

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

March 8, 2013

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

Board Members:

**SUBJECT: REVIEW AND APPROVAL OF PROJECT RECOMMENDATIONS FOR FUNDING FROM THE FISCAL YEAR 2013 LEGACY LAND CONSERVATION PROGRAM (LAND CONSERVATION FUND)**

**SUMMARY:**

Pursuant to H.R.S., section 173A-2.5, the Legacy Land Conservation Commission (the Commission) has produced recommendations to the Board of Land and Natural Resources on project selection for Fiscal Year 2013 (FY13) funding from the Legacy Land Conservation Program (LLCP). Pursuant to H.R.S., section 173A-5, the Department has sought and received the consultation of the Senate President and Speaker of the House of Representatives. This submittal summarizes these recommendations for the Board's review and requests approval for projects to receive FY13 LLCP funding.

**BACKGROUND:**

**Legacy Land Conservation Commission Recommendations:**

In July, 2012, the LLCP announced available FY13 funding from the Land Conservation Fund (LCF) for projects proposing the purchase of lands having value as a resource to the State. Nonprofit land conservation organizations, county agencies, and State agencies applied for funding for six separate resource land acquisition projects for the September 17, 2012, application deadline. On December 6, 2012, at a public meeting, the Commission ranked four projects and recommended that they be funded in the order ranked, to the extent that funds are available (see Attachment 1). The Department finds that funding is available in the amount of \$3,344,707; this amount will fully fund the ranked projects.

The Commission's recommendation results in the following awards:

1. **Hamakua Springs Purchased Conservation Easement;** Hawaiian Islands Land Trust (HILT), at \$198,707 for purchase of a conservation easement over 264.942 acres in south Hilo, Island of Hawai'i, for the protection of agricultural lands.

2. **Acquisition of Buffer for Ulupo Heiau;** DLNR, State Parks Division, at \$1,000,000 for acquisition of 3.44 acres in Ko‘olaupoko, Island of O‘ahu, for the protection of a buffer for Ulupo Heiau.
3. **Vipassana Hawaii Purchased Conservation Easement;** HILT, at \$1,000,000 for purchase of a conservation easement over 254.517 acres in North Kohala, Island of Hawai‘i, for protection of agricultural lands and coastal open space.
4. **Whitmore Agricultural Lands;** The Trust for Public Land (TPL) and State of Hawai‘i Agribusiness Development Corporation (ADC), at \$1,146,000 to fund the acquisition (by ADC) of 456 acres in Waiialua, Island of O‘ahu, to support agricultural production.

In summary, the Commission recommended funding four projects, in the order ranked (see Attachment I) to the extent that funds are available. The Department finds that funding is available in the amount of \$3,344,707, which will fully fund the above-listed projects. Details on each project are included in the discussion.

#### Legislative Consultation

Following the Commission meeting, the Department and the Commission Chair sought the consultation of Senate President Donna Mercado Kim and the Speaker of the House of Representatives Joseph Souki regarding the Commission’s recommendations, pursuant to H.R.S. Chapter 173A. The Senate President and Speaker of the House of Representatives confirmed that the projects listed be funded as recommended by the Commission in letters dated January 25, 2013, and February 7, 2013, respectively (Attachments II and III).

#### DISCUSSION:

The following discussion describes the details surrounding each of the Legacy Land Conservation Commission’s recommended projects.

#### **Hamakua Springs Purchased Conservation Easement**

HILT applied for \$198,707 for the purchase of a conservation easement over 264.942 acres in south Hilo, Island of Hawai‘i, for the protection of agricultural lands. HILT is proposing to provide 75% of the total project costs for the acquisition. The federal NRCS will provide approximately half of the funds through its Farm and Ranchland Protection Program, and the landowner will provide reduction in price from the appraised fair market value of the conservation easement.

The conservation easement on the Hamakua Springs Country Farm would restrict development on the 265-acre of the farm and would encourage continued agricultural uses of this land containing productive soils. The landowner would continue its current practices in promoting food sustainability by leasing lands to community members that distribute crops locally. The conservation easement would also contribute to the protection of watershed and stream values on the land, including watersheds associated with Waimaauou Stream (and Alia

and Waiaama Streams bordering the land on the north and south). The landowner plans to construct a hydroelectric facility to reduce cost of farming operations, promote energy self-sufficiency, and reduce fossil fuel reliance.

HILT will inspect the farm once a year to ensure that the conditions of the conservation easement are upheld. HILT is a local nonprofit organization, tax-exempt under 501(c)(3) of the Internal Revenue Code (IRC). HILT's mission is to protect the lands that sustain us for current and future generations.

### **Acquisition of Buffer for Ulupo Heiau**

DLNR, State Parks Division, applied for \$1,000,000 for acquisition of 3.44 acres in Ko'olaupoko, Island of O'ahu, for the protection of a buffer for Ulupo Heiau. State Parks is proposing to provide 50% of the total project costs through private foundation funds and other grants.

The buffer abuts the north and east sides of Ulupo Heiau, the largest platform heiau structure on Oahu. Ulupo Heiau is listed on the National and Hawaii Registers of Historic Places. Culturally significant springs are located around the heiau and nearby springs were used to irrigate the lo'i kalo between the heiau and the Kawainui fishpond. Acquisition of the land for inclusion into Ulupo Heiau State Park preserves the cultural landscape and historical setting of the heiau, and also allows State Parks to provide better management of visitation and cultural education programs and better coordination with neighboring land uses. Plans for the park include walking paths to assist understanding and visitation of the restored site.

### **Vipassana Hawaii Purchased Conservation Easement**

HILT applied for \$1,000,000 for purchase of a conservation easement over 254.517 acres in North Kohala, Island of Hawai'i, for protection of agricultural lands and coastal open space. HILT is proposing to provide 75% of the total project costs for the acquisition. The federal NRCS will provide the largest portion of matching funds through its Farm and Ranchland Protection Program, and the landowner will provide reduction in price from the appraised fair market value of the conservation easement.

The conservation easement on the Vipassana Hawaii property would limit residential development to one or two residences and a mediation center, and would allow for agricultural activities that are consistent with the protection of habitat for monk seals and sea birds, watersheds associated with the Halawa and Halelua Gulches, and cultural and historic resources. Grazing and crop activities will be guided by a conservation plan done in coordination with the USDA Natural Resource Conservation Service with the goal of protecting soils and other agricultural values.

HILT will inspect the farm once a year to ensure that the conditions of the conservation easement are upheld. HILT is a local nonprofit organization, tax-exempt under 501(c)(3) of the Internal Revenue Code (IRC). HILT's mission is to protect the lands that sustain us for current and future generations.

