P.s 3607 and 7533, L.C.  
Aw. 8452, Ap. 9 to A. Keohokalole;
25. 194° 25' 537.84 feet along the remainder of R.P.s 3607 and 7533, L.C.  
Aw. 8452, Ap. 9 to A. Keohokalole;
26. 270° 00' 1835.28 feet along the remainder of R.P.s 3607 and 7533, L.C.  
Aw. 8452, Ap. 9 to A. Keohokalole to the point  
of beginning and containing an AREA OF 99.79  
ACRES.

EXCLUSION PARCEL D: Being a portion of Royal Patents 3607 and 7533, Land  
Commission Award 8452, Apana 9 to Keohokalole.

Beginning at the southwest corner of this parcel of land, the coordinates of  
said point of beginning referred to Government Survey Triangulation Station "PUU OHAU"  
being 4703.10 feet South and 42,634.04 feet East, thence running by azimuths measured  
clockwise from True South:-

1. 183° 00' 1180.00 feet along the remainder of R.P.s 3607 and 7533, L.C.  
Aw. 8452, Ap. 9 to A. Keohokalole;



C.S.F. No. 25,081

May 26, 2011

2. 153° 00' 1230.00 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
3. 258° 30' 120.00 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
4. 264° 00' 195.00 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
5. 309° 00' 807.00 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
6. 233° 30' 1030.00 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
7. 245° 00' 150.00 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
8. 275° 00' 275.00 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
9. 303° 00' 102.00 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
10. 229° 30' 280.00 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
11. 239° 00' 110.00 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
12. 244° 00' 125.00 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
13. 245° 30' 410.00 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
14. 249° 00' 200.00 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
15. 240° 00' 190.00 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
16. 233° 00' 215.00 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;

C.S.F. No. 25,081

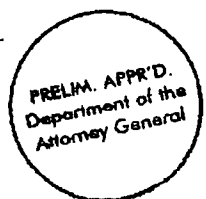
May 26, 2011

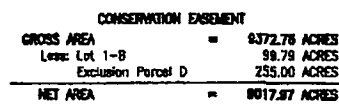
17. 225° 00' 500.00 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
18. 223° 30' 427.47 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
19. 359° 30' 4307.41 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
20. 88° 30' 806.10 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
21. 89° 14' 59" 1110.00 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
22. 183° 00' 415.00 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole;
23. 93° 00' 1875.00 feet along the remainder of R.P.s 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole  
to the point of beginning and containing an  
AREA OF 255.00 ACRES.

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

By: Glenn J. Kodani  
Glenn J. Kodani  
Land Surveyor ry

Compiled from map and desc. furn. by  
Pattison Land Surveying, Inc. Said map  
and desc. have been examined and checked  
as to form and mathematical correctness but  
not on the ground by the Survey Division.





For Description See C.S.F. No. 25,081

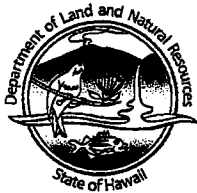
**H.S.S. PLAT 221**

**EXHIBIT "B"**

FILED IN 1968  
OCT 17 1968  
NEW YORK  
FOR NEW YORK  
158-247-Per. 01

Exhibit B. Violation Documentation Letter to Kona Hills LLC

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

NOV 22 2019

2356  
SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
FIRST DEPUTY

KALEO L. 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

CERTIFIED RETURN RECEIPT REQUEST

Mark M. McCormick  
Kona Hills LLC  
81-964 Haleki'i Street  
Building 3, Suites A&B  
Kealahou, Hawaii 96750

Dear Mr. McCormick,

As a follow-up to our meeting on August 28, 2019, we would like to discuss a way to repair the damage done to the Kealahou Mountain Reserve (KMR) property, Tax Map Key (3) 8-2-012:001, resulting from road construction activity by Kona Hills LLC along the KMR property boundary.

The Division of Forestry and Wildlife (DOFAW), Department of Land and Natural Resources, holds a conservation easement over the KMR property. DOFAW was notified of a possible conservation easement violation on May 31, 2019 and followed up with a visit to the KMR property on June 18, 2019. At that time, DOFAW staff observed an encroachment by Kona Hills LLC onto KMR property and violations of the terms and conditions of the conservation easement. A cease and desist letter dated July 1, 2019, was sent to Kona Hills LLC and we met on August 28, 2019. At that meeting, representatives from Kona Hills LLC denied any encroachment; however, they agreed to follow-up on several matters discussed:

- Kona Hills would re-survey and flag the Kona Hills LLC and the KMR property boundary.
- Kona Hills would provide DOFAW and KMR with County permits that it had obtained for grading and grubbing, and for road construction along the KMR boundary.
- Kona Hills would provide DOFAW and KMR with the engineering designs for the road construction, particularly as related to Kona watercourses 6 & 7.

