

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawai'i 96813

January 25, 2013

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

Land Board Members:

**SUBJECT: REQUEST FOR APPROVAL OF FEDERAL FUNDS SUB-GRANT TO THE NATURE CONSERVANCY FOR THE PURCHASE OF A CONSERVATION EASEMENT FOR 3,550 ACRES OF LAND IN EAST MAUI**

SUMMARY:

The Division of Forestry and Wildlife has secured a total of \$391,000 from a grant through the Fish and Wildlife Service (FWS), Recovery Lands Acquisition (RLA) program for the purchase of a Conservation Easement from East Maui Irrigation, Inc. (EMI) for approximately 3,550 acres of private land on East Maui. The FWS recognizes that success in conserving species will ultimately depend on working cooperatively with landowners, communities, and tribes to foster voluntary stewardship efforts on private lands. This acquisition is for the conservation of endangered species and their habitats as well as the important watershed values that characterize the area.

The subject property is at the center of the 100,000-acre East Maui Watershed Partnership (EMWP) area, which is managed by six major landowners, including DOFAW. It is bordered by the State of Hawai'i Ko'olau Forest Reserve, the Hanawi Natural Area Reserve, Haleakala National Park, and lies immediately below The Nature Conservancy's (TNC) Waikamoi Preserve, with which it shares a seven mile boundary.

The purpose of this request is to authorize the Division of Forestry and Wildlife to pass through those federal funds as a sub-grant to TNC for purchase of a conservation easement on said parcel for the protection of this important area in perpetuity.

## BACKGROUND:

A conservation easement held by TNC will serve to protect this critically important watershed as well as habitat for 16 threatened or endangered plant species, 19 species of concern and seven candidate species. Additionally, it will result in permanent habitat protection for eight endangered bird species; and one insect species.

## DISCUSSION:

The goal of the East Maui Watershed Acquisition Project is for TNC to acquire a conservation easement on 3,550 acres of the property. All funds will be used for the acquisition and associated acquisition costs. After acquisition, the property will be managed for native species and ecosystem protection in perpetuity, and managed by TNC. TNC intends to apply for management funding through the State's Natural Area Partnership (NAPP).

Currently, conservation organizations are restricted in their access to the property for biological surveys, threat control, or for protection of the Property's important native resources. If this easement is not acquired, EMI, or a subsequent private landowner, could prohibit access by conservation organizations for protection of native species and other conservation values of this important area.

### Chapter 343, Hawaii Revised Statutes: Environmental Assessment

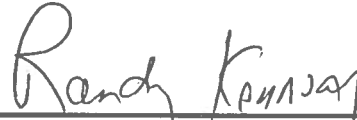
DOFAW advises that HRS Chapter 343 does not apply to this sub-grant agreement as the pass through of federal funds for the acquisition of a conservation easement by a third party does not constitute the use of state or county funds nor does it constitute a "use" within any lands requiring the preparation of an environmental assessment under HRS section 343-5.

## RECOMMENDATION:

The Department recommends that the Board:

1. Delegate to the Chairperson the authority to develop and execute an Agreement to Subgrant between The Nature Conservancy and the Department which will then provide federal RLA grant funds to TNC for the acquisition of a conservation easement, subject to review and approval of the Attorney General and such other terms and conditions as the Chairperson may approve.

Respectfully Submitted,



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Randall W. Kennedy, Acting Administrator  
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



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WILLIAM J. AILA, JR, Chairperson

Attachments:

- I: Draft Agreement to Subgrant
- II: East Maui RLA Application FINAL

**AGREEMENT TO SUBGRANT**

**Between:**

**THE NATURE CONSERVANCY  
&  
STATE OF HAWAI'I  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

This Agreement to Subgrant ("Agreement") entered into on \_\_\_\_\_, 2012 (the "Effective Date") by and between THE NATURE CONSERVANCY, a District of Columbia non-profit corporation acting by and through its Hawai'i chapter, having an address at 923 Nu'uuanu Avenue, Honolulu, Hawai'i, 96817 ("TNC") and the STATE OF HAWAI'I through its Department of Land and Natural Resources ("DLNR"), whose principal place of business is 1151 Punchbowl Street, Honolulu, Hawai'i 96813.

**EXHIBITS**

Exhibit A      Recovery Land Acquisition Grant Proposal  
Exhibit B      Checklist for Acquisition Subgrants

**RECITALS**

WHEREAS, the Department of the Interior, acting through its Fish and Wildlife Service ("FWS") and DLNR have entered into a Recovery Land Acquisition Grant Agreement No. HI E-21-RL-1 to facilitate the acquisition of interests in real property identified in said Grant Agreements;

WHEREAS, the FWS will permit DLNR to subgrant FWS grant funds to another state or local agency or non-profit organization ("potential recipients"), conditioned on the grant funds being used to acquire the identified real property and the potential recipient agreeing to accept all of the provisions and obligations set forth in said Grant Agreements;

WHEREAS, TNC is a charitable organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder, whose purpose includes conserving the lands and waters on which all life depends.

WHEREAS, TNC intends to purchase a conservation easement (the "Easement") over that certain real property (the "Property"), situate at Makawao, County of Maui, State of Hawai'i, consisting of 3,540 acres, more or less, and bearing tax map key ("TMK") number (2) 2-4-16:04, as more particularly described in Exhibit A ("East Maui Watershed Conservation Easement Acquisition Project");

WHEREAS, TNC and DLNR desire that the Property be protected in perpetuity as part of the East Maui Watershed Acquisition Project, as a conservation area for native wildlife habitat; and

NOW THEREFORE, DLNR and TNC agree to a subgrant of the FWS grant funds to TNC in accordance with the following terms and conditions.

**A. SUBGRANT**

DLNR hereby agrees to subgrant to TNC an amount not to exceed the sum of Three Hundred and Ninety One Thousand and No/100 Dollars (\$391,000.00) ("Grant Funds"), subject to the terms and conditions of this Agreement.

**PURPOSE OF SUBGRANT**

DLNR is making this Subgrant, using funds to DLNR by FWS, for the purpose of facilitating TNC's acquisition of a conservation easement over the Property.

TNC agrees that if the Grant Funds are received by it and it acquires a conservation easement over the Property, such acquisition will be for the purposes of conservation of the area for watershed, biodiversity and endangered species protection and the provisions of Recovery Land Acquisition Agreement No. HI E-21-RL-1.

**B. CONDITIONS OF SUBGRANT**

1. TNC agrees to use its reasonable best efforts to purchase and hold the Easement over the Property for a purchase price not to exceed Three Hundred and Ninety One Thousand and No/100 Dollars (\$391,000.00). The parties anticipate closing before December 31, 2012, but shall in any event close no later than June 1, 2014.
2. DLNR shall provide the Grant Funds in an amount not to exceed \$391,000.00 for purchase of the Easement, such funds to be made available for escrow five business days prior to the closing date.
4. As holder of the Easement, TNC shall:
  - a. Create a Management Plan for native species and ecosystem protection that addresses key threats, which include ungulates and invasive species:
  - b. Seek funding for native species and ecosystem protection, including but not limited to management funds from the Natural Area Partnership Program, as available.
  - c. Facilitate implementation of the Management Plan, subject to funds available for such purpose.
5. DLNR shall be given opportunity to review and comment on the Management Plan as it is being developed and appropriate staff shall be allowed to participate in the planning process.
6. At the request of DLNR, TNC shall, to the extent the Easement gives TNC such right, allow DLNR reasonable access to the subject property to assess compliance with the terms and conditions contained herein.

7. TNC shall not transfer, mortgage, hypothecate, or pledge the Easement or any portion thereof without the prior written approval of DLNR, which shall not be unreasonably withheld or conditioned.

8. In the event that the State of Hawai'i Board of Land and Natural Resources ("BLNR") determines in its reasonable discretion, after affording TNC written notice and an opportunity to cure that is reasonable under the circumstances, that TNC is unable to continue operations or is otherwise unable to manage the property, then subject to the approval of the BLNR, the Easement shall be conveyed by TNC to another appropriate conservation organization, DLNR, or another agency which will continue to manage the property for the conservation values specified in the Easement. Any conveyance to DLNR shall be done *gratis* and TNC shall be responsible for any and all fees and costs associated with the conveyance. Furthermore, any transfer of the Easement shall comply with USFWS Recovery Land Acquisition Grant program rules.

