

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

September 26, 2014

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

PSF No.:13MD-133

MAUI

Approval for Acquisition of Private Lands situate at Honokohau and Honolua,
Lahaina, Maui, identified as Tax Map Key No.: (2) 4-1-001:010.

APPLICANT AGENCY:

Department of Land and Natural Resources

PRIVATE LANDOWNER:

MAUI LAND & PINEAPPLE COMPANY, INC., as Fee Owner, whose business and
mailing address is 200 Village Road, Lahaina, Hawaii 96761.

LEGAL REFERENCE:

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

LOCATION:

Privately-owned lands situated at Honolua, Lahaina, Maui, identified by Tax Map Key:
(2) 4-1-001:010, as shown on the attached map labeled Exhibit A.

AREA:

269.95 acres, more or less.

ZONING:

State Land Use District: Agriculture/Conservation
County of Maui CZO: AGR

CURRENT USE:

Vacant and unencumbered.

CONSIDERATION:

The purchase price will be the lower of either the available funds or the fair market value as established by an appraisal conducted by an independent appraiser contracted by the State/DLNR.

PURPOSE

Preservation and public recreational uses.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Pursuant to Section 343-5(a)(1), HRS, an environmental assessment (EA) is not required where State or county funds are being used for the acquisition of unimproved real property. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

APPLICANT REQUIREMENTS:

Seller or Applicant shall be required to:

- 1) Pay for the appraisal cost to determine the value of the properties to be acquired;
- 2) Provide survey maps and descriptions for the privately-owned property according to State DAGS standards and at Applicant's own cost;
- 3) Obtain a title report for the privately-owned property at Applicant's own cost and subject to review and approval by the Department;
- 4) Pay for and conduct a Phase I environmental site assessment and, if this Phase I identifies the potential for hazardous materials release or the presence of hazardous materials, conduct a Phase II environmental sampling and analysis plan and perform any and all remediation, abatement and disposal as may be warranted and as satisfactory to the standards required by the Federal Environmental Protection Agency and/or the State Department of Health, all at no cost to the State and to the satisfaction of the Department.

REMARKS:

BACKGROUND. On June 28, 2013, the Governor approved Act 241, Sessions Laws of Hawaii 2013. The Act requires the Department to engage to acquire the parcel of land described above, popularly referred to as Lipoa Point (“property”). A copy of the Act is included as Exhibit B. The property is currently owned by the Maui and Land Pineapple Company, Inc. (“MLP”). This potential acquisition will serve two purposes: 1) to preserve the natural, cultural, and recreational resources of the property, and 2) to

dedicate the proceeds from the purchase to ensure adequate capitalization of MLP's retiree pension fund. The Board granted approval in principle for this acquisition at its meeting on August 23, 2013, under Agenda Item D-6. Subsequently, the Department began utilizing the funds appropriated for this acquisition to conduct necessary due diligence for the acquisition.

NEED FOR ACQUISITION. As noted in the Act, “the legislature finds, however, that recent contemplation of zoning changes to this area has jeopardized the pension benefits for numerous retirees, as the parcel was pledged against a pension fund established by the retirees’ former employer in order to make sure that kupuna would continue to receive the benefits that they worked for. If this pension fund should fail, many of the pensioners would have to turn to state services and programs, thereby straining the social safety net, especially in an area where resources are already scarce.” In addition, the acquisition presents the opportunity to preserve the natural, cultural and recreational resources of the property. The area is rich in marine resources and historical sites, and is one of the most popular recreational areas for locals and tourists alike. This acquisition has received strong support from the local community.

FUNDING SOURCE. The Legislature provided an appropriation in the amount of twenty million dollars (\$20,000,000.00) for this acquisition. The funds have been appropriated for this purpose, are currently awaiting release through approval of the Governor.

DUE DILIGENCE REQUIREMENTS. MLP provided a title report as well as a survey map and meets and bounds description. The map and description were submitted to DAGS Survey for their review and approval. A review of the title report uncovered several encumbrances. Most of the encumbrances of concern will be expunged from the title report either prior to or at closing. Remaining outstanding will be nine un-located kuleana that may potentially be on the property. These kuleana awards are in the ahupua’a, but have not been located with any further specificity. Further review of the title report shows that title to four of the kuleana lots, along with a half interest in a fifth lot, were confirmed to be with MLP, as determined by judgments of the State Circuit Court of the Second Circuit. Title to the remaining four kuleana and the other half interest in the fifth lot has not been confirmed.

Although MLP has agreed to provide title insurance to the State, the policy will not insure against the un-located kuleana. In order to resolve the issue, MLP agrees to convey title to the kuleana they own, to the extent the kuleana are determined to be located on the Property. With respect to the remaining kuleana, MLP agrees to indemnify the State against claims to the extent the kuleana are determined to be located on the Property. The State and MLP have agreed on the terms of a warranty deed that has been amended from the State’s standard form for the purpose of addressing the kuleana issues. A copy of the draft deed is attached as Exhibit C.

