

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

April 28, 2023

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

STATEWIDE

NON-ACTION ITEM: Update on Compliance with Act 90, Session Laws of Hawaii 2003, Transfer of Non-Agricultural Park Lands to State of Hawaii Department of Agriculture.

BACKGROUND:

*Legislative Enactments*

In 2003, the Legislature enacted Act 90, Session Laws of Hawaii 2003 (Act 90), which created a process to transfer non-agricultural park lands under the management of the Department of Land and Natural Resources (DLNR) to the Department of Agriculture (DOA) subject to the mutual agreement of the Board of Land and Natural Resources (BLNR) and the Board of Agriculture (BOA) and approval by the Governor. Act 90 does not mandate that all parcels be transferred, rather it requires the mutual approval of transfers by both BLNR and BOA, indicating that some parcels may not be acceptable to DOA or appropriate for transfer from a DLNR standpoint.

Since 2020, the Legislature has introduced various bills proposing amendments to Act 90, to specifically address the issue of transfer of pasture leases from DLNR to DOA:

- 1) Mandate the requirement of transferring certain pasture leases from DLNR to DOA, by removing the “mutual agreement” provision from the statute by striking out BLNR approval from the process
- 2) As an alternative, DLNR has proposed to give DLNR statutory leasing powers like those of DOA, which are more favorable to ranchers because, under the DOA statutes:
  - DOA does not need to go to public auction before entering into a general lease;
  - DOA is not required to set lease rents at fair market value, while DLNR has a statutory and public trust obligation charge fair market rents to its lessees;
  - DOA can enter direct leases with an existing tenant, resulting in a cumulative term longer than 65 years for a single tenant; and

- Other agricultural uses in addition to cattle can be permitted.

In 2021, the legislature passed Act 139, SLH 2021, which established an Act 90 Working Group. This was comprised of Legislators as well as DOA and DLNR staff representatives. The Working Group's Final Report, authored by the House and Senate Water and Land committee chairs, is attached to this submittal as **EXHIBIT A**. The report stated that "certain agricultural lands under DLNR have multiple management objectives, which can include agricultural production, forestry, native forest restoration, watershed protection, habitat conservation, public recreation, fire fuel suppression, and other public purposes which clearly fall within DLNR's purview and mission. These multiple-use lands should remain under DLNR's management." The Working Group also maintained the requirement of mutual consent between DLNR and DOA.

In 2023, Senate Bill 77 (SB 77) was introduced to remove the requirement of mutual consent between DLNR and DOA, and it would have permitted DOA to unilaterally require the transfer of certain pasture leases to DOA without DLNR consent. SB 77 had strong support from the Hawaii Cattlemen's Council, Hawaii Farm Bureau, DOA, the Senate Water & Land Committee, and key members of the House Water & Land Committee. In response to the strong legislative momentum and growing public sentiment in support of the long-time ranchers, DOA and DLNR Directors agreed to revisit the transfer of some of the large pasture leases from DLNR to DOA, including Kapapala Ranch and KK Ranch on Hawaii Island. As a result of DLNR's reconsideration to transfer these pasture leases, SB 77 did not pass.

#### *DLNR and DOA's implementation of Act 90*

Since the enactment of Act 90, DLNR has transferred to DOA crop lands and some pasture lands that primarily have agricultural value. Act 90 sets forth the process to transfer DLNR ag leases to DOA. The process includes, 1) DLNR identifying available parcels either under lease or revocable permit to DOA, 2) DOA then conducts due diligence to determine whether the lands are suitable for ag purposes and clear of any encumbrance, 3) once DOA accepts the ag parcels, then the Board of Land and Natural Resources (BLNR) formally approves the transfer to DOA and BOA formally accepts the ag parcels, 4) DOA will conduct a formal metes and bounds survey of the transferred property and DLNR prepares an executive order approved by the Governor transferring management authority to DOA. In total, over 250 leases, revocable permits, and vacant parcels totaling over 38,000 acres have been transferred to DOA or ADC since 2003 to March 2023.

Upon the enactment of Act 90 through the present, DLNR offered DOA two-thirds of the pasture RPs and GLs that are still in DLNR's inventory. DLNR also published a publicly available interactive webmap of these parcels and shared this with the Legislature and ranching community to provide transparency about DLNR's interests and completion of these transfers are pending due diligence by DOA:

<https://arcg.is/1DrmL1>

Over the last three months, with the change of administration, DLNR and DOA have met regularly

to discuss implementation of Act 90. With the change of Administration and the Director's willingness to transfer pasture leases, DLNR has updated its spreadsheet to increase the ag parcels, including certain pasture leases, that it agrees to transfer to DOA. DLNR has distributed the updated spreadsheet to DOA to review and conduct their due diligence. DOA must conduct due diligence on the lands before moving forward with BOA and BLNR approval. DLNR is making available their files on the ag leases to DOA to facilitate their due diligence. Due diligence involves reviewing files to ensure compliance with rent and other terms, as well as potential site visits, which also can confirm whether the land has agricultural value. DLNR is working with DOA to process the transfers in three batches towards a completion date of December 31, 2023. Surveys will likely be needed for most, if not all, of the RPs because the executive order require detailed maps and descriptions to be attached to them. DLNR stands ready to process these proposed transfers through the BLNR and assist with the executive orders that would finalize the transfers.

As directed by both department chairpersons, DLNR and DOA are meeting on a regular basis to process the outstanding transfers that have been mutually agreed to by both departments as quickly as possible. In addition, as directed by the DLNR Chairperson, DLNR staff has visited two of the larger ranches that DLNR initially sought to retain and is now negotiating with DOA and the ranchers about proposals for transferring all or a portion of their lands to DOA.

## DISCUSSION

Historically, DLNR has opposed bills that mandate the transfer of lands under DLNR management to DOA, even if those lands are in agricultural or pasture use. The primary reason is that these lands, especially certain pasture lands, possess significant resource values, such as forestry and watershed protection, that DLNR believes should be considered along with agricultural and pasture use. Another reason is that certain lands may have other uses that may provide significant public benefits above and beyond agricultural use. Furthermore, DLNR has historically considered pasture lands to be separate and distinct from agricultural lands and not subject to Act 90, as indicated by the different classes of land included in Section 171-10, HRS. However, as certain legislative committees have indicated that they will likely pass a measure to compel transfer of these lands to DOA, the DLNR and DOA Chairpersons have worked together to identify certain pasture lands that DLNR has previously desired to retain, and proceed with a proposed transfer to DOA, subject to certain conditions that ensure that DLNR fulfills its mission and public trust obligations. While DLNR staff would ideally prefer to retain these lands and not support such a transfer, staff also recognizes the potential consequences that could result from the alternative of a legislatively mandated transfer.<sup>1</sup>

As a compromise, DLNR proposes to retain certain lands and include reservations to protect public trust resources in other lands to be transferred to DOA. **EXHIBIT B** contains maps of the lands that DLNR has offered to DOA, as well as the areas DLNR seeks to retain. As DLNR and DOA are working under the current terms and conditions of Act 90, any proposed transfer would require

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<sup>1</sup> Staff notes that a legislative mandate to transfer public lands without approval of the BLNR may not be consistent with Article XI, Section 2 of the Hawaii State Constitution and Section 26-15, Hawaii Revised Statutes.

the approval of both boards. Therefore, it is possible that certain leases and revocable permits offered to DOA for transfer might not be approved by either BLNR or BOA for multiple reasons (such as lack of compliance), so it is important to note that a property's inclusion on this list does not guarantee transfer. There are now roughly 175 pasture revocable permits and leases that are in DLNR's inventory (excluding those that are pending a BOA or BLNR approved disposition). DLNR has offered approximately 70% of those dispositions to the DOA, which constitutes roughly 54,000 acres. The remaining 30% of those leases and revocable permits, which total approximately 50,000 acres, are intended to remain under DLNR's management because they are "multi-use" and have other important resource values in addition to agricultural use.

