

2020 OCT 16 A 11:25

OFFICE OF PLANNING

Leiopapa a Kamehameha, Room 600
235 South Beretania Street
Honolulu, Hawaii 96813
Telephone: (808) 587-2846
Facsimile: (808) 587-2824

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A99-729
)	
THE NEWTON FAMILY LIMITED	)	OFFICE OF PLANNING’S RESPONSE
PARTNERSHIP, A HAWAII LIMITED	)	TO MOTION FOR ORDER AMENDING
PARTNERSHIP	)	THE FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW, AND
	)	DECISION AND ORDER, DATED
To Amend the Conservation Land Use	)	NOVEMBER 15, 2001;
District Boundary into the Agricultural Land	)	OP EXHIBITS 1, 2, 3, 4, AND 5; AND
Use District for Approximately 885.40	)	CERTIFICATE OF SERVICE
Acres of Land at Kukuau, South Hilo,)	
Hawaii, TMK No.: (3) 2-4-008: Por. 33)	
)	
)	

**OFFICE OF PLANNING’S RESPONSE TO MOTION FOR ORDER AMENDING THE
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER,
DATED NOVEMBER 15, 2001**

The Office of Planning (“OP”) recommends approval, subject to modifications, of successor Petitioner Hawaiian Islands Land Trust’s (“HILT”) (“Successor Petitioner”) Motion to amend and delete certain conditions of the Findings of Fact, Conclusions of Law, and Decision and Order (“Motion”). According to the Motion, HILT is a Hawaii nonprofit corporation and a nationally-accredited land trust. Successor Petitioner has protected over 21,500 acres across Hawaii through fee simple ownership and stewardship and conservation easements restricting land use on privately-owned lands.

The Motion requests that the Land Use Commission (“LUC”): issue a new order modifying the Commission’s 2001 D&O in order to allow Successor Petitioner to establish appropriate findings of fact, conclusions of law and conditions that are specifically applicable to the proposed native forest management plans and project.

OP distributed the Motion to the following agencies for their review and comments: Department of Land and Natural Resources (“DLNR”), State Historic Preservation Division (“SHPD”), Department of Transportation (“DOT”), the Office of Hawaiian Affairs “OHA”), and the U. S. Fish and Wildlife Service (“USFWS”). OP’s response is based on the representations and documents filed by the Petitioner, including comments received by various State agencies on potential impacts to their facilities, programs, statutes and regulations applicable to these proceedings.

I. BACKGROUND AND ORIGINAL PROPOSAL

The original Petitioner, Newton Family Limited Partnership, proposed to reclassify the Petition Area from the Conservation Land Use District to the Agricultural District in order to subdivide the Petition Area into nine (9) parcels, consisting of eight (8) agricultural parcels within the Petition Area, and one (1) large conservation parcel within the remainder area. The eight agricultural lots were proposed to range in size from 80 acres to 153 acres. The lots were to be distributed within the Newton family, with three (3) of the lots to be sold to non-family members to defray the cost of the infrastructure improvements.

II. PROPOSED DEVELOPMENT

According to the Motion, the Petition Area is vacant and undeveloped. Successor Petitioner is proposing to establish the Kukuau Forest Management Project on the Petition Area in line with its nonprofit mission to protect and steward lands in Hawaii. The Petition Area contains native forest with an overstory of ohia and koa with an understory of primarily uluhe fern. There are also invasive species of strawberry guava and Koster’s curse plants overtaking sections of native forest over the entire parcel. The Kukuau Forest Management Project includes actively managing the native forests and restoring the native koa and ohia forest on the entire Petition Area. Active native forest management requires invasive species monitoring, removal and fencing for ungulate control. Successor Petitioner will also propagate native plants on the Petition

Area, and regularly monitor and document native species use of the forest habitat such as the Hawaiian Hawk, Hawaiian Hoary Bat, and other native bird and insect species.

Successor Petitioner also proposes to include community outreach, hosting volunteer workdays and educational forest walks, field trips from schools, and inviting Hawaiian cultural practitioners to the Petition Area.

The proposal also includes fencing to keep out ungulates and invasive species, construction of a native plant greenhouse, and a large covered area. Funds are needed to hire staff from Hilo, and to contract with foresters and other conservation professionals to help manage the Petition Area. In order to obtain funds for the management of the Kukuau forest, the Successor Petitioner proposes to harvest the koa trees on the site.

Conditions of Approval within the 2001 D&O and proposed amendment

The Decision and Order of 2001 included 23 conditions of approval. Here are OP's summarized comments and recommendations on the conditions for the current conditions and the proposed amendment or modification proposed by the Successor Petitioner:

Condition 1: Proposed agricultural subdivision limited to eight (8) lots. Successor Petitioner proposes the following substitute condition:

The Petition Area shall not be subdivided.

OP Recommendation: OP has no objection to the proposed amendment. In its justification, Successor Petitioner states that the plans for its Kukuau Forest Management Project include “one structure which would provide shelter for community volunteers, Hawaiian cultural practitioners, and school children on educational field trips or utilizing the Petition Area as a place of study and research.” This structure would likely not be permitted as a matter of law under Hawaii Revised Statutes (“HRS”) § 205-2(d) as a shelter for “community volunteers, Hawaiian cultural practitioners, and school children on educational field trips,” and therefore may require a special permit pursuant to HRS § 205-6. This structure “as a place of study and research” may be permitted as a matter of law under HRS § 205-2(d)(9), which allows small-scale... scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land; provided that these facilities shall not be used as or equipped for

use as living quarters or dwellings,” depending on additional information and the objectives of the structure. The Commission’s approval of this Motion should not be considered an approval of any structure on the Petition Area.

Condition 2: Protection of endangered animals with any protection or mitigation measures shall be approved by the USFWS and the DLNR. Successor Petitioner proposes a modification to the condition, as follows:

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.

OP Recommendation: OP recommends additional conditions relating to the protection of fauna in the vicinity, as recommended by comments submitted by the USFWS and the DLNR, Division of Forestry and Wildlife (“DOFAW”). Thus, OP recommends a new condition for the protection of the fauna within the Petition Area. See OP Exhibits 1 and 2.

New OP-Recommended Condition:

2. Fish and Wildlife Protection. Petitioner shall comply with the following:
 - a. The State listed Hawaiian Hawk 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 Oahu 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.

Condition 3: Clearing and grubbing the alignment for the subdivision roadway to survey the immediate area for endangered species nests and species.

Successor Petitioner proposes to delete this condition.

OP Recommendation: OP has no objection. OP's proposed Condition No. 2 addresses impacts and mitigation to native species should any clearing or grubbing take place on the Petition Area.

Condition 4: Shielding of night lights to mitigate adverse impacts on seabirds.

Successor Petitioner proposes to retain this condition.

OP Recommendation. Retain the condition, with modifications to provide better protection of fauna in the vicinity, as recommended by comments submitted by the USFWS and the DOFAW. See OP Exhibits 1 and 2.

Condition 4 with OP modifications:

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.

Condition 5: Conservation of kipuka and large areas of native vegetation.

Successor Petitioner proposes to modify the condition as follows:

The Petitioner Area includes significant native forest. Petitioner and its successors shall develop and implement a forest management plan within 2 years from the date of this Decision and Order, and will provide the forest management plan to this Commission, and 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.

OP Recommendation: OP has no objection.

