

STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawai'i

February 13, 2015

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

Land Board Members:

SUBJECT: ACCEPTANCE OF HEARING OFFICER'S REPORT ON A PUBLIC HEARING FOR ONE PROPOSED ADDITION AND FIVE PROPOSED WITHDRAWALS TO THE FOREST RESERVE SYSTEM ON THE ISLAND OF MAUI.

APPROVAL AND RECOMMENDATION TO THE GOVERNOR ISSUANCE OF AN EXECUTIVE ORDER FOR ADDITION OF TAX MAP KEYS (2) 1-4-001: PORTION OF 001 AND (2) 1-5-001: PORTION OF 001 COMPRISING APPROXIMATELY 190.10 ACRES, TO HĀNA FOREST RESERVE, HĀNA, MAUI.

APPROVAL AND RECOMMENDATION TO THE GOVERNOR ISSUANCE OF AN EXECUTIVE ORDER FOR WITHDRAWAL OF TAX MAP KEYS (2) 1-4-001: PORTIONS OF 003 AND 004, COMPRISING APPROXIMATELY 399.91 ACRES, FROM HĀNA FOREST RESERVE, HĀNA, MAUI.

APPROVAL AND RECOMMENDATION TO THE GOVERNOR ISSUANCE OF AN EXECUTIVE ORDER FOR WITHDRAWAL OF TAX MAP KEY (2) 4-8-001: PORTION OF 002, COMPRISING APPROXIMATELY 1.28 ACRES, FROM WEST MAUI FOREST RESERVE, LAHAINA, MAUI.

APPROVAL AND RECOMMENDATION TO THE GOVERNOR ISSUANCE OF AN EXECUTIVE ORDER FOR WITHDRAWAL OF KAUMAHINA STATE WAYSIDE, TAX MAP KEY (2) 1-1-001: PORTION OF 044, COMPRISING APPROXIMATELY 7.80 ACRES, FROM KO'OLAU FOREST RESERVE, HĀNA, MAUI.

APPROVAL AND RECOMMENDATION TO THE GOVERNOR ISSUANCE OF AN EXECUTIVE ORDER FOR WITHDRAWAL OF PUA'A KA'A STATE WAYSIDE, TAX MAP KEYS (2) 1-2-001: PORTION OF 003 AND (2) 1-2-004: PORTION OF 005, COMPRISING APPROXIMATELY 1.712 ACRES, FROM KO'OLAU FOREST RESERVE, HĀNA, MAUI.

APPROVAL AND RECOMMENDATION TO THE GOVERNOR ISSUANCE OF AN EXECUTIVE ORDER FOR WITHDRAWAL OF POLIPOLI SPRING STATE RECREATION AREA TAX MAP KEYS (2) 2-2-007: PORTIONS OF 001 AND 003, COMPRISING APPROXIMATELY 7.00 ACRES, FROM KULA FOREST RESERVE, MAKAWAO, MAUI.

SUMMARY:

This Board submittal requests acceptance of a Hearing Officer's Report for one proposed addition and five proposed withdrawals to the Forest Reserve System on the Island of Maui, and approval and recommendation to the Governor, issuance of Executive Orders (EO) for addition of land to Hāna Forest Reserve and withdrawal of lands from Hāna, West Maui, Ko'olau and Kula Forest Reserves. These actions represent effort by the Division of Forestry and Wildlife (DOFAW) to complete previously initiated processes and to formalize past action.

LEGAL REFERENCE:

Section 183-11, Hawai'i Revised Statutes (HRS), as amended.

LOCATION AND AREA:

See Exhibit A.

ZONING AND TRUST LAND STATUS:

See Exhibit A.

BACKGROUND

Proposed Addition

Hāna Forest Reserve

At its meeting of October 24, 2014, item C-1, the Board of Land and Natural Resources (Board) approved in concept the addition of portions of State-owned parcels, Tax Map Keys (TMK) (2) 1-4-001:001 (approximately 87.44 acres) and (2) 1-5-001:001 (approximately 102.66 acres) to Hāna Forest Reserve, Hāna, Maui (Exhibit B). On March 30, 1949, the Board of Commissioners of Agriculture and Forestry (BCAF) approved Resolution No. 12.1, which modified the Hana Forest Reserve (FR) boundary to include portions of these two parcels. Resolution 12.1 specifically states "That the setting aside of the specified government lands by executive order as forest reserve is herewith recommended to the Governor." Despite this, documentation that a Governor's Executive Order (EO) was issued for this addition could not be found after comprehensive research. The Division of Forestry and Wildlife seeks to resolve this discrepancy by adding State-owned parcels, Tax Map Keys (TMK) (2) 1-4-001: portion of 001 (approximately 87.44 acres) and (2) 1-5-001: portion of 001 (approximately 102.66 acres) to Hāna Forest Reserve.

