

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

August 28, 2009

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

Land Board Members:

SUBJECT: Amend Prior Board Action of March 13, 2009, item D-5: "Approve in Principle to Set Aside to the Department of Land and Natural Resources, Division of Forestry and Wildlife, for Waimanalo Forest Reserve Purposes; Rescind Prior Approval dated June 26, 1992, Item F-9; Authorize the Division of Forestry and Wildlife to Conduct an After-the-fact Public Hearing Relating to Waimanalo Forest Reserve at Kailua, Kaneohe, and Waimanalo, Koolaupoko, Oahu, Tax Map Key (1) 4-1-008:013, (1) 4-1-010:074, 091, & 093 4-2-005:001, and 4-2-010: portion of 001."

Acceptance of Hearing Officer's Report on a Public Hearing for Five Proposed Changes to the Forest Reserve System on Oahu.

Approval and Recommendation to the Governor for an Executive Order to Amend Governor's Proclamation dated January 3, 1923 Changing the Status of the Lands within Waimanalo Forest Reserve Defined as TMK (1) 4-2-010: portion of 001, Comprising Approximately 1,544 acres, from Private to Public (State) Ownership Under the Control and Management of the Department of Land and Natural Resources Division of Forestry and Wildlife.

Approval and Recommendation to the Governor the Issuance of Executive Orders for: 1) Addition of approximately 456 acres to Waimanalo Forest Reserve, Koolaupoko District, Oahu; 2) Removal of approximately 28 acres from Pupukea Forest Reserve, Koolauloa District, Oahu; and 3) Set Aside 28 acres to the Department of Land and Natural Resources Division of State Parks, Koolauloa District, Oahu.

Confirm and Adopt Prior Board Action and Recommend to the Governor the Issuance of Executive Orders for: 1) Cancellation of Governor's Executive Order 4172, dated August 28, 2006 for the Makua-Keaau Public Hunting Area, Waianae District, Oahu and 2) Addition of approximately 584 acres to Makua-Keaau Forest Reserve, Waianae District, Oahu.

Background: The following items were previously considered and recommended by the Board of Land and Natural Resources:

1. Board meetings of October 14, 1994, item F-9 and March 13, 2009, item D-5: The addition of approximately 209 acres (TMK (1) 4-2-005:001) to the Waimanalo Forest Reserve, Koolauapoko District, Oahu, with an additional overlay designation of Mount Olomana State Monument was approved in 1994 (Exhibit A). This set aside was formally executed via Executive Order No. 3652 dated April 26, 1995, but documentation of an associated public hearing was not found in Division of Forestry and Wildlife records. The Board approved an after-the-fact public hearing for this forest reserve addition at its March 13, 2009 meeting under agenda item D-5.

Board meeting of March 13, 2009, item D-5: Addition of approximately 2000 acres to the Waimanalo Forest Reserve, Koolauapoko District, Oahu, consisting of TMK (1) 4-1-008:013, (1) 4-1-010:074, 091, & 093, and (1) 4-2-010: portion of 001 (Exhibit B). This represents a proposed transfer of unencumbered lands from Land Division to the Division of Forestry and Wildlife (Division). Following the Board's action on March 13, 2009, item D-5, the Division determined that pursuant to Governor's Proclamation dated January 3, 1923, entitled "Waimanalo Forest Reserve, Proclamation of Forest Reserve in the District of Koolauapoko, City and County of Honolulu, Island of Oahu, Territory of Hawaii," TMK (1) 4-2-010: portion of 001 comprising approximately 1,544 acres (Exhibit B) lies within the current boundary of Waimanalo Forest Reserve.

The Division notes that due to a practice of the Territorial Government in the early 20th century, both public and private lands were sometimes included within proclaimed forest reserve boundaries. As a result, the lands that now comprise TMK (1) 4-2-010: portion of 001 were included in the January 3, 1923 Proclamation that established Waimanalo Forest Reserve as private lands. This private acreage was included in the area condemned by the State in 1990 for watershed purposes. Between 1990 and the present, the Department assumed that these lands had unencumbered status. The portion of parcel 001 discussed above is an example of this practice, and while its status has changed to State ownership, it technically still lies within the boundary of Waimanalo Forest Reserve.

Rather than representing a potential addition of approximately 2,000 acres to the Forest Reserve System as requested of the Board on March 13, 2009, under item D-5 (Exhibit C), staff request that the Board **amend** item D-5 by identifying approximately 1,544 acres of parcel 001 as a set-aside from Land Division to the Division of Forestry and Wildlife and reducing the area recommended for addition to Waimanalo Forest Reserve from approximately 2,000 to 456 acres. In order to accomplish this, staff now requests that the Board approve of and recommend to the Governor an Executive Order to amend Governor's Proclamation dated January 3, 1923 for the currently existing Waimanalo Forest Reserve changing the status of the lands defined as TMK (1) 4-2-010: portion of 001, comprising approximately 1,544 acres, from private to public (State) ownership. These proposed amendments would return a majority of parcel 001 to the Division for

management under its original purpose as forest reserve as well as add parcels 013, 074, 091, and 093 to the Forest Reserve System.

A portion of TMK (1) 4-2-010:001 is currently encumbered by Revocable Permit No. 7242 issued to the Luluku Banana Growers Cooperative by Land Division. The area covered by this or a similar future revocable permit would be excluded from the proposed set-aside to DOFAW and remain under Land Division jurisdiction.

