

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

May 10, 2024

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

- SUBJECT: 1. REQUEST THE APPROVAL OF AN ACQUISITION OF PRIVATE LANDS AT HAMAKUALOA DISTRICT, ISLAND OF MAUI, TAX MAP KEY NUMBERS (2) 2-9-011:012 AND (2) 2-9-013:009;
2. UPON CLOSING, APPROVE ISSUANCE OF A MANAGEMENT RIGHT-OF-ENTRY TO THE DIVISION OF FORESTRY AND WILDLIFE;
3. DELEGATE AUTHORITY TO THE DIVISION OF FORESTRY AND WILDLIFE'S MAUI BRANCH MANAGER, IN COORDINATION WITH THE MAUI LAND AGENT, TO ISSUE PERMITS PURSUANT TO SECTION 13-221-5, HAWAII ADMINISTRATIVE RULES;
- AND
4. AUTHORIZE THE DIVISION OF FORESTRY AND WILDLIFE TO CONDUCT A PUBLIC HEARING ON THE ISLAND OF MAUI FOR A PROPOSED ADDITION TO THE FOREST RESERVE SYSTEM FOR TAX MAP KEYS: (2) 2-9-011:012 AND (2) 2-9-013:009.

APPLICANT AGENCY:

Division of Forestry and Wildlife ("Division").

PRIVATE LANDOWNER:

Trust for Public Land, a California non-profit corporation ("Seller").

LEGAL REFERENCE:

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

LOCATION:

Privately-owned lands of Alexander and Baldwin and East Maui Landholdings, LLC situated at Maui identified by Tax Map Keys: (2) 2-9-011:012 and (2) 2-9-013:009 (“the Property”) as shown on the attached map labeled Exhibit A.

AREA:

| | |
|-----------------|---|
| (2) 2-9-011:012 | 46.81 acres, more or less |
| (2) 2-9-013:009 | 42.80 acres, more or less |
| Total: | approximately 89.61 acres, more or less |

ZONING:

| | |
|--------------------------|------------------------------|
| (2) 2-9-011:012 | |
| State Land Use District: | Agriculture and Conservation |
| County of Maui: | Agriculture and Conservation |
| (2) 2-9-013:009 | |
| State Land Use District: | Agriculture |
| County of Maui: | Agriculture |

CURRENT USE:

Vacant and unencumbered.

CONSIDERATION:

The purchase price will be the lower of either funds raised for the purchase or the fair market value (FMV) as established by an appraisal conducted by an independent appraiser contracted by the Hawaii State Department of Land and Natural Resources (“Department”) and reviewed and approved by the Department and the U.S. Department of Agriculture Forest Service.

PURPOSE:

Forest reserve purposes.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

Pursuant to Section 343-5(a)(1), HRS, an environmental assessment (“EA”) is not required where State or county funds are being used to acquire unimproved real property. As the subject lands are unimproved, an EA is not required. Inasmuch as the

Chapter 343 environmental requirements apply to the Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

ACQUISITION REQUIREMENTS:

- 1) Obtain an appraisal to determine the value of the properties to be acquired.
- 2) Provide survey maps and descriptions for the privately owned property according to State DAGS standards.
- 3) Obtain a title report for the privately owned property subject to review and approval by the Department.
- 4) Conduct a Phase I Environmental Site Assessment, and if it 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 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 (DOH), all at no cost to the State and to the satisfaction of the Department.

BACKGROUND:

The East Maui Rainforest Project will protect a coastal forest by acquiring parcels for sale by a private owner and prevent the loss of forest and coastal habitat. Subdivision and development are the greatest threat to parcels along this treasured coastline. By purchasing and transferring these parcels to public ownership through the State, the Division removes this significant threat. Located next to a state forest reserve and state lands set aside for forest reserve, the subject parcels are crucial for expanding Maui's 108,000-acre conservation network.

(2) 2-9-011:012 (West Hanawana) - This parcel contains Hoalua Stream and coastal areas (Hoalua Bay, Hanawana Bay, and Puu Ka Ae) with high-quality native coastal vegetation. Puu Ka Ae is a likely seabird nesting colony with potential future management as a seabird refuge. The parcel has existing dirt roads to the cliffs and offers shoreline access. This parcel has connectivity to and access through adjacent state lands set aside to the Division as an addition to the Ko'olau Forest Reserve. The acquisition will allow the contiguous protection of two bays. In 2020, the Division of Aquatic Resources (DAR) evaluated 12 East Maui Streams within the Huelo complex. It determined the restoration potential for Hoalua Stream is medium due to the presence of an estuarine bay. However, only limited biological information was available at the time. The stream enters marine waters at Hoalua Bay with no significant barrier. An estuarine bay is found at the coastline of this system.

(2) 2-9-013:009 (West Makaīwa) - This parcel is accessed from Hana Highway and includes portions of a trail to Makaīwa Bay (potentially a historic trail) and 'O'opuola Stream. DAR determined the restoration potential for 'O'opuola Stream is high as it gradually enters marine waters at Makaīwa Bay, with no significant barriers. A riverine

estuary and estuarine bay represent estuaries within this system, and juvenile ‘O‘opu alamo‘o (*Lentipes concolor*) were present during a survey.

This undeveloped area provides habitat for endangered species, opportunities for public access to the coastline, recreation and cultural activities, and freshwater for aquatic resources and coastal fisheries. Strategically located next to existing protected state lands, the subject parcels will expand the island's network of conserved lands and increase connectivity of protected areas from Haleakala's summit to the sea.

Securing the parcels safeguards forests, shorelines, and streams vital for recreation, cultural practices, and native species. It protects nesting grounds for seabirds, habitat for endangered bats, and culturally significant trees. Protecting the upland forests and streams also benefits monk seals by safeguarding their near-shore environment. The acquisition will expand public access to recreation, currently limited in this coastal area, and provide access to traditional cultural practices. By protecting these streams, which are crucial for native wildlife, the acquisition supports efforts to improve water quality and connectivity to the ocean.

REMARKS:

The Land Division and the Attorney General's Office assisted the Division in conducting due diligence for this acquisition. The landowner provided title reports for the parcels dated March 11, 2024 ((2) 2-9-011:012) and November 10, 2023 ((2) 2-9-013:009). The Land Division and the Attorney General's Office have reviewed these reports, and no issues with land titles have been identified.

The Division plans to contract an appraisal to determine the fair market value. As required by the Forest Legacy Program, the appraisal must be compliant with the Uniform Standards of Professional Appraisal Practice (USPAP) and the Uniform Appraisal Standards for Federal Land Acquisition (USFLA). The appraisal is subject to review and approval by the U.S. Forest Service ("Forest Service"), and Forest Service approval is required for federal funds to be released. The Division recommends the yet-to-be-determined appraised value be accepted when the Forest Service approves it. During the 2023 Hawaii State legislative session, the Division secured operating funding, authorized for CIP (land acquisition), and released December 1, 2023. To meet the Forest Legacy grant 25% matching funds requirement, the Division will use all or portions of the appropriated state funds for this acquisition.

Available funding breakdown is provided below:

| | |
|---|--------------------|
| State of Hawaii | \$633,334 |
| <u>U.S. Forest Service, Forest Legacy Program</u> | <u>\$1,900,000</u> |
| Total | \$2,533,334 |

As required by the Forest Legacy Program, the warranty deed shall include language that obligates the State to manage the property in compliance with the grant program requirements. The deed language is included as Exhibit B.

DOFAW contracted Fukumoto Engineering, Inc., to prepare survey maps and metes and bounds descriptions of the Property. In consultation with DAGS Survey Division, these maps and descriptions were verified and approved as sufficient to prepare the Copy of Survey Furnished (CSF) required for the issuance of an executive order setting aside the subject lands to DOFAW (Exhibit B).

A Phase I Environmental Site Assessment (ESA) was prepared by Lehua Environmental Inc., dated February 15, 2024. The site inspection identified small quantities of non-hazardous solid waste on the property, but there was no evidence of hazardous release or impact to the property. Before closing, the landowner will contract for the removal of the debris. The ESA report found no historically Recognized Environmental Conditions (REC). The report concluded that there was no evidence of a current REC on the Property.

TPL has an agreement to buy the Property from the current landowner and will then be conveying the Property to the State. A draft final Warranty Deed (Exhibit B) and draft final Purchase and Sale Agreement (PSA) between the State and TPL (Exhibit C), were reviewed and accepted by the seller and the State's deputy attorney general and are attached for the Board's review and approval.

