

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

November 8, 2013

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

PSF: 13HD-169

Hawaii

Approval in principle for the acquisition of private lands situate at Kealakehe, North Kona, island of Hawaii, identified as Tax Map Key No.: (3) 7-4-020:10 (portion) for the proposed Kona Judiciary Complex

APPLICANT AGENCY:

Department of Accounting and General Services ("DAGS") on behalf of the Hawaii State Judiciary ("Judiciary")

PRIVATE LANDOWNER:

Liliuokalani Trust Estate ("QLT"), whose business and mailing address is 1100 Alakea Street, Suite 1100, Honolulu, Hawaii 96813

LEGAL REFERENCE:

Sections 107-10, 171-11 and 171-30, Hawaii Revised Statutes, as amended

LOCATION:

Privately-owned lands situated at Kealakehe, North Kona, Island of Hawaii, being identified by Tax Map Key: (3) 7-4-020:010 (portion), as generally shown on the attached tax map labeled **Exhibit A-1** and location map labeled **Exhibit A-2**.

AREA:

10 acres, more or less, subject to survey and subdivision approval(s)

ZONING:

State Land Use District: Urban
County of Hawaii CZO: CG-10; General Commercial

CURRENT USE:

Vacant and unencumbered

PUBLIC PURPOSE:

Judiciary and ancillary purposes. Subject to BLNR final approval and ultimately the acquisition of the proposed 10-acre site, DAGS on behalf of the Judiciary proposes to improve the site with a new Kona Judiciary Complex.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final EIS for the Kona Judiciary Complex Site Selection was published in the Office of Environmental Quality Control's ("OEQC") Environmental Notice on December 23, 2011, and the Governor's Acceptance letter dated February 22, 2012, was published in OEQC's Environmental Notice on March 8, 2012.

CONSIDERATION:

QLT is agreeable to convey to the State up to ten acres of land at the Makalapua Center for nominal consideration provided, however, the land shall only be used for judiciary and ancillary purposes; and if the land is not needed for judiciary purposes, the fee simple interest in the land and any improvements thereon revert back to QLT. There are no known outstanding orders requiring QLT to provide land to the State for Judiciary purposes. A copy of a letter from QLT confirming their willingness to convey the 10 acres of land to the State for nominal consideration is attached hereto as **Exhibit B**.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1. Provide survey maps and descriptions for the privately-owned property according to State DAGS standards and at Applicant's own cost;
2. Obtain a title report for the privately-owned property at Applicant's own cost and subject to review and approval by DLNR and the Department of the Attorney General;
3. Process and obtain subdivision approval at Applicant's own cost;
4. Pay for and conduct a Phase I environmental site assessment and, if this Phase I identifies the potential for hazardous materials release or the presence of hazardous materials, conduct a Phase II environmental sampling and analysis plan and perform any and all remediation, abatement and disposal as may be warranted and as satisfactory to the standards required by the Federal Environmental Protection Agency and/or the State Department of Health, all at no cost to and to the satisfaction of DLNR.

REMARKS:

This request is for the Board of Land and Natural Resources ("BLNR") for the approval in principle for the proposed acquisition of a portion of privately-owned land, situate at Kealakehe, North Kona, island of Hawaii. The privately-owned land is identified as TMK (3) 7-4-20:10 ("Parcel 10"), as shown on **Exhibit A-1**, attached. Public records show Parcel 10 has an area of 216.24 acres and is owned in fee by the Liliuokalani Trust Estate ("QLT"). The proposed subject site is an approximate 10-acre portion of Parcel 10 (hereinafter the "Subject Site"). The Subject Site is vacant and located mauka of Queen Kaahumanu Highway, across Makala Boulevard from the Makalapua Center, as generally shown on **Exhibits A-1 and A-2**, attached.

Subject to the Applicant satisfying all requirements cited above and such other terms as may be prescribed by BLNR, if any, the results of all due diligence shall be presented to BLNR for consideration of a final approval of the proposed acquisition.