Survey marking of the boundary occurred on September 12 and 13, 2019, with representatives from Hawaiian Islands Land Trust (HILT), HCC Farms LLC, KMR, and Kona Hills LLC present. HCC Farms LLC owns a neighboring property whose conservation easement held by HILT might also have been damaged by the road construction activity. DOFAW staff documented conservation easement violations through measurements and photos on September 12, 2019. See Exhibit A. Wes Thompson Associates prepared a survey map for KMR which

documents the extent of the encroachment into the KMR property. See Exhibit B. Although Kona Hills LLC did not provide documents responsive to the above second and third bullet points, we were able to obtain copies of permits, plans, and engineering designs from the Hawai'i County Planning office for work on the Kona Hills LLC property.

Summary of Conservation Easement Violations - The conservation easement restricts activities on the KMR property in order to protect conservation values including native forest ecosystems, forest resources (trees), scenic open space, and recreational, research and educational values. The following conservation easement provisions were violated by Kona Hills LLC:

- (1) The road construction encroaches over the KMR property boundary and into the conservation easement area in numerous locations. Survey maps, completed after the September 12-13, 2019 survey and attached as Exhibit B, calculate the encroachment area as 1.77 acres of the KMR property. Road construction is restricted by the conservation easement and requires consultation and/or authorization by DOFAW (Easement Section 3(f)(iv)).
- (2) The road construction has altered the surface of the KMR property with grading and grubbing. Section 4(c) of the conservation easement limits "alteration of the surface of the [KMR property], including, without limitation, the excavation or removal of soil, sand, gravel, rock, lava ... ". The photos attached as Exhibit A show numerous instances on the encroachment altering the surface of the KMR property.
- (3) The road construction created numerous water drainage channels on the KMR property which will cause soil erosion in violation of Section 4(d) of the conservation easement. In addition, South Kona watercourses 6 and 7 may have been altered in violation of Section 4(e) of the conservation easement.
- (4) Mature native ohia trees on the KMR property were damaged during the road construction process. Injuries to the roots of the trees and piling excavated material next to the trees is likely to cause these trees to die, which negatively impacts the conservation values protected by the conservation easement.

#### Resolution of Conservation Easement Violations

Please contact us to discuss corrective measures to repair damage to the KMR property. At a minimum, corrective action must include: (i) re-engineering the boundary road to resolve erosion on the KMR property; (ii) restoring KMR land altered by the road construction, and (iii) restoring native trees on the KMR property harmed by the road construction. We request that these corrective actions occur prior to or in conjunction with your planned fencing activity along the joint boundary.

Corrective action to the KMR property is independent of any action you might need to take to resolve violations of Federal, State, or County laws or regulations. First, your County permit only authorized grubbing on Kona Hills LLC property, when both grubbing and grading was done on both the Kona Hills LLC and the KMR property. Second, on our September 12, 2019



visit, we noted damage to a historic rock wall on the KMR property as a result of the road construction activities. State Historic Preservation compliance only covers activities on the Kona Hills property and does not extend to damage done to the historic rock wall. Third, Kona Hills LLC does not have a National Pollution Discharge permit, as required by the State Department of Health Clean Water Branch for construction activities, including clearing, grading, and excavation, that results in the disturbance of one or more acres of total land area. We request that Kona Hills LLC work with the County, the State Historic Preservation Division, and the State Department of Health to rectify possible violations which have occurred on KMR property.

We are hopeful that this matter can be resolved quickly and amicably. Please contact Tanya Rubenstein at (808) 587-0027 or by email at [Tanya.Rubenstein@hawaii.gov](mailto:Tanya.Rubenstein@hawaii.gov) with any questions regarding this letter and to discuss corrective actions.

This letter and offer to reach a resolution set forth herein are made subject to and pursuant to Rule 408 of the Hawaii Rules of Evidence to settle and compromise the ongoing dispute as indicated above. Nothing herein should be construed as an admission of any kind by DOFAW or the State of Hawai'i, and should the dispute not be resolved, DOFAW and the State reserve any and all of their rights in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Smith', with a stylized flourish at the end.