9.

10. Prior to closing, either party may terminate this Agreement for any reason or for no reason, by providing the other party with a minimum of thirty (30) days' written notice of such termination.

11. After close of escrow for the acquisition of the Property, this Agreement to Subgrant shall remain in full force and effect for the purpose of securing compliance with the "PURPOSE OF SUBGRANT" provisions set forth above.

12. DLNR must provide the FWS with an interim performance report and/or a final performance report depending on the duration of the grant. TNC shall provide within 30 days of request, the following information:

a. Summary of Land Costs – TNC shall furnish a schedule showing seller, acreage, appraised value, price paid, relocation costs, and other costs for each tract. Other costs of acquisition (appraisal, negotiation, title search, land surveys, etc.) may be shown as a lump sum.

b. Title Vesting Evidence – TNC shall furnish a title insurance policy or title certificate which must include a correct legal description and the acreage of the property involved. The description may be given by reference to a deed or plat, provided a copy of the document accompanies the certificate or policy. On a per-unit purchase, the exact acreage, or mileage shall be indicated.

c. If the acquisition could not be acquired within the period specified in the Subgrant Agreement, a statement of the problem, the actions taken or resolve the problem, and when it is anticipated that the acquisition will be completed shall be provided.

The final report must include a summary table for the property acquired. If a Subgrantee-owned property is to be used as match, a summary table for each property used for match must be included as well. For each property, TNC must provide DLNR with copies of the following:

For Fee Title:

1. Copy of Recorded Deed(s) and Notice(s) of Grant Agreement with Book/Page Number;
2. Title Vesting Certificate or Title Insurance Policy (specify which is being provided);
3. Property or Plat Map, Area Map, and Location Map.

14. Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To TNC:       The Nature Conservancy  
                  923 Nu`uanu Avenue  
                  Honolulu, Hawai`I 96817

To DLNR:      Hawaii Department of Land and Natural Resources  
                  Division of Forestry and Wildlife  
                  1151 Punchbowl Street, Rm. 325  
                  Honolulu, Hawaii 96813

or to such other address as either party from time to time shall designate by written notice to the other.

15. It is understood that the STATE shall in no way be held liable for any claims, damages, causes of action, or suits resulting from any acts or omissions of TNC in the development of the Management Plan for the East Maui Watershed Easement Acquisition Project.

16. The interpretation and performance of this Agreement shall be governed by the laws of the State of Hawai`i.

17. No person performing work under this Agreement, including any subcontractor, employee, or agent of TNC, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

18. TNC shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state, and federal laws, now in force or which may be in force.

19. TNC and DLNR agree that nothing in this Agreement should be construed as creating any type of partnership or joint venture arrangement or principal and agent relationship between them.

20. TNC and DLNR agree that neither party shall be deemed to be the drafter of this Agreement and further that in the event that this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision herein against TNC or DLNR as the drafter.

21. Each party has thoroughly reviewed and revised this Agreement and has had the advice of counsel prior to the execution hereof, and the parties agree that neither party shall be deemed to be the drafter of this Agreement .



IN WITNESS WHEREOF TNC and DLNR have set their hands on the day and year first above written.

Approved by the Board of  
Land and Natural Resources  
At its meeting held on

\_\_\_\_\_

STATE OF HAWAII  
DEPARTMENT OF LAND AND  
NATURAL RESOURCES

By \_\_\_\_\_  
Chairperson  
Board of Land and  
Natural Resources

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

THE NATURE CONSERVANCY, a District of  
Columbia non-profit corporation acting by and  
through its Hawai'i chapter

By \_\_\_\_\_

Its \_\_\_\_\_\*

(Title)

\*Evidence of authority of TNC's representative to sign this Subgrant Agreement for TNC must be attached.

SUBGRANTEE'S ACKNOWLEDGMENT

STATE OF HAWAII )  
 ) SS.  
COUNTY OF \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, did say that he/she is the \_\_\_\_\_ of \_\_\_\_\_, the SUBGRANTEE named in the foregoing instrument, and that he/she is authorized to sign said instrument on behalf of the SUBGRANTEE, and acknowledges that he/she executes said instrument as the free act and deed of the SUBGRANTEE.

\_\_\_\_\_  
Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

Notary Seal Affixed:  
\_\_\_\_\_

Doc. Date: _____	# Pages: _____
Notary Name: _____	_____ Circuit
Doc. Description: _____	
_____	
Notary Signature _____	Date _____

(Stamp or Seal)

**TIME SCHEDULE**

This Agreement shall be in effect beginning \_\_\_\_\_, 2012. TNC shall complete acquisition of the Property and record the conveyance no later than June 1, 2014. If any of the obligations required to be performed in the Agreement are not completed within the time stated, TNC may be required to return all funds previously received by it pursuant to the Agreement.

**COMPENSATION AND PAYMENT SCHEDULE**

In full consideration of the services to be performed under this Agreement, TNC and DLNR agree to the following:

- a) TNC's request for payment, in the form of an invoice, shall be delivered personally or sent by first class mail, postage prepaid to:

Hawaii Division of Forestry and Wildlife  
Department of Land and Natural Resources  
1151 Punchbowl Street, Room 325  
Honolulu, Hawaii 96813

The request for payment must be received by DLNR's Division of Forestry and Wildlife by \_\_\_\_\_. A maximum payment of THREE HUNDRED AND NINETY ONE THOUSAND DOLLARS (\$391,000.00) shall be made upon:

- i. TNC's completion of the Checklist for Acquisition Subgrants attached hereto as Exhibit B;
  - ii. TNC's compliance with all STATE and FWS policies and practices;
  - iii. DLNR's receipt of an original invoice and copies of all bills, invoices, receipts, and a contract of sale; and
  - iv. DLNR's receipt of TNC's tax clearances from the Hawaii State Department of Taxation and the Internal Revenue Service.
- b) Within thirty (30) days of acquiring the Easement, but no later than \_\_\_\_\_, TNC shall submit to the STATE a copy of the recorded Easement over the Property.
- c) The total amount awarded under this Agreement will be dependent upon the project being completed with no substantive changes to the RLA Project Applications. DLNR and/or FWS may reduce the award if the project changes in any way that DLNR and/or FWS deem substantial. For example, a reduction in acreage, purchase price, or fair market value may be deemed substantial and sufficient justification for a reduction in the award.

## 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 Nature Conservancy, TNC, the undersigned does declare as follows:

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

TNC understands that the Agreement to which this document is attached is voidable on behalf of the STATE if this Agreement 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 for 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.

TNC:

By \_\_\_\_\_

(Signature)

Print Name \_\_\_\_\_

Print Title \_\_\_\_\_

Name of Subgrantee \_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

**GENERAL CONDITIONS FOR RECOVERY LAND  
ACQUISITION GRANT AGREEMENTS**

1. Recordkeeping Requirements. TNC shall in accordance with generally accepted accounting practices, maintain fiscal records and supporting documents and related files, papers, receipts, reports, and other evidence that sufficiently and properly reflect all direct and indirect expenditures and management and fiscal practices related to TNC's performance under this Agreement. TNC shall retain all records related to TNC's performance under this Agreement for at least three (3) years after the date of submission of TNC's Final Project Report.
2. Audit of TNC. TNC shall allow the STATE and/or FWS full access to applicable records, reports, files, and other related documents and information for purposes of monitoring, measuring the effectiveness, and assuring the proper expenditure of the grants. This right of access shall last as long as the records and other related documents are retained.
3. Nondiscrimination. No person performing work under this Agreement, including any employee or agent of the TNC, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
4. Inspection of Property. TNC shall permit the STATE and its agents and representatives, at all reasonable times, the right to enter and examine the Property to ensure compliance with the terms of this Agreement, to the extent the Easement gives TNC such right.
5. Conflicts of Interest. TNC represents that neither TNC, nor any employee or agent of TNC, 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 TNC's performance under this Agreement.
6. Compliance with Laws. TNC 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 TNC's performance under this Agreement.
7. Indemnification and Defense. TNC shall defend, indemnify, and hold harmless the State of Hawaii and the U.S. Fish and Wildlife Service, their contracting agencies, and their officers, employees, and agents from and against all liability, loss, damage, and cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or in resulting from the acts or omissions of TNC or TNC's employees, officers, or agents under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