Subject to BLNR final approval and upon the acquisition of the proposed Subject Site, DAGS, on behalf of the Judiciary, intends begin construction of a new Kona Judiciary Complex thereon to service the West Hawaii area.

Over the past two decades there has been a growing need to improve the Judiciary facilities in the West Hawaii area. Factors collectively contributing to that need generally include the poor quality and inadequate scale of existing facilities to service West Hawaii's increasing population, the rise in case filings, and the associated staffing needs in the West Hawaii region.¹

An Environmental Impact Statement (EIS) for the Kona Judiciary Complex Site Selection was prepared. The Final EIS was published in OEQC's Environmental Notice on December 23, 2011, and the Governor's acceptance letter dated February 22, 2012 was published in OEQC's Environmental Notice on March 8, 2012. The EIS site selection process identified and fully vetted seven candidate sites for the proposed Kona Judiciary Complex, which are identified as Candidate Sites A through G on **Exhibit C**, attached. Based on the EIS site selection process, and notwithstanding a subsequent US Fish and Wildlife Service ("USFWS") proposal to designate approximately 18,766 acres of land in west Hawaii as "critical habitat", the Judiciary ultimately approved the selection of Site F for the proposed Kona Judiciary Complex.² A copy of Judiciary's approval of the selection of Site F, hereinafter the "Subject Site", is attached as **Exhibit D**.

DAGS' chronology summarizing the EIS site selection process, candidate site information, how the selection process was reopened after the USFWS proposed critical habitat designation, and how the Judiciary ultimately selected the Subject Site is attached as **Exhibit E**.

DAGS reports existing released appropriations for the proposed Kona Judiciary Complex include \$580,000 for planning, \$500,000 for land acquisition, \$6,800,000 for design, and \$2,000,000 for consultant services during construction. Moreover, during the 2013 Legislative session, the Judiciary was also appropriated \$9,000,000 for construction of the proposed Kona Judiciary Complex. Subject to BLNR approval of the acquisition, the Judiciary intends to request an appropriation in the amount of \$81 million for construction of the Kona Judiciary Complex on the Subject Site.³

¹ The Judiciary in West Hawaii currently operates out of the old Kona Hospital (Keakealani Building), which is managed by DAGS, and four other private facilities all under a lease agreements.

² In October 2012, the USFWS proposed approximately 18,766 acres of land in West Hawaii be designated as "critical habitat." The USFWS provided comments on the EIS on October 3, 2011 and made no mention of the potential designation, which could impact five of the seven candidate sites, including Site F. QLT is currently in negotiations with USFWS on a mitigation plan agreement which will exempt approximately 302 acres of QLT lands, including Site F, from the USFWS proposed critical habitat designation in the area. Although QLT's proposed mitigation plan agreement has purportedly been approved by USFWS Hawaii office, it remains subject to review and approval by USFWS regional and national offices. Notwithstanding the above, if Site F remains within USFWS proposed critical habitat area, DAGS/Judiciary does not anticipate development of the proposed Kona Judiciary Complex to trigger a Federal nexus (i.e. use Federal funds; impacts Federal lands; or require Federal approvals).

³ During the 2013 Legislative regular session, the Judiciary requested an appropriation of \$90 million for the construction of the proposed Kona Judiciary Complex, only \$9 million of which was approved. At the time, a site for the proposed Kona Judiciary Complex had not been selected. Accordingly, the Legislature instructed the Judiciary to finalize the proposed site before requesting the balance of the construction funds.

Agency comments were solicited and responded to as part of the EIS process, including DLNR's Division of Aquatic Resources, Engineering Division, Division of Forestry and Wildlife, Division of State Parks, Commission on Water Resource Management, and Land Division's Hawaii District Office. As a result the Engineering Division and Land Division's Hawaii District Office submitted comments on the Kona Judiciary Complex project, which were subsequently responded to. Pursuant to the governor's acceptance letter dated February 22, 2012, and published in OEQC's Environmental Notice on March 8, 2012, mitigation measures proposed in the EIS will minimize the negative impacts of the project.

