

SHAELENE K. KAMAKAALA, #010342
General Counsel
Hawaiian Islands Land Trust
500 Kalaniana'ole Ave. #1
Hilo, Hawai'i 96720
(808)940-0639

Of Counsel:
LAW OFFICES OF YEH & MOORE,
A Limited Liability Law Company
dba LAW OFFICES OF YEH & KIM

RONALD N.W. KIM 8306
THOMAS L. H. YEH 2341
JILL D. RAZNOV 8011

10 Kamehameha Avenue
Hilo, Hawaii 96720-2830
phone: (808) 961-0055
email: ron@rkimlaw.com
tly@yehandmoore.com
jdrznov@gmail.com

Co-counsel for Petitioner
HAWAIIAN ISLANDS
LAND TRUST



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition of

HAWAIIAN ISLANDS LAND TRUST to
amend the Conditions of the Decision and
Order for approximately 885.40 acres at
Kukuau, South Hilo, Hawai'i, Tax Map Key
No. (3) 2-4-008-033 (por.)

DOCKET NO. A99-729

HAWAIIAN ISLANDS LAND TRUST
AMENDED MOTION FOR ORDER
AMENDING THE FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER
FILED NOVEMBER 16, 2001;
DECLARATION OF LAURA H.E. KAAKUA;
EXHIBIT "1"; CERTIFICATE OF SERVICE

HAWAIIAN ISLANDS LAND TRUST AMENDED MOTION
FOR ORDER AMENDING THE FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DECISION AND ORDER FILED NOVEMBER 16, 2001

Comes now, Petitioner HAWAIIAN ISLANDS LAND TRUST (“HILT”), by and through its undersigned co-counsel, to respectfully move the Land Use Commission of the State of Hawai‘i (“Commission”) pursuant to §15-15-70 and §15-15-94 of the Commission’s Rules for an Order: 1) recognizing HILT’s standing to seek and obtain the relief requested herein; 2) amending the Findings of Fact, Conclusions of Law, and Decision and Order dated November 15, 2001 (the “D&O”) to release the subject property of approximately 885.40 acres of land, located at Kukuau, South Hilo, County of Hawai‘i, identified by Tax Map Key No. (3) 2-4-008-033 (por.) (the “Petition Area”) from the conditions of the D&O; and 3) issue a new Findings of Fact, Conclusions of Law, and Decision and Order for the Petition Area for the purpose of establishing appropriate findings of fact, conclusions of law and conditions that are specifically applicable to Petitioner’s proposed native forest management plans and project (“Kukuau Forest Management Project”). Petitioner initially submitted its Motion for Order Amending the Findings of Fact, Conclusions of Law, and Decision and Order dated November 15, 2001, on September 17, 2020 (“Motion”). The State of Hawai‘i’s Office of Planning and County of Hawai‘i’s Planning Department have both submitted responses to the Motion. HILT is amending its Motion to: 1) include factual support for the Motion with facts which did not appear in the record, and 2) amend certain proposed conditions of the D&O based upon the comments from the Office of Planning and Planning Department.

In support of this Amended Motion for Order Amending the Findings of Fact, Conclusions of Law, and Decision and Order dated November 15, 2001 (“Amended Motion”), Petitioner alleges as follows:

I. BACKGROUND

The background of this docket, is hereby incorporated by reference herein as if fully set forth herein.

On November 15, 2001, the Commission approved a petition from the former landowner, The Newton Family Limited Partnership, to reclassify the State Land Use District Boundary of the Petition Area consisting of approximately 885.40 acres of land from the Conservation Land Use District into the Agricultural Land Use District for the development of an agricultural subdivision.

The proposed development of the Petition Area as an eight-lot subdivision was premised on amendments to the Hawai'i County General Plan and to the Hawai'i County Zoning Map. The required General Plan amendment from Conservation to Extensive Agriculture, was adopted by the County Council in January 2005.

The required Change of Zone from no County zoning to County Agricultural- 80 acres (A-80a) was approved with an effective date of February 24, 2006.

Condition Nos. 1 through 18 of the D&O relate to the actual subdivision of the Petition Area, and were intended to be satisfied during the subdivision process. In a March 19, 2018 letter from the County of Hawai'i Planning Department to Belt Collins Hawaii LLC, representing the former landowner The Newton Family Limited Partnership, the Planning Department noted that final subdivision approval has not been granted to date because of water system issues, and provided notice that due to The Newton Family Limited Partnership's inability to comply with the concurrency standards of the Zoning Code and conditions of Ordinance No. 06 27, the

Planning Department Director would shortly initiate rezoning from Agricultural- 80 acres (A-80a) to Agricultural- 800 acres (A-800a) which would allow for some agriculture and construction of a farm dwelling with water catchment, but not allow subdivision.

On February 27, 2019, The Newton Family Limited Partnership transferred all of its right, title, and ownership in Tax Map Key No. (3) 2-4-008-033, including the Petition Area to HILT under a Limited Warranty Deed, recorded on March 13, 2019, in the Office of Assistant Registrar as Document No. T-10663066, with the issuance of Transfer Certificate of Title No. 1,172,671 (Declaration of Laura H.E. Kaakua (“Kaakua Decl.”) ¶ 4; Exhibit 1). On April 25, 2019, The Newton Family Limited Partnership provided a letter to the Commission notifying the Commission of its transfer of the Petition Area to HILT.

At the May 7, 2019 Commission meeting, HILT provided a status update and requested a year to plan for management of the Petition Area before deciding whether to request that the State Land Use District Boundary of the Petition Area remain in the Agricultural Land Use District with amendments to D&O conditions, or that the State Land Use District Boundary of the Petition Area be reclassified to the Conservation Land Use District.

At the June 25, 2020 Commission meeting, HILT provided a status update presentation sharing that HILT’s goal for the entirety of Tax Map Key No. (3) 2-4-008-033, comprising the Petition Area and the upland remainder of the property, is a community-stewarded native forest. HILT noted that it did not intend to subdivide the Petition Area or pursue the eight-lot subdivision planned by former landowner The Newton Family Limited Partnership, but that the existing Agricultural Land Use District of the Petition Area is needed to actively manage and restore the native forest.

II. CONFORMANCE WITH STATE LAND USE STANDARDS

Petitioner is not seeking reclassification of State Land Use District Boundaries, but is seeking to retain the present Agricultural Land Use District with amendments to the D&O. Petitioner will discuss applicable requirements set forth by §15-15-50(c) Hawai‘i Administrative Rules (“HAR”) to support this motion.