Condition 6: Best management practices for construction. Successor Petitioner proposes to retain this condition. Successor Petitioner may seek to construct a greenhouse or shelter for visitors.

OP Comments: We note that the construction of agricultural greenhouses is a permitted use within the State Agricultural District under HRS § 205-2(d)(7). However, shelters for visitors are not a permitted use as a matter of law under HRS § 205-2, and therefore would likely require a special permit pursuant to HRS § 205-6.

Conditions 7, 8 and 9:

Relating to Archaeological inventory survey, mitigation plan/preservation plan, and standard archaeological condition should any historic or archaeological resources be discovered. Condition 7 indicates that the survey should be provided to SHPD and OHA for their review and comment prior to any land alteration for a specific development. Condition 8 provides for mitigation and preservation plans developed with community input, including OHA and approved by SHPD. Condition 9 requires contacting SHPD in case archaeological and historic resources are found during construction.

Successor Petitioner proposes to delete these three conditions.

OP Recommendation: An email from the Office of Hawaiian Affairs (OHA) dated October 14, 2020, indicates that their office recommends that SHPD remain on the conditions, however, OHA has made no objection to removing their office from the conditions. Comments from SHPD dated September 29, 2020 indicate that no archaeological inventory survey has been completed for the site. We note that Successor Petitioner proposes to construct several structures in order to facilitate forestry management of the Petition Area. SHPD indicates that future projects that involve ground disturbing activities may have adverse impacts on undocumented

historic properties. Thus, OP recommends that the LUC retain the conditions but with modifications. See OP Exhibits 3 and 4.

Original Condition 7 with OP modifications.

Petitioner and its successors shall complete, prior to any land alteration, an archaeological inventory survey (AIS) of the area [~~acreage~~] that would be disturbed by any specific development including roadway, driveway, parking, [~~house site~~] and agricultural building site. The AIS [~~survey~~] results will be provided to the DLNR State Historic Preservation Division (SHPD) [~~and the Office of Hawaiian Affairs (OHA)~~] for review and approval [~~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.]~~

Original Condition 8 with OP modifications.

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. [~~This plan will include input from the local native Hawaiian community and relevant Hawaiian groups, including the OHA.~~] The plan shall be reviewed and 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.~~]

Original Condition 9 with OP modifications.

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 [~~the development~~] of the proposed Kukuau forest management [~~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.~~]

Condition 10: Right of way for County's secondary arterial roadway.

Successor Petitioner is requesting to delete this condition.

OP Recommendation: OP takes no position on this request and defers to the County of Hawaii.

Condition 11: Wastewater infrastructure.

Successor Petitioner is requesting to delete this condition.

OP Recommendation. OP recommends that this condition requiring adequate wastewater facilities be retained in light of the planned uses including community volunteer work days, field trips for local schools, and inviting Hawaiian cultural practitioners to the area.

Conditions 12-15 and 17: These conditions relate to the original proposed subdivision.

Successor Petitioner is requesting to delete these conditions.

OP Recommendation: OP has no objections.

Condition 16: Relating to availability of water.

Successor Petitioner is requesting to delete this condition.

OP Recommendation: OP recommends that this condition requiring adequate water source, storage, and transmission facilities be retained in consideration of the planned uses of the area.

Conditions 18-23: LUC standard conditions.

Successor Petitioner requests the deletion of conditions 18 through 20. Successor Petition requests to retain Condition 21, 22 and 23.

OP Recommendation: OP recommends the retention of all Conditions 18-23 as standard LUC conditions.

Consistency with Urban District Standards and State

The proposed use to establish the Kukuau Forest Management Project on the Agricultural Petition Area is reasonable and consistent with the Agricultural Land Use District classification and Commission Rules for Agricultural District standards and permissible uses under Hawaii Administrative Rules §§ 15-15-19 and 15-15-25. However, we note that other non-agricultural uses may require additional approvals and permitting such as a special permit pursuant to HRS § 205-6.

Key Issues of Concern to the State

The following summarizes the concerns identified by various State agencies and includes recommendations for proposed conditions to mitigate potential impacts from the proposed Project.

Historical or Archaeological, PASH and Ka Paakai Assessment

As indicated above, SHPD has commented that an archaeological inventory survey has not been done for this site. Therefore, we recommend that the LUC retain with modifications conditions relating to the historical and archaeological resources. In addition, we note that Successor Petitioner has not indicated whether the proposal has met the standards for PASH and Ka Paakai. See OP Exhibit 3.

Mitigation recommendation: The Commission should retain these conditions with modifications. In addition, Successor Petitioner should include a statement regarding how the proposal meets PASH and Ka Paakai, prior to approval of the Motion.

Transportation

The State DOT submitted a letter dated October 1, 2020 indicating that they have no comments on the proposal. Thus, no mitigation is needed. See OP Exhibit 5.

Fish and Wildlife Protection

OP recommends additional conditions related to the protection of fauna in the vicinity, as recommended by comments submitted by the U.S. Fish and Wildlife Service and the State Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW). See OP Exhibits 1 and 2.

CONCLUSION AND RECOMMENDATIONS

Based on the foregoing information and analysis, OP recommends approval of Successor Petitioner's Motion with proposed modifications to conditions, as noted with OP amendments. OP concurs with the proposed deletions of Conditions Nos. 3, 10, 12, 13, 14, 15, and 17. OP takes no position on Condition No. 10. OP agrees with Successor Petitioner's proposed amendments on Condition Nos. 1 and 5. OP recommends modifications to Condition Nos. 2, 4,

7, 8 and 9. OP recommends that the Commission retain Condition Nos. 6, 11, and 16. Lastly, Conditions Nos. 18 to 23 are the LUC's standard conditions which should be retained.

DATED: Honolulu, Hawaii, October 16, 2020.

OFFICE OF PLANNING
STATE OF HAWAII

Mary Alice Evans

MARY ALICE EVANS
DIRECTOR

DAVID Y. IGE
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

October 13, 2020

State of Hawaii
DBEDT - Office of Planning
Land Use Division
Attention: Ms. Lorene Maki, Planner
235 South Beretania Street, 6th Floor
Honolulu, Hawaii 96813

via email: lorene.k.maki@hawaii.gov

Dear Ms. Maki:

SUBJECT: Land Use Commission Docket No. A99-729 Hawaiian Islands Land Trust aka The Newton Family Limited Partnership – To Establish, Manage and Steward the Native Forest on the Petition Area as Part of the **Kukuau Forest Management Project** located at Kukuau, South Hilo, Island of Hawaii; TMK: (3) 2-4-008: 33 Por. on behalf of Hawaiian Islands Land Trust aka The Newton Family Limited Partnership

Thank you for the opportunity to review and comment on the subject matter. The Land Division of the Department of Land and Natural Resources (DLNR) distributed or made available a copy of your request pertaining to the subject matter to DLNR's Divisions for their review and comments.

At this time, enclosed are comments from the (a) Engineering Division, (b) Division of Forestry & Wildlife, (c) Land Division-Hawaii District, and (d) State Historic Preservation on the subject matter. Should you have any questions, please feel free to contact Darlene Nakamura at (808) 587-0417 or email: darlene.k.nakamura@hawaii.gov. Thank you.