2. Board meeting of May 25, 2007, item D-3: Withdrawal of approximately 28 acres, consisting of TMK (1) 5-9-006:003 & 007 from Pupukea Forest Reserve, Koolauloa District, Oahu (Exhibit D). These two parcels, historically referred to as Water Reserve Parcels A & B, would be added to a proposed State Park. Both parcels are completely surrounded by lands already set aside to the Division of State Parks. The proposed change is likely to increase public access and recreational opportunities to the subject lands and consolidate land use in the area under one DLNR Division.
3. Board meeting of December 12, 2008, item C-3: Addition of approximately 584 acres, consisting of TMK (1) 8-3-001:009 & 018, to the Makua-Keaau Forest Reserve, Waianae District, Oahu (Exhibit E). Pursuant to Governor's Executive Order No. 4172 dated August 28, 2006, these parcels were designated as the Makua-Keaau Public Hunting Area under the jurisdiction of the Division. However, there is no formal land designation category called "public hunting area" with associated statutes and administrative rules. As such, the Division seeks to transfer the subject lands to the currently existing and adjacent Makua-Keaau Forest Reserve. This action will merely change the designation of the area from Public Hunting Area to Forest Reserve, placing the area under the protection of statutes and rules associated with the Forest Reserve System.

Approval to hold public hearings on the proposed forest reserve additions and withdrawals were obtained from the Board of Land and Natural Resources on May 25, 2007 (Pupukea withdrawals), December 12, 2008 (Makua-Keaau addition), and March 13, 2009 (Waimanalo additions). Approval to set the date of the public hearing and to appoint Michael Constantinides as the Hearing Officer was obtained from the Chairperson on March 24, 2009.

In accordance with Notices of Public Hearing published in the Honolulu Star-Bulletin, the Garden Island, the Maui News, the West Hawaii Today, and the Hawaii Tribune-Herald newspapers on Sunday, May 10, 2009, a public hearing was held on May 26, 2009 to receive public input on all of the proposed forest reserve additions and withdrawals discussed above, inclusive of the after-the-fact public hearing item discussed in Section 1 above. No members of the public attended this hearing, the proceedings of which are summarized in the Hearing Officer's report (Exhibit F). No verbal or written testimony was received regarding these items. Based on these results, staff recommends final processing of the proposed transfers.

Division staff consulted with the Office of the Attorney General in preparing this submittal regarding the amendments proposed for their input and concurrence.

RECOMMENDATIONS:

That the Board of Land and Natural Resources:

1. Amend its prior Board action of March 13, 2009, under agenda item D-5 by:
 - a. Changing the "Area" Section to exclude TMK (1) 4-2-010: portion of 001 for a net addition of approximately 456 acres to Waimanalo Forest Reserve.
 - b. Striking Recommendation No. 1 in its entirety and replacing it with the following language:

"1. Approve in principle the set aside of TMK (1) 4-1-008:013, (1) 4-1-010:074, 091, & 093 at Kailua and Waimanalo, Koolaupoko, Oahu, comprising approximately 456 acres, as an addition to Waimanalo Forest Reserve, and approve in principle an amendment of Governor's Proclamation dated January 3, 1923 changing the status of the lands within Waimanalo Forest Reserve defined as TMK (1) 4-2-010: portion of 001, and comprising approximately 1,544 acres, from Private to Public (State) Ownership Under the Control and Management of the Department of Land and Natural Resources Division of Forestry and Wildlife."
2. Accept and approve the Hearing Officer's report and minutes for the public hearing held on May 26, 2009 relating to proposed Forest Reserve System additions and withdrawals on Oahu as described above.
3. Approve of and recommend to the Governor an Executive Order to amend Governor's Proclamation dated January 3, 1923 changing the status of the lands defined as TMK (1) 4-2-010: portion of 001, comprising approximately 1,544 acres, from private to public (State) ownership, and as such that these lands now fall under management of the Department of Land and Natural Resources Division of Forestry and Wildlife as part of the Waimanalo Forest Reserve.
4. Approve of and recommend to the Governor issuance of an executive order setting aside approximately 456 acres to the Waimanalo Forest Reserve, Koolaupoko District, Oahu, consisting of TMK (1) 4-1-008:013, (1) 4-1-010:074, 091, & 093 as described above.
5. Approve of and recommend to the Governor issuance of two (2) executive orders, one withdrawing approximately 28 acres, consisting of TMK (1) 5-9-006:003 & 007 from Pupukea Forest Reserve, Koolauloa District, Oahu and a second to re-set aside said acreage to the Division of State Parks for State Park Reserve purposes as described above.
6. Based on the results of the public hearing held on July 13, 2009, on the island of Oahu, the Board confirm and adopt its prior recommendations made at the Board meeting of December 12, 2008, item C-3 - That the Governor issue two (2) executive orders, one cancelling Governor's Executive Order 4172, dated August 28, 2006 for the Makua-

Keaau Public Hunting Area, representing approximately 584 acres (TMK (1) 8-3-001:009 & 018), Waianae District, Oahu, and a second to re-set aside said acreage to the Division of Forestry and Wildlife for addition to Makua-Keaau Forest Reserve, as described above.

7. Recommendation Nos. 4 through 6 are further made subject to the following:
- A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

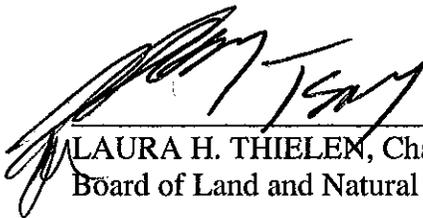
Respectfully submitted,



PAUL J. CONRY
Administrator

Attachments

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN, Chairperson
Board of Land and Natural Resources

HEARING OFFICER'S REPORT AND MINUTES OF:

**Public Hearing for Five (5) Proposed Changes Affecting the Area of
Government Forest Reserve Lands on the Island of Oahu**

Kalanimoku Building, Room 132, 1151 Punchbowl Street, Honolulu

May 26, 2009

SUMMARY OF TESTIMONIES RECEIVED

Written testimonies are kept on file in the Division of Forestry and Wildlife for public review.

