

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

May 12, 2023

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

Land Board Members:

SUBJECT: REQUEST APPROVAL TO AUTHORIZE THE CHAIRPERSON TO NEGOTIATE, EXECUTE, AMEND, AND EXTEND A MEMORANDUM OF AGREEMENT WITH HALOA AINA L.L.C. FOR ESTABLISHMENT, MANAGEMENT, AND MAINTENANCE OF A SANDALWOOD SEED ORCHARD SITE AT HALOA AINA L.L.C., AND IN THE DISTRIBUTION OF SEEDS PRODUCED FROM THE ORCHARD.

SUMMARY

Hawaiian sandalwood trees (*Santalum spp.*) are highly valued economically, ecologically, and culturally, and are threatened by habitat loss, predation, fire, and lack of regeneration. The Department of Land and Natural Resources' (DLNR) Division of Forestry and Wildlife is currently establishing a network of Hawaiian sandalwood seed orchards at locations across the state on public and private land through a Landscape Scale Restoration (LSR) Agreement with the U.S. Department of Agriculture Forest Service (USDA-FS). The purpose of this project is to produce high quality, eco region specific seed for native forestry restoration efforts. Haloa Aina L.L.C (HA), a family-owned company that is dedicated to restoring native dryland forest, has expressed willingness in hosting a seed orchard site on their property on a 2.5 portion of TMK (3) 7-9-001:014.

The submittal requests authorization to enter into a Memorandum of Agreement (MOA) with HA regarding the sandalwood seed orchard. The purpose of this MOA is to delineate the responsibilities of DLNR and HA in the establishment, management, and maintenance of a sandalwood seed orchard site at HA, and in the distribution of seeds produced from the orchard.

The attached draft MOA document (exhibit A) has been reviewed and accepted by HA and the Attorney Generals' office.

BACKGROUND

Sandalwood is renowned for its fragrant wood and oil, and its significant economic value has led to exploitation across the Pacific. There is interest in cultivating this native species, but several threats limit its regeneration. On July 18, 2018, the USDA-FS and DLNR entered a LSR Grant Agreement to establish a network of Hawaiian sandalwood seed orchards at locations across the state on public and private land to produce high quality, eco-region specific seed for native forestry restoration efforts. These orchards will provide seeds to private and public land managers throughout the eco-region, for reforestation of priority watersheds and landscape scale restoration efforts, which will lead to enhanced ecosystem benefits. This project will also inform future development of additional sandalwood seed orchards, increase knowledge on germination, cultivation, and silviculture, conserve genetic diversity, and contribute to future research of sandalwood oil productivity, growth requirements, and threat abatement.

Under the LSR Agreement, DLNR is in the process of installing sandalwood seed orchards on state land within the Forest Reserve System. DLNR is also engaging with private forest landowners on establishing sandalwood seed orchards on their properties. HA expressed their willingness to host a sandalwood seed orchard site and is dedicated to managing its property for purposes of restoring native forest, preserving wildlife habitat, commercially producing timber and non-timber forest products, specifically sandalwood oil, increasing social benefits in the local community, and promoting access to native forest in South Kona on Hawaii Island.

ANALYSIS

The DLNR has duties to “devise ways and means of protecting, extending, increasing, and utilizing the forests and forests reserves” and “devise and carry into operation, ways and means of reforesting suitable lands.” HRS § 183-1.5(4) and (6). The DLNR, as the head of DLNR, may delegate to the chairperson “powers and duties as may be lawful or proper for the performance of the functions vested in the board[.]” HRS § 171-6(8).

DLNR and HA seek to cooperate on the establishment of a sandalwood seed orchard at HA due to its appropriate location and environment for sandalwood, compatibility with HA's management intentions for the property, and HA's willingness to host a seed orchard site. The purpose of this MOA is to formally outline the responsibilities of DLNR and HA in the establishment, management, and maintenance of a sandalwood seed orchard site at HA, and in the distribution of seeds produced from the orchard.