8. Cost of Litigation. In case the STATE and/or FWS shall, without any fault on its part, be made a party to any litigation commenced by or against TNC in connection with this Agreement, TNC shall pay all costs and expenses incurred by or imposed on the STATE and/or FWS, including attorneys' fees.
9. Relationship of Parties; Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
  - a. In the performance of this Agreement, TNC is an "independent contractor," with the authority and responsibility to control and direct the performance required under this Agreement; however, the STATE and FWS shall have a general right of inspection to determine whether, in the STATE's and/or FWS's opinion, TNC is in compliance with this Agreement.
  - b. TNC and TNC's employees and agents are not by reason of this Subgrant Agreement, agents or employees of the STATE and/or FWS for any purpose, and TNC, and TNC's employees and agents shall not be entitled to claim or receive from the STATE or FWS any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state and federal employees.
  - c. TNC shall be responsible for the accuracy, completeness, and adequacy of TNC's performance under this Subgrant Agreement. Furthermore, TNC intentionally, voluntarily, and knowingly assumes the sole and entire liability to TNC's employees and agents, and to any individual not a party to this Subgrant Agreement, for all loss, damage, or injury caused by TNC, or TNC's employees or agents, in the course of their employment.
  - d. TNC shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by TNC by reason of this Subgrant Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, (iii) general excise taxes, (iv) real property taxes, and (v) conveyance taxes. TNC also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Subgrant Agreement.
  - e. TNC shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, Hawaii Revised Statutes, and shall comply with all requirements thereof. TNC 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 TNC have been paid and submit the same to the STATE prior to



commencing any performance under this Subgrant Agreement.

- f. TNC is responsible for securing all employee-related insurance coverage for TNC and TNC'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.

10. Payment Procedures: Tax Clearance. All payments under this Subgrant Agreement shall be made only upon submission by TNC of (i) original invoices specifying the amount due and certifying that it has completed or will complete performance in accordance with the Subgrant Agreement, and (ii) tax clearances from the Hawaii State Department of Taxation and the Internal Revenue Service.

11. Publicity.

- a. TNC shall not refer to the STATE and/or FWS, or any office, agency, or officer thereof, or any state employee, in any of TNC's brochures, advertisements, or other publicity of TNC without written permission from the Public Information Office of the State of Hawaii, Department of Land and Natural Resources and the FWS. All media contacts with TNC about the subject matter of this Subgrant Agreement shall be referred to the State of Hawaii, Department of Land and Natural Resources, Division of Forestry and Wildlife and the FWS.
- b. TNC consents to the STATE and FWS's use of TNC's name, photograph, image, or likeness in brochures, advertisements, or other publicity relating to the Recovery Land Acquisition Program, National Coastal Wetlands Program and other conservation related programs. The STATE and FWS shall have complete ownership of all material which is developed, prepared, assembled, or conceived for brochures, advertisements, or other publicity relating to the proposed acquisition by the State and/or FWS.

12. Confidentiality of Material.

- a. All materials given to or made available to TNC by virtue of this Subgrant Agreement, which are identified as proprietary or confidential information, will be safeguarded by TNC 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 TNC to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, Hawaii Revised Statutes.

13. Suspension and Termination of Agreement.

- a. The STATE reserves the right at any time and for any reason to suspend this Subgrant Agreement for any reasonable period, upon written notice to TNC. Upon receipt of said notice, TNC shall immediately comply with said notice and suspend all performance under this Subgrant Agreement at the time stated.
  - b. If, for any cause, TNC breaches this Subgrant Agreement by failing to satisfactorily fulfill in a timely or proper manner TNC's obligations under this Subgrant Agreement or by failing to perform any of the promises, terms, or conditions of this Subgrant Agreement, and having been given reasonable notice of and opportunity to cure such default, fails to take satisfactory corrective action within the time specified by the STATE, the STATE shall have the right to terminate this Subgrant Agreement by giving written notice to TNC of such termination at least seven (7) calendar days before the effective date of such termination. Furthermore, the STATE may terminate this Subgrant Agreement without statement of cause at any time by giving written notice to TNC of such termination at least thirty (30) calendar days before the effective date of such termination.
  - c. Upon termination of the Subgrant Agreement, TNC, within thirty (30) calendar days of the effective date of such termination, shall compile, and submit in an orderly manner to the STATE an accounting of the work performed up to the date of termination. In such event, TNC shall be paid for the actual cost of the services rendered, if any, but in no event more than the total compensation payable to TNC under this Subgrant Agreement.
  - d. If this Subgrant Agreement is terminated for cause, TNC shall not be relieved of liability to the STATE for damages sustained because of any breach by TNC of this Agreement. In such event, the STATE may retain any amounts which may be due and owing to TNC until such time as the exact amount of damages due to the STATE from TNC has been determined. The STATE may also set off any damages so determined against the amounts retained.
14. Disputes. No dispute arising under this Agreement may be sued upon by TNC until after TNC's written request to the Chairperson of the Board of Land and Natural Resources ("CHAIRPERSON") to informally resolve the dispute is rejected, or until ninety (90) calendar days after the CHAIRPERSON's receipt of TNC's written request whichever comes first. While the CHAIRPERSON considers TNC's written request, TNC agrees to proceed diligently with the performance necessary to complete the proposed project unless otherwise instructed in writing by the CHAIRPERSON.
15. State Remedies. TNC understands that in the event that it no longer meets all of

the standards set forth in paragraph 1 of these General Conditions, or in the event that TNC fails to comply with any of the other requirements, provisions, or conditions set forth in this Subgrant Agreement, that the STATE and/or FWS may refuse to make further payments to TNC or may seek reimbursement for payments made to TNC under this Subgrant Agreement. In addition to the remedies set forth above, the STATE and/or FWS shall be entitled to pursue any other remedy available at law or in equity.

16. Modifications of Agreement. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Subgrant Agreement permitted by this Subgrant Agreement shall be made by written amendment to this Subgrant Agreement, signed by TNC and the STATE.
17. Notices. Any written notice required to be given by a party to this Subgrant Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to the CHAIRPERSON at the CHAIRPERSON's office in Honolulu, Hawaii or to TNC at TNC's address as indicated in the Subgrant Agreement. A notice shall be deemed to have been received at the time of actual receipt. TNC is responsible for notifying the CHAIRPERSON in writing of any change of address.
18. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Subgrant Agreement 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 Subgrant Agreement. The fact that the STATE specifically refers to one section of the Hawaii Revised Statutes, and does not include other statutory sections in this Subgrant Agreement shall not constitute a waiver or relinquishment of the STATE's rights or TNC's obligations under the statutes.
19. Severability. In the event that any provision of this Subgrant Agreement 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 Subgrant Agreement.
20. Governing Law. The validity of this Subgrant Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Subgrant Agreement, 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 Subgrant Agreement shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
21. Survival. TNC's obligations and the STATE's remedies shall survive the funding of the grants and the acquisition of this Property by TNC.
22. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE

and TNC relative to this Subgrant Agreement. This Subgrant Agreement supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall 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 TNC other than as set forth or as referred to herein.