### *Conservation Values*

Some lands contain remnant native forests, or are strategic restoration sites. Pasture lands were originally diverse native forests – frequently overlaying the climatic zone best suited for koa. Some of them still have a closed canopy of native forest, like the former pasture RP that was voluntarily discontinued and designated the Waiea Natural Area Reserve in South Kona. Others may have been converted to grasslands, yet would be relatively easy and strategic to restore because the soil still contains a seedbank of koa and other natives; they are in high elevations where native birds and insects can also distribute seeds; and are far from invasive plants that plague restoration sites. For example, on March 24, 2023 (C-3) the Board approved the extension of the Nakula Natural Area Reserve into a pasture RP that the rancher is voluntarily ending to support DOFAW's leeward Haleakala tree-planting program, which have resulted in over half a million native trees planted in adjacent areas. **EXHIBIT C** contains background information on these examples. Protection of existing forests, and restoring forests in grasslands, is critically important for maintaining water supplies, particularly as much of Hawaii's driest areas are predicted to become even drier. This is a particular threat to Hawaii's agriculture which relies on water pumped or delivered from these watershed forests. Additionally, forest protection and restoration are the most beneficial land use actions for sequestering carbon in Hawai'i, per a report from the Greenhouse Gas Sequestration Task Force.

Ranchers have testified that DLNR cannot manage its existing lands, and that the lands that were formerly in pasture leases have been left fallow. **EXHIBIT D** has fact sheets on the management DLNR has conducted on certain pasture leases that were either not renewed after the lease ended, voluntarily ended by the lessee, or were withdrawn from larger leased areas to mitigate the effects on palila critical habitat by the Daniel K. Inouye (Saddle Road) realignment. In the latter case, DLNR did not initiate those involuntary lease withdrawals.

**EXHIBIT B** contains maps overlaying endangered species habitat and pasture lands. In some cases, managing the species on these pasture leases (rather than existing Reserves) is necessary because the leases may contain the main – or only – population of a species. For example, pasture RP 7571<sup>2</sup> in Kahakuloa Head, Maui has a critically endangered rare plant population known from

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<sup>2</sup> This land was also recommended by the BLNR to be set aside as a DOFAW Wildlife Sanctuary in item C-3, March 24, 2023.



only a few sites. The area has other endangered plants and invertebrates, as well as nesting native seabird colonies. Recovering critically endangered species requires managing every remaining individual to retain genetic diversity. Protecting populations in multiple sites, rather than just one, makes the species more resilient against catastrophic loss from fires, hurricanes, etc.

### *Cultural and Recreational Values*

Many of these lands include important cultural sites and recreational features (trails, hunting areas, etc.). These areas can provide the main access points available for communities to reach coastlines or upland forested areas. On areas proposed for transfer to DOA, DLNR intends on including reservations to ensure access for managing hunting, as well as public trails and roads. However, when the lands are transferred, the enforcement of those requirements is much more difficult. For example, lands transferred to DOA in Ookala, Hamakua, Hawai'i included road access to the historic Humu'ula Trail and a public hunting area. However, the lessee locked out the public and DLNR was only able to restore public access after hunters protested and elevated the issue to State legislators. When DLNR is no longer the lessor, the lessee will have less incentive to comply with these terms to ensure critical public access routes are safeguarded for traditional and customary gathering purposes as well as recreational uses.

### *Overall Management Considerations*

DLNR oversight of these lands provides flexibility to re-evaluate areas for their highest and best use – which is key to changing land and climate conditions. Some lands might become unusable for pasture due to threats such as Two-Lined Spittle Bug. Under DLNR, the use of these areas could be reconsidered to include reforestation, hunting use, or other purposes in addition to pasture. DLNR is seeking “reversion” clauses in the executive orders to require that if the land is no longer being used for pasture, the land shall be returned to DLNR.<sup>3</sup> DLNR, in turn, will continue to re-evaluate its lands if they are more appropriate to be managed by DOA as conditions change.

### *DLNR Partnerships with Ranchers*

In addition to offering and managing hundreds of pasture leases for decades, DLNR works cooperatively with ranchers on public leased lands as well as private lands. A dozen large mauka ranchers have joined together in watershed partnerships to protect our forested watersheds from threats such as invasive species. DLNR cost-shares land management tasks of mutual benefit, such as fence maintenance, wildfire control, and shared road maintenance. DLNR has secured large Federal grants that support invasive species control and reforestation/timber projects on ranches. The Forest Stewardship program provides matching funds for ranchers willing to commit to sustainable land management practices. In some places, sheep and deer compete for pasture forage. DLNR runs hunting programs to help reduce this problem. DLNR is a HISC agency lead, supporting the first responders and research on problematic ranch species such as the Two-Lined Spittle Bug.

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<sup>3</sup> This is consistent with statutory requirements of a set aside pursuant to Section 171-11, HRS.

*Next Steps and Timelines*

DLNR is negotiating with DOA and ranchers to determine which transfers are acceptable, develop reservations to ensure public access as well as public hunting, and withdrawals of lease areas that DLNR will retain due to resource value. DLNR has already offered a majority of the leases and revocable permits to be transferred to DOA. After DOA confirms that they are willing to accept the transfers via BOA approval, DLNR will submit recommendations to the BLNR to approve the transfers. The departments have an ambitious schedule to process all the transfers through the two Boards that are mutually agreeable before the end of calendar year 2023. The departments will also work to process as many executive orders that finalize the transfers as possible, however that timeline depends on the capacity of other agencies that must assist with surveys and legal reviews, as well as Governor approval.

The proposed schedule:

1. 1<sup>st</sup> 90 days (April – June 2023)
  - Informational Board briefings to BOA (April 25) and BLNR (April 28).
  - DLNR identifies parcels to be transferred to DOA, including priority transfers of KK Ranch and Kapapala Ranch to DOA, subject to DOA conducting due diligence.
  - June – KK Ranch and Kapapala Ranch on BLNR agenda for approval to transfer by executive order (EO) to DOA, subject to review by the Department of the Attorney General (AG), survey, and reverter clause when no longer in ranching.
2. 2<sup>nd</sup> 90 days (July – Sep 2023)
  - Aug – DOA completes their due diligence and notifies DLNR that they accept 2<sup>nd</sup> batch of parcels to be set aside to DOA.
  - Sep – 2<sup>nd</sup> batch of parcels goes to BLNR for approval to transfer by EO to DOA, subject to review by AG and survey.
3. 3<sup>rd</sup> 90 days (Oct – Dec 2023)
  - Nov – DOA completes their due diligence and notifies DLNR they accept a 3<sup>rd</sup> batch of parcels to be set aside to DOA.
  - Dec – 3<sup>rd</sup> batch of parcels goes to BLNR for approval to transfer by EO to DOA, subject to review by AG and survey.
  - Dec 31, 2023 – DLNR and DOA execute a letter of concurrence acknowledging completion of the implementation of Act 90.

