

FINAL ENVIRONMENTAL ASSESSMENT
FOR
PURCHASE OF CONSERVATION EASEMENT
TO
PRESERVE AGRICULTURAL LANDS

Kunia, Oahu, Hawaii
TMK: (1) 9-2-1-11 (Portion)

SUBMITTED JUNE 4, 2008

BY

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A. SUMMARY

Project Name:	Purchase of a Conservation Easement to Preserve Agricultural Lands, Kunia, Oahu, Hawaii
Agency Action:	Agribusiness Development Corporation
Approving Agency:	Agribusiness Development Corporation
EA Trigger:	Use of state funds to purchase a conservation easement to assure perpetual protection of agricultural lands with high quality soils
Anticipated Determination:	No Significant Impact
Project Location:	Kunia, Oahu
Acreage Involved:	108.217 acres
Tax Map Key:	Portion of (1) 9-2-1-11
Land Use:	State Agriculture; County Agriculture
Pre-Consultation:	DLNR Forestry and Wildlife Division City and County of Honolulu Department of Planning and Permitting Board of Land and Natural Resources Legacy Land Conservation Commission Hawaii State Legislature Natural Resources Conservation Service U.S. Department of Agriculture Hawaii Farm Bureau Federation

B. DESCRIPTION OF THE PROPOSED ACTION

Agribusiness Development Corporation (ADC) is a Hawaii state agency whose mission is to transition the state's agricultural industry from plantation operations to a diversified agricultural economy, including the preservation of lands agricultural importance. ADC proposes to purchase a conservation easement to protect, in perpetuity, agricultural lands located in Kunia, Hawaii, which are owned by Hawaii Agriculture Research Center (HARC). HARC is a Hawaii nonprofit focused on agricultural research. Federal and state money will pay for the easement, which is estimated to cost approximately \$3 million. About half of the purchase price of the easement will come from the federal Farm and Ranch Lands Protection Program (FRPP) managed by the U.S. Department of Agriculture's (USDA) Natural Resources Conservation Service (NRCS). The remainder of the funding will come from the Hawaii Legacy Land Conservation Program (LLCP), which is managed by the Hawaii Department of Land and Natural Resources (DLNR).

1. Description of Property and Location

The proposed conservation easement will encumber approximately 108.217 acres of agricultural land located on the northwestern corner of the intersection of the H1-Interstate Freeway and Kunia Road. The area to be encumbered by the conservation easement (hereinafter the "Conservation Property") is part of a larger parcel of approximately 389.768 acres designated as Lot 16246, shown on Map 1276, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069, situate at Honouliuli, Ewa, City and County of Honolulu, State of Hawaii, bearing tax key designation (1) 9-2-1-11 ("Lot 16246"). The Conservation Property is represented on aerial images, topographic and other maps, which are part of the Draft Baseline Report (Appendix A). Figure 1-3 in the Draft Baseline Report is a survey map delineating the Conservation Property from the remainder of Lot 16246.

2. Reason for and Focus of Environmental Assessment

The trigger. Under the Hawaii Environmental Impact Statement law, Hawaii Revised Statutes ("HRS"), Chapter 343 (hereinafter the "EIS Law" or "Chapter 343"), an environmental assessment (EA) is required where there is a state action that "triggers" the need for an EA, and there is no exemption for the state action. In this case, the trigger for this EA is the proposed use of state funds to match federal funds for the purchase of the conservation easement.

No exemption. Under Chapter 343, one agency will ordinarily be responsible for the processing of the EA. In this case two state agencies are involved: DLNR and ADC. DLNR and ADC agree that ADC is the responsible agency for the purposes of the legal requirements of Chapter 343 because it initiated the proposal for the purchase of a conservation easement over the Conservation Property. Therefore, ADC's exemption list is applicable. Because conservation easements are a relatively new conservation tool in Hawaii, ADC has not updated its exemption list to include this kind of proposed conservation activity by the agency. Therefore, an EA is required even though the proposed action is for the purpose of conservation.

EA focus. The focus of this EA is to evaluate the environmental impacts of ADC's proposal to purchase a conservation easement over the Conservation Property. The specific environmental impacts that are addressed in this EA are the environmental impacts, if any, of purchasing a conservation easement that will provide perpetual prohibitions on development of most of the Conservation Property and thereby provide an opportunity for the Conservation Property to always be available for agricultural uses. ADC expects there is no significant impact to conserving this land through the use of a conservation easement.

3. Description of Farm and Ranch Lands Protection Program

The program. The Farm and Ranch Lands Protection Program (FRPP) is a voluntary program that helps farmers and ranchers keep their land in agriculture. The program provides matching funds to state, tribal, or local governments and non-governmental organizations with existing farm and ranch land protection programs to purchase conservation easements. FRPP was reauthorized in the Farm Security and Rural Investment Act of 2002 (Farm Bill). The U.S. Department of Agriculture's (USDA) NRCS manages the program.

Benefits/Accomplishments. Through 2003, more than 300,000 acres have been protected in 42 states. Until recently, Hawaii did not participate in FRPP programs because there was no source for the matching funds required by FRPP. However, with the creation of the Hawaii Legacy Lands Conservation Program (discussed in the next section), Hawaii was able to apply for FRPP funding. Hawaii completed its first FRPP project in 2007 with the purchase of a conservation easement over agricultural lands on the island of Molokai. That easement was negotiated by and is now held by the Maui Coastal Land Trust. See attached press release regarding this first easement (Appendix F).

How FRPP Works. USDA works through state, tribal, and local governments and non-governmental organizations to conduct the FRPP. These entities acquire conservation easements from landowners. Participating landowners agree not to convert their land to non-agricultural uses and to develop and implement a conservation plan for highly erodible land. All highly erodible lands enrolled must have a conservation plan developed based on the standards in the NRCS Field Office Technical Guide and approved by the local conservation district. Landowners retain rights to use the property for agriculture. To participate, a landowner submits an application to an entity – a State, Tribal, or local government or a non-governmental organization – that has an existing farm or ranch land protection program. The NRCS State Conservationist, with advice from the State Technical Committee, awards funds to qualified entities to purchase perpetual conservation easements.

Eligibility. To qualify for FRPP, the land offered must be part or all of a farm or ranch and must: contain prime, unique, or other productive soil or historical or archaeological resources; be included in a pending offer from a state, tribal, or local government or nongovernmental organization's farmland protection program; be privately owned; be covered by a conservation plan for any highly erodible land; be large enough to sustain agricultural production; be accessible to markets for what the land produces; be surrounded by parcels of land that can support long-term agricultural

production; and, be owned by an individual or entity that does not exceed the Adjusted Gross Income (AGI) limitation.

The AGI provision of the 2002 Farm Bill impacts eligibility for FRPP and several other 2002 Farm Bill programs. Individuals or entities that have an average AGI exceeding \$2.5 million for the three tax years immediately preceding the year the contract is approved are not eligible to receive program benefits or payments. However, an exemption (FRPP Fact Sheet page 2 September 2004) is provided in cases where 75 percent of the AGI is derived from farming, ranching, or forestry operations. If the land cannot be converted to nonagricultural uses because of existing deed restrictions or other legal constraints, it is ineligible for FRPP.

Funding. FRPP is funded through the Commodity Credit Corporation. The FRPP share of the easement cost must not exceed 50 percent of the appraised fair market value of the conservation easement. As part of its share of the cost of purchasing a conservation easement, a state, tribal, or local government or nongovernmental organization may include a charitable donation by the landowner of up to 25 percent of the appraised fair market value of the conservation easement. At a minimum, a cooperating entity must provide, in cash, 25 percent of the appraised fair market value or 50 percent of the purchase price of the conservation easement.

4. Description of State of Hawaii Legacy Land Conservation Program

About the Land Conservation Fund. The Land Conservation Fund was established in July of 2005 by Act 156. Act 156 is codified by HRS Chapter 173A (Acquisition of Resource Value Lands). The Legacy Land Conservation Program (LLCP) provides funding from the Land Conservation Fund for the acquisition of lands, including easements, for: watersheds protection, parks, coastal areas, beaches, and ocean access, natural areas, habitat protection, agricultural production, cultural and historical sites, open spaces and scenic resources, recreational and public hunting area.

The 2006 application cycle awarded approximately \$3.6 million in grants through a competitive process. The 2007 cycle awarded approximately \$4.7 million.

The Legacy Land Conservation Commission (LLCC). The Legacy Land Conservation Commission is a nine-member State commission created by Act 254, SLH 2006, to advise the Board of Land and Natural Resources on projects proposed for funding under HRS Chapter 173A. The Commission uses the priorities identified in HRS Chapter 173A to guide its decision making and uses an interim criteria form that corresponds with the application form to assess project applications.

Who May Apply for Funding. Grants from the Land Conservation Fund are available through LLCP to state agencies, counties, and non-profit land conservation organizations seeking funding to acquire property that has value as a resource to Hawaii. County agency or nonprofit land conservation organization grant recipients must provide matching funds of at least 25% of the total project costs.

Award Selection Process. Applicants are required to complete and submit an application and related documents. The LLCC reviews all complete grant application

packets and then recommends funding awards to the Board of Land and Natural Resources ("BLNR"). Final awards are subject to a consultation process with members of Hawaii Legislature and the approval of the BLNR, the Attorney General and the Governor.

5. Description of Conservation Easements

The Land Trust Alliance (lta.org) provides the following description of conservation easements:

In the 5 years between 2000 and 2005, the amount of land protected by local and state land trusts using easements doubled to 6.2 million acres. Landowners have found that conservation easements can be flexible tools, and yet provide a permanent guarantee that the land won't ever be developed. Conservation easements are used to protect all types of land, including coastlines; farm and ranchland; historical or cultural landscapes; scenic views; streams and rivers; trails; wetlands; wildlife areas; and working forests.

A conservation easement (or conservation restriction) is a legal agreement between a landowner and a land trust or government agency that permanently limits uses of the land in order to protect its conservation values. It allows you to continue to own and use your land and to sell it or pass it on to heirs.

When you donate a conservation easement to a land trust, you give up some of the rights associated with the land. For example, you might give up the right to build additional structures, while retaining the right to grow crops. Future owners also will be bound by the easement's terms. The land trust is responsible for making sure the easement's terms are followed.

Conservation easements offer great flexibility. An easement on property containing rare wildlife habitat might prohibit any development, for example, while one on a farm might allow continued farming and the building of additional agricultural structures. An easement may apply to just a portion of the property, and need not require public access.

A landowner sometimes sells a conservation easement, but usually easements are donated. If the donation benefits the public by permanently protecting important conservation resources and meets other federal tax code requirements--it can qualify as a tax-deductible charitable donation. The amount of the donation is the difference between the land's value with the easement and its value without the easement.

6. Description of the Proposed Conservation Easement

A copy of the proposed conservation easement is attached (Appendix G). The purpose of the easement is set forth in Section B of the easement, and provided here, as well:

The Purpose of this Easement is to protect the agricultural soils, agricultural viability, and agricultural productivity of the Property, and the other Agricultural Values identified [herein] . . . in perpetuity. No activity which significantly impairs the actual or potential use of the Property for agricultural production shall be permitted, and protection and preservation of agricultural production shall be given first priority

in this Easement. To the extent that the preservation and protection of the other Agricultural Values of the Property referenced above may be accomplished without impairing the primary purpose of protecting the agricultural soils, agricultural viability, and agricultural productivity of the Property in perpetuity, it is also the purpose of this Easement to protect those other Agricultural Values of the Property, and to such extent, no activity which shall significantly impair those additional Agricultural Values of the Property shall be permitted.

To maintain arable agricultural lands, the easement provides specific limitations on further hardening of the surface area by buildings or other manmade structures, and limits such structures to two identified building envelopes within the Conservation Property. These two building envelopes may be seen in Figure 2.1 of the Draft Baseline Report (Appendix A).

Among other things, the easement identifies the remaining rights of the land owner, identifies permitted agricultural activities and prohibited activities, provides the ability of the co-holders of the easement (ADC and NRCS) to enforce the terms of the easement, and specifies limitations on the types of dwellings that may be built and who may live in such dwellings.

7. Description of Co-Holder, ADC

ADC will be one of the two co-holders responsible for monitoring and enforcing the terms of the conservation easement that will encumber the Conservation Property. The ADC was formed in 1994 to facilitate and provide direction for the transition of Hawaii's agriculture industry from a dominance of sugar and pineapple to one composed of a diversity of different crops.

The mission of the ADC is to provide leadership and advocacy for the conversion of agribusiness into a dynamic growth industry through the use of financial and other tools enabled by the founding legislation for the pursuit of specific projects to achieve the legislative objectives.

Its main objectives are:

- To facilitate in the orderly transition of existing agribusiness resources of land, water and infrastructure as they become available;
- To focus on specific marketing analysis for ADC identified projects and to utilize complementary marketing resources of related agencies;
- To provide the leadership for the development, financing, improvement, or enhancement of agribusiness enterprises;
- To participate in county, state, and federal legislative initiatives to fulfill the purposes of the ADC.

Since its inception, ADC has participated in a variety of projects pairing qualified farmers with landowners and providing assistance to both parties to ensure the success of such a partnership. ADC currently is actively pursuing projects on all the main islands of Hawaii, some with statewide implications.

8. Description of Co-Holder, NRCS

NRCS (through the U.S. Commodity Credit Corporation) will be a co-holder with ADC, and will be responsible for monitoring and enforcing the terms of the conservation easement that will encumber the Conservation Property. Since 1935, the NRCS (originally called the Soil Conservation Service) has provided leadership in a partnership effort to help America's private land owners and managers conserve their soil, water, and other natural resources.

NRCS employees provide technical assistance based on sound science and suited to a customer's specific needs. NRCS provides financial assistance for many conservation activities. Participation in its programs is voluntary.

NRCS's Conservation Technical Assistance (CTA) program provides voluntary conservation technical assistance to land-users, communities, units of state and local government, and other Federal agencies in planning and implementing conservation systems.

- NRCS reaches out to all segments of the agricultural community, including underserved and socially disadvantaged farmers and ranchers, to ensure that our programs and services are accessible to everyone.
- NRCS manages natural resource conservation programs that provide environmental, societal, financial, and technical benefits.
- NRCS's science and technology activities provide technical expertise in such areas as animal husbandry and clean water, ecological sciences, engineering, resource economics, and social sciences.
- NRCS provides expertise in soil science and leadership for soil surveys and for the National Resources Inventory, which assesses natural resource conditions and trends in the United States.
- NRCS provides technical assistance to foreign governments, and participates in international scientific and technical exchanges.

9. Description of Selection Process for the Conservation Property

In 2006, HARC and ADC agreed to seek funding to purchase a conservation easement over the Conservation Property. Their agreement is memorialized in an "Option to Purchase, and Purchase Agreement of Agricultural Land Preservation Easement" (see Appendix D).

FRPP selection. Thereafter, ADC applied to NRCS for FRPP funds. On August 28, 2006, ADC and NRCS (through the U.S. Commodity Credit Corporation (CCC)) entered into a "Cooperative Agreement Between the [CCC] and the [ADC] for the [FRPP]" ("Cooperative Agreement"). A copy of the Cooperative Agreement is attached (Appendix E). In the Cooperative Agreement, CCC agreed to commit up to \$1,839,412.00 for purchase of the conservation easement, subject to other conditions, including ADC matching, in cash, at least 25 percent of the appraised fair market value of the conservation easement or 50 percent of the purchase price.

LLCP selection. ADC concurrently applied for LLCP funds. ADC's application was processed by DLNR and submitted to the Legacy Land Conservation Commission

for review and recommendation to the BLNR. At its May 18, 2007 meeting, the LLCC considered ADC's application as well as other conservation applications. By a vote of two to three (two abstaining due to conflicts), the LLCC declined to recommend the ADC's application to the BLNR. Those voting against recommendation of the project expressed a preference for agricultural projects that were organic and that focused solely on the production of food. The minutes of the meeting may be reviewed at: <http://www.state.hi.us/dlnr/dofaw/llcp/llcc%20min&agenda/llcc%20minutes%205-18-07%20-%20approved.pdf>.

The LLCC's recommendation list, as well as all other applications, including ADC's, was thereafter submitted to the BLNR for review. BLNR met to make the final binding decision on June 8, 2007. Paul Conry, Administrator for DLNR's Division of Forestry and Wildlife made a report about the LLCP program and noted the LLCC made a priority list based on review of eleven proposals. Conry noted the LLCC "had concerns with the [ADC] project supporting genetically modified crops and research geared toward large industrial agricultural uses [and the LLCP] therefore recommended against funding this project." Conry explained that subsequent to the LLCC vote, DLNR conferred with other agencies with respect to LLCC's recommendation list, including the Legislature, the Speaker of the House, the Senate President and the land chairs of the legislature. Conry reported what DLNR learned during this agency consultation:

The Legislature did not concur with the [LLCC's] recommendation of not funding the ADC request on the agricultural easement in Kunia. [The Legislature's members] recognize the enormous pressure on agricultural lands. The [\$]1.1 million is specifically earmarked for funding these agricultural conservation easements under the [FRPP]. [DLNR] Staff recommends the [BLNR] fund this project.

Additional discussion among the BLNR members and testimony by HARC, ADC, and other agency representatives followed Mr. Conry's report. Thereafter, BLNR unanimously approved an amended slate of LLCP recipients, including ADC. The BLNR resolution for ADC read as follows:

On behalf of [ADC], approve the Division's recommendation to award funds to acquire the following property and encumber funds, under the FY07 LLCP ceiling, from the LCF for the following project:

Project 7. [ADC], for \$1.1 million, to acquire a 108.217-acre agricultural easement across land in Kunia, on the Island of Oahu, from [HARC];

Subject to the normal process and procedures for the acquisition of lands by the State.

The pertinent excerpts from the BLNR June 8, 2007 minutes are attached (Appendix C).

C. DESCRIPTION OF THE AFFECTED ENVIRONMENT

1. Project Location and Nearby Development

The Conservation Property is located at Kunia in the south central portion of Oahu. Royal Kunia and Waipahu are to the east and southeast. Ewa and Kapolei are to the south and southwest. Makakilo is to west and central Oahu is to the north.

The primary roadway in the area is the H-1 Freeway, which generally travels in an east-west direction providing access to Honolulu (22 +/- miles to driving distance to the southeast) and to Ewa and Leeward Oahu to the west. Kunia Road is also a major thoroughfare traveling in a north to south direction intersecting with the H-1 Freeway. The Conservation Property is located at the corner of Kunia Road and the H-1 Freeway on the fringe of urban development.

Waipahu Town originally developed as a plantation town associated with sugarcane cultivation. The town includes commercial development, strip fashion, along Farrington Highway, industrial development south of the highway and residential development to the north. The area is substantially built out with a small amount of vacant land available for new development.

Royal Kunia, mauka of the H-1 Freeway and Waipahu Town and directly across Kunia Road from the subject, is under development with 3,750 homes, 2 golf courses, a 123 acre light industrial park and a 150 acre agricultural park. This master planned community has been under active development for 15+ years with additional land yet to built out. A neighborhood shopping center that is part of the development is located directly across Kunia Road from the subject.

The Ewa Plain, southwest of the subject, is often referred to as Oahu's "Second City" as it is the focus of future population growth and urban development for Oahu. Due to existing development and geographic constraints, there are no other significant land areas available for such development. The success to date of the development is the result of the combined efforts Campbell Estate (seller of Conservation Property), the State of Hawaii and the County. The State and County have designated the area the focus of future development and Campbell Estate has aggressively accommodated these plans. Over the years, Campbell Estate has sold off landholdings for other residential development including West Loch Estates, Villages of Kapolei, Ocean Pointe and Ewa by Gentry. Campbell Estate is currently offering for sale agricultural landholdings in the subject vicinity.

Makakilo (west of the Conservation Property) is a residential-planned community located on the hillside above the Ewa Plain. The development includes condominiums and single-family houses occupied by 12,000+ residents. Zoning and planning approvals have been obtained for additional units.

2. Property Description

a. TOPOGRAPHY, IRRIGATION AND AGRICULTURE ACTIVITIES

The topography of the Property is predominantly gently sloping in a *makai* (ocean), or southerly direction, but with some steeply sloping portions. Elevation ranges from approximately 225 feet to 335 feet above sea level.

The Property is irrigated by surface water from a ditch system managed by the Agribusiness Development Corporation, a quasi-state organization formed to facilitate the conversion of lands formerly in large scale corporate farming to smaller diversified operations.

There are more than 85 acres of Prime and Unique Farmlands as identified by the NRCS in the soil survey, referred to above (see soils section in this EA, Section 3, for further description). Some land of lesser soil quality (located predominantly in the center of the Property) provides natural drainage for the Property or is the site of existing improvements and structures. All of the high quality farm land on the Conservation Property are used for various crops, including, currently, papaya, coffee, cacao, corn and sugarcane.

Lower quality soil areas are reserved for related agricultural improvements, including: irrigation lines; a multipurpose agricultural building for minor sorting, processing; structures for farm engineering and testing; equipment, tool and vehicle storage and maintenance sheds, chemical storage and workshop sheds; a farm house and field office; and, dirt or paved roads used to access the fields and improvements. The existing structures all lie within “Farm Building Envelope Two” shown in Figure 2.1 of the Draft Baseline Report (Appendix A).

b. PAST USES AND ACTIVITIES OF CURRENT OWNER

Until recently, Campbell Estate was the owner of this Property as well as several thousand acres of adjacent farm lands in the Kunia plain. These lands were used historically for sugarcane and pineapple cultivation but more recently for vegetable production and seed crops. Campbell Estate has rented the Conservation Property to HARC for about 50 years.

HARC is a 112 year old private organization that is engaged in the production of coffee, cacao, vegetable crops, tropical fruits, sugarcane, hardwoods and many other diversified crops. Its mission is to maintain, improve, and advance agricultural production and to support the development of a diverse agricultural sector for Hawaii in general. HARC purchased the Conservation Property in 2006.

c. CURRENT LAND USE DESIGNATIONS

Hawaii State Land Use District. The Conservation Property is located within the “Agricultural” State Land Use District, as defined by Hawaii Revised Statutes (“HRS”) Chapter 205. HRS section 205-4.5 (supp. 2005) delineates uses on Agricultural lands based on the Hawaii Land Study Bureau’s Detailed Land Classification, which provides “overall (master) productivity rating” for soils ranging from class A or B (best soils) to soils classified as C, D, E, or U. Uses permitted *of right* (without requiring discretionary

approval) for class A or B soils include the following generalized uses: (1) cultivation of various crops, including orchards, forage, and timber; (2) game and fish propagation; (3) raising of various kinds of livestock; (4) farm structures, such as farm dwellings, employee housing, and farm buildings; (5) public buildings necessary for agriculture; (6) public and private open area types of recreational uses, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps; (7) public and private utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks and related water infrastructure; (8) retention and maintenance of historic buildings and sites; (9) roadside stands for the sale of agricultural products grown on the premises; (10) buildings and uses that are considered directly accessory to the above uses, including mills, storage, and processing facilities, maintenance facilities, vehicle and equipment storage areas; (11) agricultural parks; (12) agricultural tourism conducted on a working farm or farming operation; and (13) wind energy facilities and associated improvements, provided it is compatible with agriculture uses and causes minimal adverse impact on the agricultural land. HRS Chapter 205 also permits Agricultural lands to be subdivided into one-acre lots, unless county zoning is more restrictive.

Hawaii Coastal Zone Management Act. The Conservation Property is not located within the Special Management Area, as defined by the Hawaii Coastal Zone Management Act ("CZMA"), HRS Chapter 205A.

City and County of Honolulu General Plan. The Oahu Community Plan establishes the objective of maintaining the viability of agriculture on Oahu. The Plan identifies eight policies to carry out the objective: (1) Assist the agricultural industry to ensure the continuation of agriculture as an important source of income and employment; (2) support agricultural diversification in all agricultural areas on Oahu; (3) support the development of markets for local products, particularly those with the potential for economic growth; (4) provide sufficient agricultural land in Ewa, Central Oahu, and the North Shore to encourage the continuation of sugar and pineapple as viable industries; (5) maintain agricultural land along the Windward, North Shore, and Waianae coasts for truck fanning, flower growing, aquaculture, livestock production, and other types of diversified agriculture; (6) encourage the more intensive use of productive agricultural land; (7) encourage the use of more efficient production practices by agriculture, including the efficient use of water; and (8) encourage the more efficient use of non potable water for agricultural use.

Community Plans. The Conservation Property lies within the Ewa Community Plan but also abuts the Central Oahu Community Plan. Kunia road acts as the boundary between the two plans. Both refer to the importance of this property for agriculture. Section 2.2.1 of the Ewa Community Plan explains that "The Urban Growth Boundary for Ewa was drawn to give long-range protection from urbanization for over 3,000 acres of prime agricultural land and for preservation of open space while providing adequate land for urban development in Ewa for the foreseeable future. . . . The same section explains that "The Urban Growth Boundary protects prime agricultural lands along Kunia Road from urban development for the foreseeable future, providing an incentive for landowners to give long term leases to farmers. No proposals

for urban uses will be considered outside the Urban Growth Boundary.”

Section 2.2.2 of the Ewa Community Plan (“Retention Of Agricultural Lands”) describes not only the importance of the agricultural lands along Kunia road but also their vulnerability to development:

The closure of the Oahu Sugar Company in 1995 raised serious questions about how thousands of acres of former sugar lands in Ewa should be used in the future. The Ewa Development Plan protects the highest value prime agricultural lands in Ewa from urban development. . . . State agencies indicated that these prime agricultural lands should have the highest priority for retention of all the prime agricultural lands in Ewa. These 3,000 acres *have been rated, in the most authoritative studies, as potentially among the most productive lands for diversified agriculture in the State.* The State Department of Agriculture's November 1977 study, Agricultural Lands of Importance to the State of Hawaii (Revised), indicates that the Kunia lands and a portion of the Magazine lands *are "prime" agricultural lands which generally produce the largest yields and the best quality crops for the least expenditure of energy.* The University of Hawaii Land Study Bureau's December 1972 bulletin, Detailed Land Classification -Island of Oahu, rated productive capacity of the Kunia lands as either A or B and the Magazine lands as B or C (An A rating was given to the highest productivity lands and E was given to the lowest.) These prime agricultural lands have unique advantages in weather, soil productivity, infrastructure, water availability from the Waiahole Ditch, and access to the local markets of Honolulu and to export markets through Honolulu International Airport. Successful agricultural operations are currently being pursued on the former sugar lands in the Kunia area, including vegetables, melons, and other truck crops. *In addition, the [HARC] Hawaiian Sugar Planters' Association research facility at the corner of H-1 and Kunia Road is conducting studies on vegetable crops and forage to help diversified agricultural activities in the area. . . .* [Emphasis added]

County Zoning. The Conservation Property is zoned “AG-1” “Agriculture Restricted” under the Honolulu Land Use Ordinance (“LUO”). Section 21-3.50 of the LUO provides:

The purpose of the [Honolulu] agricultural districts is to maintain a strong agricultural economic base, to prevent unnecessary conflicts among incompatible uses, to minimize the cost of providing public improvements and services and to manage the rate and location of physical development consistent with the city's adopted land use policies. To promote the viability and economic feasibility of an existing agricultural operation, accessory agribusiness activities may be permitted on the same site as an adjunct to agricultural uses. These accessory activities must be compatible with the on-site agricultural operation and surrounding land uses.

Section 21-3.50(b) of the LUO, which addresses uses on lands zoned AG-1, provides:

The intent of the AG-1 restricted agricultural district is to conserve and protect important agricultural lands for the performance of agricultural functions by permitting only those uses which perpetuate the retention of these lands in the production of food, feed, forage, fiber crops and horticultural plants. Only accessory agribusiness activities which meet the above intent shall be permitted in this district.