### **Whitmore Agricultural Lands**

The Trust for Public Land (TPL) and State of Hawai'i Agribusiness Development Corporation (ADC), applied for \$1,146,000 to fund the acquisition by ADC of 456 acres in Waialua, Island of O'ahu, to support agricultural production. TPL and ADC are proposing to provide 88% of the total project costs of the acquisition. Matching funds would be primarily from the Navy and Army buffer programs and the City and County of Honolulu's Clean Water and Natural Lands Fund.

The property is classified as "prime" and "unique" agricultural land under ALISH system, and is part of a larger plan led by ADC to acquire a 24-acre parcel west of the subject property to renovate existing agricultural packing and processing facilities and acquire an additional 1,700 acres of nearby lands in cooperation with the Office of Hawaiian Affairs for farming. The north fork of Kaukonahua Stream, the longest stream in the State, and Poamoho Stream run through the property. The acquisition of these lands by ADC will protect farm lands for food production in a context that includes the infrastructure and facilities necessary to support farming.

In summary, in its recommendations below, DOFAW advises the Board to approve the projects selected by the Commission and approved by the legislators, amounting to a total of \$3,344,707 in awarded funding from the Land Conservation Fund. This amount will fund the listed projects at the requested amounts.

#### Act 284, SLH 2012,

Act 284, SLH 2012, amended Chapter 173A, HRS, in two ways: it requires applicants to seek consultation of certain State agencies prior to application, and it sets forth in detail the framework for what type of deed restriction (including covenants, agricultural easements, conservation easements) may be required over properties being acquired with funds from the LLCP.

#### *Agency Consultation Process*

Act 284, SLH 2012, amended Chapter 173A, HRS, to require applicants to the LLCP to seek the consultation of this Department, Department of Agriculture, Agribusiness Development Corporation, and the Public Land Development Corporation with regard to the maximization of public benefits of each proposed land acquisition project. Consulting agencies could also provide input regarding other aspects of the project, including the level of legal protection on the land (e.g., whether a conservation easement is appropriate and what agency or organization ought to hold the conservation easement). Using forms supplied by the Department, applicants consulted the four agencies prior to submitting applications to the LLCP, and then submitted the consultation forms and any results to the LLCP along with the application form.

The timeline was as follows:

- July 6, 2012: Act 284, SLH 2012, signed into law
- July 13, 2012: consultation forms available
- August 3, 2012: consultation forms due from applicants to agencies
- September 3, 2012: consultation forms due from agencies back to applicants

- September 17, 2012: applications and results of agency consultation due to LLCP

In the first year of this requirement, twelve potential LLCP applicants submitted consultation requests to the agencies. Six of these twelve potential applicants followed up by submitting application forms to the LLCP by the annual deadline. After the application deadline passed, the LLCP issued a request for feedback by email to those that participated in the FY13 consultation process. No major issues were noted, however, the Department and the Commission will collaborate on fine-tuning this new consultation process for Fiscal Year 2014.

#### *Conservation Easements, Agricultural Easements, Deed Restrictions, and Covenants*

Act 284, SLH 2012, amended Chapter 173A, HRS, to require that the Board that State and county agencies receiving funds under this chapter provide a conservation easement under chapter 198, or an agricultural easement or deed restriction or covenant to the Department or another eligible agency. The act also provides that the Board shall be a holder of any such easement required, and states that the Board or any agency or organization required to hold an easement may provide an exemption from that requirement.

In previous years, the Department has required all recipients of funds through this program to record restrictions in the deed of conveyance for the property. Similar to many federal programs, the restrictions for Legacy Land county and nonprofit grantees included a reference to the grant agreement that is executed between the Board and the grantee, and the statutory restrictions on the transfer of the land provided within Chapter 173A, HRS.

The addition of a conservation easement to a project is a substantive change to the project that affects whether it is submitted by the applicant, how it is supported by the public, and how it is reviewed by the Legacy Land Conservation Commission. If this requirement is made clear at the beginning of the grant process, applicants to the program will be able to prepare appropriately for a substantial change to the projects that they are submitting, and members of the public and the Commission will be able to review the project in its entirety. With the new consultation process described above, the four consulting agencies had the opportunity to request a conservation easement prior to the review of the project by the Commission. No such requests were made by the consulting agencies.

While the Board currently possesses the optional authority to impose conservation easements on lands acquired by other entities, the Department advises that the deed restrictions imposed in previous years are more appropriate for the recommended Fiscal Year 2013 projects. Of the four projects being recommended, two are to be held by State entities, and the remaining two are acquisitions of conservation easements for the protection of agricultural resources.

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

Class 1, Exemption 15, on the June 12, 2008, Division of Forestry and Wildlife Exemption List, states, "The award of grants under H.R.S., Chapter 173A, for the acquisition of interests in land, provided that the acquisition does not cause any material change of use of land or resources beyond that previously existing." DOFAW advises declaring awards exempt from the preparation of an environmental assessment pursuant to this exemption.

RECOMMENDATIONS:

That the Board:

1) Approve the acquisition of the following parcels and authorize the Chairperson to execute a letter of offer to the landowner and encumber funds, under the FY13 LLCPC ceiling, from the LCF for the following Department project:

- a. **Acquisition of Buffer for Ulupo Heiau;** DLNR, State Parks Division, at \$1,000,000 for acquisition of 3.44 acres in Ko'olaupoko, Island of O'ahu, for the protection of a buffer for Ulupo Heiau.

Using a total of \$1,000,000 from the LCF, subject to compliance with H.R.S., Chapter 173A, and the normal process and procedures for the acquisition of lands by the State.

2) Authorize the Chairperson to enter into agreements and encumber FY13 funds with the listed grant recipients for the following grants to State agencies, nonprofit land conservation organizations, and counties:

- a. **Hamakua Springs Purchased Conservation Easement;** Hawaiian Islands Land Trust (HILT), at \$198,707 for purchase of a conservation easement over 264.942 acres in south Hilo, Island of Hawai'i, for the protection of agricultural lands.
- b. **Vipassana Hawaii Purchased Conservation Easement;** HILT, at \$1,000,000 for purchase of a conservation easement over 254.517 acres in North Kohala, Island of Hawai'i, for protection of agricultural lands and coastal open space.
- c. **Whitmore Agricultural Lands;** State of Hawai'i Agribusiness Development Corporation (ADC), at \$1,146,000 to fund the acquisition (by ADC) of 456 acres in Waialua, Island of O'ahu, to support agricultural production.

using a total of \$2,344,707 from the LCF, subject to:

- a. compliance with H.R.S., Chapter 173A;
- b. compliance with H.R.S., Chapter 343;
- c. execution of a Grant Agreement with the BLNR;
- d. certification of an appraisal for each project by the Department;
- e. insertion of Legacy Land Conservation Program restrictions into the deed as a condition of contractual agreements with the grant recipients;
- f. approval of the Grant Agreement and of the Deed by the Attorney General's office;
- g. the availability of funds;
- h. the approval of the Governor; and
- i. such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

3) Require the imposition of Legacy Land Conservation Program restrictions into the deeds as a condition of contractual agreements with the grant recipients and exempt projects from any additional conservation easements that may be required under Act 284, SLH 2012.