**EXHIBIT A**

**East Maui Watershed Conservation Easement Acquisition Project**

A Proposal to the US Fish & Wildlife Recovery Land Acquisition Grant Program



**Figure 1. Aerial view of East Maui Watershed**

Proposed by:  
State of Hawai'i  
Department of Land & Natural Resources  
Division of Forestry & Wildlife  
January 2011

**Project Facts:****East Maui Watershed Conservation Easement Acquisition Project**

- Conservation Easement
- East Maui Irrigation Co., Limited (EMI) 3,550 acres (a portion of a single 6,830 acre parcel)
- Estimated total cost of proposed project: \$548,000
- % of cost to be shared by non-USFWS entities (list): 27.3% (Landowner match)
- Amount of funding requested from RLA: \$398,000
- Number of Federally listed T&E species: 16
- Number of S
- Species of Concern: 19
- Number of Candidate Species: 7
- Species with final recovery plans: 15

**Project Summary and Objectives:**

Hawai'i is known for the high level of endemism of its native flora and fauna. The native flowering plants of Hawai'i consist of nearly 1,100 taxa, ninety percent of which occur only in the Hawaiian Islands. More than three quarters of Hawai'i's 158 native ferns are found nowhere else. Similarly, many of the bird species native to Hawai'i are also unique to these islands. These native species are under relentless pressure from plants and animals introduced to the Hawaiian Islands that compete for limited resources and/or prey directly upon the native species. The best protection for native species is to reside in reserves and refuge areas where threats to their existence can be mitigated by professional wild-land managers, trained volunteers, and interested community members. It is also important to establish buffers around these refuges and protected corridors between them to facilitate needed access to multiple ecosystems.

This privately owned parcel consists of 6,835 acres and is more particularly identified as TMK (2) 2-4-016-004. This project proposal is for acquisition of a conservation easement over 3,550 acres of the parcel ("Property"). It is mauka (upslope) of the towns of Makawao and Haiku on the island of Maui. The Property is literally at the center of the 100,000-acre East Maui Watershed Partnership (EMWP) area, which is managed by six major landowners. It is bordered by the State of Hawai'i Ko'olau Forest Reserve, the Hanawi Natural Area Reserve, Haleakala National Park, and lies immediately below TNC's Waikamoi Preserve, with which it shares a long seven mile boundary (see attached map).

The Property is owned by East Maui Irrigation Co., Limited (EMI), a subsidiary of Alexander & Baldwin ("Landowner" or "A&B"). A&B is a multi-market transportation and real estate company. It is among the largest private landholders in

Hawai`i. A change in A&B's landownership or management could severely jeopardize years of effective management efforts in one of the State's most important intact and biologically rich native landscapes. If A&B decided to limit the EMWP's work on the parcel, it would cause significant degradation of the watershed by allowing ungulate, weed, and other damage to increase unchecked.

In Hawai`i, it is rare to have the opportunity to secure a parcel with such important biodiversity and watershed value, held by a private corporate entity, for permanent species protection. The goal of this proposal is to seek funds for purchase of a Conservation Easement which will (1) legally protect the Property in perpetuity; (2) allow fencing of the western boundary of the Property to ensure biodiversity and watershed management of both the parcel and adjacent EMWP management areas; and (3) facilitate increased ungulate and invasive plant management to protect rare species, including two endangered forest birds.

### **Project Description and Needs**

The East Maui watershed is rich in biodiversity and supports hundreds of native plant species, including 74 rare species and those that are endemic to Maui. The area contains at least nine plant communities and 13 rare or endangered native bird species. A significant portion of these species have been found or are likely to be found within the property. At least 34 rare plants and eight rare animals have been documented on the parcel, but we estimate many more plants and invertebrates would be found with additional surveys, especially given the low number of documented surveys.



Figure 2. `Ākohekohe. Photo by Jack Jeffrey.



Figure 3. Maui Parrotbill. Photo by Maui Forest Bird Recovery Project

The parcel is primary habitat for the endemic `ākohekohe and Maui parrotbill, which are among the rarest birds in the United States. Additionally, much of the Property has been designated as critical habitat by the U.S. Fish & Wildlife Service to protect *Geranium multiflorum* and eight other rare plant species (see table 1). These 3,500 acres make up the core management area of the East Maui Watershed Partnership (EMWP), of

which The Nature Conservancy (TNC) is a partner. 2,500 acres of this Property has received some management to reduce ungulate and weed threats and is partially protected by fencing, due, in part to a fencing license agreement between EMI, EMWP and TNC that began in 1998 and is subject to renewal in 2012. However, 1,000 acres of the western end of the Property has received no management and is severely impacted by ungulates and increasing invasive weed species, like Kahili ginger and strawberry guava. This unmanaged portion of the Property contains high quality Maui parrotbill and `ākohekohe habitat that will continue to be further degraded without immediate management.

Protection of this parcel through a conservation easement is critical to protect the native species in the area. This opportunity to secure protection on such an important privately-held parcel is rare in Hawai`i; the time is ripe for acquisition of a conservation easement before leadership at A&B changes and the opportunity is lost.



Figure 4. *Geranium Multiflorum* (Nohoanu). The Property has been designated critical habitat for this species. Photo by Forest and Kim Starr.

The Property has been one of the Nature Conservancy’s highest conservation priorities in Hawai`i for at least two decades. It is now in the final stages of negotiating a conservation easement over 3,550 acres of the Property. A list of documented listed species associated with the Property are included in Table 1.

Table 1. Listing and abbreviations according to USFWS Species List January 5, 2010:  
E=endangered; C=candidate; T= threatened; SOC=Species Of Concern

**RARE PLANTS associated with Property:**

<i>Species Name</i>	<i>Hawaiian/ Common Name</i>	<i>Federal Listing</i>	<i>Recovery Priority No.</i>	<i>Recovery Plan, if any</i>
<i>Anoectochilus sandwicensis</i>	Hono hono orchid, jewel orchid	SOC	NEED	NEED
<i>Asplenium fragile var. insulare</i>		E	6	Final
<i>Asplenium haleakalense</i>		SOC	NEED	NEED



<i>Calamagrostis expansa</i>		C	NEED	NEED
<i>Clermontia oblongifolia</i> subsp. <i>Mauiensis</i>	‘Ōhā; ‘Ōhā Wai	E	6	Final
<i>Clermontia tuberculata</i>	‘Ōhā; ‘Ōhā Wai	SOC	None	None
<i>Cyanea copelandii</i> subsp. <i>Haleakalaensis</i>	Hāhā	E	6	Final
<i>Cyanea glabra</i>	‘Ōhā, Hāhā, ‘Ōhā Wai	E	5	Final
<i>Cyanea hamatiflora</i> subsp. <i>Hamatiflora</i>	Hāhā	E	6	Final
<i>Cyanea horrida</i>	Holokea	C	None	None
<i>Cyanea kunthiana</i>	‘Ōhā, Hāhā, ‘Ōhā Wai	C	None	None
<i>Cyanea mceldowneyi</i>	‘Ōhā, Hāhā, ‘Ōhā Wai	E	2	Final
<i>Cystopteris douglasii</i>		SOC	NEED	NEED
<i>Diplazium molokaiense</i>		E	3	Final
<i>Dryopteris tetrapinnata</i>		SOC	NEED	NEED
<i>Dubautia reticulate</i>	Na`ena`e	SOC	None	None
<i>Fragaria chiloensis</i> var. <i>sandwicensis</i>	‘Ōhelo papa	SOC	None	None
<i>Geranium multiflorum</i>	Noho`anu	E	8	Final
<i>Hillebrandia sandwicensis</i>	Waimakanui, ‘aka`aka`awa	SOC	NEED	NEED
<i>Joinvillea ascendens</i> subsp. <i>Ascendens</i>	‘Ohe	C	None	None
<i>Liparis hawaiiensis</i>	‘Awapuhiaka naloa	SOC	NEED	NEED
<i>Melicope balloui</i>	Alani	E	5	Final
<i>Melicope haleakalae</i>	Alani	SOC	None	None
<i>Melicope</i> sp. nov. 2	Alani	SOC	None	None
<i>Phyllostegia ambigua</i>		SOC	NEED	NEED
<i>Phyllostegia bracteata</i>		C	None	None
<i>Phyllostegia macrophylla</i>		SOC	NEED	NEED
<i>Pritchardia arecina</i>	Loulu	SOC	NEED	NEED
<i>Ranunculus mauiensis</i>	Makou	C	None	None
<i>Rubus macraei</i>	‘Ākala	SOC	None	None
<i>Sanicula sandwicensis</i>		SOC	NEED	NEED
<i>Schiedea diffusa</i> subsp. <i>diffusa</i>		SOC	None	None
<i>Sicyos cucumerinus</i>	‘Anunu; Kupala	SOC	None	None
<i>Wikstroemia villosa</i>	‘Ākia	SOC	NEED	NEED