The Master Use Table of the LUO provides for the following permitted uses in the AG-1 districts: aquaculture, crop production, forestry, open land, livestock grazing, minor livestock production, livestock veterinary services, and public uses and structures. Subject to meeting specific use development standards, set forth in the LUO, other uses are permitted in the AG-1 district, including the following: minor agricultural products processing, centralized storage of agriculture products, minor composting, agricultural machinery sales and service, sawmills, seed, feed and fertilizer storage, major livestock production, farm dwellings, and certain utility installations. Upon meeting certain requirements, section 21-3.50-1, 2 and 3 of the LUO permits the clustering of farm dwellings, including detached, duplex or multifamily farm dwellings to “promote economy of services and utilities and the most efficient use of the remainder area for agricultural pursuits.”

3. Soils

As set forth in the Draft Baseline Report (Appendix A), the Conservation Property’s soils are part of the Lulualaei-Fill Land-Ewa Association, which are deep, nearly level to moderately sloping, well drained soils that have a fine texture or moderately fine texture subsoil (USDA 1972). Soils onsite have been classified as part of the Molokai Series. These soils have been described as well drained soils found on uplands that formed in material from basic igneous rock; they are nearly level to moderately steep, with runoff being medium and erosion hazard as high. The Molokai Series soil classified onsite are listed below:

- Molokai Silty Clay Loam (MuB) with 3 to 7 percent slopes; and
- Molokai Silty Clay Loam (MuC) with 7 to 15 percent slopes.

As determined by a soil survey conducted by the U.S. Department of Agriculture Natural Resources Conservation Service (“NRCS”), a majority of the Conservation Property is considered to be either “Prime Farmland” or “Unique Farmland.” “Prime Farmland” means land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, without intolerable soil erosion (7 CFR § 1491.3). “Unique Farmland” means land other than prime farmland that is used for the production of specific high-value food and fiber crops. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods (7 CFR § 1491.3).

Additional information regarding the Conservation Property’s soil rating is in the NRCS Preliminary Technical Determination (Appendix B).

4. Biological Resources

a. AQUATIC FEATURES

There are no aquatic features. See the NRCS Preliminary Technical Determination (Appendix B), providing that the Conservation Property includes no wetlands.

b. FLORA

Current crops at the Conservation Property include papaya, coffee, cacao, corn and sugarcane. Little of the property is in a natural state and no noteworthy endemic plants or trees are present on the property.

c. FAUNA

No noteworthy endemic insects or animals are present on the Conservation Property.

5. Cultural and Social Resources

a. HISTORICAL AND ARCHAEOLOGICAL RESOURCES

The Conservation Property and surrounding properties have all been farmed historically. There are no known historical or archaeological sites on the Conservation Property. Japanese American WWII internment camp preservation sites are located near the Conservation Property in Honouliuli, west of Kunia Road and mauka of the present-day H-1 freeway. The Honouliuli Preserve owned by The Nature Conservancy is located mauka of the Conservation Property.

b. SENSITIVE AND SIGNIFICANT AREAS

There are no environmentally sensitive areas. However, there are important drainage areas that will be left unfarmed and unfilled.

c. CULTURAL FEATURES AND PRACTICES

HARC, formerly the Hawaiian Sugar Planters' Association, came into existence in 1880. HARC has leased and farmed the Conservation Property over 50 years. Recently, HARC was able to purchase the Conservation Property from Campbell Estate. The Conservation Property is part of a larger section of high quality agricultural lands used traditionally for farming. The purpose of the conservation easement is to ensure a continuation of this tradition, despite the changing land use practices and development pressures in the Kunia area.

6. Economic Resources

The purpose of the conservation easement is to ensure the perpetual protection of the agricultural lands on the Conservation Property. This, in turn, protects agriculture, which remains an important agricultural resource in Hawaii. The following information regarding the importance of agriculture is from the Hawaii Department of Agriculture website:

Agriculture has always had a special place in Hawaii history and continues to be an important industry, generating \$2.9 billion to the state's annual economy and directly and indirectly providing 42,000 jobs.

Historically, the ancient Polynesian voyagers traveled to Hawaii, bringing with them plants such as taro, bananas and other staples to sustain themselves. Hawaii agriculture began with small farms covering the islands, growing everything from sweet potato to rice. Fishponds were created along the coasts to raise fish and other seafood.

The plantation era witnessed the boom decades of the sugar and pineapple industries, expanding over thousands of acres of prime agricultural lands. Fields of green spread far and wide, contributing to the lush scenery that made the islands so attractive to visitors.

Now, with the decline of the sugar industry, these agricultural lands are returning to a new era of small farms growing diversified agricultural products. Crops such as specialty exotic fruits, coffee, macadamia nuts, flowers and foliage not only provide fresh produce and flowers to Hawaii's markets, but also have become major exports to destinations around the world. The early fishponds have evolved into high-tech aquaculture ventures, farming from the sea sumptuous varieties of fish, shrimp, lobster, abalone, and seaweed.

"Grown in Hawaii" exports have gained recognition in foreign and domestic markets and have become synonymous with premium quality delicacies. The lure of Hawaii and the reputation of our products have led to the exportation of a host of fresh and manufactured products to markets and stores abroad, especially in Canada and Japan.

Increased efforts to expand the market for Hawaii's agricultural products are also progressing in unique ways. The development of Hawaii Regional Cuisine, a blending of the flavors of East and West, utilizes fresh island products, including fresh fish and seafood, tropical fruits and vegetables in new combinations.

How important is Hawaii's agriculture today? Aside from the obvious benefits of providing food and jobs, agriculture also plays a major role in preserving Hawaii's precious green space. As urban sprawl encroaches onto rural areas, Hawaii agriculture keeps our islands lush and vibrant.

Hawaii's leading industry, tourism, also depends on agriculture. Each year, millions of visitors from around the globe travel to our state with the great expectation of viewing spectacular landscapes of green vegetation. Trends in the travel industry also show an increasing interest in eco-tourism, farm tours and cultural experiences; attractions that are all agriculturally based.

Agriculture in Hawaii is evolving as economic and social factors change here and globally. The future of local agriculture remains full of economic potential. Therefore, support for Hawaii agriculture has never been more important than at present.

D. ENVIRONMENTAL IMPACTS OF PROPOSED ACTION; PLANNED MITIGATION MEASURES

1. Impacts on Physical Resources

a. SOIL

The proposed action (purchasing the conservation easement) will assure the perpetual protection of the high quality agricultural soils found on the Conservation Property.

b. WATER QUALITY

The proposed action (purchasing the conservation easement) will have no negative impact on water quality but may lead to positive benefits, as any owners of the Conservation Property will be required to follow NRCS conservation guidelines, including such measures as reducing runoff.

2. Impacts on Biological Resources

The proposed action (purchasing the conservation easement) will have no negative impact on biological resources.

3. Impacts on Cultural and Social Resources

The proposed action (purchasing the conservation easement) will have no negative impact on historic, archaeological or cultural resources. It will provide positive benefits by assuring the preservation and continued use of the property for agricultural uses.

4. Impacts on Economic Resources

Per the discussion above, the proposed action (purchasing the conservation easement), will indirectly benefit Hawaii's important agricultural economy by assuring the availability, for perpetuity, of land for agricultural uses.

E. ALTERNATIVES TO THE PROPOSED ACTION

1. No Action Alternative

If the ADC does not purchase the conservation easement, there is the risk that the land could be rezoned in future years to a different use, including non-agricultural uses. In such event, it is possible that portions, or most of property, could be developed -- like much of the nearby areas, in which case, there would be little likelihood that the land would ever be returned to farming.

Even if the zoning did not change, current agricultural laws do not sufficiently protect the arable lands from substantial development. In addition, the land, even if not fully developed, could move away from legitimate agricultural uses (e.g., being used as a "gentleman's estate"). Or, under current zoning, it is possible the land could be further

subdivided, thereby losing the opportunity for larger scale, more financially efficient, farming.

Therefore, the “no action” alternative leaves the Conservation Property at risk to the development pressures (shopping areas, residential uses) that have affected lands directly across the street from the property. Moreover, the significant matching funds offered by NRCS would be forfeited if ADC does not purchase the conservation easement.

2. Alternative Properties

There is the question whether ADC could consider alternative properties for protection and preservation. In this case an alternative does not exist. NRCS identified the Conservation Property as a property in Hawaii worthy of funding under the FRPP program during fiscal year 2007. ADC agreed to assist in obtaining matching funds, so that the conservation easement project could be completed. Other alternative properties could also be attractive but not for fiscal year 2007 because they were not selected by NRCS under the FRPP process. Therefore, there are no alternative properties for the fiscal year 2007 under the FRPP process.

F. DETERMINATION

1. The proposed project does not involve irrevocable commitment to loss or destruction of any natural or cultural resource.

Rather, the proposed action (purchasing the conservation easement), assures that a cultural resource (agricultural lands) are protected from irrevocable commitment or loss.

2. The proposed project does not curtail the range of beneficial uses of the environment.

Based on current Hawaii zoning, the best use of the Conservation Property is for agriculture. NRCS has evaluated the property and agrees. The proposed action (purchasing the conservation easement) provides perpetual protection of the beneficial uses of the Conservation Property.

3. The proposed project does not conflict with the state’s long-term environmental policies or goals and guidelines as expressed in Chapter 344, HRS, and any revisions thereof and amendments thereto, court decisions, or executive orders.

Among the policies enunciated in Section 344-3 is the following:

Conserve the natural resources, so that land, water, mineral, visual, air and other natural resources are protected by controlling pollution, by preserving or augmenting natural resources, and by safeguarding the State’s unique natural environmental characteristics in a manner which will foster and promote the general welfare, create and maintain conditions under which humanity and

nature can exist in productive harmony, and fulfill the social, economic, and other requirements of the people of Hawaii.

Among the economic development guidelines enunciated in Section 344-4 is the following: "Promote and foster the agricultural industry of the State; and preserve and conserve productive agricultural lands."

The proposed action (purchasing the conservation easement) is consistent with and furthers the policies set forth in Chapter 344, HRS.

4. The proposed project does substantially affect the economic or social welfare of the community or state.

Any economic or social impacts from the proposed action (purchasing the conservation easement), are positive rather than negative.

5. The proposed project does not substantially affect public health.

There are no negative impacts to the public health from the proposed action. The proposed action instead benefits public health by directly furthering the state's long term environmental policies and guidelines.

6. The proposed project does not involve substantial secondary impacts; such as population changes or effects on public facilities.

No secondary impacts, such as population changes or effects on public facilities will occur from the proposed action (purchasing the conservation easement).

7. The proposed project does not involve a substantial degradation of environmental quality.

Rather, the proposed action (purchasing the conservation easement) benefits the environment by preserving agricultural lands and open space by restricting, in perpetuity, development of the Conservation Property.

8. The proposed project does not have considerable cumulative adverse effects.

There are no cumulative adverse effects from the proposed action.

9. The proposed project does not substantially affect a rare, threatened, or endangered species, or its habitat.

The proposed action (purchasing the conservation easement) will not affect any rare, threatened or endangered species or habitat.

10. The proposed project does not detrimentally affect air or water quality or ambient noise levels.

There will be no negative impacts to air, water or ambient noise levels from the proposed action (purchasing the conservation easement).

11. The proposed project does not affect scenic vistas or view-planes identified in county or state plans or studies.

No important scenic vistas or view planes are affected. However, the proposed action (purchasing the conservation easement), will nonetheless mean protection of open space agricultural lands, which are generally considered a scenic amenity.

12. The proposed project does not require substantial energy consumption.

The proposed action (purchasing the conservation easement) involves no energy consumption.

13. The proposed development will not adversely impact the social, cultural, economic, environmental, and ecological character and quality of the area.

The proposed action (purchasing the conservation easement) will maintain the character of the area.

G. CONCLUSION

The proposed action (purchasing the conservation easement) will not cause a significant environmental or social impact.

A. DRAFT BASELINE REPORT

Revision 2
1 February 2008

Baseline Report

Lot 12004-A-2

Kunia, Oahu, Hawaii

Agribusiness Development Corp.
State of Hawaii
235 South Beretania Street, Room 205
Honolulu, HI 96813



Baseline Report

Lot 12004-A-2
Kunia, Oahu, Hawaii

GRANTORS

Hawai'i Agriculture Research Center
Pioneer Hi-Bred International, Inc.

HOLDERS:

Agribusiness Development Corporation
Natural Resources Conservation Service

Final Report
January 16, 2008

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SIGNATURE PAGE

This Baseline Report and all attached documents have been reviewed and approved for accuracy by the undersigned:

GRANTORS: Hawai'i Agriculture Research Center

By: _____
Stephanie A. Whalen
Director and President

By: _____
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Vice President

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By: _____
Name: _____
Title: _____

HOLDERS: Agribusiness Development Corporation

By _____
Alfredo Lee
Executive Director

Natural Resources Conservation Service

By _____
Lawrence T. Yamamoto
Director, Pacific Islands Area

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LIST OF ACRONYMS AND ABBREVIATIONS

ADC	Agribusiness Development Corporation
AST	above-ground storage tank
DLNR	State of Hawaii Department of Land and Natural Resources
FRPP	U.S. Farm and Ranch Lands Protection Program
GPS	Global Positioning System
HARC	Hawaii Agriculture Research Center
LLCP	Legacy Land Conservation Program
NRCS	Natural Resources Conservation Service
U.S.	United States
USDA	U.S. Department of Agriculture
UST	underground storage tank

1.0 INTRODUCTION

This Baseline Report documents the current condition of an agriculture parcel (“the Property”) located in Kunia, Oahu, Hawaii, further described below, and identified in Figures 1-1 through 1-5, for the purpose of a conservation easement, further described below. This Baseline Report establishes the baseline condition and uses of the property for future reference and monitoring of and enforcement of the conservation easement. Among other things, this Report describes the buildings, utilities, roads, boundaries and uses of the property. This Report follows guidance presented from The United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), (<http://www.nrcs.usda.gov/programs/frpp> 2007) and other conservancy programs (Thorton 1998).

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Figure 1-1
Regional Location Map

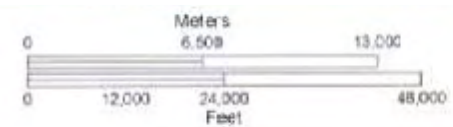
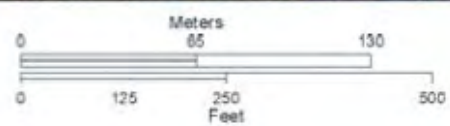




Figure 1-2
Aerial Image



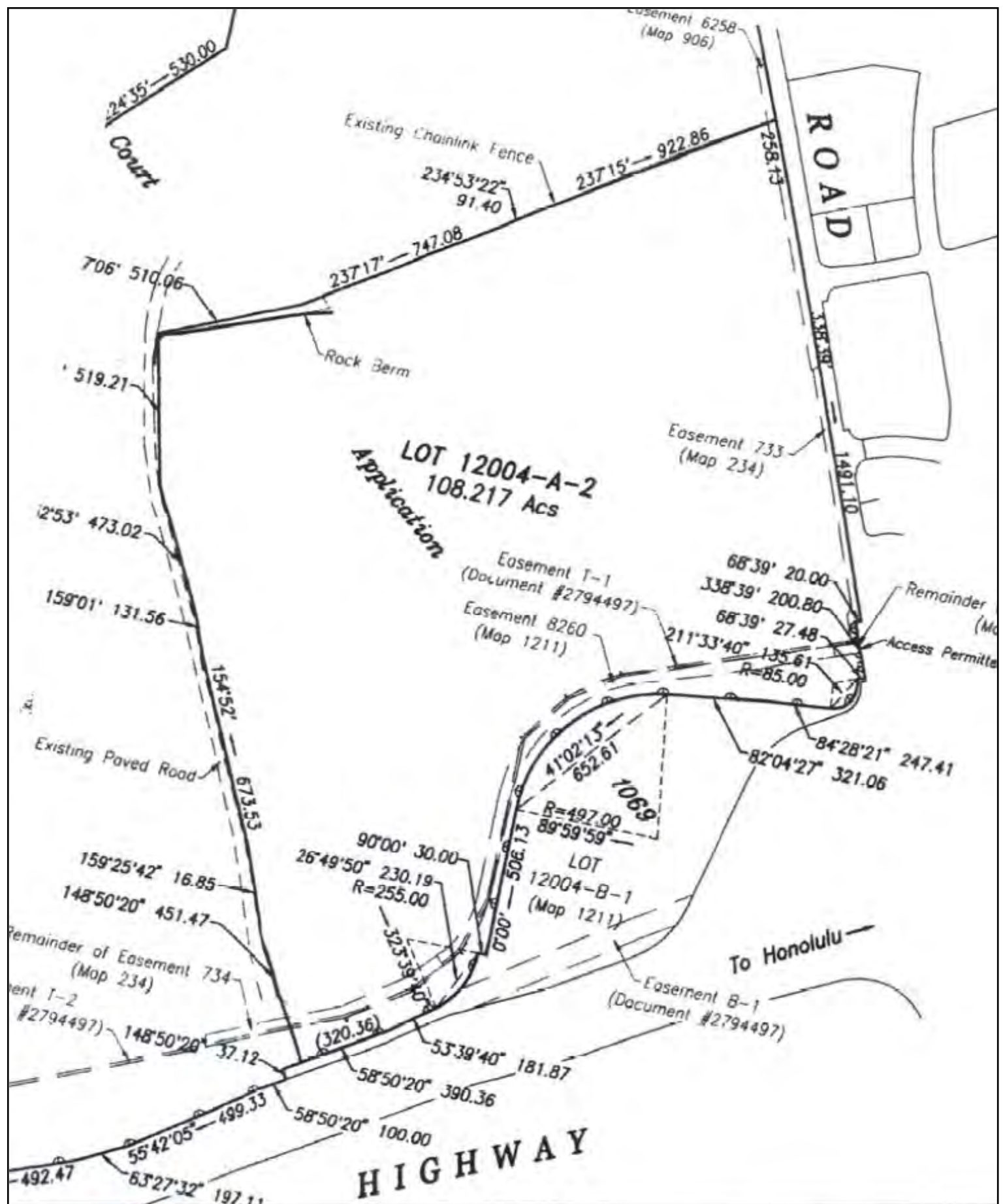


Figure 1-3
Site Map

Not to Scale



Not to Scale

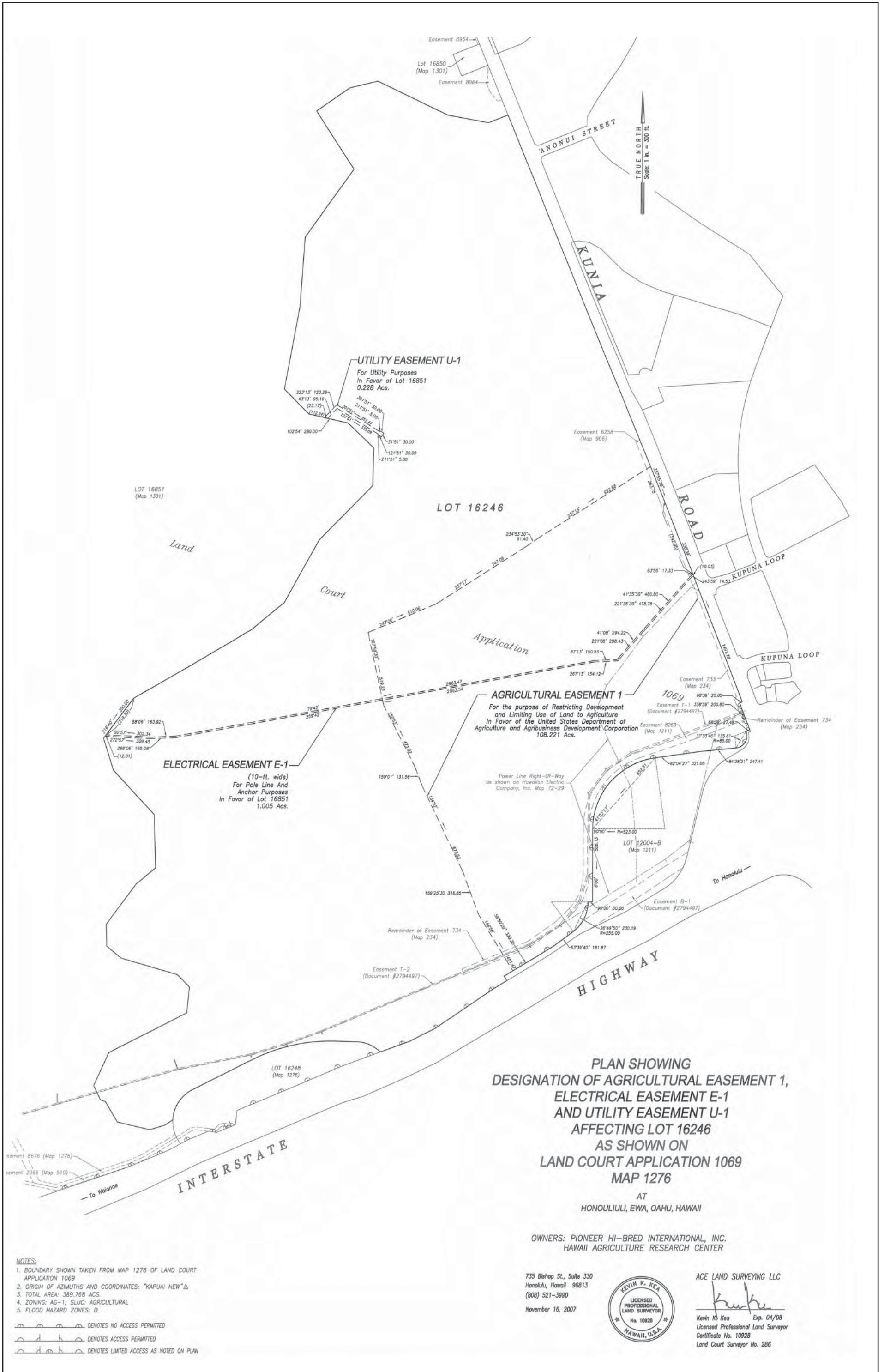


Figure 1-5
Topography Map

2.0 SITE INFORMATION

2.1 PROPERTY LOCATION AND DESCRIPTION

The Property is approximately 108.217 acres in size and is located on the northeast corner of the intersection of the H1-Interstate Freeway and Kunia Road (Figure 1-1). The Property is part of a larger parcel of approximately 389.768 acres in size designated as Lot 16246, shown on Map 1276, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069, situate at Honouliuli, Ewa, City and County of Honolulu, State of Hawaii, bearing tax key designation (1) 9-2-1-11 ("Lot 16246"). The Property is represented on aerial images, topographic and other maps in Figures 1-2 through 1-5. Figure 1-3 is a survey map delineating the Property to be encumbered by the conservation easement from the remainder of Lot 16246.

2.2 IDENTIFICATION OF GRANTORS, GRANTEES AND INTERESTED PARTIES

Grantors: The grantors of the conservation easement are the current land owners. The Property is part of a larger parcel which is currently co-owned by Hawaii Agriculture Research Center (HARC) and Pioneer Hi-Bred International, Inc. ("Pioneer") as tenants in common. Pursuant to a tenants in common agreement, HARC occupies and controls the Property, while Pioneer occupies and controls the remainder of Lot 16246. Both HARC and Pioneer will be grantors of the conservation easement.

Grantees: The Hawaii Agribusiness Development Corporation (ADC) is purchasing the conservation easement from HARC using grant funds provided by the Hawaii Legacy Land Conservation Program ("LLCP") and the U.S. Farm and Ranch Lands Protection Program ("FRPP"). The U.S. Commodity Credit Corporation, through Natural Resources Conservation Service ("NRCS"), is the administrator of the FRPP program, and will be a co-grantee.

Interested Party: The Hawaii Department of Land and Natural Resources ("DLNR") is the administrator of the LLCP, and, as such, is an interested party but not a co-grantee.

2.3 BACKGROUND

The Property is currently utilized by HARC for agricultural research. The remainder of Lot 16246 is also used for agricultural purposes by Pioneer. However, suburban and commercial development has occurred to the east of the site.

Representatives from HARC (Mr. Lance Santo, Mr. Blake Vance) have indicated that HARC has been onsite for approximately 40 to 50 years, leasing the property from the James Campbell Company. In 2006, HARC purchased the property.

HARC, (formerly the Hawaiian Sugar Planters' Association) is a private, non-profit 501c organization and performs research in forestry, coffee, forage, vegetable crops, tropical fruits, diversified crops and sugarcane. HARC maintains its laboratories and administrative offices at the Robert L. Cushing Building in Aiea, Hawaii, and also has field substations on Oahu, Kauai

and Maui (<http://www.hawaiiag.org/harc/index.htm>, 2007). HARC plans on re-locating its laboratory and offices to the site, as well as continuing to perform agricultural research there.

2.4 TYPE OF EASEMENT

The Property is intended to be encumbered by a conservation easement that will limit development to two building envelopes and assure that the best agricultural soils on the Property remain available, in perpetuity, for agricultural production (collectively “the Conservation Purposes”). The focus of this Baseline Report is to report on conditions of the property that would be relevant to the Conservation Purposes.

2.5 SITE VISIT

A site visit was conducted on November 15, 2007. Representatives from ADC (Ms. Lynn Owan), the State of Hawaii Department of Land and Natural Resources, Land Division (Mr. Ian Hirokawa), HARC (Mr. Blake Vance and Mr. Lance Santo) and ADC subcontractor TEC Inc. (Ms. Nicole Griffin) met at the HARC field office. A site map showing the building envelopes (Figure 2-1), background information, and site data were provided by Mr. Vance and Mr. Santo. Mr. Vance and Mr. Santo explained the research and uses of the site, including sub-leasing the Multi-purpose Building and lands directly south of it to Pioneer. This is a temporary arrangement, which will be concluded when Pioneer has established its facilities; this is expected to occur in the near future. The following current site information was given:

- **Utilities** – The site is generally accessed by an asphaltic paved access road opposite Kupuna Loop along Kunia Road. Access to this road is controlled with a metal gate, and the road is also bordered by croton hedge. An abandoned irrigation line borders the north and south portions of the road. Other utilities include a one-inch potable water line supplied from the Honolulu Board of Water Supply, electricity supplied from Hawaiian Electric Company and telephone service supplied by Hawaiian Telcom. The building envelope also contains three cesspools (located near the office, the multi-purpose building and just north of the tractor shed). One underground storage tank (UST) with a pump dispenser was located on the eastern side of the Tractor Building. Most of these utilities are concentrated within the building envelope, and run along the access road. Irrigation water is supplied from water from Waiahole Ditch; this pipeline runs along Kunia Road and enters the site near the northwest corner. Irrigation water is distributed about the site through lateral lines and hoses.
- **Buildings** – Two designated building envelopes exist for the site. The current building envelope is located near the center of the site and contains several structures. On the north side of the access road, the building envelope contains a weather station area, caretakers house and carport, the HARC office, parking lot, and approximately 5 out-buildings/sheds including the tractor building. South of the access road, is the large Multi-purpose Building, and at least two other semi-permanent sheds. South of the multi-purpose building is a fenced plant quarantine area, and other semi-permanent green-house structures. One above-ground storage tank (AST) containing gasoline, on a concrete pad

was also located along the green houses. The planned HARC building is projected to be built along the northern side of the access road, near the gate.

- A drainage/dry creek extends from the north to the south through the site; the area directly west of the Tractor Building is sometimes used as a drainage.
- There are no significant historical or archaeological features remaining onsite.
- There are no significant noxious weed areas onsite.
- There are no significant native plant areas onsite.

The site is extensively used for agricultural research. Current uses include (north) cover crops like wheat, oat and sun hemp; (west) sugar cane and papaya, (central) cacao, neem, coffee; (east) coffee and sugar cane; (south) sorghum. Portions of the drainages have erosion control grasses (vetvibra) planted, and the north boundary has jackfruit, avocado and bamboo test areas planted. The site is not completely covered with crops, several fallow areas exist, and crops have been and will likely be in rotation or changed.

The boundary of the site is protected by soil berms (north, west and south), or by dry rock lava walls (east – along Kunia Road). The topography of the site slopes downward to the south; the site generally has three main terraces that are protected by soil berms. A large lava rock wall exists on the northern side of the drainage to the west of the tractor building. The southern portion of the site has a crushed coral road; the road terminates to the east at a metal pole gate and lava rock wall, while the western portion terminates at a pole gate that opens to the adjacent farm. The southern boundary of the site abuts the H-1 Interstate Freeway Interchange; scrub vegetation including grasses, trees and bushes exist there.