Sincerely,

Russell Tsuji

Russell Y. Tsuji
Land Administrator

Enclosures
cc: Central Files

OP EXHIBIT 1

DEPARTMENT OF LAND AND NATURAL RESOURCES
ENGINEERING DIVISION

LD/Russell Y. Tsuji

Ref: Land Use Commission Docket No. A99-729 Hawaiian Islands Land Trust
aka The Newton Family Limited Partnership – To Establish, Manage and
Steward the Native Forest on the Petition Area as Part of the Kukuau Forest
Management Project

Location: Kukuau, South Hilo, Island of Hawaii

TMK(s): (3) 2-4-008: 33 Por.

Applicant: Office of Planning on behalf of Hawaiian Islands Land Trust aka
The Newton Family Limited Partnership

COMMENTS

The rules and regulations of the National Flood Insurance Program (NFIP), Title 44 of the Code of Federal Regulations (44CFR), are in effect when development falls within a Special Flood Hazard Area (high risk areas). State projects are required to comply with 44CFR regulations as stipulated in Section 60.12. Be advised that 44CFR reflects the minimum standards as set forth by the NFIP. Local community flood ordinances may stipulate higher standards that can be more restrictive and would take precedence over the minimum NFIP standards.

The owner of the project property and/or their representative is responsible to research the Flood Hazard Zone designation for the project. Flood Hazard Zones are designated on FEMA's Flood Insurance Rate Maps (FIRM), which can be viewed on our Flood Hazard Assessment Tool (FHAT) (<http://gis.hawaiiinfip.org/FHAT>).

If there are questions regarding the local flood ordinances, please contact the applicable County NFIP coordinating agency below:

- o Oahu: City and County of Honolulu, Department of Planning and Permitting (808) 768-8098.
- o Hawaii Island: County of Hawaii, Department of Public Works (808) 961-8327.
- o Maui/Molokai/Lanai County of Maui, Department of Planning (808) 270-7253.
- o Kauai: County of Kauai, Department of Public Works (808) 241-4896.

Signed: 
CARTY S. CHANG, CHIEF ENGINEER

Date: Oct 7, 2020

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL STREET, ROOM 325
HONOLULU, HAWAII 96813

October 12, 2020

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ADMINISTRATION
(TERRIERO)
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAMOHAWI ISLAND RESERVE COMMISSION
LAND
STATE PARKS

MEMORANDUM

Log no 2826

TO: RUSSELL Y. TSUJI, Administrator
Land Division

FROM: DAVID G. SMITH, Administrator *for*
Division of Forestry and Wildlife

SUBJECT: Division of Forestry and Wildlife Comments for Land Use Commission Docket No. A99-729 Hawaiian Islands Land Trust aka The Newton Family Limited Partnership- To Establish, Manage and Steward the Native Forest on the Petition Area as Part of the Kukuau Forest Management Area

The Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) has received your inquiry regarding the Kukuau Forest Management Project in South Hilo on the Island of Hawai'i, TMK: (3) 2-4-008:033 (por.). The proposed project consists of keeping the designated land as Conservation Land Use District in lieu of Agricultural as originally proposed to establish, manage and steward the lot in line with its nonprofit mission.

The State listed Hawaiian Hawk or 'Io (*Buteo solitarius*) is known to occur in the project vicinity. DOFAW recommends surveying the area to ensure no Hawaiian Hawk nests are present if trees are to be cut. 'Io nests might be present during the breeding season from March to September.

The State listed Hawaiian Goose or Nēnē (*Branta sandvicensis*) has the potential to occur in the vicinity of the proposed project site. It is against State law to harm or harass these species. If any of these species are present during management activities, then all activities within 100 feet (30 meters) should 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, please contact the Hawai'i Island DOFAW Office at (808) 974-4226.

DOFAW recommends minimizing the movement of plant or soil material between worksites, such as in fill. Soil and plant material may contain invasive fungal pathogens (e.g. Rapid 'Ōhi'a Death), vertebrate and invertebrate pests (e.g. Little Fire Ants), or invasive plant parts that could harm our native species and ecosystems. We recommend consulting the Big Island Invasive Species Committee at (808) 933-3340 in planning, design, and construction of the project to learn of any high-risk invasive species in the area and ways to mitigate spread. All equipment, materials, and personnel should be cleaned of excess soil and debris to minimize the risk of spreading invasive species. Gear that may contain soil, such as work boots and vehicles, should be thoroughly cleaned

with water and sprayed with 70% alcohol solution to prevent the spread of Rapid 'Ōhi'a Death and other harmful fungal pathogens.

The State listed Hawaiian Hoary Bat or 'Ōpe'ape'a (*Lasiurus cinereus semotus*) has the potential to occur in the vicinity of the project area and may roost in nearby trees. If any site clearing is required this should be timed to avoid disturbance during the bat birthing and pup rearing season (June 1 through September 15). If this cannot be avoided, woody plants greater than 15 feet (4.6 meters) tall should not be disturbed, removed, or trimmed without consulting DOFAW.

We note that artificial lighting can adversely impact seabirds that may pass through the area at night by causing disorientation. This disorientation can result in collision with manmade artifacts or grounding of birds. For nighttime lighting that might be required, DOFAW recommends that all lights be fully shielded to minimize impacts. Nighttime work that requires outdoor lighting should be avoided during the seabird fledging season from September 15 through December 15. This is the period when young seabirds take their maiden voyage to the open sea. For illustrations and guidance related to seabird-friendly light styles that also protect the dark, starry skies of Hawai'i please visit: <https://dlnr.hawaii.gov/wildlife/files/2016/03/DOC439.pdf>.

We appreciate your efforts to work with our office for the conservation of our native species. Should the scope of the project change significantly, or should it become apparent that threatened or endangered species may be impacted, please contact our staff as soon as possible.

If you have any questions, please contact Lauren Taylor, Protected Species Habitat Conservation Planning Coordinator at (808) 587-0010 or lauren.taylor@hawaii.gov.



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Pacific Islands Fish and Wildlife Office
300 Ala Moana Boulevard, Room 3-122
Honolulu, Hawaii 96850

In Reply Refer To:
01EPIF00-2021-TA-0007

October 13, 2020

Ms. Mary Alice Evans
Director
Office of Planning
State of Hawaii
235 South Beretania Street, 6th Floor
Honolulu, Hawaii 96804

Subject: Technical Assistance for Land Use Commission Docket No. A99-729; Hawaiian Islands Land Trust's Motion for Order Amending the Findings of Fact, Conclusions of Law, and Decision and Order Dated November 16, 2001, Island and County of Hawaii

Dear Ms. Evans,

The U.S. Fish and Wildlife Service (Service) received your correspondence on September 30, 2020, requesting the Service provide comments on the subject Motion to Amend for the State's use in Response to the Motion and subsequent testimony for the Land Use Commission (LUC) Hearing on the Motion to Amend the 2001 Findings of Fact, Conclusions of Law, and Decision Order regarding the subject property (TMK (3) 2-4-008-033, a 1645.823 acre parcel).

