

State of Hawai'i  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawai'i 96813

May 27, 2011

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i

Board Members:

**SUBJECT: REQUEST FOR APPROVAL TO ENTER INTO AN AGREEMENT TO SUBGRANT BETWEEN THE COUNTY OF HAWAI'I AND THE BOARD OF LAND AND NATURAL RESOURCES FOR THE PURCHASE OF APPROXIMATELY 550.871 ACRES IN KA'Ū, ISLAND OF HAWAI'I, TAX MAP KEYS (3) 9-5-16:025, (3) 9-5-16:006, AND (3) 9-5-17:005**

**SUMMARY:**

This Board Submittal requests approval to enter into an Agreement to Subgrant between the County of Hawai'i and the Board for the pass through of Federal Funds for the purchase of approximately 550.871 acres, tax map keys (3) 9-5-16:025, (3) 9-5-16:006, and (3) 9-5-17:005, for conservation purposes as per U.S. Fish and Wildlife Service (USFWS) Section 6 Recovery Lands Acquisition (RLA) Grant No. E-17-RL-1.

**BACKGROUND:**

The three parcels of land, totaling 550.871 acres ("Property"), is located in the District of Ka'ū, Island of Hawai'i. The Property includes approximately two miles of pristine coastline at and around Kāwā Bay, including Ka'ili'ili Beach along the southeast tip of the Island of Hawai'i.

The acquisition of the Property is a joint effort by County of Hawai'i, the USFWS, and the State of Hawai'i to protect wetland and coastal habitat on the Island of Hawai'i. The County of Hawai'i will use a combination of county funds, State Legacy Land Conservation Program funds, and federal USFWS RLA funds to purchase the fee title to the property and perpetually manage it for endangered species recovery.

The USFWS Section 6 RLA program provides funding to State agencies to purchase lands directly or to pass through the funds to third parties, such as nongovernmental conservation organizations, to purchase lands for the recovery of listed species. For the 2008 RLA grant cycle, the Hawai'i Division of Forestry and Wildlife established a selection committee to review and rank proposals. The subject proposal received the highest internal rank and was the project selected by the Division for funding. The Honolulu Office of the USFWS worked with the Division of Forestry and Wildlife and the County of Hawai'i to finalize the grant proposal and submit it for consideration by the Service. The

submitted grant proposal identified that the funds would be passed through to the County of Hawai'i for the purchase of the property and that the County of Hawai'i would hold title. The acquisition of the Property was one of only a handful of projects nationally selected for funding.

### DISCUSSION:

The purpose of the acquisition is to protect the Property's resources from damage by preventing development, managing vehicular access to prevent erosion, continuing predator control measures around nesting areas, restoring native vegetation around the wetlands, pond, and springs for the recovery of native flora and fauna, and working with the community to steward the conservation and cultural values of the property in perpetuity.

Acquisition of the Property would protect a wide range of habitats: well-documented nesting areas for the endangered Hawaiian Hawksbill Turtle, off-shore turtle foraging areas for the threatened green sea turtle, habitat for the orange-black Hawaiian damselfly (a candidate endangered species), habitat for migratory shorebirds, wandering tattlers, and ruddy turnstones, and habitat for migratory waterfowl, including northern pintails and northern shovelers. Protection of the Property would also enhance a two-acre intertidal brackish water pond, the second largest coastal freshwater spring system on the island, tidepools, and coral reefs. Habitat for the indigenous 'Auku'u or Black-Crowned Night Heron will also be protected, as well as the habitat for the endangered and endemic Hawaiian coot.

The County will partner with state and federal agencies and community organizations to manage vehicular access to protect nesting habitat and prevent erosion to the pond, wetlands, springs, tidepools, and coral reefs, and restore native plant vegetation, as well as protect important cultural sites, including a large *heiau*.

The Department of Land and Natural Resources is the authorized agency within the State of Hawai'i with the statutory and constitutional responsibility for the management and conservation of wildlife in the State of Hawai'i. This agreement to subgrant would ensure that the pass-through of State-issued USFWS Recovery Land Acquisition funds contributes to the purchase and conservation of the subject property for the management and conservation of wildlife. Through the agreement, the Department will mandate that standard RLA deed restrictions be inserted into the deed prior to acquisition, requiring that the property be managed in accordance with the purposes of the grant. If the County of Hawai'i is unable to manage the property in accordance with the purposes of the grant, it must seek disposition instructions from the USFWS via the State. The County of Hawai'i will be responsible for any and all fees and costs associated with the conveyance.

### Chapter 343, Hawaii Revised Statutes

In accordance with the Exemption List for the for the Division of Forestry and Wildlife, approved by the Environmental Council and dated June 12, 2008, the subject project is considered to be exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item No. 16, that states: "The acquisition of land or interests in land for the purposes of conservation, provided that the acquisition does not cause any material change of use of land or resources beyond that previously existing."

### RECOMMENDATIONS:

That the Board:

1) Authorize the Chairperson to negotiate and execute an agreement to subgrant with the County of Hawai'i to provide a pass through of federal grant funds in an amount not to exceed \$1,000,000 from the U.S. Fish and Wildlife Service's Recovery Land Acquisition (RLA) grant program to acquire and hold in perpetuity for the purpose of conserving 550.871 acres, tax map keys (3) 9-5-16: 025, (3) 9-5-16: 006, and (3) 9-5-17: 005, as discussed above, subject to:

1. certification of the appraisal by the U.S. Fish and Wildlife Service's appraisal department;
2. compliance with federal RLA grant requirements;
3. approval of the agreement to subgrant by the Department of the Attorney General;
4. the availability of funds; and
5. such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

2) Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this subgrant will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

3) Authorize the Department to proceed with all due diligence and negotiations that may be necessary to carry out the grant mentioned above.

Respectfully submitted,



PAUL J. CONRY, Administrator  
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR., Interim Chairperson  
Board of Land and Natural Resources

ATTACHMENT: Draft subgrant agreement, including RLA project proposal as Exhibit A  
(draft subject to revisions from the Department of the Attorney General)

**AGREEMENT TO SUBGRANT  
between**

**COUNTY OF HAWAII  
and**

**STATE OF HAWAII**

This Agreement, entered into on \_\_\_\_\_, by and between the STATE OF HAWAII, through its Board of Land and Natural Resources ("STATE"), by its Chairperson, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, and the COUNTY OF HAWAII, a Hawaii nonprofit corporation, whose address is 25 Aupuni Street, Hilo, Hawaii 96720 ("SUBGRANTEE").

**EXHIBITS**

Exhibit A Recovery Land Acquisition Grant Proposal

Exhibit B Checklist for Land Acquisition Subgrants

Exhibits A and B are hereby made a part of this Agreement.

