

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

October 27, 2023

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

Board Members:

SUBJECT: 1) APPROVE ACQUISITION OF PRIVATE LAND AT MAKOLELAU,
DISTRICT OF KONA, ISLAND OF MOLOKAI, TAX MAP KEY NUMBER
(2) 5-5-001:015 (MAKOLELAU 5th PARCEL);

2) UPON CLOSING, APPROVE ISSUANCE OF A MANAGEMENT
RIGHT-OF-ENTRY PERMIT TO THE DIVISION OF FORESTRY AND
WILDLIFE AT MAKOLELAU, DISTRICT OF KONA, ISLAND OF
MOLOKAI, TAX MAP KEY NUMBER (2) 5-5-001:015 (MAKOLELAU 5th
PARCEL);

AND

3) AUTHORIZE THE DIVISION OF FORESTRY AND WILDLIFE TO
CONDUCT A PUBLIC HEARING ON THE ISLAND OF MOLOKAI FOR A
PROPOSED ADDITION TO THE MOLOKAI FOREST RESERVE AT
MAKOLELAU, DISTRICT OF KONA, ISLAND OF MOLOKAI, TAX MAP
KEY NUMBER (2) 5-5-001:015 (MAKOLELAU 5th PARCEL).

APPLICANT AGENCY:

Division of Forestry and Wildlife.

PRIVATE LANDOWNER:

The Nature Conservancy, a District of Columbia nonprofit organization.

LEGAL REFERENCE:

Sections 107-10, 171-11, and 171-30, Hawaii Revised Statutes ("HRS"), as amended.

LOCATION:

Privately-owned land situated at Makolelau, District of Kona, Island of Molokai as shown on the attached map labeled **Exhibit A**.

AREA:

Approximately 515.750 acres, more or less.

ZONING:

State Land Use: Agricultural (254.75 acres)
 Conservation/Protected Subzone (261 acres)

County of Maui: Agriculture (254.75 acres)
 Interim (261 acres)

CURRENT USE:

Vacant and unencumbered.

CONSIDERATION:

\$617,000.00.

PURPOSE:

Forest Reserve purposes.

CHAPTER 343-ENVIRONMENTAL ASSESSMENT:

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

APPLICANT REQUIREMENTS:

1. Obtain an appraisal report to determine the value of the property to be acquired;
2. Provide survey maps and descriptions for the privately-owned property according to State Department of Accounting and General Services Survey Division standards;

3. Obtain a title report for the privately-owned property subject to review and approval by the Department; and
4. Conduct a Phase I Environmental Site Assessment and, if this Phase I identifies the potential for hazardous materials release or the presence of hazardous materials, conduct a Phase II environmental sampling and analysis plan and perform any and all remediation, abatement and disposal as may be warranted and as satisfactory to the standards required by the Federal Environmental Protection Agency and/or the State Department of Health, all at no cost to the State and to the satisfaction of the Department.

BACKGROUND:

At its meeting held December 11, 2020, under Agenda Item C-3, the Board approved a subgrant of federal funds from the U.S. Fish and Wildlife Service Recovery Land Acquisition program ("USFWS" "RLA") to Molokai Land Trust ("MLT") for land acquisition at Mapulehu, District of Kona, Island of Molokai. This was preceded by the Board's approval of a grant from the Land Conservation Fund to MLT for the same acquisition (meeting held April 24, 2020 under Agenda Item C-3).

After the formerly willing seller for the Mapulehu land rejected MLT's purchase offer, USFWS amended the RLA grant to allow the Division to assist The Nature Conservancy ("TNC") with purchasing five parcels spanning 1,045 acres at Makolelau, District of Kona, Island of Molokai, including the subject Makolelau "5th Parcel" at Tax Map Key Number (2) 5-5-001:015. At its meeting held March 11, 2022, under Agenda Item C-1, the Board authorized the Chairperson to enter into a subgrant agreement with TNC for TNC's acquisition of the five Makolelau parcels.

At its meeting held July 22, 2022, under Agenda Item C-2, the Board approved the acquisition, via donation from TNC, of four of the five Makolelau parcels (Tax Map Key Numbers (2) 5-5-001:013; 5-5-001:022; 5-5-001:036; 5-5-001:038) and issuance of a Management Right-of-Entry to the Division for those parcels, and authorized the Division to hold public hearings for adding the four Makolelau parcels to the Molokai Forest Reserve. These four parcels are depicted in pink on the attached map (Exhibit A) as "Makolelau State Parcels." The Board also authorized the Chairperson to enter into a Memorandum of Understanding with TNC for conveying the remaining Makolelau 5th Parcel at Tax Map Key Number (2) 5-5-001:015 to the State at a later date.

In September 2022, TNC provided matching funds and secured a landowner donation to complete its purchase of the five Makolelau parcels in a bargain sale; encumbered all five parcels with a Notice of Federal Participation (stating that the entire property must be managed in accordance with the terms and conditions of the RLA grant); and donated four of the parcels to the State, retaining the 5th parcel which it sought to sell to the State at a later date.

At its meeting held April 28, 2023 under Agenda Item C-1, the Board approved a grant of up to \$650,000 to the Division from the Land Conservation Fund for acquiring the Makolelau 5th Parcel, with standard conditions for (a) the imposition of Legacy Land Conservation Program restrictions and covenants into the deed and (b) the submission and acceptance of standard Legacy Land Conservation Program forms for Project Accounting, Matching Funds, and Resource Value Documentation; and with special conditions that (1) the Department engage in a community outreach and dialogue process to develop a management plan for the Makolelau 5th parcel, and (2) the community outreach management plan be completed within 24 months of closing on the land acquisition deal. As one of four Legacy Land grant awards approved by the Board for equal percentages of requested funding, the initial amount transferred from the Land Conservation Fund to the Department Trust Fund for this acquisition is \$593,458 (91.3% of the amount requested in the application). The Division seeks to use other State funds totaling \$23,542 to cover the purchase price of \$617,000.

