

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

February 27, 2015

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 COUNTY OF HAWAI'I FOR THE FEE ACQUISITION OF 3,128 ACRES OF LAND IN KAHUKU, KA'Ū, HAWAI'I, TAX MAP KEY NUMBER (3) 9-2-001:075

SUMMARY:

The Division of Forestry and Wildlife (DOFAW) secured \$1,214,000 in federal grant funds from the U.S. Fish and Wildlife Service Recovery Lands Acquisition program (USFWS-RLA) to (1) acquire approximately 3,128 acres of private land within the State Agricultural Land Use District at Kahuku, Ka'ū, Hawai'i from Sands of South Kona, LLC, and (2) add the acquired property to the County of Hawai'i's Open Space lands for protection and management in perpetuity. This acquisition will facilitate the conservation of endangered species and their habitats and the preservation of unique and important natural and cultural resources that characterize the Kahuku and Ka'ū areas.

The Kahuku Coastline property includes over one mile of wild ocean frontage along the remote southwestern shore of Hawai'i island. To the northwest, the property shares a 2.5 mile boundary with the DOFAW-managed Manukā Natural Area Reserve (the state's largest Natural Area Reserve, encompassing 25,550 acres on the southwest slope of Mauna Loa, extending from the shoreline mauka to 5,524 feet near Pu'uohohia), and adjoins a 5.4 acre private lot within the Conservation District at the shoreline. To the southeast, it shares a 3 mile boundary with a 1,115 acre parcel of private agricultural land, and to the north is a 3 mile boundary with several rural subdivisions that are located makai of Highway 11.

The purpose of this request is to authorize DOFAW to pass through \$1,214,000 in federal grant funds as a sub-grant to the County of Hawai'i for fee acquisition of the Kahuku Coastline property to secure its perpetual protection.

BACKGROUND:

Acquisition of the Kahuku Coastline property by the County of Hawai'i will provide landscape-level protection of the area's unique native ecosystems and high-quality habitats, including areas that are occupied by six listed or candidate endangered native species (Hawaiian monk seal, Hawksbill turtle, Green turtle, and three endemic anchialine pool shrimp), numerous and diverse endemic cave invertebrate species, and various migratory shorebirds. The acquisition will also enable public access and partnerships for preserving and managing cultural use areas (with historic trails, structures, and petroglyphs that are recommended for protection); kīpuka of lowland native dry forest; portions of the second longest lava tube cave known in the world (Kipuka Kanohina, 15.5 miles); recreational beaches; and a heavily used private access road that includes portions of the popular "Road to the Sea" and is the only vehicular access route into Manukā Natural Area Reserve.

DISCUSSION:

The Kahuku Coastline property is a key parcel within a broader landscape that provides important, contiguous habitat for the protection and recovery of rare and endangered species. The property is a historic target of development pressure that threatens the integrity of the area's natural and cultural landscape. The objectives of this acquisition are to (1) eliminate the threat of development by purchasing the Kahuku property, and (2) facilitate and foster partnerships with local community organizations, the County of Hawai'i, the State of Hawai'i, and federal agencies to:

- protect threatened and endangered sea turtle nesting areas and anchialine ponds;
- expand monitoring, management, and protection of Hawksbill turtle nesting habitat;
- create and implement plans for monitoring, management, and protection of other listed and candidate species found on property;
- protect natural and cultural resources; and
- manage compatible recreational and educational opportunities that promote conservation values and goals.

DOFAW will use federal grant funds to pay for the fee title to the property, only. Additional funding—including coverage of the 25% non-federal match requirement—comes from the State Legacy Land Conservation program (\$621,245 for Project 12-07; approved May 11, 2012, Item

C-4) and the County of Hawai'i Public Access, Open Space, and Natural Resources Preservation program (Council Resolution 49-11; April 20, 2011). After acquisition, the County will manage the property for native species and ecosystem protection in perpetuity, subject to deed restrictions imposed by the sponsoring government programs.

Today, public use of the Kahuku Coastline property is widely restricted and its natural resources are largely unmanaged. Conservation organizations face daunting access hurdles for biological surveys, threat control, and protection of important native resources. If the County of Hawai'i does not acquire the Kahuku Coastline property, a future private landowner could further prohibit public access, ignore natural resource management needs, and cause the irretrievable loss of high-quality natural habitat, native species, and cultural uses in this important area.

Chapter 343, Hawaii Revised Statutes (HRS): Environmental Review

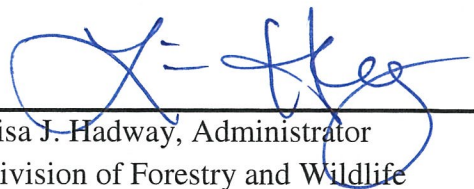
DOFAW advises that this sub-grant does not trigger HRS Chapter 343 requirements for environmental review because the pass through of federal funds for the fee acquisition of private property by a third party is not an action that proposes a "use," "amendment," "reclassification," "construction," "expansion," "modification," "unit," "facility," "landfill," or "refinery" for which an environmental assessment is required under HRS section 343-5(a).

RECOMMENDATION:

The Department recommends that the Board:

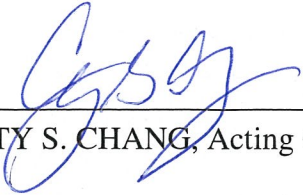
1. Delegate to the Chairperson the authority to develop and execute an Agreement to Subgrant between the County of Hawai'i and the Department that will then provide federal Recovery Land Acquisition grant funds to the County for the acquisition of fee title to the Kahuku Coastline property, subject to review and approval of the Attorney General and such other terms and conditions as the Chairperson may approve.

Respectfully Submitted,



Lisa J. Hadway, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



CARTY S. CHANG, Acting Chairperson

Attachments:

I: Draft Agreement to Subgrant

AGREEMENT TO SUBGRANT

Between:

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

This Agreement to Subgrant ("Agreement") entered into on _____, 2015 (the "Effective Date") by and between THE COUNTY OF HAWAI'I, a municipal corporation of the State of Hawai'i ("THE COUNTY"), whose principal place of business is 25 Aupuni Street, Hilo, HI 96720, 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.

RECITALS

WHEREAS, the U.S. Department of the Interior, acting through its Fish and Wildlife Service ("FWS") and DLNR have entered into a Federal Recovery Land Acquisition Grant Agreement Number F12AP01107 ("Grant Agreement") to facilitate the acquisition of fee title to real property identified in said Grant Agreement;

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

WHEREAS, THE COUNTY is a local agency whose purpose includes to conserve and protect all natural and cultural resources for the benefit of present and future generations;

WHEREAS, THE COUNTY intends to purchase fee title to the Kahuku Coastal Property (the "Property"), situate at Kahuku, County of Hawai'i, State of Hawai'i, consisting of 3,127.95 acres, more or less, and bearing tax map key number ("TMK No.") (3) 9-2-001:075, as more particularly described in Exhibit A;

WHEREAS, THE COUNTY and DLNR desire that the Property be protected in perpetuity as part of the Kahuku Coastline Protection and Management Project, as a conservation area for native wildlife habitat; and

NOW THEREFORE, DLNR and THE COUNTY agree to a subgrant of the FWS grant funds to THE COUNTY in accordance with the following terms and conditions. DLNR hereby agrees to subgrant to THE COUNTY an amount not to exceed the sum of One Million Two Hundred Seventeen Thousand One Hundred Fourteen and No/100 Dollars (\$1,217,114.00) ("Grant Funds"), subject to the terms and conditions of this Agreement to Subgrant.

A. PURPOSE OF SUBGRANT

DLNR is making this subgrant, using funds provided to DLNR by FWS, for the purpose of facilitating THE COUNTY's acquisition of fee title to the Property comprising 3,127.95 acres, as more particularly described in Exhibit A, which is attached hereto and made a part hereof by this reference.

THE COUNTY agrees that if the Grant Funds are received by it and it acquires fee title to the Property, such acquisition will be for the purposes of protecting the Property in perpetuity; managing endangered species in coastal areas and anchialine ponds; expanding monitoring, management, and protection of Hawksbill turtle nesting habitat; creating and implementing plans for monitoring, management, and protection of other listed and candidate species; protecting natural and cultural resources; managing compatible recreational and educational opportunities that promote conservation values and goals; and the provisions of Recovery Land Acquisition Agreement Number F12AP01107, as more particularly described in Exhibit B.