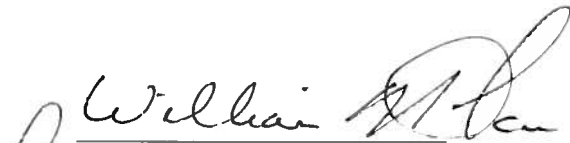
- 4) Declare these awards of funds exempt in accordance with Class 1, Exemption 15, on the June 12, 2008, Division of Forestry and Wildlife Exemption List.
- 5) Authorize the Department to proceed with all due diligence and negotiations that may be necessary to carry out the grants and acquisitions mentioned above.

Respectfully submitted,



ROGER IMOTO, Administrator  
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



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

ATTACHMENTS:

- Attachment I: Table of recommended awards for the Fiscal Year 2013 Legacy Land Conservation Program with individual project information attached
- Attachment II: January 25, 2013, letter from the Senate President
- Attachment III: February 7, 2013, letter from the Speaker of the House of Representatives

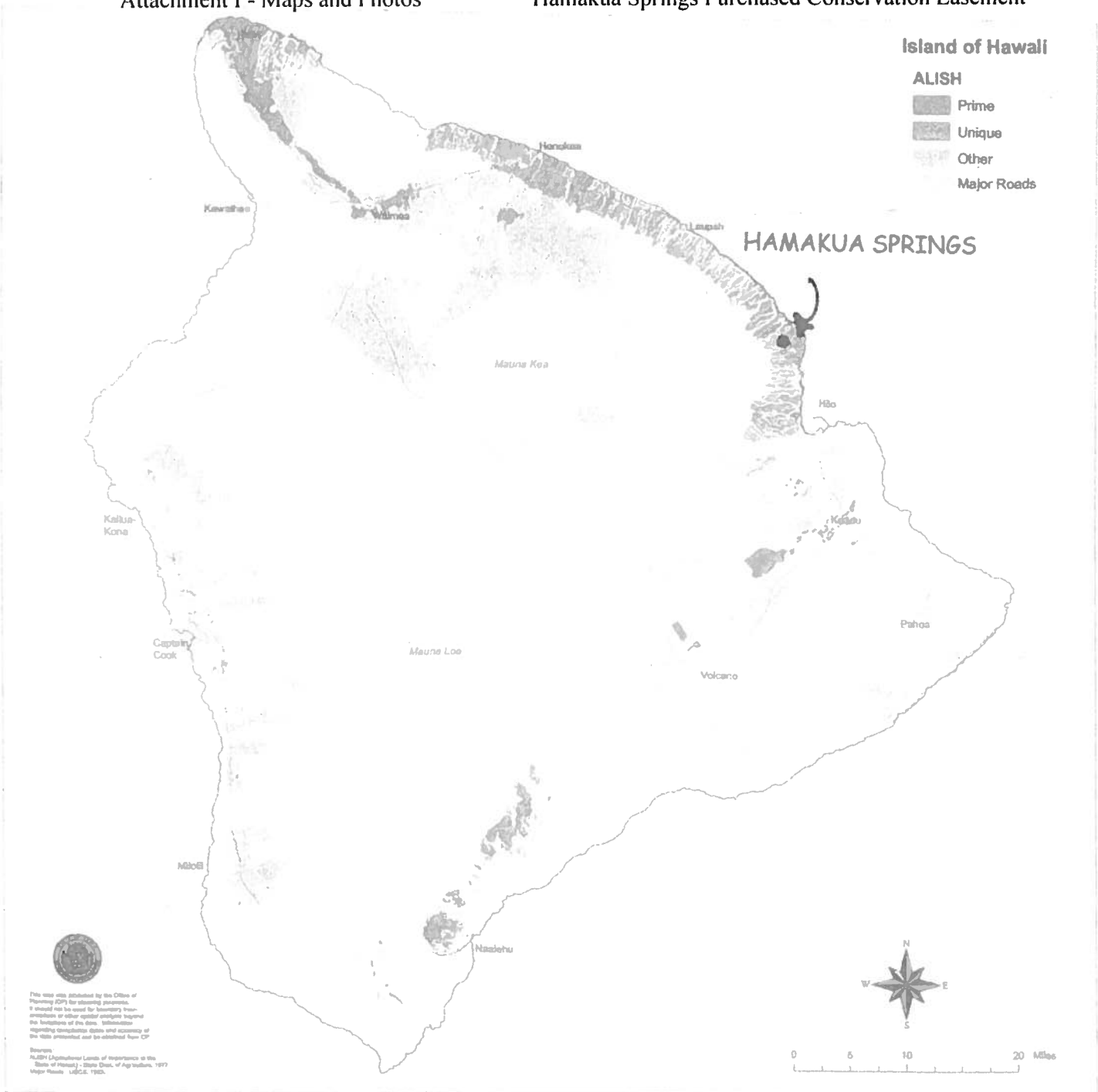
## Attachment I - Table

**Legacy Land Conservation Commission Rankings, Fiscal Year 2013 (2012-2013)**

Rank	Project title	Agency/org:	District - Island	CE / fee	held by	Size (acres)	LL Request	Total Project Costs
1	Hamakua Springs Purchased CE	Hawaiian Islands Land Trust	South Hilo, Island of Hawaii	CE	HILT	264.942	\$198,707	\$802,328
2	Acquisition of Buffer for Ulupo Heiau	State of Hawaii, DLNR, Division of State Parks	Ko'olaupoko, Island of O'ahu	fee	SP	3.44	\$1,000,000	\$2,000,000
3	Vipassana Hawaii Purchased CE	Hawaiian Islands Land Trust	North Kohala, Island of Hawaii	CE	HILT	254.517	\$1,000,000	\$4,012,500
4	Whitmore Agricultural Lands	The Trust for Public Land & State of Hawai'i Agribusiness Development Corporation	Waialua District/Moku, Central O'ahu	fee	ADC	456	\$1,146,000	\$10,213,500

At its meeting on December 6, 2012, the Legacy Land Conservation Commission recommending that the Board of Land and Natural Resources fund the projects listed above in the order ranked, to the extent that funds are available, through the Fiscal Year 2013 Legacy Land Conservation Program.