In addition to approving the acquisition and set aside, the Board is requested to approve an immediate management right-of-entry to the Division and delegate to the Division's Maui Branch Manager, in coordination with the Maui Land Agent, the authority to issue permits under section 13-221-5, Hawaii Administrative Rules. This will allow the Division to implement actions necessary to effectively manage the Property upon acquisition. That authority was delegated to the Chairperson by the Board at its August 12, 2010, meeting. The delegation requested here to the Division's Maui Branch Manager is consistent with current delegations approved for the regulation and management of Forest Reserves under Chapter 13-104 and will provide consistency of practice as the Division assumes management and follows statutory procedures for the designation of the parcels as Forest Reserves. The Division will then conduct public hearings to add the Property to the Forest Reserve System. Upon completing the public hearings, the Division will return to the Board to seek approval to set aside the Property as part of the Forest Reserve System (Koolau Forest Reserve) and obtain an Executive Order as appropriate.

Once designated as a Forest Reserve, the parcels will join other managed areas that preserve Maui's diverse forests. The Division plans to prepare a comprehensive management plan for this Forest Reserve, which will be developed with input from the public. The management plan will address the various resource values of the two parcels, including aquatic species and stream habitat, wildlife (seabirds and bats),

restoration of coastal vegetation, recreational resources (camping, fishing, hiking), management of invasive species, forest restoration and cultural and historic resources. The two parcels that are the subject of this submittal are the first phase of a larger acquisition project the Division is working on that will acquire private lands threatened with sale to be included in the network of protected public lands in the East Maui region. Additionally, the Division is working on protecting and enhancing the management of public lands in the area. In April 2023, the Board approved setting aside 18 parcels of unencumbered state lands in this region for forest reserve, which will be designated part of the Koolau Forest Reserve via Governor's Executive Order.

RECOMMENDATION: That the Board:

1. Authorize the acquisition of the subject private lands under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The terms and conditions of the attached warranty deed document, as may be amended;
 - 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. Authorize the issuance of a management right-of-entry permit to the Division of Forestry and Wildlife covering the subject parcels 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 the Chairperson may prescribe to best serve the interests of the State.
3. Delegate authority to the Division's Maui Branch Manager, in coordination with the Maui Land Agent, to issue permits under section 13-221-5, Hawaii Administrative Rules.
4. Under Section 183-11, HRS, as amended, authorize the Division of Forestry and Wildlife to conduct a public hearing on the Island of Maui regarding the proposed addition of the Property to the Forest Reserve System. Further, under 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

APPROVED FOR SUBMITTAL:

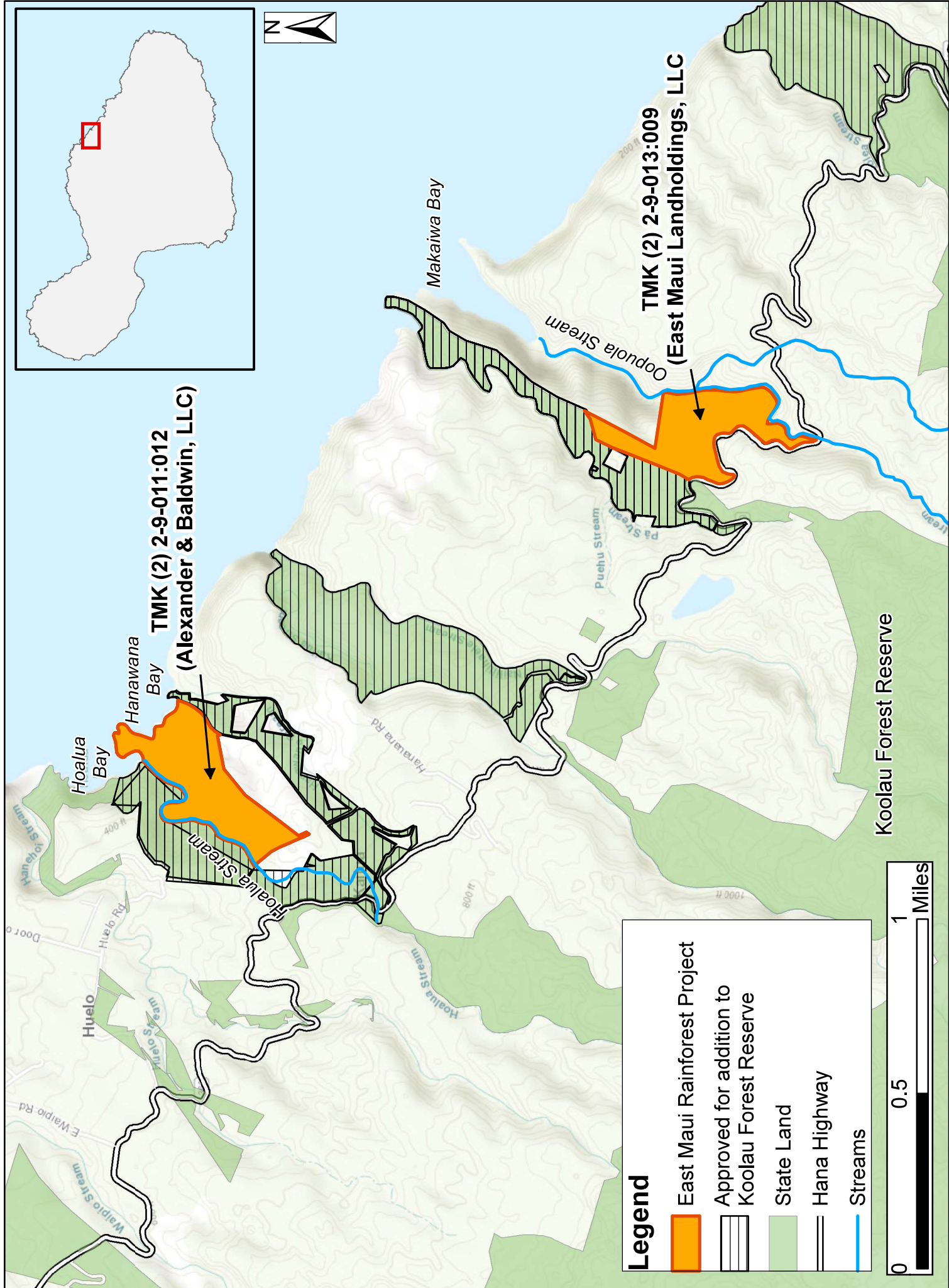


Dawn N.S. Chang, Chairperson

Attachments:

- Exhibit A – Map of Property
- Exhibit B – Draft Warranty Deed
- Exhibit C – Draft Purchase and Sale Agreement

Exhibit A. East Maui Rainforest Project



hereof, said exhibits being, respectively, a survey description and survey map prepared by X, and dated _____ (hereafter, the "Property").

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.

NOTICE OF FEDERAL PARTICIPATION

United States Department of Agriculture (USDA) Forest Service

Purpose & authority. The purpose of this acquisition is to effect the Forest Legacy Program in accordance with the provisions of the Cooperative Forestry Assistance Act of 1978, P.L. 95-313 as amended (codified at 16 U.S.C. 2101 et seq.) on the herein described land, which purposes include protecting environmentally important forest areas that are threatened by conversion to nonforest uses and for promoting forest land protection and other conservation opportunities. The purposes also include the protection and preservation of important scenic, cultural, fish, wildlife and recreational resources, riparian area, and other ecological values, and to ensure that the Property is available for the sustainable and cost-effective harvesting of forest products in a silviculturally sound manner, all of which meet the objectives of the Forest Legacy Program (FLP).

Transfer & disposal. This deed may be transferred or assigned only (i) to a government agency that (a) is eligible to hold this deed under the FLP, (b) is willing and able to hold this deed for the purpose for which it was created, and (c) expressly agrees to assume the responsibility imposed by the terms of this deed and (ii) with the consent of the State of Hawai'i, by its Board of Land and Natural Resources for the state lead agency, the Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife (DOFAW). If the deed

holder ever ceases to exist or is no longer willing and able to hold this deed for the purpose for which it was created or carry out the responsibility imposed on the holder by the terms of this deed, the state lead agency must identify and select an appropriate entity to which this deed must be transferred.