Respectfully Submitted,



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Ian Hirokawa  
Special Projects Coordinator

APPROVED FOR SUBMITTAL:



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Dawn N.S. Chang, Chairperson *RT*



**HAWAI'I STATE LEGISLATURE**  
STATE OF HAWAII  
STATE CAPITOL  
415 SOUTH BERETANIA STREET  
HONOLULU, HAWAII 96813

December 21, 2021

The Honorable Ronald D. Kouchi, President,  
and Members of the Senate  
State Capitol, Room 409  
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki, Speaker  
and Members of the House of Representatives  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Aloha President Kouchi, Speaker Saiki, and Members of the Legislature,

For your information and consideration, we are transmitting herewith our report conveying the process, findings, and recommendations of the Act 90 Working Group, pursuant to Act 139, 2021.

The report may also be viewed on the Act 90 Working Group webpage at:  
<https://www.capitol.hawaii.gov/specialcommittee.aspx?comm=act90wg&year=2021>

Mahalo,

Senator Lorraine R. Inouye  
Co-Chair, Act 90 Working Group  
Chair, Senate Committee on Water and Land

Representative David A. Tarnas  
Co-Chair, Act 90 Working Group  
Chair, House Committee on Water and Land

**EXHIBIT A**

# Act 90 Working Group Report to the Legislature

## Introduction

Act 139, Session Laws of Hawaii ("SLH") 2021, established the Act 90 Working Group to:

- (1) Ascertain the process and status of the transfer of non-agricultural park lands from the Department of Land and Natural Resources ("DLNR") to the Department of Agriculture ("DOA") pursuant to Act 90, SLH 2003, and Chapter 166E, Hawaii Revised Statutes ("HRS"), regarding non-agricultural park lands; and
- (2) Determine the challenges and potential remedies necessary to facilitate the process of fulfilling the purposes of Act 90, SLH 2003.

The Act 90 Working Group ("Working Group") was tasked with conducting its work through meetings, informational briefings, and consultation with lessees of state non-agricultural park lands, lessees of state agricultural lands, and the public.

The members of the Working Group were as follows:

- (1) The Chairs of the Senate Water and Land Committee (Senator Lorraine Inouye) and House Water and Land Committee (Representative David Tarnas), who served as co-chairs of the Working Group;
- (2) The Vice Chairs of the Senate Water and Land Committee (Senator Gilbert Keith-Agaran) and House Water and Land Committee (Representative Patrick Pihana Branco);
- (3) The Chairperson of the Board of Land and Natural Resources (Chair Suzanne Case);
- (4) The Administrator of the Division of Forestry and Wildlife of the Department of Land and Natural Resources (David Smith);
- (5) The Administrator of the Land Division of the Department of Land and Natural Resources (Russell Tsuji);
- (6) The Chairperson of the Board of Agriculture or the chairperson's designee (Deputy Morris M. Atta, Deputy to the Chairperson); and
- (7) The Administrator of the Agricultural Resource Management Division of the Department of Agriculture or the Administrator's designee (Linda H. Murai, designee for the Administrator).

The Working Group met five times, on August 16th and 23rd, September 9th, October 14th, and November 17th. Meetings were publicly broadcast live and as recordings on the House of Representatives' streaming video channel. Written and live (audio and audiovisual) public testimony was accepted at each meeting. Public written testimony is publicly archived on the Working Group webpage at the State Capitol website.

The Working Group also received documents from DOA and DLNR that provide detailed updates on the status of Act 90 land transfers, the process of transfers, and the nature of DLNR and DOA engagement with lessees and lease contracts on non-agricultural park lands. These documents are also publicly archived on the Working Group webpage at the State Capitol website.

## **Background**

In 2003, the Legislature found that public lands classified for agricultural use by DLNR should be transferred to and managed by DOA for the development of farms on a widespread of a basis as possible, consistent with Article XI, Section 10, of the State Constitution. Act 90 provides that non-agricultural park lands may be transferred from DLNR to DOA upon the mutual agreement of the Board of Agriculture ("BOA") and the Board of Land and Natural Resources ("BLNR").

Accordingly, Act 90, SLH 2003 (Act 90), was passed to transfer non-agricultural park lands from DLNR to DOA upon the mutual agreement of the BLNR and BOA. Since the passage of Act 90, over nineteen thousand acres have been transferred from DLNR to DOA, including 242 land parcels. Other agricultural lands classified as "non-agricultural park lands" or pasture lands remain held by DLNR.

DLNR and DOA then began to coordinate the transfer of lands. DOA asserted its discretionary authority to decline transfers pursuant to HRS§166E-3(b), for any parcel determined to be unsuitable for agricultural use, and if encumbered (i.e., those subject to a general lease or revocable permit), when:

- (1) The lessee or permittee is not in full compliance with the terms and conditions of the lease or permit;
- (2) The lessee or permittee is in arrears in the payment of rent or taxes or other obligations owed to the State or any county; or
- (3) The lessee's or permittee's agricultural operation is not economically viable because the majority of their income is not from farming activity on the land or the land area is too small to support a viable agricultural operation.

While unencumbered and pasture lands were always contemplated for transfer under Act 90, DLNR and DOA initially prioritized the transfer of encumbered lands with existing agricultural operations, with a focus on lands used for crop production, nurseries, and other

diversified agriculture, to provide existing agricultural operators the benefits of operating under DOA management as soon as possible.

To date, 242 parcels under 181 general leases or revocable permits have been transferred from DLNR to DOA. According to DLNR, over one hundred thousand acres of pasture and other agricultural land (183 revocable permits or general leases) remain under DLNR management statewide. Of these lands, DLNR considers 111 parcels eligible for potential transfer to DOA, subject to DOA's acceptance. DLNR has identified fifteen parcels which DLNR would consider eligible for transfer if an easement were provided to allow DLNR and/or the public to access an adjacent parcel. DLNR also considers fifty-seven encumbrances (general leases or revocable permits) ineligible due to DLNR priorities on those lands.

### **Challenges and Findings**

The Working Group heard testimony from lessees of pasture lands held under DLNR, many who expressed frustration over the years they have spent for a transfer to DOA. Some expressed appreciation for DLNR's stewardship of multiple land uses, including historic preservation, reforestation, and conservation. Others expressed a lack of trust in DLNR's commitment to agriculture as a priority, stating their concerns that DLNR would reallocate the leased lands for reforestation purposes; DLNR's reforestation management is ineffective land stewardship; and short lease terms on state land limit the lessees' ability to invest in long-term improvements.

The Working Group finds that lands under DLNR used for the primary and substantial management objective of agricultural production should be transferred to DOA, following the processes and conditions pursuant to Act 90.

The Working Group further finds that certain agricultural lands under DLNR have multiple management objectives, which can include agricultural production, forestry, native forest restoration, watershed protection, habitat conservation, public recreation, fire fuel suppression, and other public purposes which clearly fall within DLNR's purview and mission. These multiple-use lands should remain under DLNR's management.

The Working Group also finds that improved collaborative working relationships between DLNR, DOA, and lessees of multi-use agricultural lands will facilitate the management or co-management of these DLNR multi-use parcels to benefit public values, including food production, conservation, and natural resource management.