LOCATION MAP OF  
HAMAKUA SPRINGS FARM  
(RICHARD HA)  
ON THE ISLAND OF HAWAII



PARCEL MAP OF  
HAMAKUA SPRINGS FARM  
(RICHARD HA)  
SOUTH HILO DISTRICT  
TMK (3) 2-8-004-005

Hamakua Springs Farm (Richard Ha)  
TMK (3) 2-8-004-005



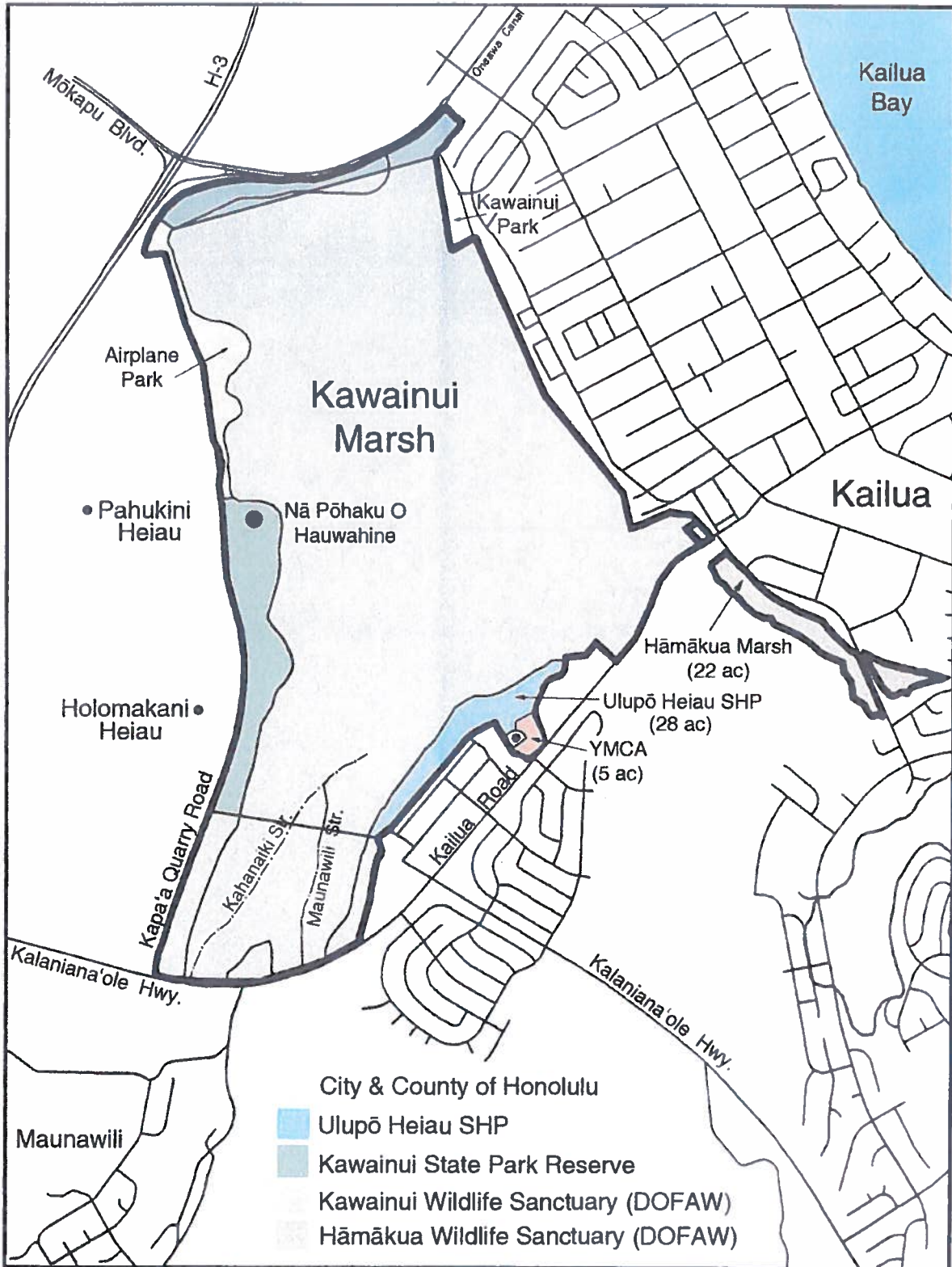
Field of Sweet Potatoes at Hamakua Springs Farm