After discussing the uses of the site, a tour was given. The entire site is accessible from foot and four-wheel drive, and was viewed by the meeting participants from a four-wheel drive vehicle.

2.6 SOILS

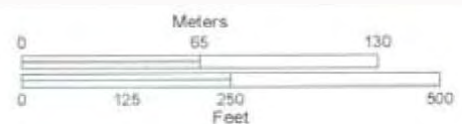
The soils onsite are part of the Lulualalei-Fill Land-Ewa Association, which are deep, nearly level to moderately sloping, well drained soils that have a fine texture or moderately fine texture subsoil (USDA 1972). Soils onsite have been classified as part of the Molokai Series. These soils have been described as well drained soils found on uplands that formed in material from basic igneous rock; they are nearly level to moderately steep, with runoff being medium and erosion hazard as high. Nonetheless, NRCS determined in May 2005 that the pertinent fields"... are not highly erodible ...". The Molokai Series soil classified onsite are listed below (USDA 1972):

- Molokai Silty Clay Loam (MuB) with 3 to 7 percent slopes; and
- Molokai Silty Clay Loam (MuC) with 7 to 15 percent slopes.

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Figure 2-1
Building Envelopes



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3.0 DATA

After the tour was completed, data for the site, including photo-documentation and Global Positioning System (GPS) points were collected. Thirty-nine points were collected to document the current conditions of the site. The points include delineation of accessible portions of the property line, the access road, and buildings (southeastern corner of each feature was measured, unless otherwise noted). The photo-documentation is presented in Appendix A. Each photo is keyed to a GPS point found in Table 3-1, and also shown on Figure 3-1. The GPS points were collected with a Garmin GPSMAP 76 hand-held GPS unit, with accuracy in the 1-meter range.

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Table 3-1: GPS Points and Descriptions

<u>Map</u> Key	Type,	Id, Lat,	Long,	Date	Description
1	WAYPOINT,	063,21.38805958,-158.03453953		15-NOV-07	Entrance at Kunia Road, Metal Gate, North Side
2	WAYPOINT,	064,21.38791172,-158.03445102,		15-NOV-07	Entrance at Kunia Road, Rock Wall, South Side
3	WAYPOINT,	065,21.38760150,-158.03519458,		15-NOV-07	Access Road, First Southern Turn-off
4	WAYPOINT,	066,21.38713975,-158.03567184,		15-NOV-07	Weather Station, Southeastern Corner of Fence
5	WAYPOINT,	067,21.38697345,-158.03578206,		15-NOV-07	Weather Station, Southwestern Corner of Fence
6	WAYPOINT,	068,21.38738165,-158.03539423,		15-NOV-07	Access Road, Second Southern Turn-off
7	WAYPOINT,	069,21.38677471,-158.03595146,		15-NOV-07	Caretakers House
8	WAYPOINT,	070,21.38659786,-158.03600594,		15-NOV-07	Caretakers Carport
9	WAYPOINT,	071,21.38655988,-158.03625514,		15-NOV-07	HARC Office
10	WAYPOINT,	072,21.38638420,-158.03620962,		15-NOV-07	HARC Parking Lot Entrance
11	WAYPOINT,	073,21.38617650,-158.03639989,		15-NOV-07	Tractor Building
12	WAYPOINT,	074,21.38606753,-158.03677532,		15-NOV-07	Storage/shop West of Tractor Building
13	WAYPOINT,	075,21.38618127,-158.03682226,		15-NOV-07	Lab/Bathroom Building
14	WAYPOINT,	076,21.38618127,-158.03682226,		15 NOV 07	¹
15	WAYPOINT,	077,21.38618127,-158.03682226,		15 NOV 07	¹
15	WAYPOINT,	078,21.38623341,-158.03698855,		15-NOV-07	Northwestern Storage Shed
16	WAYPOINT,	079,21.38624816,-158.03716809,		15-NOV-07	Northeast Corner of Drainage By Rock Wall
17	WAYPOINT,	080,21.38615336,-158.03612052,		15-NOV-07	² Corrugated Shed West of Multi-purpose Bldg.

Table 3-1: GPS Points and Descriptions

<u>Map</u> Key	Type,	Id,	Lat,	Long,	Date	Description
18	WAYPOINT,	081,	21.38657187,	-158.03565323,	15-NOV-07,	Multi-purpose Bldg.
19	WAYPOINT,	082,	21.38642007,	-158.03555793,	15-NOV-07,	Greenhouse
20	WAYPOINT,	083,	21.38604155,	-158.03485410,	15-NOV-07	Temporary Greenhouse Area (SE Corner)
21	WAYPOINT,	084,	21.38580786,	-158.03562398,	15-NOV-07	Temporary Greenhouse Area (SW Corner)
22	WAYPOINT,	085,	21.38555305,	-158.03605841,	15-NOV-07	Quarantine Fence (SE Corner)
23	WAYPOINT,	086,	21.38539924,	-158.03631524,	15-NOV-07	Quarantine Fence (SW Corner)
24	WAYPOINT,	087,	21.38576754,	-158.03653275,	15-NOV-07	Quarantine Fence (NW Corner)
25	WAYPOINT,	088,	21.38582186,	-158.03681186,	15-NOV-07,	SE Point of Drainage
26	WAYPOINT,	089,	21.38504511,	-158.03720162,	15-NOV-07	SW Point of Drainage
27	WAYPOINT,	090,	21.38606938,	-158.03749641,	15-NOV-07	NW Point of Drainage
28	WAYPOINT,	091,	21.38647288,	-158.03796194,	15-NOV-07	Telephone Pole (1 st on Straight Line off Bend)
29	WAYPOINT,	092,	21.38804616,	-158.03946390,	15-NOV-07	Center Road, at North (Pioneer) Boundary
30	WAYPOINT,	093,	21.38896708,	-158.03781124,	15-NOV-07	Drainage at North Boundary
31	WAYPOINT,	094,	21.39036929,	-158.03561074,	15-NOV-07,	Northeastern property boundary (interior)
32	WAYPOINT,	095,	21.38772212,	-158.03954721,	15-NOV-07	Dog-leg in Northern Property Boundary
33	WAYPOINT,	096,	21.38717537,	-158.04119677,	15-NOV-07	Northwestern corner of the property (interior)
34	WAYPOINT,	097,	21.38602780,	-158.04088974,	15-NOV-07	Telephone pole easement Western Boundary Entry

Table 3-1: GPS Points and Descriptions

<u>Map</u> Key	Type,	Id,	Lat,	Long,	Date	Description
35	WAYPOINT,	098,	21.38281167,	-158.03922920,	15-NOV-07	Gate, 2 nd Terrace, Western Property Boundary
36	WAYPOINT,	099,	21.38158623,	-158.03836436,	15-NOV-07	SW Lower Terrace Road (inner)
37	WAYPOINT,	100,	21.38234312,	-158.03706978,	15-NOV-07	Lower Terrace SE Bend in Road
38	WAYPOINT,	101,	21.38109120,	-158.03857651,	15-NOV-07	SW Corner of Site at Gate (interior)
39	WAYPOINT,	102,	21.38211697,	-158.03695855,	15-NOV-07	SE Bend in Coral Road (interior)
40	WAYPOINT,	103,	21.38472425,	-158.03618708,	15-NOV-07	South Coral Road at Interior Road Gate
41	WAYPOINT,	104,	21.38559077,	-158.03374367,	15-NOV-07	SE Property Boundary at Coral Road, Kunia Gate

Notes:

Map Key = Location of Measurement and photo as noted on Figure 3-1

Type = GPS measurement point

ID = GPS Identification point

Lat. = Latitude

Long. = Longitude

*Each feature was measured from the Southeastern corner, unless otherwise noted.

¹ Deleted Points

² Measured from Northeast corner

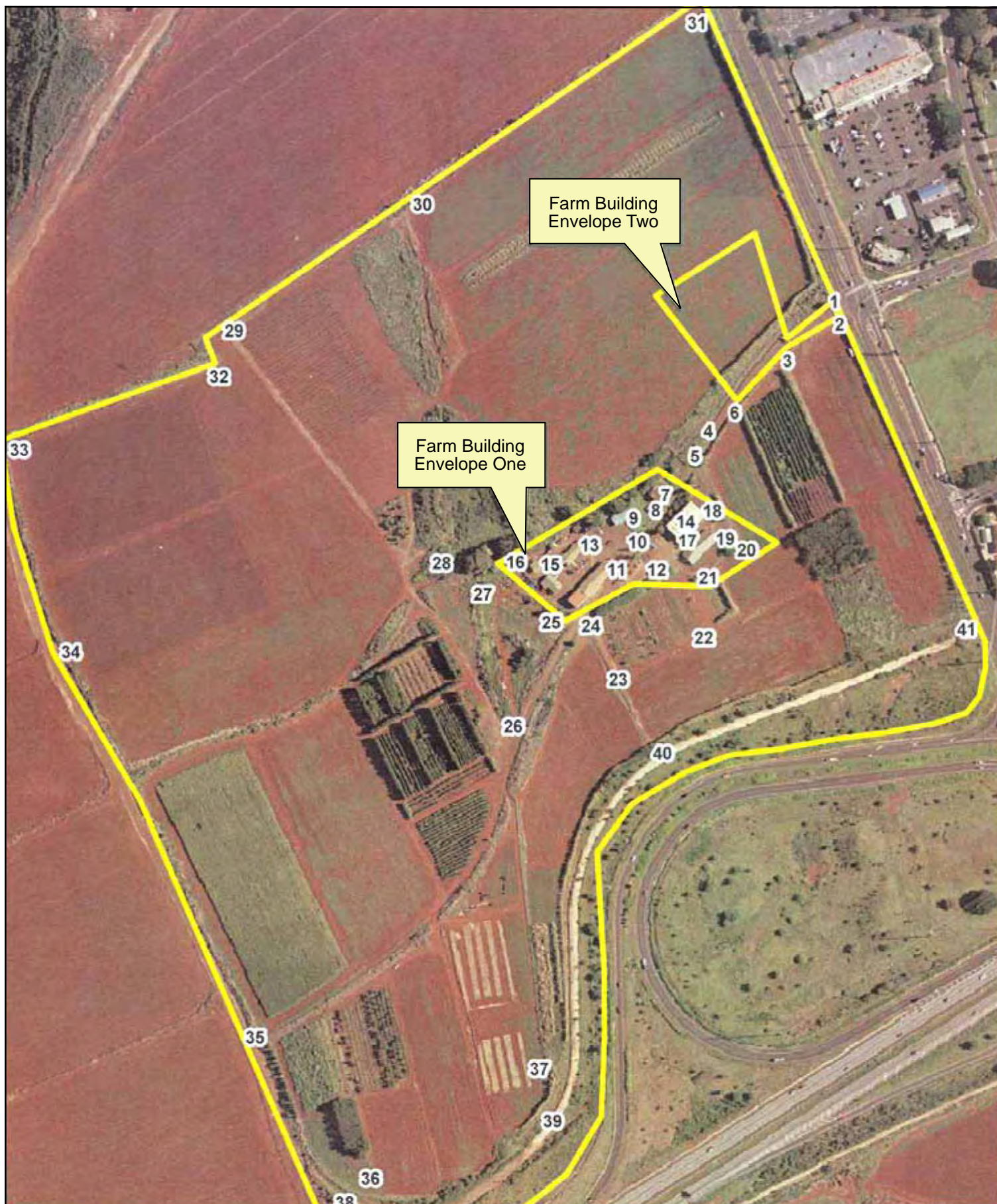
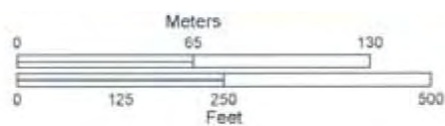


Figure 3-1
Keyed Site Map



4.0 REFERENCES

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APPENDIX A
PHOTODOCUMENTATION

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Photo Map Key Points 1 and 2:
View south – site entrance at Kunia Road



Photo Map Key Point 3:
View northwest at first southern turn-off from access road.



Photo Map Key Points 4 and 5:
View northwest of weather station.



Photo Map Key Point 6:
View south of second southern turnoff from access road.



Photo Map Key Points 7 and 8:

View northwest of the caretaker's house and carport.



Photo Map Key Point 9:

View northwest of the HARC office.



Photo Map Key Point 10:

View northwest of the HARC parking lot entrance.
(Note – corner of HARC office at right.)



Photo Map Key Point 11:

View west of the tractor building.
(Note: crane and containers in center, lab/bathroom building on right).



Photo Map Key Point 12:

View northwest of the storage/shop west of tractor building.



Photo Map Key Point 13:

View northwest of the lab/bathroom building.



Photo Map Key Point 15:

View west of the northwest storage shed, and rock wall by drainage.



Photo Map Key Points 17 and 18:

View east of the corrugated metal shed (located west of the multi-purpose bldg.)
and the multi-purpose bldg.



Photo Map Key Point 19:
View southwest of greenhouse.



Photo Map Key Points 20 and 21:
View southeast of the temporary greenhouse area.



Photo Map Key Points 20 and 21:

View northeast of the temporary greenhouse area
(Note: gasoline AST and fertilizer drums).



Photo Map Key Points 21 and 23:

View west of quarantine fence area.



Photo Map Key Points 23 and 24:
View north of quarantine fence area.



Photo Map Key Point 25:
View northwest from the southeastern point of the drainage.



Photo Map Key Point 26:

View north from the southwestern point of the drainage.



Photo Map Key Point 27:

View south from the northwestern point of the drainage.



Photo Map Key Point 28:

View east of the telephone pole easement running through the center of the site (just north of the drainage).



Photo Map Key Point 28:

View west of the telephone pole easement running through the center of the site (just north of the drainage).



Photo Map Key Point 29:

View east from Map Key Point 29 – looking along the northern property boundary with Pioneer –Hi-Bred (Note: berm to the left with new plantings).



Photo Map Key Point 30:

View south from Map Key Point 30 – looking along the drainage.



Photo Map Key Point 31:

View toward the northeastern property corner.



Photo Map Key Point 32:

View west (looking towards Map Key Point 33) along the northern property boundary, at the dog-leg.



Photo Map Key Points 33 and 34:

View south (looking towards Map Key Point 34 – the telephone pole easement) along the western property boundary, at the northwestern corner. (Note: fallow fields.)



Photo Map Key Point 35:

View west along the western property boundary, at the metal gate.



Photo Map Key Point 36:

View to the northeast from the southwestern interior boundary
(Note: the building envelope and telephone easement in the center of the picture).



Photo Map Key Point 37:

Lower terrace, SE bend in road, view to the northwest (Note - old papaya field).



Photo Map Key Point 38:

Southwestern corner of site, at access gate, view to the northwest.



Photo Map Key Point 39:

Southeast bend in coral road, view to the east.



Photo Map Key Point 40:

South coral road, at interior road gate, looking northeast.



Photo Map Key Point 40:

View south towards the H1-Interstate Freeway exchange.
(Note: the scrub and fence).



Photo Map Key Point 41:

South coral road, looking at the southeastern property corner
at the metal gate and rock wall.

B. NRCS PRELIMINARY TECHNICAL DETERMINATION



Natural Resources Conservation Service
Aiea Field Office
99-193 Aiea Heights Drive, Suite 207
Aiea, HI 96701

United States Department of Agriculture

Our People...Our Islands...In Harmony

May 20, 2005

HARC
99-193 Aiea Heights Dr.
Aiea, HI 96701

<u>Tax Map Key:</u>	<u>Farm #:</u>	<u>Tract #:</u>	<u>Field(s):</u>
9-2-001:011	635	624	1,2,3,4

ALL OTHER AREAS NOT INVENTORIED

Dear Ms. Whalen:

Enclosed is your preliminary Highly Erodible Land and Certified Wetland Determination, Form NRCS-CPA-026E for your land located on Oahu. This preliminary technical determination was made in response to an application for USDA program benefits and conforms with the conservation provisions of the Food Security Act of 1985, as amended.

As of the date of this letter, this preliminary technical determination notifies that:

Fields 1,2,3, and 4 are not highly erodible and are not wetlands.

The wetland certification does not include "other waters of the United States" as defined by the United States Army Corps of Engineers (Corps), which include but are not limited to tidal waters, lakes, streams, and mud flats regulated under the Clean Water Act. Contact the Corps regarding the need for permits for these waters and for wetlands. In order for you to maintain your USDA program eligibility and comply with the Clean Water Act, contact us prior to performing the following activities:

- Land clearing
- Drainage alterations
- Filling, leveling, grading, grubbing, excavating
- Land use changes

Under the current NRCS appeals process, your preliminary technical determination will become final within 30 days of this letter unless you request either or both of the following:

A Field Visit to the site will be made by our office to review with you the basis for our preliminary technical determination, answer any questions you have concerning the determination, and to gather additional information from you concerning the determination. At the option of the West Oahu Soil and Water Conservation District, a representative will also attend the field visit.

Mediation will be used in an attempt to settle your concerns with the preliminary technical determination. A trained, impartial person (a neutral mediator) will help us look at mutual problems, identify and consider options, and determine if we can agree on a solution.

The Natural Resources Conservation Service provides leadership in a partnership effort to help people conserve, maintain, and improve our natural resources and environment.

An Equal Opportunity Provider and Employer



United States Department
of Agriculture

Natural Resources
Conservation Service

NRCS-CPA-026E
9/2000

HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION DETERMINATION

Name Address:	HARC (Hawaiian Agricultural Research Center 99-193 Aiea Hights Dr., Aiea, HI 96701	Request Date:	3/9/05	County:	Oahu
Agency or Person Requesting Determination:		Tract No:	624	FSA Farm No.:	635

Section I - Highly Erodible Land

Is a soil survey now available for making a highly erodible land determination?	Yes
Are there highly erodible soil map units on this farm?	No

Fields in this section have undergone a determination of whether they are highly erodible land (HEL) or not; fields for which an HEL Determination has not been completed are not listed. In order to be eligible for USDA benefits, a person must be using an approved conservation system on all HEL.

<u>Field(s)</u>	<u>HEL(Y/N)</u>	<u>Sodbust(Y/N)</u>	<u>Acres</u>	<u>Determination Date</u>
1	N	N	24.74	5/16/05
2	N	N	20.0	5/16/05
3	N	N	14.2	5/16/05
4	N	N	28.54	5/16/05
-	-	-		

The Highly Erodible Land determination was completed in the ~~Office~~ field.

Section II - Wetlands

Are there hydric soils on this farm?	No
--------------------------------------	----

Fields in this section have had wetland determinations completed. See the Wetlands Explanation section for additional information regarding allowable activities under the wetland conservation provisions of the Food Security Act and/or when wetland determinations are necessary to determine USDA program eligibility.

<u>Field(s)</u>	<u>Wetland Label*</u>	<u>Occurrence Year (CW)**</u>	<u>Acres</u>	<u>Determination Date</u>	<u>Certification Date</u>
1	NW		24.74	5/16/2005	5/16/05
2	NW		20.95	5/16/05	5/16/05
3	NW		14.20	5/16/05	5/16/05
4	NW		28.54	5/16/05	5/16/05
-	-				

The wetland determination was completed in the field . It was -delivered to the person on 5/20/05.

Remarks:

I certify that the above determinations are correct and were conducted in accordance with policies and procedures contained in the National Food Security Act Manual.

Signature Designated Conservationist	Date
	5-16-05

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotope, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice or TDD). USDA is an equal opportunity provider and employer.



HARC SOILS MAP

Customer(s): HAWAII AGRICULTURE RESEARCH CENTER

Field Office: AIEA SERVICE CENTER

Approximate Acres: 88.4

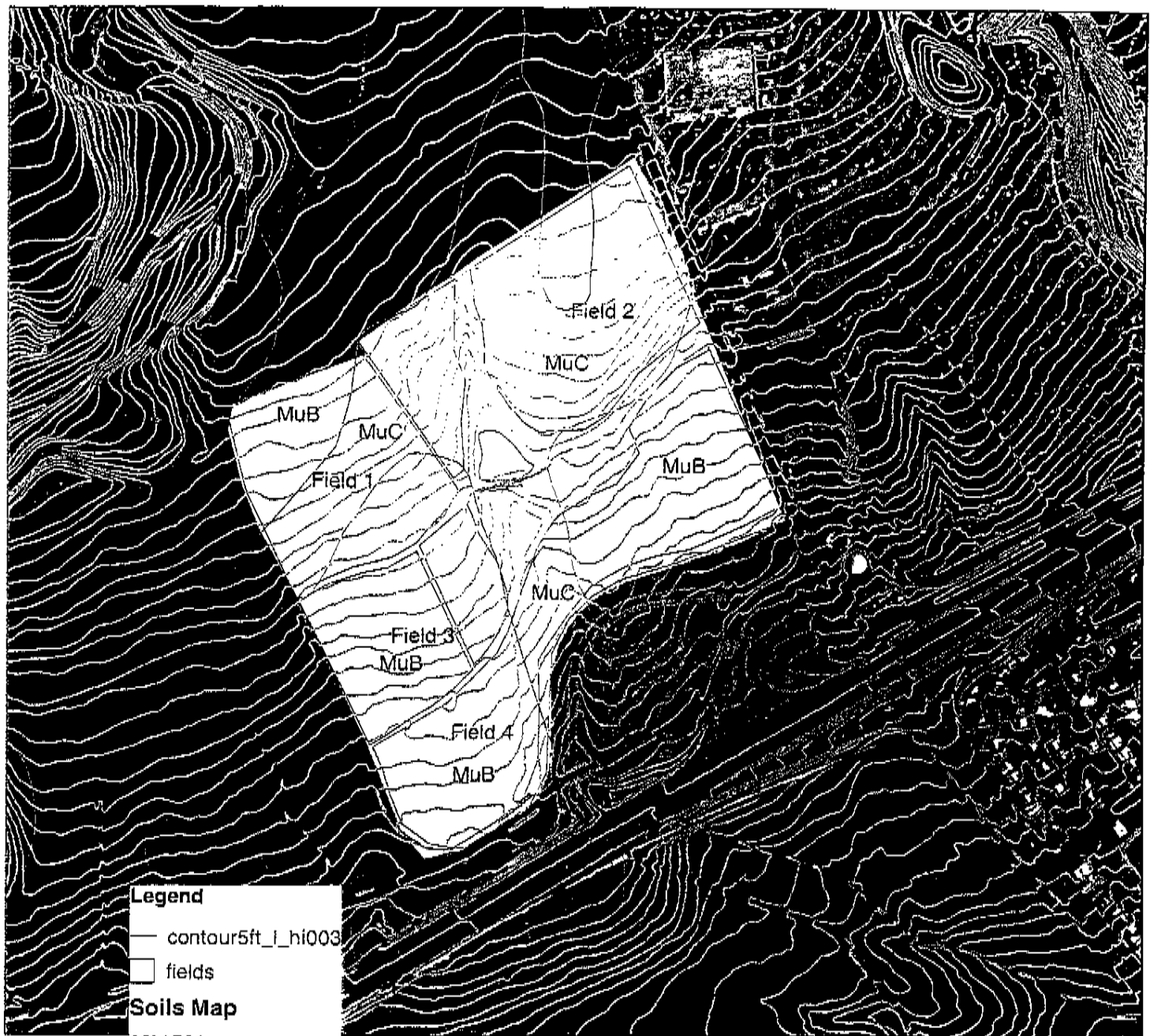


Image: m2115840_20000924.tif

360 0 360 720 1,080 1,440
Feet



Business: HARC (Hawaiian Agricultural Research Center)
 FSA Farm No.: 636
 Tract: 625
 Field: 1,2,3,4

Date: May 20, 2005

Completed by:

Land Use: Truckcrop, Orchard

Island	Oahu
Field/Soil	Area in Acres:
Field	88.4

R Factor 150

Select Soil Symbol Below	Soil Series	Length	Slope	LS	T	K	EI=RKLS/T	Soil Map Unit	Acres of HEL	Acres of NHEL	HEL Class per Calculator
MuB	MOLOKAI	100	5	0.536	5	0.17	2.73	Non-HEL	0	47.7	2
MuC	MOLOKAI	300	6	1.165	5	0.17	5.94	Non-HEL	0	32.1	2
		0	0	0	0	0	0.00	Non-HEL	0	0	0
		0	0	0	0	0	0.00	Non-HEL	0	0	0
		0	0	0	0	0	0.00	Non-HEL	0	0	0
		0	0	0	0	0	0.00	Non-HEL	0	0	0
Total Area:										0	79.8

Field is Non-HEL

Notes/Comments

☐ Compliance plan is not needed; crop is not annually tilled or sugarcane.

☐ Compliance plan is not needed; grazing land.

Soils Inventory Report

Fri May 20 11:40:26 UTC-1000 2005

HAWAII AGRICULTURE RESEARCH CENTER

Map Unit Symbol	Acres	Percent
MuA	2.6	3%
MuB	47.7	58%
MuC	32.1	39%
Total:	82.4	

C. BOARD OF NATURAL LAND AND RESOURCES MEETING MINUTES

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, JUNE 8, 2007
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 96813

Interim Chairperson Allan Smith called the meeting of the Board of Land and Natural Resources to order at 9:05 a.m. The following were in attendance:

MEMBERS

Mr. Allan Smith	Mr. Rob Pacheco
Ms. Taryn Schuman	Mr. Jerry Edlao
Mr. Ron Agor	Mr. Samuel Gon III

STAFF

Ms. Charlene Unoki, LD	Mr. Paul Conry, DOFAW
Mr. Dan Quinn, SP	Mr. Dan Polhemus, DAR
Mr. Wayne Haight, DAR	Mr. Duane Rogers, DAR
Mr. Jeff Walters, DAR	

OTHERS

Mr. Colin Lau, A.G.'s Office	Mr. Dale Bonar, C-3
Senator Russell Kokubun, C-3	Senator Colleen Hanabusa, C-3
Mr. Alfredo Lee, C-3	Mr. Harry Yada, C-3
Ms. Stephanie Wayland, C-3	Mr. Dean Okimoto, C-3
Mr. Larry Yamamoto, C-3	Ms. Jill Olson, C-3
Ms. Frieda Fujita, C-3	Mr. Duane Okamoto, C-3
Ms. Sandra Kunimoto, C-3	Mr. Ivan Lui-Kwan, C-3
Mr. Joseph Phillips, D-4	Ms. Marti Townsend, F-2
Ms. Malia Nobriga, F-2	Mr. Wayne Kahooleipanoki, F-2
Ms. Heidi Guth, OHA	Mr. Curt Trafega,
Mr. Paul Jokiel, F-4	Mr. Robert Toonen, F-5
Mr. Carl Meyer, F-6	Mr. Matthew Craig, F-7
Mr. Brian Bowen, F-8	Ms. Keeley Belva, F-9
Mr. Shawn Corson, F-3	Mr. Michael Tosato, NOAA
Mr. William Aida, F-3	Mr. Dennis Niles, F-11
Mr. Don Pollaski, F-3	Mr. Carl Jellings, F-11

Mr. Jeff Walters, F-1

{Note: language for deletion is [bracketed], new/added is underlined}

Item A-1 Minutes of May 25, 2007

Recused: Member Agor and Schuman. Member Gon missed the last 20 minutes. Attorney General's representative, Pam, stated he has to recuse.

Deferred due to lack of quorum (Gon, Pacheco)

Item D-2 Grant to Four (4) Perpetual, Non-Exclusive Easements; Issuance of Management and Construction Right-of-Entry to Kaloko Heights Associates for Access and Utility Purposes Over the Road To The Sea Trail at Kaloko and Kohanaiki, North Kona, Hawaii, Tax Map Key: 3rd/ 7-3-09: portions of 32, 57, 58, 59, 61 and 62

Member Schuman recused herself.

