

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

August 9, 2024

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

Land Board Members:

SUBJECT: REQUEST FOR APPROVAL TO AUTHORIZE THE CHAIRPERSON TO NEGOTIATE, ENTER INTO, AMEND, EXTEND, AND TERMINATE AN AGREEMENT TO SUBGRANT A UNITED STATES FISH AND WILDLIFE SERVICE NATIONAL COASTAL WETLANDS CONSERVATION GRANT BETWEEN THE STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES, DIVISION OF FORESTRY AND WILDLIFE, AND MOLOKA'I LAND TRUST TO ACQUIRE LANDS IN KAHANUI, ISLAND OF MOLOKA'I AT TMK (2) 5-2-011:011 ("KAHANUI WETLAND")

AND

REQUEST APPROVAL TO AUTHORIZE THE CHAIRPERSON TO SIGN A NOTICE OF FEDERAL PARTICIPATION FORM FOR KAHANUI WETLAND

AND

REQUEST FOR APPROVAL FOR THE ACQUISITION OF A PERPETUAL CONSERVATION EASEMENT OVER PRIVATE LANDS OVER KAHANUI WETLAND

Moloka'i

PRIVATE LANDOWNER:

Moloka'i Land Trust ("MLT") is a Hawai'i nonprofit corporation with a 100.00 percent undivided interest, as Fee Owner, whose mailing address is P.O. Box 1884, Kaunakakai, Hawai'i 96748 ("Grantor").

LEGAL REFERENCE:

Sections 107-10, 171-11, 171-30, and 198-3 Hawai'i Revised Statutes (HRS), as amended.

LOCATION:

Conservation easement over privately-owned lands situated at Kahanui, Moloka'i, identified as a portion of Tax Map Keys: (2) 5-2-011:011, as shown on the attached map labeled Exhibit A ("Kahanui Wetland").

AREA:

TMK (2) 5-2-011:011	43.73 acres, more or less
TOTAL	43.73 acres, more or less

ZONING:

State:	Agricultural CZMA Special Management Area
County of Maui:	Agricultural (AG), approximately 43.08 acres, and Interim, approximately 1.35 acres

CURRENT USE:

The property is currently vacant and undeveloped.

BACKGROUND:

This Project requires the Department of Land and Natural Resources ("Department") to subgrant funds from a National Coastal Wetland Conservation Grant ("NCWCG") to MLT for the acquisition of fee title to Kahanui Wetland. Once MLT holds title to Kahanui Wetland, MLT would grant a conservation easement to the Department and the County of Maui across the Kahanui Wetland property.

DISCUSSION:

I. Subgrant Agreement

The United States Fish and Wildlife Service ("USFWS") awarded the Department \$401,000 from the Federal National Coastal Wetland Conservation Grant program (NCWCG Award Number F23AP00651 "Kahanui Grant Award," Exhibit B) for the acquisition of fee title to 45 acres of wetland real property at Kahanui on the Island of Moloka'i, Tax Map Key ("TMK") (2) 5-2-011:011, called Kahanui Wetland. The main objective of

acquiring Kahanui Wetland is to restore and manage the wetland habitat in perpetuity to benefit wetland-dependent birds and cultural resources. The acquisition of Kahanui is part of a more considerable effort to restore a series of wetlands across Moloka'i using landscape-scale ecological restoration with community support. It is essential to prevent the continued loss of existing wildlife habitat to invasive species, sedimentation, and possible development.

The proposed subgrant agreement will permit the Department to subgrant funds from the Kahanui Grant Award to another state or local agency or non-profit organization ("intended recipient"), conditioned on the grant funds being used to acquire fee title to Kahanui Wetland and the potential recipient agreeing to accept all the provisions and obligations proposed subgrant agreement ("Kahanui Subgrant Agreement," Exhibit C). The Division of Forestry and Wildlife requests Moloka'i Land Trust ("MLT") to be the intended recipient. The Kahanui Subgrant Agreement would allow funds to be transferred to MLT to complete the purchase.

The total cost for land acquisition, due diligence, and staff overhead is estimated at \$656,000. The Kahanui Grant Award provides \$398,850 for land acquisition costs and due diligence plus \$2,150 for Department staff at an indirect cost rate of 8.6% (for a total of \$401,000). MLT has raised additional contributions to purchase Kahanui Wetland from the County of Maui Open Space, Natural Resources, Cultural Resources and Scenic Views Preservation Fund ("Open Space Fund") (\$210,000) and private contributions (\$45,000 from Moloka'i Land Trust and Papahana Kuaola).

II. Notice of Federal Participation

The USFWS requires all grant recipients record a Notice of Federal Participation ("NOFP") with the deed of the real property purchased using NCWCG grant funds (Exhibit D). The NOFP (1) identifies the location of the real property by legal description; (2) identifies the grant used to purchase the real property; (3) names the grant recipient and/or subrecipient of the grant; (4) identifies the USFWS as the awarding agency and the purpose of the award; (5) provides assurance that the grant recipient and/or subrecipient will use the real property "for its originally authorized purpose as long as needed for the purpose or any future purpose that is mutually agreed upon by the [USFWS] and the [grant] recipient;" (6) provides that the recipient and/or subrecipient will not tolerate activities on the real property that interfere with its originally authorized purpose; (7) requires a statement the recipient and/or subrecipient will not dispose of, transfer, or encumber the title without USFWS approval; (8) requires a statement there will be no discrimination on the real property under the award as long as it serves its originally authorized purpose; and (9) requires the signature of the director or chief executive of the recipient agency or organization and the signature of

the director or chief executive of the subrecipient agency or organization that will hold the real property.

When a grant recipient purchases and holds title to a property, the NOFP is included as part of the deed. Provided MLT purchases Kahanui Wetland as a subgrantee of the Kahanui Grant Agreement, the deed and NOFP for Kahanui Wetland will be recorded separately for this property. The NOFP will be a separate document because the Chairperson of the Department of Land and Natural Resources is required to sign the NOFP as the chief executive of the recipient agency of the Kahanui Grant Agreement.

III. Conservation Easement

A condition of the Kahanui Grant Award is that a conservation easement, held by the Department and Maui County, be established in perpetuity across the entire property ("Kahanui Conservation Easement," Exhibit E). The primary purpose of the Kahanui Conservation Easement is to allow for (1) restoration and management of coastal wetland habitat crucial for maintaining sustainable populations of migratory bird species and the recovery of endangered endemic waterbirds, (2) supporting compatible agricultural activities, (3) restoration and management of historically and culturally sensitive features, and (4) management of the property for open space features.

The Department will not expend any state funds to acquire this Conservation Easement. Maui County is expected to be a co-holder of the Conservation Easement. The county will expend county funds from an Open Space Grant to MLT to acquire the property but will not expend any additional funding. The Conservation Easement will be established in perpetuity.

The Conservation Easement shall include a baseline documentation report, to be signed by the co-holders and MLT before the Kahanui Grant Award closes, that documents the current conditions of the protected property and will be used as a baseline for annual state monitoring of the easement conditions in the future. MLT will be required to develop a management plan for the Conservation Easement within three years of the effective date of the Conservation Easement that ensures management activities at Kahanui Wetland are consistent with the purpose of the Kahanui Grant Award and the Open Space Grant. The Division of Forestry and Wildlife ("Division") would conduct annual monitoring and be responsible for reviewing and approving the management plan.

The Land Division and the Attorney General's office assisted the Division in conducting due diligence for this acquisition. The Division obtained a title report for the Property dated January 7, 2022, and confirmed no encumbrances, encroachments, or liens on the Property.

MLT contracted for a Yellow-Book certified appraisal with the Benavente Group, LLC, dated March 20, 2024, which determined a fair market value that supports the purchase price. The USFWS must approve a Yellow-Book appraisal and review the appraisal to accept the fair market value of the property and determine the appraisal was compliant with the assignment of both the Uniform Standards of Professional Appraisal Practice (USPAP) and the Uniform Appraisal Standards for Federal Land Acquisition (UAFFLA). The Yellow-Book appraisal and review appraisal were received by the Department this month. The Department and USFWS are in the process of reviewing these documents.

Central Planet Repair, LLC, completed a Phase I Environmental Site Assessment (ESA) on June 7, 2024. The ESA found no historically recognized environmental condition (REC) and concluded that no evidence of RECs on the subject property and adjoining parcels could impact the property.

CHAPTER 343 ENVIRONMENTAL REVIEW

In accordance with the requirements of section 343-5(a)(1), HRS, an environmental assessment (EA) is not required when county funds are being used to acquire unimproved real property. As the subject lands are unimproved, an EA is not required. This request does not include approval of an action pursuant to sections 343-2 or any other provisions of 343-5(a), HRS.

RECOMMENDATIONS:

That the Board:

1. Authorize the Chairperson to negotiate, enter into, amend, extend, and terminate an agreement to subgrant United States Fish and Wildlife Service National Coastal Wetlands Conservation Kahanui Grant Award Number F23AP00651 to Moloka'i Land Trust to acquire lands situated at Kahanui, Moloka'i, identified as a portion of Tax Map Keys: (2) 5-2-011:011 (Kahanui Wetland).
2. Authorize the Chairperson to sign a Notice of Federal Participation form as required by the National Coastal Wetlands Conservation Kahanui Grant Award Number F23AP00651 to acquire lands at Kahanui on the Island of Moloka'i, (2) 5-2-011:011 (Kahanui Wetland).
3. Authorize the Department to acquire a perpetual conservation easement over private lands at Kahanui, Moloka'i, identified as a portion of Tax Map Keys: (2) 5-2-011:011 (Kahanui Wetland).

Respectfully submitted,



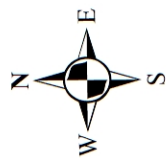
DAVID G. SMITH, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:




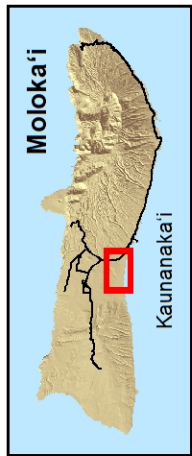
DAWN N.S. CHANG, Chairperson
Board of Land and Natural Resources

- Exhibit A: Map of Kahanui Wetland
- Exhibit B: Kahanui Grant Award
- Exhibit C: Kahanui Subgrant Agreement
- Exhibit D: Notice of Federal Participation
- Exhibit E: Kahanui Conservation Easement



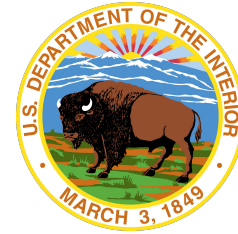
0 0.5 1 Miles

 Kahanui Wetland Conservation Easement



1. DATE ISSUED MM/DD/YYYY 02/07/2023		1a. SUPERSEDES AWARD NOTICE dated except that any additions or restrictions previously imposed remain in effect unless specifically rescinded	
2. CFDA NO. 15.614 - Coastal Wetlands Planning, Protection and Restoration			
3. ASSISTANCE TYPE Project Grant			
4. GRANT NO. F23AP00651-00 Originating MCA #		5. TYPE OF AWARD Other	
4a. FAIN F23AP00651		5a. ACTION TYPE New	
6. PROJECT PERIOD MM/DD/YYYY From 01/01/2023		Through 12/31/2024	
7. BUDGET PERIOD MM/DD/YYYY From 01/01/2023		Through 12/31/2024	

NOTICE OF AWARD



AUTHORIZATION (Legislation/Regulations)
Coastal Wetlands Planning, Protection and Restoration Act—National
coastal wetlands conservation grants (16 U.S.C. §3954)

8. TITLE OF PROJECT (OR PROGRAM)
Reimagining the Wetland Landscape in Molokai – a Partnership Approach to Restoration for Community and Wildlife. Phase 1 – Acquisition at Kahanui.

9a. GRANTEE NAME AND ADDRESS LAND AND NATURAL RESOURCES, HAWAII DEPT OF 1151 Punchbowl St RM 110 Honolulu, HI, 96813-3047	9b. GRANTEE PROJECT DIRECTOR Afsheen Siddiqi 1151 Punchbowl Street, Room 325 Honolulu, HI, 96813-0000 Phone: 808-587-0163
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10a. GRANTEE AUTHORIZING OFFICIAL Mr. David G Smith 1151 PUNCHBOWL ST RM 110 HONOLULU, HI, 96813-3047 Phone: 808-587-4181	10b. FEDERAL PROJECT OFFICER Mr. Christopher Swenson 911 NE 11TH AVE PORTLAND, OR, 97232 Phone: 503-231-6758
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ALL AMOUNTS ARE SHOWN IN USD

11. APPROVED BUDGET (Excludes Direct Assistance)		12. AWARD COMPUTATION	
I Financial Assistance from the Federal Awarding Agency Only		a. Amount of Federal Financial Assistance (from item 11m) \$ 401,000.00	
II Total project costs including grant funds and all other financial participation		b. Less Unobligated Balance From Prior Budget Periods \$ 0.00	
a. Salaries and Wages\$ 0.00		c. Less Cumulative Prior Award(s) This Budget Period \$ 0.00	
b. Fringe Benefits\$ 0.00		d. AMOUNT OF FINANCIAL ASSISTANCE THIS ACTION \$ 401,000.00	
c. Total Personnel Costs\$ 0.00		13. Total Federal Funds Awarded to Date for Project Period \$ 401,000.00	
d. Equipment\$ 0.00		14. RECOMMENDED FUTURE SUPPORT	
e. Supplies\$ 0.00		(Subject to the availability of funds and satisfactory progress of the project):	
f. Travel\$ 0.00		YEAR TOTAL DIRECT COSTS YEAR TOTAL DIRECT COSTS	
g. Construction\$ 0.00		a. 2 \$ d. 5 \$	
h. Other\$ 656,000.00		b. 3 \$ e. 6 \$	
i. Contractual\$ 0.00		c. 4 \$ f. 7 \$	
j. TOTAL DIRECT COSTS → \$ 656,000.00		15. PROGRAM INCOME SHALL BE USED IN ACCORD WITH ONE OF THE FOLLOWING ALTERNATIVES:	
k. INDIRECT COSTS \$ 0.00		a. DEDUCTION	
l. TOTAL APPROVED BUDGET \$ 656,000.00		b. ADDITIONAL COSTS	
m. Federal Share \$ 401,000.00		c. MATCHING	
n. Non-Federal Share \$ 255,000.00		d. OTHER RESEARCH (Add / Deduct Option)	
		e. OTHER (See REMARKS)	
		a	
		16. THIS AWARD IS BASED ON AN APPLICATION SUBMITTED TO, AND AS APPROVED BY, THE FEDERAL AWARDING AGENCY ON THE ABOVE TITLED PROJECT AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:	
		a. The grant program legislation	
		b. The grant program regulations.	
		c. This award notice including terms and conditions, if any, noted below under REMARKS.	
		d. Federal administrative requirements, cost principles and audit requirements applicable to this grant.	
		In the event there are conflicting or otherwise inconsistent policies applicable to the grant, the above order of precedence shall prevail. Acceptance of the grant terms and conditions is acknowledged by the grantee when funds are drawn or otherwise obtained from the grant payment system.	

REMARKS (Other Terms and Conditions Attached - Yes No)

GRANTS MANAGEMENT OFFICIAL:

David Teuscher, Chief, Pacific Region, Wildlife and Sport Fish Restoration
911 NE 11th Ave.
Portland, OR, 97232
Phone: 503-929-5524

17. VENDOR CODE 0070069018		18a. UEI L3D1YEK6KAW6		18b. DUNS 824671200		19. CONG. DIST. 01	
LINE#	FINANCIAL ACCT	AMT OF FIN ASST	START DATE	END DATE	TAS ACCT	PO LINE DESCRIPTION	
1	0051031501-00010	\$401,000.00	01/01/2023	12/31/2024	8151	Coastal Wetlands FY 2023	

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Federal Financial Report Cycle			
Reporting Period Start Date	Reporting Period End Date	Reporting Type	Reporting Period Due Date
01/01/2023	12/31/2023	Annual	03/30/2024
01/01/2024	12/31/2024	Final	04/30/2025

Performance Progress Report Cycle			
Reporting Period Start Date	Reporting Period End Date	Reporting Type	Reporting Period Due Date
01/01/2023	12/31/2023	Annual	03/30/2024
01/01/2024	12/31/2024	Final	04/30/2025

SCOPE OF WORK

1. Project Description

This award titled “Reimagining the Wetland Landscape in Molokai – a Partnership Approach to Restoration for Community and Wildlife. Phase 1 – Acquisition at Kahanui” is based on Service approval of your organization’s proposal, hereby incorporated by reference into this award.

Terms and Conditions

1. U.S. Fish and Wildlife Service

General Award Terms and Conditions

Recipients of U.S. Fish and Wildlife Service (Service) grant and cooperative agreement awards (hereafter referred to as ‘awards’) are subject to the terms and conditions incorporated into their Notice of Award either by direct citation or by reference to Federal regulations; program legislation or regulation; and special award terms and conditions. Award terms and conditions are applicable unless and until the USFWS removes or revises them in written notice to the recipient. The Service will make such changes by issuing a written notice that describes the change and provides the effective date.

Recipients indicate their acceptance of an award by starting work, drawing down funds, or accepting the award via electronic means. Recipient acceptance of an award carries with it the responsibility to be aware of and comply with all terms and conditions applicable to the award. Recipients are responsible for ensuring that their subrecipients and contractors are aware of and comply with applicable award statutes, regulations, and terms and conditions. Recipient failure to comply with award terms and conditions can result in the Service taking one or more of the remedies and actions described in Title 2 of the Code of Federal Regulations (CFR) §§200.339—343.

A PDF of these terms and conditions with embedded links to all regulations is available on the Service’s website at: <https://www.fws.gov/media/fws-financial-assistance-award-terms-and-conditions-2020-12-31>. See also the Department of the Interior’s General Award Terms and Conditions on their website at: <https://www.doi.gov/grants/doi-standard-terms-and-conditions>.

Administrative Requirements, Cost Principles, and Audit Requirements

These requirements and cost principles are applicable to all awards except those to individuals receiving the award separate from any business or organization they may own or operate. Foreign public entities and foreign organizations must comply with special considerations and requirements specific to their entity type, unless otherwise stated in this section. Foreign public entities must

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comply with those for states.

2 CFR Part 200, Subparts A—D, as supplemented by 2 CFR Part 1402

Foreign public entities must follow payment procedures in 2 CFR §200.305(b). For foreign public entities and foreign organizations, the requirements in 2 CFR §§200.321—323 do not apply.

Appendix XII to 2 CFR Part 200—Recipient Integrity and Performance Matters

Applicable to awards with a total Federal share of more than \$500,000 except for awards of any amount to foreign public entities.

2 CFR Part 200, Subpart E—Cost Principles

Applicable to all domestic and foreign non-Federal entities except non-profit organizations identified in Appendix VIII to 2 CFR Part 200.

48 CFR Subpart 31.2—Contracts with Commercial Organizations

Applicable to non-profit organizations identified in Appendix VIII to 2 CFR Part 200 and for-profit organizations.

Indirect Cost Proposals

Requirements for development and submission of indirect cost rate proposals are contained in Appendix III (Institutions of Higher Education), Appendix IV (Nonprofit organizations), and Appendix VII (States, local government agencies, and Indian tribes) to 2 CFR Part 200. See also the DOI negotiated indirect cost rate deviation policies at 2 CFR §1402.414. For-profit entities should contact the DOI National Business Center, Office of Indirect Cost Rate Services at: <https://ibc.doi.gov/ICS/icrna>.

2 CFR Part 200, Subpart F—Audit Requirements

Applicable to U.S. states, local governments, Indian tribes, institutions of higher education, and nonprofit organizations. Not applicable to foreign public entities, foreign organizations, or for-profit entities.

Statutory and National Policy Requirements

These requirements are applicable to all awards, including those to individuals, for-profits, foreign public entities, and foreign organizations, unless otherwise stated in this section.

Appendix A to 2 CFR Part 25—Universal Identifier and System for Award Management

Not applicable to individuals or any entity exempted by the awarding bureau or office prior to award per 2 CFR §25.110(c)(2) and bureau or office policy.

Appendix A to 2 CFR Part 170—Award term for reporting subaward and executive compensation

Not applicable to individuals. See 2 CFR 170 for other exceptions.

2 CFR §175.15—Award Term for Trafficking in Persons

Applicable to private entities as defined in 2 CFR §175.25(d), states, local governments, and Indian tribes. Applicable to foreign public entities if funding could be provided to a private entity as a subrecipient under the award.

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2 CFR Part 1400—Nonprocurement Debarment and Suspension

All recipients must ensure they do not enter into any covered transaction with an excluded or disqualified participant or principal. See also 2 CFR Part 180—OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement). 2 CFR §180.215 defines nonprocurement transactions that are not covered transactions.

2 CFR Part 1401—Requirements for Drug-Free Workplace (Financial Assistance)

Not applicable to foreign public entities or foreign organizations.

43 CFR Part 18—New Restrictions on Lobbying

Recipients are prohibited from using any federally appropriated funds (annually appropriated or continuing appropriations) or matching funds under a Federal award to pay any person for lobbying in connection with the award. Lobbying is influencing or attempting to influence an officer or employee of any U.S. agency, a Member of the U.S. Congress, or an officer or employee of a Member of the U.S. Congress in connection with the award.

41 U.S.C. §4712—Whistleblower Protection for Contractor and Grantee Employees

41 U.S.C. §6306—Prohibition on Members of Congress Making contracts with Federal Government

Mandatory Disclosures

Failure to make required disclosures may result in any of the remedies for noncompliance described in 2 CFR §200.339, including suspension or debarment (see also 2 CFR Part 180).

Conflicts of interest: Per 2 CFR §1402.112, non-Federal entities and their employees must take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements. In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the provisions in 2 CFR §200.318 apply. Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR §200.112. Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Service Project Officer identified in their notice of award in writing of any conflicts of interest that may arise during the life of the award, including those that reported by subrecipients. The Service will examine each disclosure to determine whether a significant potential conflict exists and, if it does, work with the applicant or recipient to develop an appropriate resolution. Failure to resolve conflicts of interest in a manner that satisfies the government may be cause for termination of the award.

Lobbying: If the Federal share of the award is more than \$100,000, recipients must disclose making or agreeing to make any payment using non-appropriated funds for lobbying in connection with the award. To make such disclosures, recipients must complete and submit the SF-LLL, “Disclosure of Lobbying Activities” form to the USFWS. This form is available at: <https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html>. For more information on when additional submission of this form is required, see 43 CFR, Subpart 18.100. These restrictions are not applicable to such expenditures by Indian tribe, tribal organization, or any other Indian organization that is specifically permitted by other Federal law.

Other Mandatory Disclosures: Recipients and subrecipients must disclose, in a timely manner, in writing to the Service Project Officer identified in their notice of award or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities subject to the 2 CFR 200, Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters are required to report certain civil, criminal, or administrative proceedings to SAM.

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National Policy Encouragements

Executive Order 13043—Increasing Seat Belt Use in the United States

Non-Federal entities are encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles. Individuals are encouraged to use seat belts while driving in connection with award activities.

E. O. 13513—Federal Leadership on Reducing Text Messaging While Driving

Non-Federal entities are encouraged to adopt and enforce policies that ban text messaging while driving, including conducting initiatives of the type described in section 3(a) of the order. Individuals are encouraged to not text message while driving in connection with award activities.

BUDGET AND PROGRAM REVISIONS

1. WSFR Budget and Program Revisions

The recipient is permitted to re-budget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, certain types of post-award changes in budgets and projects shall require the prior written approval of the Service. Refer to **2 CFR 200.308** for additional information on the types of changes that require prior written approval.

AWARD CONDITIONS

1. Pre-Award Costs

The Service authorizes the recipient to request reimbursement for pre-award expenses incurred for a restricted use appraisal costing \$7,330 done between June and December 2022. Pre-award costs are those incurred prior to the effective date of this award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award.

2. Real Property

The deed of purchased and/or match properties shall identify the Federal interest in the title of real property or a Notice of Federal Participation (NOFP) shall be recorded to further ensure that the land will be managed in perpetuity in a manner consistent with the goals and objectives of this grant. Title vesting evidence; including the deed, NOFP, title insurance, settlement statement, and map(s) shall be included as part of the final accomplishment report. In the event that the terms for perpetual conservation are violated the property will be subject to transfer, replacement, or repayment to the United States pursuant to 2 CFR 200.311.

For the acquisition of a Conservation Easement (CE), the CE shall identify that the property is to be managed in perpetuity in a manner consistent with the goals and objectives of the grant and a NOFP shall be recorded, a baseline inventory shall be completed prior to closing, property management plans(s) shall be prepared, and CE monitoring shall be conducted on an annual basis.

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If mineral rights are reserved, the extraction of minerals must be consistent with the purpose of the acquired land and must be extracted in a way that will not damage the habitat or value of the surface lands. This ensures that the quantity and quality of the habitat needed to conserve species will be maintained.

Revenue generated during the grant period from the sale of timber on acquired or match lands shall be treated as program income. Program income is subject to the Federal assistance regulations at 2 CFR 200.307. Timber revenues realized after the grant period are required to be fully used by the State grantee or sub-grantee for management of the property as approved in the management plan and may not be diverted to other purposes.

Prior to accessing funds for the purchase of property, market value must be determined by appraisals performed in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book). The Federal share of the acquisition will not be greater than the agreed upon match proportion of the current market value, as determined by an appraisal and review appraisal completed to Yellow Book standards. If land is to be used as match, Federal funds may not be used to acquire the subject property until documentation of the match property has been approved by the Service. Documentation shall consist of identification and approval of the property and a Yellow Book, self-contained appraisal with a review appraisal. The following conditions must be completed to document Yellow Book compliance:

- 1.1. A State-certified general appraiser must conduct an appraisal that meets Federal land acquisition standards. Specifically the appraisal must be Yellow Book compliant <http://1.usa.gov/1HmvzGu>. This must occur for the property or properties you plan to purchase or use as match.*
- 2. Following the appraisal, a review appraisal is required. The review appraisal can be prepared by qualified agency staff or provided to your agency by contract or agreement with another state agency. A State-certified or licensed review appraiser must conduct the review appraisal.*
- 3. The U.S. Fish and Wildlife Service must be identified as an intended user in the appraisal and review.*

The appraisal and review appraisal documents must be submitted to WSFR for review and acceptance of the value before Federal funds can be used to purchase the land.

3. WSFR Small Grants Match

The federal share of the total project costs cannot exceed 61%. The Grant Recipient is eligible to request Federal obligated funds up to but not in excess of an amount equal to 61% of the total project expenditures. See also 2 CFR §200.306.

If cost share percentage identified in the attached budget changes for any reason, please notify the project officer for further guidance.

4. WSFR Cost Accounting

Cost accounting is at the grant level.

5. WSFR TRACS Grant Entry

The recipient is responsible for entering grant and project statement information for this award into the Service's electronic performance reporting system – TRACS (<https://tracs.fws.gov>). This information must be entered in TRACS within 60 calendar days of the latter: (a) period of performance start date; or (b) the date the award was approved. The grant and project statement information entered in TRACS must be consistent with the approved Project Statement (narrative) in GrantSolutions. If you need

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assistance, please contact the WSFR Federal Project Officer identified in this Notice of Award.

PAYMENTS

1. Domestic Recipients Enrolled in Treasury's ASAP System

The recipient will request payments under this award in the [U.S. Treasury's Automated Standard Application for Payment \(ASAP\)](#) system. When requesting payment in ASAP, your Payment Requestor will be required to enter an Account ID. The number assigned to this award is the partial Account ID in ASAP. When entering the Account ID in ASAP, the Payment Requestor should enter the award number identified in the notice of award, followed by a percent sign (%). Refer to the ASAP.gov Help menu for detailed instructions on requesting payments in ASAP.

REPORT

1. WSFR Interim Financial Reports

The recipient is required to submit interim financial reports on an annual basis directly in GrantSolutions. The recipient must follow the financial reporting period end dates and due dates provided in GrantSolutions. The interim reporting due dates are available by signing in to GrantSolutions and selecting the menu for Reports>Federal Financial Report. The GrantSolutions financial report data entry fields are the same as those on the SF-425, "[Federal Financial Report](#)" form. See also our instructional video on "[Completing the Federal Financial Report \(SF-425\)](#)".