The STATE OF HAWAI'I, by its Board of Land and Natural Resources, the owner of the Deed, pursuant to the grant agreement "East Maui Rainforest - Hana Highway Coastal Rainforest (Phase 1) #22-DG-11052021-249" awarded by the United States Department of Agriculture (USDA) Forest Service on July 21, 2022, to the grant recipient, STATE OF HAWAI'I, DLNR/DOFAW, acknowledges that the USDA Forest Service Forest Legacy Program funding for this acquisition is authorized by the Cooperative Forestry Assistance Act of 1978, P.L. 95-313, as amended (codified at 16 U.S.C. § 2101 *et seq.*), and that the interest acquired cannot be sold, exchanged, or otherwise disposed. Except, however, the USDA Secretary of Agriculture (Secretary) may exercise discretion to consent to such sale, exchange, or disposition upon the grant recipient's tender of equal valued consideration acceptable to the Secretary and under the requirement that the United States is reimbursed the market value of the interest, proportional to its contribution in the original acquisition, at the time of disposal. The grant agreement is housed in the USDA Forest Service Pacific Southwest Region Office at 1323 Club Drive, Vallejo, California, 94592, or in an archival facility per Agency policy.

The USDA Forest Service's proportionate share is X %, which was determined by dividing the FLP's contribution to the acquisition by the value of the acquisition, at the time it was acquired, and expressing the result as a percentage.

The market value of this fee simple interest or the portion thereof that is disposed shall be the market value of such interest immediately before the disposal as determined by an appraisal that meets the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) and is completed by a certified general appraiser approved by the grant recipient and the USDA Forest Service Pacific Southwest Region Office.,

The form of the USDA Forest Service's reimbursement under this paragraph (whether it is received in cash or in kind) shall be in the sole and absolute discretion of the Secretary but shall in all events be used for FLP or similar conservation

purposes. This fee simple deed shall not be deemed disposed in whole or in part until the USDA Forest Service receives reimbursement as provided in this paragraph.

No inaction or silence by the Secretary shall be construed as approval of a disposal or as an abandonment of this fee simple deed in whole or in part. Any purported disposal executed without the prior written consent of the Secretary will be null and void. The provisions of this paragraph shall survive any partial disposal.

If the deed owner is notified of a proposal to condemn all or any portion of the property subject to this fee simple deed, the grant recipient and the USDA Forest Service must immediately be notified.

Management objectives. The Property will be managed in a manner consistent with and in accordance with the FLP and a Multi-Resource Management Plan to ensure long-term sustainability and protection of the forest resources and other conservation values for which the Property was acquired. The management plan will provide for maintenance of at least 75% cover.

There will be no surface disturbance of the property other than what is necessary for management activities which are needed for long-term forest health and sustainability. Disturbance must be limited but could include construction of new recreational or forest management roads or trails, construction or replacement of culverts or construction of structures that are necessary to meet the purposes of the acquisition including public access and forest-based recreation. There may be limited extraction of sand or gravel for onsite management activities. Such activities and construction will be outlined in the Multi-Resource Management Plan. Protection of the forest is the primary purpose of this acquisition; any management, structures, disturbance or alteration will be done only if needed for effective protection, management or restoration of the forest.,

There will be no conveyance or subdivision of the subject property except that limited portions may be conveyed as part of bona fide boundary dispute resolutions in consultation with the appropriate Court. The holder of the subject property shall not enter into long term contracts, agreement, leases or easements

that could impact the long-term title of this property or the purposes for which the property entered the FLP.

Ecosystem service markets. No agreements relating to ecosystem service markets shall be made regarding the Property that is or is likely to become inconsistent with the Purposes or Terms of this Deed, the terms of the FLP grant, State of Hawai'i Forest Action Plan or other documents incorporated by reference. If the State of Hawai'i wishes to enter such an agreement it must notify the USDA Forest Service explaining what the State proposes to do and explain why it believes market participation is compatible. The USDA Forest Service will respond with its denial or approval and include instructions if applicable.

Funding contributions toward the total purchase of the Property are as follows:

| Contributing Partner | Amount | % of total |
|---|--------|------------|
| USDA Forest Service - Forest Legacy Program | X | X |
| State of Hawai'i Department of Land and Natural Resources | X | X |
| Total | X | X% |

The Grantee shall not authorize or tolerate any activities on the Property that are incompatible with its originally authorized purpose, and will endeavor while working with partners, to stop these activities immediately should they occur without the Grantee's permission.

The Grantee acknowledges that there must be no discrimination during the useful life of the project (43 C.F.R. 17.204(c) (2)).

The Grantee, as grant recipient of the Awards, hereby confirms its obligations and responsibilities with regard to the Property pursuant to the terms and conditions associated with the Awards.

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, and its successors and assigns, 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 Grantor herein, has caused these presents to be executed this _____ day of _____, 2024, and the STATE OF HAWAI'I, 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 _____, 2024, both effective as of the day, month, and year first above written.

THE TRUST FOR PUBLIC LAND, a
California non-profit corporation

By
Its

GRANTOR

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

STATE OF HAWAII

Deputy Attorney General

Dated: _____

By _____
Dawn N.S. Chang
Chairperson
Board of Land and
Natural Resources

GRANTEE

STATE OF HAWAI'I)
) SS.
COUNTY OF)

On this _____ day of _____, 20 _____,
before me appeared _____ and
_____, to me personally known,
who, being by me duly sworn, did say that they are the
_____ and _____, respectively,
of _____, a _____
corporation, and that said instrument was signed in behalf of
said corporation by authority of its Board of Directors, and the
said _____ and _____
acknowledged said instrument to be the free act and deed of said
corporation.

Notary Public, State of Hawai'i

My commission expires: _____

STATE OF HAWAI'I)
) SS.
COUNTY OF)

On this _____ day of _____, 20____, before me personally appeared _____ and _____, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that _____ executed the same as _____ free act and deed.

Notary Public, State of Hawai'i

My commission expires: _____

EXHIBIT "A"

DESCRIPTION**PARCEL 12 OF TAX MAP KEY (2) 2-9-011**

Being a portion of Grant 2081 to Nakoa and Uilama situated at Hoalua, Island and County of Maui, State of Hawaii.

Beginning at the Southwest corner of this lot within Haiku Ditch Tunnel, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPUAI" being:

1,202.02 feet South

20,011.55 feet East

and running by azimuths measured clockwise from True South:

1. Follows along the middle of Hoalua Stream, being also along Government Land of Hanehoi with the direct azimuth and distances being:
 - a. 210° 02' 30" 1,340.12 feet;
 - b. 298° 59' 343.30 feet;
 - c. 223° 41' 710.00 feet;
2. Follows along the top of pali at seashore with the direct azimuth and distances being:
 - a. 257° 19' 372.00 feet;
 - b. 354° 45' 417.00 feet;
 - c. 295° 51' 511.50 feet;
3. Follows along the top of pali, being also the along the Government Land of Hanawana 2, with direct azimuth and distances being:
 - a. 40° 59' 679.20 feet;
4. 161° 15' 38.00 feet along the remainder of Grant 2081 to Nakoa & Uilama;
5. 79° 26' 30" 495.39 feet along same;
6. 49° 36' 474.98 feet along same;
7. 37° 26' 952.24 feet along same;
8. 333° 28' 81.00 feet along the remainder of Grant 2081 to Nakoa & Uilama;
9. 46° 00' 31.45 feet across the width of Haiku Ditch Tunnel, being also along Lot 2 of Grant 2081 of Partition Deed to Kalani Ihu;

10. 153° 28' 231.97 feet along the remainder of Grant 2081 to Nakoa & Uilama;
11. 192° 27' 57.90 feet along Lot 1 of Grant 2081 of Partition Deed to Catholic Mission, being also across the width of Haiku Ditch Tunnel;
12. 167° 20' 29.60 feet along Lot 1 of Grant 2081 of Partition Deed to Catholic Mission;
13. 144° 27' 66.70 feet along same;
14. 162° 34' 36.50 feet along same;
15. 224° 45' 25.70 feet along Royal Patent 6659, Land Commission Award 5522, Apana 1 to Owili;
16. 176° 00' 183.50 feet along same;
17. 113° 15' 65.00 feet along same;
18. 103° 27' 184.59 feet along same;
19. 144° 26' 119.65 feet along the remainder of Grant 2081 to Nakoa and Uilama;
20. 179° 00' 25.95 feet from across the Westerly side of Haiku Ditch Tunnel to the midpoint, being along the Government Land of Hanaehoi to the point of beginning and containing an area of 45.91 Acres more or less.

This work was prepared by me
or under my supervision.



FUKUMOTO ENGINEERING, INC.

Sharon Y. Toyama

Sharon Y. Toyama
Licensed Professional Land Surveyor
Certificate Number 13713
License Expires: 4/30/26

1721 Wili Pa Loop, Suite 203
Wailuku, Hawaii 96793
April 4, 2024

SOH52

DESCRIPTION

**EASEMENT HD-1
(For Haiku Ditch Tunnel purposes)**

Affecting portions of Grant 2081 to Nakoa and Uilama, and Lot 1 of Grant 2081 to Partition Deed to Catholic Mission situated at Hoalua, Island and County of Maui, State of Hawaii.