B. CONDITIONS OF SUBGRANT

1. THE COUNTY agrees to purchase and hold fee title to property identified as TMK No. (3) 9-2-001:075, more particularly described in Exhibit A, for a purchase price not to exceed Two Million Six Hundred Thousand and No/100 Dollars (\$2,600,000.00). The purchase price of the Property shall not exceed the market value of the Property. The anticipated closing date for this purchase is on or before September 30, 2015.

2. DLNR is making this subgrant to THE COUNTY using funds provided to DLNR by FWS by Grant Agreement Number F12AP01107 in an amount not to exceed One Million Two Hundred Seventeen Thousand One Hundred Fourteen and No/100 Dollars (\$1,217,114) for purchase of fee title to the Property, such funds to be made available for deposit into escrow five business days prior to the closing date.

3. As owner of THE PROPERTY, THE COUNTY shall:

- a. Create a long-term Management Plan for THE PROPERTY, consisting of an endangered species and habitat protection program that addresses key threats—which include predators, habitat alteration and fragmentation, development pressure, alien species, trash, human waste, climate change, and sea level rise—while providing continued access to the shoreline for fishing, hiking, and recreational opportunities;
- b. Secure funding for protecting and managing endangered species and their habitat;
- c. Implement the Management Plan; and
- d. Manage, conduct, and oversee the maintenance efforts specified in the Management Plan.

4. DLNR shall be given opportunity to review and comment on the Management Plan as it is being developed, and appropriate DLNR staff shall be allowed to participate in the planning process. The DOFAW Program Administrator or the Administrator's designee shall have the right of final approval of the Management Plan.
5. At the request of DLNR and FWS, THE COUNTY shall provide DLNR and FWS reasonable access to THE PROPERTY to assess compliance with the terms and conditions contained herein.
6. THE COUNTY shall not transfer, mortgage, hypothecate, or pledge fee title to THE PROPERTY or any portion thereof without prior written approval of the State of Hawai'i Board of Land and Natural Resources ("BLNR").
7. In the event that THE COUNTY is unable to continue operations or is otherwise unable to manage THE PROPERTY, subject to the approval of the BLNR, fee title to THE PROPERTY shall be conveyed by THE COUNTY to another agency, DLNR, or an appropriate conservation organization which will continue to manage the Property for the conservation values specified in the Grant Agreement and in the recorded Deed to THE COUNTY. Any conveyance to DLNR shall be done *gratis* and THE COUNTY shall be responsible for any and all fees and costs associated with the conveyance. Furthermore, any transfer of the Property shall comply with FWS Recovery Land Acquisition Grant program rules.
8. Prior to closing, either party may terminate this Agreement to Subgrant for any reason or for no reason, by providing the other party with a minimum of thirty (30) days' written notice of such termination.
9. This Agreement to Subgrant is contingent upon DLNR's receipt of funds from the FWS.
10. After close of escrow for the acquisition of fee title to 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.
11. DLNR must provide the FWS with interim performance reports and a final performance report. THE COUNTY shall provide to DLNR, within 30 days of request, all necessary documentation related to FWS Recovery Land Acquisition Grant interim and final performance reports. Reporting requirements include but are not limited to the following:
 - a. Summary of Land Costs – THE COUNTY 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 – THE COUNTY 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 fee title to 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, THE COUNTY must provide DLNR with copies of the following:

For Fee Title:

- Copy of Recorded Deed(s) and copy of Notice(s) of Grant Agreement, with Document Numbers.
- Title Vesting Certificate or Title Insurance Policy.
- Property or Plat Map, Area Map, and Location Map.

13. 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 THE COUNTY: County of Hawai'i
Property Management Division
25 Aupuni Street, Suite 1101
Hilo, Hawai'i 96720

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

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

14. THE COUNTY shall defend, indemnify, and hold harmless the U.S. Fish and Wildlife Service and the State of Hawai'i, DLNR, and BLNR, their officers, employees, and agents, from and against any and all claims, demands, liabilities, suits, causes of action, judgments, costs, and expenses (including attorneys' fees) for loss, injury, death, or damage, including without limitation, claims for property damage, personal injury, death of persons, whenever such damage, injury, loss, or death arises out of, or is connected with, related to, or arising from, this Agreement to Subgrant or fee title to THE PROPERTY (TMK No. (3) 9-2-001:075, more particularly described in Exhibit A). The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement to Subgrant.

15. The interpretation and performance of this Agreement to Subgrant shall be governed by the laws of the State of Hawai'i.

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

17. THE COUNTY 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.

18. THE COUNTY and DLNR agree that nothing in this Agreement to Subgrant should be construed as creating any type of partnership or joint venture arrangement or principal and agent relationship between them.

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

20. Each party has thoroughly reviewed and revised this Agreement to Subgrant 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 to Subgrant.

IN WITNESS WHEREOF the COUNTY 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

APPROVED AS TO FORM:

Deputy Attorney General

STATE OF HAWAI'I
DEPARTMENT OF LAND AND
NATURAL RESOURCES

By _____
Chairperson
Board of Land and Natural Resources

COUNTY OF HAWAI'I

By _____
William P. Kenoj
Its Mayor _____*
(Title)

RECOMMEND APPROVAL:

DEANNA SAKO
Finance Director
County of Hawai'i

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel
County of Hawai'i

*Evidence of authority of the County's representative to sign this Agreement for the County must be attached.

SUBGRANTEE'S ACKNOWLEDGMENT

STATE OF HAWAII)
) SS.
COUNTY OF _____)

On this _____ day of _____, 2015, 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)

SCOPE OF PERFORMANCE

Project Description

THE COUNTY shall use funds from the Recovery Land Acquisition Grant to acquire fee title to 3,127.95 acres of land, more or less, identified as TMK No. (3) 9-2-001:075 and more particularly described in Exhibit A. Real property for which fee title is acquired with Recovery Land Acquisition Grant funding from the U.S. Fish and Wildlife Service shall be held and managed in a manner designed to protect the property's resource values in perpetuity.

Performance

THE COUNTY is required to do the following:

1. THE COUNTY agrees to purchase and forever hold fee title to real property identified as TMK No. (3) 9-2-001:075, more particularly described in Exhibit A, for a purchase price not to exceed Two Million Six Hundred Thousand and No/100 Dollars (\$2,600,000.00). The purchase price of the Property shall not exceed the market value of the Property. The anticipated closing date for this purchase is on or before September 30, 2015.
2. As owner of fee title to the Property, THE COUNTY shall:
 - a. Create a Management Plan for THE PROPERTY, consisting of a native species and ecosystem protection program that addresses key threats, which include ungulates and invasive species;
 - b. Secure funding for native species and ecosystem protection;
 - c. Implement the Management Plan for such purposes; and
 - d. Manage, conduct, and oversee the maintenance efforts specified in the Management Plan.
3. DLNR shall be given opportunity to review and comment on the Management Plan as it is being developed, and appropriate DLNR staff shall be allowed to participate in the planning process. The DOFAW Program Administrator or the Administrator's designee shall have the right of final approval of the Management Plan.
4. At the request of DLNR and FWS, THE COUNTY shall provide DLNR and FWS reasonable access to THE PROPERTY to assess compliance with the terms and conditions contained herein.

5. THE COUNTY shall not transfer, mortgage, hypothecate, or pledge fee title to THE PROPERTY or any portion thereof without prior written approval of the State of Hawai'i Board of Land and Natural Resources ("BLNR").

6. In the event that THE COUNTY is unable to continue operations or is otherwise unable to manage THE PROPERTY, subject to the approval of the BLNR, fee title to THE PROPERTY shall be conveyed by THE COUNTY to another agency, DLNR, or an appropriate conservation organization which will continue to manage the Property for the conservation values specified in the Grant Agreement and in the recorded Deed to THE COUNTY. Any conveyance to DLNR shall be done *gratis* and THE COUNTY shall be responsible for any and all fees and costs associated with the conveyance. Furthermore, any transfer of the Property shall comply with FWS Recovery Land Acquisition Grant program rules.

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

8. This Agreement to Subgrant is contingent upon DLNR's receipt of funds from FWS.

9. After close of escrow for the acquisition of fee title to 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.

10. DLNR must provide the FWS with interim performance reports and a final performance report. THE COUNTY shall provide to DLNR, within 30 days of request, all necessary documentation related to FWS Recovery Land Acquisition Grant interim and final performance reports. Reporting requirements include but are not limited to the following:

a. Summary of Land Costs – THE COUNTY 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 – THE COUNTY 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 fee title to 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, THE COUNTY must provide DLNR with copies of the following:

- Copy of Recorded Deed(s) and copy of Notice(s) of Grant Agreement, with Document Numbers
- Title Vesting Certificate or Title Insurance Policy
- Legal Description of the Property.