Overview of Hamakua Springs Farm with crops in varying stages of growth

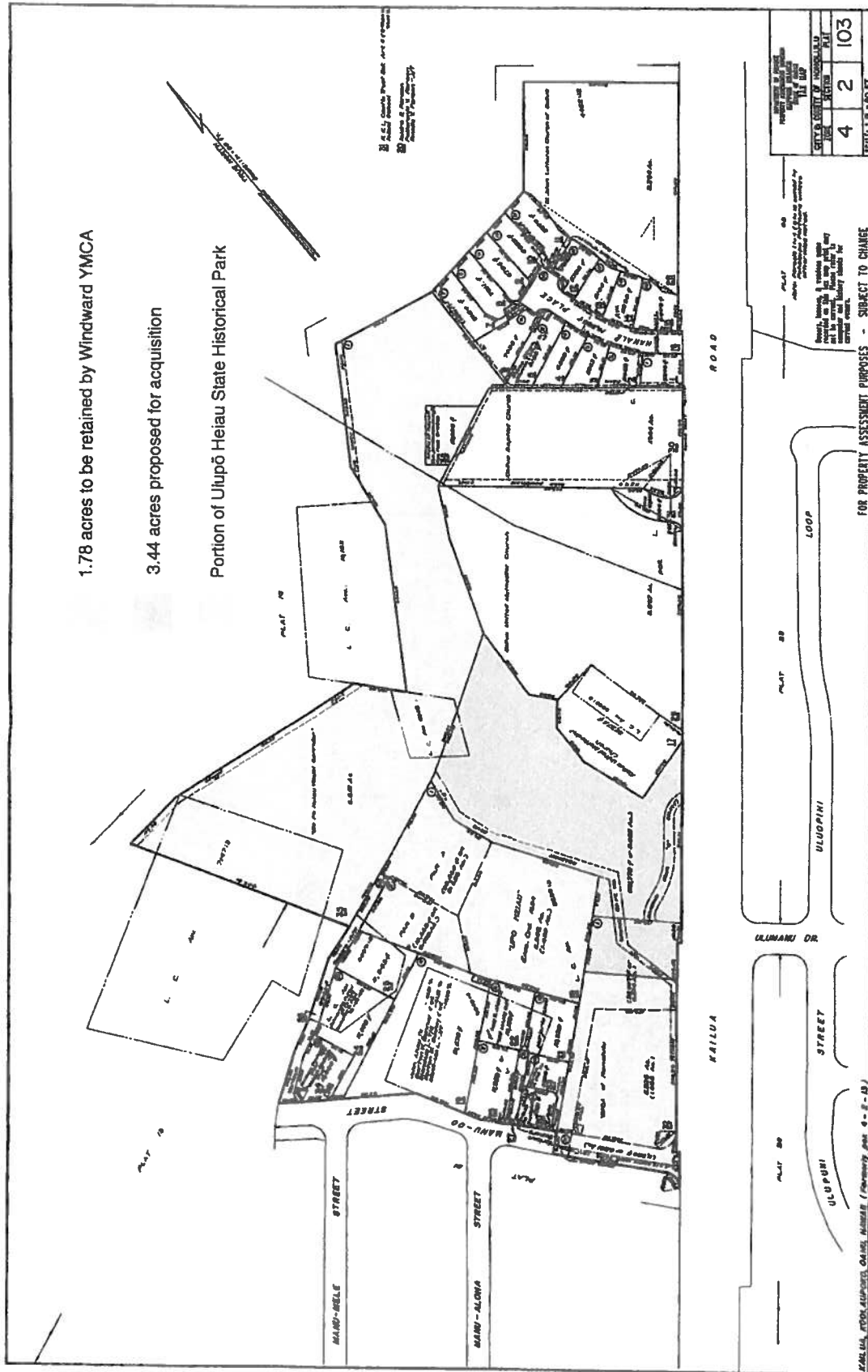


Taro field at Hamakua Springs Farm



**LOCATION MAP**

YMCA property adjacent to Ulupō Heiau State Historical Park and along the eastern side of Kawainui Marsh in the Kailua *ahupua'a*, Ko'olaupoko district.



TAX MAP KEY MAP

The portion of the YMCA property proposed for acquisition is situated adjacent to Ulupo Heiau State Historical Park.



Lower portion of the subject parcel where restoration of the cultural landscape adjacent to Ulupō Heiau has been initiated with the planting of *lo'i kalo*, Polynesian-introduced, and native plants. The 30-foot high wall of Ulupō Heiau is evident in the background. View is to the southeast.



Upper portion of the property proposed for acquisition includes *heiau* parking lot and landscaped grounds on the east side of Ulupo Heiau. The Windward YMCA facility is located to the right and the YMCA will retain this road that runs along the western side of the facility from the YMCA's parking lot on the southern end of the YMCA property. View is to the northeast.



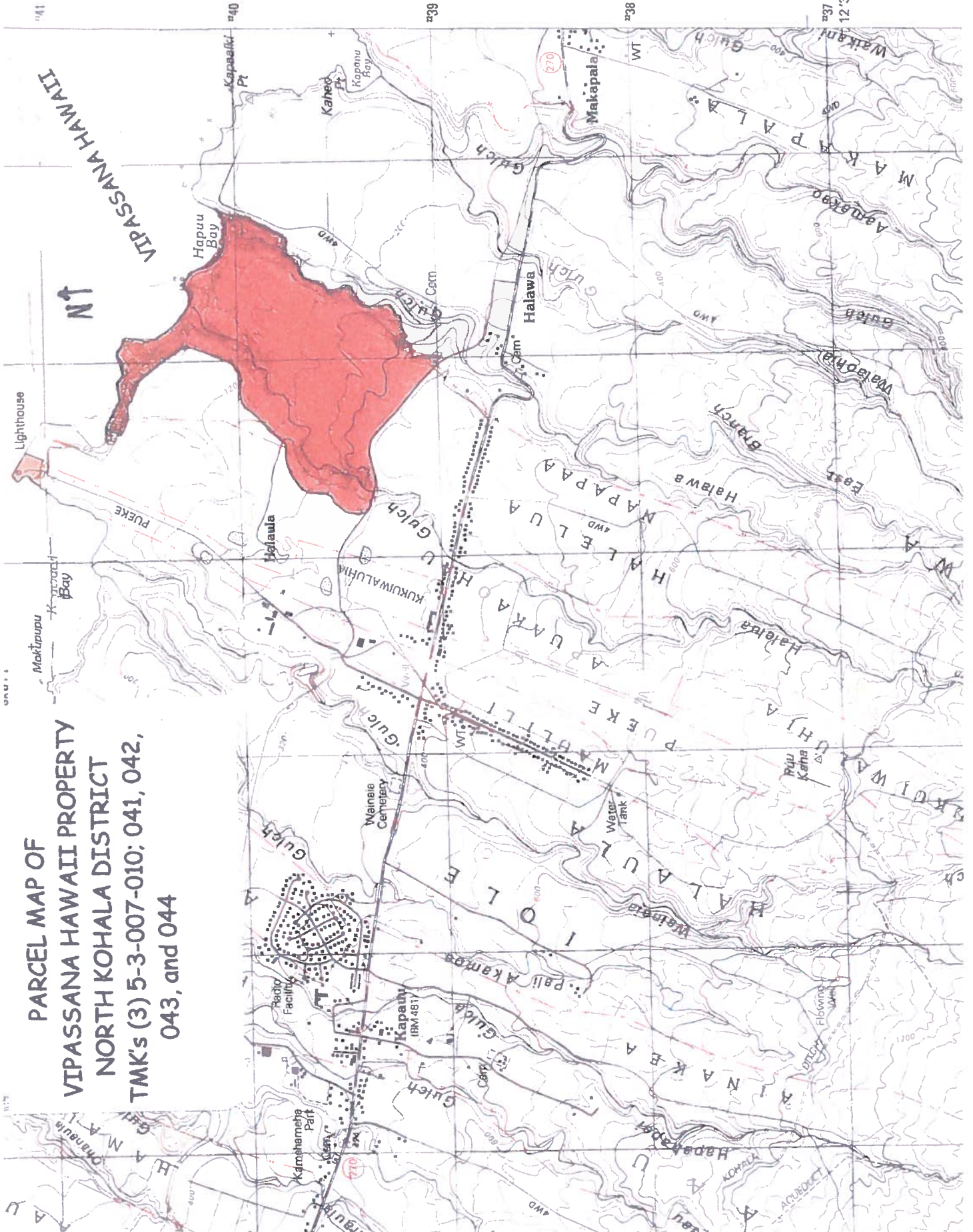


Opposite view of the upper portion of the property from the roadway that runs from Kailua Road to the *heiau* parking lot. This road is the State's public access to Ulupō Heiau and the *heiau* is visible to the right. View is to the southwest.