A. PETITIONER AND REPRESENTATIVE

Petitioner Hawaiian Islands Land Trust (“HILT”) is a Hawai‘i nonprofit and IRS 501(c)(3) corporation which is a state-wide and nationally accredited land trust (Kaakua Decl. ¶ 2). HILT has protected over 21,500 acres across Hawai‘i through fee simple ownership and stewardship, and conservation easements restricting land use on privately-owned lands (Kaakua Decl. ¶ 3). HILT’s mission is to protect and steward the lands that sustain Hawai‘i, and to perpetuate Hawaiian values by connecting people with aina (*id.*). HILT protects lands that are integral to Hawai‘i’s well-being and character, upholding its kuleana to these lands and the communities they are in through thoughtful stewardship that deepens community connection to, and builds reciprocal relationships with, aina (*id.*). HILT’s Chief Executive Officer is Laura H.E. Kaakua, and HILT’s in house General Counsel and Director of Aina Protection is Shaelene K. Kamakaala. Correspondence and communications in connection with this Motion are to be addressed to Shaelene K. Kamakaala and Laura H.E. Kaakua, at 126 Queen Street, Suite 306, Honolulu, HI 96813.

B. DESCRIPTION OF THE SUBJECT PROPERTY

1. The Petition Area is located in the Upper Kukuau area, South Hilo, Hawai‘i, and is designated as Tax Map Key No: 2-4-008-033 (por). The Petition Area is

approximately 885.40 acres and consists of the makai (oceanside) portion of an approximately 1,645.823-acre parcel ("Property") of unimproved land. The remaining approximately 760.423 mauka (mountainside) acres of the Property is proposed to remain in the Conservation District ("Remainder Area") (D&O ¶ 22).

2. The Property, including the Petition Area, is owned by Petitioner in fee simple. There are no ceded lands in the Petition Area (D&O ¶ 23; Kaakua Decl. ¶ 4; Exhibit 1).

3. The annual rainfall averages approximately 230 inches (D&O ¶ 24).

4. The U.S. Natural Resources Conservation Service identifies the soils on the Petition Area as Keei Series (rKGD), extremely rocky muck. This soil consists of well-drained, thin organic material very dark brown muck up to about 10 inches thick overlying pahoehoe lava bedrock. Permeability is slow, but water moves rapidly through cracks. Runoff is medium and its erosion hazard is slight. This soil is used mostly for pasture. Its Capability Classification is Vlls, non-irrigated, which indicates that the soil, when not irrigated, has very severe limitations that make it unsuitable for cultivation and restrict its use largely to pasture or range, woodland or wildlife. The heavy rainfall on the Property supports a native koa and ohia forest with ever increasing invasive species (D&O ¶ 25).

5. According to the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii Map, the Petition Area is unclassified. The Land Study Bureau's overall suitability rating for agricultural purposes classifies the Petition Area as "D" or "Poor," with the exception of a small portion of land at the northeast corner of the Petition Area classified as "E" or "Very Poor" (D&O ¶ 26).

6. Although the Petition Area is still shown within the Hilo Forest Reserve on some United States Geological Survey maps, it is no longer in the current State forest reserve jurisdiction. The Petition Area was included in the Hilo Forest Reserve under a voluntary 30-year surrender agreement with the State of Hawai'i, formalized in 1948. The Petition Area was subsequently withdrawn from the forest reserve by the State of Hawaii (D&O ¶ 27).

7. The Petition Area has changed over the years from native forest to sugarcane production to forestry and grazing (D&O ¶ 28).

8. The Petition Area is primarily in forest and heavy shrub vegetation. A modest amount of grazing may occur within the Petition Area by cattle from adjacent lands though Petitioner has not provided permission for any adjacent owners to pasture their cattle on the Property (D&O ¶ 29).

9. The Flood Insurance Rate Map prepared by the Federal Emergency Management Agency designates the Petition Area as Zone X, an area determined to be outside the 500-year flood plain (D&O ¶ 30).

10. A 150-foot-wide easement designated for electrical transmission line purposes runs partially along the northern boundary of the Petition Area. This easement serves the Hawaii Electric Light Company, Inc. site, which is located on the makai boundary of the Petition Area (D&O ¶ 31).

11. A 40-foot-wide unimproved access easement runs along the Petition Area's entire northern boundary. This easement can be accessed from Wilder Road and services the Petition Area and adjacent mauka subdivisions (D&O ¶ 32).

12. Puna Sugar Company, Ltd., formerly known as "Ola'a Sugar

Company," is the current holder of a right-of-way for one or more flumes granted by Akana Amelia Richardson in favor of Ola 'a Sugar Company by instrument dated November 5, 1900, recorded in the Bureau of Conveyances of the State of Hawai'i in Liber 212, Page 747, as modified by Quitclaim Deed dated March 31, 1938. The abandoned flume and the dirt road which parallels the route of the flume, commonly referred to as the "Ola'a Flume Road," are located within the Petition Area. The Ola'a Flume Road connects Kaumana Drive and Stainback Highway, and delineates the approximate alignment of the future county secondary arterial. The mauka boundary of the Petition Area also coincides with this route (D&O ¶ 33).

13. The 'aku' aku (*cyanea platyphylla*) is the only species of flora listed as a protected species by the U.S. Fish and Wildlife Service ("USFWS") that was located on the Property, and only a single species was found in the Remainder Area. No USFWS protected flora species were located in the Petition Area, which is dominated by alien species and was used in the past for grazing and possibly logging (D&O ¶ 52).

14. Various bird and mammal species exist on the Property. Two endemic bird species, the Hawaiian Hawk and the Hawaiian Hoary Bat, were both sighted on the Property. Any further clearing or improvements in the Petition Area is not anticipated to have a significant impact on native or federally protected avian or mammalian species, including the Hawaiian Hawk and the Hawaiian Hoary Bat, given the small amount of clearing and improvements proposed (D&O ¶ 54).

15. For the initial Petition, Paul H. Rosendahl, Ph.D., Inc. ("PHRI") conducted inspection level field work of the Petition Area. There are no archaeological or cultural sites or features of any kind in the Petition Area. Based on the historical sugarcane cultivation on the

Petition Area, significant archaeological/historic sites are unlikely to have survived (D&O ¶ 55).

16. PHRI also consulted with four individuals recognized by the local native Hawaiian community as knowledgeable in various aspects of traditional Hawaiian culture. The purpose of the consultation was to determine if any native Hawaiian cultural practitioners might currently be exercising traditional and customary access and use rights within the Petition Area, or might have knowledge of any specific cultural sites or areas within the Petition Area that might qualify as legitimate traditional cultural properties. No valued cultural or natural resources have been identified in the Petition Area and no traditional and customary native Hawaiian rights are exercised in the Petition Area. Since such resources and activities have not been identified, they will still not be affected or impaired by the proposed project (D&O ¶ 56).

17. The Ola 'a flume system has been determined to be eligible for the National Register of Historic Places under Criterion D (a site that has yielded, or is likely to yield, information important in local history). The project will respect the alignment of the facility and keep it intact so that no adverse impact will result (D&O ¶ 57).