No testimonies, written or oral, were received.

I. SUMMARY OF PUBLIC HEARING PROCEEDINGS

- A. The public hearing was called to order at 5:30 pm. In attendance were the following staff members from the Department of Land and Natural Resources:

Division of Forestry and Wildlife:

<u>Michael Constantinides – Hearing Officer</u>	Forestry Program Manager
Jacqueline Robson	Forestry & Watershed Planner
Ryan Peralta	Acting Oahu Forestry Manager
Marigold Zoll	Oahu Branch Planner
Randy Kennedy	NARS Program Manager
Betsy Gagné	NARS Executive Secretary
Emma Yuen	NARS Enhancement Coordinator

Land Division:

Barry Cheung	Land Agent
Gavin Chun	Project Development Specialist

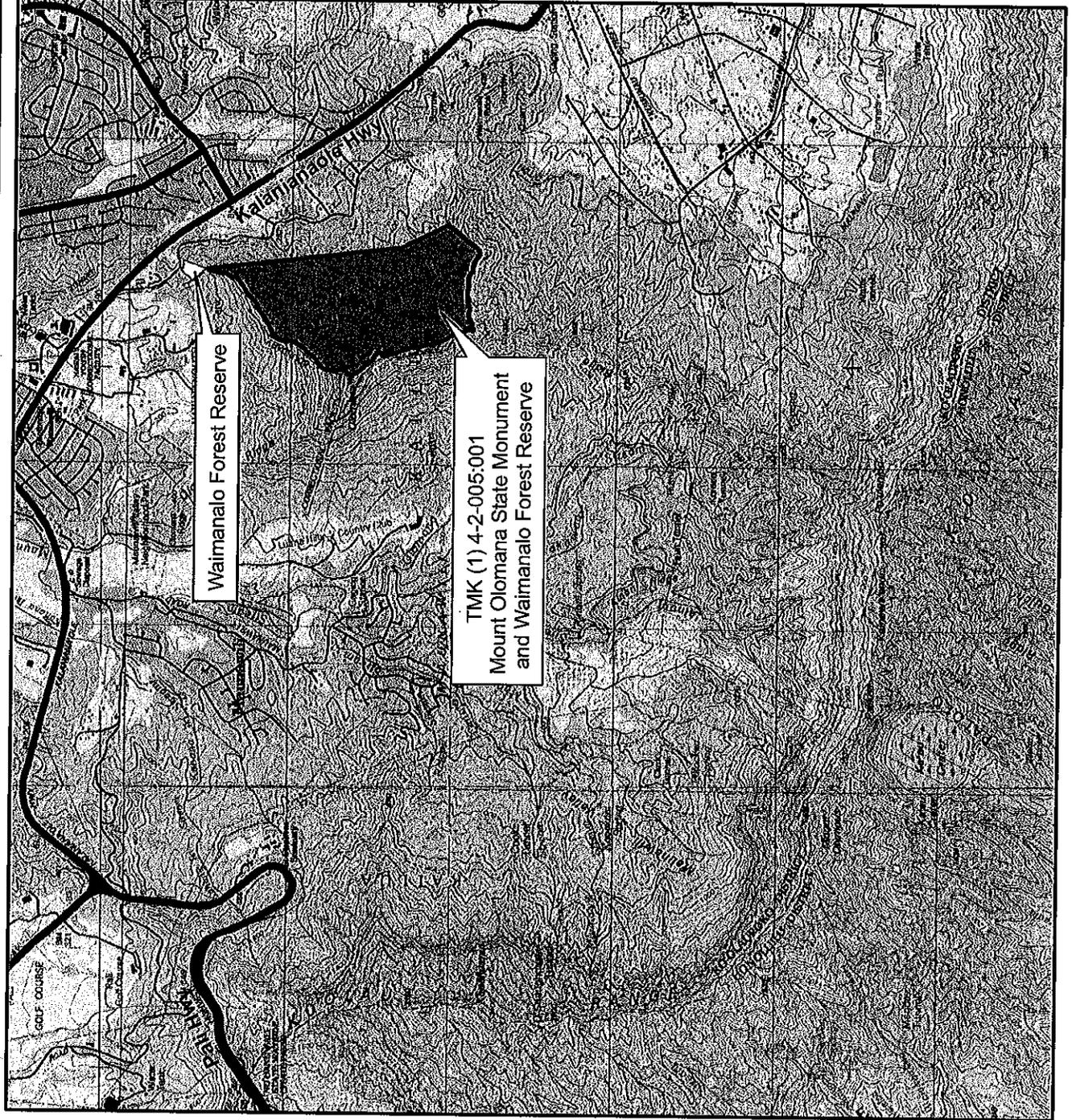
- B. No members of the public attended this meeting, thus no written or oral testimony was collected in regards to the proposed Forest Reserve additions and withdrawals during the meeting. The information that the Division of Forestry and Wildlife had prepared regarding these items was not presented as there were no attendees other than staff.
- C. The public hearing was adjourned at 6:05 pm.

II. APPROVALS AND NOTICES OF PUBLIC HEARING

- A. Approval to hold a public hearing for the five (5) proposed forest reserve additions and withdrawals was obtained from the Board of Land and Natural Resources on May 25, 2007 (Pupukea withdrawals), December 12, 2008 (Ewa withdrawal and Makua-Keaau addition), and March 13, 2009 (Waimanalo additions).
- B. Approval to hold the public hearing and to appoint Michael Constantinides as the Hearing Officer was obtained from the Chairperson on March 24, 2009.
- C. Notice of this public hearing was published in the Honolulu Star-Bulletin, the Garden Island, the Maui News, the West Hawaii Today, and the Hawaii Tribune-Herald newspapers on Sunday, May 10, 2009.