The Department contracted with John Child & Co., Inc. (“Appraiser”) for an appraisal report to determine the fair market value of the property in compliance with the Uniform Standards of Professional Appraisal Practice (“USPAP”). The fair market value as determined by the appraisal was higher than the amount of the funds appropriated for the acquisition, so the final purchase price will be the amount of the appropriation (\$20,000,000.00) minus the costs incurred by the Department relating to the acquisition, i.e. appraisal report, environmental studies, etc. The initial appraisal was performed under the assumption that the un-located kuleana would not significantly impact the value. Upon reaching the aforementioned agreement with MLP in regards to the kuleana, the appraiser provided an assessment of the impact of the outstanding kuleana on the fair market value. The estimated potential diminution in value was not significant enough to affect the purchase price.

The Department contracted with AMEC Environment & Infrastructure, Inc. (“AMEC”) to conduct a Phase I Environmental Site Assessment (“Phase I”) for the Property and, if necessary, a Phase II Environmental Site Assessment (“Phase II”). The Phase I identified potential recognized environmental conditions from the historical use of the Property for commercial agricultural purposes (specifically pineapple cultivation), as there was a potential for residual contamination from the use of pesticides and herbicides. In addition, a portion of the property had been used as a dump site, and although the area has since been cleared, there exists the potential for residual contamination from unknown wastes.

Based on the findings of the Phase I, AMEC was instructed to proceed with the Phase II. AMEC consulted with the State Department of Health (“DOH”) on formulating a plan for field sampling and laboratory analyses to identify potential soil contamination based on the Property’s historical use for pineapple cultivation activities and/or waste disposal. AMEC then conducted surface soil multi-incremental sampling of the former pineapple field, associated sediment settling basin and the former waste disposal area, and analyzed for contaminants of potential concern.

The results were screened against the current DOH Tier I Environmental Action Levels (“EALs”) or the Environmental Protection Agency Region 9 Screening Levels for unrestricted/residential land use. All sample concentrations were found to be below the screening levels for the Property. Therefore the Phase II concluded that based on this information, the historic pesticide and herbicide usage on the pineapple fields and/or impacts from the former waste disposal area do not appear to have resulted in residual contamination in excess of current regulatory thresholds. As a result, the Phase II was submitted to DOH for their review and on August 20, 2014, DOH issued a No Further Action Determination for the property for unrestricted land use.

In order to comply with the Act provisions relating to funding the MLP retiree pension fund, the State and MLP will enter into a Purchase and Sale Agreement (“PSA”). The PSA will require the proceeds of the sale be deposited in an escrow account to ensure that

the funds are disbursed to the pension plan trustee. As a result, a mortgage securing the pension shall be released from the property. A copy of the draft purchase and sale agreement is attached as Exhibit D.

MANAGEMENT. The present situation is unique in that rather than an agency seeking to acquire land for its own purposes, this acquisition was driven by legislative action. As a result, at present, the Department is working to determine how the property should be managed to best ensure natural resource stewardship, cultural practices, education and outdoor recreation. To this end, the Department has established a working group consisting of representatives of various divisions to further identify resource values and management challenges, and proposed recommendations to address those issues. The Department plans to engage the community stakeholders and appropriate agencies regarding future management of the property. The Department will also seek additional funding from the Legislature to implement the proposed measures.

Once it is determined how the property should be managed, the Department will return to update the Board with its proposed action and to seek approval for a set aside to the appropriate agency. At present, the Board is requested to authorize the Chairperson to execute management rights-of-entry to agencies as deemed appropriate to fulfill the Department's objectives.

RECOMMENDATION: That the Board:

1. Authorize the Chairperson to enter into a purchase and sale agreement under the terms and conditions cited above which are by this reference incorporated herein and further subject to the following:

Review and approval by the Department of the Attorney General; and

Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

2. Authorize the acquisition of the subject private lands under the terms and conditions cited above which are by this reference incorporated herein and further subject to the following:

The terms and conditions of the amended deed document form, as may be further amended;

Review and approval by the Department of the Attorney General; and

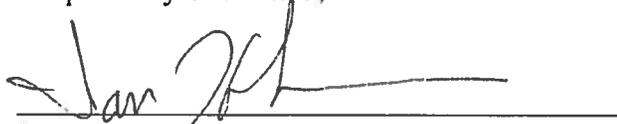
Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

3. Authorize the Chairperson to issue management right-of-entry permits to agencies as deemed appropriate covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

The standard terms and conditions of the most current right-of-entry permit form, as may be amended; and

Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

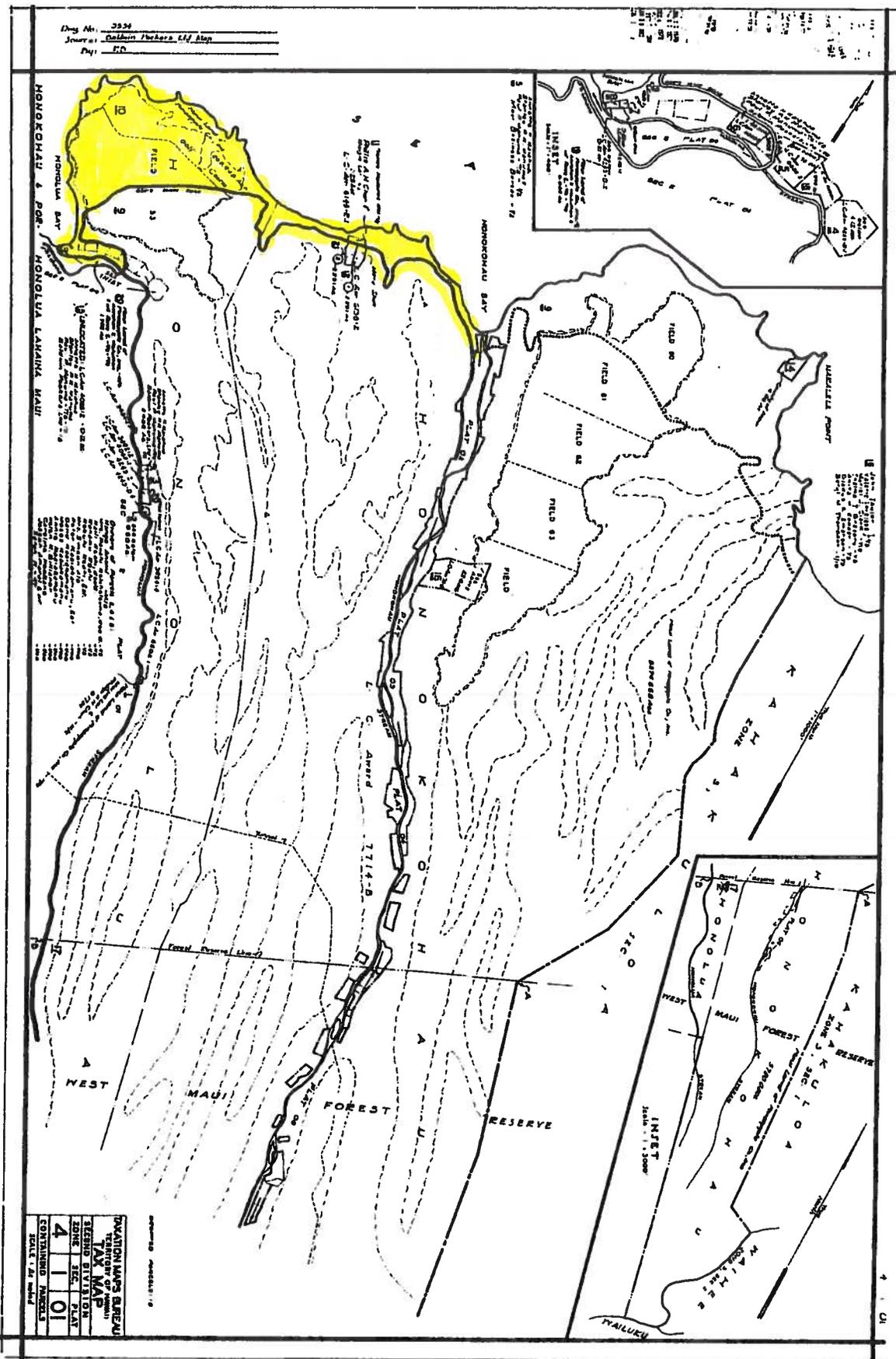


Ian Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson *WJA*



QUANTON MAPS SERIES
TAY MAP
FIELD DIVISION
ZONE SEC. PLAT.
4 1 01
CONTINUED PARCELS
SCALE 1/2 IN. = 1 MI.

EXHIBIT "A"

A BILL FOR AN ACT

RELATING TO THE ACQUISITION OF RESOURCE VALUE LANDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that Lipoa Point-Honolua
2 is one of the most iconic landmarks in Hawaii. Honolua is rich
3 in marine resources and historical and archaeological sites, and
4 is one of the most popular recreational areas for locals and
5 tourists alike, offering some of the best snorkeling and surfing
6 conditions on the island of Maui. Nationally recognized as a
7 marine preserve, it has attracted federal funding and programs
8 due to having some of the highest fish assemblage
9 characteristics of all the Hawaiian islands. Additionally,
10 Honolua is considered to have one of the most diverse, unique,
11 and abundant reef formations, providing habitat for rare coral
12 species.

