

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

September 23, 2011

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

Board Members:

**SUBJECT:** Contested Case Request Regarding 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

**SUMMARY:**

At the May 27, 2011, meeting of the Board of Land and Natural Resources ("Board"), the Division of Forestry and Wildlife ("Division") requested the Board's approval to enter into an Agreement to Subgrant between the County of Hawai'i and the Board for the subgrant of federal Recovery Land Acquisition (RLA) funds for the purchase of approximately 550.871 acres in the District of Ka'u, Island of Hawai'i. The Board approved the recommendations of the Division. Subsequently, a petitioner requested a contested case hearing on the item.

The Division asserts that the petitioner, Abel Simeona Lui, does not have a legal right to a contested case hearing. The Division recommends denying the petitioner's request.

**BACKGROUND:**

On May 27, 2011, with item C-4, the Division requested and received the Board's 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 ("Property"), for conservation purposes as per U.S. Fish and Wildlife Service (USFWS) Section 6 Recovery Lands Acquisition (RLA) Grant No. E-17-RL-1. 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 petitioner made an oral request for a contested case hearing on item C-4 prior to the close of the May 27, 2011, Board meeting and mailed a postmarked written petition with the Board within ten

calendar days after the Board meeting, as required by Hawaii Administrative Rules. The Division forwarded the written petition and a request for legal assistance to the Department of the Attorney General.

### DISCUSSION:

The analysis of whether the petitioner is entitled to a contested case hearing is a two-step process. First, the Board must determine if there is a right to a contested case, as defined in HRS §91-1 (1993). Secondly, the Board must determine if a particular petitioner has standing to participate in the contested case hearing.

#### **Right to a contested case**

Regarding the first step, HRS § 91-1 defines a contested case as “a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for an agency hearing.” An “agency hearing” refers only to such hearing “held by an agency immediately prior to a judicial review of a contested case as provided in section 91-14.” HRS § 91-1. Hawaii’s courts have interpreted these definitions to mean that “[a] contested case is an agency hearing that 1) is required by law and 2) determines the rights, duties, or privileges of specific parties.” E&J Lounge Operating Co., Inc. v. Liquor Comm’n of the City and County of Honolulu, 118 Hawaii 320, 330, 189 P.3d 432, 444 (2008) (“E&J”) (quoting Public Access Shoreline Haw. V. Hawaii County Planning Comm’n, 79 Hawaii 425, 431, 903 P.2d 1246, 1252 (1995) (PASH)). A contested case hearing is “required by law” if the statute or rule governing the activity in question mandates a hearing prior to the administrative agency’s decision-making, or if a hearing is mandated by due process. Bush v. Hawaiian Homes Comm’n, 76 Hawaii 128, 134, 870 P.2d 1272, 1278 (1994).

A contested case hearing is not required by law. First, there is no statute or rule that mandates a contested case hearing prior to decision-making. Secondly, as to whether a hearing is required by due process, “[I]n order to assert a right to procedural due process, [a plaintiff] must possess an interest which qualifies as ‘property’ within the meaning of the constitution.” Sandy Beach Defense Fund v. City Council of City and County of Honolulu, 70 Haw. 361, 377, 773 P.2d 250, 260 (1989). According to Brown v. Thompson, 91 Hawaii 1, 10, 979 P.2d 586, 595, cert. denied, 528 U.S. 1010 (1999):

At the outset, a claim of a due process right to a hearing requires a two[-]step analysis: (1) is the particular interest which the claimant seeks to protect by a hearing “property” within the meaning of the due process clauses of the federal and state constitutions, and (2) if the interest is “property” what specific procedures are required to protect it.

The petitioner’s affected interests, as stated in the Petition for a Contested Case Hearing, relate to a claim of ownership to part of the real property for which the County of Hawai‘i is proposing to acquire with subgranted federal funds. Petitioner states that the Board’s action will deprive him of real property rights to the subject Property. The item in question, item C-4, requested the Board’s approval to enter into an agreement to subgrant of federal funds to the County of Hawai‘i for the purchase of land in Ka‘ū. The unexecuted subgrant agreement is between the Board and the County of Hawai‘i. The petitioner does not claim and has no property interest in the subgrant. An ordinary grant application process does not create a property interest. Alan Guttmacher Institute v.

McPherson, 597 F. Supp. 1530, 1544 (S.D.N.Y. 1984); see also Abbs v. Sullivan, 756 F. Suppl 1172, 1182-83 (W.D. Wisc. 1990), vacated on jurisdictional grounds, 963 F.2d 918 (7<sup>th</sup> Cir. 1992) (There is no enforceable right to receive a grant or award as such funding is always discretionary with the funding agency).

As to the second prong of the contested case definition, whether the decision would determine the rights duties or privileges of specific parties, the Board does not have the authority to decide the petitioner's claimed rights in the real property in a contested case hearing. See HRS § 171-6. The petitioner's action to quiet title to the real property can only be brought in the circuit court of the circuit in which the property is situated. HRS § 669-1(d).

### **Standing to participate in a contested case**

Regarding the second step of the analysis, the Board does not need to reach the question of whether the petitioner has standing to participate in a contested case, because there is no requirement for the Board to hold a contested case in order to enter into a subgrant agreement with the County.

### **Conclusion**

The petitioner does not have any legal interest or rights in the item under consideration, and does not have a right to a contested case hearing. Moreover, conducting a contested case hearing for the subgrant agreement would not further the stated interests of the petitioner, if, as written in the Petition, the petitioner seeks to assert a property interest in the real property that is the subject of the subgrant agreement. Therefore, the Division recommends proceeding with the Board's May 27, 2011, decision to approve item C-4 without conducting a contested case hearing.

### **RECOMMENDATIONS:**

That the Board deny the request of the petitioner, Abel Simeona Lui, for contested case hearing regarding the approved May 27, 2011, item C-4, authorizing the execution of 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 in the District of Ka'ū, Island of Hawai'i

Respectfully submitted,



PAUL J. CONRY, Administrator  
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



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

ATTACHMENTS:

- Attachment I:           Approved Submittal, May 27, 2011, Item C-4, "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'u, Island of Hawai'i, Tax Map Keys (3) 9-5-16:025, (3) 9-5-16:006, and (3) 9-5-17:005"
- Attachment II:           June 13, 2011, Petition for Contested Case Hearing from Abel Simeonea Lui



STATE OF HAWAII  
BOARD OF LAND AND NATURAL RESOURCES

RECEIVED

PETITION FOR A CONTESTED CASE HEARING

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OFFICIAL USE ONLY	
Case No.	Date Received & NATURAL STATE C... DEPT ...
Board Action Date / Item No.	Division/Office

**INSTRUCTIONS:**

- File (deliver, mail or fax) this form within ten (10) days of the Board action date to:

Department of Land and Natural Resources  
Administrative Proceedings Office  
1151 Punchbowl Street, Room 130  
Honolulu, Hawaii 96813  
Phone: (808) 587-1496, Fax: (808) 587-0390

- DLNR's contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (<http://hawaii.gov/dlnr/rules/Ch13-1-Official-Rules.pdf>). Please review these rules before filing a petition.
- If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.
- Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a \$100.00 non-refundable filing fee (payable to "DLNR") or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner's financial hardship.

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Abel Simeona Lui	2. Contact Person same as item (1)	
3. Address Post Office Box 791	4. City Pahala	5. State and ZIP 96777
6. Email	7. Phone (808) 938-8895	8. Fax

B. ATTORNEY (if represented)		
9. Attorney Name	10. Firm Name	
11. Address	12. City	13. State and ZIP
14. Email	15. Phone	16. Fax

**C. SUBJECT MATTER**

**17. Board Action Being Contested**

Contesting a Request for Approval to Enter into an Agreement to subgrant between the County of Hawaii and the Board of Land and Natural Resources for the purchase of approximately 550.871 Acres in Ka'u, Island of Hawaii, Tax Map Key(s)(3) - 9-5-16:025, (3) 9-5-16:006, and 9-5-17:005.

