

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

October 28, 2022

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

Land Board Members:

SUBJECT: APPROVE A DISPOSITION OF STATE INTERESTS IN LAND THAT HI'IPAKA LLC ACQUIRED WITH A GRANT FROM THE LAND CONSERVATION FUND AT KO'OLAULOA DISTRICT, ISLAND OF O'AHU, TAX MAP KEY NUMBER (1) 6-1-002:005

AND

AUTHORIZE THE CHAIRPERSON TO GRANT APPROVALS ON BEHALF OF THE BOARD, MAKE DETERMINATIONS FOR THE BOARD, AND PROCEED WITH ALL DUE DILIGENCE AND NEGOTIATIONS THAT MAY BE NECESSARY TO CARRY OUT THE DISPOSITION APPROVED BY THE BOARD

SUMMARY

The Division recommends that the Board approve a request from Hi'ipaka LLC for a disposition of State interests in land acquired with a grant from the Land Conservation Fund at Ko'olauloa District, Island of O'ahu, Tax Map Key Number (1) 6-1-002:005. If the Board approves this request, then Hi'ipaka LLC will buy back 100% of the State's interests in the entire 3.75-acre subject property, thus allowing Hi'ipaka LLC to reprogram grant funds received from the U.S. Department of Commerce (Economic Development Administration) to erect a traditional learning hale for students on the subject property. The proposed disposition, if approved and completed, would remove the property from the jurisdiction of the Legacy Land Conservation Program and Chapter 173A, Hawai'i Revised Statutes, with repayment deposited into the Land Conservation Fund. After disposition of State interests, the property and its resources will continue to remain protected, in perpetuity, under the existing conservation easement held by the City and County of Honolulu and the North Shore Community Land Trust.

BACKGROUND

On April 8, 2016, under agenda item C-3, the Board awarded a \$175,000 grant from the Land Conservation Fund to Hi'ipaka LLC ("Hi'ipaka") for purchasing 3.75 acres at Ko'olauloa District, Island of O'ahu, (the "Pu'ukua" property) for the protection of multiple resource

values. Prior to the Board meeting, the Legacy Land Conservation Commission ranked the Pu'ukua application at the top of its recommendations for the Fiscal Year 2016 grant cycle (Project Number LLCP 2016-01), and the President of the State Senate and the Speaker of the State House of Representatives expressed "no concerns or objections" about the recommendations. On April 26, 2017, the Board and Hi'ipaka entered into a Legacy Land Conservation Program ("LLCP") Grant Agreement (Contract No. 65721). Hi'ipaka completed its purchase of Pu'ukua on April 8, 2019 for \$400,000, with the LLCP grant accounting for 43.75 percent of the purchase price.

Hi'ipaka recently received \$3.75 million in grant funds from the U.S. Department of Commerce, Economic Development Administration ("EDA"), American Rescue Plan Indigenous Communities Program for renovating and constructing facilities on neighboring properties in Waimea Valley (Waimea Valley Indigenous Resilience Project). Hi'ipaka has arranged with EDA to expend a portion of these grant funds to erect a traditional learning hale at Pu'ukua. However, this expenditure of EDA grant funds would be subject to standard EDA grant conditions that require—with limited exceptions—that EDA maintain a first lien position against its investment in the Pu'ukua property, secured by a mortgage in favor of EDA, during the useful life of the project-funded improvements (typically twenty years). Because the Division's interpretation of LLCP statutory requirements is that the State always holds the first lien position against any disposition of a property acquired with a grant from the Land Conservation Fund, Hi'ipaka now wishes to resolve the conflicting federal/state lien requirements by removing the State from its lien position through a purchase of the State's financial interests in Pu'ukua.

Section 173A-9, Hawai'i Revised Statutes, provides that "[a]ny land acquired by any nonprofit land conservation organization under this chapter may be sold, leased, or otherwise disposed of with the prior written approval of the board," and Section 13-140-34(a), Hawai'i Administrative Rules requires that "[p]rior to any disposal of lands acquired with moneys from the fund, awardees must seek the written approval of the board. Such requests for approval shall be submitted to the department in writing." In seeking to facilitate the EDA grant award process, Hi'ipaka submitted a request for Board approval of a proposed disposition of the Pu'ukua property (Exhibit I).

## DISCUSSION

### Appraising the Value of the State's Interest

The disposition that Hi'ipaka LLC ("Hi'ipaka") requests would repay the State for the present-day value of the State's financial interest at Pu'ukua, thus removing the property from the deed restrictions currently imposed upon it under the Legacy Land Conservation Program ("LLCP") grant agreement and Chapter 173A, Hawai'i Revised Statutes (Haw. Rev. Stat.). The State's financial interest is 43.75 percent of total property value, so the repayment amount would be 43.75 percent of a current valuation basis for the property, paid to the Land Conservation Fund (see Exhibit II for deed restrictions and financial documentation).