The Petitioner, Hawaii Islands Land Trust (HILT), is requesting that the LUC: (1) recognize the Petitioner's standing for the Motion, and (2) revise, delete, and amend certain conditions of the 2001 Decision and Order (2001 DO). The 2001 DO reclassified the State Land Use District Boundary of the Petition Area consisting of approximately 885.40 acres of the subject property from the Conservation Land Use District into the Agricultural Land Use District for the development of an agricultural subdivision which was never completed by the previous owner. HILT states that they have received the subject property as a donation and intend to manage the entire parcel as the Kukuau Forest Management Project in line with their nonprofit mission to protect and steward the lands that sustain Hawaii, and to perpetuate Hawaiian values by connecting people with aina. Their Petition includes a wide variety of edits to the 2001 DO, including removing all references to subdividing the land and converting the entire parcel (all 1645.823 acres) to the Agricultural District to allow for active forest management including survey and treatment of invasive species, restoration of native habitats, and limited timber harvest of koa trees to provide a funding stream for other conservation work. Other land uses described may include forestry, forage, agricultural activities, construction of a greenhouse to support native plant restoration, collection of native plant seed, fencing for ungulate control, and development of an open area recreational/educational facility to host groups for outreach purposes.

We have reviewed the information provided and pertinent information in our files, as it pertains to listed species in accordance with section 7 of the ESA. Our data indicate the following federally listed species may occur or transit through the vicinity of the proposed project area: the endangered Hawaiian hoary bat (*Lasiurus cinereus semotus*), Hawaiian petrel (*Pterodroma sandwichensis*), band-rump storm-petrel (*Oceanodroma castro*), Blackburn's sphinx moth (*Manduca blackburni*), *Drosophila digressa*, *Drosophila heteroneura*, *Drosophila mulli*, *Drosophila ochrobasis* (picture-wing flies), *Clermontia peleana* (oha wai), *Cyanea platyphylla* (aku aku), *Cyrtandra giffardii* (haiwale), *Cyrtandra tintinnabula* (haiwale), *Joinvillea ascendens subsp. ascendens* (ohe) and the threatened Newell's shearwater (*Puffinus auricularis newelli*), and Hawaiian goose (*Branta sandvicensis*). The Hawaiian petrel, band-rump storm-petrel, and Newell's shearwater will hereafter collectively be referred to as "Hawaiian seabirds", *Drosophila* spp. will be referred to as picture-wing flies, and *Clermontia peleana*, *Cyanea platyphylla*, *Cyrtandra giffardii*, *Cyrtandra tintinnabula*, and *Joinvillea ascendens subsp. ascendens* will be referred to as "Listed plants."

The Hawaiian hawk (*Buteo solitarius*), a species that was recently removed from the federal list of threatened and endangered species, is known to occur in the area. While the Service no longer consults on the Hawaiian hawk, this species is still protected under Hawaiian state regulations (H.R.S. §195D-4) and the Migratory Bird Treaty Act (16 U.S.C. 703-712). Please see our recommendations below and reference the aforementioned regulations for any additional consultation or mitigation requirements.

The Service offers the following comments to assist you in your review of the Motion and HILT's proposed revisions to the 2001 DO. This letter has been prepared under the authority of, and in accordance with, provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) as amended (ESA).

Hawaiian hoary bat

The Hawaiian hoary bat roosts in woody vegetation across all islands and will leave their young unattended in trees and shrubs when they forage. If trees or shrubs 15 feet or taller are cleared during the pupping season, June 1 through September 15, there is a risk that young bats could inadvertently be harmed or killed, since they are too young to fly or move away from disturbance. Hawaiian hoary bats forage for insects from as low as 3 feet to higher than 500 feet above the ground and can become entangled in barbed wire used for fencing.

To avoid and minimize impacts to the endangered Hawaiian hoary bat we recommend HILT incorporate the following applicable measures into future project plans:

- Do not disturb, remove, or trim woody plants greater than 15 feet tall during the bat birthing and pup rearing season (June 1 through September 15).
- Do not use barbed wire for fencing.

Hawaiian hawk

The Hawaiian hawk was recently federally delisted, but remains a listed species under Hawaii State law. The Hawaiian hawk is known to occur across a broad range of forest habitats throughout the Island of Hawaii. Loud, irregular and unpredictable activities, such as using heavy equipment or building a structure, near a Hawaiian hawk nest may cause nest failure. Harassment of Hawaiian hawk nesting sites can alter feeding and breeding patterns or result in nest or chick abandonment. Nest disturbance can also increase exposure of chicks and juveniles to inclement weather or predators.

To avoid and minimize impacts to Hawaiian hawks we recommend HILT incorporate the following applicable measures into future project descriptions:

- If work must be conducted during the March 1 through September 30, the Hawaiian hawk breeding season, have a biologist familiar with the species conduct a nest search of the project footprint and surrounding areas immediately prior to the start of construction activities.
 - Pre-disturbance surveys for Hawaiian hawks are only valid for 14 days. If disturbance for the specific location does not occur within 14 days of the survey, conduct another survey.
- Clearing of vegetation or construction activities should not occur within 1,600 feet of any active Hawaiian hawk nest during the breeding season until the young have fledged.
- Regardless of the time of year, avoid trimming or cutting trees containing a hawk nest, as nests may be re-used during consecutive breeding seasons.

Hawaiian seabirds

Hawaiian seabirds may traverse the project area at night during the breeding, nesting and fledging seasons (March 1 to December 15). Outdoor lighting could result in seabird disorientation, fallout, and injury or mortality. Seabirds are attracted to lights and after circling the lights they may become exhausted and collide with nearby wires, buildings, or other structures or they may land on the ground. Downed seabirds are subject to increased mortality due to collision with automobiles, starvation, and predation by dogs, cats, and other predators. Young birds (fledglings) traversing the project area between September 15 and December 15, in their first flights from their mountain nests to the sea, are particularly vulnerable to light attraction.

To avoid and minimize potential project impacts to seabirds we recommend HILT incorporate the following measures into your future project plans:

- Fully shield all outdoor lights so the bulb can only be seen from below.
- Install automatic motion sensor switches and controls on all outdoor lights or turn off lights when human activity is not occurring in the lighted area.
- Avoid nighttime construction during the seabird fledging period, September 15 through December 15.

Hawaiian goose

Nene are found on the islands of Hawaii, Maui, Molokai, and Kauai. They are observed in a variety of habitats, but prefer open areas, such as pastures, golf courses, wetlands, natural grasslands and shrublands, and lava flows. Threats to the species include introduced mammalian and avian predators, wind facilities, and vehicle strikes.

To avoid and minimize potential project impacts to nene we recommend HILT incorporate the following measures into your future project plans:

- Do not approach, feed, or disturb nene.
- If nene are observed loafing or foraging within the project area during the breeding season (September through April), have a biologist familiar with nene nesting behavior survey for nests in and around the project area prior to the resumption of any work. Repeat surveys after any subsequent delay of work of 3 or more days (during which the birds may attempt to nest).

- Cease all work immediately and contact the Service for further guidance if a nest is discovered within a radius of 150 feet of proposed project, or a previously undiscovered nest is found within the 150-foot radius after work begins.
 - In areas where nene are known to be present, post and implement reduced speed limits, and inform project personnel and contractors about the presence of endangered species on-site.

Blackburn's sphinx moth

The adult Blackburn's sphinx moth feeds on nectar from native plants, including beach morning glory (*Ipomoea pes-caprae*), iliee (*Plumbago zeylanica*), and maiapilo (*Capparis sandwichiana*). Blackburn's sphinx moth larvae feed on non-native tree tobacco (*Nicotiana glauca*) and native aiea (*Nothoecstrum* sp.). To pupate, the larvae burrow into the soil and can remain in a state of torpor for a year or more before emerging from the soil. Soil disturbance can result in death of the pupae.