13 Historically, not only is Honolua Bay significant for
14 Hawaiian canoe voyaging as being the departure point for the
15 Hōkūle‘a maiden voyage in 1976, it is also the site of several
16 archaeological finds that were identified by Bishop Museum staff
17 in 1974, including two heiau, boulders with grinding surfaces,
18 house platforms, burial mounds, and agricultural terraces.

HB1424 CD1 HMS 2013-3626



EXHIBIT "B"

1 The legislature further finds that, due to its iconic
2 reputation, Honolua Bay has drawn countless visitors to Hawaii,
3 which helps generate revenue by bolstering the State's important
4 tourist industry. Honolua is known worldwide as a premier
5 winter session, big wave surf spot, a sector of the surfing
6 industry that is currently eclipsing the Association of Surfing
7 Professionals World Championship Tour.

8 The legislature finds, however, that recent contemplation
9 of zoning changes to the area has jeopardized the pension
10 benefits for numerous retirees, as the parcel was pledged
11 against a pension fund established by the retirees' former
12 employer in order to make sure that kupuna would continue to
13 receive the benefits that they worked for. If this pension fund
14 should fail, many of the pensioners would have to turn to state
15 services and programs, thereby straining the social safety net,
16 especially in an area where resources are already scarce.

17 The legislature further finds that acquiring this land for
18 preservation would help protect the area's pristine condition
19 while providing funds to ensure the adequate capitalization of
20 the pension fund. The legislature also finds that the owners of
21 the land have pledged that any revenues derived from the sale of
22 this parcel would be pledged completely against the pension



1 fund, thereby alleviating concerns of the social safety net
2 being stretched even further.

3 The purpose of this Act is to require the department of
4 land and natural resources to engage to acquire the parcel of
5 land located at Lipoa Point. It is the legislature's intent
6 that the department explore options to protect and preserve the
7 area's pristine condition, while ensuring the adequate
8 capitalization of the pension fund against which the parcel was
9 pledged.

10 SECTION 2. The department of land and natural resources,
11 in consultation with the Hawaiian Islands Land Trust, shall
12 engage to acquire the parcel of land located at Lipoa Point,
13 identified as TMK 2-4-1-001-010 0000.

14 SECTION 3. To the maximum extent practicable, the
15 department of land and natural resources shall ensure that the
16 seller of the land identified in section 2 of this Act uses the
17 proceeds of the sale to benefit the pension plan of retirees of
18 the Maui Land and Pineapple Company, Inc.

19 This section shall not be construed or interpreted or
20 deemed to obligate the State for the pension plan liabilities of
21 employees and retirees of the Maui Land and Pineapple Company,
22 Inc.



1 SECTION 4. This Act shall take effect on July 1, 2013.



Report Title:

DLNR; Lipoa Point; Land Acquisition

Description:

Requires DLNR, in consultation with the Hawaiian Islands Land Trust, to engage to acquire the parcel of land located at Lipoa Point, identified as TMK 2-4-1-001-010-0000. Requires DLNR to ensure to the maximum extent practicable that the seller of the land uses the proceeds of the sale to benefit the pension plan of retirees of the Maui Land and Pineapple Company, Inc. Effective July 1, 2013. (HB1424 CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



hereof, said exhibits being, respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, designated as C.S.F. No. _____ and dated _____ (hereafter, the "Property").

TOGETHER WITH the following unlocated kuleana awards in the Ahupuaa of Honolulu, to the extent the kuleana awards are located on the Property, title which was confirmed to the Grantor by Judgment and Decree dated December 10, 1981 filed in Circuit Court of the Second Circuit State of Hawaii, in Civil No. 4713 on December 10, 1981, and recorded in the Bureau of Conveyances in Liber 16073 at Page 714 on December 30, 1981, as follows:

Apana 1 of Royal Patent Number 6962, Land Commission Award Number 3031 to Naiwimawaho;

Apana 3 of Royal Patent Number 4776, Land Commission Award Number 4250 to Kauai; and

Apana 1 of Royal Patent Number 4189, Land Commission Award Number 4256 to Kenao.

TOGETHER WITH the following unlocated kuleana awards in the Ahupuaa of Honolulu, to the extent the kuleana awards are located on the Property, title which was confirmed to the Grantor by Judgment and Decree dated December 10, 1981 filed in Circuit Court of the Second Circuit State of Hawaii, in Civil No. 4713 on December 10, 1981, and recorded in the Bureau of Conveyances in Liber 16073 at Page 739 on December 30, 1981, as follows:

Apana 3 of Royal Patent Number 3338, Land Commission Award Number 6602 to Peleua; and

An undivided one-half (1/2) interest in and to Apana 2 of Royal Patent Number 3330, Land Commission Award Number 4065 to Kahiki.