Land Division and the Department of the Attorney General assisted the Division in completing due diligence for the acquisition. The Division contracted for an appraisal with Medusky and Co. which determined a fair market value that supports the purchase price. An updated title report confirmed that there were no outstanding liens on the property. A Phase 1 Environmental Site Assessment prepared by Lehua Environmental, Inc. in April 2022, and updated in April 2023 concluded that there is no evidence of Recognized Environmental Conditions that could impact the property.

DISCUSSION

The Department and The Nature Conservancy have partnered to purchase the Makolelau property which spans most of the Mokolelau ahupua'a on the south slope of Molokai. Acquiring the Makolelau 5th parcel and adding it to the public lands inventory would protect watershed, endangered species, and open space, and would provide public access and opportunities for community co-management. It would also allow contiguous management of the other four parcels in Makolelau that are proposed to be added to the Forest Reserve System.

Upon Board authorization the Division will hold a public hearing to gather public testimony on a proposal to designate the five Mokolelau parcels as a Forest Reserve.

Prior to set-aside, survey maps will be required per the Department of Accounting and General Services Survey Division. Existing sub-division maps dated October 28, 1982, provide descriptions that Survey Division approved and checked for mathematical correctness to prepare property descriptions and maps. Subdivision will not be required. A draft final Warranty Deed (**Exhibit B**) and a draft final Purchase and Sale Agreement (**Exhibit C**), were reviewed and accepted by the seller and the State's Deputy Attorney General, as attached for the Board's review and approval.

RECOMMENDATIONS: That the Board:

1. Approve the Board's acquisition of approximately 515.750 acres of private land at Makolelau, District of Kona, Island of Molokai, currently identified as Tax Map Key Number (2) 5-5-001:015 (Makolelau 5th Parcel), under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current warranty deed document form, as may be amended from time to time;
- B. Review and approval by the Department of the Attorney General; and
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

2. Approve the issuance of a management right-of-entry permit from the Land Division to the Division of Forestry and Wildlife at Makolelau, District of Kona, Island of Molokai, currently identified as Tax Map Key Number (2) 5-5-001:015 (Makolelau 5th Parcel), under the terms and conditions cited above, effective immediately upon acquisition by the State, which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time; and
- B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

3. Pursuant to Section 183-11, Hawaii Revised Statutes, as amended, authorize the Division of Forestry and Wildlife to conduct a public hearing on the island of Molokai regarding the designation of the parcel (2) 5-5-001:015 for addition to the Molokai Forest Reserve. Further, pursuant to 183-12 HRS authorize the Chairperson to:

- A. Set the date, location, and time of the public hearing; and
- B. Appoint a hearing master(s) for the public hearing.

Respectfully Submitted,



DAVID G. SMITH, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



DAWN N.S. CHANG, Chairperson

Attachments:

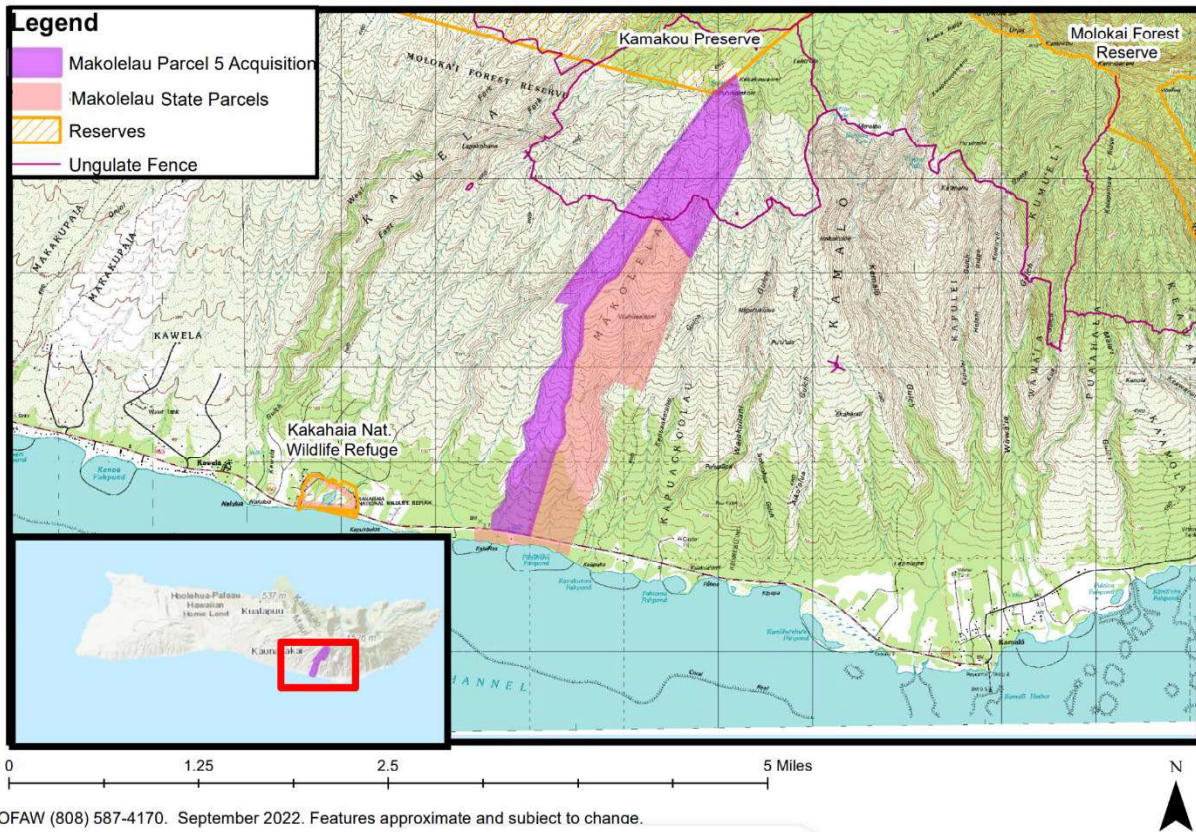
Exhibit A: Property Map

Exhibit B: Draft Final Warranty Deed

Exhibit C: Draft Final Purchase and Sale Agreement (with its Exhibits C and D)

Exhibit A

Makolelau Acquisition



Parcel (2) 5-5-001:015 (Makolelau 5th Parcel Acquisition) and Adjacent Parcels proposed for addition to the Molokai Forest Reserve

Exhibit "A" and delineated on Exhibit "B," both attached hereto and made parts hereof (hereafter, the "Property"). SUBJECT TO THE FOLLOWING:

1. Land Patent Grant No. S-15,296 dated December 5, 1975.
2. Section 18.16.270 D. Agreement for Large Lots dated September 24, 1981, recorded in the State of Hawaii, Bureau of Conveyances in Liber 16115, Page 81 (unrecorded Agreement as of March 28, 1980, and entitled "Settlement and Trust Agreement Regarding Subdivision of Makolelau, Molokai").
3. Instrument dated October 29, 1983, recorded aforesaid in Liber 17417, at Page 10, containing the terms and provisions, contained in the State of Hawaii, Department of Land and Natural Resources approval of the subdivision dated May 18, 1982.
4. Triangulation Survey Station(s) "Puu Kolekole" located within the land.
5. Notice of Federal Participation dated September 1, 2022, recorded aforesaid in Document No. A-82790244 between the State of Hawaii, Board of Land and Natural Resources "Recipient" and The Nature Conservancy, a District of Columbia nonprofit corporation.

NOTICE OF STATE PARTICIPATION

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

AND the reversions, remainders, rents, income and

profits thereof, and all of the estate, right, title, and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or in any ways appertaining or held and enjoyed therewith in fee simple unto said Grantee, the Grantee's successors and assigns, forever, free and clear of all liens and encumbrances, except as noted herein.

The Grantor, for itself, its successors and assigns, does hereby covenant with the Grantee, its successors and assigns, that the Grantor is lawfully seised in fee simple and possessed of the above-described Property that it has a good and lawful right and title to sell and convey the same as aforesaid, that the same is free and clear of all liens and encumbrances, except as noted herein, and that it will and its successors and assigns, shall WARRANT AND DEFEND the same unto the Grantee, its successors and assigns, forever, against the claims and demands of all persons whomsoever.

AND, the Grantor warrants that if any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Grantor on or adjacent to the Property, as determined by Grantee in its sole discretion, then the Grantor shall be responsible for the reasonable costs thereof. In addition, Grantor shall execute affidavits, representations and the like from time to time at Grantee's request concerning Grantor's best knowledge and belief regarding the presence of hazardous materials on the Property placed or released by Grantor.

The Grantor agrees to release, indemnify, defend, and hold Grantee harmless, from any damages and claims resulting from the release of hazardous materials on or about the Property occurring while Grantor was in possession of the Property, or elsewhere if caused by Grantor or persons acting through or under Grantor.

For the purpose of this warranty deed "hazardous material" shall mean any pollutant, contaminant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, as all of the above are defined in or pursuant to the Resource Conservation and Recovery Act, as

amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, as amended, Chapter 128D, Hawaii Revised Statutes, as amended, or any other federal, state, or local law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

The Grantor shall be responsible for payment of all property taxes up to the date of execution of this Warranty Deed.

IT IS MUTUALLY AGREED that the terms "Grantor" and "Grantee," as and when used hereinabove or hereinbelow shall mean and include the masculine or feminine, the singular or plural number, individuals, associations, trustees, corporations, partnerships, or other entities and their and each of their respective successors in interest, heirs, executors, personal representatives, administrators and permitted assigns, according to the context thereof, and that if these presents shall be signed by two or more grantors, or by two or more grantees, all covenants of such parties shall be and for all purposes deemed to be their joint and several covenants.

The parties agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same instrument, binding all parties notwithstanding that all of the parties are not signatory to the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, THE NATURE CONSERVANCY, a District of Columbia non-profit corporation, the Grantor herein, has caused these presents to be executed this _____ day of _____, 20____, and the STATE OF HAWAII, by its Board of Land and Natural Resources, the Grantee herein, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be executed this _____ day of _____, 20____, both effective as of the day, month, and year first above written.