**18. Board Action Date**

Friday, May 27, 2011

**19. Item No.**

C4

**20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action**

Petitioner is affected in that the action, as approved, will deprive the Heirs of Timoteo Keawe of inherent, vested rights by virtue of Grant 993 (tmk 9-5-16:006) and Grant 1530 (tmk 9-5-17:005; as well as the Heirs of Noa Malailua, Grant 2370 (tmk 9-5-16:025, subject to the conditions of His Majesty Kamehameha III, Volume I, promulgated 1845-1846, in accordance with Hawaiian (Fundamental) Laws 1841-1842, Lahainaluna.

**21. Any Disagreement Petitioner May Have with an Application before the Board**

Petitioner contends that the vested rights of the Heir(s) of the aforementioned Grant(s) entitle them to reside on the subject land(s) "...with all the natural privileges of water, timber, stone, lime, sand, way, ingress, egress and regress, and all the rights of piscary theretoappendant; subject only to the private vested or other rights therein of all persons having such rights in said tract or tracts which were acquired in accordance with the past usages of the country, or confirmed by existing laws;..." (HM Kamehameha III Vol. I, 1845-1846.)

**22. Any Relief Petitioner Seeks or Deems Itself Entitled to**

Petitioner seeks recognition and compliance with the Fundamental Hawaiian Laws 1841-1842, and His Majesty Kamehameha III, Volume I, Promulgated 1845-1846; and the protection of Human Rights per United States Department of State (UNCLASSIFIED) MEMORANDUM FOR STATE GOVERNORS, Subject: U.S. Human Rights Treaty Reports, and particular the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the International Covenant on Civil and Political Rights (ICCPR); the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); and Convention on the Rights of the Child; International Humanitarian Law, i.e., The Law of Geneva and The Law of the Hague proper, "determines the rights and duties of belligerents in the conduct of operations and limits the choice of means in doing harm." Protection from violations of: Title-42: USCS-1986 Knowledge & Stop-Correct-Wrongs; Title 42: USCS-1985 Conspiracy-Civil; Title 42: USCS-1985-2 Obstruction; Title 18: USCS-1961 RECO; Title 18: USCS-242: Coloring of the Laws; Title 18: USCS-241 Criminal Conspiracy - Tort; Title 18: USCS-3 Criminal Participation-Knowledge; Title 18: USCS-1512 Obstruction of the Law; as a Grant of a tract of land which is described either by survey or in any other sufficiently definite mode will be held to include all that is within its boundaries (Harris v Carter, 6 H. 195, 197 (1877). Investigation as to whether or not COLLUSION exists to defraud the rightful Heir(s) to the subject parcels of land and rights in the land by the forms of law, to obtain that which is forbidden by law. and that some existence of fraud of some kind, the employment of fraudulent means and /or of lawful means for the accomplishment of an unlawful purpose (Tomiyosu v. Golden, 81 Nev. 140, 400 P. 2d 415, 417) in a open and notorious combination, conspiracy, and concert of action between certain parties to the request for fraudulent and deceitful purposes; COLOR OF TITLE Howth v. Farrar, C.C.A. Tex., 94 F.2d 654, 659; that which is a semblance or appearance of title, but is not title in fact or in law McCoy v. Lowrie, 42 Wash.2d 24, 253 P 2d 415, 418.



United States Department of State

Washington, D.C. 20520

[www.state.gov](http://www.state.gov)

January 20, 2010

UNCLASSIFIED

**MEMORANDUM FOR STATE GOVERNORS**

FROM: Harold Hongju Koh, Legal Adviser

A handwritten signature in dark ink, appearing to read 'HHK', written over the printed name of the sender.

SUBJECT: U.S. Human Rights Treaty Reports

This electronic communication contains information on several human rights treaties to which the United States is party, and which are implemented through existing laws at all levels of government (federal, state, insular and local). To promote knowledge of these treaties in the United States, we would appreciate your forwarding this communication to your Attorney General's office, and to the departments and offices that deal with human rights, civil rights, housing, employment and related issues in your administration.

Specifically, this memorandum provides background information on five human rights treaties to which the United States is a party and on which the United States has filed reports with the United Nations from 2005-2008: the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the International Covenant on Civil and Political Rights (ICCPR); the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); and two optional protocols to the Convention on the Rights of the Child – the Optional Protocol on the Involvement of Children in Armed Conflict and the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (CRC Optional Protocols). The United States is party to each of these treaties and, pursuant to obligations under each of these treaties, is obliged to submit reports to treaty monitoring bodies on the implementation of U.S. obligations thereunder. Because U.S. treaty obligations may apply to all levels of government throughout the territory of the United States and because of the important issues of U.S. law and practice addressed in our reports, we wish to make you and the appropriate members of your staff aware of these reports.

United States obligations under the ICCPR, CERD and the CRC Optional Protocols are implemented under existing law; in other words, prior to becoming a

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party to each of these treaties, the U.S. State Department, coordinating with other relevant agencies, reviewed the treaties and relevant provisions of U.S. law and determined that existing laws in the United States were sufficient to implement the treaty obligations, as understood or modified by reservations, understandings or declarations made by the United States at the time of ratification in order to ensure congruence between treaty obligations and existing U.S. laws. With regard to the CAT, Congress passed specific implementing legislation. Although these treaties do not give rise directly to individually enforceable rights in U.S. courts, the United States is bound under international law to implement all of its obligations under these treaties and takes these obligations very seriously.

As noted above, among these obligations are requirements to submit to the United Nations periodic reports of the actions the United States has taken in implementation of these treaties. Subsequent to submission of the reports, representatives of the United States (and in some cases representatives of the states) met with the relevant United Nations committees involved to present these reports, answer questions, and provide further information. In the context of these reports and meetings, the United Nations committees have expressed interest in confirming that the existence and substance of these treaties is made known throughout the territory of the United States. For example, one of these committees expressly urged the United States to "make government officials, the judiciary, federal and state law enforcement officials, teachers, social workers and the public in general aware about the responsibilities of the State party under the Convention." Because implementation of these treaties may be carried out by officials at all levels of government (federal, state, insular, and local) under existing laws applicable in their jurisdictions, we want to make sure that the substance of these treaties and their relevance to the United States is known to appropriate governmental officials and to members of the public.

I have attached to this memorandum links to the State Department and other websites containing the relevant treaties, the reports submitted by the United States, committee responses ("Concluding Observations"), and other relevant documents. We ask that you transmit these links to the appropriate offices in your organization or department.

Attachment:        Links to Treaties and Relevant Documents

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## *LINKS TO INFORMATION ON TREATIES*

- **Convention Against Torture and other Cruel Inhuman or Degrading Treatment of Punishment (CAT)**
  - Treaty: <http://www2.ohchr.org/english/law/cat.htm>
  - Latest U.S. Report: <http://www.state.gov/g/drl/rls/45738.htm>
  - Related Documents: <http://www.state.gov/g/drl/hr/treaties/>
  
- **International Covenant on Civil and Political Rights (ICCPR)**
  - Treaty: <http://www2.ohchr.org/english/law/ccpr.htm>
  - Latest U.S. Report: <http://www.state.gov/g/drl/rls/55504.htm>
  - Related Documents: <http://www.state.gov/g/drl/hr/treaties/>
  
- **International Convention on the Elimination of All Forms of Racial Discrimination (CERD)**
  - Treaty: <http://www2.ohchr.org/english/law/cerd.htm>
  - Latest U.S. Report: [http://www.state.gov/g/drl/rls/cerd\\_report/83404.htm](http://www.state.gov/g/drl/rls/cerd_report/83404.htm)
  - Related Documents: <http://www.state.gov/g/drl/hr/treaties/index.htm>
  
- **Optional Protocol (to the Convention on the Rights of the Child) on the Involvement of Children in Armed Conflict**
  - Treaty: <http://www2.ohchr.org/english/law/crc-conflict.htm>
  - Initial U.S. Report: <http://www.state.gov/g/drl/rls/83929.htm>
  - Related Documents: <http://www.state.gov/g/drl/hr/treaties/index.htm>
  
- **Optional Protocol (to the Convention on the Rights of the Child) on the Sale of Children, Child Prostitution, and Child Pornography**
  - Treaty: <http://www2.ohchr.org/english/law/crc-sale.htm>
  - Initial U.S. Report: <http://www.state.gov/g/drl/rls/84467.htm>
  - Related Documents: <http://www.state.gov/g/drl/hr/treaties/index.htm>

HAWAIIAN  
LAWS

1841-1842

## P R O L O G U E

THIS IS A REPRINT of a very rare book. The copy I have worked from previously belonged to the late M. B. "Kelly" Henshaw, who for many years headed a prominent Honolulu law firm. He and his wife Rose, or Tutu, as so many of her friends and loved ones called her, befriended and were loved by people in all walks of life. When Kelly passed away, Tutu said she knew he would like me to have the book. The Hawaii State Archives has a copy of the original book, but I know of no other.