Beginning at the Northerly side of this easement, being also within Haiku Ditch Tunnel, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPUAI" being:

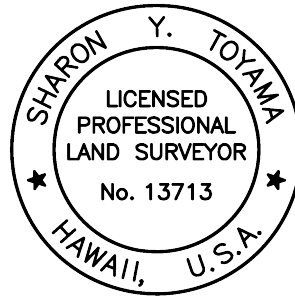
1,202.02 feet South

20,011.55 feet East

and running by azimuths measured clockwise from True South:

1. 179° 00' 18.65 feet along Government Land of Hanehoi;
2. 305° 26' 14.43 feet along the remainder of Grant 2081 to Nakoa & Uilama;
3. 324° 26' 177.26 feet along same;
4. 103° 27' 45.74 feet along Royal Patent 6659, Land Commission Award 5522, Apana 1 to Owili;
5. 144° 26' 119.65 feet along the remainder of Grant 2081 to Nakoa & Uilama;
6. 179° 00" 25.95 feet along Government Land of Hanehoi to the point of beginning and containing an area of 4,712 Square Feet.

This work was prepared by me
or under my supervision.



FUKUMOTO ENGINEERING, INC.

Sharon Y. Toyama

Sharon Y. Toyama
Licensed Professional Land Surveyor
Certificate Number 13713
License Expires: 4/30/24

1721 Wili Pa Loop, Suite 203
Wailuku, Hawaii 96793
December 4, 2023

SOH52

DESCRIPTION

**EASEMENT HD-2
(For Haiku Ditch Tunnel purposes)**

Affecting a portion of Grant 2081 to Nakoa and Uilama situated at Hoalua, Island and County of Maui, State of Hawaii.

Beginning at the Southeasterly side of this easement on the Easterly side of Haiku Ditch Tunnel, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPUAI" being:

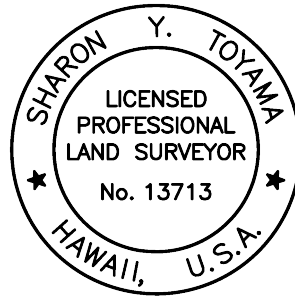
1,955.40 feet South

20,485.53 feet East

and running by azimuths measured clockwise from True South:

1. 46° 00' 31.45 feet over and across Haiku Ditch Tunnel, being also along Lot 2 of Grant 2081 Partition deed to Kalani Ihu;
2. 153° 28' 231.97 feet along the remainder of Grant 2081 to Nakoa & Uilama;
3. 192° 27' 47.69 feet along Lot 1 of Grant 2081 of Partition Deed to Catholic Mission;
4. 333° 28' 259.60 feet along the remainder of Grant 2081 to Nakoa and Uilama to the point of beginning and containing an area of 7,374 Square Feet.

This work was prepared by me
or under my supervision.



FUKUMOTO ENGINEERING, INC.

Sharon Y. Toyama

Sharon Y. Toyama
Licensed Professional Land Surveyor
Certificate Number 13713
License Expires: 4/30/26

1721 Wili Pa Loop, Suite 203
Wailuku, Hawaii 96793
April 4, 2024

SOH52

EXHIBIT "B-1"

DESCRIPTION

LOT 12-B REMNANT

Being a portion of Grant 1915 to Mauna situated at Makaiwa, Hamakualoa, Makawao, Island and County of Maui, State of Hawaii.

Beginning at a Northwesterly corner of this lot on the Northerly side of Hana Highway, the direct azimuth and distance from East Maui Irrigation Triangulation Station #111 "Mauna" being 229° 12' 35" 170.12 feet, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Puu Kukai" being:

4,109.66 feet South

659.30 feet East

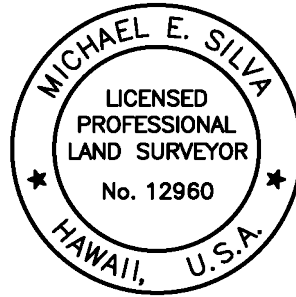
and running by azimuths measured clockwise from True South:

1. 209° 01' 155.14 feet along Land Commission Award 9971, Apana 21 to Wm. Pitt Leleiohoku to a concrete monument;
2. 199° 31' 23" 1,023.68 feet along same to a concrete monument;
3. 210° 47' 198.00 feet along same to a concrete monument;
4. 256° 17' 130.00 feet along same;
5. 246° 47' 83.50 feet along same;
6. 253° 32' 85.10 feet along same;
7. 234° 47' 141.62 feet along same to a concrete monument;
8. 26° 32' 1,095.21 feet along Grant 2561 to Kahaule to a concrete monument;
9. 279° 02' 307.00 feet along same to a concrete monument;
10. 279° 02' 545.70 feet along same;
11. Thence along the center of Opuola Stream, being also along Grant 1396 to Luka et. al., the direct azimuth and distances being:
 - a) 359° 10' 40" 1,487.01
 - b) 82° 46' 485.00
 - c) 19° 16' 674.46

12. 121° 04' 11.39 feet along the Northeasterly side of Hana Highway;
13. 161° 01' 25.83 feet along same;
14. 168° 43' 206.95 feet along same;
15. 156° 41' 196.11 feet along same;
16. 195° 10' 44.21 feet along same;
17. 225° 26' 117.06 feet along same;
18. 188° 38' 61.15 feet along same;
19. 160° 38' 168.35 feet along same;
20. 206° 55' 10.41 feet along same;
21. 229° 21' 59.69 feet along same;
22. 225° 00' 215.43 feet along same;
23. 211° 50' 126.89 feet along same;
24. Thence along the Easterly side of Hana Highway on a curve to the left with a radius of 117.00 feet, the radial azimuth from the radius point to the beginning of the curve being: 295° 05' 25", the radial azimuth from the radius point to the end of the curve being: 214° 02' 35", and the chord azimuth and distance being: 164° 34' 152.04 feet;
25. 126° 00' 55.48 feet along same;
26. 146° 25' 28.23 feet along same;
27. 171° 57' 33.20 feet along same;
28. 189° 23' 39.74 feet along same;

29. Thence along same on a curve to the left with a radius of 145.00 feet, the radial azimuth from the radius point to the beginning of the curve being: $276^{\circ} 53'$, the radial azimuth from the radius point to the end of the curve being: $178^{\circ} 21'$, and the chord azimuth and distance being: $137^{\circ} 37'$ 219.75 feet;
30. $75^{\circ} 14'$ 277.43 feet along the Northerly side of Hana Highway;
31. $52^{\circ} 34'$ 159.30 feet along same;
32. $11^{\circ} 48'$ 126.59 feet along same;
33. Thence along same on a curve to the right with a radius of 42.00 feet, the radial azimuth from the radius point to the beginning of the curve being: $282^{\circ} 16' 30''$, the radial azimuth from the radius point to the end of the curve being: $65^{\circ} 03' 30''$, and the chord azimuth and distance being: $83^{\circ} 40'$ 79.61 feet;
34. $154^{\circ} 04'$ 117.86 feet along the Southerly side of Hana Highway;
35. $170^{\circ} 20'$ 85.56 feet along same;
36. $198^{\circ} 54'$ 303.59 feet along same;
37. $184^{\circ} 31'$ 60.38 feet along same;
33. Thence along same on a curve to the left with a radius of 115.00 feet, the radial azimuth from the radius point to the beginning of the curve being: $277^{\circ} 52' 20''$, the radial azimuth from the radius point to the end of the curve being: $207^{\circ} 23' 22''$, and the chord azimuth and distance being: $152^{\circ} 37' 51''$ 132.72 feet, to the point of beginning and containing an area of 42.520 acres, more or less.

This work was prepared by me
or under my supervision.



FUKUMOTO ENGINEERING, INC.

A handwritten signature in black ink that reads "M Silva".

1721 Wili Pa Loop, Suite 203
Wailuku, Hawaii 96793
December 15, 2023

Michael E. Silva
Licensed Professional Land Surveyor
Certificate Number 12960
License Expires: 4/30/2024

SOH52

EXHIBIT "B"

MAP SHOWING PARCEL 12 OF TAX MAP KEY (2) 2-9-011

BEING A PORTION OF GRANT 2081 TO NAKOA AND UILAMA
HOALUA, MAUI, HAWAII

SCALE: 1 IN.=1,000 FT.