RECOMMENDATIONS

That the Board of Land and Natural Resources:

1. Authorize the Chairperson to negotiate, execute, amend, and extend a MOA between the DLNR and HA for the establishment, management, and maintenance of a sandalwood seed orchard site at HA, and in the distribution of seeds produced from the orchard.
 - a. The terms and conditions of the attached MOA document, as may be amended.
 - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted



David G. Smith, Administrator

APPROVED FOR SUBMITTAL:



DAWN CHANG, Chairperson

Attachments:

Exhibit A: Draft Memorandum of Agreement between DLNR and HA

MEMORANDUM OF AGREEMENT
BETWEEN

STATE OF HAWAI‘I DEPARTMENT OF LAND AND NATURAL RESOURCES

AND

HALOA AINA L.L.C.

This Memorandum of Agreement (“MOA”) is made and entered into on this ____ day of _____, 2023 by and between the State of Hawai‘i by its Department of Land and Natural Resources, hereinafter referred to as “DLNR”, and Haloa Aina L.L.C., hereinafter referred to as “HA”. DLNR and HA are jointly referred to as the Parties.

WITNESSETH:

WHEREAS, Hawaiian sandalwood trees (*Santalum spp.*) are highly valued economically, ecologically, and culturally, and are threatened by habitat loss, predation, fire, and lack of regeneration;

WHEREAS, the U.S. Department of Agriculture, acting through its Forest Service (“USFS”), and DLNR have entered into a Landscape Scale Restoration Grant Agreement Number 18-DG-11052021-224 (“Grant Agreement”) on July 18, 2018 to establish a network of Hawaiian sandalwood seed orchards at locations across the state to produce high quality, eco-region specific seed for native forestry restoration efforts;

WHEREAS, a sandalwood seed orchard will provide material (seeds and seedlings) to private and public land managers throughout the eco-region, for reforestation of priority watersheds and landscape scale restoration efforts, which will lead to enhanced ecosystem benefits;

WHEREAS, the project will inform future development of additional sandalwood seed orchards, increase knowledge on germination, cultivation, and silviculture, conserve genetic diversity, and contribute to future research of sandalwood oil productivity, growth requirements, and threat abatement;

WHEREAS, in partnership with the USFS, DLNR administers the Hawai‘i Forest Stewardship Program (“FSP”) which provides private landowners with technical and financial assistance to promote the stewardship, enhancement, conservation, and restoration of Hawaii’s forests;

WHEREAS, HA, a family-owned limited liability company that is dedicated to restoring native dryland forest, is implementing a ten-year Forest Stewardship Program Management Plan, recommended for approval by the Forest Stewardship Advisory Committee on February 11, 2021 and approved by the Division of Forestry and Wildlife Administrator on August 6, 2021, on their fee-owned 2,780 acre property, Tax Map Key Numbers (3) 7-9-001:013, (3) 7-9-001:014, and (3) 7-9-001:015 in Kealahou, South Kona, County of Hawai‘i;

WHEREAS, HA intends to manage its property for purposes of restoring, remediating, and regenerating native forest, preserving wildlife habitat, commercially producing timber and non-timber forest products, specifically sandalwood oil, increasing social benefits in the local community, and promoting access to native forest;

WHEREAS, the Parties seek to cooperate on the establishment of a sandalwood seed orchard at HA due to its appropriate location and environment for sandalwood, compatibility with HA's management intentions for the property, and HA's willingness to host a seed orchard site;

WHEREAS, the purpose of this MOA is to document the responsibilities of the Parties in the establishment, management, and maintenance of a sandalwood seed orchard site at HA, and in the distribution of seeds produced from the orchard;

NOW, THEREFORE, the HA and DLNR mutually agree as follows:

HA shall:

1. Provide access to DLNR to the 2.5 acre sandalwood seed orchard site located on a portion of TMK (3) 7-9-001:014 ("sandalwood seed orchard site") (Attachment 1 and Attachment 2);

DLNR may:

1. Install a sandalwood seed orchard, including:
 - a. Conducting site preparation activities including boundary flagging, creating holes for planting, and weed control via herbicide spraying;
 - b. Designing the seed orchard layout (Attachment 3);
 - c. Planting koa and sandalwood seedlings originating from the selected eco-region;
 - d. Fertilizing and mulching at the time of planting;
2. If DLNR installs a sandalwood seed orchard within the sandalwood seed orchard site, then DLNR shall:
 - a. Follow best management practices for seed orchard installation and operations including biosecurity precautions (cleaning of vehicles, boots, and equipment) to avoid introduction of harmful pests to the site;
 - b. Provide to HA not less than five calendar days prior written notice of planned access date, names of personnel requiring access, and scheduled activities at the sandalwood seed orchard;
 - c. Collect, process (de-pulp, dry), and store sandalwood seeds from the seed orchard upon maturity;
 - d. Provide 50% of collected and processed sandalwood seeds to HA, provided that DLNR may, in DLNR's sole discretion, provide additional seeds to HA;
 - e. Conduct sampling of individual sandalwood trees for oil analysis on an as-needed basis (as determined by DLNR);
 - f. Conduct site inspections to monitor tree health quarterly in years 2023 and 2024, and twice a year in years 2025 through 2033;
 - g. Maintain the orchard through activities such as fertilization, weed and pest

- control, and culling of inferior trees as needed
- h. Collect annual data on tree growth, including height and diameter, and survival by seed source, and share as open data.
 - i. Make reasonable efforts to seek future funding for ongoing maintenance and operations of the sandalwood seed orchard.

LIABILITY

DLNR, shall be responsible for injury caused by its officers and employees in the course and scope of their employment to the extent that DLNR's liability for such damage or injury has been determined by a court or otherwise agreed to by DLNR. DLNR shall pay for such damage and injury to the extent permitted by law, provided that an appropriation is enacted for that purpose and the funds have been allocated by the executive budget process. If DLNR procures a contractor to perform any work described in the Agreement within the seed orchard site, DLNR shall require the contractor to carry and maintain, at the contractor's expense, general liability insurance and property damage insurance in an amount determined by DLNR with respect to work to be performed by the contractor. If any subcontractor is involved in the performance of the contract, DLNR shall require that the contractor's insurance policy or policies name the subcontractor as additional insured. This insurance shall not be cancelled, limited to scope of coverage, or nonrenewed until written notice has been given to DLNR. It is agreed that any insurance maintained by the State of Hawai'i will apply in excess of, and not contribute with, insurance provided by contractor's policy(s).

CONDITION OF SEED ORCHARD SITE/ASSUMPTION OF RISK

DLNR hereby agrees and acknowledges that HA has not made, and will not make, any representation or warranty, implied or otherwise, with respect to the condition of the seed orchard site, including any dangerous or defective conditions existing upon the seed orchard site, whether or not such conditions are known to HA or reasonably discoverable by DLNR. DLNR accepts each entry upon the seed orchard site with full assumption of the risk and consequences thereof, of said conditions, subject to the acts or omissions of HA. DLNR agrees that all property, vehicles, approved improvements and equipment of DLNR kept or stored on the seed orchard site shall be so kept or stored at the sole risk of DLNR.

COMPLIANCE WITH LAWS AND REGULATIONS

DLNR shall, at all times during the term hereof, comply with all applicable laws, rules and regulations, whether state, county or federal, including, but not limited to, the laws applicable to the use of the seed orchard site.

COOPERATION

DLNR agrees to coordinate its activities with HA to minimize any impairment of access by customers or business invitees of HA to the seed orchard site and any inconvenience to or disruption of HA's business on the seed orchard site. If DLNR procures a contractor to perform any work described in the Agreement within the seed orchard site, DLNR shall require the

contractor to coordinate its activities with HA to minimize any impairment of access by customers or business invitees of HA to the seed orchard site and any inconvenience to or disruption of HA's business on the seed orchard site.

STATE'S FINANCIAL OBLIGATION AND COMMITMENT

DLNR's financial obligation and commitment to make payments or reimbursements of any kind under this MOA shall be contingent upon authorization and appropriation by the legislature and the availability and allotment by the Director of the Department of Budget and Finance of public funds to DLNR to make such payment or reimbursement.

TERM, MODIFICATIONS, AND TERMINATION

1. **Term.** This MOA shall be for a term of 10 years beginning upon execution of this MOA. This period may be extended upon mutual written agreement by the Parties.
2. **Modifications.** Amendments to the MOA must be made in writing by both parties.
3. **Termination.** Either party may terminate this MOA upon 30 days written notice to the other party.