We offer the following survey recommendations to assess whether the Blackburn's sphinx moth occurs within the project area:

- A biologist familiar with the species should survey areas of proposed activities for Blackburn's sphinx moth and its larval host plants prior to work initiation.
 - Surveys should be conducted during the wettest portion of the year (usually November-April or several weeks after a significant rain) and within 4-6 weeks prior to construction.
 - Surveys should include searches for adults, eggs, larvae, and signs of larval feeding (chewed stems, frass, or leaf damage).
 - If moths, eggs, or larvae, or native aiea or tree tobacco over 3 feet tall, are found during the survey, please contact the Service for additional guidance to avoid impacts to this species.

If no Blackburn's sphinx moth, aiea, or tree tobacco are found during surveys, it is imperative that measures be taken to avoid attraction of Blackburn's sphinx moth to the project location and prohibit tree tobacco from entering the site. Tree tobacco can grow greater than 3 feet tall in approximately 6 weeks. If it grows over 3 feet, the plants may become a host plant for Blackburn's sphinx moth. We therefore recommend:

- Remove any tree tobacco less than 3 feet tall.
- Monitor the site every 4-6 weeks for new tree tobacco growth before, during, and after the proposed ground-disturbing activity.
 - Monitoring for tree tobacco can be completed by any staff, such as groundskeeper or regular maintenance crew, provided with picture placards of tree tobacco at different life stages.

Picture-wing flies

Picture-wing flies live in montane forest habitat and are restricted to single islands. Larvae of each species are dependent on a single or a few related plant species. The flies are threatened by destruction of habitat from non-native ungulates and invasive weeds, and also directly threatened by a variety of introduced invertebrates, including yellow jackets and several ant species.

- Avoid clearing forest vegetation within 200 feet of a site potentially occupied by endangered *Drosophila*.
- Restrict construction equipment to existing roads and trails.
- If the site is potentially occupied by endangered *Drosophila* based on location and presence of host plants, consult the Service since permits are required to conduct surveys.

Pesticide use may require a larger buffer distance and the Service should be consulted.

Table 1. General species information for picture-wing flies.

Species	Island	Habitat	Host plant(s)
<i>D. digressa</i>	Hawaii	Mesic to wet forest	<i>Charpentiera</i> spp., <i>Pisonia</i> spp.
<i>D. heteroneura</i>	Hawaii	Mesic to wet forest	<i>Cheirodendron</i> spp., <i>Clermontia</i> spp., <i>Delissea</i> spp.
<i>D. mulli</i>	Hawaii	Wet forest	<i>Pritchardia beccariana</i>
<i>D. ochrobasis</i>	Hawaii	Mesic to wet forest	<i>Clermontia</i> spp., <i>Marattia</i> spp., <i>Myrsine</i> spp.

Listed Plants

Project activities may affect listed plant species by causing physical damage to plant parts (roots, stems, flowers, fruits, seeds, etc.) as well as impacts to other life requisite features of their habitat which may result in reduction of germination, growth and/or reproduction. Cutting and removal of vegetation surrounding listed plants has the potential to alter microsite conditions (e.g., light, moisture, temperature), damaging or destroying the listed plants and also increasing the risk of invasion by nonnative plants which can result in higher incidence or intensity of fire. Activities such as timber harvest, grazing, use of construction equipment and vehicles, and increased human traffic (i.e. trails, visitation, monitoring), can cause ground disturbance, erosion, and/or soil compaction which decrease absorption of water and nutrients and damage plant root systems and may result in reduced growth and/or mortality of listed plants. Soil disturbance or removal has the potential to negatively impact the soil seed bank of listed plant species if such species are present or historically occurred in the project area.

The subject property does not overlap with any designated critical habitat, and ranges in elevation from approximately 1410' to 2450'. The parcel appears to overlap with the current range of several endangered plants, and likely contains habitats that support endangered plants, including remnant forested kipukas. These habitats are categorized as *Metrosideros polymorpha*-*Acacia koa* lowlands and montane wet forests. Listed endangered plants such as *Clermontia peleana* have been observed to be epiphytic on *Metrosideros* spp. (ohia), *Acacia koa* (koa), and *Cheirodendron* spp. (olapa) (Lammers 1999, p. 435) and may be difficult to detect from ground level on large trees.

In order to avoid or minimize potential adverse effects to listed plants that may occur on the proposed project site, we recommend minimizing disturbance outside of existing developed or otherwise modified areas. When disturbance outside existing developed or modified sites is proposed, conduct a botanical survey for listed plant species within the project action area, defined as the area where direct and indirect effects are likely to occur. In the case of timber harvest, this would include not only the vicinity of the harvested trees, but all yarding, sorting, access routes, and staging areas as well. Surveys should be conducted by a knowledgeable botanist with documented experience in identifying native Hawaiian and Pacific Islands plants, including listed plant species. Botanical surveys should optimally be conducted during the

wettest part of the year (typically October to April) when plants and identifying features are more likely to be visible, especially in drier areas. If surveys are conducted outside of the wet season, the Service may assume plant presence.

The boundary of the area occupied by listed plants should be marked with flagging by the surveyor. To avoid or minimize potential adverse effects to listed plants, we recommend adherence to buffer distances for the activities in Table 2 below. Where disturbed areas do not need to be maintained as an open area, restore disturbed areas using native plants as appropriate for the location.

Whenever possible we recommend using native plants for landscaping purposes. The following websites are good resources to use when choosing landscaping plants: Landscape Industry Council of Hawai'i Native Plant Poster (<http://hawaiiscape.wordpress.com/publications/>), Native Hawaiian Plants for Landscaping, Conservation, and Reforestation (<https://www.ctahr.hawaii.edu/oc/freepubs/pdf/of-30.pdf>), and Best Native Plants for Landscapes (<https://www.ctahr.hawaii.edu/oc/freepubs/pdf/OF-40.pdf>).

If listed plants occur in a project area, the avoidance buffers are recommended to reduce direct and indirect impacts to listed plants from project activities. However, where project activities will occur within the recommended buffer distances, additional consultation is required. The impacts to the plants of concern within the buffer area may be reduced by placing temporary fencing or other barriers at the boundary of the disturbance, as far from the affected plants as practicable.

The above guidelines apply to areas outside of designated critical habitat. If project activities occur within designated critical habitat unit boundaries, additional consultation is required. All activities, including site surveys, risk introducing nonnative species into project areas. Specific attention needs to be made to ensure that all equipment, personnel and supplies are properly checked and are free of contamination (weed seeds, organic matter, or other contaminants) before entering project areas. Quarantines and or management activities occurring on specific priority invasive species proximal to project areas need to be considered or adequately addressed. This information can be acquired by contacting local experts such as those on local invasive species committees (Hawaii: <https://www.biisc.org/>). Please refer to the attached Biosecurity Protocols for the Island of Hawaii for more information.

Table 2. Recommended buffer distances to minimize and avoid potential adverse impacts to listed plants from activities listed below.