DAVID G. SMITH  
Administrator

Attachments:

Exhibit A: Photos of violation area with map

Exhibit B: Survey Map of Easement Violation Area

cc: Darwin Inman

HILT

KMR

Robert G. Klein Esq.

EXHIBIT A: Kealakakua Mountain Reserve (DoTerra) Conservation Easements (CE) Violation  
Photos/Measurements from Site visit 9/12/2019 done by DOFAW staff



Boundary pin on the left  
(reinstalled by surveyor on  
9/12/2019).

Encroachment into KMR  
property/conservation easement  
being measured.

Photo taken from road by boundary  
pin looking to southeast



#29 on map

Triangular area bulldozed (not part of road)

42 ft encroachment into boundary (boundary pin in red circle)

damage to historic rock wall on KMR property







#32 Encroachment of 19.5 ft. Grading over 5 ft tall.  
Boundary pin in red circle



#36. water diversion  
136 ft. encroachment





#38

Mature ohia tree with roots damaged by bulldozer  
Fill material pushed next to tree  
10-15 ft encroachment onto property (pin in red circle)





#40 bulldozer damage to trunk of mature ohia tree. Fill materials pushed onto ohia





Surveyors marking boundary. Boundary on flagged pole with bulldozing encroachment visible on left



#42. Surveyor at boundary pin with encroachment (bulldozed water diversion in background); 200 ft encroachment





#43. 142 ft water diversion (between ohia trees).  
Surveyor are at boundary and encroachment is to their left  
Bulldozed water diversion encroachment on photo to right







#44. Piled material/debris from road construction pushed onto KMR property, up against ohia trees  
Boundary pins in red  
Photo below looking makai at piled material and boundary.





CE Violation – Kona Hills LLC encroachment into KMR property and CE area (next 4 pages of photos); Photos taken June 18, 2019



Approximately 4 Trenches were bulldozed into the CE from the road, potentially to divert water from the road. These varied in distance from approximately 50-150 ft into the property (photo to left). Bulldozing occurred up to native trees and piled fill material to the side on the CE property (photo to right). Photos are of view to southeast from road



Exhibit B. Violation Documentation Letter to Kona Hills LLC

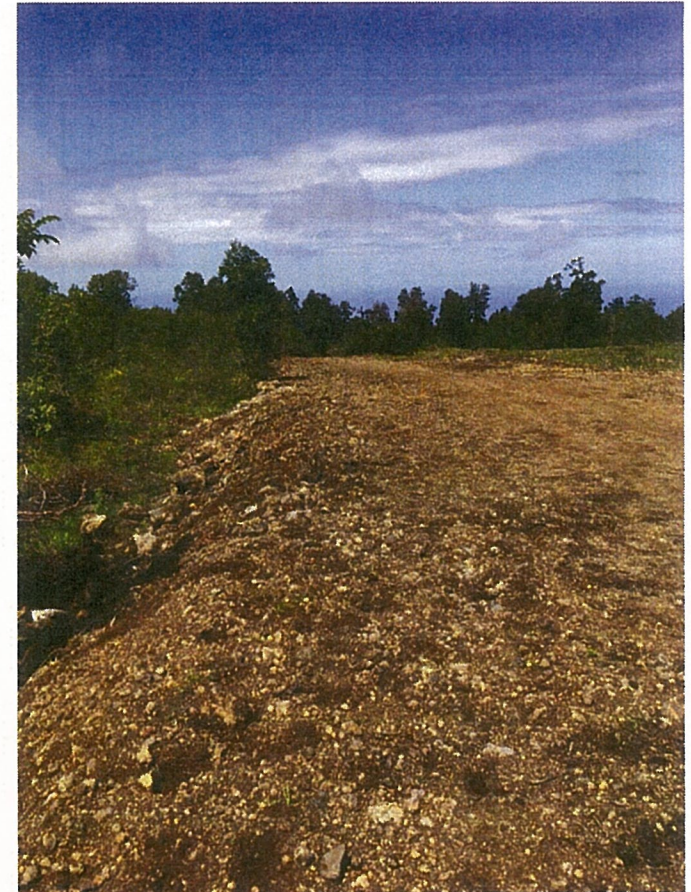


Fill material piled to edge of large, mature ohia tree. Bulldozing may have impacted roots of tree (photo to left). Trench into CE area (photo above). Photos view to southeast.