The Working Group finds that multi-use lands can support sustainable land management, including natural resource conservation, at a reduced cost to the State. These "win-win-win" multi-uses are enhanced when DLNR and DOA collaborate with lessees of pasture lands to steward lands and harness additional funding to support multiple uses, such as by using Natural Resources Conservation Service programs and similar opportunities.



The Working Group further finds that maintaining easements to non-agricultural park lands under DLNR is a challenge impeding some Act 90 transfers. Preservation of a DLNR easement on these lands requires DLNR to procure and bear the cost of a professional land surveyor to prepare a map and metes and bounds description of the easement corridor.

Although the leases from both departments cannot exceed sixty-five years and allow the departments to, at the end of the lease term, take ownership of any improvements on the leased land or require the improvements' removal at the lessee's cost, the Working Group finds that two important differences between how the departments' manage their leases are how they extend lease terms and determine rent.

(1) Regarding lease extensions:

- (A) Pursuant to Section 171-36(b), HRS, DLNR is authorized to amend and extend leases with BLNR's approval if the extension is needed to amortize the cost of improvements (e.g. a mortgage loan or cost of self-financed improvements);
- (B) Under chapter 166E, HRS, and HAR chapter 4-158, DOA has greater flexibility to extend its leases. DOA leases can be extended if the lessee complies with the provisions of the current lease; and
- (C) HAR §4-158-8 to §4-158-12 also specifically allow DOA to extend or convert the leases transferred under Act 90 to new DOA leases with terms that can range from thirty-five to sixty-five years.

(2) Regarding rent determination:

- (A) For leases of lands under DLNR, all rents are set at fair market value according to an appraisal, and all leases are issued at public auction (Section 171-17, HRS). DLNR revocable permits, which are month-to-month dispositions that cover most of agricultural lands under DLNR, can be negotiated with lessees rather than requiring a public auction. Also, BLNR can approve any rent amounts under revocable permits that serve "the best interests of the State" (Section 171-55, HRS);
- (B) For leases of lands under DOA, rents can either be set at the fair market value as determined by an independent appraisal, or the Administrator of the Agricultural Resource Management Division can recommend that the BOA adjust the appraised value or rent schedule based on the specific lease. For example, rent can be adjusted by factoring the uses of the lands (e.g. for crops which require heavy initial capital investments or are of low yield value) or by factoring in unproductive acreage on the lands (HAR §4-158-21). If significant improvements and/or preparation is required for commencing agricultural operations on a DOA-leased property, lease rent for up to two years may be waived or credited for the lessee; and

- (C) DOA leases of non-agricultural park lands can be issued by negotiation rather than public auction if BOA finds that "the public interest demands the disposition as provided by section 171-18, HRS", the statute which describes the use of revenues from ceded lands (HAR §4-158-22).

## **Recommendations**

The Working Group recommends proposing legislation that:

- (1) Authorizes DOA to inquire with DLNR, prior to offering a lease, regarding any easements required for DLNR to access its landlocked forest reserves or other DLNR assets on the lands subject to the lease;
- (2) Authorizes BLNR to:
  - (A) Amend and extend existing pasture leases for furtherance of public purposes that are the responsibility of the department to promote, including promoting sustainable food production and preserving and enhancing natural resource and public use values, for up to a sixty-five-year lease term;
  - (B) Issue new pasture leases by negotiation, if the lands are already under pasture use and lease issuance by negotiation furthers public purposes; and
  - (C) Develop agricultural and pastoral lease rents based on the value of the land's agricultural uses;
- (3) Requires DLNR's Division of Forestry and Wildlife to seek BLNR's approval before taking land out of pasture leases for reforestation purposes, and requires the Division of Forestry and Wildlife to submit a funded action plan for reforestation purposes on current pasture lease land to the BLNR; and
- (4) Facilitates collaborative relationships between DLNR, DOA, and lessees of multi-use agricultural lands by:
  - (A) Revising DLNR land classifications to include "agricultural multi-use," defined to include lands with agricultural value as well as natural resource, conservation, and/or public recreation values; and
  - (B) Creating and funding a multi-use lands specialist position to collaborate with DOA, DLNR, and multi-use land tenants and to leverage the Natural Resources Conservation Service and other funding sources to support natural land stewardship, reforestation, and other public purposes on agricultural multi-use lands.