2. WSFR Interim Performance Reports

The recipient is required to submit interim performance reports on an annual basis directly in GrantSolutions. The recipient must follow the performance reporting period end dates and due dates provided in GrantSolutions. The interim reporting due dates are available by signing in to GrantSolutions and selecting the menu for Reports>FPR.

3. Final Reports

The recipient must liquidate all obligations incurred under the award and submit a *final* financial report in GrantSolutions no later than 120 calendar days after the award period of performance end date. The GrantSolutions financial report data entry fields are the same as those on the SF-425, "[Federal Financial Report](#)" form. See also our instructional video on "Completing the Federal Financial Report (SF425) [https://fawiki.fws.gov/display/VLSV#VirtualLearningSeriesVideosHome-CompletingtheFederalFinancialReport\(SF-425\)](https://fawiki.fws.gov/display/VLSV#VirtualLearningSeriesVideosHome-CompletingtheFederalFinancialReport(SF-425))

The recipient must submit a *final* performance report no later than 120 calendar days after the award period of performance end date. Performance reports must contain: 1) a comparison of actual accomplishments with the goals and objectives of the award as detailed in the approved scope of work; 2) a description of reasons why established goals were not met, if appropriate; and 3) any other pertinent information relevant to the project results. Please include the Service award number on all reports.

The recipient must follow the final Federal Financial Report and the final Performance Report reporting period end dates and due dates provided in GrantSolutions. The final reporting due dates are available by signing in to GrantSolutions and selecting the menu for Reports>Federal Financial Report or Reports>FPR.

4. Reporting Due Date Extensions

Reporting due dates may be extended for an award upon request to the Service Project Officer identified in the notice of award. The request should be sent by selecting the award in GrantSolutions and selecting send message. The message must include the type of report to be extended, the requested revised due date, and a justification for the extension. The Service may approve an

NOTICE OF AWARD (Continuation Sheet)

PAGE 8 of 8	DATE ISSUED 02/07/2023
GRANT NO. F23AP00651-00	

additional extension if justified by a catastrophe that significantly impairs the award Recipient's operations. The recipient must submit reporting due date extension requests through GrantSolutions to the Service Project Officer identified in their notice of award before the original due date. The Service Project Officer will respond to the recipient after approval or denial of the extension request.

5. Significant Developments Reports

See [2 CFR §200.329\(e\)](#). Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, recipients are required to notify the Service in writing as soon as the recipient becomes aware of any problems, delays, or adverse conditions that will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of any corrective action(s) taken or contemplated, and any assistance needed to resolve the situation. The recipient should also notify the Service in writing of any favorable developments that enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

6. WSFR TRACS Reporting

The recipient is responsible for entering interim (if required) and final performance report information for this award into the Service's electronic performance reporting system – TRACS (<https://tracs.fws.gov>) and attaching those reports from TRACS into GrantSolutions by the report due date(s) as specified in GrantSolutions. Performance information entered in TRACS must provide quantitative outputs to the approved Standard Objectives and narrative responses to the following questions. If the award includes multiple project statements, the recipient must answer these questions for each project statement. If you need assistance, please contact the WSFR Federal Project Officer identified in this Notice of Award.

1. What progress has been made towards completing the objective(s) of the project?
2. Please describe and justify any changes in the implementation of your objective(s) or approach(es).
3. If applicable, please share if the project resulted in any unexpected benefits, promising practices, new understandings, cost efficiencies, management recommendations, or lessons learned.
4. For survey projects only: If applicable, does this project continue work from a previous award? If so, how do the current results compare to prior results? (Recipients may elect to add attachments such as tables, figures, or graphs to provide further detail when answering this question).
5. If applicable, identify and attach selected publications, photographs, screenshots of websites, or other documentation (including articles in popular literature, scientific literature, or other public information products) that have resulted from this project that highlight the accomplishments of the project.
6. Is this a project that you wish to highlight for communication purposes?
7. For CMS State fish and wildlife agencies only: If the grant is a CMS, has the agency submitted an update report every 3 years detailing the CMS components: (a) inventory and scanning; (b) strategic plan; (c) operational plan; and (d) evaluation and control have been reviewed and summaries included which provide detailed review results and recommendations?

7. WSFR TRACS Real Property/Facility

The recipient is responsible for entering required information into the TRACS (<https://tracs.fws.gov>) inventory modules to create real property/facility record(s). These records will become the basis for future recipient real property/facility reporting compliance under 2 CFR 200.330 and 2 CFR 1402.329. If you need assistance with entering real property/facility records in TRACS, please contact the WSFR Federal Project Officer identified in this Notice of Award.

AWARD ATTACHMENTS

LAND AND NATURAL RESOURCES, HAWAII DEPT OF

F23AP00651-00

1. SF-424
2. Narrative
3. Budget

Application for Federal Assistance SF-424*** 1. Type of Submission:**

- Preapplication
 Application
 Changed/Corrected Application

*** 2. Type of Application:**

- New
 Continuation
 Revision

*** If Revision, select appropriate letter(s):**

*** Other (Specify):**

*** 3. Date Received:**

06/24/2022

4. Applicant Identifier:

State of Hawaii, DLNR DOFAW

5a. Federal Entity Identifier:

5b. Federal Award Identifier:

F23AP00651

State Use Only:**6. Date Received by State:**

7. State Application Identifier:

8. APPLICANT INFORMATION:*** a. Legal Name:** DLNR Division of Forestry and Wildlife*** b. Employer/Taxpayer Identification Number (EIN/TIN):**

99-0266119

*** c. Organizational DUNS:**

8246712000000

d. Address:*** Street1:**

1151 Punchbowl Street, Room 325

Street2:

*** City:**

Honolulu

County/Parish:

*** State:**

HI: Hawaii

Province:

*** Country:**

USA: UNITED STATES

*** Zip / Postal Code:**

96813-0000

e. Organizational Unit:**Department Name:**

Land and Natural Resources

Division Name:

Forestry and Wildlife

f. Name and contact information of person to be contacted on matters involving this application:**Prefix:**

*** First Name:**

Afsheen

Middle Name:

*** Last Name:**

Siddiqi

Suffix:

Title: Wildlife Biologist**Organizational Affiliation:**

Employee

*** Telephone Number:**

808-587-0163

Fax Number:

*** Email:** Afsheen.A.Siddiqi@hawaii.gov

Application for Federal Assistance SF-424

*** 9. Type of Applicant 1: Select Applicant Type:**

A: State Government

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

* Other (specify):

*** 10. Name of Federal Agency:**

Fish and Wildlife Service

11. Catalog of Federal Domestic Assistance Number:

15.614

CFDA Title:

Coastal Wetlands Planning, Protection and Restoration

*** 12. Funding Opportunity Number:**

F23AS00003

* Title:

Fiscal Year 2023 National Coastal Wetlands Conservation Grant Program

13. Competition Identification Number:

F23AS00003

Title:

Fiscal Year 2023 National Coastal Wetlands Conservation Grant Program

14. Areas Affected by Project (Cities, Counties, States, etc.):

Add Attachment

Delete Attachment

View Attachment

*** 15. Descriptive Title of Applicant's Project:**

Reimagining the Wetland Landscape in Molokai - a Partnership Approach to Restoration for Community and Wildlife. Phase 1 - Acquisition at Kahanui.

Attach supporting documents as specified in agency instructions.

Add Attachments

Delete Attachments

View Attachments

Application for Federal Assistance SF-424

16. Congressional Districts Of:

* a. Applicant

* b. Program/Project

Attach an additional list of Program/Project Congressional Districts if needed.

Add Attachment

Delete Attachment

View Attachment

17. Proposed Project:

* a. Start Date:

* b. End Date:

18. Estimated Funding (\$):

* a. Federal	401,000.00
* b. Applicant	255,000.00
* c. State	0.00
* d. Local	0.00
* e. Other	0.00
* f. Program Income	0.00
* g. TOTAL	656,000.00

*** 19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

a. This application was made available to the State under the Executive Order 12372 Process for review on

b. Program is subject to E.O. 12372 but has not been selected by the State for review.

c. Program is not covered by E.O. 12372.

*** 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes," provide explanation in attachment.)**

Yes No

If "Yes", provide explanation and attach

Add Attachment

Delete Attachment

View Attachment

21. *By signing this application, I certify (1) to the statements contained in the list of certifications and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)**

** I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Authorized Representative:

Prefix: * First Name:

Middle Name:


* Last Name:

Suffix:

* Title:

* Telephone Number: Fax Number:

* Email:

* Signature of Authorized Representative: 

* Date Signed:

Project Narrative: NCWCG Proposal – Division of Forestry and Wildlife / Molokai Land Trust

Title: Reimagining the Wetland Landscape in Molokai – a Partnership Approach to Restoration for Community and Wildlife. Phase 1 – Acquisition at Kahanui.

The Division of Forestry and Wildlife (DOFAW) proposes the acquisition of the 43.73-acre Kahanui wetland in Molokai, Hawai'i through a subgrant to the Molokai Land Trust (MLT). Molokai's South Shore has some of the greatest wetland restoration potential in Hawai'i; the expansive coastal floodplain has a mosaic of fresh, brackish & saltwater habitats. Such an undeveloped floodplain is rare in Hawai'i, lost mainly to development. This acquisition is essential to prevent the continued loss of existing wildlife habitat to invasive species, sedimentation & possibly development; attempts to support the current owner to find restoration funding have not succeeded.

Project Need

- This is a time critical acquisition, with the property on the open market and a purchase for non-conservation reasons possible at any time. Such a purchase would be a major blow to community, state and federal ecosystem level restoration plans for this area. Much of the floodplain is currently in public ownership (see Figure 22 in 'Maps and Photos') and it is critically important that this central parcel is integrated into that ownership, continuing that trajectory, rather than risking further habitat loss and becoming an impediment to future wetland restoration work. The current landowner has neither the desire nor the intention to remove the mangrove; a purchase by another party would also be highly likely to result in the mangrove continuing to destroy the wildlife and cultural value of the site and the wetland value being further lost, along with the T&E species that are currently present.
- Coastal wetland habitats are crucial ecosystems for the sustainability of migratory bird species, recovery of Hawai'i's endangered native waterbirds and development of indigenous agro-ecology for sustainable food. Throughout the main Hawaiian Islands, numerous issues hinder the ability to provide long-term sustainable wetlands for endemic and migratory birds and community benefits / ecosystem services, including urban expansion and population growth (water use, housing development, airport expansions, military operations), impacts of invasive species, and climate change / SLR (van Rees and Reed, 2014). However, the southern shore of Molokai harbors a series of relatively isolated wetland habitats, strategically proximal to one another, many already in public ownership, and remote from human activities. This affords a rare opportunity for Hawai'i: the potential to enact the landscape scale ecological recovery of wetland habitat and manage for wildlife and community. Kahanui is part of this complex. This project intends to acquire 42.97 acres of national and regionally decreasing wetlands (NWI Type Code: E2FO3N, PEM1T, PEM1R, PF03C) and 0.76 acres of wetland-adjacent scrubland. With the expected sea level rise (SLR) impacts to wetlands around the state, non-urbanized wetland complexes such as this, have the potential to become replacement habitat for climate change losses to existing core waterbird habitat areas on other islands. For example, wetland loss due to SLR is predicted at Kanaha Pond Wildlife Sanctuary (a core wetland in Maui) as early as 2028 but surrounding urban development prevents upslope migration of the wetland (Kane et al. 2013). This loss in wetland function and habitat will displace wetland dependent birds.

- The endemic waterbirds, which were at their peak when indigenous agro-ecology thrived, have declined dramatically; all four are on the ESA list, with Hawaiian Common Gallinule extirpated from all but 2 islands and purebred Koloa Duck birds present only on Kauaʻi. Nēnē remain threatened. These birds remain in peril of extinction. Equally, birds migrating to Hawaiʻi have declined from tens of thousands in the 1940s to a few thousand today (Henry, 2011); Molokai previously supported large migratory & shorebird bird populations, but migratory flyways have been decimated by habitat loss. This site has the potential to sustain a functioning coastal wetland ecosystem, a step towards repairing some of that damage.
- The PICASC team observed that not a single lowland wetland site in Molokai was in good restoration condition, other than a small, well managed spring-fed irrigated pondfield (loʻipunawai) named Kaupapaloʻi o Kaʻamola, in the southeast. Even the USFWS National Wildlife Refuge at Kakahaiʻa has been mothballed (although efforts are afoot to reverse this situation and USFWS are an active member of the MWP). The Kahanui acquisition has not only intrinsic value but a much deeper importance as a demonstration site, trialing and refining restoration techniques including invasive species removal and hydrological rehabilitation on Molokai. This is vital because invasive species, including mangrove, pickleweed and kiawe threaten the ecological integrity of this site and many others, degrading habitat for native plants and wildlife and reducing the climate resilience of the site. Reduced rainfall is resulting in low water conditions, which, without active management, could extirpate the remaining populations of the endangered Orangeblack damselfly *megalagrion xanthomelas* and also render the site less suitable for some of the T&E waterbirds and migratory species that rely on it (Polhemus, 2022, pers.comm).
- Mangrove is not native to Hawaiʻi. Their colonization has had severe negative impacts on the coastal area (Dʻiorio, 2003), reducing wetland habitat available for endemic waterbirds, and encroaching onto the reef, beaches (which are no longer accessible to locals), and fishponds, which are particularly vulnerable, as they provide root support within their rock walls. In Molokai, many previously shoreline-bound fishponds (loko ʻumeʻiki) are now separated from the coastline by hundreds of meters of mangrove forest (Dʻiorio, 2003). This acquisition represents an opportunity to showcase future mangrove removal by MLT, which has a highly successful track record in non-native vegetation management and outplanting of natives.
- The purchase by MLT effectively returns land currently in private ownership to the Molokai community, which values shared land ownership. The resulting project will focus on community-based resource management, with community as active stewards. Restoration in future phases will promote traditional Hawaiian methods of preservation, restoration, and cultural perpetuation. The sustainability of life on this island requires that future generations have a strong sense of environmental stewardship and can forge a symbiotic and productive relationship with the land, as was the case under Hawaiian management prior to European arrival. Acquisition will allow engagement of native Hawaiian partners by creating a loʻi kalo, which will provide a sustainable, culturally important local food source as well as additional habitat for T&E waterbirds. It is essential to involve the community in Molokai to ensure that restoration projects can be maintained long term.
- The Division of Forestry and Wildlife (DOFAW) & USFWS are seeking to reintroduce Hawaiian Common Gallinule to a third island; Kahanui would be a candidate site.

- The Department of Hawaiian Homelands and the State of Hawai'i have recognized the value of the wider wetland plain and already own parcels in the area; this purchase will cement the ability of the conservation community to manage the wetland plain at an ecosystem level.

1.1. Project Objectives, Approach and Timetable

To successfully complete the proposed acquisition and partial restoration project, the following objectives will be met within the 24-month project period:

Objective 1: Acquisition: Acquire real property interest in 43.73 acres by December 2024.

Strategy: Real Property Acquisition

Activity: Land Acquisition of 43.73 acres of wetland.

Objective 2: Communicate with 500 individuals about the land and acquisition by December 2024.

Strategy: Outreach/Communication

Activity 1: Inform/communicate with 500 individuals using different communication strategies.

Activity 2: Participate in 2 community events.

Approach

Sub recipients and their role(s) in meeting the project objectives (a,b,c,d)

Sub recipient. Acquisition: Molokai Land Trust will manage the acquisition process & hold title to the real property. Ownership will be fee simple for all acres. The following approach will be taken: i. completion of phase 1 EA ii. hydrological survey iii. yellow book appraisal & appraisal review. MLT will carry out all aspects of project management. The hydrological survey is important because MLT's mission requires them to restore any acquisition after purchase & due diligence therefore requires that they understand hydrological conditions so as to commit to that restoration. After acquisition, MLT will manage the land long term; the organization is already a significant landowner on Molokai with a long track record of building productive partnerships & securing significant funding for restoration & management of protected lands, including a 1.1-mile predator proof fence at its Anapuka Dune Restoration Site on Mokuo Preserve. This project is an excellent example of the diverse partner & fund development mechanism utilized by MLT to create management actions at scale. MLT's Mokuo Preserve was designated one of 5 priority work areas for the Main Hawaiian Islands by USFWS Coastal Program in their 2016-2021 Strategic Plan, due MLT's strong track record for positive ecological responses to management, & committed partnerships that results in high quality restoration.

Sub recipient: Outreach and Communication.

- MLT outreach staff will carry out communications work with key stakeholders and community leaders (20+ individuals engaged by Dec 2024) to increase environmental awareness and exchange information with the local community on coastal wetlands conservation on Molokai. Future recreation on site will involve participation in community-based restoration and the team will cultivate volunteers for this work during the acquisition .
- MLT will host booths at 2+ community events by Dec 2024 and will add a page to their website on the acquisition site and wetland importance for the Molokai community.
- MLT will engage local hunting community.

- Pacific Birds will produce a digital & print leaflet on the importance of the acquisition site and wetlands, geared towards community interests, and will support MLT in all other outreach and education efforts through provision of staff time.
- Partner Papahana Kuaola will incorporate and expand education about the Kahanui site into existing community education projects, bringing vital messaging about the value of wetlands, especially in light of climate change, to schools on the island of Molokai.
- In total we expect to reach more than 500 individuals.

Project Timeline and Compliance Requirements

Pre-grant actions	Agency/Org	Timeline & Expected Determination
MLT board agrees to pursue purchase	MLT	Apr/May 2022
Liaison with seller	MLT/PB	Apr/May 2022
Letter of Intent from MLT to seller	MLT	May 2022
Willing Seller Letter received	MLT	Jun 2022
Restricted appraisal (pre award cost)	MLT	Jun 2022
Permit / Determination Request		
Phase 1 Environmental Survey	MLT via contract	Dec 2023. No contaminants expected.
Hydrological survey	MLT via contract	Dec 2023
Federal permitting (ESA, NEPA, NHPA)	DOFAW/MLT	Dec 2023
Project Action Timeline 2023-2025		
MLT enters into final negotiations.	MLT	Notification of award
Yellow book appraisal & appraisal review	MLT	Dec 2023
Outreach work – 500 individuals reached: Connect with 20+ community leaders 2 x event booths Webpage and leaflet complete Hunter engagement Student education	MLT/PB/ MWP Papahana Kuaola	Jan 2024 – Dec 2024 Ongoing Apr 2023 and Apr 2024 Apr 2023 Apr 2023 – ongoing Apr 2023 - ongoing
MLT completes purchase	MLT	Aug 2023 (Notice to proceed)-Dec 2024

How long-term management (20+ years or longer) be accomplished

Acquisition: DOFAW intends to acquire & manage the property through a subgrantee, the Molokai Land Trust. The acquisition of this property will guarantee long term management in perpetuity since it will be purchased fee simple and will include protective covenants & / or easements that will prevent future development or loss of wetland habitat and quality. The conditions of the matching funds from the County of Maui Open Space Fund include the County holding a perpetual conservation easement over the property. The State of Hawaii will be a co-holder. Management will be achieved with the support of the Molokai Wetland Partnership (MWP), which was formed in 2019 to explore opportunities for wetland restoration on Molokai, integrating both cultural uses and habitat needs. See Table 3 of the Criteria Section for members. The broad, inclusive nature of the partnership will ensure community, federal & state support for long term management. MLT has a long track record (14+ years) of managing similar projects on Molokai. The site will be managed for wildlife in perpetuity, but MLT will also

engage with the local community to develop taro pondfields for wildlife habitat and sustainable food sources (if water resources are appropriate), and to explore fishpond restoration opportunities as SLR exposes the buried walls of this culturally valuable site. Long term financial viability will be assured with the help of MLTs operational endowment fund.

What will be involved in the restoration?

The project focus is acquisition; restoration planning & implementation will occur in future phases. The approach for acquisition after grant award is as follows:

Objective 1: Acquisition: Yellow book appraisal completed; Liaison with seller and agent; Purchase completed

Objective 2: Outreach and Communication: see section 2.3.1

Is the project ready to implement?

Yes. MLT & PB are in regular contact with seller who has expressed a strong interest in selling to a conservation organization. Letter of intent from MLT and a willing seller letter are in hand.

Expected Results and Benefits

- This project will result in the fee title purchase & permanent protection of 43.73 acres of estuarine & marine wetland, palustrine emergent wetland, palustrine forested/shrub wetland habitat & adjacent scrub to benefit the Molokai community & native wildlife.
- Although this grant proposal does not include restoration, the purchase is essential to facilitate future wetland restoration, to provide full ecosystem services & wildlife habitat.
- Purchase will kickstart the restoration of a wetland within the wider ecosystem and prevent the loss of this key site to other land uses. Indigenous agro-ecology will be included in future restoration planning, connecting the community to the site and returning an area currently in private ownership to the Molokai community.
- Through future phases, the project will serve as an example site for mangrove, pickleweed & kiawe removal, and the creation / maintenance of open water and wetland habitat for the benefit of two highly endangered waterbirds, nēnē, migratory birds, and endangered invertebrates; monitoring and management of predators; and optimizing hydrological conditions and the ability of the wetland to provide ecosystem services.
- A potential reintroduction site for the Hawaiian common gallinule will result.
- Community outreach & education will be expanded; project will catalyze community knowledge exchange (incl. traditional ecological knowledge) about wetland habitats.

Activities are both “site-specific” and “substantive” as required in section C3.

Endangered, resident and migratory species

Acquisition and subsequent restoration (phase 2) of the native wetland plants will benefit 2 endemic waterbirds with critically small world populations: the a’eo or Hawaiian Stilt, popn ~2000; & the ‘alae ke’oke’o or Hawaiian Coot, popn ~ 2000; as well as the threatened Nēnē, popn ~3150. The site will potentially benefit the ‘alae’ula or Hawaiian Common Gallinule, popn ~1000, by providing a reintroduction site to a 3rd island (the birds have been extirpated from all but Kaua’i and O’ahu). Migratory birds including the Ruddy turnstone / ‘akekeke , Sanderling / hunakai; and Pacific golden plover / kōlea will benefit from a protected site with suitable habitat. Restoration will improve the migratory stopover habitat for 13 State of Hawaii Species

of Greatest Conservation Need & 30 species of migratory waterfowl & shorebirds (10 of which use the site already). The site hosts declining migratory species such as the IUCN 'vulnerable' Bristle-thighed Curlew (listed as of 'greatest concern' in the [US Shorebirds of Conservation Concern](#), 2016). The endangered Hawaiian hoary bat / 'Ōpe'ape'a (*Lasiurus cinereus semotus*) will benefit from the creation of additional habitat & predator control. Tables 6 and 7 in the Criteria Document provide an overview of the T&E species and how the project supports their recovery. The Orangeblack Hawaiian Damselfly, (*Megalagrion xanthomelas Selys-Longchamps*), an endangered species, has been found at 2 basal springs within this property previously & was relocated during PICASC surveys in Apr 2022, making Kahanui one of the few sites in Hawai'i where this species persists (it is now extirpated from Lāna'i Island, a former stronghold).

Fish and Shellfish

This acquisition will allow for a future increase in the abundance and diversity of endemic / native fish on site. As mangrove is removed, the future restoration of springs and open water will create important nursery & foraging habitat for native aquatic species (e.g. native o'opu and mullet 'ama'ama), which are currently in decline. Historically this site was connected to the ocean. Due to erosion and sedimentation of the fishpond system, and encroachment by mangrove over 150 years, ocean connectivity is now limited to extreme high tide events. This connectivity will improve in future due to SLR, providing nursery grounds to reef fish. The coral reefs & fisheries of the South Shore are of great significance, with 99 taxa of fish identified. While it is 'probably the most productive reef flat in main Hawaiian Islands for the harvest of reef fish and invertebrates' and 'healthier than those in more exploited urban areas' it has 'shown signs of decline in overall health and quality over time' (Friedlander et al, 2008) & will benefit from acquisition to prevent development and maximize wetland ecosystem services.

Improved Water Quality, Pollution Retention and Restored Functions & Values

A primary goal of acquisition is to enable restoration of the wetland to provide full ecosystem services, a process which is intended to be replicated across the broader south shore plain. Currently, mangrove is resulting in a total loss of those services; the root systems reduce water flow, & leaf litter decomposition from this invasive monoculture creates anoxic conditions that do not support life. Removal of mangrove will reverse these conditions & restoration of wetland habitat will provide sediment & flood control services to prevent ongoing reef damage.

Cultural Resources

The fishpond on the property is known as Punalau (Many Springs) Pond and a 1981 archaeological survey found the walls of the pond buried under sediment in "excellent preservation", concluded that the pond was used to grow *Chanos chanos* (milkfish); & that no mitigation procedures were required to preserve the site. While removal of sediment to restore the fishpond is likely to prove expensive, the presence of the original walls will help to protect the site from SLR, allowing the freshwater to retreat north, and longer term, erosion may see this historic structure uncovered naturally, providing for future restoration.

Project Location

The project location is along the south shore of Molokai. The coordinates are 21° 6'22.00"N 157° 4'45.42"W. See Maps and Photographs Document. The targeted lands meet the definition

of the coastal wetland ecosystem, 'Coastal Lands – Hawaii'. NWI Wetland Designations: 9.96 acres of the site (mainly the area invaded by mangrove) designated as Estuarine and Marine Wetland habitat (E2FO3N). The majority of the remaining wetland acres (30.67) are Palustrine Emergent Wetland habitat (PEM1T & PEM1R). The band of mangrove along the coast is designated as Palustrine Forested/Shrub Wetland habitat (PFO3C) – 2.34 acres.

Funding Eligibility

The project will contribute to goals of the USFWS Recovery Plan for Hawaiian Waterbirds (USFWS 2011) & DOH Water Quality Plan objectives (DOH 2019). It also fulfills goals & objectives of the Molokai Wetland Partnership (Raine, unpubl.) and Pacific Coast Joint Venture Strategic Plan for Hawaii Wetlands (2006). This is a single purpose project with no facilities.

State Trust Fund

Hawaii State qualifies for 25% non-federal match as it has recurring funds for habitat conservation purposes. Annually, the state legislature approves funding allocations to projects that meet these conservation needs. Eligibility for 25/75 cost share with the National Coastal Wetland Conservation grant has been approved & no changes have occurred to these funds

Relationship to Other Projects

This acquisition will be a cornerstone project for the MWP, convened to facilitate partner efforts to action wetland opportunities. The project is part of a larger effort to restore a series of wetlands across Molokai, with ongoing community liaison to ensure long term success. Information to support this project came from a major PICASC project begun in 2021 with the objective of prioritizing wetlands for restoration using a series of criteria (including community input); the proposal to purchase this property is a direct result of the outreach & research work from that project. Project Partner Ka Ipu Makani also obtained a Catalyst Landscape Grant to allow for further community outreach and the integration of community feedback into planning and acquisition work related to wetlands. Hawai'i Wetlands are a priority for Pacific Birds Habitat Joint Venture (PB), supported by the international management board and PB will continue to assist MLT and partners into the future with this effort.

Public Involvement and Interagency Coordination

MLT is deeply involved in the local & greater statewide conservation community. They offer STEM related service-learning opportunities for every school on island, paid internships for island youth, & visitor volunteer opportunities. MLT representatives sit on the Molokai Maui Invasive Committee, USDA NRCS State Technical Advisory Committee, State of Hawaii Legacy Lands Conservation Commission (Chair), Molokai Wetland Partnership, East Molokai Watershed Partnership. MLT has completed Phase I of its Operations & Service Learning Center through a complex financing structure utilizing the New Markets Tax Credit Program with national partners Wells Fargo Bank and Ecotrust (a community development entity). MLT has consulted statewide on conservation & restoration strategies.

Budget and Budget Narrative

Budget and Planned Expenditures

Table 1. Detailed budget breakdown.