Ms. Charlene Unoki representing Land Division (LD) reported Kaloko Heights Associates had worked with the community to look realigning a portion of the road to the sea. As a result there are community agreements, members have a copy of a letter dated November 17, 2006 to Mr. Chris Yuen. Staff would like to grant an easement with construction right of entry and would like to add a condition to the easement document where the 11/17/06 letter is used for the grantee to comply with. Member Pacheco asked conditions stated in the letter will become the conditions? Ms. Unoki replied yes.

Unanimously approved as amended (Pacheco, Gon)

Add letter dated November 17, 2006 from Mr. Paul Kay, Vice President and Sr. Development Manager of Stanford Carr Development, LLC to Mr. Christopher Yuen, Planning Director for the County of Hawaii as a condition in the new easement document.

Item C-3 Review of the Legacy Land Conservation Commission Recommendations and Approval of Projects for Funding under the Fiscal Year 2007 Legacy Land Conservation Program (Land Conservation Fund)

Mr. Paul Conry, Administrator for Division of Forestry & Wildlife (DOFAW), reported this is the first fiscal year for the Department to implement this program. It is a conservation land acquisition program with a rough budget of 7.4 million dollars. This program established by the Legislature in 2006 and this year seeded the Commission. The Commission's duty is to review applications submitted by conservation

organizations and government agencies for conservation land acquisitions that would value the State. Started October 2006 with solicitations of proposal, about eleven projects were put before the Commission during the month of May. The Commission made a list of priority projects to fund. Also as part of the process they consulted the Legislature, the Department met with the Speaker of the House, Senate President and land chairs of the legislature. They provided their recommendations. Staff is asking to approve those recommendations. The Commission ranked the proposals and he explained those projects. Funding from the Agribusiness Development Corporation (ADC) for 1.1 million to acquire 108 acre agricultural easement at Kunia, Oahu for Hawaii Agricultural Research Corporation (HARC). The Commission had concerns with the project supporting genetically modified crops and research geared toward large industrial agricultural uses therefore recommended against funding this project. The Legislature agreed on the first five priorities, but did not concur with the recommendation of not funding the ADC request on the agricultural easement in Kunia. They recognize the enormous pressure on agricultural lands. The 1.1 million is specifically earmarked for funding these agricultural conservation easements under the Farm & Ranch Land Protection Program. Staff recommends the Board fund this project.

Member Pacheco recused himself.

Mr. Dale Banard, Chair of the Legacy Land Commission reported he is here to explain the Commission's reasoning. Member Gon asked for clarification on the agricultural reversal, was the main objection potential development of potential GMO? Mr. Banard replied it was one of them. Members of the Commission was concerned with GMOs particularly taro. Three of the commissioners were concerned with the way the lands were laid out, presented with development right across the street (Wal-Mart) and were concerned HARC was going to be an industrial agricultural research center. The Commission was not provided with information on what HARC does and based on that is what the Commission came up with. Concerned with toxic levels of chemicals in the ground water and felt other projects were better suited. Much of the questions the Commission had did not have adequate answers therefore they chose to go against this project.

Member Edlao asked if one of the projects should fail would there be adequate funding to cover? Mr. Conry replied that is the fall back approach. If we go forward with one of the grants a participant can't commit and project fell through and there was enough money then another project would be considered and would shift over. Member Edlao asked if project five does not go through would the funding be enough to cover project six? Mr. Conry replied they would have Federal Grants make up the difference, but in such a short time it would be difficult. What would happen is staff would encumber the funds and take a year to make up the difference.

Senator Russell Kokubun represents Big Island District 2 which covers Puna, Ka'u and part of Hilo. He was asked by the Senate President to be a member to meet with the Legacy Lands Commission and DLNR staff to provide input to the recommendations.

The Legislature concur the amended recommendation from staff particularly the 1.1 million would be used for the Kunia lands. When they put this legislation together it was not only for conservation lands, but they felt agriculture lands are very important to Hawaii. Not only did the Legislature appropriate the 1.1 million specifically for this purpose there was support from HARC and the Hawaii Farm Bureau Federation who want to see this accomplished. They request the Board consider this recommendation. After meeting with the Commission Chairman and DLNR staff it appears some of the policy directions from the Legislature were not clear to the Legacy Lands Commission. It may have been their fault for not being there. But this is their opportunity and wishes the Board to consider it.

Senator Colleen Hanabusa clarified Member Gon's inquiry. She represents Leeward Coast. Kunia lands on the left should be preserved for agriculture. The lands on the right are development. This Legislature has equal use of money for agriculture. They are still struggling with the GMO issue. The Senate passed the bill to prohibit GMO of taro alone with much dispute. The Legislature wanted to make clear with how the statute is now written with the importance of preserving agriculture. There is very little agriculture lands left on Oahu. This is why the State should hold title to this land because if the State doesn't we do not know how agriculture will be preserved. Agriculture as a use is critical for the State. They are here to ask the Board to support the recommendations of the Legacy Lands Commission and reverse on the issue of the 1.1 million which has Federal matching funds. If it does not approve the State loses those funds. We should not pass up this opportunity.

Mr. Alfredo Lee, Executive Director of Agribusiness Development Corporation (ADC), reported their mission is to preserve and protect agriculture land and infrastructure. This is a very appropriate and important project for them. They want to supply water to these lands and believe Kunia is the best lands. The economic value is a considerable amount which is over 50% of Oahu's total production. Passed out an outline and went over the map. They have the Federal funds and request to approve project.

Mr. Harry Yada, Property Manager, representing County of Hawaii reported a letter was previously submitted on behalf of Mayor Harry Kim in support of the recommendations and asks the Board's support. Look forward to having State and County control to preserve their coastline for future generations.

Ms. Stephanie Wayland, President and Research Director for the Waianae Cultural Research Park reported on testimony submitted. These are the best agricultural lands on Oahu if not the State and closest to the market. This area has all the infrastructure and developers would want this land. The owner must keep it in agriculture, manage it, and report to the Federal agencies every year. She wants to avoid creating a gentlemen's estate. Prevent development of ag. land by putting it away for perpetuity.

Mr. Dean Okimoto, President of Hawaii Farm Bureau Federation and Nalo Farms owner. He is looking for more land to create organic farming. They support the amended version of the Legacy Land Commission's recommendations and they support HARC's request.

As farmers Kunia is key for the sustainability of ag on Oahu. A good example on how it can be done. His family owns 7 acres in Waimanalo and they are looking to put in ag easements there also. HARC is very crucial to sustainability of ag. They're research not only helps the big land owners, but has helped him and other farmers. They do research across the board on everything. They are vital to the industry.

Mr. Larry Yamamoto, Head of the Natural Resources Conservation Service, reported they're the Federal agency which the Farm and Ranch Land Program is under. It is their goal to protect both conservation and agriculture lands which is a valuable program for the State. Hawaii has the most pressure to develop agriculture lands. This program was underutilized because of people's hesitancy to commit agricultural lands in perpetuity. They feel it is in the best interest of the State.

Ms. Jill Olson and Ms. Elfrieda Fujita representing the Kona Historical Society. Ms. Olson Executive Director reported they are here in support of the Kona Coffee Living History Museum, Uchida Farm.

Mr. Duane Okamoto, Deputy Director for Department of Agriculture on behalf of Sandra Kunimoto. Reported the Dept. is in strong support for funding of ADC to acquire this easement. All parties concluded it is worth their support and HARC is beneficial to the State. HARC will stabilize agriculture in the area. Because of the ongoing pressure to agriculture lands he urges the Board's support.

Mr. Ivan Lui-Kwan, one of the owners of one of the properties recommended by the Legacy Land Commission. He supports the recommendation. This is an opportunity to protect these lands.

**Unanimously approved as amended (Edlao, Schuman)
Recommendations 2, 3, and 4 should be stricken and replaced by the following:**

2) Approve the Commission's recommendation to award funds to acquire the following property and encumber funds, under the FY07 LLCP ceiling, from the LCF for the following project:

Project 1. DOFAW, DLNR, at \$430,250, for the acquisition of a fee simple interest in the 1,335.98-acre Carlsmith property near Hilo, on the Big Island of Hawai'i;

subject to the normal process and procedures for the acquisition of lands by the State.

3) Approve as a contingency the Commission's recommendation to award funds to acquire the following property and encumber funds, under the FY07 LLCP ceiling, from the LCF for the following project:

Project 6. SP, DLNR, as an alternate, for the acquisition of a fee simple interest in 17 acres near Lapakahi State Historical Park, North Kohala, on the Big Island of Hawai'i;

subject to the normal process and procedures for the acquisition of lands by the State.

4) On behalf of the Agribusiness Development Corporation (ADC), approve the Division's recommendation to award funds to acquire the following property and encumber funds, under the FY07 LLCP ceiling, from the LCF for the following project:

Project 7. Agribusiness Development Corporation (ADC), for \$1.1 million, to acquire a 108.217-acre agricultural easement across land in Kunia, on the Island of Oahu, from the Hawai'i Agricultural Research Center (HARC);

subject to the normal process and procedures for the acquisition of lands by the State.

Item C-2 Recommendation to Establish Visiting hours of 5:30 am to 7:30 pm for 'Ahihi-Kina'u Natural Area Reserve, Maui

Mr. Paul Conry, Administrator for Division of Forestry & Wildlife, reported the intent is to provide enforcement flexibility, to allow the public set hours, and flexibility to close the reserve at night when there were some enforcement issues. Imbedded through NARS Commission and supports the restriction. Staff urges approval.

Member Gon asked was there much public feedback during the 'Ahihi-Kina'u Advisory Council meetings? Mr. Dale Banard, Chair of the Advisory Commission, replied yes there was at many meetings. The overwhelming response from the public was an understanding for a need to control it. This Natural Area Reserve is heavily visited by tourists and the public support was to overwhelmingly control this resource.

Unanimously approved as submitted (Edlao, Gon)

Item D-4 Sale of Reclaimed Lands to Joseph J. Phillips Jr., as Trustee of the Joseph J. Phillips Jr. Living Trust dated October 5, 1987, and Stephanie J. Phillips, as Trustee of the Stephanie J. Phillips Living Trust dated October 5, 1987, and Cancellation of Grant of Non-Exclusive Easement S-5715 for Seawall Purposes, Kaalaea, (Kaneohe Bay), Koolaupoko, Oahu, TMK (1) 4-7-024:029 seaward.

Ms. Charlene Unoki representing Land Division reported in 2001 the Land Board approved issuing an easement and now Phillips has come forward to buy the reclaimed land area. Staff recommends cancelling the easement and sell the reclaimed land to the Phillips.

Member Gon asked is this a coastal piece? Are the Phillips appraised of all the issues that come with coastal lands and requirements? Mr. Joseph Phillips replied the 156 sq. ft. encroachment occurred when they obtained lease approval of their pier which they received under the amnesty program in 2004. When they did the shoreline survey that was when they found the encroachment. He received this property from his father and wants his children not to contend with this encroachment. He didn't know about the liability policy, but has it now. The rates are too expensive. He can't build there. Ms. Unoki stated he is a good tenant.

Unanimously approved as submitted (Schuman, Gon)

Item D-5 Grant of Term, Non-Exclusive Easement to Richard H. and Corintha B. Pohle for Boat Ramp Purposes, Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-4-21:23 seaward.

Ms. Charlene Unoki of Land Division reported no changes to submittal.

Unanimously approved as submitted (Schuman, Pacheco)

Item D-1 Consent to Assign General Lease No. S-5397, Richard Corr, Assignor, to Corrine Murata and Wanda Corr, Assignees, Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-9-12:28.

Item D-3 Consent to Assign General Lease No. S-3155, Jesse C. Wolf, Assignor, to Pacific Island Investments LLC, Assignee, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/ 2-1-07:21.

Ms. Charlene Unoki of Land Division reported no changes and tenants are in good standing.

Unanimously approved as submitted (Pacheco, Edlao)

Item M-1 Acquisition of Private Lands and Set Aside to Department of Transportation, Harbors Division, for Maritime Purposes, Kahului, Wailuku, Island of Maui, Tax Map Key: 2nd Division, 3-7-10: 1 and 36.

Ms. Charlene Unoki of Land Division reported Department of Transportation (DOT) is looking for additional lands for harbor. If staff proceeds with acquisition they request recommending to the Governor transfer of these lands to DOT – Harbors Division. Acquisition cost is \$9,820,000.

Unanimously approved as submitted (Edlao, Pacheco)

Item M-2 Consent to Assignment of State Lease No. DOT-A-06-0001 Offshore Flight School, Inc. to Resort Air, LLC Honolulu International Airport

Ms. Charlene Unoki of Land Division reported SNE appears in good standing.

Unanimously approved as submitted (Schuman, Gon)

Item C-1 Acceptance of Hearing Officer's Report on a Public Hearing for Two Proposed Additions to the Forest Reserve System on O'ahu, and Approval and Recommendation to Governor for the issuance of two Executive Orders; Addition of approximately 3,716 acres to Honolulu Watershed Forest Reserve, Honolulu District, O'ahu; and Addition of approximately 0.298 acres to Mokule'ia Forest Reserve, Mokule'ia District, O'ahu.

Mr. Paul Conry of DOFAW reported additions to a portion of Moanalua and Mokule'ia. No changes to submittal and request approval.

Unanimously approved as submitted (Schuman, Gon)

Item E-1 Request for a Six-Month Holdover of Concession Lease No. SP-0039 for the Kokee Concession, Kokee State Park, Kauai

Mr. Dan Quinn, Administrator for State Parks, reported the Board entertained this about six months ago. Initial discussion was for 1 year extension, but was approved a six month extension to carry it through this calendar year. Staff hopes to have a bigger lease out to bid. This was to go out the same time as a potential overall cabin lease which did not pass and likely will not. Staff is in the process of wrapping up the master plan which will help the next bidder plan, change or alter facilities.

Unanimously approved as submitted (Agor, Gon)

Item E-2 Request for Approval to Execute a Contract with the Hawaii Tourism Authority for Improvements to Akaka Falls State Park, Hawaii and Resource Protection Implementation for Haena State Park, Kauai, and Kekaha Kai State Park, Hawaii

Mr. Dan Quinn of State Parks reported the Akaka Falls improvement is a continuation of repair to hand rails, \$800,000. \$200,000 goes to a ranger program which is in place at Haena, Kauai and Kekaha Kai on Big Island. It's to continue this program until staff can establish positions approved by the Legislature. Any leftover funds will be used to supplement the State wide ranger program where 12 positions have been approved.

Unanimously approved as submitted (Pacheco, Edlao)

Item E-3 Request to Approve the Master Plan and Final EIS Waianapanapa State Park in the District of Hana, Maui

Mr. Dan Quinn representing State Parks reported an executive summary was passed out and went over the map. Plan has gone through EUC process and has been accepted by the Governor. Request Board to accept plan.

Unanimously approved as submitted (Edlao, Gon)

10:20am: Adjourned for Executive Session (Gon, Pacheco)

10:55am: Reconvened

Item F-2 Request Approval on Revisions to the Joint Permit Form, and Approval of Special Terms and Conditions, for Permitted Activities within the Northwest Hawaiian Islands - Papahānaumokuākea Marine National Monument

Mr. Dan Polhemus representing Division of Aquatic Resources (DAR) reported this was item was deferred from the May 25, 2007 Land Board Meeting. There are three parts which the Board took action on the first part and deferred the second and third parts. At the April 27, 2007 the Board approved and adopted a Joint Permit Form for permitted activities within the Northwest Hawaiian Islands. This form was developed collaboratively with DAR working in concert with the State of Hawaii's Co-Trustees to the Papahānaumokuākea Marine National Monument. The Joint Permit Form Template replaces the previous State Permit Form Template issued for permitted activities within the Northwest Hawaiian Islands State Marine Refuge. While the Board approved the new Joint Permit Form it directed the DAR to review all permit conditions that had been applied to the NOAA (National Oceanic Atmospheric Administration) application for a permit for a management permit approved at the January 26, 2007 Land Board Meeting. The Board requested DAR ensure that all these permit conditions were consistent with the Joint Permit Form General and Special Conditions. At its May 25, 2007 Land Board Meeting the Board approved the revised Monument Joint Permit Form.

The Joint Permit Form Terms and Conditions have undergone intense scrutiny and an extensive process of review over the past five months in consultation with staff and council from the White House Council of Environmental Quality, the U.S. Departments of Commerce, Interior and Justice, the Office of Hawaiian Affairs, the Department of the Attorney General for the State of Hawaii, and representatives from the Co-Trustee Agencies locally. A comparison of specific Terms and Conditions contained in prior State Northwestern Hawaiian Islands permits was undertaken to ensure all these Terms and Conditions were incorporated into the General Conditions contained in the Joint Permit Form or were revised with Special Conditions. A composition matrix of the former State Conditions and the Joint Permit Conditions was provided to the Board at the April 27, 2007 Land Board Meeting. Many similar concerns addressed in prior State

Permits, such as documenting activities while in the Monument, curtailing commercial exploitation of resources were revised and incorporated into the joint permit conditions. Upon further review of these former State conditions, certain changes were made to the previously approved joint permit form (Attachment 1). The Board took action in the previous Land Board Meeting. In addition, a revised set of special conditions, which were based on the former State permit conditions has been further vetted and reviewed by the Office of the Attorney General and other agencies and are contained as Attachment 2. He requested to amend Clause 3 in Attachment 2 to read: To prevent introduction of disease or the unintended transport of live organisms the permittee must comply with the disease and transport protocol as previously submitted. It was attached to the 5/25/2007 submittal, but was not attached to this submittal. He had copies available. The Special Terms and Conditions are consistent with former conditions applied to previous State permits. Staff has shown it to the Office of the Attorney General and they concur with it. As is summarized in Attachment 3, these Special Terms and Conditions are to be applied base on the type of activity proposed in any given permit application for a specific class of permits.

Ms. Marty Townsend representing KAHEA the Hawaiian Environmental Alliance, passed out a petition of 300 signatures detailing concerns with the Board's decision at the last meeting. She explained the petition asks the Board to enforce the 45 day public comment period which this Board has not met, asks before a permit is granted a Natural Plan and Environmental Impact Statement is completed and a State policy on bioprospecting is drafted. A State Commission is currently considering language on bioprospecting. She recommends the Board take cautionary action and ban it. She went over testimony e-mailed to the Board. The easiest way is to apply the conditions approved by the Board at the January 26, 2007 Land Board Meeting to all permits. She presented to the Board what the Board changed since then and proceeded with the list of eliminated conditions. Freeze things on bioprospecting and wait for the Commission to come up with a policy.

Member Pacheco asked to clarify "for profit" is it like giving away our property rights? Ms. Townsend replied #21 is good language because it does not distinguish a for profit motive and not for profit motive. Mr. Pacheco explained in the General Conditions it states we hold all natural resources in trust to the State of Hawaii. For profit or non profit the State still owns it. Ms. Nobriga asked then why the language? Don't need that language. Ms. Townsend gave an example with mineral rights and relayed her opinion. Expressed how a third party, like the University of Hawaii could take it and use it for profit.

Ms. Malia Nobriga, President of Waikiki Hawaiian Civic Club, the Chair of the Association of Hawaiian Civic Club's Bioprospecting Task Force and a Native Hawaiian originally from Kauai. She passed out handouts and reported the Waikiki Hawaiian Civic Club helped to organize and participated in three Ka'Aha Pono - Native Hawaiian Intellectual Rights Conference. These conferences produced the Paoakalani Declaration which addresses the issue of bioprospecting and states:

- We have the right to free, prior and informed consent before research relating to our biological resources commences. Researchers, corporations, educational institutions, government or others conducting such research must fully and entirely inform Kanaka Maoli regarding the purposes of their research and recognize our right to refuse to participate.
- Biological samples are being transferred, traded, bought, and sold without the agreement or consent of our peoples, in violation of our inherent human rights.
- Although biological and genetic samples have been transferred, sold, patented or licensed, Kanaka Maoli never relinquished our rights to our biological and genetic materials and therefore, call for the rightful repatriation of such samples and due compensation.
- Kanaka Maoli human genetic material is sacred and inalienable. Therefore, we support a moratorium on patenting, licensing, sale or transfer of our human genetic material.
- We further support a moratorium on patenting, licensing, sale or transfer of any of our plants, animals and other biological resources derived from the natural resources of our lands, submerged lands, waters, and oceans until indigenous communities have developed appropriate protection and conservation mechanisms.

She explained how her organization(s) brought about resolutions and legislation on collective intellectual property rights of Native Hawaiians, protection of Hawaii's flora and fauna and bioprospecting. They recommend that the Board defer permitting the research mission of UH's HIMB to Papahānaumokuākea until:

- a policy on bioprospecting is drafted and circulated to all rights holders and stakeholders.
- a thorough and public environmental review is conducted, including an assessment of the cumulative impacts of taking thousands of samples of living material every year for the last several years.
- a Monument management plan is developed with meaningful public input. By law, research in the NWHI must further the management and conservation goals of the Monument and the State Refuge. it is impossible to know what those goals are without a management plan in place.
- the public has a meaningful opportunity to comment on all research permits. The Board adopted a 45-day public review and comment policy. DLNR staff refuse to implement that policy by restricting release of the permit applications until 4 working days before the permit hearing.

Mr. Wayne Kaho'oleipanoki representing Ilioulaokalani Coalition reported they have been involved with the Northwest Hawaiian Islands - Papahānaumokuākea for the past 10 years. Bioprospecting is theft of natural resources from native peoples and should not happen in the Northwest Hawaiian Islands or in the State of Hawaii. He expressed how appalled of what happened at the April Board Meeting while the Commission on Bioprospecting is still meeting. He recommends waiting for the policy on bioprospecting comes out before any permits are issued. Until a thorough public environmental review

is conducted including an assessment of the cumulative impacts of taking thousands of samples of living material every year for the past several years. It is a violation of Hawaiian people's rights. The Board's approval is contradictory to acknowledging the fact we are the host culture. He recommends developing a Monument plan and asks to give the Bioprospecting Commission time to draft a policy.

Mr. Dan Polhemus of DAR explained the part that says no bioprospecting was written by his staff as a guideline for the initial State permits when it was first set-up. That was an interim instrument it wasn't imbedded past the Attorney General, but at the time it was the most precautionary policy. It was made a permit condition. The AG stated we don't legal authority under current rules and statute. What we have here is what was advised by the Office of the Attorney General. The alternative is to remain silent on the issue by deleting the parts that say including work involving bioassay or bioprospecting and retain the rest of Clause One and Attachment Two. Of the Co-Trustees, OHA was the only agency requiring a clause addressing bioprospecting. How he reads the AG's opinion if you grant a license, a permit to collect specimens in the State and don't work within the context of that permit, assert your underlying title, you cannot come back later to claim it. If you do so up front you've covered it. Everything is forbidden except what you're allowed in the terms of the permit and the permit doesn't have to restate everything you're forbidden to do. The permit tells you what you are allowed to do and if it is not stated in the permit then it is forbidden. The letter received from the White House Council on Environmental Quality signed off by general council's office of the Departments of Commerce and Interior and by our AG's office made it very clear you don't need to re-write, re-state all applicable laws in the context of a permit. Permit allows you what you can do that you would otherwise would not be able to do in the context of those laws and everything still applies.

Ms. Heidi Guth, Lead Advocate for Native Rights at Office of Hawaiian Affairs apologized for the language in this condition. She agreed with Mr. Polhemus with the initial language that there must be no bioprospecting in the Monument. When working with Federal and attorneys, there is no internationally, federal or state agreed definition for bioprospecting nor any law. She brought to their attention this Bioprospecting Commission and they decided to build a stop gap until the Commission came up with language thinking to insert in place. After this mornings comments it was not a good idea. It says "under this permit the authorized research activity including work involving a bioassay or bioprospecting" tells the permittee you are authorized to do these. Because there is no known definition for bioprospecting the attorneys decided to leave in bioassay with the knowledge that Hawaiians are not against research. The State AG added the words "for profit" which she feels is unnecessary. Take out bioprospecting and for profit and leave in bioassay would make OHA's beneficiary happy. Please do not defer this because there are permits before the Board.

Member Pacheco asked if an entity takes resources out of the Monument like at the University of Hawaii, how is it set-up to protect it? Mr. Polhemus replied at U.H. it is still under the State because it states you can't do this they will be in violation. Will staff have to catch them doing it? Yes.

Chairperson Smith asked what if we deferred this matter to study the language, but would put the other permits on hold? Mr. Polhemus replied the Board hasn't approved the special conditions and will not be a part of the permit until they are approved. He suggested amending and defer action on clause 1 and approves clauses 2-6. We have the General Conditions which are extremely restrictive. Chairperson Smith explained we need to have something in the interim in regards to bioprospecting until the Commission makes a consensus. Mr. Polhemus replied as Member Pacheco pointed out in the General Conditions "the State retains underlying title" which means not anyone can take this, patent and lay claim to it. In the context of this permit document, right up front, we claim underlying title. Member Pacheco stated we should wait until the Commission comes up with a direction for the State policy. Chairperson Smith replied we should limit its activities and build existing fail safes. Mr. Polhemus reiterated or we keep clause 1 and eliminate the including work involving bioassay or bioprospecting. Say instead "does not authorize the sale of collected organisms, authorized research activity must be for non-commercial not involving sale use bio-products material collected in the Monument pertaining patents or intellectual property." Note there is an Intellectual Property Clause in the General Conditions that are very restrictive. Member Gon asked OHA and those who testified would this phrasing, as a stop gap, be satisfactory? Ms. Guth and those who testified replied if they could have time to discuss.

Chairperson Smith called for a Recess, 11:53am for 5 minutes
Reconvened: 12:05pm

Ms. Heidi Guth of OHA met with parties and she presented the following: 1. This permit is not to be used for nor does it authorize for the sale of collected organisms under this permit the authorized research activity must be for non-commercial purposes not involving the use of sale of any organisms, by products or materials collected within the Monument for obtaining patent or intellectual property rights. Chairperson Smith asked the AG this is good? She replied it is clearer. Ms. Guth stated they would like this to go through as a stop gap measure until the Bioprospecting Commission comes up with a State Policy.

Member Gon moved to approve the legally imbedded special terms and conditions as amended, in particular to item one and item three.

**Unanimously approved as amended (Gon, Edlao)
Amend Item 1 and Item 3.**

Member Gon departed 12:08 pm.

- Item F-3** **Request for Authorization and Approval to Issue a Papahanaumokuakea Marine National Monument Research Permit to C.O. Jon D. Swallow, National Oceanic and Atmospheric Association (NOAA) Ship Hi'ialakai, for Access to State Waters to Support Marine Research Activities.**
- Item F-4** **Request for Authorization and Approval to Issue a Papahanaumokuakea Marine National Monument Research Permit to Dr. Paul L. Jokiel, University of Hawai'i, Hawai'i Institute of Marine Biology (HIMB) for Access to State Waters to Conduct Benthic Habitat Mapping Activities.**
- Item F-5** **Request for Authorization and Approval to Issue a Papahanaumokuakea Marine National Monument Research Permit to Dr. Robert Toonen, University of Hawai'i, Hawai'i Institute of Marine Biology (HIMB) for Access to State Waters to Conduct Coral Reef Invertebrate Genetics Research Activities**
- Item F-6** **Request for Authorization and Approval to Issue a Papahanaumokuakea Marine National Monument Joint Research Permit to Dr. Carl Meyer, University of Hawai'i, Hawai'i Institute of Marine Biology (HIMB) for Access to State Waters to Conduct Top Predator Population Research Activities**
- Item F-7** **Request for Authorization and Approval to Issue a Papahanaumokuakea Marine National Monument Research Permit to Dr. Matthew Craig, University of Hawai'i, Hawai'i Institute of Marine Biology (HIMB) for Access to State Waters to Conduct Reef Fish Life History Research Activities**
- Item F-8** **Request for Authorization and Approval to Issue a Papahanaumokuakea Marine National Monument Research Permit to Dr. Brian Bowen, University of Hawai'i, Hawai'i Institute of Marine Biology (HIMB), for Access to State Waters to Conduct Reef-Fish Genetics Research Activities**
- Item F-9** **Request for Authorization and Approval to Issue a Papahanaumokuakea Marine National Monument Education Permit to Keeley Belva, Papahanaumokuakea Marine National Monument (PMN Monument) for Access to State Waters to Conduct Education and Outreach Activities**
- Item F-10** **Request for Authorization and Approval to Issue a Papahanaumokuakea Marine National Monument Research Permit to Dr. Isabella Abbott, University of Hawaii (UH), Department of Botany, for Access to State**

Mr. Dan Polhemus of Division of Aquatic Resources reported F-3 through F-10 is all referable to a research cruise proposed for the Northwest Hawaiian Islands in early July 2007. He reminded the Board the language in the Hawaii Administrative Rules Chapter 60.5 pertaining to research in the Monument. It says "The intent and purpose is to manage, preserve, protect, and conserve the unique resources in the Marine Refuge using the best available science. Part 13-60.5-1, Clause 2. In Clause 4 of that same section "To support, promote, and coordinate appropriate scientific research and assessment and long term monitoring of the Refuge resources and the impacts or threats from human or other activities and to help better understand, protect, manage and conserve consistent with applicable law." In the definition section as far as scientific purposes, it means observing, identifying, describing, investigating, collecting marine life and a biotic samples for analysis and study and theoretically explaining natural phenomenon including the principals and processes necessary to form concepts to conduct observations or experiments and to validate hypothesis by observation or experiment. Finally, the Board may determine the production of conservation of resources might require the cessation of some activities allowed by a permit. In particularly, if there were considerations of damage to the ecosystem integrity such as direct harm to habitat or reduction. He explained each of the permits.

