

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

September 28, 2012

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

PSF No.: 97OD-157

Oahu

Final Approval of an Exchange Between the State of Hawaii and Tiana Partners and Hawaiian Humane Society for State-Owned Springing Executory Interest in Land at Niu, Honolulu, Oahu, Tax Map Keys: (1) 3-7-04:01, 02, 20 and 21 and Privately-Owned Land at Niu, Honolulu, Oahu, Tax Map Key: (1) 3-7-04:02, for Proposed Addition to the Honolulu Watershed Forest Reserve

APPLICANT AGENCY:

Department of Land and Natural Resources, Division of Forestry and Wildlife ("DOFAW");

PRIVATE LANDOWNERS:

Tiana Partners, a Hawaii domestic partnership whose business and mailing address is 440 Puamamane Street, Suite A, Honolulu, Hawaii 96821, which owns an unencumbered 47.8916032% undivided interest in TMKs (1) 3-7-04:01, 02, 20 and 21; and

Hawaiian Humane Society, a Hawaii nonprofit corporation whose business and mailing address is 2700 Waiialae Avenue, Honolulu, Hawaii 96826, which owns a 52.0183968% undivided interest in TMKs (1) 3-7-04:01, 02, 20 and 21, which is encumbered by the State of Hawaii's springing executory interest.

LEGAL REFERENCE:

Section 171-50, Hawaii Revised Statutes, as amended.

PROPERTIES TO BE EXCHANGED:

State's Interest to be Conveyed: Springing executory interest encumbering the undivided fractional interest vested in Hawaiian Humane Society.

Location: Portions of lands at Niu, Honolulu, Oahu, identified by Tax Map Keys: (1) 3-7-04:01, 02, 20 & 21, as shown on **Exhibits A and B**
Land Area: 680.58 acres, more or less

Zoning:

	State Land Use	County Zoning
Parcel 01	Conservation/ Urban	P-1 Restricted R-7.5 Residential
Parcel 02	Conservation	P-1 Restricted
Parcel 20	Urban/ Conservation	R-7.5 Residential P-1 Restricted
Parcel 21	Urban	R-7.5 Residential

Trust Status: The State's springing executory interest was established after August 1959, and is non-ceded. Moreover, the State's interest is not subject to the 30% DHHL entitlement pursuant to the Hawaii State Constitution.

Current Use: Vacant and unencumbered

Privately-Held Interest to be Conveyed: 100% undivided fee simple interest in portion of lands of Niu, Honolulu, Oahu, identified by Tax Map Key: (1) 3-7-04:02, together with access and trail easements over Tax Map Keys: (1) 3-7-04:01, 20, & 21

Location: Portion of lands of Niu, Honolulu, Oahu, identified by Tax Map Key: (1) 3-7-04:02 ("Parcel 02"), as shown on **Exhibits A and B**

Land Area: 263 acres, more or less

Zoning: State Land Use District: Conservation
City & County of Honolulu: P-1 Restricted

Current Use: Vacant and unencumbered

PUBLIC PURPOSE OF EXCHANGE:

Proposed addition to the Honolulu Watershed Forest Reserve

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Pursuant to Section 343-5(a)(1), HRS, an environmental assessment (EA) is not required where the use State or county lands or the use of State or county funds are being used for the acquisition of unimproved real property. As Parcel 02 is unimproved real property, an EA is not required for the acquisition of these lands through the proposed land exchange.

Upon its conveyance to the State, DOFAW shall conduct a public hearing pursuant to Sections 183-11 and 183-12, Hawaii Revised Statutes. DOFAW shall report back to BLNR with the results of the public hearings and if appropriate will recommend BLNR approve recommending to the Governor the issuance of an executive order, setting aside Parcel 02 to DOFAW for addition to the Honolulu Watershed Forest Reserve.