C. PRESENT USE OF THE SUBJECT PROPERTY AND CONFORMITY TO AGRICULTURAL DISTRICT STANDARDS

The Property is currently vacant and undeveloped (Kaakua Decl. ¶ 8). The Property is native forest with an overstory of primarily ohia and koa and an understory of primarily uluhe fern (Kaakua Decl. ¶ 8). Invasive species, primarily strawberry guava and Koster's curse (clidemia herta) are overtaking sections of the native forest in both the Petition Area and the Remainder Area (Kaakua Decl. ¶ 9). The Kukuau Forest Management Project will be consistent with the standards for agricultural districts pursuant to Hawaii Revised Statute § 205-2(d) (Kaakua Decl. ¶ 13). The Kukuau Forest Management Project includes forestry and forage

activities and uses; and bonafide agricultural services and uses that support and are accessory to these activities, including but not limited to an open area recreational facility (*id.*).

D. DESCRIPTION OF THE USE OR DEVELOPMENT BEING PROPOSED

Petitioner received the Property as a donation and now needs to determine whether it can steward the Property pursuant to its nonprofit mission to protect and steward the lands that sustain Hawaii, and to perpetuate Hawaiian values by connecting people with aina (Kaakua Decl. ¶¶ 7, 13-17). The Property is not a pristine native forest that can thrive in perpetuity by simply being under HILT ownership (Kaakua Decl. ¶ 9). Invasive species expand their territory annually within the Property, and Petitioner realizes that if Petitioner does not actively manage the native forest, the native forest on the Property will be completely overtaken by invasive species in due time (Kaakua Decl. ¶ 9). Petitioner also acknowledges that the Property is sandwiched between privately-owned residential properties on its makai (oceanside) boundaries, and State Forest Reserve on its mauka (mountainside) boundaries (Kaakua Decl. ¶ 11). Therefore, the Property acts as a buffer for the State Forest Reserve (Kaakua Decl. ¶ 12). A healthy native forest on the Property will keep the State Forest Reserve in healthy native forest (*id.*). In comparison, allowing the invasive plants to take over the native forest on the Property will eventually result in invasive species spreading into the State Forest Reserve (*id.*).

Petitioner endeavors to actively manage and restore the native koa and ohia forest on the entirety of the Property, starting with the Petition Area, and to engage, educate, and connect the Hilo community with the aina of Kukuau (Kaakua Decl. ¶ 15). Active native forest management requires constant invasive species monitoring, invasive species removal, fencing for ungulate control, gathering seeds of native plants on the Property, growing native plants from seeds and cuttings typically in a greenhouse, planting native species, regularly monitoring and documenting

native species use of the native forest habitat such as Hawaiian Hawk, Hawaiian Hoary Bat, and other native bird and insect species, managing for pests, and dynamically adjusting stewardship practices in response to native species observations, changing weather patterns, and changing threats (Kaakua Decl. ¶ 16). Petitioner's mission includes connecting Hawaii's communities with aina (the land that feeds us), so Petitioner's forest management activities as part of the Kukuau Forest Management Project would also include community outreach, hosting community volunteer workdays and educational forest walks, hosting learning field trips for local schools, inviting Hawaiian cultural practitioners such as hula halau to spend time, learn from, and care for the Kukuau Forest (Kaakua Decl. ¶ 17). All of these activities have an end goal of inspiring community stewardship of Kukuau Forest, and extending that practice of malama aina (caring for the lands that care for us) to other lands as well (Kaakua Decl. ¶ 15).

The many forest stewardship and community engagement activities that comprise the Kukuau Forest Management Project are only possible if Petitioner is able to hire and retain knowledgeable staff from Hilo, and to contract with foresters and other conservation professionals who specialize in the large scale capital improvements needed such as fencing to keep out ungulates and invasive species, building of a native plant greenhouse, and building of a covered gathering space for volunteers and students to get out of the elements (Kaakua Decl. ¶¶ 18, 21-22). The initial start up and annual costs are high to hire and retain staff, complete the needed capital improvement projects, maintain the capital improvements over time, and annually pay for typical land stewardship expenses such as property taxes and liability insurance (Kaakua Decl. ¶ 22). As a nonprofit land trust that understands the need for active forest management on the Property, Petitioner cannot responsibly retain the Property without a reliable annual income source to support stewardship (Kaakua Decl. ¶ 21). Petitioner intends to partner with a forestry

company employing certified foresters to selectively harvest koa trees to fund the Kukuau Forest Management Project (Kaakua Decl. ¶ 23). In consultation with the forest management company Forest Solutions, Inc., selective removal of koa trees will fund such significant native forest restoration that the number of koa trees on the Property over a 30 year period is projected to regenerate approximately 1.5x as many koa trees as were originally there (*id.*). The ability to actively manage the forest on the Property, including selective koa harvest, is the critical factor in Petitioner’s ability to retain the Property for community environmental, cultural and educational benefit (Kaakua Decl. ¶ 21).

III. RELIEF REQUESTED

Petitioner seeks an Order: 1) recognizing HILT’s standing to seek and obtain the relief requested herein; 2) amending the 2001 D&O to release the Petition Area from the conditions of the 2001 D&O; and 3) issue a new Findings of Fact, Conclusions of Law, and Decision and Order for the Property for the purpose of establishing appropriate findings of fact, conclusions of law and conditions that are specifically applicable to Petitioner’s Kukuau Forest Management Project.

A. STANDING

Petitioner is the owner of the fee simple interest in the Property, including the Petition Area. Based on the foregoing, Petitioner requests that the Commission recognize Petitioner as having the requisite standing to seek and obtain the relief requested herein.

B. REQUESTED MODIFICATION OR DELETION OF CONDITIONS

Petitioner requests that the Petition Area be released from certain conditions in the 2001 D&O and that a new findings of fact, conclusions of law and decision and order be issued with respect to the Petition Area. The intent of this request is to establish a set of conditions that will

apply specifically to the Petition Area and Kukuau Forest Management Project, where the conditions will start with the existing conditions in the 2001 D&O and thereafter modify or delete certain conditions to reflect the changed project description specific to the Petition Area. The conditions will be drafted considering that the landowner and plans for the Petition Area have changed from an eight-lot subdivision with eight residences to a community-stewarded native forest.

The following discussion relating to those conditions, that would be included in the amended or new findings of fact, conclusions of law and decision and order and would apply only to the Petition Area, will first quote all of the conditions in the 2001 Decision and Order, and each condition will be followed by the request for modification or deletion, if any, together with the support for the request.

D&O Condition 1:

“The proposed subdivision will be restricted to a maximum of 8 lots, with a minimum lot size of 80 acres. Each deed conveying title to a subdivided lot will include a 20-year restriction commencing upon final subdivision approval against further subdivision, and a general prohibition against large-scale commercial agriculture operations, animal hospitals, campgrounds and other similar open area recreational activities, mausoleums, group living facilities, golf courses, golf driving ranges, golf maintenance facilities, and golf clubhouse, adult care homes, community buildings, day care centers, hospitals, stadiums and sports arenas and schools.”

Request for Modification or Deletion:

HILT requests the condition be modified to read: “The Petition Area will be not be subdivided. Any structures that HILT erects or constructs in the Petition Area shall be allowed by HRS 205-2(d), or HILT will seek a Special Permit to erect or construct such structure(s).”