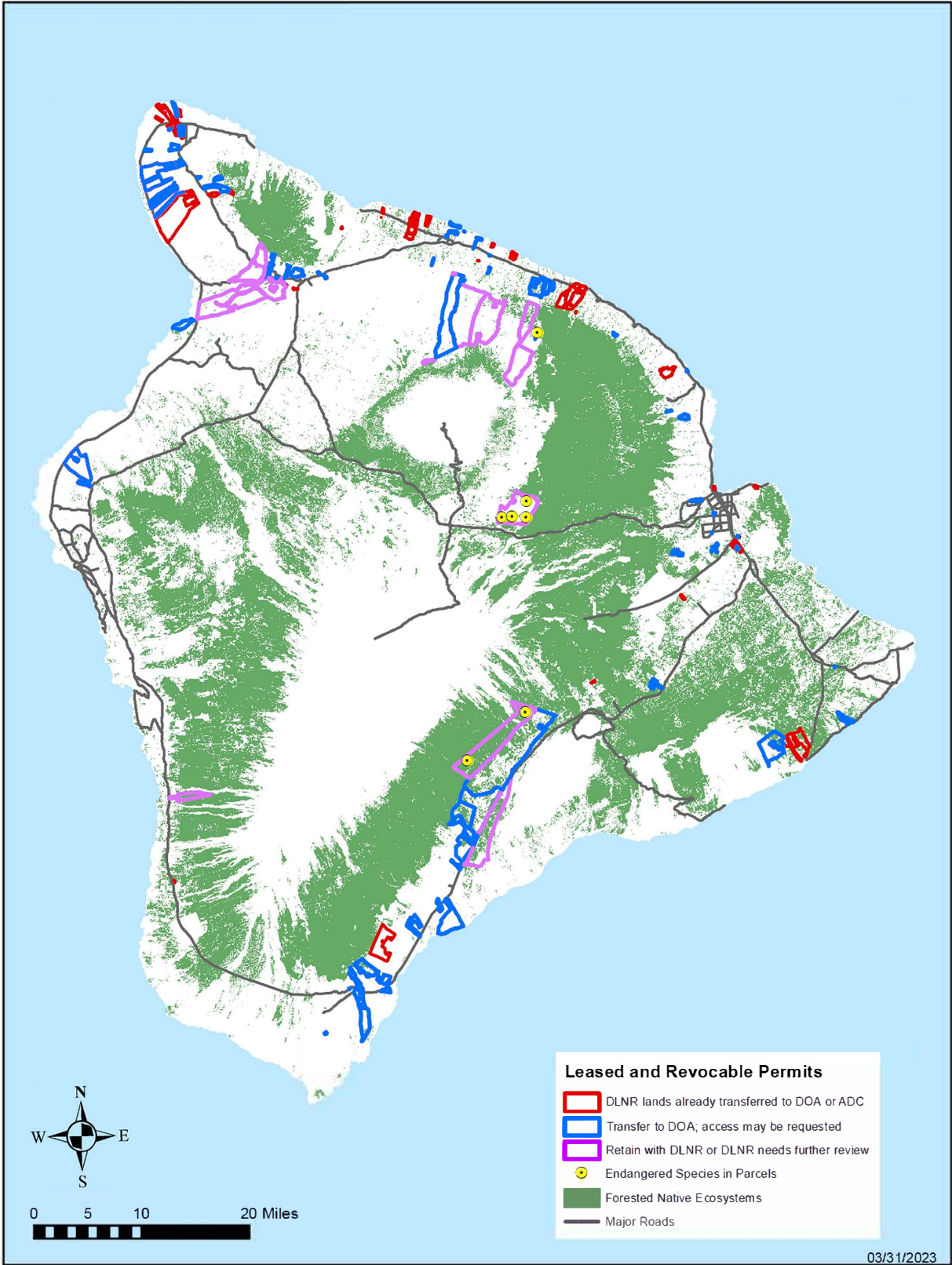


EXHIBIT B

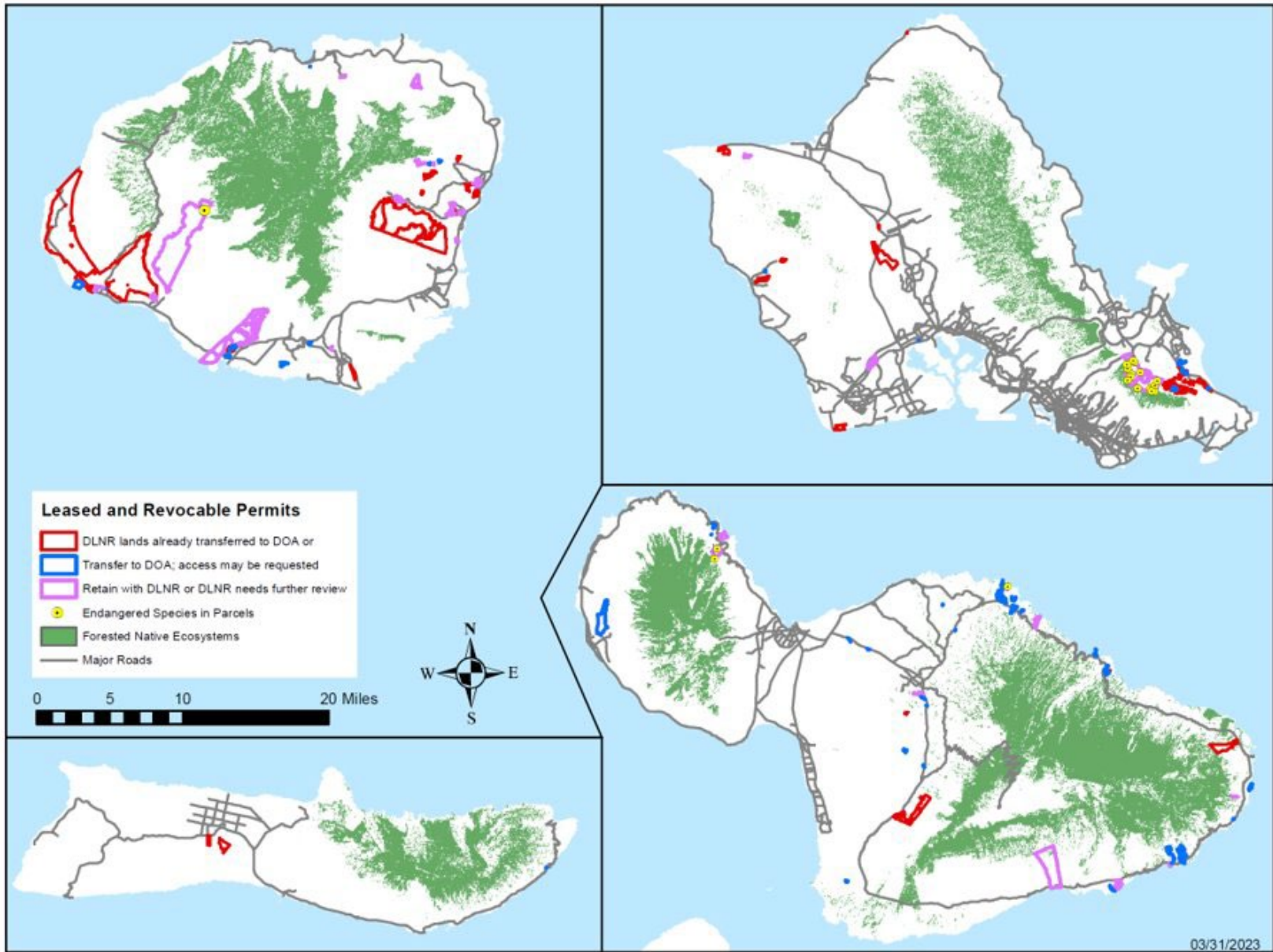


EXHIBIT B



# Waiea Natural Area Reserve

## 1,260 Acres in Ecosystem Protection



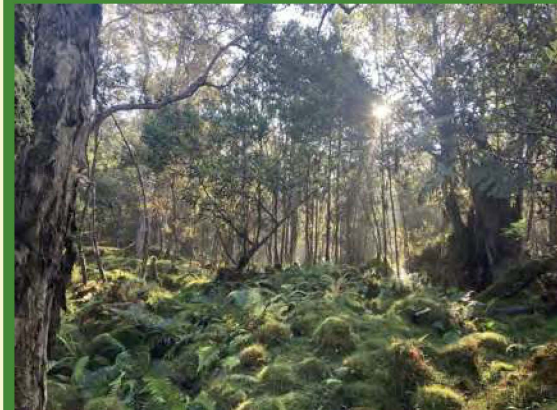
### Reforestation and Endangered Species Protection

The Waiea Natural Area Reserve is a koa and 'ōhi'a forest on the western flank of Mauna Loa in the district of South Kona. It is important as a representative ecosystem because it has distinct seasonality compared to other forests in the Natural Area Reserve system: it evolved under a summer wet season.



### Infrastructure and Natural Resource Management:

- Completed a formal, contracted boundary survey and coordinated with USFWS partners who surround the NAR on two sides
- Established a management right of entry and remote basecamp for field operations
- Suppressed invasive weeds along roadsides and in the forest, including miconia and Japanese anemone
- Refurbished two 10,000 gallon water tanks and a covered rainshed for use in initial attack response for wildfires
- Preliminary forest bird surveys detected 'i'iwi, 'apapane, and 'elepaio with adjacent lands holding populations of endangered 'alawī and 'akepa



### Common and Rare Plant Work:

- Began a seed bank repository for regionally-significant species including *Dubautia plantaginea* and *Clermontia clermontioides*
- Three Plant Extinction Prevention Program (PEPP) units were established for endangered plant protection and a rare plant inventory has been completed
- Endangered Outplanting for Genetic Reservoirs:
  - *Cyanea stictophylla*, *C. marxii* and *C. hamatiflora* (Hāhā), *Pittosporum hawaiiense* (Hō'awa), *Nothocestrum breviflorum* ('Aiea), *Phyllostegia velutina*, *Sicyos macrophyllus* ('Anunu)