Accordingly, the proposed addition to the Honolulu Watershed Forest Reserve is expected to result in no expansion or change of use beyond that previously existing for Parcel 02. Moreover, the proposed addition of Parcel 02 to the surrounding Honolulu Watershed Forest Reserve is expected to result in only negligible changes in DOFAW's operations of the Forest Reserve, if any.

Based on the foregoing, DOFAW's planned use of the property is exempt from the preparation of an environmental assessment in accordance with Sections 11-200-8(a); Exemption List for the State of Hawaii, Department of Land and Natural Resources as Reviewed and Concurred upon by the Environmental Council (Docket 91-EX-2), December 4, 1991; and Exemption List for the Division of Forestry and Wildlife of the Department of Land and Natural Resources, State of Hawaii, Reviewed and Concurred upon by the Environmental Council on June 12, 2008, pursuant to Exemption Class 1 "Operations, repairs or maintenance... involving negligible or no expansion or change of use beyond that previously existing.", and Exemption Class 4 "Minor alterations in the conditions of land, water, or vegetation." A copy of the Chapter 343, Exemption Notification is attached.

FAIR MARKET VALUE AND CONSIDERATION IF ANY:

As required by Subsection 171-50(b), HRS:

"The public land exchange shall be of substantially equal value to that of the private land. In any exchange, the fair market value of the private land and the public land shall be separately determined by a disinterested qualified appraiser or appraisers and the cost shall be borne equally between the owner and the board. No payment by the State shall be required should the private land exceed the value of the public land, but any difference in value of the public land over the private land shall be paid to the State at the time of the exchange; provided no exchange shall be made should public land exceed 120 per cent of the value of the private land."

REMARKS:

The Hawaiian Humane Society (HHS) acquired an undivided 52.018397% interest in approximately 680.846 acres of land located in Niu Valley by two deeds that were dated December 28, 1976 and December 10, 1982.¹ These lands are identified as TMKs (1) 3-7-04:01 (Parcel 01), 02 (Parcel 02), 20 (Parcel 20) and 21 (Parcel 21), as shown on **Exhibits A and B**, attached. The deeds conveying HHS's undivided fractional interest provided that the lands "*shall be used for the benefit of the public for the operation of an education preserve for flora and fauna, to be made accessible as an educational experience for the public under the control and administration of said Hawaiian Humane Society and its successors and assigns, and, if not so used, then to State of Hawaii and its successors and assigns, for and as a*

¹ The remaining undivided 49.9816032% interest is owned by Tiana partners.

public park." This deed provision constitutes the State of Hawaii's ("State") springing executory interest in the undivided partial interest in the lands currently vested with HHS.²

HHS and Tiana Partners ("Tiana") entered into a Memorandum of Understanding (MOU) dated September 11, 2006, which includes an agreement to convey their combined 100% undivided interest in Parcel 02 to the State of Hawaii in exchange for the State's springing executory interest. The MOU conditions the aforementioned HHS/Tiana conveyance to the State on the Board of Land and Natural Resources (BLNR) approval of the subject exchange as well as approval from the State's Probate Court.

Accordingly at its meeting of December 8, 2006, under agenda item D-14, as amended on December 14, 2007, under agenda item D-15, the BLNR approved in principle a proposed exchange whereby the State would relinquish its springing executory interest in exchange for a 100% undivided interest in Parcel 02. BLNR's approval in principle also set forth certain requirements and provided that the details of the exchange be submitted to the BLNR for final approval prior to documentation. Accordingly, details and results of the due diligence are presented herein for BLNR's review.