THE NATURE CONSERVANCY, a
District of Columbia non-profit
corporation

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

By _____

Its _____

GRANTOR

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

CINDY Y. YOUNG
Deputy Attorney General

STATE OF HAWAII

By _____
DAWN N.S. CHANG
Chairperson
Board of Land and
Natural Resources

Dated: _____

GRANTEE

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

On this _____ day of _____, 20 ____,
before me appeared _____,
to me personally known, who, being by me duly sworn, did say
that ___ is the _____, of THE
NATURE CONSERVANCY, a District of Columbia non-profit
corporation, and that said instrument was signed in behalf of
said corporation by authority of its Board of Directors, and the
said _____ acknowledged said instrument to
be the free act and deed of said corporation.

Notary Public, State of Hawaii

My commission expires: _____

13.	225° 30'		450.00	feet along same;
14.	100° 19'	34.4"	566.42	feet along same;
15.	218° 06'	30"	4662.94	feet along Lot 2, Land Court Application 1714;
16.	218° 06'	30"	4400.00	feet along Lot 1, Land Court Application 1714;
17.	230° 20'	30"	860.88	feet along same;
18.	348° 24'	30"	2278.35	feet along same;
19.	27° 49'	30"	4372.84	feet along L. P. 8143, L. C. Aw. 9971 Ap. 24 to W. P. Leleiohoku;
20.	139° 18'	40"	1926.89	feet along the remainder of Grant 4105;
21.	32° 00'		2724.98	feet along same;
22.	67° 00'		2724.98	feet along same;
23.	37° 00'		1250.00	feet along same;
24.	5° 00'		1125.00	feet along same;
25.	24° 00'		650.00	feet along same;
26.	7° 35'		1200.00	feet along same;
27.	23° 30'		500.00	feet along same;
28.	0° 30'		850.00	feet along same;
29.	31° 15'		600.00	feet along same;
30.	18° 00'		3050.00	feet along same to the point o beginning and containing an area of 515.750 acres, more or less

EXHIBIT B

MAP



**AGREEMENT OF SALE
(Makolelau Property)**

This is an Agreement of Sale (“Agreement”) dated _____, 2023, between THE NATURE CONSERVANCY, a District of Columbia non-profit corporation, authorized to do business in the State of Hawai’i (“Seller”), and the **State of Hawaii**, by its Board of Land and Natural Resources (“Buyer”).

RECITALS

A. The address and telephone numbers of the parties to this Agreement are as follows: Telephone numbers are included for information only:

SELLER:

The Nature Conservancy
Attn: Mele Coleman
923 Nuuanu Ave.
Honolulu, HI 96813
mele.coleman@tnc.org
Tel: (808) 285-8581

BUYER:

State of Hawaii
Board of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809-0621
Attn: Dawn N.S. Chang, Chairperson
dawn.chang@hawaii.gov
Tel: (808) 808-587-_____

Copies of any notices to Seller should also be sent to:

The Nature Conservancy, Legal
923 Nuuanu Ave.
Honolulu, Hawaii 96813
Attn: Melinda Ching
mching@tnc.org
Tel: (808) 284-6248

Copies of any notices to Buyer should also be sent to:

State of Hawaii
Dept. of Land and Natural Resources
Division of Forestry and Wildlife
1151 Punchbowl Street, Room 325
Honolulu, Hawaii 96813
Attn: Emma Yuen
emma.yuen@hawaii.gov
Tel: (808) 808-366-4788

B. Seller owns that certain real property located on the Island of Moloka’i, Hawaii, Tax Map Key No. (2) 5-5-001:015, described in Exhibit A and depicted in Exhibit B both attached to this Agreement and incorporated herein by this reference, together with all improvements, fixtures, timber, water, oil, gas and mineral and metallic mines of every kind or description, if any, and all rights appurtenant to the Property, including but not limited to timber rights, water rights, grazing rights, access rights, and geothermal rights, if any will be referred to in this Agreement as the “Property.”

C. Buyer wishes to purchase the Property from Seller and Seller wishes to sell the Property to Buyer on the terms and conditions set forth in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. **Purchase and Sale.** Seller agrees to sell the Property to Buyer and Buyer agrees to buy the Property from Seller on the terms and conditions set forth herein.

2. **Purchase Price.** The purchase price for the Property is Six Hundred Seventeen Thousand Dollars (\$617,000.00) (the “Purchase Price”). The Purchase Price will be payable on Close of Escrow, as defined in Section 7.

3. **Effective Date.** This Agreement will be effective on the date that it is signed by both parties hereto and approved as to form and legality by the Attorney General, as shown on the signature pages to this Agreement (the “Effective Date”).

4. **Conditions Precedent to Closing.** The parties’ respective obligations to close the purchase and sale of the Property are conditioned upon all of the following happening at the time set forth below, or if not set forth below, then at least one (1) business day before the Close of Escrow or _____, whichever is sooner:

(a) Buyer’s approval of the title, physical, and structural condition of the Property not later than _____ (the “Review Deadline”);

(b) Buyer has approved the environmental condition of the Property;

(c) Buyer receives approval by the State of Hawaii, Board of Land and Natural Resources to enter into this Agreement and to acquire the Property, which approval is subject to the Board’s sole discretion;

(d) Buyer receives confirmation from all sources of grant funding that they are compatible with each other and may be used together to purchase the Property;

(e) Seller has provided Buyer with copies of the Property Information (as defined in Section 5(a) below). To the best of Seller’s knowledge the Property Information contains all encumbrances, restrictions, and obligations, both recorded and unrecorded, pertaining to the Property;

(f) Satisfaction of all obligations stated in this Agreement by both Buyer and Seller, within the periods provided in this Agreement (if any).

If any condition precedent is not satisfied or waived, the Seller or Buyer may terminate this Agreement by written notice to the other party and to the Escrow Holder; in which event the Parties will have no further obligation to each other under this Agreement and Buyer will not be liable for any damages.