VIPASSANA HAWAII



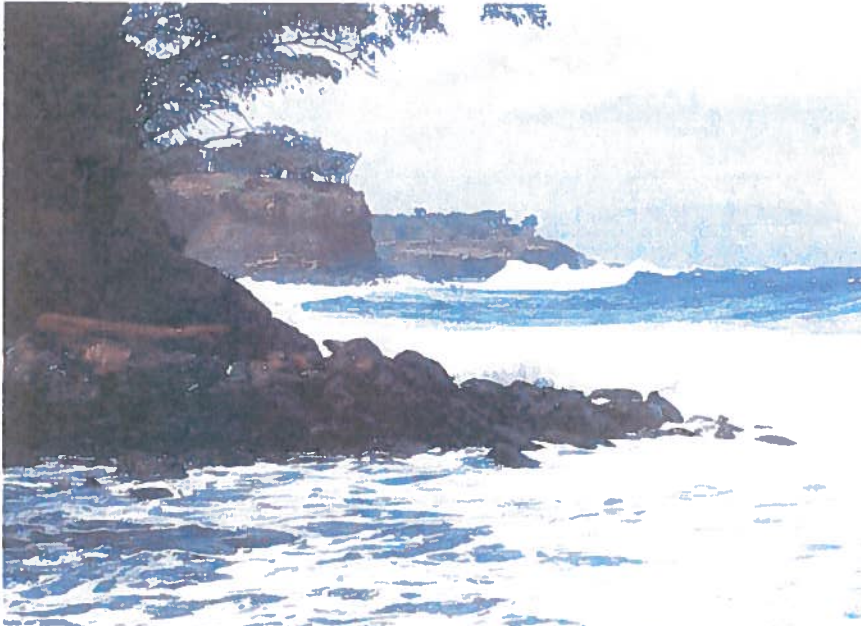
LOCATION MAP OF  
VIPASSANA HAWAII PROPERTY  
ON THE ISLAND OF HAWAII



PARCEL MAP OF  
VIPASSANA HAWAII PROPERTY  
NORTH KOHALA DISTRICT  
TMK's (3) 5-3-007-010; 041, 042,  
043, and 044

**Vipassana Hawaii**

TMK (3) 5-3-007-010; 5-3-007-041; 5-3-007-042; 5-3-007-043; 5-3-007-044  
254.517 acres



View to the northwest from Hapu'u Bay on Vipassana Hawaii Property



Shrubby Uplands on Vipassana Hawaii Property



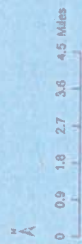
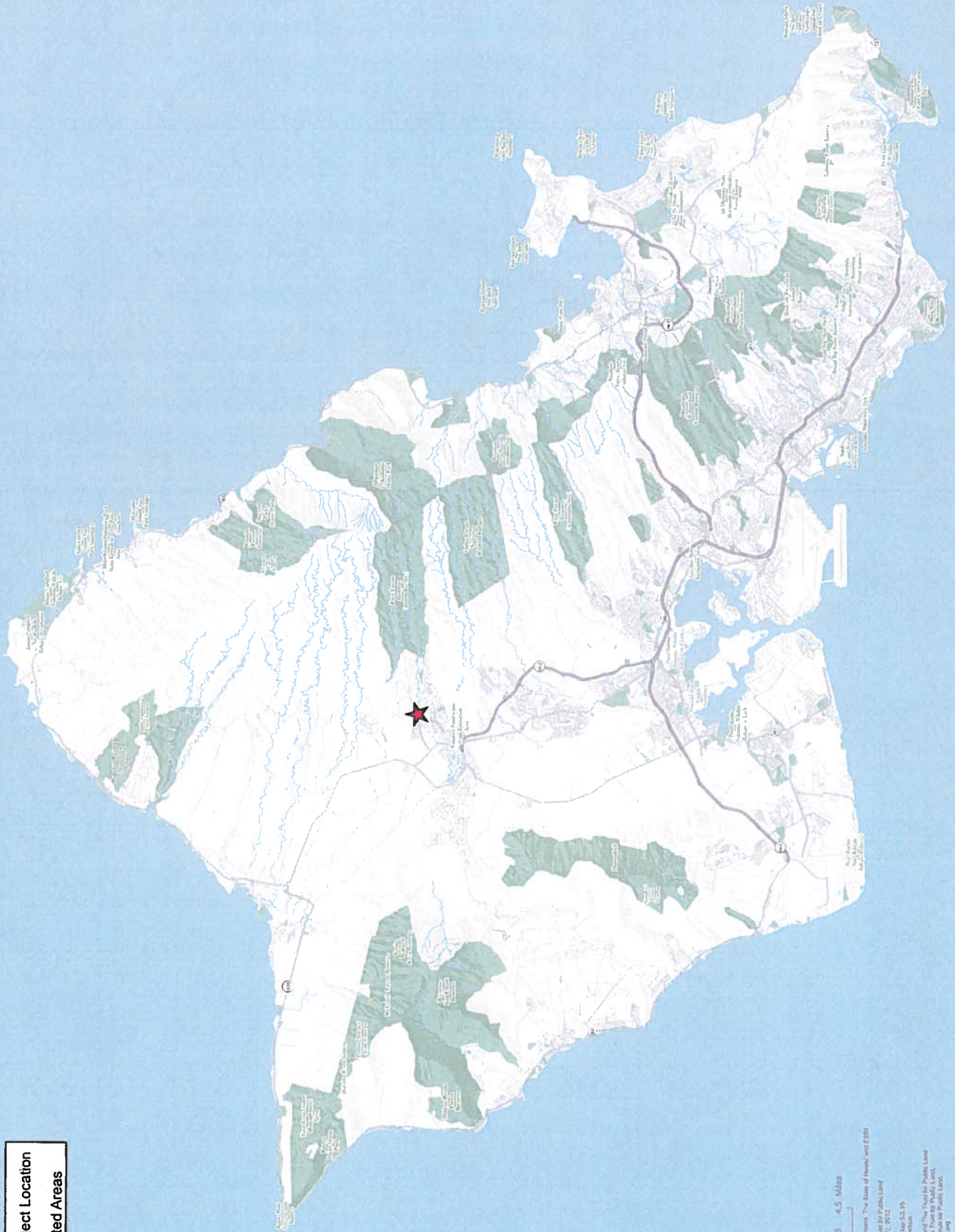
O'ahu Heiau on the northwest side of the Vipassana Hawaii Property