1. Appraisal: An independent appraiser, contracted for by the State, valued the State's springing executory interest in the 680.58 acres of land and the fee simple interest in Parcel 02 on December 8, 2006. The appraiser concluded the fair market value of the State's springing executory interest to be \$67,000, while the fee simple interest in Parcel 02 that will be conveyed to the State was valued at \$710,000. Accordingly, the proposed exchange complies with Section 171-50(c), HRS.
2. Legislation: Pursuant to §171-50(d) resolutions were submitted to the Legislature during the 2008 Legislative Regular Session. Senate Concurrent Resolution No. 210, H.D.1, which affirmatively approved the exchange as approved by the Board of Land and Natural Resources, was adopted by the Senate and the House of Representatives. A copy of Senate Concurrent Resolution 210, H.D.1, 2008 is attached as **Exhibit C**.
3. Title Report: Title Guaranty of Hawaii, Incorporated prepared a title report dated July 15, 2008, covering Parcel 02. The title report identified Tiana Partners and Hawaiian Humane Society as the owners of undivided fractional interests in Parcel 02 as well as the State's

² The State's springing executory interest provides that State use the land as a public park. However, DLNR, Division of State Parks has opined the lands are not suitable for public park use in its current condition due to risk of rockfall and lack of sufficient vehicular access necessary for a public park.

springing executory interest in the same. The title report did not identify any objectionable encumbrances.

4. Survey: Data and various survey maps were provided by Tiana for review by the Department of Accounting and General Services, Survey Division (DAGS Survey). Based on the information provided and additional research, DAGS Survey prepared a survey description and map (C.S.F.), which will be used in the land exchange documentation as appropriate.

As previously agreed to and as indicated on the C.S.F., Tiana/HHS shall convey to the State Parcel 02, together with Easements B, C and 2 (roadway purposes), and Easement 3 (hiking trail purposes).

5. Public Notice: Pursuant to §171-50 and §171-16(d), public notices were published on December 5, 2008, in the Honolulu Star Bulletin, Maui News, West Hawaii Today, the Hawaii Tribune-Herald, and The Garden Island. Affidavits confirming all publications are retained in the project file.
6. Phase I ESA: Tiana/HHS submitted a Phase I Environmental Site Assessment ("ESA") dated August 2012, and prepared by Masa Fujioka & Associates. The Phase I ESA included a reconnaissance of the subject and adjoining properties, personal interviews, and review of historical records and regulatory agency databases. The Phase I ESA found no evidence of recognized environmental conditions, no de minimis conditions, nor any conditions of potential concern associated with the subject property.
7. Probate Court Approval: Consistent with the MOU entered into and between HHS and Tiana, BLNR approval in principle was conditioned on the approval by probate court. A Stipulated Order Approving Land Exchange Free and Clear of Use Restrictions approving the land exchange between Tiana/HHS and the State of Hawaii, free and clear of any use restrictions and Judgment Pursuant to Stipulated Order Approving Land Exchange Free and Clear of Use Restrictions were filed on February 21, 2012. No further court action is required.

Parcel 02's east and west side boundaries abut the Honolulu Watershed Forest Reserve. Acquiring private lands that are adjacent to or abut existing Forest Reserves improves management across the landscape. This parcel includes the Koolau summit, thus important watershed and native habitat area, including an existing endangered plant enclosure. Accordingly, the acquisition of Parcel 02 together with Easements B, C, 2 and 3, described above, supports DOFAW's continuing management of the State's Honolulu Watershed Forest

Reserve. Based on the foregoing staff recommends BLNR approve the above described exchange.

Subsequent to the exchange, DOFAW shall conduct a public hearing on the proposed addition of Parcel 02 to the Honolulu Watershed Forest Reserve, pursuant to HRS Section 183-11, Government Land for Forest Reserves, and Section 183-12, Notice of Hearing. After which, DOFAW shall report the results of the meeting back to the BLNR and, if appropriate, request BLNR's approval to recommend to the Governor the issuance of an executive order setting aside Parcel 02, to DOFAW for addition to the Honolulu Watershed Forest Reserve.

