

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

July 27, 2012

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

Land Board Members:

**SUBJECT: REQUEST TO AMEND THE FOREST STEWARDSHIP AGREEMENT
WITH THE OUTDOOR CIRCLE DBA WAIKOLOA VILLAGE
OUTDOOR CIRCLE TO SUBSTITUTE THE NEW LICENSEE,
WAIKOLOA DRY FOREST INITIATIVE INC., FOR THE OUTDOOR
CIRCLE**

BACKGROUND

The State of Hawaii Forest Stewardship Program (FSP), implemented pursuant to Chapter 195-F, HRS, provides technical and financial assistance to private landowners committed to the stewardship, conservation and enhancement of important forest resources that provide a variety of private and public benefits. This assistance enables private landowners to develop and implement long-term multi-resource management plans to restore and maintain primary forest values including watershed and forest productivity, wildlife habitat, and recreational opportunities.

The Forest Stewardship Advisory Committee approved the Waikoloa Village Outdoor Circle's (WVOC) Waikoloa Dry Forest Recovery Project management plan on March 7, 2008. A 10-year Forest Stewardship Agreement (Agreement) with The Outdoor Circle dba Waikoloa Village Outdoor Circle (Exhibit A) was approved at the May 8, 2009 Board of Land and Natural Resources (BLNR) meeting under agenda item C-2, and was executed on August 18, 2009. The Waikoloa Dry Forest Recovery Project represents the first FSP project in a tropical dryland forest ecosystem and includes the goals of conserving, restoring, managing, and protecting 275 acres in a 1,800 acre parcel owned by the Waikoloa Village Association. The Outdoor Circle dba Waikoloa Village Outdoor Circle holds a 25-year land license agreement with Waikoloa Village Association (Exhibit B). This FSP project focuses on the restoration of the native wiliwili and the endangered 'uhi'uhi, while reducing the highly flammable fountain grass fuel loads that are abundant in this area. Through fencing and invasive species removal, the project provides a fire buffer to the neighboring community, as well as enhances native species habitat for threatened and endangered species.

DISCUSSION

The Outdoor Circle (TOC) is a statewide non-profit that strives to keep Hawaii clean, green and beautiful by preserving, protecting and enhancing our environment for future generations. Through satellite offices around the state, TOC partners with various agencies and/or communities with similar goals. After years of successful collaboration between the Waikoloa Community and TOC, a partnership was forged to try to save the rare dryland forest of that area, which ultimately resulted in the Agreement with the Hawaii Forest Stewardship Program via the Waikoloa Village Outdoor Circle. The Outdoor Circle dba Waikoloa Village Outdoor Circle has been implementing the FSP project successfully for the past three years. Their accomplishments include installation of a perimeter fence around the project area; design and layout of an irrigation system for rare species; outplanting approximately 10 acres of native plants; creation of a 100 foot wide fuel break around nearly the entire project area; removal of all ungulates from inside the perimeter fence; and inclusion of an outreach and education program, the *Waikoloa Future Forester*, that reaches a minimum of 20 students per month.

Over the past year, WVOC has been working to create a non-profit to manage the Waikoloa Dry Forest Recovery Project and associated Forest Stewardship Agreement with the intention of providing better management of the FSP project at the local level, and reducing overhead and lag time in processing expenses, payments, and reimbursements due to the need to route them through TOC's main office. At TOC's Board of Directors meeting held on January 25, 2012, a resolution was unanimously passed to transfer The Outdoor Circle dba Waikoloa Village Outdoor Circle land license agreement with the Waikoloa Village Association to the newly established Hawaii nonprofit corporation, Waikoloa Dry Forest Initiative, Inc. The Board of Directors also agreed to assign The Outdoor Circle's rights, responsibilities and obligations contained in the land license agreement and associated Waikoloa Dry Forest Recovery Project Forest Stewardship Agreement to Waikoloa Dry Forest Initiative, Inc (Exhibit C). The Waikoloa Dry Forest Initiative, Inc. has agreed to assume the full responsibility for the Forest Stewardship Agreement (Exhibit D) as provided for in the Agreement.


The FSP Agreement allows that in the event that the subject property is sold, conveyed or otherwise transferred during the initial term of the Agreement, The Outdoor Circle dba Waikoloa Village Outdoor Circle is not required to reimburse the State for cost-share assistance received if the purchasing entity, Waikoloa Dry Forest Initiative, Inc. contractually agrees to assume full responsibility for the Agreement. Waikoloa Dry Forest Initiative, Inc. has agreed to assume all responsibilities including but not limited to management and financial responsibilities and penalties for the term identified in the Forest Stewardship Agreement, September 25, 2022, and corresponding Forest Stewardship management plan activities for the remainder of the management plan term. The Division is requesting that the Board approve the amendment of the State of Hawaii Forest Stewardship Agreement with The Outdoor Circle dba Waikoloa Village Outdoor Circle without penalty and reassign the full responsibilities of the remaining term of Forest Stewardship Agreement, including all management and financial responsibilities and penalties to the Waikoloa Dry Forest Initiative, Inc.

RECOMMENDATION

That the Board:

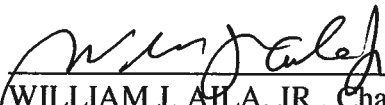
- 1) Amend the State of Hawaii Forest Stewardship Agreement with The Outdoor Circle dba Waikoloa Village Outdoor Circle, Contract No. 58708, without penalty and substitute and reassign the full responsibilities to the new licensee Waikoloa Dry Forest Initiative Inc.

Respectfully submitted,



PAUL J. CONRY, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



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

Attachment: Exhibit A, B, C, and D.

RECEIVED JUN 24 2009

COPY

STATE OF HAWAII
FOREST STEWARDSHIP AGREEMENT

This AGREEMENT, made this 18th day of August, 2009, by and between the BOARD OF LAND AND NATURAL RESOURCES, STATE OF HAWAII ("STATE"), by its Chairperson, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, and The Outdoor Circle, a Hawaii Corporation, dba Waikoloa Village Outdoor Circle, ("LICENSEE") whose mailing address and federal and state taxpayer identification numbers are as follows: 1314 South King Street, #306 Honolulu, Hawaii 96814 99-0085044 and W40394764

Business address

Federal and state taxpayer identification numbers

RECITALS

WHEREAS, Chapter 195F, Hawaii Revised Statutes (HRS), provides for the establishment of a forest stewardship program to encourage and assist private landowners in managing, protecting, and restoring important watersheds, native vegetation, fish and wildlife habitats, isolated populations of rare and endangered plants, and other forest lands that are not recognized as potential natural area reserves; and

WHEREAS, in accordance with HRS Chapter 195F and Title 13, Subtitle 5, Part 1, Chapter 109 of the Hawaii Administrative Rules (HAR), the LICENSEE has applied, and qualifies, for participation in the forest stewardship program; and

WHEREAS, the LICENSEE has submitted a forest stewardship management plan, as set forth in Attachment 1 hereto, that the STATE agrees is consistent with the policies, goals, and objectives of the forest stewardship program; and

WHEREAS, the STATE desires to assist the LICENSEE in implementing the forest stewardship management plan with financial and other assistance; and

WHEREAS, money is available to fund this agreement pursuant to: Act 195, SLH 1993, Hawaii Revised Statutes, Section 247-7.

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

COPY

A. SCOPE OF SERVICES

The LICENSEE hereby agrees to implement the forest stewardship management plan set forth in Exhibit A and the project described in the "Scope of Services" set forth in Attachment S1 in proper and satisfactory manner as determined by the STATE, both of which are hereby made a part of this AGREEMENT. The STATE hereby agrees to assist the LICENSEE in implementing the forest stewardship management plan, all in accordance with the terms and conditions set forth in Attachments S1, S2, S3, S4, S5, and 6, attached hereto.

B. COMPENSATION

The LICENSEE shall be compensated for performance of the project under this AGREEMENT according to the "Compensation and Payment Schedule," set forth in Attachment S2, which is hereby made a part of this Agreement.

C. TIME OF PERFORMANCE

The performance required of the LICENSEE under this AGREEMENT shall be completed in accordance with the "Time of Performance" set forth in Attachment S3, which is hereby made a part of this AGREEMENT.

D. CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

The "State of Hawaii Certificate of Exemption from Civil Service," set forth in Attachment S4, is hereby made a part of the AGREEMENT.

E. OTHER TERMS AND CONDITIONS


The "State of Hawaii Special and General Conditions for Forest Stewardship Program Agreements," set forth in Attachment S5, and the General Conditions attached hereto, are hereby made a part of this AGREEMENT. For the purposes of this AGREEMENT the term "CONTRACTOR" in the "General Conditions" shall mean the LICENSEE.

F. STANDARDS OF CONDUCT DECLARATION

The "Standards of Conduct Declaration" by LICENSEE, set forth in Attachment S6, is hereby made a part of this AGREEMENT. For the purposes of this AGREEMENT the term "CONTRACTOR" in the "Standards of Conduct Declaration" shall mean the LICENSEE.

IN WITNESS WHEREOF, the parties execute this AGREEMENT by their signatures to be effective as of the date first above written.

STATE

By 
Chairperson of the Board of Land and Natural Resources

Laura H. Thielen

Print Name

Date

8/18/09

LICENSEE

By  Pres.

Denise L. Soderholm, President
Print Name

Date

7-2-09

Approved by the Board of
Land and Natural Resources on

MAY 8 2009

APPROVED AS TO FORM:


Deputy Attorney General

LICENSEE'S ACKNOWLEDGMENT

STATE OF HAWAII)
COUNTY OF Honolulu) SS.

On this 2nd day of July, 2009, before me personally appeared Denise L. Soderholm, to me personally known, who being by me duly sworn, did say the he/she is the President of the Outdoor Circle, the LICENSEE named in the foregoing instrument, and the he/she is authorized to sign said instrument on behalf of the LICENSEE, and acknowledges that he/she executed said instrument as the free act and deed of the LICENSEE.

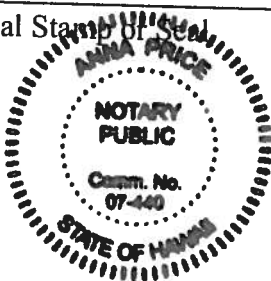
Anna Price

Notary Public, State of Hawaii

My Commission Expires: 8-26-2011

Date of the Notarized Document: not dated
Number of Pages: 25 pages (incl Attachments 51-55)
Identification or Description of the Document being Notarized: State of Hawaii Forest Stewardship Agreement

Printed Name of Notary: Anna Price 1st Circuit
Anna Price 7-2-09
Notary's Signature and Notary's Official Stamp of _____ Date





STATE OF HAWAII
SCOPE OF SERVICES

SECTION 1 - SCOPE OF WORK

- 1.1 MANAGEMENT AREA - The project area to be managed is the Waikoloa Dry Forest Recovery Project Forest Stewardship project area; TMK NUMBER(S) (3) 6-8-002:015 (portion) as designated on maps found in Exhibit A to this AGREEMENT.
- 1.2 THE PRIMARY OBJECTIVES - The STATE and LICENSEE shall direct their efforts under this AGREEMENT to do the following: fund the management of and manage the natural resources of the two hundred seventy-five (275) acres Waikoloa Dry Forest Recovery Project Forest Stewardship project area (“Forest Stewardship project area”) in accordance with the MANAGEMENT PLAN, attached as Exhibit A to this AGREEMENT, and all approved amendments thereto, with the intention of providing for protection and restoration of a critically endangered dry-forest ecosystem type in the Waikoloa community.
- 1.3 SCOPE OF WORK - The LICENSEE shall perform the following technical and professional services:
- (a) Management plan. The LICENSEE shall carry out the management activities outlined in the approved MANAGEMENT PLAN, attached as Exhibit A to this AGREEMENT.
- (b) Consultation. The LICENSEE shall be available for consultation regarding progress, upon request by the STATE.
- 1.4 AUTHORITY TO CARRY OUT MANAGEMENT PLAN - The LICENSEE hereby represents that it has authority to carry out the MANAGEMENT PLAN and that it is the LICENSEE of “Forest Stewardship project area” as defined in Section 195F-2, Hawaii Revised Statutes, as amended.
- 1.5 NO INCONSISTENT ACTIVITIES - The LICENSEE shall not take any action on the “Forest Stewardship project area”, which will undermine or conflict with the approved MANAGEMENT PLAN.



STATE OF HAWAII
SCOPE OF SERVICES

II. SECTION 2 - CONTROL AND PROGRESS OF THE WORK

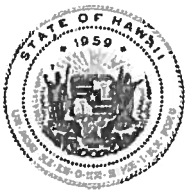
2.1 REPORTS - The LICENSEE shall submit to the STATE, reports showing work accomplished at the following times:

- (a) Progress Reports. A progress report shall be due on December 31 of each year under this AGREEMENT for which funding has been approved. This report shall include a description of the approved MANAGEMENT PLAN accomplishments and activities, areas needing technical advice, an accounting of expenditures with documentation, and proposed modifications to the current year's management activities. This report shall be submitted to the STATE within 30 days following the due date. If the LICENSEE would like more than 2 reimbursements per year, a progress report shall accompany each reimbursement request and the "Forest Stewardship project area" shall be made available for a site visit by Department of Land and Natural Resources personnel.
- (b) Annual Report. An annual report shall be due on or before June 30 of each year under this AGREEMENT for which funding has been approved in order to ascertain the need to amend the contract for the following year. In the event the contract is executed less than 6 months prior to June 30, then no annual report is due on June 30, 2010. This report shall include a description of MANAGEMENT PLAN accomplishments and activities, areas needing technical advice, and proposed modifications to the next year's approved management objectives, projects and budget. This report shall also include a detailed accounting of expenditures for the preceding 12-month period to provide the basis for the annual reconciliation of the STATE's and the LICENSEE's respective shares of funding as determined pursuant to Attachment S3, Section 2.1. This report shall be submitted to the STATE within 60 days of due date. This report may also request, subject to approval by the STATE, changes to the management plan, for either or both the practice implementation schedule and/or the budget/payment schedule in order to best consolidate and rectify the past year's outcomes or lack thereof.



STATE OF HAWAII
SCOPE OF SERVICES

- 2.2 DELEGATION OF AUTHORITY - As used herein and throughout this AGREEMENT, unless the context clearly indicates otherwise, the STATE shall include the State of Hawaii Department of Land and Natural Resources and its authorized employees, agents and representatives.



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULESECTION 1 – PAYMENTI.1 SCOPE OF PAYMENT -

- (a) STATE's Payment. In full satisfaction of the STATE's funding share of the approved MANAGEMENT PLAN, which is contingent upon satisfactory completion by the LICENSEE of the management activities described in the approved MANAGEMENT PLAN, attached as Exhibit A to this AGREEMENT, the STATE agrees to pay the LICENSEE a total sum not to exceed four hundred sixty-five thousand three hundred eighty-one and 50/100 Dollars (\$465,381.50) according to the schedule outlined below that includes fiscal year 2010 through 2019 for completion of the management activities described in the approved MANAGEMENT PLAN. Payments shall be made by the STATE to the LICENSEE as partial annual reimbursements for actual expenditures made by the LICENSEE in completing the management activities described in the approved MANAGEMENT PLAN only after the corresponding progress or annual report has been reviewed by the STATE and all reported management activity accomplishments have been verified following an inspection of the “Forest Stewardship project area” by the STATE. Actual expenditures may include but are not limited to in-kind services such as heavy equipment operation and sources of labor. All funds to be paid by the STATE to the LICENSEE shall be encumbered on an annual basis for the forthcoming fiscal year provided that the STATE has approved the continuation of management activities outlined in Exhibit A of this AGREEMENT for the forthcoming fiscal year.

If the allocated annual funds are encumbered or fully exhausted due to the LICENSEE not completing all of the management activities described in the MANAGEMENT PLAN for that year, the LICENSEE may request that these funds be incorporated in the following year's encumbrances to complete the management activities which were not completed, if there are sufficient STATE funds to accommodate this request. If approved by the STATE, this will be incorporated in written amendment to the AGREEMENT.



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

If in any fiscal year the STATE does not appropriate, and/or the STATE does not approve the expenditure of, funds sufficient to meet the STATE's funding share of the approved MANAGEMENT PLAN, this AGREEMENT shall automatically terminate without penalty at the end of the last fiscal year for which any funds have been appropriated and approved, subject to Attachment S5, Section 4.1, regarding partial State funding.

- (b) LICENSEE's Share. In full satisfaction of the LICENSEE's funding share of the approved MANAGEMENT PLAN, the LICENSEE agrees to fully complete the management activities described in the approved MANAGEMENT PLAN, and to initially assume all corresponding actual annual expenditures in expectation of the STATE's partial reimbursement for satisfactory completion of these management activities. Expenditures for implementation of the approved MANAGEMENT PLAN which are less than the amounts allocated in the approved budget may be made by the LICENSEE in its discretion so long as the quality of materials and work as called for in the approved MANAGEMENT PLAN are not adversely affected.



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE**WAIKOLOA DRY FOREST RECOVERY FOREST STEWARDSHIP****PROJECT BUDGET/PAYMENT SCHEDULE:**

YEAR	Total Budget	LICENSEE Share	STATE Share
1	\$185,950.00	\$110,950.00	\$75,000.00
2	\$156,235.00	\$84,867.50	\$71,367.50
3	\$108,900.00	\$61,200.00	\$47,700.00
4	\$74,650.00	\$44,075.00	\$30,575.00
5	\$76,463.00	\$44,981.50	\$31,481.50
6	\$84,963.00	\$42,981.50	\$41,981.50
7	\$83,963.00	\$41,981.50	\$41,981.50
8	\$83,963.00	\$41,981.50	\$41,981.50
9	\$83,313.00	\$41,656.50	\$41,656.50
10	\$83,313.00	\$41,656.50	\$41,656.50
Total	\$ 1,021,713.00	\$556,331.50	\$465,381.50

1.2 PAYMENT SCHEDULE --

- (a) Progress Payment. Within 30 days following receipt of the progress report as provided in Attachment 1, Section 2.1(a) for each year for which the STATE has agreed to pay the LICENSEE as outlined in the schedule above and for which funding has been appropriated, the STATE shall pay to the LICENSEE a portion of the STATE's funding share of the approved MANAGEMENT PLAN as a partial reimbursement of actual expenditures made to complete approved management activities. This payment shall be subject to the LICENSEE's satisfactory completion of the corresponding approved management activities described in the approved MANAGEMENT PLAN, attached as Exhibit A to this AGREEMENT, and calculated on the basis of actual expenditures made by the LICENSEE. This payment shall also be subject to the STATE's approval of such progress report.
- (b) Annual/Final Payment. Within 30 days of receipt of the annual report as provided in Attachment S1, Section 2.1(b), the STATE shall pay to the LICENSEE the balance of the STATE's approved annual funding share. This payment shall be subject to the LICENSEE's satisfactory completion of the corresponding annual management activities described in the approved MANAGEMENT PLAN,



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

attached as Exhibit A to this AGREEMENT, and calculated on the basis of actual expenditures made by the LICENSEE.

- (1) Annual or Final Acceptance and Payment - Annual or final acceptance means a written notice from the STATE to the LICENSEE advising the LICENSEE of the satisfactory fulfillment of the AGREEMENT's annual or final requirements.

- 1.3 UNAUTHORIZED WORK - The LICENSEE shall not receive matching STATE funds for management activities not designated in the approved MANAGEMENT PLAN. All work completed by the LICENSEE prior to receipt of a fully-executed copy of this AGREEMENT, and prior to STATE approval of funding for any subsequent years and prior to STATE approval of any subsequent amendments to the approved MANAGEMENT PLAN, shall be at the LICENSEE's own volition and risk, including work performed during the period of any deliberations by the STATE in anticipation of approval; provided, however, that if funding and/or amendments applicable to such work are subsequently approved, the LICENSEE may be paid for such work even if performed prior to such approval.

SECTION 2 - FISCAL RECORDS MAINTENANCE, RETENTION, AND ACCESS

- 2.1 The LICENSEE shall maintain, in accordance with generally acceptable accounting practices, fiscal records and supporting documents and related files, papers and reports that adequately reflect all direct and indirect expenditures and management and fiscal practices materially related to the LICENSEE's performance of services paid for by State funds under this AGREEMENT.
 - (a) The STATE, the Comptroller of the State of Hawaii, and any of their authorized representatives, the committees (and their staff) of the Legislature of the State of Hawaii, and the Legislative Auditor of the State of Hawaii shall have the right of access to any book, document, paper, file, or other records of the LICENSEE that is materially related to the performance by the LICENSEE of services funded by the STATE under this AGREEMENT, in accordance with generally accepted



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

audit procedures, for the purposes of monitoring and evaluating the LICENSEE's performance of services and the LICENSEE's management program and fiscal practices to assure the proper and effective expenditure of funds under this AGREEMENT; provided, however, that no party conducting any such audit or examination shall copy, distribute, or retain any of such information or records, with the understanding that it is not the intention that the LICENSEE's financial and other records and information be made public.