5. **Condition of the Property.**

(a) Buyer and Seller agree that, before the Review Deadline, as defined in Section 4(a) above:

(i) Buyer will have had the opportunity to study all aspects or circumstances of the Property which Buyer deems material or relevant;

(ii) Buyer will have received from Seller the documents described in Exhibit C attached hereto and incorporated by this reference, which sets forth Property-related information (the "Property Information");

(iii) Buyer will have had access to the Property; and

(iv) Buyer will have had the opportunity to make all inspections and verifications which Buyer deems necessary for the completion of Buyer's due diligence review for the transaction covered by this Agreement.

(b) Except as otherwise expressly provided in this Agreement, Buyer hereby acknowledges and agrees that the sale of the Property hereunder is and will be made on an "as is, where is" basis and that neither Seller, nor any attorney, representative, agent, or employee of Seller has made, or will make, and except for Seller's representations and express warranties set forth in this Agreement, Seller specifically negates and disclaims, any representations, warranties, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present, future, or otherwise, of, as to, concerning or with respect to the Property.

6. **Due Diligence.** Seller has provided to Buyer the Property Information and the opportunity to investigate and review a preliminary title report, the Property Information, and the physical condition of the Property, which investigation and review must be completed on or before the Review Deadline. If Buyer determines that it is dissatisfied with the condition of the Property, then Buyer may terminate this Agreement by delivering written notice to Seller on or before the Review Deadline. If Buyer fails to deliver any such written termination notice to Seller on or before the Review Deadline, then Buyer will be deemed to have elected to proceed to close escrow and acquire the Property.

7. **Escrow and Closing.**

(a) Seller has opened an escrow (the "Escrow") with Title Guaranty Hawaii, 235 Queen St., Honolulu, Hawaii, 96813 Attn: Barbara Paulo (the "Escrow Holder") for the purpose of consummating the purchase and sale of the Property. Buyer and Seller will approve and submit joint escrow closing instructions. Escrow will close on or before _____, unless extended by agreement of the parties.

(b) Buyer and Seller must deliver (or cause to be delivered) all final, fully executed documents and all funds into Escrow at least two (2) business days before the Close of Escrow.

(c) Seller will pay all escrow fees. Any documentary tax or real property transfer tax arising out of the conveyance of the Property will be borne by Seller, if applicable. The cost of title insurance will be borne as provided in Section 9 below. Any other closing expenses, fees, and charges will be paid for by Seller.

8. **Title**. Seller will cause the Property to be conveyed to Buyer by warranty deed (the “Deed”) in the form attached hereto as Exhibit C, incorporated herein by this reference, a fee simple interest in the Property, free and clear of all monetary liens and encumbrances, excepted as shown in the preliminary title reports issued by Title Guaranty Hawaii (the “Title Company”) attached hereto as Exhibit D, attached hereto and incorporated by this reference:

Seller will pay or cause to be paid all property taxes up to the date of recordation of the Deed.

9. **Title Insurance**. Seller will provide an ALTA standard coverage, owner’s policy of title insurance, with regional exceptions, in the full amount of the Purchase Price, insuring that title to the Property is vested in Buyer upon Close of Escrow subject only to the exceptions noted in Section 8. Buyer will pay for the cost of standard coverage. If Buyer elects to obtain any endorsements and/or an extended coverage policy, Buyer will pay the difference between ALTA standard coverage and the increased premium for the endorsements and/or extended coverage. If Buyer or the Title Company requires a survey, the cost of the survey will be at Buyer’s expense and such survey must be completed at least two (2) business days before the Close of Escrow.

10. **Seller’s Promise not to Further Encumber**. Seller may not, without the prior written consent of the Buyer, make any leases, contracts, options, or agreements whatsoever affecting the Property that would in any manner impede Seller’s ability to perform hereunder and deliver title as agreed herein.

11. **Seller’s Representations**. Seller represents and warrants that:

(a) Subject to the conditions precedent set forth in Section 4, Seller has the power to sell, transfer and convey all right, title and interest in and to the Property;

(b) To Seller’s actual knowledge, there is no action, suit, litigation, arbitration, or other proceeding pending or threatened that in any manner affects the Property;

(c) Subject to the conditions precedent set forth in Section 4, Seller has full power and authority to execute and deliver this Agreement and to consummate the transactions provided herein. The persons signing this Agreement for Seller have full power and authority to sign for Seller and to bind it to this Agreement;

(d) Seller has no actual knowledge of any violations of any law, order, ordinance, or regulation affecting the Property;

(e) Seller has not received notice and has no knowledge of, any pending or threatened condemnation of all or part of the Property;

(f) This Agreement and the other documents to be executed by Seller hereunder, upon execution and delivery thereof by Seller, will have been duly entered

into by Seller, and will constitute legal, valid and binding obligations of Seller, subject to the conditions precedent set forth in Section 4, and subject to applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws or equitable principles affecting or limiting the rights of contracting parties generally. Neither this Agreement nor anything provided to be done under this Agreement violates or will violate any contract, document, understanding, agreement, or instrument to which Seller is a party or by which it is bound;

(g) Seller has no actual knowledge of any unrecorded agreements affecting the Property other than as described in Section 8;

(h) Seller represents and warrants that it is not a “foreign person” as defined in Section 1445 of the Internal Revenue Code. Seller’s United States Taxpayer Identification Number is 53-0242652;

(i) Seller represents and warrants that it is a non-profit corporation duly organized, validly existing and in good standing under the laws of the District of Columbia;

(j) Seller represents and warrants, to Seller’s actual knowledge that the Property is not subject to any investigation by any governmental authority or any judicial or administrative proceedings alleging the material violation of or liability under any hazardous materials law, or any outstanding written order or agreement with any governmental authority or private party relating to any hazardous materials laws or hazardous materials claims;

(k) Seller agrees to disclose to Buyer all material findings regarding the condition of the Property that Seller may discover and are not contained in the preliminary title report delivered to Buyer.