PROJECT BUDGET					
No.	CATEGORY	NCWCG Anticipated Revenues & Expenditures	OTHER Funding Sources Anticipated Revenues & Expenditures	Anticipated Revenues & Expenditures	Grand Total
REVENUE					
1	NCWCG Request (2022)	\$401,000			\$401,000
2	County of Maui Open Space Fund (FY23)		\$210,000		\$210,000
3	Molokai Land Trust (Private Funds)			\$40,000	\$40,000
4	Papahana Kuaola (Private Funds)			\$5,000	\$5,000
5	Total Revenue Budget	\$401,000	\$210,000	\$45,000	\$656,000
EXPENSES					
6	Land Acquisition (Selling Price)	\$240,000	\$210,000		\$450,000
7	Restricted Use, Yellow Book Appraisal and Appraisal review (will occur after grant award); other conveyance and purchase expenses (legal fees association with acquisition)	\$98,850			\$98,850
8	Phase 1 EA and hydrological survey	\$60,000			\$60,000
9	State DLNR Negotiated Indirect Rate is 8.6% (applying 8.6% to first \$25,000 of federal request); c	\$2,150			\$2,150
10	MLT Staff time and administrative overhead expenses to complete land transaction and outreach efforts			\$40,000	\$40,000
11	Papahana Kuaola Staff time to carry out education and outreach efforts			\$5,000	\$5,000
12	Total Expense Budget	\$401,000	\$210,000	\$45,000	\$656,000

Table 2. Overall Budget

Total Contract to MLT (sub-award)	\$398,850
Total DLNR overhead (8.6% of \$25K)	\$2,150
Total Federal Request	\$401,000
<i>Base Match (25%) required</i>	<i>\$133,667</i>
Additional Cash Match (>25% over minimum required)	\$121,333
Total match	\$255,000
Total project cost	\$656,000

Budget Narrative

The total project cost is \$656,000 (line 5), with the federal request being \$401,000 (line 1).

Revenue includes the nonfederal cash match of \$210,000 (line 2) from the County's Maui Open Space Fund along with nonfederal match of \$40,000 (line 3) in private funds from Molokai Land Trust (salary for outreach and administration) and \$5,000 of non federal match from outreach group Papahana Kuaola (line 4).

The bulk of the expenses are related to the purchase cost for the property; in the restricted appraisal, commissioned by Pacific Birds in conjunction with the seller, the property was valued at \$450,000 (line 6). The restricted appraisal is a pre award cost for which we are requesting approval, in the amount of \$7,329.84; a restricted appraisal was needed to ascertain that the selling price was appropriate before this application was submitted. Given the fact that Yellow Book appraisals expire and the time pressures involved in getting a full Yellow Book appraisal done before application submission, a restricted appraisal was agreed as the best course of action. Additional expenses are comprised of Yellow Book appraisal, appraisal review and other conveyancing and purchase costs / legal fees (line 7). The State requires a Phase 1 Environmental Assessment (line 8); a hydrological survey is required by MLT as the purchaser because their mission requires them to carry out restoration on any purchased land and as part of due diligence, they require a better hydrological understanding of the site (line 8); the last expense covers outreach work by both MLT staff and Papahana Kuaola staff (lines 10 and 11).

The State DLNR negotiated indirect rate is 8.6% applied to the first \$25,000 of the federal request (line 9). This grant will be subawarded by DOFAW to MLT; In-kind Federal Match is provided Pacific Birds and USGS (not shown in table; \$5000 & \$10,000 each for technical advice, admin support and scientific support to MLT).

The total sub-award to MLT will be in the form of a contract for \$398,850 (lines 6-8)

AGREEMENT TO SUBGRANT

Between:

**MOLOKA'I LAND TRUST
&
STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES**

This Agreement to Subgrant ("Agreement") entered into on _____, 2024 (the "Effective Date") by and between MOLOKA'I LAND TRUST ("MLT"), whose principal place of business is at 1800 Farrington Avenue, Kualapuu, Molokai, Hawaii and whose mailing address is P.O. Box 1884, Kaunakakai, Hawai'i 96748, and the STATE OF HAWAI'I, through its Department of Land and Natural Resources ("DLNR"), whose principal place of business is 1151 Punchbowl Street, Honolulu, Hawai'i 96813.

EXHIBITS

EXHIBIT A Notice of Award, F23AP00651
EXHIBIT B Property Description
EXHIBIT C Checklist for Acquisition Subgrants
Exhibits A, B, and C are hereby made a part of this Subgrant Agreement.

RECITALS

WHEREAS, the U.S. Department of the Interior, acting through its Fish and Wildlife Service ("FWS") and the DLNR have entered into a Federal National Coastal Wetlands Conservation Grant Award Number F23AP00651 (Exhibit A, "Grant Award") to facilitate the acquisition of fee title to real property identified in said Grant Award;

WHEREAS, the FWS will permit the DLNR to subgrant FWS grant funds to another state or local agency or non-profit organization ("potential recipient"), conditioned on the grant funds being used to acquire fee title to the identified real property and the potential recipient agreeing to accept all of the provisions and obligations set forth in said Grant Award (Exhibit A);

WHEREAS, MLT is a local non-profit organization whose mission is to protect and restore the land, natural and cultural resources of Moloka'i, and to promote, educate, and perpetuate the unique Native Hawaiian traditions and character of the islands for the benefit of the future generations of all Moloka'i, particularly Native Hawaiians;

WHEREAS, MLT intends to purchase fee title to the Kahanui Property situate in the ahupua'a of Kahanui, Island of Moloka'i, County of Maui, State of Hawai'i, consisting of 45 acres, more or less, and currently bearing tax map key numbers ("TMK No.") (2) 5-2-011:011, as more particularly described in Exhibit B (the "Property");

WHEREAS, MLT and the DLNR desire that the Property be protected in perpetuity through the Reimagining the Wetland Landscape of Moloka'i – a Partnership Approach to Restoration for Community and Wildlife project, included in the Grant Award, as a wetland conservation area for native wildlife and plant habitat, fishpond, and a space for cultural-based education and outreach;

WHEREAS, MLT intends to provide matching funds for the FWS grant;

WHEREAS, the current landowners, Moloka'i Fisheries, Inc., require a quick sale of the Property; and

WHEREAS, MLT intends to grant a Conservation Easement over the Property to the County of Maui and State of Hawai'i;

NOW THEREFORE, the DLNR and MLT agree to a subgrant of the FWS grant funds to MLT in accordance with the following terms and conditions. The DLNR hereby agrees to subgrant to MLT an amount not to exceed the sum of Three Hundred and Ninety-Eight Thousand Eight Hundred and Fifty Dollars (\$398,850) ("Grant Funds"), subject to the terms and conditions of this Agreement to Subgrant.

A. PURPOSE OF SUBGRANT

The DLNR is making this subgrant, using funds provided to the DLNR by FWS, for the purpose of facilitating MLT's acquisition of fee title to the Property comprising 45 acres, more or less, as more particularly described in Exhibit B, which is attached hereto and made a part hereof by this reference.

MLT agrees that if it receives the Grant Funds and acquires fee title to the Property, then such acquisition will be for the purposes of protecting the Property in perpetuity in a manner consistent with the goals and objectives of the Grant Award, as amended, as described in Exhibit A. MLT further agrees to grant a perpetual Conservation Easement over the Property to the County of Maui and State of Hawai'i, described in Section B.4 of the Recitals; manage and restore native wetland habitat through a comprehensive management plan; engage with local communities to develop active agricultural operations that are compatible with endemic waterbird and wildlife habitat; and explore fishpond restoration opportunities.

B. CONDITIONS OF SUBGRANT

1. MLT agrees to purchase and hold fee title by warranty deed to the Property, currently identified by TMK Nos. (2) 5-2-011:011, as more particularly described in Exhibit B, for a purchase price estimated at Four Hundred and Fifty Thousand Dollars and No/100 Dollars (\$450,000.00). The purchase price of the Property shall not exceed the appraised fair market value approved by the FWS. The anticipated closing date for this purchase is on or before

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December 31, 2024, but may be subject to change based on prolonged negotiations with the landowner, required due diligence by MLT and public funders, County of Maui funding approval, and any other unanticipated delays.

2. The DLNR is making this subgrant to MLT using funds provided to the DLNR by FWS by the Grant Award in an amount not to exceed a total of Three Hundred and Ninety-Eight Thousand Eight Hundred and Fifty Dollars (\$398,850) for purchase of fee title to the Property, including reimbursement for a restricted use appraisal costing Seven Thousand Three Hundred and Thirty Dollars (\$7,330) done between June and December 2022 (pre-award), a yellow book appraisal and appraisal review including other conveyance and purchase expenses estimated at Ninety-Eight Thousand Eight Hundred and Fifty Dollars (\$98,850), and a phase I environmental site assessment and hydrological survey estimated at Sixty Thousand Dollars (\$60,000), such funds to be made available for deposit into escrow five business days prior to the closing date. Non-federal match for this grant comes from County of Maui Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund contributions in an amount not to exceed Two Hundred and Ten Thousand Dollars (\$210,000); from private contributions in an amount estimated at Five Thousand Dollars (\$5,000); and MLT staff time and administrative overhead expenses to complete the land transaction and outreach efforts in an amount estimated at Forty Thousand Dollars (\$40,000).

3. In the same transaction described in section B.2 above, MLT will use funds from County of Maui Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund in an amount not to exceed Two Hundred and Ten Thousand Dollars (\$210,000) to conduct due diligence and purchase the Property by warranty deed.

4. After the acquisition of fee title to the Property by warranty deed, MLT shall grant a perpetual Conservation Easement over the Property to the County of Maui and the State of Hawai'i (co-holders).

5. MLT shall not transfer, mortgage, hypothecate, or pledge fee title to the Property or any portion thereof without prior written approval of the State of Hawai'i Board of Land and Natural Resources ("BLNR") or its successor authorities.

6. In the event that MLT is unable to continue operations or is otherwise unable to manage the Property in a manner consistent with this Agreement, subject to the approval of the BLNR, fee title to the Property shall be conveyed by MLT to the DLNR, another government agency, or an appropriate conservation organization which will continue to manage the Property for the conservation values specified in the Grant Award and Conservation Easement. Any conveyance to the DLNR shall be done *gratis* and MLT shall be responsible for any and all fees and costs associated with the conveyance. Furthermore, any transfer of the Property shall comply with FWS National Coastal Wetlands Conservation Grant program rules. The Board shall receive prior approval of any disposal or encumbrance from the Regional Director of the United States Fish and Wildlife Service.

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7. Prior to closing, either party may terminate this Agreement for any reason or for no reason, by providing the other party with thirty (30) days written notice of such termination.

8. This Agreement is contingent upon the DLNR's receipt of funds from the FWS.

9. After the close of escrow for the acquisition of fee title to the Property, this Agreement shall remain in full force and effect for the purpose of securing compliance with the Section A, Purpose of Subgrant, and Section B, Conditions of Subgrant, provisions set forth herein.

10. The DLNR must provide FWS with interim financial and performance reports; final financial and performance reports; and Real Property Status Reports. MLT shall provide to the DLNR, within 30 days of request, all necessary documentation related to Grant Award interim and final financial and performance reports and Real Property Status Reports. Reporting requirements include but are not limited to the following:

a. Summary of Land Costs – MLT shall furnish a schedule showing seller, acreage, appraised value, price paid, relocation costs, and other costs for each tract. Other costs of acquisition (appraisal, negotiation, title search, land surveys, etc.) may be shown as a lump sum.

b. Title Vesting Evidence – MLT shall furnish a title insurance policy or title certificate which must include a correct legal description and the acreage of the Property involved. The description may be given by reference to a deed or plat, provided a copy of the document accompanies the certificate or policy. On a per-unit purchase, the exact acreage, or mileage shall be indicated.

c. If the acquisition could not be acquired within the period specified in the Subgrant Agreement, a statement of the problem, the actions taken or resolve the problem, and when it is anticipated that the acquisition will be completed shall be provided.

d. MLT shall provide Real Property Status Reports to the DLNR every five (5) years after the closing of the grant. Real Property Status Reports shall show MLT retains ownership of the Property and the Property is managed according to Section A, Purpose of Subgrant.

The final report must include a summary table for the fee title to the Property acquired. If a Subgrantee-owned property is to be used as match, a summary table for each property used for match must be included as well. For each property, MLT must provide the DLNR and FWS with copies of the following:

For Fee Title:

- Copy of Recorded Warranty Deed(s), including Notice of Federal Participation, and copy of Notice(s) of Grant Award, with Document Numbers.
- Title Vesting Certificate or Title Insurance Policy.
- Property or Plat Map, Area Map, and Location Map.

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For Conservation Easement:

- Copy of Recorded Grant of Conservation Easement and copy of Conservation Easement Baseline Documentation
- Copy of draft management plan

11. Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To MLT:

Moloka'i Land Trust
Attn: William "Butch" Haase, Executive Director
P.O. Box 1884
Kaunakakai, HI 96748
Phone: (808) 366-6675
Email: butch@molokailandtrust.org

To DLNR:

Department of Land and Natural Resources
Administrator, Division of Forestry and Wildlife
1151 Punchbowl Street, Rm. 325
Honolulu, Hawai'i 96813

or to such other address as either party from time to time shall designate by written notice to the other.

12. MLT shall defend, indemnify, and hold harmless the FWS and the State of Hawai'i, DLNR, and BLNR, their officers, employees, and agents, from and against any and all claims, demands, liabilities, suits, causes of action, judgments, costs, and expenses (including attorneys' fees) for loss, injury, death, or damage, including without limitation, claims for property damage, personal injury, death of persons, whenever such damage, injury, loss, or death arises out of, or is connected with, related to, or arising from, this Agreement or fee title to the Property. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

13. The interpretation and performance of this Agreement shall be governed by the laws of the State of Hawai'i.

14. No person performing work under this Agreement, including any subcontractor, employee, or agent of MLT, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

15. MLT shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state, and federal laws, now in force or which may be in force.

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16. MLT and the DLNR agree that nothing in this Agreement should be construed as creating any type of partnership or joint venture arrangement or principal and agent relationship between them.

17. MLT and the DLNR agree that neither party shall be deemed to be the drafter of this Agreement and further that in the event that this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision herein against MLT or DLNR as the drafter.

18. Each party has thoroughly reviewed and revised this Agreement and has had the advice of counsel prior to the execution hereof, and the parties agree that neither party shall be deemed to be the drafter of this Agreement.

IN WITNESS WHEREOF MLT and DLNR have set their hands on the day and year first above written.

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

:

APPROVED AS TO FORM:

Deputy Attorney General

STATE OF HAWAI'I
DEPARTMENT OF LAND AND
NATURAL RESOURCES

By _____
Chairperson
Board of Land and Natural Resources

MOLOKA'I LAND TRUST

By _____
William "Butch" Haase
Executive Director

SUBGRANTEE'S ACKNOWLEDGMENT

STATE OF HAWAII)
)
) SS.
 _____ COUNTY OF _____)

On this _____ day of _____, 2023, before me personally appeared _____, to me known, to be the person described in and, who being by me duly sworn, did say that he/she is the _____, of MOLOKA'I LAND TRUST, the SUBGRANTEE named in the foregoing instrument, and that he/she is authorized to sign said instrument on behalf of the SUBGRANTEE, and acknowledges that he/she executes said instrument as the free act and deed of the SUBGRANTEE.

Notary Public, State of Hawaii

My commission expires: _____

Notary Seal Affixed:

NOTARY CERTIFICATION

Doc. Date: _____ # Pages: ____
Notary Name: _____ Circuit
Doc. Description: State of Hawaii Agreement to Subgrant

Notary Signature Date

Attachment 1

USFWS RLA F23AP00651 – *Reimagining the Wetland Landscape in Moloka'i – a Partnership Approach to Restoration for Community and Wildlife. Phase 1 - Acquisition. DLNR Subgrant Agreement with Moloka'i Land Trust.*

SCOPE OF PERFORMANCE

Project Description

MLT shall use funds from the Grant Award to acquire fee title to approximately 45 acres, more or less, on the island of Moloka‘i, currently bearing tax map key numbers (“TMK No.”) (2) 5-2-011:011 (the “Property”), as more particularly described in Exhibit B. Real property for which fee title is acquired with the Grant Award shall be held and managed in a manner consistent with the purposes of the Grant Award and designed to protect the property’s resource values in perpetuity.

Performance

MLT is required to do the following:

1. MLT agrees to purchase the Property, more particularly described in Exhibit B, for a purchase price estimated at Four Hundred and Fifty Thousand Dollars and No/100 Dollars (\$450,000.00). The purchase price of the Property shall not exceed the appraised fair market value of the Property approved by the FWS and the DLNR. The anticipated closing date for this purchase is on or before December 31, 2024 but may be subject to change based on prolonged negotiations with the landowner, required due diligence by MLT and public funders, County of Maui funding approval, and any other unanticipated delays.

2. Pursuant to DLNR’s commitment under the Grant Award, as amended, between the FWS and the DLNR, the federal cost share for total project costs shall not exceed sixty-one percent (61%). MLT shall provide matching non-federal funds, constituting at least thirty-nine percent (39%) of the total project costs as set forth in the Grant Award, as amended. Inability of the MLT to provide matching funds in the required amount may result in reduced or terminated subaward, pursuant to any applicable federal laws, rules, and agreements.

3. As owner of fee title to the Property, MLT shall:

a. Grant a Conservation Easement over the Property to the County of Maui and State of Hawai‘i as described in Section B.4 of the Recitals; and

b. Create and implement a Management Plan for the Property that is consistent with the purposes of the Grant Award and further described in the Conservation Easement.

4. MLT shall work closely with the DLNR and FWS staff with target species expertise during the management planning process. The Management Plan shall be completed within three (3) years of the Effective Date of the Conservation Easement. The Management Plan must be approved by DLNR. Any changes to the Management Plan after final approval must be approved by DLNR. Any activities commenced on the Property prior to MLT receiving DLNR’s approval

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of the Management Plan shall be consistent with the Conservation Values of the Property described in the conservation easement and MLT must receive written approval from DLNR before commencing each activity.

5. MLT shall provide DLNR and FWS reasonable access to the Property to assess compliance with the terms and conditions contained herein.

6. MLT shall not transfer, mortgage, hypothecate, or pledge fee title to the Property or any portion thereof without prior written approval of the DLNR.

7. In the event that MLT is unable to continue operations or is otherwise unable to manage the Property in a manner consistent with this Agreement, subject to the approval of the DLNR, fee title to the Property shall be conveyed by MLT to the DLNR, another government agency, or an appropriate conservation organization which will continue to manage the Property for the conservation values specified in the Grant Award and Conservation Easement. Any conveyance to the DLNR shall be done *gratis* and MLT shall be responsible for any and all fees and costs associated with the conveyance. Furthermore, any transfer of the Property shall comply with FWS National Coastal Wetlands Conservation Grant program rules. The Board shall receive prior approval of any disposal or encumbrance from the Regional Director of the United States Fish and Wildlife Service.

8. Prior to closing, either party may terminate this Agreement for any reason or for no reason, by providing the other party with a minimum of thirty (30) days written notice of such termination.

9. This Agreement is contingent upon the DLNR's receipt of funds from FWS.

10. After close of escrow for the acquisition of fee title to the Property, this Agreement shall remain in full force and effect for the purpose of securing compliance with the Section A, Purpose of Subgrant, provisions set forth above.

11. MLT shall provide to the DLNR, within 30 days of request, all necessary documentation related to Grant Award interim and final financial and performance reports and Real Property Status Reports. Reporting requirements include but are not limited to the following:

a. Summary of Land Costs – MLT shall furnish a schedule showing seller, acreage, appraised value, price paid, relocation costs, and other costs for each tract. Other costs of acquisition (appraisal, negotiation, title search, land surveys, etc.) may be shown as a lump sum.

b. Title Vesting Evidence – MLT shall furnish a title insurance policy or title certificate which must include a correct legal description and the acreage of the Property involved. The description may be given by reference to a deed or plat, provided a copy of the document accompanies the certificate or policy. On a per-unit purchase, the exact acreage, or mileage shall be indicated.

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c. If the acquisition could not be acquired within the period specified in the Subgrant Agreement, a statement of the problem, the actions taken or resolve the problem, and when it is anticipated that the acquisition will be completed shall be provided.

d. MLT shall provide Real Property Status Reports to the DLNR every five (5) years after the closing of the grant. Real Property Status Reports shall show MLT retains ownership of the PROPERTY and the PROPERTY is managed according to Section A, Purpose of Subgrant.

The final report must include a summary table for the fee title to the PROPERTY acquired. If a MLT-owned property is to be used as match, a summary table for each property used for match must be included as well. For each property, MLT must provide the DLNR with copies of the following:

- Copy of Recorded Warranty Deed(s) and copy of Notice(s) of Grant Award, with Document Numbers
- Title Vesting Certificate or Title Insurance Policy
- Legal Description of the Property
- Copy of Recorded Grant of Conservation Easement and copy of Conservation Easement Baseline Documentation.

12. MLT shall comply with the terms and conditions of the National Coastal Wetlands Conservation Grant Award Number F23AP00651, as amended (Exhibit A), all FWS National Coastal Wetlands Conservation Grant program rules, and all terms and conditions set forth in the General Conditions for National Coastal Wetlands Conservation Grant Awards (Exhibit A, Attachment 5) and in the Notice of Federal Participation.

14. Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To MLT: Moloka‘i Land Trust
Attn: William “Butch” Haase, Executive Director
P.O. Box 1884
Kaunakakai, HI 96748
Phone: (808) 366-6675
Email: butch@molokailandtrust.org

To DLNR: Department of Land and Natural Resources
Administrator, Division of Forestry and Wildlife
1151 Punchbowl Street, Rm. 325
Honolulu, Hawai‘i 96813

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or to such other address as either party from time to time shall designate by written notice to the other.

15. MLT agrees to defend, indemnify, and hold harmless the FWS and the State of Hawai'i, DLNR, and BLNR, their officers, employees, and agents, from and against any and all claims, demands, liabilities, suits, causes of action, judgments, costs, and expenses (including attorneys' fees) for loss, injury, death, or damage, including without limitation, claims for property damage, personal injury, death of persons, whenever such damage, injury, loss, or death arises out of, or is connected with, related to, or arising from, this Agreement or fee title to the Property (TMK Nos.) (2) 5-2-011:011, more particularly described in Exhibit B. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

16. The interpretation and performance of this Agreement shall be governed by the laws of the State of Hawai'i.

17. No person performing work under this Agreement, including any subcontractor, employee, or agent of MLT, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

18. MLT shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state, and federal laws, now in force or which may be in force.

19. MLT and the DLNR agree that nothing in this Agreement should be construed as creating any type of partnership or joint venture arrangement or principal and agent relationship between them.

20. MLT and the DLNR agree that neither party shall be deemed to be the drafter of this Agreement and further that in the event that this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision herein against MLT or the DLNR as the drafter.

21. Each party has thoroughly reviewed and revised this Agreement and has had the advice of counsel prior to the execution hereof, and the parties agree that neither party shall be deemed to be the drafter of this Agreement.

TIME SCHEDULE

This Agreement shall be in effect beginning _____, 2024. MLT shall complete acquisition of the Property and record the conveyance no later than December 31, 2024. If any of the obligations required to be performed in this Agreement to Subgrant are not completed within the time stated, MLT may be required to return all funds previously received by it pursuant to this Agreement. The Chairperson of the BLNR may extend the time for performance of any requirement. Requests for extension must be submitted by AWARDEE in writing 90 days prior to December 31, 2024.

COMPENSATION AND PAYMENT SCHEDULE

In full consideration of the services to be performed under this Agreement, MLT, and DLNR agree to the following:

- a) MLT’s request for payment, in the form of an invoice, shall be delivered personally or sent by first class mail, postage prepaid to:

Hawai‘i Division of Forestry and Wildlife
Department of Land and Natural Resources
1151 Punchbowl Street, Room 325
Honolulu, Hawai‘i 96813

The request for payment must be received by the DLNR’s Division of Forestry and Wildlife by December 1, 2024, or 30 days prior to closing. A maximum payment of THREE HUNDRED AND NINETY-EIGHT THOUSAND EIGHT HUNDRED AND FIFY DOLLARS (\$398,850) shall be made upon:

- i. MLT’s completion of the Checklist for Acquisition Subgrants attached hereto as Exhibit C;
 - ii. MLT’s compliance with all DLNR and FWS policies and practices; and
 - iii. DLNR’s receipt of an original invoice and copies of all bills, invoices, receipts, and a contract of sale.
- b) Within thirty (30) days of acquiring fee title to the Property, but no later than December 31, 2024, or the end date of the extended FWS grant performance period, MLT shall submit to the DLNR a copy of the recorded conveyance document transferring fee title to the Property to MLT.
- c) The total amount awarded under this Agreement will be dependent upon the project being completed with no substantive changes from the proposed project described in “Reimagining the Wetland Landscape of Moloka‘i – a Partnership Approach to Restoration for Community and Wildlife” project, included in the Grant Award. The DLNR and/or FWS may reduce the award if the project changes in any way that the DLNR and/or FWS deem substantial. For example, a reduction in acreage, purchase price, or fair market value may be deemed substantial and sufficient justification for a reduction in the award.

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

“Agency” means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

“Controlling interest” means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

“Employee” means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of the Moloka‘i Land Trust, the undersigned does declare as follows:

1. MLT is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. MLT has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Agreement within the preceding two years and who participated while so employed in the matter with which the Agreement is directly concerned. (Section 84-15(b), HRS).
3. MLT has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Agreement, if the legislator or employee has been involved in the development or award of the Agreement. (Section 84-14(d), HRS).
4. MLT has not been represented on matters related to this Agreement, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Agreement. (Sections 84-18(b) and (c), HRS).

MLT understands that the Agreement to which this document is attached is voidable on behalf of the DLNR if this Agreement was entered into in violation of any provision of chapter 84, Hawai‘i Revised Statutes, commonly referred to as the Code of Ethics, including

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the provisions which are the source for the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the DLNR.

Moloka'i Land Trust

By _____

(Signature)

Print Name _____

Print Title _____

Date _____

**GENERAL CONDITIONS FOR NATIONAL COASTAL WETLANDS
CONSERVATION GRANT AWARDS**

1. Recordkeeping Requirements. MLT shall in accordance with generally accepted accounting practices, maintain fiscal records and supporting documents and related files, papers, receipts, reports, and other evidence that sufficiently and properly reflect all direct and indirect expenditures and management and fiscal practices related to MLT 's performance under this Agreement. MLT shall retain all records related to MLT's performance under this Agreement for at least three (3) years after the date of submission of MLT's Final Project Report.
2. Audit of MLT. MLT shall allow the DLNR and/or FWS full access to applicable records, reports, files, and other related documents and information for purposes of monitoring, measuring the effectiveness, and assuring the proper expenditure of the grants. This right of access shall last as long as the records and other related documents are retained.
3. Nondiscrimination. No person performing work under this Agreement, including any employee or agent of MLT, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
4. Inspection of Property. MLT shall permit the DLNR and its agents and representatives, at all reasonable times, the right to enter and examine the Property to ensure compliance with the terms of this Agreement.
5. Conflicts of Interest. MLT represents that neither MLT, nor any employee or agent of MLT, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with MLT's performance under this Agreement.
6. Compliance with Laws. MLT shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect MLT's performance under this Agreement.
7. Indemnification and Defense. MLT agrees to defend, indemnify, and hold harmless the FWS and the State of Hawai'i, DLNR, and BLNR and its officers, employees, and agents, from and against any and all claims, demands, liabilities, suits, causes of action, judgments, costs, and expenses (including reasonable attorneys' fees) for loss, injury, death, or damage, including without limitation, claims for property damage, personal injury, death of persons, whenever such

damage, injury, loss, or death arises out of, or is connected with, related to, or arising from this Agreement or fee title to the Property. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

8. Cost of Litigation. In case either party shall, without any fault on its part, be made a party to any litigation commenced by or against the other in connection with this Subgrant, the other shall pay all costs and expenses incurred by or imposed on the first party, including reasonable attorneys' fees.
9. Relationship of Parties; Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of this Agreement, MLT is an “independent contractor,” with the authority and responsibility to control and direct the performance required under this Agreement; however, the DLNR and FWS shall have a general right of inspection to determine whether, in the DLNR’s and/or FWS’s opinion, MLT is in compliance with this Agreement.
 - b. MLT and its employees and agents are not, by reason of this Agreement, agents or employees of the DLNR and/or FWS for any purpose, and MLT, and MLT’s employees and agents shall not be entitled to claim or receive from the DLNR or FWS any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state and federal employees.
 - c. MLT shall be responsible for the accuracy, completeness, and adequacy of MLT’s performance under this Agreement. Furthermore, MLT intentionally, voluntarily, and knowingly assumes the sole and entire liability to MLT’s employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by MLT, or MLT’s employees or agents, in the course of their employment.
 - d. MLT shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by MLT by reason of this Agreement, including but not limited to employment related fees, assessments, and taxes. MLT also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
 - e. MLT shall obtain a tax clearance certificate from the Director of Taxation, State of Hawai‘i, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued

under state law and the Internal Revenue Code of 1986, as amended, against MLT have been paid and submit the same to DLNR prior to commencing any performance under this Agreement.