Kelly was the finest and most meticulous man I have ever known. While in the printing business years ago, I told him I would like to try to reprint the book for the edification of present and future generations. He held this book in very, very high esteem, so although we were close friends, only after I signed a very legal receipt he had prepared did Kelly loan me the book for two days for photocopying. Unfortunately, it had been rebound too close to the inside margins and could not be reproduced or photographed, so I returned it to Kelly.

I set the English part on a Linotype in 1969 and pulled proofs of this in book-page form. The Hawaiian section I recently set on a word processor. Some spelling, grammar and punctuation may not be in accord with that of today, but it is as originally printed in 1842. The form and text are the same as in the original book but page numbers are not because the pages were set wider and in different type. The original book was painstakingly set in handset type and printed in the island's first printshop at Lahainaluna, Maui.

My thanks and fond Aloha to my sister, Janet Allan, of Lahaina, for her proofreading and other assistance.

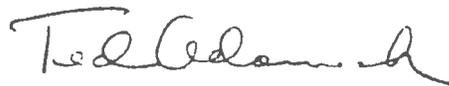
I think you will find this book quite interesting and I

hope present and future generations will be enlightened by learning of these very simple, basic but essential laws the people of Hawaii had to live by in what some think were "the good old days." This book will also give students of Hawaiian culture many insights into that culture's fascinating and interesting past.

Some feel these laws, written mostly by missionaries, ensured the downfall of the Hawaiian people's welfare. But history is history and must not be distorted. I, and people of Hawaiian heritage who have been consulted, feel it is vitally important that everyone who is interested should be afforded the opportunity to read and/or study these actual laws.

Kelly's copy of the original book that Tutu gave me will be given to the Maui Historical Society, where it will have a permanent home in a fitting Hawaii repository.

Aloha,



Ted Adameck

This reprint was published by Ted Adameck in 1994  
1822 Birdie Lane, Green Valley, Nevada 89014, U.S.A.

**TED ADAMECK**

**724 RENATE WAY**

**PASO ROBLES, CA 93446**

Printed and bound by Pressroom Printer & Designer, Hong Kong

TRANSLATION  
OF THE  
CONSTITUTION AND LAWS  
OF THE  
HAWAIIAN ISLANDS,  
ESTABLISHED IN THE REIGN  
OF  
KAMEHAMEHA III.



LAHAINALUNA,  
1842.

## PREFACE

The following is a translation of the constitution of the Hawaiian Government, and of all the laws which have been enacted or revised since its adoption so far as they are known to the translator. The translation is not designed to be a perfectly literal one, but where ever there is a variation from the letter of the original it is always made with the design of giving the sense more clearly. For these variations the translator is responsible. The original will of course be the basis of all judicial proceedings.

The foreign reader may be interested to know some thing of the history of these laws. A particular account of the origin of that part which relates to taxation, and indeed most of the civil code, may be found in the Hawaiian Spectator Vol. II Page 345.

The laws as they now appear are most of them of quite recent date. Some of them were enacted as far back as 1833, and others had their origin as early as 1823.

But all the laws which were enacted previous to the former period, and some of a later period have undergone such modifications and changes, that they now appear with a date much later than the original.

At these islands as well as in more civilized countries there is some thing like a system of common law, independent of special statutes. It consists partly in their ancient taboos, and partly in the practices of the celebrated chiefs as the history of them has been handed down by tradition, and at the present period the principles of the Bible are fully adopted. The established customs of civilized Nations have also in most cases the force of law in these Islands provided that custom is known.

This little volume therefore must not be considered as containing the whole system of Hawaiian law, although it contains most of the printed statutes.

Some of the laws contained in this volume were first proposed by foreign visitors and commanders of vessels of war, some were proposed by foreign residents, some by foreign consuls, and one or two were written by them; but not so with by far the greatest proportion. In some cases, as for example the Harbor laws, several individuals were called on to make a draft of a law on the same subject and then the chiefs adopted that which they considered the best, making such corrections by the others, or by their own suggestions as they saw best.

Several of the original laws were written by David Malo; Some by John Ii; nearly all the laws on the subject of taxation were written by Boaz Mahune and the first drafts of some were made by Timothy Keaweiki, Daniel Ii, and others.

But nearly all have been materially modified by the House of Nobles and House of Representatives at their annual council. They were repeatedly read and discussed, referred to committees or al-

tered by the suggestion of individuals, according to the will of the council. Almost every law however before it received the signature of the King and Premier was unanimously approved by both houses of the Legislature, and there is not a law in the book which was finally disapproved by a single individual of the council.

TRANSLATOR.

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A note regarding translation. Not text from the original book: King Kamehameha III prevailed upon the Rev. William L. Richards to leave the Protestant Mission in 1838 and enter the Kingdom Service as Chaplain, Teacher and Translator. The translator of these laws of 1842 (Lahainaluna Press) is believed to have been Rev. William L. Richards. SOURCE: The Fundamental Law of Hawaii. Edited and indexed by Lorrin A. Thurston. The Hawaii Gazette Co., Ltd., Honolulu, Hawaii 1904. Page viii.

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## CONSTITUTION, LAWS &c.



### DECLARATION OF RIGHTS, BOTH OF THE PEOPLE & CHIEFS.

"God hath made of one blood all nations of men to dwell on the earth," in unity and blessedness. God has also bestowed certain rights alike on all men and all chiefs, and all people of all lands.

These are some of the rights which He has given alike to every man and every chief of correct deportment; life, limb, liberty, freedom from oppression; the earnings of his hands and the productions of his mind, not however to those who act in violation of the laws.

God has also established government, and rule, for the purpose of peace; but in making laws for the nation it is by no means proper to enact laws for the protection of the rulers only, without also providing protection for their subjects; neither is it proper to enact laws to enrich the chiefs only, without regard to enriching their subjects also, and hereafter there shall by no means be any laws enacted which are at variance with what is above expressed, neither shall any tax be assessed, nor any service or labor required of any man, in a manner which is at variance with the above sentiments.

### PROTECTION FOR THE PEOPLE DECLARED.

The above sentiments are hereby published for the purpose of protecting alike, both the people and the chiefs of all these islands, while they maintain a correct deportment; that no chief may be able to oppress any subject, but that chiefs and people may enjoy the same protection, under one and the same law.

Protection is hereby secured to the persons of all the people, together with their lands, their building lots, and all their property, while they conform to the laws of the kingdom, and nothing whatever shall be taken from any individual except by express provision of the laws. What ever chief shall act perseveringly in violation of this constitution, shall no longer remain a chief of the Hawaiian Islands, and the same shall be true of the Governors officers, and all land agents.

But if any one who is deposed should change his course and regulate his conduct by law, it shall then be in the power of the chiefs to reinstate him in the place he occupied previous to his being deposed.

## CONSTITUTION

It is our design to regulate our kingdom according to the above principles and thus seek the greatest prosperity both of all the chiefs and all the people of these Hawaiian Islands. But we are aware that we cannot ourselves alone accomplish such an object—God must be our aid, for it is His province alone to give perfect protection and prosperity.—Wherefore we first present our supplication to Him, that he will guide us to right measures and sustain us in our work.

It is therefore our fixed decree,

I. That no law shall be enacted which is at variance with the word of the Lord Jehovah, or at variance with the general spirit of His word. All laws of the Islands shall be in consistency with the general spirit of God's law.

II. All men of every religion shall be protected in worshipping Jehovah, and serving Him, according to their own understanding, but no man shall ever be punished for neglect of God unless he injures his neighbor, or bring evil on the kingdom.

III. The law shall give redress to every man who is injured by another without a fault of his own, and shall protect all men while they conduct properly, and shall punish all men who commit crime against the kingdom or against individuals, and no unequal law shall be passed for the benefit of one to the injury of another.

IV. No man shall be punished unless his crime be first made manifest, neither shall he be punished unless he be first brought to trial in the presence of his accusers, and they have met face to face, and the trial having been conducted according to law, and the crime made manifest in their presence, then punishment may be inflicted.