- (b) The right of access shall not be limited to the required retention period but shall last as long as the records are retained. The LICENSEE shall retain all records related to the LICENSEE's performance of services funded under this AGREEMENT for at least 3 years after the date of submission of the LICENSEE's annual reports for any designated period and payment for such expenditures by the STATE in accordance with its matching share, except that if any litigation, claim, negotiation, investigation, audit, or other action involving the records has been started before the expiration of the 3-year period, the LICENSEE shall retain the records until completion of the action and resolution of all issues that arise from it or until the end of the regular 3-year retention period, whichever occurs later.



STATE OF HAWAII
TIME OF PERFORMANCE

SECTION 1 - EXECUTION OF AGREEMENT

- 1.1 EXECUTION OF AGREEMENT - This AGREEMENT shall be promptly executed by the STATE and the LICENSEE upon approval by each party.
- 1.2 CERTIFICATION AND APPROVAL OF AGREEMENT - This AGREEMENT shall not be considered binding upon the STATE, unless the availability of the funds therefore has been duly certified as prescribed by Section 103-39, Hawaii Revised Statutes, as amended. Further, this AGREEMENT shall not be considered to be fully executed unless the Office of the Attorney General of the State of Hawaii has approved this AGREEMENT as to form.

SECTION 2 - TERM

- 2.1 INITIAL TERM - The initial term will be for a minimum of Thirteen (13) years following the completion of any and all management practices for which the LICENSEE has received cost-share assistance. Accordingly, this AGREEMENT shall commence on the date of full execution hereof and shall be in effect until September 25, 2022; subject, however to earlier termination as provided in this AGREEMENT.
- 2.2 STATE FUNDING CONDITION - This AGREEMENT is subject to continued funding of the STATE's share of the approved management budget as outlined in Attachment S2, Section 1.1. Annual funding is provided by the Conveyance Tax pursuant to Act 195, SLH 1993, Section 247-7, Hawaii Revised Statutes, whereby twenty-five percent of the amount collected from this tax shall be paid into the natural area reserve fund from which funds are dispersed to the natural area partnership and forest stewardship programs, and by way of Act 269, SLH 2000 to projects undertaken in accordance with watershed management plans. Payments are then made through the forest stewardship program to reimburse participants for implementing approved stewardship management practices. Any balance remaining in this fund at the end of any fiscal year shall be carried forward into the fund for the next fiscal year. If in any fiscal year the STATE does not



STATE OF HAWAII
TIME OF PERFORMANCE

appropriate, and/or the STATE does not approve the expenditure of, funds sufficient to meet its share of the approved management budget, this AGREEMENT shall automatically terminate without penalty at the end of the last fiscal year for which any funds have been appropriated and approved, subject to Attachment S5, Section 4.1, regarding partial State funding.



STATE OF HAWAII

CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development ("DHRD").*

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

(Signature) LA

(Date) 8/18/09

Laura H. Thielen

(Print Name) Chairperson, Board of Land and Natural Resources

(Print Title)

* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

- (1) It involves the delivery of completed work or product by or during a specific time;
- (2) There is no employee-employer relationship; and
- (3) The authorized funding for the service is from other than the "A" or personal services cost element.

NOTE: Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§ 76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

2. By the Director of DHRD, State of Hawaii.

I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to §76-16, HRS.

(Signature) _____

(Date) _____

(Print Name) _____

(Print Title, if designee of the Director of DHRD) _____



STATE OF HAWAII
SPECIAL CONDITIONS

SECTION 1 – INSPECTIONS

- 1.1 The STATE shall have the right to make inspections of the “Forest Stewardship project area” after prior notice to the LICENSEE. In addition, the STATE shall be obligated to inspect the work on the “Forest Stewardship project area” not less frequently than once per year under this AGREEMENT, and more frequently in the case of a LICENSEE default as provided in Section 4.1(d) below or when the LICENSEE makes more than 2 reimbursement requests per year as provided in Attachment S1, Section 2.1. The STATE shall notify the LICENSEE within a reasonable time thereafter of any perceived defaults in the LICENSEE's implementation of the approved MANAGEMENT PLAN. The LICENSEE hereby represents that it has authority to allow access to the “Forest Stewardship project area” by the STATE in connection with this AGREEMENT, conditional upon receipt of a liability waiver, acceptable to the LICENSEE for all state personnel visiting the “Forest Stewardship project area”.

SECTION 2 - AMENDMENTS

- 2.1 The LICENSEE may propose for approval by the STATE, and the STATE may approve, minor alterations to the approved MANAGEMENT PLAN, which will not have a material adverse impact on the achievement of the overall management objectives of the approved MANAGEMENT PLAN. This includes minor changes to the practice implementation schedule and/or changes in the budget/payments schedule so long as the total management activities do not subtract from or exceed the total scope of the approved MANAGEMENT PLAN and the budget/payments schedule does not exceed the total annual budget allocations up to and including the budget request for that year, and so long as the STATE has sufficient funding available to accommodate such a request.
- 2.1 The LICENSEE may propose for approval by the STATE, and the STATE may approve, significant changes to the approved MANAGEMENT PLAN or budget to adapt to current conditions. Significant amendments to the approved MANAGEMENT PLAN



STATE OF HAWAII
SPECIAL CONDITIONS

- shall include an amended budget, which will increase the overall STATE's funding share above the total amount set forth in the approved budget/payment schedule. The STATE shall make the proposed amendments available for public review prior to final approval.
- 2.3 The proposed amendments may include, without limitation, re-establishment of management priorities, increase or reduction of the specified work, increases to the budget/payments schedule, or time for performance of specified tasks, all as determined considering the natural conditions of the “Forest Stewardship project area,” existing management priorities, threats, potential for decline of the natural resource during any period under consideration, availability of specialized labor or technical expertise, permitting requirements and time needed to obtain permits, and other material factors.
- 2.4 Any proposed expenditures which will increase the overall STATE's funding share above the amount set forth in the approved budget of the approved MANAGEMENT PLAN, which are proposed either as a result of additional costs required to implement the approved MANAGEMENT PLAN or as a result of amendments to the approved MANAGEMENT PLAN, must be mutually agreed upon in advance by and between the STATE and the LICENSEE. If so agreed upon the approval of these expenditures shall be incorporated in written amendment to this AGREEMENT.
- 2.5 Economic Hardship. Notwithstanding other provisions of this AGREEMENT, in the event that the LICENSEE determines in good faith that it is financially unable without undue economic hardship to fulfill its funding share as provided in Attachment S2, Section 1.1(b), or to carry out fully the management activities described in the approved MANAGEMENT PLAN, attached as Exhibit A to this AGREEMENT, within the budget and time period established thereby, the LICENSEE may apply to the STATE to renegotiate the terms thereof.
- (a) Negotiation of Amendment. In such event, the STATE and the LICENSEE shall meet and negotiate in good faith an acceptable amendment to the approved MANAGEMENT PLAN that seeks to accomplish the significant objectives of the approved MANAGEMENT PLAN reasonably within the LICENSEE's financial



STATE OF HAWAII
SPECIAL CONDITIONS

means. The amendment may include, without limitation, re-establishment of management priorities and reduction and/or deferral of the specified work, involving significant costs, and/or extension of time for performance of specified tasks, all as determined considering the natural conditions of the “Forest Stewardship project area,” existing management priorities, threats, potential for decline of the natural resource during any period under consideration, other potential sources of funding, and other material factors.

- (b) Disputes. If the STATE and the LICENSEE are unable to agree reasonably and in good faith on a suitable amendment to the approved MANAGEMENT PLAN, the parties shall refer any such disputes to arbitration as provided in Attachment S5, the General Conditions, Section 11.

- (c) No Termination for Economic Hardship. This provision shall not be construed to allow the LICENSEE or the STATE to terminate this AGREEMENT for economic hardship; it is rather intended to provide a mechanism for reasonable revisions to the approved MANAGEMENT PLAN for economic hardship.

SECTION 3 - PAYBACK OF STATE FUNDS

3.1 In the event that the LICENSEE sells, conveys, or otherwise transfers LICENSEE’s right, title, or interest in the “Forest Stewardship project area,” or any portion thereof, during the initial term of this AGREEMENT as defined in Attachment S3, Section 2.1, the LICENSEE shall within 90 days of the sale, conveyance or transfer of title or interest in the “Forest Stewardship project area,” pay back to the STATE a portion of the amount paid by the STATE to the LICENSEE pursuant to this AGREEMENT. The amount to be paid back to the STATE shall be that fraction of the total matching funds received by the LICENSEE under this AGREEMENT that is equal to the fraction of the “Forest Stewardship project area” that is sold, conveyed or otherwise transferred by the LICENSEE.



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3.2 In the event that the LICENSEE sells, conveys, or otherwise transfers LICENSEE's right, title, or interest in the "Forest Stewardship project area," or any portion thereof, during the initial term of this AGREEMENT as defined in Attachment S3, Section 2.1, the LICENSEE will not be required to reimburse the STATE as set forth in Attachment S5, Section 3.1 for the cost-share assistance received if the person(s) who acquire the property contractually agree to assume full responsibility for this AGREEMENT for the initial term of the AGREEMENT, including but not limited to management and financial responsibilities and penalties contained herein. See Agenda Item C - 2, as amend, approved at the Board of Land and Natural Resources May 8, 2009 meeting. Nothing in this provision shall relieve the LICENSEE of its obligations under this AGREEMENT.

SECTION 4 - TERMINATION; DEFAULT; PENALTY PAYBACK

- 4.1 **TERMINATION OF THE AGREEMENT** - It is mutually agreed that this AGREEMENT may be terminated for any one of the following reasons on the following terms:
- (a) **No State Funding**. This AGREEMENT shall be terminated if the STATE does not approve funding for the forthcoming fiscal year of the approved MANAGEMENT PLAN. In such event, this AGREEMENT shall automatically terminate without penalty at the end of the funding period then in effect.
 - (b) **Partial State Funding**. This AGREEMENT may be terminated by the LICENSEE if the STATE approves only a portion of its share of funding for the forthcoming fiscal year as outlined in the budget provided in the approved MANAGEMENT PLAN.
 - (1) In such event, the LICENSEE shall elect, by written notice to the STATE, either:
 - (A) to terminate this AGREEMENT without penalty at the end of the funding period then in effect; or



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- (B) to revise the approved MANAGEMENT PLAN and budget in the LICENSEE's reasonable discretion to accomplish significant management goals which can reasonably be funded with the amount of STATE funding actually approved.
- (c) Transfer to Government Agency. This AGREEMENT may be terminated without penalty if the “Forest Stewardship project area” is transferred or sold to a government agency committed to forest stewardship and that possesses the technical and professional skills to manage the “Forest Stewardship project area” natural resources.
- (d) LICENSEE Default. This AGREEMENT may be terminated by the STATE upon substantial evidence that progress being made by the LICENSEE in carrying out the approved MANAGEMENT PLAN is inadequate, incorrect, or insufficient to substantially complete on a timely basis the work called for in the approved MANAGEMENT PLAN subject to the lack of performance notification provisions set forth below.
- (1) Penalties Apply. In the event of termination for default in accordance with these provisions, the penalty payback provisions set forth below shall apply.
- (2) Lack of Performance Notification. In such event, the STATE may terminate for default, provided the STATE adheres to the following procedures for notice and opportunity to cure prior to termination:
- (A) The STATE shall first notify the LICENSEE in writing of any perceived inadequacy, incorrectness or insufficient progress. The STATE and the LICENSEE shall meet within two weeks thereafter, and every three months thereafter until one year following the date of the notice, and discuss in good faith the



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perceived failure and the reasons therefore and any subsequent progress or lack thereof. If the reason for the failure is a good faith inability of the LICENSEE to carry out the terms of the MANAGEMENT PLAN for reasons beyond the LICENSEE's reasonable control, including without limitation economic hardship as described in Attachment S5, Section 2.5 above, the STATE and the LICENSEE shall specifically consider the need to amend the approved MANAGEMENT PLAN, including extending the time to carry out the work called for in the approved MANAGEMENT PLAN and/or revising the budget established in the approved MANAGEMENT PLAN, subject to the provisions of Attachment S1, Section 1.5 and Attachment S4, Section 2 of this AGREEMENT regarding amendments to this AGREEMENT and the approved MANAGEMENT PLAN. Following the date of the notice, the STATE shall be obligated to inspect the "Forest Stewardship project area" once each quarter after notifying the LICENSEE, to determine the updated status of the perceived default.

- (B) Following the expiration of the one year period following notice of default given by the STATE to the LICENSEE and failure of the LICENSEE to remedy the default, or to make significant progress to remedy the default if by its nature the default cannot reasonably be remedied within one year, the STATE may elect to notify the LICENSEE of its intention to terminate this AGREEMENT for default. Such notice shall be in writing, shall state that the STATE will terminate the AGREEMENT for default on a date not less than 3 months thereafter if the LICENSEE does not remedy the default, or to make significant progress to remedy the default if by its nature the default cannot reasonably be remedied within 3



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months, and shall specify that penalties as provided under this AGREEMENT shall apply.

- (C) If the LICENSEE fails to remedy the default within 3 months thereafter, or to make significant progress to remedy the default if by its nature the default cannot reasonably be remedied within 3 months, the STATE may terminate this AGREEMENT effective immediately for default by written notice thereof to the LICENSEE.
 - (D) The STATE shall be deemed to have complied with these provisions if it attempts in good faith to meet with the LICENSEE and to inspect the “Forest Stewardship project area” as provided above, whether or not the LICENSEE cooperates in such procedures.
- (3) All disputes regarding default and termination under this AGREEMENT, which cannot be resolved by the parties, shall be referred to arbitration as provided in Attachment S5, the General Conditions, Section 11.
 - (4) If the LICENSEE has not fully performed its work under this AGREEMENT on expiration or termination of this AGREEMENT, the STATE may withhold the final payment to the LICENSEE pending full completion of the LICENSEE's work. This withheld payment shall be paid by the STATE to the LICENSEE on final acceptance and tax clearance as provided in Attachment S2, Section 1.2 (b) and Attachment S5, Section 17.

4.2 PENALTY PAYBACK -



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(a) Payback and Penalties. In the event that the LICENSEE defaults on this AGREEMENT as provided in Attachment S5, Section 4.1(d) above and the STATE has followed the Lack of Performance Notification procedures as outlined in Attachment S5, Section 4.1(d)(2) above, the LICENSEE shall promptly pay to the STATE the following payback and penalty monies:

(1) Refund of State Funds - 3 Years. All funds paid from the initial date of this AGREEMENT by the STATE to the LICENSEE in the previous 3 years (or such portion thereof as STATE shall have funded if this AGREEMENT shall have been in effect for less than 3 years) shall be returned to the STATE. In the event that this AGREEMENT shall have been in effect for more than 3 years, the LICENSEE shall be liable to pay back State funds for the immediately preceding 3 years. In addition, the LICENSEE shall pay to the STATE a penalty of two percent of the total of funds that are returned to the STATE.

(b) No Other Party Liable. Only the LICENSEE receiving State funding under the FOREST STEWARDSHIP PROGRAM shall be liable to the STATE under this AGREEMENT for the payback and penalty.

(c) Disputes. The LICENSEE shall have the right to submit any disputes to the arbitration procedure as outlined in Attachment S5, Section 11 if it feels that the imposition of payback, and/or additional penalties is unwarranted.

4.3 VIOLATIONS OF AGREEMENT - It is expressly understood and agreed that violations which are not caused by the LICENSEE shall not constitute or give rise to a default by the LICENSEE under this AGREEMENT and no penalty provisions shall apply to the LICENSEE.

4.4 EFFECT OF EMINENT DOMAIN -

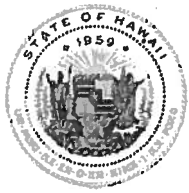


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- (a) Full Condemnation. If any action in eminent domain for the condemnation of the fee title of the entire “Forest Stewardship project area” described herein is filed, or if the “Forest Stewardship project area” is acquired in lieu of eminent domain for a public improvement by a public agency or person or whenever there is any such action or acquisition by the federal government or the state government or any person, instrumentality or agency acting under authority or power of the federal government or the state government, this AGREEMENT shall be deemed null and void without penalty as to the land actually being condemned or so acquired as of the date the action is filed, and upon the termination of such a proceeding, this AGREEMENT shall be null and void without penalty for all land actually taken or acquired.
- (b) Partial Condemnation. When such an action to condemn or acquire less than all the entire “Forest Stewardship project area” is filed, this AGREEMENT shall be deemed null and void without penalty as to the portion so condemned or acquired.
- (c) Adjustment of approved MANAGEMENT PLAN. The land actually taken by the means set forth above in this Section shall be removed from this AGREEMENT and the approved MANAGEMENT PLAN and budget adjusted accordingly on a reasonable basis by the STATE and the LICENSEE.

SECTION 5 - INCORPORATION OF CHAPTER 195F, HAWAII REVISED STATUTES

- 5.1 Incorporation. The provisions of chapter 195F, Hawaii Revised Statutes, as amended, are incorporated by reference into this AGREEMENT. In the event that there is any conflict between the provisions of this AGREEMENT and the provisions of chapter 195F, Hawaii Revised Statutes, the latter shall be controlling.
- 5.2 Renumbering. In the event that chapter 195F, or any of the sections under chapter 195F, Hawaii Revised Statutes, are renumbered, any references to the chapter or sections in this AGREEMENT shall be deemed renumbered accordingly.



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EXHIBIT A

Waikoloa Dry Forest Recovery Project Forest Stewardship Management Plan.

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
 - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period

not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.
- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of

supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

(1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

(A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;

(B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or

(C) Within such further time as may be allowed by the Agency procurement officer in writing.

(2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

(3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

(4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.

- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.
- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:

- (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
- d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
- e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
- f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
- g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
- h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
- i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
 - b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
 - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.
28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

- a. The cost or pricing data, and
- b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. **Cost or Pricing Data.** Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. **Audit of Cost or Pricing Data.** When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.

31. **Records Retention.**

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

32. **Antitrust Claims.** The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. **Patented Articles.** The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. **Governing Law.** The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or
 - (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or

- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.



STATE OF HAWAII

CONTRACTOR'S

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of The Outdoor Circle DBA Waikoloa Village, CONTRACTOR, the undersigned does declare as follows: outdoor circle

1. CONTRACTOR is is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

Reminder to Agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the Agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).

CONTRACTOR

By Denise L. Soderholm
(Signature)

Print Name Denise L. Soderholm

Print Title President

Name of Contractor The Outdoor Circle
DBA Waikoloa Village Outdoor Circle

Date 6-30-09

Waikoloa Dry Forest Recovery Project
Forest Stewardship Management Plan



Name: Waikoloa Village Outdoor Circle (WVOC)
Address: P.O. Box 38-4721, Waikoloa, HI 96738

Email: wwoc@waikoloaoutdoorcircle.com
Phone: (808) 883-3362
Fax: (808) 883-9988

Tax Map Key number: (3)6-8-002:015
State and County Zone designation: State Zoning: Agriculture; County Zoning: Open

Total property acreage: 1800 acres in TMK. 8000+ in Waikoloa Village (property owner)

Acres of proposed stewardship management area: 275 acres.

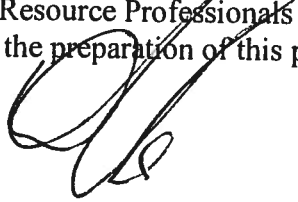
Please see attached License Agreement permitting WVOC for 15 years

Driving directions from the nearest highway: Exit Queen Kaahumanu Hwy at Waikoloa Road. Proceed to Waikoloa Village, 6 miles. Take the first road on the right, Quarry Rd.

Forest Stewardship Plan Signature Page

Professional Resource Consultant Certification: I have prepared (revised) this Forest Stewardship Plan. Resource Professionals have been consulted and/or provided input as appropriate during the preparation of this plan.

Prepared by



Professional Resource Consultant's Signature/ Date

8 May 09

Professional Resource Consultant's Name: Dave Faucette

Applicant Certification: I have reviewed this Forest Stewardship Plan and hereby certify that I concur with the recommendations contained within. I agree that resource management activities implemented on the lands described shall be done so in a manner consistent with the practices recommended herein.

Prepared for:

Brand 5/8/09

Applicant's Signature/ Date

Applicant's Name: Beverley Brand, Waikoloa Village Outdoor Circle

State Forester's Approval: This plan meets the criteria established for Forest Stewardship Plans by Hawaii's Forest Stewardship Advisory Committee. The practices recommended in the plan are eligible for funding according to state of Hawaii Forest Stewardship Program guidelines and administrative rules.