HILT does not seek to pursue the eight-lot subdivision or any subdivision (Kaakua Decl. ¶ 7). HILT’s native reforestation plans of its Kukuau Forest Management Project include connecting people with the land, potentially through culturally appropriate camping and

recreational opportunities, selective harvest of koa trees to reinvest proceeds back into land management, active forest management, a greenhouse with equipment storage, and one structure for study and research for community volunteers, Hawaiian cultural practitioners, school children on educational field trips, or others utilizing the Petition Area as a place of study and research (Kaakua Decl. ¶¶ 16-18). Condition 1 currently prohibits “large-scale commercial agriculture operations”, which could be interpreted to include forestry, “campgrounds and other similar open area recreational activities,” “community buildings,” and “schools”. As HILT is no longer intending to subdivide the Petition Area, HILT does not see for these general prohibitions and deed restrictions.

D&O Condition 2:

“Endangered birds and bats, including the Hawaiian Hawk and the Hawaiian Bat, have been observed in the Petition Area. Petitioner and its successors shall implement mitigation measures to avoid any negative effects to existing rare, endangered or threatened species. Such mitigation measures will include leaving any large stands of native forest trees and clusters of native vegetation intact, and focusing residential sites to areas that were previously cleared and incorporating the use of native plants in landscaping plans. Petitioner and its successors shall not develop the Petition Area into a project which would change the overall character of the area or generate major increases in resident population. Petitioner and its successors shall preserve the existing lowland native forest, and protect the Hawaiian Hawk and the Hawaiian Bat. Any such protection or mitigation measures that are initiated shall be first approved by the U.S. Fish and Wildlife Service, and the State Department of Land and Natural Resources.”

Request for Modification or Deletion:

HILT requests the condition be modified to read:

(a) The State listed Hawaiian Hawk (‘io) is known to occur in the project vicinity. To avoid impacts to the Hawaiian Hawk, prior to any construction and/or tree harvesting activities, the area should be surveyed during the breeding season from March to September to ensure no Hawaiian Hawk nests are present if trees are to be cut. If this cannot be avoided, no trees should be disturbed, removed or trimmed without consulting DOFAW. (b) If the State listed Hawaiian Goose or Nene are present during construction activities, all activities within 100 feet (30 meters) shall cease, and the bird should not be approached. Work may continue

after the bird leaves the area of its own accord. If a nest is discovered at any point, DOFAW shall be contacted. (c) The movement of plant soil material between worksites such as in fill shall be minimized. Petitioner shall contact the Big Island Invasive Species Committee to minimize the risk of spreading invasive species. All equipment, materials and personnel should be cleaned of excess soil and debris to minimize the risk of spreading invasive species. (d) To avoid potential impacts to the Hawaiian hoary bat, the clearing of dense vegetation, including woody plants greater than 15 feet should not occur between June 1 to September 15 when bats may be carrying young and potentially at risk by such clearing activities. If this cannot be avoided, woody plants greater than 15 feet tall should not be disturbed, removed, or trimmed without consulting DOFAW. Barbed wire shall not be installed on fencing within the Petition Area.

A core purpose of HILT's Kukuau Forest Management Project is to improve the native forest so that degraded sections with invasive species return to native habitat for native species such as the Hawaiian Hawk and the Hawaiian Bat, and so that intact native forest sections remain high quality native habitat (Kaakua Decl. ¶¶ 15-16). In line with those goals and its purposes, HILT is willing to follow the recommendations of USFWS and DOFAW, as suggested by the Office of Planning. HILT was already planning to work with DOFAW to develop and get approval and oversight of its Kukuau Forest Stewardship Plan (Kaakua Decl. ¶ 14). Ultimately, HILT does not intend to do residential development or "landscaping" which is typically associated with development, but does want the ability to actively manage the forest (Kaakua Decl. ¶ 16).

D&O Condition 3:

"Prior to clearing and grubbing the alignment for the subdivision roadway and utilities, Petitioner will stake the centerline for the proposed access road, conduct a 500-meter wide survey of the proposed roadway alignment to assure that there are no Hawaiian Hawk and/or Hawaiian Bat nests in the area. The U.S. Fish and Wildlife Service ("USFWS") and the State Department of Land and Natural Resources will be provided with a copy of the results of such survey and consulted as to the need for any mitigating or conservation measures."

Request for Modification or Deletion:

HILT requests this condition be deleted. HILT does not plan a subdivision development,

and therefore does not plan for the same subdivision roadway and utilities (Kaakua Decl. ¶ 7).

D&O Condition 4:

“Petitioner, developers, and/or landowners shall minimize the use of night lights and shield all exterior lighting and light sources to mitigate the downing of Pelagic seabirds that may fly over the Property to return to their nesting colonies on the upper slopes of Mauna Kea.”

Request for Modification or Deletion:

HILT, in accordance with its desire to be a responsible steward and the recommendation of the Office of Planning requests the following modification:

Construction activity shall be restricted to daylight hours as much as practicable during the seabird breeding season (April through November) to avoid the use of nighttime lighting that could be an attraction to seabirds. All nighttime work that requires outdoor lighting shall be avoided during the seabird fledging fallout period from September 15 through December 15. All outdoor lighting at the Project shall be shielded to prevent upward radiation so as to reduce the potential for seabird attraction.

D&O Condition 5:

“There are kipuka in the Petition Area which harbor native forest. Petitioner and its successors shall implement conservation measures such as leaving large stands of native forest trees and clusters of native vegetation within the Petition Area intact, containing residential sites to areas previously cleared, maintaining the Remainder Area (area above the Ola'a Flume Road) in Conservation, utilizing a grading plan that will leave undisturbed the stands of forest in the makai parcel that extend into the Petition Area to as low as the 1,600-foot level as a buffer for the Remainder Area. The grading plan shall be approved by the State Department of Land and Natural Resources, the US Fish and Wildlife Service, and any other appropriate governmental agencies.”

Request for Modification or Deletion:

HILT requests the following modification to Condition 5: “The Petition Area includes significant native forest. HILT and its successors shall develop and implement a forest management plan within 2 years from the date of this Decision and Order, which HILT will provide to this Commission, and HILT will provide reports to this

Commission every 5 years on native forest restoration progress per plan benchmark projections. Forestry is an allowable use in the Petition Area.”

D&O Condition 6:

“Best management practices will be used during construction to control erosion and prevent runoff from damaging native forest resources.”

Request for Modification or Deletion:

HILT does not seek any modification or deletion to Condition 6. HILT will use best management practices in the construction of any and all structures which it constructs on the Property to control erosion and prevent runoff (Kaakua Decl. ¶ 19).

D&O Condition 7:

“Petitioner and its successors shall complete, prior to any land alteration, an archaeological inventory survey of the acreage that would be disturbed by any specific development, including roadway, driveway, house site and agricultural site. The survey results will be provided to the DLNR State Historic Preservation Division (SHPD) and the Office of Hawaiian Affairs (OHA) for review and comment. Subsequent work shall proceed upon clearance from the SHPD. This condition shall be included in all sales documents pertaining to the lots in the proposed subdivision and in each deed conveying title to a subdivided lot.”