A 2016 appraisal approved by the Department estimated the market value of the property at \$435,000 for unencumbered fee title to the "vacant land"; the 2019 purchase price paid by Hi'ipaka was \$400,000; and the current value assessed by the City and County of Honolulu for its real property taxation purposes is \$112,500.

Section 173A-10 requires that "[w]hensoever any such land [land acquired with a grant from the Land Conservation Fund] is sold by any state agency, county, or nonprofit land conservation organization, that portion of the net proceeds (sale price less actual expenses of sale) of such sale equal to the proportion that the grant by the State bears to the original cost of the land or other property shall be paid to the State." The Division believes that a buyout of the State's interest in the Pu'ukua property is equivalent to a sale, and that the valuation basis for the buyout price should be established by appraising the current value of the property. To maintain consistency with the valuation process that was the basis for the State's initial investment in the property, the Division requires that Hi'ipaka provide a new appraisal report and independent appraisal review covering the property as it exists today, with an assumption that the highest and best use of the property is the same as that identified for the initial/approved LLCP appraisal (As Vacant) while disregarding existing LLCP deed restrictions and the conservation easement now held by the North Shore Community Land Trust (Administrative Holder) and the City and County of Honolulu (Co-Holder).

The conservation easement—governed under Chapter 198, Haw. Rev. Stat.—runs with the land in perpetuity and will continue to protect land and resources at Pu'ukua by prohibiting subdivision of the property; limiting structures and impermeable surfaces to the "development to one traditional Hawaiian hale or halau in a culturally appropriate place . . . [that] shall not be used for temporary or permanent dwelling"; limiting commercial uses of the property; imposing management plan requirements and reporting obligations for Hi'ipaka; and establishing procedures for monitoring the easement and enforcing compliance with its terms.

### Board Approval

The disposition requested by Hi'ipaka, as a complete divestment of the State's interests in property acquired with a grant from the Land Conservation Fund, presents a case of first impression for the LLCP and the Board, and the LLCP's governing authorities provide limited guidance for Board decisionmaking. Under Section 173A-11, Haw. Rev. Stat., the Board's general powers allow it to "do all things necessary, useful, and convenient in connection with the acquisition, administration, maintenance, and management of lands having value as a resource to the State, subject to all applicable laws . . . ." Because the disposition requested by Hi'ipaka would be from the State to the landowner (a divesting of the State's interests back to the landowner, only), the Division believes that the Board need not consider factors that might otherwise apply in considering a request to approve a disposition from one entity to another, such as via sale or lease, under Section 13-140-34, Hawai'i Administrative Rules.

### Chapter 343, Hawai'i Revised Statutes, Environmental Review

Proposed approval of the requested disposition does not trigger environmental review requirements under subsection 343-5(a), Hawai'i Revised Statutes.

## RECOMMENDATIONS

That the Board:

- (1) Approve, in writing, a disposition of State interests in land that Hi'ipaka LLC acquired with a grant from the Land Conservation Fund at Ko'olaupia District, Island of O'ahu, Tax Map Key Number (1) 8-6-008:004 (the "Pu'ukua" property), as described in this submittal, subject to Board approval of the following documents to be provided by Hi'ipaka LLC:
  - (a) an appraisal report, prepared in accordance with Uniform Standards of Professional Appraisal ("USPAP"), that estimates the present market value of the Pu'ukua property, As Vacant, disregarding existing encumbrances of Legacy Land deed restrictions and a conservation easement;
  - (b) an independent, technical/desk review of the appraisal report that is completed pursuant to Recommendation (1)(a) above, prepared in accordance with USPAP;
  - (c) a draft final release of Legacy Land Conservation Program ("LLCP") deed restrictions on the Pu'ukua property, for recordation;
  - (d) transaction instructions that require Hi'ipaka LLC to (i) pay to the State (prior to recording a release of LLCP deed restrictions on the Pu'ukua property), for Hi'ipaka LLC's buyback of the State's interest in the Pu'ukua property, an amount calculated as the product of the present market value of the Pu'ukua property (as approved by the Board), times the proportion of funding provided by the State for Hi'ipaka LLC's 2008 purchase price for the Pu'ukua property (set by the State at 43.75 percent); and (ii) record with the State Bureau of Conveyances, after full payment to the State, a release of Legacy Land Conservation Program deed restrictions on the Pu'ukua property (as approved by the Board); and
  - (e) other transactional documents and financing arrangements that may be necessary to carry out the disposition of State interests as approved by the Board.
- (2) Require, as a condition the Board's approval, that Hi'ipaka LLC submit to the Board, within thirty days of recording, a copy of each recorded conveyance document that releases the Legacy Land Conservation Program deed restrictions on the Pu'ukua property.
- (3) Authorize the Chairperson to:
  - (a) approve, on behalf of the Board, the disposition, documents, and arrangements listed in Recommendation (1) above, including such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State;
  - (b) determine for the Board whether or not a substantive discrepancy exists between a draft final document and a final recorded document, and to pursue available remedies accordingly; and