Approved by:

Paul J Conry 5/12/09

State Forester's Signature/ Date

State Forester's Name: Paul J. Conry

Introduction:

This management plan describes the Waikoloa Dry Forest Recovery Project (WDFRP), a native dry forest restoration project that will restore native lowland wiliwili forest (*Erythrina sandwicense*) habitat over 275 acres of open space south of the community of Waikoloa Village. The 10-year project aims to restore native forest around a remnant patch of lowland wiliwili (*Erythrina sandwicense*) forest that contains 13 endangered uhiuhi (*Caesalpinia kavaiensis*) trees (10 of which lie within the 275 acre enclosure) and establish new populations of 9 endangered plant species. The remnant forest patch lies ½ mile south of Waikoloa Village at approximately 1000 ft. elevation on the northwest flank of the island of Hawaii.

Waikoloa Village is a rapidly growing suburban community (Population approx. 4,000) located in the district of South Kohala on the island of Hawai'i. The Waikoloa Village Association (WVA), which represents the community through an elected Board of Directors, manages the village golf course and approximately 10,000 acres of land that surrounds the village which are deed-restricted as open space. The WVA Board of Directors supports this project and has agreed to a long term license agreement with the Waikoloa Village Outdoor Circle. The Waikoloa Village chapter of The Outdoor Circle (WVOC) engages in beautification and maintenance of areas within and around Waikoloa Village for the benefit of residents and visitors.

Wiliwili, the rare native deciduous coral tree having distinctive smooth orange-red bark, occur widely scattered over a rough a'a flow that sweeps south of the Village. The WVOC proposes to lead a community-based effort to restore the wiliwili lowland dry forest and build within the forest self-sustaining populations of 9 endangered plant species. This proposal represents a summary of the status and distribution of lowland dry forests within the region; describes the current distribution of wiliwili, uhiuhi, and other rare dry forest species on the island; and outlines the project over the next 10 years. Required matching contributions from cooperating agencies and organizations are identified, and project budget and timelines are presented.

The project acreage has been expanded from 250 acres since the proposal was submitted in June of 2007. An additional 25 acres was added along the southern boundary to encompass a small population of wiliwili trees. These trees are situated on discrete and separate pockets of a'a lava surrounded by a matrix of pahoehoe. Many of these a'a pockets are devoid of any native plant life but they represent potential out planting locations. This additional acreage also allows the project to protect a network of lava tubes and caves. We have also added two additional endangered plants that may do well within the project site. *Neraudia ovata* of the Nettle family, recently existed behind Costco in the Kaloko area which is at similar elevation to our site. *Solanum incompletum* of the Nightshade family represents the other species we think would do well at this site. Both species are thriving at the Oweowe out-planting site along Mamalahoa Hwy.

WVOC has been granted \$310,350 by NRCS under the WHIP program. Of this total, only \$70,350 is to be applied to fence construction. The balance is dedicated to pest management and planting. Total cost of fence construction is estimated to be approximately \$300,000.

The entire project, in order to move forward, requires that fencing be undertaken and completed in the most expedient manner possible. The number of ungulates roaming this area is estimated at between 350 and 450. Their ability to find and browse wiliwili seedling is remarkable. Seedlings found on a Saturday are often gone the following day. Small cages will not protect the seedlings for any length of time. Wiliwili is successfully regenerating within the project area but unfortunately are not able to grow beyond the seedling stage.

History of Land Uses:

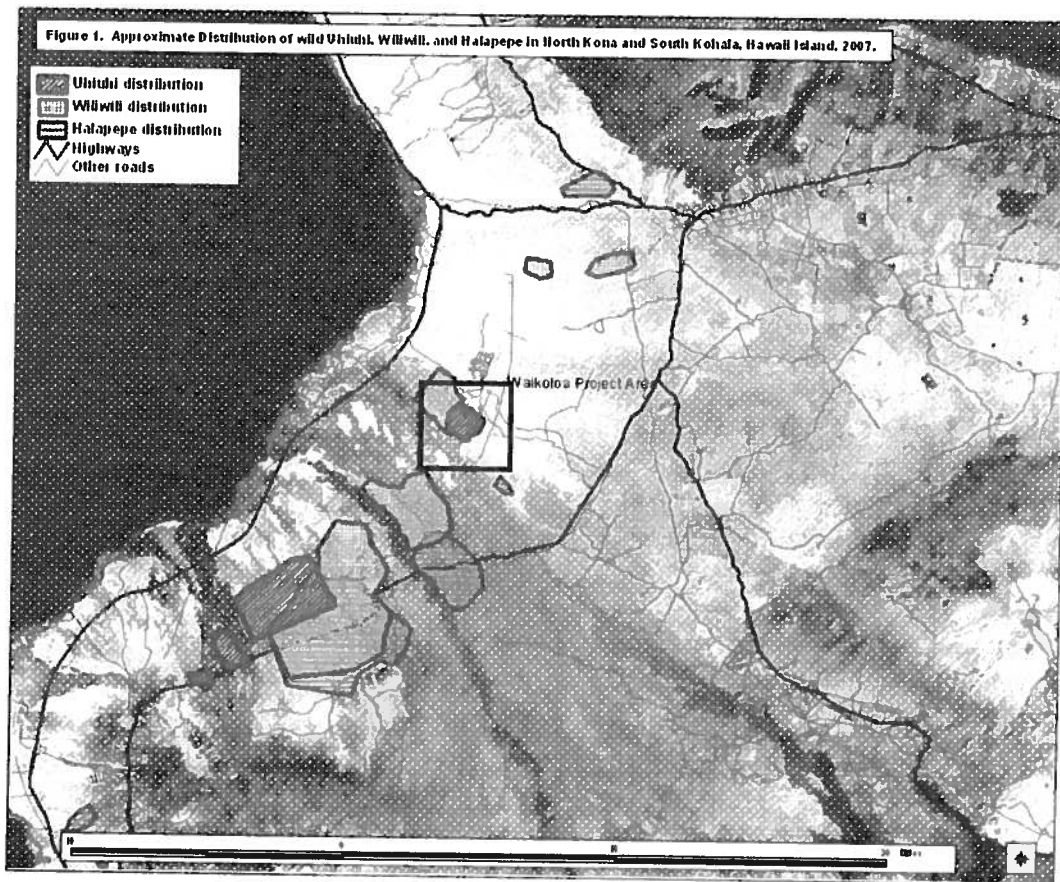
Historical land use of the region was beef cattle. Prior to domestic cattle, the region was heavily impacted by the sandalwood trade and by giant wild herds of feral cattle, sheep, and goats that roamed throughout the region. Additional pressures from rats, loss of pollinators, and alien plants further forced major shifts in biotic communities, despite landscape-scale changes that had already occurred in the lowlands.

Native Hawaiians relied upon the lowland dry forest landscape to sustain extensive communities in Mahukona, Lapakahi, Kawaihae, Puako, 'Aneaho'omalu, Kiholo, and Honokohau. The two hardest and heaviest of the native woods were the uhiuhi (*Caesalpinia kawaiensis*) and its neighbor upslope, the kauila (*Colubrina oppositifolia*), which were fashioned into kappa beaters, fishing weights, fish hooks, holua sled runners, and weapons (Abbott 1992). Lama (*Diospyros sandwicense*), the endemic persimmon, one of the dominant tree species from the region, represented enlightenment and was used to cap hula altars; and ohia'alehua (*Metrosideros polymorpha*), naio (*Myoporum sandwicense*) and olopua (*Nestegis sandwicensis*) were used widely in house construction. Uhiuhi, kauila, and alahe'e (*Psydrax odorata*) were used for o'ho, and soft woods, such as the wiliwili (*Erythrina sandwicensis*), were used for surf boards and extracts of the bark as canoe paint. In gathering, the sticky sap of the ala'a (*Pouteria sandwicensis*) fruit was used as a glue to catch forest birds in the practice of feather collecting; in medicine, tea was made from ko'oko'olau (*Bidens* sp.); and in religion, branches of the rare and endangered halapepe (*Pleomele hawaiiensis*) were offered to the hula diety, Kala. In addition, the wiliwili, ulei (*Osteomeles anthyllidifolia*), 'ilima (*Sida fallax*), and others were used in lei making, and kokio (*Kokia drynarioides*), 'ohe makai (*Reynoldsia sandwicensis*), akia (*Wikstroemia phillyreifolia*), ma'o hau hele (*Hibiscus brackenridgei*), and ko'oloa'ula (*Abutilon menziesii*), and others were used as dye plants.

But harvesting, burning, grazing by domestic and wild cattle and goats, and the effects of invasive plants and insects have reduced dry forests within the past 100 years to a few small isolated stands. Existing forest patches today mark areas that have been spared by recurring grass-fueled wildfires. There has been no recruitment of dry forest trees within this landscape in many decades most likely due to competition with alien grasses and browsing by feral goats. Wildfires now pose the greatest threat to the land and its inhabitants. Driven by persistent trade winds, large-scale grass and brush fires sweep across the landscape on roughly 10-year intervals, threatening properties, degrading rangelands, threatening to damage to coral reefs and near shore marine environments

through erosion, and destroying endangered lowland and montane dry forests and shrub lands that are intolerant of recurrent fire.

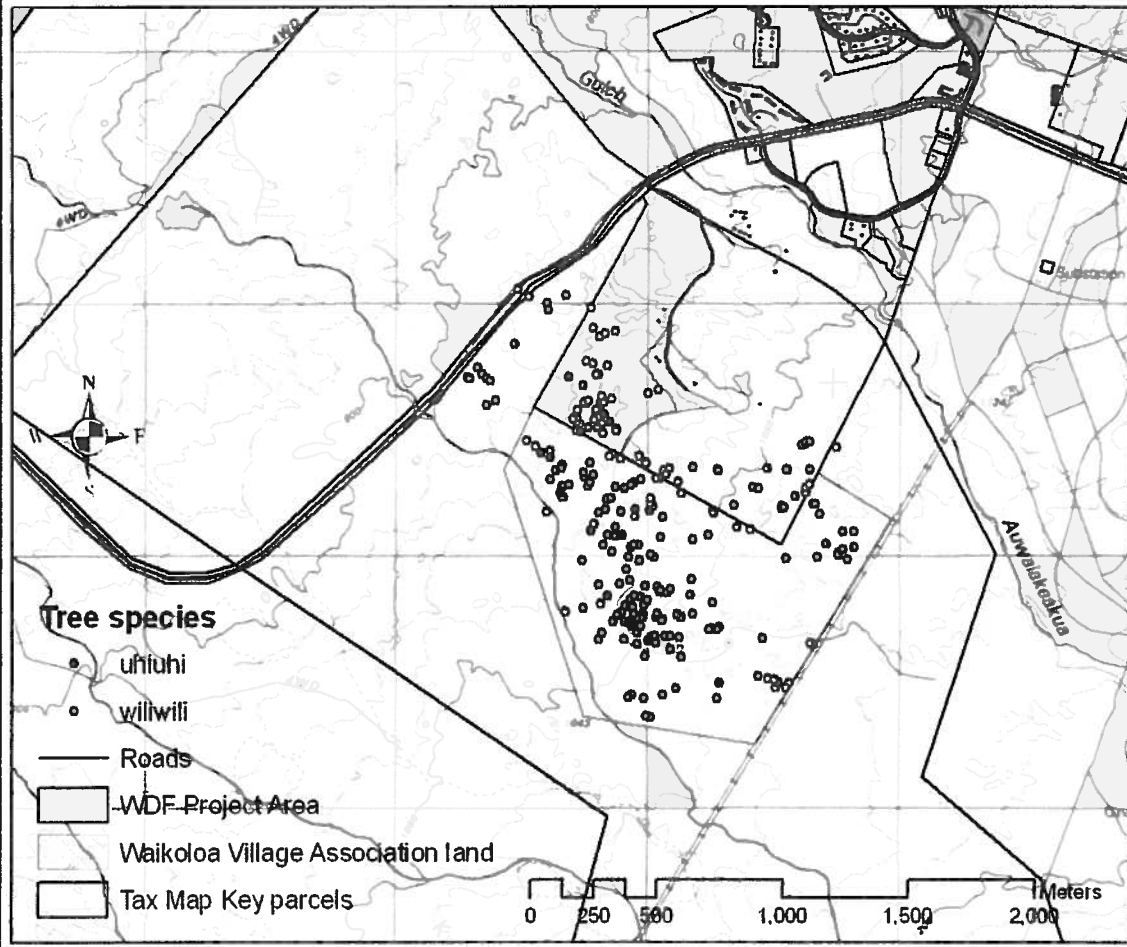
As few as a hundred years ago, lowland dry forests within the region were still comprised of a mixture of endemic tree and shrub species. According to a description of the extremely hard and dense uhiuhi by Joseph Rock in 1913, “The tree ... inhabits the leeward side of the islands, especially the a’ala lava fields. At North Kona, between Huehue and Puu Wa’awa’a, elevation 2000 ft, the writer observed the biggest trees... in Hawai’i, they are only found in Kona ...”. Lowland dry forests that remain today occur as widely scattered patches imbedded within an expansive fountain grass and buffel grass-kiawe savanna (Figure 1).



Remaining wiliwili on Hawai’i island occur at Puu Wa’awa’a, at Puu Anahulu, and near Waikoloa Village. The largest population occurs within the Waikoloa Village area where it is estimated that over 200 trees still survive. (Figure 2). In addition, smaller groups and individual trees occur widely scattered in the leeward Kohala mountain and upper Lalamilo areas. The very rare and federally endangered uhiuhi (*Caesalpinia kavaiensis*) persist in the North Kona District in Kealakehe, Ka’upulehu, and Puu Wa’awa’a, as reported in the recovery plan for the species (USFWS 1992), and at Waikoloa Village. A site in Kealakehe subdivision has one adult tree enclosed by a fence and rock wall; the Ka’upulehu site supports 2-3 naturally occurring trees; the Puu Wa’awa’a site supports somewhere between 15 and 20 wild adults (D. Wilkinson, pers. comm.); and the

population near Waikoloa Village supports 13 adult trees. To date, the WVOC has identified approximately 30 uhiuhi snags scattered amongst the living uhiuhi and wiliwili, indicating that the uhiuhi density in this area was substantially higher in the recent past. About 3 miles to the east/south/east of the Waikoloa wiliwili forest occurs a single halapepe (*Pleomele hawaiiensis*) growing from a large lava-tube sinkhole (G. Gerrish, pers. comm.). In the adjacent State lands of Puu Anahulu occurs lama dominated dry forest supporting halapepe, aiea (*Nothocestrum breviflorum*), 'ohe makai (*Reynoldsia sandwicensis*), kulu'i (*Nototrichium sandwicense*), and many other native dry forest plant species. In the early 1980's the last of the Ko'oloa'ula (*Abutilon menziesii*) from the island were found two miles downstream of Waikoloa Village at approximately 300 ft. elevation in the lower reaches of the 'Auwaiakeakua Gulch above Puako.

Fig. 2: Waikoloa Dry Forest Recovery Project within Waikoloa Village Association, Tax Map Key 3-6-8002015, South Kohala District, HI.



The past land uses and current condition of the nearby dry forest provide a convenient classroom through which local residents will build knowledge and community relationships through the practice of land stewardship. This site provides an excellent opportunity for collaborative learning about Hawaii's culturally and ecologically important native dry forests. Working as a community, we will provide lasting protection

for the wiliwili forest and its inhabitants, provide increased fire protection for the area, sustain important native Hawaiian cultural resources, and build a long-term project that enhances community values.

Land and Resource Description

Existing vegetation:

The Waikoloa Dry Forest Recovery project site is home to 10 endangered uhiuhi (*Caesalpinia kavaiensis*) and approximately 80 living wiliwili (*Erythrina sandwicensis*) trees. The surrounding area harbors at least 3 more uhiuhi trees and approximately another 100-120 wiliwili trees. One thing that is noticeable when walking through the area is the number of wiliwili snags. Over half of the trees in the area are dead. Wiliwili seedlings can be seen germinating during the rainy season if you look close enough and you are there at the right time. The sheer number of ungulates in the area and the browsing effectiveness they display, leaves one wondering what this forest must have looked like 250 years ago. Certainly, it would have been much more dense with all age classes represented, along with many more than just the two species still present on the site.

Other native vegetation still present within the project vicinity include lama, which exists just south of the project boundary, 'ilima (*Sida fallax*), 'aweo'weo (*Chenopodium oahuense*), 'akia (*Wikstroemia pulcherrima*) (reported near Pu'u Hinai), pua kala (*Argemone glauca*), as well as the indigenous uhaloa (*Waltheria indica*) and ilihee (*Plumbago zeylanica*). The area known as Waikoloa Highland is said to have kawelu (*Eragrostis variabilis*), a native lovegrass. The cave system also supports a scattered population of a yet identified *Asplenium* species.

The project site is nearly completely covered with fountain grass (*Pennisetum setaceum*), and buffelgrass (*Cenchrus ciliaris*). Shrub species include indigo bush (*Indigofera suffruticosa*) and the rapidly expanding tree tobacco (*Nicotiana glauca*). Kiawe (*Prosopis pallida*) is the most common tree species on the property.

Existing wildlife:

Large herds of feral goats (*Capra hircus*) roam the parcel. Rats (*Rattus spp.*), Indian mongoose (*Herpestes a. auropunctatus*), and cats (*Felis catus*) also exist within the project area.

Native wildlife still exists on the property. The endemic Hawaiian subspecies of the Short eared Owl (*Asio flammeus sandwichensis*) or Pueo has been seen in the area on several occasions. During a cave inventory, archeologists inadvertently flushed a Pueo out of a cave situated along the southern boundary of the project site. Two old eggs were also found on a ledge in that cave. It is possible that other endemic birds may use the area during certain times of the year. The Hawaiian hoary bat (*Lasiurus cinereus semotus*) has not been detected in the area but surveys trying to detect it have not been undertaken. This bat roosts in trees. The planting of more native trees and the clearing of non-native

ground cover may provide more opportunities for the bat to use the area in the future.

Geology and Soils:

The Waikoloa Village native wiliwili forest stand occurs on a relatively young Mauna Kea a'a flow that originates from Puu Hinai (elev. 1439 ft.) and sweeps downslope toward Puako. Estimated to be between 4.4 and 7.1 thousand years old (Wolfe and Morris 1996), the flow has a very rough and blocky texture that has precluded access to cattle. Like other young and rough flows that still support remnant patches of dry forest, this flow has remained less colonized by exotic grasses resulting in protection for its inhabitants from wildfire.

According to the Soil Survey of the State of Hawaii two soil types are present within this TMK. These include:

- 1) **Rock land (rRO)**, is a miscellaneous land type that consists of pahoehoe lava bedrock covered in places by a thin layer of soil material. The dominant slope is between 10 and 15 percent. Pahoehoe outcrops occupy 50 to 90 percent of the surface. The average depth of the soil material is between 6 and 8 inches, although in some places the material extends into the cracks of the lava. Rock land is at an elevation ranging from near sea level to 13,000 feet and receives from 10 inches to more than 150 inches of rainfall annually. The vegetation is confined mainly to the soil-covered areas and the cracks in the lava. It varies according to rainfall and temperature, and suffers from drought during dry spells. The hazard of water erosion is slight. Rock land is used for pasture, wildlife habitat, and watershed. (Capability subclass VII, nonirrigated)

- 2) **Lava flows, Aa (rLV)**, has been mapped as a miscellaneous land type. This lava has practically no soil covering and is bare of vegetation, except for mosses, lichens, ferns, and a few small ohia trees. It is at an elevation ranging from near sea level to 13,000 feet and receives from 10 to 250 inches of rainfall annually. It is associated with pahoehoe lava flows and many soils. This lava is rough and broken. It is a mass of clinkery, hard, glassy, sharp pieces piled in tumbled heaps. In areas of high rainfall, it contributes substantially to the underground water supply and is used for watershed. (Capability subclass VIII, nonirrigated)

A third type of soil called Very Stony Land (rVS) exists just outside the southwest boundary. This soil type is noticeable in that it occupies a more rolling type of landscape, usually at a higher elevation than the other two soil types within the project area.

Water Resources:

There are no perennial streams located within the project site. There is an unnamed intermittent stream that shows up on maps of the area. This stream has shown no signs of flow during the last couple of years of observation.

Existing recreational and aesthetic values:

During wildfire operations in the past, fuel breaks have been cut through the project vicinity. State maps show one continuous trail/break that starts along the power line trail and winds its way through the parcel until reaching the new industrial area. This however is not the case, as there is a gap of around 200m across the roughest terrain that was never completed. It appears that they tried to breach this area but were never successful. Completing this trail/fuelbreak is essential as it would provide vehicular access into the area to further protect the area in case of fire.