Action	Buffer Distance (feet (meters)) - Keep Project Activity This Far Away from Listed Plant	
	Grasses/Herbs/Shrubs and Terrestrial Orchids	Trees and Arboreal Orchids
Walking, hiking, surveys	3 ft (1 m)	3 ft (1 m)
Cutting and Removing Vegetation By Hand or Hand Tools (e.g., weeding)	3 ft (1 m)	3 ft (1 m)
Mechanical Removal of Individual Plants or Woody Vegetation (e.g., chainsaw, weed eater)	3 ft up to height of removed vegetation (whichever greater)	3 ft up to height of removed vegetation (whichever greater)
Removal of Vegetation with Heavy Equipment (e.g., bulldozer, tractor, "bush hog")	2x width equipment + height of vegetation	820 ft (250 m)
Use of Approved Herbicides (following label)	Ground-based Spray Application; hand application (no wand applicator; spot treatment)	Crown diameter
	Ground-based Spray Application; manual pump with wand, backpack	Crown diameter
	Ground-based Spray Application; vehicle-mounted tank sprayer	Crown diameter
	Aerial Spray (ball applicator)	250 ft (76 m)
Aerial Application – herbicide ballistic technology (individual plant treatment)	100 ft (30 m)	Crown diameter
Aerial Spray (boom)	Further consultation required	Further consultation required
Ground/Soil Disturbance/Outplanting/Fencing (Hand tools, e.g. shovel, hoe; Small mechanized tools, e.g., auger)	20 ft (6 m)	2x crown diameter

Action	Buffer Distance (feet (meters)) - Keep Project Activity This Far Away from Listed Plant	
	Grasses/Herbs/Shrubs and Terrestrial Orchids	Trees and Arboreal Orchids
Ground/Soil Disturbance (Heavy Equipment)	328 ft (100 m)	820 ft (250 m)
Surface Hardening/Soil compaction	Trails (e.g., human, ungulates)	2x crown diameter
	Roads/Utility Corridors, Buildings/Structures	328 ft (100 m)
Prescribed Burns	Further consultation required	Further consultation required
Farming/Ranching/Silviculture	820 ft (250 m)	820 ft (250 m)

Definitions (Wagner *et al.* 1999)

- Crown: The leafy top of a tree.
- Herb: A plant, either annual, biennial, or perennial, with the non-woody stems dying back to the ground at the end of the growing season.
- Shrub: A perennial woody plant with usually several to numerous primary stems arising from or relatively near the ground.
- Tree: A woody perennial that usually has a single trunk.

Compliance with the ESA

If this potential project should receive federal funding, federal permits, or any federal authorization, it will require a Section 7 consultation with the Service. The Service only conducts Section 7 consultations with the federal action agency or their designated representative. If there is no federal action agency, but take of listed species cannot be fully avoided, further coordination with us pursuant to ESA compliance is necessary.

Thank you for participating with us in the protection of our endangered species. If you have any further questions or concerns regarding this consultation, please contact Melissa Cady, Fish and Wildlife Biologist, 808-933-6963, email: melissa_cady@fws.gov. When referring to this project, please include this reference number: 01EPIF00-2021-TA-0007.

Sincerely,

MICHELLE
BOGARDUS

Digitally signed by
MICHELLE BOGARDUS
Date: 2020.10.13 18:02:18
-10'00'

Michelle Bogardus
Island Team Manager
Maui Nui and Hawaii Island

Enclosures:

Recommended Standard Water Quality Best Management Practices
Biosecurity Protocols for the Island of Hawaii

Literature Cited

Lammers T.G. Campanulaceae. In: Wagner W.L., Herbst D.R., Sohmer S.H., editors. Manual of the flowering plants of Hawaii. Bishop Museum; Honolulu, HI: 1999. pp. 420-489.

Wagner, W.L., Sohmer, S., and D.R. Herbst. 1999. Manual of the flowering plants of Hawaii, revised edition. Honolulu, Hawaii. University of Hawaii and Bishop Museum Press. 1,919 pp.

Recommended Standard Water Quality Best Management Practices

The U.S. Fish and Wildlife Service recommends that the measures below be incorporated into projects to minimize the degradation of water quality and minimize the impacts to fish and wildlife resources.

1. Turbidity and siltation from project-related work shall be minimized and contained within the vicinity of the site through the appropriate use of effective silt containment devices and the curtailment of work during adverse tidal and weather conditions.
2. Dredging/filling in the marine environment shall be scheduled to avoid coral spawning and recruitment periods and sea turtle nesting and hatching periods.
3. Dredging and filling in the marine/aquatic environment shall be designed to avoid or minimize the loss special aquatic site habitat (beaches, coral reefs, wetlands, etc.) and the function of such habitat shall be replaced.
4. All project-related materials and equipment (dredges, barges, backhoes, etc.) to be placed in the water shall be cleaned of pollutants prior to use.
5. No project-related materials (fill, revetment rock, pipe, etc.) should be stockpiled in the water (intertidal zones, reef flats, stream channels, wetlands, etc.) or on beach habitats.
6. All debris removed from the marine/aquatic environment shall be disposed of at an approved upland or ocean dumping site.
7. No contamination (trash or debris disposal, non-native species introductions, attraction of non-native pests, etc.) of adjacent habitats (reef flats, channels, open ocean, stream channels, wetlands, beaches, forests, etc.) shall result from project-related activities. This shall be accomplished by implementing a litter-control plan and developing a Hazard Analysis and Critical Control Point Plan (HACCP – see <http://www.haccp-nrm.org/Wizard/default.asp>) to prevent attraction and introduction of non-native species.
8. Fueling of project-related vehicles and equipment should take place away from the water and a contingency plan to control petroleum products accidentally spilled during the project shall be developed. Absorbent pads and containment booms shall be stored on-site, if appropriate, to facilitate the clean-up of accidental petroleum releases.
9. Any under-layer fills used in the project shall be protected from erosion with stones (or core-loc units) as soon after placement as practicable.
10. Any soil exposed near water as part of the project shall be protected from erosion (with plastic sheeting, filter fabric etc.) after exposure and stabilized as soon as practicable (with native or non-invasive vegetation matting, hydroseeding, etc.).

BIOSECURITY PROTOCOLS – HAWAII ISLAND

The following biosecurity protocol (based on National Park Service, State of Hawaii, U.S. Fish and Wildlife, U.S. Geological Survey, and the DOI Office of Native Hawaiian Relations guidance) should be followed when operating on Hawaii Island to prevent the introduction of harmful invasive species including frogs, ants, weeds, and fungi into local natural areas (e.g., Hawaii Volcanoes National Park, Hakalau Forest National Wildlife Refuge, State of Hawaii “Natural Areas”) and areas with native habitat (habitat that is primarily composed of native vegetation), other islands in Hawaiian archipelago, or the U.S. mainland. The protocol also includes suggestions for keeping field staff safe from certain invasive species.

1. All work vehicles, machinery, and equipment should be cleaned, inspected by its user, and found free of mud, dirt, debris and invasive species prior to entry into the natural areas or native habitat.

a. Vehicles, machinery, and equipment must be thoroughly pressure washed in a designated cleaning area and visibly free of mud, dirt, plant debris, insects, frogs (including frog eggs) and other vertebrate species such as rats, mice and non-vegetative debris. A hot water wash is preferred. Areas of particular concern include bumpers, grills, hood compartments, areas under the battery, wheel wells, undercarriage, cabs, and truck beds (truck beds with accumulated material (intentionally placed or fallen from trees) are prime sites for hitchhikers).

b. The interior and exterior of vehicles, machinery, and equipment must be free of rubbish and food. The interiors of vehicles and the cabs of machinery must be vacuumed clean. Floor mats shall be sanitized with a solution of >70% isopropyl alcohol or a freshly mixed 10% bleach solution.

c. Any machinery, vehicles, equipment, or other supplies found to be infested with ants (or other invasive species) must not enter natural areas or native habitat. Treatment is the responsibility of the equipment or vehicle owner and operator.