No man or chief shall be permitted to sit as judge or act on a jury to try his particular friend (or enemy), or one who is especially connected with him. Wherefore if any man be condemned or acquitted, and it shall afterwards be made to appear, that some one who tried him acted with partiality for the purpose of favoring his friend (or injuring his enemy), or for the purpose of enriching himself, then there shall be a new trial allowed before those who are impartial.

### EXPOSITION OF THE PRINCIPLES

#### ON WHICH THE PRESENT DYNASTY IS FOUNDED.

The origin of the present government, and system of polity, is as follows. Kamehameha I, was the founder of the kingdom, and to him belonged all the land from one end of the islands to the other, though it was not his own private property. It belonged to the chiefs and people in common, of whom Kamehameha I. was the head, and had the management of the landed property. Where-

fore, there was not formerly, and is not now any person who could or can convey away the smallest portion of land without the consent of the one who had, or has the direction of the kingdom.

These are the persons who have had the direction of it from that time down, Kamehameha II, Kaahumanu I, and at the present time Kamehameha III. These persons have had the direction of the kingdom down to the present time, and all documents written by them, and no others are the documents of the kingdom.

The kingdom is permanently confirmed to Kamehameha III, and his heirs, and his heir shall be the person whom he and the chiefs shall appoint, during his life time, but should there be no appointment, then the decision shall rest with the chiefs and house of Representatives

### PREROGATIVES OF THE KING.

The prerogatives of the King are as follows: He is the sovereign of all the people and all the chiefs. The kingdom is his. He shall have the direction of the army and all the implements of war of the kingdom. He also shall have the direction of the government property—the poll tax—the land tax—the three days monthly labor, though in conformity to the laws. He also shall retain his own private lands, and lands forfeited for the nonpayment of taxes shall revert to him.

He shall be the chief judge of the Supreme Court, and it shall be his duty to execute the laws of the land, also all decrees and treaties with other countries, all however in accordance with the laws.

It shall also be his prerogative to form treaties with the rulers of all other kingdoms, also to receive ministers sent by other countries, and he shall have power to confirm agreements with them.

He shall also have power to make war in time of emergency, when the chiefs cannot be assembled, and he shall be the commander in chief. He shall also have power to transact all important business of the kingdom which is not by law assigned to others.

### RESPECTING THE PREMIER OF THE KINGDOM.

It shall be the duty of the King to appoint some chief of rank and ability, to be his particular minister, whose title shall be Premier of the Kingdom. His office and business shall be the same as that of Kaahumanu I, and Kaahumanu II. For even in the time of Kamehameha I, life and death, condemnation and acquittal were in the hands of Kaahumanu. When Kamehameha I, died, his will was, "The Kingdom is Liholiho's, and Kaahumanu is his Minister." That important feature of the government, originated by Kamehameha I, shall be perpetuated in these Hawaiian Islands, but shall always be in subserviency to the law

The following are the duties of the Premier. All business connected with the special interests of the kingdom, which the King

wishes to transact, shall be done by the Premier under the authority of the king. All documents and business of the kingdom executed by the Premier, shall be considered as executed by the King's authority. All government property shall be reported to him (or her) and he (or she) shall make it over to the King.

The Premier shall be the King's special counsellor in the great business of the kingdom.

The King shall not act without the knowledge of the Premier, nor shall the Premier act without the knowledge of the King, and the veto of the King on the acts of the Premier shall arrest the business. All important business of the kingdom which the King chooses to transact in person, he may do it but not without the approbation of the Premier.

#### GOVERNORS

There shall be four Governors over these Hawaiian Islands — one for Hawaii — one for Maui and the Islands adjacent — one for Oahu, and one for Kauai and the adjacent Islands. All the Governors, from Hawaii to Kauai shall be subject to the king.

The prerogatives of the Governors and their duties shall be as follows: Each Governor shall have the general direction of the several tax gatherers of his island, and shall support them in the execution of all their orders which he considers to have been properly given, but shall pursue a course according to law, and not according to his own private views. He also shall preside over all the judges of his island, and shall see their sentences executed as above. He shall also appoint the judges and give them their certificates of office.

All the Governors, from Hawaii to Kauai shall be subject not only to the King, but also to the Premier.

The Governor shall be the superior over his particular island or islands. He shall have charge of the munitions of war, under the direction of the king, however, and the Premier. He shall have charge of the forts, the soldiery, the arms and all the implements of war. He shall receive the government dues and shall deliver over the same to the Premier. All important decisions rest with him in time of emergency, unless the king or Premier be present. He shall have charge of all the King's business on the island, the taxation, new improvements to be extended, and plans for the increase of wealth, and all officers shall be subject to him. He shall also have power to decide all questions, and transact all island business which is not by law assigned to others.

When either of the Governors shall decease, then all the chiefs shall assemble at such place as the king shall appoint, and shall nominate a successor of the deceased Governor, and whosoever they shall nominate and be approved by the King, he shall be the new Governor.

#### HOUSE OF NOBLES.

At the present period, these are the persons who shall sit in the government councils, Kamehameha III, Kekauloahi, Hoapiliwahine, Kuakini Kekauonohi, Kahekili, Pahi, Konia, Keohokalole, Leleiohoku, Kekuaanoa, Kealiihahonui, Kanaina, Keoni Ii, Keoni Ana, and Haalilio. Should any other person be received into the council, it shall be made known by law. These persons shall have part in the councils of the kingdom. No law of the nation shall be passed without their assent. They shall act in the following manner: They shall assemble annually, for the purpose of seeking the welfare of the nation, and establishing laws for the kingdom. Their meetings shall commence in April, at such day and place as the King shall appoint.

It shall also be proper for the King to consult with the above persons respecting all the great concerns of the kingdom, in order to promote unanimity and secure the greatest good. They shall moreover transact such other business as the King shall commit to them.

They shall still retain their own appropriate lands, whether districts or plantations, or whatever divisions they may be, and they may conduct the business on said lands at their discretion, but not at variance with the laws of the kingdom.

#### RESPECTING THE REPRESENTATIVE BODY.

There shall be annually chosen certain persons to sit in council with the Nobles and establish laws for the nation. They shall be chosen by the people, according to their wish, from Hawaii, Maui, Oahu, and Kauai. The law shall decide the form of choosing them, and also the number to be chosen. This representative body shall have a voice in the business of the kingdom. No law shall be passed without the approbation of a majority of them.

#### RESPECTING THE MEETINGS OF THE LEGISLATIVE BODY.

Their shall be an annual meeting as stated above; but if the Rulers think it desirable to meet again they may do it at their discretion.

When they assemble, the Nobles shall meet by themselves and the representative body by themselves, though at such times as they shall think it necessary to consult together, they may unite at their discretion.

The form of doing business shall be as follows: The Nobles shall appoint a secretary for themselves who at the meetings shall record all decisions made by them, and that book of records shall be preserved in order that no decrees affecting the interests of the kingdom may be lost.

The same shall be done by the representative body. They too shall choose a Secretary for themselves, and when they meet for the purpose of seeking the interests of the kingdom, and shall come to