RECOMMENDATION:

That the Board approve in principle the above-described land acquisition under the terms and conditions cited above which are by this reference incorporated herein and subject to the following;


1. Details of the proposed acquisition shall be submitted to the Board for final approval prior to documentation;
2. The standard terms and conditions of the most current deed document form, as may be amended from time to time;
3. Review and approval by the Department of the Attorney General;
4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



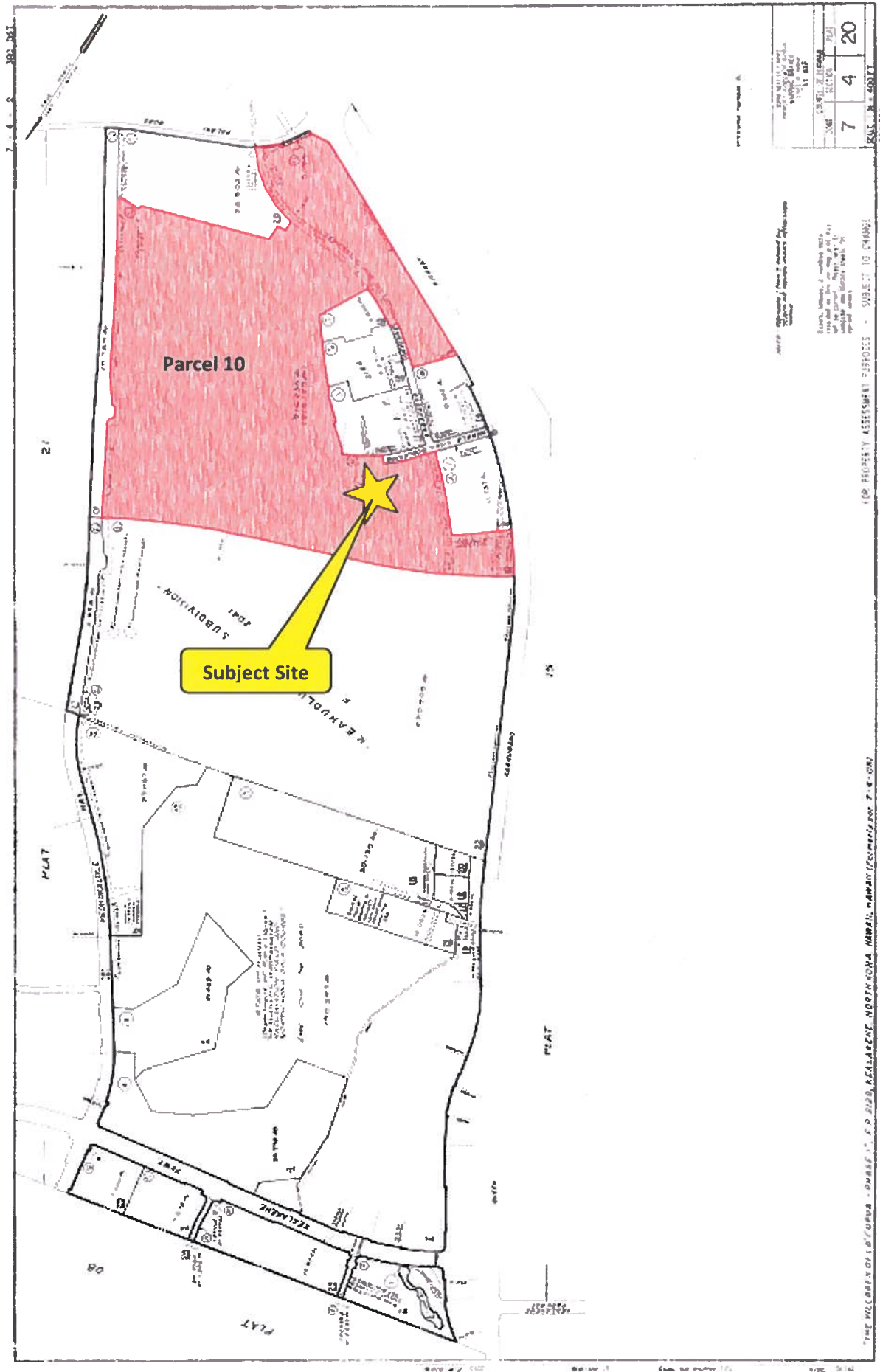
Gavin Chun
Project Development Specialist