Forest Health:

The current health and prognosis of this forest is not good. For the last couple of years the wiliwili has been impacted heavily by the Erythrina gall wasp (*Quadrastichus erythrinae*). Several trees have been lost recently and it is thought that the gall wasp has been the impetus leading to their demise. Many more of the trees are in poor health and it is no guarantee that they will make it without direct intervention.

Uhiuhi trees are impacted by the black twig borer (*Xylosandrus compactus*), which manifests itself through globs of sap hanging down from impacted branches. The trees continue to produce seed, which is fortunate, but one never knows when a threshold is crossed upon which the trees will begin a precipitous decline towards death.

Both tree types are impacted by ungulates browsing on the fresh bark of new branches. All trees display a browse line above which the ungulates are no longer able to browse. Goats have also been observed within the lower branches of wiliwili trees across the project site.

In July 2007, a fire originating from the Pu'u Hinai quarry area resulted in approximately ¼ of the project area burning. We were fortunate in that only one tree was lost. It has been mentioned previously that the nature of the terrain has precluded high densities of non-native grasses from building up in certain areas, but the sheer volume of fuels in the surrounding area and the high winds that frequent the Waikoloa area, provide ample opportunity for embers and ash to move unimpeded across the entire project area. Perhaps many other shrub and tree species have been lost in the past due to fire which we do not even know about. Fire breaks along the proposed fence line are currently being constructed.

Significant Historic and Cultural Resources:

The additional 25 acres of land that was added on since the last submittal, was done not only to capture the few remaining trees along the southern boundary but also to protect a series of caves and lava tubes. The caves have been heavily impacted by ungulates that have been using them as shelter. A dead wiliwili tree has also been observed within one of the tubes along the southeast boundary. A few ferns still cling to life on inaccessible walls and ceilings where ungulates cannot browse them. Preliminary surveys of the caves have been done and further studies are to be undertaken very soon. Initial surveys have resulted in some interesting findings. Sleeping quarters have been found in one area of the caves which most likely dates back to the late 1800s. Broken

glass scattered across several locations also indicate activity around the end of the 19th century. More studies are in the works along with an underground mapping exercise.

Forest Management Objective & Public benefit:

Project objectives encompassed within this proposal are to provide native species restoration, habitat restoration and dry forest education. Benefits to the public include the establishment of a native ecosystem that more accurately depicts the true structure and function of its former self, right in the backyard of the residents of Waikoloa Village. In addition, the reduction and management of the fuels may potentially keep the village safe from devastating fires. And finally, there is the provision of educational and ecotourism opportunities.



Figure 3: Establishing a fuel free zone around the perimeter

The WVOC will oversee and coordinate directly or through contract services all management measures described herein, including the control alien grass fire fuels, removal of feral goats, control of rats, and restoration of native lowland dry forest vegetation. Working with our partners, cooperating researchers, and federal and state agency representatives, to date the WVOC has contracted the removal of grass fuels from within 50' radius surrounding the base of 12 of 13 uhiuhi and 24 wiliwili trees as well as along the southern and western fence line boundaries, collected and stored uhiuhi seed from 2004, 2005, 2007 and 2009 in accordance with HRPRG protocols, conducted a survey of goat-exclusion fence alignment alternatives and finalized one that captures most every tree within the vicinity as well as network of caves along the southern

boundary, GPSed every wiliwili and uhiuhi tree with the project area, conducted *Erythrina* Gall Wasp monitoring and control trials, collected uhiuhi leaf samples for genetic research, and developed this funding proposal. These actions have been implemented as Phase I (Stabilization and Planning) of the project.

Through active management, the WVOC will lead the restoration of the forest to function for the following purposes:

- as habitat to support stable wild populations of rare dry forest plants and animals,
- to perpetuate important Hawaiian cultural resources,
- to provide fire protection to the southern aspect of the Waikoloa Village community,
- to provide opportunities for community involvement in conservation, and
- to serve as an educational resource.

Phase I - Stabilization and Planning: 2004-2006 (Completed)

- A) Gather existing information pertaining to locations of existing uhiuhi trees in the Waikoloa Village area;
- B) reduce fuels surrounding remaining uhiuhi and wiliwili to abate wildfire threat;
- C) Conduct assessment, treatment, and monitoring for the *Erythrina* Gall Wasp;
- D) Develop funding proposals for Phases II and III.

Phase II - Conservation: 2007-2018 (In Progress)

- A) Fence 275 acres to exclude feral goats from the majority of the wild population of uhiuhi and wiliwili;
- B) Initiate an integrated pest management program to control infestations of alien insect pests, including EGW, Black Twig Borer, and Bruchid Seed Weevil;
- C) Establish a rodent control grid and initiate rat baiting/trapping program to establish and maintain very low rodent densities around mature uhiuhi trees;
- D) Maintain and expand fountain grass removal around all mature native trees to enhance wildfire protection;
- E) Establish a water system to support future plantings;
- F) Hold volunteer workdays and build a network of support through volunteer workers, community organizations, civic clubs, and local businesses;
- G) Establish a monitoring program to measure the effectiveness of habitat restoration efforts and document changes in vegetation over time; and
- H) Collect and store seed of common natives for use during phase III.

Phase III - Restoration: 2009-2018

- A) Establish a nursery facility within the project area for the propagation of common natives
- B) Restore native forest through seeding and planting of common natives;
- C) Interplant rare and endangered species.
- D) Maintain fence perimeter, firebreak roads, grass-free areas, rodent control grid, and integrated pest management program;

- E) Conduct monitoring and research and evaluate and revise management approach as appropriate; and
- F) Conduct planning and fundraising for the site maintenance phase starting in 2011.

Phase II, Conservation 2007-2018

Phases II (Conservation) and III (Restoration) will occur through the year 2018. During the Conservation phase (2007-2018) management actions will directly address the factors limiting reproduction and survival of the native trees: wildfire, goat browsing, insect pests, and rodents. The actions planned for this phase meet interim USFWS recovery objectives for managing threats to the species in the wild. Over time of course, we anticipate that certain actions will be phased out as we meet our goals and objectives. For example, goat browsing should be eliminated shortly after the fence is complete and rodents should be reduced to very small discontinuous populations. Monies can then be obligated towards more intensive fuel and pest management (fuel breaks and EGW).

Establish perimeter firebreak and reduce fountain grass fuel load around mature trees. Fuels management techniques used in this project will be a combination of mechanical and chemical means. Prescribed burns may be used along the southern boundary which is comprised mostly of pahoehoe lava flows. Extensive planning with local, state and federal agencies will be undertaken if we pursue this management action. Outside of the few wiliwili trees, the ground cover is predominately fountain grass along with a few other weed species. Prescribed fire may be a way to maintain the area fuel free until populations of native vegetation can be established.

We will also be establishing a firebreak along the perimeter fence (3.0 mi) that is grass-free to a width of between 100-130 feet (Figure 3). The NRCS Job Sheet 383 – Fuel Break, calls out for a width of 40 ft. The breaks we are establishing may very well be the widest throughout the islands. While this width may not be enough to stop a wildfire under extremely high winds, it should provide firefighters defensible space under low to moderate wind conditions and allow them to undertake operations in a reasonably safe environment. These breaks will be maintained and widened over the course of time. Coverage of these costs will need to be further discussed with the various funding agencies.

Maintain in fuel-free condition the fine fuels buffer areas surrounding all wiliwili and uhiuhi trees within the project area beyond the 34 trees that have been completed in Phase I. Money to support this phase is covered under the NRCS WHIP contract until 2016 (Pest Management: manage infestations of weeds, insects and disease to reduce adverse effects on plant growth). We will be seeking funding for the years 2017 and 2018. Grass will be removed using a combination of herbicide spray and manual cutting techniques demonstrated to be effective in other nearby dry forest restoration and wildfire fuels management efforts at Kau'pulehu, Kipuka Oweowe, and Puu Wa'awa'a. We will maintain the grass free area to a distance of 50-foot radius from the trunk of the tree. Grass will be killed using glyphosate herbicide applied via a backpack sprayer at a concentration of 1.5 to 3%. The dead grass will then be cut using industrial-grade string trimmer. The areas within 50-feet of each of the trees within the 275-acre project area are

to be maintained in this manner. Repeat trips to each site are necessary to insure complete grass kill and removal. Upon kill and removal of grass within a 50-ft. radius of all the trees, we will then begin to expand the radius up to 100-feet around all trees.

Establish an Initial Attack and Response Plan The key to this plan is providing the fire fighters the necessary information before an incident occurs. Foremost will be the development of a map that will display the necessary information that will help the firefighters stay safe and protect the forest.

Waikoloa Fire Station 16 is the nearest station to the project site. They are approximately $\frac{1}{4}$ of a mile away. It is this station that will provide the Initial Attack and Response Plan. This close proximity will ensure a timely response in case of a fire which will go a long ways to saving the forest. At present, there are two locked gates preventing unauthorized entry into the project site. The first gate is shared between West Hawaii Utilities, the Construction workers, and WDFRP. The second lock is situated just behind the partially completed light industrial complex. The WDFRP paid for this gate to be installed. We anticipate one additional gate being erected along the power line where a trail has already been established. The fire station will have a complete set of keys and or combinations so that they can access the parcel at any time in order to respond to a fire. They will also have a series of phone numbers of WDFRP staff in case they have any question as to the current status of the project site or who might be present on site during an emergency.

Each and every gate will be clearly labeled on the map provided to the fire station. In addition to the gates, the map will also show gridlines so that they can relay accurate information to personnel and other agencies, it will clearly show and label the location of the dip tank along with any other water infrastructure, all trails, and all trees (listed by species and whether they are dead or alive) so that they can orient themselves. Every firebreak created in the parcel will be clearly labeled along with its average width along with the location of every 200ft X 200ft safety zone. Safety zones will be located every $\frac{1}{4}$ mile along the perimeter of the project site.

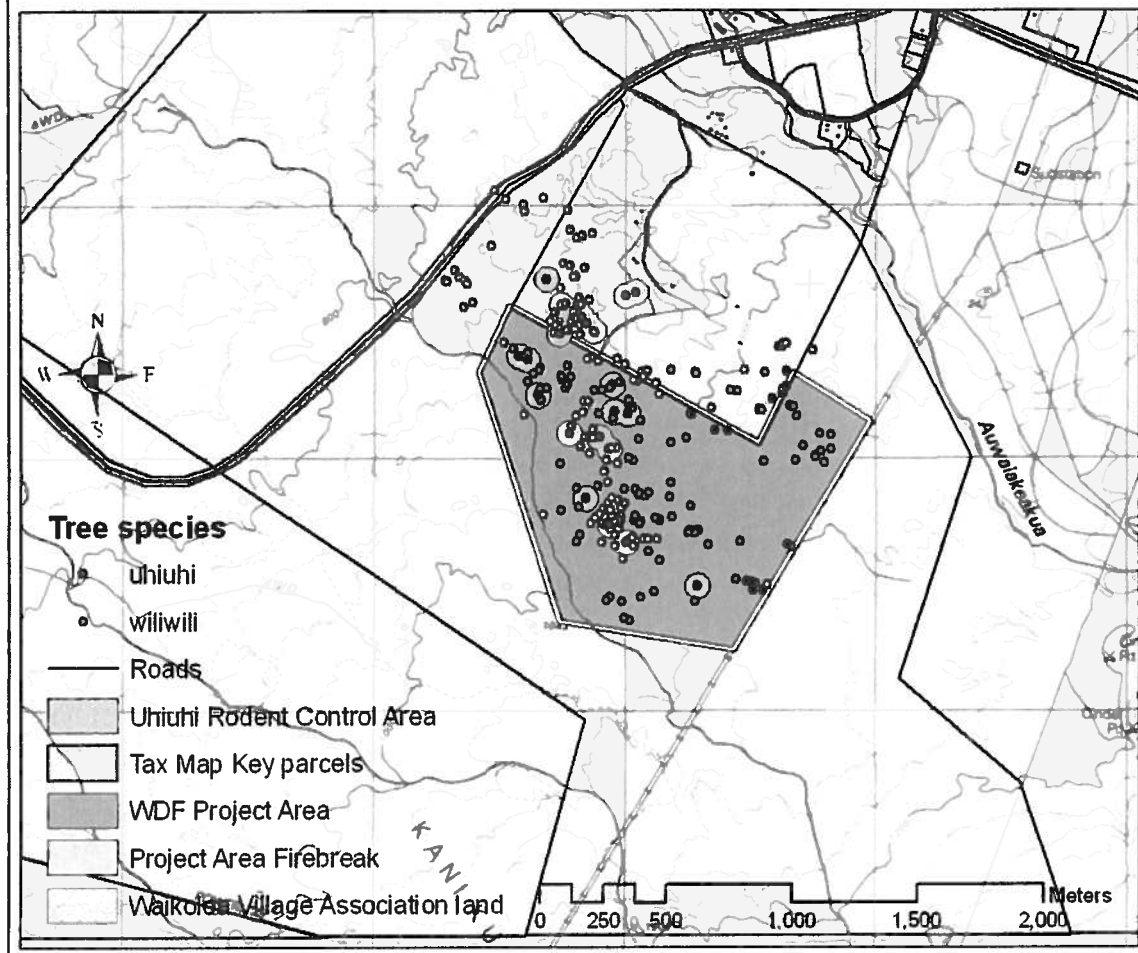
Lastly, the map will clearly state that the area is duded with UXO and no off road maneuvers are permitted. The surface has been swept by Corps of Engineers. They were lucky in that much of the area they swept took place after the fire of July 07, when all the ground cover had burned off. Discussions with US Army Corps of Engineers, Honolulu District, are currently underway in order to have a subsurface sweep of the project site completed in the next year or so (G. Sirakata, pers. comm.). The map produced will be laminated and presented to the Incident Commander of Station 16 in Waikoloa.

The Response Plan ultimately rests with the IC from the Waikoloa Station. He decides when to call in air support, as well as deciding if and when other agencies should be called in to help assist in fighting a fire. Our goal is to simply give that person all the information available regarding our project. Project staff personnel will also be wildfire response trained.

Construct Fence We will construct approximately 16,000 feet of goat-proof exclusion fence to enclose a 275 acre section of Waikoloa Village Association land. The parcel will enclose 10 of the 13 uhiuhi trees on Association property, and capture the majority of the wiliwili forest habitat. The fence will be built to exclude feral goats from the restoration area and when complete will measure no less than 6ft tall. This height should be more than enough to keep the goats out of the project site (Miles Nakahara (retired DOFAW), pers. comm.). It is also his opinion that mouflons will not become residents within the Waikoloa area. Tests done by the National Park Service concluded that a 6ft fence was also enough to keep sheep out of an enclosure. If sheep do make their way into the project vicinity, we will act aggressively to impede encroachment.

Fence posts will be 7-10 foot triple-dip galvanized or bezinal coated steel t-posts spaced 10 feet apart or less, as terrain dictates. Detailed construction specifications will be developed in consultation with the USDA Natural Resource Conservation Service Waimea Field Office. There is a shortfall in the NRCS WHIP grant in order to complete this project. We are seeking FSP funding to make up this shortfall in order to complete this very important phase of the project.

Fig. 4: Detail showing Management Features of Waikoloa Dry Forest Recovery Project in South Kohala, HI.



Initiate integrated pest management program Project staff have met with various personnel from the bio-control branch at Hawai'i Department of Agriculture during the past several years. In December 2008 Department of Agriculture staff began their initial release of *Eurytoma* sp. for the biological control of the Erythina Gall Wasp on 8 trees in the vicinity of the WDFRP site. It is still too early to make any statements as to the efficacy of the bio-control on this pest. In addition to this we will continue testing and development of appropriate systematic insecticide type, treatment rate, and most effective method for seed and twig beetles (This project line item will be funded partially through the NRCS WHIP grant).

Any additional activities that we shall undertake to control pests on the site will be in accordance to label specifications and in coordination with Hawai'i Department of Agriculture, University of Hawaii Extension Service, relevant research agencies, and a professional arborist.

Control Rats Within the region, roof rats (*Rattus rattus*) have been documented to depredate uhiuhi seed and gnaw bark from young branch shoots, thereby killing new growth and increasing susceptibility to pathogens. Eliminating the effects of rats on the growth and vigor of the remaining trees is well justified. In addition, eliminating rats will allow seedbank development and set the stage for natural recruitment of uhiuhi and other species (funding for this line item will be through the NRCS WHIP grant).

An approach that employs the use of rodenticide bait stations applied in a grid has been effective in reducing rat populations and maintaining them at low levels. This technique will be applied over a 77-acre area encompassed by a 312-foot (95m) radius surrounding each of the 13 uhiuhi trees. A baiting grid spacing of 25 m will be used. To reduce the initial population, stations will be checked and refilled every 2-3 days, until the rate of bait consumption declines markedly or stops completely. This will indicate an effective kill of the rat population within the baited area. Stations will be refilled at less frequent intervals after this point (about every 2 weeks) to maintain the site. A rodent bait grid network (25-m grid spacing, or 16 sta/ha) over the 31 hectare area (77 Ac) that is represented by a 125 m (410 ft.) radius around each of the 10 uhiuhi trees will be established (Figure 4). This system will use 496 stations continuously supplied with bait until there is no more take of bait. This method eliminates rats from an entire area, thereby allowing seedbank replenishment to occur. Rodenticide bait will be handled by a licensed pesticide applicator.

Begin to install a water system and initiate test planting of common native species. The cornerstone of this project will be the construction of a 20,000 gallon open-top water storage tank, capable of supporting 2-4 hours of sustained helicopter bucket operations. The most likely site for the tank is along the main access trail near the heaviest concentration of uhiuhi trees. This tank will feed a network of water supply lines that will irrigate the vast majority of our outplanting sites. (We are looking for FSP Funding to help cover this project line item).

In addition to this, project staff will work with various groups and knowledgeable personnel to see if a state of the art sprinkler system can be installed within the project site in order to offer additional protection to the uhiuhi trees.

Build network of support and source of contributions WDFRP staff have already begun building a network both within and outside the community of people and groups interested in supporting the conservation of the dry forest by providing assistance, labor, or donations of funds or services. Volunteer workdays have been on-going since early 2008. We still need to hire a volunteer coordinator to maintain the communications network, coordinate and promote volunteer workdays, and otherwise support the program through facilitating community involvement. Right now the Project Manager, Mr. Dave Faucette, and Beverley Brand, the Project Coordinator have been doing the community relations.

Phase III, Restoration 2009 – 2018

Phase III will focus on restoration of the wiliwili forest and its common and rare components. The end goal of this phase will be to establish populations of 9 endangered plant species and other natives. Most activities in this phase will focus on propagation and planting of common natives. Once the community of common native plants has been established, the rare species propagated by the cooperating rare plant propagation facility will be planted. The actions planned for during this phase, work toward USFWS recovery objectives for species stabilization and recovery. The final community will include the native tomato tree, aiea (*Nothocestrum breviflorum*), the host tree for the endangered Blackburn's Sphinx Moth (*Manduca blackburni*). As such, the forest may eventually become colonized by the moth and serve as habitat for the species.

Plant and restore native vegetation WDFRP staff and volunteers will conduct trial plantings of select common natives to determine site suitability and microsite requirements. We will build upon successful techniques and establish a mix of common natives as appropriate throughout actively managed portions of the project area. We will continue to improve restoration techniques until the water supply system is functional, access pathways have been developed throughout the management area, and planting techniques to maximize survival have been identified through trial and error using common native species (Table 1). Once planting techniques to insure maximized survival have been worked out with common natives, propagation and planting of rare natives and endangered species can begin. Rare natives and endangered species will be propagated through contract with the Hawaii Rare Plant Restoration Group (HRPRG)-member Amy Greenwell Ethnobotanical Garden as well as in the new plant propagation facility we plan to erect on site. Our facility will allow local groups and other individuals to propagate both common and rare plants directly on site. Water from the dip tank will supply the greenhouse (We will be seeking FSP funding for the construction of the facility and the ongoing costs associated with growing and nurturing of seedlings).