As to Royal Patent Number 4198, Land Commission Award Number 3802, Apana 3 to Lohelohe: Stipulation by and between Grantor and Grantee filed on January 31, 1992 and Stipulation Amending Stipulation by and between Grantor and the Grantee filed on January 31, 1992 entered on May 8, 1992 as set forth in Final Judgment and Decree filed on April 13, 1993 in the Circuit Court of the Second Circuit, State of Hawaii, in Civil No. 88-0578(1), and amended by Amended Final Judgment and Decree filed on June 23, 1993 and recorded in the Bureau of Conveyances as Document

No. 93-108324 on July 6, 1993.

SUBJECT TO Lease to Maui Electric Company, Limited, and Hawaii Telephone Company, now known as Hawaiian Telcom, Inc. dated October 9, 1961, recorded in the Bureau of Conveyances as Liber 4162 and Page 301, for a term of 35 years from the date hereof, and thereafter from year to year until terminated.

SUBJECT, FURTHER to claims out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

SUBJECT, FURTHER to the location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with county regulations and/or ordinance.

AND the reversions, remainders, rents, income and profits thereof, and all of the estate, right, title, and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or in anywise appertaining or held and enjoyed therewith in fee simple unto said Grantee, the Grantee's successors and assigns, forever, free and clear of all liens and encumbrances (./, **except as noted herein.)

The Grantor, for itself, its successors and assigns, does hereby covenant with the Grantee, its successors and assigns, that the Grantor is lawfully seised in fee simple and possessed of the above-described Property that it has a good and lawful right to convey the same as aforesaid, that the same is free and clear of all liens and encumbrances, (**except as noted herein,) and that it will and its successors and assigns, shall WARRANT AND DEFEND the same unto the Grantee, its successors and assigns, forever, against the claims and demands of all persons whomsoever.

Grantor further covenants to indemnify Grantee against the following unlocated kuleana awards in the Ahupuaa of Honolulu to the extent they are determined to be located on the Property:

Royal Patent Number 4198, Land Commission Award Number 3802, Apana 1 to Lohelohe;

Royal Patent Number 4785, Land Commission Award Number 4246, Apana 3 to Kaleo;

Royal Patent Number (none), Land Commission Award Number 4708, Apana 2 and 3 to Mahuka;

Royal Patent Number 3935, Land Commission Award Number 3924, Apana 2 to Nakupala; and

An undivided one-half (1/2) interest in Apana 2 of Royal Patent Number 3330, Land Commission Award Number 4065 to Kahiki.

Said above unlocated kuleana awards are subject to the following:

1. Matters arising out of the failure of a patent to have been issued on Land Commission Award Number 4708 to Mahuka.
2. No title insurance with respect to those kuleana awards listed above can be issued at this time.

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AND, the Grantor warrants that if any lender or governmental agency shall ever require testing to ascertain whether there has been any release of hazardous materials by Grantor on or adjacent to the Property, as determined by Grantee in its sole discretion, then the Grantor shall be responsible for the reasonable costs thereof. In addition, Grantor shall execute affidavits, representations and the like from time to time at Grantee's request concerning Grantor's best knowledge and belief regarding the presence of hazardous materials on the Property placed or released by Grantor.

The Grantor agrees to indemnify, defend, and hold Grantee harmless, from any damages and claims resulting from the release of hazardous materials on or about the Property occurring while Grantor was in possession of the Property, or elsewhere if caused by Grantor or persons acting through or under Grantor.

For the purpose of this deed "hazardous material" shall mean any pollutant, contaminant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, as all of the above are defined in or pursuant to the Resource Conservation

and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, Chapter 128D, Hawaii Revised Statutes, or any other federal, state, or local law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

The Grantor shall be responsible for payment of all property taxes up to the date of execution of this Warranty Deed.

IN WITNESS WHEREOF, MAUI LAND & PINEAPPLE COMPANY, INC., a Hawaii corporation, the Grantor herein, has caused these presents to be executed this _____ day of _____, 20____, and the STATE OF HAWAII, by its Board of Land and Natural Resources, the Grantee herein, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be executed this _____ day of _____, 20____, both effective as of the day, month, and year first above written.

MAUI LAND & PINEAPPLE COMPANY,
INC., a Hawaii corporation

Approved by the Board of
Land and Natural Resources
at its meeting held on
September 26, 2014.

By _____

Its _____

And By _____

Its _____

GRANTOR

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

STATE OF HAWAII

JULIE H. CHINA
Deputy Attorney General

By _____
WILLIAM J. AILA, JR.

Dated: _____

Chairperson
Board of Land and
Natural Resources

GRANTEE

STATE OF HAWAII)
) SS.
 COUNTY OF)

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

Notary Public, State of Hawaii

My commission expires: _____

PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this "Agreement") is made and entered into on this **9th day of October, 2014**, by and among **MAUI LAND & PINEAPPLE COMPANY, INC.**, a Hawaii corporation, whose address is 200 Village Road, Lahaina, Hawaii 96761 ("Seller"), and the **STATE OF HAWAII**, by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813 ("Buyer").