Proposed Withdrawals

Hāna Forest Reserve

At its meeting of October 24, 2014, item C-1, the Board approved in concept the withdrawal of Tax Map Keys (2) 1-4-001: portions of 003 and 004, comprising approximately 399.91 acres,

from Hāna Forest Reserve, Hāna, Maui (Exhibit B). In the early 1900's when forest reserves were first being established, privately owned lands were also included within their boundaries to encourage landowners to manage their lands for watershed values. Although these parcels are designated as FR, they are not subject to the administrative rules and statutes established for the public or publicly controlled lands in the Forest Reserve System. On June 26, 2014, DOFAW received a letter (Exhibit C) from Schneider Tanaka Radovich Andrew & Tanaka, LLLC, a law firm representing Hana Ranch Land, LLC, (Hana Ranch) requesting that the FR encumbrance be removed from TMKs (2) 1-4-001:003 and (2) 1-4-001:004, both of which are owned by Hana Ranch. To comply with this request, DOFAW is seeking approval to withdraw TMKs (2) 1-4-001: portion of 003 (354.21 acres) and (2) 1-4-001: portion of 004 (45.70 acres) from Hāna Forest Reserve.

West Maui Forest Reserve

At its meeting of October 24, 2014, item C-1, the Board approved in concept the withdrawal of Tax Map Key (2) 4-8-001: portion of 002, comprising approximately 1.28 acres, from West Maui Forest Reserve, Lahaina, Maui (Exhibit D). A portion of Royal Patent No. 6862, Land Commission Award No. 310, Apana 1 (RP6862), comprising approximately 1.28 acres is located within TMK (2) 4-8-001:002 and was also the subject of a quiet title action, Devon Corporation, et al. vs. State of Hawai'i et al., Civil No. 96-0351(1). Final judgment was issued on June 15, 2011, declaring that Adeline Ka'ahui Rodrigues and Vincent Hinano Rodrigues are the fee owners of RP6862. Given that RP6862 is privately owned, and DOFAW has no jurisdiction over the portion located within the FR boundary, DOFAW is requesting approval to withdraw TMK (2) 4-8-001: portion of 002 (approximately 1.28 acres), from the West Maui Forest Reserve.

Ko'olau Forest Reserve

At its meeting of October 24, 2014, item C-1, the Board approved in concept the withdrawal of Kaumahina State Wayside, Tax Map Key (2) 1-1-001: portion of 044, comprising approximately 7.80 acres from the Koolau FR, and the subsequent set-aside to the Division of State Parks (DSP) to establish the Kaumahina State Wayside, Hāna, Maui (Exhibit E). Given that the area has been set-aside to the DSP, and they have been managing the area for over 60 years, DOFAW requests approval to withdraw Kaumahina State Wayside TMK (2) 1-1-001: portion of 044 (approximately 7.80 acres) from the Ko'olau FR.

At its meeting of October 24, 2014, item C-1, the Board approved in concept the withdrawal of Pua'a Ka'a State Wayside, Tax Map Keys (2) 1-2-001: portion of 003 and (2) 1-2-004: portion of 005, comprising approximately 1.712 acres, from Ko'olau FR, and the subsequent set-aside to the DSP to establish the Pua'a Ka'a State Wayside, Hāna, Maui (Exhibit F). Given that the area has been set-aside to the DSP, and they have been managing the area for over 60 years, DOFAW requests approval to withdraw Pua'a Ka'a State Wayside, Tax Map Keys (2) 1-2-001: portion of 003 and (2) 1-2-004: portion of 005, comprising approximately 1.712 acres, from Ko'olau FR.

Kula Forest Reserve

At its meeting of October 24, 2014, item C-1, the Board approved in concept the withdrawal of Polipoli Spring State Recreation Area, Tax Map Keys (2) 2-2-007: portions of 001 and 003,

comprising approximately 7.00 acres, from Kula Forest Reserve, and the subsequent set-aside to the DSP to establish the Polipoli Spring State Recreational Area, Makawao, Maui (Exhibit G). Given that the area has been set-aside to the DSP, and they have been managing the area for over 60 years, DOFAW requests approval to withdraw TMKs (2) 2-2-007: portions of 001 and 003 (approximately 7.00 acres) from Kula Forest Reserve.

DISCUSSION

Approval to hold a public hearing on the subject proposed forest reserve additions and withdrawals were obtained from the Board of Land and Natural Resources at its meeting on October 24, 2014, item C-1. Approval to hold the public hearing and to appoint Lance De Silva, the Division's Maui Forestry Management Supervisor I, as the Hearing Officer was obtained from the Chairperson on November 7, 2014.

On December 28, 2014, a Notice of Public Hearing was published in the Sunday editions of the Garden Island, Honolulu Star-Advertiser, Maui News, West Hawaii Today, and Hawaii Tribune-Herald newspapers, for a public hearing that was held on January 14, 2015, to receive public input on the subject items.

Two members of the public attended this meeting, the proceedings of which are summarized in the attached Hearing Officer's report (Exhibit H). No verbal testimony was received regarding these items. No written testimonies were received by mail after the meeting. Based on these results, staff recommends final processing of the proposed transfers.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

This action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action does not trigger the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as the Chapter 343, HRS, environmental requirements apply to the Applicants use of the lands, the Applicants shall be responsible for compliance with Chapter 343, HRS, as amended.