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson





COUNTY CLERK	
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FOR PROPERTY ASSESSMENT PURPOSES - SUBJECT TO CHANGE



Location Map

(Proposed Kona Judiciary Complex Site)

Exhibit A-2



QUEEN LILI'UOKALANI TRUST

February 23, 2012

Mr. Bruce Coppa
Chief of Staff
Office of the Governor
Executive Chambers, State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

Re: Kona Judiciary Complex Site

Dear Mr. Coppa:

The Queen Lili'uokalani Trust ("Trust") is a nonprofit organization which provides social services to orphaned and destitute children of Hawaiian ancestry throughout the State of Hawaii ("State").

It has recently come to our attention that our lands located at the Makalapua Center is under consideration for the future Kona Judiciary Complex pursuant to the Environmental Impact Statement filed for this project in December 2011. We believe that the location of the Kona Judicial Complex at Makalapua would be of mutual benefit to the Trust and to the State since its location is in close proximity to Kailua Village.

In conjunction with the above, we are planning to expand the development of our lands makai of Queen Kaahumanu Highway, adjacent to the northern side of Kailua Village. We anticipate filing our petition for urbanization of these makai lands with the State Land Use Commission sometime this year. Our Environmental Impact Statement is currently being prepared on the Trust's Master Plan which we consider an extension of Kailua Village.

If the Makalapua Center site is selected for the Kona Judiciary Complex, we would like to provide up to a maximum of ten (10) acres of land located in the Makalapua Center area (i.e., the approximate location of which is set forth as Site F on the attached Exhibit A incorporated herein by reference) to the State for this complex in fee simple, at no cost, or by long-term lease, at a nominal lease rent of \$10.00/year.

We believe that the siting of the Kona Judicial Complex at Makalapua Center will facilitate the natural growth of Kailua Village and vicinity from the standpoint of, infrastructure availability, convenience and location to other support facilities (e.g., retail, shopping, office buildings, etc.).

Exhibit B

Mr. Bruce Coppa
February 23, 2012
Page 2

Should you have any interest in this proposal, please feel free to contact LeeAnn Crabbe of my office to discuss this matter further.

Very truly yours,

QUEEN LILI'UOKALANI TRUST

A handwritten signature in black ink, appearing to read 'LeeAnn Crabbe'.

for ROBERT OZAKI
President & Chief Executive Officer

Enclosure (Exhibit A)