12. **Buyer’s Representation.** Buyer represents and warrants that subject to approval by the Board of Land and Natural Resources which approval is at the Board’s sole discretion, Buyer has all the requisite power and authority to enter into this Agreement and to consummate the transactions contemplated hereby.

13. **Risk of Loss.** All risk of loss will remain with Seller until Close of Escrow. If the Property is destroyed or damaged after the Effective Date of this Agreement and before Close of Escrow, then Buyer or Seller may, at their option elect to terminate this Agreement with no damages accountable to Buyer.

14. **Notices.** All notices pertaining to this Agreement will be in writing delivered to the parties hereto by email transmission, personally by hand, courier service or Express Mail, or by first class mail, postage prepared, at the addresses set forth in Recital A. All notices will be deemed given: (a) if sent by mail, when deposited in the mail, first class postage prepared, addressed to the party to be notified; (b) if delivered by hand, courier service or Express Mail, when delivered; or (c) if transmitted by email, when transmitted; provided the sender receives no indication the transmittal was

unsuccessful. The parties may, by notice as provided above, designate a different address for notices.

15. **Remedies Upon Default.** If Buyer or Seller defaults in the performance of any of their respective obligations under this Agreement, then Seller or Buyer will, in addition to any and all other remedies provided in this Agreement or by law or equity, have the right of specific performance against the defaulting party.

16. **No Broker's Commission.** Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. Each party further represents that it has not and will not pay or receive a broker's commission or finders' fee for this transaction. If any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, then the party on account of whose conduct the claim is asserted will hold the other party harmless from said claim.

17. **Time of the Essence; Dates.** Time is of the essence to this Agreement. If any date specified in this Agreement falls on Saturday, Sunday or a public holiday, then such date will be deemed to be the succeeding day on which the public agencies and major banks are open for business.

18. **Binding on Successors.** Subject to approval by the Board of Land and Natural Resources and the Seller's Board of Directors, which approvals are at each Board's sole discretion, this Agreement will be binding not only upon the parties but also upon their heirs, personal representatives, assigns, and other successors in interest.

19. **Additional Documents.** Seller and Buyer agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

20. **Additional Documents to be Provided by Seller to Buyer.** Seller agrees to provide to Buyer or Escrow Holder before the close of Escrow a resolution of the Board of Directors of Seller authorizing the transaction contemplated by this Agreement, the execution, delivery, and performance of this Agreement, any other obligation of Seller contemplated by this Agreement, and authorizing the person who will sign this Agreement to do so on behalf of Seller.

21. **Assignment.** Buyer may not assign its interests under this Agreement without the written consent of Seller.

22. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between Buyer and Seller pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Agreement will be binding unless executed in writing by all parties. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will

be binding unless executed in writing by the party making the waiver and agreeable to both parties.

23. **Counterparts**. This Agreement may be executed in counterparts; each of which will be deemed an original and which together will constitute one and the same agreement.

24. **Severability**. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance will nonetheless be of full force and effect.

25. **Governing Law**. This Agreement will be governed by and construed in accordance with the laws of the State of Hawai'i.

26. **Survival of Close of Escrow**. All representations, warranties, covenants, conditions, agreements, and other obligations set forth in this Agreement will survive the Close of Escrow and the recordation of the Deed and will not merge therein unless specifically stated otherwise in this Agreement.

IN WITNESS of the foregoing provisions the parties have signed this Agreement below:

SELLER:

STATE OF HAWAII

THE NATURE CONSERVANCY, a District
of Columbia nonprofit corporation

By: _____

Name: DAWN N.S. CHANG

Chairperson, Board of Land and Natural Resources

By: _____

GRANTEE

Date: _____, 2023

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

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

Name: CINDY Y. YOUNG

Deputy Attorney General

Exhibit A

Legal Description of Property

ITEM i:

All of that certain parcel of land (being portions of the land described in and covered by Land Patent Grants 4105 to Frank H. Foster and S-15,296 to Daniel Foster, et al) situate, lying and being at Makolelau, Island of Molokai, County of Maui, State of Hawaii, being LOT "D", and thus bounded and described as per survey of Harold Zane, Registered Professional Land Surveyor, dated October 29, 1982, to-wit:

Beginning at the southeast corner of this piece of land, on the north side of Kamehameha V Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU LUAHINE" being 24,957.30 feet south and 31,127.05 feet east, thence running by azimuths measured clockwise from true South:

1. $101^{\circ} 35'$ 30" 100.00 feet along the north side of Kamehameha V Highway;
2. Thence along same, on a curve to the left with a radius of 11,499.16 feet, the chord azimuth and distance being $98^{\circ} 44' 41.6''$ 1142.22 feet;
3. $186^{\circ} 08'$ 496.66 feet along the remainder of Grant 4105;
4. $215^{\circ} 36'$ 800.00 feet along same;
5. $185^{\circ} 04'$ 600.00 feet along same;
6. $204^{\circ} 02'$ 700.00 feet along same;
7. $226^{\circ} 00'$ 600.00 feet along same;
8. $170^{\circ} 31'$ 800.00 feet along same;
9. $227^{\circ} 38'$ 550.00 feet along same;
10. $192^{\circ} 29'$ 1300.00 feet along same;
11. $219^{\circ} 10'$ 1050.00 feet along same;
12. $183^{\circ} 30'$ 1400.00 feet along same;