**RARE ANIMALS associated with Property:**

<i>Species Name</i>	<i>Hawaiian/ Common Name</i>	<i>Federal Listing</i>	<i>Recovery Priority No.</i>	<i>Recovery Plan, if any</i>
<i>Branta (Nesochen) sandwicensis</i>	Nēnē	E		
<i>Lasiurus cinereus semotus</i>	ʻŌpeʻapeʻa Hawaiian Hoary Bat	E	9	Final
<i>Loxops coccineus ochraceus</i>	Maui ʻĀkepa; ʻAkepeuʻie	E	1	Final
<i>Pseudonestor xanthophrys</i>	Maui Parrotbill	E	1	Final
<i>Pterodroma phaeopygia sandwichensis</i>	Hawaiian Dark-Rumped Petrel, ʻUaʻu	E	2	Final
<i>Puffinus auricularis newellii</i>	Newell's shearwater, ʻAʻo	T	3	Final
<i>Palmeria dolei</i>	Crested Honeycreeper, ʻĀkohekohe	E	7	Final
<i>Megalagrion nesiotes</i>	Damselfly, pinao ʻula	C	5	None

At least 15 U.S. Fish and Wildlife Service Recovery Plans are associated with this conservation easement acquisition.

**Objective**

The goal of the East Maui Watershed Acquisition Project is for TNC to acquire a Conservation Easement on 3,550 acres of the Property. All funds will be used for acquisition and associated costs as set forth in the budget below. After acquisition, the area will be protected for native species and ecosystem protection in perpetuity, and managed by TNC. TNC intends to apply for management funding through the State's Natural Area Partnership (NAPP) program that provides two state dollars (\$2.00) to every one dollar (\$1.00) of private funding. The NAPP program focuses on Hawai'i's most intact ecosystems and endangered species and requires the perpetuity of a conservation easement for funding. The NAPP program will require a long-term management plan.

## **Expected Results and Benefits**

A conservation easement will serve to protect habitat for 16 threatened or endangered plant species, 19 species of concern and seven candidate species. Additionally, it will result in permanent habitat protection for eight endangered bird species; and one insect species.

Moreover, purchase of a conservation easement will result in the permanent protection of an area that serves as critical habitat for *Geranium Multiflorum* (Nohoanu) and eight other native plant species. Surveys have been able to confirm the following six species: (1) *Cyanea copelandii ssp. haleakalaensis*; (2) *Cyanea hamatiflora ssp. hamatiflora*; (3) *Cyanea mceldowneyi*; (4) *Diplazium molokaiense*; (5) *Geranium multiflorum*; and (6) *Melicope balloui*. Future surveys may be able to locate *Phlegmariurus mannii*, *Phyllostegia mannii*, and *Argyroxiphium sandwicense ssp. macroceph.* A complete list of threatened, endangered, and candidate species on the Property can be found in the table 1, above.

Further benefits in purchasing the Property include the preservation of Tropical Moist Forest habitat, which is considered a “crisis” and “opportunity” ecoregion.

TNC also works closely with the State of Hawai‘i’s Plant Extinction Program for survey of rare plants, and out-planting projects and intends to continue that partnership for this Property.

## **Approach and Timeline**

The approximate timeline for the acquisition of the Conservation Easement is within one year. A more detailed timeline is set forth in table 2, below. TNC is in the process of negotiating the terms of a Conservation Easement with the Landowner. The parcel is not for sale on the open market. A property appraisal is being conducted to determine the value of the Property and the conservation easement. A final appraisal will need to be coordinated via U.S. Fish & Wildlife Service and the Department of the Interior if the project is selected for funding.

The fence license agreement between EMI and EMWP is up for renewal in 2012. After acquisition, TNC intends to manage the Property by restoring and protecting habitat (fencing, feral ungulate and weed controls) in conjunction with its neighboring Waikamoi Preserve. TNC has held a conservation easement at Waikamoi since 1993.

This grant would assure preservation in perpetuity. Currently, conservation organizations are restricted in their access to the Property for biological surveys, threat control, or for protection of the Property’s important native resources. If not acquired, EMI, or a subsequent private landowner, could refuse to allow conservation organizations access for protection of the native species.

Table 2. Tentative Acquisition Plan and Timeline

Action	Timeframe	Risks possibly impacting schedule and other action items
Negotiate with landowner	Completed. Landowner is in agreement.	Will follow up with letter of intent
Yellow Book Standard Appraisal	Preliminary appraisal results expected by January 2011. Final Yellow Book Standard Appraisal to be completed by June 2011, if funded.	Preliminary appraisal was completed by Yellow Book certified appraiser that would make it easy to upgrade appraisal after consultation with federal review appraiser.
Due Diligence, including possible survey	Complete by October 1, 2011	Could uncover unknown issues
Non-federal funds	Landowner is willing to donate the required match.	Will follow up with letter of intent after project is funded.
Conservation Easement negotiations	First draft completed and reviewed by landowner.	CE will need to reviewed by state and federal contacts.
Closing of Transaction	November 15, 2011	

**Location**

The proposed conservation easement is 3,550 acres located above Haiku and Makawao in East Maui on the Island of Maui in Maui County, Hawai`i. The parcel is part of a larger TMK, the acreage of which totals 6,830. It sits at the center of the 100,000 acre East Maui Watershed Partnership. See [www.eastmauiwatershed.org](http://www.eastmauiwatershed.org). It is owned by East Maui Irrigation, Inc., a subsidiary of Alexander & Baldwin. The primary habitat type is Tropical Moist Forest. TNC intends to manage the conservation easement as a nature preserve.

**Estimated Costs**

The conservation easement is estimated at \$541,000 including acquisition purchase and associated due diligence costs. TNC has ordered an appraisal from the Hallstrom Group, Inc.

and expects an estimated valuation by the end of January 2011. Based on TNC's analysis of comparable sales, TNC estimates the value of the conservation \$500,000. For the purposes of this application, the RLA monies sought will be allocated solely to the acquisition of a conservation easement on these important lands. The State is requesting \$391,000 from the RLA grant to fund a portion of this acquisition; additional funding sources include donation of at least 25% by the Landowner.

<b>Source</b>	<b>Amount</b>
<b>Federal RLA</b>	
Conservation Easement	\$350,000
Title	\$1,000
Appraisal	\$15,000
Phase I	\$5,000
State Lands Division	\$5,000
State DOFAW	\$5,000
TNC Staff	\$10,000
<b>Non-Federal</b>	
Land value Donation by Landowner	\$150,000
<b>Total Acquisition Cost</b>	<b>\$541,000</b>

The prospect of partial funding for the conservation easement is dependent on final appraisal value of the property, but is otherwise acceptable.

**Partners**

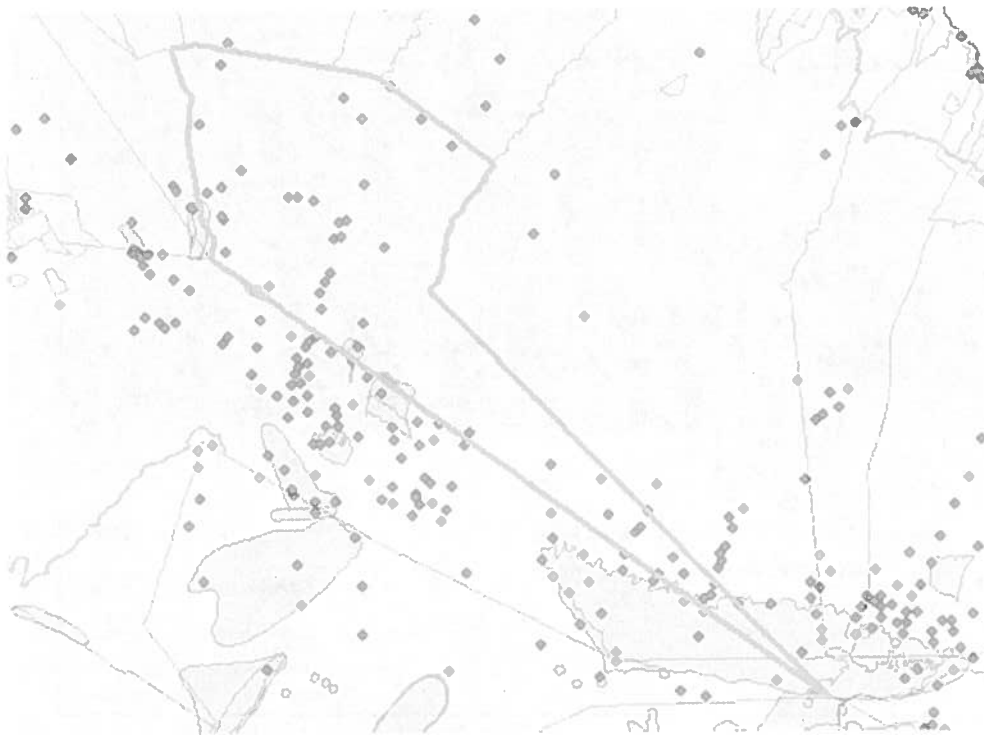
State of Hawaii, DLNR-DOFAW  
 East Maui Watershed Partnership  
 The Nature Conservancy