R E C I T A L S:

A. Seller is the fee simple owner of that certain unimproved parcel of land located at Honokohau and Honolua, Lahaina, Island of Maui, State of Hawaii, consisting of 244.12 acres, more or less, (Tax Map Key No.: (2) 4-1-001:010), commonly referred to as Lipoa Point and more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, together with Seller's interest in all improvements, fixtures, timber, water, oil, gas and mineral and metallic mines of every kind or description, if any, and all rights appurtenant to such land, including but not limited to timber rights, water rights, grazing rights, access rights and geothermal rights, if any (collectively, the "Property").

B. Buyer wishes to purchase the Property from Seller and Seller wishes to sell the Property to Buyer on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises, mutual agreements, representations, warranties, covenants, conditions and obligations herein set forth, the parties hereby agree as follows:

1. Purchase and Sale. Seller agrees to sell to Buyer and Buyer agrees to buy from Seller the Property on the terms and conditions set forth herein.

2. Purchase Terms.

(a) Price. The purchase price for the Property shall be the sum of **TWENTY MILLION and NO/100 DOLLARS (US\$20,000,000.00)**.

(b) Method of Payment. The purchase price shall be due and payable to Seller, in United States legal tender, at Closing (defined below).

(c) Effective Date. This Agreement shall be effective on the date that it is signed by both parties hereto and approved as to form and legality by the Attorney General (the "Effective Date").

(d) Closing. The closing for this transaction ("Closing") shall take place on or before October 9, 2014 (the "Closing Date"). Closing shall take place at such date, time and place as Seller and Buyer may agree to in writing. Seller and Buyer may mutually agree in writing to extend the Closing Date.

(e) Title Report. The parties acknowledge receipt of a Preliminary Title Report for the Property dated as of [REDACTED], 2014 (the "Title Report"), prepared by Title Guaranty of Hawaii, Inc. (the "Title Company").

(f) Escrow. To ensure that the Seller uses the proceeds of the sale to benefit the pension plans of retirees of the Seller, the purchase and sale contemplated by this Agreement shall be consummated through an escrow which Buyer and Seller shall cause to be established with Title Guaranty Escrow Services, Inc. ("Escrow Agent"). The Escrow Agent shall be responsible for the safekeeping of documents and funds and the disbursement of same in accordance with the escrow instructions provided in Exhibit B.

3. Conditions Precedent to Closing. The parties' respective obligations to close the purchase and sale of the Property shall be conditioned upon completion of all of the following:

(a) Buyer receives approval by the State of Hawaii, Board of Land and Natural Resources to enter into this Agreement and to acquire the Property, which approval is subject to the Board's sole discretion;

(b) The Pension Benefit Guaranty Corporation ("PBGC") has delivered to Escrow Agent an irrevocable commitment to provide a release of the PBGC's mortgage on the Property, including an unexecuted copy of the mortgage release;

(c) Seller has removed the unpermitted temporary structure on the southwest portion of the Property overlooking Honolulu Bay; and

(d) Satisfaction of all obligations stated herein by both Buyer and Seller, within the time periods provided in this Agreement.

If any condition precedent is not satisfied or waived in writing by the parties, Seller or Buyer may terminate this Agreement by written notice to the other party, in which event the parties shall have no further obligation to each other under this Agreement and no damages shall be accountable to Buyer or Seller.

4. Condition of the Property.

(a) Buyer and Seller agree that:

(i) Buyer has had the opportunity to study all aspects or circumstances of the Property which Buyer deems material or relevant;

(ii) Buyer shall have had access to the Property, at reasonable times and upon reasonable prior notice; and

(iii) Buyer has had the opportunity to make all inspections and verifications which Buyer deems necessary for the completion of Buyer's due diligence review for the transaction covered by this Agreement.

(b) Except as otherwise expressly provided herein or in the Limited Warranty Deed, as defined below, Buyer hereby acknowledges and agrees that the sale of the Property hereunder is and will be made on an "as is, where is" basis and that neither Seller, nor any attorney, representative, agent or employee of Seller has made, or will make, and except for Seller's express warranties set forth in this Agreement or in the Warranty Deed, as defined below, Seller specifically negates and disclaims, any representations, warranties, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present, future, or otherwise, of, as to, concerning or with respect to the Property.

5. [reserved].

6. [reserved].

7. Title. Seller shall convey to Buyer fee simple title to the Property, by warranty deed (the "Warranty Deed"), the form of which has been agreed upon by Seller and Buyer, free and clear of all monetary liens and encumbrances, except as to the encumbrances noted in Schedule B of the Title Report. Seller shall pay all property taxes up to the date of recordation of the Warranty Deed.

8. Title Insurance. Seller will provide a standard owner's policy of title insurance issued by the underwriter(s) of the Title Company, in the full amount of the Purchase Price, insuring that title to the Property is vested in Buyer at Closing, subject only to the exceptions noted in Section 7. The cost of such title insurance shall be paid by Seller.