**RECITALS**

WHEREAS, the Department of the Interior, acting through its Fish and Wildlife Service ("FWS") and the STATE have entered into a Recovery Land Acquisition Grant Agreement No. E-17-RL-1 to facilitate the acquisition of real property identified in said grant agreement;

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

WHEREAS, SUBGRANTEE is a municipal corporation of the State of Hawaii;

WHEREAS, SUBGRANTEE intends to purchase, in fee simple, that certain real property situate in the District of Ka'ū, County of Hawaii, State of Hawaii, consisting of 550.871 acres, more or less, and bearing tax map key numbers (3)9-5-16: 025, (3)9-5-16: 006, and (3)9-5-17: 005, as more particularly described in Exhibit A (the "Property");

WHEREAS, SUBGRANTEE and the STATE desire that the Property be protected in perpetuity as a conservation area for protection of threatened and endangered native

wildlife habitat, open space, cultural resources, coastal resources, and passive public recreation;  
and

NOW, THEREFORE, in consideration of the promises contained in this Agreement, the STATE and the SUBGRANTEE agree as follows:

**A. SCOPE OF PERFORMANCE**

The SUBGRANTEE shall perform, in a proper and satisfactory manner, as determined by the STATE, the project described in the “Scope of Performance” set forth in Attachment 1, which is hereby made a part of this Agreement.

**B. TIME OF PERFORMANCE**

The performance required of the SUBGRANTEE under this Agreement shall be completed in accordance with the “Time Schedule” set forth in Attachment 2, which is hereby made a part of this Agreement.

**C. COMPENSATION**

The SUBGRANTEE shall be compensated for performance of the project under this Agreement according to the “Compensation and Payment Schedule,” set forth in Attachment 3, which is hereby made a part of this Agreement.

**D. STANDARDS OF CONDUCT DECLARATION**

The “Standards of Conduct Declaration” by SUBGRANTEE, set forth in Attachment 4, is hereby made a part of this Agreement.

**E. OTHER TERMS AND CONDITIONS**

The “General Conditions for Recovery Land Acquisition Grant Agreements,” set forth in Attachment 5, is hereby made a part of this Agreement.

IN WITNESS WHEREOF, the STATE and the SUBGRANTEE have executed this Agreement effective as of the date first above written.

STATE

\_\_\_\_\_  
Chairperson  
Board of Land and Natural Resources

SUBGRANTEE

By \_\_\_\_\_  
Its \_\_\_\_\_ \*

(Title)

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

\* Evidence of authority of representative to sign must be attached.

SUBGRANTEE'S ACKNOWLEDGMENT

STATE OF HAWAII )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, did say that he/she is the \_\_\_\_\_ of \_\_\_\_\_, 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: \_\_\_\_\_

## SCOPE OF PERFORMANCE

### Project Description

The SUBGRANTEE shall use funds from the Recovery Land Acquisition (RLA) Grant for land acquisition of 550.871 acres, more or less, in the District of Ka'ū, County of Hawaii, State of Hawaii, ("Property") for the protection of resource values stated in the Project Application attached hereto as Exhibits A. Property acquired with RLA funding from the U.S. Fish and Wildlife Service shall be held and managed in a manner designed to protect the Property's resource values in perpetuity.

### Performance

The SUBGRANTEE is required to do the following:

1. The SUBGRANTEE agrees to purchase and forever hold in fee simple the 78 acres, more or less, consisting of the following parcels: TMKs (3)9-5-16:025, (3)9-5-16:006, and (3)9-5-17:005 from the Edmund C. Olson Trust for a purchase price of (\$\_\_\_\_\_). The anticipated closing date for this purchase is June 30, 2011, or prior.
2. The U.S. Fish and Wildlife Service ("FWS"), through the STATE, shall provide SUBGRANTEE the grant funds in an amount not to exceed \$1,000,000.00 for purchase of the 550.871 acres, more or less, such funds are to be made available for escrow prior to the closing date.
3. Pursuant to the STATE'S commitment under Grant Agreement Number E-17-RL-1 between the FWS and the STATE, the SUBGRANTEE shall provide matching non-federal funds, constituting approximately eighty-seven percent (87%) of the total project costs as set forth in Grant Agreement Number E-17-RL-1. Inability of SUBGRANTEE to provide matching funds in the required amount may result in reduced or terminated award, pursuant to any applicable federal and State laws, rules, and agreements.
4. As owner of the Property, the SUBGRANTEE shall:
  - a. Support the conservation of threatened and endangered species according to the respective priorities and planning documents listed within the Recovery Land Acquisition Grant Proposal attached hereto as Exhibit A.
  - b. Create an integrated Management Plan for restoring the wetland habitat and coastal strand areas of the Property;
  - c. Incorporate into the Management Plan the protection of threatened or endangered

species habitat, including:

- i. The goals, objectives, and implementation steps for predator control on the Property;
    - ii. The goals, objectives and implementation steps for invasive species removal on the Property;
  - d. Seek external funding for implementation of the Management Plan;
  - e. Implement the Management Plan;
  - f. Manage, conduct, and oversee the restoration efforts specified in the Management Plan;
  - g. Restore the wetlands habitat by removing invasive species in the wetlands and buffer areas;
  - h. Control predators through exclusion or eradication;
  - i. Work with local community and cultural groups to create an archaeological conservation plan; and
  - j. Implement the archeological conservation plan, which may include the preservation and restoration of archeological features of the site including heiau and burial areas.
5. SUBGRANTEE shall provide the STATE, through its Department of Land and Natural Resources (“DLNR”), the opportunity to participate in the planning process and review and provide comment on the Management Plan as it is being developed.
  6. At the request of the State, the SUBGRANTEE shall allow the State access to the subject property to assess compliance with the terms and conditions contained herein.
  7. The SUBGRANTEE shall not transfer, mortgage, hypothecate, or pledge the subject property or any portion thereof without the prior written approval of the State.
  8. In the event that the SUBGRANTEE is unable to continue operations or is otherwise unable to manage the property according to the terms of the grant, SUBGRANTEE shall notify the STATE in writing and seek disposition instructions from the FWS through the STATE. The SUBGRANTEE shall be responsible for any and all fees and costs associated with the disposition.
  9. The SUBGRANTEE will be liable and responsible to the STATE for any violations of grant terms under any applicable federal and State laws, rules, and agreements. Violations of grant terms are subject to 43 CFR 12.71 and the State must contact the FWS for disposition instructions which could result in a requirement that the SUBGRANTEE:

- a. 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;
- b. Repay to the STATE, 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
- c. As a last resort, transfer the subject property to the STATE, the FWS, or to a third party designated or approved by the STATE and FWS.