# Oahu, Hawaii

## Whitmore Agricultural lands - General Location



 **Project Location**  
 **Protected Areas**



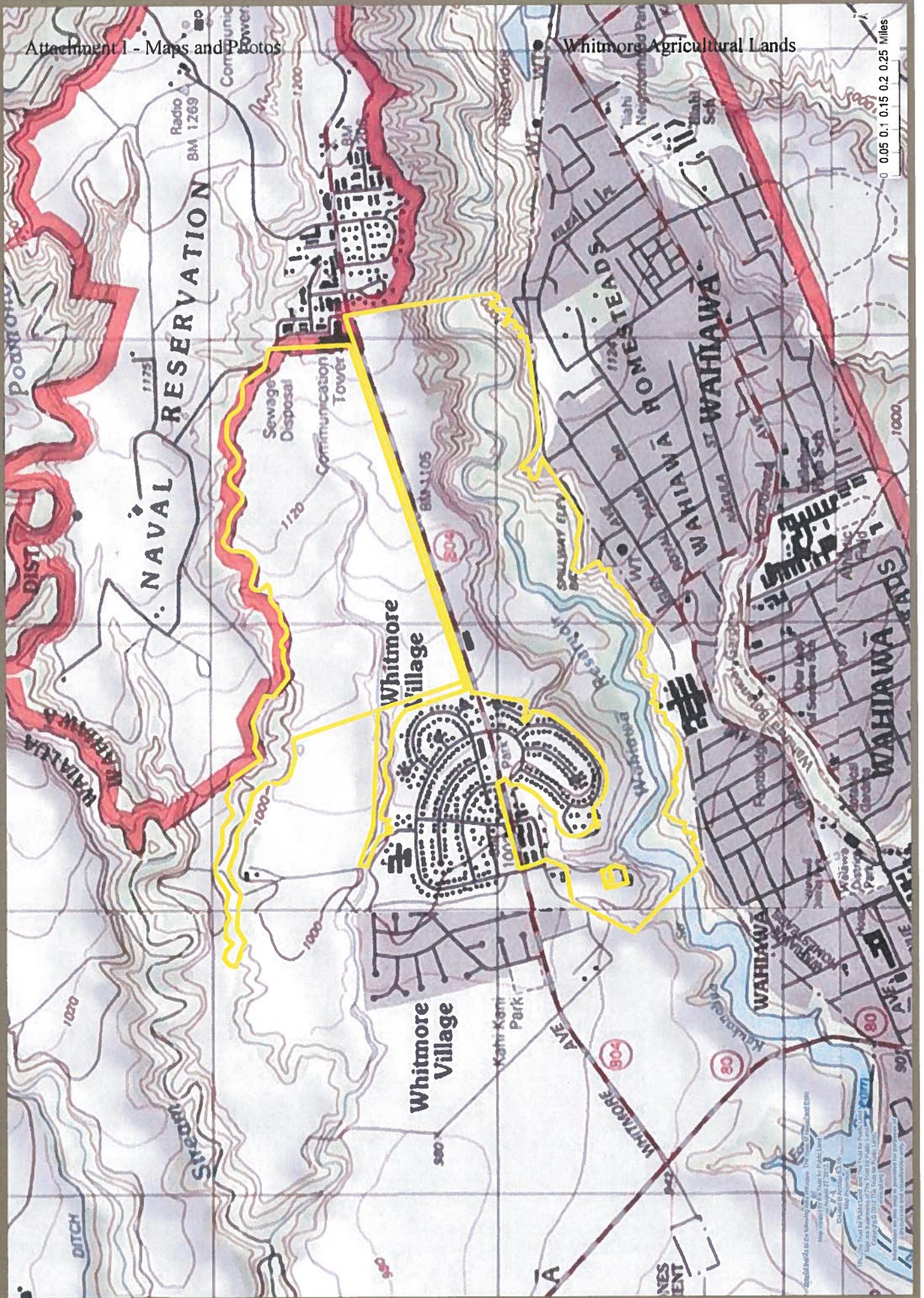
Special thanks to the following data providers: The State of Hawaii and EPRS  
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 On August 27, 2012  
 Map Proponent:  
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# Oahu, Hawaii Whitmore Agricultural Lands - Topo Map