13.	225° 30'		450.00	feet along same;
14.	100° 19'	34.4"	566.42	feet along same;
15.	218° 06'	30"	4662.94	feet along Lot 2, Land Court Application 1714;
16.	218° 06'	30"	4400.00	feet along Lot 1, Land Court Application 1714;
17.	230° 20'	30"	860.88	feet along same;
18.	348° 24'	30"	2278.35	feet along same;
19.	27° 49'	30"	4372.84	feet along L. P. 8143, L. C. Aw. 9971 Ap. 24 to W. P. Leleiohoku;
20.	139° 18'	40"	1926.89	feet along the remainder of Grant 4105;
21.	32° 00'		2724.98	feet along same;
22.	67° 00'		2724.98	feet along same;
23.	37° 00'		1250.00	feet along same;
24.	5° 00'		1125.00	feet along same;
25.	24° 00'		650.00	feet along same;
26.	7° 35'		1200.00	feet along same;
27.	23° 30'		500.00	feet along same;
28.	0° 30'		850.00	feet along same;
29.	31° 15'		600.00	feet along same;
30.	18° 00'		3050.00	feet along same to the point o beginning and containing an area of 515.750 acres, more or less.

Exhibit B

Map of Property



Exhibit C

Limited Warranty Deed

WARRANTY DEED

Total Number of Pages: ___ LOD No.

Tax Map Key No. (2) 5-5-001:015

KNOW ALL MEN BY THESE PRESENTS:

THAT, effective as of the ___ day of _____, 20___, THE NATURE CONSERVANCY, a District of Columbia non-profit corporation, whose address is 923 Nuuanu Avenue, Honolulu, Hawaii 96817, hereinafter referred to as the “Grantor,” for and in consideration of the sum of SIX HUNDRED SEVENTEEN THOUSAND AND NO/100 DOLLARS (\$617,000.00), paid by the STATE OF HAWAII, by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, hereinafter referred to as the “Grantee,” the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, the Grantee’s successors and assigns, that certain parcel of land situate at Makolelau, Island of Molokai, County of Maui, Hawaii, designated as “,” containing an area of 515.750 acres, more or less, more particularly described in Exhibit “A” and delineated on Exhibit “B,” both attached hereto and made parts hereof (hereafter, the “Property”). SUBJECT TO THE FOLLOWING:

1. Land Patent Grant No. S-15,296 dated December 5, 1975.
2. Section 18.16.270 D. Agreement for Large Lots dated September 24, 1981, recorded in the State of Hawaii, Bureau of Conveyances in Liber 16115, Page 81 (unrecorded Agreement as of March 28, 1980, and entitled “Settlement and Trust Agreement Regarding Subdivision of Makolelau, Molokai”).
3. Instrument dated October 29, 1983, recorded aforesaid in Liber 17417, at Page 10, containing the terms and provisions, contained in the State of Hawaii, Department of Land and Natural Resources approval of the subdivision dated May 18, 1982.
4. Triangulation Survey Station(s) “Puu Kolekole” located within the land.
5. Notice of Federal Participation dated September 1, 2022, recorded aforesaid in Document No. A-82790244 between the State of Hawaii, Board of Land and Natural Resources “Recipient” and The Nature Conservancy, a District of Columbia nonprofit corporation.

NOTICE OF STATE PARTICIPATION

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

AND the reversions, remainders, rents, income and profits thereof, and all of the estate, right, title, and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or in any ways appertaining or held and enjoyed therewith in fee simple unto said Grantee, the Grantee's successors and assigns, forever, free and clear of all liens and encumbrances, except as noted herein.

The Grantor, for itself, its successors and assigns, does hereby covenant with the Grantee, its successors and assigns, that the Grantor is lawfully seised in fee simple and possessed of the above-described Property that it has a good and lawful right and title to sell and convey the same as aforesaid, that the same is free and clear of all liens and encumbrances, except as noted herein, and that it will and its successors and assigns, shall WARRANT AND DEFEND the same unto the Grantee, its successors and assigns, forever, against the claims and demands of all persons whomsoever.

AND, the Grantor warrants that if any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Grantor on or adjacent to the Property, as determined by Grantee in its sole discretion, then the Grantor shall be responsible for the reasonable costs thereof. In addition, Grantor shall execute affidavits, representations and the like from time to time at Grantee's request concerning Grantor's best knowledge and belief regarding the presence of hazardous materials on the Property placed or released by Grantor.

The Grantor agrees to release, indemnify, defend, and hold Grantee harmless, from any damages and claims resulting from the release of hazardous materials on or about the Property occurring while Grantor was in possession of the Property, or elsewhere if caused by Grantor or persons acting through or under Grantor.

For the purpose of this warranty deed “hazardous material” shall mean any pollutant, contaminant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, as all of the above are defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, as amended, Chapter 128D, Hawaii Revised Statutes, as amended, or any other federal, state, or local law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

The Grantor shall be responsible for payment of all property taxes up to the date of execution of this Warranty Deed.