11. THE COUNTY shall comply with the terms and conditions of the Recovery Land Acquisition Grant Agreement Number F12AP01107, all FWS Recovery Land Acquisition Grant program rules, and all terms and conditions set forth in the General Conditions for Recovery land Grant Agreements, and the Notice of Federal Assistance.

12. 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 THE COUNTY: County of Hawai'i
Property Management Division
25 Aupuni Street, Suite 1101
Hilo, Hawai'i 96720

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

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

13. THE COUNTY shall defend, indemnify, and hold harmless the U.S. Fish and Wildlife Service and the State of Hawai'i, DLNR, and BLNR, their officers, employees, and agents, from and against any and all claims, demands, liabilities, suits, causes of action, judgments, costs, and expenses (including attorneys' fees) for loss, injury, death, or damage, including without limitation, claims for property damage, personal injury, death of persons, whenever such damage, injury, loss, or death arises out of, or is connected with, related to, or arising from, this Agreement to Subgrant or fee title to THE PROPERTY (TMK No. (3) 9-2-001:075, more particularly described in Exhibit A). The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement to Subgrant.

14. The interpretation and performance of this Agreement to Subgrant shall be governed by the laws of the State of Hawai'i.

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

16. THE COUNTY 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.

17. THE COUNTY and DLNR agree that nothing in this Agreement to Subgrant should be construed as creating any type of partnership or joint venture arrangement or principal and agent relationship between them.

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

19. Each party has thoroughly reviewed and revised this Agreement to Subgrant 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 to Subgrant.

TIME SCHEDULE

This Agreement to Subgrant shall be in effect beginning _____, 2015. THE COUNTY shall complete acquisition of the Property and record the conveyance no later than September 30, 2015. If any of the obligations required to be performed in this Agreement to Subgrant are not completed within the time stated, THE COUNTY may be required to return all funds previously received by it pursuant to this Agreement to Subgrant.

COMPENSATION AND PAYMENT SCHEDULE

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

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

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

The request for payment must be received by DLNR's Division of Forestry and Wildlife by _____. A maximum payment of ONE MILLION TWO HUNDRED AND SEVENTEEN THOUSAND ONE HUNDRED AND FOURTEEN DOLLARS (\$1,217,114.00) shall be made upon:

- i. THE COUNTY's completion of the Checklist for Acquisition Subgrants attached hereto as Exhibit B;
 - ii. THE COUNTY's compliance with all DLNR and FWS policies and practices; and
 - iii. DLNR's receipt of an original invoice and copies of all bills, invoices, receipts, and a contract of sale.
- b) Within thirty (30) days of acquiring fee title to the Property, but no later than September 30, 2015, or the end date of the extended FWS grant performance period, THE COUNTY shall submit to the DLNR a copy of the recorded conveyance document transferring fee title to the Property to THE COUNTY.
- c) The total amount awarded under this Agreement to Subgrant will be dependent upon the project being completed with no substantive changes to the Recovery Land Acquisition 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 County of Hawai‘i, the undersigned does declare as follows:

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

THE COUNTY understands that the Agreement to Subgrant to which this document is attached is voidable on behalf of the DLNR if this Agreement to Subgrant was entered into in

violation of any provision of chapter 84, Hawai'i 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 DLNR.

THE COUNTY:

By _____

(Signature)

Print Name _____

Print Title _____

Name of Subgrantee _____

Date _____

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

1. Recordkeeping Requirements. THE COUNTY 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 THE COUNTY 's performance under this Agreement to Subgrant. THE COUNTY shall retain all records related to THE COUNTY's performance under this Agreement to Subgrant for at least three (3) years after the date of submission of THE COUNTY's Final Project Report.
2. Audit of THE COUNTY. THE COUNTY shall allow the DLNR 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 to Subgrant, including any employee or agent of THE COUNTY, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
4. Inspection of Property. THE COUNTY shall permit the DLNR 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 Subgrant.
5. Conflicts of Interest. THE COUNTY represents that neither THE COUNTY , nor any employee or agent of THE COUNTY, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with THE COUNTY 's performance under this Agreement to Subgrant.
6. Compliance with Laws. THE COUNTY shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect THE COUNTY's performance under this Agreement to Subgrant.
7. Indemnification and Defense. THE COUNTY shall defend, indemnify, and hold harmless the U.S. Fish and Wildlife Service and the State of Hawai'i, DLNR, and BLNR, their officers, employees, and agents, from and against any and all claims, demands, liabilities, suits, causes of action, judgments, costs, and expenses

(including attorneys' fees) for loss, injury, death, or damage, including without limitation, claims for property damage, personal injury, death of persons, whenever such damage, injury, loss, or death arises out of, or is connected with, related to, or arising from, this Agreement to Subgrant or fee title to the Property. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement to Subgrant.

8. Cost of Litigation. In case the DLNR and/or FWS shall, without any fault on its part, be made a party to any litigation commenced by or against THE COUNTY in connection with this Agreement to Subgrant, THE COUNTY shall pay all costs and expenses incurred by or imposed on the DLNR 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 to Subgrant, THE COUNTY is an "independent contractor," with the authority and responsibility to control and direct the performance required under this Agreement to Subgrant; however, the DLNR and FWS shall have a general right of inspection to determine whether, in the DLNR's and/or FWS's opinion, THE COUNTY is in compliance with this Agreement to Subgrant.
 - b. THE COUNTY and THE COUNTY's employees and agents are not, by reason of this Agreement to Subgrant, agents or employees of the DLNR and/or FWS for any purpose, and THE COUNTY, and THE COUNTY's employees and agents shall not be entitled to claim or receive from the DLNR or FWS any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state and federal employees.
 - c. THE COUNTY shall be responsible for the accuracy, completeness, and adequacy of THE COUNTY's performance under this Agreement to Subgrant. Furthermore, THE COUNTY intentionally, voluntarily, and knowingly assumes the sole and entire liability to THE COUNTY's employees and agents, and to any individual not a party to this Agreement to Subgrant, for all loss, damage, or injury caused by THE COUNTY, or THE COUNTY's employees or agents, in the course of their employment.
 - d. THE COUNTY shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by THE COUNTY by reason of this Agreement to Subgrant, including but not limited to employment related fees, assessments, and taxes. THE COUNTY also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement to

Subgrant.

- e. THE COUNTY shall obtain a tax clearance certificate from the Director of Taxation, State of Hawai'i, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against THE COUNTY have been paid and submit the same to the DLNR prior to commencing any performance under this Agreement to Subgrant.
 - f. THE COUNTY is responsible for securing all employee-related insurance coverage for THE COUNTY and THE COUNTY'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 Agreement to Subgrant shall be made only upon submission by THE COUNTY of (i) original invoices specifying the amount due and certifying that it has completed or will complete performance in accordance with the Agreement to Subgrant, and (ii) tax clearances from the Hawaii State Department of Taxation and the Internal Revenue Service.
11. Publicity.
- a. THE COUNTY shall not refer to the DLNR and/or FWS, or any office, agency, or officer thereof, or any state employee, in any of THE COUNTY's brochures, advertisements, or other publicity of THE COUNTY without written permission from the Public Information Office of the State of Hawai'i, Department of Land and Natural Resources and the FWS. All media contacts with THE COUNTY about the subject matter of this Agreement to Subgrant shall be referred to the State of Hawai'i, Department of Land and Natural Resources, Division of Forestry and Wildlife and the FWS.
 - b. THE COUNTY consents to the DLNR and FWS's use of THE COUNTY's name, photograph, image, or likeness in brochures, advertisements, or other publicity relating to the Recovery Land Acquisition Program and other conservation related programs. The DLNR 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 DLNR and/or FWS.
12. Confidentiality of Material.
- a. All materials given to or made available to THE COUNTY by virtue of

this Agreement to Subgrant, which are identified as proprietary or confidential information, will be safeguarded by THE COUNTY and shall not be disclosed to any individual or organization without the prior written approval of the DLNR.

- b. All information, data, or other material provided by THE COUNTY to the DLNR shall be subject to the Uniform Information Practices Act, chapter 92F, Hawai'i Revised Statutes.