Testimony was heard from each of the applicants.

Member Edlao asked when will the upgrade for discharge be done and how long will it take? Mr. Curt Trafeca representing C.O. John Swallow of the NOAA ship, Hi'ialakai, replied the ship will not discharge anything into State waters or SPA water zone. The ship has made upgrades to its ship board systems this year with low flow toilets and washing machines to reduce the amount of gray water. The gray water, staff is asking to discharge within the Monument, but no black water. The earliest retrofit will be this winter. Member Pacheco asked how does this happen? If you come up to State waters and need to dump, would you then move out of State waters? Mr. Curt Trafeca explained correct, the ship conducts operations during the day in State waters then at night move offshore. The holding capacity of the tank isn't very much. The ship would go out past the SPA which is about 7 miles out. He reiterated the Hi'ialakai wants to minimize any impact they have and are doing all they can.

Member Edlao asked how often does the mapping have to be done on Item F-4? Mr. Polhemus replied it is not complete. The Monument is 1200 miles long by 50 miles wide. The bathometric mapping is incomplete and shows lots of white gaps. Staff doesn't know what its showing is what is really there. Interested in how much reef we have and remote sensing shows there is coral in a place and need to go back to ground truth it. Even the main Hawaiian Islands are not completely mapped out. Dr. Paul Jokiel of U.H., Hawaii Institute of Marine Biology (HIMB) replied the work is focused on the living resources and there is a lot of area to cover. They were there in 2001 to do the ground truthing. Changes in climate will affect the results in the Monument which will affect globally. Member Edlao was concerned with touching coral. Dr. Jokiel replied staff was covering their bases, but they are not touching intentionally.

Member Schuman asked regarding F-5, how would you know what the population size would be? Dr. Robert Toonen of U.H., HIMB replied staff estimates the population size by the number of individuals of a given area as you are surveying across a number of locations. Staff has dropped the number of samples per State's direction.

Member Edlao asked about the shark and monk seal interaction study in F-6? Concerned with the hooks? Dr. Carl Meyer of U.H., HIMB explained the set-up will be constantly monitored and operations will only occur during daylight hours. It will be directed to Galapagos sharks that target monk seal pups. Member Edlao asked what kind of bait used? Dr. Meyer replied either large pieces of tuna or shark.

Member Edlao asked (F-7) how many species of fish will be gathered? Dr. Matthew Craig of U.H., HIMB explained the sampling for this project is being collected for another project. About 20 different species and if it is not abundant in an area they will not take from it. He explained fork length. Mr. Polhemus stated that F-7 & F-8 are sharing the same fishes because 1. It's very expensive to go there and 2. Don't want to take out more than necessary.

Member Edlao asked about the tissue plug? Dr. Brian Bowen of U.H., HIMB replied staff takes a tissue plug the size of a grain of rice. Staff only takes fishes that occur in the millions. Member Edlao concerned with the large number of specimens. Dr. Bowen replied staff does not get everything. Staff takes about 30 specimens in an area the size of Oahu from each atoll island. They are taking only what is needed for statistical validity which is 30-50 samples. Dr. Bowen commented the scientists at U.H., HIMB are in agreement with KAHEA and others about bioprospecting. Before the scientists requested these permits they relinquish all rights to profit, to patent and automatically defer to the State.

Member Edlao asked on F-9 what about privately funded? Mr. Polhemus replied in the Monument the standard permit conditions say we retain rights to copies of all images that are taken. People will not have exclusive rights to their images. The only way to commercialize it is to get a special ocean use permit which goes through the Monument Board and the Land Board.

Mr. Curt Trafega of the Hi'ialakai asked for a change to F-3, condition #3 on the permit regarding a safety issue with the divers who must dive in pairs.

Mr. Edlao asked about OHA's recommendation on cultural protocols. Mr. Polhemus replied staff, OHA and scientists are meeting to work out an acceptable agreement mutually. Ms. Guth of OHA explained when they read staff's report they were upset because it put it right back on their shoulders. At the last meeting, Moani Pye felt people understood and respected the cultural side. She is glad that management is willing to work with OHA and understand they have to address the cultural issues.

Mr. Wayne Kaho'oleipanoki of Ilioulaokalani asked if there is no cultural monitor on the ship what happens? Does the ship go out or does it wait for a cultural monitor on board?

Mr. Polhemus replied there is a briefing. In the future, there will be a requirement for cultural observer, but has not been built into the system. Ms. Guth explained there is a Hawaiian cultural working group associated with Papahānaumokuākea Marine Monument. This group met recently and their main issue is the permitting process. OHA will meet with this group in July and this issue will be addressed by native Hawaiians then. Mr. Kaho'oleipanoki asked for the July 7th sail, what assurance do we have that cultural protocols will be observed? Is it because a briefing will be held? He thinks not. Ms. Guth replied this is all we have right now although she doesn't agree with it.

Mr. Shaun Corson, Acting Superintendent with NOS/NOAA Monument, clarified the permit itself identifies the need to dive in these closed areas. #3 in the staff recommendation list to limit it to Midway Special Preservation Area. The permit does not need to be modified. Member Pacheco explained the Board is only amending the Special Conditions.

Ms. Marty Townsend of KAHEA, Hawaiian Environmental Alliance, passed out handouts and recommended a moratorium on all permits to the Northwest Hawaiian Islands. She recommended conducting an Environmental Impact Statement Review which the Environmental Policy Act requires it be a public review process. She referred to when you cannot use categorical exclusions. She expressed none of these have been done and would violate Federal Law and explained how permits have been done piecemeal. She reported concern about the gray water issue and other items.

Mr. Wayne Kaho'oleipanoki expressed his concerns with a possibility of a cultural monitor on board which had started a year ago and this issue has not been settled. It troubles him that DAR understood a year ago about the cultural monitor. He recommends if these scientists/applicants want to continue exploring Papahānaumokuākea then they need to make the effort to learn the proper cultural protocols and to assure the Hawaiian community that they understand it. It is the applicant's responsibility to come to them.

A female speaker gave testimony concerned with even asking to dump sewage in the Monument. It's unheard of.

Mr. Michael Tossato, Deputy Regional Administrator for NOAA Fisheries, explained he doesn't understand where the mis-conception that Hi'ialakai is requesting to dump in the State waters. It is explicitly stated "no discharges is allowed in State waters" and Hi'ialakai is not requesting to approve any. The request to discharge within the Monument is an authorized activity the proclamation allows the operation of ships to support conservation activities. Hi'ialakai is asking to discharge gray water within the Monument where it is authorized to do so and the managers will make that decision. A group is looking at what discharges are authorized and putting in place a monitoring system. All research is closely coordinated with the Fisheries Science Center. The reason why permits were presented separately is it was the most logical. Member Pacheco asked about EIS comments? Mr. Tossato replied as we make Federal decisions all applicants are required to follow NIPA. NIPA provides three options and categorical

exclusions are one of those options. Environmental Assessments are not EIS's and EIS's are not required to comply with NIPA. They're one of the ways to comply with NIPA. Staff is considering what needs that level of analysis. Public ability is not just having an EA when it's done which NIPA requires. That information must be made available to the public when it's done. Staff is forming a Conservation Science Plan and we'll see the EIS or EA.

Mr. William Aida, DLNR employee but here as individual, reported the discharge is not a negative intent. Sewage treatment plants put out millions of gallons a day compared to 3000 gallons 50 miles off shore which is nutrients. It will be recycled. Sometimes we need to do what is in front of you because there is no time to lay out the best plans. The science is critical because what is happening at the Monument like the sharks might be coming down to the main Hawaiian Islands and vice-a-versa. The taking of sharks is pono because of the monk seal issue. He urges support for the permits and he urges desire to have a better plan.

Mr. Don Pollaski of Fish and Wildlife Service for the Monument reported this is not a new project. HIMB placed in safe guards and have been very successful. Mr. Polhemus explained staff cannot approve things projected in the future. Only things in front of us now. In regards to the 45 days, it will go back and forth with comments. The public must realize what you get after the 45 days is different from the final application that the submittal is based. Public will object because things would be worked out in the interim. Staff has honored every request and he has a written track. Per Wayne Haight there were 500 pages of documents requested and OIP said when you have something that big do an incremental release which they are doing. Submittals come right up to the deadline and he and Member Edlao commented the 5-6 days they have to review everything is difficult. Ten days would be better.

Member Pacheco commented on the negative connotation with the changes in leadership and stated we are all here to do the best job we can. He moved to approve F-3 to F-10 with an amendment to Item F-3, recommendation #3 to include swimming, scuba, snorkeling activity allowed only for vessel maintenance and emergency operations and other non-recreational activities in support of ship and research activities.

**Unanimously approved as amended (Pacheco, Agor)
Amend Item F-3, recommendation #3. All voted yes.**

Item F-11 Enforcement Action against Crystal Seahorse, Ltd. and Captain Peter Wood Involving Prohibited Activities at 'Ahihi-Kina'u Natural Area Reserve, Maui

Mr. Blaine Rogers representing Department of Aquatic Resources, reported the vessel Shangri-La commanded by Captain Peter Wood entered the State Natural Area Reserve, 'Ahihi-Kina'u, related the situation background and violation(s). Staff's

recommendation is to fine Crystal Seahorse (holder of the commercial use permit) \$2,500 for conducting a commercial tour within a Natural Area Reserve, fine Peter Wood \$2,500 for operating a motorized vehicle within 'Ahihi-Kina'u Natural Area Reserve, fine Peter Wood \$5,000 for unlawfully anchoring a vessel within marine waters, fine Peter Wood \$1,000 for damaging stony coral, fine Peter Wood \$2,750 for damaging 11 specimen of stony coral, and assess Administrative Fees and Costs against Peter Wood totaling \$3,554 expenses incurred by DLNR investigating and remediation damages. Grand Total of \$17,304.

Member Pacheco asked 31 meters deep how does it happen? Were they there under an hour or half-hour? Mr. Rogers replied after talking to the biologists who did the investigation they explained on a windy day, the large size of the vessel and with an anchor chain that's slack a swath could cut in the coral. Member Pacheco were the biologists able to see forensically when that coral was broken by the nature of the break? Protocols have been established on how staff investigates coral damage. A Natural Area Reserve ranger and a private volunteer were present in the area when the vessel came in. The volunteer swam out to the vessel and told crew they were there inappropriately. The pictures of the anchor and anchor chain were taken by the volunteer. Subsequent investigation was taken by DAR staff.

Member Pacheco asked this is a pretty serious fine for the operator was way out of area where his permit allowed, in fact a whole different part of the island. Staff is not asking to revoke the permit? Mr. Rogers answered it was not part of the discussion. DOCARE assigned him to handle this. This is a test case for all the divisions (or for Department). Staff felt it wouldn't be fair to Mr. Wood and too much for the Department.

Member Pacheco asked then why DAR instead of DOCARE handling this? Mr. Rogers replied Divisions have the ability to bring enforcement actions.

Mr. Dennis Niles attorney representing Crystal Seahorse, reported Mr. Peter Wood has operated on Maui for over 20 years and this is a first time episode. He responded immediately and professionally, but was charged with a crime. The Department was not satisfied with the outcome of the criminal prosecution therefore they found it necessary to punish Mr. Wood more, than the humility of being charged with a crime. He was operating within the limits of his permit and he alleged crossed the line by entering these waters. Mr. Wood knows you don't anchor on coral, there is sand in the area and what happened, apparently alleged, the chain draped over some pieces of coral and some coral broke. He explained the plea agreement with the State. This is the second time Mr. Wood is before a State Board (entity). Then explained civil legal action as compared to an administrative contested case. He recommended not to take further action against Mr. Wood. Also reported there were no signs around the Natural Area Reserve to state it was a closed area. Requested a contested case hearing in respect to Crystal Seahorse.

2:00 pm: Adjourned for Executive Session (Pacheco, Agor)

2:14 pm: Reconvened

Chairman Smith asked Mr. Niles would he and his client be amiable to a negotiated settlement? Mr. Niles replied yes. Chairman Smith asked if they found common ground would he drop the contested case hearing? Mr. Niles replied certainly. Reported what happened previously with proposals from both sides and no counter. Mr. Smith asked would you like to counter? Mr. Niles replied his client is not here.

Member Pacheco suggested striking items 1,2,3 and approving items 4-6 for a total of \$7,304. Mr. Niles explained there is no obvious landmarks in the area or buoys. Member Pacheco asked are you suggesting we place buoys? Mr. Niles replied on an enforcement perspective it would be helpful. Mr. Rogers interrupted to say that DOFAW has an environmental assessment to install buoys. And explained on the map and boating rules which any mariner should already know. Mr. Niles replied he needs to reach his client.

Member Pacheco moved to apply items 4,5, 6 and strike 1, 2, 3. Member Edlao second. Mr. Rogers suggested an alternative. Instead of striking 1,2,3 which DOFAW and DOBOR has an interest in and the allocation be worked out between him, Mr. Niles and his client. Mr. Niles stated with one exception, the claim for Crystal Seahorse is dropped and the sanction changed to Mr. Wood. Discussed Hanalei issue and navigable waters. Mr. Niles and Mr. Rogers took a break to discuss with Mr. Wood.

Mr. Niles reported Mr. Wood accepts the proposal suggested by the Board. Mr. Rogers amended 1. to replace Crystal Seahorse with Mr. Peter Wood. Mr. Niles suggested changing other items. Mr. Rogers did not feel comfortable dismissing count 1 because he can't represent DOFAW.

Member Edlao deferred to next meeting. Mr. Rogers replied he will be absent.

Member Edlao asked in your previous settlement offer was it to strike the conduct commercial? Mr. Niles replied he only remembers the amount of \$2500, but he doesn't remember the specifics. He is certain it involves eliminating Crystal Seahorse and throwing Mr. Wood in. They felt Crystal Seahorse is not the proper party and the captain should bear the responsibility. Member Pacheco asked then why won't you allow the Board to insert Peter Wood for commercial tour? Mr. Niles answered Peter Wood was not conducting the tour; he doesn't have a commercial license. He is not a commercial operator; he is an employee of the company. The permit to conduct the tour is held by Crystal Seahorse. Member Edlao decided to support.

Member Pacheco moved to fine \$7,304 as noted for items 2-6 paid lump sum and strike item 1 and withdraw motion for a contested case hearing.

**Unanimously approved as amended (Pacheco, Schuman)
Amend fine to \$7304 for items 2-6, strike #1, and withdraw request for a contested case hearing.**

Item F-1 Request for Final Approval to Amend Hawaii Administrative Rules Chapter 13-75, Rules Regulating the Possession and Use of Certain Fishing Gear to Include Rule Amendments for Board-Authorized Area Closures for Lay Nets, and a Correction of the Section's Number.

Mr. Dan Polhemus of DAR reported the Board could close certain areas to lay gill netting effective with the filing of coordinates and maps at the Lieutenant Governor's office. Public hearing and testimony had opposition, but recent deaths of monk seals by lay gill nets expedited this. There is exposure to the endangered species act and the State could be sued at anytime. The result could shut down all near shore activities that could affect protected species which is all pole & line fishing and all net fishing at all near shore waters of all Hawaiian Islands for 2-3 years as an extreme outcome. Our Federal partners recommend the State address this problem while engaging Section 7. The Legislature gave DLNR 2 positions to deal with incidental take problems which would help mitigate the exposure. 1. If a monk seal is in an area and in consultation with NOAA to close an area from all net fishing until the seal has left an area. 2. Refers to Molokai.

Mr. Jeff Walters of Co-Manager of the Hawaiian Islands Humpback Whale National Marine Sanctuary and DAR staff specializing in protected species, reported this measure is important in protecting the Hawaiian monk seal from lay gill nets. Explained the behavior of monk seals and where they would feed.

Mr. William Aida testified in support with the request that the surround kule is not part of the motion. Direct DAR to work with fishermen to develop a DVD for DOCARE statewide to educate them on the difference between surround kule fishing and reef gill net fishing. Ask DOCARE to be more pro-active by checking for a net on three day weekends. Staff investigate the effectiveness of requiring monofilament line of a net be a smaller size like 12lbs. Enough for seals to break through, but not for fishes.

Mr. Carl Jellings, a Waianae fisherman expressed concern over events in Waianae. Kule fishermen have to have a license and another license for gill net fishing. Clarify that the type of gear used at the Makua case was incorrect for kule fishing. But the officer wouldn't know that. Mr. Polhemus replied he would seek AG's authority on this matter.

Mr. Tossato of NOAA Fisheries reported they fully support responsible fisheries. Attorney General's representative reported these rules have not been approved.

Unanimously approved as submitted (Edlao, Schuman)

There being no further business, Interim Chairperson Smith adjourned the meeting at 3:05 p.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Adaline Cummings".

Adaline Cummings
Land Board Secretary

Approved for submittal:

A handwritten signature in cursive script, appearing to read "Allan C. Smith".

ALLAN SMITH
Interim Chairperson
Department of Land and Natural Resources

D. OPTION TO PURCHASE CONSERVATION EASEMENT

**OPTION TO PURCHASE, AND PURCHASE AGREEMENT OF
AGRICULTURAL LAND PRESERVATION EASEMENT**

This Option Agreement, made this 11th day of May, 2006 and executed by and between Hawaii Agriculture Research Center, whose address is 99-193 Aiea Heights Drive, Suite 300, Aiea, HI 96701 ("Owner") and the State of Hawaii, Agribusiness Development Corporation ("ADC"), whose address is 235 S. Beretania Street, Room 205, Honolulu, HI 96813 (collectively, "parties" or "parties to this agreement").

W I T N E S S E T H:

WHEREAS, Owner is the holder of a right to purchase that certain property more particularly known as a portion of Lot 16246, and presently designated as Lot 12004-A-2 in that certain survey preliminary map, a copy of which map is attached hereto as Exhibit "A", located in the County of Honolulu, State of Hawaii, currently bearing Tax Map Key Number (por.) 1-9-2-001-011 and containing approximately 108.217 acres ("optioned property").

WHEREAS, the optioned property contains prime and productive agricultural soil, is of sufficient size and acreage to sustain agricultural production, and is currently zoned and used for agricultural purposes,

WHEREAS, ADC is a Hawaii state agency whose mission is to transition the state's agricultural industry from plantation operations to a diversified agricultural economy, including the preservation of lands like the optioned property, and which has the authority and capability to acquire and maintain an interest in the optioned property for conservation purposes,

WHEREAS, Owner has requested that ADC assist it in ensuring the preservation of the optioned property for use in agricultural purposes, in perpetuity,

WHEREAS, in order to facilitate preservation of such lands, ADC proposes to secure funding from the United States Department of Agriculture ("USDA") to purchase a preservation easement on the optioned property that will ensure that the optioned property is perpetually maintained in agriculture and is not converted to urban, residential, commercial, or industrial uses ("preservation easement"),

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WHEREAS, Owner desires to grant and sell a preservation easement over the optioned property, subject to and contingent on determination of the price of such an easement based on a mutually acceptable appraisal and other terms, conditions, and contingencies set forth in this Agreement, and

WHEREAS, to facilitate the potential grant and sale of a preservation easement, Owner desires to grant to the ADC, and the ADC desires to obtain from the Owner, an option to acquire a preservation easement over the optioned property, on the terms and conditions set forth below.

NOW THEREFOR, in consideration of the mutual undertakings set forth below, and for other good and valuable consideration given, the receipt and sufficiency of which are hereby acknowledged, Owner hereby grants to ADC the exclusive option to purchase and acquire a preservation easement over the optioned property from the Owner, upon and subject to all of the following terms and conditions ("option"):

1. Option Period. The term of this option shall begin on the date hereof and shall terminate at 4:00 p.m. on May 11, 2008 (the option period).

2. ADC's Undertakings. Upon execution of this agreement, ADC shall commence the process to seek qualification as an eligible entity, as that term is used in the Federal Farm and Ranch Land Protection Program, and apply for funding from the USDA to be applied to the purchase of the preservation easement over the optioned property, and shall enter into a cooperative agreement with the USDA.

3. Determination of Price. Prior to or simultaneous with ADC's efforts to secure USDA eligibility and funding, Owner shall, at its sole expense, secure an appraisal to determine the value of the preservation easement to be granted on the optioned property, and shall provide a copy of the completed appraisal to ADC. Upon approval of the appraised value by ADC, the appraised value shall be the purchase price for the preservation easement if ADC elects to exercise this option. Approval of the purchase price shall only be binding upon the ADC when approval is communicated by ADC to Owner, in writing.

4. No Guaranty of Funding or of Exercise of the Option. Owner acknowledges and understands that ADC cannot guarantee that it will be successful in

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qualifying as an eligible entity, or in securing the required USDA funding, or in obtaining state funding for ADC's share of the purchase price. Further, Owner acknowledges that ADC may be seeking funding for preservation easements on multiple properties and further, that ADC cannot guarantee that Owner's property will ultimately be selected for funding, or that ADC will elect to exercise this option.

Owner further acknowledges that the obligation to purchase the preservation easement is expressly contingent upon ADC qualifying as an eligible entity, securing the USDA funding, and securing the state's share of the funding and, in the event any of these events should fail to occur, or there is insufficient funding to purchase all preservation easements being considered by ADC, ADC shall not be obligated to purchase the preservation easement.

5. Option Exercise. ADC may exercise the option at any time, in its sole discretion, before the end of the option period by giving written notice to Owner. If ADC shall fail to timely exercise this option in accordance with this Section and within the option period specified in Section 1, above, then this option shall expire and thereafter ADC shall have no further option, right, or interest of any kind with respect to the optioned property or the acquisition of the preservation easement.

6. Purchase Terms and Procedures. In the event this option is properly exercised as set forth above, the parties agree that Owner shall sell and grant to ADC and ADC shall purchase and acquire from Owner a preservation easement over the optioned property in accordance with all of the following terms and conditions ("purchase"):

(a) Purchase Price. The purchase price, determined pursuant to Section 3, shall be payable in cash at closing.

(b) Management Fee. In addition to the purchase price, Owner shall pay to ADC the additional sum of no less than FIVE PERCENT (5%) of the purchase price, representing management fee, payable in one lump sum at closing or on schedule agreed upon in writing by ADC and Owner at the time of closing. The management fee shall compensate ADC for performing field work to document, inventory and photograph the property's existing conditions and improvements;

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conducting research on reports, studies, and ordinances relating to the property; preparation of easement maps and documentation; performing annual audits and filing of reports; and any expenses relating to the acquisition and enforcement of the easement.

(c) Closing. The closing shall occur on a date designated by ADC that is not earlier than the 30th day following ADC's exercise of the option and not later than the 180th day following such exercise. Closing shall be handled by an escrow company duly authorized to do business as an escrow in the State of Hawaii that is mutually agreeable to both parties. In the event funding is not obtained, closing may be extended from time to time upon mutual agreement of the parties.

If funding of the purchase price is not timely obtained, and the parties cannot agree on an extended closing date, ADC shall have no further option, right or interest of any kind with respect to the optioned property or the acquisition of the preservation easement, and Owner shall have neither any further obligation to sell the preservation easement, nor any right of recourse to enforce the sale of the preservation easement to ADC.

(d) Form and Recordation of Preservation Easement. At closing, Owner shall grant and sell the preservation easement to ADC or its designee, by a Grant of Easement in the form required by USDA and mutually acceptable to Owner and ADC, subject to no mortgages, liens, other monetary encumbrances, other preservation easements, or other encumbrances inconsistent with the terms of the preservation easement. The Grant of Easement shall be recorded in the Bureau of Conveyances of the State of Hawaii or the Office of the Assistant Registrar of the Land Court of the State of Hawaii, as appropriate. Owner's and ADC's obligations to close are expressly subject to their mutual approval, in their respective sole discretion, of the USDA-required form of easement. All costs of preparing the Grant of Easement and recordation thereof shall be borne by Owner.

(e) Closing Costs. All costs of sale, including all closing costs, shall be

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borne by Owner. At its option, costs may be either advanced by Owner, or may be paid out of Owner's share of the sale proceeds. No brokerage commissions are payable in connection with this transaction, and Owner agrees to hold ADC, its officers, directors and employees acting within the scope of their authority, and the State of Hawaii, and its employees acting within the scope of their authority, harmless from and against any claim for commissions or other similar compensation arising by reason of services alleged to have been rendered to, or at the request of, Owner.

7. Conservation Plan. If the USDA finds that a conservation plan is required, and therefore must be developed, Owner shall work cooperatively with the USDA to formulate a plan which will adequately address all erosion and other concerns of the USDA, and will ensure that plan requirements and directives are adhered to and followed, as required by the USDA.

Owner shall also be responsible for maintaining compliance with the Highly Erodible Land and Wetland Conservation provisions of the Food Security Act of 1985, as amended, and 7 C.F.R. part 12.

8. Conservation Violations. Owner shall conduct its business in a manner so as not to endanger or impair the preservation easement. In the event Owner, at any time, violates any of the applicable federal or state conservation laws, and fails or refuses to correct any such violation in accordance with the terms of the conservation easement, Owner shall indemnify and hold ADC, its officers, directors and employees acting within the scope of their authority, and the State of Hawaii, and its employees acting within the scope of their authority, harmless from any liability, general damages, special damages, punitive damages, costs, or any other expenses associated with such violation(s). Owner shall also reimburse ADC for any and all administrative and legal costs incurred by the USDA that ADC may be caused to pay to the USDA associated with any enforcement or remedial action as it relates to the enforcement by either ADC or the USDA of the preservation easement.

9. Indemnification. Owner agrees that is shall indemnify and hold ADC, its officers, directors and employees acting within the scope of their authority, and the

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State of Hawaii, and its employees acting within the scope of their authority, harmless from liability resulting from the negligent acts of Owner, its employees, agents, servants, licensees, invitees, or any other foreseeable entity that may give rise to premises liability, and shall reimburse ADC and make ADC whole for any costs, including legal fees and expenses, which may be incurred in defending such alleged liability.

10. Notifications. In order to be effective, all offers, acceptances, and notices which are required or permitted to be given or served hereunder shall be in writing and shall be sent via first class, registered or certified mail, postage prepaid, or by hand delivery, or by facsimile transmission (with a hard copy to be sent by first class mail), at the following addresses:

Stephanie A. Whalen
President and Director
Hawaii Agriculture Research Center
99-193 Aiea Heights Drive, Suite 300
Aiea, Hawaii 96701
Fax No. (808)486-5020

and

Alfredo Lee
Executive Director
State of Hawaii
Agribusiness Development Corporation
235 S. Beretania Street, Room 205
Honolulu, Hawaii 96813
Fax No. (808)586-0189

Any such address or fax number may be changed from time to time by serving notice to all other parties, in writing, as above provided. Any offer, acceptance, or notice shall be deemed to have been given or served as of the date and time of actual delivery or actual completion of facsimile transmission (evidenced by the confirmation memo or message produced by the sending party's fax machine) or at the expiration of the second full day after the date of mailing.