**HIS MAJESTY KAMEHAMEHA III,**

**KING OF THE HAWAIIAN ISLANDS ;**

**PASSED BY THE**

**HOUSES OF NOBLES AND REPRESENTATIVES ,**

**DURING THE TWENTY-FIRST YEAR OF HIS REIGN, AND THE THIRD AND**

**FOURTH YEARS OF HIS PUBLIC RECONITION ,**

**A. D. 1845 AND 1846 :**

**TO WHICH ARE APPENDED THE**

**ACTS OF PUBLIC RECONITION ,**

**AND THE**

**TREATIES WITH OTHER NATIONS.**

**VOL. I.**

---

*HONOLULU, OAHU*

**CHARLES E. HITCHCOCK, PRINTER**

**GOVERNMENT PRESS**

**1846**

### ARTICLE III.---OF THE PUBLIC STAMPS.

Section I. The director of the government press shall be, *exofficio*, keeper of the public stamps, to be hereinafter described; which it shall be his duty to impress upon all documents requiring to be legalized throughout the kingdom; that is to say:---all deeds and leases of real estate, between private individuals. All bills of sale of chattel property, between private individuals. All bonds for the payment of money. All mortgages and hypothecations, executed within this kingdom. All documents and papers or exhibits required by law at the custom houses. All agreements not to be performed within a year and a day by either party thereto. All articles of co-partnership. All powers of attorney, executed in the kingdom. All process of the courts of judicature throughout the kingdom. All exhibits, required by law to be made by private individuals. All petitions to any department of the government. All licenses. All letters testamentary, of administration, letters of guardianship, and inventories of property, filed by such executors, administrators and guardians. All wills and testaments. All official and other bonds, executed within this kingdom. All recognizances to keep the peace. All enlargements and extensions, in any way affecting the rights and interests of private persons, throughout the kingdom; and all instruments hereinafter specifically required to be stamped:---for any of which impressions, the director of the (25) government press shall receive payment, at the hands of the person applying for the same, the price prescribed and graduated in and by the third part of this act, for the benefit of the royal exchequer. And it shall be the duty of His Majesty's attorney general, as provided in the fifth part of this act, to prepare and propose to the king and premier for adoption, all the forms in blank, contemplated in this section; which, when so prepared and adopted, he shall furnish to the director of the government press, to be printed in blank by the said director, and sold stamped in blank, to whomsoever it may concern, at the price to be prescribed by an executive circular, emanating from the interior department, for the benefit of the royal exchequer.

Section II. The said stamp shall consist of the device of the royal crown; shall be of the diameter of an inch; and shall be impressed upon said documents with the words, "*Royal Stamp*" inscribed over the crown in the Hawaiian, and under the crown in the English language. This device may, however, be altered from time to time, by an order in council.

# Grants

KNOW ALL MEN BY THESE PRESENTS, That I, \_\_\_\_\_, of the district of \_\_\_\_\_, Hawaiian Islands, for and in consideration of the sum of \_\_\_\_\_ dollars to me in hand paid, (or as the case may be to me secured by, &c. setting forth the security) have granted, bargained, sold, enfeoffed, conveyed and do hereby confirm unto His Majesty, Kamehameha \_\_\_\_\_, king of the Hawaiian Island, and to his successors and assigns, all my rights, title, interest, claim, possession, right of possession, reversion, right of reversion, remainder and right of remainder, in and to the following described tract or tracts of lands, situate on the Island of \_\_\_\_\_, viz:

Together with all and singular the tenements, hereditaments, buildings and improvements now situate thereon, and all the natural privileges of water, timber, stone, lime, sand, way, ingress, egress and regress, and all the rights of piscary thereto appendant; subject only to the private vested or other rights therein of all persons having such rights in said tract or tracts which were acquired in accordance with the past usages of the country, or confirmed by existing laws:

To have and to hold the tract or tracts above specified, in manner and forms as above conveyed, subject only to the above reservation, in favor of the third persons having vested right therein unto His Majesty the king, and unto his successors and assigns forever.

In witness whereof I the said \_\_\_\_\_, have hereunto set my hand and seal, at Honolulu, in presence of His Highness the premier, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_.

\_\_\_\_\_, ( L. S. )

Royal fee simple patent

Section VI. The form of all royal fee simple patent shall be as follows:

KAMEHAMEHA \_\_ , by the grace of God, king of the Hawaiian Islands, by this his royal patent, make known unto all men, that he has for himself and his successors in office, this day granted and given, absolutely, in fee simple unto \_\_\_\_\_ , his faithful and loyally disposed subject, for the consideration of \_\_\_\_\_ dollars, paid into the royal exchequer, all that certain piece of land, situated at \_\_\_\_\_ , in the island of \_\_\_\_\_ , and described

*(by actual survey or by natural boundaries as the case may be)* as follows:

containing \_\_\_\_\_ acres, more or less; excepting and reserving to the Hawaiian government, all mineral or metallic mines, of every description.

To have and to hold the above granted land in fee simple, unto the said \_\_\_\_\_ his heirs and assigns forever, subject to the taxes to be from time to time imposed by the legislative council equally, upon all landed property held in fee simple.

In witness whereof I have hereunto set my hand, and caused the great seal of the Hawaiian Islands to be affixed, at Honolulu, this \_\_\_\_\_ day of \_\_\_\_\_ , 18\_\_ .

( L. S.) \_\_\_\_\_

Attest, \_\_\_\_\_ ,

Premier

Exhibit B

Leases

This indenture of lease between His Hawaiian Majesty's minister of the interior of the one part, and \_\_\_\_\_, of \_\_\_\_\_, Island of \_\_\_\_\_, Hawaiian Islands, of the other part, witnesseth: that the Hawaiian government has leased and does hereby lease unto the said \_\_\_\_\_, his executors, administrators and assigns, upon the condition hereinafter expressed, that tract of land containing \_\_\_\_\_ acres, situate at \_\_\_\_\_, Island of \_\_\_\_\_, and known by the following boundaries: which tract, and all its present improvements and advantages, the said \_\_\_\_\_, his executors, administrators and assigns is to possess and enjoy, without unlawful molestation, for the terms of \_\_\_\_\_ years from this date, provided he or his said representatives shall, during that period, comply with the following engagements on his part, viz:

The said \_\_\_\_\_, is yearly, during said term, to pay the minister of finance, at the royal exchequer, as the reserved rent of said land, the sum of \_\_\_\_\_ dollars; he is in addition thereto, pay any taxes now or to be hereafter imposed by law upon landed property, which are applicable to leasehold estates; he is by no means to manufacture or sell any ardent spirits upon said land; and at the full expiration of the said term of \_\_\_\_\_ years, he is to restore the said land to His Highness, the minister of the interior, for the use of the Hawaiian government, together with all the buildings, enclosures and improvements thereon.

And it is hereby covenanted by the said \_\_\_\_\_, that in case default shall be made in the payment of the rent as above reserved, that it shall be lawful for His Majesty's attorney general, for the use of the royal exchequer, to distrain upon the property of the said \_\_\_\_\_ or of his representatives, found at the time of such default, upon the said premises, to the value of the rent in arrear; or to sue for and levy the same on executive, upon any other property of said \_\_\_\_\_ or of his representatives; and also, that in case of non-payment of rent, whether the same shall have been distrained or levied on execution, as above authorized; or in case either of the other conditions above set forth shall be violated, then it shall be lawful for the said attorney general to cause this lease to be annulled, and the minister of the interior reinstated in the premises hereby demised.

In witness whereof the respective parties have hereto set their hands and seals,  
this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
( L. S. )  
( L. S. )

Page 102-103

Section XII. The said lease shall be recorded originally before delivery in a book of lease; to be kept in the archives of the bureau by this act created, and the minister of the interior shall be entitled to receive at the hands or the lease, for the use of the royal exchequer, the fee of leasing and recording, established by the third part of this act.