13. Suspension and Termination of Agreement.

- a. The DLNR reserves the right at any time and for any reason to suspend this Agreement to Subgrant for any reasonable period, upon written notice to THE COUNTY. Upon receipt of said notice, THE COUNTY shall immediately comply with said notice and suspend all performance under this Agreement to Subgrant at the time stated.
- b. If, for any cause, THE COUNTY breaches this Agreement to Subgrant by failing to satisfactorily fulfill in a timely or proper manner THE COUNTY's obligations under this Agreement to Subgrant or by failing to perform any of the promises, terms, or conditions of this Agreement to Subgrant, 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 DLNR, the DLNR shall have the right to terminate this Agreement to Subgrant by giving written notice to THE COUNTY of such termination at least seven (7) calendar days before the effective date of such termination. Furthermore, the DLNR may terminate this Agreement to Subgrant without statement of cause at any time by giving written notice to THE COUNTY of such termination at least thirty (30) calendar days before the effective date of such termination.
- c. Upon termination of the Agreement to Subgrant, THE COUNTY, within thirty (30) calendar days of the effective date of such termination, shall compile, and submit in an orderly manner to the DLNR an accounting of the work performed up to the date of termination. In such event, THE COUNTY shall be paid for the actual cost of the services rendered, if any, but in no event more than the total compensation payable to THE COUNTY under this Agreement to Subgrant.
- d. If this Agreement to Subgrant is terminated for cause, THE COUNTY shall not be relieved of liability to the DLNR for damages sustained because of any breach by THE COUNTY of this Agreement to Subgrant. In such event, the DLNR may retain any amounts which may be due and owing to THE COUNTY until such time as the exact amount of damages due to the DLNR from THE COUNTY has been determined. The DLNR may also set off any damages so determined against the amounts retained.

14. Disputes. No dispute arising under this Agreement to Subgrant may be sued upon by THE COUNTY until after THE COUNTY'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 THE COUNTY's written request whichever comes first. While the CHAIRPERSON considers THE COUNTY's written request, THE COUNTY agrees to proceed diligently with the performance necessary to complete the proposed project unless otherwise instructed in writing by the CHAIRPERSON.
15. State Remedies. THE COUNTY 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 THE COUNTY fails to comply with any of the other requirements, provisions, or conditions set forth in this Agreement to Subgrant, that the DLNR and/or FWS may refuse to make further payments to THE COUNTY or may seek reimbursement for payments made to THE COUNTY under this Agreement to Subgrant. In addition to the remedies set forth above, the DLNR 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 Agreement to Subgrant permitted by this Agreement to Subgrant shall be made by written amendment to this Agreement to Subgrant, signed by THE COUNTY and the DLNR.
17. Notices. Any written notice required to be given by a party to this Agreement to Subgrant 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, Hawai'i or to THE COUNTY at THE COUNTY's place of business as indicated in the Agreement to Subgrant. A notice shall be deemed to have been received at the time of actual receipt. THE COUNTY is responsible for notifying the CHAIRPERSON in writing of any change of address.
18. Waiver. The failure of the DLNR to insist upon the strict compliance with any term, provision, or condition of this Agreement to Subgrant shall not constitute or be deemed to constitute a waiver or relinquishment of the DLNR's right to enforce the same in accordance with this Agreement to Subgrant. The fact that the DLNR specifically refers to one section of the Hawai'i Revised Statutes, and does not include other statutory sections in this Agreement to Subgrant shall not constitute a waiver or relinquishment of the DLNR's rights or THE COUNTY's obligations under the statutes.
19. Severability. In the event that any provision of this Agreement to Subgrant 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

Agreement to Subgrant.

20. Governing Law. The validity of this Agreement to Subgrant and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement to Subgrant, shall be governed by the laws of the State of Hawai'i. Any action at law or in equity to enforce or interpret the provisions of this Agreement to Subgrant shall be brought in a state court of competent jurisdiction in Honolulu, Hawai'i.
21. Survival. THE COUNTY's obligations and the DLNR's remedies shall survive the funding of the grants and the acquisition of fee title to the Property by THE COUNTY.
22. Entire Contract. This Contract sets forth all of the Agreement's, conditions, understandings, promises, warranties, and representations between the DLNR and THE COUNTY. This Agreement to Subgrant supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall no further be in force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the DLNR and THE COUNTY other than as set forth or as referred to herein.

Exhibit A - Description of the Kahuku Coastal Property

ACM Consultants, Inc.

3,127.95-acre Acres at Kahuku, Ka'u, Hawaii

A-11. LEGAL DESCRIPTION

According to the Preliminary Title Report prepared by Title Guaranty of Hawaii, dated May 13, 2009, the subject's legal description is as follows:

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 2791 to C. C. Harris) situate, lying and being at approximately 20,000 feet southwesterly of Hawaii Belt Road (F.A.P. No. F-011-1(2)) at Kahuku, Ka'u, Island and County of Hawaii, State of Hawaii, being LOT 1, and thus bounded and described as per survey dated September 10, 1986, to-wit:

Beginning at the easternmost corner of this parcel of land, being also the northernmost corner of Lot 2 of this subdivision and a point on the southwesterly boundary of Lot 10, Block 23 of Hawaiian Ocean View Ranchos, Increment 3 (File Plan 1183), the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU O KAMA OA" being 15,609.92 feet south and 8,360.53 feet west and running by azimuths measured clockwise from true South:

1. 59° 42' 22" 15,000.39 feet along Lot 2 of this subdivision and along the remainder of Grant 2791 to C. C. Harris to a point;

Thence, for the next three (3) courses following along the shoreline the direct azimuths and distances being:

2. 104° 56' 30" 680.70 feet to a point;
3. 105° 29' 18" 4,450.38 feet to a point;
4. 107° 53' 20" 520.40 feet to a point;
5. 197° 53' 20" 13,552.10 feet along Government Land at Manuka to a point;
6. 295° 43' 40.38 feet along Lot 7, Block Z-7 of Kona Gardens Subdivision and along the remainder of Grant 2791 to C. C. Harris to a point;
7. 17° 53' 20" 552.68 feet along the remainder of Grant 2791 to C. C. Harris to a point;
8. 221° 32' 506.72 feet along the remainder of Grant 2791 to C. C. Harris to a point;

9. 295° 43'	4,094.64	feet along the remainder of Grant 2791 to a point;
10. 205° 43'	60.00	feet along the remainder of Grant 2791 to C. C. Harris to a point;
11. 295° 43'	11,447.07	feet along Lot 21, Road Lot A, Lot 22 of Keone's Hawaiian Ranchos No. 2 (File Plan 1006); Lot 155, Kona Kai Blvd. and Lot 154 of Kula Kai View Estates, Increment II (File Plan 1149); Lots 21, 24 (Road Lot) and 22 of Kona South Estates, Unit III (File Plan 953); Lots 21, 24 (Road Lot) and 22 of Kona South Estates, Increment IV (File Plan 953); Lot 8, Block 11, Prince Kuhio Blvd., Lots 10 and 9 of Block 23, Kahili Blvd. and Lot 7, Block 34 of Hawaiian Ocean View Ranchos, Increment 1 (File Plan 1125); Lot 7, Block 12, Maikai Blvd., Lots 10 and 9, Block 23, Alii Blvd., and Lot 7, Block 34 of Hawaiian Ocean View Ranchos, Increment 2 (File Plan 1145); Lot 7, Block 12, Hakulani Blvd. and Lot 10 Block 23 of Hawaiian Ocean View Ranchos, Increment 3 (File Plan 1183) to the point of beginning and containing an area of 3,127.950 acres, more or less.

The subject is further described on the State Tax Map as:

Division 3, Zone 9, Section 2, Plat 01, Parcel 075

Helping Habitat for Hawaiian Hawksbill Turtles - Kahuku Coastline Protection and Management

PROJECT STATEMENT

The Division of Forestry and Wildlife (DOFAW) is proposing the acquisition of 3,128 acres of coastal lands on the island of Hawai'i under the Recovery Land Acquisition Program. This parcel, known as the Kahuku coastal property, is located on the southern coast of the island of Hawai'i, the southernmost island of the Hawaiian Island chain. The Kahuku coastal property extends over more than a mile of coastline which includes beaches that are important habitat for three recovery Priority 1 endangered species. The Hawaiian monk seal (*Monachus schauinslandi*) uses beaches along the coastline to haul out and bask as well as deliver and rear pups. Hawksbill turtles (*Eretmochelys imbricata*) have been documented nesting at a beach on this property known as Humuhumu Point. Threatened green turtles (*Chelonia mydas*) use the coastal habitats for off shore foraging areas and resting.