2. Little Fire Ants – All work vehicles, machinery, and equipment should be inspected for invasive ants prior to entering the natural areas or native habitat.

a. A visual inspection for little fire ants should be conducted prior to entry into natural areas or native habitat.

b. Hygiene is paramount but even the cleanest vehicle can pick up a little fire ant. Place MaxForce Complete Brand Granular Insect Bait (1.0% Hydramethylnon; <http://littlefireants.com/Maxforce%20Complete.pdf>) into refillable tamper resistant bait stations. An example of a commercially available refillable tamper resistant bait station is the Ant Café Pro (<https://www.antcafe.com/>). Place a bait station (or stations) in vehicle. Note larger vehicles, such as trucks, may require multiple stations. Monitor bait stations frequently (every week at a minimum) and replace bait as needed. If the station does not have a sticker to identify the contents, apply a sticker listing contents to the station.

c. Any machinery, vehicles, equipment, or other supplies found to be infested with ants (or other invasive species) must not enter natural areas or native habitat until it is sanitized and re-tested

following a resting period. Infested vehicles must be sanitized following recommendations by the Hawaii Ant Lab (<http://www.littlefireants.com/>) or other ant control expert and in accordance with all State and Federal laws. Treatment is the responsibility of the equipment or vehicle owner.

d. Gravel, building materials, or other equipment such as portable buildings should be baited using MaxForce Complete Brand Granular Insect Bait (1.0% Hydramethylnon; <http://littlefireants.com/Maxforce%20Complete.pdf>) or AmdroPro (0.73% Hydramethylnon; <http://littlefireants.com/Amdro%20Pro.pdf>) following label guidance.

e. Storage areas that hold field tools, especially tents, tarps, and clothing should be baited using MaxForce Complete Brand Granular Insect Bait (1.0% Hydramethylnon; <http://littlefireants.com/Maxforce%20Complete.pdf>) or AmdroPro (0.73% Hydramethylnon; <http://littlefireants.com/Amdro%20Pro.pdf>) following label guidance.

3. Base yards and staging areas inside and outside areas must be kept free of invasive species.

a. Base yards and staging areas should be inspected at least weekly for invasive species and any found invasive removed immediately. Pay particular attention to where vehicles are parked overnight, keeping areas within 10-meters of vehicles free of debris. Parking on pavement and not under trees, while not always practical is best.

b. Project vehicles or equipment stored outside of a base yard or staging area, such as a private residence, should be kept in a pest free area.

4. All cutting tools must be sanitized to prevent the Rapid 'Ōhi'a Death (ROD) fungus.

a. Avoid wounding 'ōhi'a trees and roots with mowers, chainsaws, weed eaters, and other tools. Cut only the minimum amount of trees and branches as approved for the project.

b. All cutting tools, including machetes, chainsaws, and loppers must be sanitized to remove visible dirt and other contaminants prior to entry into natural areas or areas with native habitat, and when moving to a new project area within the native habitat area. Tools may be sanitized using a solution of >70% isopropyl alcohol or a freshly mixed 10% bleach solution. One minute after sanitizing, you may apply an oil based lubricant to chainsaw chains or other metallic parts to prevent corrosion.

c. Only dedicated tools and chainsaws should be used to sample known or suspected ROD infected trees.

d. Vehicles, machinery, and equipment must be cleaned as described in (1) above.

5. Imported firewood, logs, and 'ōhi'a parts:

a. 'Ōhi'a firewood, 'ōhi'a logs, and 'ōhi'a parts should not be transported.

6. For individuals working in the field:

a. **Before going into the field**, visually inspect and clean your clothes, boots, pack, radio harness, tools and other personal gear and equipment, for seeds, soil, plant parts, insects, and other debris. A small brush is handy for cleaning boots, equipment and gear. Soles of shoes should be sanitized using a solution of >70% isopropyl alcohol or a freshly mixed 10% bleach solution.

b. **Immediately before leaving the field**, visually inspect and clean your clothes, boots, pack, radio harness, tools, and other personnel gear and equipment, for seeds, soil, plant parts, insects, and other debris. Soles of shoes should be sanitized using a solution of >70% isopropyl alcohol or a freshly mixed 10% bleach solution.

c. **Little fire ants nest in trees.** If you are under a tree and that tree is bumped or somehow stressed, the threat response of the ants is to fall from the leaves and sting the person under the tree. If you are subject to an ant attack, do not panic. The ants are extremely small but their stings are painful so make sure you remove all ants from your body and clothing. The stings cause inch long welts that are itchy and painful, and can last for weeks. Treat stings as you would other insect stings. In some persons stings can produce life threatening reactions. Stocking antihistamine in the first aid kit is a reasonable precaution.

d. **Rat Lungworm disease** is caused by a parasite that can infect humans who consume raw or undercooked infected snails or slugs or consume raw produce that contains a small infected snail or slug. Infection is rare but can be serious. Symptoms can include severe headache, neck stiffness, low grade fever, nausea, and vomiting anywhere from 1-6 weeks after exposure. The disease is not spread person to person. Anyone who handles snails or slugs should wear gloves and/or wash hands. Eating unwashed produce is discouraged.

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING
601 KAMOKILA BLVD, STE 555
KAPOLEI, HAWAII 96707

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING

FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

September 29, 2020

Mary Alice Evans, Director
Office of Planning State of Hawaii
235 South Beretania St. 6th Floor
Honolulu, HI 96804
Email: MaryAlice.Evans@hawaii.gov

Russell Tsuji
State of Hawaii- DLNR Land Division
PO Box 621
Honolulu, HI 96809
Email: Russell.Y.Tsuji@hawaii.gov

Dear Ms. Evans and Mr. Tsuji:

**SUBJECT: Chapter 6E-42 Historic Preservation Review -
Request for Comments - LUC Docket A99-729
Motion for Order Amending the Findings of Fact, Conclusions of Law, and Decision and
Order Dated February 10, 1995 Land Use Commission Docket No. A99-729 Hawaiian
Islands Land Trust aka The Newton Family Limited Partnership To Establish, Manage and
Steward the Native Forest on the Petition Area as part of the Kūkūau Forest Management
Project
Kūkūau Ahupua'a, South Hilo District, Island of Hawai'i
TMK: (3) 2-4-008:033 por.**

This letter provides the State Historic Preservation Division's (SHPD's) comments on the State of Hawaii Office of Planning submittal titled Motion for Order Amending the Findings of Fact, Conclusions of Law, and Decision and Order Dated February 10, 1995 Land Use Commission Docket No. A99-729 Hawaiian Islands Land Trust aka The Newton Family Limited Partnership Proposed Use: To Establish, Manage and Steward the Native Forest on the Petition Area as part of the Kūkūau Forest Management Project, Kūkūau, South Hilo, Hawaii Tax Map Key No: (3) 2-4-008:033 Por. Land Area: 885.40 Acres

The SHPD received this submittal on September 24, 2020, which included the following:

- [X] A letter dated September 24, 2020 from the SOH OP, requesting SHPD's comments;
- [X] A Land Use Commission petition;
- [X] A satellite photo; and
- [X] A County of Hawaii TMK map

Project Description

The purpose of the subject request is to:

- 1) Recognize Hawaii Island Land Trust's (HILT's) standing to seek and obtain the relief requested herein;
- 2) Amend 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 Kūkūau, 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 (Kūkūāu Forest Management Project).