KONA JUDICIARY COMPLEX SITE SELECTION

Draft Final Environmental Impact Statement

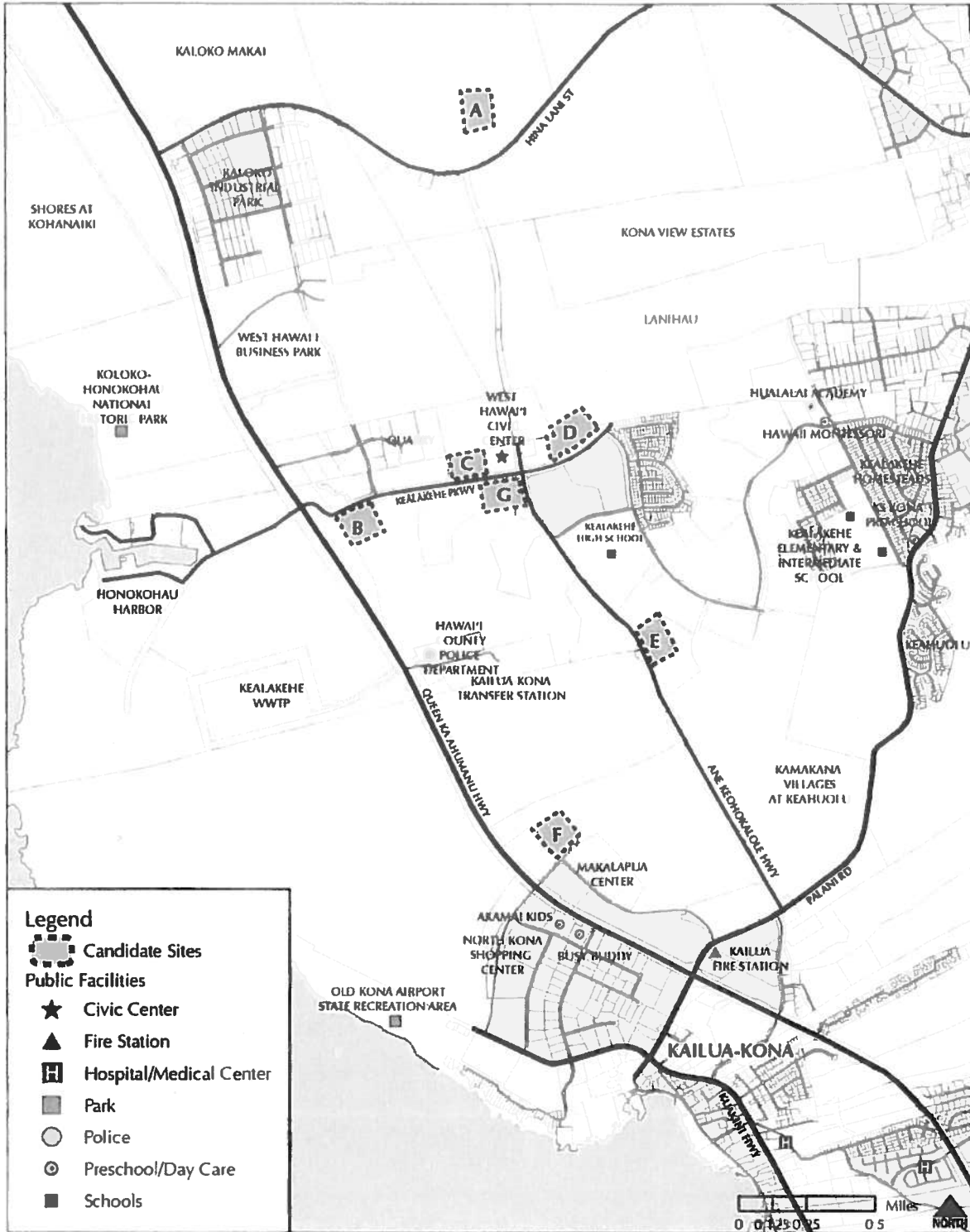


Figure 4-7
Existing Land Use and Institutions



Rodney A. Maile
ADMINISTRATIVE DIRECTOR

Iris T. Murayama
DEPUTY ADMINISTRATIVE DIRECTOR

October 11, 2013

MEMORANDUM

TO: Chief Justice Mark E. Recktenwald
FROM: Rodney A. Maile, Administrative Director of the Courts
RE: Recommendation of Site F for Kona Judiciary Complex

The Executive Review Committee consisting of myself, Tom Mick, Gary Teramae, Dennis Chen, Judge Ronald Ibarra, and Dawn West, after reviewing all of the available information regarding Site F (owned by the Queen Liliuokalani Trust), and Site C (owned by the Department of Hawaiian Home Lands), including the attached documents prepared by the Department of Accounting and General Services (DAGS), and after conferring with: 1) the DAGS Public Works Division – Planning Branch professional staff assigned to this project; 2) the private consultant retained to assist in the land acquisition for the site; 3) the West Hawai'i Bar Association; 4) the Hawai'i State Bar Association, 5) and the Trustees and senior management team of the Queen Liliuokalani Trust, respectfully recommend that Site F be selected as the site for the Kona Judiciary Complex.