Sandy beach (Kahuku)

Anchialine habitats in the Hawaiian Islands are the only ecosystems of this type found within the United States. The Kahuku coastal property includes an anchialine pool complex, containing important habitat for native marine invertebrates, fish, and unique native crustaceans, including endemic species of anchialine pool shrimp (*Halocaridina rubra*) including three candidate species for listing as threatened or endangered under the Endangered Species Act - *Metabetaeus lohena*, *Palaemonella burnsi* and *Procaris hawaiiana*. The coastline provides habitat for migratory shorebirds including the Pacific golden plover (*Pluvialis fulva*), ruddy turnstone (*Arenaria interpres*), black-crowned night heron (*Nycticorax nycticorax*), and

wandering tattler (*Heteroscelus incanus*). The subsurface of the property contains an extensive lava-tube cave system which has a high diversity of endemic invertebrate cave-adapted species.

The high ecological value of this coastline has encouraged conservation actions in this area. Manukā Natural Area Reserve (NAR), located immediately to the west of the subject parcel, was formally established in 1983 to protect the area as one of the best remaining ecosystems in the State. At 25,550 acres this Reserve is the largest NAR in the State and is the site of on-going conservation efforts by professional resource managers. The 2011 Hawaii State Legislative session established the South Kona Wilderness Area, an additional 10,000 acres of coastline adjacent to the NAR and subject parcel, to preserve the visual, cultural, historical and biological resources of this remote coastline and protect this area from development.

The goal of this project is to purchase the Kahuku coastal property and add it to the County of Hawaii's Open Space lands where it will be protected and managed in perpetuity. Acquisition of the parcel will provide important habitat for the protection and recovery of endangered species, provide landscape-level protection of the area's unique ecosystems and habitats, prohibit commercial developments that are encroaching on this remote coastline, and allow for an increase in protected "recovery" lands due to habitat modification associated with climate change and sea level rise.

NEED: Why is the project being undertaken?

The Kahuku coastal property is a key coastal parcel in a broader landscape that provides important habitat for the protection and recovery of rare and endangered species (see Biological Inventory Table). The parcel and surrounding lands have been and continue to be subject to severe development pressures, which would inevitably have an adverse impact on the resident native species and habitats.

The subject property was proposed to be developed as a resort which was to include a 400 slip marina, 275 luxury hotel units, over 1,000 residential units and an 18 hole golf course. After litigation over the approval of this development and bankruptcy of the original applicant, the development proposal was withdrawn in 1995. In 2009, the owners of the adjacent property to the east proposed development of over 2,000 agricultural and residential lots, up to 950 hotel units, a 36 hole golf course and related activities, including an airport or helipad, medical center and commercial/industrial activities. The owners are currently seeking the necessary land use permits to allow implementation of this project. If approved, it would provide a precedent for the development of these remote coastal properties, increasing the likelihood of development of the Kahuku coastal property

One of the most important species the proposed acquisition will protect is the hawksbill turtle. Hawksbill turtles are the rarest sea turtle in the Pacific Ocean and are classified as critically endangered on the International Union for Conservation of Nature and Natural Resources Red List as well as a U.S. federally listed endangered species. The Recovery Plan for U.S. Pacific Populations of the Hawksbill Turtle (National Marine Fisheries Service and U.S. Fish and Wildlife Service. 1998) identifies one of the main threats to the recovery and conservation of this stock as loss of nesting and foraging habitat. In the marine environment, hawksbills are subject to the pressures of nearshore tourist development such as resorts, marinas, and aquatic recreational activities. Due to predation, alterations to nesting habitat, coastal development, and numerous other limiting factors such as climate change, the recovery and survival of this species requires immediate management, monitoring, and research actions. The Recovery Plan notes that the most valuable land on most Pacific islands is often located along

the coastline, particularly when it is associated with a sandy beach. In Hawai'i construction and development along coastlines occurs at a rapid rate resulting in a continued loss of sea turtle nesting areas. The Recovery Plan recommends (recovery outline priority 1.2) protection and management of nesting habitat to ensure future generations of the species.

The Hawai'i Island Hawksbill Turtle Recovery Project (HIHTRP) is a partnership which includes the National Park Service, National Oceanic Administration's (NOAA) National Marine Fisheries Service and U.S. Fish and Wildlife Service. HIHTRP manages Hawksbill nesting habitat on Federal, State and Private lands on the Island of Hawaii. The HIHTRP originally confirmed the beach at Humuhumu Point on the Kahuku coastal property as nesting habitat and stressed the need to partner with county, state and federal and other agencies to acquire and protect the parcel. Turtles use multiple nesting sites along a coastline. Therefore, it is imperative that as much of the coastline as possible is managed in compatibility with nesting sea turtles. As a known nesting site, the subject parcel plays a critical role in the life cycle of the hawksbill. In addition, the acquisition of the parcel decreases habitat fragmentation as it is adjacent to existing protected coastline that contains some of the most important nesting beaches for the hawksbill.

The Hawaiian Monk Seal is one of the most endangered marine mammals in the world. The Kahuku property is important habitat for resting, pupping and nursing, and nearshore marine areas provide foraging habitat. The National Marine Fisheries Service 2007 Recovery Plan for the Hawaiian Monk Seal identifies the conservation of monk seal habitat in the Main Hawaiian Islands (MHI) as a critical aspect of recovery for this species. Increasing numbers of monk seals in the MHI are very important for recovery of the species if another functional subpopulation can be added to the overall metapopulation.



Hawaiian monk seal resting on beach at Humuhumu Point, 2010.

Long-term protection of marine habitat is a priority of the Recovery Plan for the U.S. Pacific Populations of the Green Turtle (National Marine Fisheries Service and U.S. Fish and Wildlife Service). Important marine habitats for the green sea turtle "... may include hatchling, juvenile and adult foraging areas and migratory range for all age classes." The southern coast of the island of Hawai'i is a well known resting and foraging area for the green sea turtle. The Plan identifies specific threats to the green turtle which include "... the loss of foraging habitats to nearshore development in the MHI (e.g., marina construction, artificial beach development, siltation from agricultural runoff, contamination of forage areas from toxic spills, resort

development, and increased vessel traffic), entanglement and ingestion of marine debris, incidental take in sport and commercial fisheries, poaching, and proliferation of disease (fibropapillomas) throughout the turtle population." The acquisition of the parcel will directly prevent impacts caused by resort or home development and thus prevent loss of additional foraging and resting habitats of the green turtle.

The anchialine pool complex on the parcel is important habitat for four species of endemic shrimp including three candidate species for listing as threatened or endangered under the Endangered Species Act, as well as other native marine invertebrates and fish. The pools on the parcel are some of the few remaining areas that have anchialine habitats that are in near pristine conditions. However, pools on the parcel are threatened by alien species, trash, human waste, and alteration. Acquisition of the parcel will provide needed protection and management of these pools.

The Kipuka Kanohina Cave System is currently ranked as the second longest lava tube cave known in the world. Nearly half of this complex network of interconnecting braids lies beneath the parcel being considered for purchase. At least ten cave invertebrate species have been collected or observed in the lava tubes in this area. These species are disappearing in areas in which subdivisions are altering the surface and removing native trees. Protection of the Kahuku coastal property will help ensure these endemic species will survive into the future.

Kahuku Coastal Property Biological Inventory						
Type	Scientific Name	Common Name	Biological Status	Federal Status	Recovery Priority Number	Recovery Plan
Aquatic Mammal	<i>Monachus schauinslandi</i>	Hawaiian Monk Seal	Endemic	Endangered	1	Y
Aquatic Reptile	<i>Eretmochelys imbricata</i>	Hawksbill Turtles	Indigenous	Endangered	1	Y
Aquatic Reptile	<i>Chelonia mydas</i>	Green Turtle	Indigenous	Endangered	1	Y
Anchialine Pool Fauna	<i>Halocaridina rubra</i>	Atyid Shrimp	Endemic			N
Anchialine Pool Fauna	<i>Metabetaeus lohena</i>	Anchialine Pool Shrimp	Endemic	Candidate		N
Anchialine Pool Fauna	<i>Palaemonella burnsi</i>	Anchialine Pool Shrimp	Endemic	Candidate		N
Anchialine Pool Fauna	<i>Procaris hawaiiensis</i>	Anchialine Pool Shrimp	Endemic	Candidate		N
Cave Fauna	<i>Lycosa howarthi</i>	Small-Eyed Big-Eyed Wolf Spider	Endemic			N
Cave Fauna	Lynphiidae		Endemic			N
Cave Fauna	Conopidae		Endemic			N
Cave Fauna	Isopoda	Sow Bugs	Endemic			N
Cave Fauna	Lithobiidae	Cave Adapted Centipede	Endemic			N
Cave Fauna	Cambalidae: <i>Nannolene sp.</i>	Cave Millipede	Endemic			N
Cave Fauna	Collembola	Springtails				N
Cave Fauna	<i>Nicoletia</i>	Silverfish				N
Cave Fauna	<i>Caconemobius</i> (related to <i>varius</i>)		Endemic			N
Cave Fauna	<i>Anisolabis howarthi</i>	Blind Cave Earwig	Endemic			N
Cave Fauna	Reduviidae	Cave Emesine	Endemic			N
Cave Fauna	<i>Oliarus polyphemus</i> (or related sp.)	The Cave Planthopper	Endemic			N
Cave Fauna	Noctuidae <i>Schrankia sp.</i>	Cave And Entrance Zone Moths	Endemic			N
Cave Fauna	Phoridae <i>Megaselia</i>	Blind Flightless Flies	Endemic			N
Migratory Shore Bird	<i>Pluvialis fulva</i>	Pacific Golden Plover	Indigenous			N
Migratory Shore Bird	<i>Arenaria interpres</i>	Ruddy Turnstone	Indigenous			N
Migratory Shore Bird	<i>Heteroscelus incanus</i>	Wandering Tattler	Indigenous			N
Migratory Shore Bird	<i>Nycticorax nycticorax</i>	Black-Crowned Night Heron	Indigenous			N