IT IS MUTUALLY AGREED that the terms “Grantor” and “Grantee,” as and when used hereinabove or hereinbelow shall mean and include the masculine or feminine, the singular or plural number, individuals, associations, trustees, corporations, partnerships, or other entities and their and each of their respective successors in interest, heirs, executors, personal representatives, administrators and permitted assigns, according to the context thereof, and that if these presents shall be signed by two or more grantors, or by two or more grantees, all covenants of such parties shall be and for all purposes deemed to be their joint and several covenants.

The parties agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same instrument, binding all parties notwithstanding that all of the parties are not signatory to the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, THE NATURE CONSERVANCY, a District of Columbia non-profit corporation, the Grantor herein, has caused these presents to be executed this _____ day of

_____, 20__, and the STATE OF HAWAII, by its Board of Land and Natural Resources, the Grantee herein, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be executed this _____ day of _____, 20__, both effective as of the day, month, and year first above written.

THE NATURE CONSERVANCY, a
District of Columbia non-profit
corporation

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

By _____
Its _____

GRANTOR

STATE OF HAWAII

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

By__

DAWN N.S. CHANG

Chairperson

Board of Land and

Natural Resources

CINDY Y. YOUNG

Deputy Attorney General

Dated:_____

GRANTEE

STATE OF HAWAII)

) SS.

CITY AND COUNTY OF HONOLULU)

On this ___ day of _____, 20 __, before me appeared
, to me personally known, who, being by me duly sworn, did say that ___ is the _____
, of THE NATURE CONSERVANCY, a District of Columbia non-profit corporation, and that
said instrument was signed in behalf of said corporation by authority of its Board of Directors,
and the said _____ acknowledged said instrument to be the free act and deed of said
corporation.

Notary Public, State of Hawaii

My commission expires:

Exhibit D

Property Information

PRELIMINARY REPORT

(No Liability Hereunder)

This report (and any revisions thereto) is issued solely for the convenience of the titleholder, the titleholder's agent, counsel, purchaser or mortgagee, or the person ordering it for the purpose of facilitating the issuance of a policy of title insurance by Title Guaranty of Hawaii, LLC and no liability will arise under this report.

SCHEDULE A

Title Guaranty of Hawaii, LLC (the "Company") hereby reports that, subject to those matters set forth in Schedule "B" hereof, the title to the estate or interest to the land described in Schedule "C" hereof is vested in:

THE NATURE CONSERVANCY,
a District of Columbia non-profit corporation,
as Fee Owner

This report is dated as of March 16, 2023 at 8:00 a.m.

Inquiries concerning this report should be directed to:
Title Officer - Reiko Crabtree; Office: (808)539-7704
Email: rcrabtree@tghawaii.com
Please reference Title Order No. 7311407979.

**SCHEDULE B
EXCEPTIONS**

1. Real Property Taxes, if any, that may be due and owing.

Tax Key: (2) 5-5-001-015 Area Assessed: 515.75 acres

Tax Classification: AGRICULTURAL AND CONSERVATION

2. Mineral and water rights of any nature.

3. The terms and provisions contained in the following:

INSTRUMENT : LAND PATENT GRANT NUMBER S-15,296

DATED : December 5, 1975

The foregoing includes, but is not limited to, matters relating to reservation of minerals and waters.

4. The terms and provisions contained in the following:

INSTRUMENT : SECTION 18.16.270 D. AGREEMENT FOR LARGE LOTS

DATED : September 24, 1981

RECORDED : Liber 16115 Page 81

PARTIES : TITLE GUARANTY OF HAWAII INCORPORATED, a Hawaii corporation, Trustee under that certain unrecorded Agreement as of March 28, 1980, and entitled "Settlement and Trust Agreement Regarding Subdivision of Makolelau, Molokai", et al, "Applicant", and the DEPARTMENT OF PUBLIC WORKS, COUNTY OF MAUI, "Department".

5. The terms and provisions, contained in the State of Hawaii (Department of Land Natural Resources) approval of the subdivision dated May 18, 1982, as disclosed by instrument dated October 29, 1983, recorded in Liber 17417, at Page 10, as follows:

- (i) that the owner comply with all applicable statutes, ordinances, rules and regulations of the federal, state, county and city governments, and applicable parts of Section 13-2-21 of Title 13, Chapter 2, Departmental Administrative Rules, as amended;
 - (ii) that the owner, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or admission of the owner, its successors, assigns, officers, employees, contractors and agents under the permit granted by the State of Hawaii or relating to or connected with the granting of said permit;
 - (iii) that the approval of the State of Hawaii is for subdivision use only and that all other proposed land use within the Conservation District will require the conservation district use application and approval of the Department of Land and Natural Resources;
 - (iv) that the Panahaha fishpond, being Lot P, shall not be subdivided, unless approved by the state.
6. Triangulation Survey Station(s) "Puu Kolekole" located within the land described herein, referenced on the Tax Map. Attention is invited to the provisions of Section 172-13 of the Hawaii Revised Statutes, relative to destruction, defacing or removal of survey monuments.
7. The terms and provisions contained in the following:
- INSTRUMENT : NOTICE OF FEDERAL PARTICIPATION
- DATED : September 1, 2022
- RECORDED : Document No. A-82790244
- PARTIES : STATE OF HAWAI'I, Board of Land and Natural Resources, "Recipient", and THE NATURE CONSERVANCY, a District of Columbia nonprofit corporation, "Subrecipient"
8. 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.

9. Water rights, claims or title to water, whether or not shown by the public records.
10. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.
11. Any unrecorded leases and matters arising from or affecting the same.

END OF SCHEDULE B