DATE: FEBRUARY 26, 2024

PREPARED FOR:

STATE OF HAWAII
DEPARTMENT OF LAND & NATURAL
RESOURCES
DIVISION OF FORESTRY AND WILDLIFE

PREPARED BY:

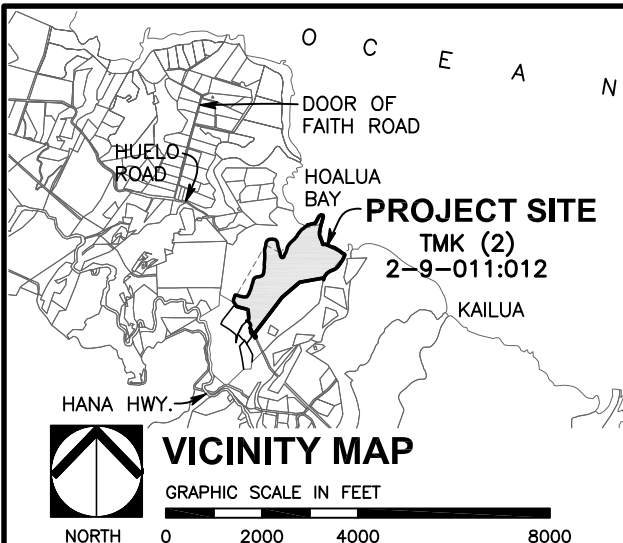
FUKUMOTO ENGINEERING, INC.
1721 WILI PA LOOP, SUITE 203
WAILUKU, HAWAII 96793

OWNER:

ALEXANDER & BALDWIN LLC
822 BISHOP STREET
HONOLULU, HAWAII 96813

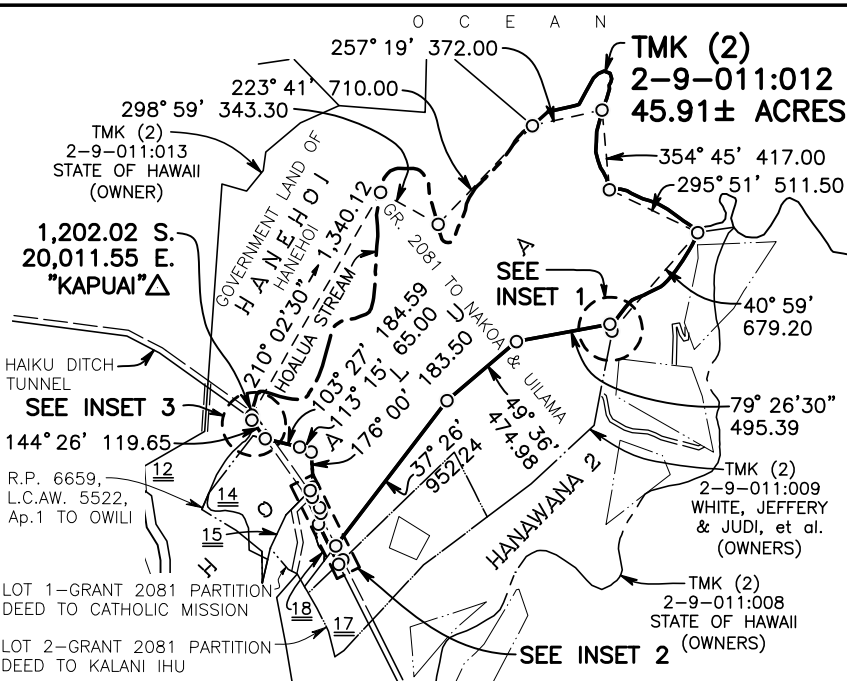
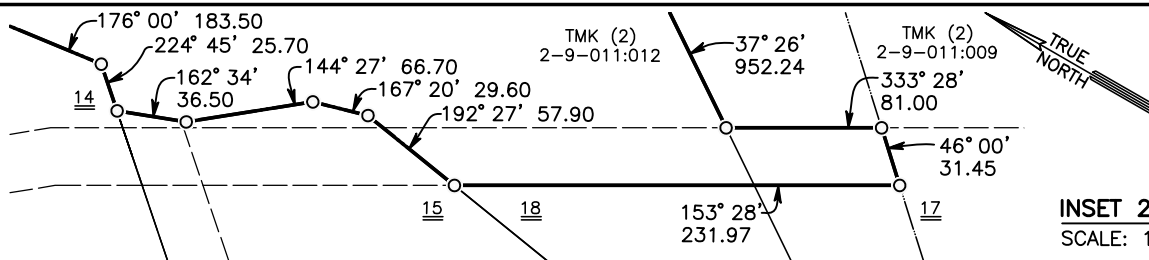
PROPERTY LOCATION:

HANAWANA
HAIKU, HAWAII 96708

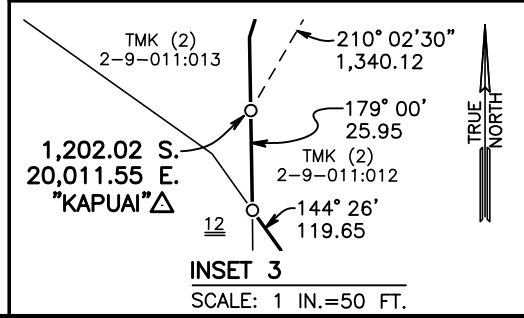
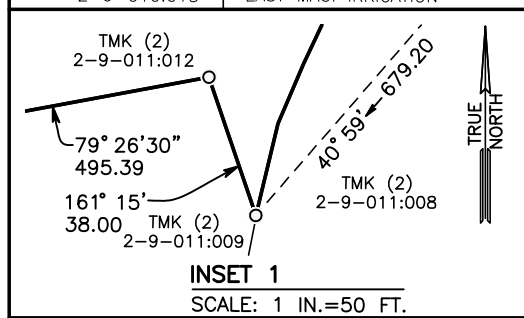


NOTES:

1. ALL AZIMUTHS AND RECORD COORDINATES REFER TO GOVERNMENT SURVEY TRIANGULATION STATION "KAPUAI"Δ.
2. OWNERS OF ADJOINING PARCELS ARE FROM THE REAL PROPERTY TAX DIVISION RECORDS.
3. PARCEL IS DEFINED AS PARCEL 12 OF TAX MAP KEY (2) 2-9-011. PARCEL 12 IS A COMPILATION OF INFORMATION:
 - A. REGISTERED MAP 2746 COMPILED IN 1926; B. C.S.F. 4665 DATED MARCH 17, 1927;
 - C. C.S.F. 19,487 DATED MARCH 12, 1982; D. EMI MAP #10 (EXCHANGE DEED TO KALANI IHUI)
 - E. LOT 1 OF HALUA PARTITION DEED TO CATHOLIC MISSION.
4. NO FIELD WORK WAS PERFORMED TO LOCATE PARCEL 12.
5. PARCEL 12 OF TAX MAP KEY (2) AREA PER DEED IS 46.81± ACRES AND PER CALCULATION/DIGITIZED IS 45.91± ACRES.



| OWNER OF ADJOINING PARCELS | |
|----------------------------|-------------------------|
| TMK (2) | OWNER |
| 2-9-010:012 | STATE OF HAWAII |
| 2-9-010:014 | ALEXANDER & BALDWIN LLC |
| 2-9-010:015 | ROMAN CATHOLIC CHURCH |
| 2-9-010:017 | WHITE, JEFFREY, et al. |
| 2-9-010:018 | EAST MAUI IRRIGATION |



PARCEL 12 OF TMK (2) 2-9-011



NOTE:
15 INDICATES PARCEL
FOR TMK (2) 2-9-010

TAX MAP KEY (2) 2-9-011:012

1,202.02 S.
20,011.55 E.
"KAPUAI"Δ

HAIKU DITCH TUNNEL
SEE INSET 3

R.P. 6659,
L.C.A.W. 5522,
Ap.1 TO OWLI

LOT 1—GRANT 2081 PARTITION
DEED TO CATHOLIC MISSION

LOT 2—GRANT 2081 PARTITION
DEED TO KALANI IHUI

**MAP SHOWING EASEMENT HD-1
 AND EASEMENT HD-2**

BEING A PORTION OF GRANT 2081 TO NAKOA AND
 UILAMA

HOALUA, MAUI, HAWAII

SCALE: 1 IN.=1,000 FT.