Request for Modification or Deletion:

HILT, in accordance with its desire to be a responsible steward and the recommendations of DLNR’s State Historic Preservation Division and the Office of Hawaiian Affairs to the Office of Planning requests the following modification:

“Prior to commencing any proposed projects that involve ground-disturbing activities, Petitioner and its successors shall provide the DLNR State Historic Preservation Division (“SHPD”) the opportunity to review, comment, and have Petitioner comply with any of SHPD’s requirements for the project(s). HILT will

consult with SHPD to assess the scope of work and whether some level of archeological reconnaissance is required.”

D&O Condition 8:

“To the extent that any archaeological sites are located on the Petition Area, Petitioner and its successors shall work with SHPD in developing a data recovery/ mitigation/ preservation plan. This plan will include input from the local native Hawaiian community and relevant Hawaiian groups, including the OHA. The plan shall be approved by SHPD, and a certified copy thereof filed with the Commission, prior to any land alteration affecting such sites. This condition shall be included in all sales documents pertaining to the lots in the proposed subdivision and in each deed conveying title to a subdivided lot.”

Request for Modification or Deletion:

HILT, in accordance with its desire to be a responsible steward and the recommendation of the Office of Planning requests the following modification: “To the extent that any archaeological sites are located on the Petition Area, Petitioner and its successors shall work with SHPD in developing a data recovery/mitigation/preservation plan(s), as needed in conjunction with Condition 7.”

D&O Condition 9:

“Petitioner and its successors shall immediately stop work and contact SHPD should any previously unidentified archaeological resources such as artifacts, human burials, rock alignments, pavings or walls be encountered during the development of the proposed subdivision. This condition shall be included in all sales documents pertaining to the lots in the proposed subdivision and in each deed conveying title to a subdivided lot.”

Request for Modification or Deletion:

HILT, in accordance with its desire to be a responsible steward and the recommendation of the Office of Planning requests the following modification: “Petitioner and its successors shall immediately stop work and contact SHPD should any previously unidentified archaeological resources such as artifacts, human burials,

rock alignments, pavings or walls be encountered during construction activities of the proposed Kukuau forest management.”

D&O Condition 10:

“In connection with the subdivision of the Petition Area, Petitioner shall, if necessary, dedicate to the County of Hawai'i an 80-foot right-of-way located near the Ola'a flume system to accommodate the County's planned secondary arterial.”

Request for Modification or Deletion:

HILT requests this condition remain unchanged. HILT is not intending to subdivide the Petition Area (Kaakua Decl. ¶ 7), which would be the type of development giving rise to a condition of land use approval such as the dedication of a right-of-way.

D&O Condition 11:

“Petitioner and its successors shall fund and construct adequate individual wastewater transmission and disposal facilities, as determined by the County of Hawai'i Department of Public Works (DPW) and the State Department of Health (DOH).”

Request for Modification or Deletion:

HILT, in accordance with its desire to be a responsible steward and the recommendation of the Office of Planning requests that the condition remain unchanged. HILT is not expecting to generate a heavy amount of waste and is projecting that any waste it creates can be addressed by a maximum of two compostable toilets (Kaakua Decl. ¶ 18).

D&O Condition 12:

“Petitioner and its successors prior to any construction activities, including grading or grubbing, shall consult with the Department of the Army (DA) to determine if a DA permit will be required and to ensure compliance of development plans with the Federal Emergency Management Agency.”

Request for Modification or Deletion:

HILT requests that this condition be deleted. HILT does not plan to subdivide and develop the property, but plans to restore and manage the native forest (Kaakua Decl. ¶ 7).

D&O Condition 13:

“Petitioner and its successors shall provide written notification to all prospective buyers of proposed lots within the proposed subdivision of the potential odor, noise, and dust pollution resulting from surrounding Agricultural District land.”

Request for Modification or Deletion:

HILT requests that this condition be deleted. HILT does not plan to subdivide and develop the property, but plans to restore and manage the native forest (Kaakua Decl. ¶ 7).

D&O Condition 14:

“Petitioner and its successors shall notify all prospective buyers of the proposed lots within proposed subdivision that the Hawai'i Right-to-Farm Act, Chapter 165, Hawai'i Revised Statutes, limits the circumstances under which pre-existing farm activities may be deemed a nuisance.”

Request for Modification or Deletion:

HILT requests that this condition be deleted. HILT does not plan to subdivide and develop the property, but plans to restore and manage the native forest (Kaakua Decl. ¶ 7).

D&O Condition 15:

“Petitioner and its successors shall fund the design and construction of drainage improvements required as a result of the development of the Petition Area to the satisfaction of federal, state, and county agencies.”

Request for Modification or Deletion:

HILT requests this condition be deleted. HILT does not plan to subdivide and develop the property, but plans to restore and manage the native forest (Kaakua Decl. ¶ 7).

D&O Condition 16:

“Petitioner and its successors shall participate in the funding and construction of adequate water source, storage, and transmission facilities and improvements to accommodate the proposed project. Water transmission facilities and improvements shall be coordinated and approved by appropriate state and county agencies.”

Request for Modification or Deletion:

HILT, in accordance with its desire to be a responsible steward and the recommendation of the Office of Planning requests that the condition remain unchanged. HILT is not expecting to generate a heavy demand for water and is projecting that any water needs created by its use can be addressed by a maximum of two water catchment tanks (Kaakua Decl. ¶ 18).

D&O Condition 17:

“Petitioner and its successors shall maintain the Remainder Area in Conservation and subject all development thereof to the approval of the State DLNR.”

Request for Modification or Deletion:

HILT requests that this condition be deleted. HILT does not plan to subdivide and develop the property, but plans to restore and manage the native forest (Kaakua Decl. ¶ 7). HILT wishes to actively manage the native forest on the entirety of the Property, as there are invasive species present in both the Petition Area and the Remainder Area (Kaakua Decl. ¶ 9). The Agricultural District provides greater flexibility for active management of native forest. HILT will work with the State DLNR to subject any forest management activities to the approval of the State DLNR (Kaakua Decl. ¶ 14). HILT intends to seek DLNR’s assistance and partnership to complete a

Forest Stewardship Plan to fulfill Condition 5, and intends that such Forest Stewardship Plan would be the management plan for the entire Property (Kaakua Decl. ¶ 14).

D&O Condition 18:

“Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission. Failure to so develop the Petition Area may result in reversion of the Petition Area to its former classification, or change to a more appropriate classification.”

Request for Modification or Deletion:

HILT, in accordance with its desire to be a responsible steward and the recommendation of the Office of Planning requests that the condition remain unchanged.

D&O Condition 19:

“Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area, prior to development of the Petition Area.”

Request for Modification or Deletion:

HILT, in accordance with its desire to be a responsible steward and the recommendation of the Office of Planning requests that the condition remain unchanged.