The acquisition of the Kahuku coastal property will help insure the protection and management of important cultural resources. An archaeological reconnaissance survey was conducted over a portion of the property. During this survey, over 40 archaeological sites were discovered, including 7 sites recommended for preservation. The preservation sites include trails, habitation complexes, temporary habitation, and petroglyphs. The sites found were primarily in the coastal portion of the subject parcel. A full archaeological inventory survey would undoubtedly find additional sites within the subject parcel.

Finally, acquisition of this parcel will secure ownership of the only access road (Road to the Sea) to the parcel and the adjacent NAR. This will enable the County to partner with State and Federal agencies and community organizations to better manage and control access and

recreational activities in the area to protect endangered species, restore native plant vegetation, as well as protect important cultural sites. This acquisition will also secure long-term access by professional managers for conservation work in the adjacent Manukā NAR, as Road to the Sea is the only access route to this side of the NAR.

OBJECTIVE: What is to be accomplished during the period of the project pursuant to the stated need? (Specify fully what is to be accomplished within the time, money, and staffing allocated and specify end point.)

Once funds are allocated the time-frame for completing the land acquisition is expected to be short. The County of Hawai'i Public Access, Open Space and Natural Resources Preservation Commission (PONC) and the Mayor of Hawaii Island, identified the Kahuku coastal property as a priority area for acquisition in its 2009 Annual Report. This area is currently the highest priority of properties identified in the original report that has not been acquired or is currently under contract by the County for acquisition. Funding of \$1,219,000 has already been approved by the County Open Space program and the landowner has agreed to sell the property at the appraised price of \$2,428,000 and has noted so in a letter of intent. County staff are dedicated to this project and will continue to work on the acquisition to complete it. With funding from the Recovery Land Acquisition program, County staff will be able to proceed with the acquisition of the property and use available matching funds and the preexisting agreement with the landowner to acquire the Kahuku coastal property. All funds will be dedicated to the purchase price of the property. If Recovery Land Acquisition funding is received, the acquisition is expected to be completed by the summer of 2013.

The acquisition of the property is the first step of the County's plan to manage the property in perpetuity. The County is planning on working closely with partners and the community to then develop and management plan and steward the conservation and cultural values of the property.

The County's objectives for acquiring the Subject Property include:

1. Protect the property in perpetuity;
2. Manage endangered species habitat in coastal areas and anchialine ponds;
3. Expand monitoring, management and protection of Hawksbill turtle nesting habitat;
4. Create and implement plans for monitoring, management and protection of other listed and candidate species found on property (see biological table)
5. Protect natural and cultural resources;
6. Manage compatible recreational and educational opportunities which promote conservation values and goals;

The County will work with the local community and Federal and State agencies to develop a long-term management plan for the area which will protect and manage endangered species and their habitat while providing continued access to the shoreline for fishing, hiking, and recreational opportunities.

No commercial activities are proposed for the property. The proposed activities will not require any permits from any County, State or Federal agencies.

EXPECTED RESULTS OR BENEFITS: How will the project impact fish and wildlife resources or benefit the public? Try to provide quantifiable or verifiable resource benefits.

The acquisition of the parcel by the County of Hawaii will result in the perpetual protection of over a mile of coastline that connects hawksbill turtle nesting sites, green turtle off shore foraging areas, and Hawaiian monk seal pupping and resting habitat. County ownership will allow needed management planning, monitoring, public outreach and education to reduce human impacts on these sensitive animals, biologically important anchialine pools, cave systems, and the cultural sites found on the property. Management by the County will allow for additional biological surveys to document and inventory natural resources on the property. Under County management, state, federal, and nonprofit agencies will partner to provide increased protection and management of endangered species. These activities will be carried out with partners at beaches elsewhere along the coast on the Island of Hawaii, providing the landscape level management effort needed for recovery of these species.

The Kahuku coastal property includes over a mile of coastal habitat for the green turtle and the Hawaiian monk seal, as well as a black sand beach that provides hawksbill turtle nesting habitat. Preserving coastlines for the Hawaiian monk seal, hawksbill and green sea turtles will benefit these listed species by expanding existing protected habitat and providing additional protected areas for activities critical to their life cycle, increasing the likelihood of recovery.

The HIHTRP currently monitors the turtle nesting activities at Humuhumu Beach within the Kahuku coastal property as well as beaches in adjacent areas (see map below). The HIHTRP will continue to monitor and protect turtle nesting habitat as well as educate the public on the need to protect and respect the endangered Hawksbill and its habitat. The HIHTRP has already installed signs to educate beach users on the presence of and threats to hawksbill nesting sites. Having the land under County ownership will add much needed legal protection and will allow for increased education and reduction of indirect human impacts to native species such as littering, illegal camping and use of lights during nesting season. Protecting and managing the coastline of the property will increase capacity of the critically endangered hawksbill turtle to persist in the face of sea level rise due to climate change by improving nesting habitat and reducing harmful human interactions.

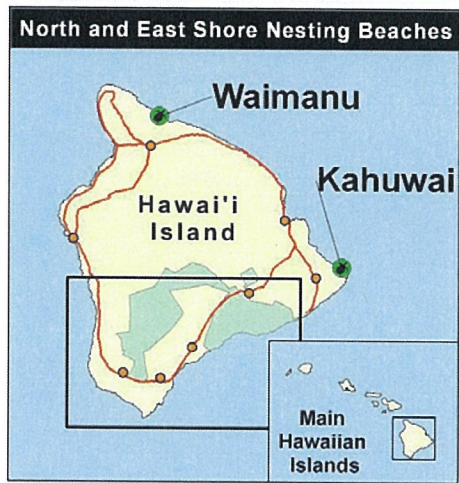
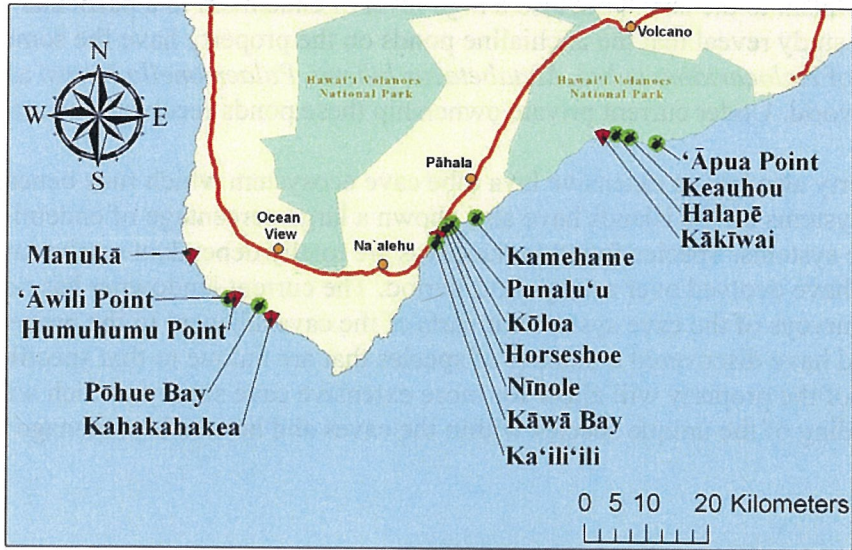
Purchase of the property will result in benefits to the Hawaiian monk seal, through growth of the MHI population, increased management, public education and creation of a volunteer network to monitor seals when they are on-shore. The Hawaiian Monk Seal Recovery Plan recommends ensuring the continued natural growth of the Hawaiian monk seal in the MHI by reducing human threats through increased coordination of federal, state, local and non-government parties, volunteer networks, and outreach and education in order to develop a culture of co-existence between humans and seals. Seals hauled out on beaches, especially mothers with pups, are likely to be disturbed by humans and animals, and a high degree of public awareness, public cooperation, and effective regulatory enforcement is needed to manage such haul-out events. Management by the County will enable the implementation of these recommendations in the Recovery Plan to reduce conflicts between humans and seals.