Site F Approved

Site F Disapproved

Mark E. Recktenwald
MARK E. RECKTENWALD
Chief Justice
The Judiciary, State of Hawai'i

Dated: Oct 15, 2013

Attachments submitted by DAGS:

- Kona Judiciary Complex – Comparison Chart of Sites C and F
- Kona Judiciary Complex – Land Issues Overview, Executive Summary
- Kona Judiciary Complex – Chronology of Events

Kona Judiciary Complex project, CHRONOLOGY OF EVENTS for Land Acquisition Phase
(updated October 17, 2013)

Chronology of Events:	
1990	State of Hawaii, Housing and Community Development Corporation of Hawaii (HCDCH) involved in master planning for formerly proposed Villages of La'i'opua residential developments.
1993 to 1999	U.S. Department of Interior, Fish and Wildlife Service (USFWS); State of Hawaii, Division of Forestry and Wildlife (DOFAW); and HCDCH worked together to develop an endangered species mitigation plan for listed and other rare plants that would be impacted by the proposed Villages of La'i'opua residential developments.
1999	HCDCH developed the "Mitigation Plan for Endangered Species at Villages of La'i'opua" that was approved by USFWS.
2004	Most of the lands set aside to HCDCH for the formerly proposed Villages of La'i'opua residential developments were subsequently transferred to the Department of Hawaiian Home Lands (DHHL). Thereafter, DHHL (in consultation with the USFWS) continued to implement the conservation management plan for some of the former Villages of La'i'opua residential development areas. For this purpose, DHHL expended or has allocated \$741,564 (total) toward construction of preserves, habitat restoration, and education and community outreach activities through 2014.
December 2011	<p>State of Hawaii, Department of Accounting and General Services (DAGS) prepared a Final Environmental Impact Statement (FEIS) document for the Kona Judiciary (JUD) Complex project that contained a Site Selection Study, which was accepted in March 2012. Seven (7) candidate sites were identified in the EIS process. [NOTE: On October 3, 2011, USFWS staff provided comments for the EIS document on the Kona Judiciary Complex project but did not mention any potential impacts the USFWS proposed critical habitat designations would have on five (5) of the seven (7) candidate sites.]</p> <p>At the end of the EIS process, the State of Hawaii JUD administration selected candidate Site G for the Kona Judiciary Complex project, which is directly south of the existing West Hawaii Civic Center (on the corner of Kealakehe Parkway and Ane Keohokalole Highway) because it had one of the highest evaluation ratings (tied with Site F), was on State owned land, and the Hawaii Housing and Finance Development Corporation (HHFDC; the State entity that replaced HCDCH) was willing to dedicate up to 10 acres for the Kona JUD Complex project [portion of</p>

Kona Judiciary Complex project, CHRONOLOGY OF EVENTS for Land Acquisition Phase
(updated October 17, 2013)