PRINCIPAL CONTACTS

Individuals listed below are authorized to act in their respective areas for matters related to this agreement.

State of Hawai'i
Department of Land and Natural Resources
Chairperson
1151 Punchbowl Street
Honolulu, Hawai'i 96813
(808) 587-0400

Division of Forestry and Wildlife
Administrator
1151 Punchbowl Street, Room 325
Honolulu, Hawai'i 96813
(808) 587-0166

Haloa Aina L.L.C.
Wade Lee, Manager
Haloa Aina L.L.C., a Hawai'i limited liability company
P.O. Box 284
Honoka'a, Hawai'i 96727
Email: Wadelee@haloaina.com
(808) 896-6307

IN WITNESS WHEREOF, the Parties agree to this MOA and signed such agreement by their signatures below effective date of last signature.

HALOA AINA L.L.C.

Signature

Date

Wade Lee, Manager

Printed Name, Title

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

Signature

Date

Dawn N. S. Chang, Chairperson

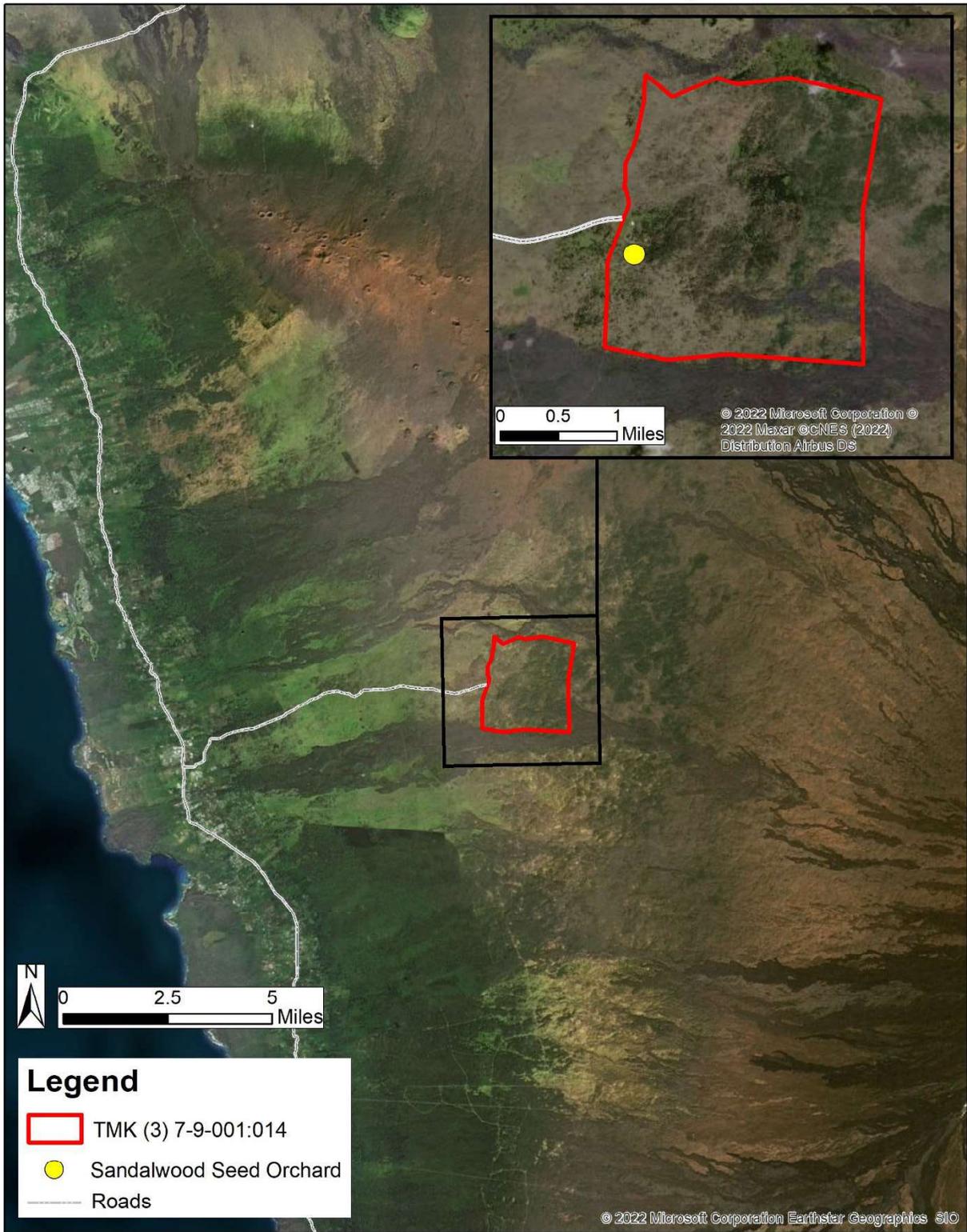
Printed Name, Title

APPROVED AS TO FORM:

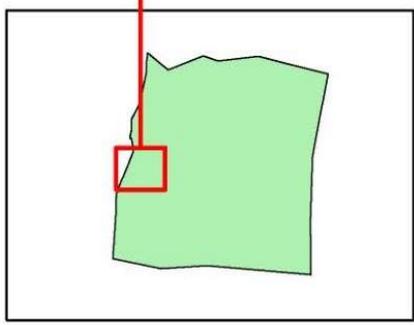
Deputy Attorney General

Date

Attachment 1. Location Map



Attachment 2. Sandalwood Seed Orchard at Haloa Aina



Legend

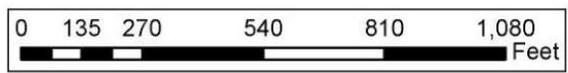
- Exclusion 2 Photo Points
- Exclusion 2: 44.591 acres
- Sandalwood Seed Orchard: 2.5 acres
- Protected Property Boundary