Minutes prepared and respectfully submitted by Jacqueline Robson.

Proposed Addition to Waimanalo Forest Reserve - Exhibit A



Legend

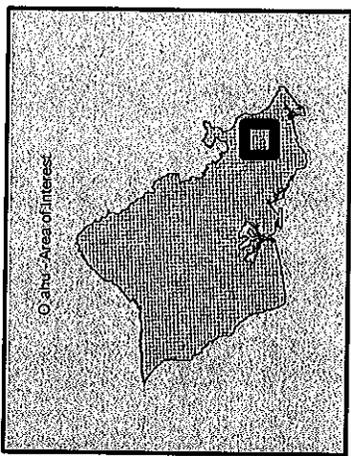
- Proposed Forest Reserve Addition
- Major Roads

Miles
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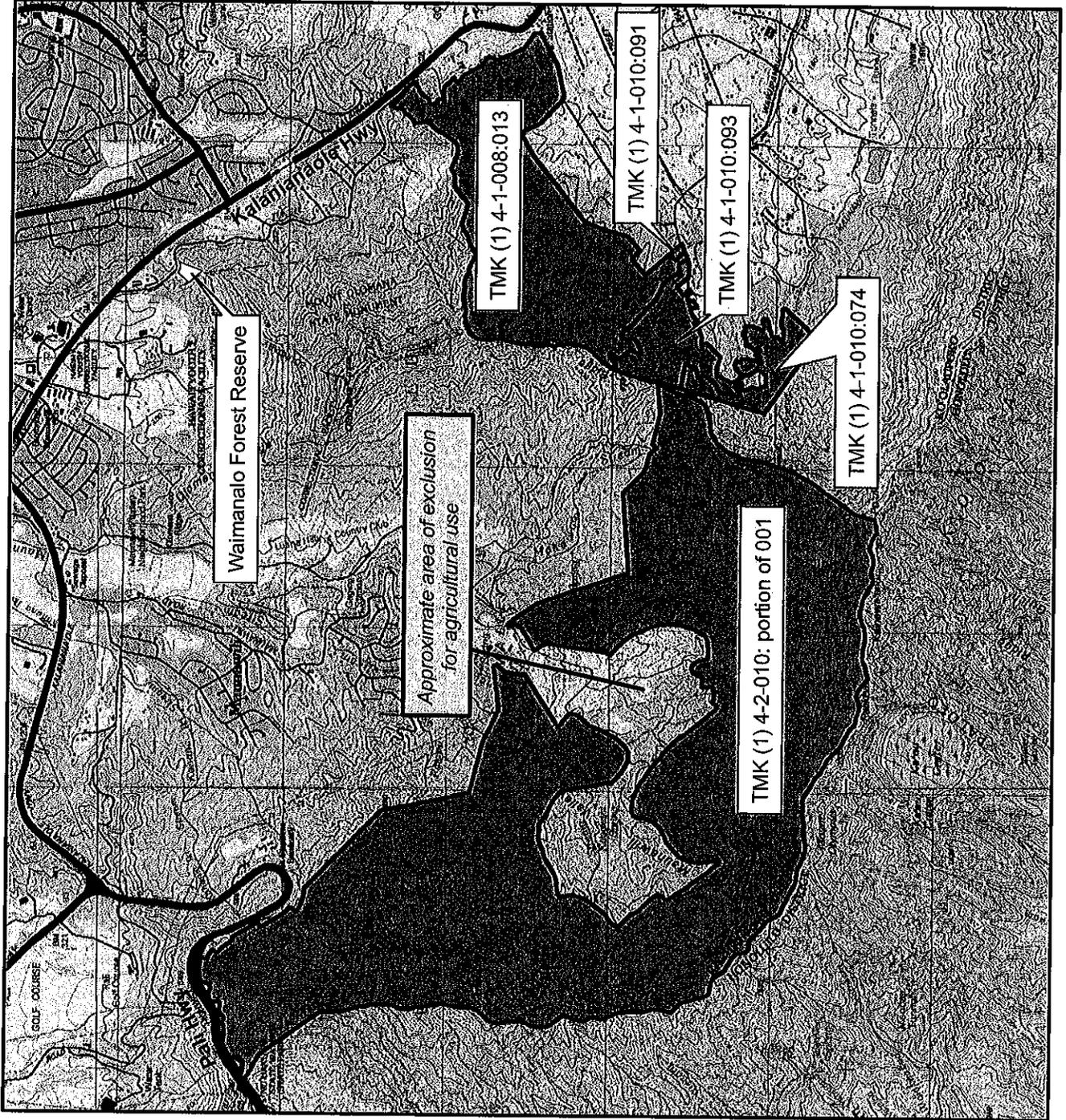
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Department of Land and Natural Resources
Division of Forestry and Wildlife
808-587-0166
March 2009

HAWAII STATEWIDE GIS PROGRAM



Proposed Additions to Waimanalo Forest Reserve - Exhibit B



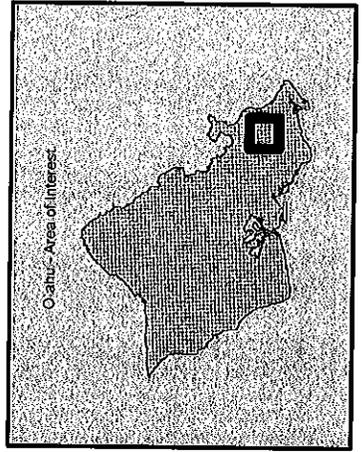
Legend

- Proposed Forest Reserve Additions
- Major Roads

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Department of Land and Natural Resources
Division of Forestry and Wildlife
808-587-0166
March 2009