- f. MLT is responsible for securing all employee-related insurance coverage for MLT and MLT's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.
10. Payment Procedures: Tax Clearance. All payments under this Agreement shall be made only upon submission by MLT of (i) original invoices specifying the amount due and certifying that it has completed or will complete performance in accordance with the Agreement, and (ii) tax clearances from the Hawaii State Department of Taxation and the Internal Revenue Service.
 11. Publicity.
 - a. MLT shall not refer to the DLNR and/or FWS, or any office, agency, or officer thereof, or any state employee, in any of MLT's brochures, advertisements, or other publicity of MLT without written permission from the Public Information Office of the State of Hawai'i, Department of Land and Natural Resources and FWS. All media contacts with MLT about the subject matter of this Agreement shall be referred to DLNR and FWS.
 - b. MLT consents to the DLNR and FWS's use of MLT's name, photograph, image, or likeness in brochures, advertisements, or other publicity relating to the Recovery Land Acquisition Program and other conservation related programs. DLNR and FWS shall have complete ownership of all material which is developed, prepared, assembled, or conceived for brochures, advertisements, or other publicity relating to the proposed acquisition by DLNR and/or FWS.
 12. Confidentiality of Material.
 - a. All materials given to or made available to MLT by virtue of this Agreement, which are identified as proprietary or confidential information, will be safeguarded by MLT and shall not be disclosed to any individual or organization without the prior written approval of DLNR.
 - b. All information, data, or other material provided by MLT to the DLNR shall be subject to the Uniform Information Practices Act, chapter 92F, Hawai'i Revised Statutes.

13. Suspension and Termination of Agreement.
- a. DLNR reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to MLT. Upon receipt of said notice, MLT shall immediately comply with said notice and suspend all performance under this Agreement at the time stated.
 - b. If, for any cause, MLT breaches this Agreement by failing to satisfactorily fulfill in a timely or proper manner MLT's obligations under this Agreement or by failing to perform any of the promises, terms, or conditions of this Agreement, and having been given reasonable notice of and opportunity to cure such default, fails to take satisfactory corrective action within the time specified by DLNR, DLNR shall have the right to terminate this Agreement by giving written notice to MLT of such termination at least seven (7) calendar days before the effective date of such termination. Furthermore, DLNR may terminate this Agreement without statement of cause at any time by giving written notice to MLT of such termination at least thirty (30) calendar days before the effective date of such termination.
 - d. Upon termination of the Agreement, MLT, within thirty (30) calendar days of the effective date of such termination, shall compile, and submit in an orderly manner to the DLNR an accounting of the work performed up to the date of termination. In such event, MLT shall be paid for the actual cost of the services rendered, if any, but in no event more than the total compensation payable to MLT under this Agreement.
 - e. If this Agreement is terminated for cause, the defaulting party shall not be relieved of liability to the other for damages sustained because of the defaulting party's breach by MLT of this Agreement. In such event, the terminating party may retain any amounts which may be due and owing to it until such time as the exact amount of damages due to the terminating party has been determined. The terminating party may also set off any damages so determined against the amounts retained.
14. Disputes. No dispute arising under this Agreement may be sued upon by MLT until after MLT's written request to the Chairperson of the Board of Land and Natural Resources ("CHAIRPERSON") to informally resolve the dispute is rejected, or until ninety (90) calendar days after the CHAIRPERSON's receipt of MLT's written request whichever comes first. While the CHAIRPERSON considers MLT's written request, MLT agrees to proceed diligently with the performance necessary to complete the proposed project unless otherwise instructed in writing by the CHAIRPERSON.

15. State Remedies. MLT understands that in the event that it no longer meets all of the standards set forth in paragraph 1 of these General Conditions, or in the event that MLT fails to comply with any of the other requirements, provisions, or conditions set forth in this Agreement to Subgrant, that DLNR and/or FWS may refuse to make further payments to MLT or may seek reimbursement for payments made to MLT under this Agreement to Subgrant. In addition to the remedies set forth above, DLNR and/or FWS shall be entitled to pursue any other remedy available at law or in equity.
16. Modifications of Agreement. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement to Subgrant permitted by this Agreement shall be made by written amendment to this Agreement, signed by MLT and DLNR.
17. Notices. Any written notice required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to the CHAIRPERSON at the CHAIRPERSON's office in Honolulu, Hawai'i or to MLT at MLT's place of business as indicated in the Agreement. A notice shall be deemed to have been received at the time of actual receipt. MLT is responsible for notifying the CHAIRPERSON in writing of any change of address.
18. Waiver. The failure of DLNR to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of DLNR's right to enforce the same in accordance with this Agreement. The fact that the DLNR specifically refers to one section of the Hawai'i Revised Statutes, and does not include other statutory sections in this Agreement shall not constitute a waiver or relinquishment of DLNR's rights or MLT's obligations under the statutes.
19. Severability. In the event that any provision of this Agreement to Subgrant is declared invalid or unenforceable by a court, such invalidity, or unenforceability shall not affect the validity or enforceability of the remaining terms of this Agreement to Subgrant.
20. Governing Law. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawai'i. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a state court of competent jurisdiction in Honolulu, Hawai'i.
21. Survival. MLT's obligations and the DLNR's remedies shall survive the funding of the grants and the acquisition of fee title to the Property by MLT.

22. Entire Contract. This Contract sets forth all of the Agreement's conditions, understandings, promises, warranties, and representations between DLNR and MLT. This Agreement supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall no further be in force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between DLNR and MLT other than as set forth or as referred to herein.

AGREEMENT TO SUBGRANT

Between:

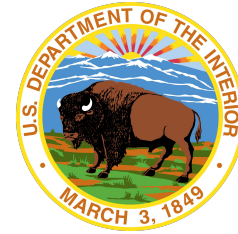
**MOLOKA'I LAND TRUST
&
STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES**

EXHIBIT A

Notice of Award, F23AP00651

1. DATE ISSUED MM/DD/YYYY 02/07/2023		1a. SUPERSEDES AWARD NOTICE dated except that any additions or restrictions previously imposed remain in effect unless specifically rescinded	
2. CFDA NO. 15.614 - Coastal Wetlands Planning, Protection and Restoration			
3. ASSISTANCE TYPE Project Grant			
4. GRANT NO. F23AP00651-00 Originating MCA #		5. TYPE OF AWARD Other	
4a. FAIN F23AP00651		5a. ACTION TYPE New	
6. PROJECT PERIOD MM/DD/YYYY From 01/01/2023		Through 12/31/2024	
7. BUDGET PERIOD MM/DD/YYYY From 01/01/2023		Through 12/31/2024	

NOTICE OF AWARD



AUTHORIZATION (Legislation/Regulations)
Coastal Wetlands Planning, Protection and Restoration Act—National coastal wetlands conservation grants (16 U.S.C. §3954)

8. TITLE OF PROJECT (OR PROGRAM)
Reimagining the Wetland Landscape in Molokai – a Partnership Approach to Restoration for Community and Wildlife. Phase 1 – Acquisition at Kahanui.

9a. GRANTEE NAME AND ADDRESS LAND AND NATURAL RESOURCES, HAWAII DEPT OF 1151 Punchbowl St RM 110 Honolulu, HI, 96813-3047	9b. GRANTEE PROJECT DIRECTOR Afsheen Siddiqi 1151 Punchbowl Street, Room 325 Honolulu, HI, 96813-0000 Phone: 808-587-0163
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10a. GRANTEE AUTHORIZING OFFICIAL Mr. David G Smith 1151 PUNCHBOWL ST RM 110 HONOLULU, HI, 96813-3047 Phone: 808-587-4181	10b. FEDERAL PROJECT OFFICER Mr. Christopher Swenson 911 NE 11TH AVE PORTLAND, OR, 97232 Phone: 503-231-6758
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ALL AMOUNTS ARE SHOWN IN USD

11. APPROVED BUDGET (Excludes Direct Assistance)		12. AWARD COMPUTATION	
I Financial Assistance from the Federal Awarding Agency Only		a. Amount of Federal Financial Assistance (from item 11m) \$ 401,000.00	
II Total project costs including grant funds and all other financial participation		b. Less Unobligated Balance From Prior Budget Periods \$ 0.00	
a. Salaries and Wages\$ 0.00		c. Less Cumulative Prior Award(s) This Budget Period \$ 0.00	
b. Fringe Benefits\$ 0.00		d. AMOUNT OF FINANCIAL ASSISTANCE THIS ACTION \$ 401,000.00	
c. Total Personnel Costs\$ 0.00		13. Total Federal Funds Awarded to Date for Project Period \$ 401,000.00	
d. Equipment\$ 0.00		14. RECOMMENDED FUTURE SUPPORT	
e. Supplies\$ 0.00		(Subject to the availability of funds and satisfactory progress of the project):	
f. Travel\$ 0.00		YEAR TOTAL DIRECT COSTS YEAR TOTAL DIRECT COSTS	
g. Construction\$ 0.00		a. 2 \$ d. 5 \$	
h. Other\$ 656,000.00		b. 3 \$ e. 6 \$	
i. Contractual\$ 0.00		c. 4 \$ f. 7 \$	
j. TOTAL DIRECT COSTS → \$ 656,000.00		15. PROGRAM INCOME SHALL BE USED IN ACCORD WITH ONE OF THE FOLLOWING ALTERNATIVES:	
k. INDIRECT COSTS \$ 0.00		a. DEDUCTION	
l. TOTAL APPROVED BUDGET \$ 656,000.00		b. ADDITIONAL COSTS	
m. Federal Share \$ 401,000.00		c. MATCHING	
n. Non-Federal Share \$ 255,000.00		d. OTHER RESEARCH (Add / Deduct Option)	
		e. OTHER (See REMARKS)	
		a	
		16. THIS AWARD IS BASED ON AN APPLICATION SUBMITTED TO, AND AS APPROVED BY, THE FEDERAL AWARDING AGENCY ON THE ABOVE TITLED PROJECT AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:	
		a. The grant program legislation	
		b. The grant program regulations.	
		c. This award notice including terms and conditions, if any, noted below under REMARKS.	
		d. Federal administrative requirements, cost principles and audit requirements applicable to this grant.	
		In the event there are conflicting or otherwise inconsistent policies applicable to the grant, the above order of precedence shall prevail. Acceptance of the grant terms and conditions is acknowledged by the grantee when funds are drawn or otherwise obtained from the grant payment system.	

REMARKS (Other Terms and Conditions Attached - Yes No)

GRANTS MANAGEMENT OFFICIAL:

David Teuscher, Chief, Pacific Region, Wildlife and Sport Fish Restoration
911 NE 11th Ave.
Portland, OR, 97232
Phone: 503-929-5524

17. VENDOR CODE	0070069018	18a. UEI	L3D1YEK6KAW6	18b. DUNS	824671200	19. CONG. DIST.	01
LINE#	FINANCIAL ACCT	AMT OF FIN ASST	START DATE	END DATE	TAS ACCT	PO LINE DESCRIPTION	
1	0051031501-00010	\$401,000.00	01/01/2023	12/31/2024	8151	Coastal Wetlands FY 2023	

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Federal Financial Report Cycle			
Reporting Period Start Date	Reporting Period End Date	Reporting Type	Reporting Period Due Date
01/01/2023	12/31/2023	Annual	03/30/2024
01/01/2024	12/31/2024	Final	04/30/2025

Performance Progress Report Cycle			
Reporting Period Start Date	Reporting Period End Date	Reporting Type	Reporting Period Due Date
01/01/2023	12/31/2023	Annual	03/30/2024
01/01/2024	12/31/2024	Final	04/30/2025

SCOPE OF WORK

1. Project Description

This award titled “Reimagining the Wetland Landscape in Molokai – a Partnership Approach to Restoration for Community and Wildlife. Phase 1 – Acquisition at Kahanui” is based on Service approval of your organization’s proposal, hereby incorporated by reference into this award.

Terms and Conditions

1. U.S. Fish and Wildlife Service

General Award Terms and Conditions

Recipients of U.S. Fish and Wildlife Service (Service) grant and cooperative agreement awards (hereafter referred to as ‘awards’) are subject to the terms and conditions incorporated into their Notice of Award either by direct citation or by reference to Federal regulations; program legislation or regulation; and special award terms and conditions. Award terms and conditions are applicable unless and until the USFWS removes or revises them in written notice to the recipient. The Service will make such changes by issuing a written notice that describes the change and provides the effective date.

Recipients indicate their acceptance of an award by starting work, drawing down funds, or accepting the award via electronic means. Recipient acceptance of an award carries with it the responsibility to be aware of and comply with all terms and conditions applicable to the award. Recipients are responsible for ensuring that their subrecipients and contractors are aware of and comply with applicable award statutes, regulations, and terms and conditions. Recipient failure to comply with award terms and conditions can result in the Service taking one or more of the remedies and actions described in Title 2 of the Code of Federal Regulations (CFR) §§200.339—343.

A PDF of these terms and conditions with embedded links to all regulations is available on the Service’s website at: <https://www.fws.gov/media/fws-financial-assistance-award-terms-and-conditions-2020-12-31>. See also the Department of the Interior’s General Award Terms and Conditions on their website at: <https://www.doi.gov/grants/doi-standard-terms-and-conditions>.

Administrative Requirements, Cost Principles, and Audit Requirements

These requirements and cost principles are applicable to all awards except those to individuals receiving the award separate from any business or organization they may own or operate. Foreign public entities and foreign organizations must comply with special considerations and requirements specific to their entity type, unless otherwise stated in this section. Foreign public entities must

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comply with those for states.

2 CFR Part 200, Subparts A—D, as supplemented by 2 CFR Part 1402

Foreign public entities must follow payment procedures in 2 CFR §200.305(b). For foreign public entities and foreign organizations, the requirements in 2 CFR §§200.321—323 do not apply.

Appendix XII to 2 CFR Part 200—Recipient Integrity and Performance Matters

Applicable to awards with a total Federal share of more than \$500,000 except for awards of any amount to foreign public entities.

2 CFR Part 200, Subpart E—Cost Principles

Applicable to all domestic and foreign non-Federal entities except non-profit organizations identified in Appendix VIII to 2 CFR Part 200.

48 CFR Subpart 31.2—Contracts with Commercial Organizations

Applicable to non-profit organizations identified in Appendix VIII to 2 CFR Part 200 and for-profit organizations.

Indirect Cost Proposals

Requirements for development and submission of indirect cost rate proposals are contained in Appendix III (Institutions of Higher Education), Appendix IV (Nonprofit organizations), and Appendix VII (States, local government agencies, and Indian tribes) to 2 CFR Part 200. See also the DOI negotiated indirect cost rate deviation policies at 2 CFR §1402.414. For-profit entities should contact the DOI National Business Center, Office of Indirect Cost Rate Services at: <https://ibc.doi.gov/ICS/icrna>.

2 CFR Part 200, Subpart F—Audit Requirements

Applicable to U.S. states, local governments, Indian tribes, institutions of higher education, and nonprofit organizations. Not applicable to foreign public entities, foreign organizations, or for-profit entities.

Statutory and National Policy Requirements

These requirements are applicable to all awards, including those to individuals, for-profits, foreign public entities, and foreign organizations, unless otherwise stated in this section.

Appendix A to 2 CFR Part 25—Universal Identifier and System for Award Management

Not applicable to individuals or any entity exempted by the awarding bureau or office prior to award per 2 CFR §25.110(c)(2) and bureau or office policy.

Appendix A to 2 CFR Part 170—Award term for reporting subaward and executive compensation

Not applicable to individuals. See 2 CFR 170 for other exceptions.

2 CFR §175.15—Award Term for Trafficking in Persons

Applicable to private entities as defined in 2 CFR §175.25(d), states, local governments, and Indian tribes. Applicable to foreign public entities if funding could be provided to a private entity as a subrecipient under the award.

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2 CFR Part 1400—Nonprocurement Debarment and Suspension

All recipients must ensure they do not enter into any covered transaction with an excluded or disqualified participant or principal. See also 2 CFR Part 180—OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement). 2 CFR §180.215 defines nonprocurement transactions that are not covered transactions.

2 CFR Part 1401—Requirements for Drug-Free Workplace (Financial Assistance)

Not applicable to foreign public entities or foreign organizations.

43 CFR Part 18—New Restrictions on Lobbying

Recipients are prohibited from using any federally appropriated funds (annually appropriated or continuing appropriations) or matching funds under a Federal award to pay any person for lobbying in connection with the award. Lobbying is influencing or attempting to influence an officer or employee of any U.S. agency, a Member of the U.S. Congress, or an officer or employee of a Member of the U.S. Congress in connection with the award.

41 U.S.C. §4712—Whistleblower Protection for Contractor and Grantee Employees

41 U.S.C. §6306—Prohibition on Members of Congress Making contracts with Federal Government

Mandatory Disclosures

Failure to make required disclosures may result in any of the remedies for noncompliance described in 2 CFR §200.339, including suspension or debarment (see also 2 CFR Part 180).

Conflicts of interest: Per 2 CFR §1402.112, non-Federal entities and their employees must take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements. In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the provisions in 2 CFR §200.318 apply. Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR §200.112. Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Service Project Officer identified in their notice of award in writing of any conflicts of interest that may arise during the life of the award, including those that reported by subrecipients. The Service will examine each disclosure to determine whether a significant potential conflict exists and, if it does, work with the applicant or recipient to develop an appropriate resolution. Failure to resolve conflicts of interest in a manner that satisfies the government may be cause for termination of the award.

Lobbying: If the Federal share of the award is more than \$100,000, recipients must disclose making or agreeing to make any payment using non-appropriated funds for lobbying in connection with the award. To make such disclosures, recipients must complete and submit the SF-LLL, “Disclosure of Lobbying Activities” form to the USFWS. This form is available at: <https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html>. For more information on when additional submission of this form is required, see 43 CFR, Subpart 18.100. These restrictions are not applicable to such expenditures by Indian tribe, tribal organization, or any other Indian organization that is specifically permitted by other Federal law.

Other Mandatory Disclosures: Recipients and subrecipients must disclose, in a timely manner, in writing to the Service Project Officer identified in their notice of award or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities subject to the 2 CFR 200, Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters are required to report certain civil, criminal, or administrative proceedings to SAM.

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National Policy Encouragements

Executive Order 13043—Increasing Seat Belt Use in the United States

Non-Federal entities are encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles. Individuals are encouraged to use seat belts while driving in connection with award activities.

E. O. 13513—Federal Leadership on Reducing Text Messaging While Driving

Non-Federal entities are encouraged to adopt and enforce policies that ban text messaging while driving, including conducting initiatives of the type described in section 3(a) of the order. Individuals are encouraged to not text message while driving in connection with award activities.

BUDGET AND PROGRAM REVISIONS

1. WSFR Budget and Program Revisions

The recipient is permitted to re-budget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, certain types of post-award changes in budgets and projects shall require the prior written approval of the Service. Refer to **2 CFR 200.308** for additional information on the types of changes that require prior written approval.

AWARD CONDITIONS

1. Pre-Award Costs

The Service authorizes the recipient to request reimbursement for pre-award expenses incurred for a restricted use appraisal costing \$7,330 done between June and December 2022. Pre-award costs are those incurred prior to the effective date of this award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award.

2. Real Property

The deed of purchased and/or match properties shall identify the Federal interest in the title of real property or a Notice of Federal Participation (NOFP) shall be recorded to further ensure that the land will be managed in perpetuity in a manner consistent with the goals and objectives of this grant. Title vesting evidence; including the deed, NOFP, title insurance, settlement statement, and map(s) shall be included as part of the final accomplishment report. In the event that the terms for perpetual conservation are violated the property will be subject to transfer, replacement, or repayment to the United States pursuant to 2 CFR 200.311.

For the acquisition of a Conservation Easement (CE), the CE shall identify that the property is to be managed in perpetuity in a manner consistent with the goals and objectives of the grant and a NOFP shall be recorded, a baseline inventory shall be completed prior to closing, property management plans(s) shall be prepared, and CE monitoring shall be conducted on an annual basis.

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If mineral rights are reserved, the extraction of minerals must be consistent with the purpose of the acquired land and must be extracted in a way that will not damage the habitat or value of the surface lands. This ensures that the quantity and quality of the habitat needed to conserve species will be maintained.

Revenue generated during the grant period from the sale of timber on acquired or match lands shall be treated as program income. Program income is subject to the Federal assistance regulations at 2 CFR 200.307. Timber revenues realized after the grant period are required to be fully used by the State grantee or sub-grantee for management of the property as approved in the management plan and may not be diverted to other purposes.

Prior to accessing funds for the purchase of property, market value must be determined by appraisals performed in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book). The Federal share of the acquisition will not be greater than the agreed upon match proportion of the current market value, as determined by an appraisal and review appraisal completed to Yellow Book standards. If land is to be used as match, Federal funds may not be used to acquire the subject property until documentation of the match property has been approved by the Service. Documentation shall consist of identification and approval of the property and a Yellow Book, self-contained appraisal with a review appraisal. The following conditions must be completed to document Yellow Book compliance:

- 1.1. A State-certified general appraiser must conduct an appraisal that meets Federal land acquisition standards. Specifically the appraisal must be Yellow Book compliant <http://1.usa.gov/1HmvzGu>. This must occur for the property or properties you plan to purchase or use as match.*
- 2. Following the appraisal, a review appraisal is required. The review appraisal can be prepared by qualified agency staff or provided to your agency by contract or agreement with another state agency. A State-certified or licensed review appraiser must conduct the review appraisal.*
- 3. The U.S. Fish and Wildlife Service must be identified as an intended user in the appraisal and review.*

The appraisal and review appraisal documents must be submitted to WSFR for review and acceptance of the value before Federal funds can be used to purchase the land.

3. WSFR Small Grants Match

The federal share of the total project costs cannot exceed 61%. The Grant Recipient is eligible to request Federal obligated funds up to but not in excess of an amount equal to 61% of the total project expenditures. See also 2 CFR §200.306.

If cost share percentage identified in the attached budget changes for any reason, please notify the project officer for further guidance.

4. WSFR Cost Accounting

Cost accounting is at the grant level.

5. WSFR TRACS Grant Entry

The recipient is responsible for entering grant and project statement information for this award into the Service's electronic performance reporting system – TRACS (<https://tracs.fws.gov>). This information must be entered in TRACS within 60 calendar days of the latter: (a) period of performance start date; or (b) the date the award was approved. The grant and project statement information entered in TRACS must be consistent with the approved Project Statement (narrative) in GrantSolutions. If you need

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assistance, please contact the WSFR Federal Project Officer identified in this Notice of Award.

PAYMENTS

1. Domestic Recipients Enrolled in Treasury’s ASAP System

The recipient will request payments under this award in the [U.S. Treasury’s Automated Standard Application for Payment \(ASAP\)](#) system. When requesting payment in ASAP, your Payment Requestor will be required to enter an Account ID. The number assigned to this award is the partial Account ID in ASAP. When entering the Account ID in ASAP, the Payment Requestor should enter the award number identified in the notice of award, followed by a percent sign (%). Refer to the ASAP.gov Help menu for detailed instructions on requesting payments in ASAP.

REPORT

1. WSFR Interim Financial Reports

The recipient is required to submit interim financial reports on an annual basis directly in GrantSolutions. The recipient must follow the financial reporting period end dates and due dates provided in GrantSolutions. The interim reporting due dates are available by signing in to GrantSolutions and selecting the menu for Reports>Federal Financial Report. The GrantSolutions financial report data entry fields are the same as those on the SF-425, [“Federal Financial Report”](#) form. See also our instructional video on [“Completing the Federal Financial Report \(SF-425\)”](#).

2. WSFR Interim Performance Reports

The recipient is required to submit interim performance reports on an annual basis directly in GrantSolutions. The recipient must follow the performance reporting period end dates and due dates provided in GrantSolutions. The interim reporting due dates are available by signing in to GrantSolutions and selecting the menu for Reports>FPR.

3. Final Reports

The recipient must liquidate all obligations incurred under the award and submit a *final* financial report in GrantSolutions no later than 120 calendar days after the award period of performance end date. The GrantSolutions financial report data entry fields are the same as those on the SF-425, [“Federal Financial Report”](#) form. See also our instructional video on “Completing the Federal Financial Report (SF425) [https://fawiki.fws.gov/display/VLSV#VirtualLearningSeriesVideosHome-CompletingtheFederalFinancialReport\(SF-425\)](https://fawiki.fws.gov/display/VLSV#VirtualLearningSeriesVideosHome-CompletingtheFederalFinancialReport(SF-425))

The recipient must submit a *final* performance report no later than 120 calendar days after the award period of performance end date. Performance reports must contain: 1) a comparison of actual accomplishments with the goals and objectives of the award as detailed in the approved scope of work; 2) a description of reasons why established goals were not met, if appropriate; and 3) any other pertinent information relevant to the project results. Please include the Service award number on all reports.

The recipient must follow the final Federal Financial Report and the final Performance Report reporting period end dates and due dates provided in GrantSolutions. The final reporting due dates are available by signing in to GrantSolutions and selecting the menu for Reports>Federal Financial Report or Reports>FPR.

4. Reporting Due Date Extensions

Reporting due dates may be extended for an award upon request to the Service Project Officer identified in the notice of award. The request should be sent by selecting the award in GrantSolutions and selecting send message. The message must include the type of report to be extended, the requested revised due date, and a justification for the extension. The Service may approve an

NOTICE OF AWARD (Continuation Sheet)

PAGE 8 of 8	DATE ISSUED 02/07/2023
GRANT NO. F23AP00651-00	

additional extension if justified by a catastrophe that significantly impairs the award Recipient's operations. The recipient must submit reporting due date extension requests through GrantSolutions to the Service Project Officer identified in their notice of award before the original due date. The Service Project Officer will respond to the recipient after approval or denial of the extension request.

5. Significant Developments Reports

See [2 CFR §200.329\(e\)](#). Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, recipients are required to notify the Service in writing as soon as the recipient becomes aware of any problems, delays, or adverse conditions that will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of any corrective action(s) taken or contemplated, and any assistance needed to resolve the situation. The recipient should also notify the Service in writing of any favorable developments that enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

6. WSFR TRACS Reporting

The recipient is responsible for entering interim (if required) and final performance report information for this award into the Service's electronic performance reporting system – TRACS (<https://tracs.fws.gov>) and attaching those reports from TRACS into GrantSolutions by the report due date(s) as specified in GrantSolutions. Performance information entered in TRACS must provide quantitative outputs to the approved Standard Objectives and narrative responses to the following questions. If the award includes multiple project statements, the recipient must answer these questions for each project statement. If you need assistance, please contact the WSFR Federal Project Officer identified in this Notice of Award.

1. What progress has been made towards completing the objective(s) of the project?
2. Please describe and justify any changes in the implementation of your objective(s) or approach(es).
3. If applicable, please share if the project resulted in any unexpected benefits, promising practices, new understandings, cost efficiencies, management recommendations, or lessons learned.
4. For survey projects only: If applicable, does this project continue work from a previous award? If so, how do the current results compare to prior results? (Recipients may elect to add attachments such as tables, figures, or graphs to provide further detail when answering this question).
5. If applicable, identify and attach selected publications, photographs, screenshots of websites, or other documentation (including articles in popular literature, scientific literature, or other public information products) that have resulted from this project that highlight the accomplishments of the project.
6. Is this a project that you wish to highlight for communication purposes?
7. For CMS State fish and wildlife agencies only: If the grant is a CMS, has the agency submitted an update report every 3 years detailing the CMS components: (a) inventory and scanning; (b) strategic plan; (c) operational plan; and (d) evaluation and control have been reviewed and summaries included which provide detailed review results and recommendations?

7. WSFR TRACS Real Property/Facility

The recipient is responsible for entering required information into the TRACS (<https://tracs.fws.gov>) inventory modules to create real property/facility record(s). These records will become the basis for future recipient real property/facility reporting compliance under 2 CFR 200.330 and 2 CFR 1402.329. If you need assistance with entering real property/facility records in TRACS, please contact the WSFR Federal Project Officer identified in this Notice of Award.