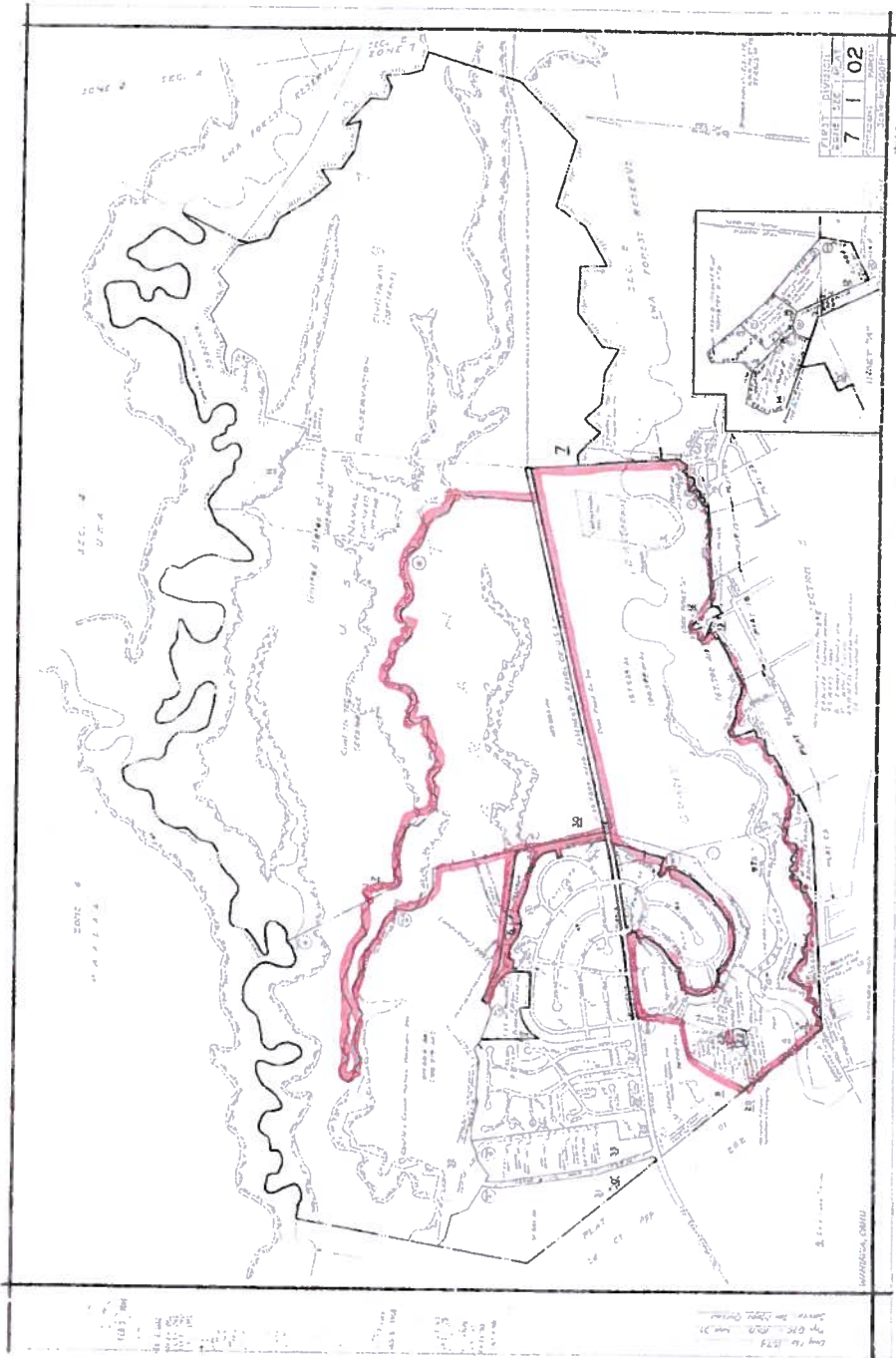


Attachment I - Maps and Photos

Whitmore Agricultural Lands



Map prepared by The Trust for Public Land, 2777 Kalanianaʻōhale Hwy., Honolulu, HI 96815. © 2008. All rights reserved. This map is a reproduction of a map published by the U.S. Geological Survey, 1980. The Trust for Public Land and the Trust for Public Land are not responsible for any errors or omissions in this map. The Trust for Public Land is a 501(c)(3) nonprofit organization. For more information, please contact us at (808) 943-1111 or www.trustforpublicland.org.



Parcel 30 has been split into new parcels 34, 35, & 36.





North Fork of Kaukonahua Stream that flows through parcel 4



Hothouses for flower farm on parcel 4



Truck parking facilities on parcel 4

73089

Attachment II



RECEIVED

2013 JAN 31 AM 7:46

DEPT. OF LAND & NATURAL RESOURCES STATE OF HAWAII

The Senate

STATE CAPITOL HONOLULU, HAWAII 96813

January 25, 2013

DONNA MERCADO KIM PRESIDENT RONALD D. KOUCHI VICE PRESIDENT SAM SLOM MINORITY LEADER

- FIRST DISTRICT GILBERT KAHELE SECOND DISTRICT RUSSELL E. RUDERMAN THIRD DISTRICT JOSH GREEN FOURTH DISTRICT MALAMA SOLOMON FIFTH DISTRICT GILBERT S.C. KEITH-AGARAN SIXTH DISTRICT ROSALYN H. BAKER SEVENTH DISTRICT J. KALANI ENGLISH EIGHTH DISTRICT RONALD D. KOUCHI NINTH DISTRICT SAM SLOM TENTH DISTRICT LES HARA JR ELEVENTH DISTRICT BRIAN T. TANIGUCHI TWELFTH DISTRICT BRICKWOOD GALUTERA THIRTEENTH DISTRICT SUZANNE CHUN OAKLAND FOURTEENTH DISTRICT DONNA MERCADO KIM FIFTEENTH DISTRICT GLENN WAKA SIXTEENTH DISTRICT DAVID Y. IGE SEVENTEENTH DISTRICT CLARENCE K. NISHIHARA EIGHTEENTH DISTRICT MICHELLE N. KIDANI NINETEENTH DISTRICT WILL ESPERO TWENTIETH DISTRICT MIKE GABBARD TWENTY-FIRST DISTRICT MAILE S.L. SHIMABUKURO TWENTY-SECOND DISTRICT DONOVAN M. DELA CRUZ TWENTY-THIRD DISTRICT CLAYTON HEE TWENTY-FOURTH DISTRICT JILL N. TOKUDA TWENTY-FIFTH DISTRICT LAURA H. THIELEN CHIEF CLERK CAROL TANIGUCHI

William J. Aila, Jr., Chairperson Board of Land and Natural Resources State of Hawaii P.O. Box 621 Honolulu, Hawaii 96809

Dear Mr. Aila:

I am in receipt of your letter dated December 13, 2012 in which you submit for my review and consultation the recommendation of the Legacy Land Conservation Commission's funding of four projects for the Fiscal Year 2013 Legacy Land Conservation Program.

This letter is to acknowledge that you are seeking comment to fulfill your statutory requirement pursuant to Hawaii Revised Statutes, Chapter 173A, that requires the Department to request consultation on the list of recommended projects with the Senate President, prior to submitting them to the Board of Land and Natural Resources for approval.

After reviewing we currently have no concerns or objections to the four projects as proposed in your attachments.

Thank you for the opportunity to provide comments on this matter.

Sincerely,

[Signature]

Donna Mercado Kim Senate President 14th District State Senator

RECEIVED LAND DIVISION 2013 JAN 31 PM 4:00 DEPT. OF LAND & NATURAL RESOURCES STATE OF HAWAII

Attachment III

JOSEPH M. SOUKI  
SPEAKER

HOUSE OF REPRESENTATIVES

STATE OF HAWAII  
STATE CAPITOL  
HONOLULU, HAWAII 96813



February 7, 2013

Mr. William J. Aila, Jr.  
Chairperson  
Board of Land and Natural Resources  
P.O. Box 621  
Honolulu, Hawaii 96809

Dear Mr. Aila:

Thank you for the recommendations of the Legacy Land Conservation Commission regarding funding of projects for the Fiscal Year 2013 Legacy Land Conservation Program (LLCP).

In response to your request for any recommendations, I do not have any concerns or objections to the four projects as proposed in your attachments.

Thank you with regard to this matter.

Sincerely,

Joseph M. Souki  
Speaker of the House