The Office of Planning Records review indicates the following:

- 2001 The Land Use 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.
- 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 in the Bureau as regular Document No. 10663066. 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.
- 2020 At the 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.

Findings

A review of SHPD records indicate that no archaeological inventory survey (AIS) has been conducted for the proposed project area. The current project area is within an area that has been substantially impacted by historic agricultural uses. The submittal indicates the presence of one or more historic flumes and a historic road known as the "Ola'a Flume road" are located within the project area. The current motion indicates that several modifications and deletions are requested that relate to SHPD.

Determination

Based on the information provided above, the SHPD has no objections to the proposed changes with the stipulation that SHPD has the opportunity to review any future proposed projects within the current project area that involves ground-disturbing activities as no archaeological inventory survey has been conducted for the project area and that historic properties have been identified within the project area and, thus, potential exists for future projects involving ground disturbing activities may have impact to adversely impact undocumented historic properties.

Please contact Sean Nāleimaile at (808) 933-7651 or at Sean.P.Naleimaile@Hawaii.gov for any questions or concerns regarding this letter.

Aloha,
Alan Downer

Alan S. Downer, PhD
Administrator, State Historic Preservation Division
Deputy State Historic Preservation Officer

cc: Lorene K. Mahi, lorene.k.maki@hawaii.gov
Megumi Nakayama, megumi.nakayama@hawaii.gov
April Suprenant, April.Suprenant@hawaiicounty.gov
Laura H. E. Kaakua, laura@hilt.org
Darlene K. Nakamura, darlene.k.nakamura@hawaii.gov
Rubyrosa T. Terrago, rubyrosa.t.terrago@hawaii.gov
Gordon C. Heit, gordon.c.heit@hawaii.gov

From: Kamakana Ferreira <kamakanaf@oha.org>
Sent: Wednesday, October 14, 2020 10:05 AM
To: Maki, Lorene K <lorene.k.maki@hawaii.gov>
Subject: [EXTERNAL] OHA Comments on Land Use Commission Docket #A99-729 Re: Kukuau D&O

Aloha Lorene,

The Office of Hawaiian Affairs (OHA) is in receipt of your letter dated September 24, 2020, inviting us to review the proposed Land Use Docket #A99-729, "Motion for Order Amending the Findings of Fact, Conclusions of Law, and Decision and Order [D&O] Dated February 10, 1995," for a parcel of land in Kukuau, South Hilo, on Hawai'i Island, TMK(3)2-4-008:033 (por.). The original D&O set conditions for the re-zoning of land from conservation to agricultural for the purposes of an agricultural subdivision. However, the land was recently acquired by the Hawaiian Islands Land Trust (HILT), who now seek to use the parcel for reforestation and community based management.

As there are no plans for a subdivision, OHA believes the removal of conditions pertaining to the subdivision is appropriate. However, we observe that Conditions 7 to 9, which pertain to archaeological resources, are also being proposed for removal. While reforestation is typically less impactful than a subdivision, there is still a potential to impact cultural resources. As such, minimally, the Land Use Commission should consider amending Condition 7 in a way that requires HILT to consult with the State Historic Preservation Division (SHPD) to assess the scope of work and whether or not some level of archaeological reconnaissance is needed. If archaeological and/or cultural resources are encountered, we would further recommend that appropriate management and preservation protocols be in place as originally intended by Condition 8.

OHA further notes that it may be unnecessary to remove Condition 9, which pertains to the reporting of inadvertent discoveries, as the Hawai'i Administrative Rules (HAR) 13-280 and 13-300-40 already requires that SHPD be contacted in the event an archaeological resource or human burial are inadvertently discovered, respectively.

Mahalo for the opportunity to comment. Should you have any question, please feel free to contact me via this email or by phone, at 808-594-0227.

Mahalo,
Kamakana C. Ferreira, M.A.
Lead Compliance Specialist
Office of Hawaiian Affairs
560 N. Nimitz Hwy
Honolulu, Hi. 96817

(808)594-0227

1
OP EXHIBIT 4

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

JADE T. BUTAY
DIRECTOR


Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

IN REPLY REFER TO:
DIR 0905
STP 8.3039

October 1, 2020

TO: MS. MARY ALICE EVANS, DIRECTOR
OFFICE OF PLANNING
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

ATTN: LORENE MAKI, PLANNER

FROM: JADE T. BUTAY, DIRECTOR 
DEPARTMENT OF TRANSPORTATION

SUBJECT: A99-729 HAWAIIAN ISLANDS LAND TRUST (HILT)
MOTION FOR ORDER AMENDING THE FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER DATED
FEBRUARY 10, 1995 (MOTION)
KUKUAU, SOUTH HILO, HAWAII
TAX MAP KEY: (3) 2-4-008: 033 (POR.)

The State of Hawaii, Department of Transportation (HDOT) understands that the Petitioner, HILT has filed the subject Motion with the Land Use Commission (Commission) requesting that the Commission 1) recognize HILT's standing to seek and obtain the relief requested; 2) amend the Findings of Fact, Conclusions of Law, and Decision and Order (D&O) dated November 15, 2001 to release the approximate 885.40-acre property 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 specific to the Petitioner's proposed native forest management plans and Kukuau Forest Management Project.

In reviewing the proposed project description and location, HDOT has determined that the project does not appear to have any impact to State transportation facilities; therefore, we have no comments.

If there are any questions, please contact Mr. Blayne Nikaido of the HDOT Statewide Transportation Planning Office at (808) 831-7979 or via email at blayne.h.nikaido@hawaii.gov.

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petitions of:	)	DOCKET NO. A99-729
)	
THE NEWTON FAMILY LIMITED	)	OFFICE OF PLANNINGS RESPONSE
PARTNERSHIP, a Hawaii Limited	)	TO MOTION FOR ORDER AMENDING
Partnership	)	THE FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW, AND
To Amend the Conservation Land Use	)	DECISION AND ORDER, DATED
District Boundary into the Agricultural Land	)	NOVEMBER 15, 2001; OP EXHIBITS 1,
Use District Boundary into the Urban Land	)	2, 3, 4, AND 5; CERTIFICATE OF
Use District for Approximately 885.40	)	SERVICE
Acres of Land at Kukuau, South Hilo,)	
Hawaii, TMK No.: (3) 2-4-08: Por. 33)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was duly served on this date on the below-named parties by U.S. Mail, postage prepaid:

SHAELINE K. KAMAKAALA, #010342
General Counsel
Hawaiian Islands Land Trust
500 Kalaniana'ole Ave. #1
Hilo, Hawaii 96720

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

MICHAEL YEE
DIRECTOR
APRIL SURPRENANT
ACTING DEPUTY DIRECTOR
County of Hawaii Planning Department
Aupuni Center
101 Pauahi Street Suite 3
Hilo, Hawaii 96720

Dated: Honolulu, Hawaii, October 16, 2020.

OFFICE OF PLANNING
STATE OF HAWAII

Mary Alice Evans

MARY ALICE EVANS
DIRECTOR