AWARD ATTACHMENTS

LAND AND NATURAL RESOURCES, HAWAII DEPT OF

F23AP00651-00

1. SF-424
2. Narrative
3. Budget

Application for Federal Assistance SF-424*** 1. Type of Submission:**

- Preapplication
 Application
 Changed/Corrected Application

*** 2. Type of Application:**

- New
 Continuation
 Revision

*** If Revision, select appropriate letter(s):**

*** Other (Specify):**

*** 3. Date Received:**

06/24/2022

4. Applicant Identifier:

State of Hawaii, DLNR DOFAW

5a. Federal Entity Identifier:

5b. Federal Award Identifier:

F23AP00651

State Use Only:**6. Date Received by State:**

7. State Application Identifier:

8. APPLICANT INFORMATION:*** a. Legal Name:** DLNR Division of Forestry and Wildlife*** b. Employer/Taxpayer Identification Number (EIN/TIN):**

99-0266119

*** c. Organizational DUNS:**

8246712000000

d. Address:*** Street1:**

1151 Punchbowl Street, Room 325

Street2:

*** City:**

Honolulu

County/Parish:

*** State:**

HI: Hawaii

Province:

*** Country:**

USA: UNITED STATES

*** Zip / Postal Code:**

96813-0000

e. Organizational Unit:**Department Name:**

Land and Natural Resources

Division Name:

Forestry and Wildlife

f. Name and contact information of person to be contacted on matters involving this application:**Prefix:**

*** First Name:**

Afsheen

Middle Name:

*** Last Name:**

Siddiqi

Suffix:

Title: Wildlife Biologist**Organizational Affiliation:**

Employee

*** Telephone Number:**

808-587-0163

Fax Number:

*** Email:** Afsheen.A.Siddiqi@hawaii.gov

Application for Federal Assistance SF-424

*** 9. Type of Applicant 1: Select Applicant Type:**

A: State Government

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

* Other (specify):

*** 10. Name of Federal Agency:**

Fish and Wildlife Service

11. Catalog of Federal Domestic Assistance Number:

15.614

CFDA Title:

Coastal Wetlands Planning, Protection and Restoration

*** 12. Funding Opportunity Number:**

F23AS00003

* Title:

Fiscal Year 2023 National Coastal Wetlands Conservation Grant Program

13. Competition Identification Number:

F23AS00003

Title:

Fiscal Year 2023 National Coastal Wetlands Conservation Grant Program

14. Areas Affected by Project (Cities, Counties, States, etc.):

Add Attachment

Delete Attachment

View Attachment

*** 15. Descriptive Title of Applicant's Project:**

Reimagining the Wetland Landscape in Molokai - a Partnership Approach to Restoration for Community and Wildlife. Phase 1 - Acquisition at Kahanui.

Attach supporting documents as specified in agency instructions.

Add Attachments

Delete Attachments

View Attachments

Application for Federal Assistance SF-424

16. Congressional Districts Of:

* a. Applicant

* b. Program/Project

Attach an additional list of Program/Project Congressional Districts if needed.

Add Attachment

Delete Attachment

View Attachment

17. Proposed Project:

* a. Start Date:

* b. End Date:

18. Estimated Funding (\$):

* a. Federal	401,000.00
* b. Applicant	255,000.00
* c. State	0.00
* d. Local	0.00
* e. Other	0.00
* f. Program Income	0.00
* g. TOTAL	656,000.00

*** 19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

a. This application was made available to the State under the Executive Order 12372 Process for review on

b. Program is subject to E.O. 12372 but has not been selected by the State for review.

c. Program is not covered by E.O. 12372.

*** 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes," provide explanation in attachment.)**

Yes No

If "Yes", provide explanation and attach

Add Attachment

Delete Attachment

View Attachment

21. *By signing this application, I certify (1) to the statements contained in the list of certifications and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)**

** I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Authorized Representative:

Prefix: * First Name:

Middle Name:


* Last Name:

Suffix:

* Title:

* Telephone Number: Fax Number:

* Email:

* Signature of Authorized Representative: 

* Date Signed:

Project Narrative: NCWCG Proposal – Division of Forestry and Wildlife / Molokai Land Trust

Title: Reimagining the Wetland Landscape in Molokai – a Partnership Approach to Restoration for Community and Wildlife. Phase 1 – Acquisition at Kahanui.

The Division of Forestry and Wildlife (DOFAW) proposes the acquisition of the 43.73-acre Kahanui wetland in Molokai, Hawai'i through a subgrant to the Molokai Land Trust (MLT). Molokai's South Shore has some of the greatest wetland restoration potential in Hawai'i; the expansive coastal floodplain has a mosaic of fresh, brackish & saltwater habitats. Such an undeveloped floodplain is rare in Hawai'i, lost mainly to development. This acquisition is essential to prevent the continued loss of existing wildlife habitat to invasive species, sedimentation & possibly development; attempts to support the current owner to find restoration funding have not succeeded.

Project Need

- This is a time critical acquisition, with the property on the open market and a purchase for non-conservation reasons possible at any time. Such a purchase would be a major blow to community, state and federal ecosystem level restoration plans for this area. Much of the floodplain is currently in public ownership (see Figure 22 in 'Maps and Photos') and it is critically important that this central parcel is integrated into that ownership, continuing that trajectory, rather than risking further habitat loss and becoming an impediment to future wetland restoration work. The current landowner has neither the desire nor the intention to remove the mangrove; a purchase by another party would also be highly likely to result in the mangrove continuing to destroy the wildlife and cultural value of the site and the wetland value being further lost, along with the T&E species that are currently present.
- Coastal wetland habitats are crucial ecosystems for the sustainability of migratory bird species, recovery of Hawai'i's endangered native waterbirds and development of indigenous agro-ecology for sustainable food. Throughout the main Hawaiian Islands, numerous issues hinder the ability to provide long-term sustainable wetlands for endemic and migratory birds and community benefits / ecosystem services, including urban expansion and population growth (water use, housing development, airport expansions, military operations), impacts of invasive species, and climate change / SLR (van Rees and Reed, 2014). However, the southern shore of Molokai harbors a series of relatively isolated wetland habitats, strategically proximal to one another, many already in public ownership, and remote from human activities. This affords a rare opportunity for Hawai'i: the potential to enact the landscape scale ecological recovery of wetland habitat and manage for wildlife and community. Kahanui is part of this complex. This project intends to acquire 42.97 acres of national and regionally decreasing wetlands (NWI Type Code: E2FO3N, PEM1T, PEM1R, PF03C) and 0.76 acres of wetland-adjacent scrubland. With the expected sea level rise (SLR) impacts to wetlands around the state, non-urbanized wetland complexes such as this, have the potential to become replacement habitat for climate change losses to existing core waterbird habitat areas on other islands. For example, wetland loss due to SLR is predicted at Kanaha Pond Wildlife Sanctuary (a core wetland in Maui) as early as 2028 but surrounding urban development prevents upslope migration of the wetland (Kane et al. 2013). This loss in wetland function and habitat will displace wetland dependent birds.

- The endemic waterbirds, which were at their peak when indigenous agro-ecology thrived, have declined dramatically; all four are on the ESA list, with Hawaiian Common Gallinule extirpated from all but 2 islands and purebred Koloa Duck birds present only on Kauaʻi. Nēnē remain threatened. These birds remain in peril of extinction. Equally, birds migrating to Hawaiʻi have declined from tens of thousands in the 1940s to a few thousand today (Henry, 2011); Molokai previously supported large migratory & shorebird bird populations, but migratory flyways have been decimated by habitat loss. This site has the potential to sustain a functioning coastal wetland ecosystem, a step towards repairing some of that damage.
- The PICASC team observed that not a single lowland wetland site in Molokai was in good restoration condition, other than a small, well managed spring-fed irrigated pondfield (loʻipunawai) named Kaupapaloʻi o Kaʻamola, in the southeast. Even the USFWS National Wildlife Refuge at Kakahaiʻa has been mothballed (although efforts are afoot to reverse this situation and USFWS are an active member of the MWP). The Kahanui acquisition has not only intrinsic value but a much deeper importance as a demonstration site, trialing and refining restoration techniques including invasive species removal and hydrological rehabilitation on Molokai. This is vital because invasive species, including mangrove, pickleweed and kiawe threaten the ecological integrity of this site and many others, degrading habitat for native plants and wildlife and reducing the climate resilience of the site. Reduced rainfall is resulting in low water conditions, which, without active management, could extirpate the remaining populations of the endangered Orangeblack damselfly *megalagrion xanthomelas* and also render the site less suitable for some of the T&E waterbirds and migratory species that rely on it (Polhemus, 2022, pers.comm).
- Mangrove is not native to Hawaiʻi. Their colonization has had severe negative impacts on the coastal area (Dʻiorio, 2003), reducing wetland habitat available for endemic waterbirds, and encroaching onto the reef, beaches (which are no longer accessible to locals), and fishponds, which are particularly vulnerable, as they provide root support within their rock walls. In Molokai, many previously shoreline-bound fishponds (loko ʻumeʻiki) are now separated from the coastline by hundreds of meters of mangrove forest (Dʻiorio, 2003). This acquisition represents an opportunity to showcase future mangrove removal by MLT, which has a highly successful track record in non-native vegetation management and outplanting of natives.
- The purchase by MLT effectively returns land currently in private ownership to the Molokai community, which values shared land ownership. The resulting project will focus on community-based resource management, with community as active stewards. Restoration in future phases will promote traditional Hawaiian methods of preservation, restoration, and cultural perpetuation. The sustainability of life on this island requires that future generations have a strong sense of environmental stewardship and can forge a symbiotic and productive relationship with the land, as was the case under Hawaiian management prior to European arrival. Acquisition will allow engagement of native Hawaiian partners by creating a loʻi kalo, which will provide a sustainable, culturally important local food source as well as additional habitat for T&E waterbirds. It is essential to involve the community in Molokai to ensure that restoration projects can be maintained long term.
- The Division of Forestry and Wildlife (DOFAW) & USFWS are seeking to reintroduce Hawaiian Common Gallinule to a third island; Kahanui would be a candidate site.

- The Department of Hawaiian Homelands and the State of Hawai'i have recognized the value of the wider wetland plain and already own parcels in the area; this purchase will cement the ability of the conservation community to manage the wetland plain at an ecosystem level.

1.1. Project Objectives, Approach and Timetable

To successfully complete the proposed acquisition and partial restoration project, the following objectives will be met within the 24-month project period:

Objective 1: Acquisition: Acquire real property interest in 43.73 acres by December 2024.

Strategy: Real Property Acquisition

Activity: Land Acquisition of 43.73 acres of wetland.

Objective 2: Communicate with 500 individuals about the land and acquisition by December 2024.

Strategy: Outreach/Communication

Activity 1: Inform/communicate with 500 individuals using different communication strategies.

Activity 2: Participate in 2 community events.

Approach

Sub recipients and their role(s) in meeting the project objectives (a,b,c,d)

Sub recipient. Acquisition: Molokai Land Trust will manage the acquisition process & hold title to the real property. Ownership will be fee simple for all acres. The following approach will be taken: i. completion of phase 1 EA ii. hydrological survey iii. yellow book appraisal & appraisal review. MLT will carry out all aspects of project management. The hydrological survey is important because MLT's mission requires them to restore any acquisition after purchase & due diligence therefore requires that they understand hydrological conditions so as to commit to that restoration. After acquisition, MLT will manage the land long term; the organization is already a significant landowner on Molokai with a long track record of building productive partnerships & securing significant funding for restoration & management of protected lands, including a 1.1-mile predator proof fence at its Anapuka Dune Restoration Site on Mokuo Preserve. This project is an excellent example of the diverse partner & fund development mechanism utilized by MLT to create management actions at scale. MLT's Mokuo Preserve was designated one of 5 priority work areas for the Main Hawaiian Islands by USFWS Coastal Program in their 2016-2021 Strategic Plan, due MLT's strong track record for positive ecological responses to management, & committed partnerships that results in high quality restoration.

Sub recipient: Outreach and Communication.

- MLT outreach staff will carry out communications work with key stakeholders and community leaders (20+ individuals engaged by Dec 2024) to increase environmental awareness and exchange information with the local community on coastal wetlands conservation on Molokai. Future recreation on site will involve participation in community-based restoration and the team will cultivate volunteers for this work during the acquisition .
- MLT will host booths at 2+ community events by Dec 2024 and will add a page to their website on the acquisition site and wetland importance for the Molokai community.
- MLT will engage local hunting community.

- Pacific Birds will produce a digital & print leaflet on the importance of the acquisition site and wetlands, geared towards community interests, and will support MLT in all other outreach and education efforts through provision of staff time.
- Partner Papahana Kuaola will incorporate and expand education about the Kahanui site into existing community education projects, bringing vital messaging about the value of wetlands, especially in light of climate change, to schools on the island of Molokai.
- In total we expect to reach more than 500 individuals.

Project Timeline and Compliance Requirements

Pre-grant actions	Agency/Org	Timeline & Expected Determination
MLT board agrees to pursue purchase	MLT	Apr/May 2022
Liaison with seller	MLT/PB	Apr/May 2022
Letter of Intent from MLT to seller	MLT	May 2022
Willing Seller Letter received	MLT	Jun 2022
Restricted appraisal (pre award cost)	MLT	Jun 2022
Permit / Determination Request		
Phase 1 Environmental Survey	MLT via contract	Dec 2023. No contaminants expected.
Hydrological survey	MLT via contract	Dec 2023
Federal permitting (ESA, NEPA, NHPA)	DOFAW/MLT	Dec 2023
Project Action Timeline 2023-2025		
MLT enters into final negotiations.	MLT	Notification of award
Yellow book appraisal & appraisal review	MLT	Dec 2023
Outreach work – 500 individuals reached: Connect with 20+ community leaders 2 x event booths Webpage and leaflet complete Hunter engagement Student education	MLT/PB/ MWP Papahana Kuaola	Jan 2024 – Dec 2024 Ongoing Apr 2023 and Apr 2024 Apr 2023 Apr 2023 – ongoing Apr 2023 - ongoing
MLT completes purchase	MLT	Aug 2023 (Notice to proceed)-Dec 2024

How long-term management (20+ years or longer) be accomplished

Acquisition: DOFAW intends to acquire & manage the property through a subgrantee, the Molokai Land Trust. The acquisition of this property will guarantee long term management in perpetuity since it will be purchased fee simple and will include protective covenants & / or easements that will prevent future development or loss of wetland habitat and quality. The conditions of the matching funds from the County of Maui Open Space Fund include the County holding a perpetual conservation easement over the property. The State of Hawaii will be a co-holder. Management will be achieved with the support of the Molokai Wetland Partnership (MWP), which was formed in 2019 to explore opportunities for wetland restoration on Molokai, integrating both cultural uses and habitat needs. See Table 3 of the Criteria Section for members. The broad, inclusive nature of the partnership will ensure community, federal & state support for long term management. MLT has a long track record (14+ years) of managing similar projects on Molokai. The site will be managed for wildlife in perpetuity, but MLT will also

engage with the local community to develop taro pondfields for wildlife habitat and sustainable food sources (if water resources are appropriate), and to explore fishpond restoration opportunities as SLR exposes the buried walls of this culturally valuable site. Long term financial viability will be assured with the help of MLTs operational endowment fund.

What will be involved in the restoration?

The project focus is acquisition; restoration planning & implementation will occur in future phases. The approach for acquisition after grant award is as follows:

Objective 1: Acquisition: Yellow book appraisal completed; Liaison with seller and agent; Purchase completed

Objective 2: Outreach and Communication: see section 2.3.1

Is the project ready to implement?

Yes. MLT & PB are in regular contact with seller who has expressed a strong interest in selling to a conservation organization. Letter of intent from MLT and a willing seller letter are in hand.

Expected Results and Benefits

- This project will result in the fee title purchase & permanent protection of 43.73 acres of estuarine & marine wetland, palustrine emergent wetland, palustrine forested/shrub wetland habitat & adjacent scrub to benefit the Molokai community & native wildlife.
- Although this grant proposal does not include restoration, the purchase is essential to facilitate future wetland restoration, to provide full ecosystem services & wildlife habitat.
- Purchase will kickstart the restoration of a wetland within the wider ecosystem and prevent the loss of this key site to other land uses. Indigenous agro-ecology will be included in future restoration planning, connecting the community to the site and returning an area currently in private ownership to the Molokai community.
- Through future phases, the project will serve as an example site for mangrove, pickleweed & kiawe removal, and the creation / maintenance of open water and wetland habitat for the benefit of two highly endangered waterbirds, nēnē, migratory birds, and endangered invertebrates; monitoring and management of predators; and optimizing hydrological conditions and the ability of the wetland to provide ecosystem services.
- A potential reintroduction site for the Hawaiian common gallinule will result.
- Community outreach & education will be expanded; project will catalyze community knowledge exchange (incl. traditional ecological knowledge) about wetland habitats.

Activities are both “site-specific” and “substantive” as required in section C3.

Endangered, resident and migratory species

Acquisition and subsequent restoration (phase 2) of the native wetland plants will benefit 2 endemic waterbirds with critically small world populations: the a’eo or Hawaiian Stilt, popn ~2000; & the ‘alae ke’oke’o or Hawaiian Coot, popn ~ 2000; as well as the threatened Nēnē, popn ~3150. The site will potentially benefit the ‘alae’ula or Hawaiian Common Gallinule, popn ~1000, by providing a reintroduction site to a 3rd island (the birds have been extirpated from all but Kaua’i and O’ahu). Migratory birds including the Ruddy turnstone / ‘akekeke , Sanderling / hunakai; and Pacific golden plover / kōlea will benefit from a protected site with suitable habitat. Restoration will improve the migratory stopover habitat for 13 State of Hawaii Species

of Greatest Conservation Need & 30 species of migratory waterfowl & shorebirds (10 of which use the site already). The site hosts declining migratory species such as the IUCN 'vulnerable' Bristle-thighed Curlew (listed as of 'greatest concern' in the [US Shorebirds of Conservation Concern](#), 2016). The endangered Hawaiian hoary bat / 'Ōpe'ape'a (*Lasiurus cinereus semotus*) will benefit from the creation of additional habitat & predator control. Tables 6 and 7 in the Criteria Document provide an overview of the T&E species and how the project supports their recovery. The Orangeblack Hawaiian Damselfly, (*Megalagrion xanthomelas Selys-Longchamps*), an endangered species, has been found at 2 basal springs within this property previously & was relocated during PICASC surveys in Apr 2022, making Kahanui one of the few sites in Hawai'i where this species persists (it is now extirpated from Lāna'i Island, a former stronghold).

Fish and Shellfish

This acquisition will allow for a future increase in the abundance and diversity of endemic / native fish on site. As mangrove is removed, the future restoration of springs and open water will create important nursery & foraging habitat for native aquatic species (e.g. native o'opu and mullet 'ama'ama), which are currently in decline. Historically this site was connected to the ocean. Due to erosion and sedimentation of the fishpond system, and encroachment by mangrove over 150 years, ocean connectivity is now limited to extreme high tide events. This connectivity will improve in future due to SLR, providing nursery grounds to reef fish. The coral reefs & fisheries of the South Shore are of great significance, with 99 taxa of fish identified. While it is 'probably the most productive reef flat in main Hawaiian Islands for the harvest of reef fish and invertebrates' and 'healthier than those in more exploited urban areas' it has 'shown signs of decline in overall health and quality over time' (Friedlander et al, 2008) & will benefit from acquisition to prevent development and maximize wetland ecosystem services.

Improved Water Quality, Pollution Retention and Restored Functions & Values

A primary goal of acquisition is to enable restoration of the wetland to provide full ecosystem services, a process which is intended to be replicated across the broader south shore plain. Currently, mangrove is resulting in a total loss of those services; the root systems reduce water flow, & leaf litter decomposition from this invasive monoculture creates anoxic conditions that do not support life. Removal of mangrove will reverse these conditions & restoration of wetland habitat will provide sediment & flood control services to prevent ongoing reef damage.

Cultural Resources

The fishpond on the property is known as Punalau (Many Springs) Pond and a 1981 archaeological survey found the walls of the pond buried under sediment in "excellent preservation", concluded that the pond was used to grow *Chanos chanos* (milkfish); & that no mitigation procedures were required to preserve the site. While removal of sediment to restore the fishpond is likely to prove expensive, the presence of the original walls will help to protect the site from SLR, allowing the freshwater to retreat north, and longer term, erosion may see this historic structure uncovered naturally, providing for future restoration.

Project Location

The project location is along the south shore of Molokai. The coordinates are 21° 6'22.00"N 157° 4'45.42"W. See Maps and Photographs Document. The targeted lands meet the definition

of the coastal wetland ecosystem, 'Coastal Lands – Hawaii'. NWI Wetland Designations: 9.96 acres of the site (mainly the area invaded by mangrove) designated as Estuarine and Marine Wetland habitat (E2FO3N). The majority of the remaining wetland acres (30.67) are Palustrine Emergent Wetland habitat (PEM1T & PEM1R). The band of mangrove along the coast is designated as Palustrine Forested/Shrub Wetland habitat (PFO3C) – 2.34 acres.

Funding Eligibility

The project will contribute to goals of the USFWS Recovery Plan for Hawaiian Waterbirds (USFWS 2011) & DOH Water Quality Plan objectives (DOH 2019). It also fulfills goals & objectives of the Molokai Wetland Partnership (Raine, unpubl.) and Pacific Coast Joint Venture Strategic Plan for Hawaii Wetlands (2006). This is a single purpose project with no facilities.

State Trust Fund

Hawaii State qualifies for 25% non-federal match as it has recurring funds for habitat conservation purposes. Annually, the state legislature approves funding allocations to projects that meet these conservation needs. Eligibility for 25/75 cost share with the National Coastal Wetland Conservation grant has been approved & no changes have occurred to these funds

Relationship to Other Projects

This acquisition will be a cornerstone project for the MWP, convened to facilitate partner efforts to action wetland opportunities. The project is part of a larger effort to restore a series of wetlands across Molokai, with ongoing community liaison to ensure long term success. Information to support this project came from a major PICASC project begun in 2021 with the objective of prioritizing wetlands for restoration using a series of criteria (including community input); the proposal to purchase this property is a direct result of the outreach & research work from that project. Project Partner Ka Ipu Makani also obtained a Catalyst Landscape Grant to allow for further community outreach and the integration of community feedback into planning and acquisition work related to wetlands. Hawai'i Wetlands are a priority for Pacific Birds Habitat Joint Venture (PB), supported by the international management board and PB will continue to assist MLT and partners into the future with this effort.

Public Involvement and Interagency Coordination

MLT is deeply involved in the local & greater statewide conservation community. They offer STEM related service-learning opportunities for every school on island, paid internships for island youth, & visitor volunteer opportunities. MLT representatives sit on the Molokai Maui Invasive Committee, USDA NRCS State Technical Advisory Committee, State of Hawaii Legacy Lands Conservation Commission (Chair), Molokai Wetland Partnership, East Molokai Watershed Partnership. MLT has completed Phase I of its Operations & Service Learning Center through a complex financing structure utilizing the New Markets Tax Credit Program with national partners Wells Fargo Bank and Ecotrust (a community development entity). MLT has consulted statewide on conservation & restoration strategies.

Budget and Budget Narrative

Budget and Planned Expenditures

Table 1. Detailed budget breakdown.

PROJECT BUDGET					
No.	CATEGORY	NCWCG Anticipated Revenues & Expenditures	OTHER Funding Sources Anticipated Revenues & Expenditures	Anticipated Revenues & Expenditures	Grand Total
REVENUE					
1	NCWCG Request (2022)	\$401,000			\$401,000
2	County of Maui Open Space Fund (FY23)		\$210,000		\$210,000
3	Molokai Land Trust (Private Funds)			\$40,000	\$40,000
4	Papahana Kuaola (Private Funds)			\$5,000	\$5,000
5	Total Revenue Budget	\$401,000	\$210,000	\$45,000	\$656,000
EXPENSES					
6	Land Acquisition (Selling Price)	\$240,000	\$210,000		\$450,000
7	Restricted Use, Yellow Book Appraisal and Appraisal review (will occur after grant award); other conveyance and purchase expenses (legal fees association with acquisition)	\$98,850			\$98,850
8	Phase 1 EA and hydrological survey	\$60,000			\$60,000
9	State DLNR Negotiated Indirect Rate is 8.6% (applying 8.6% to first \$25,000 of federal request); c	\$2,150			\$2,150
10	MLT Staff time and administrative overhead expenses to complete land transaction and outreach efforts			\$40,000	\$40,000
11	Papahana Kuaola Staff time to carry out education and outreach efforts			\$5,000	\$5,000
12	Total Expense Budget	\$401,000	\$210,000	\$45,000	\$656,000

Table 2. Overall Budget

Total Contract to MLT (sub-award)	\$398,850
Total DLNR overhead (8.6% of \$25K)	\$2,150
Total Federal Request	\$401,000
Base Match (25%) required	\$133,667
Additional Cash Match (>25% over minimum required)	\$121,333
Total match	\$255,000
Total project cost	\$656,000

Budget Narrative

The total project cost is \$656,000 (line 5), with the federal request being \$401,000 (line 1).

Revenue includes the nonfederal cash match of \$210,000 (line 2) from the County's Maui Open Space Fund along with nonfederal match of \$40,000 (line 3) in private funds from Molokai Land Trust (salary for outreach and administration) and \$5,000 of non federal match from outreach group Papahana Kuaola (line 4).

The bulk of the expenses are related to the purchase cost for the property; in the restricted appraisal, commissioned by Pacific Birds in conjunction with the seller, the property was valued at \$450,000 (line 6). The restricted appraisal is a pre award cost for which we are requesting approval, in the amount of \$7,329.84; a restricted appraisal was needed to ascertain that the selling price was appropriate before this application was submitted. Given the fact that Yellow Book appraisals expire and the time pressures involved in getting a full Yellow Book appraisal done before application submission, a restricted appraisal was agreed as the best course of action. Additional expenses are comprised of Yellow Book appraisal, appraisal review and other conveyancing and purchase costs / legal fees (line 7). The State requires a Phase 1 Environmental Assessment (line 8); a hydrological survey is required by MLT as the purchaser because their mission requires them to carry out restoration on any purchased land and as part of due diligence, they require a better hydrological understanding of the site (line 8); the last expense covers outreach work by both MLT staff and Papahana Kuaola staff (lines 10 and 11).

The State DLNR negotiated indirect rate is 8.6% applied to the first \$25,000 of the federal request (line 9). This grant will be subawarded by DOFAW to MLT; In-kind Federal Match is provided Pacific Birds and USGS (not shown in table; \$5000 & \$10,000 each for technical advice, admin support and scientific support to MLT).

The total sub-award to MLT will be in the form of a contract for \$398,850 (lines 6-8)

AGREEMENT TO SUBGRANT

Between:

**MOLOKA'I LAND TRUST
&
STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES**

EXHIBIT B

Property Description

EXHIBIT A

Description of Property

All of that certain parcel of land (portion of the land described in and covered by Land Patent Grant Number 8814 to Joel K. Kahinu) situate, lying and being at Kahanui, District of Kahanui, Island of Molokai, County of Maui, State of Hawaii, and thus bounded and described:

Beginning at a "+" on stone at stonewall and at the North corner of this lot and the East corner of Lot 1, the coordinates of said point referred to Government Survey Triangulation Station "PUU-O-KAHANUI", being 1121.3 feet South and 1279.8 feet West, as shown on Government Survey Registered Map No. 1096, and running by true azimuths:

1. 295° 16' 1125.3 feet along "Naiwa" L. C. Aw. 11216 to Kekauonohi to an ---- on stone;
2. 13° 39' 562.3 feet along "Naiwa" L. C. Aw. 11216 to Kekauonohi to an + on stone;
3. 26° 39' 1124.0 feet along L. C. Aw. 7755 to Kalauaokamano along fish pond wall and across sand to a + on stone at sea beach;
4. Thence along high-water mark to a point on beach, the direct azimuth and distance being 107° 42' 1056.0 feet;
5. 187° 00' 700.0 feet to and along Lot 1 to a point on the West side of Punalau Pond;
6. 208° 00' 1150.0 feet along Lot 2 to the point of beginning and containing an area of 50 acres, more or less.

Excepting and reserving therefrom the public road across the above described parcel of land.