Exhibit B. Violation Documentation Letter to Kona Hills LLC



Grading and grubbing occurred where the roadwork encroached onto the KMR property and CE. Photo to left looking to northeast. Photo to right looking southeast.



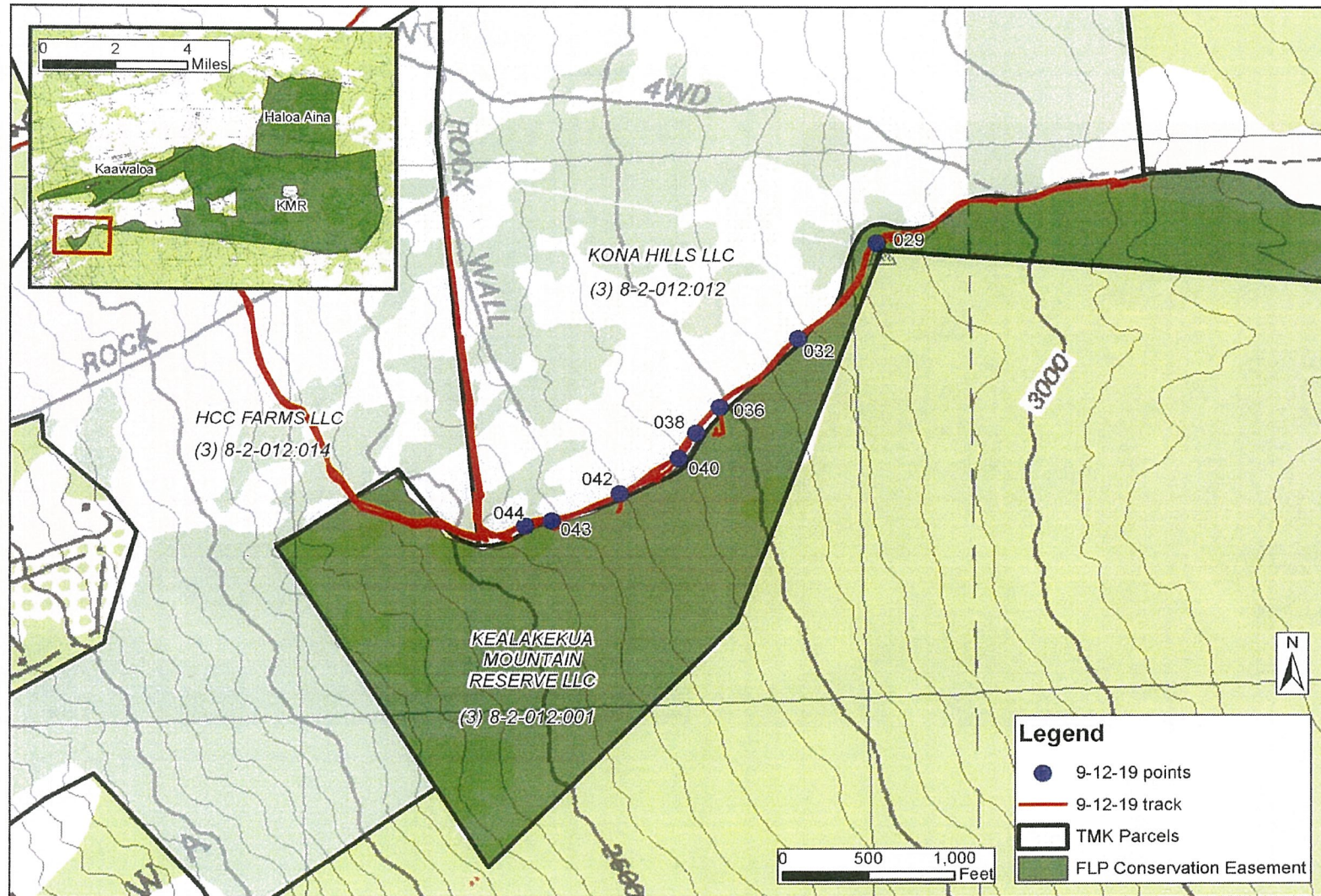
**Exhibit B. Violation Documentation Letter to Kona Hills LLC**