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

March 13, 2009

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

PSF No.: 97od-308

OAHU

Approval in Principle to Set Aside to the Department of Land and Natural Resources, Division of Forestry and Wildlife for Waimanalo Forest Reserve Purposes; Rescind Prior Approval dated June 26, 1992, Item F-9; Authorize the Division of Forestry and Wildlife to Conduct an After-the-fact Public Hearing Relating to Waimanalo Forest Reserve; at Kailua, Kaneohe, and Waimanalo, Koolaupoko, Oahu, Tax Map Key (1) 4-1-008:013, 4-1-010:074, 091 & 093, 4-2-005:001, and 4-2-010:portion of 001

APPLICANT:

Department of Land and Natural Resources, Division of Forestry and Wildlife

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands situated at Waimanalo, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-1-008:013, 4-1-010:074, 091 & 093, 4-2-005:001, 4-2-010:portion of 001, as shown on the attached map labeled Exhibit A.

AREA:

(1) 4-1-008:013	362.192 Acres;
(1) 4-1-010:074	33.553 Acres;
(1) 4-1-010:091	1.000 Acres;
(1) 4-1-010:093	59.000 Acres;
(1) 4-2-010:portion of 001	1,544.538 Acres.
Total 2,000.283 Acres, more or less.	

Exact area to be determined by the Department of Accounting and General Services, Survey Division.

[Note: (1) 4-2-005:001 has been set aside pursuant to Governor's Executive Order No. 3652. Therefore, its area is not included in this section. See Remarks Section relating to (1) 4-2-005:001.]

has its own rules pertaining to managing forest reserves. Staff decided that there was no need for DOFAW to manage the forest reserve owned by DHHL. The 1992 approval should be amended to address the non-DHHL lands only. Due to a lot of staff movement, the request for other non-DHHL parcels was inadvertently misplaced.

Recently, staff discussed the subject request with DOFAW and both divisions agreed that we should move this request forward.

This request covers only the non-DHHL parcels mentioned in the 1992 approval. DOFAW has reviewed the list of parcels to be transferred to them and has no objection to the request in principle. Prior to the transfer, Land Division staff will continue to work with DOFAW in ensuring the smooth transfer, including installation of fencing along a portion of the boundary for (1) 4-1-008:013 to control unauthorized access, assisting in the preparation of the map and description required for this disposition, and assisting in the clean-up of the illegal dumping site(s), if necessary.

A portion of (1) 4-2-010:001 is encumbered by Revocable Permit No. 7242 (RP) issued to Luluku Banana Growers Co-operative for cultivation of banana. DOFAW inspected the RP area and met with the farmers. The farmers want to continue the farming activities, and wish to pass on their agricultural operations to their children. The farmers' plan is not consistent with the intent of the Forest Reserve System. Therefore, the RP area is excluded from the proposed set aside.

Further, (1) 4-2-010:001 and other parcels were originally covered in the Governor's Proclamation dated January 3, 1923 as the Waimanalo Forest Reserve. For housekeeping purposes, staff recommends the Board document the designation of the subject area of (1) 4-2-010:001 as a forest reserve pursuant to a Governor's executive order.

Land Division and DOFAW will work with the Department of Accounting and General Services, Survey Division to prepare the necessary map, and a Conservation District Use Application, if necessary. Subject to the outcome of the map work, staff may recommend the Board revise the boundary for RP 7242 at a later date.

The proposed use by DOFAW is appropriate for the subject parcels and is considered to be the best and highest use of these undeveloped watershed lands.

Staff did not solicit comments from other agencies on this request because it is basically a housekeeping matter seeking to follow-up on the 1992 action.

Furthermore, DOFAW is required to conduct a public hearing regarding the proposed set-aside to Waimanalo Forest Reserve. Staff is unaware of further pertinent issues or concerns, and Board authorization is hereby requested.

Further, on October 14, 1994, under agenda item no. F-9, the Board approved a settlement agreement between the State of Hawaii and Asahi Kanko U.S.A. Inc. relating to lands at Olomana, Kailua, Koolaupoko District. As part of the settlement agreement,