And further excepting and reserving therefrom, that portion of said 50-acre parcel previously conveyed out by Deed dated January 8, 1959, recorded in Liber 3557 at Page 76, containing an area of 5.00 acres, more fully described as follows:

Beginning at the North corner of this piece of land being also the North corner of Grant 8814 to Joel K. Kahinu, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU-O-KAHANUI", being 1121.3 feet South and 1279.8 feet West, thence running by true azimuths measured clockwise from true South:

1. 295° 16' 200.0 feet along "Naiwa" L. C. Aw. 11216 to Kekauonohi;
2. 25° 16' 975.50 feet along the remainder of Grant 8814 to Joel K. Kahinu;
3. 115° 16 246.57 feet along same;

4. 208° 00' 976.61 feet along Grant 8813 to Otto W. Kahinu to the point of beginning and containing an area of 217,815 square feet, or 5.000 Acres;

Excepting and reserving therefrom the public road across this piece of land;

Being the premises acquired by:

WARRANTY DEED

Recorded : August 20, 1991 in the Bureau of Conveyances, State of Hawaii, as Document No. 91-112357
Grantor : THRIFT GUARANTY CORPORATION OF HAWAII, a Hawaii non-profit corporation
Grantee : MOLOKA'I FISHERIES, INC., a Hawaii corporation

AGREEMENT TO SUBGRANT

Between:

**MOLOKA'I LAND TRUST
&
STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES**

EXHIBIT C

Checklist for Acquisition Subgrants

Checklist for Acquisition Subgrants

FOR FEDERAL NCWCG SUBGRANTEES: The following items must be completed to the DLNR's satisfaction prior to the final award:

- Title report review and appraisal certification. A current title report of the property interest to be acquired must be obtained for approval through the Department of Land and Natural Resources, Land Division. Prior to purchase, all properties must have a current appraisal that is prepared to Uniform Appraisal Standards for Federal Land Acquisition (UASFLA), otherwise known as "Yellow Book" standards. The appraisal must also be reviewed to ensure compliance with Yellow Book standards. The appraisal and appraisal review shall be conducted through contracts with appropriately licensed and trained personnel.
- Appraisal cost and title work. The cost of conducting the appraisal(s) and completing title work in accordance with Federal requirements must either be assumed by the non-Federal subgrantee, or included in the total cost of the proposal on a reimbursable basis.
- Matching funds. Evidence of matching funds, as required by law, must be provided to DLNR. In cases where property value is to be used as cost sharing or match for the grant, review and approval of the match property, including the certification of current market value, must occur during the effective grant period to ensure that the property is consistent with 522 FW 24 Establishment and Use of Land Value as Match.
- Escrow. Funds that are to be used for the purchase of property will be delivered to escrow via check made payable to Subgrantee, for Subgrantee to endorse for deposit into escrow.
- Title insurance. Title insurance in the full amount of the purchase price must be obtained, insuring that the title to the Property is vested in the Subgrantee.
- Title Vesting Evidence. The following must be included on the title:
 - 1) A legal description of the property.

 - 2) The following recorded restrictions:
 - i. The above described property is acquired in part with funding received by the State from Federal Assistance Award _ F23AP00651 _, approved effective _January 1, 2023 by the U.S. Fish and Wildlife Service, and is subject to all the terms of acceptance and special conditions and provisions of the award.
 - ii. A copy of Grant Award ___ F23AP00651 _____ is kept on file at:

U.S. Fish and Wildlife Service
Division of Federal Assistance

911 NE 11th Avenue
Portland, Oregon 97232-4181

iii. The land shall be managed for purposes of protecting the Property in perpetuity in a manner consistent with the goals and objectives of the Grant Award ___ F23AP00651_____.

iv. This acquisition is for manage and restore native wetland habitat through a comprehensive management plan; engage with local communities to develop active agricultural operations compatible with endemic waterbird and wildlife habitat; and explore fishpond restoration opportunities. MLT further agrees to grant a perpetual Conservation Easement over the Property to the County of Maui and State of Hawai'i, described in Section B.4 of the Recitals. This Conservation Easement shall run with the land to all heirs and successors.

v. When subject property is used for purposes which interfere with the accomplishment of approved purposes, the violating activities must cease and any adverse effects resulting must be remedied (43 CFR 12.71).

vi. Violations of award terms are subject to 43 CFR 12.71 and the State must contact the U.S. Fish and Wildlife Service for disposition instructions which could result in a requirement that the State:

1. Acquire title to and manage other real property that is of equal value and serves the same purposes for which the property was originally acquired;
2. Repay to the U.S. Fish and Wildlife Service, in cash, the proportionate share of the funds of the original purchase price, or if greater, of a newly determined value based on the current fair market value of the land, parcel of land, or any portion thereof; or
3. As a last resort, transfer the subject property to the U.S. Fish and Wildlife Service or to a third party designated or approved by the Service.

Accounting and Settlement Statement. The Subgrantee must provide an accounting of all subgrant funds to be expended, evidenced by supporting documentation.

ESA. One or more Environmental Site Assessment(s) (ESA) as may be required by DLNR.

HRS Ch. 343 compliance. An Environmental Assessment and/or Cultural Assessment as may be required by law.

Baseline Inventory. The Subgrantee shall submit a written statement and photographs that reflect the current status and condition of the resources for which the land is to be protected.

The statement shall be certified by the Subgrantee and the photographs shall be taken from identifiable locations on the Property.

Deed. The Subgrantee shall submit a copy of proposed deed and proposed conservation easement prior to execution of the deeds for review and approval by the DLNR.

LAND COURT

REGULAR SYSTEM

Upon recording return **by mail** to:

Moloka'i Land Trust
1800 Farrington Avenue
Kualapuu, HI 96757
Telephone: (808) 537-4508

Grant Recipient: State of Hawai'i, through its Department of Land and Natural Resources

Subrecipient: Moloka'i Land Trust, a Hawaii nonprofit corporation

TMKs: (2) 5-2-011:011

Total No. of Pages: __

NOTICE OF FEDERAL PARTICIPATION

U.S. Department of the Interior, Fish and Wildlife Service

Dated: _____

The State of Hawai'i, Department of Land and Natural Resources ("DLNR" or "Recipient"), whose principal place of business is 1151 Punchbowl Street, Honolulu, Hawai'i 96813, acknowledges that the Kahanui Acquisition (Tax Map Key (2) 5-2-011:011), located in Maui County, State of Hawai'i and more particularly described in Exhibit A attached hereto and made a part hereof (the "Property"), was acquired by Moloka'i Land Trust ("MLT" or "Subrecipient), a Hawaii nonprofit corporation whose principal place of business is 1800 Farrington Avenue, Kualapuu, HI 96757, in part, with funds awarded by the U.S. Department of the Interior, Fish and Wildlife Service (the "USFWS") including grant funds received from the National Coastal Wetland Conservation Grant Program (CFDA #15.614) established under the Coastal Wetlands

Planning, Protection, and Restoration Act (16 U.S.C. § 3954) (the “Program”). The Program is administered by the USFWS, Division of Wildlife and Sport Fish Restoration, and its successors and assigns. The Property is subject to all the terms and conditions of Grant Award F23AP00651 (the “Award”), “Reimagining the Wetland Landscape in Moloka‘i – a Partnership Approach to Restoration for Community and Wildlife. Phase 1 – Acquisition of Kahanui” effective January 1, 2023, to DLNR as Recipient, and MLT as Subrecipient, the purpose of which is to provide funds for the acquisition of fee title to the Property, including due diligence for the acquisition, which is then to be managed for wetland conservation and cultural use purposes. A copy of the Award is kept on file at the offices of the USFWS, 911 NE 11th Avenue, Portland, Oregon 97232 and DLNR, Division of Forestry and Wildlife, 1151 Punchbowl Street, Room 325, Honolulu, Hawaii 96813. MLT has been sub-granted to purchase the property. DLNR acknowledges that the Property was acquired in part for the USFWS-approved purpose of protecting the Property in perpetuity in a manner consistent with the goals and objectives of the Award. The purpose of this acquisition project is to manage and restore native wetland habitat through a comprehensive restoration plan, engage with local communities to develop taro ponds and fields for wildlife habitat and sustainable food sources, and explore fishpond restoration opportunities. The Recipient and Subrecipient will use the real property for its originally authorized purpose as long as needed for that purpose or any future purpose that is mutually agreed upon by the USFWS, Recipient and Subrecipient.

The Subrecipient must not authorize or tolerate any activities on the real property that interfere with its originally authorized purpose. If such activities do occur, the Subrecipient must ensure that they stop immediately.

DLNR’s responsibilities and the federal interest shall last in perpetuity and pass to any successors unless provided for otherwise through disposal pursuant to 2 C.F.R. §200.311.

DLNR, as a recipient of Award funds, hereby confirms its obligations and responsibilities with regards to the Property pursuant to the terms and conditions associated with the Award, including the obligation to obtain the consent of the USFWS prior to the conveyance of any interest in the Property or the use of the Property for any purpose inconsistent with the USFWS-approved purpose. In the event the Property is no longer necessary for the purpose of the Award, DLNR will request disposition instructions from the USFWS, which will be provided in accordance with 2 C.F.R. §200.311(c).

There must be no discrimination against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection on any real property acquired or constructed under the Award as long as it continues to serve its originally authorized purpose.

Signatures on Following Pages

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

_____.

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

Cindy Y. Young
Deputy Attorney General

Dated: _____

STATE OF HAWAII

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

Dated: _____

RECIPIENT

MOLOKA'I LAND TRUST

By _____
WILLIAM HAASE
Executive Director

DATED: _____

SUBRECIPIENT

STATE OF HAWAII

COUNTY OF _____

On this ____ day of _____, _____, before me, the undersigned notary public, personally appeared _____, to me personally known or otherwise proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding document, and acknowledged to me that they signed such document voluntarily for its stated purpose.

Notary Public
Name: _____
Commission No. _____
My Commission Expires: _____

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: _____
Doc. Date: _____ Undated at time of notarization
No. of Pages: __ Jurisdiction: _____ Circuit
(in which notarial act is performed)

Signature of Notary Date of Certificate

Printed Name of Notary

(Official Stamp or Seal)

Exhibit A

Legal Description of the Property

All of that certain parcel of land (portion of the land described in and covered by Land Patent Grant Number 8814 to Joel K. Kahinu) situate, lying and being at Kahanui, District of Kahanui, Island of Molokai, County of Maui, State of Hawaii, and thus bounded and described:

Beginning at a "+" on stone at stonewall and at the North corner of this lot and the East corner of Lot 1, the coordinates of said point referred to Government Survey Triangulation Station "PUU-O-KAHANUI", being 1121.3 feet South and 1279.8 feet West, as shown on Government Survey Registered Map No. 1096, and running by true azimuths:

1. 295° 16' 1125.3 feet along "Naiwa" L. C. Aw. 11216 to Kekauonohi to an ---- on stone;
2. 13° 39' 562.3 feet along "Naiwa" L. C. Aw. 11216 to Kekauonohi to an + on stone;
3. 26° 39' 1124.0 feet along L. C. Aw. 7755 to Kalauaokamano along fish pond wall and across sand to a + on stone at sea beach;
4. Thence along high-water mark to a point on beach, the direct azimuth and distance being 107° 42' 1056.0 feet;
5. 187° 00' 700.0 feet to and along Lot 1 to a point on the West side of Punalau Pond;
6. 208° 00' 1150.0 feet along Lot 2 to the point of beginning and containing an area of 50 acres, more or less.

Excepting and reserving therefrom the public road across the above described parcel of land.

And further excepting and reserving therefrom, that portion of said 50-acre parcel previously conveyed out by Deed dated January 8, 1959, recorded in Liber 3557 at Page 76, containing an area of 5.00 acres, more fully described as follows:

Beginning at the North corner of this piece of land being also the North corner of Grant 8814 to Joel K. Kahinu, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU-O-KAHANUI", being 1121.3 feet South and 1279.8 feet West, thence running by true azimuths measured clockwise from true South:

1. 295° 16' 200.0 feet along "Naiwa" L. C. Aw. 11216 to Kekauonohi;
2. 25° 16' 975.50 feet along the remainder of Grant 8814 to Joel K. Kahinu;
3. 115° 16' 246.57 feet along same;

4. 208° 00' 976.61 feet along Grant 8813 to Otto W. Kahinu to the point of beginning and containing an area of 217,815 square feet, or 5.000 Acres;

Excepting and reserving therefrom the public road across this piece of land;

Being the premises acquired by:

WARRANTY DEED

Recorded : _____, 202__ in the Bureau of Conveyances, State of Hawaii, as Document No. _____

Grantor : MOLOKA'I FISHERIES, INC., a Hawaii corporation

Grantee : MOLOKA'I LAND TRUST, a Hawaii nonprofit corporation

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LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL () PICKUP ()

Moloka'i Land Trust
P.O. Box 1884
Kaunakakai, HI 96748
Telephone: (808)

TITLE OF DOCUMENT:

**DEED OF CONSERVATION EASEMENT AND
RESTRICTION OF DEVELOPMENT RIGHTS**

PARTIES TO DOCUMENT:

Owner:	Moloka'i Land Trust, a Hawai'i nonprofit corporation, P.O. Box 1884, Kaunakakai, Hawai'i 96748
Primary Co-Holder:	The State of Hawai'i, through its Board of Land and Natural Resources, Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Hawai'i 96813
Secondary Co-Holder:	County of Maui, a municipal governmental corporation of the State of Hawaii, 200 South High Street, Wailuku, Hawai'i 96793

TAX MAP KEY(S): (2) 5-2-011:011

(This document consists of _____ pages.)

**DEED OF CONSERVATION EASEMENT AND RESTRICTION OF
DEVELOPMENT RIGHTS**

THIS DEED OF CONSERVATION EASEMENT AND RESTRICTION OF DEVELOPMENT RIGHTS (“Easement”) is made this ___ day of _____, 20___, by Moloka’i Land Trust, a Hawai’i nonprofit corporation, having the mailing address of P.O. Box 1884, Kaunakakai, Hawai’i 96748 (“Owner”), the STATE OF HAWAI’I, by its BOARD OF LAND AND NATURAL RESOURCES, whose principal place of business is the Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Hawai’i 96813 (“Primary Co-Holder”), and the COUNTY OF MAUI, a municipal governmental corporation of the State of Hawai’i whose principal place of business is 200 South High Street, Wailuku, Hawai’i 96793 (“Secondary Co-Holder”, and together with Primary Co-Holder, the “Co-Holders”) (each, a “Party”, and together the “Parties”).

RECITALS

I. Structure of this Easement and Initial Definitions

A. Owner is the sole owner in fee simple of that certain real property situated off of Kaunakakai Road, in Ho’olehua, Island of Moloka’i, State of Hawai’i, consisting of one (1) parcel totaling 45 acres, more or less, and bearing a tax map key (“TMK”) number: (2) 5-2-011:011 (the “Land”), by that certain Limited Warranty Deed dated _____, 202___, recorded in the Bureau of Conveyances of the State of Hawai’i as Document No. _____, issued to Owner. This Easement encumbers all of the Land described in **Exhibit A** (“Protected Property”) and as depicted on a map in **Exhibit B**.

B. Co-Holders desire to obtain from the Owner, and Owner desires to grant to Co-Holders, a conservation easement over the Protected Property subject to the terms and conditions of this Easement.

C. This Easement includes three main parts: (1) the Recitals, which provide a general description of the Protected Property, its important Conservation Values, and the existing zoning and land use classification affecting the Protected Property; (2) Covenants and Restrictions, which describe the respective rights and obligations of Owner and Co-Holders; and (3) the Exhibits, which identify and describe the Protected Property.

D. Other capitalized terms used in this Easement are either defined when they first appear in this Easement or may be found in the Glossary, located in Section XII of the Covenants and Restrictions.

II. Identification of the Protected Property

A. The Protected Property Location and Description. The Protected Property is located on the southern shore of Moloka'i in the Pala'au District, County of Maui and being of TMK (2) 5-2-011:011. The Protected Property constitutes a makai section of the ahupua'a of Kahanui situated at sea level.

The following land use designations relate to the Protected Property:

1. State Land Use District. The Protected Property is classified as "Agricultural" as defined by Hawaii Revised Statutes ("HRS") chapter 205. Use of the Protected Property is limited as set forth in HRS Chapter 205.

2. County Zoning. The Protected Property is zoned "AG" Agricultural under Maui County Comprehensive Zoning Ordinance, chapter 19.30A, Maui County Code ("MCC"), and zoned "Interim" under Maui County Comprehensive Zoning Ordinance, chapter 19.02A, MCC, and is limited to uses described therein.

B. Importance of Protected Property for Conservation Values. The Protected Property possesses important coastal wetland habitat and natural resources, as well as agricultural, cultural, educational, and open space values ("Conservation Values"). These specific Conservation Values are of interest for protection through this Easement:

1. Coastal Wetland Habitat and Natural Resources. The Protected Property contains coastal wetland habitat crucial for the sustainability of migratory bird species and the recovery of endangered endemic waterbirds ("Wetland and Waterbird Habitat"). Acquisition and management of the Protected Property by Owner should assist in preventing the loss of existing wetland habitat to invasive species, sedimentation, and possible development. With climate change, the Protected Property has potential to become core wetland habitat to endemic waterbirds. This Wetland and Waterbird Habitat requires restoration and ongoing management to be beneficial to migratory birds and endemic waterbirds. Wetland restoration actions shall be conducted so that Wetland and Waterbird Habitat on the Protected Property is enhanced for the benefit of migratory bird species and endemic waterbirds. Management actions shall be conducted in accordance with the Management Plan in Section II.A. of the Covenants and Restrictions.

The Protected Property consists of an expansive coastal floodplain that has a mosaic of fresh, brackish, and saltwater habitats bordered by fringing reef to the south. Much of the floodplain is under public ownership and management of the Protected Property shall be integrated with surrounding properties for purposes landscape scale ecological restoration.

2. Agricultural Values. The Protected Property may function as active agricultural operation, as defined in section 19.30A.015, MCC, and those activities shall be compatible with and not jeopardize the health or existence of any endemic waterbirds, migratory bird species, or endemic invertebrates, or their habitat found on the Protected Property. As an active agricultural operation, compatible agricultural activities may include traditional and customary Native Hawaiian crop cultivation and aquaculture and

apiaries. There is potential on the Protected Property to recreate lo'ipūnāwao (spring-fed irrigated agricultural pondfields) for sustainable food production and ecosystem services and to restore fishponds to serve as a buffer against sea-level rise.

3. Cultural Values. The Protected Property has cultural significance due to its proximity to what has been identified as the deification of the 'alae'ula (Hawaiian common gallinule) in Hawaiian legend, and because the Property was once part of an extensive Hawaiian fishpond complex, of which ancient walls are still present underground. This Easement is in line with the purpose of Owner as established by Owner's bylaws which state Owner's purpose is for the protection and restoration of the land, natural, and cultural resources of Moloka'i, and the perpetuation of the unique Native Hawaiian traditions and character of Moloka'i for the benefit of future generations on Moloka'i, particularly Native Hawaiians.

4. Educational Values. The purpose of the educational values for the public, including but not limited to school groups, community groups, and families, are for agricultural and wetland restoration and management activities on the Protected Property to serve as meaningful educational experiences.

5. Open Space Values. The purpose of the open space values are to recognize the special character of the Property comprised of predominantly coastal wetlands, open space, and view planes overlooking the ocean.

C. Baseline Documentation. The Conservation Values of the Protected Property are further documented in an inventory of relevant features called the "Baseline Documentation" identified in **Exhibit C**. The Baseline Documentation consists of a descriptive report of resources found in the Protected Property, title reports for the subject parcels, maps, photographs, and other documentation, and is maintained by Primary Co-Holder. The Parties agree that the Baseline Documentation provides a comprehensive and accurate representation of the Protected Property and its resources as of the Effective Date. The Baseline Documentation is intended to serve as an objective informational baseline for monitoring compliance with the terms of this Easement. The Baseline Documentation is a requirement of National Coastal Wetland Conservation Grant Award F23AP00651 described in Section II.D. of the Recitals and must be completed prior to closing of said grant.

D. The National Coastal Wetland Conservation Grant Program. The National Coastal Wetlands Conservation Grant Program ("NCWCGP") administered in accordance with the provisions of the Coastal Wetlands Planning, Protection, and Restoration Act (Section 305, Title III, Public Law 101-646 U.S.C. 3954), provides competitive matching grants to coastal States for coastal wetlands conservation projects.

The Primary Co-Holder was awarded a grant under the NCWCGP for the acquisition of the Land titled "Reimagining the Wetland Landscape in Molokai – A Partnership Approach to Restoration for Community and Wildlife. Phase I – Acquisition at Kahanui" (Grant Award No. F23AP00651, "Grant Award"). The Primary Co-Holder and Owner entered into a subgrant agreement on _____ authorizing the Primary Co-

Holder to transfer funds under the “Grant Award” to Owner. Owner establishing a conservation easement over the Land in favor of the Co-Holders and managing said conservation easement in perpetuity in a manner consistent with the goals and objectives of the Grant Award is a condition of the Grant Award.

E. The Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund (“Open Space Fund”). Established by Ordinance No. 3128, Bill No. 20 (2003), Maui County Code, Section 1, Title 3, Chapter 3.88 provides that the Open Space Fund has a purpose of purchasing or otherwise acquiring lands or property entitlements for land conservation purposes in the County of Maui for the following purposes: 1. Public outdoor recreation and education; 2. Preservation of historic or culturally important land areas; 3. Protection of significant habitat or ecosystems, including buffer zones; 4. Preserving forests, beaches, coastal areas and agricultural lands; 5. Protecting watershed lands to preserve water quality; 6. Conserving land for the purpose of reducing erosion, floods, landslides, and runoff; and 7. Improving disabled and public access to, and enjoyment of, public land, open space, and recreational facilities.

III. Intent to Protect Conservation Values of the Protected Property

A. The Protected Property possesses significant Conservation Values, described in Section I. of the Covenants and Restrictions.

B. The land use laws and designations referenced in Section II.A. of Recitals are not sufficiently restrictive to protect the Conservation Values of the Protected Property. They permit subdivision of the Protected Property and construction of farm dwellings, farm labor dwellings, or other permitted structures. Pursuant to this Easement, subdivision is prohibited, and no dwelling of any type or use of a structure as a dwelling shall be permitted on the Protected Property. No structure shall be constructed on the Protected Property unless authorized by this Easement.

C. Owner desires that the Conservation Values of the Protected Property be preserved and maintained in perpetuity by permitting only those uses of the Protected Property that do not impair or interfere with the Conservation Values. And Co-Holders desire to accept this Easement to preserve and protect in perpetuity the Conservation Values of the Protected Property for the benefit of current and future generations.

D. Owner intends to convey to Co-Holders an easement interest over the Protected Property to preserve and protect the Conservation Values of the Protected Property in perpetuity, free and clear of all encumbrances except those identified in **Exhibit A** attached hereto.

E. HRS § 198-3 provides that “[a]ny public body and any organization which qualifies for and holds an income tax exemption under section 501(c) of the federal Internal Revenue Code of 1954, as amended, and whose organizational purposes are designed to facilitate the purposes of [HRS Chapter 198], may acquire and hold conservation easements by purchase, agreement, donation, devise, or bequest, but not

by eminent domain.” Co-Holders are public bodies qualified to hold a conservation easement under HRS § 198-3.

NOW THEREFORE, for good and valuable consideration of the Co-Holders providing the Owner the funding as described in section II.D and E of the Recitals for Owner’s acquisition of the Property, and the foregoing Recitals and mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to laws of the State of Hawai’i, including HRS Chapter 198, Owner hereby grants, bargains, sells, and conveys to Co-Holders, severally, including each of their successors and assigns, a conservation easement in perpetuity over the Protected Property subject only to the covenants, conditions, and restrictions contained in this Easement and encumbrances identified in **Exhibit A**.

Owner declares that the Protected Property shall be held, mortgaged, encumbered, transferred, sold, conveyed, used, and occupied subject to the covenants, conditions, restrictions, and easements hereinafter set forth, which covenants, conditions, restrictions, and easements shall be deemed to run with the land in perpetuity and to burden the Protected Property in perpetuity.

COVENANTS AND RESTRICTIONS

I. Purpose

The Purpose of this Easement is to preserve and maintain the Conservation Values, as set forth in Section II.B. of Recitals and in Sections I of the Covenants and Restrictions, by preventing any use of the Protected Property that will impair or interfere with the Conservation Values (the “Purpose”).

A. The Conservation Values include, but are not limited to, the restoration and management of coastal wetland habitat crucial for maintaining sustainable populations of migratory bird species and the recovery of endangered endemic waterbirds, and supporting compatible agricultural values (“Primary Purpose”), and, to the extent it is consistent with the accomplishment of the Primary Purposes, the historically and culturally sensitive features of the Protected Property, and the open space characteristics of the Protected Property. The specific Conservation Values are consistent with the NCWCGP and the Open Space Fund. The Parties agree that the management of the Protected Property for agricultural products is consistent with the coastal wetland habitat and natural resources of the Protected Property, as long as the active agricultural operation is compatible with and do not jeopardize the health or existence of any endemic waterbirds, migratory bird species, or endemic invertebrates, or their habitat found on the Protected Property.

B. No activity which is inconsistent with the Purpose of this Easement or impairs the Conservation Values shall be permitted on the Protected Property.

II. Duties of Owner

It is the duty of the Owner to manage the Protected Property in a manner that is consistent with the purposes for which the Protected Property entered the NCWCGP and Open Space Fund. It is also a duty of the Owner to regularly update the Management Plan (the "Plan") as described below.

A. Management Plan. This Easement requires a written Management Plan ("Plan"), as may be amended from time to time, after Consultation with Primary Co-Holder, to be prepared by Owner and Approved in writing by Primary Co-Holder. Co-Holders acknowledge that the Plan may provide for limited commercial agriculture, as described in Section III.A. of the Covenants and Restrictions, and agree that only said commercial agriculture, when conducted sustainably and pursuant to the terms of the approved Plan furthers the Purpose of this Easement.

1. The Plan shall be consistent with the purposes of the NCWCGP and Open Space Fund, as described in Section II.D. and E. of the Recitals, and support the Conservation Values of this Easement. The standards and guidelines under which the parties agree to review and ultimately adopt by consensus the Plan are as follows: (i) the Plan must fulfill the Purpose of this Easement; (ii) the Plan shall include all of the Plan Elements; (iii) the Plan shall include a projected cost of management; and (iv) the Plan shall incorporate the Conservation Values of the Property.

2. Owner shall have obtained Primary Co-Holder's Approval for said Plan within three (3) years from the Effective Date. The Plan represents the initial framework for land management planning and is a version of an iterative process. Owner will continue to add to, review, and improve the Plan to better protect and preserve the Conservation Values with appropriate input from other persons not necessarily associated with Owner, including the public, and agencies and partners with relevant expertise. Any changes to the Plan after Approval require Approval by the Primary Co-Holder.

3. The failure or inability of the Owner and Primary Co-Holder to agree on the Plan shall not invalidate this Easement. Any activity on the Protected Property shall be consistent with the Conservation Values of the Property and Owner must receive written Approval from the Primary Co-Holder before commencing the activity.

B. Management Plan Elements. The following baseline surveys, studies, and plans for the Property shall be incorporated into, or referenced, in the Management Plan:

1. The Baseline Documentation, as described in Section II.C. of the Recitals, shall be on file at the office of the Primary Co-Holder. The Baseline Documentation, however, is not intended to preclude the use of other information and evidence to document the present condition of the Property in the event of a future controversy.

2. A terrestrial flora and fauna survey.

3. Cultural and historic land documentation and reports.

4. A Phase I environmental site assessment.
5. A plan for the conservation, preservation, and protection of the Conservation Values of the Protected Property.
6. A plan for an active agricultural operation on the Protected Property as limited by the Conservation Values described in Section II.B. of the Recitals.
7. A plan for protection, and where appropriate restoration, to the extent applicable, of any archaeological, cultural, or historic features that may be currently known or discovered in the future. This archaeological protection and restoration plan must be approved by DLNR State Historic Preservation Division.
8. A plan for the protection, restoration, and on-going management of wetland habitat, including forecasting management activities in the event of sea level rise.
9. A statement of the protocols for Native Hawaiian cultural practitioners who wish to access the Protected Property to engage in their cultural and religious practices and beliefs.
10. A hydrological survey.
11. A plan for managing public and educational access on the Protected Property. Owner will manage the Protected Property to perpetuate educational opportunities, while also protecting the Protected Property from any use that compromises the Conservation Values. This plan will incorporate the following minimum requirements:
 - (a) Safe access to the Property and safety best practices for all general public participants and volunteers shall be given the highest priority;
 - (b) Managed public pedestrian access provided;
 - (c) Limited managed vehicular access provided at the discretion of Owner to prevent overuse and protect the Conservation Values;
 - (d) Signage for access guidelines and rules as necessary to educate the public on safety and conservation measures, shall be posted.