RECOMMENDATION:

That the Board:

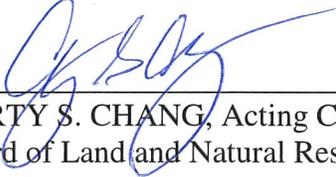
- 1) Accept and approve the Hearing Officer's report and minutes for the public hearing held on January 14, 2015, for the one proposed addition and five proposed withdrawals to the Forest Reserve System on the island of Maui.
- 2) Approve of and recommend to the Governor issuance of an executive order setting aside Tax Map Keys (2) 1-4-001: portion of 001 and (2) 1-5-001: portion of 001, comprising approximately 190.10 acres, to Hāna Forest Reserve, Hāna, Maui.
- 3) Approve of and recommend to the Governor issuance of an executive order to withdraw Tax Map Keys (2) 1-4-001: portions of 003 and 004, comprising approximately 399.91 acres, from Hāna Forest Reserve, Hāna, Maui.
- 4) Approve of and recommend to the Governor issuance of an executive order to withdraw Tax Map Key (2) 4-8-001: portion of 002, comprising approximately 1.28 acres, from West Maui Forest Reserve, Lahaina, Maui.
- 5) Approve of and recommend to the Governor issuance of an executive order to withdraw Kaumahina State Wayside, Tax Map Key (2) 1-1-001: portion of 044, comprising approximately 7.80 acres, from Ko'olau Forest Reserve, Hāna, Maui
- 6) Approve of and recommend to the Governor issuance of an executive order to withdraw Pua'a Ka'a State Wayside, Tax Map Keys (2) 1-2-001: portion of 003 and (2) 1-2-004: portion of 005, comprising approximately 1.712 acres, from Ko'olau Forest Reserve, Hāna, Maui
- 7) Approve of and recommend to the Governor issuance of an executive order to withdraw Polipoli Spring State Recreation Area Tax Map Keys (2) 2-2-007: portions of 001 and 003, comprising approximately 7.00 acres, from Kula Forest Reserve, Makawao, Maui.
- 8) Recommendation Nos. 2 through 7 are further made subject to the following:
 - a. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - b. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - c. Review and approval by the Department of the Attorney General; and
 - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



LISA J. HADWAY, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:

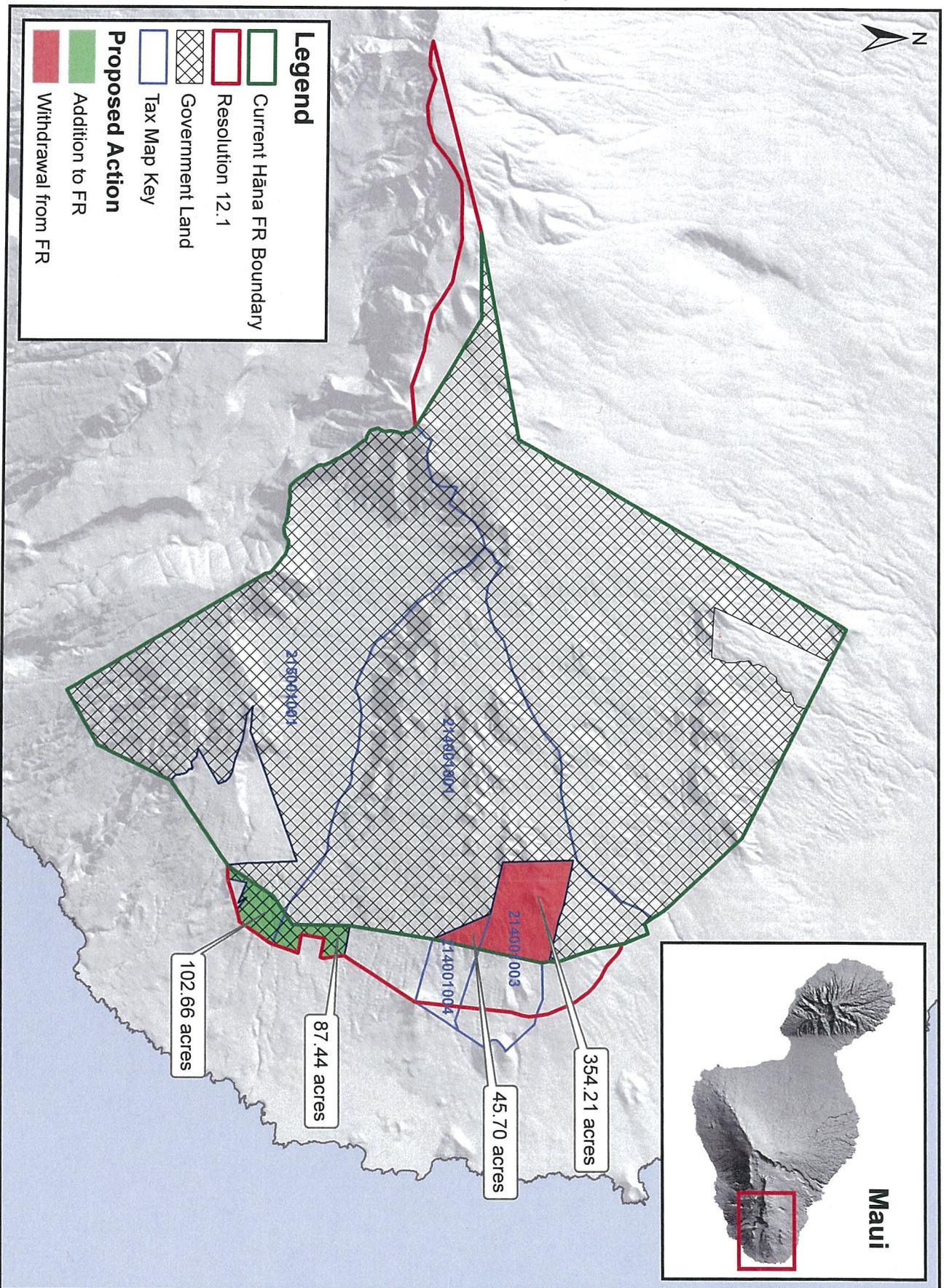


CARTY S. CHANG, Acting Chairperson
Board of Land and Natural Resources

Exhibit A

TMK	Location	Acres, more or less	State Land Use	County Zoning	DHHL Entitlement	Trust Land Status
Hāna Forest Reserve						
(2) 1-4-001: por. 001	Hāna	87.44	Conservation	Conservation	No	5(b)
(2) 1-4-001: por. 003	Hāna	354.21	Conservation/Agriculture	Conservation/Agriculture	N/A	N/A
(2) 1-4-001: por. 004	Hāna	45.70	Conservation	Conservation	N/A	N/A
(2) 1-5-001: por. 001	Hāna	102.66	Conservation	Conservation	No	5(b)
Ko'olau Forest Reserve						
(2) 1-1-001: por. 044	Hāna	7.80	Conservation	Conservation	No	5(b)
(2) 1-2-001: por. 003	Hāna	0.241	Conservation	Conservation	No	5(b)
(2) 1-2-004: por. 005	Hāna	1.471	Conservation	Conservation	No	5(b)
Kula Forest Reserve						
(2) 2-2-007: por. 001	Makawao	6.90	Conservation	Conservation	No	5(b)
(2) 2-2-007: por. 003	Makawao	0.10	Conservation	Conservation	No	5(b)
West Maui Forest Reserve						
(2) 4-8-001: por. 002	Lahaina	1.28	Conservation	Conservation	No	5(b)

Exhibit B: Proposed Additions to and Withdrawals from Hāna Forest Reserve (FR)



SCHNEIDER TANAKA RADOVICH

ANDREW & TANAKA

A Limited Liability Law Company

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Ryan K. Rodoni
Edward H. H. Wong

June 26, 2014

Via E-Mail and U. S. Mail

Department of Land and Natural Resources
Division of Forestry and Wildlife, Maui Branch
54 South High Street
Wailuku, Hawaii 96793

Attn: Mr. Lance DeSilva,
Forestry Program Manager

Re: Request for Removal of Hana Forest Reserve Designation from the Parcels of
Land Identified on the Tax Maps of the County of Maui as Tax Map Key Parcel
Numbers: (2) 1-4-1:3 and (2) 1-4-1:4

Ladies and Gentlemen:

Our firm represents Hana Ranch Land, LLC, a Delaware limited liability company, which is the owner of the above-referenced parcels of land located in Hana, Maui (collectively, the "**Properties**"). The Properties, despite being privately owned, are shown on tax maps of the County of Maui with a "Hana Forest Reserve" line within each of the Properties. This letter is written on behalf of Hana Ranch Land, LLC to request the removal of any such Hana Forest Reserve designation which may affect the Properties.

"Forest reserve" means those lands designated as forest reserves by the department pursuant to sections 183-11 and 183-15, Hawaii Revised Statutes, and other lands for plant sanctuaries, facilities, nurseries and baseyards under the custody and control of the division." Haw. Code R. § 13-104-2. Section 183-11, Hawaii Revised Statutes relates only to the establishment of government lands as forest reserve. Section 183-15, Hawaii Revised Statutes relates only to the surrender of private lands to the government as forest reserve lands.

As such, forest reserve lands are to consist only of lands that are public or publicly controlled. See Haw. Code R. § 13-104-1(a). Private lands stand outside of the statutory classification of forest reserve and, therefore should not be subject to any statutory or administrative regulations pertaining thereto.

Department of Land and Natural Resources
Division of Forestry and Wildlife, Maui Branch
Attn: Mr. Lance DeSilva, Forestry Program Manager
June 26, 2014
Page 2 of 2

Because the Properties are privately owned and have not been surrendered to the government as forest reserve, any "Hana Forest Reserve" designation affecting the Properties is beyond the scope of the statutory classification of forest reserve. Accordingly, we hereby request that any Hana Forest Reserve designation currently affecting the Properties be removed from the Properties.

If there is any further information that we can provide to initiate and complete the process of removing any such Hana Forest Reserve designation which may affect the Properties, please let us know.