- (c) proceed with all due diligence and negotiations that may be necessary to carry out the disposition approved by the Board.

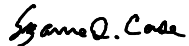
Respectfully submitted,



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DAVID G. SMITH, Administrator

APPROVED FOR SUBMITTAL:



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

EXHIBITS:

- Exhibit I: Request for release of lien (July 12, 2022)  
Exhibit II: Post-Closing Checklist, Legacy Land Conservation Program (excerpts,  
including final escrow settlement statement and recorded deed of conveyance)



October 28, 2022  
Exhibit I

July 12, 2022

Mr. David Penn  
Legacy Land Conservation Program  
Department of Land and Natural Resources  
1151 Punchbowl Street, Room 325  
Honolulu, Hawai'i 96813

**Subject:** Request for release of lien

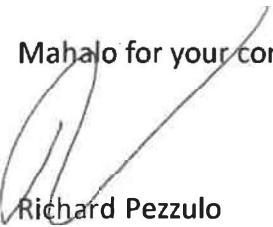
**Location:** Pu'ukua Property, TMK: (1) 6-1-002:005

Dear David:

We would like to formally request approval for a disposition of land that HI'IPAKA LLC acquired with a grant from the LAND CONSERVATION FUND at Ko'olauloa District, Island of O'ahu, tax map key number (1) 6-1-002:005, by which HI'IPAKA would buy back 100% of the State's interest and the State would remove Pu'ukua from the jurisdiction of the Legacy Land Conservation Program and Chapter 173A, Hawai'i Revised Statutes.

Please advise on next steps to obtain disposition approval.

Mahalo for your consideration,



Richard Pezzulo  
Executive Director

Cc:

October 28, 2022

Exhibit II

(rev. 10/5/2011)

**POST-CLOSING CHECKLIST**  
**Legacy Land Conservation Program**

Please complete this form for the Fiscal Year 2016 Legacy Land Conservation Program grant to Hi'ipaka LLC  
for One Hundred Seventy Five Thousand Dollars (\$175,000.00)  
and submit the certified original within 30 days of closing to:

Legacy Land Conservation Program  
1151 Punchbowl Street, Rm. 325  
Honolulu, HI 96813

**Check the box to indicate that the requested information has been provided.**

- ☒ The acquisition closed on the following date: April 25, 2019.
- ☒ The final area acquired is 3.75 acres.
- ☒ A closing statement for the escrow transaction is attached.
- ☒ The recorded deed and any other recorded documents for the acquisition are attached.  
Please list the titles of the attached documents in the space below:

Deed; Grant of Conservation Easement

- ☒ The complete title insurance policy and report are attached.  
Please list the titles of the attached documents in the space below:

Hawaii Standard Owners Policy of Title Insurance

**Certification:**

I hereby certify that the information provided is true and complete to the best of my knowledge.

Printed Name of Preparer

Richard Pezzulo

Title

Executive Director

Signature of Preparer

[Signature]

Date Signed

7/24/19



# TITLE GUARANTY ESCROW SERVICES, INC.

MAIN OFFICE, 235 QUEEN STREET, HONOLULU, HI 96813  
Tel: (808)521-0211 Fax: (808)521-0280 Email: MAIN@TGHAWAII.COM

## FINAL BUYER SETTLEMENT STATEMENT

HIIPAKA, LLC  
59-864 Kamehameha Hwy  
Haleiwa, HI 96712

**File Number:** 21017102440  
**Escrow Officer:** Jeremy Trueblood  
**Buyer:** HIIPAKA, LLC  
**Seller:** THE TRUST FOR PUBLIC LANDS  
**Tax Map:** 1610020050000  
**Property Location:** 61-029 Kamehameha Hwy  
HALEIWA, HI 96712-1304  
**Settlement Date:** 04/25/2019  
**Lender:**  
**Loan No:**