	<p>the TMK: (3)-7-04-020: 004 parcel; ~35 acres, total] if the Kona JUD Complex project returned to HHFDC at least 25 acres of “usable land” for future residential developments on the remnant portion of the TMK: (3)-7-04-020: 004 parcel and created two roadway access points for that HHFDC remnant parcel. Thereafter, preliminary due diligence field investigation work needed to be done to create a proposed ~10 acre parcel for the candidate G site.</p>
<p>October 17, 2012</p>	<p>Proposed Rules were published in Federal Register, Vol. 77, No. 201, Department of Interior, U.S. Fish and Wildlife Service (USFWS), 50 CRF, Part 17, [Docket No.: FWS-R1-ES-2012-0070: 4500030113] which outlined the USFWS proposal to list 15 species (13 plants, 1 insect and 1 crustacean) from Hawaii Island as endangered. In addition, the USFWS proposed to designate critical habitats, to the maximum extent prudent and determinable, concurrently with the endangered species listing determination. Since the proposed parcel for candidate Site G was within the USFWS proposed critical habitat designations in West Hawaii, the viability of candidate Site G became questionable and more intensive due diligence field investigation work needed to be done to determine if any endangered species were present within the proposed ~10 acre parcel for the candidate Site G.</p> <p>The USFWS proposed critical habitat designations impacted approximately 18,766 acres in West Hawaii and included an area identified as Unit 35 (which is located next to the existing West Hawaii Civic Center, the Kealakehe High, Intermediate and Elementary Schools, the Kona Police Station and the Kona Landfill). In addition, the proposed Unit 35 area is bounded on three (3) sides by Queen Kaahumanu Highway, Kealakehe Parkway and Ane Keohokalole Highway, which are major transportation corridors for mauka-makai and North-South travel.</p>
<p>January 2013</p>	<p>JUD authorized DAGS to concurrently initiate land acquisition phase work (under DAGS Job No. 11-21-7495) and preliminary design phase work (under DAGS Job No. 11-21-7499). DAGS started initial discussions on lot configuration and access to create a proposed Site G parcel within TMK: (3)-7-04-020: 004, which is State owned land that HHFDC is assigned the development rights. At that time, HHFDC required due diligence field investigation work that was going to be done to determine a configuration for a proposed Site G parcel to include comparable due diligence work for the TMK: (3)-7-04-020: 004 parcel (~35 acres, total) in entirety.</p>
<p>May 9, 2013</p>	<p>Sub-consultant firm AECOS conducted due diligence field survey work for endangered species on the TMK: (3)-7-04-020: 004 parcel in entirety. During the field survey work, AECOS located an <i>uhi uhi</i> tree within the ~35 acres of the</p>

Kona Judiciary Complex project, CHRONOLOGY OF EVENTS for Land Acquisition Phase
(updated October 17, 2013)

	<p>TMK: (3)-7-04-020: 004 parcel but outside of the ~10 acres for a proposed Site G parcel. Since an <i>uhi uhi</i> tree is an endangered species on the USFWS list, mitigative actions by the landowner will automatically be required for any development on the TMK: (3)-7-04-020: 004 parcel (regardless of the USFWS proposed critical habitat designations).</p>
<p>May 10, 2013</p>	<p>Preliminary discussions initiated with Department of Hawaiian Home Lands (DHHL) staff on the possible availability of land for candidate Sites C and D (respectively) that were identified in the FEIS document for the Kona JUD Complex project. cursory discussions were also initiated with Lanihau Property (landowner for a portion of the lands that would be needed to be combined to create a proposed Site D parcel).</p>
<p>May 15, 2013</p>	<p>USFWS staff conducted a public informational meeting and a Public Hearing on the proposed designation of approximately 18,766 acres in West Hawaii as critical habitats. USFWS staff also informed DAGS staff that any future development on the TMK: (3)-7-04-020: 004 parcel, also known as Village 9 of the formerly proposed Villages of La'i'opua residential developments, will automatically trigger the need to create a 100 acre to 150 acre preserve, pursuant to the previously approved endangered species mitigation plan for lands tied to formerly proposed Villages of La'i'opua residential developments (which would be in addition to any preserve requirements that would be triggered by the Federal nexus for lands within USFWS critical habitat designations).</p>
<p>May 16, 2013</p>	<p>Preliminary discussions initiated with Queen Liliuokalani Trust (QLT) staff on the possible availability of land for candidate Site F. While candidate Site F is within the Unit 35 area (a portion of the USFWS proposed critical habitat designations in West Hawaii), QLT staff indicated at the USFWS Public Hearing on May 15, 2013, that they were going to pursue a mitigation plan agreement with USFWS that would exempt/exclude ~302 acres of their lands in West Hawaii from the USFWS critical habitat designations. Thereafter, QLT staff indicated to DAGS and JUD staff that they have prior knowledge and experience with the execution of agreements with the USFWS for this purpose.</p>
<p>May 24, 2013</p>	<p>Formal report submitted by AECOS with findings from the field survey work conducted on a proposed Site G parcel for the Kona JUD Complex project that documented the presence of an <i>uhi uhi</i> plant within the TMK: (3)-7-04-020: 004 parcel (~35 acres, total).</p>

Kona Judiciary Complex project, CHRONOLOGY OF EVENTS for Land Acquisition Phase
(updated October 17, 2013)