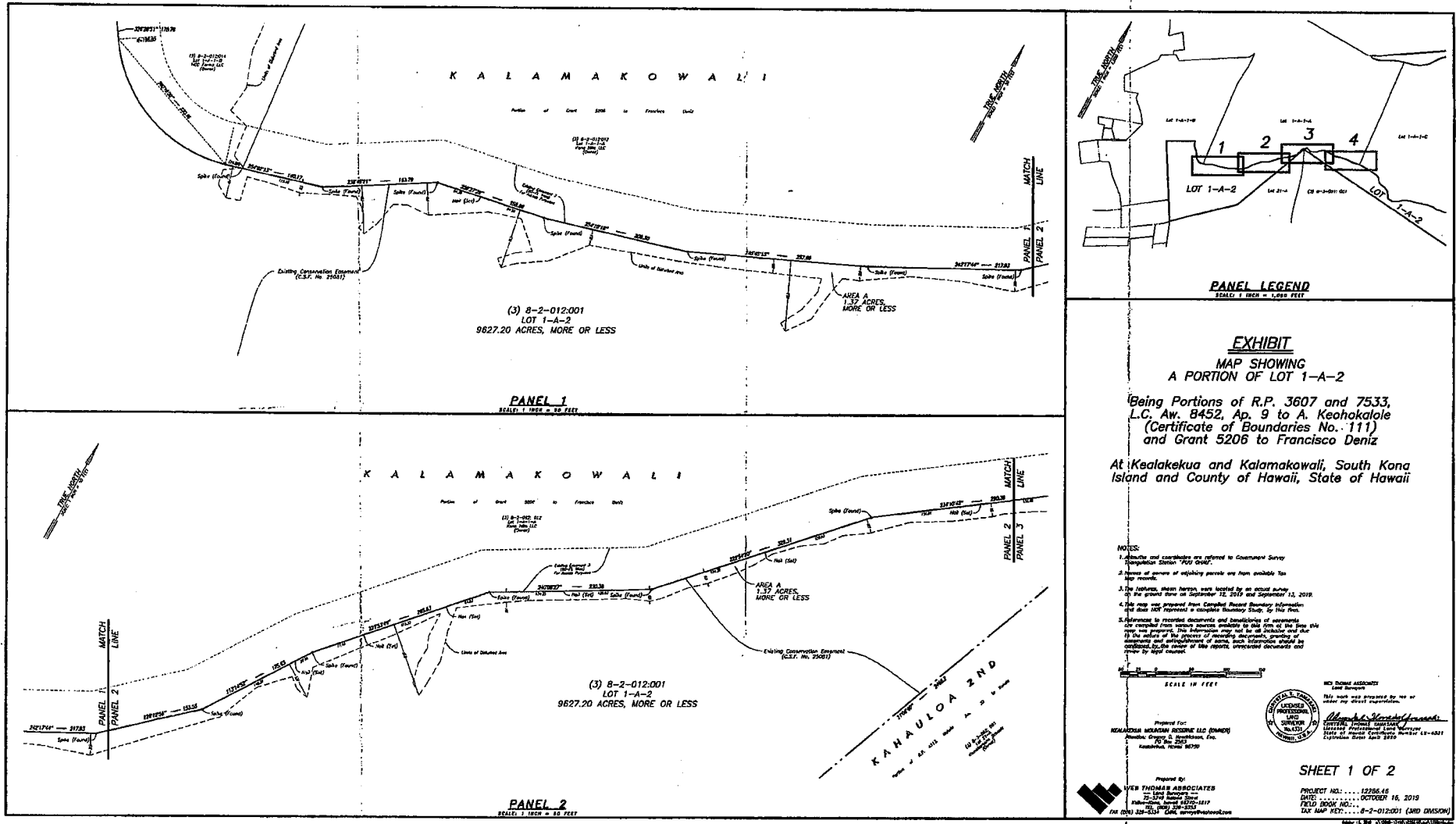
Photos looking northeast. Photo on right is a top of the encroachment area (corner of Kona Hills LLC and KMR property boundary).



KMR Site Visit 9-12-19



**Exhibit B. Violation Documentation Letter to Kona Hills LLC**



**KALAMAKOWALI**

Portion of R.P. 3607 and 7533, L.C. No. 8452, Ad. 9 to A. Kechakakole (Certificate of Boundaries No. 111) and Grant 5206 to Francisco Deniz

**KEALAHAKUA**

Portion of R.P. 3607 and 7533, L.C. No. 8452, Ad. 9 to A. Kechakakole (Certificate of Boundaries No. 111)