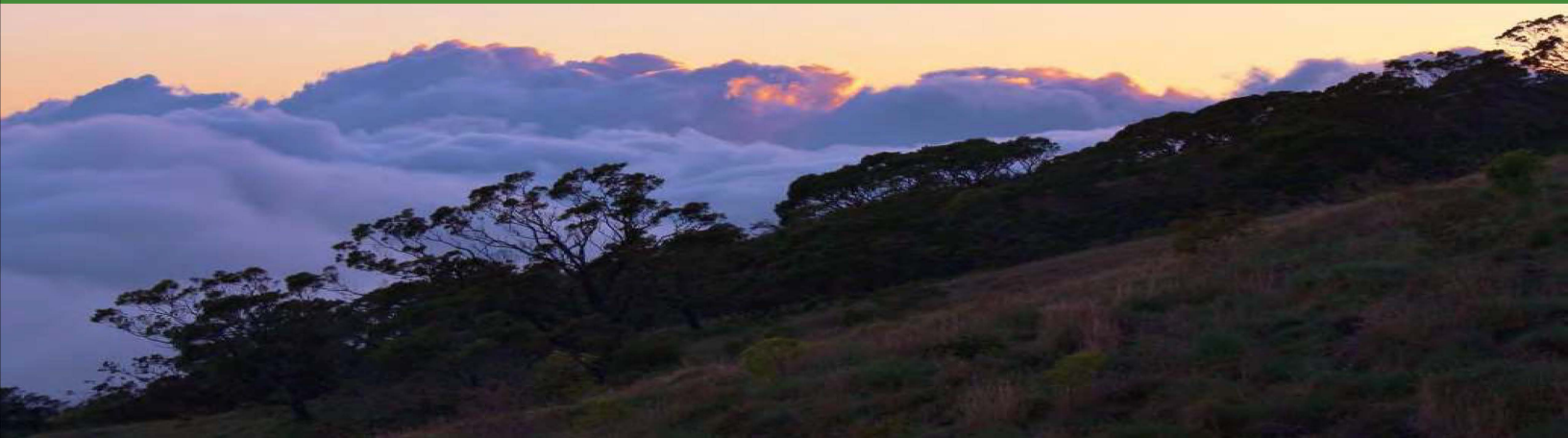


## EXHIBIT C





# Nakula Natural Area Reserve Extension



## Rebuilding the Mauna Lei

Leeward slopes of Haleakalā were once canopied with *koa* and *‘ōhi‘a* from 8,000' down to below 2,000' in many areas, matching the inversion layers of clouds that wash against the mountain daily, creating a green belt or *mauna lei*, all the way around the mountain. This canopy captured moisture and channeled it into the soil, supporting a diversity of plants in the under story as well as many kinds of forest birds, invertebrates, seabirds and *nēnē*. Together this community of species created a highly functioning ecosystem that kept groundwater recharged and soils in place, protecting subsistence reefs below. It lowered the temperatures and returned moisture to the immediate surroundings, perpetuating these cycles.

These ancient cycles were broken with the introduction of grazing animals and grasses. Grasses pull moisture from the soil without returning it, heavy rains sheet off instead of soaking in and bare soils compacted under hooves creates run off into the ocean. An inch of topsoil that took 1,000 years to form can be lost in just one rainstorm, clogging streams and burying reefs. Conservation work done above this parcel has proven that restoration is still possible.

An approximately 361-acre parcel of state land on leeward Haleakalā, Maui, is proposed for inclusion into the State of Hawai‘i Natural Area Reserve System (NARS). This area is adjacent to the existing Nakula NAR, and designation will expand a successful reforestation project that will benefit water recharge, carbon sequestration, and protection of endangered plants and wildlife.

***Pōki‘i ka ua, ua I ka lehua.***

The rain, like a younger brother, remains with the *lehua*.  
Said of the rain that clings to the forest where *‘ōhi‘a* grow.





# Nakula Natural Area Reserve

## Denuded Slopes in Restoration



### Building On Success

Since being fenced from hoofed animals in 2012, the adjacent Nakula NAR and Kahikinui Forest Reserve have had extensive reforestation success. More than 450,000 trees have been planted, and countless more seedlings have naturally regrown. Endangered seabirds have also begun to recolonize these areas, and predator control efforts are resulting in nesting success for these rare species. While this proposed extension has been extensively grazed and is primarily composed of non-native grasslands, DOFAW intends to fence and replant it, mirroring the success of the adjacent lands above. Fences exist along the north and eastern boundary of this area, so protecting the area will require relatively small amounts of new infrastructure.

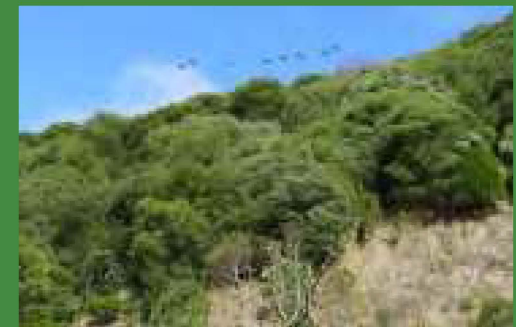
#### Expected Benefits:

- Sequestering carbon is an urgent global need and native forests do it better than grasslands.
- Leeward forests are superior to grasses in collecting fog drip from afternoon clouds, then channeling it into soils, recharging groundwater and aquifers.
- Native forest species stabilize soils, preventing catastrophic run-off during infrequent but intense storm events, becoming more prevalent with climate change.
- Reduced run-off protects food sources Maui residents rely on from near-shore reefs.
- Mesic and leeward dryland forests are the most endangered ecosystems in the state, where multiple endangered plants live, most unique only to Hawai'i. This extension reclaims some of their former habitat.
- Extending the boundaries of the existing NAR adds a buffer to native forests and endangered seabirds already recovering within upper Nakula.
- Fire suppression will be achieved through weed control, fuel breaks and small reservoirs and helicopter dip-tanks.

#### Priceless:

Native Hawaiian species are essential components of traditional practices. Hawaiian culture is partially reliant on and defined by these species, many of which are only found here. Loss of these species means not only a loss of understanding our cultural origins, but limits continuing practices into the future. Restoring land to traditional species perpetuates the culture.

*Diplazium molokaiense*, endemic & endangered

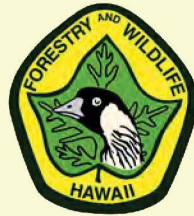


Nēnē and native seabirds return to Nakula





# Restoration Work on Former Pasture Place-based Fact Sheets



Prepared for Consideration Aug. 2021

EXHIBIT D

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# CONTENTS

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1

Kapāpala Koa Canoe  
Forest

2

Pu'u Wa'awa'a  
Forest Reserve

3

Pu'u Mali and  
Ka'oho Restoration  
Area

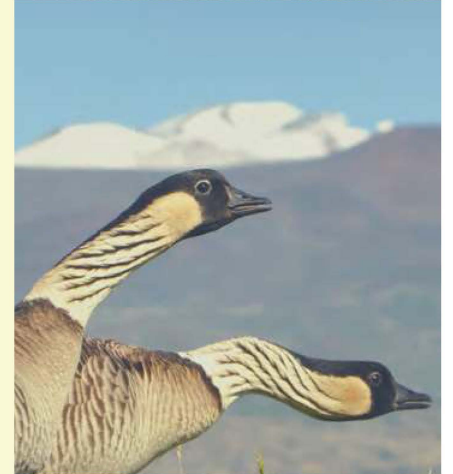
4

Pu'u O'o

5

TMK 344014004

DLNR DOFAW



# Kapāpala Koa Canoe Forest



Photo Credit: Bill Rosehill

## Sustainable Canoe Logs

The Kapāpala Koa Canoe Forest was withdrawn from pasture lease in 1989 in order to create opportunities for sustainable koa harvest. In 1990, it began to be fenced in order to exclude cattle; 4.2 miles were installed with a \$171k price tag. Then in 1992, three additional miles of cattle proof fencing were installed. The materials alone cost \$50k and man power was supplied by DOFAW. Since that time, good natural regeneration of the forest has been documented. Today the primary purpose of this parcel is to be a sustainable log source for canoe building for racing clubs, civic organizations, and educational purposes. A plan was written in coordination with the Kapāpala Koa Canoe Forest Working Group.