In the interim Land Division will issue a management right-of-entry permit to allow necessary management rules to be applied to Parcel 02.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed exchange as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Grant its final approval to the above-described land exchange between the State of Hawaii and Tiana Partners and Hawaiian Humane Society, under the terms and conditions cited above which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current exchange deed form and land patent grant or deed form, as may be applicable and as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session following the date of the Board's approval in principle and via resolution;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the issuance of a management right-of-entry permit to the Division of Forestry and Wildlife covering TMK (1) 3-7-04:02 under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

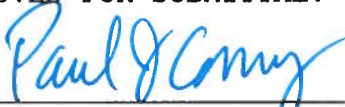
- A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.
- 4. Authorize the Chairperson to set the date and time for a public hearing to add approximately 263 acres of land to the Honolulu Watershed Forest Reserve, and appoint a Hearing Master.
 - 5. Authorize DOFAW to conduct a public hearing to add approximately 263 acres of land to the Honolulu Watershed Forest Reserve, under provisions of HRS §183-11, Government Land for Forest Reserves and §183-12, Notice of Hearing.
 - 6. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Gavin Chun
Project Development Specialist

APPROVED FOR SUBMITTAL:



Willaim J. Aila, Jr. Chairperson





Exhibit A

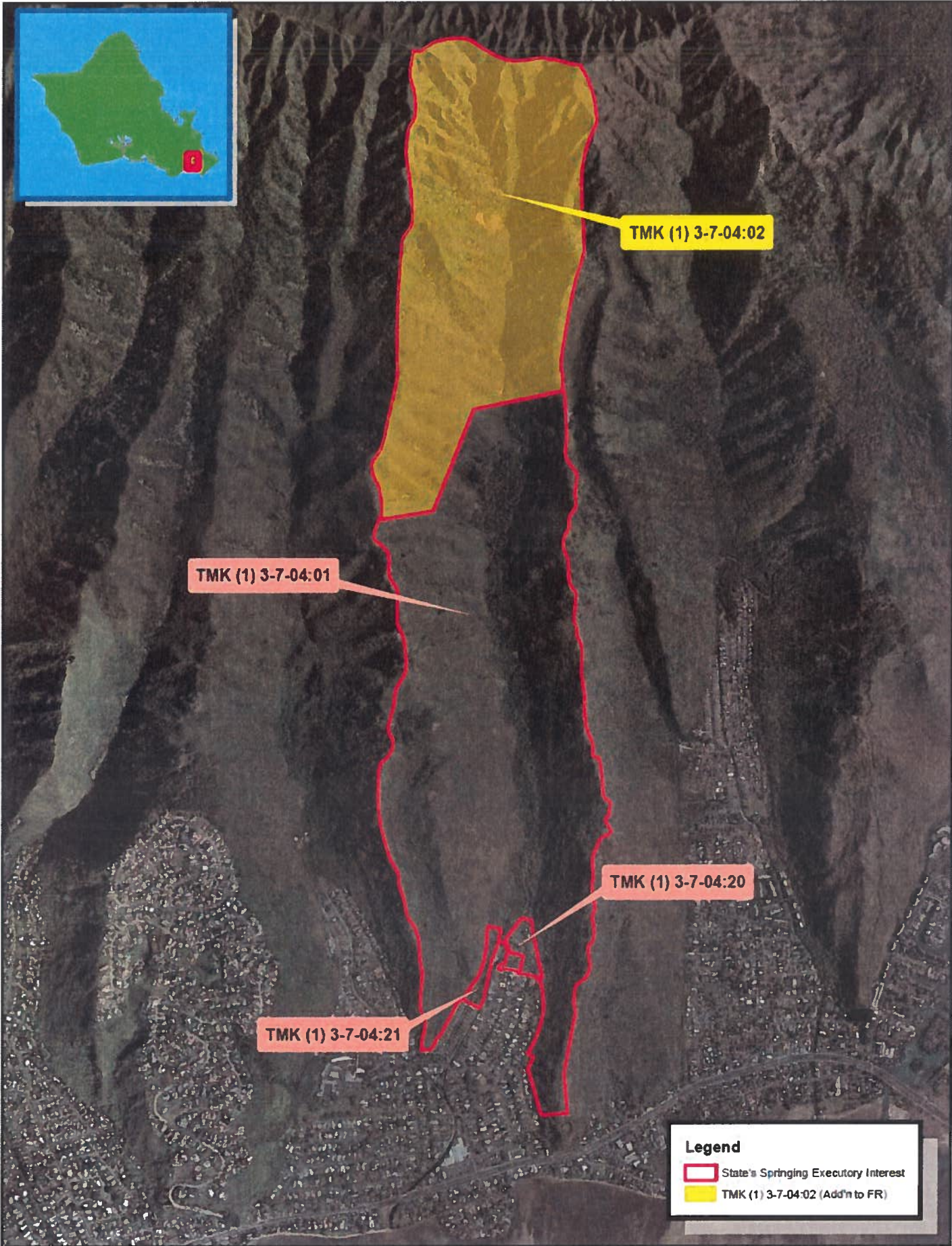


Exhibit B

Exhibit C

S.C.R. No. 210, H.D. 1, 2008

SENATE CONCURRENT RESOLUTION

APPROVING THE ACTION OF THE BOARD OF LAND AND NATURAL RESOURCES
RELATING TO A LAND EXCHANGE.

1 WHEREAS, section 171-50, Hawaii Revised Statutes, provides
2 that land exchanges of public land for private land are subject
3 to disapproval by the Legislature by two-thirds vote of either
4 the Senate or the House of Representatives or by majority vote
5 of both in any regular or special session; and
6