Thank you for your consideration.

Very truly yours,

SCHNEIDER TANAKA RADOVICH
ANDREW & TANAKA, LLLC



Diane Yuen Praywell

cc: Hana Ranch Land, LLC (c/o Andy Schlauch)

Exhibit D: Proposed Withdrawal from West Maui Forest Reserve (FR)

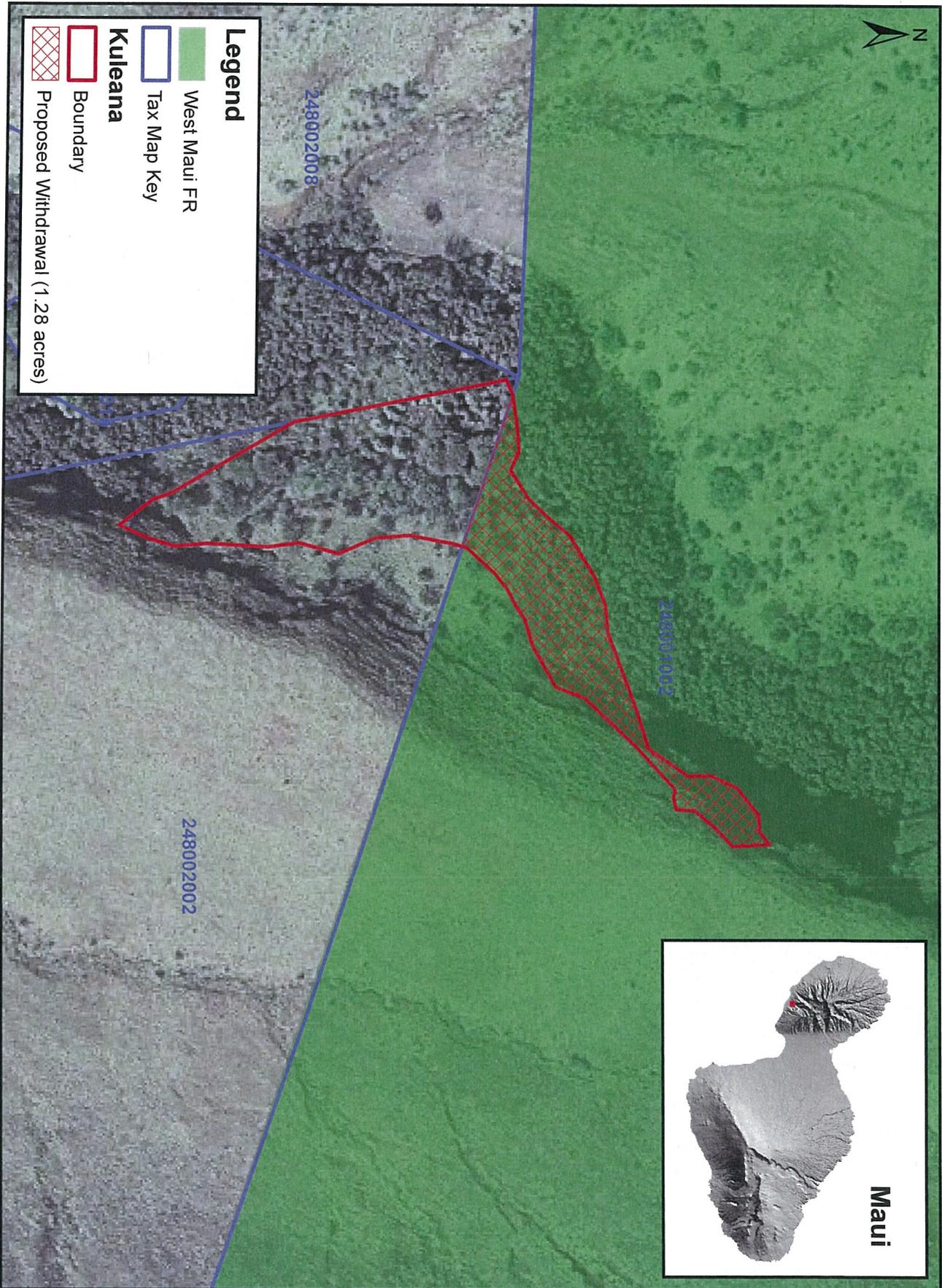
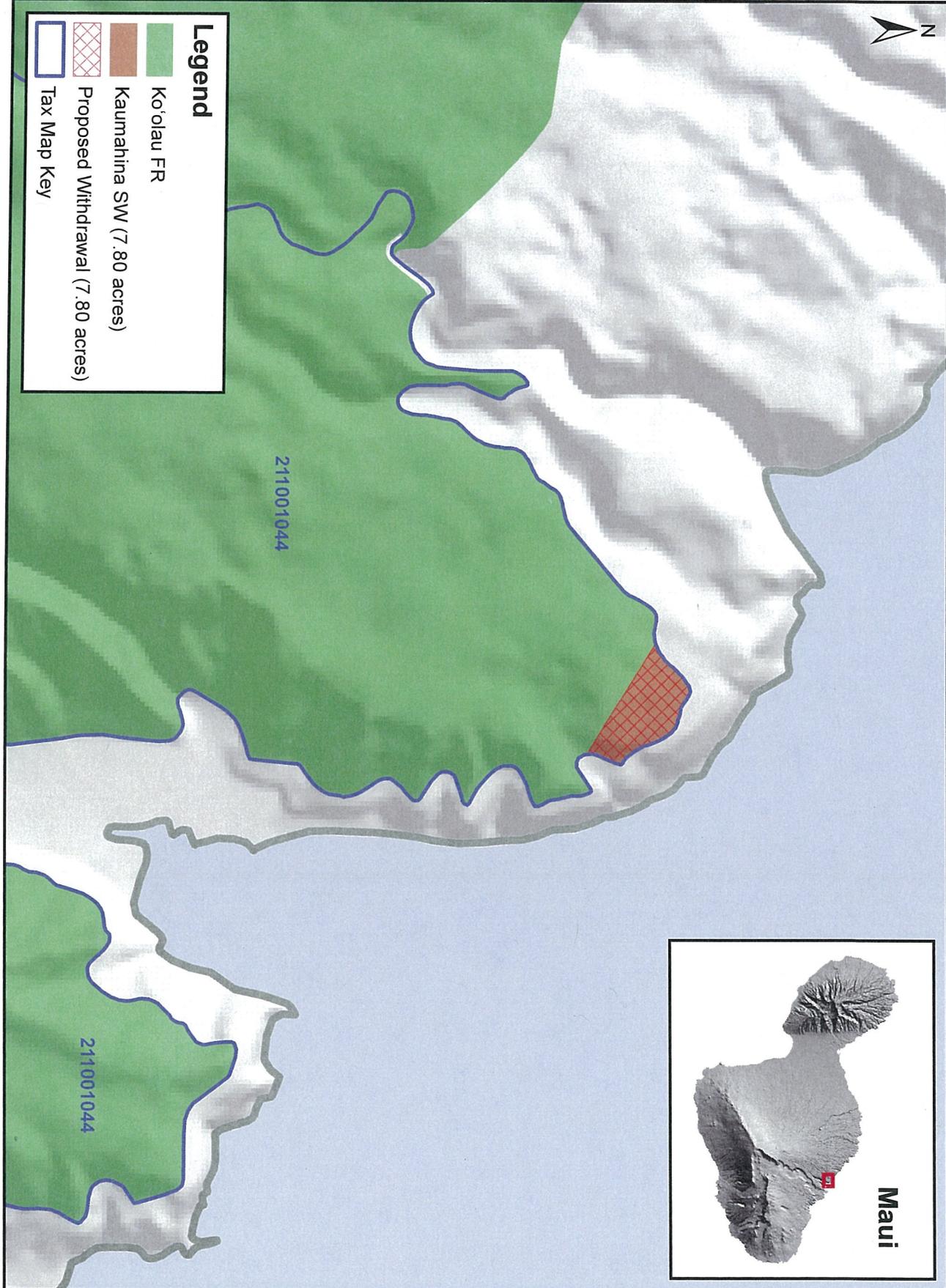
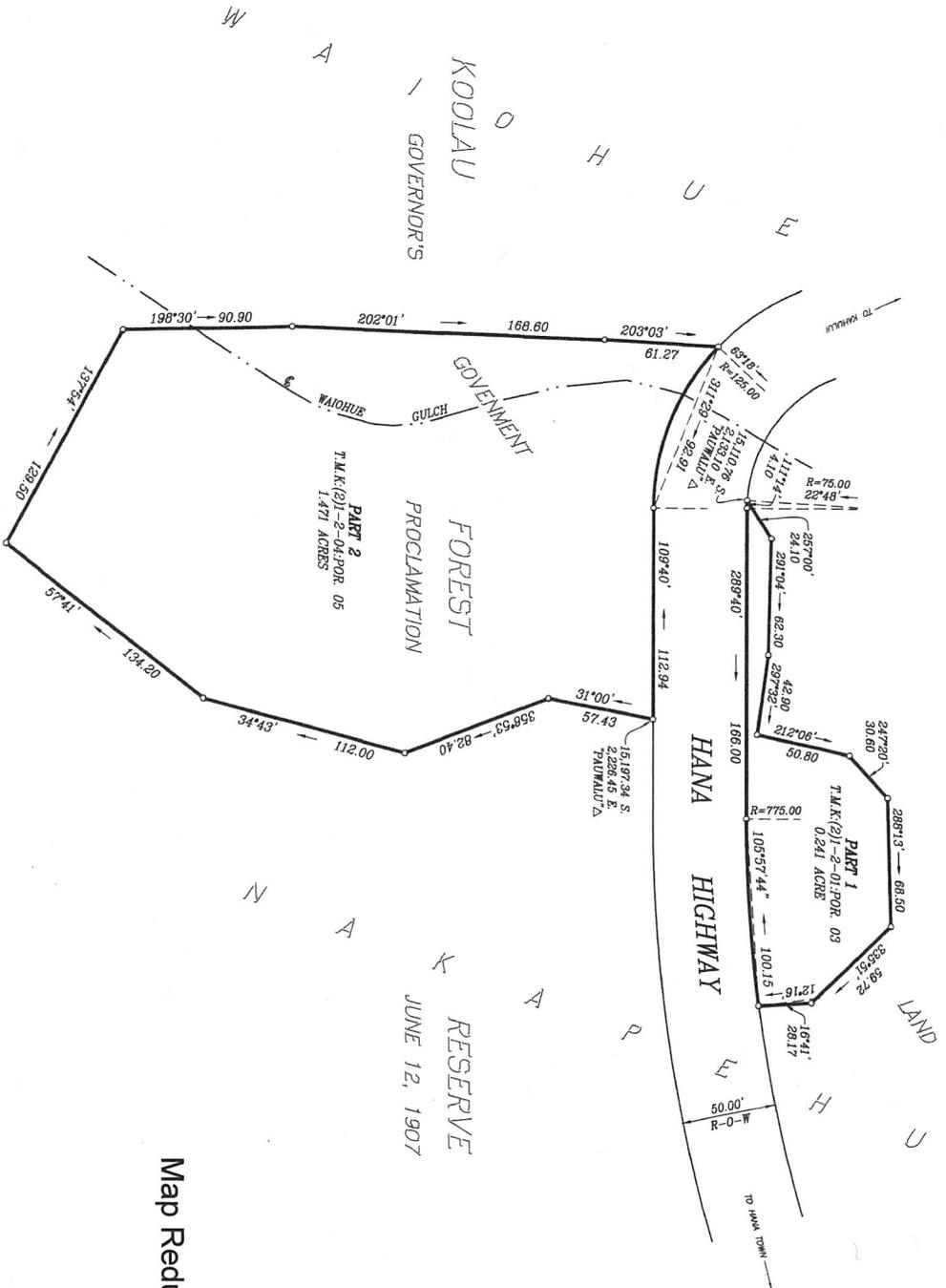