Table 1. Common and rare plant species native to the lowland dry forest of North Kona and South Kohala districts that may be suitable for planting and seeding:

Scientific Name	Common Name	Listed Status	Recovery Status*
<i>Abutilon menziesii</i> ‡	ko'oloa'ula	E	less than 50
<i>Bidens</i> sp. ‡	ko'oko'olau	SOC	in decline
<i>Caesalpinia kavaensis</i>	uhiuhi	E	less than 50
<i>Capparis sandwichiana</i>	maiapilo	SOC	in decline
<i>Chenopodium oahuense</i> †‡	'aweo'weo	-	stable
<i>Diospyros sandwicense</i>	lama	-	in decline
<i>Dodonaea viscosa</i> †‡	a'ali'i	-	stable
<i>Erythrina sandwicensis</i> †	wiliwili	SOC	In decline
<i>Hibiscus brackenridgei</i>	mao hou hele	E	less than 50
<i>Kokia drynarioides</i>	kokio	E	less than 50
<i>Metrosideros polymorpha</i> ‡	'ohia		stable
<i>Neraudia ovata</i>		E	Less than 50
<i>Nothoestrum breviflorum</i>	Aica	E	Less than 100
<i>Nototrichium sandwicense</i>	kulu'i	SOC	in decline
<i>Osteomeles anthyllidifolia</i> †	ulei	-	in decline
<i>Pleomele hawaiiensis</i>	halapepe	E	100-500
<i>Psydrax odorata</i> ‡	alaha'e	-	in decline
<i>Reynoldsia sandwicensis</i> ‡	'ohc makai	SOC	in decline
<i>Santalum</i> sp.	'iliahi	SOC	In decline
<i>Sida fallax</i> †‡	ilima	-	stable
<i>Solanum incompletum</i>		E	Less than 100
<i>Sophora chrysopylla</i> ‡	mamane	-	in decline
<i>Vigna o-wahuensis</i>	No common name	E	less than 50

* in the wild

† Test planting species

‡ Test seeding species

The WDFRP Outreach and Education Program The goal of this program is to create an outreach and education program that will increase public knowledge about the unique Wiliwili forest in Waikoloa as well as educate others around the Big Island and ultimately the state. It will educate and produce young conservationists knowledgeable on the threats facing the dry forest and equip them with the skills necessary to solve those problems. Reaching those students at a young age is the key to making this project work over the long term.

This Wiliwili forest is a state treasure worthy of protection. Waikoloa Village is a rapidly expanding community. We need to fight hard in order to protect what is left. Having a cadre of young students knowledgeable in its structure and function will go a long ways towards ensuring it thrives and ultimately expands. Funding this aspect of the program is vital to protecting the forest for generations to come. It will also promote positive public relations between the local community and WDFRP. The portion of the program dealing with the schools will attempt to follow the brief protocol outlined below. The process however can be used as a template for dealing with all the groups who will be participating in this program.

Three Step Process

1. Prior to Visit

Communicate with teachers, students and parents
Provide background materials

- Develop dual purpose curriculum
- 2. Time in the dry forest

On site activities

- 3. Follow up

Send photos, write ups etc

Communicate with Teachers

It is important to maintain communication throughout the year to keep students engaged and interested. This past year we have had students grow and nurture seedlings at their school. This keeps them engaged and thinking about the project. In the future we will provide a program for the students to meet regularly and work in the dry forest and/or give presentations to the community.

Provide Background Materials

Project summary

Plant information

Support information –Dry Forests of Hawaii, rare plants, conservation

Methodologies for seed collection, propagation, vegetation monitoring, etc.,

Handouts (pamphlets, web page, plant pictures, powerpoint etc.,)

List of materials to bring to the field (water, sunscreen, gloves lunches, no slippers etc)

Develop Dual Purpose curriculum

Already developed is a 6th grade curriculum on the dry forest endangered plants, which will be available at the beginning of school year 2008-2009. The curriculum was developed this past school year and has been fine tuned this past summer.

Appendix A outlines the programs and deliverables we have already begun and funded ourselves. We are still working on developing a few others.

Conduct monitoring, research, and seed collection

In 2008-2009, we will begin to design monitoring programs to answer specific questions that measure success in achieving management objectives. The programs will be designed to address specific management questions (is the EGW predatory wasp effective? Do we have enough rat bait stations in the field?). We will also set up a baseline ecological inventory survey that establishes permanent long-term monitoring stations. The initial baseline inventory survey will use transects for sampling invertebrates, mapping and monitoring pests and invasive species. The initial baseline inventory survey will also establish a network of permanent plots for quantifying changes in species composition and community structure over time. Permanent photo stations will be used along transects and at permanent plots to document visually apparent changes. Trees treated for insect pests and controls will also receive specific monitoring designed to measure effectiveness of insect pest treatments. Existing photo stations at each of the 13 uhiuhi trees and EGW treatment study trees will also be re-sampled. The initial baseline survey of vegetation and invertebrates will initially be repeated on 2 years intervals (2010, 2012), until initial results are obtained and sampling regime reevaluated

to fit project needs. We will also design and initiate an endangered species and habitat monitoring program utilizing University of Hawai'i and Hawai'i Community College (UH/HCC) student interns and graduate students. We will also work closely and share knowledge with the dry forest conservation and forest stewardship communities.

In coordination with cooperating botanical garden and state and federal agencies, every season collect and store seed crops of uhiuhi and wiliwili in seed storage facilities that meet Center for Plant Conservation, Lyon Arboretum, and HRPRG seed storage protocols. Track and label seed stocks by founding parent tree and maintain an electronic database log of seeds collected for purposes of future planting, exchange with other dry forest conservation programs and gardens, and making regular deposits into ex-situ seed banks.

Project Management

The WDFRP Coordinator and WVOC President, currently Ms. Beverley Brand, will oversee and coordinate the implementation of project activities on behalf of the WVOC Board of Directors and under guidance from the newly-established WDFRP Advisory Committee. The Committee's purpose is to provide guidance regarding project implementation and management. The Committee is composed of restoration ecology and management experts, including representatives from government agencies and institutions, other restoration practitioners, and community resource people. The Coordinator will serve as the principal liaison to the granting agencies, The Outdoor Circle and the Waikoloa Village Association, and will be responsible for budget, reporting, and other administrative duties. The Coordinator will work through a part-time Project Manager (Dave Faucette) who will oversee and manage the project. The Project Manager will work closely with the Coordinator, agency representatives, affected interests, and other resource personnel to provide guidance to contractors and cooperators, implement the integrated pest management program, manage establishment of native vegetation, and manage volunteer work days. The WVOC will also utilize expertise and services offered within the community through contract or fee, or in some cases through in-kind donation, as needed to implement the project. This project will make a significant contribution toward the recovery of the endangered uhiuhi and 9 other endangered plants with a similar need for actively managed habitat.

The 10 uhiuhi trees at this site represent 1/4 - 1/3 of the entire known species, and is likely to be the densest clustering of uhiuhi in the wild. To our knowledge, this site will be the second habitat patch where threats are actively managed to support recovery of the species. This project will compliment other lowland dry forest conservation efforts occurring nearby at Ka'upulehu, North Hawaii Veteran's Cemetery, leeward Kohala mountain, and at Auwahi on Maui, and further recovery goals by adding a new centrally located subpopulation to the Big Island uhiuhi metapopulation. Nine other endangered plant species with similarly reduced numbers of populations will also benefit from a new actively managed habitat.

The native forest habitat restored through this project is intended to be maintained, through the WVOC and its auspices, indefinitely. The WVOC board, which has

responsibilities for maintaining the scenic and natural beauty of the community, will ensure that funds are generated to maintain the project. As a community-based project, we anticipate that many members of the growing community will assume shared ownership and responsibility of the forest. As the WVA and golf course use the wiliwili blossom as their logo, the community is forming an identity associated with the species and its protection. The way that community members will build shared values through participating in forest stewardship and endangered species recovery is a unique quality of this project.

Priorities

Priority actions that must be funded in order for the project to move forward include fencing, pest and wildfire fuels management, water tank installation, planting and project management. We are requesting funds from the FSP in order to pay for the labor, helicopter time, etc., in order to construct the fence. It is also a priority to install the dip tank as quickly as possible in order to protect the project site and potentially Waikoloa Village. In the outlying years we are looking for FSP funding in order to implement irrigation, seedling acquisition and out-planting along with pest and fuels management when the NRCS funds run out. We will also be seeking funds to help support project administration, education, and outreach. We feel it is very important to reach out to the community and let them know what a wonderful opportunity it is to have such magnificent forest right in their own backyard.

Contributions

Contributions of funds, volunteer time, and professional services, from individuals, businesses, non-profit organizations, private foundations and other non-governmental organizations will be used as match. Several community volunteer workdays per year will be scheduled to conduct weed control and assist in planting of common natives. These workdays will be modeled after similar nearby volunteer weeding and planting efforts, including the Kaupulehu Dry Forest Conservation Program, the West Hawaii Veterans Cemetery Reforestation Project, Conservation efforts at Puu Waawaa, and native landscaping at the Waimea Nature Park.

In addition to community volunteer time, contributions of professional time and services are expected from the following non-profit organizations: The Bishop Museum's Amy B.H. Greenwell Ethnobotanical Garden, The Waikoloa Village Association, The Hawaii Wildfire Management Organization (HWMO), The Nature Conservancy, The Kohala Center for Pacific Environments, Ka Ahahui o Ka Nahelehele, Hawaii County Council and the Edith Kanakaole Foundation. Project managers will invite contributions of time and services from development companies working in the area to assist with infrastructure planning and local businesses to help sponsor volunteer workday events.

Appendix A:

Waikoloa Elementary grades 2 and 6

We have been working with Ms. Sylvie Bright's grade 6 students since the fall of 2007. In the fall the students were exposed to a series of lessons on such things as seed scarification and seedling germination, threats to the plants in the wild, and potential pollinators. The students then scarified and sowed their own seeds and begin watching the germination process from their classroom.

In late 2007 the students transplanted those seedlings that germinated. The students were exposed to the various types of media necessary to ensure seedling success. In early 2008 we transferred the seedlings into gal pots. Again, the lesson here was proper mixing of the media and how to plant a seedling from one pot to the next. They were also exposed to the different types of root systems on the various plants.

In addition to this, the students were also taught an entire curriculum on the Dry Forest of Waikoloa that was developed by Ms. Bright and Mr. Nick Boer in conjunction with the PRISM (NFS) project. Beside the lessons mentioned above, they also had to research specific endangered and other dry forest tree species (wiliwili, uhiuhi, and lama) to determine why they were endangered or threatened and what could be done to ensure their survival. Their final project was to create a pamphlet outlining what they had learned, and then inform the community of the importance of this geographical area. The students did this by passing out about 300 pamphlets at the Waikoloa Village Market, where they had an information booth. They answered questions and they received many inquiries from the Waikoloa community. Furthermore, a few of the pamphlets were selected to be part of the Hawaii Curriculum Fair, and those particular students received certificates from the Department of Education of Hawaii.

We hope that the grade 7 students who germinated seedlings last year will be able to out plant in late 2008 or early 2009. We will use temporary yet secure materials that will keep the ungulates out. The students are very proud that they are becoming custodians for the Waikoloa Dry Forest, and they want to be the role models for the younger students at Waikoloa Elementary.

Waikoloa Middle school opened its doors this year, and in the next 2 years will grow to a full middle school encompassing 6-8 grades. This project is very important to the 6th grade class as they are the first middle school class of Waikoloa. They take pride in being the pioneers, and are looked upon as role models for the younger children. Engaging them and making them responsible to their community will have a huge impact on the future of the Waikoloa dry forest, if they are cognizant of the dangers the dry forest is facing, and have the means to do something about it.

One of the initiatives that the WDFRP staff would like to start with the 7th graders focuses on establishing a weather station in the project site, with remote downloading

data capabilities so that the students can download weather data while school is in session. The students will download the data, process the information and then use it to develop reports. Under this lesson the students will be exposed to weather data, how to process it as well as accumulate the information so that long term weather data for the project site can be ascertained.

Deliverables: Students will be required to produce brochures, pamphlets and posters on the Waikoloa dry forest and its weather to be presented at Waikoloa Highlands Shopping Center as handouts, Town Hall meetings and other various events across the state. The students can act as Dry Forest Ambassadors for the village. As they grow up and move through the education system hopefully they will have developed a conservation ethos which they can use to further their career or just continue to act as stewards of the Dry Forest and the WDFRP.

WDFRP will also keep the pamphlets, posters on files either in paper or digital form in order to present it at various symposiums, town hall meetings, as well as to keep a running ledger.

Needs:

HOBO Onset Weather station	Approx \$5,000
HOBO link cell phone plan	\$699/year
Van to project site	\$250/visit
Supplies: potting mix, pots, benches	\$150/year
Printer Cartridges, paper, poster	\$200/year
Stipend for Teachers	\$150/visit

Future Programs envisioned for Waikoloa School and community:

1. Dry Forest Ranger Club (Hawaiian language equivalent needed)
 Beginning in 2009 we would like to implement a program where students will meet on a bi-monthly basis to work on hands-on activities/curriculum within the dry forest realm. We envision the 7th graders getting actively involved in all aspects of preservation and protection of that area through the mentorship of teachers, scientists and community preservationists. These students will then have the means and knowledge to begin mentoring the younger students at the school that are part of the Ranger club. As the students get older this cycle will not only grow in spectrum, but could also serve as a gateway for students to use this experience as a means to get college scholarships, and ultimately future careers in that field.

Within two years, we would like to involve the other children of our community to become members of this club. Waikoloa has a lot of children who go to private and/or charter schools. By tapping in to this particular group, the ranger club program will foster a true collaboration within all socioeconomic groups of the Waikoloa community.

2. Cultural program

It is important for students to understand the cultural aspects of the preservation of these endangered species and ecosystems. Waikoloa School has two makuas who will help the program by educating the students (K-5 at first) on the dry forest. Final products could include hula performances, storytelling, art work, etc.

3. High school

As the students of Waikoloa get older and feed in the various high schools on the island, we would like to work with the science teachers to perpetuate what the ranger club has already accomplished. The first group of students will be entering high school in three years.

4. Service Learning

Service learning is an important aspect of any school. The ranger club and the curriculums developed will automatically tie in to that aspect. Service learning is where students use what they learn to provide a service to their community, state, country, and/or world. Waikoloa School already has an extensive array of service learning projects, and the students participating in the dry forest projects will only enhance the wonderful projects the school has undertaken in the past.

Needs:

Middle School Coordinator	\$5,000/year*
Lower School Coordinator	\$5,000/year*
Makua Coodinator	\$5,000/year*

* Ranger club implementation, curriculum development, bi-monthly meetings with ranger club, coordinators bi-monthly meetings, on-site visitations, community and school presentations, student/parent/teacher/community liaisons.

The Forest Team Program

WDFRP will be looking to hire Forest Team interns or work with the entire group on specific days throughout the year. We are looking for funding through FSP in the outlying years. If we hire student interns the cost is \$1000 per student. That dollar amount is matched through their program. Each \$1,000 requires the student to work 100 hours. So we will have two students for 200 hours each over the course of the summer. We require a minimum of two students because of the inherent danger of working in the project site. If we decide to utilize the group that same amount of money would go towards a series of work days until the money has been fully consumed.

The students will be required to control weeds, maintain fuel breaks, set up and install irrigation, out plant, bait and monitor the rodent grid (provided they have passed the Certified Pesticide Applicator examination) that is to be set up around the uhiuhi trees, and to set up and read plots as part of our Vegetation Monitoring Program. We will be monitoring both around uhiuhi trees as well as more remote areas in order to look at habitat change, and changes in species composition that takes place as the fence keeps

out ungulates and fire is controlled. The type of plots and their locations has not yet been determined.

Deliverables: The Forest Team Students will be required to collect and analyze the data from the vegetation monitoring plots in order to develop long term trends in vegetation communities across the various types of substrates located within the project boundaries. They will be required to build a data base on the information collected so that long term trends in species composition can be developed. They will also keep track of the baiting program and develop reports on it.

The Forest Team Students will also participate in a tree banding project as well as locating and GPSing trees outside of the project area. There are quite a few trees on the mauka side of Waikoloa Rd which still need to be identified. I am sure there are more uhiuhi trees that have not yet been recorded.

Needs:

Student program fees	\$2,000/year
Materials for plots (stakes, tapes etc.)	\$500

Youth Conservation Corps Summer Program

Under this initiative we would have two students from the HYCC come to the WDFRP site and work under their Hana Ho program. Under this program the students work over the course of 6 weeks, working towards 300 hours in total. The total cost for the program is \$100.00 per student. The HYCC program provides them with a stipend that they use towards college.

These students might not have developed the skills as in the other programs we are trying to develop here but they get some much needed experience and they will get some hands on mentoring in conservation, dry forest restoration which they can take with them for the rest of their lives. If we get the right students we can ask them to undertake special projects for which they can receive college credits.

Deliverables: HYCC students can undertake trail building and maintenance projects, weed control, fence maintenance as well as out planting, and irrigation projects.

Needs:

Student program fees (two students)	\$200/year
Materials	\$200/year

Hilo Scout Troop 1065 (65th)

This program would see the scouts of the 65th travel from Hilo to the WDFRP site to undertake projects that will help them earn their Eagle Scout Badge and as a group perhaps attempt to earn the Hornaday Award. The Hornaday Award has never been awarded to a Hawaii Troop before. This award represents a substantial commitment of

time and energy by individuals who have learned the meaning of a conservation/environmental ethic.

If this project is accepted by the FSP committee, we will begin the process of writing up a scope of work and submitting it to the local council service center for review and approval by the council conservation committee and Scout executive. This is a major commitment of time and energy towards a project based on sound scientific principles. The Eagle Scout Badge is the highest achievement earned as a scout. In order to earn this badge the scout has to make a significant contribution to a person or to a community.

The scouts will work on several projects in order to earn these awards and badges. First and for most they will work on the irrigation projects in order to protect the uhiuhi trees. WDFRP staff, have acquired the services of a volunteer physicist willing to donate time towards working with the scouts setting up infrared sensors around the perimeter of the enclosure which will hopefully trigger a sprinkler system set up around the uhiuhi trees when fire is threatening the parcel.

The scouts will also work on germinating plants, out planting, fencing, irrigation and catchments, trail building, signage etc. Thomas Seabury, the Assistant Scout Master for the 65th expressed a strong desire to undertake the construction of living trails. These are essentially trails with signage, which would provide visitors to the site the information necessary to find their way around the project, identify plants, etc. The troop will travel to the WDFRP 2-3 times per year. During their time at the site they will set up camp, learn survival skills, and then undertake various projects leading to either their Eagle Scout Badge or the Hornaday award.

The troop currently consists of 18 scouts but is posed to expand to 26 this year. In addition to this there are 4 venturers (females). In order to undertake any project they need 60% participation. Mr. Seabury does not anticipate any problem in meeting this objective.

Deliverables: The Scouts will work in more remote areas of the project site doing some very difficult tasks. They will be responsible for developing and constructing the infrared sprinkler system as well as the living trails network. In addition to this they will out plant in remote areas and build catchments in order to trap water. In later years they can perhaps build an irrigation system to feed and maintain their out plant sites. Ultimately, they hope to achieve the Hornaday award which would be a major achievement for the 65th and the state. This special project will take some time to develop but there are many topics from which to choose. It should not be too hard to come up with a suitable project that will be approved.

Needs:

Fuel and Food for camping trips	\$800/year
Infrared Sensor and equipment	\$2,000* - \$1,000/year in outlying years
Calipers, tree height pole, dbh tapes, etc	\$1,000

Lumber/construction material (catchments)	\$500/year
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* If the infrared sensors work as envisioned, perhaps we can continue and expand the project. I also anticipate some funding needed for replacement of equipment due to general wear and tear, vandalism etc.

Cultural and Traditional Uses Program

The goal for this program is to establish a relationship with local groups and crafts people and have them make tools and implements from the wood found in the project site. The products manufactured can be displayed at schools, workshops, and conferences in order to educate people on the dry forest, traditional uses of the forest, conservation and the WDFRP. Students seem to become more engaged when they can see something tangible, hold it in their hands and then be told of its' history and where it came from. The overarching goal of this program is to assist in perpetuating Hawaiian culture, traditions and species.

Right now we have lined up two groups willing to work with us under this program. The first group call themselves Hui Uhiuhi and is lead by Lance "Mahi" LaPierre. Lance is a masters student candidate at the UH Manoa working on the uhiuhi tree. The other group is from the Kawaiaha'o Church School on Oahu. These are young students (K-6) who are looking to work with native woods in order to craft implements in order to learn and perpetuate traditional Hawaiian practices. They are lead by Wailani Robins who is the Curriculum Director.

In order to make the tools and weapons some funding will be required. Some of the weapons require shark teeth, cordage, tools or other implements and this has a cost associated with it. There will also be some travel needs for the crafts people in order to collect the wood here in Waikoloa, transport it to Oahu, hold workshops and display their products at schools or other events.

The tools crafted would belong to the WDFRP, Hui UhiUhi and Kawaiaha'o Church School. The products made can be put on display at a variety of venues by any of the principles listed above. If the work proves good enough perhaps it can be displayed at the Bishop Museum. Most important is that an inventory exists of the implements manufactured. They should be stored behind glass under lock and key. We would be looking for funding for several glass cabinets.

Deliverables: Under this initiative the WDFRP develops a relationship and establishes a rapport with students and crafts people and makers of traditional Hawaiian wood products. In turn, these folks can educate the students and the public on the importance of perpetuating Hawaiian culture, traditions and species and act as ambassadors of the Waikoloa Dry Forest.