10. The recorded Deed to the SUBGRANTEE shall include the following language:

- 1) A legal description of the property.
- 2) The following deed restrictions:
  - i. The above described property is acquired in part with funding received by the State from Recovery Land Acquisition ("RLA") Grant Agreement No. E-17-RL-1 dated \_\_\_\_\_ between the U.S. Fish and Wildlife Service ("FWS") and the State of Hawaii, Department of Land and Natural Resources, and is subject to all the terms and conditions of the grant agreement.
  - ii. A copy of RLA Grant Agreement No. E-17-RL-1 is kept on file at:

U.S. Fish and Wildlife Service  
Division of Federal Assistance  
911 NE 11<sup>th</sup> Avenue  
Portland, Oregon 97232-4181
  - iii. The land shall be managed in perpetuity for the conservation of the species covered under RLA Grant Agreement No. E-17-RL-1.
  - iv. This acquisition is for the protection of threatened or endangered species habitat in perpetuity and shall run with the land to all heirs and successors.
  - v. When the 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).
  - viii. Violations of grant terms are subject to 43 CFR 12.71 and the State must contact the Service for disposition instructions which could result in a requirement that the County of Hawaii:
    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 State, 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 State, the FWS, or to a third party designated or approved by the FWS.
11. Prior to the last to occur of (1) the State's deposit of the Grant Funds into escrow and (2) the SUBGRANTEE's close of escrow for acquisition of the Property, either party may terminate this Agreement to Subgrant for any reason or for no reason, by providing the other party with a minimum of thirty (30) days written notice of such termination.
  12. After close of escrow for the acquisition of the Property, this Agreement to Subgrant shall remain in full force and effect.
  13. The State must provide the FWS with an interim performance report and/or a final performance report depending on the duration of the grant. The SUBGRANTEE shall provide DLNR, within 30 days of request, all necessary documentation related to FWS Recovery Land Acquisition Grant No. E-17-RL-1 interim and final accomplishment reports. Reporting requirements include but are not limited to the following:
    - a. Summary of Land Costs — The SUBGRANTEE 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 — The SUBGRANTEE 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.
  14. If a SUBGRANTEE-owned property is to be used as match, a summary table for each property used for match must be included. For each property, the SUBGRANTEE must provide DLNR with copies of the following:

For Fee Title:

1. Copy of Recorded Deed(s).
2. Title Vesting Certificate or Title Insurance Policy (specify which is being provided);
3. Property or Plat Map, Area Map, and Location Map.

For Conservation Easement(s):

1. Copy of recorded easement, Notice of Grant, and/or Assignment of Rights;
2. Baseline inventory report;

3. Property management plan; and
4. Property or Plat Map, Area Map, and Location Map.

**TIME SCHEDULE**

This Agreement shall be in effect beginning \_\_\_\_\_, 20\_\_\_. SUBGRANTEE shall complete acquisition of the Property and record the conveyance no later than \_\_\_\_\_, 20\_\_\_. If any of the performances required in the Scope of Performance are not completed within the time stated, SUBGRANTEE may be required to return all funds previously received by it pursuant to this Agreement. The Chairperson of the Board of Land and Natural Resources may extend the time for performance of any requirement.

## COMPENSATION AND PAYMENT SCHEDULE

In full consideration of the services to be performed under this Agreement, from FWS Recovery Land Acquisition Grant No. E-17-RL-1, the STATE and the SUBGRANTEE agree to the following:

- a) SUBGRANTEE's requests for payment, in the form of either a single invoice or multiple invoices, shall be delivered personally or sent by United States first class mail, postage prepaid to:

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

All requests for payment must be received by the STATE by \_\_\_\_\_. A single payment or multiple payments, not exceeding the total amount of ONE MILLION DOLLARS (\$1,000,000), shall be made upon:

- i. SUBGRANTEE's completion of the Checklist for Land Acquisition Subgrants attached hereto as Exhibit B to the satisfaction of the STATE;
- ii. SUBGRANTEE's compliance with all STATE and FWS policies and practices; and
- iii. the STATE's receipt of an original invoice and copies of all bills, invoices, receipts, and a contract of sale.

All invoices should:

- o Identify costs,
- o Reference the contract number, and
- o Have a line that states "this is an original invoice" with a signature (in a pen color other than black) to certify this statement.

The final invoice should be marked as "Final" when submitted and should be accompanied by a Certification of Compliance for Final Payment.

- b) Within thirty (30) days of acquiring the Property, but no later than \_\_\_\_\_, SUBGRANTEE shall submit to the STATE a copy of the recorded conveyance document transferring ownership of the 550.871 acres, more or less, in the District of Ka'ū, County of Hawaii, State of Hawaii, to SUBGRANTEE.
- c) The total amount awarded under this Agreement will be dependent upon the project being completed with no substantive changes to the RLA project proposal. The amount of the award shall not be increased, but the STATE or FWS may reduce the award if the project changes in any way that the STATE or FWS deems 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.

The SUBGRANTEE acknowledges and agrees that the availability of funds from the FWS shall be subject to the approval and release of the budgeted funds by the FWS. If insufficient funds are released or otherwise made available to the STATE to pay the SUBGRANTEE, the STATE may, without liability to the STATE, reduce or eliminate the amount of compensation to the SUBGRANTEE, upon written notification by the STATE to the SUBGRANTEE.

## 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 [ORGANIZATION /AGENCY], SUBGRANTEE, the undersigned does declare as follows:

1. SUBGRANTEE  is  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. SUBGRANTEE 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. SUBGRANTEE 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. SUBGRANTEE 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).

SUBGRANTEE understands that the Agreement to which this document is attached is voidable on behalf of the STATE if this Agreement was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including 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 STATE.

**SUBGRANTEE:**

By \_\_\_\_\_  
(Signature)

Print Name \_\_\_\_\_

Print Title \_\_\_\_\_

Name of SUBGRANTEE \_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

**GENERAL CONDITIONS FOR RECOVERY LAND ACQUISITION  
GRANT AGREEMENTS**

1. Recordkeeping Requirements. The SUBGRANTEE 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 the SUBGRANTEE's performance under this Agreement. The SUBGRANTEE shall retain all records related to the SUBGRANTEE's performance under this Subgrant Agreement for at least three (3) years after the date of acquisition.
2. Audit of the SUBGRANTEE. The SUBGRANTEE shall allow the STATE and/or FWS full access to records, reports, files, and other related documents and information for purposes of monitoring, measuring the effectiveness, and assuring the proper expenditure of the grant. 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 Subgrant Agreement, including any employee or agent of the SUBGRANTEE, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
4. Inspection of Property. The SUBGRANTEE shall permit the STATE and/or FWS, its agents and representatives, at all reasonable times, the right to enter and examine the Property to ensure compliance with the terms of this Subgrant Agreement and the FWS RLA grant agreement.
5. Conflicts of Interest. The SUBGRANTEE represents that neither the SUBGRANTEE, nor any employee or agent of the SUBGRANTEE, 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 the SUBGRANTEE's performance under this Subgrant Agreement.
6. Compliance with Laws. The SUBGRANTEE 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 the SUBGRANTEE's performance under this Subgrant Agreement.
7. Indemnification and Defense. The SUBGRANTEE shall defend, indemnify, and hold harmless the State of Hawaii and the U.S. Fish and Wildlife Service, their contracting agencies, and their officers, employees, and agents from and against all liability, loss, damage, and cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or in resulting from the acts

or omissions of the SUBGRANTEE or the SUBGRANTEE's employees, officers, or agents under this Subgrant Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Subgrant Agreement.