**Project Contact**

Scott Fretz  
 Hawaii Department of Land and Natural Resources  
 Division of Forestry and Wildlife  
 1151 Punchbowl Street, Ste. 325  
 Honolulu, HI 96813  
 (808) 587-4187

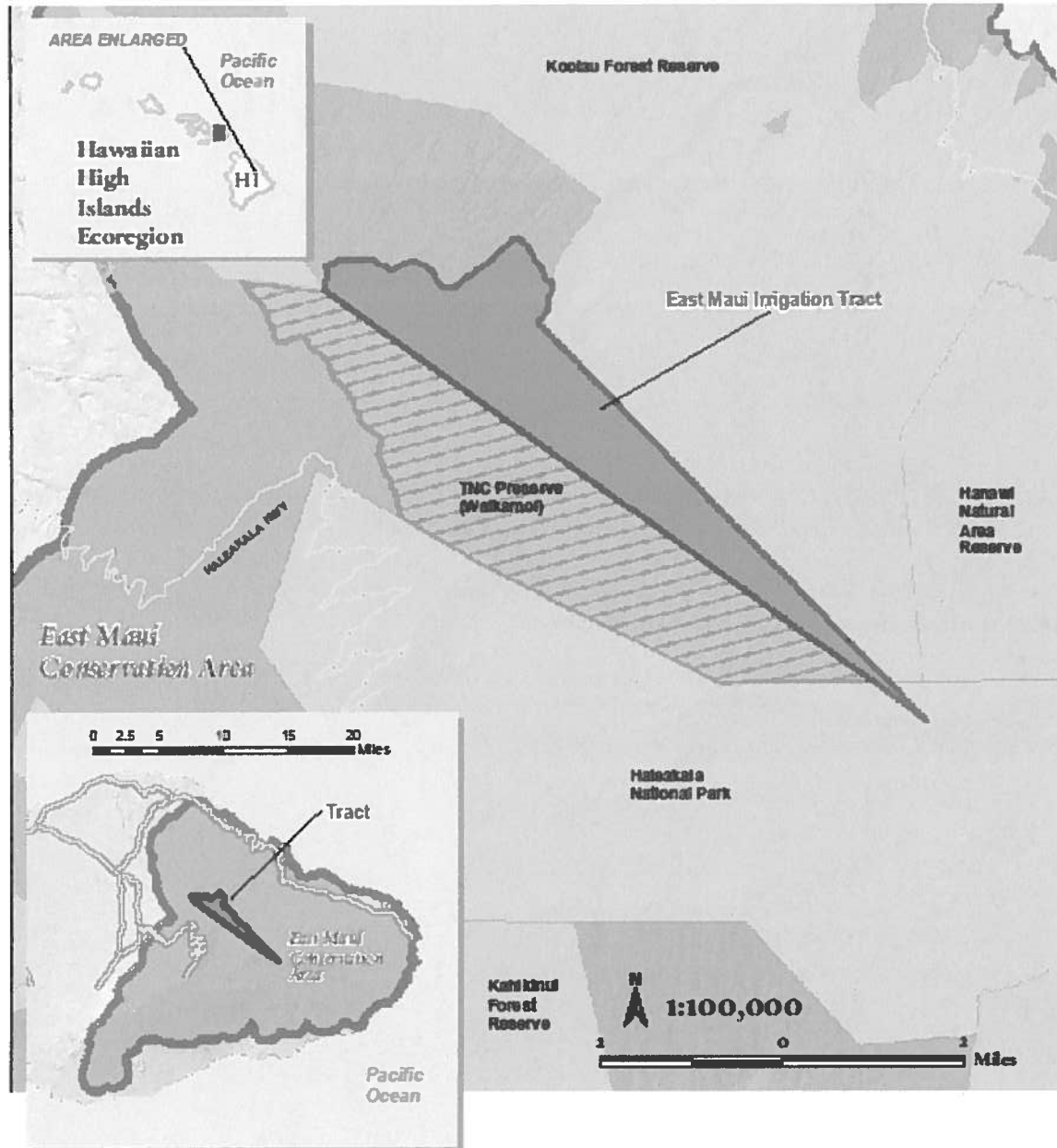


**Map of Critical Habitat Area for TMK No. (2) 2-4-016-004 (above)**



**Map of Rare Species Points for TMK No. (2) 2-4-016-004 (above)**

## East Maui (East Maui Irrigation Tract) Maui County, HI - Hawaiian High Islands Ecoregion



- |   |   |   |
|---|---|---|
|  Tract             | <b>Managed Lands</b>  |  Major Roads |
|  Conservation Area |  National Park Service |   |
|  TNC Easement      |  State                 |   |

Sep 2, 2010

Map Created by:  
 Theresa Menard, HIFO, Hawaii

Data Sources:  
 Tract, Conservation Areas- TNCH (2010);  
 Managed Lands, Cities, Roads &  
 Hillshade - State of Hawaii (2010)

Map Projection: NAD\_1983\_UTM\_Zone\_4N

## Exhibit B

### Checklist for Acquisition Subgrants

FOR FEDERAL RLA SUBGRANTEES: The following items must be completed to the STATE's satisfaction prior to the final award:

- Title report review and appraisal certification. A current title report of the property interest to be acquired must be obtained and may need to be approved through the Department of Land and Natural Resources, Land Division ("LD"). Prior to purchase, all properties must have a current appraisal that is prepared to Uniform Appraisal Standards for Federal Land Acquisition (UASFLA), otherwise known as "Yellow Book" standards. The appraisal must also be reviewed to ensure compliance with Yellow Book standards. The appraisal review can be conducted one of three ways: 1) licensed and trained State agency staff, 2) a contract with appropriately licensed and trained personnel, or 3) the Department of Interior Appraisal Services Directorate (ASD). If the appraisal will go through ASD, coordination with ASD **prior** to contracting the appraisal is needed to ensure that the appraisal will meet all Federal requirements and review procedures.
- Appraisal cost and title work. The cost of conducting the appraisal(s) and completing title work in accordance with Federal requirements must either be assumed by the State, a non-Federal subgrantee, or included in the total cost of the proposal.
- Matching funds. Evidence of matching funds, as required by law, must be provided to DLNR. In cases where property value is to be used as cost sharing or match for the grant, review and approval of the match property, including the certification of current market value, must occur during the effective grant period to ensure that the property is consistent with the draft *Guidance on the Use of Land as Match for Federal Assistance Grants*.
- Escrow. Funds that are to be used for the purchase of property will be deposited directly into escrow by DLNR.
- Title insurance. Title insurance in the full amount of the purchase price must be obtained, insuring that the title to the Property is vested in the Subgrantee.
- Title Vesting Evidence. The following must be included on the title:
  - 1) A legal description of the property.
  - 2) The following deed restrictions:
    - i. The above described property is acquired in part with funding received by the State from Grant Agreement Number \_\_\_\_\_ dated \_\_\_\_\_ between the U.S. Fish and Wildlife Service and the State of \_\_\_\_\_, Department of \_\_\_\_\_, and is subject to all the terms and conditions of the grant agreement.
    - ii. A copy of Grant Agreement Number \_\_\_\_\_ is kept on file at:



U.S. Fish and Wildlife Service  
Division of Federal Assistance  
911 NE 11th Avenue  
Portland, Oregon 97232-4181

- iii. The land shall be managed in perpetuity for the conservation of the species covered under Grant Agreement Number \_\_\_\_\_.
- iv. This acquisition is for the protection of threatened or endangered species habitat in perpetuity and shall run with the land to all heirs and successors.
- v. When subject property is used for purposes which interfere with the accomplishment of approved purposes, the violating activities must cease and any adverse effects resulting must be remedied (43 CFR 12.71).
- vi. Violations of grant terms are subject to 43 CFR 12.71 and the State must contact the Service for disposition instructions which could result in a requirement that the State:
  - 1. Acquire title to and manage other real property that is of equal value and serves the same purposes for which the property was originally acquired;
  - 2. Repay to the Service, in cash, the proportionate share of the funds of the original purchase price, or if greater, of a newly determined value based on the current fair market value of the land, parcel of land, or any portion thereof; or
  - 3. As a last resort, transfer the subject property to the Service or to a third party designated or approved by the Service.

- Accounting. The Subgrantee must provide an accounting of all subgrant funds to be expended, evidenced by supporting documentation.
- ESA. One or more Environmental Site Assessment(s) (ESA) as may be required by STATE.
- HRS Ch. 343 compliance. An Environmental Assessment and/or Cultural Assessment as may be required by law.
- Resource value documentation. The Subgrantee shall submit a written statement and photographs that reflect the current status and condition of the resources for which the land is to be protected. The statement shall be certified by the subgrantee and the photographs shall be taken from identifiable locations on the Property.
- Deed. The Subgrantee shall submit a copy of proposed deed prior to execution of the deed for review and approval by the STATE.

## **East Maui Watershed Conservation Easement Acquisition Project**

A Proposal to the US Fish & Wildlife Recovery Land Acquisition Grant Program



**Figure 1. Aerial view of East Maui Watershed**

Proposed by:  
State of Hawai'i  
Department of Land & Natural Resources  
Division of Forestry & Wildlife  
January 2011

- Project Facts:** East Maui Watershed Conservation Easement Acquisition Project
- Conservation Easement
  - East Maui Irrigation Co., Limited (EMI) 3,550 acres (a portion of a single 6,830 acre parcel)
  - Estimated total cost of proposed project: \$548,000
  - % of cost to be shared by non-USFWS entities (list): 27.3% (Landowner match)
  - Amount of funding requested from RLA: \$398,000
  - Number of Federally listed T&E species: 16
  - Number of S
  - Species of Concern: 19
  - Number of Candidate Species: 7
  - Species with final recovery plans: 15

**Project Summary and Objectives:**

Hawai`i is known for the high level of endemism of its native flora and fauna. The native flowering plants of Hawai`i consist of nearly 1,100 taxa, ninety percent of which occur only in the Hawaiian Islands. More than three quarters of Hawai`i's 158 native ferns are found nowhere else. Similarly, many of the bird species native to Hawaii are also unique to these islands. These native species are under relentless pressure from plants and animals introduced to the Hawaiian Islands that compete for limited resources and/or prey directly upon the native species. The best protection for native species is to reside in reserves and refuge areas where threats to their existence can be mitigated by professional wild-land managers, trained volunteers, and interested community members. It is also important to establish buffers around these refuges and protected corridors between them to facilitate needed access to multiple ecosystems.

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<i>Cyanea kunthiana</i>	‘Ōhā, Hāhā, ‘Ōhā Wai	C	None	None
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<i>Melicope haleakalae</i>	Alani	SOC	None	None
<i>Melicope sp. nov. 2</i>	Alani	SOC	None	None
<i>Phyllostegia ambigua</i>		SOC	NEED	NEED
<i>Phyllostegia bracteata</i>		C	None	None
<i>Phyllostegia macrophylla</i>		SOC	NEED	NEED
<i>Pritchardia arecina</i>	Loulu	SOC	NEED	NEED
<i>Ranunculus mauiensis</i>	Makou	C	None	None
<i>Rubus macraei</i>	‘Ākala	SOC	None	None
<i>Sanicula sandwicensis</i>		SOC	NEED	NEED
<i>Schiedea diffusa subsp. diffusa</i>		SOC	None	None
<i>Sicyos cucumerinus</i>	‘Anunu; Kupala	SOC	None	None
<i>Wikstroemia villosa</i>	‘Ākia	SOC	NEED	NEED

**RARE ANIMALS associated with Property:**

<i>Species Name</i>	<i>Hawaiian/ Common Name</i>	<i>Federal Listing</i>	<i>Recovery Priority No.</i>	<i>Recovery Plan, if any</i>
<i>Branta (Nesochen) sandwicensis</i>	Nēnē	E		
<i>Lasiurus cinereus semotus</i>	'Ōpe`ape`a Hawaiian Hoary Bat	E	9	Final
<i>Loxops coccineus ochraceus</i>	Maui `Ākepa; 'Akepeu`ie	E	1	Final
<i>Pseudonestor xanthophrys</i>	Maui Parrotbill	E	1	Final
<i>Pterodroma phaeopygia sandwichensis</i>	Hawaiian Dark-Rumped Petrel, `Ua`u	E	2	Final
<i>Puffinus auricularis newelii</i>	Newell's shearwater, 'A`o	T	3	Final
<i>Palmeria dolei</i>	Crested Honeycreeper, 'Ākohekohe	E	7	Final
<i>Megalagrion nesiotes</i>	Damselfly, pinao `ula	C	5	None

At least 15 U.S. Fish and Wildlife Service Recovery Plans are associated with this conservation easement acquisition.

**Objective**

The goal of the East Maui Watershed Acquisition Project is for TNC to acquire a Conservation Easement on 3,550 acres of the Property. All funds will be used for acquisition and associated costs as set forth in the budget below. After acquisition, the area will be protected for native species and ecosystem protection in perpetuity, and managed by TNC. TNC intends to apply for management funding through the State's Natural Area Partnership (NAPP) program that provides two state dollars (\$2.00) to every one dollar (\$1.00) of private funding. The NAPP program focuses on Hawai'i's most intact ecosystems and endangered species and requires the perpetuity of a conservation easement for funding. The NAPP program will require a long-term management plan.

### **Expected Results and Benefits**

A conservation easement will serve to protect habitat for 16 threatened or endangered plant species, 19 species of concern and seven candidate species. Additionally, it will result in permanent habitat protection for eight endangered bird species; and one insect species.

Moreover, purchase of a conservation easement will result in the permanent protection of an area that serves as critical habitat for *Geranium Multiflorum* (Nohoanu) and eight other native plant species. Surveys have been able to confirm the following six species: (1) *Cyanea copelandii ssp. haleakalaensis*; (2) *Cyanea hamatiflora ssp. hamatiflora*; (3) *Cyanea mceldowneyi*; (4) *Diplazium molokaiense*; (5) *Geranium multiflorum*; and (6) *Melicope balloui*. Future surveys may be able to locate *Phlegmariurus mannii*, *Phyllostegia mannii*, and *Argyroxiphium sandwicense ssp. macroceph.* A complete list of threatened, endangered, and candidate species on the Property can be found in the table 1, above.

Further benefits in purchasing the Property include the preservation of Tropical Moist Forest habitat, which is considered a “crisis” and “opportunity” ecoregion.

TNC also works closely with the State of Hawai`i’s Plant Extinction Program for survey of rare plants, and out-planting projects and intends to continue that partnership for this Property.

### **Approach and Timeline**

The approximate timeline for the acquisition of the Conservation Easement is within one year. A more detailed timeline is set forth in table 2, below. TNC is in the process of negotiating the terms of a Conservation Easement with the Landowner. The parcel is not for sale on the open market. A property appraisal is being conducted to determine the value of the Property and the conservation easement. A final appraisal will need to be coordinated via U.S. Fish & Wildlife Service and the Department of the Interior if the project is selected for funding.