Needs:

Bandsaw blades (2)	\$30 x 2 = \$60
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Angle-grinder flat sanding pads (20)	$\$5 \times 20 = \100
5 pack orbital sanding disks (50)	$\$7 \times 50 = \350
Shark teeth (20)	$\$5 \times 20 = \100
Rolls of help cordage (2)	$\$12 \times 2 = \24
Bottle of tung oil or kukui oil (1)	$\$40 \times 1 = \40
Large wood files (4)	$\$55 \times 4 = \220
Small/detail files (4)	$\$50 \times 4 = \200
Inter Island Travel (6)	$\$170 \times 6 = \$1,020$
Shipping of wood	\$300
Display cases (2)	$\$750 \times 2 = \$1,500$

Budgets:

NRCS Budget:

Contract Obligations:

Our Contract with NRCS is on a 75/25% cost share rate/method. The following tables outline the year by year totals along with the Contract Line items under which we are required to work towards.

2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
\$37,500	\$107,850	\$40,500	\$40,500	\$40,500	\$40,500	\$3,000	\$0	\$0	\$310,350

Contract Item 1: Fence

Construct a fence for use as a barrier to wildlife, livestock, or people.

Fence Woven Wire, Difficult Installation

2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
	\$70,350								

Contract Item 2: Pest Management

Manage infestations of weeds, insects and disease to reduce adverse effects on plant growth, crop production and material resources.

Low Intensity (less than 10 hours/treated acre)

2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
\$37,500									

2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
	\$37,500								

2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
		\$37,500							

2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
			\$37,500						

2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
				\$37,500					

2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
					\$37,500				

2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
						\$0			

2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
							\$0		

2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
								\$0	

Contract Item 3: Tree/Shrub Establishment

Note: the contract states that the planned amount is for 2ac at a unit cost of \$2,000/acre.

2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
		\$3,000							

2007	2008	2009	2010	2011	2012	2013	2014	2015	Total

			\$3,000						
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2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
				\$3,000					

2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
					\$3,000				

2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
						\$3,000			

The expiration of this NRCS Contract is 9/30/2016

Budget Summary: NRCS and FSP Budgets combined

Year	Total Budget	Landowner Share	State Share	NRCS Share	NRCS Fence	NRCS Pest Mgt
	\$50,000	\$12,500		\$37,500		\$37,500
Year 1 - 2009	\$293,800	\$110,950	\$75,000	\$107,850	\$70,350	\$37,500
Year 2 - 2010	\$196,735	\$84,867.5	\$71,367.5	\$40,500		\$37,500
Year 3 - 2011	\$149,400	\$61,200	\$47,700	\$40,500		\$37,500
Year 4 - 2012	\$115,150	\$44,075	\$30,575	\$40,500		\$37,500
Year 5 - 2013	\$116,963	\$44,981.5	\$31,481.5	\$40,500		\$37,500
Year 6 - 2014	\$87,963	\$42,981.5	\$41,981.5	\$3,000		0
Year 7 - 2015	\$83,963	\$41,981.5	\$41,981.5	0		0
Year 8 - 2016	\$83,963	\$41,981.5	\$41,981.5	0		0
Year 9 - 2017	\$83,313	\$41,656.5	\$41,656.5	0		0
Year 10 - 2018	\$83,313	\$41,656.5	\$41,656.5	0		0
TOTALS	\$1,344,563	\$568,831.50	\$465,381.50	\$310,350		

Year 0 (2007-8)

Practice Component	Units	Cost/Unit	Total Cost	Land Owner Share	State Share	NRCS Share
Pest Management	250ac	\$200.00/ac	\$50,000	\$12,500		\$37,500

Note: the above amounts for the NRCS funding are based on 250ac. As you know we increased the project site by 25acres.

Implementation Schedule:

Year 1 (2009)

Practice Component	Units	Cost/Unit	Total Cost	Land Owner Share	State Share	NRCS Share
Management Plan	1	\$6,400	\$6,400	\$3,200	\$3,200	
Fence materials: helicopter time, equipment rental, fuel, oil, concrete, gates	15,830ft		\$93,800	\$23,450	\$0	\$70,350
Pest Management	250ac	\$200.00/ac	\$50,000	\$12,500		\$37,500
Labor	8,800ft	\$14.50/ft	\$127,600	\$63,800	\$63,800	
Special Practices Outreach and Ed.			\$16,000**	\$8,000	\$8,000	
Totals			\$293,800	\$110,950	\$75,000	\$107,850

* We have \$70,350 from NRCS for Fencing for FY2008. It remains to be seen whether we will have any money left over as shown in the line item Fence Material.

** We are looking to establish certain portions of the education program this year. The money here covers the weather station, costs for the teachers setting up and establishing the Dry Forest Ranger Club.

Year 2 (2010)

Practice Component	Units	Cost/Unit	Total Cost	Land Owner Share	State Share	NRCS Share
Labor (Fence)	7,030ft	\$14.50/ft	\$101,935	\$50,967.5	\$50,967.5	
Irrigation	5,000 ft	\$729/500ft	\$8,000	\$4,000	\$4,000	
Trail Construction	200m		\$5,000	\$2,500	\$2,500	
Special Practices Outreach and Ed.			\$27,800	\$13,900	\$13,900	
Pest Management	250ac	\$200.00/ac	\$50,000	\$12,500		\$37,500
Tree/Shrub Est.	2ac	\$2,000/ac	\$4,000	\$1,000		\$3,000
Totals			\$196,735	\$84,867.5	\$71,367.5	\$40,500

Outreach and Education: The costs associated with the school coordinators are swags. They seem like fair costs when you break it down by the week and what they are required to do.

Irrigation: The \$729 is the cost for 2inch driscoll hose. I have bumped up the cost to get stuff like spaghetti hosing, emitters etc. The irrigation will focus only within the 35ac site to be rehabilitated. There is no irrigation in the last year as we will do it the year before the plants go in the ground.

Trail Construction: There is a small section that needs to be done in an attempt to connect the two portions of trail mentioned in the report.

Year 3 (2011)

Practice Component	Units	Cost/Unit	Total Cost	Land Owner Share	State Share	NRCS Share
Irrigation	5,000 ft	\$729/500ft	\$8,000	\$4,000	\$4,000	
Special Areas: Greenhouse		\$10,000	\$10,000	\$5,000	\$5,000	
Special Areas: Dip Tank (Fire Mgt)	20,000 gal	\$54,000	\$52,000	\$26,000	\$26,000	
Signage	8 signs	\$250/sign	\$2,000	\$1,000	\$1,000	
Special Practices Outreach and Ed.			\$23,4000	\$11,700	\$11,700	
Pest Management	250ac	\$200.00/ac	\$50,000	\$12,500		\$37,500
Tree/Shrub Est.	2ac	\$2,000/ac	\$4,000	\$1,000		\$3,000
Totals			\$149,400	\$61,200	\$47,700	\$40,500

Greenhouse: 24' X 48' Conley Series 1100 - \$3272.76 (tax included) 2X4s and construction labor not included. The greenhouse will also need ground softening on order to create a fairly smooth surface. We will need a couple hours of heavy equipment use (Bulldozer, roller for sure and maybe a grader)

Dip Tank: See attached quote from Willocks Construction

Year 4 (2012)

Practice Component	Units	Cost/Unit	Total Cost	Land Owner Share	State Share	NRCS Share
Irrigation	5,000 ft	\$729/500ft	\$8,000	\$4,000	\$4,000	
Seedling Acquisition	35ac@100 seedlings/ac	\$3.50/seedling	\$12,250	\$6,125	\$6,125	
Planting	35 acres	\$500	\$17,500	\$8,750	\$8,750	
Special Practices Outreach and Ed.			\$23,400	\$11,700	\$11,700	
Pest Management	250ac	\$200.00/ac	\$50,000	\$12,500		\$37,500
Tree/Shrub Est.	2ac	\$2,000/ac	\$4,000	\$1,000		\$3,000
Totals			\$115,150	\$44,075	\$30,575	\$40,500

Year 5 (2013)

Practice Component	Units	Cost/Unit	Total Cost	Land Owner Share	State Share	NRCS Share
Irrigation	5,000 ft	\$729/500ft	\$8,000	\$4,000	\$4,000	
Seedling Acquisition	35ac@100 seedlings/ac	\$3.50/seedling	\$12,250	\$6,125	\$6,125	
Planting	35 acres	\$500	\$17,500	\$8,750	\$8,750	
Seedling Mortality reveg	35ac@25 seedlings/ac	\$3.50/seedling	\$3,063	\$1,531.5	\$1,531.5	
Fence Maintenance	3 miles	2 X per year	\$500	\$250	\$250	
Special Practices Outreach and Ed.			\$21,650	\$10,825	\$10,825	
Pest Management	250ac	\$200.00/ac	\$50,000	\$12,500		\$37,500
Tree/Shrub Est.	2ac	\$2,000/ac	\$4,000	\$1,000		\$3,000
Totals			\$116,963	\$44,981.5	\$31,481.5	\$40,500

Year 6 (2014)

Practice Component	Units	Cost/Unit	Total Cost	Land Owner Share	State Share	NRCS Share
Irrigation	5,000 ft	\$729/500ft	\$8,000	\$4,000	\$4,000	
Seedling Acquisition	35ac@100 seedlings/ac	\$3.50/seedling	\$12,250	\$6,125	\$6,125	
Planting	35 acres	\$500	\$17,500	\$8,750	\$8,750	
Seedling Mortality reveg	35ac@25 seedlings/ac	\$3.50/seedling	\$3,063	\$1,531.5	\$1,531.5	
Fuels Management	20 acres	\$500/acre	\$10,000	\$5,000	\$5,000	
Pest Management Rodent and ungulate control, insecticides, etc	55acres	\$200/acre	\$11,000	\$5,500	\$5,500	
Special Practices Outreach and Ed.			\$21,650	\$10,825	\$10,825	
Fence Maintenance	3 miles	2 X per year	\$500	\$250	\$250	
Tree/Shrub Est.	2ac	\$2,000/ac	\$4,000	\$1,000		\$3,000
Totals			\$87,963	\$42,981.5	\$41,981.5	\$3,000

Pest and Fuels Management: Programmed in as the NRCS funding runs out. Pest Management numbers are the same per acre we received from NRCS.

Year 7 (2015)

Practice Component	Units	Cost/Unit	Total Cost	Land Owner Share	State Share	NRCS Share
Irrigation	5,000 ft	\$729/5000ft	\$8,000	\$4,000	\$4,000	
Seedling Acquisition	35ac@100 seedlings/ac	\$3.50/seedling	\$12,250	\$6,125	\$6,125	
Planting	35 acres	\$500	\$17,500	\$8,750	\$8,750	
Seedling Mortality reveg	35ac@25 seedlings/ac	\$3.50/seedling	\$3,063	\$1,531.5	\$1,531.5	
Fence Maintenance	3 miles	2 X per year	\$500	\$250	\$250	
Fuels Management	20 acres	\$500/acre	\$10,000	\$5,000	\$5,000	
Pest Management Rodent and ungulate control, insecticide, etc	55acres	\$200/acre	\$11,000	\$5,500	\$5,500	
Special Practices Outreach and Ed.			\$21,650	\$10,825	\$10,825	
Totals			\$83,963	\$41,981.5	\$41,981.5	

Year 8 (2016)

Practice Component	Units	Cost/Unit	Total Cost	Land Owner Share	State Share	NRCS Share
Irrigation	5,000 ft	\$729/500ft	\$8,000	\$4,000	\$4,000	
Seedling Acquisition	35ac@100 seedlings/ac	\$3.50/seedling	\$12,250	\$6,125	\$6,125	
Planting	35 acres	\$500	\$17,500	\$8,750	\$8,750	
Seedling Mortality reveg	35ac@25 seedlings/ac	\$3.50/seedling	\$3,063	\$1,531.5	\$1,531.5	
Fuels Management	20 acres	\$500/acre	\$10,000	\$5,000	\$5,000	
Pest Management Rodent and ungulate control, insecticide, etc	55acres	\$200/acre	\$11,000	\$5,500	\$5,500	
Special Practices Outreach and Ed.			\$21,650	\$10,825	\$10,825	
Fence Maintenance	3 miles	2 X per year	\$500	\$250	\$250	
Totals			\$83,963	\$41,981.5	\$41,981.5	

Year 9 (2017)

Practice Component	Units	Cost/Unit	Total Cost	Land Owner Share	State Share	NRCS Share
Irrigation	5,000 ft	\$729/500ft	\$8,000	\$4,000	\$4,000	
Seedling Acquisition	35ac@100 seedlings/ac	\$3.50/seedling	\$12,250	\$6,125	\$6,125	
Planting	35 acres	\$500	\$17,500	\$8,750	\$8,750	
Seedling Mortality reveg	35ac@25 seedlings/ac	\$3.50/seedling	\$3,063	\$1,531.5	\$1,531.5	
Fuels Management	20 acres	\$500/acre	\$10,000	\$5,000	\$5,000	
Pest Management Rodent and ungulate control, insecticide, etc	55acres	\$200/acre	\$11,000	\$5,500	\$5,500	
Fence Maintenance	3 miles	2 X per year	\$500	\$250	\$250	

Special Practices Outreach and Ed.			\$21,000	\$10,500	\$10,500	
Totals			\$83,313	\$41,656.5	\$41,656.5	

Year 10 (2018)

Practice Component	Units	Cost/Unit	Total Cost	Land Owner Share	State Share	NRCS Share
Irrigation	5,000 ft	\$729/500ft	\$8,000	\$4,000	\$4,000	
Seedling Acquisition	35ac@100 seedlings/ac	\$3.50/seedling	\$12,250	\$6,125	\$6,125	
Planting	35 acres	\$500	\$17,500	\$8,750	\$8,750	
Seedling Mortality reveg	35ac@25 seedlings/ac	\$3.50/seedling	\$3,063	\$1,531.5	\$1,531.5	
Fuels Management	20 acres	\$500/acre	\$10,000	\$5,000	\$5,000	
Pest Management Rodent and ungulate control, insecticide, etc	55acres	\$200/acre	\$11,000	\$5,500	\$5,500	
Fence Maintenance	3 miles	2 X per year	\$500	\$250	\$250	
Special Practices Outreach and Ed.			\$21,000	\$10,500	\$10,500	
Totals			\$83,313	\$41,656.5	\$41,656.5	

References

- Abbott, I.A. 1992. La'au Hawai'i, Traditional Uses of Plants. Bishop Museum Press, Honolulu. 163 pp.
- U.S. Fish and Wildlife Service. 1992. Recovery Plan for the *Caesalpinia kavaiensis* & *Kokia drynariodes*. U.S. Fish and Wildlife Service, Portland, OR. 82 pp. + appendices
- U.S. Fish and Wildlife Service. 1994. Recovery Plan for *Lipochaeta venosa* and *Isodendron hosakae*. U.S. Fish and Wildlife Service, Portland, OR. 45 pp.
- U.S. Fish and Wildlife Service. 1996. Big Island Plant Cluster Recovery Plan. U.S. Fish and Wildlife Service, Portland, OR. 202+ pp.
- U.S. Fish and Wildlife Service. 1998. Big Island II: Addendum to the Recovery Plan for the Big Island Plant Cluster. U.S. Fish and Wildlife Service, Portland, OR. 80 pages + appendices.
- U.S. Fish and Wildlife Service. 2002. Addendum to the Recovery Plan for the Multi-Island Plants. U.S. Fish and Wildlife Service, Portland, OR. Viii + 125 pages.
- U.S. Fish and Wildlife Service. 2005. Recovery Plan for the Blackburn's Sphinx Moth (*Manduca blackburni*). Portland, OR. 125 pp.

- Rock, J.F. 1913. The Indigenous Trees of the Hawaiian Islands. Pacific Tropical Botanical Garden, Lawai, Kaua'i. 548 pp.
- Wagner, W.L., D.R. Herbst, and S.H. Sohmer. 1991. Manual of the Flowering Plants of Hawai'i. Bishop Museum Press, Honolulu. 2 Vols., 1853 pp.
- Wolfe, E.W. and J. Morris. 1996. Geologic Map of the Island of Hawai'i. U.S. Geological Survey, Geologic Investigations Series Map I-2524-A. Scale: 1:100,000.

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL STREET, ROOM 325
HONOLULU, HAWAII 96813

April 24, 2009

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Ms. Beverley Brand
Waikoloa Village Outdoor Circle
P.O. Box 38-4721
Waikoloa, Hawaii 96738

Dear Ms. Brand,

Thank you for your interest in the State Forest Stewardship Program and the submission of the Waikoloa Dry Forest Recovery Project Forest Stewardship Management Plan. The Division of Forestry and Wildlife and the Forest Stewardship Advisory Committee reviewed your management plan at their meeting dated March 8, 2008 in Volcano, Hawaii. I am pleased to inform you that your management plan was approved and the conditions, as stipulated by the Forest Stewardship Advisory Committee at that meeting, have been met.

This letter does NOT constitute an award of funds. Once all contractual and fiscal documents are finalized and approved, an agreement will be issued to the Outdoor Circle dba Waikoloa Village Outdoor Circle. If you proceed prior to the finalization of the agreement, the State of Hawaii will not be liable for work, contract costs, expenses, loss of profits, reimbursements, or any damages whatsoever incurred by the applicant.

The Department of Land and Natural Resources, Division of Forestry and Wildlife would like to thank you for your continued interest in promoting restoration and conservation in the State of Hawaii. Please contact Sheri Mann at (808) 587-4172 for additional information and to coordinate implementation of your project.

Sincerely,

Sheri S. Mann,
Cooperative Resource Management Forester
Division of Forestry and Wildlife
Department of Land and Natural Resource
State of Hawaii

Forest Stewardship Program Review and Approval Form

VENDOR

2008-0 Waikoloa Dry Forest Recovery Project

Funding Rqst \$ ~~409,320.25~~ ^{ms} 466,938
Cash Match \$
In Kind Match \$ ~~409,320.25~~ ^{ms} 466,938
Purchase Order No: _____

plus \$310,350 in additional funding support.

Background Information

Project Description

GRANT REVIEW PROCESS

1. Date Received _____ Stewardship Response Comments _____ Coordinator Signature _____

2. Applicant Response

3. Subcommittee Review Subcommittee Review Comments* _____ Signature _____

4. Applicant revisions received Yes No

5. Council Meeting Date 3/7/2008 Location Volcano, Hawaii Island

FINAL COUNCIL DECISION

Project Approved contingent of the 5 committee conditions
Amount Awarded \$ _____

Project Deferred or Pending. _____

Recommendations of Council/Members Abstaining from Vote: _____

Signature of Forest Stewardship Advisory Chair [Signature] Date 3.7.08

*The subcommittee convenes to pre-review grant applications (Stewardship, Forest Lands Enhancement and Forest Legacy) between quarterly meetings.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement") is made as of this 25 day of SEPTEMBER, 2007, by and between WAIKOLOA VILLAGE ASSOCIATION, a Hawaii nonprofit corporation, whose mailing address is P.O. Box 383910, Waikoloa, Hawaii, 96743 ("Licensor"), and ^{The Outdoor Circle dba} WAIKOLOA VILLAGE OUTDOOR CIRCLE, a 501(c)(3) Hawaii nonprofit corporation, whose address is P.O. Box 384721, Waikoloa, HI 96738 ("Licensee").

WITNESSETH

WHEREAS, Licensor is the fee owner of the land located at Waikoloa, South Kohala, Hawaii, Tax Map Key No. (3) 6-8-002: 015 described in Exhibit A attached hereto and made a part hereof (the "Land"); and

WHEREAS, Licensee desires to use a portion of the Land, consisting of approximately ^{275 JLA 4/23/09 JW} ~~250~~ acres as shown on the maps labeled Waikoloa Dry Forest Recovery Project, copies of which are attached hereto as Exhibits B-1 and B-2, as the location of a dry forest recovery and restoration project, and to have access thereto; and

WHEREAS, Licensor is willing to license said ^{275 JLA 4/23/09} ~~250~~ acre portion of the Land to Licensee, subject to the terms and conditions herein set forth;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Licensed Area. Licensor hereby grants to Licensee a non-exclusive license for that portion of the Land, consisting of the ^{275 JLA 4/23/09} ~~250~~ acres generally depicted in the maps attached hereto as Exhibits B-1 and B-2 and made a part hereof, to be used by Licensee for a dry forest recovery and restoration project (hereinafter referred to as the "Licensed Area"), together with access thereto as set forth in Section 6 below.

2. Term. Unless sooner terminated, the term of this Agreement shall be for a period of fifteen (15) years commencing on SEPTEMBER 25, 2007 and ending on SEPTEMBER 25, 2022 (the "Term").