8. Cost of Litigation. In case the STATE and/or FWS shall, without any fault on its part, be made a party to any litigation commenced by or against the SUBGRANTEE in connection with this Subgrant Agreement, the SUBGRANTEE shall pay all costs and expenses incurred by or imposed on the STATE and/or FWS, including attorneys' fees.
9. Relationship of Parties; Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
  - a. In the performance of this Subgrant Agreement, the SUBGRANTEE is an "independent contractor," with the authority and responsibility to control and direct the performance required under this Subgrant Agreement; however, the STATE and FWS shall have a general right of inspection to determine whether, in the STATE's and/or FWS' opinion, the SUBGRANTEE is in compliance with this Subgrant Agreement. The SUBGRANTEE, the FWS, and the STATE agree that nothing in this Agreement to Subgrant should be construed as creating any type of partnership or joint venture arrangement or principal and agent relationship between them.
  - b. The SUBGRANTEE and the SUBGRANTEE's employees and agents are not by reason of this Subgrant Agreement, agents or employees of the STATE and/or FWS for any purpose, and the SUBGRANTEE, and the SUBGRANTEE's employees and agents shall not be entitled to claim or receive from the STATE or FWS any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state and federal employees.
  - c. The SUBGRANTEE shall be responsible for the accuracy, completeness, and adequacy of the SUBGRANTEE's performance under this Subgrant Agreement. Furthermore, the SUBGRANTEE intentionally, voluntarily, and knowingly assumes the sole and entire liability to the SUBGRANTEE's employees and agents, and to any individual not a party to this Subgrant Agreement, for all loss, damage, or injury caused by the SUBGRANTEE, or the SUBGRANTEE's employees or agents, in the course of their employment.
  - d. The SUBGRANTEE shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the SUBGRANTEE by reason of this Subgrant Agreement, including but not limited to (i) income taxes, (ii) employment related fees,

assessments, and taxes, (iii) general excise taxes, (iv) real property taxes, and (v) conveyance taxes. the SUBGRANTEE also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Subgrant Agreement.

e. The SUBGRANTEE shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, Hawaii Revised Statutes, if required, and shall comply with all requirements thereof.

f. The SUBGRANTEE is responsible for securing all employee-related insurance coverage for the SUBGRANTEE and the SUBGRANTEE'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. All payments under this Subgrant Agreement shall be made only upon submission by the SUBGRANTEE of original invoices specifying the amount due and certifying that it has completed performance in accordance with the Subgrant Agreement.

11. Publicity.

a. The SUBGRANTEE shall not refer to the STATE and/or FWS, or any office, agency, or officer thereof, or any state employee, in any of the SUBGRANTEE's brochures, advertisements, or other publicity of the SUBGRANTEE without written permission from the Public Information Office of the State of Hawaii, Department of Land and Natural Resources and the FWS. All media contacts with the SUBGRANTEE about the subject matter of this Subgrant Agreement shall be referred to the State of Hawaii, Department of Land and Natural Resources, Division of Forestry and Wildlife and the FWS.

b. The SUBGRANTEE consents to the STATE and FWS' use of the SUBGRANTEE and the Property's name, photograph, image, or likeness in brochures, advertisements, or other publicity relating to the Recovery Land Acquisition Program and other conservation related programs. The STATE 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.

12. Confidentiality of Material.

a. All materials given to or made available to the SUBGRANTEE by virtue of this Subgrant Agreement, which are identified as proprietary or confidential information, will be safeguarded by the SUBGRANTEE and

shall not be disclosed to any individual or organization without the prior written approval of the STATE.

- b. All information, data, or other material provided by the SUBGRANTEE to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, Hawaii Revised Statutes.

13. Suspension and Termination of Subgrant Agreement.

- a. The STATE reserves the right at any time and for any reason to suspend this Subgrant Agreement for any reasonable period, upon written notice to the SUBGRANTEE. Upon receipt of said notice, the SUBGRANTEE shall immediately comply with said notice and suspend all performance under this Subgrant Agreement at the time stated.
- b. If, for any cause, the SUBGRANTEE breaches this Subgrant Agreement by failing to satisfactorily fulfill in a timely or proper manner the SUBGRANTEE's obligations under this Subgrant Agreement or by failing to perform any of the promises, terms, or conditions of this Subgrant 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 the STATE, the STATE shall have the right to terminate this Subgrant Agreement by giving written notice to the SUBGRANTEE of such termination at least seven (7) calendar days before the effective date of such termination. Furthermore, the STATE may terminate this Subgrant Agreement without statement of cause at any time by giving written notice to the SUBGRANTEE of such termination at least thirty (30) calendar days before the effective date of such termination.
- c. Upon termination of the Subgrant Agreement, the SUBGRANTEE, within thirty (30) calendar days of the effective date of such termination, shall compile and submit in an orderly manner to the STATE an accounting of the work performed up to the date of termination. In such event, the SUBGRANTEE shall be paid for the actual cost of the services rendered, if any, but in no event more than the total compensation payable to the SUBGRANTEE under this Subgrant Agreement.
- d. If this Subgrant Agreement is terminated for cause, the SUBGRANTEE shall not be relieved of liability to the STATE for damages sustained because of any breach by the SUBGRANTEE of this Subgrant Agreement. In such event, the STATE may retain any amounts which may be due and owing to the SUBGRANTEE until such time as the exact amount of damages due to the STATE from the SUBGRANTEE has been determined. The STATE may also set off any damages so determined against the amounts retained.

14. Disputes. No dispute arising under this Subgrant Agreement may be sued upon by the SUBGRANTEE until after the SUBGRANTEE'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 the SUBGRANTEE's written request whichever comes first. While the CHAIRPERSON considers the SUBGRANTEE's written request, the SUBGRANTEE agrees to proceed diligently with the performance necessary to complete the Project unless otherwise instructed in writing by the CHAIRPERSON.
15. State Remedies. The SUBGRANTEE understands that in the event that it fails to comply with any of the requirements, provisions, or conditions set forth in this Subgrant Agreement, that the STATE and/or FWS may refuse to make further payments to the SUBGRANTEE or may seek reimbursement for payments made to the SUBGRANTEE under this Subgrant Agreement. In addition to the remedies set forth above, the STATE and/or FWS shall be entitled to pursue any other remedy available at law or in equity.
16. Modifications of Subgrant Agreement. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Subgrant Agreement permitted by this Subgrant Agreement shall be made by written amendment to this Subgrant Agreement, signed by the SUBGRANTEE and the STATE.
17. Notices. Any written notice required to be given by a party to this Subgrant 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, Hawaii or to the SUBGRANTEE at the SUBGRANTEE's address as indicated in the Subgrant Agreement. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The SUBGRANTEE is responsible for notifying the CHAIRPERSON in writing of any change of address.
18. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Subgrant Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE's right to enforce the same in accordance with this Subgrant Agreement. The fact that the STATE specifically refers to one section of the Hawaii Revised Statutes, and does not include other statutory sections in this Subgrant Agreement shall not constitute a waiver or relinquishment of the STATE's rights or the SUBGRANTEE's obligations under the statutes.
19. Severability. In the event that any provision of this Subgrant Agreement 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 Subgrant Agreement.