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11. Contingencies; Cancellation Rights. The obligations of Owner and ADC under this Agreement are expressly subject to the following:

(a) their mutual and respective satisfaction with and acceptance of, in their sole respective discretion, the value assigned to the preservation easement by the appraisal,

(b) any requirements imposed by the USDA or any other agency in connection with this transaction, and all other aspects of this transaction, including the determination that ADC is or is not eligible entity, or that the optioned property does not constitute eligible land. At any time prior to closing, either Owner or ADC may cancel this Agreement without liability if they are not satisfied in their sole respective discretion with any of the foregoing matters, with any other aspect of this transaction, or if they decide not to proceed, provided that such cancellation must be in writing, sent to the other party. In the event either party exercises this right to cancel this Agreement, this Agreement shall terminate and neither party shall have any further obligations hereunder, or

(c) any other contingency or condition beyond the control of either Owner or ADC which affects, or may affect, the ability of either party to perform its obligations under this agreement.

12. Warranties and Covenants. Owner hereby promises and covenants that it shall keep the property in good condition and repair, and shall maintain the property as required by all federal, state, and local laws, rules, and regulations made by any applicable governmental authority, and shall not abandon the property, and not commit or suffer any strip, waste, or unlawful, improper or offensive use of said property, or any other act or negligence whereby the same or any interest therein shall become liable under any lien or to seizure or attachment or final process of law; and that ADC and/or the State may at all reasonable times enter and inspect the property.

Owner hereby warrants that it is not a "foreign person" within the meaning of federal and state tax laws, and at closing, shall furnish ADC with FIRPTA and HARPTA affidavits attesting to the same.

Where appropriate and applicable, all covenants, conditions and agreements of

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the parties hereto shall survive the closing of the purchase of the optioned property by ADC.

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

14. Modification and Amendment. This option may not be modified or amended in any way whatsoever except by written instrument executed by Owner and ADC. No oral modification, extension, waiver, or amendment shall be valid or effective. Any waiver shall not be construed as further or continuing waiver.

15. Entire Agreement. This option supersedes any and all oral or written agreements or understandings now existing, and constitutes the entire agreement with respect to the subject preservation easement on the optioned property. If any term or provision of this Agreement is found to be invalid or unenforceable in any situation in any jurisdiction, those offending terms or provisions shall not affect the validity or enforceability of the remaining terms and provisions contained herein.

16. Attorney's Fees. The party prevailing in any cause of action brought before a court of law or equity to enforce the covenants and agreements herein contained shall be entitled to collect, as a part of the judgment or decision entered in its favor, all of its costs and expenses incurred in connection with such action, including, without limiting the generality of the foregoing, reasonable attorney's fees.

17. Successors. The terms and conditions of this option shall apply to and bind the successors and assigns of Owner and ADC.

18. Headings. All headings used in this Agreement are for convenience only and are not to be construed as limiting in any manner the content of any paragraph or particular provision.

19. Miscellaneous.

(a) All periods of time referred to in this agreement shall include all Saturdays, Sundays, and state or national holidays; provided that if the date of the last day to perform any act or give any offer, acceptance, or notice with respect to this agreement shall fall on a Saturday, Sunday, or state or national holiday, such act or notice may be timely performed or given on the next

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succeeding day which is not a Saturday, Sunday, or state or national holiday.

(b) No party shall be deemed to be the drafter of this agreement; and in the event this agreement is ever construed by a court of law, the court shall not construe this agreement or any provision against any party as the drafter.

(c) The execution of this agreement or the exercise of any rights hereunder is not intended and shall not be construed as creating a partnership or joint venture between Owner and ADC.

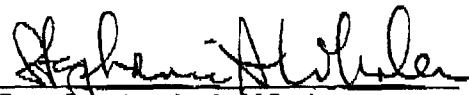
(d) Each person executing this agreement represents and warrants to the other party that he or she has been duly authorized and has full authority to execute and deliver this agreement on behalf of the party on whose behalf he or she is signing.

(e) This agreement may be executed by fax and in counterparts.

IN WITNESS WHEREOF, Owner and ADC have executed this agreement as of the date set forth above.

Hawaii Agriculture Research Center,
Owner

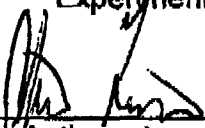
State of Hawaii
Agribusiness Development Corporation



By: Stephanie A. Whalen
Its: President and Director,
Experiment Station



By: Alfredo Lee
Its: Executive Director



By: Anthony Lannutti
Its: Secretary-Treasurer

Owner

Date:

May 8, 2006

Date:

May 8, 2006

E. COOPERATIVE AGREEMENT BETWEEN ADC AND CCC

COOPERATIVE AGREEMENT
BETWEEN THE
UNITED STATES OF AMERICA
COMMODITY CREDIT CORPORATION
and the
AGRIBUSINESS DEVELOPMENT CORPORATION
for the
FARM AND RANCH LANDS PROTECTION PROGRAM

This Cooperative agreement, made this 28 day of August 2006 is entered into by and between the United States of America, acting by and through the Commodity Credit Corporation ("CCC"), and the AGRIBUSINESS DEVELOPMENT CORPORATION ("ADC") for the implementation of the Farm and Ranch Lands Protection Program ("FRPP"), formerly known as the Farmland Protection Program. The CCC shall utilize the expertise and services of the United States Department of Agriculture, Natural Resources Conservation Service ("NRCS") (hereinafter "the United States") to administer this program and perform the duties set forth within this Cooperative agreement. For purposes of this Cooperative agreement, the term "Parties" refers collectively to the United States and the ADC.

I. AUTHORITY.

This Cooperative agreement is entered into by the United States under the authorities of the Commodity Credit Charter Act, 15 U.S.C. 714 et seq.; Title II, Subtitle F, Section 2503 of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) and Title VII, Section 714 of the Agriculture, Rural Development, Food and Drug Administration, and related Agencies Appropriation Act of 2001 (Public Law 106-387), and the ADC under Chapters 163D and 198, Hawaii Revised Statutes, *as amended*. In addition to these authorities, this Cooperative agreement will be administered in accordance with the policies and procedures set forth in the FRPP regulation, 7 CFR part 1491. The CCC administers the FRPP under the general supervision of the Chief of the NRCS who is a Vice President of the CCC.

II. BACKGROUND AND PURPOSE.

Enacted on May 13, 2002, Section 2503 of the Farm Security and Rural Investment Act of 2002 authorized the Secretary of Agriculture to purchase conservation easements that are subject to pending offers from a State, Tribal or units of local government or eligible nongovernmental organizations for the purpose of protecting topsoil by limiting non-agricultural uses of the land. To be eligible, the farm or ranch land must contain prime, unique, or other productive soil or historical or archaeological resources. The Farm Security and Rural Investment Act of 2002 authorized funding for fiscal years 2002 through 2007. On March 27, 2006, CCC published a notice in the Federal Register requesting proposals for participation from Tribes, States, units of local government, and non-governmental organizations. See Federal Register Volume 69, Number 233, Notice Pages 70427-70432.

WHEREAS, the ADC and the United States have mutual interests in preventing the conversion of agricultural lands to non-agricultural uses; and

WHEREAS, the United States administers the FRPP; and

WHEREAS, the ADC is authorized to acquire interests in real property for agricultural conservation purposes, and has pending offer(s) for acquiring agricultural conservation easements from landowners within the State of Hawaii, and the United States and the ADC have agreed to combine their resources to assure that such areas are protected from conversion to nonagricultural uses.

NOW, THEREFOR, the parties agree to enter into this Cooperative agreement on the following terms and conditions.

III. OBLIGATION OF FUNDS AND UNITED STATES' CONTRIBUTION

Upon execution of this Cooperative agreement, the United States shall obligate the sum of ONE MILLION EIGHT HUNDRED THIRTY NINE THOUSAND FOUR HUNDRED AND TWELVE DOLLARS (\$1,839,412.00) for the acquisition of the United States' interests in conservation easements and related ALTA U.S. policies on behalf of the United States government. The ADC must request payment of this amount in accordance with Part V of this Cooperative agreement before September 30, 2008, or by September 30, 2011 if the option of payment in installments is chosen to pay the landowner, a more specifically set forth in V.B., below.

This Cooperative agreement is the authorizing document that obligates CCC funds to acquire conservation easements. The United States' contribution for the acquisition of each conservation easement acquired by the ADC shall be up to but not more than 50% of the appraised fair market value. The United States' contribution cannot be used for closing and related administrative costs incurred in acquiring the conservation easement. Attachment A to this Cooperative agreement specifies the CCC funds to be used within the State of Hawaii and includes a list with a detailed breakdown of the: (1) name and mailing address of the landowner; (2) tax map number(s) of the property; (3) number of acres to be acquired; (4) FRPP's matching share; (5) the estimated conservation easement value; (6) priority of the purchase, and (7) the estimated cost of the ALTA U.S. title insurance. However, nothing in this document obligates the United States or the ADC to purchase all or any of the conservation easements parcels listed. There may be further modifications, additions or deletions to the list depending on the prices paid for the conservation easements, the ability to obtain good and clear title, future funding for acquisitions, etc. Additions or deletions to the list will be made by mutual agreement between the Parties to this Cooperative agreement.

IV. ADC'S CONTRIBUTION

Subject to other alternatives incorporated herein below, the ADC or its designated escrow agent must disburse 100 percent of the payment, representing the easement purchase price, to the

landowner at the time of closing, unless it is paying for the easement in installments in accordance with V.B. herein. Landowner donations up to 25 percent of the appraised fair market value of the conservation easement may be considered as part of the ADC's matching offer. Where a landowner's donation is considered to be part of the ADC's matching offer, the ADC is required, at a minimum, to contribute in cash, at least 25 percent of the appraised fair market value of the conservation easement or 50 percent of the purchase price. Prior to NRCS accepting the conservation easement and issuing a payment, the ADC shall self-certify on the NRCS CPA-230, Confirmation of Matching Funds, that the ADC's share of matching funds has not come from additional donations, payments, loans or fees made by or charged to the easement Grantor, immediate family members, or organizations controlled by or funded by the easement Grantor, either through formal or informal agreements.

There must exist a current appraisal of the conservation easement in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP) and the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) (Interagency Land Acquisition Conference, 1992) and policies and procedures in the NRCS Conservation Programs Manual, Part 519, and any and all supplemental standards as may be issued from time to time by the NRCS. The appraisal must have an effective date that is the date on which this Cooperative agreement is signed. The appraiser must have completed training in using the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) as well as either eminent domain or conservation easements, and have experience in appraising agricultural property with and without conservation easements. At its option, ADC may require the landowner to secure an appropriately acceptable appraisal of the conservation easement.

All parties to this Cooperative agreement must make all contributions, use appraisers, and order appraisals in accordance with the policies and procedures in the NRCS Conservation Programs Manual, Part 519.

V. PAYMENTS

A. The ADC shall notify the United States when the CCC funds are to be paid. CCC funds shall be paid to the ADC when the United States is provided a copy of the easement in the form to be recorded and the ADC has opened escrow to consummate this transaction. Where the ADC cannot obtain 100 percent of the funds to be paid at closing to the landowner(s) and requires the United States to make its payment at closing rather than on a reimbursable basis, the ADC may request a waiver for the United States to pay its share of the conservation easement purchase at closing. In any instance where a waiver is requested, the ADC shall notify the United States at least 60 days prior to closing. Where a waiver is requested, the United States shall make payment to an authorized closing agent. These funds will be transmitted to the Closing Agent by electronic transfer. The Closing Agent will hold the funds in escrow for a period not to exceed 14 calendar days. Upon receipt of the funds, the closing agent will sign a payment receipt form and return it to the United States. If interest is earned upon CCC funds, the Closing Agent must return any interest earned to the United States. All deeds used to consummate this transaction shall be prepared by the United States, subject to approval by the ADC and its legal counsel.

In order to obtain payment of FRPP funds, the ADC will submit Form SF-270 (Request for Advance/Reimbursement of Funds), and the information specified below to the Hawaii NRCS State Office. Prior to submitting the SF-270, the United States will provide ADC and the Closing Agent with a copy of closing agent requirements from the United States and will ensure that the closing agent meets these requirements. The ADC may submit the Form SF-270 prior to closing when a payment is issued at closing, after all the deeds have been recorded and the landowner has been paid.

At a minimum, the following information shall be included in, or attached to, the SF-270, prior to NRCS accepting the conservation easement and disbursing payment: (1) the official, legal name of the ADC; (2) this Cooperative agreement number; (3) conservation easement numbers (if applicable); (4) landowner name; (5) landowner's tax identification number (TIN) or last four (4) digits of an individual's social security number; (6) total amount of dollars paid the landowner for each conservation easement, specifying the CCC share and the non-CCC share of the conservation easement cost; (7) term of conservation easement; (8) acres acquired for each easement; (9) Tax Identification Number (TIN) for ADC; (10) Federal Information Processing Standards (FIPS) number for ADC; (11) Bank routing number and account number for desired deposit location; (12) copy of the conservation easement deed that contains the contingent right clause as described in Part VI of this Cooperative agreement; (13) current appraisal conducted in accordance with UASFLA or USPAP standards; (14) NRCS CPA-230, Confirmation of Matching Funds; and (15) appropriate title assurances.

B. Upon request by a landowner, the ADC may issue installment payments to the landowner. Such an arrangement may occur only after the easement has been conveyed in its entirety and approval is obtained by the NRCS National Office and the Office of General Counsel. Cooperating entities wishing to issue payments in installments for FRPP acquisitions must issue a portion of the payment at closing and provide a copy of the recorded deed to the United States and an appropriate legal instrument detailing a payment schedule prior to CCC issuing installment payments. Once the easement has been recorded, the ADC may request a payment from CCC on a reimbursable basis after a sum twice the amount of the CCC payment request has been disbursed to the landowner. For example, where the entity is contributing 25% of the appraised market value and FRPP is contributing 50% of the appraised market value, spread out in even payments over three years, the payment amounts for the entity would be 8.3%, 8.3%, 8.4% and the NRCS payments would be 16.6%, 16.7%, 16.7%. At the time of the first payment, the Agribusiness Development Corporation can request reimbursement of 16.6% from NRCS, after paying the landowner 24.9% of the appraised market value). In the event this option is selected, the ADC must issue all installment payments, including disbursement of all CCC funds and those of the ADC prior to September 30, 2011.

VI. CONSERVATION EASEMENT REQUIREMENTS.

A. The ADC shall ensure that conservation easements acquired under this Cooperative agreement:

1. run with the land in perpetuity or a minimum of thirty years, where State law prohibits a permanent easement;
2. prevent the land from being converted to nonagricultural uses;
3. provide for the administration, management, and enforcement of the easement by the ADC;
4. require management of the property in accordance with a conservation plan that is developed utilizing the standards and specifications of the NRCS field office technical guide, 7 CFR part 12, and is approved by the Conservation District. The following paragraphs shall be included in all conservation easements acquired using FRPP funds:

*As required by section 1238I of the Food Security Act of 1985, as amended, the Grantor, his heirs, successors, or assigns, shall conduct all agricultural operations on the Protected Property in a manner consistent with a conservation plan prepared in consultation with NRCS and approved by the Conservation District. This conservation plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR part 12 that are in effect on **28 August 2006**. However, the Grantor may develop and implement a conservation plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. NRCS shall have the right to enter upon the Property, with advance notice to the Grantor, in order to monitor compliance with the conservation plan.*

In the event of noncompliance with the conservation plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the conservation plan, NRCS will inform the Grantee of the Grantor's noncompliance. The Grantee shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations.

If the NRCS standards and specifications for highly erodible land are revised after the date of this Cooperative agreement based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised conservation plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantor may be or become subject;

5. include the following "Contingent Right in the United States of America" provision where title is held by the ADC:

"In the event that the ADC fails to enforce any of the terms of this easement, the Secretary of Agriculture and his or her successors and assigns shall have the right to enforce the terms of the easement through any and all authorities available under Federal or State law. In the event that the ADC attempts to terminate, transfer, or otherwise divest itself of any rights, title, or interests of this easement or otherwise divest itself of any rights, title, or interests in this Conservation Easement without the prior consent of the Secretary of the United States Department of Agriculture and payment of consideration to the United States, then, at the

option of such Secretary, all right, title, and interest in this easement [or other interests in land] shall become vested in the UNITED STATES OF AMERICA”;

6. include provisions regarding the amount of impervious surfaces permitted on the Property, in accordance with the Conservation Programs Manual, Part 519;
7. include signature of a responsible NRCS official on the conservation deed, accepting the United States’ property interest in the deed; and
8. identify the United States as a Grantee in the deed along with the ADC.

VII. RESPONSIBILITIES.

A. Those of the United States -

1. The United States, by and through the NRCS, shall provide technical and other services required to assist the landowner in developing an appropriate conservation plan in accordance with 7 CFR part 12. To ensure that the conservation plan is implemented in accordance with 7 CFR part 12, the NRCS will be provided the opportunity to conduct periodic field visits on lands that are enrolled in the FRPP and associated lands owned or managed by the landowner which are also subject to 7 CFR part 12.
2. The CCC shall, subject to the availability of funds, disburse the appropriate funds to either the ADC or the Closing Agent in accordance with Part III and V of this Cooperative agreement.
3. Prior to NRCS accepting the conservation easement and processing the payment, NRCS shall:
 - a) ensure that a conservation plan for highly erodible lands is developed in accordance with 7 CFR part 12 and that an AD-1026, Highly Erodible Land and Wetland Certification form has been filed at the appropriate USDA Service Center;
 - b) ensure that a CCC-526, Adjusted Gross Income Certification has been filed at the appropriate USDA Service Center;
 - c) provide the ADC with an acceptable form of and obtain approval of the conservation easement deed or conservation easement deed template from the Office of General Counsel; and
 - d) acquire:
 - i) a signed letter from the closing agent indicating that the agent meets FRPP closing agent requirement,

- ii) an executed NRCS CPA-230, Confirmation of Matching Funds, and
- iii) title insurance commitment for the transaction.

In addition, NRCS shall obtain an American Land Title Association (ALTA) U.S. Policy (1991) insuring the United States' and the ADC's interest in the easement based on the respective amounts paid by the United States and the ADC for the conservation easement, on a pro rata basis. The title insurance will have a liability amount not less than a sum that is 50 percent of the first \$100,000 and 25 percent of that portion of the amount of the value in excess of that amount. NRCS will reimburse the cooperating entity for the title insurance premium.

- 4. Provide up to 50% of the appraised fair market value of the conservation easement acquired.
- 5. NRCS understands and agrees that the holder of the right to purchase the underlying property upon which the conservation easement shall be included has undertaken the responsibility, and has always been responsible, for securing an appraisal of the property; NRCS shall work directly with the holder of such right prior to NRCS accepting an interest in the easement. The appraisal shall be conducted by a certified general appraiser and shall conform to the Uniform Standards of Professional Appraisals Practices and the Uniform Appraisal Standards for Federal Land Acquisitions (Interagency Land Acquisition Conference, 1992).
- 6. It is the intent of NRCS to fulfill its obligations under this Cooperative agreement. However, NRCS cannot make commitments in excess of funds authorized by law or made administratively available. If NRCS cannot fulfill its obligations under this Cooperative agreement because of insufficient funds, this Cooperative agreement will automatically terminate. In the event the ADC is subject to liability for the failure of NRCS to consummate this transaction, the NRCS will indemnify and hold the ADC harmless from any and all loss, damage, cost and expense, including any and all reasonable attorney fees and costs, which the ADC may suffer or incur in connection with or arising out the failure of the NRCS to so consummate this transaction.

B. Those of the ADC-

- 1. The ADC shall perform necessary legal and administrative actions to ensure proper acquisition and recordation of valid easements, including conducting administrative and technical reviews in accordance with NRCS Conservation Programs Manual, Part 519.
- 2. The ADC shall use all awarded funds under this Cooperative agreement for the acquisition of conservation easements within approved FRPP areas.

3. The ADC shall use its best efforts to secure the Grantor's promise to indemnify and hold harmless the United States from any liability arising from or related to property enrolled in FRPP.
4. With the exception of the cost of title insurance, the ACD shall pay all costs of conservation easement procurement or, at its option, may prorate costs of sale with landowner in accordance with state law, and will operate and manage each conservation easement as required by this Cooperative agreement and 7 CFR part 1491.
5. The Agribusiness Development Corporation shall incorporate into each deed in which CCC funds are used as part of the acquisition the required clauses set forth in Part VI of this Cooperative agreement.
6. The ADC shall prohibit all non-agricultural uses of the encumbered properties, except for recreational uses, such as hiking, hunting, fishing, boating, horseback riding that will not conflict with the purpose of Section 2503 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107 – 171).
7. At a minimum, the ADC shall monitor FRPP parcels on an annual basis to ensure that the conservation easements are being implemented according to the deed provisions. An annual report of the status of acquired conservation easements and conservation easements pending acquisition will be submitted to the NRCS representative at the State level. The NRCS representative will define the format of this report. At its option, the ADC may delegate the drafting of the annual report to the landowner, but will remain responsible for verifying all information contained in the report. Any such report prepared by the landowner shall be accepted by the NRCS upon acknowledgement of review and verification by the ADC.
8. In acquiring conservation easements, the ADC shall ensure that the title to the lands or interests therein shall be unencumbered or, if encumbered by outstanding or reserved interests, the ADC shall use its best efforts to obtain the subordination of such other interests to the conservation easement.
9. The ADC shall ensure that the consideration paid to any landowners for the conveyance to the ADC of any conservation easements is no more than the fair market value of the land conveyed.
10. In accordance with 49 CFR part 24, the ADC shall inform the landowner that the ADC does not have the authority to acquire the Property through eminent domain.
11. The ADC shall ensure that a final HUD escrow closing statement issue by the Closing Agent, containing the following information: (i) the Cooperative agreement number; (ii) the conservation easement number and landowner name; (iii) the landowner's tax identification or last four (4) digits of an individual's social security number; (iv) total

amount of dollars paid or to be paid to the landowner for the conservation easement, specifying the CCC share and the non-CCC share of the conservation easement cost; (v) acres acquired; and (vi) NRCS CPA-230, Confirmation of Matching Funds; and (viii) date when NRCS payment was received. Certification of payment for all conservation easements acquired must occur on or before September 30, 2011. The ADC shall also furnish to the NRCS a copy of the recorded deed containing the contingent right clause and conservation easement paragraphs as described in Part VI of this Cooperative agreement after recordation and/or filing of the deed.

12. The ADC shall not use FRPP funds to place an easement on a property in which the ADC employee or board member, with decision making involvement in matters related to easement and acquisition and management, has a property interest. The ADC shall not use FRPP funds to place an easement on a property in which a person who is an immediate family member or household member of an employee or board member, with decision making involvement in matters related to easement acquisition and management, has a property interest. Further, the ADC agrees to generally conduct itself in a manner so as to protect the integrity of conservation easement deeds which it holds as well as avoid the appearance of impropriety or actual conflicts of interests in its acquisition and management of conservation easements.
13. The ADC agrees that it will not at any time, when the ADC is named as a Grantee on the conservation deed, seek to acquire the remaining fee interest in the Property. Likewise, if the ADC enters into an agreement with another entity to manage/monitor the conservation easement, and the entity seeks to acquire the underlying fee, the ADC agrees to immediately terminate such a relationship and arrange for an uninterested party to manage/monitor the conservation easement.
14. When a conservation plan violation is reported to the ADC by NRCS, after all administrative and appeal rights have been exhausted by the landowner in accordance with 7 CFR part 12 and 7 CFR part 614, the ADC shall implement easement enforcement procedures.
15. The duties and obligations of the ADC shall be contingent upon it receiving sufficient funding from the Board of Land and Natural Resources, State of Hawaii, to fund its share of contribution toward the purchase price of the conservation easement. ADC shall use its best efforts, and shall work Cooperatively with the Department of Land and Natural Resources to apply for and secure appropriate funding as required by this Cooperative agreement and its agreement to purchase the conservation easement from the landowner.
16. The duties and obligations and of the ADC shall be further contingent upon the landowner securing an acceptable fair market value appraisal of the conservation easement prior to the execution of this Cooperative agreement.

VIII. GENERAL PROVISIONS.

- A. The term of this Cooperative agreement shall be from the date of the last signature affixed hereto through September 30, 2011, unless otherwise agreed to, in writing, by the United States, ADC and the landowner.
- B. No assignment in whole or in part shall be made of any right or obligation under this Cooperative agreement without the joint approval of both the United States and the ADC. Nothing herein shall preclude the United States or the ADC from entering into other mutually acceptable arrangements or agreements, except as identified in Part VII of this Cooperative agreement. Such documents shall be in writing, reference this Cooperative agreement, and be maintained as part of the official agreement file.
- C. This Cooperative agreement may be amended, extended, or modified only by written amendment signed by the authorized officials of the United States and the ADC.
- D. This Cooperative agreement may be terminated by either party hereto by a written notice to the other party at least 30 calendar days in advance of the effective date of the termination, and only if either party determines that the other party has failed to comply with the provisions of this Cooperative agreement. In the event that this Cooperative agreement is terminated for any reason, the financial obligations of the parties will be as set forth in 7 CFR part 1403, part 3016 and part 3019, as applicable.
- E. This Cooperative agreement shall be enforced and interpreted in accordance with applicable Federal laws and regulations, directives, circulars, or other guidance and, where applicable, by the laws of the State of Hawaii. When signed, this Cooperative agreement will become binding on the ADC and the United States to be administered in accordance with 7 CFR part 3015 Uniform Federal Assistance Regulations 7 CFR part 3016-Uniform Administrative Requirements for Cooperatives and Cooperative Agreements to State and Local Governments, or 7 CFR part 3019-Uniform Administrative Requirements for Cooperatives and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, as applicable.
- F. Employees of the ADC shall not be considered to be Federal employees or agents of the United States for any purpose under this Cooperative agreement.
- G. The ADC shall give CCC, the United States, or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents, not otherwise privileged, or subject to a privilege, related to this Cooperative agreement.
- H. The ADC agrees to comply with all applicable Federal, State, and local laws.

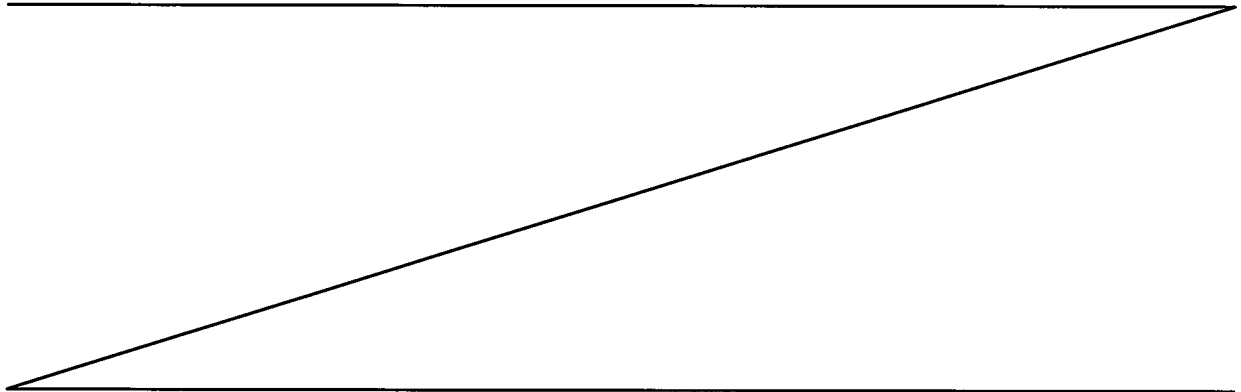
IX. PRINCIPAL CONTACTS.