3. Further Assurances. Licensee shall cooperate, take all actions, and execute any and all documents necessary for approval of any subdivision, consolidation and/or change of zone applications proposed by Licensor regarding the Land. Licensor agrees not to

make any such application or other use of the Land, or grant concurrent licenses in the Licensed Area, that unreasonably interfere with Licensee's use of the Licensed Area as described in Section 4.

4. Use. Licensee will occupy and use the Licensed Area in accordance with the purposes of Licensee's charter of incorporation, to provide and promote environmental education and beautification, and to re-create a natural habitat for native Hawaiian dry forest species through the following efforts: (a) conservation and restoration of native dry Wiliwili (*Erythrina*) forest in the Licensed Area, (b) preservation and protection of ten (10) existing endangered Uhiuhi (*Caesalpinia kavaiensis*), approximately eighty (80) existing majestic Wiliwili (*Erythrina sandwichensis*), and other remaining endangered and rare trees, and (c) restoration by creating an environment allowing the natural reproduction of these and other threatened and native dry forest species. The parties understand that the habitat for native Hawaiian dry forest species occurs on rough a'a lava terrain at locations with elevations between 200 and 2,950 feet above sea level. The parties also understand that major threats to native Hawaiian dry forest species include fountain grass (*Pennisetum setaceum*), with resulting problems of competition and increased fire hazard, and grazing by introduced ungulates.

Use of the Licensed Area is strictly limited to native Hawaiian dry forest recovery. Any use not strictly related to that stated purpose is prohibited. Any proposed change in use is subject to the prior written consent of Licensor, which consent Licensor may withhold its sole and absolute discretion. Licensee shall not construct improvements or place structures of any kind on the Licensed Area, except for fences to promote dry forest recovery and restoration, one (1) open-top water tank with a capacity of 20,000-40,000 gallons, water supply lines, not more than two (2) portable equipment sheds, and sanitary facilities consisting of not more than one (1) portable toilet. Installation and maintenance of any such improvements or facilities shall be at Licensee's sole expense. Licensee shall have no right to construct any improvements, facilities, water lines or other systems on any part of the Land located outside of the Licensed Area without the prior written consent of Licensor, which consent Licensor may withhold in its sole and absolute discretion.

5. License Fee. Licensee shall pay Licensor a license fee of One and No/100 Dollar (\$1.00) in advance, on the first day of each year.

6. Access. Licensor agrees that Licensee shall be permitted access to the Licensed Area along routes designated from time to time by Licensor. Initial access to the Licensed Area shall be along the route highlighted in green on Exhibits B-1 and B-2 attached hereto. Licensee understands and agrees that the access route is unimproved, and the Licensor has no obligation to maintain or improve the initial access route or any subsequent access route that Licensor may designate to the Licensed Area. Licensee shall make no improvements to the initial access route or any subsequent access route designated by Licensor unless Licensee obtains the prior written consent of Licensee, which consent Licensor may withhold in its sole and absolute discretion. Licensee understands and agrees that Licensor reserves the right to permit employees, members, agents, guests and invitees of Licensor, and others, access to the Licensed Area. Licensee shall coordinate with Licensor for access by such persons.

7. Utilities. Licensee acknowledges and agrees that there are no existing utilities servicing the Licensed Area. Should Licensee need or desire services from any utility or utilities, whether electric, water or other, Licensee shall, at Licensee's own expense, undertake and pay for all installations and charges necessary for the provision of the same to the Licensed Area. Licensor shall have no obligation to provide any utility service to Licensee for the Licensed Area, or be obligated to incur any expense for the same.

8. Transferability. The license granted by this Agreement is personal in nature and is not assignable in whole or in part by Licensee, without the prior written consent of Licensor, which may be withheld in its sole and absolute discretion.

9. Compliance with Applicable Laws. Licensee shall observe and perform all laws and regulations made by any governmental authority applicable to Licensee and its operations, and shall not make or suffer any strip or waste or unlawful, improper or offensive use of the Licensed Area. Licensee shall be solely responsible for obtaining all necessary permits for the development and construction of the native Hawaiian dry forest species habitat and its intended uses for preservation, conservation and restoration. The Licensor will cooperate with the Licensee and execute such grant proposals as may be required to secure third-party funding for the use of the Licensed Area permitted by this Agreement; provided, however, that such cooperation and execution shall be at no expense to the Association, and shall not expose the Association to liability for claims of restitution or return of any funding to any third-party, or to any other claims. The determination of whether the Association's cooperation on and execution

of a grant proposal may expose the Association to liability for claims shall be made by the Association in its sole and absolute discretion.

10. Inspection. Licensee shall allow and permit Licensor and Licensor's agents at all reasonable times during the Term to enter the Licensed Area to examine the condition thereof, and shall repair and make good any defects required by the terms of this Agreement to be repaired and made good by Licensee within 30 days after the giving of written notice by Licensor or Licensor's agents.

11. No Warranties; "As Is" Condition. Licensee hereby agrees and acknowledges that Licensee is accepting the Licensed Area in its "AS IS," "WHERE IS" and "WITH ALL FAULTS" condition, and Licensor makes no warranties or representations that the Licensed Area are suitable for the purposes intended by Licensee.

12. Assumption of Risk. Licensee shall and does hereby hold and assume all risk of loss or damage to any equipment, tools, supplies and other properties, by whomsoever owned, stored or placed on or in the Licensed Area, and Licensor shall not be held liable or responsible for any such loss or damage to any such property by any cause whatsoever, including loss due to theft, vandalism and the like, and Licensee hereby agrees to maintain and save harmless Licensor and any of Licensor's agents from and against any and all claims for such loss or damage. Licensee acknowledges the possible presence and danger of UNEXPLODED ORDNANCE AND MUNITIONS within the Licensed Area and agrees that the entry by Licensee, its employees, agents, or invitees, into the Licensed Area is at Licensee's own risk, and that Licensee erects any fencing on, and performs any other work in, the Licensed Areas at its own risk. Prior to any entry on the Licensed Area, Licensee will make appropriate arrangements with the United States Army Corps of Engineers and/or other appropriate governmental agency to survey the Licensed Area to ascertain the existence or presence of any hazard from UNEXPLODED ORDNANCE OR MUNITIONS on or in the Licensed Area, and obtain all necessary permits and clearances from such Corps of Engineers and/or other appropriate government agency.

13. Maintenance. During the term of this Agreement, Licensee shall be solely responsible for maintaining the Licensed Area in good order and condition, including without limitation all fences and other improvements located thereon at the time of the commencement of

this Agreement, or installed or placed on the Licensed Area by Licensee. Licensee further covenants and agrees to prevent all waste, loss or damage to the property of the Licensor.

14. Encumbrances. Licensee shall not create, or permit any agent, employee, contractor or other party to create, any lien or other encumbrance on the Licensed Area or the Land, including, without limitation, any mechanics' liens, and Licensee shall, at its own cost, immediately remove any such encumbrance from the Licensed Area or the Land.

15. Compliance with Environmental Laws. Licensee shall keep the Licensed Area, or cause the Licensed Area to be kept, free and clear of any "hazardous substances," "hazardous materials," "toxic substances," "hazardous wastes," "pollutants," or "contaminants," as such terms and words of similar import (collectively called "Hazardous Materials") are defined or used in the federal and state environmental laws presently existing as of the date of this Agreement or hereafter enacted (collectively called the "Environmental Laws"). Licensee shall promptly notify Licensor, in writing, if Licensee at any time shall become aware of any spillage, release or discharge of Hazardous Materials on, within or under the Licensed Area (for example, cleaning agents) and shall provide such detailed reports thereof as Licensor may reasonably request. Licensee shall dispose of such Hazardous Materials, or cause such Hazardous Materials to be disposed of, in compliance with the applicable Environmental Laws. Licensee shall indemnify, defend and hold Licensor harmless from and against all costs and expenses (including reasonable attorneys' fees), losses, damages, and liabilities incurred by Licensor which may arise out of or may, directly or indirectly, be attributable to: (a) Licensor's use, treatment, handling, storage, release, discharge, or disposal of any Hazardous Materials on or within the Licensed Area which shall occur during the Term hereof; (b) any amounts assessed against Licensor pursuant to the Environmental Laws based upon Licensor's ownership of the Licensed Area, for the clean-up or disposal of Hazardous Materials described in the foregoing clause (a); and (c) Licensor's enforcement of Licensee's covenants hereunder, whether or not suit is brought therefor. This indemnity shall survive any revocation or termination of this Agreement.

16. Indemnity. Licensee shall indemnify, defend and hold harmless the Licensor from and against any and all claims, demands, damages, losses and liability of whatsoever kind or nature for loss of or damage to property or for injuries to or death of any person or persons, directly or indirectly arising from, related to, or in any way connected with the

Licensee's maintenance, use, occupancy of or operations upon the Licensed Area or any acts or omissions of the Licensee or its employees, invitees, or guests upon or about the Land or the Licensed Area (collectively, "Claims"), and the Licensee shall indemnify, defend and hold harmless the Licensor from and against any and all expenses (including attorney's fees) incurred by Licensor in connection therewith. Licensee acknowledges the possible presence and danger of UNEXPLODED ORDNANCE AND MUNITIONS on the Land and within the Licensed Area and, without limiting the scope of the indemnity under this section, acknowledges and agrees that Licensee's obligations under this section shall extend to any Claims in any way arising from or relating to such ordnance. Licensee shall further indemnify, defend and hold harmless Licensor from and against any Claims arising or resulting from or in connection with Licensor's cooperation with Licensee on, and execution of, any grant proposals or funding relating to Licensee's use of the Licensed Area under this Agreement. The indemnities set forth in this section shall survive any revocation or termination of this Agreement.

17. Liability Insurance. Licensee shall, at its own cost and expense, at all times during the Term hereof, obtain and maintain a policy or policies of Comprehensive General Liability Insurance for bodily injury and/or property damage, with minimum limits of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) per occurrence and with minimum limits of not less than TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) in the aggregate, and with deductibles not more than TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) per each loss. Such policy or policies shall cover occurrences arising out of the use, occupancy, misuse or condition of the Licensed Area, be deposited with Licensor and name Licensor as an additional insured, require the insurer to give Licensor at least thirty (30) days written notice of its intention to cancel, terminate or amend the policy or policies in any material respect, and contain a waiver by the insurer of any right of subrogation to any right of Licensor or Licensee against them or any person acting under them.

18. Default and Remedies. In the event the Licensee (a) shall fail to make any payment required to be made hereunder within thirty (30) days after the same becomes due, whether the same shall or shall not have been legally demanded, or (b) shall fail to perform any of the covenants or conditions contained in this Agreement and any such failure to observe or perform shall continue for a period of thirty (30) days after written notice of such default is given to the Licensee, or (c) shall abandon the Licensed Area, or any portion thereof, then and in any

such event, Licensor may, in addition to any and all other rights or remedies at law or in equity, terminate this Agreement upon written notice thereof by the Licensor to the Licensee.

19. Surrender of Licensed Area. At the end of the Term or upon sooner termination of the license granted hereunder, Licensee shall remove at its sole cost and expense all of its materials and supplies from the Licensed Area and peaceably deliver to Licensor possession of the Licensed Area, in substantially its condition existing at the time of delivery of possession to Licensee. In the event of Licensee's failure to promptly vacate the Licensed Area or to remove such materials and supplies therefrom, the Licensor may expel and remove from the Licensed Area the Licensee and those claiming under the Licensee and the Licensee's or their materials and supplies, all without service of notice or resort to any legal process and without becoming liable for any loss or damage which may be occasioned thereby and without prejudice to any other remedy or right of action which the Licensor may have for such breach or for indebtedness owing by the Licensee hereunder, whether theretofore or thereafter accruing or to accrue, or for other or preceding breach of covenant of this Agreement on the part of the Licensee. Licensee shall not remove any fencing from the Licensed Area unless directed to do so in writing by Licensor, with any such removal being at Licensee's sole expense. Licensee shall have no right to reimbursement or payment for any fencing installed by Licensee in or on the Licensed Area during the Term of this Agreement. The Licensee will pay to the Licensor all costs and expenses incurred by the Licensor in enforcing any of Licensor's rights hereunder, including without limitation reasonable attorneys' fees.

20. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and addressed as set forth at the beginning of this Agreement either by personal delivery, or by overnight courier or facsimile. Such notices shall be deemed given when personally delivered or when sent by courier or facsimile. Notices shall be addressed to any other address as may be specified from time to time by any party by written notice to the other party.

21. Enforcement Costs; Mediation. All costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in any enforcement action involving this Agreement shall be paid by the defaulting party to the prevailing party as determined by any court of competent jurisdiction. Notwithstanding the foregoing, prior to the commencement of a civil action, the parties shall in good faith attempt to resolve any dispute between them under this

Agreement by non-binding mediation by a single mediator selected by mutual agreement of the parties. Each party shall bear its own attorneys' fees and costs in the mediation, and the mediator's fees and costs shall be divided equally.

22. No Conveyance of Interest in the Land. The uses and benefits contemplated by this Agreement are not intended to convey to Licensee any legal or equitable interest in the land described by the Licensed Area.

23. Cancellation Documentation. Upon termination of this Agreement, at Licensor's request, Licensee shall execute documents prepared by Licensor in recordable form acknowledging termination of this Agreement.

24. No Joint Venture. 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 Licensor and Licensee.

25. Entire Agreement. This Agreement and the exhibits attached hereto contain the entire agreement of the parties with respect to the subject matter hereof and supersedes all other prior representations, understandings and agreements with respect thereto.

26. Amendment. No amendment or modification or attempted waiver of any of the provisions hereof shall be binding, unless agreed to in writing by the parties hereto.

27. Assigns. This Agreement shall be binding on and inure to the benefit of the parties and their permitted assigns and successors in interest.

28. No Party Deemed Drafter. No party shall be deemed the drafter of this Agreement. If this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision hereof against any party as drafter.

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

30. Counterparts; Facsimile Signature. This Agreement may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and said counterparts together shall constitute one and the same instrument. This Agreement may also be executed by way of facsimile signature and such signature shall be sufficient to bind the party so executing this Agreement. Such party shall thereafter promptly forward a confirming copy of such facsimile signature to the other parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

Licensee:

The Outdoor Circle dba
WAIKOLOA VILLAGE OUTDOOR CIRCLE, a 501(c)(3) Hawaii nonprofit corporation.

Licensor:

WAIKOLOA VILLAGE ASSOCIATION, a Hawaii nonprofit corporation

By: *B Brand*
Name: *Beverly Brand*
Its: *President*

By: *Margaret Tighe*
Name: *MARGARET TIGHE*
Its: *PRESIDENT*

By: *Betsy Connors*
Name: *Elizabeth (Betsy) Connors*
Its: *Pres.*

By: *Wayne K. Anai*
Name: *WAYNE K. ANAI*
Its: *SECRETARY*

se 1, #1 Amended 4/23/09 from 250 Ac to 275 Ac.

J. F. Albane - President WVA

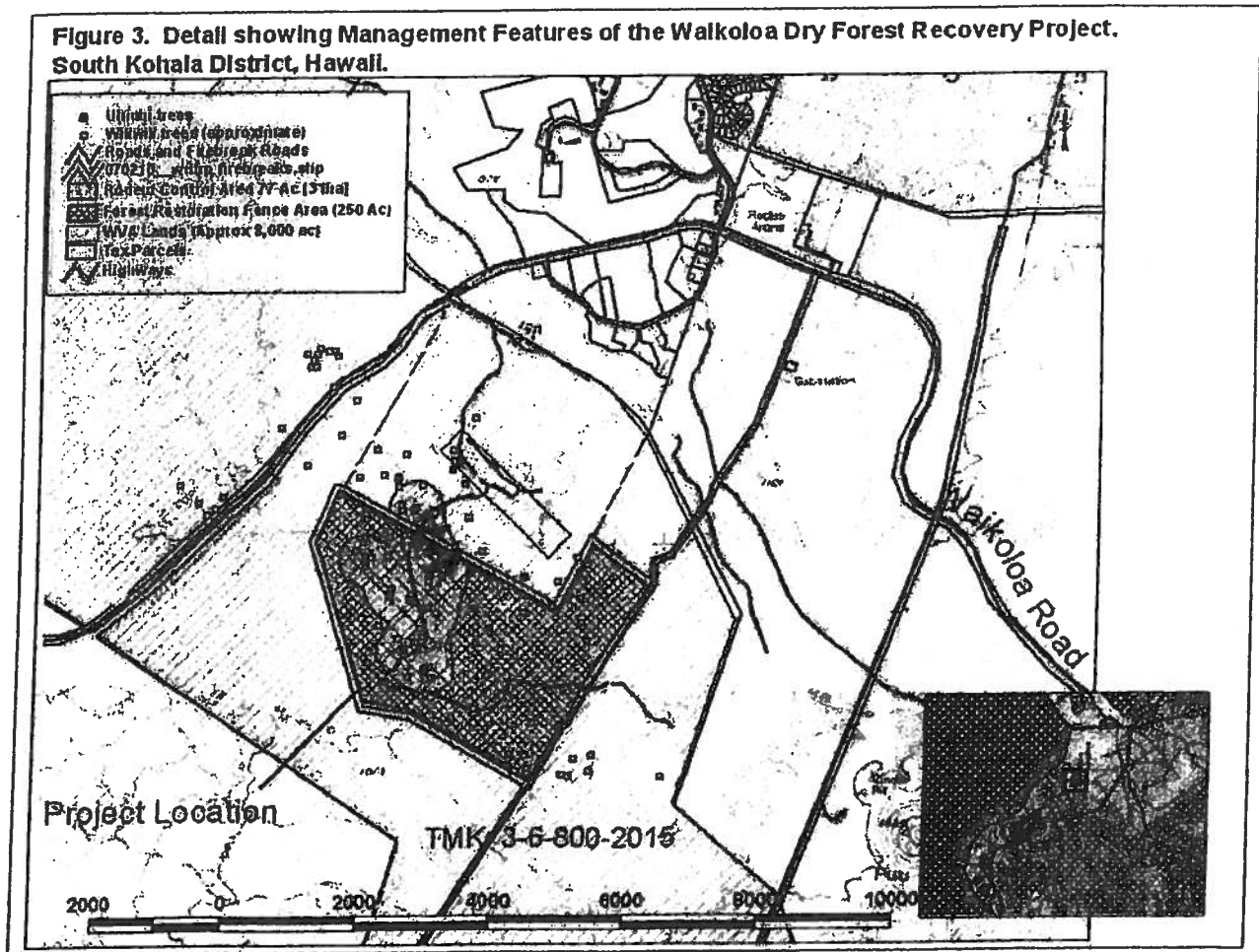
*B Brand, President
WVA*

EXHIBIT A

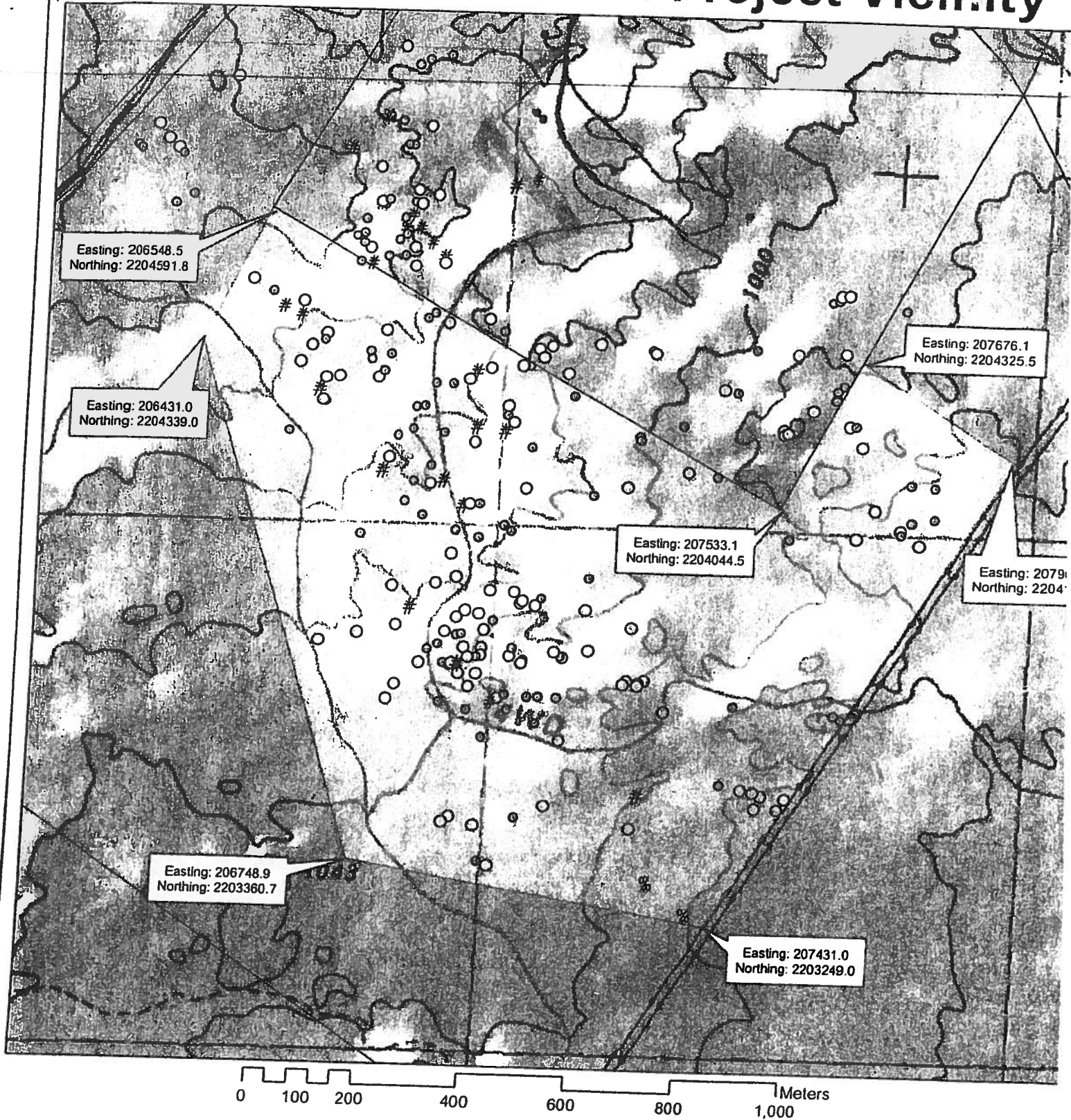
All of that certain parcel of land situate at Waikoloa, District of South Kohala, Island, County and State of Hawaii and containing an area of 1,689.74 acres, more or less, and designated on the tax maps of the third taxation division of the State of Hawaii as Tax Map Key No. 6-8-002-015.