**AREA A**  
1.11 ACRES, MORE OR LESS

**AREA B**  
0.10 ACRES, MORE OR LESS

**AREA C**  
0.11 ACRES, MORE OR LESS

**AREA D**  
0.10 ACRES, MORE OR LESS

**AREA E**  
0.10 ACRES, MORE OR LESS

**AREA F**  
0.10 ACRES, MORE OR LESS

**LOT 1-A-2**  
9627.20 ACRES, MORE OR LESS

**PANEL 1**  
SCALE: 1 INCH = 1,000 FEET

**PANEL 2**  
SCALE: 1 INCH = 1,000 FEET

**PANEL 3**  
SCALE: 1 INCH = 500 FEET

**PANEL 4**  
SCALE: 1 INCH = 500 FEET

**MAP LEGEND**  
SCALE: 1 INCH = 1,000 FEET

**EXHIBIT**  
**MAP SHOWING**  
**A PORTION OF LOT 1-A-2**

Being Portions of R.P. 3607 and 7533, L.C. No. 8452, Ad. 9 to A. Kechakakole (Certificate of Boundaries No. 111) and Grant 5206 to Francisco Deniz

At Kealahakua and Kalamakowali, South Kona Island and County of Hawaii, State of Hawaii

**NOTES:**

1. Contours and coordinates are referred to Government Survey Contour Station 7501 (DMS).
2. Names of owners of adjoining parcels are shown available for map reference.
3. The features shown herein were verified by an actual survey on the ground on September 12, 2010 and September 13, 2010.
4. This map was prepared from Computer Aided Drafting (CAD) and does not represent a complete boundary study for this site.
5. Reference to recorded documents and beneficiary of easements are indicated from various sources available at the time of the survey. This information may not be all inclusive and due to the nature of the process of recording documents, records may be incomplete. The surveyor is not responsible for the accuracy of the information provided by the owner of the property, unrecorded documents and errors by legal owners.

**SCALE IN FEET**

**YER THOMAS ASSOCIATES, INC.**  
1400 West 10th Street, Suite 100, San Jose, CA 95128  
Phone: (408) 281-1111  
Fax: (408) 281-1112  
www.yerthomas.com

**PROJECT NO. 121006.06**  
**DATE: OCTOBER 16, 2010**  
**FIELD BOOK NO. 121006.06**  
**TAX MAP REC. NO. 8-2-012001 (SND) DIVISION**

**SHEET 2 OF 2**

**PANEL LEGEND**

EXHIBIT  
MAP SHOWING  
A PORTION OF LOT 1-A-2

Being Portions of R.P. 3607 and 7533,  
L.C. Aw. 8452, Ap. 9 to A. Keohokalole  
(Certificate of Boundaries No. 111)  
and Grant 5206 to Francisco Deniz

At Kealahou and Kalamakowali, South Kona  
Island and County of Hawaii, State of Hawaii

NOTES

1. Analysis and coordinates are referred to Government Survey Transcription Sheet, T-24, 019-2.
2. Names of owners of adjoining parcels are from available Tax map records.
3. The feet/acre, sheet number, were derived by an actual survey on the ground data on September 12, 2019 and September 13, 2019.
4. This map was prepared from Compiled Record Boundary Information and does NOT represent a complete Boundary Study, by this firm.
5. Reference to recorded documents and beneficiaries of easements are compiled from various documents available in the firm of the three (3) title blocks and adjacent blocks. The easements are identified and due to the nature of the process of record documents, granting of easements and relinquishment of same, such information should be obtained from the original documents, recorded documents and due to the nature of the process of record documents, granting of easements and relinquishment of same, such information should be obtained from the original documents, recorded documents and

SCALE IN FEET



MEY THOMAS ATTORNEYS  
(and Surgeons)  
Tape work was prepared by  
under my direct supervision

*Charles H. Hordolf*  
 CHEMICAL INSTRUCTOR  
 Chemical Professionals Lab Director  
 State of Hawaii Certificate Number LS-4333  
 Expiration Date: April 2020

**SHEET 2 OF 2**

Prepared By:  
**YES THOMAS ASSOCIATES**  
-- (and Surveyors) --  
75-2719 Kew-Forest Street  
Kew-Forest, Nassau 04705-1217  
TEL (908) 328-2253  
FAX (908) 328-3133 [info@yes-thomas.com](mailto:info@yes-thomas.com)

PROJECT NO.: ....12286.16  
DATE: .....OCTOBER 16, 2019  
FIELD BOOK NO.: ..  
TAX MAP KEY:.....8-2-012-001 (JRD DIVISION)