9. Seller's Promise Not to Further Encumber. Seller shall not, without the prior written consent of Buyer, make or allow to be made any leases, contracts, options or agreements whatsoever affecting the Property, which would in any manner impede Seller's ability to perform hereunder and deliver title as agreed herein.

10. Seller's Representations. Seller represents and warrants that:

(a) Prior to Closing, Seller will own and have the power to sell, transfer and convey all of Seller's right, title and interest in and to the Property.

(b) To Seller's knowledge, there is no action, suit, litigation, arbitration or other proceeding pending or threatened, which in any manner affects the Property.

(c) Seller has the full power and authority to execute and deliver this Agreement and to consummate the transactions provided herein. The persons signing this Agreement for Seller have full power and authority to sign for Seller and to bind it to this Agreement.

(d) Seller has no knowledge of any violations of any law, order, ordinance or regulation or policy of insurance affecting the Property, other than the unpermitted temporary structure on the southwest portion of the Property overlooking Honolulu Bay, which will be removed prior to Closing.

(e) Seller has not received notice and has no knowledge of any pending or threatened condemnation of all or part of the Property.

(f) This Agreement and the other documents to be executed by Seller hereunder, upon execution and delivery thereof by Seller, will have been duly entered into by Seller, and will constitute legal, valid and binding obligations of Seller, subject to the conditions precedent set forth in Section 3. To Seller's knowledge, neither this Agreement nor anything provided to be done under this Agreement violates or shall violate any contract, document, understanding, agreement or instrument to which Seller is a party or by which it is bound.

(g) Seller has no knowledge of any unrecorded agreements affecting the Property, other than as described in Section 7.

(h) Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code.

(i) To Seller's knowledge, the Property is not subject to any investigation by any governmental authority or any judicial or administrative proceedings alleging the material violation of or liability under any hazardous materials law, or any outstanding written order or agreement with any governmental authority or private party relating to any hazardous materials laws or hazardous materials claims.

For purposes of this Agreement "hazardous material" shall mean any pollutant, contaminant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, as all of the above are defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, Chapter 128D, Hawaii Revised Statutes, or any other federal, state, or local law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

(j) Seller agrees to disclose to Buyer all material findings in respect to the condition of the Property that Seller may later discover which findings are not contained in the Title Report delivered to Buyer.

(k) Except as otherwise provided, Seller has not undertaken any independent investigation or inquiry to determine the existence or absence of facts.

11. **Buyer's Representations.** Buyer represents and warrants that, subject to approval by the Board of Land and Natural Resources, which approval is at the Board's sole discretion, and subject to approval by the Attorney General, Buyer has all the requisite power and authority to enter into this Agreement and to consummate the transactions contemplated hereby.

12. **Risk of Loss.** All risk of loss shall remain with Seller until Closing. In the event that the Property is destroyed or damaged after the Effective Date and prior to Closing, Buyer or Seller may, at their option, elect to terminate this Agreement with no damages accountable to Buyer or Seller.

13. Closing Expenses and Fees. Any documentary tax or real property transfer tax arising out of the conveyance of the Property shall be borne by Seller, if applicable. The cost of the survey of the Property previously paid by Seller will be reimbursed to Seller from the proceeds of the purchase price. Any other closing expenses, fees and charges shall be paid for by Seller, except that each party shall pay its own attorneys fees, if any, incurred in negotiating and consummating the transaction contemplated by this Agreement.

14. Notices. All notices pertaining to this Agreement shall be in writing delivered to the parties hereto by facsimile transmission, personally by hand, courier service or Express Mail, or by first class mail, postage prepared, at the addresses set forth below. All notices shall be deemed given: (a) if sent by mail, when deposited in the mail, first class postage prepared, addressed to the party to be notified; (b) if delivered by hand, courier service or Express Mail, when delivered; or (c) if transmitted by facsimile, when transmitted. The parties may, by notice as provided above, designate a different address to which notice shall be given.

If to Seller:

**MAUI LAND & PINEAPPLE COMPANY,
INC.**
200 Village Road
Lahaina, Hawaii 96761
Attention: Tim T. Esaki
Telephone: (808) 665-5480
FAX: (808) 665-0641

If to Buyer:

State of Hawaii
Board of Land and Natural Resources
P. O. Box 621
Honolulu, Hawaii 96809-0621
Attention: William J. Aila, Jr., Chairperson
Telephone: (808) 587-0433
FAX: (808) 587-0390

copies of any notices to Buyer should also be sent to:

State of Hawaii
Department of Land and Natural Resources
Land Division
1151 Punchbowl Street, Room 220
Honolulu, Hawaii 96813
Attention: Ian Hirokawa, Project Development
Specialist
Telephone: (808) 587-0420
FAX: (808) 587-0455

If to Escrow Agent

Title Guaranty of Hawaii, Inc.
P.O. Box 1678
Honolulu, Hawaii 96806
Attention: Cynthia Nakashima
Telephone: (808) 521-0211
FAX: (808) 521-0280

15. Remedies upon Default. In the event that Buyer or Seller defaults in the performance of any of their respective obligations under this Agreement, Seller or Buyer shall, in addition to any and all other remedies provided in this Agreement or by law or in equity, have the right of specific performance against the defaulting party.