D&O Condition 20:

“Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Hawai'i Planning Department in connection with the status of the subject project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.”

Request for Modification or Deletion:

HILT proposes the following modification in line with its proposed modification to Condition 5, as based on the long-range projected schedule for the Kukuau Forest

Management project, annual reports may not be very informative: “HILT and its successors shall develop and implement a forest management plan within 2 years from the date of this Decision and Order, which HILT will provide to this Commission, and HILT will provide reports to this Commission every 5 years on native forest restoration progress per plan benchmark projections.”

D&O Condition 21:

“The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.”

Request for Modification or Deletion:

HILT does not seek any modification or deletion of this condition.

D&O Condition 22:

“Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Petition Area is subject to conditions imposed by the Land Use Commission in the reclassification of the Petition Area, and (b) shall file a copy of such recorded statement with the Commission.”

Request for Modification or Deletion:

HILT does not seek any modification or deletion of this condition, and defers to this Commission as to appropriate language.

D&O Condition 23:

“Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92 Hawai'i Administrative Rules. All such conditions shall run with the land.”

Request for Modification or Deletion:

HILT does not seek any modification or deletion of this condition.

IV. CONCLUSION

Based upon the foregoing, Petitioner respectfully requests that the Commission grant this motion pursuant to HAR §15-15-70(j).

DATED: Honolulu, Hawaii, October 20, 2020.

A handwritten signature in black ink, appearing to read 'Ronald N.W. Kim', written over a horizontal line.

RONALD N.W. KIM
co-counsel for Petitioner
HAWAIIAN ISLANDS LAND TRUST

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of

HAWAIIAN ISLANDS LAND TRUST to amend the Conditions of the Decision and Order for approximately 885.40 acres at Kukuau, South Hilo, Hawai'i, Tax Map Key No. (3) 2-4-008-033 (por.)

DOCKET NO. A99-729

DECLARATION OF LAURA H.E. KAAKUA; EXHIBIT 1

DECLARATION OF LAURA H.E. KAAKUA

I, LAURA H.E. KAAKUA, declare the following:

1. I am the Chief Executive Officer for the Hawaiian Islands Land Trust ("HILT") and make this declaration based on my own personal knowledge of the matters set forth herein.
2. HILT is a Hawai'i nonprofit and IRS 501(c)(3) corporation which is a state-wide and nationally accredited land trust, and has a mailing address of 126 Queen Street, Suite 306, Honolulu, Hawai'i 96813.
3. HILT's mission is to protect and steward the lands that sustain Hawai'i, and to perpetuate Hawaiian values by connecting people with aina: protecting lands that are integral to Hawai'i's well-being and character, upholding the organization's kuleana to those lands and the communities nearby and within, and building reciprocal relationships and connections between the community and aina. HILT has protected over 21,500 acres across Hawai'i through fee simple ownership and stewardship, and conservation easements restricting land use on privately-owned lands.

4. On or about February 27, 2019, HILT received fee simple title to all of the Newton Family Limited Partnership's ("Newton Partnership") interest in property located at Kukuau, South Hilo, County of Hawai'i, identified as Tax Map Key No. (3) 2-4-008-033 (wholly referred to as the "Property"), by Limited Warranty Deed recorded on March 13, 2019, in the Office of Assistant Registrar as Document No. T-10663066, with the issuance of Transfer Certificate of Title No. 1,172,671. A true and correct copy of said Limited Warranty Deed is attached hereto as Exhibit "1".

5. The Property consists of approximately 1,645.823 acres of land consisting of approximately 885.40 acres of land (the "Petition Area") classified as Agricultural and a remaining 760.423 acres of land classified as Conservation (the "Remainder Area").

6. In 2001 the Land Use Commission ("Commission") had approved the Newton Partnership's petition to amend the Petition Area's State Land Use boundaries from the Conservation District to the Agricultural district in connection with the Newton Partnership's planned development of an eight-lot agricultural subdivision.

7. HILT does not presently intend to develop the Petition Area as an eight-lot agricultural subdivision, or any subdivision, but instead is exploring a plan to actively manage and restore the native forest within the Property, starting with the Petition Area ("Kukuau Forest Management Project").

8. The Petition Area is vacant and undeveloped and primarily covered by forest and heavy shrub vegetation, consisting of native forest with an overstory of primarily ohia and koa and an understory of primarily uluhe fern.

9. Both the Petition and Remainder Areas also contain invasive species, primarily strawberry guava and Koster's curse (*clidemia herta*), which are overtaking sections of the native

forest and annually expanding—the native forest is not pristine and cannot thrive in perpetuity simply by remaining under HILT’s ownership, but requires active management to avoid being completely overtaken by the invasive species. HILT will only use herbicides as necessary to control invasive species, will limit the use of herbicides as much as possible, and if it needs to use herbicides, then it will choose products that are designed for use in or near water to minimize any potential off-site impacts.

10. A modest amount of grazing may occur within the Petition Area by cattle from adjacent lands, but HILT has not provided permission for any adjacent owners to pasture their cattle on the Property.

11. The Property is located between privately owned residential properties on its makai boundaries and the State Forest Reserve on its mauka boundaries.

12. The Property acts as a buffer for the State Forest Reserve, as a healthy native forest on the Property helps keep the native forest in the State Forest Reserve healthy, while allowing invasive species to take over the native forest on the Property will result in those invasive species spreading into the State Forest Reserve.

13. HILT is presently in the process of planning the Kukuau Forest Management Project, which will consist of uses and activities compliant with the uses and activities for agricultural districts as provided in Hawai‘i Revised Statutes Chapter 205, including forestry and forage activities and uses, and potentially bonafide agricultural services and uses that support and are accessory to these activities.

14. HILT will seek the State Department of Land and Natural Resources’ (“DLNR”) approval of any forest management activities, and will seek DLNR’s assistance and partnership

in the development and approval of the Kukuau Forest Stewardship Plan, which is a specific type of plan to be created using DLNR's format and implemented with DLNR oversight.

15. The Kukuau Forest Management Project will actively manage and restore the native koa and ohia forest on the entirety of the Property, starting with the Petition Area, and engage, educate, and connect the Hilo community with the aina of Kukuau, with the ultimate goal of inspiring community stewardship of Kukuau Forest, and extending that practice of malama aina (caring for the lands that care for us) to other lands as well.

16. Active native forest management on the Property will require constant invasive species monitoring and/or removal, fencing for ungulate control, gathering seeds of native plants on the Property, growing and/or planting native plants from seeds and cuttings, selectively harvesting koa trees and reinvesting harvest proceeds back into land management, regularly monitoring and documenting native species' use of the native forest habitat such as Hawaiian Hawk, Hawaiian Hoary Bat, and other native bird and insect species, pest management, and dynamically adjusting stewardship practices in response to observations of native flora and fauna, changing weather patterns, and new or evolving threats.