	Debit	Buyer Credit
<b>Financial Consideration</b>		
Sale Price of Property	400,000.00	
Deposit		444.74
Deposit		701.25
Deposit		175,000.00
Buyer's funds to close		53,419.08
<b>Title Charges</b>		
Proforma Easement to TITLE GUARANTY OF HAWAII LLC	208.33	
Proforma Fee to TITLE GUARANTY OF HAWAII LLC	208.33	
Settlement Agent Fee to TITLE GUARANTY ESCROW SERVICES, INC.	1,572.91	
Owners Title Insurance (Conservation) to TITLE GUARANTY OF HAWAII LLC	701.25	
Owners Title Insurance (Fee) to TITLE GUARANTY OF HAWAII LLC	1,151.25	
Policies issued:		
Policy		
<b>Recording Charges</b>		
Recording Fees to REGISTRAR OF CONVEYANCE OR TITLE GUARANTY OF HAWAII	164.00	
Transfer Tax to State of Hawaii	400.00	
<b>Miscellaneous Debits/Credits</b>		
Refund of title fees to be paid by Hiipaka to City and County of Honolulu	701.25	
Funds from City and County		175,701.25
<b>Subtotals</b>	405,107.32	405,266.32
<b>Balance Due TO Buyer</b>	159.00	
<b>TOTALS</b>	405,266.32	405,266.32





The Property has been acquired with funds from a grant by the State of Hawaii, Department of Land and Natural Resources, Legacy Land Conservation Program ("LLCP") through grant agreement number 65721, dated April 26, 2017, as amended, and is subject to all of the terms and conditions of the grant agreement. Title of the Property conveyed by this deed shall vest in Grantee, subject to disposition instructions from the State of Hawaii, Department of Land and Natural Resources ("DLNR"), or its successor agencies. The Property shall be managed consistently with the purposes for which it was awarded a LLCP grant and Chapter 173A, Hawaii Revised Statutes.

Grantee, for itself, its successors and assigns, and in consideration of the LLCP grant, does hereby covenant that it shall not dispose of, encumber its title or other interests in, or convert the use of this Property without the written approval of the DLNR or its successor agencies. For purposes of this grant agreement, the meaning of "dispose of" shall include (1) the sale, exchange or disposition of all or substantially all of the assets of the Grantee as part of a single transaction or plan, when that single transaction or plan includes the Property in the sale, exchange, or disposition of the assets of the Grantee, and (2) a sale of the Property conducted to accomplish the dissolution, winding up, and termination of the Grantee. Upon notice from Grantee, that it intends to dispose of, encumber the title or other interests in, or convert the use of the Property, the DLNR may:

1. Require Grantee, to place on the Property, a deed restriction or covenant to protect the resource values for which Grantee was awarded a LLCP grant, to an appropriate land conservation organization or county, state, or federal resource conservation agency. The deed restriction or covenant shall run with the land and be recorded with the appropriate state agency.

2. Require to be placed on the Property, a conservation easement or agricultural easement under Chapter 198, Hawaii Revised Statutes, to an appropriate land conservation organization or county, state, or federal resource conservation agency, that shall run with the land and be recorded with the appropriate state agency.

3. Require subsequent landowners to enter into a contract with the DLNR for the protection of the resource values consistent with the purposes for which the LLCP grant was awarded.

Grantee further covenants that:

- (a) Whenever the Property is sold by Grantee, including a sale of the Property conducted to accomplish the dissolution, winding up, and termination of the Grantee, that portion of the net proceeds (sale price less actual expenses of sale) of such sale, equal to the proportion that the state grant bears to the original cost of the property, shall be paid to the State of Hawaii.

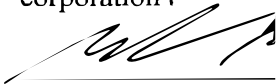
- (b) Whenever ownership of the Property changes hands through the sale, exchange, or disposition of all or substantially all of the assets of the Grantee as part of a single transaction or plan, including conversion or merger, that portion of the net proceeds of that sale, exchange, or disposition accruing to the Property, equal to the proportion that the state grant bears to the original cost of the property, shall be paid to the State of Hawaii. Said net proceeds shall be

determined in compliance with the Uniform Standards of Professional Appraisal Practice by a Certified General Appraiser, as licensed by the State of Hawaii, who is either (i) selected and contracted by the State of Hawaii or (ii) selected and contracted by Grantee, subject to State of Hawaii approval of the appraisal scope of work and the selection of the appraiser, and to State of Hawaii acceptance of an appraisal review that it will procure.

(c) If the Property is leased, rented, or otherwise disposed of by Grantee, other than as enumerated in sub-paragraph (a) above, that portion of the gross proceeds of such disposition, equal to the proportion that the state grant bears to the original cost of the Property, shall be paid to the State of Hawaii.”