20. Governing Law. The validity of this Subgrant Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Subgrant Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Subgrant Agreement shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
21. Survival. The SUBGRANTEE's obligations and the STATE's remedies shall survive the funding of the grant and the acquisition of this Property by the SUBGRANTEE.
23. No Party Deemed Drafter. The SUBGRANTEE and the STATE agree that neither party shall be deemed to be the drafter of this Agreement to Subgrant and further that in the event that this Agreement to Subgrant is ever construed by a court of law, such court shall not construe this Agreement to Subgrant or any provision herein against the SUBGRANTEE or the STATE as the drafter.
24. Review of Agreement. Each party has thoroughly reviewed and revised this Agreement to Subgrant 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 to Subgrant.
25. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the SUBGRANTEE relative to this Subgrant Agreement. This Subgrant Agreement supercedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the SUBGRANTEE other than as set forth or as referred to herein.

## **Exhibit A**

### **Recovery Land Acquisition Grant Proposal**

# **Kāwā Bay Acquisition and Habitat Restoration Project**

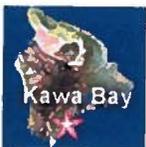


**Submitted by:**

**State of Hawai'i**

**Department of Land and Natural Resources**

**Division of Forestry and Wildlife**



**Proposed Title: Kāwā Bay Acquisition and Habitat Restoration Project**

**Submitted: Hawaii Department of Land and Natural Resources  
Division of Forestry and Wildlife  
1151 Punchbowl Street, Suite 325  
Honolulu, HI 96813**

**Project Summary and Objective:**

The following listed or candidate species would be benefited by this project: the endangered Hawaiian Hawksbill Turtle (*Eretmochelys imbricata*), the threatened green sea turtle (*Chelonia mydas*), the candidate orange-black Hawaiian damselfly (*Megalagrion xanthomelas*), and the endangered Hawaiian coot (*Fulica alai*). In addition, a number of migratory birds would also benefit. This project requests \$1,000,000 from the Section 6 Recovery Land Acquisition Program for the acquisition and permanent protection of three parcels of land totaling 550.871 acres and approximately two miles of pristine coastline at and around Kāwā Bay in the District of Ka‘ū, along the southeast tip of the Island of Hawai‘i.

Kāwā Bay, its Hawaiian Hawksbill Turtle nesting beaches, and its coastal wetlands have been identified as the number one land protection priority by the County of Hawai‘i Public Access, Open Space and Natural Resources Preservation Commission, the Mayor, and the County Council. This project would allow the County of Hawai‘i ("the County") to acquire and protect three coastline parcels totaling 550.871 acres and comprising approximately two miles of coastline located at and around Kāwā Bay, including Ka‘ili‘ili Beach, in the District of Ka‘ū, along the southeast tip of the Island of Hawai‘i, TMKs (3) 9-5-016:025, 006, and (3) 9-5-017:005 ("the Property") (see maps, Figs. 1 & 2, pages 9-10). Acquisition of the Property would protect well documented nesting areas for the endangered Hawaiian Hawksbill Turtle (*Eretmochelys imbricata*), off-shore turtle foraging areas for the threatened green sea turtle (*Chelonia mydas*), habitat for a candidate endangered species, the orange-black Hawaiian damselfly (*Megalagrion xanthomelas*), habitat for migratory shorebirds, including the Kōlea or Pacific Golden Plover (*Pluvialis fulva*), wandering tattlers (*Heteroscelus inamus*), and ruddy turnstones (*Arenaria interpres*), and habitat for migratory waterfowl, including northern pintails (*Anas acuta*) and northern shovelers (*Anas americana*). Protection of the Property would also enhance a 2-acre intertidal brackish water pond, the second largest coastal freshwater spring system on the island, tidepools, and coral reefs.. Habitat for the indigenous ‘Auku‘u or Black-Crowned Night Heron (*Nycticorax nycticorax subsp. hoactli*) will also be protected, as well as the habitat for the endangered, endemic Hawaiian coot (*Fulica alai*). Funding will also allow the County to partner with state and federal agencies and community organizations to manage vehicular access to protect nesting habitat and prevent erosion to the pond, wetlands, springs, tidepools, and coral reefs, and restore native plant vegetation, as well as protect important cultural sites, including a large ancient Hawaiian *heiau* (temple).

## **Project Description and Need:**

Kāwā Bay, its Hawaiian Hawksbill Turtle nesting beaches, and its coastal wetlands have been identified as the number one land protection priority by the County of Hawai'i Public Access, Open Space and Natural Resources Preservation Commission, the Mayor, and the County Council. The Property is a high priority because it provides habitat for four (4) federally listed species: the endangered Hawaiian Hawksbill Turtle (*Eretmochelys imbricata*), the threatened green sea turtle (*Chelonia mydas*), the endangered, endemic Hawaiian coot (*Fulica alai*; 'Alae ke'oke'o), and the orange-black Hawaiian damselfly (*Megalagrion xanthomelas*), a candidate endangered species.

This scenic Property also contains tidepools, coral reefs, a 2-acre intertidal brackish water pond, the second largest freshwater spring system on the island, habitat for migratory shorebirds, including the Kōlea or Pacific Golden Plover (*Pluvialis fulva*), wandering tattlers (*Heteroscelus inamus*), and ruddy turnstones (*Arenaria interpres*), and habitat for migratory waterfowl, including northern pintails (*Anas acuta*) and northern shovelers (*Anas americana*). Habitat for the indigenous 'Auku'u or Black-Crowned Night Heron (*Nycticorax nycticorax subsp. hoactli*) will also be protected.

Kāwā Bay is part of a rural, coastal wetlands and spring system (the second largest on the island) that is threatened by large-lot luxury residential development. Already, owners of land located south of the Property have built a high-end luxury residence, marring this once pristine coastline, to the dismay of the surrounding community. Ka'ū is one of Hawai'i Island's fastest growing districts, and planning is underway for at least five major new subdivisions in the area. Citing these development pressures, the South Kona – Ka'ū Coastal Conservation Task Force recommended in their 2006 report to the State Legislature that the federal, state and county governments work together to establish a preservation corridor along the entire coastline of Ka'ū, including the three parcels included in this application. At the request of then U.S. Congressman Ed Case, the National Park Service completed a reconnaissance survey of 27 miles of Ka'ū coastline to preliminarily evaluate the area's resources and suitability for inclusion in the national park system. The report acknowledged that this coastline merited protection, and found the resources in this region to be of national significance.

## **Objective:**

The County of Hawai'i's objectives for this project are to (1) eliminate the threat of development by purchasing the Property in FY 2008, (2) facilitate and foster partnerships with local community organizations, the State of Hawai'i and state agencies, and federal agencies, to manage vehicular access to protect turtle nesting areas and prevent erosion, continue predator control measures around nesting areas, restore native vegetation around the wetlands, pond, and springs for the recovery of native flora and fauna, and work with the community to steward the conservation and cultural values of the property in perpetuity.

## Expected results and Benefits:

This project benefits a multitude of wildlife and habitat resources, including two federal species with final Recovery Plans (endangered Hawaiian Hawksbill turtle and threatened green sea turtle), one species with a draft recovery plan (Hawaiian coot) and one candidate endangered species (orange-black Hawaiian damselfly).