Proposed Waimanalo Forest Reserve

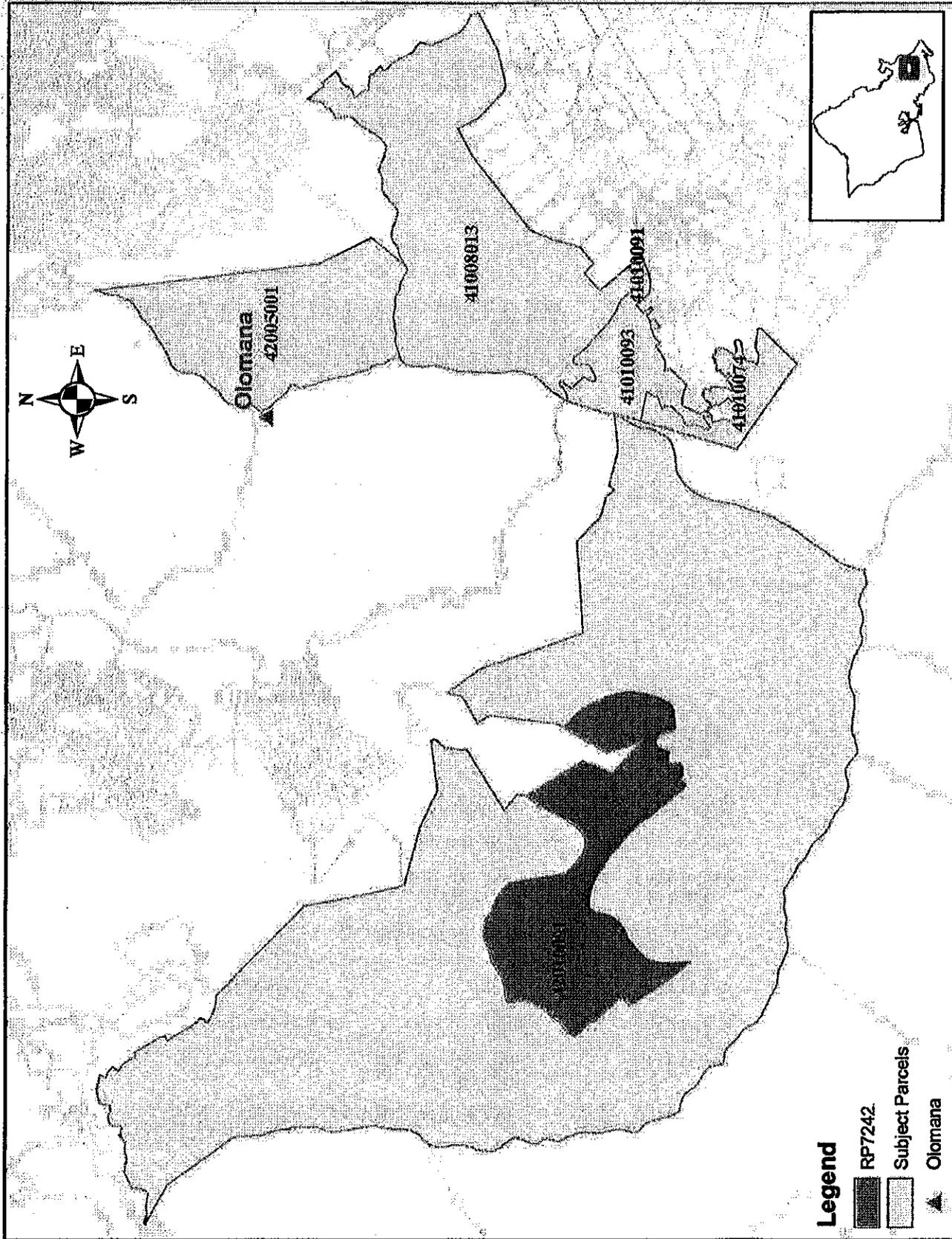


EXHIBIT A

June 26, 1992

Approximately +3,836.617 acres (Exact area to be determined by the Department of Accounting & General Services, Survey Division)

ZONING: State Land Use Commission: Agriculture/
Conservation
City & County of Honolulu Development Plan:
Agriculture/Preservation
City & County of Honolulu Zoning:
Agriculture/Preservation

CONSIDERATION: Gratis

EIS REQUIRE-
MENTS: Currently being completed by applicant

REMARKS: DLNR proposes to redesignate State lands in the Koolaupoko District as the Waimanalo State Forest Reserve. The proposed Forest Reserve includes parcels previously delineated as the Waimanalo Forest Reserve, and in addition a portion of State owned land on the east flank of Olomana. By doing so, the resources of this area will be comprehensively managed by the Division of Forestry and Wildlife. As a Forest Reserve the area would benefit from management activities that include protection and enhancement in: watershed, fire prevention, erosion control, forest management, unique native plant and animal habitat, and public recreation through the Na Ala Hele (NAH) trail and access program.

The goal is to increase the State's ability to manage and enhance forested watershed areas by placing them directly under the jurisdiction of the Division directed by statute to do so. Chapter 183 (HRS) directs DOFAW to devise ways and means of protecting, extending, increasing and utilizing the forests. Also, the State Recreation Functional Plan (DLNR, 1990) has indicated that it is desirable to emphasize activities away from the beaches in order to reduce the impact on these areas, and that the demand for hiking and related activities are likely to grow. DOFAW includes recreation in the management strategies for Forest Reserves.

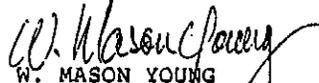
The objective is to proactively manage this area by assessing the resource management needs, perform necessary tasks for fire prevention and suppression, and to increase the potential for public recreation in this area. The proposed Koolaupoko trail complex, as described in the NAH Program Plan (DLNR, 1991), is comprised of a series of trails to be located in the environs of the Maunawili Valley and Olomana. The NAH program has completed the first three miles of the Maunawili Demonstration Trail, and as of May, 1992, has started

Board of Land and
Natural Resources

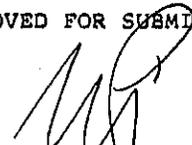
June 26, 1992

- C. Re-designate the former Waimanalo Forest Reserve situated on DHHL lands as the Waimanalo Forest Reserve subject to the following:
1. Finalization of an agreement to use the area between DHHL (landowner) and DLNR (user).
 2. Other terms and conditions as may be prescribed by the Chairperson.
- D. Grant immediate right of entry for the State (DLNR) owned lands to DOFAW to facilitate their management of the area subject to our standard right of entry conditions.