### Koa Canoe Forest Management Plan:

- Preserve natural and cultural inheritance for future generations
- Develop a stewardship model involving community groups
- Involve youth through cooperative programs with various educational and cultural entities
- Provide opportunity for compatible public uses
- Maintain and enhance overall forest health
- Support a sustainable, long-term supply of koa logs
  - Inventory of available canoe logs completed
  - Harvesting planned to begin in 2023
  - Re-planting will be a condition of all groups who harvest koa trees in the future

### Ua 'Elepaio 'ia ka Wa'a

"The canoe is marked by the 'elepaio." Hawaiians believed 'elepaio (*Chasiempis sandwichensis*) are the kinolau (physical manifestation) of the canoe goddess Lea. The Kapāpala canoe forest is habitat for the 'elepaio and for other native Hawaiian birds like 'i'iwi and 'akiapōlā'au.





# Pu'uwa'awa'a Forest Reserve Former Ranch Land in Restoration



## Conservation and Restoration Management since 2003

Long-term cattle grazing leases at Pu'uwa'awa'a were discontinued after the year 2000 because of a strong community desire to protect its endangered dry forests and rare species. A management plan was completed in 2003 and the Pu'uwa'awa'a State Forest Reserve (PWW FR) was created by Executive Order in 2007. The Hawaii Experimental Tropical Forest (HETF), created in 2007, is a partnership with the USDA Forest Service to conduct research in Pu'u Wa'a'awa'a. Since 2007, 235 research projects have been conducted by the HETF.

### Short-Term Grazing Permits in PWW FR:

- Annual Special Use Permits are issued for targeted grazing to reduce fire fuel loads and wildfire risk.
- Currently Issued Permits:
  - ◊ 18,610 acres above and below Hwy 190 to Jerry Egami
  - ◊ 700 acres around Makani Golf Course and Pu'u'anahulu community to Kamuela Bertelman

### Ungulate-Proof Fencing for Native Ecosystem Protection:

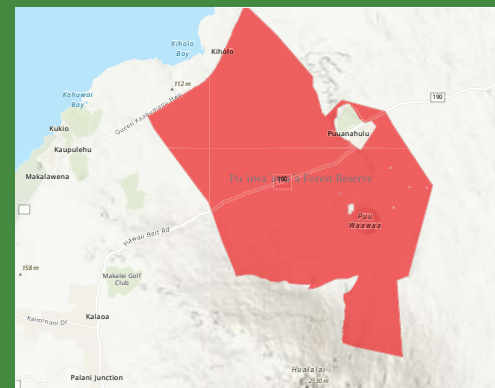
- 5,288 total acres fenced
- 3802 acres in Pu'u Wa'awa'a Forest Bird Sanctuary (FBS)
- 1,486 acres in PWW FR
- All are managed as ungulate-free areas for weed control and native plant restoration

### Reforestation:

- 97,551 native plants planted since 2004
- Of that, 29,635 are threatened or endangered plants
- The remainder are common plants like koa, māmane, manele, 'ōhi'a and kolea
- Planting is ongoing, with thousands planted annually

### Special Highlights:

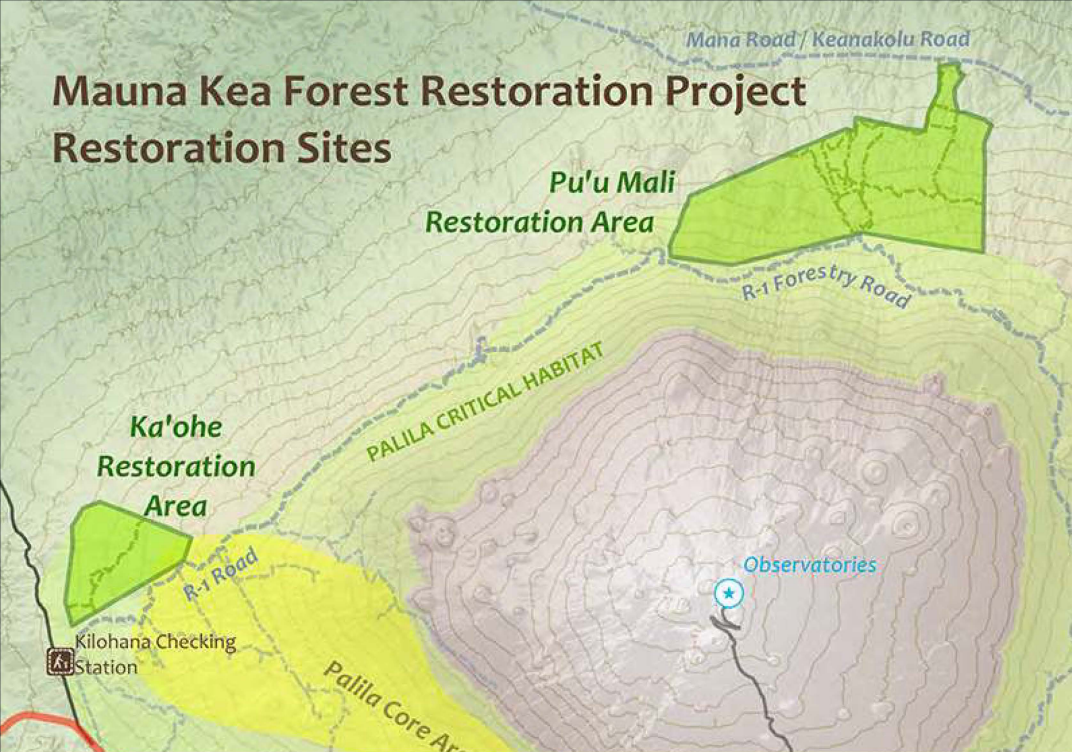
- Popular Trails: The Na Ala Hele Cone trail to the summit of PWW cinder cone is one of the most popular trails in leeward Hawai'i
- Threatened and Endangered (T&E) Species Protection: 40 rare plant taxa (23 of which are listed as endangered), six T&E birds, and several rare arthropods including the endangered Blackburn sphinx moth call PWW home





# Pu'u Mali and Mauna Kea Forest Reserve Restoration Management

## Mauna Kea Forest Restoration Project Restoration Sites



## Restoration for Palila Critical Habitat

In 2002, lands in Ka'ohe and Pu'u Mali were set aside for restoration and conservation purposes in order to compensate for impacts to palila critical habitat as a result of the Saddle Road realignment project. In total, 1,400 acres were taken out of pasture lease to become Ka'ohe Restoration Area and 5,140 acres were taken out of ranching to become Pu'u Mali Restoration Area. The primary restoration goal in these areas is to manage the forest for the benefit of palila.