A complex of anchialine pools on the property provide habitat for unique endemic shrimp species. If the County is awarded funding, education and outreach to the public on the delicacy

of the ponds and their importance, and management of the pools themselves will hugely benefit the shrimp populations and other native species found within the pools. Current DNA studies on anchialine shrimp along the southern coastline of the island of Hawai'i have shown not only a high level of endemism to the island but also a high level of endemism to a particular watershed. The results of the study reveal that the anchialine ponds on the property have the some of the only populations of *Halocaridina rubra*, *Metabetaeus lohena*, *Palaemonella burnsi* and *Procaris hawaiiiana* in the world. Under current private ownership these ponds receive no management or protection.

The property also has an extensive lava tube cave ecosystem which runs beneath the lava flows. The cave systems on the islands have also shown a large percentage of endemism specific to individual cave systems. Species found in the caves are totally dependant on the cave environment and have evolved over a very short period. The current landowner has not been willing to allow surveys of the cave system but parts of the cave adjacent to the property have been surveyed and have discovered a number of species that are unique to that specific cave. County purchase of the property will allow for more extensive cave surveys which will result in greater understanding of the unique species within the caves and how to best manage them.

Hawksbill Turtle Nesting Beaches



APPROACH: How will the objective be attained? Include specific procedures, schedules, key cooperators and respective roles.

The County of Hawaii will attain the objectives through purchase of fee simple ownership by the County of Hawaii and subsequent protection and management by partners. Upon receiving a signed grant agreement, the owner of the Kahuku coastal property has agreed to enter into an exclusive agreement for sale of the property to the County. Until such time the owner will continue to actively market the property.

Purchase: The County has taken the lead on negotiating with the current landowner and has set aside matching funds for acquisition from its dedicated Open Space Fund. The owner has agreed to sell the property to the County for \$2,428,000 (approximately \$775 per acre) based on an appraisal that was completed in June 2010. The owner's desire to see the property protected in

perpetuity motivates their desire to sell to the County. Several actions have been taken to help the process of the acquisition including:

- Preliminary title report;
- Appraisal completed in June 2010 appraising the property at \$2,428,000;
- Letter from current landowner acknowledging project and indicating willingness to sell;
- Environmental Impact Statement (for the Hawaiian Riviera Resort project), including but not limited to botanical study, archaeological reconnaissance survey and geologic assessment;
- County Resolution 49-11, the Hawaii County Council authorizing the Finance administration to proceed with negotiations for purchase of this property;

Protection and Management by Partners: The County will hold title to the property, subject to an agreeable conservation easement donated to the State of Hawai'i DLNR or other enforceable agreement, which will eliminate the threat of development. The property will be managed in perpetuity for the conservation of endangered species listed in this grant proposal. Once the property is purchased, the County will work with federal, state and community partners to develop a management plan for the natural resources, endangered species and recreational uses of the property, and will additionally:

- Support the conservation of threatened and endangered species according to the priorities and planning documents listed within this Recovery Land Acquisition Grant Proposal;
- Create an integrated Management Plan for restoring and preserving native habitat and coastal strand areas of the property;
- Incorporate into the Management Plan the protection and management of threatened or endangered species habitat, including management of major threats such as predators and invasive species
- Seek external funding and community partners for implementation of the Management Plan;
- Implement the Management Plan;
- Manage, conduct, and oversee the restoration efforts specified in the Management Plan;
- Work with local community and cultural groups to create and implement an archaeological conservation plan, which may include the preservation and restoration of archeological features of the site.

Estimated timeline:

Objective	Elements	Anticipated Completion
1	Acquire Fee Interest, extinguish development rights	July 2013
2	Additional Biological Surveys needed to develop management plan (e.g. vegetation and cave surveys)	Summer 2013
3	Draft Management Plan and Obtain Community Input	Winter 2013-Spring 2014
4	Implement Management Plan	Summer 2014-ongoing

Threats: The major threats are primarily predators, invasive, non-native plants, human impacts, fire and climate change. These threats and management needs are discussed below.

- **Protecting Hawksbill turtles;** HIHTRP personnel can help the County manage coastal areas by documenting nesting habitat, protecting nests, controlling predators, removing non-native plants, and reducing human impacts (e.g. providing interpretation at nesting beaches, community outreach, installation of signs, and removal of marine debris). HIHTRP is already focused on mitigating threats and improving management of adjacent coastal areas for native species and ecosystems, including nesting turtles and will be able to expand upon its work once the property is purchased by the county.
- **Minimizing the threats posed by non-native mammalian predators (mongooses, rats, feral cats, and feral dogs);**
- **Preventing disturbance and reporting monk seals onshore and/or seal harassment;**
- **Controlling non-native invasive plants and feral goats to reduce impacts to native vegetation;** Several habitat-modifying non-native plant taxa have invaded the natural areas of the parcel. Some of these are already widespread; others are just getting established. The most serious habitat-modifying non-native plants is fountain grass (*Pennisetum setaceum*). Fountain grass is a considerable threat to the entire parcel because it greatly increases the risk of fires in the coastal lowlands. Prevention is the preferred method of non-native plant (weed) control. Steps can be taken to minimize the chances that a new weed species will be introduced and become established in a given area. It is extremely important to eradicate all such populations as early as possible. Various ways of removing weeds include chemical means (treating with an herbicide), manual control (cutting, pulling, or digging up weed plants), and biological (the use of one or more organisms, usually predators or pathogens, to control a weed species). In natural areas, weed control methods often vary for each species that is managed, and different methods may be used depending upon the specific setting
- **And reducing other human impacts (e.g artificial lights, marine debris);** Illegal activity occurs at varying levels throughout the property, and existing problems include dumping, illegal ATV use, target shooting, and the introduction and spread of non-native species (e.g. non-native fish into anchialine pools). Other human activities such as camping also negatively impact natural and cultural resources on the property. Campers leave trash and human waste at various spots commonly used for camping. Human waste can pollute anchialine pools as well as cause human diseases. Camping also negatively impacts archeological sites when people drive off-road, climb on sites, and/or remove rocks to establish camping sites
- **Managing for climate change and sea level rise:** Climate change driven sea level rise in the Pacific Islands impacts crucial terrestrial breeding habitat for hawksbill turtle and other endangered wildlife dependent on coastal beaches and increases vulnerability to other factors. Climate change scientists predict that in Hawai'i sea level may rise 1 meter by 2100. Natural resource managers need to plan for both mitigation and adaptation to these predicted changes expected to negatively impact vulnerable wildlife and habitats. Hawai'i's Comprehensive Wildlife Conservation Strategy prioritizes restoring turtle nesting habitat, protecting and managing turtles and nests on nesting beaches, increasing education and outreach efforts, continuing ongoing partnerships with local conservation groups, agencies, and stakeholders to monitor and conserve marine wildlife, as important steps to mitigate harm to sea turtles. Addressing these needs will also address issues related to sea level rise. By improving beach nesting habitat, additional habitat less

vulnerable to inundation will be created since sea level rise will reduce the available area. Hawksbill and green turtles, Hawaiian monk seals, and seabirds will all benefit from beach restoration improving their long term climate change adaptation opportunities.

Partners:

This project is supported by a consortium of interested partners. The lead agency which will acquire the land is the County of Hawai'i. Other partners include the Hawai'i Department of Land and Natural Resources Division of Forestry and Wildlife (DLNR/DOFAW), the HIHTRP (a partnership of the National Park Service, National Marine Fisheries Service, U.S. Fish and Wildlife Service, and private landowners), and other local community groups. The County of Hawai'i is taking the lead on the acquisition of the parcel. The County is committed to working with local community groups and existing governmental partnerships to assure appropriate stewardship and community based management. The County will manage the land in partnership with community and other groups for habitat, native plant, water quality, and cultural preservation. Current Partners include:

- DLNR/DOFAW - manages the adjacent NAR and will partner in projects including endangered species survey and management, habitat restoration, invasive species control, fire response. Other DLNR Divisions will also assist in management. DLNR Division of Conservation and Resource Enforcement performs law enforcement related to endangered species, wildlife and land-use violations. The Division of Aquatic Resources will assist with the surveys and management of anchialine pools.
- HIHTRP – will continue monitoring and protecting Hawksbill turtles and other marine life that use this coastline. Provide outreach and education materials and staff to mitigate human impacts on delicate species.
- The Cave Conservancy of Hawaii, a Hawaii, non-profit organization formed in 2002 who will assist the County in managing and conserving the resources found in caves, and providing public education through scientific study.