The United States representative for this Cooperative Agreement is:

Lawrence T. Yamamoto, Director
Natural Resources Conservation Service
on behalf of the Commodity Credit Corporation
300 Ala Moana Blvd Rm 4-118
Honolulu, HI 96850
(808) 541-2600

The Agribusiness Development Corporation representative for this Cooperative Agreement is:

Alfredo A. Lee, Executive Director
Agribusiness Development Corporation
235 So. Beretania St. Rm 205
Honolulu, HI 96813
(808) 586-0186



IN WITNESS WHEREOF, the following authorized representatives of the United States and the ADC have executed this Cooperative agreement.

THE AGRIBUSINESS DEVELOPMENT CORPORATION



8/28/2006

By: Alfredo A. Lee
Its: Executive Director

UNITED STATES OF AMERICA
COMMODITY CREDIT CORPORATION



8/28/2006

By: Lawrence T. Yamamoto
Its: Director, Natural Resources Conservation Service

Attachment A
List of Pending Conservation Easement Offers

Priority	Landowner Name(s) & Mailing Address	Parcel(s) Identification (TMK)	No. of Acres	Estimated Conservation Easement Value	FRPP Matching Share	Estimated Cost of ALTA policy
HIGH	Hawaii Agriculture Research Center 99-193 Aiea Heights Drive Suite 300 Aiea, Hawaii 96701	(por)1-9-2-001- 011	108.218	\$3,500,000	\$1,750,000	\$89,412

F. MAUI COASTAL LAND TRUST PRESS RELEASE

MAUI COASTAL LAND TRUST PRESS RELEASE

For Immediate Release: June 20, 2007

Private East Molokai Lands Permanently Protected from Development

Wailuku, Maui—Third-generation rancher Kip Dunbar protected 168 acres of his Kainalu Ranch on Molokai's south-eastern shore with an agricultural conservation easement last week thanks to two unprecedented conservation grants leveraged by the Maui Coastal Land Trust (MCLT). The first grants of their kind in Hawai'i came from the Farm and Ranch Lands Protection Program (FRPP), run by the United States Department of Agriculture and the State of Hawai'i's Legacy Land Conservation Program (LLCP), run by the Hawaii Department of Land and Natural Resources.

In the agreement, development rights were purchased from Kainalu Ranch by MCLT, placing a permanent conservation easement on the acreage to keep it in open space and agricultural use. "Though my children and I have no intentions of leaving Molokai," said Dunbar, "this agreement has given us the assurance that these lands will remain in agriculture and open space no matter who may come to own them in the future."

MCLT partnered with the Natural Resources Conservation Service's (NRCS) Pacific Island Area office in Honolulu on a cooperative agreement to initiate the first FRPP award in Hawai'i and insure the conservation plans at Kainalu Ranch met required program standards. "MCLT and NRCS were instrumental in assisting our family in procuring a living agreement that the community could appreciate and respect," said Dunbar.

"The NRCS oversaw some very strict requirements for this program," said MCLT Executive Director Dale Bonar. "It serves to protect farmland for agricultural production and more importantly, keeps the farmer/rancher in agriculture. While the purchase of a permanent agricultural easement does not provide the landowner with the same level of financial benefit that might come from developing the property, it provides the incentive for an owner to stay in farming. Just as important, it may be the only way heirs could keep the land since its value is reduced thus reducing probate taxes," Bonar continued.

A nationwide initiative of the U.S. Department of Agriculture, the Farm and Ranch Lands Protection Program serves to protect prime agricultural acreage from further development. "We are pleased that the Farm and Ranchland Protection Program is available as a tool to help protect Hawaii's important agricultural land" said Larry Yamamoto, Director of the NRCS, Pacific Islands Area. "Keeping agricultural lands available for our grand children and their grand children is critical for sustaining Hawaii's future." Funds are provided to purchase conservation easements on lands that are: privately owned, large enough to sustain agricultural production, accessible to markets and have adequate infrastructure and agricultural support services. Land owners retain rights to use the property for agriculture in perpetuity.

Also tapped for the first time under this agreement was the Land Conservation Fund, through the State of Hawai'i's Legacy Land Conservation Program. "This program came along at the same time that the State of Hawai'i was recognizing the urgency and value of protecting important agricultural lands," said Allan Smith, Interim chairperson of the Department of Land and Natural Resources. "Brought into law in 2005, the Legacy Lands Act designated a small percentage of the real estate conveyance fees as the funding source. The program now provides about \$5 million per year for fee or easement acquisition, which is critical in matching federal and foundation grants, in conservation projects such as this one at Kainalu Ranch."

Established as a non-profit corporation in December 2000, The Maui Coastal Land Trust's mission is: "To preserve and protect coastal lands in Maui Nui for the benefit of the natural environment and of current and future generations." With offices in Wailuku, MCLT is Hawaii's first local fully-staffed land trust organization. For more information visit www.mauicoastallandtrust.org.

G. PROPOSED CONSERVATION EASEMENT

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LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (X) Pickup () To:

Tom Pierce
Attorney at Law
A Limited Liability Law Corporation
P.O. Box 798
Makawao, HI 96768

TMK: (1) 9-2-1-11

Total No. of Pages: _____

DEED OF CONSERVATION EASEMENT
INCLUDING DEVELOPMENT RIGHTS

This Deed of Conservation Easement Including Development Rights ("Easement") is made by and between the following parties and relates to the following Property:

Grantors:	Hawaii Agriculture Research Center ("HARC") (a Hawai'i nonprofit corporation) 99-193 Aiea Heights Drive Suite 300 Aiea, HI 96701 Pioneer Hi-Bred International, Inc. ("Pioneer") (an Iowa corporation) P.O. Box 1000 Johnston, Iowa 50131-1000	(hereinafter HARC and Pioneer are collectively referred to as "Owner")
Grantees:	State of Hawaii Agribusiness Development Corporation 235 South Beretania Street, Room 205 Honolulu, HI 96813 United States of America, Commodity Credit Corp. c/o State Conservationist U.S. Dept. of Agriculture Natural Resources Conservation Service 300 Ala Moana Blvd., Honolulu, HI 96850	(hereinafter "ADC") (hereinafter "NRCS") (ADC & NRCS are collectively "Holders")

RECITALS

I. **Identification of the Property and the Ownership Interests of HARC and Pioneer**

HARC and Pioneer are tenants in common, each with undivided interests in Lot 16246, shown on Map 1276, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069, situate at Honouliuli, Ewa, City and County of Honolulu, State of Hawaii, consisting of 389.768 acres, more or less, and bearing tax key designation (1) 9-2-1-11 ("Lot 16246").

Pursuant to a co-tenancy agreement, HARC controls and possesses a portion of Lot 16246, which consists of approximately 108.217 acres of land, which shall be encumbered by this Easement, further described in Exhibit "A," attached hereto, hereinafter referred to as "the Property."

HARC and Pioneer are participating in subdividing their interests in Lot 16246 so that the Property will become owned solely and exclusively by HARC. However, final subdivision approval has not occurred at the time of the granting of this Easement.

Pioneer has agreed to be a co-grantor of this Easement for the purpose of encumbering the Property with the covenants, restrictions and prohibitions set forth herein.

II. **Description of the Property and Surroundings**

- A. *NRCS Agricultural Lands of Importance.* As determined by a soil survey conducted by the U.S. Department of Agriculture Natural Resources Conservation Service ("NRCS"), which survey is part of the "Baseline

Documents” (defined in Section A of this Easement), a majority of the 108-acre Property is considered to be either “Prime Farmland” or “Unique Farmland” (both defined in Section A).

- B. *Property Location.* The Property is located in an area commonly referred to as Kunia in the south central portion of Oahu, approximately 22 miles driving distance from Honolulu. Royal Kunia and Waipahu are to the east and southeast of the Property and Ewa and Kapolei are to the south and southwest. Makakilo is to the west and central Oahu is to the north.
- C. *General Property Description.* The topography of the Property is predominantly gently sloping in a *makai* (ocean), or southerly direction, but with some steeply sloping portions. Elevation ranges from approximately 225 feet to 335 feet above sea level. There are more than 85 acres of Prime and Unique Farmlands as identified by the NRCS in the soil survey, referred to above. The Property is irrigated by surface water from a ditch system managed by the Agribusiness Development Corporation, a quasi-state organization formed to facilitate the conversion of lands formerly in large scale corporate farming to smaller diversified operations. Current crops in these fields include papaya, coffee, cacao, corn and sugarcane. Some land of lesser soil quality (located predominantly in the center of the Property) provides natural drainage for the Property or is the site of existing improvements and structures including: irrigation lines; a multipurpose agricultural building for minor sorting, processing, and other agriculturally related activities, including engineering and testing; equipment, tool and vehicle storage and maintenance sheds, chemical storage and workshop sheds; a farm house and field office; and dirt or paved roads used to access the fields and improvements. The structures all lie within “Farm Building Envelope Two,” shown in Exhibit **C** attached hereto and incorporated herein by reference.
- D. *History of Land Uses on the Property and Surrounding Areas.* Until recently, Campbell Estate was the owner of this Property as well as several thousand acres of adjacent farm lands in the Kunia plain. These lands were used historically for sugar cane and pineapple cultivation but more recently for vegetable production and seed crops.
- E. *Activities and Mission of Owner (HARC).* Hawaii Agriculture Research Center is a 112 year old private organization that is engaged in the production of coffee, cacao, vegetable crops, tropical fruits, sugarcane, hardwoods and many other diversified crops. Its mission is to maintain, improve, and advance agricultural production and to support the development of a diverse agricultural sector in general.
- F. *Nearby Properties and Development.* The Property, which is bordered by two major thoroughfares (H-1 Freeway and Kunia Road) is on the fringe of urban development to the southwest, south, and southeast. Directly east of the property across Kunia Road is Village Park, one of the first residential subdivisions built above the H-1 freeway on former sugarcane land. It has almost 2800 homes and approximately 9,600 residents. A major 3,750-home

development called Royal Kunia is underway directly northeast of the Property. Further to the south and southeast is Waipahu Town, which is a former sugar mill town but now a census-designated place and designated for revitalization. There are approximately 8,000 homes and 33,000 people in this older community. Village Park, Royal Kunia and Waipahu town are all included in the Central Oahu Sustainable Communities Plan which sets an urban/agricultural boundary. The Property demarks the end of the urban fringe and the beginning of the agricultural designated lands. The land to the south and southwest is part of the Ewa Development Plan which also recognizes this urban growth boundary. The Ewa Plan includes the designated Secondary Urban Center for Oahu, Kapolei which is undergoing tremendous growth. Kapolei is a 32,000 acre development that already has about 26,000 homes and 84,000 residents and is continuing to grow.

III. Land Use, Environmental and Right-to-Farm Policies and Laws

- A. *Hawai'i State Land Use District.* The Property is located within the "Agricultural" State Land Use District, as defined by Hawai'i Revised Statutes ("HRS") Chapter 205. HRS section 205-4.5 (supp. 2005) delineates uses on Agricultural lands based on the Hawai'i Land Study Bureau's Detailed land Classification, which provides "overall (master) productivity rating" for soils ranging from class A or B (best soils) to soils classified as C, D, E, or U. Uses permitted *of right* (without requiring discretionary approval) *for class A or B soils include the following generalized uses:* (1) cultivation of various crops, including orchards, forage, and timber; (2) game and fish propagation; (3) raising of various kinds of livestock; (4) farm structures, such as farm dwellings, employee housing, and farm buildings; (5) public buildings necessary for agriculture; (6) public and private open area types of recreational uses, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps; (7) public and private utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks and related water infrastructure; (8) retention and maintenance of historic buildings and sites; (9) roadside stands for the sale of agricultural products grown on the premises; (10) buildings and uses that are considered directly accessory to the above uses, including mills, storage, and processing facilities, maintenance facilities, vehicle and equipment storage areas; (11) agricultural parks; (12) agricultural tourism conducted on a working farm or farming operation; and (13) wind energy facilities and associated improvements, provided it is compatible with agriculture uses and causes minimal adverse impact on the agricultural land. HRS Chapter 205 also permits Agricultural lands to be subdivided into one-acre lots, unless county zoning is more restrictive.
- B. *Hawai'i Coastal Zone Management Act.* The Property is not located within the Special Management Area, as defined by the Hawai'i Coastal Zone Management Act ("CZMA"), HRS Chapter 205A.
- C. *County of Oahu General Plan.* The Oahu Community Plan establishes the objective of maintaining the viability of agriculture on Oahu. The Plan identifies eight policies to carry out the objective: (1) Assist the agricultural industry to

ensure the continuation of agriculture as an important source of income and employment; (2) support agricultural diversification in all agricultural areas on Oahu; (3) support the development of markets for local products, particularly those with the potential for economic growth; (4) provide sufficient agricultural land in Ewa, Central Oahu, and the North Shore to encourage the continuation of sugar and pineapple as viable industries; (5) maintain agricultural land along the Windward, North Shore, and Waianae coasts for truck farming, flower growing, aquaculture, livestock production, and other types of diversified agriculture; (6) encourage the more intensive use of productive agricultural land; (7) encourage the use of more efficient production practices by agriculture, including the efficient use of water; and (8) encourage the more efficient use of non-potable water for agricultural use.

- D. *Community Plan for Central Oahu.* The vision for Central Oahu, according to the Community Plan for Central Oahu, includes the protection of agricultural and preservation areas. Of relevance to this Easement: "Urban growth will be contained within a boundary which will protect prime agricultural lands along Kunia Road, north of Wahiawa, surrounding Mililani, and on the Waipio Peninsula for diversified agriculture and pineapple. Preservation of these prime and unique agricultural lands for use in diversified agriculture and pineapple will help retain open space and views, in addition to supporting economic diversification." The Community Plan notes: "The State Department of Agriculture's November 1977 study, Agricultural Lands of Importance to the State of Hawaii (Revised) (ALISH) . . . identifies the former sugar lands along Kunia . . . as 'prime' agricultural lands which generally produce the largest yields and the best quality crops for the least expenditure of energy." The Community Plan explains: "By protecting agricultural lands from urban development, an opportunity is created for long-term retention and development of diversified agriculture on small farms, corporate lands, and agricultural parks." Among the guidelines identified in the Community Plan for agriculture are the following: (1) facilities necessary to support intensive cultivation of arable agricultural lands should be permitted; (2) facilities to support limited outdoor recreation use, such as camping, horseback riding hiking, should be permitted in areas where agricultural use is not feasible; (3) residential use should be permitted only to the extent that it is accessory to the agricultural use; (4) where several dwellings are planned as part of an agricultural use, they should be sited and clustered to avoid the use of more productive agricultural lands and to reduce infrastructure costs; (5) buildings and other facilities that are accessory to an agricultural operation should be designed and located to minimize impact on nearby urban areas and roadways.
- E. *County Zoning.* The Property is zoned "AG-1" "Agriculture Restricted" under the Honolulu Land Use Ordinance ("LUO"). Section 21-3.50 of the LUO provides: "The purpose of the [Honolulu] agricultural districts is to maintain a strong agricultural economic base, to prevent unnecessary conflicts among incompatible uses, to minimize the cost of providing public improvements and services and to manage the rate and location of physical development consistent with the city's adopted land use policies. To promote the viability and economic feasibility of an

existing agricultural operation, accessory agribusiness activities may be permitted on the same site as an adjunct to agricultural uses. These accessory activities must be compatible with the on-site agricultural operation and surrounding land uses.” Section 21-3.50(b) of the LUO, which addresses uses on lands zoned A-1, provides: “The intent of the AG-1 restricted agricultural district is to conserve and protect important agricultural lands for the performance of agricultural functions by permitting only those uses which perpetuate the retention of these lands in the production of food, feed, forage, fiber crops and horticultural plants. Only accessory agribusiness activities which meet the above intent shall be permitted in this district.” The Master Use Table of the LUO provides for the following permitted uses in the AG-1 districts: aquaculture, crop production, forestry, open land, livestock grazing, minor livestock production, livestock veterinary services, and public uses and structures. Subject to meeting specific use development standards, set forth in the LUO, other uses are permitted in the AG-1 district, including the following: minor agricultural products processing, centralized storage of agriculture products, minor composting, agricultural machinery sales and service, sawmills, seed, feed and fertilizer storage, major livestock production, farm dwellings, and certain utility installations. Upon meeting certain requirements, section 21-3.50-1, 2 and 3 of the LUO permits the clustering of farm dwellings, including detached, duplex or multifamily farm dwellings to “promote economy of services and utilities and the most efficient use of the remainder area for agricultural pursuits.”

IV. Intent to Protect Agricultural Values of Property

- A. The Property possesses significant values worthy of being conserved, specifically productive agricultural lands (including Prime Farmland and Unique Farmland) (collectively, the “Agricultural Values”). A more specific description of the Agricultural Values is included in the Baseline Documentation.
- B. The land use, environmental and farming policies and laws designations referenced above in the Recitals are not sufficiently restrictive to protect the Agricultural Values of the Property, including the above policies and laws do not prohibit subdivision of the land and construction of dwellings or other non-agricultural use structures. An appraisal of the Property conducted in 2006 states that in its unrestricted state, the Property’s highest and best use is not traditional agriculture but instead as an agricultural estate or urban uses.
- C. Owner believes that with the intelligent and careful use of a conservation easement, the agricultural resources and other Agricultural Values of the Property can be protected in a manner that also permits continuing private ownership of land and the continued use and enjoyment of the Property by Owner.
- D. Owner and Holders have applied for and been awarded funding to pay for part of the fair market value of the development rights to be conveyed by this Easement. Matching funding was awarded to Owner and ADC by the Hawai`i Department of Land and Natural Resources (“DLNR”) from the Legacy Land Conservation Program. This program provides funding for unique and fragile places and

resources in the State of Hawai'i, including, among other things, agricultural production areas. In addition, Owners and ADC been awarded funding under the Farm and Ranch Lands Protection Program ("FRPP"), 16 U.S.C. 3838h-3838i. The purpose of the FRPP is to purchase conservation easements on land with prime, unique, or other productive soil for the purpose of protecting topsoil from conversion to nonagricultural uses. FRPP is administered by the NRCS on behalf of the Secretary of the United States Department of Agriculture.

- E. Owner intends, as owner of the Property, to convey to Holders the right to preserve and protect the Agricultural Values of the Property in perpetuity and represents that the Property is free and clear of all encumbrances except those identified in Exhibit **B**, attached to this Easement.
- F. Hawai'i Revised Statutes ("HRS") Chapter 198 provides that public bodies, such as ADC and NRCS may acquire and hold conservation easements by purchase, agreement, donation, devise, or bequest.
- G. Owner and Holders recognize the agricultural and special character of the Property, and have the common purpose of the conservation and protection in perpetuity of the Property through the use of restrictions on the Property, including transfer from Owner to Holders of affirmative rights for the protection of the Agricultural Values of the Property.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, as well as good and valuable monetary consideration, the receipt and sufficiency which is acknowledged by the Owner, and pursuant the laws of the State of Hawai'i, including HRS 198, Owner hereby voluntarily grants and conveys to Holders and its successors and permitted assigns this Easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth. Owner declares that the Property shall be held, mortgaged, encumbered, transferred, sold, conveyed, used, and occupied subject to the covenants, conditions, restrictions, and easements hereinafter set forth, which covenants, conditions, restrictions, and easements shall be deemed to run with the land in perpetuity and to burden the Property in perpetuity.

COVENANTS AND RESTRICTIONS

A. Definitions

The definitions below shall have the same meaning as the reference source, where provided, and in all other cases, shall be given their natural, commonly accepted definitions.

1. "*Agriculture Facilities Lease*" means a lease for agriculture-related activities of a structure or a portion of a structure located within Farm Building Envelope One or Two.
2. "*Agriculture Land Lease*" means a lease of a portion of the Farming Area where (a) the principal use of the leased land is agriculture, and (b) no permanent or temporary dwellings or farm dwellings, including trailers and campers, are constructed on the leased area; however, this restriction shall not prohibit the

construction of other farm structures appropriate to the agricultural activity carried on within the leased premises, if otherwise permitted in this Easement.

3. *"Agricultural Values"* means the values of the Property to be preserved in perpetuity, which values are identified in Section I.1 of the Recitals.
4. *"Approval by Holders"* is required prior to some Owner actions, as identified in this Easement. The Approval process is set forth in Section I.1.
5. *"Baseline Documents"* means the documents, including maps, photographs and assessments of the agricultural resources, which documents provide an accurate description of the condition of the Property and its agricultural resources on the effective date of this Easement, and which documents are on file with the Holders.
6. *"CFR"* means the Code of Federal Regulations.
7. *"The Code"* means the Internal Revenue Code of 1986, as now enacted or hereinafter amended, and the regulations thereunder.
8. *"Conservation Plan"* means a plan prepared by NRCS in partnership with the Owner to establish agriculture management protocols for the Property.
9. *"County"* means the City and County of Honolulu.
10. *"Environmental Law" or "Environmental Laws"* means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.
11. *"Family"* means one or more persons, all related by blood, adoption or marriage, occupying a Farm Dwelling. A family also includes no more than two unrelated persons living together as a single housekeeping unit.
12. *"Farming Area"* means all portions of the Property which are not part of Farm Building Envelopes One or Two, identified in this Easement.
13. *"Farm Building Envelope One"* means the area of approximately 5.2 acres in size, identified in Exhibit C, within which dwellings are prohibited but other farm structures are permitted, subject to the provisions set forth in Section E.
14. *"Farm Building Envelope Two"* means the area of approximately 3.5 acres in size, identified in Exhibit C, within which certain farm dwellings and other farm structures are permitted, subject to the provisions in Section E.
15. *Farm Dwelling* means a room or rooms connected together, constituting an independent housekeeping unit for a Family and containing a single kitchen, and the dwelling is used in connection with farm activities on the Property, and the

farm activities provide full-time, non-seasonal, employment to at least one of the adult residents of the Farm Dwelling.

16. "*Floor area*" means the same as the definition set forth in section 21-10.1 of the LUO on the effective date of this Easement, namely, the area of all floors of a structure excluding unroofed areas, measured from the exterior faces of the exterior walls or from the center line of party walls dividing a structure. The floor area of a structure, or portion thereof, which is not enclosed by exterior walls shall be the area under the covering, roof or floor above which is supported by posts, columns, partial walls, or similar structural members which define the wall line.
17. "*FOTG*" means the Field Office Technical Guide, the official document for NRCS guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. The FOTG contains detailed information on the conservation of soil, water, air, plant and animal resources applicable to the local area for which it is prepared.
18. "*Owner*" - "*Holders*". The terms "Owner" and "Holders," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include, respectively: HARC, its representatives, successors, and assigns; ADC, its representatives, successors and assigns; and, NRCS, its representatives, successors and assigns.
19. "*Hazardous Materials*" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.
20. "*HRS*" means Hawai'i Revised Statutes.
21. "*HRS Chapter 198*" means the Hawai'i law governing conservation easements in Hawai'i, currently codified at Chapter 198 of the HRS, or as hereinafter amended, or any successor provision(s) hereinafter applicable.
22. "*Impervious Surfaces*" means the area of the Property covered by non-seasonal, permanent roof tops, concrete or asphalt, including residential buildings, agricultural buildings (with and without flooring), and paved areas both within and without Farm Building Envelope One or Two (NRCS Guidance Manual § 519.64(H)).
23. "*LUO*" means the Land Use Ordinance for the City and County of Honolulu in effect on the effective date of this Easement.
24. "*NRCS*" means the Natural Resources Conservation Service, an agency of the U.S. Department of Agriculture delegated the task of managing the provisions of the FRPP or such other agency delegated that duty in the future.

25. *"Prime Farmland"* means land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, without intolerable soil erosion (7 CFR § 1491.3).
26. *"Purpose"* means the purpose of this Easement as defined in Section .
27. *"State"* means the State of Hawai'i.
28. *"Unique Farmland"* means land other than prime farmland that is used for the production of specific high-value food and fiber crops. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods (7 CFR § 1491.3).
29. *"Water Rights"* means and includes any and all water and water rights, ditches and ditch rights, springs and spring rights, reservoir and storage rights, wells and groundwater rights, and other rights in and to the use of water historically used on or otherwise appurtenant to the Property.

B. Purpose

The Purpose of this Easement is to protect the agricultural soils, agricultural viability, and agricultural productivity of the Property, and the other Agricultural Values identified in Section IV.A of the Recitals in perpetuity. No activity which significantly impairs the actual or potential use of the Property for agricultural production shall be permitted, and protection and preservation of agricultural production shall be given first priority in this Easement. To the extent that the preservation and protection of the other Agricultural Values of the Property referenced above may be accomplished without impairing the primary purpose of protecting the agricultural soils, agricultural viability, and agricultural productivity of the Property in perpetuity, it is also the purpose of this Easement to protect those other Agricultural Values of the Property, and to such extent, no activity which shall significantly impair those additional Agricultural Values of the Property shall be permitted.

C. Rights of Owner

Except as prohibited or restricted by the provisions in Sections D, E, F and G, Owner reserves all customary rights and privileges of ownership, not granted to Holders including, but not limited to, the following:

1. *Alienation*. The right to sell, lease, and devise the Property; and also the right to lease less than all of the Property, as long as such lease constitutes an Agriculture Land Lease or Agriculture Facilities Lease;
2. *Privacy and Quiet Enjoyment*. The right of privacy and the right to deny access to other persons, except as provided by law or as expressly permitted to Holders in this Easement;
3. *Guests and Invitees*. The right to permit or invite others to engage in, any use of, or activity on, the Property permitted by this Easement and not inconsistent with the Purpose of this Easement;

4. *Agricultural Use.* Except as expressly prohibited or restricted by the provisions in Sections D, E, F or G, the right to use the Property for all Agricultural Activities and Agricultural Production that comply with federal, state and local regulations and do not significantly impact or degrade the Agricultural Values of the Property;
5. *Utility Services and Septic Systems.* Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services to the improvements permitted herein may be installed, maintained, repaired, removed, relocated and replaced, and, subject to the restrictions in F.3, Owner may grant easements over and under the Property for such purposes. Septic or other underground sanitary systems serving the improvements permitted herein may be installed, maintained, repaired or improved.
6. *Other Rights.* Any other rights consistent with the Statement of Purpose set forth in Section B above and not specifically prohibited or limited by this Easement.
7. *Access.* No right of access to any portion of the Property is conveyed by this Easement, except where expressly provided herein.
8. *Affirmative Obligations.* Unless otherwise specified below, nothing in this Easement shall require Owner to take any action to restore the condition of the Property after any act of God or other event over which Owner had no control or no ability to foresee.

D. Permitted Agricultural Activities Subject to Conditions

The following agricultural activities and uses are permitted within the Farming Area and Farm Building Envelope One or Two on the Property and do not require Approval by Holders. No notice to Holders is required regarding initiating or conducting any reserved rights identified below:

1. *Cultivation.* Cultivation, harvesting and rotation of crops, including but not limited to silviculture, horticulture, forestry and other types of agricultural crop cultivation; provided a Conservation Plan is currently in effect for the Property and Owner's current agricultural activities are consistent with this Conservation Plan. Prior to conducting any change in the current farming activities on the Property, Owner shall consult with NRCS to determine whether a new or revised Conservation Plan is necessary. Owner's agricultural activities shall be conducted consistent with any Conservation Plan in effect for the Property.
2. *Animal Husbandry.* Propagation of, raising of, and grazing of, livestock, including but not limited to game, poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use, provided such activities are conducted pursuant to and consistent with a Conservation Plan approved by NRCS.
3. *Fences and Irrigation Systems.* The right to construct and maintain fences and irrigation transmission systems, including pipes, filtration systems, and related irrigation components (however, not including reservoirs or water tanks with footprints greater than 200 square feet, which require approval pursuant to

Section F.1), within the Farming Area; provided that their design and location shall not impair the Agricultural Values of the Property or be contrary to the Purpose of this Easement.