### Ka'ohe Restoration Area

- 269.25 acres restored with māmane stocking rate of 192 plants per acre
- The majority of the unit shows good natural regeneration
- 103,867 plants have been planted since 2007
  - Transplants and seed scatter include māmane, koa, `ili`ahi, kō`oko`olau, `a`ali`i, pilo, na`ena`e, `ilima, `ūlei, `akoko, `āweoweo, pāwale, naio and pua kala
  - Seedlings grown at Waimea State Tree Nursery using wild Mauna Kea seeds
- 935 volunteers have contributed to restoration work including school groups, retirees, community businesses and organizations

### Pu'u Mali Restoration Area

- Approximately 2,500 acres of the unit contain sections of the last Mauna Kea flow (4,500 years ago) that show good natural regeneration
- 400 acres in active restoration
- 146,279 plants planted since 2007
  - Transplants and seed scatter include māmane, koa, `ili`ahi, kō`oko`olau, `a`ali`i, pilo, na`ena`e, `ilima, `ūlei, `akoko, `āweoweo, pāwale, naio and pua kala
  - Seedlings grown at Waimea State Tree Nursery using wild Mauna Kea seeds
- 1,530 volunteers have contributed to restoration work including school groups, retirees, community businesses and organizations
- Carbon sequestration project with Pono Pacific to complete planting of entire area





# Pu'u O'o 1,460 Acres in Restoration



## Forest Recovery and Endangered Species Protection in Pu'u O'o

The Pu'u O'o area of Hilo Forest Reserve (TMK 2-6-018-013) was withdrawn from lease and incorporated into the Hilo Forest Reserve in 2011 in order to provide access, and to build a fence to keep cattle out of the upper sections of the Hilo Restricted Watershed.

### Fencing:

- 5 miles of cattle-proof fencing installed at the boundary
- Access along boundary fence allowed additional protection to the Hilo Restricted Watershed
  - 741 Cattle removed through a public cattle hunt
  - Additional 5.6 miles of fence constructed between Hilo Restricted Watershed and DHHL all the way to Hakalau National Wildlife Refuge

### Reforestation:

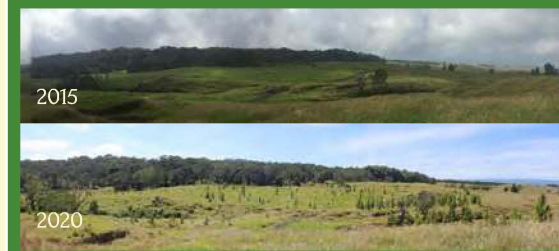
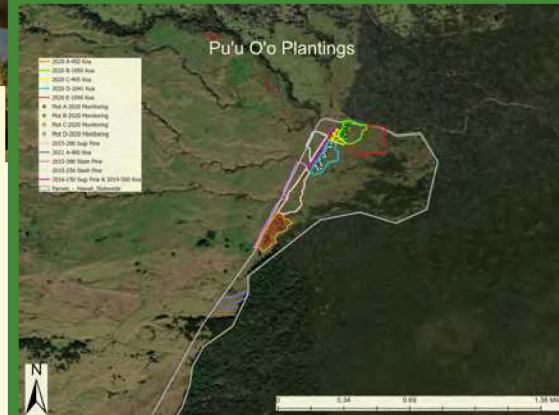
- 6,100 koa planted since 2015 across 37 acres
- Seedlings grown at Waimea State Tree Nursery
- Natural regeneration observed on 950 acres already forested

### Gorse Control:

- Important access point for gorse control on Mauna Kea to prevent conversion of the landscape to a gorse monoculture

### Predator-Proof Nēnē Habitat:

- Gov. Abercrombie's emergency proclamation made it possible for translocation of 598 nēnē from Kaua'i to Pu'u O'o in 2011
  - The last 30 wild nēnē were observed at Pu'u O'o in the 1950's
  - Pu'u O'o is in the middle of documented nēnē flyways
- Nēnē have nest fidelity and had to learn to use Pu'u O'o as their new nesting grounds
- Nesting attempts began in 2013 and up to 50 attempts have been documented each season since that time
- Biologists expect increases in nesting attempts and birds in the area each year due to the birds' instinctive drive to return
- Today, 98 acres are protected predator-proof habitat with up to 350 birds using the area in peak season

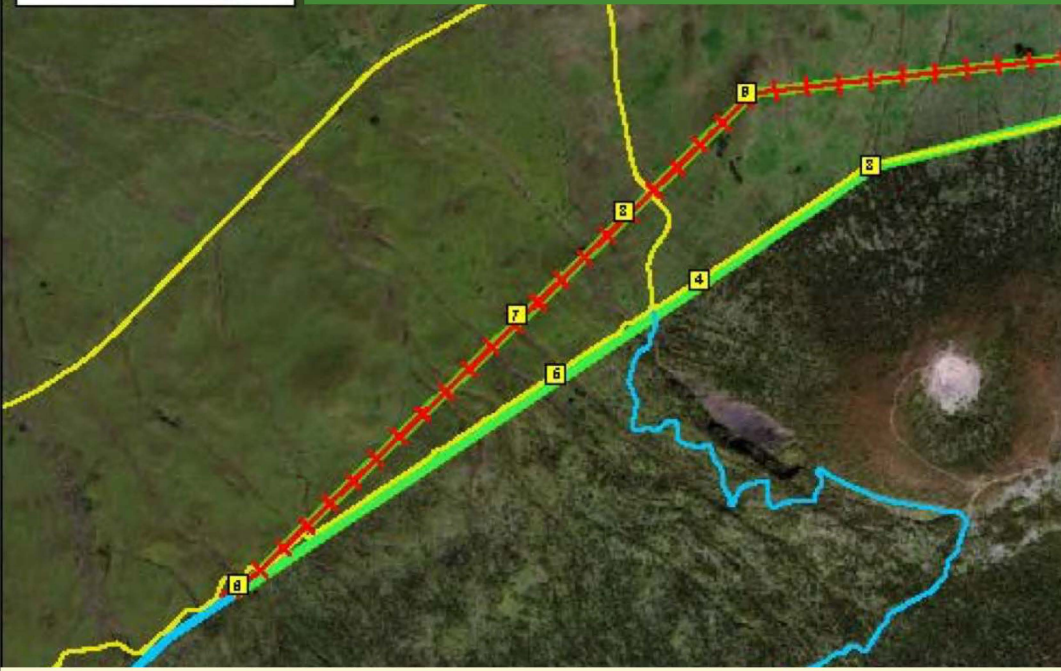






# TMK 344014004

## 101 Acres of Former Ranch Land in Restoration



### Fencing and Reforestation since 2019

TMK 3440144004 was withdrawn from Parker Ranch in 2019 and is requested for inclusion in the Mauna Kea Forest Reserve.

#### Fencing:

- 3.5 miles installed from 2019 - 2020
- 75 inch ungulate fence ties to existing fence at Pu'u Mali and strengthens the perimeter around Mauna Kea Forest Reserve

#### Reforestation:

- Augmenting remnant koa and māmane trees and forest stands on Eastern 75 acres of parcel
- Stocking rate of 100 koa per acre
- 2,600 koa planted to date
- 600 'iliahi planted to date
- Seedlings grown at Waimea State Tree Nursery using seed stock from wild Mauna Kea trees
- Over future spring and summer seasons- additional 7,400 koa to plant plus māmane, a'ali'i, pilo, naio, and more

#### Special Projects:

Parker Ranch has built a new reservoir and tied into the newly constructed fence in order to reforest their own 25 acre pasture alongside DOFAW efforts.