Exhibit E: Proposed Withdrawal from Ko'olau Forest Reserve (FR) and Set-Aside of Kaumahina State Wayside (SW) to the Division of State Parks.





Map Reduced Not to Scale

PUIA KAA STATE WAYSIDE
 BEING A PORTION OF KOOLAU FOREST RESERVE

SITUATE AT WAOHUE AND NAKAPEHU,
 KOOLAU, MAUI, HAWAII

DATE: SEPTEMBER 21, 2014 SCALE: 1" = 50'



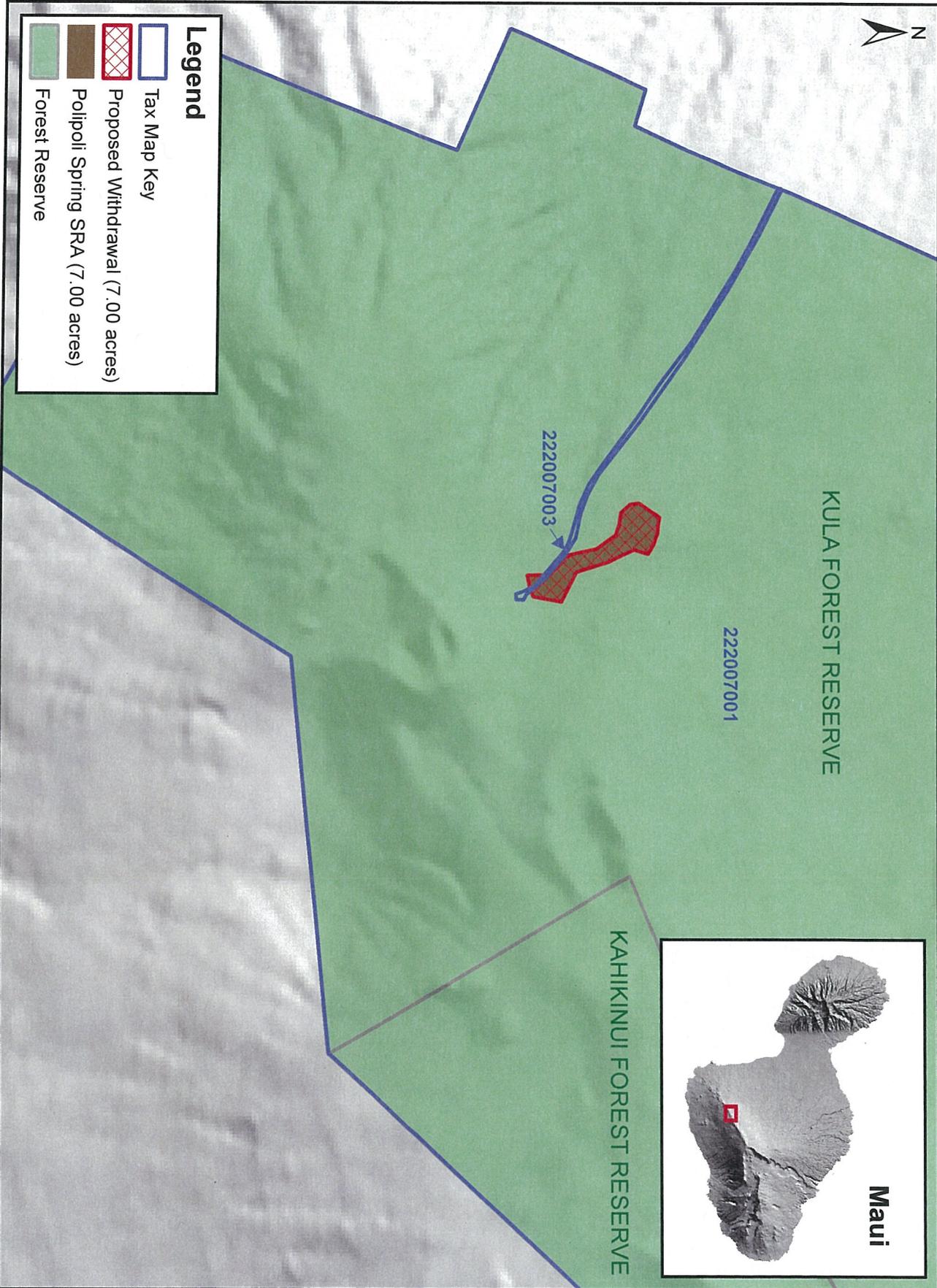
AKAMAI LAND SURVEYING, INC.
 P.O. BOX 1748
 MAKAWAO, MAUI, HAWAII 96768



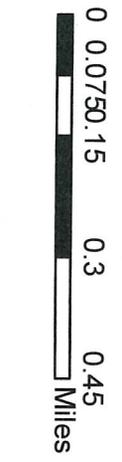
THIS WORK WAS DONE BY ME OR UNDER MY DIRECT SUPERVISION.
SHERMAN DUDLEY DEPONTE
 LICENSED PROFESSIONAL LAND SURVEYOR
 STATE OF HAWAII CERTIFICATE NO. 6980
 EXPIRATION DATE: APRIL 30, 2016

- NOTES:**
1. AZIMUTHS AND COORDINATES ARE BASED ON GRID OBSERVATIONS AND REFERRED TO COORDINATE SYSTEM TRANSLATION STATION "PAUMALU" Δ.
 2. BOUNDARY CORNERS ARE 1/2" PIPE (SPT) EXCEPT WHERE NOTED OTHERWISE.
 3. HANA HIGHWAY RIGHT-OF-WAY ALIGNMENT (28'-0" W) IS BASED ON FIELD LOCATION OF CENTERLINE AS SHOWN ON A WIDTH OF 50.00 FEET IS GIVEN BASED ON RECORD MAPS.
- T.M.K.(2)-2-01-POR 03 & 1-2-04-POR 05

Exhibit G: Proposed Withdrawal from Kula Forest Reserve and Set-Aside of Polipoli Spring State Recreational Area (SRA) to the Division of State Parks.



State of Hawaii
 Department of Land and Natural Resources
 Division of Forestry and Wildlife
 (808) 587-0166
 September 2014



HEARING OFFICER'S REPORT AND MINUTES OF:

**Public Hearing for Six (6) Proposed Changes Affecting the Area of
Government Forest Reserve Lands on the Island of Maui**

Pukalani Community Center
91 Pukalani St
Pukalani, HI 96768

5:30 pm

January 14, 2015

SUMMARY OF TESTIMONIES RECEIVED