### Hawaiian Hawksbill turtle (*Eretmochelys imbricate*)

Ka'ili'ili Beach, which is located on the southern parcels of the Property, is identified as a nesting area in the United State Fish & Wildlife Recovery Plan for U.S. Pacific Populations of the Hawksbill Turtle (1997) ("Recovery Plan"). Non-native predators (rats and mongoose), artificial lights, and unmanaged vehicular traffic threaten Hawksbill Turtle nesting habitat at Kāwā. Protection of identified nesting habitat is one of the primary recovery actions listed in the Hawksbill Recovery Plan. The Recovery Plan also calls for controlling non-native predators of eggs and hatchlings (e.g., mongoose, feral cats, and pigs) in the Hawaiian population, eliminating adverse effects of development on Hawksbill nesting and foraging habitat, and determining population size, status and trends through long-term regular nesting beach censuses.



Hawksbill turtle hatchlings at Ka'ili'ili Beach  
(Photos courtesy of Hawksbill Turtle Recovery Project)



Green sea turtle (*Chelonia mydas*)

The Kāwā Property also provides off-shore foraging areas for the federally threatened green sea turtle. The 1998 USFWS and NMFS Recovery Plan for U.S. Pacific Populations of the Green Sea Turtle identifies the protection of identified foraging areas as a priority action.

Hawaiian coot (*Fulica alai*)

The endangered, endemic Hawaiian coot ('Alae ke'oke'o) has been recorded from nearby Punalu'u (Banko 1987), and therefore may use the habitat on the Kāwā property. The protection of this species is listed as a priority in the USFWS Draft Revised Recovery Plan for Hawaiian Waterbirds (Second Draft of Second Revision 2005). An important goal of this draft Recovery Plan is to restore and maintain multiple self-sustaining populations of federally listed endangered waterbirds until species recovery allows removal from endangered status.

Orange-black Hawaiian damselfly (*Megalagrion xanthomelas*)

The Kāwā spring system supports documented damselfly populations, including the rare orange-black Hawaiian damselfly, a candidate endangered species. Protection of the property will benefit this vast spring system, which is the second largest spring system on the island. Some of the highest densities of this species of damselfly are found to occur at the back of estuarine marshes, at the mouth of Hīlea and Nīnole Streams (Hīlea Stream is located on the northernmost parcel of the Property), and at Kāwā Springs. (Foote 2006).



Photo: Hawaiian damselfly (photo by L.A. Cooper).

## Other Species

This project will protect habitat for dozens of other species as well. The intertidal pond and freshwater springs on the Property currently provide resting and foraging areas for migratory shorebirds, migratory waterbirds, and indigenous and endemic Hawaiian waterbirds. Migratory shorebirds have been recently spotted at this site, including Kolea or Pacific Golden Plover (*Pluvialis fulva*) (William Seitz, 2007 personal observations). Other common shorebird species that are expected in this habitat are wandering tattlers (*Heteroscelus incamus*) and ruddy turnstones (*Arenaria interpres*) (Seift 2005). Sanderlings (*Calidris alba*) may also occur. Seabirds have not been documented, but based on inventories of adjacent, similar coastline and potential breeding and roosting habitat, wedge-tailed shearwaters (*Puffinus pacifica*) and black noddies (*Anous minutus*) could use or visit these coastal areas.

Migratory waterfowl that will benefit from this habitat protection effort include northern pintails (*Anas acuta*) and northern shovelors (*Anas clypeata*), and may include less common migrants such as American wigeons (*Anas americana*). The indigenous 'Auku'u or Black-Crowned Night Heron (*Nycticorax nycticorax subsp. hoactli*) has been seen using these wetlands (William Seitz, 2007 personal observation).

The proposed Kawa Bay property includes a large intertidal brackish/freshwater pond and freshwater springs that have been renowned since ancient Hawaiian times, but for which limited data exists. This system, the second largest spring complex on Hawai'i Island, stretches from Nīnole Springs through Kāwā and south to Honu'apo. It consists of wetlands fed by basal springs and intermittent streams that support a broad range of native fauna. At Kāwā, the springs feed fresh water through a short stream reach to a flat-bottomed pond by the shore with low basalt rocks across its seaward end. Under calm conditions, it holds low-salinity water on the bottom with an overlying freshwater lens, while on more typical days of wind and waves, the waters mix and salinity is higher. Farther southwest at Honu'apo, the freshwater springs feed a shallow estuary with direct opening to the sea and ongoing rapid tidal exchange.



Photo: Pond at Kāwā.

Native coastal strand plants including naupaka kahakai (*Scaevola taccada*), ‘ilima ku kahakai (*Sida fallax*), milo (*Thespesia populnea*), and pōhuehue (*Ipomoea pes-caprae brasiliensis*) occur throughout the Property's coastline, and will also be preserved by the acquisition, and improved by future restoration and enhancement efforts.



Picture: Coastal strand vegetation at Kāwā.

The Property also houses important archeological and cultural resources. A *luakini heiau* (sacrificial temple) sits on the northernmost parcel of the Property, and the area was known to contain many archeological features, including dwelling complexes, fishing shrines and canoe sheds, burial sites, *wahi pana* (legendary or sacred areas), petroglyphs, water collection sites, salt collection sites, burial sites, and a coastal trail that is part of the Ala Kahakai National Historical Trail corridor. Acquisition of the property by the County of Hawai'i will protect both the ecological resources of the property, and these other important historical and cultural resources.

**Approach:**

The County of Hawai'i will attain the objectives of this project through the full fee title acquisition of the 550.871 acre Property. The objectives of the plan will be achieved through the following approach based on the anticipated timeline below:

1. The County acquires fee interest in the Property.
2. The development rights in the Property are extinguished through a permanent conservation easement granted to the State of Hawai'i DLNR or other agreement between the State and the County.
3. The County works with Ka 'Ohana o Honu'apo, the Hawksbill Turtle Recovery Project, State of Hawai'i Division of Forestry and Wildlife, and local community groups on a plan to manage vehicular access and light pollution, control non-native predators, monitor nesting areas, educate users, and protect turtle nesting habitat.
4. The County works with Ka 'Ohana o Honu'apo, Hawksbill Turtle Recovery Project, State of Hawai'i Division of Forestry and Wildlife, and local community groups on plans to restore wetland habitat and vegetation.
5. The County work with Ka 'Ohana o Honu'apo, State of Hawai'i Historic Preservation Division, the National Park Service (Ala Kahakai National Historic Trail), and local community and cultural groups to identify, preserve and restore archeological features on the site.