7 WHEREAS, Tiana Partners, a Hawaii general partnership and
8 the Hawaiian Humane Society, a Hawaii nonprofit corporation, are
9 tenants-in-common owners of land situate in Niu, Honolulu, Oahu,
10 identified as Tax Map Keys: (1) 3-7-04:01 (Parcel 1),
11 (2) 3-7-04:02 (Parcel 2), (3) 3-7-04:20 (Parcel 20), and (4)
12 3-7-04:21 (Parcel 21); and
13

14 WHEREAS, Tiana Partners owns an undivided interest of
15 .479816032 in said lands; and
16

17 WHEREAS, the Hawaiian Humane Society owns an undivided
18 interest of .520183968 in said lands; and
19

20 WHEREAS, the Hawaiian Humane Society acquired said interest
21 from Elisabeth J. K. L. Lucas by deed documents dated
22 December 28, 1976 and December 30, 1982, subject to the
23 condition that the property be "used for the benefit of the
24 public for the operation of an educational preserve for flora
25 and fauna, to be made accessible as an educational preserve for
26 the public under the control of the Hawaiian Humane Society, its
27 successors and assigns, and, if not used, then to the State of
28 Hawaii, its successors and assigns, for and as a public park.";
29 and
30

31 WHEREAS, this condition represents a springing executory
32 interest in favor of the State of Hawaii with regard to the
33 Hawaiian Humane Society's undivided .520183968 interest in said



1 land, that only would vest upon the Hawaiian Humane Society's
2 failure to use said land as specified ("State's interest"); and
3

4 WHEREAS, said lands are in a remote and steep area not
5 conducive for use as a public park; and
6

7 WHEREAS, the State of Hawaii, Department of Land and
8 Natural Resources, Division of State Parks does not have the
9 adequate resources to maintain said land as a park reserve; and
10

11 WHEREAS, Parcel 2, which is a portion of said lands, is
12 located within the Honolulu Watershed Forest Reserve as
13 established by Governor's proclamation dated October 13, 1913,
14 as amended by Governor's proclamation dated December 24, 1926;
15 Honolulu Watershed Forest Reserve; and
16

17 WHEREAS, lands abutting Parcel 2 along its easterly
18 boundary are public lands also within the Honolulu Watershed
19 Forest Reserve; and
20