<p>May 24, 2013</p>	<p>Follow up discussions commenced with DHHL staff on the possible availability of lands for candidate Sites C and D. Further evaluations for a proposed candidate Site D parcel was subsequently deferred because creation of a proposed Site D parcel will require negotiations to acquire land from two landowners (DHHL and Lanihau Property). Due diligence evaluations for candidate Site C continued because DHHL indicated its willingness to increase the size of the existing Site C parcel from ~7.5 acres to ~10 acres for the Kona JUD Complex project (as needed to make it comparable in size to the candidate Site F parcel). However, it is anticipated that increasing the size of the existing Site C parcel will require processing an “environmental assessment with finding of no significant impact (EA/FONSI)” document because the FEIS document for the Kona JUD Complex project identified candidate Site C as being only ~7.5 acres.</p>
<p>May 31, 2013</p>	<p>Site G was determined not to be a viable candidate site for the Kona JUD Complex project for the following reasons: the TMK: (3)-7-04-020: 004 parcel (~35 acres, total) is within the USFWS proposed critical habitat designations; conditions for HHFDC dedication of a portion of the TMK: (3)-7-04-020: 004 parcel could not be met because an <i>uhi uhi</i> tree was found within the TMK: (3)-7-04-020: 004 parcel; and USFWS staff expect any development within the TMK: (3)-7-04-020: 004 parcel will automatically trigger the need for the landowner to create a 100 acre to 150 acre preserve area (in addition to any preserve requirements that might result from the USFWS proposed critical habitats in West Hawaii). Thereafter, the JUD administration approved the DAGS request to proceed with concurrent due diligence site investigation work on alternative candidate Sites C and F for the Kona JUD Complex project.</p>
<p>June 18, 2013</p>	<p>Hawaiian Homes Commissions approved right of entry (ROE) to DAGS for due diligence site investigation work on alternative candidate Site C.</p>
<p>June 20, 2013</p>	<p>Follow up discussions initiated with QLT staff on possible availability of candidate Site F for the Kona JUD Complex project. At that time, DAGS and JUD staff were updated on QLT staff discussions with USFWS staff for ~302 acres of QLT lands in West Hawaii, which included the alternative candidate Site F parcel. It was noted that QLT staff were working on an mitigation plan agreement with USFWS staff for proposed set aside of up to ~50 acres of preserve lands which would be actively managed by QLT for the propagation of endangered species, in exchange for USFWS exemption/exclusion of the ~302 acres from the USFWS critical habitat designations in West Hawaii. QLT staff also indicated to DAGS and JUD</p>

Kona Judiciary Complex project, CHRONOLOGY OF EVENTS for Land Acquisition Phase
(updated October 17, 2013)

	staff their willingness to consider dedication of alternative candidate Site F with reversion clause for the Kona JUD Complex project.
June 2013	In response to public concerns, USFWS extended the public review comment period on its proposed critical habitat designations in West Hawaii by an additional 60 days (additional public review comments due by September 3, 2013). On August 7, 2013, USFWS staff conducted another Public Hearing on the proposed critical habitat designations in West Hawaii.
July 24, 2013	DHHL issued ROE to DAGS for due diligence site survey work (biological and archaeological) on alternative candidate Site C. QLT also issued ROE to DAGS for alternative candidate Site F.
July 25, 2013	DAGS authorized its consultant team staff to concurrently start due diligence site survey work for alternative candidate Sites C and F.
August 23, 2013	AECOS completed field survey work on lands for both alternative candidate Sites C and F. No endangered species were found on lands for either alternative candidate Sites C and F.
September 4, 2013	Sub-consultant firm Cultural Surveys Hawaii prepared a draft Archaeological Inventory Survey (AIS) that indicated field survey work found nothing of significance on lands for either alternative candidate Sites C and F.
October 2013	On October 15, 2013, the JUD administration approved selection of Site F (~10 acre QLT parcel at Makalapua Center) for the Kona JUD Complex project. Thereafter, QLT to issue a dedication agreement letter with reversion clause for the Site F parcel.