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

No oral testimonies were received.

No written testimonies were received.

I. SUMMARY OF PUBLIC HEARING PROCEEDINGS

- A. The public hearing was called to order at 5:32 pm. In attendance were the following staff members from the Department of Land and Natural Resources:

Division of Forestry and Wildlife:

Lance De Silva – Hearing Officer

Kylee Ah Choy – Recorder

Jan Pali

Shane De Mattos

Forest Management Supervisor I, Maui Branch

Forestry Admin Intern

Forestry Watershed Planner

Wildlife Biologist IV, Maui Branch

Division of State Parks:

Wendee Kokubun

Office Assistant III

- B. Two members of the public attended the meeting, but no written or oral testimony was provided in regards to the proposed Forest Reserve additions and withdrawals during the meeting. The information that the Division of Forestry and Wildlife had prepared regarding these items was presented as planned.
- C. The public hearing was adjourned at 5:55 pm.

II. APPROVALS AND NOTICES OF PUBLIC HEARING

- A. Approval to hold a public hearing on the proposed forest reserve additions and withdrawals was obtained from the Board of Land and Natural Resources on October 24, 2014.
- B. Approval to hold the public hearing and to appoint Lance De Silva, the Maui Forest Management Supervisor I, as the Hearing Officer was obtained from the Chairperson on November 7, 2014.
- C. Notice of this Public Hearing was published in the Sunday editions of the Garden Island, Honolulu Star-Advertiser, Maui News, West Hawaii Today, and Hawaii Tribune-Herald newspapers on December 28, 2014.

Minutes prepared and respectfully submitted by Lance De Silva.