Anticipated timeline:

Objective	Elements	Anticipated completion
1	Acquire fee interest, extinguish development rights	July, 2008
2	Draft Management Plan and Obtain Community Input	Winter 2008-Spring 2009
3	Implement Management Plan	Summer 2009- ongoing
4	Predator Control	Ongoing through Turtle Recovery Project
5	Archaeological/Cultural Conservation Plan	Summer 2009
6	Archaeological/Cultural Conservation/Restoration	Ongoing

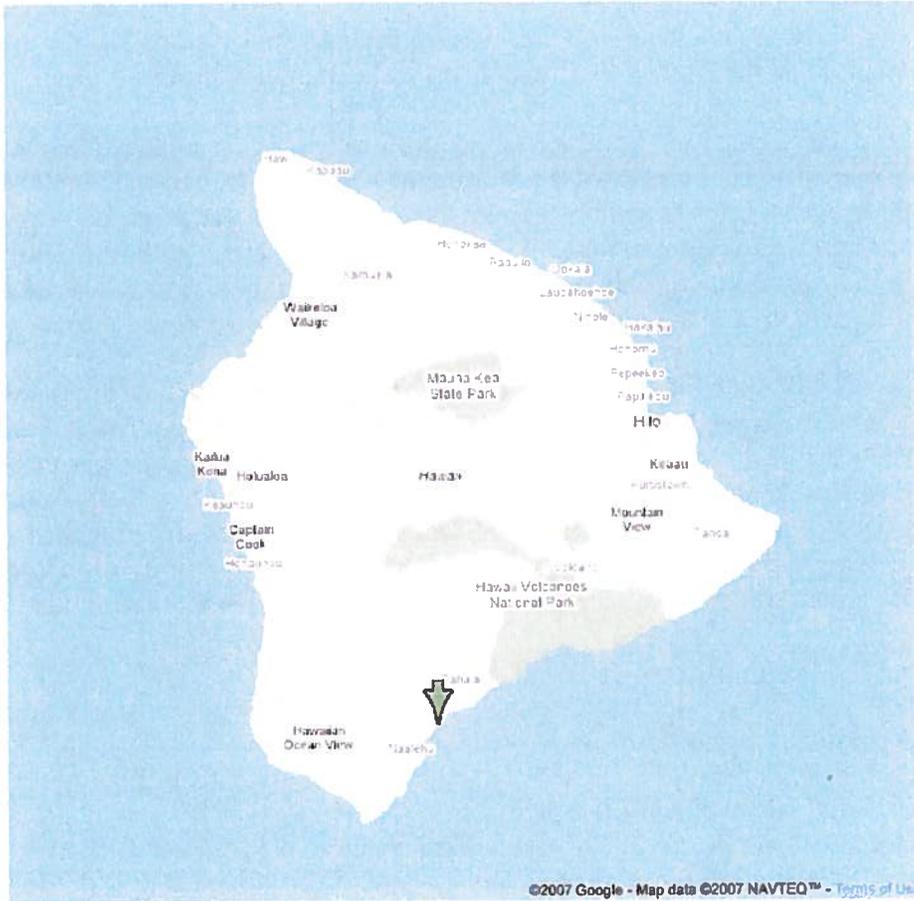
This project is supported by a consortium of interested partners. The lead agency which will acquire the land is the County. Other partners include the Hawai'i Department of Land and Natural Resources Division of Forestry & Wildlife (DLNR-DOFAW), the Hawksbill Turtle Recovery Project (a partnership of the National Park Service (NPS), National Marine Fisheries Service (NMFS), and U.S. Fish & Wildlife Service (USFWS), and private landowners), a local non-profit community group Ka 'Ohana o Honu'apo, The Trust for Public Land, and other local community groups.

The County of Hawai'i is taking the lead in identifying the vulnerability of this site to development. It has identified funds from the County's Open Space Fund that would be available to match funds from this program to acquire the site, and intends to apply to the State Legacy Lands Commission for additional support. It is committed to working with local community groups and existing governmental partnerships such as the Hawksbill Turtle Recovery Project to assure appropriate stewardship and community based management.

The County is also taking the lead on negotiating with the current landowner and setting aside matching funds for acquisition from its dedicated Open Space Fund. The County will hold title to the property, subject to an agreeable conservation easement donated to the State of Hawai'i DLNR or other enforceable agreement, which will eliminate the threat of development. The County will manage the land in partnership with community and other groups (the State of Hawai'i, Ka 'Ohana o Honu'apo, and the Hawksbill Turtle Recovery Project) for habitat, wetland, native plant, water quality, and cultural preservation.

**Partners:**

County of Hawai'i (title owner)  
Hawai'i Department of Land and Natural Resources Division of Forestry & Wildlife  
(DLNR-DOFAW)  
Hawksbill Turtle Recovery Project (a partnership of the National Park Service (NPS),  
National Marine Fisheries Service (NMFS), & U.S. Fish & Wildlife Service  
(USFWS))  
Ka 'Ohana o Honu'apo (community group)  
The Trust for Public Land  
Private landowners and community groups.