17. HILT's mission also includes connecting Hawai'i's communities with aina (the land that feeds us), so the Kukuau Forest Management Project will also include community outreach, hosting community volunteer workdays and educational forest walks, hosting learning field trips for local schools, inviting Hawaiian cultural practitioners such as hula halau to spend time, learn from, and care for the Kukuau Forest, and potentially other culturally appropriate recreational opportunities.

18. The Kukuau Forest Management Project may include building a native plant greenhouse with equipment storage, a structure for study and research for community volunteers,

Hawaiian cultural practitioners, school children on educational field trips, or others utilizing the Petition Area as a place of study and research, and up to two water catchment tanks and/or two compostable toilets (as needed).

19. HILT will use best management practices in the construction of any and all structures which it constructs on the Property to control erosion and prevent runoff.

20. The Property will be accessed by an unimproved easement from Wilder Road, which is located approximately 2,900 feet below the eastern boundary of the Petition Area. Alternate access to the Property would require the use and extension of an existing County of Hawai'i Department of Water Supply 20-foot-wide service road. HILT projects that its proposed activities will generate very minimal traffic, as a typical week would have two people working onsite three days a week. Large projects such as installing fencing, removing invasive species, or harvesting may generate approximately ten vehicles accessing the site per day for work periods that may average two weeks. Volunteers may access the site on a monthly basis in approximately five to ten vehicles. Occasionally large groups may volunteer which could generate between fifteen to thirty vehicles.

21. As a nonprofit land trust that understands the need for active forest management on the Property, HILT understands it can only responsibly retain the Property and fund the Kukuau Forest Management Project's forest stewardship and community engagement activities to bring the community a multitude of environmental, cultural and educational benefits with a reliable annual income obtained by actively managing the forest to selectively harvest koa trees.

22. The Kukuau Forest Management Project will need to fund significant initial and continuing annual costs including hiring and retaining necessary knowledgeable staff from Hawaii Island, contracting foresters and other conservation professionals who specialize in the

needed large-scale capital improvements (*i.e.*, fencing to keep out ungulates and invasive species, a native plant greenhouse, and a structure), maintaining those capital improvements over time, and annually paying other typical land stewardship expenses such as property taxes and liability insurance.

23. HILT intends to partner with a forestry company employing certified foresters to selectively harvest koa and has been consulting with a forest management company that projects a selective harvesting program over a 30 year period would result in approximately 1½ times more koa trees on the Property.

24. HILT intends to develop and implement the Kukuau Forest Stewardship Plan within two years of the date of the Amended Decision and Order, and will provide a copy of the plan to the Commission.

25. HILT will also provide the Commission with reports on native forest restoration progress per plan benchmark projections every five years.

I do declare under penalty of law that the foregoing is true and correct.

Dated: Honolulu, Hawai'i, October 19, 2020.

By 
LAURA H.E. KAAKUA
Chief Executive Officer
Hawaiian Islands Land Trust

D36
CSO



STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED

March 13, 2019 8:01 AM

Doc No(s) T-10663066
on Cert(s) 510288
Issuance of Cert(s) 1172671



1 1/2 ZMA
B-33298699

/s/ LESLIE T. KOBATA
ASSISTANT REGISTRAR

Conveyance Tax: \$0.00

Z

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return by: Mail (XX) Pickup ()

Hawaii Islands Land Trust
P.O. Box 965
Wailuku, Hawaii 96793

TG: 201910592-5
TGE: 21019124838
Jeremy Trueblood

LC
①

TYPE OF DOCUMENT:

LIMITED WARRANTY DEED

PARTIES TO DOCUMENT:

GRANTOR: **THE NEWTON FAMILY LIMITED PARTNERSHIP**, a Hawaii limited partnership

GRANTEE: **HAWAIIAN ISLANDS LAND TRUST**,
a Hawaii non-profit corporation
P.O. Box 965
Wailuku, Maui, Hawaii 96793

Tax Map Key: (3) 2-4-008-033

Number of pages: 1

EXHIBIT "1"

LIMITED WARRANTY DEED

1096
THE NEWTON FAMILY LIMITED PARTNERSHIP, a Hawaii limited partnership ("Newton"), whose mailing address is P.O. Box 426, Kailua, HI 96734, hereinafter called the "**Grantor**", in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration to the Grantor paid by **HAWAIIAN ISLANDS LAND TRUST**, a Hawaii non-profit corporation, whose mailing address is P.O. Box 965, Wailuku, Maui, Hawaii 96793, hereinafter called the "**Grantee**", the receipt and sufficiency of which is acknowledged, **HEREBY GRANTS, BARGAINS, SELLS AND CONVEYS** unto the Grantee, its successors and assigns, as Tenant in Severalty, the property described in Exhibit A attached hereto and made part hereof, hereinafter called the "**Property**".

TOGETHER WITH the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of the Grantor, both at law and in equity, in and to the Property;

TO HAVE AND TO HOLD the Property, including the improvements thereon, and all tenements, hereditaments, rights, easements, privileges and appurtenances belonging or appertaining to or held and enjoyed with the Property, unto the Grantee, its successors and assigns according to the tenancy set forth herein, forever.

AND Grantor does hereby covenant with the Grantee, its successors and assigns, subject to the exceptions set forth in said Exhibit A, that: (a) Grantor is lawfully seised in fee simple of the Property described in said Exhibit A and has full power and authority to sell and convey its interest in said Property; (b) said Property is free of all encumbrances made or suffered by Grantor except for the encumbrances mentioned in Exhibit A and real property taxes and assessments not yet due and payable; and (c) Grantor will **WARRANT AND DEFEND** the foregoing unto the said Grantee, its successors and assigns forever against the lawful claims and demands of all persons claiming by, through or under Grantor, except as aforesaid.

This instrument shall be binding upon and inure to the benefit of the persons identified above as "Grantor" and "Grantee." The terms "Grantor" and "Grantee" as and when used herein, or any pronouns used in place thereof, shall mean and include the singular or plural number, individuals, partnerships, trustees and corporations, and each of their respective successors and assigns.

Grantee hereby understands and agrees that said Property, improvements, and other items, are being conveyed to Grantee "AS IS", "WHERE IS" and "WITH ALL FAULTS", in their present state and condition, except as otherwise provided herein or in the Gift Agreement (as defined below). Grantor makes no other representations or warranties, express or implied, with respect to the use, condition, fitness for any particular purpose, merchantability or any other aspect thereof, and it is expressly understood and agreed that any and all liability for any and all such representations or warranties is expressly disclaimed, except as otherwise provided herein or in the Gift Agreement.



Notwithstanding anything herein to the contrary, Grantee understand that this deed shall not expand the liability of Grantor under that certain unrecorded Gift Agreement, dated February 20, 2019 (as it may be amended, the "Gift Agreement").

The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

The person or company recording or arranging for the recordation of this document is authorized to complete any blanks contained in this document with the applicable number of pages, dates, and recordation information, whether before or after this document has been notarized by a notary public, and in no event shall completion of such blanks be deemed an alteration of this document by means of the insertion of new content.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, Grantor and Grantee have executed this instrument to be effective as of February 27, 2019.