Royal Patent Grant

No. 993

\*\*\*\*\*

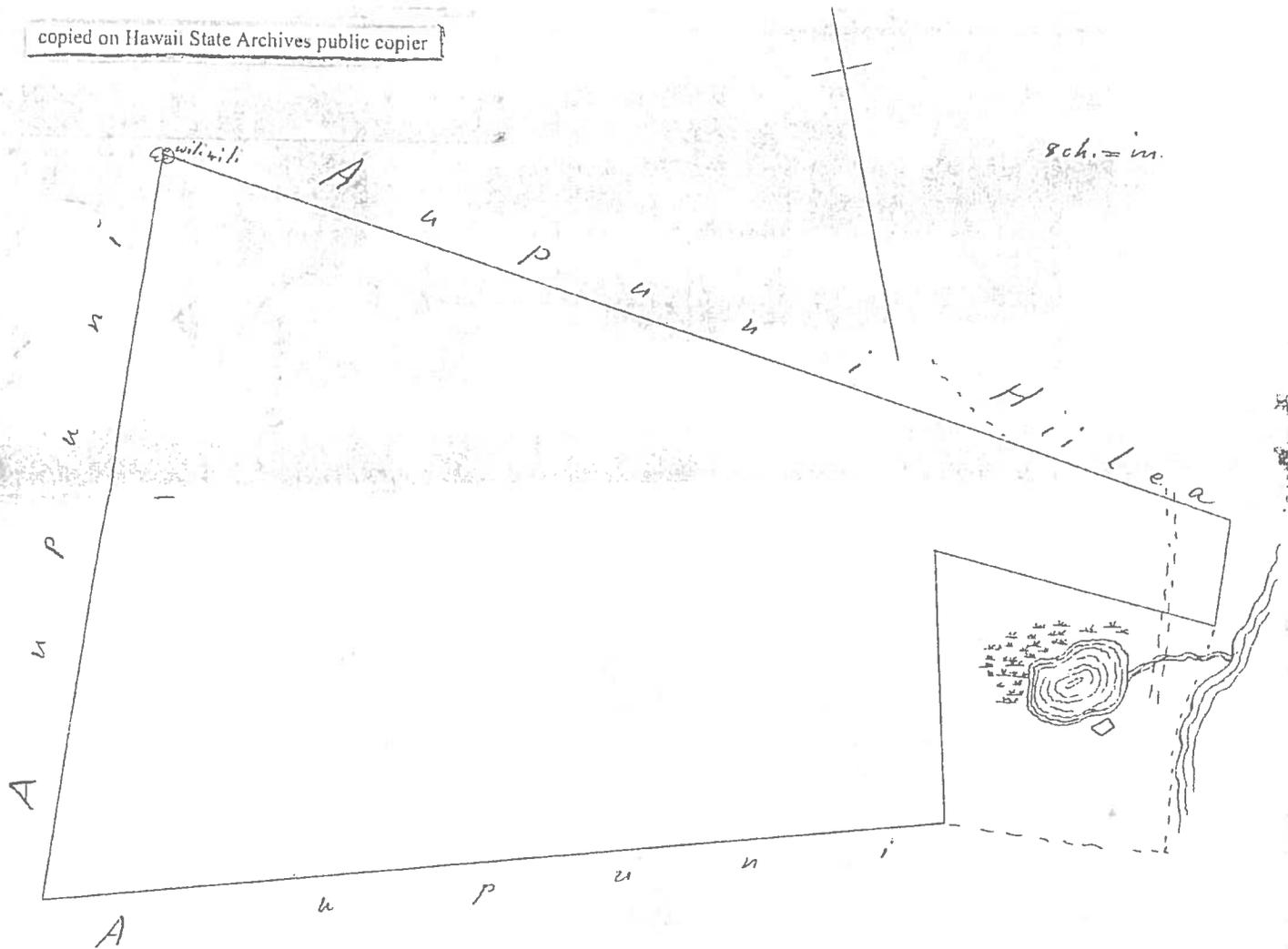
KIMONEO KEAWE.

Kaalaiki, Kau, Hawaii

\*\*\*\*\*

R. P. Grant  
99~~3~~

---



Kimokeo Kearse.  
Kaalaiki, Kau. Hawaii

Ehoomaka keia ma kahakai, ma ke kahi Hokiina o ka  
apana i ana ia e Mr. Fuller, a e holo ma ia apana  
Ak. 64 Kom. 13.83 kaul. & Hem. 9 Kom. 13.00 kaul. a hiki  
i ke kahi Komohana o ia apana; alaila e holo i ka  
Ak. 84 Kom. 43.36 kaul.; alaila Ak. 20 Heik. 36.24 kaul.  
a hiki i kahi kumu wiliwili mui; alaila e holo  
Hem. 60 1/2 Heik. 42.66 kaul. a hiki i ka iwi o Hilea;  
alaila e holo ma ia iwi Hem. 59 1/2 Heik. 11.26 kaul.; alaila  
e holo Hem. 18 1/2 Kom. 5.00 kaul. a hiki i kahi; hoomaka i.  
Maloko o keia apana 119 1/2 eka.

H. M. Luman.

205 the amount or character thereof, or whereby the amount payable by such person is  
206 increased beyond the amount which would be payable by him according to such re-  
207 turn, or whose claim for exemption shall not have been allowed, may appeal from  
208 such assessment, on lodging with the Tax Assessor on or before the first day of Octo-  
209 ber a notice in writing, stating his grounds of objection to his assessment or to such  
210 portion thereof, as the objection applies to, and depositing therewith a sum for costs  
211 of appeal as follows :

212 SECTION 42. Where the exemption or reduction claimed from the tax list shall  
213 amount to Two Dollars or under, twenty five cents for costs ; over Two Dollars and  
214 under five dollars, fifty cents costs ; over five dollars and under ten dollars, one dollar  
215 costs, and so on for every additional five or part of five dollars tax, fifty cents addi-  
216 tional costs.

217 SECTION 43. The assessor shall, on or before the first day of September in each  
218 year, send written notices to those owners of real estate within their respective dis-  
219 tricts, who are non-residents of such district, and within this Kingdom describing the  
220 property assessed to them, and stating the proposed valuation.

221 SECTION 44. It shall be the duty of each Tax Assessor on receiving any notice of  
222 objection to forward the same to the President of the Board of Appeals of his district.

#### OF THE COURTS OF TAX APPEAL.

223 SECTION 45. The several Circuit Judges of the Second, Third and Fourth Judicial  
224 Circuits, and for the Island of Oahu, the Police Justice of Honolulu, together with two  
225 disinterested persons, to be appointed by the Minister of Finance, for each taxation  
226 district, shall constitute a Court of Appeal to hear and determine all appeals and ob-  
227 jections duly taken under this Act, in their several circuits, or in the Island of Oahu.  
228 Provided that no assessor shall be appointed to sit or act as a member of such Court.

229 SECTION 46. The said Courts shall hold a sitting in each taxation district during

LAND PATENT GRANT NO. 1530

TO KIMOKEO

ON

COVERING LOT NO.

AREA

LOCATION KAALAIKI, KAU, HAWAII

DISTRICT OF KAU

ISLAND OF HAWAII

CONSIDERATION, \$

LAND BOARD APPROVAL DATE:

REFERRED TO:

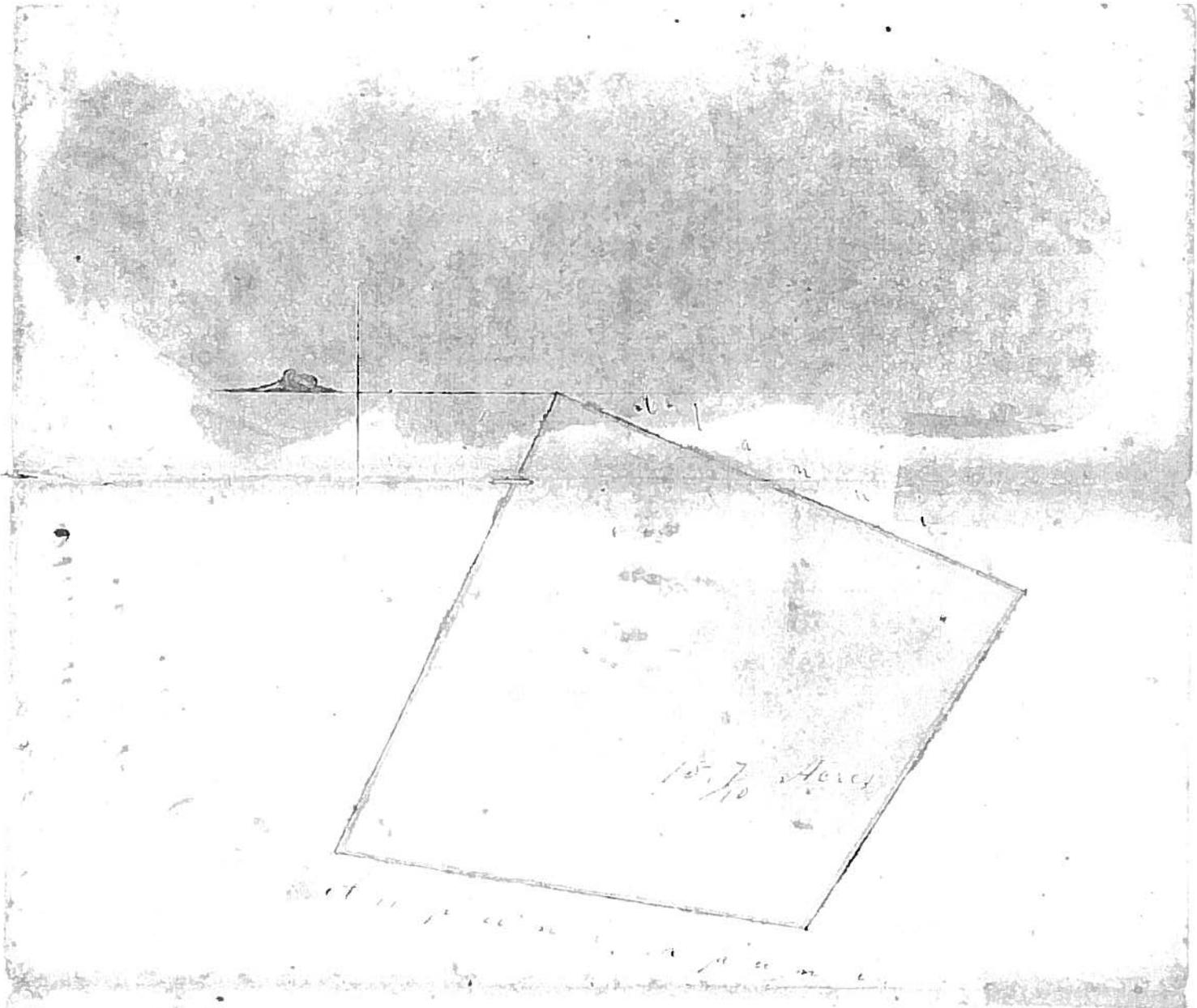
DEPARTMENT OF  
LAND AND NATURAL RESOURCES  
DIVISION OF LAND MANAGEMENT

Patent 1530  
Kimokeo  
Kaalaike,  
Kau. Hawaii.

R. P. Grant  
1530

Koloa, Kauai .....	4,000 00
Waimuu, Kauai .....	3,000 00
Lihue, Kauai.....	3,000 00
Kawaihau, Kauai.....	5,000 00

[6]



Kauai, Hawaii .....	7,900 00
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Puna, Hawaii .....	3,000 00
--------------------	----------

Uku o na Luna Alauai .....	14,400 00
Na Alauai me na Alahaka, (i lona ma ka Aie)	197,000 00
Honolulu, Oahu .....	\$ 60,000 00
Koolanpoko, Oahu.....	5,000 00
Koohunui, Oahu.....	5,000 00
Ewa a me Waianae, Oahu..	5,000 00
Waialua .....	3,000 00
Lahaina, Maui.....	8,000 00
Wailuku, Maui .....	8,000 00
Makawao, Maui .....	5,000 00
Hana, Maui.....	7,000 00
Molokai .....	5,000 00
Lanai .....	1,000 00
Kohala Akau, Hawaii.....	7,000 00
Kohala Hema, Hawaii.....	4,000 00
Hamakua, Hawaii.....	10,000 00
Kona Akau, Hawaii .....	2,000 00
Kona Hema, Hawaii.....	2,000 00
Kau, Hawaii .....	7,000 00
Puna, Hawaii.....	3,000 00
Hilo, Hawaii.....	20,000 00
Koloa, Kauai .....	4,000 00
Waimea, Kauai .....	3,000 00
Lihue, Kauai.....	3,000 00
Kawaihau, Kauai.....	5,000 00

Land of Kimoheo - Kaalaki Kaa.  
 Beginning at the Northeastern Corner and  
 running S.  $29^{\circ}30'$  W. 13.66 Chains along the road  
 thence N.  $58^{\circ}15'$  " 10.80 " " " East Corner  
 " N.  $8^{\circ}45'$  E. 12.85 " " " "  
 " S.  $64^{\circ}15'$  " 13.90 " " " "  
 to point of beginning - and containing  
 fifteen  $\frac{7}{10}$  Acres -

Kaa, Hawaii, Sept 11, 1851

J. Fuller  
 Surveyor

Resolved; That Kimoheo's application  
 for 15  $\frac{7}{10}$  acres of lands, including a small fish pond,  
 in Kaalaki, Kaa, Hawaii be granted at the price  
 of \$1.50 per acre, reserving the fish pond

By Order of the Privy Council  
 March 8 1852

Lorin Andrews Secretary

*Interior - Limited*

FINDINGS OF LAW

Pursuant to Hawaii Revised Statute Law Chapter 507 D-1.....Findings and Purpose:

.....to prevent the filing of frivolous lien claims during pendency of litigation.....

Harris vs. Carter (6 HAW 195 [1877] dubious taking of crown lands by rancher Harris.

CONCLUSIONS OF LAW

Pursuant to Hawaii Revised Statute Law Chapter 507-D-7/710-1017.....General Provision relating to Offenses against public administration.....we committed a crime for which we have refused to make any attonement.....Howeth vs.Farrar C.C.A. Tex., 94, 2d, 654,658....

Land Title within the Hawaiian Islands, can be traced back to Kamehameha the Third. This dirt is mines. (Originated in 1776, Thirteen Colonies and England shows title to the lands). Today, it is, apart, Called "The United States of America".

**CONCLUSION:** New Discovery. Pursuant to His Majesty Kamehameha the Third, Laws, Promulgated 1845-1846, Volume 1, Section III, No document required to be stamped by law shall be of any valid force in this Kingdom, unless the same shall have been previously imprinted, as here in above provided.

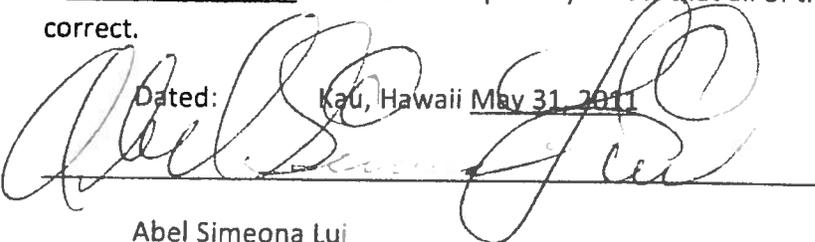
AFFIDAVIT OF

Abel Simeona Lui

Pursuant to HRAP Rule 52:

I, Abel Simeona Lui, declare under penalty of law that all of the above is true and correct.

Dated: Kau, Hawaii May 31, 2011

  
Abel Simeona Lui

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

May 27, 2011

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

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 HAWAII AND THE BOARD OF LAND AND NATURAL RESOURCES FOR THE PURCHASE OF APPROXIMATELY 550.871 ACRES IN KA'Ū, ISLAND OF HAWAII, 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<sup>\*</sup> 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.

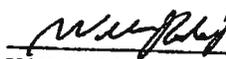
*instructed chairperson to include a provision to require the County to bring the draft management plan before the Board for review and input as part of agreement item 5.*

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)

*Note: a ~~contested~~ contested case was requested on this item by Abel Jimenez Lee (aided by Liko Okalani Martin). original request / petition.*

**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 )  
 )  
COUNTY OF \_\_\_\_\_ ) SS.

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. *of the draft plan*  
*I include a brief before the Board.*
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:
    - I. 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'u, 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.

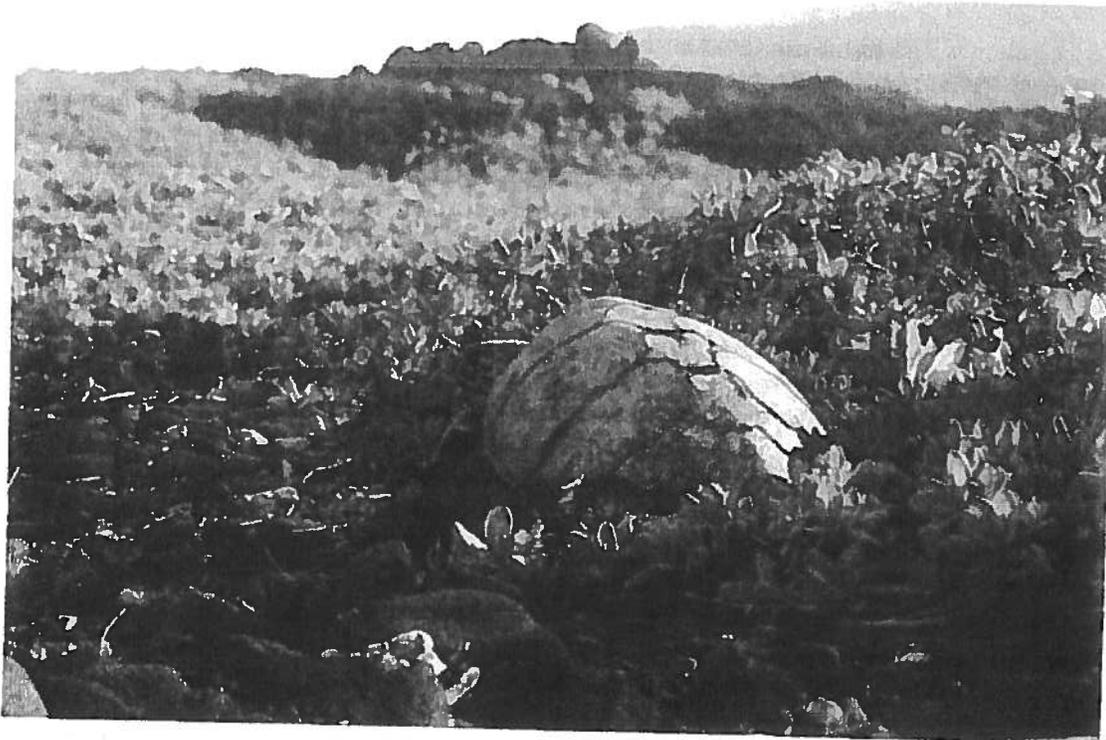
14. **Disputes.** No dispute arising under this Subgrant Agreement may be sued upon by the SUBGRANTEE until after the SUBGRANTEE's written request to the Chairperson of the Board of Land and Natural Resources ("CHAIRPERSON") to informally resolve the dispute is rejected, or until ninety (90) calendar 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 Kolea 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 Kolea 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:**