Signed as of this 8<sup>th</sup> day of April, 2019.

**The Trust for Public Land,**  
a California nonprofit public benefit  
corporation ,



By: Gilman Miller  
Its: Senior Counsel

**Hi'ipaka LLC,**  
a nonprofit limited liability company under  
the laws of the State of Hawaii

\_\_\_\_\_  
By: Richard Pezzulo  
Its: Executive Director

determined in compliance with the Uniform Standards of Professional Appraisal Practice by a Certified General Appraiser, as licensed by the State of Hawaii, who is either (i) selected and contracted by the State of Hawaii or (ii) selected and contracted by Grantee, subject to State of Hawaii approval of the appraisal scope of work and the selection of the appraiser, and to State of Hawaii acceptance of an appraisal review that it will procure.

(c) If the Property is leased, rented, or otherwise disposed of by Grantee, other than as enumerated in sub-paragraph (a) above, that portion of the gross proceeds of such disposition, equal to the proportion that the state grant bears to the original cost of the Property, shall be paid to the State of Hawaii.”

Signed as of this 25 day of APRIL, 2019.

**The Trust for Public Land,**  
a California nonprofit public benefit  
corporation

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By: Gilman Miller  
Its: Senior Counsel

**Hi'ipaka LLC,**  
a nonprofit limited liability company under  
the laws of the State of Hawaii

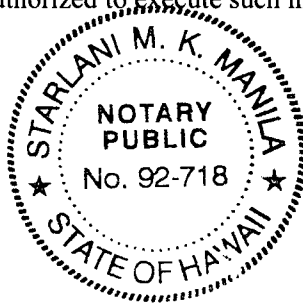


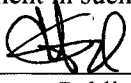
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By: Richard Pezzulo  
Its: Executive Director

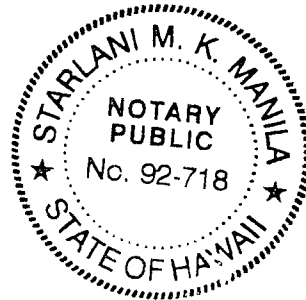
STATE OF HAWAII )  
 ) SS:  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of APR 11 2019, before me personally appeared Richard Pezzulo, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



  
Notary Public, State of Hawaii  
Printed Name: Starlani M.K. Manila  
My commission expires: 10-28-2020

Doc. Date: <u>undated</u>	# Pages: <u>7</u>
Notary Name: <u>Starlani M.K. Manila</u>	First Circuit
Doc. Description: <u>DEED</u>	
 Notary Signature	<u>APR 11 2019</u> Date
NOTARY CERTIFICATION	



CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }

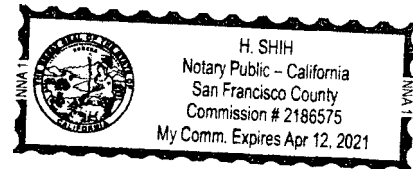
COUNTY OF San Francisco }

On April 8, 2019 before me, H. Shih, Notary Public,  
personally appeared Gilman Miller who proved to me on the  
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon  
behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature: [Signature] (Seal)



OPTIONAL

Description of Attached Document

Title or Type of Document: Deed Number of Pages: \_\_\_\_\_

Document Date: \_\_\_\_\_ Other: \_\_\_\_\_

**EXHIBIT A  
TO  
DEED**

**LEGAL DESCRIPTION**

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 2903, Land Commission Award Number 3869 to Puukua) situate, lying and being at Waimea, District of Koolauloa, City and County of Honolulu, State of Hawaii, bearing Tax Key designation (1) 6-1-002-005, and containing an area of 3.750 acres, more or less.

BEING THE PREMISES ACQUIRED BY DEED

GRANTOR : ESTATE ADMINISTRATIVE SERVICES, LLC, a Hawaii limited liability company, as Personal Representative of the Estate of Thomas Tok Soon Lee, Deceased, under probate proceedings filed in P. No. 05-1-0176 in the Circuit Court of the First Circuit of the State of Hawaii

GRANTEE : THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation

DATED : February 19, 2016  
RECORDED : Document No. A-58930248

**EXHIBIT B**  
**TO**  
**DEED**

**PERMITTED EXCEPTIONS**

1. Real Property Taxes have been fully paid up to and including June 2018.

Tax Key: (1) 6-1-002-005      Area Assessed: 3.750 acres

Tax Classification: PRESERVATION

Street Address: 61-29 KAMEHAMEHA HIGHWAY, HALEIWA, HONOLULU,  
HAWAII 96712

2. Mineral and water rights of any nature.
3. The land has no recorded access to a public roadway.
4. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
5. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.