16. No Broker's Commission. Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. Each party further represents that it has not and will not pay or receive a broker's commission or finders' fee for this transaction. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party on account of whose conduct the claim is asserted will hold the other party harmless from said claim.

17. Time of the Essence; Dates. Time is of the essence to this Agreement. In the event that any date specified in this Agreement falls on Saturday, Sunday or a public holiday, such date shall be deemed to be the succeeding day on which the public agencies and major banks are open for business.

18. Binding on Successors. Subject to approval by the Board of Land and Natural Resources which approval is at the Board's sole discretion, and approval by the Attorney General, this Agreement shall be binding not only upon the parties, but also upon their heirs, personal representatives, assigns and other successors in interest.

19. Additional Documents. Seller and Buyer agree to execute such additional documents as may be reasonable and necessary to carry out the provisions of this Agreement.

20. Additional Documents to be Provided by Seller to Buyer. Seller agrees to provide the following documents to Buyer prior to Closing:

(a) Resolutions. As applicable for Seller, resolutions authorizing the transaction contemplated by this Agreement, the execution, delivery, and performance of this Agreement, any other obligation of Seller contemplated by this Agreement, and authorizing the persons who will sign this Agreement to do so on behalf of Seller.

(b) Certificate of Good Standing. As applicable for Seller, a certificate of good standing of Seller certified by the proper governmental authority in the State of Hawaii.

21. Assignment. Buyer may not assign its interests under this Agreement without the prior written consent of Seller.

22. Entire Agreement; Modification; Waiver. This Agreement constitutes the entire agreement between Buyer and Seller pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver and agreeable to both parties.

23. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement.

24. Severability. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

25. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Hawaii.

26. Survival. All representations, warranties, covenants, conditions, agreements and other obligations set forth in this Agreement shall survive Closing and the recordation of the Warranty Deed and shall not merge therein unless specifically stated otherwise in this Agreement.

[**signature page follows**]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Seller:

**MAUI LAND & PINEAPPLE COMPANY,
INC.**

A Hawaii corporation

By: _____

Name:

Title:

By: _____

Name:

Title:

Buyer:

STATE OF HAWAII

By: _____

Chairperson
Board of Land and Natural Resources

APPROVED AS TO FORM:

Deputy Attorney General

Joinder by Escrow Agent:

TITLE GUARANTY ESCROW

SERVICES, INC.

By: _____

Name:

Title:



EXHIBIT A

[Legal Description of Property]

DRAFT

EXHIBIT B

Escrow Instructions:

To: Title Guaranty Escrow Services, Inc.

1. Upon opening of escrow:
 - A. Seller will deliver to you:
 - i. A duly executed and acknowledged Warranty Deed sufficient to convey title to the Property to Buyer in accordance with Section 7 of the Agreement; and
 - ii. Such other resolutions and documents as are necessary to close this transaction.
 - B. Buyer shall deposit with you the sum of **TWENTY MILLION DOLLARS (US\$20,000,000.00)**;
 - C. The PBGC will deliver to you an irrevocable commitment to provide a partial release of the Mortgage, Security Agreement, Assignment of Rents, Fixture Filing and Financing Statement dated November 13, 2012 ("Partial Release") to release their mortgage on the Property.
2. When you:
 - A. Are in receipt of the items specified in Section 1 of this Exhibit B;
 - B. Are prepared to issue Buyer a standard owner's policy of title insurance, in accordance with the provisions of Section 8 of the Agreement ("Title Insurance Policy"); and
 - C. Have received written or e-mailed authorization to close from Buyer and Seller or their counsel;
3. You are instructed to:
 - A. Record the Warranty Deed in the Bureau of Conveyances;
 - B. Pay all closing costs in accordance with the closing statements approved by the parties; and
 - C. Disburse certain proceeds of the sale in accordance with the instructions of AON Hewitt, actuary of the Seller's pension plans ("Actuary"), directly to First Hawaiian Bank, trustee of the Seller's pension plans ("Trustee").
4. Upon confirmation that the funds specified in Section 3.C. of this Exhibit B have been received by the Trustee, you are to deliver:

- A. The Executed Warranty Deed and Title Insurance Policy to the Buyer; and
 - B. The Partial Release to the Seller.
5. Any remaining funds after disbursement to the Trustee in accordance with Actuary's instructions shall be paid to the Buyer, so long as the PBGC gives written concurrence to you.