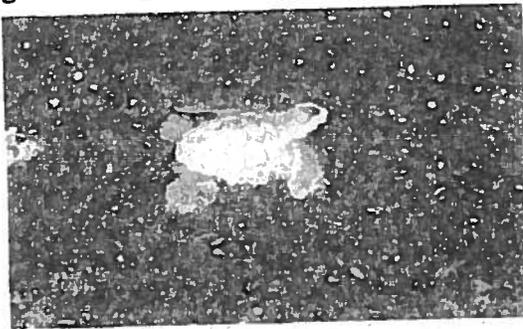
The County of Hawai'i's objectives for this project are to (1) eliminate the threat of development by purchasing the Property in FY 2008, (2) facilitate and foster partnerships with local community organizations, the State of Hawai'i and state agencies, and federal agencies, to manage vehicular access 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:**

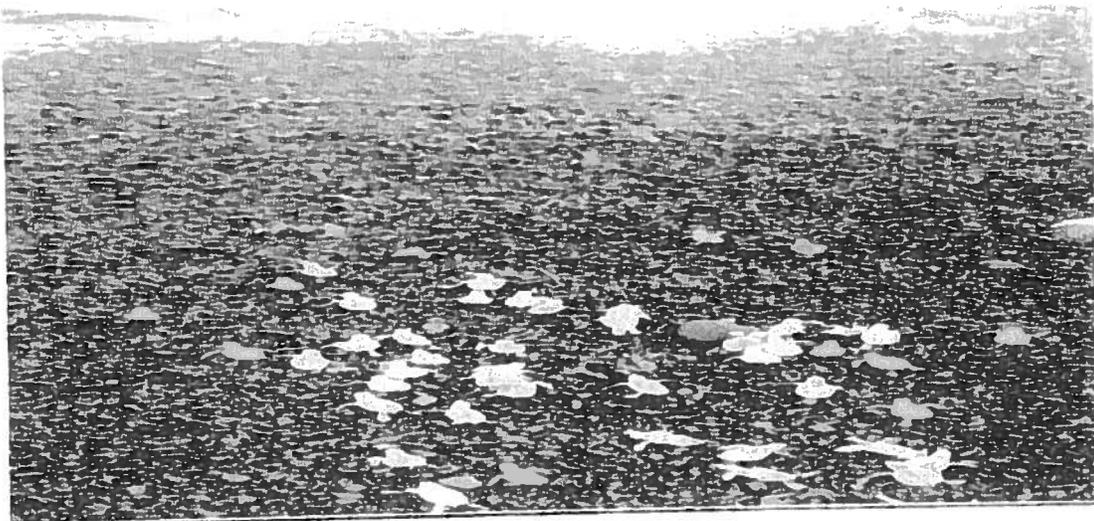
This project benefits a multitude of wildlife and habitat resources, including two federal species with final Recovery Plans (endangered Hawaiian Hawksbill turtle and threatened green sea turtle), one species with a draft recovery plan (Hawaiian coot) and one candidate endangered species (orange-black 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 mongoosc), 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 ('Alac 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. (Footc 2006).

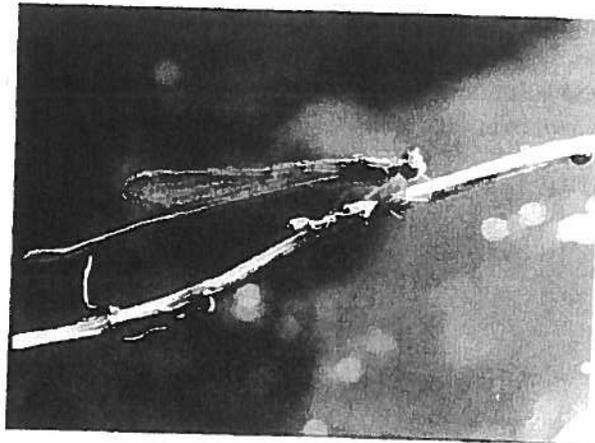


Photo Hawaiian damselfly (photo by L. A. Cooper)

### 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 incanum*) 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 Ninole 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

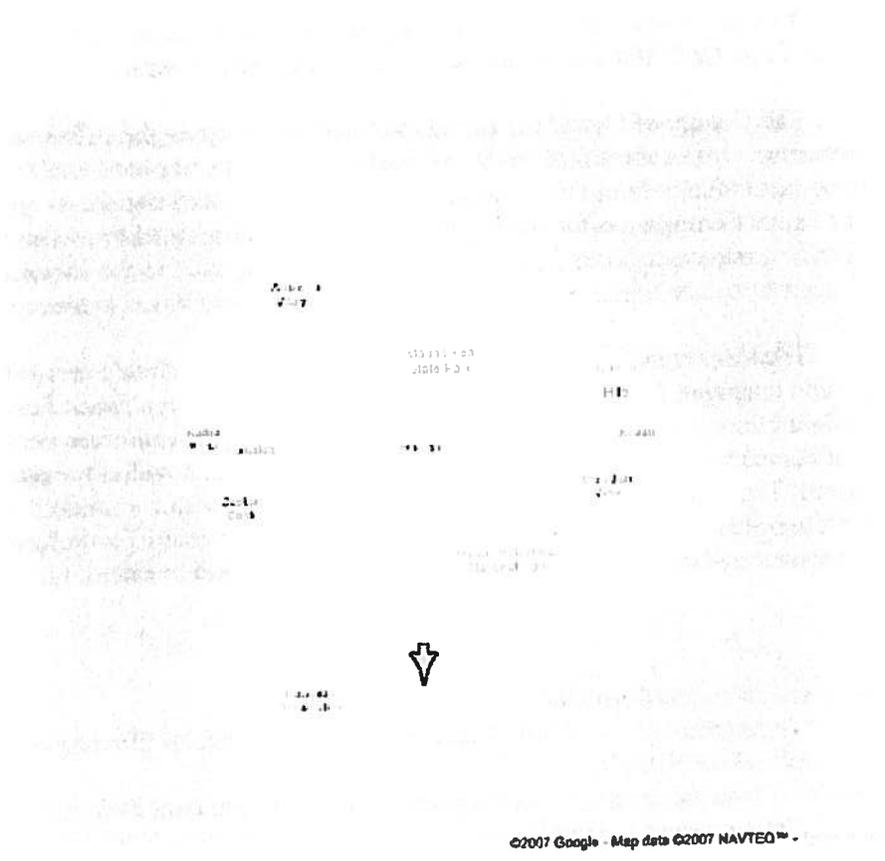
This project is supported by a consortium of interested partners. The lead agency which will acquire the land is the County. Other partners include the Hawai'i Department of Land and Natural Resources Division of Forestry & Wildlife (DLNR-DOFAW), the Hawksbill Turtle Recovery Project (a partnership of 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 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.



**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.