The fence license agreement between EMI and EMWP is up for renewal in 2012. After acquisition, TNC intends to manage the Property by restoring and protecting habitat (fencing, feral ungulate and weed controls) in conjunction with its neighboring Waikamoi Preserve. TNC has held a conservation easement at Waikamoi since 1993.

This grant would assure preservation in perpetuity. Currently, conservation organizations are restricted in their access to the Property for biological surveys, threat control, or for protection of the Property’s important native resources. If not acquired, EMI, or a subsequent



private landowner, could refuse to allow conservation organizations access for protection of the native species.

Table 2. Tentative Acquisition Plan and Timeline

<b>Action</b>	<b>Timeframe</b>	<b>Risks possibly impacting schedule and other action items</b>
Negotiate with landowner	Completed. Landowner is in agreement.	Will follow up with letter of intent
Yellow Book Standard Appraisal	Preliminary appraisal results expected by January 2011. Final Yellow Book Standard Appraisal to be completed by June 2011, if funded.	Preliminary appraisal was completed by Yellow Book certified appraiser that would make it easy to upgrade appraisal after consultation with federal review appraiser.
Due Diligence, including possible survey	Complete by October 1, 2011	Could uncover unknown issues
Non-federal funds	Landowner is willing to donate the required match.	Will follow up with letter of intent after project is funded.
Conservation Easement negotiations	First draft completed and reviewed by landowner.	CE will need to reviewed by state and federal contacts.
Closing of Transaction	November 15, 2011	

**Location**

The proposed conservation easement is 3,550 acres located above Haiku and Makawao in East Maui on the Island of Maui in Maui County, Hawai'i. The parcel is part of a larger TMK, the acreage of which totals 6,830. It sits at the center of the 100,000 acre East Maui Watershed Partnership. See [www.eastmauiwatershed.org](http://www.eastmauiwatershed.org). It is owned by East Maui Irrigation, Inc., a subsidiary of Alexander & Baldwin. The primary habitat type is Tropical Moist Forest. TNC intends to manage the conservation easement as a nature preserve.

**Estimated Costs**

The conservation easement is estimated at \$541,000 including acquisition purchase and associated due diligence costs. TNC has ordered an appraisal from the Hallstrom Group, Inc. and expects an estimated valuation by the end of January 2011. Based on TNC's analysis of comparable sales, TNC estimates the value of the conservation \$500,000. For the purposes of this application, the RLA monies sought will be allocated solely to the acquisition of a conservation easement on these important lands. The State is requesting \$391,000 from the RLA grant to fund a portion of this acquisition; additional funding sources include donation of at least 25% by the Landowner.

<b>Source</b>	<b>Amount</b>
<b>Federal RLA</b>	
Conservation Easement	\$350,000
Title	\$1,000
Appraisal	\$15,000
Phase I	\$5,000
State Lands Division	\$5,000
State DOFAW	\$5,000
TNC Staff	\$10,000
<b>Non-Federal</b>	
Land value Donation by Landowner	\$150,000
<b>Total Acquisition Cost</b>	<b>\$541,000</b>

The prospect of partial funding for the conservation easement is dependent on final appraisal value of the property, but is otherwise acceptable.

**Partners**

State of Hawaii, DLNR-DOFAW  
East Maui Watershed Partnership  
The Nature Conservancy

**Project Contact**

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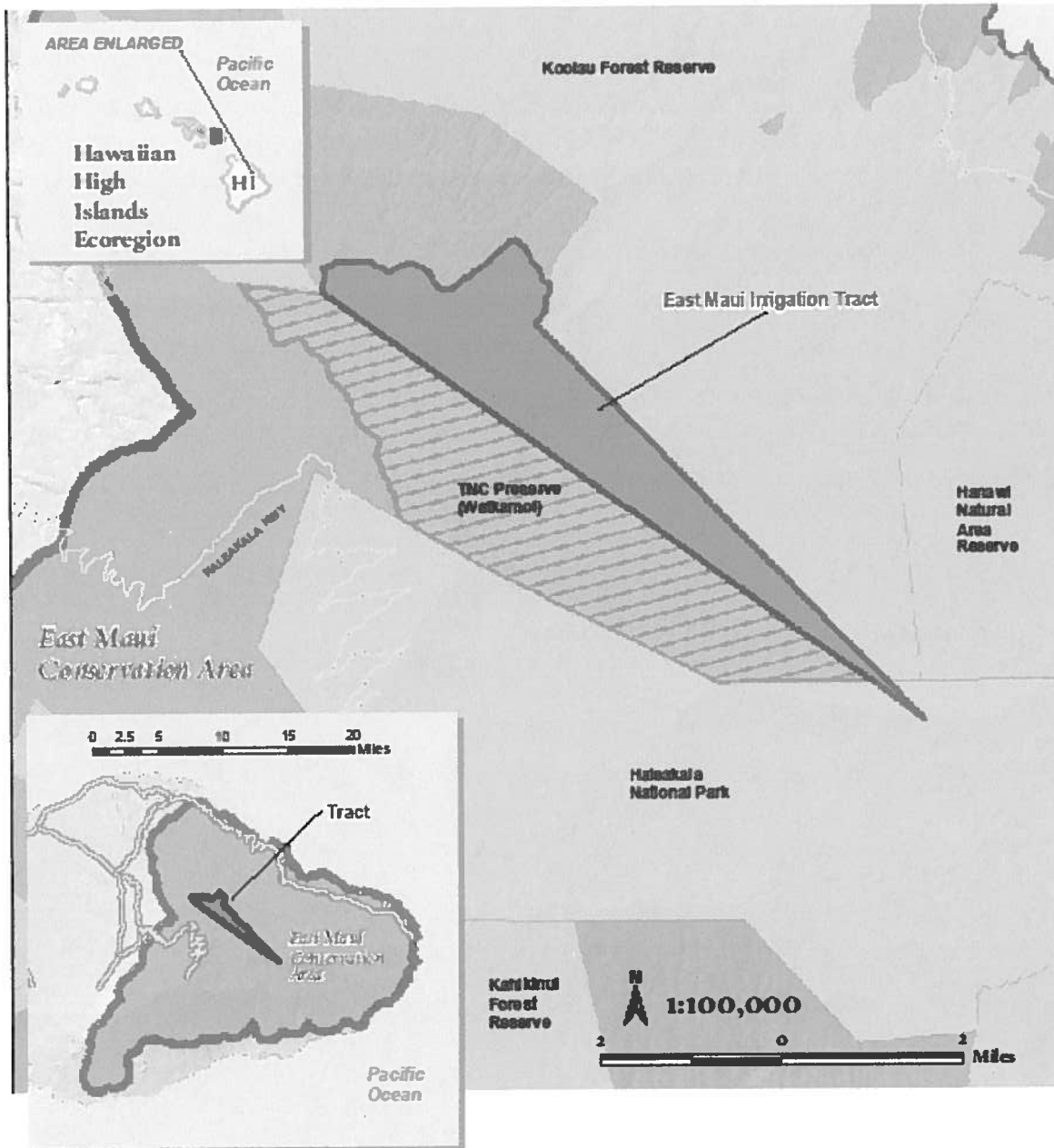


**Map of Critical Habitat Area for TMK No. (2) 2-4-016-004 (above)**



**Map of Rare Species Points for TMK No. (2) 2-4-016-004 (above)**

### East Maui (East Maui Irrigation Tract) Maui County, HI - Hawaiian High Islands Ecoregion



- |                   |                       |             |
|-------------------|-----------------------|-------------|
| Tract             | <b>Managed Lands</b>  | Major Roads |
| Conservation Area | National Park Service |             |
| TNC Easement      | State                 |             |

Scale: 1:100,000  
 0 1 2 Miles

Sep 2, 2010  
 Map Created by:  
 Theresa Menard, HIFO, Hawaii  
 Data Sources:  
 Tract, Conservation Areas- TNCH (2010);  
 Managed Lands, Cities, Roads &  
 Hatched - State of Hawaii (2010)  
 Map Projection: NAD\_1983\_VTM\_Zone\_4N