DATE: FEBRUARY 26, 2024

PREPARED FOR:

STATE OF HAWAII
 DEPARTMENT OF LAND & NATURAL
 RESOURCES
 DIVISION OF FORESTRY AND WILDLIFE

PREPARED BY:

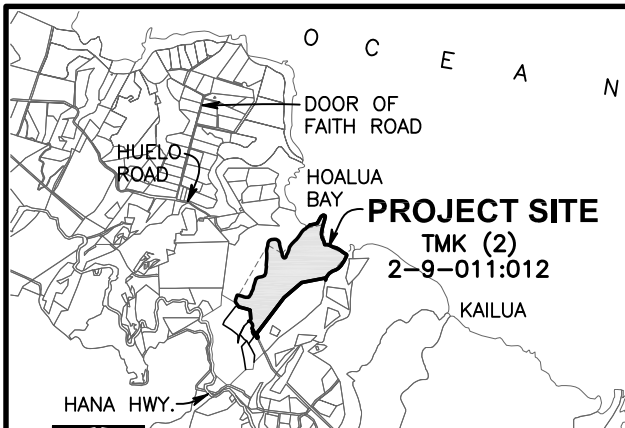
FUKUMOTO ENGINEERING, INC.
 1721 WILI PA LOOP, SUITE 203
 WAILUKU, HAWAII 96793

OWNER:

ALEXANDER & BALDWIN LLC
 822 BISHOP STREET
 HONOLULU, HAWAII 96813

PROPERTY LOCATION:

HANAWANA
 HAIKU, HAWAII 96708



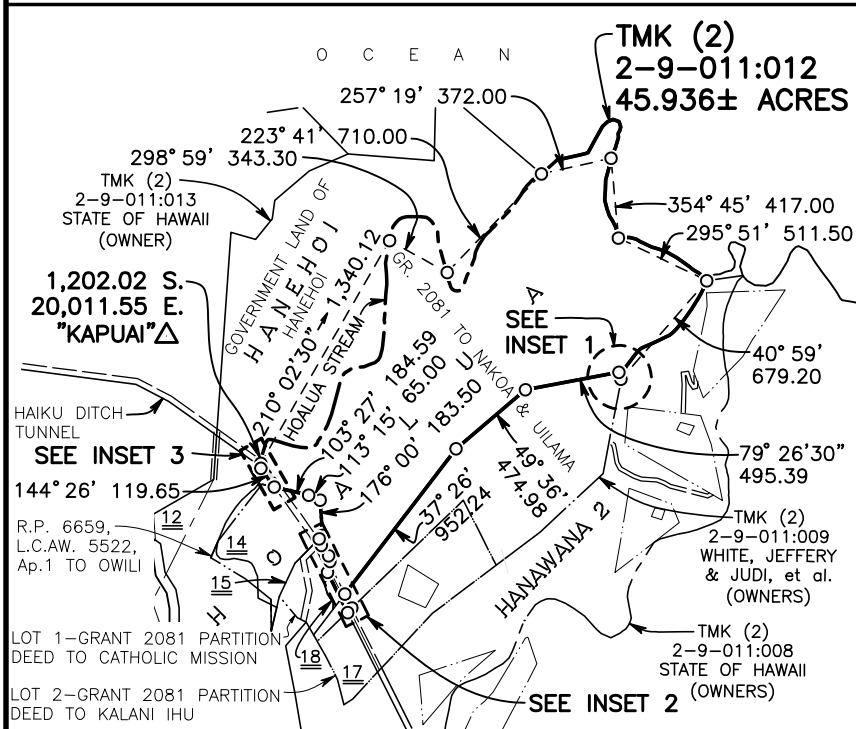
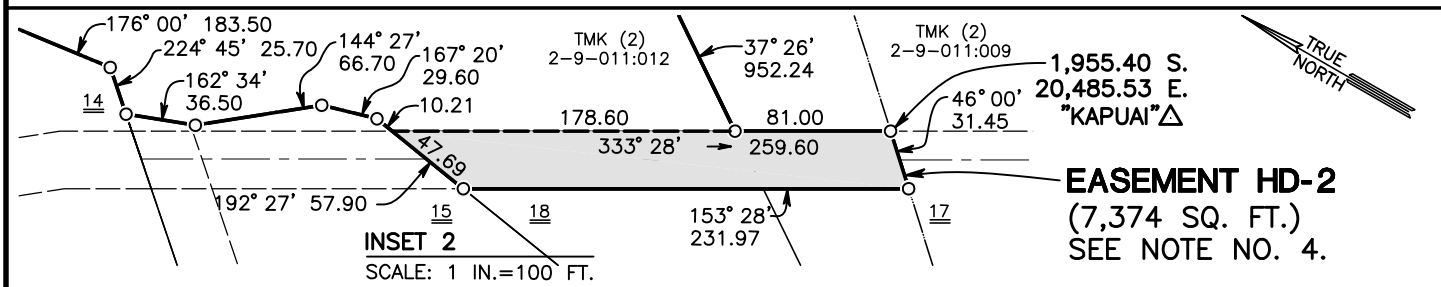
VICINITY MAP

GRAPHIC SCALE IN FEET

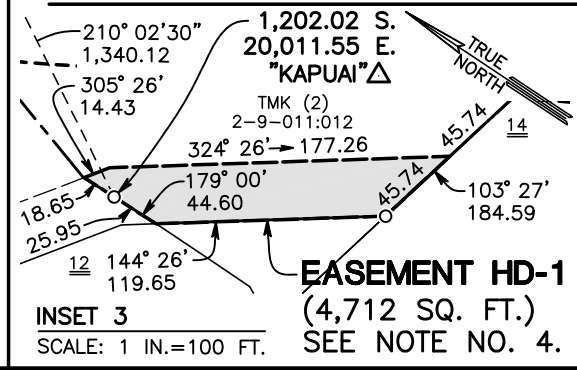
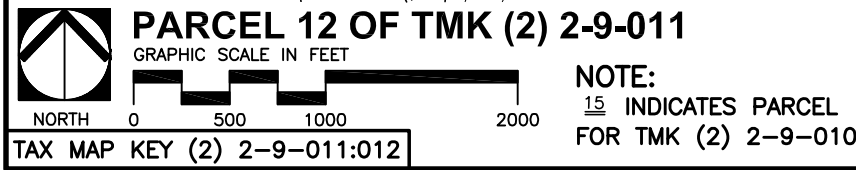
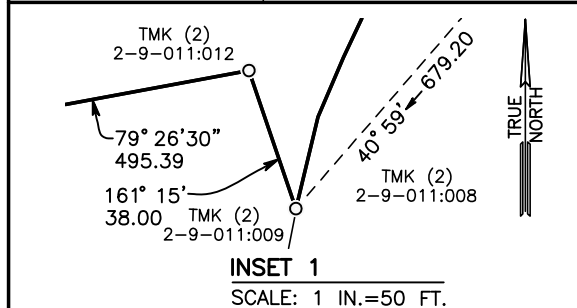
NORTH 0 2000 4000 8000

NOTES:

1. ALL AZIMUTHS AND RECORD COORDINATES REFER TO GOVERNMENT SURVEY TRIANGULATION STATION "KAPUAI" .
2. OWNERS OF ADJOINING PARCELS ARE FROM THE REAL PROPERTY TAX DIVISION RECORDS.
3. NO FIELD WORK WAS PERFORMED TO LOCATE HAIKU DITCH TUNNEL EASEMENT.
4. EASEMENT HD-1 (4,712 SQ. FT.) AND EASEMENT HD-2 (7,374 SQ. FT.) ARE EASEMENTS FOR HAIKU DITCH TUNNEL PURPOSES AFFECTING PARCEL 12 OF TAX MAP KEY (2) 2-9-011 IN FAVOR OF ALEXANDER & BALDWIN LLC.



| OWNER OF ADJOINING PARCELS | |
|----------------------------|-------------------------|
| TAX MAP KEY | OWNER |
| (2) 2-9-010:012 | STATE OF HAWAII |
| (2) 2-9-010:014 | ALEXANDER & BALDWIN LLC |
| (2) 2-9-010:015 | ROMAN CATHOLIC CHURCH |
| (2) 2-9-010:017 | WHITE, JEFFREY, et al. |
| (2) 2-9-010:018 | EAST MAUI IRRIGATION |



TAX MAP KEY (2) 2-9-011:012

MAP SHOWING LOT 12-B REMNANT

BEING A PORTION OF GRANT 1915 TO MAUNA

MAKAIWA, HAMAKUALOA, MAKAWAO, MAUI, HAWAII

SCALE: 1 IN.=500 FT.