**Exhibit C. Draft MOA with KMR**

MEMORANDUM OF AGREEMENT

DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF FORESTRY AND WILDLIFE

AND

KEALAKEKUA MOUNTAIN RESERVE

For Kealahou, South Hilo, Tax Map Key: (3) 8-2-012:001

THIS MEMORANDUM OF AGREEMENT ("MOA") is made and entered into this \_\_\_\_\_ day of 2021, by and between the State of Hawai'i, Department of Land and Natural Resources, Division of Forestry and Wildlife ("DLNR"), by its Board of Land and Natural Resources ("BLNR"), and the Kealahou Mountain Reserve, LLC ("KMR"). DLNR and KMR are jointly referred to as the "Parties."

WITNESSETH:

WHEREAS, the BLNR on April 21, 2011, approved item D-4, which is identified as Attachment 1, authorizing a deed of conservation easement and restriction of development rights by Kealahou Heritage Ranch, LLC ("KHR") for approximately 9,017.97 acres of the approximately 11,470 acre parcel owned by KHR located on the western slope of Mauna Loa in the South Kona District, County of Hawaii to protect the property's important native forest ecosystems, forest resources and products, scenic open space, and recreational, research and educational values.

WHEREAS, the BLNR on May 11, 2018, approved item C-1, authorizing an estoppel certificate for KHR conservation easement.

WHEREAS, KMR purchased the property and acquired the conservation easement from KHR in 2018.

WHEREAS, KMR is conducting native forest restoration supported by reforestation efforts and sustainable harvesting of koa and sandalwood in the easement area.

WHEREAS, DLNR was notified of a possible third-party easement trespass, committed by Kona Hills LLC on May 31, 2019, by KMR landowner representatives.

WHEREAS, the nature and extent of the trespass was documented in a letter sent to Kona Hills LLC dated November 22, 2019.

WHEREAS, the following conservation easement provisions were impacted by Kona Hills LLC:  
(1) Kona Hills' road construction encroached over the KMR property boundary and into the conservation easement area. Survey maps, attached as **Exhibit B**, calculate the encroachment area as 1.77 acres of the KMR property. Road construction is restricted by

## Exhibit C. Draft MOA with KMR

the conservation easement and requires consultation and/or authorization by the Division (Easement Section 3 (f)(iv)).

- (2) The road construction altered the surface of the KMR property with grading and grubbing. Section 4(c) of the conservation easement limits "alteration of the surface of the [KMR property], including, without limitation, the excavation or removal of soil, sand, gravel, rock, lava ...". The photos attached as **Exhibit B** show numerous instances of encroachment altering the surface of the KMR property.
- (3) The road construction created numerous water drainage channels on the KMR property which will cause soil erosion in violation of Section 4(d) of the conservation easement.
- (4) Mature native ohia trees on the KMR property were damaged during the road construction process. Injuries to the roots of the trees and piling excavated material next to the trees is likely to cause these trees to die, which negatively impacts the conservation values protected by the conservation easement.

WHEREAS, there was neither allegation of nor evidence to suggest that KMR consented to, or participated in the, above-described alterations, damage, or trespasses perpetrated by Kona Hills, LLC.

WHEREAS, in order to resolve the conservation easement trespass, Kona Hills LLC has agreed to the DLNR's proposal to provide funding totaling \$6,284 to settle all of the State's claims in the conservation easement trespass. This settlement is not an admission of any kind by Kona Hills LLC.

WHEREAS, the funding for restoration provided by Kona Hills LLC to the landowner and this MOA between DLNR and KMR will fully settle all claims by the State with respect to this matter.

WHEREAS, Funds provided by Kona Hills LLC will be deposited with KMR to restore the 1.77 acres damaged by the violation.

WHEREAS, A breakdown of estimated restoration costs is summarized below, which are based on costs/acre for other state and federal reforestation programs in the vicinity of the property and include site preparation, native trees and shrubs, and tree planting and maintenance:

<b>Restoration of 1.77 acres</b>	<b>Cost</b>
Forester oversight, planning	\$750
Site Preparation (removal of weeds and preparation of planting sites)	\$900
Trees/Shrubs (600 seedlings - mixed native species including Ohia, Hoawa, Kolea, Aalii and Iliahi)	\$2,234
Planting	\$1,500
Maintenance (weed control)	\$900
<b>TOTAL</b>	<b>\$6,284</b>

WHEREAS, the conservation easement requires a comprehensive a multi-resource management plan that guides the landowner in management of the property under the conservation easement.