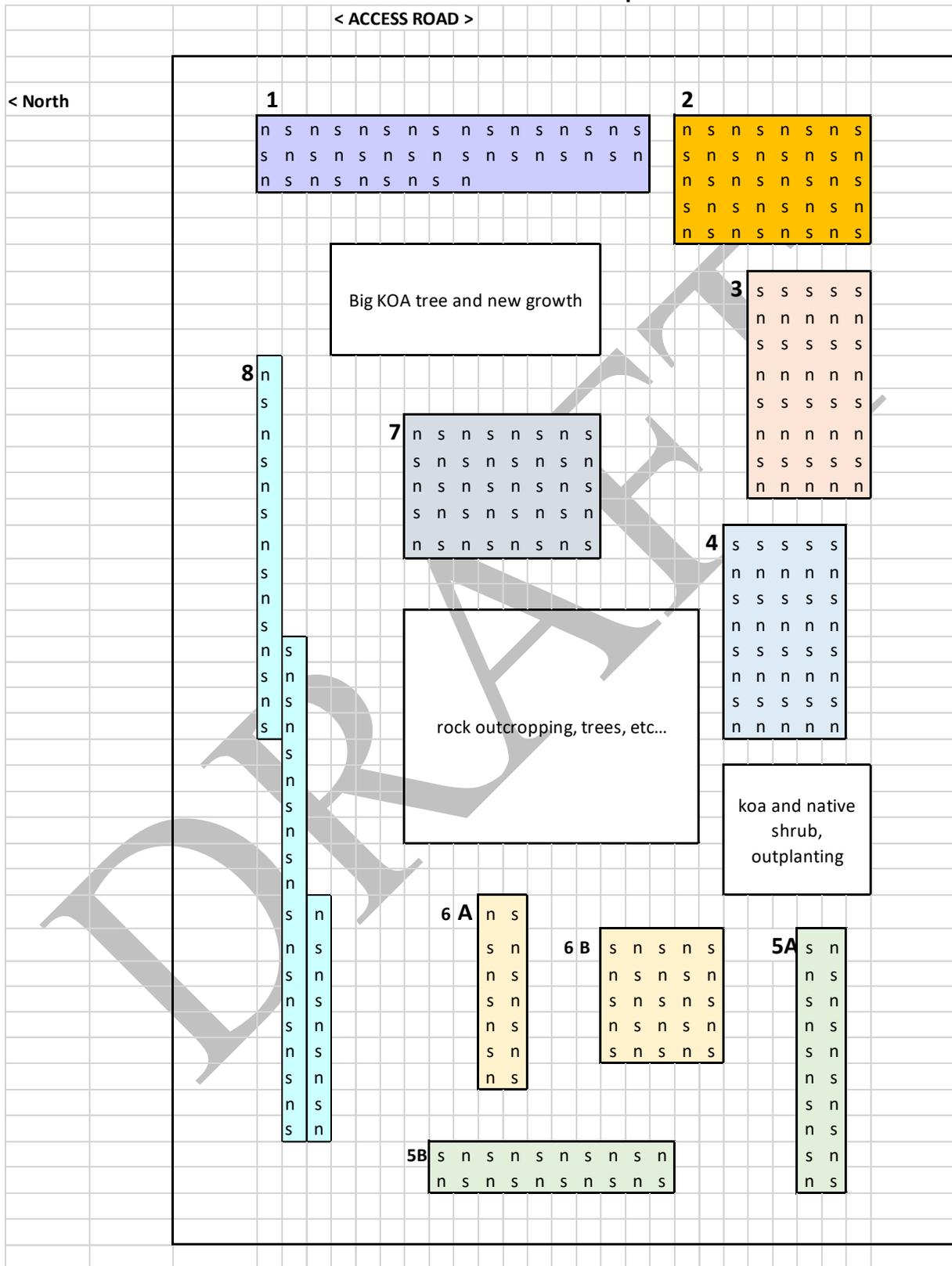
Date: 5/17/2022

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Baseline Documentation
Exclusion 2 Photopoints



Attachment 3. Haloa Aina Sandalwood Seed Orchard Site Map



Planting Order:							
See: Plot layout for orientation							
REP-1							
8	16	18	4	1	20	5	19
13	7	2	3	10	17	11	9
14	12	15	6				
REP-2							
2	3	18	6				
12	8	19	16				
7	17	9	13				
5	4	15	11				
1	14	10	20				
REP-3							
10	11		14		20	2	
1		3		19			
8	4		15				
7	6		16				
13	12		17				
18	5						
9							
REP-4							
14	16						
19	6						
20	7	8					
4	12	1					
2	11						
10	13	17					
18	15						
3	5	9					
REP 7							
10	5		6				
		18					
1	11		13				
		14					
20	8		4				
		17					
15	2		16				
		3					
						REP 5a	
							3
						7	
							9
						1	
							18
						14	

REP 5b						5
	15		13		6	19
12		11		2		16
	4		17		8	20
		10				
REP - 6A						
11	4		9			
	1		18			
	10		5			
	8		7			
			19			
REP-6B						
13	6		14			