Grantor:

**THE NEWTON FAMILY LIMITED
PARTNERSHIP**

By: Newton Family LLC, its General Partner

By: Rachel Newton-Weaver


Rachel Newton-Weaver

Its Manager

[signatures continued on next page]

Grantee:

HAWAIIAN ISLANDS LAND TRUST

By: 
Kawika Burgess
Chief Executive Officer

STATE OF HAWAII

SS:

City & County of Honolulu

On this 27 day of February, 2019, in the 1 Circuit, State of Hawaii, before me personally appeared Rachel Newton-Weaver, to me known or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument identified or described as **Limited Warranty Deed**, as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity. The foregoing instrument is dated Feb. 27, 2019, and contained 9 page(s), including Exhibit A, at the time of this acknowledgment/certification.



JEREMY TRUEBLOOD

Print Name of Notary Public

Notary Public, STATE OF HAWAII

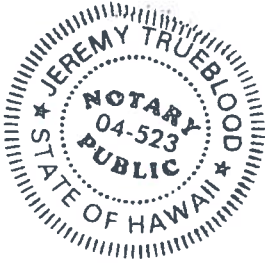
My commission expires

JEREMY TRUEBLOOD

Expiration Date: September 12, 2020



Signature of Notary Public



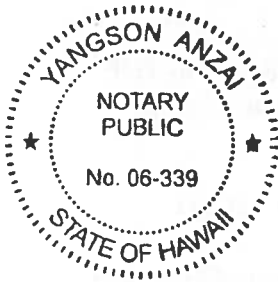
STATE OF HAWAII

City and County of Honolulu

ss:

On this 25th day of February, 2019, in the First Circuit, State of Hawaii, before me personally appeared Kawika Burgess, to me known or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument identified or described as **Limited Warranty Deed**, as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity. The foregoing instrument is dated February 25, 2019, and contained 12 page(s), including Exhibit A, at the time of this acknowledgment/certification.

YANGSON ANZAI



Print Name of Notary Public

Notary Public, STATE OF HAWAII

My commission expires JUN 11 2022

Yangson Anzai

Signature of Notary Public

Exhibit A

All of that certain parcel of land situate Kukuau 1st, South Hilo, Island and County of Hawaii, State of Hawaii, described as follows:

LOT 11-A, area 1,645.823 acres, more or less, as shown on Map 53, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1205 of Cooke Trust Company, Limited, Trustee under the Will and of the Estate of Akana Amelia Richardson, deceased.

Together with access to a public road, across a 40 foot easement as granted by Land Court Document No. 976483 and being more particularly described therein, and across Lot 330 and Easement 209 as shown on Map 73 of Land Court Application No. 1205, as provided by Land Court Order No. 104144.

NOTE: Easement 209 is connected to Lot 331. Lot 331 has been conveyed to the County of Hawaii as a public road.

Being land(s) described in Transfer Certificate of Title No. 510,288 issued to THE NEWTON FAMILY LIMITED PARTNERSHIP, a Hawaii limited partnership.

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR: GEORGE N. NEWTON, Trustee under Revocable Trust of George N. Newton dated April 5, 1976, and MARY JO NEWTON, Trustee under Revocable Trust of Mary Jo Newton dated August 7, 1989

GRANTEE: THE NEWTON FAMILY LIMITED PARTNERSHIP, a Hawaii limited partnership

DATED: --- (acknowledged May 15, 1998)
FILED: Land Court Document No. 2458280

Subject, however, to the following:

1. Mineral and water rights of any nature, if any, in favor of the State of Hawaii, but only to the extent applicable to the Property.
2. Right of Way for flume and water purposes in favor of Olaa Sugar Company, as granted by instrument dated November 5, 1900, recorded in Liber 21 at Page 474, and as modified by Quitclaim Deed dated March 31, 1938.
3. DESIGNATION OF EASEMENT "107"

SHOWN: on Map 53 of Land Court Application 1205, as set forth by Land Court Order No. 72554, filed on January 30, 1985

4. A right of way in favor of Lot 11-B over and across said Easement "107".

5. DESIGNATION OF EASEMENT "156"

PURPOSE : electrical transmission line

SHOWN : on Map 71 of Land Court Application No. 1205, as set forth by Land Court Order No. 100893, filed on January 24, 1991

6. GRANT

TO : HAWAII ELECTRIC LIGHT COMPANY, INC.

DATED : ---

FILED : Land Court Document No. 1929212

GRANTING : a right and easement over and across said Easement "156"

7. The terms and provisions contained in the following:

INSTRUMENT : NOTICE OF IMPOSITION OF CONDITIONS BY THE LAND USE COMMISSION

DATED : December 4, 2001

RECORDED : Document No. 2001-189429

(Not noted on Transfer Certificate(s) of Title referred to herein)

8. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

DATED : April 16, 2002

FILED : Land Court Document No. 2797546

9. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes, but only to the extent applicable to the Property.

10. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose, but only to the extent applicable to the Property.

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	Docket No. A99-729
)	
HAWAIIAN ISLANDS LAND TRUST to)	
Amend the Conditions of the Decision and)	
Order for approximately 885.40 acres at)	
Kukuau, South Hilo, Hawaii, Tax Map Key)	
No. (3) 2-4-008-033 (por.))	
)	
)	

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that true and correct file-marked copy of the foregoing document was duly served upon the following parties VIA ELECTRONIC MAIL and CERTIFIED MAIL at their last known address:

DAWN TAKEUCHI-APUNA, ESQ.
Deputy Attorney General
Department of the Attorney General
425 Queen Street
Honolulu, HI 96813

CERTIFIED MAIL
Dawn.T.Apuna@hawaii.gov

MARY ALICE EVANS, Director
Office of Planning, State of Hawai'i
235 South Beretania Street
Room 600, Leiopapa A. Kamehameha Bldg.
Honolulu, HI 96813

CERTIFIED MAIL
MaryAlice.Evans@hawaii.gov

JOHN MUKAI, ESQ.
DIANA MELLON-LACEY, ESQ.
Deputy Corporation Counsels
Office of the Corporation Counsel
Hilo Lagoon Centre
101 Aupuni Street, Unit 325
Hilo, HI 96720

CERTIFIED MAIL
John.Mukai@hawaiiicounty.gov
Diana.M.Mellon-Lacey@hawaii
county.gov

APRIL SURPRENANT
Acting Deputy Director
County of Hawai'i Planning Department
Aupuni Center
101 Pauahi Street, Suite 3

CERTIFIED MAIL
April.Suprenant@hawaiiicounty.gov

Hilo, HI 96720

DATED: Honolulu, Hawai'i, October 21, 2020.

A handwritten signature in black ink, appearing to read 'RONALD N.W. KIM', written over a horizontal line.

RONALD N.W. KIM
co-counsel for Petitioner
HAWAIIAN ISLANDS LAND TRUST