## **Exhibit C. Draft MOA with KMR**

WHEREAS, when updated, the activities included in this restoration project will be included in KMR's updated management plan, subject to approval by the Division.

WHEREAS, it is the intent and purpose of this MOA to set forth the relationship between the two parties, which establishes their mutual duties and responsibilities, with respect to cooperation in management and monitoring of the restoration project area within the conservation easement.

WHEREAS, the BLNR authorized the Chairperson to negotiate and sign an MOA between the BLNR and KMR for restoration activities and monitoring of restoration project area for Tax Map Key: (3) 8-2-012:001 (Item #, August 13, 2021 BLNR meeting).

WHEREAS, the KMR and DLNR have the common interest to preserve the natural resources of the subject areas for continued protection of the property's conservation values.

WHEREAS, KMR appropriately reported the encroachment by Kona Hills; and

WHEREAS, DLNR and KMR wish to enter into a mutually beneficial agreement to accomplish these purposes;

NOW THEREFORE, in consideration of the mutual benefits that will accrue to DLNR and KMR, the parties agree as follows:

### **A. Restoration Activities and Monitoring**

#### *KMR Agrees:*

1. KMR will include the restoration of the 1.77-acre encroachment area in any update or revision to the management plan for the conservation easement.
2. KMR will use the funds provided by Kona Hills LLC (\$6,284) to restore native species to mitigate damage to the property including soil erosion and restoration of native trees damaged by construction and rehabilitation of graded and grubbed sites.
3. KMR will be allowed five (5) years to implement the project including planning for the restoration site and implementation of the project using funds provided by Kona Hills LLC.

#### *DLNR Agrees:*

4. DLNR will monitor this restoration project annually as part of the annual monitoring conducted for the existing conservation easement.
5. DLNR will provide oversight and limited assistance to KMR with the planning and implementation of the restoration activities related to the conservation easement.

#### *DLNR and KMR Jointly Agree:*

## **Exhibit C. Draft MOA with KMR**

6. KMR will consult with the DLNR during the planning and implementation of the restoration activities.

### **B. Disputes**

1. Any disputes that cannot be resolved between the identified primary points of contact for the KMR and the Board relating to the terms of this MOA will be brought to the attention of Chairperson of the BLNR for a determination or resolution of the dispute or question.

### **C. Term, Modification, Termination and Notice:**

1. *Term:* This instrument is executed as of the last date shown below which shall be the commencement date. This instrument will remain in effect for five years.
2. *Modification:* This MOA may be modified at any time by mutual agreement of the Parties. Modifications shall be in writing executed by the authorized officer representing the KMR and the BLNR respectively. For purposes of this modification provision, such authorized officers are the Real Property Administrator, and the Chairperson of the BLNR (Section J).
3. *Notice:* Any written notice required to be given by either Party shall be delivered personally or by United States certified mail, postage prepaid to principal contacts listed below. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier.

### **D. Principal Contacts:**

- a. DLNR: BLNR Chairperson or authorized representative, Department of Land and Natural Resources, Post Office Box 621, Honolulu, Hawaii 96809.
- b. KMR: Greg Hendrickson, General Manager; P.O. Box 2240 Kealahou, Hawaii 96750; Telephone (808) 323-2299.

### **E. Key Officials:**

- a. DLNR: Cooperative Forester; 1151 Punchbowl St. #325; Honolulu, Hawaii 96813; Telephone: (808) 587-0027.
- b. KMR: Greg Hendrickson, General Manager; P.O. Box 2240 Kealahou, Hawaii 96750; Telephone (808) 323-2299.

**F. Attachments:** The attachments to this agreement referenced above and described as follows are incorporated herein:

- |               |   |
|---------------|---|
| Attachment 1. | Deed of Conservation Easement Kealahou Mountain Reserve |
| Attachment 2. | Violation Documentation Letter to Kona Hills LLC        |

**Exhibit C. Draft MOA with KMR**

Attachment 4. Map of Restoration Project Area

IN WITNESS WHEREOF, DLNR and KMR have executed this MOA as of the last date written below.

**KEALAKEKUA MOUNTAIN RESERVE**

\_\_\_\_\_  
By: Greg Hendrickson,  
General Manager

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

\_\_\_\_\_  
Date

**DEPARTMENT OF LAND AND NATURAL RESOURCES**

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

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

\_\_\_\_\_  
Date

## Exhibit C. Draft MOA with KMR