15	12					
3	2		17			
20	6					
REP-8						
12	15					
10	6					
	18	13	2	9		
		8	7	3		
	2	11				
	16					
	4					
	19					
	14					
	20					
	1					

Sandalwood Seed Source List

GPS coordinates

1	COCA 1	-155.237042	19.37626
2	COCA 3	-155.237183	19.376456
3	COCA 4	-155.237403	19.376746
4	Doterra 45	-155.762574	19.52006
5	Haloa Aina 2	-155.805542	19.539656
6	Haloa Aina 4	-155.809833	19.533064
7	Haloa Aina 8	-155.799294	19.55102
8	Haloa Aina 16	-155.809875	19.525487
9	Kapapala 1	-155095191	19.685363
10	Kapua San 1	-155.814281	19.152125
11	Kapua San 2	-155.813987	19.152459
12	Manuka 57	-155.814392	19.151972
13	MK 4	-155.6005	19.80517

DLNR/Haloa Aina L.L.C. MOA

14	MK 6	-155.60052	19.80561
15	MK 13	-155.60224	19.80555
16	MK 16	-155.60293	19.8054
17	MK 22	-155.60089	19.80534
18	MK 24	-155.60073	19.80531
19	MK 35	-155.60455	19.80495
20	Puuwaawaa 5	-155.858633	19.786818

Key:

COCA-Chain of Craters Rd-Volcano National Park

Kapua San- TNC Kona Hema

MK- Mauna Kea

DRAFT