**Figure 1:** Location Map of Kāwā Bay

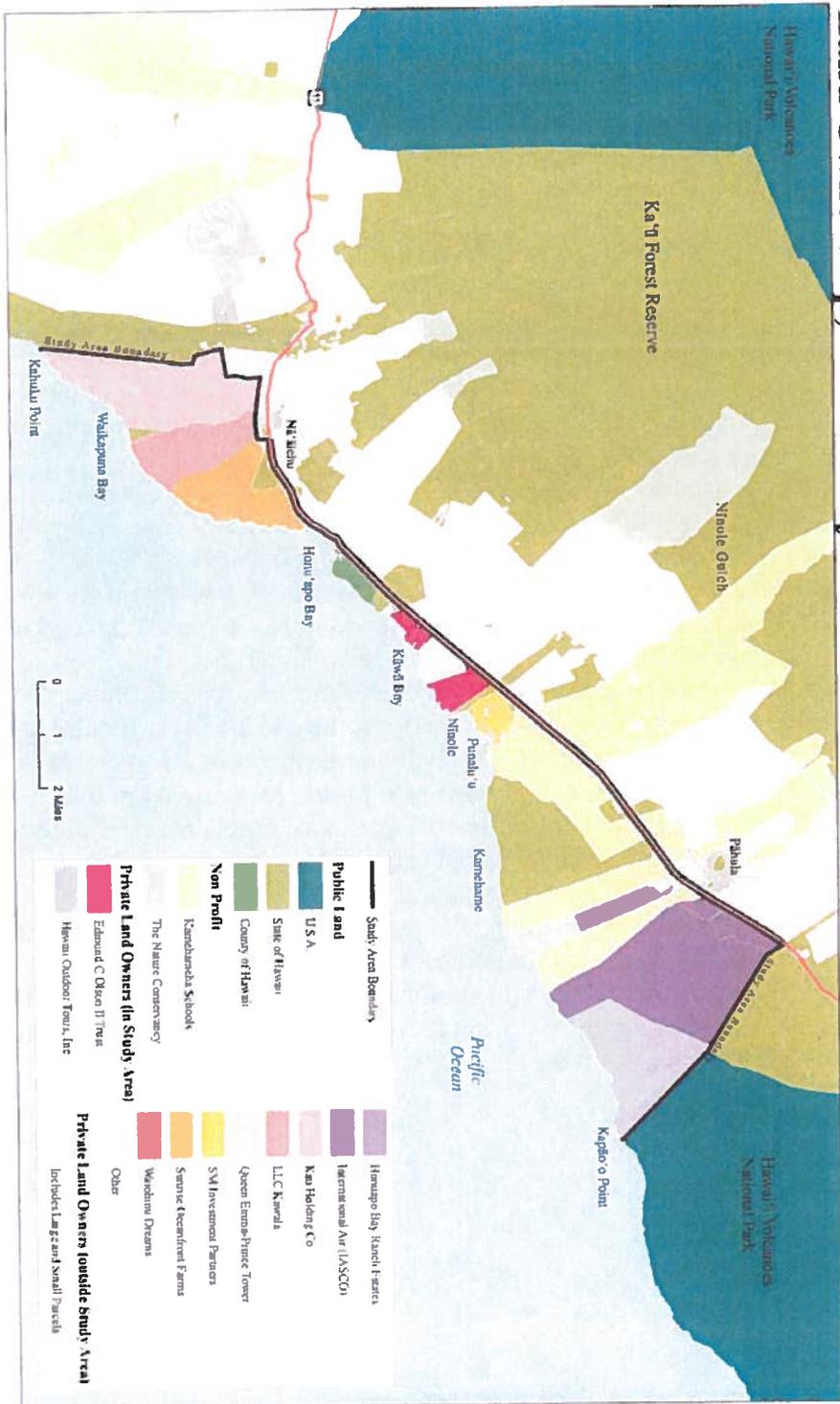
**Location:**

The Property is consists of three parcels totaling 550.871 acres and is located in the District of Ka'ū, along the southeast tip of the Island of Hawai'i (**Figure 1**). For over a century, the Property has been part of C. Brewer's and its related companies' (e.g., Ka'ū Agribusiness, Inc.'s) holdings in this region, TMKs 9-5-016:006, 025. The Property was previously owned by Samuel Parker, who purchased it from Princess Ruth Ke'elikolani. Princess Ruth was granted the Property at the time of the Mahele in 1848. The current landowner is the Edmund C. Olson Trust. The intertidal pond on the Property is technically owned by the State of Hawai'i but is not actively managed by it. This property is comprised of multiple habitat types, including turtles nesting beaches, tidepools, coral reefs, an over 2-acre intertidal brackish water pond, coastal freshwater springs. Kāwā Bay is part of a rural, coastal wetlands and spring system, which is the second largest such ecosystem on the island.

The coastal land south of the Property is privately owned on which a prominent private residence was recently built in the State land use conservation district. Further south of the privately owned land is land owned by the State of Hawai'i, and coastal lands known as Honu'apo Fishpond, which were acquired by the County of Hawai'i in 2006 through a NOAA Coastal Estuarine Land Conservation Grant. **Figure 2** (below) shows the relationship of the proposed Property acquisition in relation to other publicly owned lands (the magenta colored lots owned by the Edmund C. Olson Trust comprise the three parcels that make up the Property). Acquisition of the Property would add almost two miles to the existing 2.5 miles of public coastline. If conservation easements or fee title could be obtained along the privately owned portion of coastline in the future, connectivity of over 3 miles of coastline and estuarine areas could be preserved, creating an excellent opportunity for protection and restoration of important wetland habitat.

The Property is separated by two parcels that the County hopes to acquire in the future but which are not yet ready for purchase. One of the lots is owned by 100 or more individual owners. Acquisition of clear title to this property may not be feasible. The other lot is currently subject to a title and trespass dispute between the title owner, and a Hawaiian individual who has built a house on the property and claims it as his own.

# Land Ownership, Ka'ū Study Area



**Figure 2: Land ownership/acquisition area - magenta parcels owned by Edmund C. Olson Trust**

**Estimated Cost:**

Recovery Land Acquisition Grant:	\$1,000,000
State Legacy Lands	\$1,200,000
County	\$4,480,000
Other (Federal)	\$1,000,000
Total	\$7,680,000

The estimated cost to acquire the three parcels totaling 550.871 acres is \$7,680,000 based on a preliminary appraisal (not to Uniform Appraisal Standards for Federal Land Acquisition or "yellow book" standards). This application to the Section 6 Recovery Land Acquisition program requests \$1,000,000 (13%) of the total project cost. The balance of funds will come from the County of Hawai'i's dedicated Open Space Fund, the State Legacy Lands Fund, and other federal sources (the County and The Trust for Public Land through the State, plan to apply for additional National Coastal Wetlands grant funding). If necessary, the County and The Trust for Public Land will seek the balance of funding from other public and private sources.

**Contact:**

Hawaii Department of Land and Natural Resources  
Division of Forestry and Wildlife  
1151 Punchbowl Street. Ste. 325  
Honolulu, HI. 96813.

## Exhibit B

### Checklist for Land Acquisition Subgrants

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

- Appraisal certification. 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 review can be conducted one of three ways: 1) licensed and trained State agency staff, 2) a contract with appropriately licensed and trained personnel, or 3) the Department of Interior Appraisal Services Directorate (ASD). If the appraisal will go through ASD, coordination with ASD **prior** to contracting the appraisal is needed to ensure that the appraisal will meet all Federal requirements and review procedures.  
  
The cost of conducting the appraisal(s) and completing title work in accordance with Federal requirements must be assumed by the SUBGRANTEE or included in the total cost of the proposal.
- Title report review. A current title report of the property interest to be acquired must be obtained and may need to be approved through the Department of Land and Natural Resources, Land Division ("LD").
- 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. SUBGRANTEE shall provide a copy of the policy to the STATE.
- Matching funds. Evidence of the required matching funds must be provided to the STATE prior to the release of federal grant funds. 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 the draft *Guidance on the Use of Land as a Match for Federal Assistance Grants*.
- Accounting. The SUBGRANTEE must provide an accounting of all subgrant funds to be expended, evidenced by supporting documentation.
- ESA. SUBGRANTEE may be required to submit one or more Environmental Site Assessment(s) (ESA) as may be required by law.
- HRS Ch. 343 and NEPA compliance. An Environmental Assessment (EA), Environmental Impact Statement (EIS), a Finding of No Significant Impact (FONSI) or a determination from the appropriate agency that this project is exempt from the

preparation of an EA or an EIS, as may be required by HRS Ch. 343 or the National Environmental Policy Act (NEPA) may be required. Any costs must be assumed by the SUBGRANTEE.

- Resource value documentation. 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.
- Reports. SUBGRANTEE shall submit, upon request, all necessary documentation related to FWS grant reporting requirements. Reports may be requested at any time before or after the acquisition. Requirements may include, but are not limited to, summary and detailed documentation relating to acquisition costs, title vesting evidence, and the condition of the land and resources.
- Deed. The SUBGRANTEE shall submit a copy of proposed deed prior to execution of the deed for review and approval by the STATE. SUBGRANTEE shall ensure that the proposed deed complies with the terms of this Subgrant Agreement and any applicable federal laws, rules, and agreements.
- Escrow. Funds that are to be used for the purchase of property will be deposited directly into escrow by the STATE. SUBGRANTEE shall provide the escrow account information and documentation to the STATE.