4. *Access to Farming Activities and Building Envelopes.* Subject to the Impervious Surfaces limitations set forth in Section G.1, and as required by the County, but not for the purpose of Subdivision, which is prohibited by this Easement, the right to establish reasonable rights-of-way, including providing roadway and utility access, to permitted farm dwellings or farm structures, and crops or growing areas on the Property, and to cut trees, grass, and other vegetation to provide such access and rights-of-way. Roadway or utility improvements made under the provisions of this provision shall be done in a manner so as to create the least possible disturbance to the Agricultural Values of the Property (for example, by creating access along unpaved roads), and in no event shall such improvements be greater than those imposed by governmental requirements and/or consents.
5. *Maintenance and Improvement of Water Sources.* The right to use and maintain, and subject to approval by NRCS, the right to establish, construct, and improve -- water sources, water courses and water bodies within the Property for the uses permitted by this Easement. However, the construction of reservoirs shall be permitted only with the Approval of Holders (see Section F.4).
6. *Chemical Applications.* Subject to all applicable labeling requirements and laws, agricultural chemicals may be applied to the Property for bonafide agricultural purposes provided that the application of such chemicals does not significantly impact or degrade the Agricultural Values of the Property.
7. *Education and Recreation.* The right to undertake educational activities and related recreational activities, such as inviting groups to the Property for interpretive walks, provided that such activities do not require the construction of structures and are conducted in a manner and intensity that does not adversely impact the Agricultural Values of the Property and the Purpose of this Easement or otherwise impact any protected soils.
8. *Motorized Recreational Vehicles.* Motorized recreational vehicles, such as motorcycles and all terrain vehicles are permitted within the Farming Area; provided they are used to conduct the agricultural activities permitted by this Easement, and the use of such vehicles will not significantly impact any of the Agricultural Values of the Property. Motorized recreational vehicle use within the Farming Area for other purposes is prohibited.

E. Permitted Uses within Building Envelopes Subject to Conditions

The following activities and uses, which do not require Approval by Holders, are permitted within Farm Building Envelope One and Two, subject to the limitations in this Section. No notice to Holders is required regarding initiating or conducting activities within either of the Building Envelopes with respect to the reserved rights identified below:

1. *Farm Structures.* Subject to the Impervious Surfaces limitations set forth in Section G.1, the right to construct, repair, remodel, maintain, and use in Farm Building Envelope One or Two structures that are in furtherance of, and reasonably necessary in connection with, the agricultural activities on the Property including, but not limited to: ponds; water and fuel tanks; water transmission lines; irrigation systems; barns; vehicle, tool and equipment storage areas; workshops; stables; greenhouses; hothouses; shadehouses; storage, processing, product development and engineering facilities and related supporting offices and meeting rooms; mills; and maintenance facilities.
2. *Farm Dwellings.* Subject to the restrictions set forth in this subsection, the Impervious Surfaces limitations set forth in Section G.1, and state and county law, the right to construct, repair, remodel, maintain, and use in Farm Building Envelope Two not more than four (4) Farm Dwellings, subject to the following terms:
 - a. The Farm Dwellings may be detached from each other or may be built as duplexes or triplexes, or as one quadraplex.
 - b. No Farm Dwelling (whether single, detached, or as part of a multi-unit structure) shall have a Floor Area greater than 1,400 square feet.
3. *Farm Dorm.* Subject to the conditions and restrictions set forth in this subsection, the Impervious Surfaces limitations set forth in Section G.1, and state and county law, the right to construct, repair, remodel, maintain, and use in Farm Building Envelope Two one (1) farm dorm, subject to the following terms:
 - a. Similar to the agricultural use limitations for Farm Dwellings (see Section A.15), the dorm shall be connected to the farm activities on the Property and shall provide rooms for not more than ten (10) farm workers who shall be employed full-time in non-seasonal work from the farm activities on the Property;
 - b. Subject to state or county law, one or several kitchen or bathrooms may be shared in common among the farm dorm residents.
4. *Accessory Structures and Improvements.* Subject to the Impervious Surfaces limitations set forth in Section G.1, the right to construct, repair, remodel, maintain, and use in Farm Building Envelope One or Two accessory structures and improvements that are customarily appurtenant to comparable farm dwellings or farm utility structures on the island of Oahu, including, but not limited to, personal, non-commercial recreational facilities, garages, barns, stables, paddocks, storage sheds, catchments systems, septic tanks and leach fields, wind towers, transmitter towers; solar panels, and other buildings and facilities ordinarily associated with the uses permitted under this Easement, and also including, to the extent permitted by law.

F. Activities and Uses Requiring Holders' Approval

The following agricultural activities and uses are permitted on the Property only upon receiving Approval by Holders pursuant to the approval procedures set forth in Section I.1:

1. *Farm Structures within the Farming Area.* Subject to Approval by Holders pursuant to Section I.1, and subject to the impervious surface limits set forth in Section G.1, Owner may construct, maintain and use in the Farming Area structures directly needed for agricultural activities, such as water tanks for cattle or irrigation purposes, greenhouses and shadehouses. Excepted from approval are those structures, such as fences and irrigation transmission systems, identified in Section D.3 of this Easement.
2. *Supplemental Activities.* Upon Approval by Holders pursuant to Section I.1, and subject to the impervious surfaces limitations in G.1, other activities and uses, which are secondary to the cultivation and animal husbandry activities identified in Sections D.1 and D.2 of this Easement, but which afford Grantor supplemental financial or other opportunities, and which may assist in assuring the economic viability of the primary cultivation and animal husbandry activities, may be permitted, or which further the agricultural mission of the Property.
3. *Easements and Dedications.* Upon Approval by Holders pursuant to Section 1, Owner may grant or convey easements or make dedications of land as set forth below, and grant the right to improve and maintain such easements, including, subject to the Impervious Surfaces limitations set forth in Section I.1, grant the right to harden or permit the hardening of surface areas:
 - a. Easements to governmental agencies or utility providers for the installation, maintenance, repair and replacement of underground utility services;
 - b. Dedication of portions of the Property fronting the existing Kunia Road to the State or County as may be required by law;
 - c. Easements to adjoining lands for drainage easements which may be required by the County.
4. *Miscellaneous.* Subject to Approval by Holders pursuant to I.1, the following are permitted:
 - a. Ponds and reservoirs; however, for the purposes of this Easement, ponds and reservoirs shall be subject to the Impervious Surface limitations set forth in Section G.1;
 - b. Feedlots, upon first obtaining approval by NRCS to a comprehensive nutrient management plan for the proposed feedlots.

G. Prohibitions and Other Restrictions

The following activities and uses are prohibited or restricted unless an exception is expressly provided:

1. *Impervious Surfaces.* The aggregate impervious surfaces on the Property shall not exceed 6% (six percent) of the Property area, except that conservation practices listed in the FOTG and approved by NRCS are exempt from this impervious cover limitation.
2. *Subdivision.* The legal or “de facto” division, subdivision or partitioning of any of the Property; provided, Owner may lease portions of the Property if the lease

constitutes an Agriculture Land Lease or Agriculture Facilities Lease, as defined in Section A.1; and provided further, HARC and Pioneer may subdivide the Property in its entirety as shown in Exhibit "A" from the remainder Lot 16246.

3. *Uses and Activities Inconsistent with the Purpose of the Easement.* Any use of, or activity on, the Property inconsistent with the Purpose of this Easement is prohibited, and Owner acknowledges and agrees that it will not conduct, engage in, or permit any such use or activity. Without limiting the generality of the foregoing, the following uses of, or activities on, the Property, though not an exhaustive list of inconsistent uses or activities, are inconsistent with the purposes of this Easement and shall be prohibited, except where expressly reserved as unconditional or conditional rights of Owner, as established in Sections C, D, E and F of this Easement:
 - a. *Alteration of Land.* The alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, rock, peat, or sod, except for the alteration of land to carry out the construction or maintenance of permitted structures or improvements within the Farming Area or either Farm Building Envelope One or Two, or agricultural activities permitted by this Easement or otherwise conducted pursuant to a Conservation Plan;
 - b. *Erosion or Water Pollution.* Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters;
 - c. *Waste Disposal.* The disposal or storage of rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or hazardous waste or material on the Property;
 - d. *Mining.* The exploration for, or development and extraction of, minerals and hydrocarbons on, below or through the surface of the Property; and
 - e. *Water Rights.* Owner shall not transfer, encumber, sell, lease or otherwise separate any Water Rights for the Property or change the historic use of the Water Rights without the Approval by Holders. Owner shall not abandon or allow the abandonment of, by action or inaction, any of the Water Rights without Approval by Holders pursuant to Section I.1.

H. Affirmative Rights Conveyed to Holders

To accomplish the Purpose of this Easement the following rights are conveyed to Holders:

1. *Protection.* Holders have the right to preserve and protect in perpetuity, to prevent any use of, or activity on, the Property that will significantly impair or interfere with the Agricultural Values of the Property, and to enhance by mutual agreement the Agricultural Values of the Property.
2. *Access.* Holders or their agents have the right to enter the Property at least annually, or more frequently if a violation is suspected, at a reasonable time and upon prior notice to Owner, for the purpose of making inspections to monitor

compliance with this Easement and for enforcement purposes as set forth below:

- a. *Annual Monitoring.* Holders or their agents shall have the right to enter the Property at least once annually to inspect the Property for consistency with this Easement. Holders shall make reasonable efforts to establish a mutually agreeable time for the annual monitoring visit but under no circumstances shall Holders provide less than forty-eight hours notice of their intent to inspect the Property for annual monitoring purposes. Such entry shall not in any case unreasonably interfere with Owner's allowed uses and quiet enjoyment of the Property.
 - b. *Emergency Entry.* If Holders, in their sole discretion, determine that circumstances require immediate action to prevent or mitigate significant damage to the Agricultural Values of the Property, Holders may enter the Property for the purpose of inspection, without prior notice to Owner or without waiting for the period provided for cure to expire; provided, that Holders shall first make a reasonable attempt under the circumstances to give verbal/telephone notice to Owner of the violation and proposed action.
3. *Enforcement.* Holders have the right to enforce this Easement and the covenants and restrictions herein, including, but not limited to, the right to enjoin any use of, or activity on, the Property that is inconsistent with the Purpose of this Easement, and to require the restoration of such areas or features of the Property as may be damaged by uses or activities inconsistent with the provisions of this Easement. Holders at their sole discretion may also engage in alternative dispute resolution methods with Owner, such as mediation, subject to the parties' agreement on the terms of such alternative dispute resolution methods.
 - a. *Notice of Violation, Corrective Action.* If Holders determine that the Owner is in violation of the terms of this Easement or that a violation is threatened, Holders shall give written notice to Owner of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Holders.
 - b. *Owner's Failure to Respond.* Holders may bring an action as provided in this Section H.3 if Owner:
 - i. Fails to cure the violation within thirty (30) days after receipt of notice thereof from Holders;
 - ii. Under circumstances where the violation cannot reasonably be cured within the thirty (30) day period, fails to begin curing such violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.
4. *Remedies; Damages*

Holders' rights and remedies identified in this Section apply equally in the event of either actual or threatened violations of the terms of this Easement and shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

- a. *Injunctive Relief.* Holders may bring an action at law or in equity to enforce the terms of this Easement:
 - i. To enjoin the violation, ex parte as necessary, by temporary or permanent injunction; and
 - ii. To require the restoration of the Property to the condition that existed prior to any such injury.
- b. *Damages.* Holders shall be entitled to recover damages for violation of the terms of this Easement or injury to any Agricultural Value protected by this Easement to the extent such damages may be ascertained. Without limiting Owner's liability in any way, Holders, in their sole discretion, may apply any damages recovered to the cost of undertaking corrective or restoration action on the Property. Owner is barred from using this provision regarding damages as an affirmative defense against Holders' rights to injunctive relief.
- c. *No Bond Required.* Any action for injunctive relief or damages may be taken without Holders being required to post bond or provide other security.
- d. *Costs of Enforcement.* All reasonable costs incurred by Holders in enforcing the terms of this Easement against Owner, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Owners' violation of the terms of this Easement, shall be borne by Owner; provided, however, that if Owner prevails in a judicial enforcement action, each party shall bear its own costs.
5. *Holders' Forbearance.* Forbearance by Holders to exercise their rights under this Easement in the event of any breach of any terms of this Easement by Owner, its agents, employees, contractors, invitees or licensees shall not be deemed or construed to be a waiver by Holders of such term or any Holders' rights under this Easement. No delay or omission by Holders in the exercise of any right or remedy upon any breach by Owner shall impair such right or remedy or be construed as a waiver.
6. *Waiver of Certain Defenses.* Owner acknowledges that it has carefully reviewed this Easement and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Owner hereby waives any claim or defense it may have against Holders in interest under or pertaining to this Easement based upon waiver, laches, estoppel, or prescription.
7. *Acts Beyond Owner's Control; Emergency Conditions.* Nothing contained in this Easement shall be construed to entitle Holders to bring any action against Owner to abate, correct, or restore any condition on the Property or to recover damages for any injury to or change in the Property resulting from causes beyond Owner's control, including, without limitation, fire, flood, storm, and earth

movement, or for acts of trespassers, that Owner could not reasonably have anticipated or prevented, or from any prudent action taken by Owner under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes or to protect bonafide public health or safety in an emergency situation.

8. *Rights of the United States of America.* Under this Easement, the same rights are granted to the United States that are granted to Local Grantee. However, the Secretary of the United States Department of Agriculture (the Secretary), on behalf of the United States, will only exercise these rights under the following circumstances: In the event that Local Grantee fails to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary, the Secretary and his or her successors or assigns may exercise the United States' rights to enforce the terms of this Conservation Easement through any and all authorities available under Federal or State law. In the event that Local Grantee attempts to terminate, transfer or otherwise divest itself of any rights, title, or interests in this Conservation Easement without the prior consent of the Secretary and, if applicable, payment of consideration to the United States, then, at the option of the Secretary, all right, title, and interest in this Conservation Easement shall become vested solely in the United States of America.

I. Notice; Approval; Breach; Compliance Certificates

1. *Approval by Holders.* Prior to pursuing or engaging in the activities identified in Section F of this Easement, Owner shall follow the procedures set forth in this Section 1.
 - a. *Approval Procedures.* Owner shall request approval from Holders in writing. The request for approval shall describe the nature, scope, location, timetable, identify its conformity with this Easement, and, when applicable, evidence conformity with existing land use regulations, and any other material aspect of the proposed activity. Delivery of the request for approval shall be as required by Section I.4. Holders shall have thirty (30) days from receipt of the request in which to approve, disapprove, or approve subject to modification, the request. In the case of withholding of approval, Holders shall notify Owner in writing with reasonable specificity of the reasons for withholding of approval, and the conditions, if any, on which approval might otherwise be given.
 - b. *Standard of Approval.* Holders shall not unreasonably withhold approval of a proposed use or activity requiring approval under Section F where the proposed activity or use will not significantly impact the Agricultural Values and the proposed activity or use is consistent with the Purpose of this Easement. With respect to considering whether a proposed use is consistent with this Easement, Holders shall include in its consideration the uses permitted under HRS Section 205-4.5 and LUO Section 21-3.50, as they may be amended from time to time, or any corollary provisions that are enacted. (Abbreviated descriptions of the current permitted uses under HRS § 205-4.5

and under LUO § 21-3.50 are provided respectively in Section III.A and III.E of this Easement's Recitals.) In addition, Holders should usually permit or approve of proposed activities that are permitted by NRCS or that are consistent with the FOTG.

2. *Breach of Approval Provisions.* Failure to obtain Approval as required in this Section I and its subsections shall be a material breach of this Easement and shall entitle Holders to such rights or remedies as may be available under Section H of this Easement. Notwithstanding the foregoing, Holders may, at their sole option, permit Owner to cure the breach by submitting after-the-fact communications and documents showing the conformity of such activity with this Easement and with any relevant Federal, State or County laws, or by showing despite lack of conformity with this Easement or the laws, that the action was justified because of an emergency.
3. *Compliance Certificates.* Holders shall, within thirty (30) days of a request by Owner, execute and deliver to Owner, or to any party designated by Owner, any document, including an estoppel certificate, that certifies, to the best of Holders' knowledge, Owner's compliance or lack thereof with any obligation of Owner contained in this Easement and otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Property as of Holders' most recent inspection. If Owner requests more current documentation, Holders shall conduct an inspection, at Owner's expense, within thirty (30) days of receipt of Owner's written request.
4. *Addresses for Notices and Responses.* Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing either served personally or sent by certified mail, return receipt requested, postage prepaid, addressed to as follows:

To HARC:

Hawaii Agriculture Research Center
99-193 Aiea Heights Drive
Suite 300
Aiea, HI 96701

With a copy to:

Tom Pierce
Attorney at Law
A Limited Liability Law Corporation
P.O. Box 798
Makawao, HI 96768

To Holders:

Agribusiness Development Corp.
235 South Beretania Street, Room 205
Honolulu, HI 96813
State Conservationist

U.S. Dept. of Agriculture
Natural Resources Conservation Service
300 Ala Moana Blvd., Honolulu, HI 96850

or to such other address as any of the parties from time to time shall designate by written notices to the other.

5. Time Computation for Receipt of Notice. With respect to any provision of this Easement requiring notice, demand, request, consent, approval, or communication by a date certain, "Receipt of Notice" shall be considered to have occurred upon two days after mailing by first class mail.

J. **Costs, Liabilities and Insurance, Taxes, Environmental Compliance and Indemnification.**

1. Costs, Legal Requirements, Liabilities and Insurance. Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of any insurance coverage desired by Owner. Owner and Holders release and relieve the other, and waive their entire right to recover for loss or damage to the extent that the loss or damage is covered by proceeds of the injured party's insurance. This waiver applies whether or not the loss is due to the negligent acts or omissions of Owner or Holders. Owner remains solely responsible for obtaining any applicable governmental permits and approval for any activity or use permitted by this Easement, and any such activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. This provision I.1. shall not apply to the United States.
2. Taxes. Owner shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Holders with satisfactory evidence of payment upon request. If Owner fails to pay any Taxes when due, Holders are authorized, but in no event obligated, to make or advance such payment of Taxes upon three (3) days prior written notice to Owner, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the Taxes or the accuracy of the bill, statement or estimate, and the obligation created by such payment shall bear interest until paid by Owner at the maximum rate allowed by law.
3. Environmental Warranty and Remediation.
 - a. Owner warrants that it is in compliance with and shall remain in compliance with, all applicable Environmental Laws. Owner warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property. Owner warrants that it has no actual knowledge of a release or threatened

release of any Hazardous Materials on, at, beneath or from the Property exceeding regulatory limits.

- b. Owner promises to indemnify and hold harmless Holders against all costs, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws by Owner or any other prior owner of the Property. Owner's indemnification obligation shall not be affected by any authorizations provided by Holders to Owner with respect to the Property or any restoration activities carried out by Holders at the Property; provided, however, that Holders shall be responsible for any Hazardous Materials contributed after this date to the Property by Holders.
 - c. If at any time, there occurs, or has occurred, a release in or on the Property of a Hazardous Material, Owner agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Holders.
4. Control. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Holders or the United States to exercise physical or managerial control over the day-to-day operations of the Property, of any of Owner's activities on the Property, or otherwise to become an "operator" with respect to the Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA") or the environmental laws of the State.
5. Hold Harmless. Owner shall hold harmless, defend and indemnify Holders from any and all liabilities, injuries, losses, damages, judgments, costs, expenses of every kind, and fees, including reasonable attorney's fees actually incurred, Holders may suffer or incur as a result of or arising out of the wrongful intentional or negligent act or omission of Owner, Owner's employees, agents, guests, and invitees on the Property. Holders agree to hold harmless, indemnify, and defend Owner from any and all liabilities, injuries, losses, damages, judgments, costs, expenses of every kind, and fees, including reasonable attorney's fees actually incurred, Owner may suffer or incur as a result of or arising out of the wrongful intentional or negligent act or omission of Holders, Holders' employees, agents, guests, and invitees on the Property.

K. Transfer; Amendment; Extinguishment

1. Transfer of Property. Owner agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which Owner transfers any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Owner further agrees to give written notice to Holders and the United States of the proposed transfer of any such interest at least ten (10) days prior to the date of such transfer. The failure of Owner to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way, nor shall such failure in any way be interpreted to void or make voidable the conveyance of any such interest.

2. Limitations on Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Owner and Holders may by written agreement jointly amend this Easement; provided that no amendment shall be made that will adversely affect the qualification of this Easement or the status of Holders under any applicable laws, including Sections 170(h) and 501(c)(3) of the Code and HRS Chapter 198. Any such amendment shall be consistent with the purpose of this Easement, shall not affect its perpetual duration, shall not permit any residences on the Property other than those expressly reserved in this Easement, and shall not permit any impairment of the significant Agricultural Values of the Property. Any such amendment shall be signed and executed by Owner and Holders and filed in the State of Hawai'i Bureau of Conveyances. Nothing in this paragraph shall require Owner or Holders to any amendment or to consult or negotiate regarding any amendment of this Easement.
3. Limitations on Extinguishment. If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether with respect to all or part of the Property, by judicial proceedings in a court of competent jurisdiction. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Property (or any other property received in connection with an exchange or involuntary conversion of the Property) after such termination or extinguishment, and after the satisfaction of prior claims and net of any costs or expenses associated with such sale, Owner and Holders shall divide the proceeds from such sale in accordance with their respective percentage interests in the fair market value of the Property, as such percentage interests are determined under the provisions of Section K.4, adjusted, if necessary, to reflect a partial termination or extinguishment of this Easement. All such proceeds received by Holders shall be used by Holders in a manner consistent with Holders' conservation purposes.
4. Percentage Interests. This Easement constitutes a real property interest immediately vested in the Holders, which, for purposes of this Section K.4, the parties stipulate to have a value determined by multiplying (a) the fair market value of the Property ("FMV") unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by (b) the ratio of the value of the Easement at the time of this grant to the FMV of the Property unencumbered by this Easement at the time of this grant (the "Easement/FMV Ratio"). The parties agree that the Easement/FMV Ratio at the time of this Easement is [redacted] hundredths percent ([redacted]%). The parties agree that the United States' contribution toward the purchase of the Easement is fifty percent (50%) of the appraisal of the value of this Easement, effective [date] [redacted], 2007, prepared by [redacted], approved by NRCS and DLNR (the "Approved Easement Appraisal"); that ADC's contribution toward the purchase of the Easement is [redacted] hundredths percent ([redacted]%) of the Approved Easement Appraisal; and that Owner's contribution towards the easement value is [redacted] hundredths percent ([redacted]%) of the Approved Easement Appraisal. For the purpose of this Section K.4, the Easement/FMV

Ratio shall remain constant at all times in the future, regardless of the change in FMV of the Property or other factors.

5. Condemnation. If all or any part of the Property is proposed to be taken under the power of eminent domain, Owner and Holders shall join in appropriate proceedings at the time of such proposed taking to recover the full value of the interests in the Property subject to the taking and all incidental or direct damages resulting from the taking. All expenses reasonably incurred by the parties to this Easement in connection with such taking shall be paid out of the recovered proceeds. Owner and Holders shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provisions of paragraphs K.3 and K.4 (with respect to the allocation of proceeds). The rights of Owner and Holders set forth in this Section K.5 shall be in addition to, and not in limitation of, any rights they may have at common law.

L. Assignment and Succession

1. Assignment. Subject to the following conditions and with the advance written approval of the other Holder, either of Holders may assign their rights and obligations under this Easement to a qualified organization, as described below,:
 - a. Holders may assign this Easement only to an organization that is at the time of the assignment a qualified organization under Section 170(h) of the Code, and is, in addition, authorized to acquire and hold conservation easements under HRS Chapter 198;
 - b. The assignment shall be subject to the terms of succession referenced in Section L.2 below;
 - c. The Holder assigning its rights shall require the transferee to exercise its rights under the assignment consistent with the Purpose of this Easement;
 - d. The Holder assigning its rights shall obtain Owner's approval of the transferee organization, which approval shall not be unreasonably withheld by Owner.
2. Succession. If at any time it becomes impossible for either of the Holders to ensure compliance with the covenants, terms, conditions and restrictions contained in this Easement and the Holder at issue has not named a successor organization, or if either of the Holders shall cease to exist or to be a qualified organization under Section 170(h) of the Code or to be authorized to acquire and hold conservation easements under HRS Chapter 198, then that Holder's rights and obligations under this Easement shall vest in the other Holder, or in an entity with purposes similar to the Holder's, constituting a "qualified organization" within the meaning of Section 170(h) of the Code; provided that if such vesting in any such entity is deemed to be void under the Rule Against Perpetuities, the rights and obligations under this Easement shall vest in such organization as a court having jurisdiction shall direct, pursuant to the applicable Hawai'i law and the Code, and with due regard to the purposes of this Easement.

M. General Provisions

1. *Reasonableness Standard.* Owner and Holders shall follow a reasonableness standard and shall use their best efforts to make any determinations that are necessary or are contemplated to be made by them (either separately or jointly) under this Easement in a timely manner and shall cooperate with one another and shall take all other reasonable action suitable to that end.
2. *Controlling Law.* The interpretation and performance of this Easement shall be governed by the laws of the State and any applicable federal law.
3. *Liberal Construction.* Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed to fulfill the Purpose of this Easement and the policy and purpose of HRS Chapter 198. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
4. *Severability.* If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.
5. *Entire Agreement.* This instrument sets forth the entire agreement of the parties with respect to the Property and supersedes all prior discussions, negotiations, understandings, or agreements between Owner and Holders relating to the Property, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section K.2.
6. *No Forfeiture.* Nothing contained in this Easement shall result in a forfeiture or reversion of Owner's title in any respect.
7. *Successors and Assigns; Runs with Land.* The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Property.
8. *Termination of Rights and Obligations.* A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
9. *Counterparts.* The parties may execute this instrument in two or more counterparts. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
10. *Effective Date.* Owner and Holders intend that the restrictions arising hereunder shall take effect on the date of this Easement being recorded in the State of

Hawai'i Bureau of Conveyances after all required signatures have been affixed hereto, and after closing of the transaction contemplated in this Easement whereby Owner agrees to the perpetual covenants and restrictions set forth in this Easement in exchange for FRPP funds at the amount agreed to between Owner and Holders.

11. No Merger. Holders agree to take whatever steps are necessary to ensure that merger of the fee and Easement estates does not occur in order to ensure the continued viability of this Easement.

TO HAVE AND TO HOLD, this Conservation Easement from Owner to Holders and their respective successors and assigns forever.

OWNER:

Hawai'i Agricultural Research Center

By: _____
Stephanie A. Whalen
Director and President

By: _____
Blake Vance
Vice President

Pioneer Hi-Bred International, Inc.:

By: _____
Name:
Its:

HOLDERS:

By: _____

Alfredo Lee
Executive Director
Agribusiness Development Corporation

By: _____
Lawrence T. Yamamoto
Director, Pacific Islands Area
Natural Resources Conservation Service

STATE OF HAWAI'I)
) SS.
CITY & COUNTY OF HONOLULU)

On this _____ day of _____, 2007, before me personally appeared **Stephanie A. Whalen**, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

(Signature)

(Print Name)

Notary Public, State of Hawai'i

My Commission expires: _____

STATE OF HAWAI'I)
) SS.
CITY & COUNTY OF HONOLULU)

On this _____ day of _____, 2007, before me personally appeared **Blake Vance**, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

(Signature)

(Print Name)

Notary Public, State of Hawai'i

My Commission expires: _____

STATE OF HAWAII)
) SS.
CITY & COUNTY OF HONOLULU)

On this _____ day of _____, 2007, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

(Signature)

(Print Name)

Notary Public, State of Hawaii

My Commission expires: _____

STATE OF HAWAI'I)
) SS.
CITY & COUNTY OF HONOLULU)

On this _____ day of _____, 2007, before me personally appeared **Alfredo Lee**, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

(Signature)

(Print Name)

Notary Public, State of Hawai'i

My Commission expires: _____

STATE OF HAWAI'I)
) SS.
CITY & COUNTY OF HONOLULU)

On this _____ day of _____, 2007, before me personally appeared **Lawrence T. Yamamoto**, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

(Signature)

(Print Name)

Notary Public, State of Hawai'i

My Commission expires: _____

EXHIBIT "A"

[Metes and Bounds Description of Easement area and Map]

EXHIBIT "B"
[Title Report]

EXHIBIT “C”

[Map showing Farm Building Envelope One and Two]