DATE: DECEMBER 15, 2023

PREPARED FOR:

STATE OF HAWAII
 DEPARTMENT OF LAND AND
 NATURAL RESOURCES
 DIVISION OF FORESTRY AND WILDLIFE

PREPARED BY:

FUKUMOTO ENGINEERING, INC.
 1721 WILI PA LOOP, SUITE 203
 WAILUKU, HAWAII 96793

OWNERS:

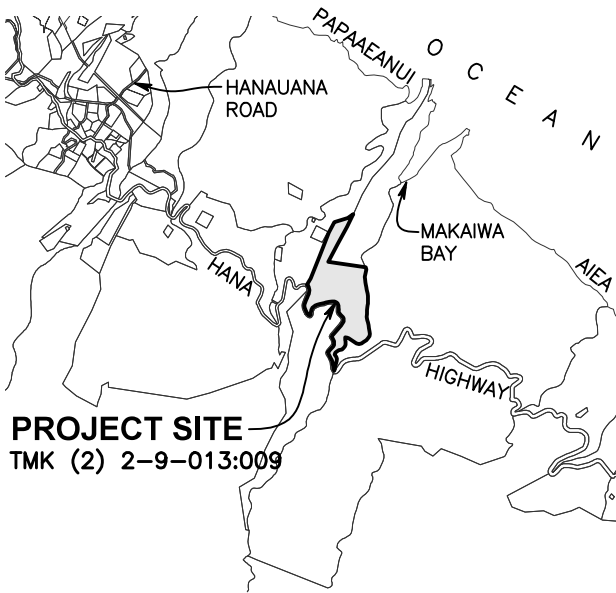
EAST MAUI LANDHOLDINGS, LLC
 822 BISHOP STREET
 HONOLULU, HAWAII 96813

PROPERTY LOCATION:

HANA HIGHWAY
 HAIKU, MAUI, HAWAII

NOTES:

1. ALL AZIMUTHS AND RECORD COORDINATES REFER TO GOVERNMENT SURVEY TRIANGULATION STATION "PUU KUKAI" Δ.
2. RECORD BOUNDARY INFORMATION WAS COMPILED FROM MAP OF GRANT 1915 TO MAUNA SHOWING PARTITION LOTS DATED SEPTEMBER 1927 AND REGISTERED MAP 2747 COMPILED IN 1926.
3. NO FIELD WORK WAS PERFORMED TO LOCATE BOUNDARY.

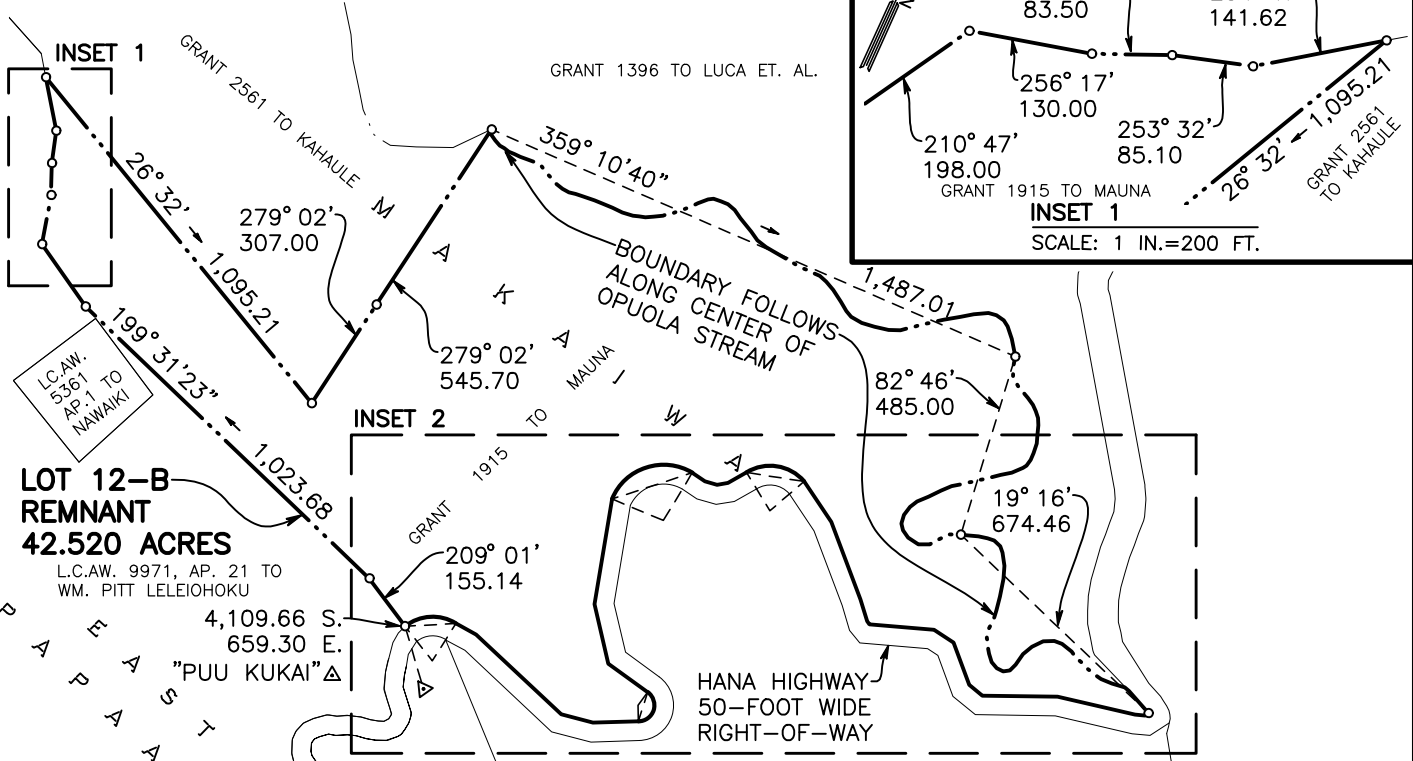


PROJECT SITE
 TMK (2) 2-9-013:009



VICINITY MAP

GRAPHIC SCALE IN FEET



LOT 12-B REMNANT
 42.520 ACRES

L.C.A.W. 9971, AP. 21 TO
 WM. PITT LELEIOHOKU

4,109.66 S.
 659.30 E.
 "PUU KUKAI" Δ

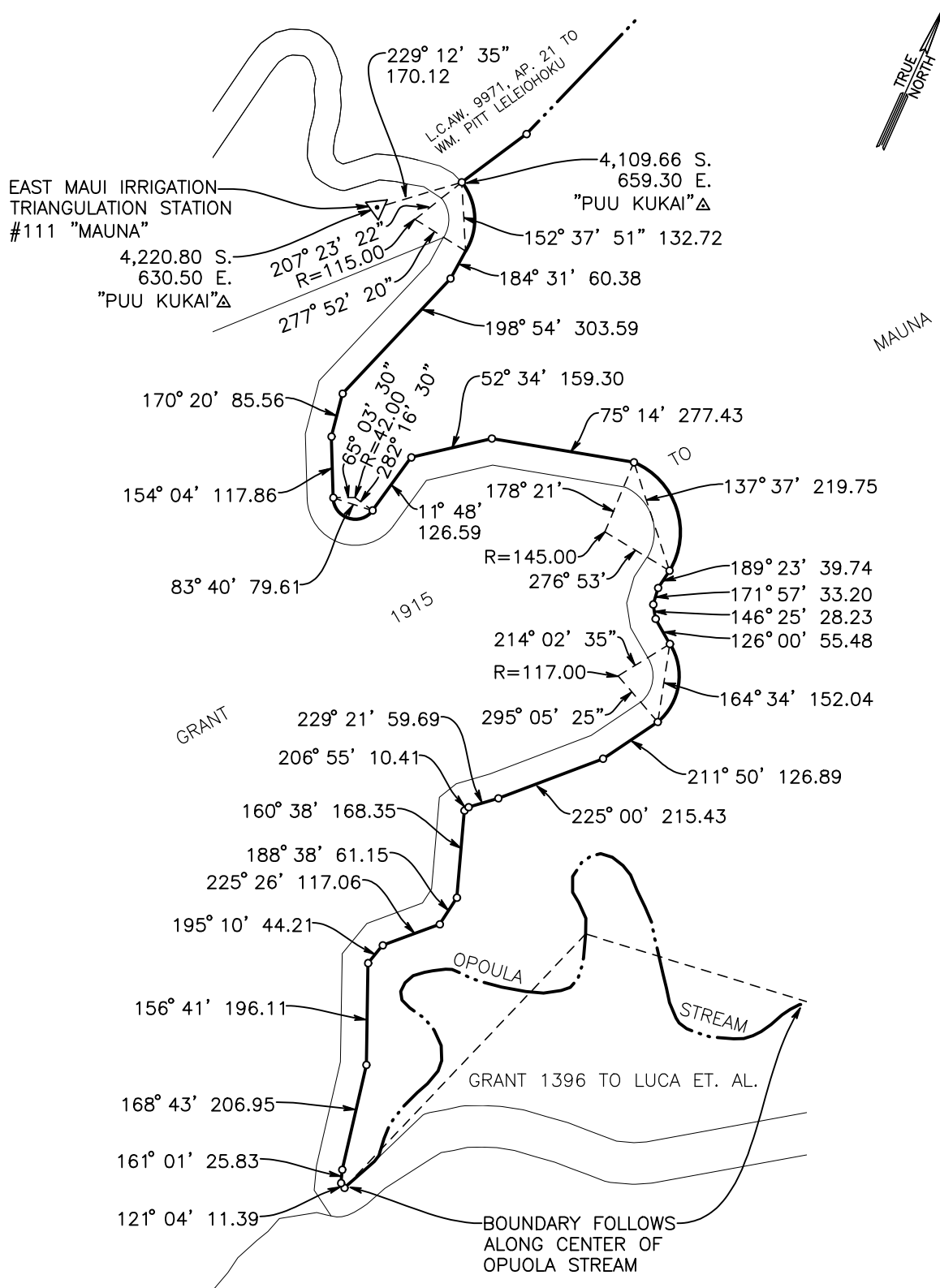


LOT 12-B REMNANT

GRAPHIC SCALE IN FEET



TAX MAP KEY (2) 2-9-013:009



INSET 2
SCALE: 1 IN.=300 FT.