C. Reporting. For the first three (3) years following the Effective Date, Owner will submit an annual written report to Primary Co-Holder, with a copy to Secondary Co-Holder, documenting Owner's progress toward the development and implementation of the Plan. Thereafter, Owner shall submit an annual written monitoring report to Primary Co-Holder, with a copy to Secondary Co-Holder, to assist Primary Co-Holder in monitoring compliance with this Easement.

D. 10-Year Review. Owner shall update the Plan at least every ten (10) years commencing from the date of the first Plan. While updating the Plan, Owner shall engage

Primary Co-Holder to review and ensure compliance of all proposed revisions with the terms of this Easement. Amendments to the Plan must be approved by Primary Co-Holder before going into effect. Owner shall not engage in any action that materially deviates from the Plan. Owner shall transmit a copy of the revised Management Plan to Co-Holders.

E. In the event of any inconsistency or conflict between the provisions of this Easement and the Plan, the terms of the Easement shall prevail.

III. Rights of Owner

Except as prohibited or restricted by the provisions in Sections III. and IV. of the Covenants and Restrictions, Owner reserves all customary rights and privileges of ownership so long as they are not expressly prohibited by this Easement, are not inconsistent with the Purpose of this Easement, and do not impair the Conservation Values. Owner expressly and specifically reserves the following rights:

A. Agriculture. Owner is permitted to engage an active agricultural operation that support the Purpose of this Easement and do not negatively impact the Conservation Values of this Easement, including limited commercial agricultural activities that shall be compatible with and not jeopardize the health or existence of any endemic waterbirds, migratory bird species, or endemic invertebrates, or their habitat found on the Protected Property. All agricultural activities are subject to Approval by the Co-Holders and shall be described in the Plan according to Section II.B.6. of the Covenants and Restrictions. As an active agricultural operation, compatible agricultural activities may include traditional and customary Native Hawaiian crop cultivation and aquaculture and apiaries. Desirable non-native plant species needed for an active agricultural operation may be introduced, but shall comply with the Plan and require Primary Co-Holder's Approval.

B. Public and Private Access. This Easement allows Owner to authorize public and private access to any part of the Protected Property for permitted uses, on such terms and conditions consistent with the Purposes of this Easement. All public access shall be conducted pursuant to the plan for managing public and educational access in Section II.B.11. of the Covenants and Restrictions. Owner covenants and agrees that Owner shall at all times comply with any and all governmental regulations of the Protected Property regarding access of disabled persons, including without limitation the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12101 *et. seq.*, or any other applicable federal, state, or local laws or ordinances and the regulations promulgated thereunder.

C. Other Commercial Activities. This Easement allows Owner to conduct and permit film and photography and hold up to four (4) fundraisers per year conducted in a manner consistent with the Purpose and that do not adversely impact the Conservation Values of the Property. Access shall be conducted according to Section III.B. of the Covenants and Restrictions.

D. Construction of Structural Improvements. The construction or reconstruction of any Structural Improvement within the Protected Property is permitted only as

authorized in this Easement, provided that such Structural Improvements do not impair the Conservation Values and are subordinate to and supportive of the Purpose of this Easement, and then only on the condition that Owner obtains all required permits and approvals from all applicable Governmental Authority and follows all Laws.

1. *No dwellings.* The construction of any dwelling is prohibited, according to Section IV.B. of the Covenants and Restrictions.

2. *Maintenance or Replacement.* Existing Structural Improvements within the Protected Property are identified in the Baseline Documentation. Owner may maintain, repair, remodel, and make limited additions to any existing Structural Improvements. Owner may also demolish and replace any Structural Improvements with one of similar size, function and use, in the same general locations.

3. *Limited Improvement Areas and Building Envelopes.* The Parties acknowledge and agree that Structural Improvements should be clustered and concentrated in limited and specific areas on the Protected Property ("Limited Improvement Areas"). The Parties have identified one (1) such Limited Improvement Area, as depicted on Exhibits B, and collectively comprising approximately three (3) acres of the Protected Property. The location of the Limited Improvement Area, Building Envelopes, and Structural Improvements within the Limited Improvement Areas are subordinate to and supportive of the Purpose of this Easement to protect in perpetuity the Conservation Values of the Protected Property, as defined in Section II.B. of the Recitals and Section I. of the Covenants and Restrictions.

Structural Improvements identified in this Section III.D.3. are restricted to the Building Envelopes within the Limited Improvement Area to prevent any harm to the Conservation Values of the Protected Property. Accordingly, the Parties herein confirm that Owner's exercise of the following reserved rights within the Limited Improvement Areas shall not cause harm to or have any adverse impact on the Conservation Values of the Protected Property. No Structural Improvements are permitted in a wetland area. All Hazardous Materials shall be stored within the Building Envelopes away from the wetland area.

(a) The location of the Building Envelopes, at their time of designation, shall be surveyed and mapped, and marked on the ground with monumented corners. Maps shall be provided to Co-Holders;

(b) Once a Building Envelope is designated and surveyed, the Building Envelope may not be moved or relocated;

(c) The Limited Improvement Area may have up to two Building Envelopes limited to an area of 1,000 square feet;

(d) Building Envelopes must be set back fifty (50) feet from any wetland area;

(e) With the Approval of Primary Co-Holder, Owner may construct

one new Structural Improvement, consistent with the Conservation Values of the Protected Property, within each Building Envelope, provided that the Structural Improvement shall be used solely for purposes consistent with this Easement;

(f) Structural Improvements shall be limited to single story fourteen (14) feet measured from natural or finish grade. Nothing in this Easement shall be construed to allow Structural Improvements to be built in a manner that violates any applicable Laws, including land use and zoning laws and building code;

(g) Structural Improvements shall be limited to (1) one utility structure for storing supplies to support management activities on the Protected Property and (2) one hale support structure used for gathering purposes only to support the Conservation Values of the Protected Property; and

(h) Structural Improvements shall not include new construction or development of utility lines within the Limited Improvement Areas. New Structural Improvements shall be off-grid and not connect to existing utilities.

4. *Conservation or Restoration Based Improvements.* Owner may construct, maintain, repair, enlarge, and replace Structural Improvements on the Protected Property to facilitate conservation or restoration activities and objectives as described in the Plan, after Consultation with and Approval by Primary Co-Holder. These improvements shall be limited to the Structural Improvements described in Section III.D.3. of the Covenants and Restrictions.

5. *Roads.* Existing roads within the Protected Property are identified in the Baseline Documentation. After Consultation with Primary Co-Holder, Owner may establish new unimproved roads and trails, or relocate unimproved roads and trails for the purpose of improving or protecting the Conservation Values, accessing or repairing fences for management purposes, reducing soil erosion, or improving the driving surface and condition. Improved Roads, unimproved roads, and trails shall not be constructed over wetland areas. Relocation of Improved Roads or construction of new Improved Roads requires Approval by Primary Co-Holder unless otherwise set forth in the Plan. The existing roadway identified in Exhibits A and B shall be used for ingress and egress to the Protected Property and parking necessary for wetland restoration and management and an active agricultural operation, described in Section III.A. of the Covenants and Restrictions, on the Protected Property.

6. *Utilities.* Except as otherwise specifically permitted under this Easement, no Utility lines shall be constructed, developed, or relocated into, on, over, under, or across the Protected Property without prior Approval by Primary Co-Holder. Primary Co-Holder may grant Approval if it determines, in its sole discretion, that any such improvement would be consistent with the objectives of this Easement. Owner shall have the right to maintain, repair, remove, or replace existing Utility improvements on the Protected Property as long as such improvement is the same size and in the same location as existing Utilities and does not harm the Conservation Values of this Easement.

7. *Fences*. Owner may repair, replace, and remove existing fences and gates anywhere on the Protected Property. Owner may erect property boundary fencing and/or predator-proof fencing, including ungulate fencing, on the Protected Property. Except for property boundary fencing, new fences and gates shall require Approval by Primary Co-Holder and shall be constructed in a manner which reasonably preserves and protects the Conservation Values.

8. *Water Resources*. Owner may maintain, enhance and develop water resources on the Protected Property for permitted wetland restoration, agricultural uses, fish and wildlife uses, domestic needs, and educational uses, in accordance with applicable Laws. Permitted uses include the following: the right to restore, enhance and develop water resources for wetland restoration and management and active agricultural operation that support the Purpose of this Easement and do not negatively impact the Conservation Values of this Easement. Development of water resources that result in ground or surface disturbance must receive Approval by Primary Co-Holder. Owner agrees that water uses are for the Protected Property, and that exportation of water outside the Protected Property is strictly prohibited.

9. *Cultural, Historical and Archaeological Sites*. Owner may maintain, preserve, and protect, and may establish appropriate buffers around any cultural, historical or archaeological sites located within the Protected Property provided that all work is conducted in accordance with the Law. Section II.B.7. of the Covenants and Restrictions describes Plan requirements for protection, and where appropriate restoration, of any archaeological, cultural, or historic features on the Protected Property.

E. Motorized Vehicles and Equipment. Owner may use motorized vehicles and equipment for permitted land management activities allowed under applicable Laws, including but not limited to, tractors, mowers, trucks, ATV's, excavators, bulldozers, graders, chainsaws, and chippers so long as such use does not harm the Conservation Values of this Easement.

F. Access by Native Hawaiians. Nothing herein shall prevent the exercise of any rights of Native Hawaiians for traditional and customary practices as may be required by Law.

IV. Prohibitions and Other Restrictions on the Protected Property

The following activities and uses are prohibited or restricted unless an exception is expressly provided below or elsewhere in this Easement:

A. Subdivision. The legal or "de facto" division, subdivision, or partitioning of the Protected Property.

B. Dwellings. The construction of any type of dwelling or use of a structure as a dwelling.

C. Uses and Activities Inconsistent with the Purpose of this Easement. Any use of, or activity on, the Protected Property which is inconsistent with the Purpose of this

Easement or which impairs the Conservation Values is prohibited, and Owner acknowledges and agrees that it will not conduct, engage in, or permit any such use or activity. The following uses or activities, shall be prohibited:

1. *Damage to Vegetation.* Any damage to native vegetation in the Protected Property, except as necessary to carry out the construction or maintenance of permitted structures or improvements, approved wetland restoration and management activities as described in the Plan, or approved activities as part of an active agricultural operation as described in the Plan.

2. *Alteration of Land.* The alteration of the surface of the Protected Property, including the excavation or removal of soil, sand, gravel, rock, lava, peat, or sod, except as reasonably necessary or appropriate to carry out approved wetland restoration and management activities described in the Plan, activities as part of an active agricultural operation as described in the Plan, the construction or maintenance of permitted structures or improvements, or other uses and activities permitted in Section III. of the Covenants and Restrictions. Any excess fill from permitted excavations on the Protected Property may be exported off of the Protected Property.

3. *Erosion or Water Pollution.* Any use or activity that causes or is likely to cause significant, verifiable soil degradation or erosion, or significant, verifiable pollution of any surface or subsurface waters.

4. *Waste Disposal.* The long-term disposal or storage of rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or Hazardous Materials on the Protected Property.

5. *Maintaining Predators.* The intentional feeding or maintaining of free-ranging predator colonies (e.g., mongooses, rats, feral dogs, or feral cats) on the Protected Property.

6. *Maintaining Ungulates.* The intentional baiting or maintaining of Ungulates on the Protected Property. Owner may erect a predator-proof fence, including ungulate fencing, for purposes of excluding ungulates from the Protected Property, as described in Section III.D.7. of the Covenants and Restrictions.

7. *Mining.* The exploration for, or development and extraction of, minerals and hydrocarbons and geothermal resources on, below or through the surface of the Protected Property.

8. *Commercial Uses.* Uses and activities not permitted under Section III or that are inconsistent with maintaining Wetland and Waterbird Habitat and that could negatively impact the Conservation Values protected by this Easement.

9. *Introduced Species.* The introduction or release of non-native invasive species (defined as any plant listed in the Hawaii-Pacific Weed Risk Assessment, or otherwise designated by the Hawaii Invasive Species Council, as high risk or potentially high risk, as it may be amended from time to time) or non-naturalized plant or animal

species, with the exception of species as described in the Plan or as needed to maintain Conservation Values, and which receive Approval by Primary Co-Holder. Desirable non-native plant species needed for an active agricultural operation may be introduced, but shall comply with the Plan and require Primary Co-Holder's Approval.

10. *Signs.* No signs or billboards or other advertising displays may be placed on the Protected Property, except signs whose placement, number and design do not diminish the scenic character of the Protected Property and which are displayed to: (1) state the name and address of the Protected Property and the names of persons responsible for the Protected Property, (2) regulate permitted on-site activities, including giving trail directions, (3) advertise the Protected Property for sale or rent, (4) post the Protected Property to control unauthorized entry or use, or (5) enhance educational activities concerning the Protected Property and Conservation Values.

11. *Environmental Laws.* The violation of, knowing allowance, or knowing continuation of any violation of any applicable Laws relating to protection of the air, water, or soil, human health and the environment ("Environmental Law") by Owner, Owner's agents, employees, business invitees, or third parties whom Owner has the right and ability to reasonably control.

12. *Easements, Leases, Contracts and Rights-of-way.* Unless otherwise allowed herein, third-party easements, leases, contracts, or rights-of-way for any period longer than ten (10) years shall not be granted across the Protected Property after the Effective Date unless such encumbrances have received advance Approval from Co-Holders. Approvals may be withheld if Co-Holders, in their sole discretion, that such encumbrance would be inconsistent with the purposes of this Easement or would affect the Conservation Values of the Protected Property. Third-party easements, leases, contracts, or rights-of-way for ten (10) years or less may be Approved through the Plan approval process.

V. Ecosystem Service Markets Participation

Owner may engage in ecosystem services markets under other programs, with prior written Approval by Primary Co-Holder, but such action must not adversely affect the interest granted under the Easement to the Co-Holders or the Co-Holders' right of enforcement or be inconsistent with or defeat the Purpose of this Easement.

VI. Rights Conveyed to Co-Holders

To accomplish the Purpose of this Easement the following rights are conveyed to Co-Holders:

A. Monitoring Easement. Co-Holders shall have the right to monitor the Protected Property to determine if a violation of this Easement has occurred.

B. Protection. Co-Holders shall have the right to enforce the provisions of this Easement so as to: (1) preserve and protect the Protected Property in perpetuity; (2) prevent any use of, or activity on, the Protected Property that will impair or interfere with

the Conservation Values or the Purpose of this Easement; and (3) enhance the Conservation Values of the Protected Property.

C. Access. Co-Holders have the right to enter the Protected Property for the purpose of making inspections to monitor compliance with this Easement, and for enforcement purposes as follows:

1. *Annual Monitoring*. Upon reasonable Notice to Owner in the manner set forth in Section VII.E. of the Covenants and Restrictions, Primary Co-Holder shall have the right to enter the Protected Property, including building interiors, in order to monitor Owner's compliance with, and otherwise enforce the terms of, this Easement, or to make a determination regarding the appropriateness of a requested use or activity. Owner acknowledges that Primary Co-Holder will visit the Protected Property annually to monitor this Easement, approve annual monitoring reports, keep all annual monitoring reports on file, and timely send a copy of the approval of each annual monitoring report to Secondary Co-Holder and Owner.

2. *Other Entry*. Where Primary Co-Holder shall, in its sole discretion, have a reasonable belief that there is a threat of violation of this Easement or a significant threat to any of the Conservation Values or the Purpose of this Easement, Primary Co-Holder has the right to enter the Protected Property, including building interiors, without Notice. However, where time permits, Primary Co-Holder shall make good faith efforts to provide Notice to Owner in the manner set forth in Section VII.E. of the Covenants and Restrictions.

3. *Public Access*. Public access shall be discussed in the Plan as described in Section II.B.11. of the Covenants and Restrictions. Public access may be limited to protect the Protected Property from invasive species introductions.

4. Primary Co-Holder shall be responsible for damage or personal injury resulting from acts or omissions of State employees while acting within the scope of their employment arising from or in connection with Primary Co-Holder's entry upon the Protected Property to the extent that the Primary Co-Holder's liability for such damage or injury has been determined by a court or otherwise agreed to by the Primary Co-Holder. Primary Co-Holder shall pay for such damages and injury to the extent that funds have been authorized and appropriated by the Legislature for such purpose, and the funds have been allocated by the executive budget process.

5. Secondary Co-Holder shall be responsible for damage or personal injury resulting from acts or omissions of County employees while acting within the scope of their employment arising from or in connection with authorized County access or other entry upon the Protected Property to the extent that the County's liability for such damage or injury has been determined by a court or otherwise agreed to by the County. The County shall pay for such damages and injury to the extent that funds have been authorized and appropriated by the Maui County Council for such purpose, and the funds have been allocated by the executive budget process.

6. *Means of Accessing the Protected Property.* Co-Holders' right to enter the Protected Property includes a right-of-way to the Protected Property.

D. Enforcement and Remedies. Co-Holders shall have the right to enforce this Easement and the covenants and restrictions herein, including, but not limited to, the right of public access to the Protected Property and the right to enjoin any use of, or activity on, the Protected Property that is inconsistent with the terms and Purpose of this Easement, an impairment to the Conservation Values, or which is prohibited by this Easement, and to require the restoration of such areas or features of the Protected Property as may be damaged by uses or activities prohibited by the provisions of this Easement. If Owner fails to comply with the terms and conditions of the Grant Award, then Primary Co-Holder may impose remedies in this Section VI.D. of the Covenants and Restrictions. For remedies due to non-compliance with the terms and conditions of the Grant Award, Owner may object and provide information and documentation challenging the suspension or termination action, in accordance with written processes and procedures published by the United States Fish and Wildlife Service.

1. *Notice of Violation, Corrective Action, Opportunity to Cure.* If either Primary or Secondary Co-Holder determines that Owner is in violation of the terms of this Easement or that a violation is threatened, Co-Holder shall give written Notice to Owner (in the manner set forth in Section VII.E. of the Covenants and Restrictions) of such violation and demand that Owner take corrective action sufficient to cure the violation (within the permitted time periods set forth in Section VI.D.2. of the Covenants and Restrictions) and, where the violation involves injury to the Protected Property or Conservation Values, to demand that Owner restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Co-Holders.

2. *Owner's Failure to Cure.* Either Primary or Secondary Co-Holder may bring an action as provided in this Section VI.D. if Owner:

(a) Fails to cure the violation within thirty (30) days after receipt of Notice thereof; or

(b) Under circumstances where the violation cannot reasonably be cured within the thirty (30) day period, fails to begin curing such violation within the thirty (30) day period or fails to continue diligently to cure such violation until finally cured.

3. *Co-Holders' Remedies.* Co-Holders' rights and remedies identified in this Easement shall apply equally in the event of either actual or threatened violations of the terms of this Easement and shall be cumulative and shall be in addition to all remedies now or hereafter existing at Law or in equity.

4. *Injunctive Relief.* Co-Holders shall be entitled to pursue and enforce any and all remedies as may be available at Law or pursuant to this Easement, including damages pursuant to HRS § 198-5 or any successor provisions then applicable. Co-Holders' rights under this Section apply equally in the event of either actual or threatened violations of the terms of this Easement. Owner agrees that Co-Holders' remedies at Law

for any violation of the terms of this Easement are inadequate and that Co-Holders shall be entitled to injunctive and other relief to which Co-Holders may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Co-Holders' remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at Law or in equity.

5. *Money Damages.* Co-Holders shall be entitled to recover money damages for any injury to the Conservation Values protected by this Easement or for the violation of the terms of this Easement. In assessing such injury, there may be taken into account, in addition to the cost of restoration, the reasonable monetary value of damage to Conservation Values, including commercial and ecosystem services, to the Protected Property, and other damages. Monetary damages collected would go toward enforcement of the Easement terms and conditions, restoration of Conservation Values, and attorneys' fees.

6. *No Bond Required.* Any action for injunctive relief or damages may be taken without Co-Holders being required to post a bond or provide other security. Owner is barred from using this provision regarding damages as an affirmative defense against Co-Holders' rights to injunctive relief.

7. *Emergency Enforcement.* If either Primary or Secondary Co-Holder, in Co-Holder's sole discretion, determines that a violation of this Easement has created circumstances requiring immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Co-Holder may pursue its remedies under this Section without prior Notice to Owner or without waiting for the period provided for cure to expire; provided, that Co-Holder shall first make a reasonable attempt under the circumstances to give verbal/telephone Notice to Owner of the violation and proposed action.

8. *Costs of Enforcement.* In the event Co-Holders must enforce the terms of this Easement, the costs to restore a violation of this Easement and Co-Holders' reasonable enforcement expenses, including attorney's fees, shall be borne by Owner. In the event that Co-Holders secures redress for a violation of this Easement without initiating or completing a judicial proceeding, the costs of such restoration and Co-Holders' reasonable expenses shall be borne by Owner. If Owner ultimately prevails in any judicial proceeding initiated by Co-Holders in good faith to enforce the terms of this Easement, each Party shall bear its own attorneys' fees and costs

9. *Co-Holders Forbearance.* Forbearance by Co-Holders to exercise their rights under this Easement in the event of any breach of any terms of this Easement by Owner, their agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Co-Holders of such term or any of Co-Holders' rights under this Easement. No delay or omission by Co-Holders in the exercise of any right or remedy upon any breach by Owner shall impair such right or remedy or be construed as a waiver.

10. *Waiver of Certain Defenses.* Owner acknowledges that it has carefully reviewed this Easement and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Owner hereby waives any claim or defense it may have against Co-Holders under or pertaining to this Easement based upon waiver, laches, estoppel, or prescription that it may have as of the Effective Date.

11. *Acts Beyond Owner's Control.* Nothing contained in this Easement shall be construed to entitle Co-Holders to bring any action against Owner to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from causes beyond Owner's control, including, without limitation, fire, flood, storm, and earth movement, or for acts of wild or feral animals or trespassers, that Owner could not have reasonably anticipated or prevented, or from any prudent action taken by Owner under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

12. *Restoration of Acts of Destruction.* Reasonable restoration of acts of destruction (more than 5 acres) to vegetation on the Protected Property that are incurred by Owner in connection with agricultural, educational or research activities, or by guests will be an obligation of Owner and must be conducted in Consultation with, and with the written Approval of the Primary Co-Holder. If Owner fails to restore the Conservation Values and the Protected Property to the satisfaction of the Primary Co-Holder within one year from the date of said destruction, or if the destruction cannot reasonably be restored within one year of the date of said destruction, and Owner fails to begin restoring said destruction within the one year period or fails to continue diligently to restore said destruction until finally restored, restoration may be done by Co-Holders. The cost of any restoration by Co-Holders shall be the responsibility of Owner.

VII. Consultation; Approval; Breach of Notice or Approval Procedures; Compliance Certificates; Notices

A. Consultation. When this Easement requires a consultation ("Consultation"), Primary Co-Holder and Owner shall meet, either in person or by telephone or via interactive technology, to discuss the proposed use or activity in good faith prior to any action being taken by Owner. The meeting shall take place within thirty (30) days of a request by Owner.

B. Approval. Whenever this Easement requires Owner to obtain Approval by Primary Co-Holder, Owner shall follow the procedures set forth in this Section VII.B. Primary Co-Holder retains the final decision-making authority regarding all requests for Approval.

1. *Approval by Primary Co-Holder.* The Owner's request for Approval by Primary Co-Holder shall be in writing. The request shall describe the nature, scope, location, timetable, identify its conformity with this Easement, and when applicable, evidence of conformity with existing land use regulations, and any other material aspect

of the proposed activity. Delivery of the request shall conform to the service methods set forth in Section VII.E.4. Primary Co-Holder may consult with the United States Fish and Wildlife Service on uses that may impact the Purpose, Conservation Values, or wetland restoration and management of the Protected Property during the Approval process. Primary Co-Holder shall have sixty (60) days from receipt of the request in which to approve, disapprove, or approve subject to modification, the request for Approval. If Primary Co-Holder reasonably requires more than sixty (60) days to respond to the notice, Primary Co-Holder may so notify Owner in writing during the sixty (60) day period and will have an additional thirty (30) days to respond.

2. *Further Information.* If Primary Co-Holder reasonably determines that it requires additional information regarding the requested use or activity to process any request for Approval, Primary Co-Holder must request in writing such information, and shall specifically identify, to a reasonable extent the information requested. Primary Co-Holder shall have sixty (60) days from receipt of all information requested in which to request additional time to respond, approve, disapprove, or approve subject to modification, the request for Approval.

3. *Alteration of Process for Approval by Primary Co-Holder.* The Parties may agree to alter the timing and approach for Approval; however, any such agreement must be in writing signed by both Owner and Primary Co-Holder.

4. *Withholding Approval.* In the case of withholding of Approval, Primary Co-Holder shall notify Owner in writing with reasonable specificity of the reasons for withholding of Approval.

5. *Failure to Respond.* Primary Co-Holder shall make reasonable efforts to timely respond to Owner's requests for approval within sixty (60) days. If Primary Co-Holder fails to timely respond to Owner's request, the proposed enterprise, use or activity shall automatically be deemed a denial. The denial shall be considered procedural and not substantive.

6. *Standard for Approval.* Primary Co-Holder shall not unreasonably withhold Approval of a proposed use or activity requiring Approval under this Easement where the proposed activity or use will not be inconsistent with the Purpose of this Easement or impair the Conservation Values.

7. *Dispute.* If a dispute arises between Owner and Co-Holders concerning an Approval request or any procedures in this Section VII.B., either Party may request a meeting. Such meeting shall be held either in person or by telephone or via interactive technology, unless otherwise agreed to by the Parties. The meeting shall take place within thirty (30) days of the meeting request, at which time the Parties shall make a good faith effort to resolve the dispute.

C. Breach of Notice or Approval Procedures. If Owner undertakes any action for which Approval is required under this Easement, but without first obtaining such Approval, Owner shall be deemed to be in material breach of this Easement and Co-Holders shall

be entitled to such rights or remedies as may be available under Section VI.D. of this Easement. Notwithstanding the foregoing, Co-Holders may permit Owner to cure the breach by submitting after-the-fact communications and documents showing the conformity of such activity with this Easement and the Law, or by showing, despite a lack of conformity with this Easement or the Laws, that the action was justified because of an Emergency.

D. Compliance Certificates. Primary Co-Holder, as the primary steward and enforcer of this Easement, shall within sixty (60) days of a request by Owner, execute and deliver to Owner, or to any party designated by Owner, any document, including an estoppel certificate, that certifies Owner's compliance or lack thereof with obligations of Owner contained in this Easement and otherwise evidences the status of this Easement. Such certificate shall be binding upon Co-Holders. Such certification shall be limited to the condition of the Protected Property as of the most recent inspection carried out by Primary Co-Holder. If Owner requests more current documentation, Primary Co-Holder shall conduct an inspection, at Owner's expense, within sixty (60) days of Owner's written request.

E. Notices. Owner shall notify Primary Co-Holder, Secondary Co-Holder, or Co-Holders as required under the terms of this Easement, whenever prior Notice or Approval, or both, is required, and such Notice shall be provided no less than thirty (30) days prior to undertaking the use or activities that requires the Notice or Approval.

Any notice, demand, request, consent, or communication (collectively, a "Notice" or "Notices") that either Party desires or is required to give the other shall be in accordance with the following procedures.

1. In ordinary circumstances, Notice may be in writing and either served personally or sent by certified mail, return receipt requested, postage prepaid, and addressed to the appropriate Party, at the appropriate address set forth below in this Section. Where Notice is served by certified mail, the receipt of notice shall be considered to have occurred on the sixth day after mailing. The serving Party may also attempt to, in addition, serve Notice pursuant to the "emergency circumstances" provisions set forth immediately below.

2. In emergency circumstances (where Notice needs to occur in 48 hours or less), the Party shall make best efforts to deliver the Notice in writing and either serve it personally, or by email or by facsimile transmission. Where Notice is served by email, the Party served the Notice shall, in addition, make concurrent attempts to notify the other Party by telephone of the Notice, and attempt to receive oral or written confirmation from the Party or the Party's attorney that the Notice has been received.