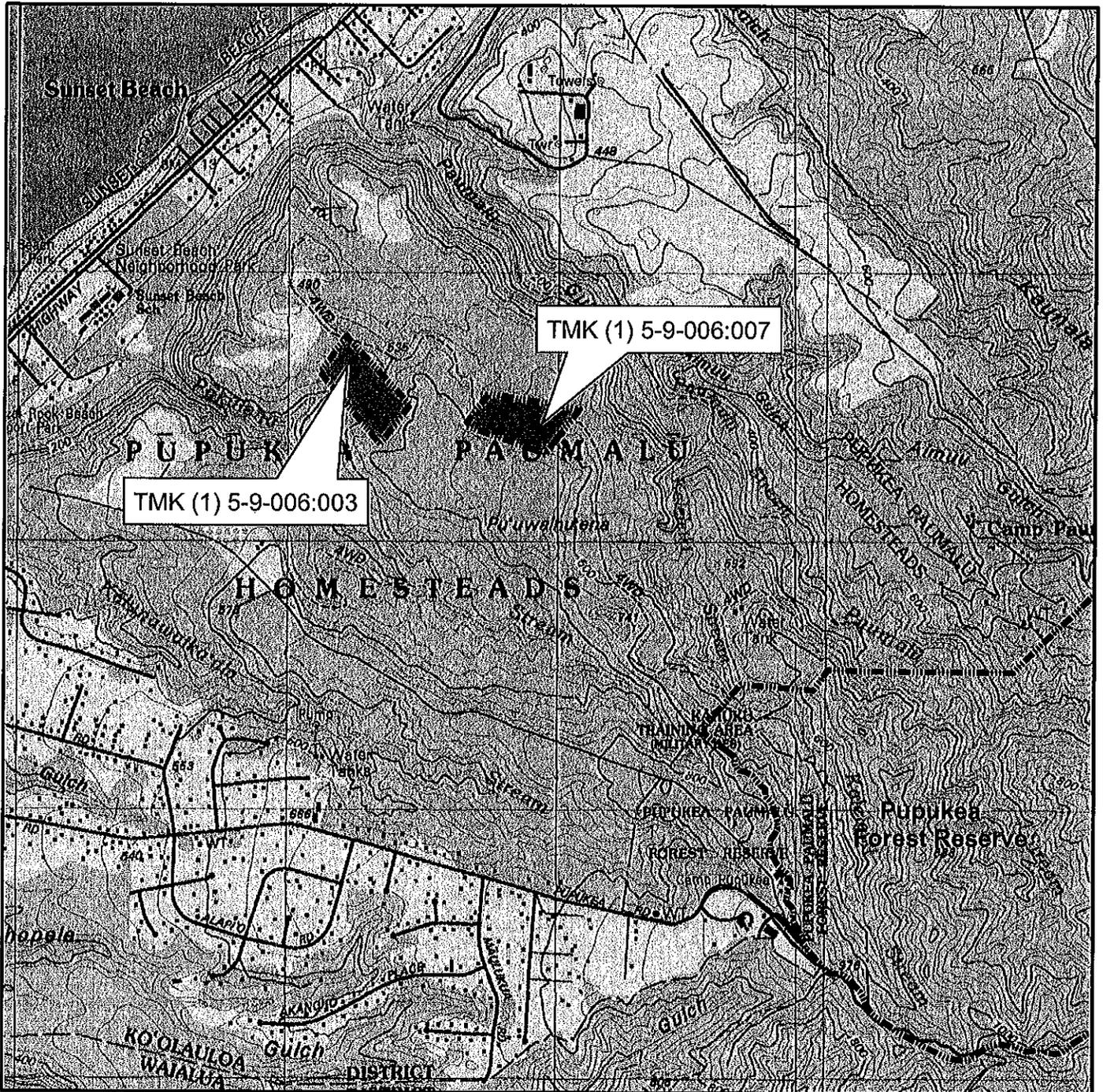
Respectfully submitted,


W. MASON YOUNG
Land Management Administrator

APPROVED FOR SUBMITTAL:


WILLIAM W. PATY, Chairperson

Proposed Removals from Pupukea Forest Reserve - Exhibit D



Legend

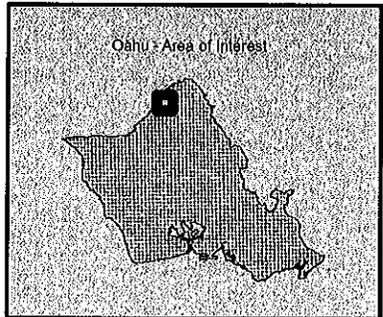
-  Proposed Removals
-  Pupukea Forest Reserve