AGREEMENT OF SALE

This is an Agreement of Sale (“Agreement”) dated _____, 2024, between **The Trust for Public Land**, a California nonprofit public benefit corporation, authorized to do business in the State of Hawaii (“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 Trust for Public Land
101 Montgomery St., Ste. 900
San Francisco, CA 94104
Attn: Gilman Miller
gilman.miller@tpl.org
Tel: (415) 800-5295

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

The Trust for Public Land
1003 Bishop St. Ste. 740
Honolulu, Hawaii 96813
Attn: Aka Wedemeyer
aka.wedemeyer@tpl.org
Tel: (808) 489-7126

BUYER:

State of Hawaii
Board of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809-0621
Attn: Dawn Chang, Chairperson
dawn.chang@hawaii.gov
Tel: (808) 587-0401
FAX: (808) 587-0390

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: Tanya Rubenstein
tanya.rubenstein@hawaii.gov
Tel: (808) 333-6803
FAX: (808) 587-0160

B. Before the Deed Recordation, the parties expect that Seller will purchase certain real property, located on the Island of Maui, Hawaii, Tax Map Key Nos. (2) 2-9-013:009 (“Parcel 9”) and (2) 2-9-011:012 (“Parcel 12”), described in Exhibit A and depicted in Exhibit B, both attached to this Agreement and incorporated herein by this reference, together with Seller’s interest in 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. Seller has entered into an option agreement with East Maui Landholdings, LLC (“EML”) and Alexander and Baldwin, LLC, Series T (“A&B” together with EML, the “Landowner”) regarding TPL’s desired acquisition of real property owned by Landowner (“TPL Option Agreement”). Under the TPL Option Agreement, TPL has the right, subject to certain conditions, to acquire Landowner’s certain real property located in the District of Hāmākualoa, Maui County, State of Hawaii.

D. Buyer desires to purchase the Property from Seller 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 total purchase price for the Property is **\$X (X)** (the “Purchase Price”). The Purchase Price will be payable, in cash or immediately available funds, with funds on Deed Recordation, 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, legality, exceptions and reservations by the Attorney General on behalf of Buyer, 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 least one (1) business day before the Closing (as defined in Section 7(a) below):
 - (a) Seller receives approval of the transaction which is the subject of this Agreement by the Seller’s Board of Directors which approval is subject to said Board’s sole discretion;
 - (b) Buyer has approved the title, physical, and structural condition of the Property not later than May 10, 2024 (the “Review Deadline”);
 - (c) Buyer has approved the environmental condition of the Property by the Review Deadline, subject to the trash remediation by Landowner, said trash identified in that certain Phase I Environmental Site Assessment Report dated February 2024, prepared by Lehua Environmental Inc.;
 - (d) Buyer receives approval by the State of Hawaii, Board of Land and Natural Resources (“BLNR”) to enter into this Agreement and to acquire the Property, which approval is subject to the Board’s sole discretion;
 - (e) Buyer receives all sources of grant funding which are to be used together to purchase the Property;

(f) Seller has provided Buyer with copies of the Property Information (as defined in Section 5(a)(ii) below), provided to Seller by the Landowner and the results of Seller's due diligence. To the best of Seller's knowledge, the Property Information contains all encumbrances, restrictions, and obligations, both recorded and unrecorded, pertaining to the Property;

(g) Landowner executes and delivers to Escrow, a Quitclaim Deed, in a form agreed to by the Parties, quitclaiming its interest in the right-of-way located on that certain property designated as Tax Map Key No. (2) 2-9-001:012; and

(h) 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 by the benefited party, 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(b) 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 shall open an escrow (the "Escrow") with Title Guaranty of Hawaii, Inc., 235 Queen Street, Honolulu, Hawaii, 96813 Attn: Jeremy Trueblood (the "Escrow Holder") for the purpose of consummating the purchase and sale of the Property (the "Closing"). Buyer and Seller will approve and submit joint escrow closing instructions. "Deed Recordation" which is defined as the date on which the Warranty Deed is recorded and the Purchase Price paid will occur on or before **X**, unless extended by agreement of the parties; the parties agree that if, despite their best efforts, any funding source has not deposited its funds into escrow by **X**, the Closing will be extended for up to thirty (30) days to accommodate the late deposit of such funds.

(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 Deed Recordation.

(c) Seller will pay 100% of any documentary tax or real property transfer tax arising out of the conveyance of the Property. Any other closing expenses, fees, and charges will be borne by the Seller.

8. **Title.** Seller will cause the Property to be conveyed to Buyer by a Warranty Deed in the form attached hereto as Exhibit D, incorporated herein by this reference (the "Deed"), a fee simple interest in the Property, free and clear of all monetary liens and encumbrances.

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 Deed Recordation subject only to the exceptions noted in Section 8. Seller 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 Deed Recordation.

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 Seller's acquisition of the Property, prior to the Close of Escrow, Seller will own and will have the power to sell the Property to Buyer, or to direct Landowner to convey the Property directly to Buyer.
- (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;

- (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 23-7222333;
- (i) Seller represents and warrants that it is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California;
- (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 (“BLNR”), which approval is at its 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 Deed Recordation. If the Property is destroyed or damaged after the Effective Date of this Agreement and before Deed Recordation, 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 facsimile or 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 or facsimile, 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 the non-defaulting party 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 BLNR 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 Deed Recordation 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 Closing and Deed Recordation and will not merge therein unless specifically stated otherwise in this Agreement.

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

SELLER:

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

By: _____
Gilman Miller
Senior Counsel

Date: _____, 2024

BUYER:

STATE OF HAWAII

By: _____
Name: DAWN CHANG
Chairperson,
Board of Land and Natural Resources

Approved by the Board of Land and Natural
Resources at its meeting held
on May __, 2024.

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

Name: TINA M. TSUCHIYAMA
Deputy Attorney General

Exhibit A

Legal Description

Exhibit B

Map of Property

Exhibit C

Property Information (Incorporated by Reference)

Exhibit D

Warranty Deed

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Exhibit C: Property Information

1. Tax Map Key Numbers

- (2) 2-9-013:009 (“Parcel 9”)
- (2) 2-9-011:012 (“Parcel 12”)

2. Preliminary Title Reports (Title Guarantee)

- Report dated November 10, 2021, for (2) 2-9-013:009 (“Parcel 9”)
- Report dated March 11, 2024, for (2) 2-9-011:012 (“Parcel 12”)

3. Survey Maps for Warranty Deed (Prepared by Fukumoto Engineering Inc.)

- PARCEL 12 OF TAX MAP KEY (2) 2-9-011 (February 25, 2024)
- LOT 12-B REMNANT (Parcel 9) (December 15, 2023)
- EASEMENT HD-1 and EASEMENT HD-2 (Haiku Ditch) (February 26, 2024)

4. Metes and Bounds Descriptions for Warranty Deed (Prepared by Fukumoto Engineering Inc.)

- PARCEL 12 OF TAX MAP KEY (2) 2-9-011 (April 4, 2024)
- LOT 12-B REMNANT (Parcel 9) (December 15, 2023)
- EASEMENT HD-1 (December 4, 2023)
- EASEMENT HD-1 (April 4, 2024)

5. Survey Maps and Metes and Bounds Description for Quit Claim Deed

- Map for EASEMENT A-1 (for Access purposes) (February 22, 2024)
- Description for EASEMENT A-1 (for Access purposes) (March 6, 2024)

6. Phase I Environmental Site Assessment Report dated February 2024, prepared by Lehua Environmental Inc.