SUBJECT, HOWEVER, to all liens, encumbrances and other matters of record.

Figure 3. Detail showing Management Features of the Waikoloa Dry Forest Recovery Project, South Kohala District, Hawaii.



Uhiuhi and Wiliwili in Project Vicinity



Waikoloa Dry Forest Recovery Project

Dave Faucette, Project Coordinator
July 2007

map by: C. Hardenbrook
projection: NAD_1983_UTM_Zone_5N

EXHIBIT B-2

- % Goat caves
- Access_easement
- - - Streams
- ▭ Project boundary
- ▭ TMK parcel lines

Species, Condition (count)

- # Uhiuhi, Live (13)
- # Uhiuhi, Dead (12)
- Wiliwili, Live (117)
- Wiliwili, Dead (113)

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement") is made as of this seventeenth day of January, 2012, by and between **WAIKOLOA VILLAGE ASSOCIATION**, a Hawaii nonprofit corporation, whose mailing address is P.O. Box 383910, Waikoloa, Hawaii, 96743 ("Licensor"), and **WAIKOLOA DRY FOREST INITIATIVE INC.**, a Hawaii nonprofit corporation, whose address is 68-3720 Lua Hoana Place, Waikoloa, HI 96738 ("Licensee").

WITNESSETH

WHEREAS, Licensor is the fee owner of the land located at Waikoloa, South Kohala, Hawaii, Tax Map Key No. (3) 6-8-002: 015 described in Exhibit A attached hereto and made a part hereof (the "Land"); and

WHEREAS, Licensee desires to use a portion of the Land, consisting of approximately 275 acres as shown on the maps labeled Waikoloa Dry Forest Recovery Project, copies of which are attached hereto as Exhibits B-1 and B-2, as the location of a dry forest recovery and restoration project, and to have access thereto; and

WHEREAS, Licensor is willing to license said 275-acre portion of the Land to Licensee, subject to the terms and conditions herein set forth;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Licensed Area. Licensor hereby grants to Licensee a non-exclusive license for that portion of the Land, consisting of the 275-acres generally depicted in the maps attached hereto as Exhibits B-1 and B-2 and made a part hereof, to be used by Licensee for a dry forest recovery and restoration project (hereinafter referred to as the "Licensed Area"), together with access thereto as set forth in Section 6 below.

2. Term. Unless sooner terminated, the term of this Agreement shall be for a period of twenty five years commencing on January 17, 2012 and ending on January 17, 2037 (the "Term").

3. Further Assurances. Licensee shall cooperate, take all actions, and execute any and all documents necessary for approval of any subdivision, consolidation and/or change of zone applications proposed by Licensor regarding the Land. Licensor agrees not to

make any such application or other use of the Land, or grant concurrent licenses in the Licensed Area, that unreasonably interfere with Licensee's use of the Licensed Area as described in Section 4.

4. Use. Licensee will occupy and use the Licensed Area in accordance with the purposes of Licensee's charter of incorporation, to provide and promote environmental education and beautification, and to re-create a natural habitat for native Hawaiian dry forest species through the following efforts: (a) conservation and restoration of native dry Wiliwili (*Erythrina*) forest in the Licensed Area, (b) preservation and protection of ten (10) existing endangered Uhiuhi (*Caesalpinia kawaiensis*), approximately eighty (80) existing Wiliwili (*Erythrina sandwichensis*), and other remaining endangered and rare trees, and (c) restoration by propagation and planting of new native Hawaiian dry forest species and creating an environment allowing the natural reproduction of these and other threatened and native dry forest species. The parties understand that the habitat for native Hawaiian dry forest species occurs on rough a'a lava terrain at locations with elevations between 200 and 2,950 feet above sea level. The parties also understand that major threats to native Hawaiian dry forest species include fountain grass (*Pennisetum setaceum*), with resulting problems of competition and increased fire hazard, and grazing by introduced ungulates.

Use of the Licensed Area is strictly limited to native Hawaiian dry forest protection, recovery, education, propagation and planting. Any use not strictly related to that stated purpose is prohibited. Any proposed change in use is subject to the prior written consent of Licensor, which consent Licensor may withhold in its sole and absolute discretion. Licensee shall not construct improvements or place structures of any kind on the Licensed Area, except for fences to promote dry forest recovery and restoration, one (1) open-top water tank with a capacity of 20,000-40,000 gallons, one (1) nursery structure, water supply lines, not more than two (2) portable equipment sheds, and sanitary facilities consisting of not more than one (1) composting toilet. Installation and maintenance of any such improvements or facilities shall be at Licensee's sole expense. Licensee shall have no right to construct any improvements, facilities, water lines or other systems on any part of the Land located outside of the Licensed Area without the prior written consent of Licensor, which consent Licensor may withhold in its sole and absolute discretion.

5. License Fee. Licensee shall pay Licensor a license fee of One and No/100 Dollar (\$1.00) in advance, on the first day of each year.

6. Access. Licensor agrees that Licensee shall be permitted access to the Licensed Area along routes designated from time to time by Licensor. Initial access to the Licensed Area shall be along the route highlighted in green on Exhibits B-1 and B-2 attached hereto. Licensee understands and agrees that the access route is unimproved, and the Licensor has no obligation to maintain or improve the initial access route or any subsequent access route that Licensor may designate to the Licensed Area. Licensee shall make no improvements to the initial access route or any subsequent access route designated by Licensor unless Licensee obtains the prior written consent of Licensee, which consent Licensor may withhold in its sole and absolute discretion. Licensee understands and agrees that Licensor reserves the right to permit employees, members, agents, guests and invitees of Licensor, and others, access to the Licensed Area. Licensee shall coordinate with Licensor for access by such persons.

7. Utilities. Licensee acknowledges and agrees that there are no existing utilities servicing the Licensed Area. Should Licensee need or desire services from any utility or utilities, whether electric, water or other, Licensee shall, at Licensee's own expense, undertake and pay for all installations and charges necessary for the provision of the same to the Licensed Area. Licensor shall have no obligation to provide any utility service to Licensee for the Licensed Area, or be obligated to incur any expense for the same.

8. Transferability. The license granted by this Agreement is personal in nature and is not assignable in whole or in part by Licensee, without the prior written consent of Licensor, which may be withheld in its sole and absolute discretion.

9. Compliance with Applicable Laws. Licensee shall observe and perform all laws and regulations made by any governmental authority applicable to Licensee and its operations, and shall not make or suffer any strip or waste or unlawful, improper or offensive use of the Licensed Area. Licensee shall be solely responsible for obtaining all necessary permits for the development and construction of the native Hawaiian dry forest species habitat and its intended uses for preservation, conservation and restoration. The Licensor will cooperate with the Licensee and execute such grant proposals as may be required to secure third-party funding for the use of the Licensed Area permitted by this Agreement; provided, however, that such cooperation and execution shall be at no expense to the Licensor, and shall not expose the

Licensor to liability for claims of restitution or return of any funding to any third-party, or to any other claims. The determination of whether the Licensor's cooperation on and execution of a grant proposal may expose the Licensor to liability for claims shall be made by the Licensor in its sole and absolute discretion.

10. Inspection. Licensee shall allow and permit Licensor and Licensor's agents at all reasonable times during the Term to enter the Licensed Area to examine the condition thereof, and shall repair and make good any defects required by the terms of this Agreement to be repaired and made good by Licensee within 30 days after the giving of written notice by Licensor or Licensor's agents.

11. No Warranties: "As Is" Condition. Licensee hereby agrees and acknowledges that Licensee is accepting the Licensed Area in its "AS IS," "WHERE IS" and "WITH ALL FAULTS" condition, and Licensor makes no warranties or representations that the Licensed Area are suitable for the purposes intended by Licensee.

12. Assumption of Risk. Licensee shall and does hereby hold and assume all risk of loss or damage to any equipment, tools, supplies and other properties, by whomsoever owned, stored or placed on or in the Licensed Area, and Licensor shall not be held liable or responsible for any such loss or damage to any such property by any cause whatsoever, including loss due to theft, vandalism and the like, and Licensee hereby agrees to maintain and save harmless Licensor and any of Licensor's agents from and against any and all claims for such loss or damage. Licensee acknowledges the possible presence and danger of UNEXPLODED ORDNANCE AND MUNITIONS within the Licensed Area and agrees that the entry by Licensee, its employees, agents, or invitees, into the Licensed Area is at Licensee's own risk, and that Licensee erects any fencing on, and performs any other work in, the Licensed Areas at its own risk. Prior to any entry on the Licensed Area, Licensee will make appropriate arrangements with the United States Army Corps of Engineers and/or other appropriate governmental agency to survey the Licensed Area to ascertain the existence or presence of any hazard from UNEXPLODED ORDNANCE OR MUNITIONS on or in the Licensed Area, and obtain all necessary permits and clearances from such Corps of Engineers and/or other appropriate government agency.

13. Maintenance. During the term of this Agreement, Licensee shall be solely responsible for maintaining the Licensed Area in good order and condition, including without

limitation all fences and other improvements located thereon at the time of the commencement of this Agreement, or installed or placed on the Licensed Area by Licensee. Licensee further covenants and agrees to prevent all waste, loss or damage to the property of the Licensor.

14. Encumbrances. Licensee shall not create, or permit any agent, employee, contractor or other party to create, any lien or other encumbrance on the Licensed Area or the Land, including, without limitation, any mechanics' liens, and Licensee shall, at its own cost, immediately remove any such encumbrance from the Licensed Area or the Land.

15. Compliance with Environmental Laws. Licensee shall keep the Licensed Area, or cause the Licensed Area to be kept, free and clear of any "hazardous substances," "hazardous materials," "toxic substances," "hazardous wastes," "pollutants," or "contaminants," as such terms and words of similar import (collectively called "Hazardous Materials") are defined or used in the federal and state environmental laws presently existing as of the date of this Agreement or hereafter enacted (collectively called the "Environmental Laws"). Licensee shall promptly notify Licensor, in writing, if Licensee at any time shall become aware of any spillage, release or discharge of Hazardous Materials on, within or under the Licensed Area (for example, cleaning agents) and shall provide such detailed reports thereof as Licensor may reasonably request. Licensee shall dispose of such Hazardous Materials, or cause such Hazardous Materials to be disposed of, in compliance with the applicable Environmental Laws. Licensee shall indemnify, defend and hold Licensor harmless from and against all costs and expenses (including reasonable attorneys' fees), losses, damages, and liabilities incurred by Licensor which may arise out of or may, directly or indirectly, be attributable to: (a) Licensor's use, treatment, handling, storage, release, discharge, or disposal of any Hazardous Materials on or within the Licensed Area which shall occur during the Term hereof; (b) any amounts assessed against Licensor pursuant to the Environmental Laws based upon Licensor's ownership of the Licensed Area, for the clean-up or disposal of Hazardous Materials described in the foregoing clause (a); and (c) Licensor's enforcement of Licensee's covenants hereunder, whether or not suit is brought therefor. This indemnity shall survive any revocation or termination of this Agreement.

16. Indemnity. Licensee shall indemnify, defend and hold harmless the Licensor from and against any and all claims, demands, damages, losses and liability of whatsoever kind or nature for loss of or damage to property or for injuries to or death of any

person or persons, directly or indirectly arising from, related to, or in any way connected with the Licensee's maintenance, use, occupancy of or operations upon the Licensed Area or any acts or omissions of the Licensee or its employees, invitees, or guests upon or about the Land or the Licensed Area (collectively, "Claims"), and the Licensee shall indemnify, defend and hold harmless the Licensor from and against any and all expenses (including attorney's fees) incurred by Licensor in connection therewith. Licensee acknowledges the possible presence and danger of UNEXPLODED ORDNANCE AND MUNITIONS on the Land and within the Licensed Area and, without limiting the scope of the indemnity under this section, acknowledges and agrees that Licensee's obligations under this section shall extend to any Claims in any way arising from or relating to such ordnance. Licensee shall further indemnify, defend and hold harmless Licensor from and against any Claims arising or resulting from or in connection with Licensor's cooperation with Licensee on, and execution of, any grant proposals or funding relating to Licensee's use of the Licensed Area under this Agreement. The indemnities set forth in this section shall survive any revocation or termination of this Agreement.

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to the Licensee, or (c) shall abandon the Licensed Area, or any portion thereof, then and in any such event, Licensor may, in addition to any and all other rights or remedies at law or in equity, terminate this Agreement upon written notice thereof by the Licensor to the Licensee.

19. Surrender of Licensed Area. At the end of the Term or upon sooner termination of the license granted hereunder, Licensee shall remove at its sole cost and expense all of its materials and supplies from the Licensed Area and peaceably deliver to Licensor possession of the Licensed Area, in substantially its condition existing at the time of delivery of possession to Licensee. In the event of Licensee's failure to promptly vacate the Licensed Area or to remove such materials and supplies therefrom, the Licensor may expel and remove from the Licensed Area the Licensee and those claiming under the Licensee and the Licensee's or their materials and supplies, all without service of notice or resort to any legal process and without becoming liable for any loss or damage which may be occasioned thereby and without prejudice to any other remedy or right of action which the Licensor may have for such breach or for indebtedness owing by the Licensee hereunder, whether theretofore or thereafter accruing or to accrue, or for other or preceding breach of covenant of this Agreement on the part of the Licensee. Licensee shall not remove any fencing from the Licensed Area unless directed to do so in writing by Licensor, with any such removal being at Licensee's sole expense. Licensee shall have no right to reimbursement or payment for any fencing installed by Licensee in or on the Licensed Area during the Term of this Agreement. The Licensee will pay to the Licensor all costs and expenses incurred by the Licensor in enforcing any of Licensor's rights hereunder, including without limitation reasonable attorneys' fees.

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civil action, the parties shall in good faith attempt to resolve any dispute between them under this Agreement by non-binding mediation by a single mediator selected by mutual agreement of the parties. Each party shall bear its own attorneys' fees and costs in the mediation, and the mediator's fees and costs shall be divided equally.

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24. No Joint Venture. 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 Licensor and Licensee.

25. Entire Agreement. This Agreement and the exhibits attached hereto contain the entire agreement of the parties with respect to the subject matter hereof and supersedes all other prior representations, understandings and agreements with respect thereto.

26. Amendment. No amendment or modification or attempted waiver of any of the provisions hereof shall be binding, unless agreed to in writing by the parties hereto.

27. Assigns. This Agreement shall be binding on and inure to the benefit of the parties and their permitted assigns and successors in interest.

28. No Party Deemed Drafter. No party shall be deemed the drafter of this Agreement. If this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision hereof against any party as drafter.

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

30. Counterparts; Facsimile Signature. This Agreement may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and said counterparts together shall constitute one and the same instrument. This Agreement may also be executed by way of facsimile signature and such signature shall be sufficient to bind the party so executing this Agreement. Such party shall thereafter promptly forward a confirming copy of such facsimile signature to the other parties

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

Licensee:

Licensor:

**WAIKOLOA DRY FOREST
INITIATIVE INC.**, a Hawaii nonprofit
corporation.

WAIKOLOA VILLAGE ASSOCIATION,
a Hawaii nonprofit corporation

By: _____

Name: Beverley Brand
Its: President

By: _____

Name: Lonnie Cole
Its: President



BOARD OF DIRECTORS
EXECUTIVE COMMITTEE

THE OUTDOOR CIRCLE

Joel Kurokawa
President

Marcy Fleming
1st Vice President

Maureen Murphy
2nd Vice President

Diane Anderson
3rd Vice President

Betsy Connors
4th Vice President

Diane Harding
Treasurer

Heather Shank
Assistant Treasurer

Teresa Trueman-Madriaga
Secretary

Alexandra Avery
Advisor

Jo Ann Best
Advisor

Paula Ress
Advisor

Marcy Fleming
Bradley Totherow
Finance

BRANCHES

East Honolulu (O'ahu)

Kane'ohe (O'ahu)

Kapolei (O'ahu)

Kaua'i

Kona (Hawai'i)

Lani-Kailua (O'ahu)

Maui

North Shore (O'ahu)

Waikoloa Village (Hawai'i)

Waimea (Hawai'i)

The Outdoor Circle January 25,2012

Resolution

Whereas The Outdoor Circle, dba Waikoloa Village Outdoor Circle, has entered into various contracts related to the Waikoloa Dry Forest Recovery Project;

And whereas a new Hawaii nonprofit corporation, Waikoloa Dry Forest Initiative, Inc. ("WDFI"), has been formed to assume stewardship of the Waikoloa Dry Forest;

And whereas WDFI is willing to assume all of the rights, responsibilities and obligations of The Outdoor Circle related to the Waikoloa Dry Forest Recovery Project;

Be it resolved that The Outdoor Circle supports WDFI and its assumption of stewardship of the Waikoloa Dry Forest Recovery Project;

And be it further resolved that The Outdoor Circle has no objections to the assignment of The Outdoor Circle's rights, responsibilities and obligations contained in contracts related to the Waikoloa Dry Forest Recovery Project to the extent that such contracts are assignable.

The Outdoor Circle
January 25, 2012

Resolution _____

Whereas The Outdoor Circle, dba Waikoloa Village Outdoor Circle, has entered into various contracts related to the Waikoloa Dry Forest Recovery Project;

And whereas a new Hawaii nonprofit corporation, Waikoloa Dry Forest Initiative, Inc. ("WDFI"), has been formed to assume stewardship of the Waikoloa Dry Forest;

And whereas WDFI is willing to assume all of the rights, responsibilities and obligations of The Outdoor Circle related to the Waikoloa Dry Forest Recovery Project;

Be it resolved that The Outdoor Circle supports WDFI and its assumption of stewardship of the Waikoloa Dry Forest Recovery Project;

And be it further resolved that The Outdoor Circle has no objections to the assignment of The Outdoor Circle's rights, responsibilities and obligations contained in contracts related to the Waikoloa Dry Forest Recovery Project to the extent that such contracts are assignable.

A handwritten signature in black ink, appearing to read "John Knapforn", with a long horizontal line extending to the right.



July 9, 2012

To whomever it may concern:

The Outdoor Circle, dba Waikoloa Village Outdoor Circle transferred their land license regarding the Waikoloa Dry Forest Recovery Project to The Waikoloa Dry Forest Initiative, Inc., a nonprofit organization. The Waikoloa Dry Forest Initiative, Inc., agrees to assume full responsibility for the Forest Stewardship Program agreement formally held by The Outdoor Circle, dba Waikoloa Village Outdoor Circle for the initial term of the agreement. This includes but is not limited to management, financial responsibilities, and penalties contained in the State of Hawaii, Forest Stewardship Agreement, Contract number 58708.

WDFI Board of Directors approves this action.


Beverley Brand, President
WDFI

Waikoloa Dry Forest Initiative
68-3720 Laka Heaia Pl.
Waikoloa, HI 96738
808 895-4679