21 WHEREAS, the Department of Land and Natural Resources,
22 Division of Forestry and Wildlife considers Parcel 2 to be a
23 good addition to the public holdings within the Honolulu
24 Watershed Forest Reserve for watershed protection and other
25 public use purposes; and
26

27 WHEREAS, Tiana Partners and Hawaiian Humane Society are
28 proposing a land exchange pursuant to section 171-50, Hawaii
29 Revised Statutes, whereby Tiana Partners and the Hawaiian Humane
30 Society have agreed to allow the Hawaiian Humane Society to
31 convey its interest in Parcels 1, 20, and 21 to Tiana Partners
32 in exchange for cash and other consideration, subject to the
33 State of Hawaii relinquishing its springing executory interest
34 in the Hawaiian Humane Society's undivided .520183968 interest
35 in said lands in exchange for Tiana Partners and the Hawaiian
36 Human Society conveying a 100 per cent undivided fee simple
37 interest in Parcel 2 to the State of Hawaii; and
38

39 WHEREAS, at its meeting of December 8, 2006, under agenda
40 item D-14, the Board of Land and Natural Resources approved in
41 principle the proposed exchange involving the State's interest
42 in Parcels 1, 2, 20, and 21; and
43



1 WHEREAS, at its meeting of December 14, 2007, under agenda
2 item D-15, the Board of Land and Natural Resources approved to
3 amend its prior action to reflect the parties' intent to
4 exchange present and future interest in land in Parcels 1, 2,
5 20, and 21; and

6
7 WHEREAS, pursuant to section 171-50, Hawaii Revised
8 Statutes, "[a]ny exchange of public land for private land shall
9 be subject to disapproval by the Legislature by two-thirds vote
10 of either the Senate or the House of Representatives or by
11 majority vote of both in any regular or special session
12 following the date of the Board of Land and Natural Resources'
13 approval in principle of the exchange."; now, therefore,
14

15 BE IT RESOLVED by the Senate of the Twenty-fourth
16 Legislature of the State of Hawaii, Regular Session of 2008, the
17 House of Representatives concurring, that the following
18 exchange, approved by the Board of Land and Natural Resources,
19 be reviewed by the Legislature:
20

21 LAND EXCHANGE BETWEEN TIANA PARTNERS, HAWAIIAN HUMANE SOCIETY
22 AND STATE OF HAWAII

23
24 Statute: Section 171-50, Hawaii Revised Statutes, as
25 amended.

26
27 Purpose: Addition to the public holdings within the
28 Honolulu Watershed Forest Reserve

29
30 Date of Board Approval in Principle: December 8, 2006

31
32 Date of Board Approval of Amendment: December 14, 2007
33
34

35 I. TIANA PARTNERS AND HAWAIIAN HUMANE SOCIETY TO CONVEY
36 TO THE STATE OF HAWAII A 100% UNDIVIDED FEE SIMPLE
37 INTEREST IN:
38

<u>Location</u>	<u>Tax Map Key</u>	<u>Area</u>	<u>Appraised Value</u>
Niu, Oahu	(1) 3-7-04:02	±263.0 acres	\$710,000



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II. THE STATE OF HAWAII TO CONVEY TO TIANA PARTNERS AND HAWAIIAN HUMANE SOCIETY ITS SPRINGING EXECUTORY INTEREST IN THE HAWAIIAN HUMANE SOCIETY'S UNDIVIDED .520183968 INTEREST IN:

<u>Location</u>	<u>Tax Map Key</u>	<u>Area</u>	<u>Appraised Value</u>
Niu, Oahu	(1) 3-7-04:01, 02, 20, and 21	±680.58 acres	\$67,000

III. NAME OF DISINTERESTED APPRAISERS WHO APPRAISED THE PROPERTIES

Public Interest

Appraisal Hawaii Inc., pursuant to appraisal report dated November 6, 2007, and amendment report dated February 14, 2008, both of which indicate the effective date of value as being December 8, 2006.