3. Notices may also be served by any other method mutually agreed to between the Parties.

4. Notices shall be served at the following addresses or to such other address as any of the Parties from time to time shall designate by written Notice to the

other:

To Owner:
Moloka'i Land Trust
Attn: William "Butch" Haase, Executive Director
P.O. Box 1884
Kaunakakai, HI 96748
Phone: (808) 366-6675
Fax (808) 553-3950
Email: butch@molokailandtrust.org

To Primary Co-Holder:
State of Hawai'i, Department of Land and Natural Resources
Attn: Administrator, Division of Forestry and Wildlife
Post Office Box 621
Honolulu, Hawai'i 96809
Phone (808) 587-0166
Fax (808) 587-0160
Email: dlnr@hawaii.gov

With a copy to:
Department of the Attorney General
State of Hawai'i
Land Division
465 South King Street, Room 300
Honolulu, Hawai'i 96813

To Secondary Co-Holder:
County of Maui
Property Management Division
200 South High Street
Wailuku, Hawai'i 96793
Fax (808) 270-7831

With copy to:
County of Maui
Office of the Corporation Counsel
200 South High Suite, 3rd Floor
Wailuku, Hawaii 96793

VIII. Costs; Legal Requirements; Liabilities and Insurance; Taxes; Warranty and Remediation; Control; and General Indemnifications

A. Costs, Legal Requirements, Liabilities and Insurance. Owner shall procure and maintain, at its cost and expense and acceptable to Owner, in full force and effect throughout the term of this Easement, comprehensive general liability insurance, or its equivalent, with an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A-" or other comparable and equivalent industry rating, in an amount of at least \$1,000,000.00 for each occurrence and \$2,000,000.00 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The policy or policies of insurance shall name the State of Hawai'i as an additional insured and a copy shall be filed with the State of Hawai'i, Department of Land and Natural Resources. The insurance shall cover the entire premises, including all Structural Improvements and all Improved Roads, unimproved roads, and trails on or adjacent to the premises in the use or control of Owner.

Owner, prior to entry and use of the premises or within fifteen (15) days from the effective date of this Easement whichever is sooner, shall furnish Primary Co-Holder with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire term of this Easement, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or non-renewed until after thirty (30) days written notice has been given to Primary Co-Holder. Primary Co-Holder may at any time require Owner to provide Primary Co-Holder with copies of the insurance policy(s) that are or were in effect during the term of this Easement.

Primary Co-Holder shall retain the right at any time to review the coverage, form, and amount of the insurance required by this Easement. If, in the opinion of Primary Co-Holder, the insurance provisions in this Easement do not provide adequate protection for Primary Co-Holder, Primary Co-Holder may require Owner to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. Primary Co-Holder's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. Primary Co-Holder shall notify Owner in writing of changes in the insurance requirements and Owner shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with Primary Co-Holder incorporating the changes within thirty (30) days of receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Owner's liability under this Easement nor to release or relieve Owner of the indemnification provisions and requirements of this Easement. Notwithstanding the policy(s) of insurance, Owner shall be obligated for the full and total amount of any damage, injury, or loss caused by Owner's negligence or neglect connected with this Easement.

It is agreed that any insurance maintained by Primary Co-Holder will apply in excess of, and not contribute with, insurance provided by Owner's policy.

B. Taxes. Owner shall timely pay all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "Taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Co-Holders with satisfactory evidence of payment upon request. If Owner fails to pay any Taxes when due, Co-Holders are authorized, but in no event obligated, to make or advance such payment of Taxes upon three (3) days prior written Notice to Owner, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the Taxes or the accuracy of the bill, statement or estimate, and the obligation created by such payment shall bear interest until paid by Owner at the maximum rate allowed by Law in the State.

C. Warranty and Remediation.

1. Owner warrants that as of the Effective Date, to Owner's Knowledge, there are no apparent or latent defects in or on the Protected Property.

2. Owner warrants that as of the Effective Date, to Owner's Knowledge, Owner and the Protected Property are in compliance with all Laws applicable to the Protected Property and its use.

3. Owner warrants that as of the Effective Date, there is no pending or to Owner's Knowledge, threatened litigation affecting the Protected Property or any portion of the Protected Property that will materially impair the Conservation Values of any portion of the Protected Property.

4. Owner warrants that, to Owner's Knowledge, Owner is in compliance with all Environmental Laws applicable to the Protected Property as of the Effective Date. Owner covenants to operate and maintain the Protected Property from and after the Effective Date in compliance with all applicable Environmental Laws. Owner warrants that Owner has received no notices from any Governmental Authority of any violation or alleged violation of, non-compliance or alleged noncompliance with, or any liability under any Environmental Law relating to the operations or conditions of the Protected Property as of the Effective Date. Owner warrants that, as of the Effective Date, there has been no release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property exceeding regulatory limits.

5. Owner shall indemnify and hold harmless Co-Holders against all costs, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by a prior owner of the Protected Property. Owner's indemnification obligation shall not be affected by authorizations provided by Co-Holders to Owner with respect to the Protected Property.

6. If at any time, there occurs, or has occurred, a release in or on the

Protected Property of a Hazardous Material in violation of Laws, Owner shall, at Owner's own expense, promptly take all actions as shall be required under applicable Environmental Law for the clean-up of any and all portions of the Protected Property, as the case may be, so that a No Further Action (NFA)/No Further Remediation (NFR) Letter can be issued by the State of Hawai'i Department of Health, or its successor agency, acknowledging the Hazardous Substance has been abated to the satisfaction of the State of Hawai'i Department of Health.

D. Control. Owner shall not itself perform or knowingly permit any Prohibited Activity to be performed by Owner, its agents, employees, invitees, or those within Owner's ability to reasonably control. Owner will take reasonable steps to prevent, halt and/or enjoin any Prohibited Activity by a third party. Nothing in this Easement shall be construed as giving rise to any right or ability in Co-Holders to exercise physical or managerial control over the day-to-day operations of the Protected Property, or otherwise become an "operator" with respect to the Protected Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, or any other Environmental Law.

E. General Indemnifications. Owner agrees to release and hold harmless, indemnify, and defend Co-Holders and their departments, divisions, members, directors, officers, employees, agents, invitees, and contractors, and each of the personal representatives, heirs, successors, and assigns of such parties (collectively "Co-Holders' Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with:

1. Owner's failure to perform the obligations and covenants set forth in this Easement;

2. Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on the Protected Property, unless due to the negligence of any of the Indemnified Co-Holders' acting within the scope of their authority;

3. In the case the Co-Holders shall, without any fault on the Co-Holders' part, be made a party to any litigation commenced by or against Owner; and

4. The obligations, covenants, representations, and warranties in Sections VIII.A. through VIII.E. of the Covenants and Restrictions.

IX. Transfer, Sale, Lease, or Devise of Protected Property; Condemnation

A. Transfer, Sale, Lease, or Devise of Protected Property. Owner agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which Owner divests itself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest. Owner further agrees to give written Notice to Co-Holders of the proposed transfer of any such interest at least thirty (30) days prior to the date of such transfer in the manner provided in Section VII.E of the Covenants

and Restrictions. The Notice to Co-Holders shall include the name, address, and telephone number of the transferee or the transferee's representative. Transfer of the Protected Property does not extinguish or alter any of the provisions of this Easement, which runs with the Land. The failure of Owner to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

Within three (3) years of a conveyance or devise, the new landowner shall be required to submit a management plan, according to the terms and conditions in Section II.A. of the Covenants and Restrictions and consistent with the Conservation Values of the Protected Property.

The Protected Property has been acquired by Owner with funds from the NCWCGP funds and the Open Space Fund. Upon dissolution of Owner, title to or interest in this property shall be conveyed to the State of Hawai'i Department of Land and Natural Resources, County of Maui, another government agency or to another qualified land conservation organization approved by the Maui County Council and Board of Land and Natural Resources ("Board"). Any conveyance to the DLNR shall be done *gratis* and MLT shall be responsible for any and all fees and costs associated with the conveyance. Furthermore, any transfer of the Property shall comply with United States Fish and Wildlife Service National Coastal Wetlands Conservation Grant program rules. The Board shall receive prior approval of any disposal or encumbrance from the Regional Director of the United States Fish and Wildlife Service.

B. Condemnation. If Owner or Co-Holders are notified of a proposal to condemn all or any portion of the property subject to this Easement and Co-Holders must immediately be notified.

If all or any of the Protected Property shall be taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Owner and Co-Holders shall act jointly to recover the full value of the interest in the Protected Property subject to the taking or in lieu purchase and all direct or incidental damages resulting from the taking or in lieu purchase. All expenses reasonably incurred by Owner and Co-Holders in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Except as provided by applicable Law, Owner and Co-Holders agree that Co-Holders' share of the balance of the amount recovered shall be as determined as described in Section X.E.

The failure of Owner to perform any act required by this Section IX.B. shall not impair the validity of this Easement or limit its enforceability in any way.

X. Limitations on Amendment; Funding by Secondary Co-Holder; Assignment; Extinguishment

The provisions of this section shall apply notwithstanding, and in addition to, any other conditions or limitations that may be imposed on the amendment, assignment, or

extinguishment of this Easement

A. Limitations on Amendment. This Easement may be amended only with the written approval of Co-Holders and they are under no obligation to agree to any amendment or consult or negotiate regarding any amendment. An amendment may be approved by the Co-Holders only if it will: (1) serve the public interest and not diminish the benefits provided to the public; (2) have a beneficial or neutral effect on the Conservation Values protected by this Easement; (3) be consistent with the Purpose of this Easement; (4) not confer an economic benefit on private persons (private inurement or private benefit in the case of a charitable organization holder); (5) be consistent with the intent of the original Owner of this Easement and any funding entities; (6) not diminish the perpetual duration of this Easement or negatively affect the status or rights of the Co-Holders, or the United States with regard to this Easement; and (7) otherwise comply with all federal, state and local laws and regulations.

Amendments to make boundary line adjustments are permitted only in the case of technical errors made in the survey or legal description.

Any approved amendment must be recorded in the State of Hawai'i Bureau of Conveyances by Owner and a copy of the recorded amendment must be provided to Co-Holders within thirty (30) days of recordation. Any purported amendment that is recorded without the prior written approval of Co-Holders will be null and void.

B. Provisions required by the County of Maui. *Owner and the County of Maui have entered into agreements relating to the Property, identified as "Grant Agreement of County Funds, Moloka'i Land Trust (Grant No. G5988)" and "Amendment to Grant Certification (Grant No. G5988)", hereinafter "Grant Agreement G5988 ". Special Condition 2 of Grant Agreement G5988 requires compliance with MCC Section 3.88.070B, and specifically states that Owner shall include the following additional terms in this Conservation Easement, which are incorporated below and made a part hereof:*

1. The Protected Property has been acquired by Owner with funds from the Open Space Fund described in Section II.E of the Recitals. Upon dissolution of Owner, title to or interest in this property shall be conveyed according to terms in Section IV.A of the Covenants and Restrictions;

2. The general public shall be allowed reasonable access to this Property, provided that access may be limited or controlled for cultural and environmental resource protection and public safety, according to Section III.B of the Covenants and Restrictions; and

3. The Protected Property shall be managed for Purposes, as described in Section I of the Covenants and Restrictions, and this Easement prohibits uses that are inconsistent with that Purpose, as described in Section IV.C of the Covenants and Restrictions.

C. Assignment (Transfer). If Primary Co-Holder ever ceases to exist or is no longer willing and able to hold this Easement for the purpose for which it was created or carry

out the responsibility imposed on the Primary Co-Holder by the terms of this Easement, the Primary Co-Holder must identify and select an appropriate entity to which this Easement must be transferred. Subject to this Section X.C., this Easement may be transferred or assigned by Primary Co-Holder only (1) to a Governmental Authority that (i) is eligible to hold this Easement under the NCWCGP and Open Space Grant, (ii) is a "qualified organization" within the meaning of Section I 70(h) of the Code, has a Hawaii presence, and is, in addition, authorized to acquire and hold conservation easements under HRS Chapter 198, (iii) is willing and able to hold this Easement for the Purpose for which it was created, and (iv) expressly agrees to assume the responsibility imposed on the holder by the terms of this Easement; and (2) with the consent of the Primary Co-Holder. The Parties recognize and agree that the benefits of this Easement are in gross and assignable in whole but not in part. In the event of any transfer of this Easement or of any of its monitoring and enforcement rights hereunder, Primary Co-Holder shall ensure that United States Fish and Wildlife Service and Owner are provided at least ninety (90) days prior written Notice. Transfer of the Easement does not extinguish or alter any of the provisions of this Easement, which runs with the Land.

D. Succession. If at any time it becomes impossible for Primary Co-Holder to ensure compliance with the covenants, terms, conditions and restrictions contained in this Conservation Easement and a successor organization has not been named as provided in Section X.C of the Covenants and Restrictions, or if Primary Co-Holder shall cease to exist or to be a qualified organization under Section 170(h) of the Code or to be authorized to acquire and hold conservation easements under HRS Chapter 198, then Primary Co-Holder's rights and obligations under this Easement shall vest in the Secondary Co-Holder, which will automatically succeed as the primary holder, and assume all rights and responsibilities of Primary Co-Holder. The new Primary Co-Holder would then be both Primary Co-Holder and Secondary Co-Holder. The new Primary Co-Holder can:

Remain as Primary Co-Holder and Co-Holder in which case the Holder responsibilities would combine;

Assign another qualified organization to serve as Primary Co-Holder, and remain as Secondary Co-Holder; or

Provide the former Primary Co-Holder an opportunity to cure, and once cured, reassign as Primary Co-Holder, and remain as Secondary Co-Holder.

If at any time it becomes impossible for Secondary Co-Holder to ensure compliance with the covenants, terms, conditions and restrictions contained in this Conservation Easement and a successor organization has not been named as provided in Section X.C in the Covenants and Restrictions, or if Secondary Co-Holder shall cease to exist or to be a qualified organization under Section I 70(h) of the Code or to be authorized to acquire and hold conservation easements under HRS Chapter 198, then Co-Holder's rights and obligations under this Easement shall vest in such organization as a court having jurisdiction shall direct, pursuant to the applicable Hawaii law and the Code and with due regard to the Purpose of this Conservation Easement.

E. Extinguishment. This Easement cannot be extinguished and shall be perpetual in duration in accordance with Section 198-2(b), Hawaii Revised Statutes.

Pursuant to 2 CFR § 200.311, when the Protected Property is no longer needed for the originally authorized purpose, Owner must obtain disposition instructions from the Primary Co-Holder. The Primary Co-Holder is required to consult with the United State Fish and Wildlife Service prior to issuing disposition instructions.

Where Owner retains title to the Protected Property but this Easement is extinguished, Owner shall compensate the United States Fish and Wildlife Service for its proportionate share (up to sixty-one (61) percent of the total cost of acquisition). The amount paid to the United States Fish and Wildlife Service will be computed by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. Where Owner is disposing of the Protected Property acquired or improved with NCWCGP and acquiring replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

Where Owner sells the Protected Property, Owner shall compensate the United States Fish and Wildlife Service. The amount due to the United States Fish and Wildlife Service will be calculated by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the United States Fish and Wildlife Service account has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When the Owner is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.

Where the title is transferred to the United States Fish and Wildlife Service or to a third party designated/approved by the United States Fish and Wildlife Service. Owner is entitled to be paid an amount calculated by applying the Owner's percentage of participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property.

Secondary Co-Holder's "proportionate share" is XXX%, which was determined by dividing the Secondary Co-Holder's contribution to the acquisition of this Easement by the value of this Easement, on the Effective Date, and expressing the result as a percentage. The "value of this Easement or the portion thereof that is extinguished" shall be the value of such interest immediately before the extinguishment as determined using the before and after or similar appraisal method in an appraisal that meets the Uniform Appraisal Standards for Federal Land Acquisitions and is completed by a certified general appraiser approved by Co-Holders and the United States Fish and Wildlife Service.

Inaction or silence by Co-Holders or the Secretary shall not be construed as approval of an extinguishment or as an abandonment of this Easement in whole or in part. Any purported extinguishment executed without the prior written consent of Co-Holders and the Secretary will be null and void. The provisions of this paragraph shall

survive any partial extinguishment.

XI. General Provisions

A. Reasonableness Standard. Owner and Co-Holders shall follow a reasonableness standard and shall use their best efforts to make any determinations that are necessary or are contemplated to be made by them (either separately or jointly) under this Easement in a timely manner and shall cooperate with one another and shall take all other reasonable action suitable to that end.

B. Controlling Law. The interpretation and performance of this Easement shall be governed by and construed in accordance with the laws of the State of Hawai'i

C. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed to fulfill the Purpose of this Easement and the policy and purpose of HRS Chapter 198. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

D. Severability. If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.

E. Entire Agreement. This instrument sets forth the entire agreement of the Parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements between Owner and Co-Holders relating to the Protected Property. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section X.A.

F. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Owner's title in any respect.

G. Successors and Assigns; Runs with Land. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the Parties to this Easement and their personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.

H. Termination of Rights and Obligations. A Party's rights and obligations under this Easement terminate upon transfer of the Party's interest in this Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

I. Counterparts. The Parties may execute this instrument in two or more counterparts. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced,

the recorded counterpart shall be controlling.

J. Effective Date. Owner and Co-Holders intend that the restrictions arising hereunder take effect on the day and year this Easement is recorded in the State of Hawai'i Bureau of Conveyances after all required signatures have been affixed hereto. Either Co-Holders may re-record this instrument at any time as may be required to preserve its rights in this Easement.

K. No Merger. Owner and Co-Holders agree to take whatever steps are necessary to ensure that merger of the fee and Easement estates does not occur in order to ensure the continued viability of this Easement.

L. Calendar Days. Unless otherwise expressly stated herein, all references to a specific number of days shall mean and refer to that specific number of calendar days.

M. Exhibits. The following Exhibits are attached hereto and made a part of this Easement:

Exhibit A: Legal Description of the Protected Property

Exhibit B: Map of the Protected Property

Exhibit C: Baseline Documentation Report

XII. Glossary

The definitions below shall have the same meaning as the reference source, where provided, and in all other cases, shall be given their natural, commonly accepted definitions. Some definitions for other terms used in this Easement are set forth in other parts of this Easement, and not included here.

1. "Approval" or "Approve" means an approval by Primary Co-Holder required prior to certain Owner actions, as identified throughout this Easement, subject to the procedures set forth in Section VII.B of the Covenants and Restrictions.
2. "Baseline Documentation" has the meaning set forth in Section II.C. of the Recitals.
3. "Building Envelope" has the meaning set forth in Section III.D.3 of the Covenants and Restrictions.
4. "Code" means the Internal Revenue Code of 1986, as now enacted or hereinafter amended, and the regulations thereunder.
5. "Co-Holders" mean the Primary Co-Holder and Secondary Co-Holder.
6. "Co-Holders' Parties" has the meaning set forth in Section VIII.E. of the Covenants and Restrictions.

7. "Conservation Values" has the meaning set forth in Section II.B. of the Recitals and Section I of the Covenants and Restrictions.
8. "Consultation" has the meaning set forth in Section VII.A. of the Covenants and Restrictions.
9. "County" means the County of Maui.
10. "Easement" has the meaning set forth in the Preamble.
11. "Ecosystem Services Market" means institutions or settings in which numerous individuals voluntarily trade permits or credits of an ecosystem service, typically using money as the means of exchange.
12. "Effective Date" has the meaning set forth in Section XI.J. of the Covenants and Restrictions.
13. "Emergency" means a sudden and serious event or an unforeseen change in circumstances that calls for immediate action to avert, control, or remedy harm.
14. "Environmental Law" or "Environmental Laws" means any and all federal, state, or county laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any Governmental Authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, Hazardous Materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.
15. "Governmental Authority" means any federal, state, county, or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.
16. "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which now or hereafter defined, listed, or otherwise classified, pursuant to any federal, state, or local law, regulation, or requirement as, toxic or dangerous to the air, water, or soil, or in any other way harmful or threatening to human health or the environment.

17. "HRS Chapter 198" means the law governing conservation easements in Hawai'i, currently codified at chapter 198 of the HRS, or as hereinafter amended, or any successor provision(s) hereinafter applicable.
18. "HRS" means the Hawai'i Revised Statutes.
19. "Improved Road" means any road that is surfaced with an impermeable material (e.g., concrete, asphalt, macadam, or chip seal).
20. "Land" has the meaning set forth in Section I of the Recitals.
21. "Law" or "Laws" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.
22. "Limited Improvement Area" means that area or those areas so identified on Exhibit B, within which Owner may exercise those reserved rights, as set forth in Section III.D.3, with respect to construction and other improvements permitted within such Limited Improvement Area.
23. "Notice" or "Notices" has the meaning set forth in Section VII.E. of the Covenants and Restrictions.
24. "Owner" means Molokai Land Trust and its permitted successors and assigns as owner of the fee simple interest in the Protected Property or any portion thereof has the meaning set forth in the Preamble.
25. "Party" has the meaning set forth in the Preamble.
26. "Parties" has the meaning set forth in the Preamble.
27. "Plan" means the Management Plan which has the meaning set forth in Section II.A. of the Covenants and Restrictions.
28. "Primary Co-Holder" means the State of Hawai'i, through its Board of Land and Natural Resources, and its representatives, successors, and assigns, subject to the assignment and succession limitations set forth in Section X of the Covenants and Restrictions. Primary Co-Holder has primary monitoring responsibility described in Section VI.C.1. of the Covenants and Restrictions and is responsible for all final decisions for all requests for Approval.
29. "Prohibited Activity" means activity inconsistent with the purpose of the Easement.
30. "Protected Property" has the meaning set forth in Section I of the Recitals. This Easement encumbers the Protected Property as described and depicted in Exhibits A and B, respectively.
31. "Purpose" has the meaning set forth in Section I of the Covenants and Restrictions.

32. "Secondary Co-Holder" means the County of Maui, a municipal corporation duly organized and existing under the laws of the State of Hawai'i.
33. "State" means the State of Hawai'i.
34. "Structural Improvement" means any permanent or temporary building or structure with an impervious surface, and any non-affixed storage, water, and fuel tanks. Impervious surfaces include, without limitation, the footprint of buildings, structures and/or improvements, roofs, or concrete pads. Structural footprints shall be measured along the outermost perimeter of such structures, at ground level or above, include any attached or associated decks, steps, porches, or other enclosed or open-air attachments.
35. "Taxes" has the meaning set forth in Section VIII.B. of the Covenants and Restrictions.
36. "Ungulate" or "Ungulates" means a hoofed mammal.
37. "Utility" or "Utilities" means, without limitation, electric power lines and facilities, storm sewer facilities as required by local or state government, telephone and communications cable systems, and their respective appurtenant facilities.

Executed and effective the day and year first above written.

[The remainder of this page is intentionally left blank. Signature pages follow.]

TO HAVE AND TO HOLD, the said Conservation Easement, unto the said Co-Holders and its successors and assigns forever.

IN WITNESS WHEREOF, the STATE OF HAWAI'I, by its Board of Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the Parties hereto have caused these presents to be executed the day, month and year first above written.

Approved by the Board
of Land and Natural
Resources at its meeting
held on _____, 20__.

MOLOKA'I LAND TRUST,
a Hawai'i nonprofit organization

By: _____

Its: _____

"President"

By: _____

Its: _____

"Vice-President"

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

THE STATE OF HAWAI'I

Cindy Y. Young
Deputy Attorney General
Dated: _____

By: _____
Chairperson
Board of Land and Natural Resources
"Primary Co-Holder"

COUNTY OF MAUI

RICHARD J. BISSEN, JR.
Its: Mayor

RECOMMEND APPROVAL:

MARIA ZIELINSKI
Acting Finance Director
County of Maui

APPROVED AS TO FORM
AND LEGALITY:

KRISTINA C. TOSHIKIYO
Deputy Corporation Counsel
County of Maui

County of Hawai'i)
STATE OF HAWAI'I) SS.
COUNTY OF MAUI)

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Notary Public, State of Hawai'i
Printed Name: _____
My Commission Expires: _____

<u>NOTARY CERTIFICATION STATEMENT</u>	
Document Identification or Description:	_____
Document Date:	_____
No. of Pages:	_____
Jurisdiction (in which notarial act is performed):	_____
Signature of Notary	Date of Notarization and

Certification Statement

(Notary Stamp or Seal)

Printed Name of Notary

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

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Notary Public, State of Hawai'i
Printed Name: _____
My Commission Expires: _____

<u>NOTARY CERTIFICATION STATEMENT</u>	
Document Identification or Description: _____	
Document Date: _____	
No. of Pages: _____	
Jurisdiction (in which notarial act is performed): _____	
Signature of Notary	Date of Notarization and Certification Statement

Printed Name of Notary (Notary Stamp or Seal)

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

On this _____ day of _____, 202_, before me personally appeared RICHARD J. BISSEN, JR, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the County of Maui, a municipal corporation of the State of Hawai'i, that the seal affixed to the foregoing instrument is the corporate seal of said County of Maui, the foregoing instrument was signed and sealed on behalf of the County of Hawai'i by authority given to said Mayor of the County of Maui by pursuant to Sections 7-5.11 and 9-18 of the Revised Charter of the County of Maui (1983), as amended, and said RICHARD J. BISSEN, JR. acknowledged said instrument to be the free act and deed of said County of MAUI.

Notary Public, State of Hawai'i
Printed Name:
My commission expires:

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

Doc. Date: _____ or " Undated at time of
notarization.

No. of Pages: _____ Jurisdiction: Third Circuit

Signature of Notary
and

Date of Notarization

Certification

Statement

Printed Name of Notary

EXHIBIT "A"

[Legal Description of the Protected Property]

EXHIBIT "B"

[Map of the Protected Property]

EXHIBIT "C"

[Baseline Documentation Report]

EXHIBIT "A"
LEGAL DESCRIPTION

All of that certain parcel of land (portion of the land described in and covered by Land Patent Grant Number 8814 to Joel K. Kahinu) situate, lying and being at Kahanui, District of Kahanui, Island of Molokai, County of Maui, State of Hawaii, and thus bounded and described:

Beginning at a "+" on stone at stonewall and at the North corner of this lot and the East corner of Lot 1, the coordinates of said point referred to Government Survey Triangulation Station "PUU-O-KAHANUI", being 1121.3 feet South and 1279.8 feet West, as shown on Government Survey Registered Map No. 1096, and running by true azimuths:

1. 295° 16' 1125.3 feet along "Naiwa" L. C. Aw. 11216 to Kekauonohi to an ---- on stone;
2. 13° 39' 562.3 feet along "Naiwa" L. C. Aw. 11216 to Kekauonohi to an + on stone;
3. 26° 39' 1124.0 feet along L. C. Aw. 7755 to Kalauaokamano along fish pond wall and across sand to a + on stone at sea beach;
4. Thence along high-water mark to a point on beach, the direct azimuth and distance being 107° 42' 1056.0 feet;
5. 187° 00' 700.0 feet to and along Lot 1 to a point on the West side of Punalau Pond;
6. 208° 00' 1150.0 feet along Lot 2 to the point of beginning and containing an area of 50 acres, more or less.

Excepting and reserving therefrom the public road across the above described parcel of land.

And further excepting and reserving therefrom, that portion of said 50-acre parcel previously conveyed out by Deed dated January 8, 1959, recorded in Liber 3557 at Page 76, containing an area of 5.00 acres, more fully described as follows:

Beginning at the North corner of this piece of land being also the North corner of Grant 8814 to Joel K. Kahinu, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU-O-KAHANUI", being 1121.3 feet South and 1279.8 feet West, thence running by true azimuths measured clockwise from true South:

1. 295° 16' 200.0 feet along "Naiwa" L. C. Aw. 11216 to Kekauonohi;
2. 25° 16' 975.50 feet along the remainder of Grant 8814 to Joel K. Kahinu;
3. 115° 16' 246.57 feet along same;
4. 208° 00' 976.61 feet along Grant 8813 to Otto W. Kahinu to the point of beginning and containing an area of 217,815 square feet, or 5.000 Acres;

Excepting and reserving therefrom the public road across this piece of land;

Being the premises acquired by:

WARRANTY DEED

Recorded : _____, 202__ in the Bureau of Conveyances, State of Hawaii, as Document No.

Grantor : MOLOKA'I FISHERIES, INC., a Hawaii corporation

Grantee : MOLOKA'I LAND TRUST, a Hawaii nonprofit corporation

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EXHIBIT "B"

MAP OF PROTECTED PROPERTY