Department of Land and Natural Resources
 Division of Forestry and Wildlife
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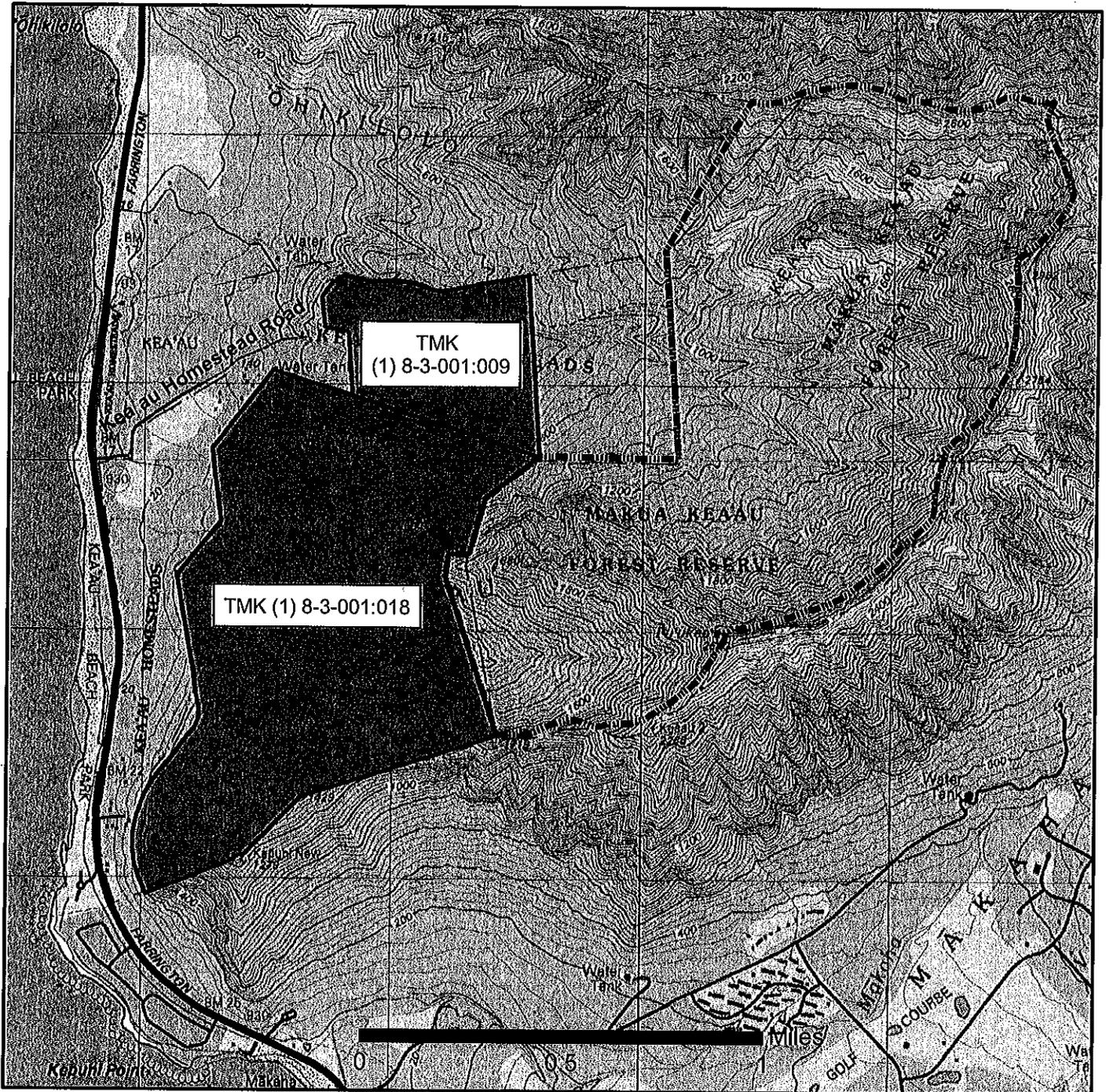
March 2009







Proposed Addition to Makua-Kea`au Forest Reserve-Exhibit E



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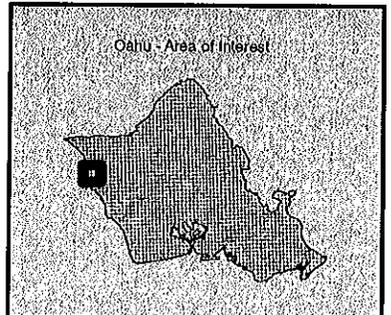
-  Proposed Forest Reserve additions
-  Makua-Kea`au Forest Reserve
-  Major Roads

Department of Land and Natural Resources
Division of Forestry and Wildlife
808-587-0166

March 2009







HEARING OFFICER'S REPORT AND MINUTES OF:

**Public Hearing for Five (5) Proposed Changes Affecting the Area of
Government Forest Reserve Lands on the Island of Oahu**

Kalanimoku Building, Room 132, 1151 Punchbowl Street, Honolulu

May 26, 2009

SUMMARY OF TESTIMONIES RECEIVED

Written testimonies are kept on file in the Division of Forestry and Wildlife for public review.

No testimonies, written or oral, were received.

I. SUMMARY OF PUBLIC HEARING PROCEEDINGS

- A. The public hearing was called to order at 5:30 pm. In attendance were the following staff members from the Department of Land and Natural Resources:

Division of Forestry and Wildlife:

<u>Michael Constantinides – Hearing Officer</u>	Forestry Program Manager
Jacqueline Robson	Forestry & Watershed Planner
Ryan Peralta	Acting Oahu Forestry Manager
Marigold Zoll	Oahu Branch Planner
Randy Kennedy	NARS Program Manager
Betsy Gagné	NARS Executive Secretary
Emma Yuen	NARS Enhancement Coordinator

Land Division:

Barry Cheung	Land Agent
Gavin Chun	Project Development Specialist

- B. No members of the public attended this meeting, thus no written or oral testimony was collected in regards to the proposed Forest Reserve additions and withdrawals during the meeting. The information that the Division of Forestry and Wildlife had prepared regarding these items was not presented as there were no attendees other than staff.
- C. The public hearing was adjourned at 6:05 pm.

II. APPROVALS AND NOTICES OF PUBLIC HEARING

- A. Approval to hold a public hearing for the five (5) proposed forest reserve additions and withdrawals was obtained from the Board of Land and Natural Resources on May 25, 2007 (Pupukea withdrawals), December 12, 2008 (Ewa withdrawal and Makua-Keaau addition), and March 13, 2009 (Waimanalo additions).
- B. Approval to set the date of the public hearing and to appoint Michael Constantinides as the Hearing Officer was obtained from the Chairperson on March 24, 2009.
- C. Notice of this public hearing was published in the Honolulu Star-Bulletin, the Garden Island, the Maui News, the West Hawaii Today, and the Hawaii Tribune-Herald newspapers on Sunday, May 10, 2009.

Minutes prepared and respectfully submitted by Jacqueline Robson.