Private Land

Appraisal Hawaii Inc., pursuant to appraisal report dated November 6, 2007, and amended report dated February 14, 2008, both of which indicate the effective date of value as being December 8, 2006; and

BE IT FURTHER RESOLVED that a certified copy of this Concurrent Resolution be transmitted to the Chairperson of the Board of Land and Natural Resources.





STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

September 28, 2012

EXEMPTION NOTIFICATION regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR.

Project Title: Final Approval of an Exchange between the State of Hawaii and Tiana Partners and Hawaiian Humane Society for State-Owned Springing Executory Interest in Land at Niu, Honolulu, Oahu, Tax Map Keys: (1) 3-7-04:01, 02, 20 and 21 and Privately-Owned Land at Niu, Honolulu, Oahu, for Proposed Addition to the Honolulu Watershed Forest Reserve

Project / Reference No.: PSF 97OD-157

Project Location: Portions of lands at Niu, Honolulu, Oahu, identified by Tax Map Keys: (1) 3-7-04:01, 02, 20 & 21

Project Description: Exchange of State's springing executory interest in land for privately-owned land pursuant to Chapter 171-50, HRS.

Ch 343 Trigger(s): Pursuant to Section 343-5(a)(1), HRS, an environmental assessment (EA) is not required where the use State or county lands or the use of State or county funds are being used for the acquisition of unimproved real property. Whereas the land being acquired by the State in the subject exchange is unimproved real property, an EA is not required for the exchange itself.

Following the subject exchange, the Department of Land and Natural Resources, Division of Forestry and Wildlife proposes to add lands acquired in the exchange, identified by tax key as TMK (1) 3-7-04:02 ("Parcel 02"), to the surrounding Honolulu Watershed Forest Reserve ("DOFAW"). The proposed addition of Parcel 02 to the Honolulu Watershed Forest Reserve, and DOFAW's management as such, constitute a use of State lands.

Exemption Lists and Approval Dates: Whereas subsequent to the exchange, the privately-owned property will become State property. In accordance with the Section 11-200-8(a)(1) & (4); Exemption List for the State of Hawaii, Department of Land and Natural Resources as Reviewed and Concurred upon by the Environmental Council (Docket 91-EX-2), December 4, 1991; and Exemption List for the Division of Forestry and Wildlife of the

Department of Land and Natural Resources, State of Hawaii, Reviewed and Concurred upon by the Environmental Council on June 12, 2008, the proposed activity is considered to be exempt from the preparation of an environmental assessment under the following exemption classes.

Exemption Classes and Descriptions:

Exemption Class 1: "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features involving negligible or no expansion or change of use beyond that previously existing."

Exemption Class 4: "Minor alterations in the conditions of land, water, or vegetation."

Remarks:

As a result of the subject exchange, approximately 263 acres of private land, identified as TMK (1) 3-7-04:02 ("Parcel 02"), will be conveyed to the State of Hawaii for proposed addition to the Honolulu Watershed Forest Reserve.

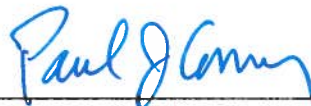
Parcel 02's east and west side boundaries abut the Honolulu Watershed Forest Reserve. Accordingly, the acquisition of Parcel 02 and proposed addition to the Honolulu Watershed Forest Reserve is expected to result in no expansion or change of use that previously existed for Parcel 02. Moreover, the proposed addition of Parcel 02 to the surrounding Honolulu Watershed Forest Reserve is expected to result in only negligible changes in DOFAW's operations of the Forest Reserve, if any.

Consulted Parties:

Department of Land and Natural Resources, Land Division and Division of Forestry and Wildlife; and Department of the Attorney General, Land Transportation Division were consulted as sources authority having jurisdiction or expertise in this matter, and concurs that the exemption identified above is applicable to and appropriate for the proposed project.

Recommendation:

It is anticipated this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



for William J. Aila, Jr.
Chairperson

Date: 9/7/12