Other potential partners include the following:

- NOAA's Marine Mammal Research Program conducts research on the population biology and status of Hawaiian monk seals to enhance the recovery of the Hawaiian monk seal population. NOAA's Marine Turtle Research Program focuses on the biological recovery and sustained management of sea turtle populations in Hawaii and other U.S.-affiliated islands in the Pacific Ocean. These NOAA programs fit in well with the goals of the County for the protection and monitoring of these endangered species.
- The Hawaii Wildlife Fund conducts research and monitors the nesting activities of hawksbill sea turtles and runs the Monk Seal Watch which uses volunteers to create a "safety zone" around hauled out seals, marking the area with yellow tape and standing guard to ensure the animals are not disturbed. There is potential for the County to work with this program to implement similar monitoring and protection projects.
- The local Sierra Club has supported the purchase of the property and supports other conservation issues in the area. It is likely that this group will have continued involvement to protect the many rare and endangered species found on the property.

LOCATION: Where will the work be done? Describe habitat type(s) to be affected, and relevant ecosystem/watershed characterization.

The property proposed for acquisition is located on the southwest side of Hawai'i Island (Big island) (Map 1; TMK Parcel ID (3) 9-2-001: 075). The property ranges from sea level to 700 feet in elevation.

The native plant communities found within the parcel can be broadly classified as containing two major vegetation zones including lowland dry and pioneer vegetation on new lava flows. Lowland native dry vegetation communities include patches of 'ilima (*Sida fallax*) coastal shrubland and pili (*Heteropogon contortus*) grassland. Lowland dry forest areas surrounded by younger volcanic substrate grade into nonnative dominated coastal shrub and grasslands along the coast. The area has not been surveyed for rare native plants but the adjacent NAR provides habitat for several rare native coastal plants including maiapilo (*Capparis sanwichiiana*) and *Sesbania tomentosa* which indicates that other individuals and populations exist within the general area and/or could be restored to similar habitat within the Kahuku parcel.

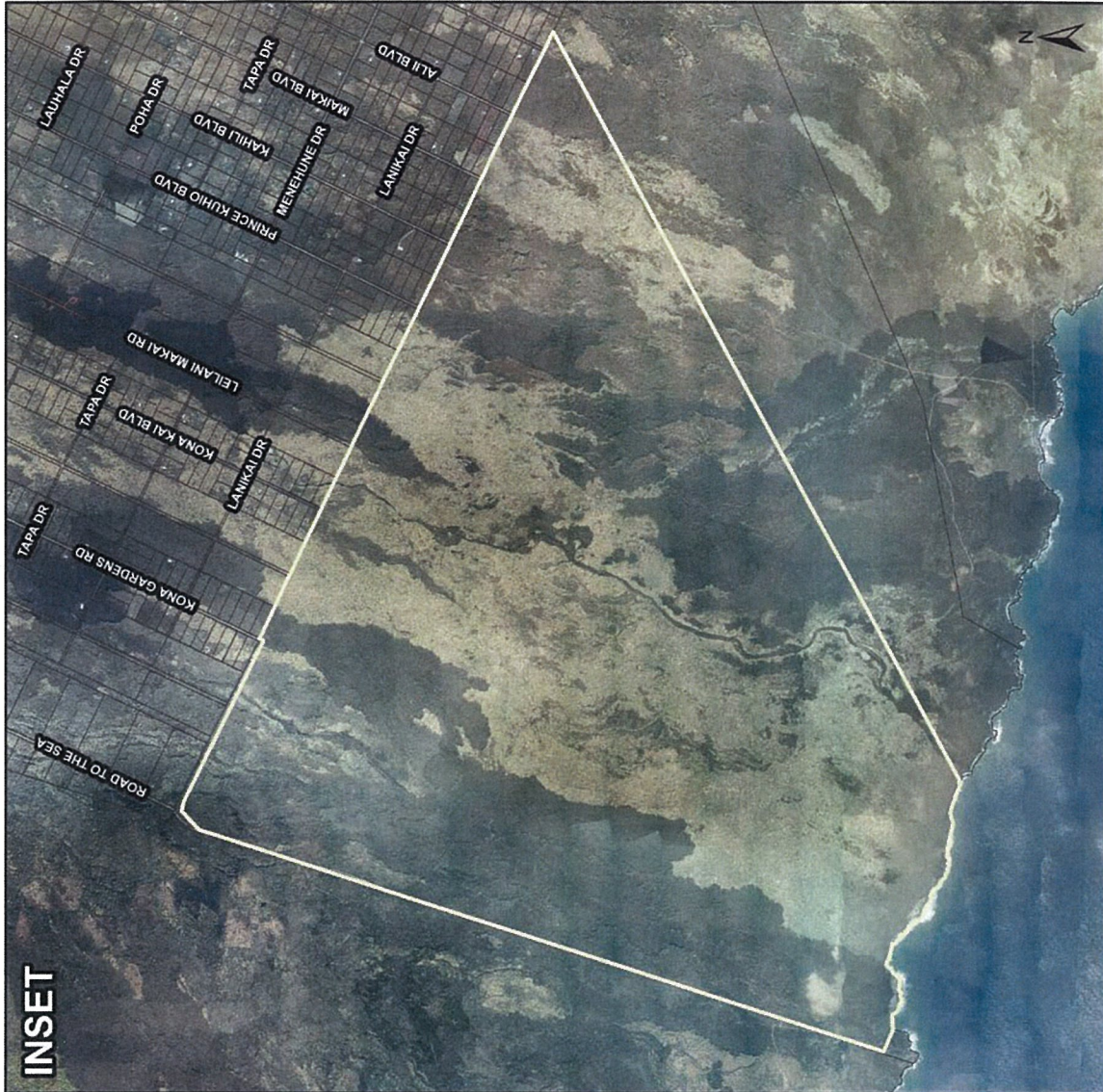
The black sand beach at Humuhumu Point has recently been confirmed as a nesting site for the hawksbill turtle. Humuhumu Point is only the 16th nesting beach documented on the island. In addition to sea turtles, HIHTRP personnel also observed a Hawaiian monk seal on several occasions hauled out at Humuhumu Point.

The property also contains unique natural communities such as anchialine pools and lava-tube caves. Anchialine pools in Hawai'i are home to many rare and threatened species, some of which are candidates for protection under the Endangered Species Act. Anchialine pools are characterized as coastal bodies of land-locked salt or brackish water that fluctuate with the tides due to subterranean connections and are important ecosystems for native species.



Kipuka Kanohina Cave

The Kipuka Kanohina Cave System runs beneath the property. The cave system is over 15.5 miles of continuous cave passage that is highly braided, with multiple levels. The caves provide habitat for endemic species live in root mats created as surface vegetation extends downward into the cave. The root zones are protected by the dark and moist environment of the cave, and become a haven that provides the nutrients necessary to support a wide diversity of highly adapted organisms. It also contains soda straw stalactites and significant gypsum deposits.



INSET



County of Hawai'i
Dept. of Finance
Property Management
Division

**Kahuku Coastal
 Property**

TMK: (3) 9-2-001:075
Acres: 3,127.95



Data gathered from the following:
 County of Hawaii Planning Dept.
 Imagery: Pictometry International Corp.

ESTIMATED COST: Provide a detailed breakdown of what it will cost to attain the objective

The total appraisal cost of the Kahuku coastal parcel is \$ 2,428,000. The County of Hawai‘i has secured 50% of the total project cost through its Open Space program to be used as matching funds for this program and has applied to the State Legacy Lands Commission for additional support. Legacy Land Conservation Project funding has been approved but the amount to be received will be subject to availability of funds. If the project were to receive Legacy Lands Funding the requisition price from the Recovery Lands Acquisition grants program will be lowered to match total project costs.

Source	Amount	Percent	Status
Federal			
Recovery Lands Acquisition Grant	\$1,214,000		50%
Non-federal			
Legacy Land Conservation Project	\$421,245 (requested)		pending
County of Hawaii Open Space (2%)	\$1,219,000		50%
Total Cost	\$ 2,428,000		